Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

CRIMINAL LAW POLICY REGARDING STATE LOSSES IN CRIMINALACTS OF CORRUPTION REALIZING JUSTICE

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Abstract: The aims of this research include: To find out how to analyze and examine the current Regulations on the Abuse of Corruption Crimes. To find out about criminal law policies in returning state financial losses due to corruption to achieve justice **.** To find out that criminal law policies can be implemented effectively to deal with criminal acts of corruption that are detrimental to the state **.** In preparing this research, the author used a normative juridical legal research type. What is meant by juridical research is looking at legal aspects based on statutory regulations, while normative research is research in the legal field to discover legal rules and legal doctrines to answer existing legal issues. Normative juridical legal research which focuses on the study or study of positive law. Causality Relationship between Unlawful Actions and State Losses Etymologically, causality or causalitied comes from the word causa which means cause. The word Causa in the Legal Dictionary is defined as a legal reason or basis; a cause that can cause an event. Based on the definition above, it can be concluded that causality is something that states the relationship between cause and effect. The causal relationship is a factor that confirms that state losses in the form of shortages of money, goods and securities that occur are truly the result of unlawful acts committed by the person responsible for state/regional losses.

Keywords : Criminal Law, Corruption Crimes, Justice

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Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Introduction

Based on Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is explained that Indonesia is a legal state. This means that all citizens and state administrators must comply with applicable legal provisions. In a legal state, it is mandatory to follow and implement statutory regulations in the life of the nation and state. However, in reality there are still many laws and regulations that society violates, such as corruption cases that occur in Indonesia.

Corruption has now become the center of international attention, as evidenced by the United Nations seriously holding international conferences to discuss the problem of corruption. The UN Congress on the Prevention of Crime and the Treatment of Offenders shows that the international community recognizes that corruption has a transnational nature. For Indonesia, the problem of corruption has become a problem that is quite difficult to overcome because it has infected all aspects of people's lives, even the firm attitude of law enforcers has not been effective in reducing it and is still under the control of the perpetrators of corruption or other parties who help the perpetrators. This condition is inappropriate and it is unethical to allow it to continue, so the state must take back these assets from the perpetrators of corruption or third parties who do not have good intentions. The number of criminal acts of corruption requires a policy against corruption, because the impact of corruption is not only detrimental to individuals but also many people, including society national and state, and all elements must be actively involved in eradicating corruption

Corruption acts based on PTPK Law Number 31 of 1999 jo. Law No. 20 of 2001, corruption is the action of a public official: Unlawfully carrying out actions to benefit themselves or another party or a business entity which has the potential to harm the state or state finances (article 2) Abuse of position or position through deviation of authority, opportunity or existing facilities and have the potential to harm state finances or the state economy (Article 3). Corruption cases themselves have greatly disturbed the Indonesian people. Based on the results of the public participation survey, it shows that 98% assess that the Indonesian nation is in a condition with a worrying category of corruption cases and 72% of corruption is because there is a law enforcement process that is not strict and serious (Corruption Eradication Commission, 2018:19). The reality that occurs in national and state life still revolves around the problem of financial fraud which is still high, this is also in line with the number of corruption cases that have emerged.

The problems that arise originate primarily from the fat bureaucracy of government organizations in carrying out state and government duties,

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

apart from that, the poor organizational structure and governance of the central government is also exacerbated by the worrying competence of government officials, making it prone to corruption (Ismail, 2021 :2). Efforts to eradicate criminal acts of corruption and criminality have been going on for almost as long as the Republic of Indonesia. This is what underlies the birth of the Dutch Indy Wetbook Fans Criminal Code which later became known as the Wetbook Fans Criminal Code (WvS) through Law Number 1 of 1946 concerning Criminal Regulations which was born from regulatory efforts. Articles of the Criminal Code Several formulations of criminal acts of corruption which are inherently regulated in three separate chapters, namely Chapter VIII concerning Crimes Against Public Authority, Chapter XXV concerning Fraud, and Chapter XXVIII concerning Violations. At that time, the articles included in the chapter -The chapter does not clearly indicate that these acts constitute acts of corruption, but the language in the prohibited acts refers to acts that are inherently corrupt, and crimes of corruption of the international community.

In the articles formulated in UNCAC corruption is defined as the following acts:

1) bribery (bribery);
2) embezzlement;
3) misuse (misappropriation);
4) trading influence (trading in influence);
5) abuse of authority (abuse of functions);
6) enrich by illicit means (illicit enrichment);
7) bribery in the private sector (bribery in the private sector);
8) embezzlement of assets in the private sector (embezzlement in the private sector);
9) laundering of proceeds of crime;
10) concealment of wealth (concealment); And
11) obstructing the legal process (obstruction of justice).

In its development, the formulation of criminal acts of corruption was regulated as a special criminal act, on the grounds that the provisions in the Criminal Code were deemed insufficient to overcome the criminal acts of corruption that occurred, so that Law Number 31 of 1999 concerning the Eradication of Corruption Crimes was issued which was subsequently issued. amended through Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as UUTPK). The aim of regulating special criminal acts is to fill legal gaps, both formal law and material law, which are not regulated in the Criminal Code and Criminal Procedure Code.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Corruption not only has a negative impact on a country's economic sector, but can also weaken the values of justice and democracy and even impact the international economic system. Almost all countries in the world cannot avoid the crime of corruption, the impact of which not only attacks the government system but also the social system. and culture. Corruption is a practice that has a negative impact on a country's economy, and some people are forced to live difficult lives. This is because the country experiences quite large losses even though the funds are actually used to finance programs carried out for the benefit of the people.

The economic impacts that arise from acts of corruption:

1) Corruption Negatively Impacts Economic Growth;
2) Corruption Lowers Investment Levels;
3) Corruption Increases the Burden in Economic Transactions and Creates a Bad Institutional System;
4) Corruption Causes Low Quality Facilities and Infrastructure;
5) Corruption Creates Income Inequality;
6) Corruption Increases Poverty.

Corruption is an act of using power secretly to benefit oneself or others by abusing the authority that exists within oneself. Corruption as an extraordinary crime committed by educated people creates its own problems, and these problems are easier to overcome by enforcers. laws because organized crime decentralizes responsibility.

Action: Efforts to eradicate corruption through the implementation of specific law enforcement patterns and strategies are a priority in order to build a just and prosperous society and produce clean government. Corruption requires special policies because it impacts people's welfare and causes economic instability in the country. The specific strategy that must be implemented is to change the legal paradigm of the police, prosecutors, anti-corruption commission and courts so that they can apply the law progressively, rather than just imposing prison sentences. At the same time, there is a need to optimize recovery of state losses through confiscation of assets and fines. Replacement goods for. Therefore, it is worth noting that although law enforcement officials must prioritize the interests of recovering state losses (followed by money) from the start of the investigation, the practice of following the money must also be carried out. Complete information can be obtained by tracing all of the suspect's assets abroad One of the inhibiting factors is that the recovery of state losses has not been maximized, considering that the perpetrators have assets abroad.

Procedural law and the judicial system in Indonesia have a significant influence on the success of efforts to recover money resulting from

corruption. Perpetrators can take advantage of various loopholes in the legal system that allow them to avoid sanctions in order to recover assets resulting from criminal acts of corruption. Implementation of progressive laws and regulations to recover State losses require the courage of law enforcement officials to break away from the status quo which does not provide a sense of justice for the state towards victims. Carrying out formal legal processes. Formal legal processes that lead to. There are at least two urgent reasons for implementing the Progressive Corruption Eradication Law. First, there are perpetrators corruption encompasses entire groups, and their increasingly diverse methods can no longer be overcome by conservative law enforcement techniques.

Second, the existing empirical data shows that there is a gap between the government losses incurred and the assets that were successfully returned. State losses which are much greater than the returns indicate that law enforcement is behind schedule. The criminal case in question is that the applicable legal paradigm is not sufficient for legal policy as a whole. legitimate. Its implementation is very strict. The special strategy that must be implemented is to change the legal paradigm of the police, prosecutors, anti-corruption commission and courts so that they can apply the law progressively, rather than just imposing prison sentences. At the same time, there is a need to optimize the recovery of state losses through confiscation. assets and fines. Replacement goods for. Therefore, it is worth noting that although law enforcement officials must prioritize the interests of recovering state losses (followed by money) from the start of the investigation, the practice of following the money must also be carried out. Complete information can be obtained by tracing all of the suspect's assets. abroad.

The high rate of corruption and ongoing state losses make the public think that law enforcement officials are not serious about eradicating corruption. This suspicion is further strengthened by the widespread disparities in punishment that occur in many cases of criminal acts of corruption.

As a legal state, the Indonesian state has an obligation to implement the legal policy process for criminal acts of corruption in order to uphold the supremacy of law, uphold justice and create peace in life in society. However, we can see that the legal policy for criminal acts of corruption in Indonesia is still relatively weak. This can be seen from the large number of regulators or law enforcers themselves who commit criminal acts of corruption. The presence of regulators or law enforcers who commit criminal acts of corruption can cause a decrease in the level of public trust in the regulators or law enforcers themselves.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Based on the background above, this dissertation legal research chose the research title: "Criminal Law Policy Against State Losses in Corruption Crimes Realizing Justice" Problem Formulation Based on the background as described above, the researcher can formulate the legal problem as follows:

1) What are the current regulations for the abuse of Corruption Crimes?
2) What is the criminal law policy for recovering state financial losses due to corruption to achieve justice?
3) How can criminal law policies be implemented effectively to deal with criminal acts of corruption that are detrimental to the state?

Methods

In preparing this research, the author used a normative juridical legal research type. What is meant by juridical research is looking at legal aspects based on statutory regulations, while normative research is research in the legal field to discover legal rules and legal doctrines to answer existing legal issues. Normative juridical legal research which focuses on the study or study of positive law. Normative juridical research is legal research that places law as a building system of norms. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, as well as doctrines or teachings.

Another name for normative legal research is doctrinaire legal research, also referred to as library research or document study. It is called doctrinal legal research, because this research is carried out or aimed only at written regulations or other legal materials. It is said to be library research or document study because this research is mostly carried out on secondary data in libraries. In accordance with the character of normative legal science, the study of positive law includes the study of legal dogmatics, the study of legal theory, and the study of legal philosophy.

Research Approach is a method or way of conducting research so that researchers obtain information from various aspects to find the issue they are looking for an answer to. In accordance with the type of research, namely normative juridical, the research approach used in this research is: Legislative Approach (Normative/Statute Approach), namely by examining all laws and regulations that are related to the legal issue being handled. In this case, the approach is taken by examining the laws and regulations relating to criminal law policies regarding state losses in criminal acts of corruption in realizing justice.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Conceptual Approach (Conceptual Approach) Is a departure from the views and doctrines that have developed in legal science. By studying views and doctrines in legal science, researchers will find ideas that give rise to legal understandings, legal concepts and legal principles that are relevant to the content at hand. A conceptual approach can also carry out research on legal concepts such as; legal sources, legal functions, legal institutions, and so on. This legal concept is in three domains or levels according to the level of legal science itself, namely: the level of dogmatic legal science, the legal concept is technical juridical, the legal theory level is the general concept of law, the legal philosophy level is the basic concept of law.

Case Approach: This approach is carried out by examining cases related to the legal issues being faced that have received court decisions and have permanent legal force. These cases can be cases that occur in Indonesia or in other countries. The main study in the case approach is ratio decidendi or reasoning, namely the court's considerations in arriving at a decision. Both for practical purposes and for academic studies, ratio decidendi or reasoning is a reference for preparing arguments in solving legal issues.

Historical Approach (Historical Approach) This approach is carried out within the framework of understanding the philosophy of legal rules over time, as well as understanding changes and developments in the philosophy that underlies these legal rules. This approach is carried out by examining the background of what is being studied and developments in regulations regarding the legal issues being faced. Such research is needed by researchers when researchers really want to reveal the philosophy and thought patterns that gave birth to something being studied. Comparative Approach (Comparative Approach) The comparative approach is carried out by conducting comparative legal studies. Comparative legal studies are activities to compare the laws of one country with the laws of other countries or the laws of one particular time with the laws of another time

Results / Discussion

1. What are the current regulations for the abuse of Corruption Crimes?

Corruption is a criminal act in the form of enriching oneself or another person or corporation which can harm state finances or the state economy. What is meant by state finances is the totality of state assets in whatever form, whether separated or not separated, including all parts of state assets and all rights and obligations arising from being under the control and accountability of officials of state institutions, both central

and regional levels. or BUMN/BUMD, foundations, legal entities and companies that include third party capital based on an agreement with the state. Meanwhile, what is meant by state economy is economic life which is structured as an independent community effort. Corruption is a criminal phenomenon that undermines and disrupts the implementation of development, so its handling and eradication must be prioritized.

The consequences resulting from criminal acts of corruption are very broad and have a negative impact on all areas, especially the economic sector. The definition of corruption in the Corruption Eradication Law is contained in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999. Another definition, corruption can be interpreted as "Behavior that does not comply with principles", carried out by individuals in the private sector or public official. Decisions are made based on personal or family relationships, corruption crimes. is based on government policy at both central and regional levels in accordance with the provisions of applicable laws and regulations and aims to provide benefits, prosperity and well-being to the lives of the people. Thus, the country's economy is structured as a joint effort based on the principle of kinship or community which is based on government policies for the prosperity of the people. According to Barda Nawawi, the strategy in eradicating corruption is not about eradicating corruption itself but eradicating "the causes and conditions that give rise to corruption", eradicating corruption through criminal law enforcement is only symptomatic eradication, while eradicating the causes and conditions that give rise to corruption is causative eradication. .

The aim of law to regulate peaceful social interactions as stated by van Apeldoorn above, is based on the idea that individual interests and the interests of human groups are always in conflict with each other. This conflict of interests will always lead to conflict, even war between everyone against everyone, if the law does not act as an intermediary to maintain peace, and the law maintains peace by weighing conflicting interests carefully and striking a balance between them, because law can only achieve the goal (regulate peaceful social interactions) if it leads to fair regulations, meaning regulations in which there is a balance between protected interests, in which everyone gets as much as possible from their share. Likewise with justice, the term fairness (iustitia) comes from the word "just" which means: impartial, impartial, siding with what is right, proper, not arbitrary. From several definitions it can be understood that the meaning of justice is all things related to attitudes and actions in relationships between humans, justice contains a demand that people treat each other in accordance with their rights and obligations, this treatment does not discriminate or show favoritism; rather, everyone is treated equally

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

2. What is the criminal law policy in returning state financial losses due to corruption to achieve justice?

The theory of justice in legal science, especially legal dogmatics, is to discuss the objectives of law including justice, certainty and usefulness. The issue of legal objectives is the scope of discussion of legal philosophy. According to Gustav Radbruch, the idea of law as a cultural idea cannot be formal, instead it is directed at rechtsidee, namely justice. Justice as an ideal as shown by Aristotle cannot say anything else, except that the equal is treated equally, the unequal are treated unequally. So, to fill this ideal of justice with concrete content, we must look at its finality, and to complete justice and finality, certainty is needed. So according to Gustav Radbruch, law has three aspects, namely justice, finality and certainty. According to Aristotle in his books Ethica Nichomacheia and Rethorica, law has a sacred duty, namely giving each person what he is entitled to receive. Meanwhile, according to Bentham, the assumption that prioritizes utility. According to Bentham, the aim of law is to ensure the greatest happiness for the greatest number of people. The aim of law is to realize justice, certainty and benefit to society will be realized.

The meaning of justice in the utilitarian view is justice in a broad sense, not for individuals or just the distribution of goods. The only measure to measure whether something is fair or not is how big its impact is on human welfare. John Rawls's theory of justice, justice as fairness begins with one of the most general choices that people can make together, namely with the choice of the first principle of the concept of justice which regulates further criticism and reform of institutions. So after choosing a conception of justice, we can assume that they chose the constitution and laws to enforce laws and so on, all of which are in accordance with previously agreed principles of justice. Furthermore, according to John Rawls, say a society is well ordered when it is not only designed to improve the welfare of its members but when it is also effectively governed by the public conception of justice, namely a society in which Everyone accepts and knows that others adhere to the same principles of justice Existing basic social institutions are generally in line with these principles. Furthermore, according to John Rawls, a number of people state that in reality formal justice and substantive justice tend to go hand in hand and therefore unjust institutions are never, or sometimes at any level, regulated neutrally and consistently.

Based on article 1 paragraph 22 of Law Number 1 of 2004 concerning State Treasury, State/Regional Losses are a shortage of money, securities and goods, which are real and definite in amount as a result of unlawful

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

acts whether intentional or negligent. Based on this understanding, it can be said that state losses have occurred if the elements of state losses have been fulfilled. Based on Law Number 1 of 2004, State Losses have occurred if there is a perpetrator/person responsible for the loss, namely the treasurer, non-treasurer/other civil servant who has committed an unlawful act, either intentionally or negligently, which results in a shortage of money, securities and goods whose quantity is real and certain and the illegal action carried out has a causal relationship with the loss that occurs.

If we only look at the definition of State loss according to the Treasury Law, the amount of loss that occurs can only be stated based on the "real and certain" amount that has arisen. This understanding is different from Law Number 31 of 1999 concerning Corruption Crimes in conjunction with Law Number 20 of 2001 which states that criminal acts of corruption as one of the elements of unlawful acts, are acts of enriching oneself or another person or a corporation which can detrimental to state finances or the country's economy. The word 'can' in this definition certainly contains the meaning that losses are not only limited to those that are real and certain but also those that have the potential to arise in the future. So, how is the actual implementation of determining state losses? Who has the right to determine the amount of state losses? The author is of the opinion that settlement of state losses is assessed by the presence or absence of criminal elements. If the loss to the State is caused not based on an unlawful act or negligence which has a criminal element, then the settlement is carried out by means of /

The imposition of state/regional compensation on treasurers is determined by the Supreme Audit Agency . The imposition of state/regional compensation on non-treasurer civil servants is determined by the minister/institution head/governor/regent/mayor. Procedures for claiming compensation for state/regional losses are regulated by government regulations. If a criminal element is found during the examination of state/regional losses as intended, financial irregularities that have criminal elements are reported to central law enforcement officials such as the Indonesian National Police, the Corruption Eradication Commission (KPK), and the Prosecutor's Office. If the state loss is caused by a criminal act of corruption, the loss is assessed not only based on what is "real and certain" but also on all potential state losses that arise.

According to the 1945 Constitution, Article 23E paragraph (1) "To examine the management and responsibility of state finances, a free and independent Financial Audit Agency was established." In Article 1 point 1 of Law Number 15 of 2006 concerning the Financial Audit Agency, it also

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

states that, "The Financial Audit Agency is a state institution whose task is to examine the management and responsibility of state finances as intended in the 1945 Constitution," then this statement is reiterated in Article 6 paragraph (1) states "The Financial Audit Agency is tasked with examining the management and responsibility of state finances carried out by the Central Government, Regional Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional-Owned Enterprises, and institutions or other bodies that manage state finances. Finally, Article 10 paragraph (1) states, "The Financial Audit Agency has the authority to assess and/or determine the amount of state losses resulting from unlawful acts, whether intentional or negligent, committed by treasurers, BUMN/BUMD managers, and other institutions or bodies that carry out management. state finances".

3) How criminal law policies can be implemented effectively to deal with criminal acts of corruption that are detrimental to the state

One of the fundamental elements in criminal acts of corruption is the loss of state finances. Before determining the existence of state financial losses, there needs to be a clear legal definition of the meaning of state finances. There are currently no similarities in the various laws and regulations that exist regarding the definition of state finances. Article 1 number 1 of Law Number 17 of 2003 concerning State Finances defines state finances as all state rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be made property of the state in connection with the implementation of these rights and obligations.

In 2001, Presidential Decree Number 103 was issued concerning the Position, Duties, Functions, Authorities, Organizational Structure and Work Procedures of Non-Departmental Government Institutions as amended several times, most recently by Presidential Regulation No. 64 of 2005. In Article 52 it is stated that BPKP has the task of carry out government duties in the field of financial supervision and development in accordance with the provisions of applicable laws and regulations. One of the government tasks in the field of supervision carried out by BPKP is assignments in the field of investigations which include investigative audits, audits in the context of calculating state financial losses, providing expert information, investigative audits of obstacles to the smooth development, price escalation audits and claims audits as well as other related investigative assignments. with efforts to prevent corruption.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Currently, BPKP can be said to be the most sophisticated government institution in its supervisory function within government. How could it not be, supported by organizational work procedures that are quite well established in planning, assignments, and accountability. Not only that, BPKP also has a large capacity in terms of investigative audits which can be relied upon to track various irregularities and leaks in state financial management.

Regarding investigative audits, the Constitutional Court recognized the BPKP's authority to conduct investigative audits through Constitutional Court Decision Number: 31/PUU-X/2012 dated 23 October 2012 which strengthened the BPKP's authority to conduct investigative audits based on Presidential Decree 103 of 2001 and PP No. 60 of 2008. BPKP and BPK each have the authority to conduct audits based on regulations. According to the Court, in order to prove a criminal act of corruption, the Corruption Eradication Commission (KPK) can not only coordinate with the BPKP and BPK, but can also coordinate with other agencies, and can even prove itself beyond the findings of the BPKP and BPK, for example by inviting experts or by requesting materials from the inspectorate general or body that has the same function as that. In fact, from other parties (including companies), who can show material truth in calculating state financial losses and/or can prove the case they are handling.

In the legal considerations of the Constitutional Court, pages 52-53, it is stated that BPKP has the authority to carry out government duties in the field of financial supervision and development in accordance with the provisions of applicable laws and regulations. Government Regulation Number 60 of 2008 concerning the Government's Internal Control System states, "The Financial and Development Supervisory Agency is the government's internal control apparatus which is directly responsible to the President". PP 60/2008 then states, "To strengthen and support the effectiveness of the Internal Control System as intended in paragraph (1), the following are carried out: a. internal supervision over the implementation of the duties and functions of Government Agencies including state financial accountability; and b. coaching the implementation of SPIP". Article 49 of PP 60/2008 states that BPKP is one of the government's internal supervision apparatus, and one of the internal supervision includes investigative audits. The authority of the BPK is regulated in Article 23E paragraph (1) of the 1945 Constitution, and further regulated in Article 6 paragraph (1) of Law Number 15 of 2006 concerning the Financial Audit Agency which states, "The BPK is tasked with examining the management and responsibility of State finances carried out by the Central Government, Regional Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional-

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

Owned Enterprises, and other institutions or bodies that manage state finances." Thus, the duties and authorities of each agency such as BPKP and BPK are clearly regulated in statutory regulations, so that these duties and authorities do not need to be mentioned further in the explanation of the KPK Law. This MK statement can at least answer the doubts of several parties who have been unsure about the existence of BPKP and BPK in the process of handling corruption cases.

Conclusion

Apart from the BPK's task of examining the management and responsibility of state finances, there are also other state institutions in the Constitutional System of the Republic of Indonesia. The existence of this institution has existed since before Indonesia became independent and was formed based on Besluit Number 44 of 1936 (Besluit No. 44/1936) with the name Djawatan Akuntan Negara (Regering Accountantsdienst). This State Accountant Department was the forerunner to the formation of BPKP. After Indonesia's independence, BPKP also had a strong enough juridical foundation to carry out its duties, namely as stated in Presidential Decree Number 31 of 1983 concerning the Financial and Development Supervisory Agency (Presidential Decree No. 31/1983) jo. Presidential Decree Number 103 of 2001 concerning Position, Duties, Functions, Authority, Organizational Structure and Work Procedures of Non-Departmental Government Institutions (Presidential Decree No. 103/2001). Regarding the duties and authorities regarding BPKP, it is also contained in Government Regulation Number 60 of 2008 concerning the Government Internal Control System (PP No. 60/2008). Renewal of regulations to support the existence of BPKP was also carried out in Presidential Decree No. 31/1983, which was updated with the provisions of Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency (Presidential Decree No. 192/2014).

Based on the juridical basis possessed by the BPKP, there is one BPKP authority which has the same authority as the authority possessed by the BPK, namely the authority to assess state financial losses in criminal acts of corruption (Article 3 letter e of Presidential Decree No. 192/2014). The conflict of authority regarding the assessment of state financial losses in handling cases of criminal acts of corruption was answered with the issuance of Constitutional Court (MK) Decision Number 31/PUU-Constitutional Court (MK) Decision Number 31/PUU-X/2012 dated 23 October 2012. This decision is the MK's rejection of the judicial review submitted by former PLN President Director Eddie Widiono Suwondho, namely a request for a judicial review of Law Number 30 of 2002 concerning

the Eradication of Crime Corruption against the 1945 Constitution, article 23E paragraph (1), which states that: "To examine the management and responsibility for state finances, a free and independent Financial Audit Agency was created." This case was investigated by the Corruption Eradication Committee (KPK) in coordination with the BPKP.

Thus, even though there are provisions regarding the BPK Law which was issued in 2006, newer regulations have also emerged, which regulate the authority of the BPKP (PP No. 60/2008). The government even made its own regulations, which explicitly regulate the duties and functions of the BPKP (Presidential Decree No. 192/2014), so that the existence of these regulations creates conflicts over state institutional authority in the constitutional system of the Republic of Indonesia. Such conditions require several changes to occur in state administration. These changes in state administration are changes to the state's institutional structure. However, conflicts of authority regarding examining (auditing) state financial losses do not only occur between the BPK and BPKP institutions. In PP no. 60/2008 jo. Law Number 30 of 2014 concerning Government Administration (UU No. 30/2014) also gave rise to its own polemic, namely related to the existence of the Government Internal Supervisory Apparatus (APIP). Based on Article 20 of Law no. 30/2014, APIP's task is to supervise the prohibition of abuse of authority carried out by relevant government agencies and/or officials without any errors; there is an administrative error; or administrative errors that cause state financial losses. With this task, APIP implicitly has the authority to carry out assessments that are deemed to cause state financial losses to government agencies and/or officials who are indicated to have committed criminal acts of corruption.

According to PP no. 60/2008, BPKP is also included in the scope of APIP, but not only BPKP is considered as APIP, but there are also Inspectorates General, Provincial Inspectorates and Regency/City Inspectorates. In Law no. 30/2014, does not explicitly regulate which institution is called APIP. If we look more deeply, APIP's position is within the scope of the government (executive) or is located under the President. From this conflict of authority, if the state institutions that have the authority to assess state financial losses are the BPK and APIP, which includes the BPKP and the Inspectorate (according to PP No. 60/2008), then this will raise the issue of which state institution has the authority to assess state financial losses in criminal acts of corruption.

Previously, there were various opinions from experts regarding the polemic regarding the authority to calculate State losses, including the State Finance Expert, Dian Puji Simatupang, who was presented by the legal advisory team of the former President Director of the State Electricity Company. In his testimony, the lecturer at the Faculty of Law at the University of Indonesia

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

said that BPKP no longer had the authority to calculate state losses. The one who has the authority to calculate and audit state losses is the BPK. This is emphasized in Law Number 15 of 2006 concerning BPK. He said that BPKP could audit as long as there was permission from the President and the minister. He said, if there are audit results issued simultaneously by the BPK and other institutions, law enforcers must refer to the BPK results. Because this institution has the authority to calculate and audit state losses. Even in Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission, BPKP is allowed to calculate and audit state losses. However, this clause in the Law was updated with the birth of the BPK Law in 2006. On the basis of assessing the new Law, law enforcers can use it as a basis for determining who should calculate state losses. Apart from the Corruption Eradication Committee Law, Presidential Decree Number 103 of 2001 concerning Position, Duties, Functions, Authority, Organizational Structure and Work Procedures of Non-Departmental Government Institutions, also states that the BPKP is allowed to calculate and audit state losses. But again, experts believe that the position of the Presidential Decree is inferior to the BPK Law which states that the BPK is the institution that has the authority to calculate state losses.

In its legal considerations, the Constitutional Court stated that the BPKP has the authority to carry out government duties in the field of financial supervision and development in accordance with the provisions of applicable laws and regulations (vide Article 52 of Presidential Decree Number 103 of 2001). General Provisions of Government Regulation Number 60 of 2008 concerning the Government's Internal Control System states that the Financial and Development Supervisory Agency is the government's internal control apparatus which is directly responsible to the President. Article 47 paragraph (2) of Government Regulation Number 60 of 2008 also states that to strengthen and support the effectiveness of the Internal Control System as intended in paragraph (1), the following are carried out: a. internal supervision over the implementation of the duties and functions of Government Agencies including state financial accountability; and b. coaching the implementation of SPIP. Article 49 of Government Regulation Number 60 of 2008 states that BPKP is one of the government's internal supervision apparatus, and one of the internal supervision includes investigative audits. The authority of the BPK is regulated in Article 23E paragraph (1) of the 1945 Constitution, and further regulated in Article 6 paragraph (1) of Law Number 15 of 2006 concerning the Financial Audit Agency which states that the BPK is tasked with examining the management and responsibility of State finances carried out by Central Government, Regional Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional-Owned Enterprises, and other institutions or bodies that manage state finances (see Article 6 paragraph (1)

of the BPK Law). Thus, the duties and authorities of each agency such as BPKP and BPK are clearly regulated in statutory regulations, so that these duties and authorities do not need to be mentioned further in the explanation of the KPK Law.

With the issuance of the Constitutional Court Decision Number: 31/PUU-X/2012 dated 23 October 2012, the Constitutional Court acknowledged the authority of the BPKP in conducting investigative audits which strengthened the authority of the BPKP to conduct investigative audits based on Presidential Decree 103 of 2001 and PP No. 60 of 2008. BPKP and Each BPK has the authority to conduct audits based on regulations. According to the Constitutional Court, in order to prove a criminal act of corruption, the KPK can not only coordinate with the BPKP and BPK, but can also coordinate with other agencies, and can even prove itself beyond the findings of the BPKP and BPK, for example by inviting experts or by requesting materials from the inspectorate. general or body that has the same function as that. In fact, from other parties (including companies), who can show material truth in calculating state financial losses and/or can prove the case they are handling. This MK statement can at least answer the doubts of several parties who have been unsure about the existence of BPKP and BPK in the process of handling corruption cases.

Constitutional Court Decision Number 31/PUU-X/2012 is closely related to the authority to assess state financial losses by the BPK and BPKP. This decision was motivated by the KPK's determination of Eddie Widiono Sowondho as a suspect, the results of the suspect's determination were based on the results of calculating state financial losses by the BPKP as the government's internal supervisor (internal auditor), not based on the results of the assessment of state financial losses by the BPK as the external auditor.). \

Whereas the aim and purpose of the a quo petition is to test the constitutionality of Article 6 letter a and the Elucidation of Article 6 of the Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission (UU KPK), which states: Article 6 letter a of the KPK Law: Eradication Commission Corruption has the following tasks: (a) coordinating with agencies authorized to eradicate criminal acts of corruption...; Explanation of Article 6 of the Corruption Eradication Committee Law: What is meant by "authorized agency" includes the Financial Audit Agency, the Financial and Development Supervisory Agency, the State Administration's Assets Audit Commission, Inspectorates in Departments or Non-Departmental Government Institutions. Against the 1945 NRI Constitution.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

According to the Court, the coordination task is a task that the Corruption Eradication Commission should have in order to effectively carry out its task of eradicating criminal acts of corruption, so that such a function cannot be considered contrary to the constitution. 3) That the respective authorities of BPKP and BPK have been clearly regulated in statutory regulations. Therefore, according to the Court, the KPK can not only coordinate with the BPKP and BPK in the context of proving a criminal act of corruption, but can also coordinate with other agencies. 4) The constitutional loss argued by the Petitioner, namely regarding the validity or invalidity of the LPHKKN used by the Corruption Eradication Commission as a basis for determining an investigation, is a loss or potential loss that could occur due to the implementation of the law enforcement process or implementation of the norms in the Corruption Eradication Committee Law. Regarding whether or not the state loss stated in the LPHKKN is proven or whether the LPHKKN is valid or not, it remains the absolute authority of the judge who tries it. In other words, even though the Corruption Eradication Commission has discretionary authority to use information about state losses in the form of LPHKKN from the BPKP or BPK in investigations, whether or not this information is used in making decisions is the independence of the judge who hears the case. Therefore, according to the Court, the problem faced by the Petitioner is in the realm of norm implementation, not a problem of the constitutionality of norms. The mention of the BPKP agency or other agencies in the Elucidation to Article 6 of the Corruption Eradication Committee Law without mentioning and limiting the authority of each agency cannot be stated as a provision that creates legal uncertainty.

If viewed based on the theory of authority, then between BPK and BPKP their authority is equally recognized according to the theory of authority, it's just that there are differences in the sources of authority that BPK and BPKP have. The source of authority possessed by BPK is the source of attribution authority, while the source of authority possessed by BPKP is the source of delegation authority. Thus, the position of the BPK is higher than the BPKP if viewed according to the source of its authority. This is also similar if the position of the BPK and BPKP is reviewed according to the hierarchy of statutory regulations, which can be seen that the position of the BPK is higher in rank than the BPKP. So, if these two institutions, namely the BPK and BPKP, both assess state financial losses and there are differences in the assessment results, then the assessment results used are the results from the BPK. However, in the case decided based on Constitutional Court Decision Number 31/PUU-X/2012, only BPKP assessed state financial losses. So, it cannot be determined that the results of the assessment from the BPKP are invalid, because the BPK itself did not assess the state's financial losses.

Law Journal Borobudur International
Vol 1 No 1, July 2024

ISSN: 2809-9664

In Law Number 31 of 1999 as amended and added to Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, it does not clearly regulate which institution has the authority to calculate State losses, but the authority of the institution which calculates State financial losses is strictly Implicity can be found in the explanation of Article 32 paragraph (1) UUPTPK which states that what is meant by actual State financial loss is State financial loss whose amount can be calculated based on the findings of the authorized agency or appointed public accountant. Referring to several provisions of applicable laws and regulations, there are at least two authorized agencies, namely BPK and BPKP. The implementation of the calculation of state financial losses by the BPK in corruption cases really depends on the prosecutor, whether in the indictment the prosecutor uses the calculation results from the BPK or BPKP.

In the indictment, the prosecutor did not use the BPK in calculating the amount of state financial losses because the procedures carried out by the BPK when asked by investigators, in this case the prosecutor, to calculate and provide conclusions from the results of the calculations carried out by the BPK were very long, so according to the prosecutor, the calculations from the BPK often contradicted the principle of justice that is fast, simple and low cost. So in this case the prosecutor preferred BPKP to calculate the State's financial losses, because according to the prosecutor the calculation by BPKP was very fast and the procedure was very simple.

In terms of the calculation procedure carried out by the BPK, the process takes a long time because after being asked by law enforcement officials to calculate State losses in a BPK representative area, the results or conclusions of the calculation must be given to the central BPK to be discussed in a meeting, after which it is returned to Provincial/representative BPK and then given to law enforcement officials. Apart from that, in general the BPK is only an expert in the field of calculations and inspection audits but if it is related to technical issues or the quality of an object being corrupted, the BPK does not have expertise in that field, and also the quantity of human resources at the BPK is very limited in this case it is less if Compared to corruption cases in Indonesia, the BPK is often overwhelmed in carrying out audits because the BPK's task is not only to examine state financial losses but also to carry out financial audits, performance audits and audits with specific objectives.

Acknowledgments

Whether or not the calculation results from the authorized agency are used in the decision really depends on the judge, because determining

the amount of State losses must be based on the facts or evidence in the trial, so whether or not the results of the BPK's calculations are used is the absolute authority of the judge. Thus, the issue of whether or not BPK services were used in calculating the amount of State losses is not the main issue for judges in determining the amount of State losses in a criminal act of corruption. Judges in determining the amount of state financial losses are not tied to any one institution because judges are based more on the facts in the trial.

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Law Journal Borobudur International
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