



Reconstruction of authority to calculate country financial damages in corruption case in Indonesia based on justice value

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Abstract

Corruption Eradication in Indonesia are regulated in Law No. 31 of 1999 concerning Corruption and Law No. 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption does not regulate the authority to calculate state financial losses in criminal acts of corruption. This makes a polemic in the community especially for the Defendant and his Legal Counsel although based on the Decision of the Constitutional Court Number 31 / PUU-X / 2012 dated October 23, 2012 which basically states that the BPK, BPKP, Inspectorate, Public Accountants have the authority to calculate financial losses the state in criminal acts of corruption and even the Investigator also has the authority to do so.

The problem examined in this study is regarding the reconstruction of the authority to calculate the loss of state finances in criminal acts of corruption based on justice. The research method uses a sociological juridical approach. Data collection techniques by interview, observation, and documentation. Data analysis techniques using interactive analysis methods.

The results of this study conclude that the authority to calculate State Financial Losses in Corruption is not based on values of dignified justice that uphold human and human values based on Pancasila. BPK, BPKP, Inspectorate and Public Accountant are composed of people or people with dignity who work as auditors who have professional abilities with auditing standards determined by the government and they carry out their duties based on applicable regulations. In order not to make polemic and debate and can be a guideline for Law Enforcement, it must be regulated in the Corruption Act.

Keywords: counting authority, state financial losses, corruption crimes, justice

Introduction

Corruption is a symptom of the people found in almost every country. The Talk about corruption is as if never stop. In Indonesia, corruption is a systematic and widespread crime, and seizes the economic and social rights of many people, so that it is considered as an extraordinary crime. Moreover, corruption in Indonesia continues to show an increase from year to year. Both of the cases that occurred and the amount of state loss. As a result of the corruption has a very influential impact on the country in all lines both economic, social and poverty of the people, politics and democracy, law enforcement, defense and security, as well as an impact on environmental quality and quality of life ^[1]. The impact of these extraordinary acts of corruption if the government does not immediately deal seriously will further worsen the image of the government in the eyes of the people reflected in the form of mistrust and disobedience of the people to the law ^[2]. if there is no meaningful improvement, the conditions are very dangerous nation's life ^[3]. Indonesia as a state of law puts the law as the highest

thing (supreme), which upholds the rule of law. The rule of law must not neglect the three basic laws, namely justice, expediency, and certainty. Therefore, to combat and eradicate corruption in Indonesia, the Indonesian government has tried to enact rules that govern criminal acts of corruption. In Law No. 31 of 1999 concerning Eradication of Corruption Crimes as amended and supplemented by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 because it was not strictly regulated, the legal vacuum was made polemic among lawyers and Defendant's Legal Counsels about who has the authority to calculate state financial losses in corruption ^[4]. Most people believe that the authority to determine state financial losses is the Supreme Audit Board (BPK), this is based on the mandate of Article 23E Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Article 10 of Law Number 15 of 2006 concerning the Supreme Audit Board (BPK) which states: "BPK evaluates and / or determines the amount of state losses caused by intentional or negligent acts committed by the treasurer, the manager of the State-Owned Enterprises / Regional Government-Owned Enterprises, and institutions or other bodies that carry out state financial management." In the practice of the hearing the opinions are outlined in the exception / objection and defense / defense of the Defendant and the Defendant's Legal Counsel.

¹ Feter J. Berger, 1985, *Invitations to Sociologies*² Humanistic (Alih Bahasa oleh Dhakidae), Inti Sarana Aksara, Jakarta.

² C.K. Allen, 1994, *Law in the Making*, Harvard University Press, New York.

³ Komisi Pemberantasan Korupsi, -, *Rencana Strategik Komisi Pemberantasan Korupsi, 2008-2011* accessed on <http://www.kpk.go.id/modules/editor/doc/Strategic> plan 2008 to 2011 id.pdf. on January 2019

⁴ Frans Magnis Suseno, 2003, *Etika Politik Prinsip-prinsip Dasar Kenegaraan Modern*, Gramedia Pustaka Utama, Jakarta.

The debate / polemic about the authority to calculate state financial losses calculated by agencies other than the State Audit Agency (BPK) and even brought to the Constitutional Court friendly to conduct a material test (judicial review). In Decision of the Constitutional Court (MK) Number 31 / PUU-X / 2012 dated October 23, 2012, which in one of its considerations stated as follows: "KPK can not only coordinate with BPKP and BPK in the framework of proving a criminal act of corruption, but can also coordinate with other agencies, can even prove themselves outside the findings of the BPKP and BPK, for example by inviting experts or by asking for material from the inspectorate general or a body that has the same function from each government agency, even from other parties (including companies), which can demonstrate material truth in the calculation of state financial losses and / or can prove the case being handled". However, despite the decision of the Constitutional Court, in judicial practice it is still often debated as to who is authorized to calculate financial losses. Country, where most investigators are good investigators those from the police and investigators who come from the prosecutor's office, use an audit of the calculation of state losses from the Regional Inspectorate, or the Financial and Development Supervisory Agency (BPKP), even by the Public Accountant, but very rarely use audits from the Supreme Audit Agency (BPK).

Based on the description above, the writer wants to do a research on who is authorized to carry out the calculation of state financial losses in corruption based on justice, which in the end can be used as a basis / guidance for all parties, both law enforcement and those suspected of committing corruption, which is set forth and stipulated explicitly in a statutory regulation, based on the problem mentioned above, the writer is interested in researching about this and formulate a main problem that will be discussed in this article and that is how to reconstruct the authority to calculate losses of state finances in Corruption Case based on Justice Value.

Method of Research

The research paradigm carried out in this article is constructivism. Constructivism paradigm is a paradigm that tries to see that the truth of a legal reality is relative, applies according to specific contexts that are considered relevant by social actors. Legal reality is a diverse plurality of reality, based on individual social experience because it is a mental construction of humans, so the research conducted emphasizes empathy and dialectical interaction between researchers and those investigated to reconstruct legal reality through qualitative methods. It is hoped that with this paradigm model later, a study of the authorized construction to calculate and determine State financial losses in corruption which has not been regulated in Law Number 31 of 1999 concerning Eradication of Corruption can be viewed from a variety of perspectives in a comprehensive manner, especially in relation to values of justice. The type of analytical descriptive research with a research approach is sociological juridical. Sources of data in this study are: Primary data and secondary data. Data collection techniques that will be carried out with literature studies, observations and interviews. In order to realize the results of the research in accordance with the expected objectives, then in analyzing the data, this study uses descriptive qualitative analysis. This descriptive qualitative data analysis method is

useful for describing theories that have been built from data that have been obtained in the field, by means of the initial stage of the researcher doing exploration, then conducting in-depth data collection from observation to presentation of data provided in this article ^[5].

Research Result and Discussion

Calculation of State Financial Losses in Practice in Courts.

In practice, institutions that are often involved by law enforcement agencies in calculating state losses are the Supreme Audit Board (BPK) and the Financial and Development Supervisory Agency (BPKP) and the Inspectorate. However outside the institutions, the counting of state losses in the acts of criminal corruption can also be carried out by an Public Accountant and even The Prosecutors' Office and the Court can carry out their own calculations of state financial losses.

Investigator as enforcers of law are at the vanguard of the first / beginning to prove the existence of the alleged acts of criminal corruption ^[6], they count the state financial losses based on:

1. Law No. 31 Year 1999 on Eradication Act Criminal Corruption.
2. Decision of the Constitutional Court (MK) Number 31 / PUU-X / 2012 dated October 23, 2012.
3. Letter Circular No. 4 Year 2016 on Application of Formulation Results Meetings Plenary Room Supreme Court Year 2016, dated the date of 9 December 2016 As the Guidelines Implementation Task For the Court.

Based on the provision above, the investigator as enforcers of law as the front guard conduct an investigation on the alleged acts of criminal corruption in proving the elements of "detrimental to the financial state" using the calculation / audit provided by the Board of State Finance Audit (CPCs), or the Agency for the Supervision of Financial and Development (BPK), or Inspectorate, or even public accountant, or even Investigators can perform the calculation themselves. But the fact that in the case of acts of criminal corruption were submitted to the Court investigators do not ever do the counting losses finance the state itself. Based on information from investigators either of Police ^[7], Prosecutor ^[8] or even investigator from the corruption eradication commission ^[9].

To prove the elements of "detrimental to the financial state" investigators have not been doing the calculation of damages finance the state itself. In doing the calculation of loss of financial state investigators always ask for help to one of the agency that is authorized to perform audits both to the Board of State Finance Audit (CPCs), or the Agency for the Supervision of Financial and Development (BPK), or Inspectorate, or even public Accountant.

⁵ Esmi Warassih, Tanpa Tahun, *Metode Penelitian Hukum*, Yayasan Dewi Sartika, Semarang, p 162.

⁶ Wahyu Widodo, Spto Budoyo, Toebagus Galang, 2018, The Role of Law Politics on Creating Good Governance and Clean Governance for a Free-Corruption Indonesia in 2030. The Social Sciences, Year 2018, Volume: 13, Issue: 8, Page No.: 1307-1311, DOI: 10.36478/sscience.2018.1307.1311.

⁷ Interview With Fadli, SH., SIK., MSi, Penyidik pada Dirreskrimsus Polda Jawa Tengah, 10 June 2019.

⁸ Interview With Teguh Ariawan, SH, Penyidik pada Kejaksaan Tinggi Jawa Tengah, 19 June 2019

⁹ Interview With Syaifudin Arif, Penyidik Komisi Pemberantasan Tindak Pidana Korupsi, 20 May 2019.

Investigators from the Police and the Prosecutor's are more often asked for assistance to the Agency for the Supervision of Financial and Development (BPK), although ever also asked for assistance to the Board Audit Finance (BPK), Inspectorate, or Public Accountant to calculate the losses financial state. While for investigators are derived from the Commission Eradication Act Criminal Corruption (KPK) more frequently asking for assistance to the Board Audit Finance (BPK) to calculate the loss of financial state.

With so each investigator to prove the offense of criminal corruption against elements of "harming the financial state" using agencies that different, namely Board Audit Finance (CPCs), or the Agency for the Supervision of Financial and Development (BPK), Inspectorate, or Public Accountant, even investigators can calculate their own state financial losses. To find out more about about the authority of the agency BPK, BPK, the Inspectorate and the Accountant Public.

1. The Authority to Calculate State Financial Losses in Corruption Cases that still Does Not Reflect Justice.

As explained above, the authority to calculate state financial losses in practice can be carried out by various agencies, namely the Supreme Audit Board (BPK), the Financial and Development Supervisory Agency (BPKP), Inspectorate (Inspectorate General, Provincial and Regency / City), and Public Accountants. This is based on the Decision of the Constitutional Court (MK) Number 31 / PUU-X / 2012 and Circular Letter Number 4 of 2016 concerning the Application of the Formulation of the Plenary Meeting Results of the Supreme Court of 2016. This has caused a lot of debate among legal experts, especially advocates who accompanied the Defendant in a corruption case. this is caused by many corruption cases in the trial where the audit results of the Supreme Audit Agency (BPK) differ from the audit results of the Financial and Development Supervisory Agency (BPKP), as well as the Inspectorate and Public Accountant. One states there is a state loss, one or the other does not ^[10]. "This is reinforced by the opinion of the Head of the Law and Public Relations Bureau MA Ridwan Mansyur who states that the BPK, BPKP, Inspectorate and Public Accountants have different scope of duties. Although not frequently, the calculation of BPK is different from the calculation of BPKP, the same also happened to Inspectorate and Public Accountant.

The debate over who has the authority in calculating state losses has begun to be much questioned, especially in relation to handling corruption cases. The Legal Advisers are of the view that the BPK is authorized to determine the state financial losses as stipulated in Article 10 of Law Number 15 Year 2006 concerning the Supreme Audit Board (BPK) which states: "The BPK evaluates and / or determines the amount of state losses caused by deliberate or negligent acts committed by the treasurer, the manager of a State-Owned Enterprise / Regional Government-Owned Enterprise, and other institutions or entities that conduct the management of state finances" ^[11].

Based on the regulation, despite the Constitutional Court Decision Number 31 / PUU-X / 2012 and Circular Letter

Number 4 of 2016 concerning the Enactment of the Formulation of the 2016 Supreme Court Chamber Plenary Meeting Results which gave the authority of other Agencies to calculate state losses in acts of corruption other than BPK, but did not dampen the polemic and the debate. Legal experts, especially Advocates, are of the view that only the Supreme Audit Board (BPK) has the authority to calculate the state's financial losses in corruption. While other agencies besides the BPK do not have the authority to do so or are unconstitutionally unable.

In addition, the fact that the calculation of state financial losses in corruption was different results so that they are of the opinion not to provide injustice for the Defendant. This can be seen that in one case of corruption that has been audited from different agencies that produce different calculations of state financial losses, for example Corruption Crime Case Number: 6 / Pid.Sus-TPK / 2018 / PN Smg. Conducted an audit / calculation by:

a. Public Accountant.

In this case based on the statement of Rina Arifati, Se., M.Sc., Akt binti Asmawi, Auditors at the Public Accounting Firm Darsono and Budi Cahyo Santoso who have conducted audits of PD. Bhumi Phala Wisata in 2016 on the company's internal report, to be adjusted to the applicable financial accounting standards, explained that based on the audit results contained in a Letter from the Public Accounting Firm Darsono & Budi Cahyo Santoso Number: 054 / KAP-DB / ML / IV / 2017 April 20, 2017, regarding the Management Letter there is still debt from PD. Bhumi Phala Wisata of Temanggung Regency to Pikatan Tour & Travel of Rp. 662,950,942, - (six hundred sixty two million Nine hundred fifty thousand Nine hundred forty two rupiahs) ^[12].

b. Regional Inspectorate.

Based on information from Dwi Arief Setiawan. S. Sos., M.Sc, and Wedya Ardhini, SE., Positioned as Young Auditor at the Temanggung Regency Inspectorate who has done the State Losses Calculation in the alleged corruption case at the request of the Temanggung District Prosecutor's Office, based on the audit results set forth in the Audit Report from the Temanggung Regency Inspectorate Number: 700/900 / 010.PKN / 2017 November 24, 2017 there is a loss of state finances with a value of at least Rp. 467,486,210.00 (four hundred sixty seven million four hundred eighty-six thousand two hundred and ten rupiah) ^[13].

Based on the reasons mentioned above, the experts of law in particular Advocat believes that the various institutions that determine or calculate the loss of financial state makes not the certainty of law and lack of justice for the public. Besides the purpose of law to provide peace of society becomes not achieved because there will always be a polemic and debate, as proposed by Prof. Van Apeldoorn in the book are titled " *Inleiding tot de studie van het nedelandse recht* " which states that the purpose of law is to regulate social life of man is peaceful. The law requires peace. This is in line to Prof. Subekti, SH. Who Argued that "justice that comes from God the almighty One, will be but

¹⁰ Interview With Dwi Nuryanto, S.H., dan Ani Widayati, S.H.Advokat / Penasehat Hukum perkara Tindak Pidana Korupsi Semarang, dan 16 Oktober 2018.

¹¹ Ganjong, 2007, Pemerintahan Daerah Kajian Politik dan Hukum, Ghalia Indonesia, Bogor.

¹² Interview With Rina Arifati, Se., M.Si., Akt Auditor di Kantor Akuntan Publik Darsono dan Budi Cahyo Santoso, 13 Pebruari 2018.

¹³ Interview With Dwi Arief Setiawan. S.Sos., M.Si, danWedya Ardhini, SE., Auditor Muda pada Inspektorat Kabupaten Temanggung, 13 Pebruari 2013.

the man who has the intellect, skill or ability to palpate and feel the state of the so-called fair)."

Legal positive is a series of principles and rules of law that apply when this, the form of verbal or written that the enforceability of the law are binding in particular and the general are enforced by the institution of judicial or government who live in a country (*ius constitution*).

Tying in general are the rules hold that the law which applies a commonly, namely regulation legislation. Who referred to the law is all the rules of writing are made by the government or agency state or any official who is authorized and are binding in general. Indonesia is a great country who has a lot of people with various idea and it established a regulatory law that is applicable and binding manner for the entire population of Indonesia, by reason that the existence of regulatory legislation is very important because as a unifying standard in the life of nation and state that order and security can be realized.

Regulation of the legislation that applies in Indonesia arranged by Law Act No. 12 Year 2011, which set about Resources Law and Rules of Order Rule Legislation, which refers to the principle of *'lex Superiori derogat legi inferiori'*. This means that the laws that exist in the above can ignore or override laws that position there at the bottom. Laws positive that apply when these are applied in Combating Acts of Criminal Corruption is the Law - Law Number 31 Year 1999 on Eradication Act Criminal Corruption, as has been in change and coupled with the Law - Law Number 20 Year 2001 concerning Amendment Above the Law No. 31 Year 1999 about Eradication Act criminal Corruption and regulations other that relates to the offense of criminal corruption.

1. Kewenangan Menghitung kerugian Keuangan negara dalam perkara tindak pidana Korupsi berdasarkan berkeadilan

The main basis of the theory of Dignified Justice according to its initiator, Teguh Prasetyo^[14], is Pancasila which is a *Volksgeist*, the soul of the nation of the people of Indonesia, which has a characteristic of *Humanistic* which apply are universal, namely in Javanese term "*Nguwongke Uwong*" in addition to justice social and precepts are more of Pancasila^[15]. Dignified Justice is of the opinion that both justice, usefulness and legal certainty are a unity that collects in justice, namely justice based on Pancasila.

According to Teguh Prasetyo, the pillar of Social Justice for All Indonesian People in equal prosperity for all people in a dynamic and increasing sense. All natural wealth and so on are used for mutual happiness according to their respective potentials. Protect the weak so that community groups can work in accordance with their fields. The values of Pancasila have been trusted by the Indonesian people. Therefore, practicing Pancasila is a must for the Indonesian people. The 5th principle of Pancasila is the mandate of the Pancasila originators, especially committee 9 including Bung Karno, and contained within the values of "Economic Justice" which is now we as the next generation understand that, so that all policies and any programs implemented, must lead to the realization of social justice for all the people of Indonesia.

Legal regulations in Indonesia must be aimed at achieving the goals of the state as stipulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, which is to build the whole nation and the whole of Indonesia's blood, educate the life of the nation, advance public welfare, and participate in carrying out world order. The state's goal must be made into a political orientation of development and legal politics so that political law must be seen as an effort to make law as a means of achieving the country's goals from time to time in accordance with the stages of community development^[16].

Hans Kelsen as one of the exponents of the genre of legal positivism also constructed a model of the ordering of the legislation through the theory of *stufenbau des recht* (or the hierarchy of norms), which qualifies law as purely formal. Thus, the rule of law is a system of norms, a system of norms is a hierarchical arrangement and each norm is based on the norms that are above it, which forms it or which gives and determines its validation and becomes the source for the norms below it. The apex of the hierarchy is a basic norm, namely the constitution. This basic norm is the highest basis for the overall validity of the legal system. The constitution referred to here is constitutional in the material sense, not formal. Related to the material aspects (substance) of basic norms, Kelsen distinguishes two types of norms or norm systems, namely: (i) the static system of norm is a system that sees a norm in terms of the content or material content of the norm itself. The contents show that the proven quality directly guarantees its validity; and (ii) the dynamic system of norm is a system that sees a norm which is formed in accordance with procedures determined by the constitution (formed by a delegative authority and norms derived from higher norms).

The pouring of the value of Pancasila in the 1945 Constitution is clear when seen in the order of the precepts of Pancasila. The precepts of the "Godhead" are regulated in Article 29 and Article 28 of the 1945 Constitution. The precepts for "just and civilized humanity" are regulated in Article 28. The precepts for "Unity of Indonesia" are regulated in Article 1 paragraph (1), Article 30 and Article 37 paragraph (5). The precept "Democracy led by wisdom in consultation / representation" is regulated in Article 2, Article 5, Article 20, Article 18, and Article 22; and the principle of "Social justice for all Indonesian people" is regulated in Article 28, Article 33, Article 34.

Other Articles in the 1945 Constitution are all made to support the implementation of all precepts of the Pancasila. Meanwhile, the pouring of Pancasila in the laws and regulations under the 1945 Republic of Indonesia Constitution, it is very difficult to assess or measure one by one, whether the content of the laws and regulations under the 1945 Republic of Indonesia Constitution is really a pouring of the Pancasila or not, because there are thousands of them. But in general it can be said that there are already legal and political instruments that regulate all laws and regulations to contain content that is tiered consistent with higher legislation which at its peak must be sourced from the Pancasila as a source of technology which is the source and guiding principle law. To measure the consistency of the 1945 Constitution of the Republic of Indonesia with Pancasila is relatively easy because there is only one 1945

¹⁴ Teguh Prasetyo, 2015, *Keadilan Bermartabat Perspektif Teori Hukum*, Nusa Media, 2015, Bandung, p 77.

¹⁵ *Ibid.*, p 52.

¹⁶ George Sabine, 1995, *A History of Political Theory*, George G. Harrap & CO. Ltd., London.

Constitution of the Republic of Indonesia that applies, even though the assessment of the suitability of the 1945 Constitution of the Republic of Indonesia with Pancasila cannot be passed through legal mechanisms, for example judgments by judicial institutions. This becomes necessary because the 1945 Constitution of the Republic of Indonesia is a political agreement that includes the pouring of Pancasila politically as well without any other institution that can cancel it, except changes by the institution authorized to make it. However, for the laws and regulations under the 1945 Constitution of the Republic of Indonesia it will be difficult to judge one by one because of the large number. Whereas formally, the logical hierarchy of national legislation can be found in Article 7 paragraph (1) of Law No. 12 of 2011, concerning "Formation of Legislation and Invitation." Types and Hierarchy of Regulations consist of:

1. The Constitution of the Republic of Indonesia Year 1945;
2. Decree of the People's Consultative Assembly (MPR);
3. Government Act / Regulation in Lieu of Law;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations; and
7. Regency / City Regional Regulations.

There is no guarantee that a lower norm always matches a higher norm. Therefore, the construction of the legal system in the resolution of conflicting norms must be submitted to the competent institution (organ of the court) so that the final decision of the case is judicial (not constitutional, not declarative), so the decision to cancel the legal norm is null (nullity) *ab initio* with retroactive force¹⁷.

In the Indonesian context, the institutionalization of the testing of norms can be a legal and political instrument to oversee that the content of laws and regulations is always in accordance with Pancasila, thus requiring institutions that form laws and regulations to always be thorough, careful and careful. The form of testing can be through judicial-constitutional review, legislative / political review, and executive review. The highest laws and regulations (UUD) must be sourced and based on Pancasila as the basis and ideology of the state. Laws must be sourced and based on the Constitution, PPs must be based and sourced from laws, and so on. Therefore, Law Number 31 of 1999 concerning Eradication of Corruption and Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption, particularly in terms of regulating the authority to calculate losses of state finance in cases of action criminal corruption about Which agency has the authority to calculate the loss of state finances must reflect and be based on justice, especially Dignified Justice based on Pancasila and may not conflict with the higher

regulations above, in this case Pancasila as the Source of All Legal Sources in the Unitary State of the Republic of Indonesia.

Based on a comparative study of regulations obtained by The Authors on the Embassy of the Republic of Indonesia in Bangkok that based on the Constitution (Constitution) of the State of Bangkok the authority to handle corruption cases is the National Anti-Corruption Commission (NACC), where the calculation of state financial losses is carried out by the National Anti-Corruption Commission Team (NACC) which can request expert assistance from other agencies to assist in calculating state financial losses.

Investigators are the frontline in eradicating criminal acts of corruption. Therefore, to speed up the handling of cases of alleged criminal acts of corruption, the authors believes that investigators need to be given the authority to obtain evidence of elements "detrimental to state finances / the economy of the state" where the calculation of losses of state finances is left to investigators. Investigators in calculating the losses of state finances by requesting assistance to the BPK, or BPKP, or Inspectorate or Public Accountant and use the audit / calculation of state financial losses generated by these agencies, because these agencies work based on the laws and regulations in force in Indonesia and has audit capabilities that are not in doubt. Therefore, the case of corruption / audit of the calculation of state financial losses must be carried out by the BPK or BPKP, or the Inspectorate or Public Accountant, but the investigator determines which agency will be used to prove the existence of state financial losses to the case being handled.

The law governing criminal acts of corruption is part of the criminal law, which in principle adheres to the principle of "legality" which is a fundamental reference / guideline in applying criminal law. According to the Criminal Code (KUHP) the meaning of the principle of legality is mentioned in Article 1 Paragraph (1) of the Criminal Code that: "An act cannot be convicted, except based on the strength of existing criminal legislation"

Thus The Author argues that the regulations relating to corrupt acts relating to the authority to calculate state financial losses must also be included / explicit in the provisions of the Corruption Act by adding one Article in Law Number 31 of 1999 concerning Eradication of Corruption Crimes, so as to provide legal certainty for litigants, namely the Public Prosecutor and Defendant / Defendant's Legal Counsel, which will end the debate about the authority to calculate state financial losses that have occurred so far, which will ultimately provide justice and legal certainty for the parties.

Based on the description above the conclusion of the reconstruction Authority to Calculate State Financial Losses in Justice-Based Corruption Cases on the table presented below:

¹⁷Kelsen,Hans, *General Theory...., Ibid.*

Table 1

No	Subject	Description
1	Basic Reconstruction	<ul style="list-style-type: none"> ▪ Local Wisdom: the value of Pancasila from pillar number 2 to 5. ▪ International Wisdom: implementation of regulatory authority to calculate the loss of financial state in acts of criminal corruption in the country of Thailand.
2	The Reconstruction Paradigm	<ul style="list-style-type: none"> ▪ Paradigm of constructivism namely constructing Authority Calculating Losses Finance State In Case Follow- Criminal Corruption are based on the value of justice.
3	Reconstruction Theories	<ul style="list-style-type: none"> ▪ Theory of Dignified Justice, <i>Stufenbau Theory</i>, Theory of the System of Law, Theory of Progressive Law and Codification Law
4	Purpose of Reconstruction	<ul style="list-style-type: none"> ▪ Realizing the Authority in Calculating Losses Finance State In Case Follow- Criminal Corruption are based on values of justice with dignity and to realize the certainty of law.
5	Dissertation Findings	<ol style="list-style-type: none"> 1. Rules that there are associated with the Authority Counting Losses Finance State In Case Follow- Criminal Corruption is still scattered and not codified. 2. Authority Calculating Losses Finance State In Case Follow- Criminal Corruption still be a debate between the parties that the litigants so that does not reflect fairness and certainty of law. 3. The authority Calculating Losses Finance State In Case Follow- Criminal Corruption when it is not based on the values of justice, especially the value of justice with dignity that is based on Pancasila, particularly the principle of the 2nd, 4th and 5th. 4. Reconstruction of the value of ideal Authority Calculating Losses Finance State In Case Follow- Criminal Corruption are based on values of justice aims to protect the whole party were interested in the case of acts of criminal corruption.. 5. As for the reconstruction of the laws of the Authority Calculating Losses Finance State In Case Follow- Criminal Corruption are based Justice are: <ol style="list-style-type: none"> a. Article 4 of Law No. 31 Year 1999 on Eradication Act Criminal Corruption, by adding a paragraph that reads: "authority to calculate the loss of financial state handed over to investigators. b. Elucidation of Article 4: "In calculating state financial losses, investigators coordinate and request assistance from the BPK, or BPKP, or Inspectorate or Public Accountant agencies."

Based on the results of the study on " Reconstruction Of Authority To Calculate Country Financial Damages In Corruption Case In Indonesia Based On Justice Value" above, the authors proposed a new theory, namely the theory of " Certainty of a Fair Law". The Equitable Legal Certainty Theory, as a result of the author's analysis of the problems that occur in the " Authority to Calculate State Financial Losses in Justice-Based Corruption Crimes" where although there are regulations in the form of Constitutional Court Decree Number 31 / PUU-X / 2012 dated October 23, October 2012 and Circular of the Supreme Court (SEMA) Number 4 of 2016 concerning the Enforcement of the Results of the Plenary Meeting of the 2016 Supreme Court Chamber as Guidelines for Performing Tasks for the Court that regulates the Authority to Calculate State Financial Losses in Corruption, but the facts do not provide justice and certainty the law for one of the litigants proven by the Defendant and the Defendant's Legal Counsel always submit an *exception* / objection or a defense against an institution other than the State Audit Board (BPK) in calculating the state financial losses in a corruption case.

The theory of "Certainty of a Fair Law" by the author is not only *provide treatment that is the same what was supposed to be a part of in accordance with the rights of its individual*, but should also no certainty of law which is guaranteed by regulation legislation that is evidenced by *implicit* explicit in laws and regulations so as to provide legal certainty for the parties. Regulations are accepted and executed by the public to be used as guidance in arranging behavior behavior of society, thus giving certainty of law and justice for the people.

This theory is different from the theory of justice from Aristotle, a philosopher who first formulated the meaning of justice. He said that justice is giving to each person what that be right, *fiat jutitia bereat mundus*. Furthermore, he split the equity is divided into two forms namely; First, distributive Justice, a justice which is determined by the maker of the legislation, the distribution load services,

rights, and kindness for members of the community according to the principle of the same proportion. Second, corrective justice, namely justice that guarantees, supervises and maintains this distribution against illegal attacks. Or said another justice distributive is justice based on the amount of services that are given, while justice corrective is justice based on equality rights without seeing the magnitude of the services that are given.

Thus, Aristotle's theory of justice only emphasizes the fulfillment of the right course for everyone without no certainty of law because not in implemented in a rule of law that codified. While the theory of the certainty of a fair law presented by the author not only fulfill the rights alone but must also embodied in the rule that expressly in the Act.

Conclusion

The Reconstruction of the Authority to Calculate State Financial Losses in Justice-Based Corruption Crimes is to add provisions in the Corruption Crime Act that regulates strictly about the authority to calculate state losses in non-criminal corruption in accordance with the values of justice and with legal certainty. As for reconstruction the law is to reconstruct Article 4 of Law No. 31 of 1999 concerning Eradication of Corruption and its explanation, by adding one verse as follows:

- Article 4 of Law No. 31 of 1999 concerning Eradication of Corruption Crime before it is reconstructed reads: "Returning the financial losses of the state or the economy of the state does not eliminate criminal conviction as referred to in Article 2 and Article 3."

- Proposed reconstruction of Promovendus is:

a. Article 4 of Law No. 31 Year 1999 on Eradication Act Criminal Corruption made two verses to add a paragraph so that after reconstructed reads:

1. The authority to calculate state financial losses shall be left to the Investigator. "
2. The return loss of the financial state or the economy of the country do not eliminate the penalty to the

- perpetrators of acts of crime as referred to in Article 2 and Article 3.
- b. In the Elucidation of Article 4: "In calculating the loss of state finances, investigators coordinate and ask for assistance from the BPK agency, or BPKP, or the Inspectorate or Public Accountant."

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