RECONSTRUCTION OF STATE ECONOMIC LOSSES IN CRIMINAL ACTS OF CORRUPTION IN INDONESIA

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ABSTRACT

Purpose: The purpose of this study is to examine and know the concept and application of proof and calculation of state economic losses, which so far law enforcement on the application of proving state economic losses is rarely carried out by law enforcement.

Method: The definition of the state economy as referred to in the Elucidation of the Corruption Law is very general and has multiple interpretations so that it is difficult to explain in trial evidence, this has an impact on the lack of law enforcement in implementing state economic losses.

Results and conclusion: The concept of state economic losses in its application based on the corruption law can be formulated more concretely, including determining the characteristics and scope of state economic losses, and along with the development of science, especially economics, relating to state economic losses as a corruption impact. The calculation of economic losses uses two approaches, namely economic losses and lost expenditures. By taking action that does not harm the country's economy, law enforcement against criminal acts of corruption can be more optimal and the recovery of state economic losses can be maximized in order to welfare society.

Research implications: Economists who focus on the problem of state economic losses, with certain formulas can calculate the real amount of state economic losses. The component of state economic losses is calculated based on the amount of losses incurred, namely multiple economic impacts.

Originality/value: The various corruption cases that have been revealed in these sectors show that there is an impact on the state and regional economy that is far greater than the value of state losses due to acts of corruption that occur. The stabilization function of the economy has been disrupted so that the economic fundamentals of the country or region have weakened.

Keywords: Reconstruction, State Economic Losses, Proof of State Economic Losses, Corruption, Recovery of the State, Economic Losses.

RECONSTRUÇÃO DAS PERDAS ECONÔMICAS DO ESTADO EM ATOS CRIMINOSOS DE CORRUPÇÃO NA INDONÉSIA

RESUMO

Objetivo: O objetivo deste estudo é examinar e conhecer o conceito e aplicação de prova e cálculo de perdas econômicas estaduais, que até agora a aplicação da lei sobre a aplicação da comprovação de perdas econômicas estaduais raramente é realizada pelas autoridades policiais.

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Método: A definição de economia estatal a que se refere o Esclarecimento da Lei de Corrupção é muito geral e tem múltiplas interpretações de modo que é difícil de explicar em provas de julgamento, isso tem um impacto na falta de aplicação da lei na implementação da economia estatal perdas.

Resultados e conclusão: O conceito de perdas econômicas estatais em sua aplicação com base na lei de corrupção pode ser formulado de forma mais concreta, inclusive determinando as características e a abrangência das perdas econômicas estatais, e junto com o desenvolvimento da ciência, especialmente da economia, relacionada à economia estatal perdas como impacto da corrupção. O cálculo das perdas econômicas usa duas abordagens, ou seja, perdas econômicas e despesas perdidas. Ao tomar medidas que não prejudiquem a economia do país, a aplicação da lei contra atos criminosos de corrupção pode ser otimizada e a recuperação das perdas econômicas do estado pode ser maximizada para o bem-estar da sociedade.

Implicações de pesquisa: Os economistas que se concentram no problema das perdas econômicas do estado, com certas fórmulas, podem calcular o valor real das perdas econômicas do estado. A componente das perdas econômicas do Estado é calculada com base no montante das perdas incorridas, nomeadamente impactos econômicos múltiplos.

Originalidade/valor: Os vários casos de corrupção que foram revelados nesses setores mostram que há um impacto na economia estadual e regional muito maior do que o valor das perdas do estado devido aos atos de corrupção que ocorrem. A função de estabilização da economia foi interrompida de modo que os fundamentos econômicos do país ou região enfraqueceram.


1 INTRODUCTION

The United Nations Convention Against Corruption (UNCAC) stipulates the crime of corruption as one of the seriousness of problems and threats posed by corruption with methods of handling that must be carried out in extraordinary ways (extra ordinary enforcement). It is important to deal with corruption in an extraordinary way because the impact caused by acts of corruption includes various aspects of social, economic, environmental, natural resources and affects the investment climate and development in Indonesia (UNODC, 2004).

Indonesia and all countries in the world make the phenomenon of corruption a concern. As an extraordinary crime, corruption is a serious problem in all areas of life and can have negative effects, endangering the stability of the state and society, undermining socio-economic development, as well as politics, as well as destroying moral and democratic values which in turn can take root into a justified culture. Extra handling in eradicating corruption in order to achieve the ideals of a just and prosperous society (Silalahi, 2018).

President Joko Widodo stated that there must be a paradigm shift in measuring the eradication of corruption, namely that it should no longer be seen based on the number of cases, but must also be accompanied by saving state losses or the lost state economy. Restoring the condition of the community will provide the greatest benefit for the community, which is the real function of law, so that law enforcement on the side of proving the country's economy must be optimized. An increase in saving the country and an improvement in governance in every service will result in an improvement in price stability and an improvement in distribution.

The factor of abuse of power/authority is the main trigger for the growth of corruption which has very serious consequences for the country's economy, especially in certain sectors such as natural resource management, environment, trade and industry. The various corruption
cases that have been revealed in these sectors show that there is an impact on the state and regional economy that is far greater than the value of state losses due to acts of corruption that occur. The stabilization function of the economy has been disrupted so that the economic fundamentals of the country or region have weakened.

Even though law enforcement for criminal acts of corruption has been carried out massively by each competent institution in the field of eradicating corruption, recovery for the impact of losses caused by acts of corruption has not been optimal considering that law enforcers are only concerned with proving the elements of state losses contained in the Corruption Law, and has not yet touched on proving the element of loss to the country's economy which actually if it is carried out then the recovery of losses due to criminal acts of corruption can be further optimized.

Based on case statistics at the Prosecution Directorate of the Attorney General's Office of the Republic of Indonesia between 2017-2020, there were 5,317 corruption cases with state losses of Rp. 3,081,930,910,817.35, however, these cases stem from corruption cases related to state losses and there has been no proof and rescue of state economic losses (Jampidsus, 2020).

In practice, losses to the state's economy are often ignored and associated with corruption are often seen only as losses to state finances. Even though the consequences of corruption are not only financial losses, but also economic, social, ecological and other aspects.

Given the extent of the impact on the economic sector caused by corruption, it is necessary to work hard to eradicate corruption through applying the elements of loss to the state's economy which are elements of the elements of Article 2 and Article 3 of the Corruption Act effectively. This element of loss to the country's economy is rarely applied on the grounds that there are several factors of difficulty in its application. Several court rulings still seem doubtful and vague in nature, making law enforcers confused in proving the elements of state economic loss that occurred in corruption cases.

It is not easy for law enforcers to prove the element of loss to the state's economy, because the concept in the Corruption Law provides a very broad definition of "state's economy", and it is very difficult to translate it into the concept of proof in court. In the General Explanation of Corruption Laws, the definition of the country's economy is:

"What is meant by the state economy is economic life that is structured as a joint venture based on the principle of kinship or an independent community business based on government policy, both at the central and regional levels in accordance with the provisions of the applicable laws and regulations.

2 METHOD

This research includes doctrinal legal research (normative) which is descriptive in nature. The statutory approach and the conceptual approach depart from the views and doctrines that have developed in the science of law. Doctrinal legal research does not recognize field research because what is examined is legal materials, so it can be said as; library based, focusing on reading and analysis of the primary and secondary materials (Pujiyono, et al, 2022). The nature of the research in this study is prescriptive. As a prescriptive science, legal science aims to obtain suggestions on what to do to address certain problems. Legal research is conducted to produce arguments, theories or new concepts on the results of research that has been done (Pujiyono, 2021) with prescriptive research, researchers want to know and study and make an assessment of the Reconstruction Of State Economic Losses In Criminal Acts Of Corruption In Indonesia.
3 DISCUSSION

Indonesia has various laws and regulations about state economic lost, the definition of the country's economy is found, namely "economic life which is structured as a joint business based on the principle of kinship or community business independently based on government policy, both at the central and regional levels in accordance with the provisions of laws and regulations in force that aims to provide benefits, prosperity and welfare to all people's lives (Riyanta, 2020).

The formulation of the elements of the state's economic loss clearly shows that the concept of the country's economy is very abstract and has multiple interpretations, resulting in this formulation being inapplicable. Law enforcers, in this case investigators and public prosecutors, are confused in carrying out investigations and prosecutions related to the element of loss to the state economy. In addition to the courage of law enforcers, of course a clear formulation is needed regarding the meaning of the elements of loss to the state's economy so that it can be applied effectively.

3.1 The Concept of Elements of State Economic Losses is Abstract and has Multiple Interpretations

Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (UU PTPK) regulates corruption groups that harm state finances or the country's economy. Conceptually, the meaning of state financial losses can be seen in various laws and regulations, namely the PTPK Law, the State Finance Law, the State Treasury Law, and the Audit Board Law. However, the meaning of the concept of loss to the state's economy is a problem because even though the concept of the state's economy has been explained in the General Elucidation of the PTPK Law, it is still not felt to be applicable. In the practice of enforcing the law on corruption, there is hardly a decision which states that a defendant has committed a criminal act of corruption which is detrimental to the country's economy. In the general explanation section of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes explains that the State Economy is economic life that is structured as a joint venture based on the principle of kinship or community business independently based on Government policies, both at the central and regional levels in accordance with the provisions of the law - applicable legislation aimed at providing benefits, prosperity and welfare to all people's lives. This non-holistic interpretation of state losses creates legal uncertainty in relation to the recovery of losses suffered by the state as a result of criminal acts of corruption.

Regarding the understanding of the concept of the state economy, former Attorney General Baharudin Lopa is of the opinion that when viewed from a legal perspective, what is meant by the state economy as referred to in the elucidation of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes is so vague that it creates difficulties in proving the phrase "detrimental to the country's economy" in enforcing corruption laws. If you look at the previous Corruption Crime Eradication Law, namely Law Number 3 of 1971, it was explained about actions that could harm the country's economy.

The meaning in the general elucidation section of the Corruption Crime Eradication Law is unclear, vague and not applicable to law enforcement, making it difficult to find clear parameters or benchmarks regarding losses to the country's economy. The Indonesian economic system which adheres to the Pancasila Economic System is an economic system based on joint ventures based on the principles of kinship and national mutual cooperation and is contained in the constitution Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.
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which refers to cooperatives. However, it is necessary to understand the context of business entities here, not only cooperatives as the right business entities to achieve prosperity, but there are still BUMN and BUMS which cannot be separated as business entities whose goals and principles are based on kinship and mutual cooperation and are formed as a joint business, so the business entity These businesses can be called "Cooperatives" which is in the understanding of the Pancasila Economic System while the meaning of "community businesses are independently based on government policies both at the central and regional levels in accordance with the provisions of the applicable laws and regulations with the aim of providing benefits, prosperity and welfare to all people's lives" is an abstract concept and has multiple interpretations.

A rule or legal norm according to the principle of legality in criminal law must be formed with the principles of Lex Scripta, Lex Strict, and Lex Certa, namely written, clear and not multi-interpreted. The juridical implications of the application or legal interpretation of a term whose meaning and elements have not been clearly normalized in a law can result in the deprivation of the constitutional right to legal certainty (Efendi, 2011).

Mistakes in understanding a legal definition can result in fatal consequences for justice seekers, especially if this erroneous understanding becomes a decision which then becomes the rationale for the next judge in a similar case, a mistake in interpreting the meaning not only causes legal uncertainty but also extends to the legal side. The highest is justice. In deciding cases, ex officio judges have an obligation to explore, follow and understand legal values and a sense of justice that lives in society as stipulated in Law Number 48 of 2009 concerning Judicial Power and if a judge is faced with a case whose legal provisions If it is not clear or unclear, because of this obligation, the judge has the discretion to make legal discoveries in deciding a case, either by interpreting or other methods.

Normatively, based on the principle of legality, from what has been contained in a Legislation and Explanation, it must be interpreted and interpreted as written in the regulation (lex scripta, lex stricta, lex certa) so that difficulties are indeed found if there is none or not a valid legal basis as a reference for interpreting the concept of harming the country's economy (Handoko, 2017).

3.2 The Practice of the Judiciary for Proving Losses to the State's Economy is Still Minimal

The concept of loss to the country's economy which is still abstract and has multiple interpretations makes the application of elements of the country's economy inapplicable. This condition is also compounded by the lack of court decisions that provide references regarding the understanding and understanding of losses to the country's economy. Some of the Corruption Court Rulings relating to losses to the state's economy and state finances which explicitly and implicitly discuss proving the elements of state's economic losses or have something to do with understanding the concept of the state's economy in their considerations, include the following:

3.2.1 Verdict a. Defendant TONY GOZAL aka GO TIONG KIEN

The corruption case on behalf of Tony Gozal was investigated by the South Sulawesi High Prosecutor's Office during Baharuddin Lopa's tenure as High Prosecutor, where the modus operandi of the case was as follows:

1) Tony Gozal submitted an application for usufructuary rights over the former Pasar Central bus terminal land area (state land) covering an area of 7,150 m2, while his rights
according to the decision of the House/Land Purchase Committee for Kodya Ujung Pandang were only 5,700 m²;

2) Tony Gozal expanded his shop building on the land of the former Pasar Central Bus terminal (outside 7,150 m²) by taking state land from the former terminal with an area of 496 m² without any valid reason;

3) In addition, Tony Gozal also took state land managed by the Regional Government of the Municipality of Ujung Pandang (a former fish auction) covering an area of 950 m² without legal rights by:
   a) In the application for ownership rights over land purchased from the Regional Government covering an area of 982 m², Tony Gozal deliberately stated an area of 1,289 m² so that his land area increased by 307 m²;
   b) With the certificate of ownership covering an area of 1,289 m², Tony Gozal submitted an application for splitting the certificate into eleven certificates by increasing the land area by 497 m², so that the eleven certificate fractions of the master certificate (area 1,289 m²) became 1,786 m²;
   c) Apart from the withdrawals mentioned above, Tony Gozal in building his shop added another 146 m² of land area from the remaining ex-fish auction.

4) Tony Gozal also obtained a permit with lease rights over the water area of the Makassar port covering an area of 4,857 m², but in reality, Tony Gozal built a hotel/shop/parking lot above the water area by adding an area of 1,365 m² without permission from the authorities.

Based on the decision of the Supreme Court Number: 1164 K/Pid/1985 dated October 31, 1986 the Panel of Judges of the Supreme Court decided that the defendant Tony Gozal was proven legally and convincingly guilty of committing the crime of corruption and sentenced him to imprisonment for 7 (seven) years and 5 (five) months. The Supreme Court gave its consideration that the losses incurred as a result of the actions of the defendant Tony Gozal were detrimental to the state's economy because water areas that were used without permits could no longer be for the public interest, because of the actions of the defendant who built without permits in state-owned water areas so that the state could not use them for public interest, so that the act is categorized as an act that is detrimental to the country's economy. The legal considerations of the Supreme Court of the Republic of Indonesia in the decision were that: "the defendant's actions were against the law, because he built on it without any rights/authorized permits and as a result of his actions, part of the waters of the Ujung Pandang port can no longer be used for the benefit of general. That these waters belong to the state, so that the use of them by the defendant is clearly detrimental to the country's economy."

3.2.2 Verdict a. Defendant Ir. HA. FATTAH DS

The case on behalf of the defendant Ir. HA. Fattah DS is a case of misuse of funds from the Indonesian Forest Entrepreneurs Association (APHI) originating from a group of HPH entrepreneurs in the amount of Rp. 43,545,000,000, - in the following way:

1) For the purposes of procuring aerial photographs, aerial photograph maps, boundaries, supporting efforts to prevent forest fires and research efforts to increase the stability of forest concessions and sustainability, the HPH holders agree to hand over funds in the amount of US$ 1,-/m³ of wood logs and US$ 2,-/m³ processed wood to APHI;

2) After these funds were collected, the defendant as Deputy Chairman of APHI together with Ir. Adiwarisita Adinegoro as Chairperson of APHI and Drs. H. Zain Mansyur as Deputy Treasurer of APHI and Drs. Yusran Sharif as Treasurer of APHI has committed abuse and acts against the law against APHI's money amounting to Rp. 43,545,000,000, - for his personal interests, the funds should have been used for the procurement of aerial
photographs, aerial photographic maps, boundaries, supporting efforts to prevent forest fires and research efforts to increase the stability of forest exploitation and sustainability. Regarding this case, the Supreme Court gave the following considerations:

"That these reasons cannot be justified because the judex factice is not wrong in applying the law, because the defendant's actions can harm the country's economy. What is meant by the state economy includes community businesses independently based on government policies in accordance with applicable laws and regulations. In this case APHI receives funds from HPH entrepreneurs, namely US $ 1.\text{-}/M3 for logs and US $ 2.\text{-}/M3 for processed wood, used for forest planning purposes, aerial photography/aerrial photo maps, all of which Of course, the aim is to provide benefits, prosperity and welfare for all people's lives, because forests have multifunctional functions that are beneficial to the lives of mankind/Indonesian people."

Taking into account the considerations of the Supreme Court, the defendant's actions did not harm the state's finances but harmed the country's economy, because the funds collected from HPH entrepreneurs were US$ 1.\text{-}/M3 for logs and US$ 2.\text{-}/M3 for logs, respectively. The processed wood is used for the purposes of forest management, aerial photography/aerial photo maps, all of which aim to provide benefits, prosperity and welfare for all people's lives, because forests have multifunction that are beneficial to the lives of mankind/the Indonesian nation. In reality the funds that have been collected amount to Rp. 43,545,000,000, - by the defendant together with Ir. Adiwarsita Adinegoro, H. Zain Mansyur and Drs. Yusran Sharif was not used for the purposes of forest planning, aerial photography/aerial photo maps but was used for his personal interests.

3.2.3 Verdict a. Defendant Drs. Irianto in the textile import case

Corruption crime case on import of textiles on behalf of the Defendant Drs. Irianto whose investigation is being handled by the Attorney General's Office. In the investigation of the case, investigators are of the opinion that there has been a loss to the country's economy as a result of corruption which resulted in a surge in imported textiles on the domestic market which resulted in a decrease in domestic textile production. The calculation of economic losses uses two approaches, namely economic losses and loss expenses. The calculation of economic losses is carried out to estimate the impact of the surge in imported textile products on the domestic market which has caused a decrease in the activity of the domestic textile industry. Another impact that is calculated is the loss of household expenditure as a result of termination of employment due to a decrease in domestic textile industry activity. The decline in domestic industrial economic activity is shown using data on the decline in domestic market share and the decline in the performance of domestic companies.

There were economic losses in the form of a decrease in domestic industrial activity and a decrease in employment caused by the surge in imports during 2017-2019. Economic losses are also supported by several reasons as follows:

1) There was a surge in the number of imports of goods investigated relative to national production in 2017-2018 with a trend of 46.62%. In the 2018-2019 period (January-June) the relative number of imports increased by 27.83%;
2) The workforce affected by the surge in imports amounted to 15,633 (fifteen thousand six hundred thirty-three) workers with lost expenses of Rp. 19.76 Billion-Rp. 23.05 Billion;
3) The share of the domestic market has decreased with a trend of 10.71% in 2017-2018, likewise in the 2018-2019 period there has been a decrease of 3.17%;
4) The decline in production occurred with an estimated decline in national production of IDR 65.35 trillion;

5) The decline in domestic industrial activity in the form of decreased production and decreased employment was not caused by other factors according to the KPPT's investigation, but was caused by a surge in imports.

6) Based on this analysis, there is a loss to the state's economy which is assessed economically in the amount of Rp. 1,646,216,880,000.- (one trillion six hundred forty-six billion two hundred sixteen million eight hundred and eighty thousand rupiah).

Based on the Cassation Decision, the Supreme Court of the Republic of Indonesia rendered the following decisions:

- Correcting the Decision of the Corruption Crime Court at the DKI Jakarta High Court Number 16/Pid.Sus-TPK/2021/PT.DKI dated 22 June 2021 which strengthens the Decision of the Corruption Crime Court at the Central Jakarta District Court Number 55/Pid.Sus-TPK/2021/PN/Jkt.Pst dated 7 April 2021 regarding the qualifications of criminal acts and crimes imposed on the defendant so that they become:

  1) Declare the Defendant Drs. Irianto has been proven legally and convincingly guilty of committing the crime of "collective corruption" as charged in the first primary charge of Article 2 paragraph (1) Jo. Article 18 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption jo. Article 55 paragraph 1 1st of the Criminal Code and the second charge of Article 5 paragraph 91) letter a of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption;

  2) Sentence a sentence against the defendant with imprisonment for 10 (ten) years and a fine of Rp. 200,000,000.- (two hundred million rupiah) with the provision that if the fine is not paid then it is replaced by imprisonment for 4 (four) months.

3.4 The Concept of State Economic Losses as a Corruption Impact

The impact of corruption on the country's economy is greater than the loss of state finances, so it is very important to formulate the concept of loss to the country's economy as a result of criminal acts of corruption. The concept of the state, based on Economics, consists of three elements, namely the household sector (society), the business world (business sector) and the government (public sector). Economic theory separates strictly between financial costs, fiscal costs and social costs. Financial costs are costs borne by households and firms (business sector). Fiscal costs are costs borne by the government. Meanwhile, social costs or costs for the country's economy are costs borne by all elements of the state, namely households, the business sector and the public sector (Pradiptyo, n.d.).

Corruption has a very negative impact on the country's economy which ultimately hinders the development of a country. Some of the effects of corruption on the country's economy, among others, have a negative impact on economic growth, reduce the level of investment, namely increasing the burden on economic transactions and creating a bad institutional system, causing low quality facilities and infrastructure, creating income inequality, and increasing poverty. (Handoko, 2017).

Every crime always creates a social impact. Crime only benefits the perpetrators of crime, but the impact of the crimes they commit becomes a burden to the victims, the government, society and even the business world. If the profits obtained by the perpetrators of crime are combined with the negative impacts of crime that are borne by the business world, society and government, it is certain that the personal benefits are much smaller than the costs borne by other parties. The increase in the number of crimes that occur has an impact on increasing the social costs of crime that must be borne by the community. Conversely, a
decrease in the crime rate will reduce the social cost of crime. The implication is that every effort to reduce crime rates, both in terms of prosecution and prevention, will create benefits for society in the form of reducing the social costs of crime (Lima, 2023).

Various studies classify the cost of a crime in the form of tangible costs and intangible costs, and the calculation methodology can be calculated as direct costs and indirect costs. It should be understood that some types of crime have higher tangible costs than intangible costs. Various conventional crimes such as theft, destruction of public facilities, etc., tend to have a pattern of a high proportion of tangible costs rather than intangible costs. However, for serious crimes such as corruption and money laundering, they have characteristics that are the opposite of conventional crimes. Serious crimes such as corruption tend to create higher intangible costs than tangible costs.

The Corruption Eradication Commission in 2013 has conducted research on the social costs of corruption, which must be borne by the perpetrators of Corruption Crimes. Elements of the social costs of corruption consist of the explicit costs of corruption and the implicit costs of corruption. Explicit costs of corruption include costs incurred as anticipation costs for acts of corruption, costs for reactions to acts of corruption and values due to corruption. While the implicit costs of corruption include all costs that are calculated due to corruption, and the costs of the effects of corruption. From those explanation, the question is, which components are the scope of losses to the state and the country's economy as a result of criminal acts of corruption? When referring to the concept of loss to the state and the country's economy, the component that becomes a loss to the state is the explicit cost in the form of the value of money corrupted and the opportunity cost that arises, while the component that becomes a loss to the country's economy is the multiplier economic impact by looking at the difference in the economic multiplier between before corruption occurred and after corruption.

3.5 Proof of Elements of State Economic Losses in Corruption Crimes

As the Constitutional Court Ruling number: 25/25/PUU-IX/2016 dated 25 January 2016, that the element of state loss must be proven and must be able to be calculated, even though it is an estimate or even though it has not occurred. Loss factors, both real and in the form of possibilities, are seen as aggravating or mitigating things in sentencing. In order to consider the specific and concrete circumstances surrounding the events that occurred which can logically be concluded that state losses did or did not occur, experts in state finance, state economy and experts in the analysis of the relationship between acts and losses must be carried out.

In line with the opinion of the Constitutional Court, regarding the importance of expert testimony in proving the elements of loss to the state finances or the state economy, it is important to resubmit the notes of the Murba Faction during the discussion of the elements of loss to the state economy in the deliberations of Law number 3 of 1971, as follows: 1. The act of enriching oneself or another person or an entity must be proven; 2. "against the law" is too broad a matter, one that can be accused and one that can be rebutted, therefore a lot depends on the judges; 3. Disputes that indirectly harm state finances, including those that are serious, expert opinion will be required; 4. Experts are needed to find out to what extent the country's economy can be harmed.

So that in proving losses to the country's economy, the first reference must first be proven as the concept of state economic losses, namely "economic life which is structured as a joint business based on the principles of kinship or community business independently based on government policies, both at the central and regional levels." area in accordance with the provisions of the applicable laws and regulations aimed at providing benefits, prosperity and welfare to all people's lives. The description of the country's economy above provides an
understanding that the guidelines that can be used to measure economic life are the principles of economic democracy, thus also:

"Losses to the state economy have the following characteristics: a) All economic activities that damage the joints of the economy, which highlight the class structure or at least highlight the control of resources that dominate the lives of many people so that it disrupts the joint efforts of the community, b) The existence control of state assets and state finances by private parties, which deviate from established government policies, including cooperation between private parties and state administrators or other parties, c) private parties or other parties with state administrators illegally has carried out economic activities to control production branches that are important for the state and affect the livelihood of the people at large, d) Any business or economic activity that has exploited the freedom of the people to choose a job, exploits the community in its economic activities without providing a decent life and work, e) Economic activities that result in reduced social rights of the community, and impede development to create welfare and prosperity for the community, f) Economic activities that cause harm to the public interest and reduce the potential, initiative and creative power of every citizen, g) Any business or activity economic activity resulting in an increase in the number of poor people and neglected children, g) Community economic or business activities that disrupt development aimed at increasing community economic growth, h) Community economic or business activities that destabilize the joints of the community's or state's economy, disrupt the efforts of the community government efforts to maintain economic stability, i) Carrying out monopoly activities that disrupt price stability and economic growth, j) Carrying out business activities aimed at dominating the market which results in unfair competition, disrupts people's rights to meet their needs fairly"

Along with the development of science, especially economics, is related to losses to the country's economy as a result of criminal acts of corruption. Economists who focus on the problem of losses to the state's economy, with a certain formula or formula can calculate the amount of real (real) losses to the country's economy. The component of state economic losses is calculated based on the number of losses incurred, namely the multiplier economic impact (Mulyadi, 2014, Saputra, 2021).

The problem that arises is how to calculate the country's economic loss based on the concept of multiplier economic impact considering the difficulty of determining its components and variables. Several variables are often associated with the impact of the country's economy such as the level of income per capita (Gross Domestic Product/GDP per capita), poverty gap, unemployment rate and investment and others (Firmansyah, 2020).

The calculation of economic losses by economists does not conflict with Supreme Court Circular Letter Number 4 of 2016, because the SEMA does not prohibit the BPKP, SKPD Inspectorate or other agencies from carrying out inspections and audits, even in the SEMA it is confirmed that in certain cases the judge is based on the facts of the trial can assess the existence of state losses and the amount of state losses. In addition, the Constitutional Court Decision Number: 31/PUU-X/2012 dated 8 October 2012, states that "KPK is not only able to coordinate with BPKP and BPK in the context of proving a criminal act of corruption, but can also coordinate with other agencies, even prove themselves beyond the findings of the BPKP and BPK, for example by inviting experts or by requesting material from the inspectorate general or a body that has the same function as that from each government agency, even from other parties (including from companies), which can show material truth in calculating state financial losses and/or be able to prove the case being handled"(Fontgalland, 2023).
3.6 Reconstruction of Elements Detrimental to the Country's Economy

According to Satjipto Rahardjo: "Law as a means of social engineering is not only understood that law is a tool for imposing the will of the government on its people, but now the concept has been expanded to mean that law is a means of social and bureaucratic renewal, therefore, legislation is a The state describes the existence of regulation, control and supervision carried out by the state for citizens in general. (Rahardjo, 2011, Pujiyono, 2017).

If reconstruction is associated with concepts or ideas or ideas about law, it means that legal reconstruction is interpreted as a process of rebuilding or rearranging ideas, ideas or concepts about law. Each legal formulation must be interpreted according to its own context. One another is within the scope of one national legal system, namely the Indonesian legal system. Efforts to build through legal reconstruction are directed at finding "legal will (recht idee)”, "community will", and "moral will". The will of law, both written and unwritten law.

Law Number 31 of 1999 as amended by Law Number 20 of 2001 does not explicitly define the meaning of the country's economy. In contrast to Law Number 3 of 1971 in the elucidation of Article 1 sub (a) it states: "Actions that can harm the country's economy are criminal violations of regulations issued by the government in its obligations as referred to in MPRS Decree Number XXIII/MPRS/1996".

While the regulations issued by the government in their respective areas of authority are in accordance with the MPRS Decree, their existence must be scrutinized based on these rules, so that they do not overlap, let alone conflict with each other, especially the provisions of laws and regulations concerning policies in the economic sector, and monetary. In practice, it seems that it is very rare for defendants of corruption whose actions are proven to fulfill the formulation of elements detrimental to the state's economy. In accordance with the general explanation of Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, stated: "The state economy is economic life that is structured as a joint venture based on the principle of kinship or community business independently based on government policy, both at the central and regional levels in accordance with the provisions of the applicable laws and regulations aimed at providing benefits, prosperity and welfare to all people".

This definition is unclear, vague and not implementable in the realm of law enforcement on corruption, so that it is almost never applied by law enforcement because there are no clear parameters for this definition.

If we return to the history of debates and thoughts related to the concept of the country's economy, it is also included in laws and regulations as in the explanation of Article 1 sub (a) of Law Number 3 of 1971 in the explanation of Article 1 sub (a) which states: "Actions that can harm the country's economy are criminal violations of regulations issued by the government in its obligations as referred to in MPRS Decree Number XXIII/MPRS/1996".

Thus, the concept of losses to the state's economy in its application based on the law on corruption, can be formulated more concretely, including first determining the characteristics for measuring economic life, namely the principles of economic democracy, which have the following characteristics:

a. Any economic activity that damages the foundations of the economy, accentuates the class structure or at least highlights the control of resources that affect the livelihoods of many people, thereby disrupting the joint efforts of the community.

b. There is control over the sources of state assets and state finances by the private sector, which deviates from government policies that have been set, including the cooperation carried out by the private sector with state officials or other parties.
c. Private parties or other parties with state administrators have illegally carried out economic activities to control production branches which are important for the state and control the livelihoods of the people at large.
d. Every business or economic activity that exploits the freedom of the people to choose a job, takes advantage of the community in its economic activities without providing a decent life and work,
e. Economic activities that result in reduced social rights of the community, and hampered development to create community welfare and prosperity.
f. Economic activities that cause harm to the public interest and reduce the potential, initiative and creativity of every citizen.
g. Any business or economic activity that results in an increase in the number of poor people and neglected children.
h. Economic activities or community businesses that disrupt development aimed at increasing community economic growth.
i. Economic activities or community businesses that destabilize the joints of the community's or state's economy, disrupt the government's efforts to maintain economic stability.
j. Carry out monopoly activities that disrupt price stability and economic growth.
k. Carrying out a business activity aimed at dominating the market resulting in unfair competition, interfering with the people's right to meet their needs fairly.

By determining these characteristics, without neglecting the characteristics of the country's economy as a broad concept, identification of the scope of losses to the country's economy can still be carried out, so that the scope of proving the element of harming the country's economy is a loss due to an unlawful act against good economic development policies central and regional, including the following:

1) Policies for economic stability and production recovery (rehabilitation) with the following priority scales:
   a) Control of inflation, including as referred to in Presidential Regulation Number 23 of 2017 concerning the National Inflation Control Team and Regulation of the Minister of Finance of the Republic of Indonesia Number 124/PMK.010/2017 concerning Inflation Targets for 2019, 2020 and 2021;
   b) Monetary economic control, among others as referred to in Law Number 23 of 1999 concerning Bank Indonesia as amended several times, most recently by Law Number 6 of 2009 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2008 concerning The Second Amendment to Law Number 23 of 1999 concerning Bank Indonesia to become a Law was continued with Bank Indonesia Regulation Number 22/14/PBI/2020 concerning Monetary Operations;
   c) Adequacy of food, clothing and shelter needs, among others as referred to in Regulation of the Government of the Republic of Indonesia Number 68 of 2002 concerning Food Security and Regulation of the Minister of Agriculture Number 65/Permentan/OT.140/12/2010 concerning Minimum Service Standards in the Provincial Food Security Sector and Regency/City;
   d) rehabilitation of infrastructure and economic facilities, including those referred to in the Presidential Regulation of the Republic of Indonesia Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects and the Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia Number 5 of 2017 concerning Amendments to the Regulation of the Coordinating Minister for the Economy Number 12 of 2017 2015 Concerning the Acceleration of Priority Infrastructure Preparation; And
e) Increase in export/import activities, among others as referred to in the Regulation of the Minister of Trade of the Republic of Indonesia Number 13/M-Dag/Per/3/2012 concerning General Provisions in the Export Sector and the Regulation of the Minister of Trade of the Republic of Indonesia Number 48/M-Dag/Per /7/2015 concerning General Provisions in the Field of Import.

2) Government policies at the central and regional levels related to economic development, which consist of: Agriculture Sector, Infrastructure Sector and Industry/Natural Resources Sector.

3) Central and regional government policies regarding the development of economic potential, among others as referred to in the Presidential Regulation of the Republic of Indonesia Number 33 of 2010 concerning the National Council and the Council for Special Economic Zones.

The actions included in the scope mentioned above are related to causality with the impact of losses to the country's economy in the form of:

1) State Financial Losses (explicit consequences) plus the emergence of opportunity costs and multiplier economic impacts (implicit consequences); or

2) opportunity cost and multiplier economic impact (implicit effect);

The examples of opportunity cost and multiplier economic impact can be described as follows:

1) For opportunity costs, an example of this is the emergence of other costs that must be incurred by textile producers due to criminal acts of corruption related to deviations in textile export-import policies.

2) For the multiplier economic impact, an example of the form is the existence of criminal acts of corruption related to deviations from the textile import-export policy resulting in many textile factories losing the opportunity to gain profits because the factories closed, besides that many workers who should have worked normally had to stop because of the factory closures which affected national and regional economic conditions.

Thus, in order to optimize the application of elements detrimental to the state's economy in acts of corruption, according to promenades it is necessary to reconstruct elements detrimental to the state's economy and the concept of recovery for losses to the state's economy. It is necessary to add an explanation of the characteristics and scope of the elements of the state's economic losses to the formulation which can be added to the explanation. The addition does not need to be made to the norms in its body, this is so that it still shows the characteristics of the country's economy as a broad concept and does not limit law enforcement in carrying out its enforcement. Furthermore, it is also necessary to carry out a reconstruction of the concept of confiscation and payment of replacement money in the provisions of Article 18 of the Corruption Law so that it is not limited to the proceeds of crime or profits obtained, but also includes the value of the losses the country's economy has caused.

4 CONCLUSION AND SUGGESTION

Application of the element of loss to the state's economy as stipulated in article 2 paragraph (1) and article 3 of Law number 31 of 1999 concerning the Eradication of Corruption, can be used to reduce the social and economic impacts that occur as a result of corruption, but the formulation of the element of economic loss still abstract and general, especially with the Constitutional Court decision. In order for the element of loss to the state economy to be applicable, it is necessary to formulate more concrete concepts and meanings, including determining the characteristics and scope of losses to the state economy which are included in the Elucidation of the article governing losses to the state economy. In addition, it is also necessary to regulate the existence of legal instruments to recover state economic losses through
expanding the meaning of replacement money which not only regulates the amount of crime proceeds obtained but can also be applied to the entire value of state economic losses incurred by perpetrators as part of deterrence efforts. Along with the development of science, especially economics, related to losses to the country's economy as a result of criminal acts of corruption. Economists who focus on the problem of losses to the state's economy, with a certain formula or formula can calculate the amount of real (real) losses to the country's economy. The component of the country's economic losses is calculated based on the number of losses incurred, namely the multiplier economic impact.

REFERENCES


