



Reconstruction of regulation of evidence of state financial loss in corruption crime based on justice value

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Abstract

The Constitutional Court's Decision Number 25/PUU-XIV/2016 makes Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes a material offense, making the legal certainty aspect of Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of the Crime of Corruption increasingly unclear and resulting in a dualism of interpretation, considering that in 2006 the Constitutional Court had also interpreted the provisions the. The purpose of this research is first to examine and analyze the weakness of the regulation on proving the element of state financial loss for corruption in the Indonesian legal system and second, to reconstruct the regulation on establishing the element of state financial loss for corruption in the Indonesian legal system based on the value of justice. This study uses a constructivism paradigm with a *sociological juridical* to solve research problems by examining secondary and primary data. Based on the results of this study, namely the weakness of the regulation on proving elements of state financial losses for corruption in the legal structure where contradictory audit results from the Supreme Audit Agency and the Financial and Development Supervisory Agency will be a gap for corruption perpetrators to make excuses. The name of the institution authorized to determine state losses is not explicitly stated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. From the legal substance, the element of state losses is only regulated in Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Second, there is no common perception regarding state finances. Third, there is no agreement on the scope of "state losses". Weaknesses in legal culture are family culture, paternalistic community orientation, and community culture that does not dare to be honest (*non-assertive*). Therefore, it is necessary to reconstruct the Elucidation of Article 32 paragraph (1) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Keywords: corruption, state finance, loss of state finance

Introduction

Promoting public welfare is one of the objectives of the Unitary State of the Republic of Indonesia as contained in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. To realize the welfare of all Indonesian people, a guideline for the Implementation of a State that is Clean and Free of Corruption, Collusion, and Nepotism as formulated in Law No. 28/1999 on Corruption Crimes. The law contains the principles or principles of legal certainty, orderly state administration, public interest, openness, proportionality, professionalism, and accountability.

Corruption is believed to have emerged since the beginning of human civilization. Corruption itself comes from the Latin "*corruption*" from the verb "*corruptor*" which means to destroy (Hartanti, 2015) ^[1]. Balck's Law Dictionary defines corruption as "*the act of doing something with an intent to give some inventing inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station pr office to procure some benefit either personally or someone else, Contrary to the rights of others* " (Gamer, 1983).

The term corruption is a symptom where officials and state agencies abuse their authority with bribery, counterfeiting, and irregularities. Corruption is a form of abuse of counterfeiting and other irregularities. Corruption is also a form of abusing the power of trust for personal gain. But corruption can also be seen as behavior that does not meet the principle of "*keeping a distance*", meaning that in making economic decisions, whether this is done by individuals in the private sector or public officials, personal or family relationships do not play a role (Pope, 2003) ^[3].

Corruption is a criminal act that is regulated by a separate law, namely Law Number 31 of 1999 jo. Law Number 20 of 2001. Therefore, corruption is classified as a special crime, namely a crime regulated outside the Criminal Code (Suhendar, 2018) ^[4].

Corruption practices occur in almost all elements of the bureaucracy, starting from state public bodies to spreading to the private/private sphere which is identical to the business world. Like a disease, corruption is a chronic disease, so it is difficult to treat it (Firmansyah, 2020) ^[5].

The spirit of law enforcement against corruption which is suspected to be an extraordinary crime that results in social, and economic inequality, loss of trust in the government, and various other problems prompted the birth of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Corruption Crimes (Rumadan, 2013) ^[6].

Efforts to eradicate corruption in Indonesia are not new, starting in 1958 with the issuance of the Army Chief of Staff War Regulation Number: Prt/Peperpu/013/1958 dated April 16, 1958, and the Navy Chief of Staff War Regulation Number: Prt/ZI/137 dated 17 April 1958. In the two regulations, corruption is divided into criminal acts of corruption and non-criminal acts of corruption. Corruption is criminal if there are elements of a crime or violation so based on that it can be punished with corporal punishment and or a fairly heavy fine in addition to confiscation of the assets resulting from the corruption. Meanwhile, corruption is not a crime if there is no malicious intent. This act is not criminalized but is handled by the High Court which carries out a lawsuit from the Coordinating Board for Property Owners to seize the assets resulting from corruption (Prakoso & Suryati, 1986) ^[7].

Subsequently, Law Number 24/Prp/1960 was issued concerning the Investigation, Prosecution, and Examination of Criminal Acts of Corruption. Rules regarding the eradication of criminal acts of corruption were refined again in 1971 with the issuance of Law Number 3 of 1971 concerning the Eradication of Corruption Crimes. After Law Number 3 of 1971, during the New Order government, there was no revision or renewal of regulations to eradicate corruption.

During the New Order government, the limitation of corruption was increasing intense. This can be seen with the formation of several institutions, such as the Corruption Eradication Team (TPK) in 1967, Commission Four in 1970, the Anti-Corruption Commission (KAK) in 1970, and 1977, the New Order government launched Operation Control (OPSTIB) against corruption in Indonesia. However, after the reform of the new order ended, the government formed after the reformation formed several corruption eradication institutions, such as the Joint Team for Corruption Eradication (TGPTPK). This team is under Attorney General Marzuki Darusman. TGPTPK was formed as a temporary institution until the formation of the Corruption Eradication Commission which was mandated by Law No.31 of 1999 concerning eradicating corruption. Unfortunately, TGPTPK consisting of prosecutors, police, and community representatives did not have support (Patawari, 2020) ^[8].

The system of state administration during the New Order was considered to have fostered corrupt practices. As a result, a multi-dimensional crisis occurred along with the monetary crisis that hit the world. This situation provoked a student movement that led to the fall of the New Order. Entering the reformation period, Law Number 3 of 1971 was deemed unable to eradicate massive corruption. The urge to update regulations on the eradication of criminal acts of corruption gave birth to Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Chaerudin, et al., 2009).

One of the basic elements of corruption is the loss of state finances. Various laws and regulations that exist today do not have the same definition of state finances. Article 1 point 1 of Law no. 17 of 2003 concerning State Finances defines state finances as, "*all rights and obligations of the state that can be valued in 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.*"

Article 1 paragraph (1) of Law no. 19 of 2003 concerning State-Owned Enterprises states that state participation is separated from state assets. The meaning of this article is that when state assets have been separated, these assets are no longer in the realm of public law but are included in the realm of private law. The definition of state finances in the Corruption Crime Act is also different from the State Finance Law and the State-Owned Enterprises Law, in the general explanation section of the Corruption Crime Act it is stated that state finances are all state assets in any form, which separated or not separated, then the wealth is no longer in the realm of public law but in the realm of private law. The definition of state finances in the Corruption Crime Act is also different from the State Finance Law and the Law on State-Owned Enterprises. In the general explanation section of the Corruption Crime Act, it is stated that state finances are all state assets in any form, separated or not separated, including all state financial losses and all rights and obligations arising from:

1. Being in the control, management, and accountability of state agency officials both at the central and regional levels;
2. Are in the control, management, and accountability of State-Owned Enterprises/Regional-Owned Enterprises, Foundations, Legal Entities, and Companies that include state capital, or companies that include third-party capital based on agreements with the state.

Differences in the meaning of the laws and regulations can cause difficulties. The difficulty lies in the effort to determine how much state financial losses are due to corruption and how much replacement money will be charged to the convict, in addition to the difficulty of proving at the trial of eradicating corruption.

Articles 2 and 3 of the Corruption Law contain the words "which can harm state finances or the state economy". This element is important to determine whether or not the perpetrators of corruption can be punished. Normatively, if all the elements in Article 2 and Article 3 are proven, then the perpetrator can be sentenced to imprisonment or substitute money. Meanwhile, if one element is not proven, it can have an impact on the release

of the perpetrators of corruption from legal bondage (either because the investigation was stopped or released by a court judge).

Several high-profile corruption cases were handled by the Prosecutor's Office, such as the procurement of the *access fee* at the Ministry of Law and Human Rights. The Attorney General's Office has stopped investigating corruption cases involving access to the Legal Entity Administration System or Sisminbakum. The letter to terminate the investigation or SP3 against one of the suspects, in this case, namely former Minister of Law and Human Rights Yusril Ihza Mahendra, and two other suspects: Hartono Tanoesoedibjo and Ali Amran Jannah, has been signed by the Director of Investigations at the Deputy Attorney General for Special Crimes. This case was discontinued investigation. Because there is not enough evidence in this case.

In another case, namely the procurement of the Pertamina tanker (VLCC), the Attorney General's Office issued a letter of termination of case investigation (SP3) in the alleged corruption case in the sale of Pertamina's very large crude carrier (VLCC). With the signing of the letter, the case involving the politician, Admiral Sukardi, was officially terminated. In this case, the Prosecutor's Office had named three suspects. They are former Pertamina President Director Ariffi Nawawi, former Pertamina Finance Director Alfred H Rohimone, and former State Minister for State-Owned Enterprises and Pertamina President Commissioner Laksamana Sukardi. They were initially found guilty of selling the VLCC Hull 1540 and 1541 in 2004 without the Minister of Finance's approval. The ship, which is currently under construction at Hyundai Heavy Industries in Ulsan, Korea, was sold to Frontline for US\$184 million. As a result, the state is alleged to have lost US\$ 20-56 million because the VLCC price on the market at that time was US\$ 204-240 million. In 2007, the Attorney General's Office asked the Supreme Audit Agency for assistance in auditing state losses in this case.

In October, the Examining Body submitted the results of the audit and stated that it had not found a comparable price. With this decision, state losses are floating and unclear and it turns out that state losses are difficult to calculate concretely. There are actions of people, and the loss to the country cannot be proven. In addition, in the review of the implementation of the *United Nations Convention Against Corruption* (UNCAC) conducted by the United Kingdom and Uzbekistan against Indonesia in 2011, one of the recommendations is to ensure that the existing norms on abuse of function include non-material benefits and consider revising the law. law to remove references to state loss (*Ensure that the existing norms on abuse of functions cover also a non-material advantage, and consider revising the laws to remove the reference to state loss*). As a result of the many problems and the results of a review of the implementation of UNCAC in Indonesia, there has been a discourse to review whether or not the element of "detriment to state finances" is maintained in the revision of the Anti-Corruption Law in the future.

For this reason, the research will specifically assess the elements of state financial losses in corruption. The results of this study are expected to help provide a solution to the problem of eradicating corruption, as well as provide recommendations to strengthen the element of state financial losses in corruption which is the focus of the author's attention who tries to raise issues regarding this problem where the discussion mainly focuses on:

1. What are the weaknesses of the regulation on proving the element of state financial loss for corruption in the legal system in Indonesia?
2. How is the reconstruction of the regulation on elements of state financial losses for corruption in the Indonesian legal system based on the value of justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Soekanto, 1984)^[9].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

This data analysis used the descriptive-analytical method. Descriptive Analysis is an analysis that only reaches the level of description, namely analyzing and presenting facts systemically so that they can be easier to understand and conclude (Hardiyanti & Diamantina, 2022)^[10].

Research Result and Discussion

1. Weaknesses of the Regulation on Proving Elements of State Financial Loss in the Crime of Corruption in the Indonesian Legal System

Weaknesses in regulations regarding proving elements of state financial losses in corruption can be seen from several perspectives. This is based on the theory of the legal system originating from Lawrence M. Friedman which states that a good legal system consists of Legal Structure, Legal Substance, and Legal Culture. In the context of the weakness of regulations to prove elements of state losses in corruption, it can be analyzed into 3 (three) components, namely:

a. Legal Structure

Provisions for criminal acts of corruption as regulated in Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Prevention and Eradication of Corruption Crimes were later changed to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Prevention and Eradication of Criminal Acts of Corruption which contains two main elements, namely "*Enriching Yourself or Others or a Corporation*" and "*May be detrimental to state finances or the state economy*".

In practice, in corruption cases generally in examining indications of state losses, and prosecutors calculate state losses themselves. In several other cases, prosecutors presented LHPKKN from BPKP, and only a small number of cases were asked to calculate state losses from BPK. In principle, whoever the auditor is, what is certain is that the calculation is carried out to find the value of real state losses due to corruption.

Audits carried out by different institutions with different methods and interpretations of state financial losses result in contradictory values of state losses. This has been a matter of controversy to this day. Even the Report on the Result of Calculation of State Financial Losses from the Financial and Development Supervisory Agency itself has several times been sued by the State Administrative Court.

The precision and accuracy of both the method and how to define state losses in the calculations will achieve justice and legal certainty. Contradictory audit results from the Supreme Audit Agency and the Financial and Development Supervisory Agency will be a gap for corruption perpetrators to make excuses. The name of the institution authorized to determine state losses is not explicitly stated in the Law on Corruption Eradication: (Explanation of Article 32 paragraph (1)).

Although the functions of the two institutions, both the Supreme Audit Agency and the Financial and Development Supervisory Agency, are identical, there are differences in the purpose of the institution's existence and work procedures and audit methods, for example in the interpretation of state losses.

In addition to authorized institutions or institutions, one of the alternative parties that can calculate state financial losses is accountants as a profession. According to Leo Nugroho, the calculation of state losses can only be done by the accountant profession. Because accountants have sufficient professional standards to calculate state financial losses. The agency or institution that performs the calculation can be any institution, as long as the person carrying out the calculation is a person who has the competence of an accountant. Although according to the law, the Supreme Audit Agency (BPK) has the authority to do the calculations, not all employees of the Supreme Audit Agency can do the calculations. To be able to perform calculations, people must have the competencies mentioned above (Jaya & Juliani, 2016)^[11].

These differences lead to double standards in handling corruption, especially as a basis for prosecutors to present evidence of state losses. This condition can open up negotiation space for corruption suspects, as well as set a precedent for legal uncertainty. In the case of Dahlan Iskan, for example, the prosecutor brought evidence from the audit results of the Financial and Development Supervisory Agency to the trial, which culminated in a pre-trial hearing which was won by Dahlan Iskan. With the argument that the evidence presented by the prosecutor was incomplete, because it did not have an audit of the value of state losses from the State Audit Board, the case was declared not to be detrimental to the state. Of course, we hope that there will be equal legal action against all perpetrators of corruption and that there will be no gaps for them to avoid enforcing the criminal law of corruption.

b. Legal Substance

1. Only Regulated in Article 2 and Article 3 of the Corruption Act Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption classifies corruption into seven types, namely:

1. It is detrimental to the State's finances
2. bribe,
3. gratuities,
4. embezzlement in office,
5. blackmail,
6. fraudulent acts, and
7. conflict of interest.

The seven types of corruption are described in great detail in the law as the formulation of offenses (criminal acts), namely acts that are punishable by law, contrary to the law, committed by someone who is guilty and that person is considered responsible for his actions. Apart from that, acts of corruption are also classified in other forms, not only related to economic gain as stated in Article 21, Article 22, and Article 24 of the Anti-Corruption

Law. The formulation of a crime shows what must be proven in an investigation according to law. The following are the articles that define criminal acts of corruption in the Anti-Corruption Law:

Table 1

No.	Classification of criminal acts of corruption	Articles used
1	Harming state finances	Article 2 and Article 3
2	Bribery	Article 5 paragraph (1) letters a and b, Article 5 paragraph (2), Article 12 letters a, b, c and d, Article 6 paragraph 1 letter a and b, Article 6 paragraph 2, Article 11, Article 13
3	Gratification	Article 12 B jo. Article 12 C
4	Embezzlement in office	Article 8, Article 9, Article 10 letters a, b and c
5	Extortion	Article 12 letters e, g and f
6	Fraudulent acts	Article 7 paragraph 1 letters a, b, c and d, Article 7 paragraph 2, article 12 letter h
7	Conflicts of interest in procurement	Article 12 letter i

However, of the many provisions governing corruption in the Anti-Corruption Law, the provisions governing "detriment to state finances", are only contained in articles namely Articles 2 and 3 of the Law Corruption. The rest, criminal acts categorized as corruption do not require calculating state financial losses. There are several articles that do not link corruption with state finances, for example bribery. An official who accepts bribes from someone cannot be said to be detrimental to the state's finances.

Even though there are only two articles, these articles are often used or become a favorite of law enforcement officers to ensnare corruption actors who are suspected of causing state losses. state finances. This can be proven by the number of uses of Article 2 and/or Article 3 of the Anti-Corruption Law in the indictment of the public prosecutor.

One of the basic elements in corruption is the loss of state finances. Various existing laws and regulations do not yet have the same definition of state finances. Article 1 point 1 of Law no. 17 of 2003 concerning State Finances defines state finances as, "all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be used as state property in connection with the implementation of these rights and obligations.

In Article 1 paragraph (1) of Law no. 19 of 2003 concerning BUMN states that state participation is a separated state asset. The meaning of this article is, when state assets have been separated, the wealth is no longer in the realm of public law but is included in the realm of private law. The Law on State Finance positions State-Owned Enterprises (Persero) at the level of public law. On the other hand, Article 11 of the Law on State-Owned Enterprises states that the management of State-Owned Enterprises (Persero) is carried out based on Law no. 1 of 1995 concerning Limited Liability Companies and their implementing regulations. means that the Limited Liability Company Law is in accordance with the principle of *lex specialis derogat lex generalis* which applies to State-Owned Enterprises (Persero).

In the event of a loss to the State-Owned Enterprise (Persero), law enforcers and state apparatus, adhere to Article 2 letter g of the State Finance Law which states that State assets/regional assets are managed by themselves or by other parties in the form of money, securities, receivables, goods, as well as other rights that can be valued in money, including separated assets in state/regional companies and a general explanation of the Corruption Crime Act which states that "Separated State Participation is state property" remains in the area of public law.

The definition of state finances in the Corruption Crime Act is also different from the State Finance Law and the Law on State-Owned Enterprises. In the General Explanation section of the Corruption Crime Act, it is stated that state finances are all state assets in any form, separated or not separated, including all state finances and all rights and obligations arising from:

1. Being in the control, management, and accountability of state agency officials both at the central and regional levels;
2. Being in the control, management, and accountability of State-Owned Enterprises/Regional-Owned Enterprises, Foundations, Legal Entities, and Companies that include state capital, or companies that include third-party capital based on agreements with the state. A number of the descriptions above show a non-uniform understanding.

The International Convention, in this case, UNCAC (*United Nations Convention Against Corruption*), does not explicitly explain the formulation of state losses. Article 3 paragraph 2 of UNCAC (section *Scope of Application*) explains, "To implement this Convention, it shall not be necessary, except otherwise stated herein, for the offenses outlined in it to result in damage or harm to state property".

If translated directly, then the scope of application of UNCAC and to implement this convention; the crimes referred to in it need not, unless stated otherwise, result in loss or damage to state assets.

In many corruption cases, investigators, public prosecutors, and even judges in court fail to agree on the determination of the amount of state financial losses in the corruption crimes being handled. This is due to the absence of a unified perspective on state finances itself. As a result, there is often a difference (disparity)

between the Public Prosecutor (JPU) and the judge regarding the amount of state loss that was corrupted by the defendant as a determinant of additional punishment in the form of compensation for state losses.

c. Legal Culture

In the course of Indonesian history, an official in the early days of independence was someone who became the leader of the people to lead the struggle for independence, led the Indonesian people to achieve the ideals of the welfare of the Indonesian nation, and his basic behavior was a sacrifice, dedication. An official after Indonesia's independence is someone who is entrusted with public power by the Indonesian nation and state to exercise power to carry out state activities in the interest of achieving state goals. It turns out that the basic behavior at the beginning of independence gradually changed to become more oriented towards power, facilities, and personal wealth.

Now corruption has become a serious problem for this nation because those who do corruption are no longer low-level employees, but those with high positions and education and very luxurious lifestyles so corruption takes place systemically and amounts to billions. Like a caterpillar, what is eaten is not only the leaves, branches, and fruit, but the trunk which will eventually spread to the roots of state life. The corruptors have indeed succeeded in destroying the dignity and authority of the government and bankrupting the wealth of the state and nation.

Society and the government should place the corruptors as a subversion group that is the enemy of the people and the state who must be dealt with firmly, if necessary, sentenced to death because the state and many people are victims. The destructive power of corrupt acts is far more powerful than that of terrorists who commit suicide bombings. Because the destructive power of corruption is systemic and destroys the body of the state bureaucracy and the mentality of officials, the people must be angry and rise against corruptors. Therefore, the verdict (convict) against the corruptors is a special concern for all levels of society and the state so that the judges (courts) give the severest punishment and the corruptors to return the assets that have been taken to the state as an effort to impoverish which can then create a deterrent effect.

2. Reconstruction of the Regulation on Proving the Elements of Sate Loss for the Crime of Corruption in the Indonesian Legal System based on the Value of Justice

The formulation of the element of corruption in the Law on the Eradication of Corruption Crimes Number 31 of 1999 still does not have clarity regarding what is meant by the elements of "benefiting oneself" and "enriching oneself" as stated in Article 2 paragraph (1) and Article 3 of the Law. - Law on eradicating corruption. Article 2 paragraph (1) and Article 3 are favorite articles for law enforcers, especially the Corruption Eradication Commission (KPK) in ensnaring perpetrators of Corruption Crimes. As for the sound of article 2 paragraph (1) and Article 3 of Law no. 31 of 1999, namely: Article 2 paragraph (1): "Everyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be sentenced to life imprisonment or a minimum term of imprisonment. 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)." From the sound of such an article, it is clear that Article 2 paragraph (1) of Law no. 20 of 2001, requires that anyone who is proven to have committed a criminal act of corruption, as regulated in Article 2 paragraph (1), will be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (two) years. twenty) years and or a fine of at least Rp. 200,000,000.00 (two hundred million) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). Concerning sanctions for perpetrators of corruption Article 2 paragraph (1) of Law no. 31 of 1999, also stipulates that if a criminal act of corruption is committed against funds intended for the management of dangerous situations, national natural disasters, response to widespread social unrest, overcoming economic and monetary crises, and repetition of criminal acts of corruption, then the perpetrators can be sentenced to death.

The formulation of the element of corruption in the Law on the Eradication of Corruption Crimes Number 31 of 1999 still does not have clarity regarding what is meant by the elements of "benefiting oneself" and "enriching oneself" as stated in Article 2 paragraph (1) and Article 3 of the Law. - Law on eradicating corruption. Article 2 paragraph (1) and Article 3 are favorite articles for law enforcers, especially the Corruption Eradication Commission (KPK) in ensnaring perpetrators of Corruption Crimes.

The initial steps of parliamentary policy must be consistent with TAP MPR No. VIII of 2001 concerning Recommendations and Policy Directions for the Eradication and Prevention of Corruption, Collusion, and Nepotism. As one of the direction points of the policy of eradicating KKN that must be used as legal politics to eradicate KKN is, "revoke, amend, or replace all laws and regulations as well as decisions of state administrators that indicate to protect or allow the occurrence of KKN". So the question is, which Constitutional Court ruling regime is more directed towards the TAP MPR policy direction? Is it the 2006 Constitutional Court's decision or the 2017 Constitutional Court's decision?

According to the author's view, it is clear that the 2006 Constitutional Court's decision made it easier to eradicate corruption in Indonesia. But what needs to be considered is not easy or difficult, but how the concept of eradicating corruption runs constitutionally and does not violate the law that needs to be regulated in the future revision of the TPK Law.

On the other hand, future parliamentary policies must formulate and determine which institution has the most authority to conduct investigative audits of state losses, so that there is no conflict between state institutions, as is

the case today between BPK and BPKP, who often have different opinions about the existence of losses. country or not.

The clarity of the institutions authorized to carry out investigative audits will determine the success and failure of eradicating corruption after the 2017 Constitutional Court decision which emphasizes the aspect of prohibited consequences, namely the element of real state losses.

Table 2: Table of Reconstruction of Regulations for Proofing Elements of State Financial Loss in Criminal Acts of Corruption in the Indonesian Legal System Based on Justice Values

Before Reconstruction	Weaknesses	After Reconstruction
<p>Elucidation of Article 32 Paragraph (1) What is meant by "obviously there has been a state financial loss" is a loss whose amount can be calculated based on the findings of the authorized agency or appointed public accountant.</p>	<p>In the Anti-Corruption Law, in particular Article 2 and Article 3, it regulates the element of state financial loss as a corruption offense, but this regulation does not explicitly state which agency or party is authorized to determine the calculation of state losses. This phrase points to the need for a body or accountant who is authorized to determine state losses. However, in practice, ambiguity regarding "authorized agency or appointed public accountant" can lead to multiple interpretations. phrase "authorized agency" can be translated as an authorized agency or has the capacity in accounting or calculating state financial losses or it can also be interpreted as an institution authorized in handling corruption cases.</p>	<p>Elucidation of Article 32 Paragraph (1) What is meant by "obviously there has been a state financial loss" is a loss whose amount can be calculated based on the findings of the BPK (Financial Audit Board).</p>

Conclusion

Based on the results of the description of the results of the discussion regarding "Reconstruction of the Regulation of Elements of State Financial Loss in the Crime of Corruption in Corruption Crimes based on the Value of Justice" as follows:

1. The weakness of the regulation on proving the element of state financial loss for corruption in the Indonesian legal system consists of *first*, the legal structure where contradictory audit results from the Supreme Audit Agency and the Financial and Development Supervisory Agency will be a gap for perpetrators of corruption crimes to make excuses. The name of the institution authorized to determine state losses is not explicitly stated in the Law on Corruption Eradication. *The second* is from the legal substance in which state losses are only regulated in article 2 and article 3 of the Corruption Crime Act and there is no common perception regarding state finances. Where in Article 1 number 1 of Law no. 17 of 2003 concerning State Finance, Article 1 paragraph (1) of Law no. 19 of 2003 concerning State-Owned Enterprises, and also in the General Explanation of the Corruption Crime Act. And there is no agreement on the scope of state losses contained in Law Number 1 of 2004 concerning the State Treasury, Article 1 paragraph 22. Article 2 paragraph (1) of the Corruption Crime Act and Article 1 number 15 of Law Number 15 2006 concerning the Supreme Audit Agency. *The third* is a legal culture where three cultural aspects can facilitate corruption, namely family culture, paternalistic community orientation, and community culture that is not brave enough, to be honest (*non-assertive*). Family culture has many positive aspects for the life of a nation, but on the negative side, family culture will make it difficult for people to act decisively, and indecision in implementing regulations will be an obstacle to eradicating corruption. A paternalistic culture will also make it difficult to eliminate corruption because every time there is an act of corruption by a leader or someone who is respected in society. The action will be easily imitated by other people with lower status, this will get worse yet there is no openness to criticism from the public. Meanwhile, a culture that lacks the courage to be frank (*non-assertive*) will cause people to choose silence rather than reporting violations committed by others.
2. Reconstruction of regulations for proving the element of state financial loss for criminal acts of corruption in the Indonesian legal system based on the value of justice wherein reconstructing the explanation from the Elucidation of Article 32 Paragraph (1) of the Corruption Crime Act to what is meant by "there has been a state financial loss" is a loss that the amount can already be calculated based on the findings of the Supreme Audit Agency.

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