JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v6i5

The Concept of State Financial Losses in Criminal Acts of Corruption After Constitutional Court Decision Number 28/PUU-XXIV/2026

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Abstract: This study examines the juridical analysis of the Constitutional Court Decision Number 28 of 2026 concerning the authority to calculate state financial losses in corruption cases. The background of this research lies in legal uncertainty due to overlapping authority among institutions in determining state losses, which is a crucial element in proving corruption cases. This study aims to identify the legal basis of institutional authority and the implications of the decision on law enforcement. The method used is empirical legal research with a socio legal approach, utilizing secondary data supported by primary data. The results indicate that the Supreme Audit Institution holds the primary constitutional authority to determine state financial losses, while law enforcement agencies are limited to preliminary calculations for investigative purposes. In conclusion, the decision clarifies the division of authority, enhances legal certainty, and strengthens the effectiveness of corruption law enforcement in Indonesia.

Keyword: State Financial Losses, Institutional Authority, Constitutional Court Decisions, Criminal Acts of Corruption

INTRODUCTION

The growth of economic activity has been accompanied by the emergence of various forms of action that are detrimental to the public interest. The United Nations (UN) at its Fourth Congress in 1970 in Kyoto on Crime Prevention and the Development of Criminals *(Fourth United Nations Congress on the Prevention of Crime and Treatment of Offenders*) realize that various important aspects of social development are considered to have the potential to be criminogenic and have the potential to give rise to crime.[1]

Economic crime is a new dimension of crime, the perpetrators of which are from the wealthy, intellectual, and organized classes. Economic crime is also commonly referred to as white-collar crime.*white collar crime.*Another characteristic of this crime is its high mobility and its perpetration not only within a single region but across national borders. This paper aims

[1]Yoserwan, 2021, *Criminal Economic Law*, PT Raja Grafindo Persada, Depok, 2021, p. 6

to understand the definition and scope of economic crimes, the characteristics of economic crimes, and the regulations.[2]One form of economic crime is corruption.

Corruption is a common enemy, not only a national problem but also an international problem, universal and cross-country (*national border*). Technological advancements and global economic developments have made corruption possible and have negative impacts in several countries. Therefore, the global community needs to work together to take strategic steps to combat and eradicate corruption.[3]Inside*preambule United Nations Convention Against Corruption*which was accepted by the UN General Assembly on 31 October 2003, among other things, stated that corruption is: A threat to the security and stability of society (*threat to the stability and security of societies*); Undermining democratic values and institutions (*undermining the institutions and values of democracy*), Destroying moral values and justice (*undermining ethical values and justice*); Endangering "sustainable development" and "rule of law" (*jeopardizing sustainable development and the rule of law*); and threaten political stability (*threaten the political stability*).[4]

The term corruption is generally closely related to the deviant behavior of government officials by abusing their authority, thus harming the state's finances and economy. In consideration letter a, Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is acknowledged that the widespread criminal acts of corruption have not only harmed state finances, but have also constituted a violation of the social and economic rights of the community at large, hindering the pace of development so that criminal acts of corruption need to be classified as crimes whose eradication must be carried out in an extraordinary manner. Two important things emphasized in the consideration are acknowledged that the negative impact of corruption is not only a matter of financial and economic losses to the state but also a humanitarian problem, because corruption has clearly robbed the social rights of the community. Considering the extraordinary impact of corruption as mentioned above, consideration letter a states that corruption needs to be classified as a crime whose eradication must be carried out in an extraordinary manner (*extra ordinary measure*).[5]

Before discussing the definition of criminal acts of corruption, it is first necessary to understand the definition of criminal acts. Criminal acts are actions that are not only formulated by the Criminal Code as crimes or criminal acts.[6]An act can be said to be a crime if it meets the following elements: 1. Subject 2. Error 3. Unlawful nature (from the act) 4. An act that is prohibited or required by law/regulation and the violator is threatened with criminal penalties 5. Time, place, and circumstances (other objective elements). The five elements are categorized into two elements, namely subjective elements and objective elements. Which include the subject and error elements. While those included in the objective elements are unlawful nature, prohibited actions and threatened with criminal penalties by law and other objective factors. These five elements must be present in a crime.[7]

In Chapter II Criminal Acts and Criminal Responsibility Part One Criminal Acts Paragraph 1 General Article 12 of Law No. 17 of 2023 concerning the Criminal Code, it states that: (1) A Criminal Act is an act which is threatened with criminal sanctions and/or actions by statutory regulations. (2) To be declared a Criminal Act, an act which is threatened with

[2]Fauzi Iswari & Azriadi, 2022, *Economic Crimes and Their Regulation in the Indonesian Legal System*, Subang 12 Journal Volume 1 No. 1, July 2022, p.1

[3]Pujiyono, 2020,*Terms, Definitions and Scope of Criminal Acts of Corruption*, accessed at:https://pustaka.ut.ac.id/lib/wp-content/uploads/pdfmk/HKUM4310-M1.pdfp.1

[4] *Ibid*.

[5] *Ibid*.

[6]S.R Sianturi,*Principles of Criminal Law in Indonesia and Their Implementation.*3rd edition. Jakarta. Storia Grafika. 2002. P. 204

[7]Adam Chazawi, 2002, *Criminal Law Lesson Part 1.* Jakarta. PT. Raja Grafindo Persada. P. 211

criminal sanctions and/or actions by statutory regulations must be unlawful or contrary to the laws prevailing in society. (3) Every Criminal Act is always unlawful, unless there is a justification.

The crime of corruption is a special crime whose regulations are outside the Criminal Code, the crime of corruption is a crime that with bribery, manipulation and unlawful acts that are detrimental or can be detrimental to state finances or the state economy, detrimental to the welfare or interests of the people/public. Acts that are detrimental to state finances or the state economy are corruption in the material field, while corruption in the political field can be realized in the form of manipulating voting by means of bribery, intimidation, coercion and or interference that affects the freedom to choose the commercialization of voting in legislative institutions or on administrative decisions in the field of government implementation.[8]

The prevalence of corruption is due to weak legal systems. Abusing or changing laws is indeed easier than bringing corruptors to justice. Considering Law No. 31 of 1999 and Law No. 20 of 2001, corruption can be viewed from two perspectives: active corruption and passive corruption. Active corruption is defined as follows:[9]

1. Unlawfully enriching oneself or another person or corporation which could harm state finances or the state economy (Article 2 of Law Number 31 of 1999);
2. With the aim of benefiting oneself or another person or a corporation, misusing the authority, opportunities or means available to him due to his position or position which could be detrimental to state finances or the state economy (Article 3 of Law Number 31 of 1999);
3. Giving gifts or promises to civil servants in view of the power or authority attached to their position or position, or by the giver of the gift or promise being considered attached to the position or position (Article 4 of Law Number 31 of 1999);
4. Attempt, assistance or conspiracy to commit a crime of corruption (Article 15 of Law Number 31 of 1999);
5. Giving or promising something to a Civil Servant or State Administrator with the intention of doing something or not doing something in his position that is contrary to his obligations (Article 5 paragraph (1) letter a of Law Number 31 of 1999);
6. Giving something to a Civil Servant or State Administrator because of or in connection with something that is contrary to his/her obligations carried out or not carried out in his/her position (Article 5 paragraph (1) letter b Law Number 20 of 2001);
7. Giving or promising something to the Judge with the intention of influencing the decision of a case submitted to him for trial (Article 6 paragraph (1) letter a of Law Number 20 of 2001);
8. Contractors, building experts who, when constructing a building, or building material sellers who, when delivering building materials, commit fraudulent acts which could endanger the safety of people or goods, or the safety of the State in a state of war (Article 7 paragraph (1) letter a Law Number 20 of 2001);
9. Any person whose job is to supervise construction or the delivery of building materials, intentionally allows fraudulent acts as referred to in letter a (Article 7 paragraph (1) letter b of Law Number 20 of 2001);
10. Any person who, when handing over goods required by the Indonesian National Army or the Republic of Indonesia National Police, commits fraudulent acts which could endanger the security of the State in a state of war (Article 7 paragraph (1) letter c of Law Number 20 of 2001);

[8]Siti Maryam, 2012, *Understanding the Criminal Act of Corruption*, 2012, http://sitimaryamnia.blogspot.com/2012/02/pengertian-tindak-pidanakorupsi.html, accessed on May 12, 2026.

[9]Darwan prinst, 2002, *Eradication of Criminal Acts of Corruption*. Bandung. Citra Aditya Bakti. 2002. P. 2

11. Any person whose duty is to supervise the delivery of goods required by the Indonesian National Army or the Republic of Indonesia National Police who intentionally allows fraudulent acts as referred to in letter c (Article 7 paragraph (1) letter d of Law Number 20 of 2001);
12. Civil servants or other people other than civil servants who are assigned to carry out a public office continuously or temporarily, intentionally embezzle money or valuable documents held because of their position, or allow such valuable documents to be taken or embezzled by other people, or assist in carrying out such acts (Article 8 of Law Number 20 of 2001).
13. Civil servants or non-civil servants who are assigned to carry out a general position continuously or temporarily, intentionally falsify books or lists specifically for administrative audits (Article 9 of Law Number 20 of 2001)

Meanwhile, passive corruption is as follows: 1. Civil servants or state officials who receive gifts or promises because they do or do not do something in their position that is contrary to their obligations (Article 5 paragraph (2) of Law Number 20 of 2001) 2. Judges or advocates who receive gifts or promises to influence the decision on a case submitted to them for trial or influence the advice or opinion given in connection with a case submitted to the court for trial (Article 6 paragraph (2) of Law Number 20 of 2001) 3. People who receive the delivery of materials or needs for the Indonesian National Army or the Republic of Indonesia National Police who allow fraudulent acts as referred to in paragraph (1) letter a or letter c of Law Number 20 of 2001 (Article 7 paragraph (2) of Law Number 20 of 2001).[10]The difference between active and patient corruption is an important point in the process of law enforcement against criminal acts of corruption.

As a country based on law, the Republic of Indonesia has an obligation to carry out the process of enforcing the law against criminal acts of corruption in order to uphold the supremacy of law, uphold justice and create peace in community life.[11]However, we can see that law enforcement against corruption in Indonesia remains relatively weak. This is evident in the large number of lawmakers and law enforcers themselves who commit corruption. The presence of lawmakers and law enforcers who engage in corruption can lead to a decline in public trust in those lawmakers and law enforcers.[12].

Law enforcement against corruption in Indonesia cannot be separated from the element of state financial loss as a crucial element of the evidentiary process. This is stipulated in Articles 603 and 604 of Law Number 1 of 2023 concerning the Criminal Code, which emphasizes that any unlawful act that harms state finances is punishable. Therefore, the existence and extent of state losses are key elements that must be legally proven in the judicial process. Calculating and determining state financial losses is a frequently raised and debated issue in the resolution of corruption cases.

Each law enforcement official often provides different interpretations, particularly regarding which agency is authorized to calculate and determine the amount of state financial losses in court decisions. The overlapping laws and regulations regarding which agency is authorized to calculate state financial losses poses a problem in determining the extent of state financial losses resulting from the defendant's actions in corruption cases.

[10] *Ibid*.

[11]Gradios Nyoman Tio Rae. 2020.*Good Governance and Corruption Eradication*. Jakarta: Saberro Inti Persada, p.2 in Ana Aniza Karunia, 2022, Law Enforcement of Corruption Crimes in Indonesia in the Perspective of Lawrence M. Friedman's Theory, in the Journal of Law and Economic Development, Sebelas Maret University, Surakarta, Solo, Volume 10, Number 1, 2022 ISSN (Print) 2338-1051, ISSN (Online) 2777-0818, p.116

[12]Widayati. 2018. "Law Enforcement in a Democratic Indonesian Legal State". Journal of Scientific Publications. Surakarta: Muhammadiyah University of Surakarta., p. 5 in Journal of Law and Economic Development, Sebelas Maret University, Surakarta, Solo, Volume 10, Number 1, 2022 ISSN (Print) 2338-1051, ISSN (Online) 2777-0818, p. 117

However, problems have arisen regarding the institution authorized to calculate state financial losses. Constitutionally, the Audit Board of Indonesia has authority based on Article 23E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the Audit Board of Indonesia is tasked with auditing the management and accountability of state finances. In addition, this authority is also emphasized in Law Number 15 of 2006 concerning the Audit Board of Indonesia, which mandates the Audit Board as a state institution authorized to conduct audits, including in determining state financial losses.

Based on Article 1 paragraph 22 of Law Number 1 of 2004 concerning State Treasury, State/Regional Loss is a shortage of money, securities, and goods, which is real and certain in amount as a result of unlawful acts whether intentional or negligent. Based on this definition, 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 Loss has occurred if there is a perpetrator/person responsible for the loss, namely the treasurer, a civil servant who is not a treasurer/other official who has committed an unlawful act either intentionally or negligently which results in a shortage of money, securities, and goods which is real and certain in amount and the unlawful act he committed has a causal relationship with the loss that occurred.[13]If viewed solely from the definition of state losses according to the Treasury Law, the amount of losses incurred can only be stated based on the amount that "is real and certain" that has occurred. This definition differs from Law Number 31 of 1999 concerning Criminal Acts of Corruption.*because*Law Number 20 of 2001, which states that corruption, as an unlawful act, is an act of enriching oneself, another person, or a corporation that can harm state finances or the national economy. The word "can" in this definition certainly implies that losses are not limited to those that are real and certain but also those that have the potential to arise in the future.[14]

So, how exactly is the determination of state losses implemented? Who has the authority to determine the extent of these losses? The author argues that the settlement of state losses is assessed based on the presence or absence of criminal elements. If the state losses are not based on elements of unlawful acts or negligence that have criminal elements, then the settlement is carried out by:[15]

1. The imposition of state/regional compensation on treasurers is determined by the Audit Board;
2. The imposition of state/regional compensation on civil servants who are not treasurers is determined by the minister/head of the institution/governor/regent/mayor. The procedures for claiming state/regional compensation are regulated by government regulations.

If in the examination of state/regional losses as referred to, criminal elements are found, financial irregularities that have criminal elements are reported to central law enforcement agencies such as the Republic of Indonesia National Police, the Corruption Eradication Commission (KPK), and the Prosecutor's Office. If the state losses are caused by criminal acts of corruption, the losses are assessed not only based on what is "real and certain" but also all potential state losses that arise. According to the 1945 Constitution, Article 23E paragraph (1) "To examine the management and accountability of state finances, a free and independent Financial Audit Agency shall be established." Article 1 number 1 of Law Number 15 of 2006 concerning the Audit Board also states that, "The Audit Board is a state institution tasked with auditing the management and accountability of state finances as referred to in the 1945 Constitution," then this statement is reaffirmed in Article 6 paragraph (1) which states "The Audit Board is tasked with auditing the management and accountability of state finances

[13]Khana Karrina, 2024,*Understanding the Meaning of State Losses*, accessed at:https://www.djkn.kemenkeu.go.id/kpknl-lhokseumawe/baca-artikel/17008/Memahami-Arti-Dari-Kerugian-Negara.html, p.1.

[14] *Ibid*.

[15] *Ibid*.

carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regionally-Owned Enterprises, and other institutions or bodies that manage state finances. Finally, Article 10 paragraph (1) states, "The Audit Board has the authority to assess and/or determine the amount of state losses resulting from unlawful acts, whether intentional or negligent, carried out by treasurers, BUMN/BUMD managers, and other institutions or bodies that manage state finances."[16]

Regarding which institution is authorized to calculate state financial losses related to corruption crimes, the UUPTPK itself does not explicitly regulate it, but it can be found implicitly in the explanation of Article 32 paragraph (1) of the UUPTPK, which states that what is meant by a state financial loss that has clearly occurred is a state financial loss that can be calculated based on the findings of the authorized agency or appointed public accountant. This explanation is to clarify the formulation in Article 32 paragraph (1) of the UUPTPK related to the phrase "a state financial loss has clearly occurred. The lack of clarity regarding which institution is authorized to calculate state financial losses is often a matter of debate among law enforcement officials.

On the other hand, law enforcement officials such as the Indonesian Attorney General's Office, the Indonesian National Police, and the Corruption Eradication Commission (KPK) also calculate state losses during investigations. This is based on their investigative authority as stipulated in the Criminal Procedure Code (KUHAP) and the respective laws and regulations of each institution. This situation creates dualism and even pluralism of authority, potentially leading to differences in the calculation of state losses. These differences then create legal uncertainty in judicial practice, especially when there are differences in the value of state losses used as the basis for evidence.

The word proof (*proof*) Dutch is used in two meanings, sometimes it is interpreted as an action by which certainty is given, sometimes it is interpreted as a result of the action, namely the existence of certainty.[17] According to Eddy O.S Hiariej[18]provides a conclusion (by quoting Ian Denis's opinion) that: The word*Evidence*closer to the meaning of evidence according to Positive Law, while the word*proof*can be interpreted as proof that leads to a process.*Evidence* or evidence (opinion of Max. M. Houck) as the provision of information in a legitimate investigation regarding facts that are more or less as they are.[19]

Based on Constitutional Court Decision Number 28/PUU-XXIV/2026, Adi Purnama, Special Criminal Assistant at the Bangka Belitung Islands High Prosecutor's Office, wrote a review of Constitutional Court Decision Number 28/PUU-XXIV/2026 filed by Bernita Matondang and Vendy Setiawan. The petition essentially questions the unclear provisions in the Criminal Code regarding the institution authorized to audit state financial losses, the audit evidence stage, and the binding force of audit results for judges. In its consideration, the Court emphasized that the Supreme Audit Agency (BPK) has constitutional authority to determine state financial losses, but did not rule out the possibility for other institutions such as the BPKP (Financial Supervisory Agency), the inspectorate, or independent auditors to conduct audits. The audit results are not binding, as judges still have the freedom to assess all evidence in court. (Adi Purnama, 2026)[20]

[16] *Ibid*.

[17] A. Karim Nasution, 1976, *Legal Issues of Evidence in Criminal Proceedings*, Volume I, unpublished, p. 22

[18] Eddy OS. Hiarieej, 2012, *Theory and Law of Proof*, Erlangga Publisher, Jakarta, pp. 2-3

[19] *Ibid*.

[20] Adi Purnama, 2026 “Legal Arguments in Calculating State Financial Losses from the Perspective of Corruption Cases,” BangkaPos.com, p.1.

The Court rejected the petitioners' petition on the grounds that the substance of the case had been previously decided and there was no new basis for changing its position. In law enforcement practice, investigators such as the Corruption Eradication Commission (KPK), the prosecutor's office, and the police can still use audit results from various sources or even conduct their own calculations during the investigation stage. However, the final determination of the existence and extent of state losses remains the authority of the judge. This approach is considered important to maintain the effectiveness of corruption eradication so that it is not hampered, while still guaranteeing legal certainty and the principle of presumption of innocence. (Adi Purnama, 2026) Based on this description, it is important to conduct further study regarding "**The Concept Of State Financial Losses In Criminal Acts Of Corruption After The Mk Decision Number 28/Puu-Xxiv/2026**".

METHOD

The research specification is descriptive analytical, with a normative legal approach supported by empirical legal methods. The types of data used are secondary and primary data. Secondary data was obtained from document studies, while primary data was obtained through interviews. The data obtained were then analyzed qualitatively.

Problem

Based on the above background, the main issues in this writing are as follows:

1) What is the impact of the Constitutional Court's decision regarding the concept of state financial losses on law enforcement in corruption crimes in Indonesia?
2) What is the authority to determine the elements of state financial losses in corruption cases after the Constitutional Court decision Number 28/PUU-XXIV/2026?

DISCUSSION

The Impact of the Constitutional Court's Decision on the Concept of State Financial Losses on Law Enforcement Agencies in Corruption Crimes in Indonesia

The definition of state financial loss is not implicitly found in various regulations related to state financial loss or corruption. The UNCAC does not use state loss as an element of a crime, and even UN conventions also regulate corruption in the private sector. Indonesia has a unique approach to regulating the elements of corruption in its legislation. The element of state financial loss is the most important element in the corruption articles imposed on suspects or defendants in corruption crimes. Corruption is closely related to the abuse of authority or influence in one's position as an official, deviating from legal provisions, resulting in state financial losses.

That the provisions for criminal acts of corruption that are detrimental to state finances are regulated in Article 603 and Article 604 of Law Number 1 of 2023. Government Regulation No. 60 of 2008 opened up space for internal audits, including investigative audits. Meanwhile, Presidential Regulation No. 192 of 2014 assigned the Financial and Development Supervisory Agency (BPKP) to investigative audit functions, audits for calculating state/regional financial losses, providing expert testimony, and preventing corruption. In other words, our system has long allowed two streams to run concurrently: constitutionally appointing the BPK, but operationally operating largely through the BPKP and the Audit Agency (APIP). This is the root of the dualism. On the one hand, the constitution and the BPK Law require a single center of legitimacy to declare state losses. On the other hand, the practice of investigations, inquiries, and even prosecutions has traditionally relied on non-BPK audits.

This implies that the relationship between the Criminal Code and special regimes such as the Anti-Corruption Law is increasingly important to read carefully. The Criminal Code

provides a general framework, particularly regarding principles and criminal liability, while special provisions continue to function as operational instruments in law enforcement practices, particularly those with specific modus operandi and requiring specialized institutions, such as those involving corruption, money laundering, narcotics, serious human rights violations, and terrorism. Therefore, we can position the existence of external crimes as part of a recognized design. The challenge lies in ensuring there is no overlapping authority or differing standards of proof that could create uncertainty. If not managed properly, this dualism has the potential to undermine the direction of criminal law reform, which is precisely what is intended to be achieved through codification in the National Criminal Code.

Criminal acts of corruption are regulated inChapter XXXV Special Crimes Part Three Criminal Acts of Corruption Article 6O3, which states that: Any person who unlawfully commits an act of enriching himself, another person, or a corporation that is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI. Meanwhile,deepChapter XXXV Special Crimes Part Three Criminal Acts of Corruption Article 6O4, which states that: Any person who, with the aim of benefiting himself, another person, or a Corporation, abuses the authority, opportunity, or means available to him due to his position or position which is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI.

Next, inChapter XXXV Special Crimes Part Three Criminal Acts of Corruption Article 605 which states that: Article 605 (1) Any person who: a. gives or promises something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position, which is contrary to his obligations; or b. gives something to a civil servant or state administrator because of or in connection with something which is contrary to obligations, which is done or not done in his position. l2l Civil servants or state administrators who receive gifts or promises as referred to in paragraph (l) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and a fine of a minimum of category III and a maximum of category V; anddeepChapter XXXV Special Crimes Part Three Criminal Acts of Corruption Article 6O6 states that: (1) Any person who gives a gift or promise to a civil servant or state administrator considering the power or authority attached to his/her position or position, or is deemed by the person giving the gift or promise to be attached to said position or position, shall be punished with a maximum of 3 (three) years imprisonment and a maximum fine of category IV; (2) A civil servant or state administrator who receives a gift or promise as referred to in paragraph (1) shall be punished with a maximum of 4 (four) years imprisonment and a maximum fine of category IV.

In the Criminal Act of Corruption there are 2 (two) sanctions, namely:**First**, prison sentences and fines. SanctionsImprisonment where the perpetrator is threatened with life imprisonment or imprisonment for a minimum of 2 years and a maximum of 20 years; and**Second:**The fines are categorized into 8 categories, starting from Category II (maximum IDR 10 million) to Category VI (maximum IDR 2 billion).

Authority to Determine Elements of State Financial Losses in Corruption Cases

Calculating state financial losses is often a point of contention in corruption trials. The question often arises as to which institution actually has the authority to determine whether or not state losses have occurred.[21]To date, public prosecutors have often used the results of state

[21]Novrieza Rahm, 2017, "Who Has the Authority to Declare State Losses? Even the SEMA is Not Binding." Accessed at: https://www.hukumonline.com, February 22, 2017, p. 1

financial loss calculations from two institutions to prove state financial loss in corruption cases: the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP).[22]

It is explicitly explained in Article 2 of Law No. 15 of 2006 concerning the BPK, that it is a state institution that is free and independent in examining the management and accountability of state finances.Regarding the duties and authorities of the BPK, this is explained in Article 6 of the Law on the BPK, namely as follows:

1. The BPK is tasked with examining the management and accountability of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regionally-Owned Enterprises, and other institutions or bodies that manage state finances.
2. Implementation of the BPK audit as referred to in paragraph (1) is carried out based on the Law concerning audits of state financial management and accountability.
3. BPK audits include financial audits, performance audits, and audits with specific objectives.
4. In the case of an audit carried out by a public accountant based on the provisions of the Law, the report on the results of the audit must be submitted to the BPK and published.
5. In carrying out the audit of state financial management and accountability as referred to in paragraph (1), the BPK will discuss the audit findings with the audited objects in accordance with state financial audit standards.
6. Further provisions regarding the procedures for implementing the BPK's duties as referred to in paragraph (1) are regulated by BPK regulations.

That, while carrying out its duties under the Law, the BPK is given the authority to:

a. Determining the object of the inspection, planning and carrying out the inspection, determining the time and method of the inspection and compiling and presenting the inspection report;
b. Requesting information and/or documents that must be provided by every person, organizational unit of the Central Government, Regional Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regionally-Owned Enterprises, and other institutions or bodies that manage state finances;
c. Conducting inspections at places where state money and property are stored, at places where activities are carried out, state financial bookkeeping and administration, as well as inspections of calculations, letters, evidence, bank statements, accountability and other lists relating to state financial management;
d. Determining the types of documents, data and information regarding the management and accountability of state finances that must be submitted to the BPK;
e. Establishing standards for state financial audits after consultation with the Central Government/Regional Government which must be used in audits of state financial management and accountability;
f. Establish a code of ethics for auditing state financial management and accountability;
g. Using experts and/or inspectors outside BPK who work for and on behalf of BPK;
h. Establishing a functional department of Inspectors;
i. Provide considerations regarding Government Accounting Standards; and
j. Provide considerations on the design of the Central Government/Regional Government internal control system before it is determined by the Central Government/Regional Government.

[22] *Ibid*.

2) Documents, data and information regarding the management and accountability of state finances requested by the BPK as referred to in paragraph (1) letter d are only used for audits.

In the Constitutional Court decision Number 28/PUU-XXIV/2026 dated February 9, 2026 on page 39, it is explained that the state institution authorized to audit state finances is the BPK as mandated in Article 23E paragraph (1) of the Republic of Indonesia Constitution, and further in Article 10 Paragraph (1) of Law No. 15 of 2006 concerning the Republic of Indonesia BPK which states that the BPK also has the authority to assess and determine the amount of state financial losses caused by unlawful acts, so it is true that the BPK, which is a state institution, has the authority as an auditor of state financial losses, but in this decision there is no statement from the Constitutional Court that limits and prohibits government institutions such as BPKP and inspectorates, or certified independent auditors from auditing state financial losses in a case.corruptionrequested by APH.

The audit results or the value of state losses due to criminal acts of corruption originating from the agency authorized to calculate state losses are the most important evidence in corruption cases, where the size of the state losses will be one of the determining factors in the severity of the prosecutor's demands or legal verdict.[23]

When referring to the same Constitutional Court decision on page 37, the Constitutional Court explained that the Court had several times decided or had a position regarding the testing of the norms of Article 2 Paragraph (1) and Article 3 of the Corruption Law, and most recently in the Constitutional Court decision Number 142 / PUU-XXII / 2024 dated December 17, 2025, therefore based on the decisions of the Constitutional Court in question and because the elements of the crime in the criminal act of corruption regulated in the norms of Article 603 and Article 604 of Law No. 1 of 2023 concerning the Criminal Code which are requested for testing in the a quo application are the same as the norms of Article 2 Paragraph (1) and Article 3 of the Corruption Law which also apply mutatis mutandis in considering the a quo application, because until now the Constitutional Court has not had a strong and fundamental basis to shift from its previous position.

The court's statement was also found in the same Constitutional Court decision on page 36, the Constitutional Court explained that proving state financial losses is not exclusive and closed only to the results of the examination of certain audit institutions, but must be proven based on legally valid evidence and assessed independently by a judge in the criminal justice process. This court statement is in line with SEMA No. 4 of 2016 which agrees on the legal principles regarding the authorized agency stating whether or not there is a state financial loss, with the following SEMA text, "the authorized agency to state whether or not there is a state financial loss is the BPK which has constitutional authority while other agencies such as BPKP, inspectorates, regional work units, public accountants remain authorized to conduct examinations and audits of state financial management but are not authorized to state or declare the existence of state financial losses, in certain cases the judge based on the facts of the trial can assess the state financial loss and the amount of state losses ".

Furthermore, SEMA No. 4 of 2016 was strengthened by being amended by SEMA No. 2 of 2024, which reads "the agency authorized to declare whether or not there is a state financial loss is the BPK which has constitutional authority while other agencies such as BPKP, inspectorates, regional work units, certified public accountants remain authorized to conduct examinations and audits of state financial management, the results of which can be used as a

[23]R. Bayu Ferdian, et al., 2018, “Determination of State Losses in Corruption Crime Cases” (Syiah Kuala Law Journal: Vol. 2(3) December 2018), p. 1

basis for determining whether or not there is a state financial loss, the judge based on the facts of the trial can assess the state financial loss and the amount of state loss".

The Constitutional Court judge in his ruling which has decided on the petition from two applicants, namely Bernita Matondang and Vendy Setiawan in the Constitutional Court decision Number 28/PUU-XXIV/2026 dated February 9, 2026, was very right to REJECT THE APPLICANTS' APPLICATION IN ITS ENTIRETY, because the matter of the petition had been decided by the Constitutional Court previously and the Constitutional Court had not shifted from the position of the previous decisions.

Apart from the several Constitutional Court decisions above, the eradication ofcorruptionmust be done in a*extraordinary*which does not drag on in its resolution in order to provide legal certainty to achieve substantive justice for the community and the state. Therefore, when handling a casecorruptionRegarding state financial losses as regulated in Articles 603 and 604 of the Criminal Code, only the Supreme Audit Agency (BPK) is permitted to conduct audits of state financial losses, so it is certain that there will be a protracted delay in resolving criminal cases.corruption throughout Indonesia.

Imagine if every case handled by law enforcement officers at the district level, even at the village level, had to be assessed based on the BPK audit results. This would create very long queues at the BPK. Therefore, it is appropriate and necessary to eradicate criminal acts.corruptionsupported by all parties, including agencies that have functions that support the disclosure and resolution of criminal casescorruptionOf course, law enforcement officers are also required to handle cases professionally, upholding the presumption of innocence and without any vested interests in handling the case.

CONCLUSION

Based on the discussion related to the problem, the following conclusions can be drawn:

1) That the impact of the Constitutional Court's decision relating to the concept of state financial losses on the enforcement of corruption criminal law in Indonesia is the emergence of legal uncertainty regarding the institutions authorized to carry out calculations and*clearly*state financial losses, thus giving rise to a lack of synchronization between law enforcement officers in eradicating criminal acts of corruption.
2) That it is necessary to create special regulations that regulate the synchronization of agencies or institutions that have the authority to calculate and*clearly*State financial losses due to corruption. Every agency or institution must have indicators or limits on its authority to calculate state financial losses, so that in exercising its authority there is no overlap (*overlapping*) between institutions/agencies that calculate state financial losses.

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