

Regulating the Element of Harming the State Economy in Corruption Offenses in Indonesia



Antonius Despinola¹, Hafrida², Hartati³

^{1,2,3} Faculty of Law, Universitas Jambi, Jambi, Indonesia

ABSTRACT: The separation between state financial losses and the state economy shows that there is a different character between the two terms so that there are also differences in the fulfillment of the elements of state financial losses and state economic losses. The Constitutional Court Decision No. 25/PUU-XIV/2016, has decided that the fulfillment of the elements of state financial losses or the state economy must be determined with real and certain (actual loss). The existence of real and certain requirements that are also applied to the fulfillment of the elements of the state economy, needs to be studied further considering that at the level of law enforcement practices of corruption crimes committed in Indonesia, more is done on the fulfillment of the elements of state financial losses. On this basis, a research was conducted on the "Arrangement of the Element of Harm to the State Economy in the Offense of Corruption in Indonesia", to then focus on analyzing how the arrangement of the element of loss to the state economy in law enforcement of corruption in Indonesia? This research includes normative juridical research, with a statutory approach, case approach, historical approach, and conceptual approach, to then be analyzed qualitatively, and presented descriptively in the form of an article. The results of the study indicate that the legislation in force in Indonesia only provides strict arrangements relating to State Finance, while there is no law specifically regulating the State Economy or called the Law on the State Economy. The legal norm of the definition of the State Economy is also not specifically regulated in the norms of the body of legislation, but is found in the General Elucidation of Law Number 31 of 1999 as amended by Law Number 20 of 2001. The placement of the definition of the State Economy in the General Elucidation clearly does not have the same normative position as the placement in the Article provisions of a statutory regulation. With this condition, it is necessary to reform the regulation of the state economy specifically so that it can then be used as a legal basis in determining the elements of losses to the state economy in corruption crimes.

KEYWORDS: Delict; State Economic Loss; Corruption Crime.

A. INTRODUCTION

Criminal law academics define the definition of corruption from several sources, such as from the history of the birth of the word corruption in parts of the world to the birth of corruption laws. Etymologically, the word corruption comes from the Latin *corruptio* or *corruptus* which is also derived from the word *corrumpere*, an older Latin. That Latin descended into many European languages such as English, corruption, corrupt, French, corruption, and Dutch, *corruptie* (*korruptie*). Thus, it can be concluded that the word "corruption" in Indonesian comes from Dutch.¹

Corruption is literally rottenness, ugliness, depravity, dishonesty, bribery, immorality. It's like the bad life in prison that is often referred to as the corrupt life, where all kinds of criminal acts occur. According to Black's Law Dictionary, corruption is an act committed with the intent and purpose of providing an advantage with the rights obtained from others, abusing his position or to obtain an advantage for himself or others.²

According to Lubis and Scott as cited by IGM Nurdjana, in his view of corruption, it is stated that, "in a legal sense, corruption is behavior that benefits self-interest to the detriment of others, by government officials who directly violate the legal boundaries

¹ Andi Hamzah, 2007, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*, PT. Raja Grafindo Persada, Jakarta, p. 4.

² Masruchin Ruba'i, *et.all.*, 2014, *Buku Ajar Hukum Pidana*, Bayumedia Publishing, Malang, p. 83.

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of such behavior, while according to government norms it can be considered corruption if the law is violated or not in the business of such actions is despicable". So the view of corruption is still ambivalent, only called punishable or not and as a despicable act.³

Corruption is one of the crimes considered as an extra ordinary crime. This identification is appropriate considering that the impact of the crime of corruption does not only result in state financial losses, but it is also possible that it will result in widespread losses to the state economy. The consequence of such an impact will certainly lead to widespread disruption of the economic conditions of the country's society.

Juridically, the definition of corruption, both in meaning and type, has been formulated in the Corruption Law. The definition of corruption is not limited to acts that fulfill the formulation in the offense that can harm state finances or the state economy, but includes acts that fulfill the formulation of the offense that can harm the public or individuals. The existence of losses to state finances or the state economy is an element of the offense of corruption as stipulated in Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (Corruption Law), namely:⁴

Article 2 of the Anti-Corruption Law reads:

"Every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 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 rupiahs)".

Article 3 of the Anti-Corruption Law reads:

"Every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and a fine of at least Rp.50,000,000.00 (fifty million rupiahs) and a maximum of Rp.1,000,000,000.00 (one billion rupiahs)".

The phrase "may" before the phrase "harming state finances or the state economy" in these articles causes this corruption offense to be qualified as a formal offense, so that the existence of losses to state finances or the state economy is not a result that must actually occur (potential loss).⁵ However, after the decision of the Constitutional Court Number 25 / PUU-XIV / 2016, which basically eliminates the phrase "may" in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, which makes the qualification of corruption offenses that harm state finances or the state economy at this time must be interpreted into material offenses, the consequence of which is that the prohibited consequences in these articles, namely "harming state finances or the state economy" must be interpreted as a real and certain loss or actual loss.

The General Elucidation of Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 on the Eradication of Corruption, provides an explanation that state finances are all state assets in any form, separated or non-separated, including all parts of state assets and all rights and obligations arising from:

- a. Being in the possession, management, and accountability of State officials, both at the central and regional levels;
- b. Being in the control, management and accountability of State-Owned Enterprises/Region-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the State.

The definition and scope of state finances in efforts to deal with corruption crimes, in terms of legislation, are not only based on Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, but also based on state financial arrangements specifically regulated in Law Number 17 of 2003 concerning State Finance, Law Number 1 of 2004 concerning State Treasury, and Law Number 15 of 2004 concerning Audit of State Financial Management and Responsibility.

Based on the definition of state finances as stated in the General Elucidation of Law Number 20 of 2001 Concerning the Amendment to Law Number 31 of 1999 Concerning the Eradication of Corruption, and also mentioned in the special regulation on state finances, it is clearly stated that the determination of the occurrence of real and certain state financial losses (actual loss) can be carried out in law enforcement efforts against the crime of corruption.

³ IGM Nurdjana, 2009, *Sistem Hukum Pidana dan Bahaya Laten Korupsi*, Total Media, Yogyakarta, p. 15.

⁴ Republik Indonesia, *Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi*.

⁵ R. Wiyono, 2008, *Pembahasan Undang-Undang Tindak Pidana Korupsi Edisi Kedua*, Sinar Grafika, Jakarta, p. 27-28.

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However, the existence of real and certain requirements (actual loss) which are also applied to the fulfillment of the elements of the state economy, needs to be studied further considering that at the level of law enforcement practices of corruption crimes carried out in Indonesia more are carried out on the fulfillment of the elements of state financial losses. Therefore, based on this background, the author raises a legal issue regarding how the regulation of the state economy element in corruption offenses in Indonesia.

B. RESEARCH METHOD

This research is a normative juridical research, because the research conducted is in order to analyze the legal rules governing the element of harming the state economy in the crime of corruption in Indonesia. The research approach taken in this research is by using a statutory approach, case approach, historical approach, and conceptual approach. The legal materials in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials, all of which are related to the regulation of the element of harming the state economy in corruption offenses in Indonesia. All legal materials that have been collected through literature studies, then arranged systematically to be discussed and then analyzed qualitatively, not using statistical data, and presented in descriptive form, in order to answer the problems discussed and the results are made in the form of articles.

C. RESULT AND DISCUSSION

Corruption is a part of criminal law, which is outside the general criminal law that applies to people and certain actions. In its position outside the general criminal law, the crime of corruption is one of the special criminal offenses which is therefore regulated in special regulations.

The term corruption implies the misappropriation or misuse of state (company, etc.) money for personal or other people's benefit.⁶ According to Lubis and Scott, corruption is behavior that benefits self-interest at the expense of others, by government officials who directly violate the legal limits on such behavior.⁷ Meanwhile, Robert Klitgaard states that corruption is behavior that deviates from the official duties of a state position because of the benefits of status or money that concerns individuals (individuals, close family, own group), or violates the rules of implementation of some personal behavior.⁸

Based on the definition of corruption above, it can be clearly identified that corruption contains actions that have violated applicable laws and regulations and resulted in state losses. With the impact of this act of corruption, regulations have been made on the prohibition of committing acts of corruption. When the prohibition is violated, it will lead to the crime of corruption.

The crime of corruption is an act to enrich oneself or a group, which is an act that is very detrimental to other people, the nation and the state.⁹ In Indonesia, the prohibition against acts of corruption has been specifically regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption. According to Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 Concerning the Amendment to Law Number 31 of 1999 Concerning the Eradication of the Crime of Corruption, it can be identified that what is meant by corruption related to losses to state finances or the state economy, namely:¹⁰

- a. Any person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm state finances or the state economy (Article 2 paragraph (1));
- b. Any person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity, or means available to him or her because of the position or position or the means available to him or her because of the position or position that may harm the state finances or the state economy (Article 3).

In its development, the phrase "may" which follows "harm to state finances or the state economy" as stipulated in the provisions of the Article above with the issuance of Constitutional Court Decision No. 25/PUU-XIV/2016 has changed, the fulfillment of the element of loss to state finances or the state economy must be determined with real and certain (actual loss). This real and certain requirement (actual loss) is a requirement to determine whether or not an action that is declared an unlawful act or abuse of authority, opportunity, or means available to him has caused losses to state finances or the state economy.

In relation to criminal acts that cause losses to the state economy, at a practical level in Indonesia after the issuance of the Constitutional Court Decision Number 25 / PUU-XIV / 2016, there have been several efforts to enforce corruption crimes that also

⁶ 2000, *Kamus Besar Bahasa Indonesia*, Edisi Ketiga, Balai Pustaka, Jakarta, p. 597.

⁷ Jawade Hafidz Arsyad, 2017, *Korupsi dalam Perspektif HAN*, Sinar Grafika, Jakarta, p. 168.

⁸ Robert Klitgaard, 2001, *Membasmi Korupsi*, Yayasan Obor Indonesia, Jakarta, p. 31.

⁹ Chatrina Darul Rosikah dan Dessy Marriani Listianingsih, 2016, *Pendidikan Anti Korupsi*, Sinar Grafika, Jakarta, p. 6.

¹⁰ Republik Indonesia, *Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi*.

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make elements of state economic losses the basis of charges made by the Public Prosecutor, for example the Corruption Crime committed by the Former Governor of Southeast Sulawesi, the defendant NA in early 2018, related to the issuance of a Nickel Mining Business License (IUP) to PT. Anugrah Harisma Barakah in Kabaena Island, Southeast Sulawesi, where the Public Prosecutor has accumulated material state financial losses that have been proven by an investigative audit from BPKP amounting to Rp. 1.5 trillion, which was then accumulated with non-material losses, namely environmental economic losses consisting of ecological, economic aspects, and environmental rehabilitation costs totaling 2.7 trillion.

In 2022, the Deputy Attorney General for Special Crimes also investigated the alleged corruption of PT Duta Palma Group's palm oil business activities, which cost the state Rp. 104.1 trillion. Most of the losses in the case, namely Rp. 99.2 trillion, are losses to the state economy.

Starting from the application of the two corruption cases mentioned above, although it is not comparable to the efforts to enforce corruption law based on the identification of state financial losses, it has nevertheless shown the phenomenon that law enforcement officials continue to make efforts to use the means of state economic losses to hold criminal responsibility for the perpetrators of existing corruption crimes.

Furthermore, the phenomenon of law enforcement practices on the application of the element of harm to the state economy also occurred in the case of the Cooking Oil corruption case (CPO export license) which previously became hot in the news due to the difficulty of the community in obtaining cooking oil, and then followed up with law enforcement efforts against several people suspected of having committed corruption crimes which resulted in losses to the state economy. However, on January 3, 2023, the Panel of Judges of the Jakarta Corruption Court convicted the five defendants of the cooking oil corruption case (CPO export permit) by deciding that the five defendants were guilty of committing a criminal act of corruption with a prison sentence of 1-3 years and a fine of Rp. 100 million. However, although the five defendants were found guilty of corruption, the panel of judges did not find them guilty of harming the state economy.¹¹ This phenomenon clearly arises from the weakness of the regulation of the element of harm to the state economy in the crime of corruption.

Etymologically, loss comes from the word loss which means less than the purchase price or capital, not getting profit; less than capital; not getting benefits (benefits), not getting something useful; something that is not good (unfavorable), harm. Meanwhile, loss means to bear or suffer loss; subject to loss; something that is considered to cause loss; compensation.

The definition of loss above, when connected to the concept of the element of loss to the state economy, which in this case has been regulated in Law Number 39 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption, namely in the provisions of Article 2 paragraph (1) which states that the crime of corruption is "every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that can harm the state's finances or economy." and the provisions of Article 3 which states "corruption is a crime of corruption, " and the provisions of Article 3 which states "every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity, or means available to him or her because of his or her position or position which may harm the state finances or the state economy".

Based on the definition of loss and corruption above, conceptually, it can be identified that the loss of the state economy is the loss experienced by the state to the existing state economy, so that when it is carried out, it will lead to the occurrence of corruption crimes. The object of the loss is certainly not the loss to state finances, but the loss referred to here is the loss to the state economy.

According to the General Elucidation of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption, it is explained that the State Economy is an economic life that is structured as a joint effort based on family principles or independent community efforts based on Government policies, both at the central and regional levels in accordance with the provisions of applicable laws and regulations aimed at providing benefits, prosperity and welfare to all people's lives.

The definition of the state economy mentioned above, in terms of its placement, cannot be used as a norm that can be used in the application of regulating acts of a legislation so that it can be stated as a norm about the state economy. General explanations and explanations of articles in the science of legislation are not norms that have binding legal force, which is why the value of the definition of the state economy cannot be considered as a norm as contained in the provisions of the article of a law.

However, regardless of the weakness of the placement of the definition of the state economy in the explanation above, of course the definition of the economy can at least be known as the definition intended by the legislator in explaining the state

¹¹ Refki Saputra, *Kerugian Perekonomian Negara dalam Tindak Pidana Korupsi*, <https://www.kompas.id/baca/opini/2023/01/31/kerugian-perekonomian-negara-dalam-tindak-pidana-korupsi>.

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economy, although later when seen the content of the definition of the economy, it is still abstract, which according to the Researcher, this shows that the value of the measure to determine the loss of the state economy is not the same as the value of the measure in determining state financial losses, which can be definite in accordance with the results of audit calculations conducted by an authorized examining agency or a designated public accountant. However, based on the definition of the state economy contained in the General Elucidation of Law Number 39 of 1999 as amended by Law Number 20 of 2001 on the Eradication of the Crime of Corruption, it is at least an initial concept to determine that the loss of the state economy referred to in the Law on the Crime of Corruption is a loss to the state economy that causes losses to the common economic life that will affect the achievement of the success of the policies and objectives of the Government both at the central and regional levels, so that it is identified as a criminal act of corruption.

Furthermore, has the regulation of the state economy also been regulated in other laws and regulations? Judging from the history of regulation, it is known that prior to the issuance of Law Number 31 Year 1999, Law Number 3 Year 1971 on the Eradication of Corruption, through the explanation of Article 1 paragraph (1) sub a, explicitly states that what is meant by actions that can harm the state economy are criminal offenses against regulations issued by the Government in its field of authority as referred to in MPRS Decree No. XXIII/MPRS/1966 ". This MPRS Decree No. XXIII/MPRS/1966 is an MPRS decree on the Renewal of Economic, Financial and Development Foundation Policy. However, currently Law No. 3 of 1971 is no longer valid because it was revoked through Law 31 of 1999, while MPRS Decree No. XXIII/MPRS/1966 has also been revoked based on MPR Decree No. 1 of 2003 concerning the Review of the Material and Legal Status of MPRS Decrees and MPR Decrees from 1960 to 2002. However, at this time Law No. 3 of 1971 is no longer valid because it was revoked through Law 31 of 1999, while MPRS Decree No. XXIII/MPRS/1966 has also been revoked based on MPR Decree No. 1 of 2003 concerning the Review of the Material and Legal Status of MPRS Decrees and MPR Decrees of 1960 to 2002. However, even though the Law and the MPRS Decree have been revoked, at least the acts that are detrimental to the state economy as described in Law No. 3 of 1971 will be able to become a recommendation or reference of regulatory content material if it is necessary to prepare legislative material on acts that are detrimental to the state economy.

According to I Komang Ugra Jagiwirata, and I Gusti Ayu Stefani Ratnah Maharani, there are several things that must be considered when postulating the concept of loss to the state economy, namely:¹²

1. The definition of harming the state economy in the Corruption Eradication Law essentially has the same meaning as the norm in Article 33 of the 1945 Constitution;
2. In interpreting the element of harming the state economy, it is not the same as interpreting state financial losses, which can be clearly seen in the State Compensation Law, the State Finance Law and the Supreme Audit Agency Law, in interpreting the element of harming the state economy can be broader;
3. According to the perspective of economics, the explanation of the Corruption Eradication Law on the concept of the state economy can be interpreted as the Indonesian economy seen in terms of state/national income whose parameter is the Gross Domestic Product (GDP).

However, it is necessary to provide recommendations for the preparation of regulatory materials governing acts that harm the state economy. In criminal law, it is known that a rule or legal norm in accordance with the principle of legality in criminal law must be formed with the principles of *Lex Scripta*, *Lec Stricta*, and *Lex Certa*, which are written, clear, and not multi-interpretive. The juridical implications of the application or legal interpretation of a term whose meaning and elements have not been clearly normed in a law can result in the deprivation of the constitutional right to legal certainty.¹³ In this position, then the norming of the absolute rule of law is determined in writing, clear and not multi-interpretive, so that law enforcement efforts against violations or criminal acts of existing regulations do not result in new violations of the law.

Theoretically, it is understood that law enforcement is actually an action taken in the life of the state to ensure that the law can run in accordance with predetermined norms so that order and justice are realized in people's lives.

Furthermore, in terms of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as law enforcement efforts by subjects in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable legal rules, means that he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject, law enforcement is only defined as the efforts of certain law enforcement apparatuses to guarantee and

¹² I Komang Ugra Jagiwirata dan I Gusti Ayu Stefani Ratna Maharani, *Pengaturan Kerugian Perekonomian Negara Dalam Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi*, Jurnal Kertha Semaya, Vol. 11, No. 10, 2023, p. 2295.

¹³ Duwi Handoko, 2017, *Asas-asas Hukum Pidana dan Hukum Penitensier di Indonesia*, Hawa dan Ahwa, Jakarta, p. 67.

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ensure that a particular law is enforced. to guarantee and ensure that a rule of law runs as it should. runs as it should. In ensuring that the law is upheld, if necessary, the law enforcement apparatus is allowed to use force. use force.¹⁴

Apart from being viewed from the subject angle above, law enforcement can also be viewed from the object angle, namely in terms of the law. In this case, the definition also includes broad and narrow meanings. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules and the values of justice that live in society. However, in a narrow sense, law enforcement concerns only the enforcement of formal and written regulations. Therefore, the translation of the word 'law enforcement' into Indonesian in using the word 'law enforcement' in a broad sense and the term 'enforcement of regulations' in a narrow sense can also be used. 'rule enforcement' in the narrow sense.¹⁵

The concept of total law enforcement requires that all values behind legal norms be enforced without exception. values behind legal norms are also enforced without exception. The concept of full concept requires the need to limit the total concept with a formal law in order to protect individual interests. a formal law in order to protect individual interests.¹⁶ In such a position, an error in understanding a legal understanding can have fatal consequences for justice seekers, especially if the wrong understanding becomes a decision which then becomes the basis for the next judge's thinking in a similar case, errors in interpreting understanding not only cause legal uncertainty but also reach the higher side of the law, namely justice.¹⁷ In deciding cases, Judges do et officio have an obligation to explore, follow and understand the legal values and sense of justice that live in society as stipulated in Law Number 48 of 2009 concerning Judicial Power and if the judge is faced with a case where the legal provisions are unclear or unclear then because of this obligation the judge has the discretion to make legal discoveries in deciding a case either by interpretation or other methods.¹⁸

In the end, in order to fulfill law enforcement efforts that will be able to guarantee legal certainty and justice, the regulation of acts that are declared as detrimental to the state economy must be given a clear and concrete regulation in the existing laws and regulations, so that it can then be used as a firm foundation in the context of law enforcement efforts for corruption crimes related to acts detrimental to the state economy.

D. CONCLUSIONS

The laws and regulations in force in Indonesia only provide explicit arrangements relating to State Finance, while there is no law specifically regulating the State Economy or called the Law on the State Economy. The legal norm of the definition of the State Economy is also not specifically regulated in the norms of the body of the legislation, but is found in the General Elucidation of Law No. 31 of 1999 as amended by Law No. 20 of 2001. The placement of the definition of the State Economy in the General Elucidation clearly does not have the same normative position as the placement in the Article provisions of a statutory regulation.

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¹⁴ *Ibid*, p. 46

¹⁵ Agus Rahardjo, 2003, *Cybercrime Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*, Citra Aditya Bakti, Bandung,, p. 76.

¹⁶ *Ibid.*, p. 79.

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¹⁸ Hwan Christianto, 2010, *Batasan Perkembangan Penafsiran Ekstensif dalam Hukum Pidana*, 3 Pamator, Jakarta, p. 102.

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