Research Article

Legal Analysis of The Element of Economic Loss to The State in Article 2 Paragraph (1) and Article 3 of The Corruption Crimes Act

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Abstract, The ambiguity of the concept of state economic loss in Article 2 paragraph (1) and Article 3 of the Corruption Crime Law (Tipikor Law) has yet to be defined normatively or by an official institution with the authority to do so. This uncertainty has given rise to legal problems in law enforcement, especially after Constitutional Court Decision No. 25/PUU-XIV/2016, which changed the qualification of corruption offenses to material offenses, so that the proof of economic loss to the state must be *actual* loss. However, in practice, as in the Surya Darmadi corruption case, law enforcement officials still face difficulties in determining the measure and method of proving economic loss to the state in a lawful manner. The issues in this study are the basis for the judge's consideration of the element of economic loss to the state in the Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst and the obstacles and constraints in proving the element of economic loss to the state in criminal acts of corruption.This study uses a normative legal method with *a statute approach*, *a case approach*, and *a conceptual approach*. The results of the study show that the first-level panel of judges assessed that environmental damage and the loss of potential state revenue due to the illegal conversion of forest areas were part of the actual economic loss to the state, while the Supreme Court emphasized the importance of limiting this element to *actual loss* in accordance with Constitutional Court Decision No. 25/PUU-XIV/2016. The obstacles and constraints in proving the element of state economic loss in corruption crimes stem from internal and external factors that are interrelated and affect the effectiveness of law enforcement.

Keywords: Ambiguity, Corruption Crimes, Judicial Considerations, Normative Legal, State Economic Loss.

1. Introduction

Corruption in the public sector has a very detrimental impact on the economy and public welfare, especially in the management of the state budget and the provision of basic services. When public funds are misused, budgets that should be allocated for infrastructure development, education, health, and other social services become stalled or diverted, depriving the public of access to adequate services. This misuse of funds also has a direct impact on job creation due to reduced public investment in sectors that should be driving economic growth. As a result, social inequality becomes more acute, with groups that do not have access to basic services falling further behind, while perpetrators of corruption benefit financially (Rizky, et al., 2023).

Furthermore, corruption hinders national economic development by weakening public trust in the government, reducing productivity, and reducing the country's competitiveness in the global arena. In the long term, these effects have the potential to slow economic growth, increase poverty, and worsen the quality of life for the community. Therefore, corruption in the public sector poses a serious threat to the welfare of the people and is one of the main obstacles to achieving sustainable and equitable development across all levels of society (Harly Clifford and Jonas Salmon, 2024).

The enforcement of criminal corruption laws faces various problems, especially in efforts to recover state losses in the form of asset transfers to third parties or when assets obtained through corruption have been mixed with other legitimate sources of income, making it difficult to determine the amount that must be returned. Stolen assets stored outside Indonesian jurisdiction are protected by *legal procedures* and *the bank secrecy act* of the local country. The non-payment of compensation or only partial payment with the remainder subsidized by imprisonment, the subsidiary punishment (imprisonment) is relatively light and not commensurate with the value of the compensation. These problems are factors that greatly influence the enforcement of the law against perpetrators of corruption.

The development of *the modus operandi* of perpetrators of corruption in concealing assets derived from criminal acts has prompted the urgent need to implement a progressive law enforcement strategy by carrying out two strategic steps, namely: First, taking *rule-breaking* actions in the form of confiscating assets related or unrelated to corruption as collateral for the return of state assets, unless the defendant can prove that the assets were obtained from legitimate business activities. Second, judges issue *contra legem* verdicts in the form of mandatory compensation payments without subsidiaries, preceded by seizure of collateral, thereby closing any loophole that would allow defendants to escape compensation payments (Ade Mahmud, 2020).

Formally, corruption is explicitly defined in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter referred to as the Anti-Corruption Law). Based on this legal basis, acts that are classified as corruption under Article 2 paragraph (1) of the Corruption Eradication Law are:

> "Any person who unlawfully enriches himself or herself or another person or a corporation that may harm the state finances or the state economy shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp200,000,000.00 (two hundred million rupiah) and a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."

Furthermore, Article 3 of the Anti-Corruption Law states that:

> "Any person who, for the purpose of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity, or means available to him or her

due to his or her position or status, which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp.50,000,000.00 (fifty million rupiah) and a maximum of Rp.1,000,000,000.00 (one billion rupiah).

Other acts classified as corruption offenses are also mentioned in Articles 5 to 13 of the Anti-Corruption Law. Based on this legal description, it can be concluded that corruption includes any person who, by unlawful means, enriches themselves, benefits themselves or others or a corporation, abuses their authority or opportunities or means available to them due to their position or status, which can harm state finances or the state economy.

In the practice of enforcing corruption criminal law in Indonesia, public prosecutors often use Article 2 paragraph (1) and Article 3 above. The phrase "may" before the phrase "harm the state finances or economy" in both articles means that this corruption offense is classified as a formal offense, so that the loss to state finances or the economy is not a consequence that must actually occur (*potential loss*). (R. Wiyono, 2008).

In general, the element of "loss to state finances" as referred to in Articles 2 and 3 of the Anti-Corruption Law is proven by an investigative audit conducted by the Supreme Audit Agency of the Republic of Indonesia (BPK RI) and/or the Financial and Development Supervisory Agency (BPKP). Proving the element of "state economic loss" in the enforcement of corruption crimes in Indonesia still leaves conceptual and institutional problems. To date, there is no clear formulation of the concept of state economic loss in legislation, and no institution has been explicitly given the authority to determine the existence of such losses. This ambiguity creates legal uncertainty and has the potential to hamper the effectiveness of law enforcement against corruption (Supriyanto, et al., 2017). This problem has resulted in a minimal number of cases decided by the courts in which the defendants were found guilty of corruption for causing economic losses to the state based on the provisions of the Anti-Corruption Law. This phenomenon poses a challenge for law enforcement officials, particularly public prosecutors, in proving the element of economic loss to the state.

In the last 10 years, various corruption cases involving abuse of authority and having a major impact on the state economy have continued to be in the public spotlight and a subject of debate in the legal sphere. One such case is the tin trading corruption case involving the defendant Harvey Moeis, who was charged under Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law. In this case, the Public Prosecutor applied the element of economic loss to the state to the defendant's actions. The economic loss to the state in this case amounted to Rp 300,000,000,000,000 (three hundred trillion rupiah). The losses stemmed from illegal cooperation, tin ore payments, and environmental damage. The tin trade corruption case involving Harvey Moeis has sparked pros and cons among academics and legal practitioners due to the fantastic amount of state losses. Among other things, they argue

about the competence of the institution that determines state economic losses, because currently there is no institution authorized by law to calculate state economic losses. The Supreme Audit Agency (BPK) is only authorized to calculate state losses that can be calculated in *real* terms. Meanwhile, state economic losses are losses that have a broad impact on society and the state. Therefore, they argue that the value of state economic losses amounting to 300 trillion rupiah in the Harvey Moeis tin corruption case is considered imaginary and does not meet the qualifications for material offenses as stipulated in Constitutional Court Decision Number 25/PUU-XIV/2016 because the value of state economic losses in the case is only a *potential loss*. because currently there are no rules or standards for calculating state economic losses as referred to in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law (Nurul Diwa, 2024).

In addition to the tin trade corruption case above, there are other corruption cases related to this study. Based on a search of court decisions, one court decision was found that proves the element of state economic loss as referred to in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, namely the Central Jakarta District Court Decision Number 62/Pid.Sus-TPK/2022/PN Jkt.Pst dated February 23, 2023, in the case of Surya Darmadi (Defendant). The panel of judges who tried and examined the case concluded that the defendant's actions had caused economic loss to the state because he had carried out plantation business activities, starting from the licensing process, both the Plantation Business License and the Location Permit, which were not in accordance with the provisions/procedures. Surya Darmadi (Defendant), together with H. Raja Thamsir Rachman, knew that these activities were taking place in a forest area but continued to carry out plantation business activities, thereby generating profits that were used for personal, group, and/or corporate purposes.

Furthermore, the Panel of Judges also considered that the defendant's actions caused economic losses to the state from three companies that did not have a Right to Cultivate, namely: PT. Panca Agro Lestari, PT. Palma Satu, and PT. Seberida Subur amounting to Rp 39,751,177,520,000.00 (thirty-nine trillion seven hundred fifty-one billion one hundred seventy-seven million five hundred twenty thousand rupiah). In addition to the economic losses to the state caused by the defendant's companies not having a Right to Cultivate, the Panel of Judges also found that the defendant's actions caused economic losses to the state amounting to Rp 73,920,690,300,000.00 (seventy-three trillion nine hundred twenty billion six hundred ninety thousand three hundred thousand rupiah), consisting of household and business losses as detailed in the Report on the Analysis of Social Costs of Corruption and Illegal Profits in the Corruption and Money Laundering Case Related to the Illegal Land Transfer by PT. Duta Palma Group in Indragiri Hulu District.

Based on the above case, it can be understood that the element of state losses in criminal acts of corruption is not limited to financial losses, but also includes losses to the state

economy. In the above case, the public prosecutor included calculations of losses to business rights, household losses, and business losses. The calculation of the state's economic losses was carried out by experts from the Institute for Economic and Business Research and Training, Faculty of Economics and Business, Gadjah Mada University. Given the extraordinary impact of state economic losses, law enforcement officials must begin to interpret state losses not only as financial losses to the state but also as losses to the state economy as a manifestation of the state's spirit to eradicate corruption (Rizki Agung Firmansyah, 2020).

The lack of concrete explanation of the element of "economic loss to the state" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law has resulted in misinterpretation and multiple interpretations, which in turn has affected the enforcement of the law on criminal acts of corruption itself. 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.

A rule or legal norm in accordance with the principle of legality in criminal law must be formulated based on the principles *of Lex Scripta*, *Lex Stricta*, and *Lex Certa*, namely that it must be written, clear, and unambiguous. The legal implications of the application or interpretation of a legal term whose meaning and elements have not been clearly standardized in legislation can result in the deprivation of constitutional rights to legal certainty (Duwi Handoko, 2017). Errors in understanding a legal concept can have fatal consequences for those seeking justice, especially if the incorrect understanding becomes a ruling that then forms the basis for judges' thinking in similar cases. Errors in interpreting concepts not only cause legal uncertainty but also extend to a higher level of law, namely justice (Peter Mahmud Marzuki, 2017).

2. Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data (Soerjono Soekanto & Sri Pamudji, 2011). Based on the above background, the problem formulation in this research focuses on the Legal Analysis of the Elements of State Economic Loss in Article 2 Paragraph (1) and Article 3 of the Corruption Crime Law.

3. Results and Discussion

Basis for the Judge's Consideration of the Element of State Economic Loss in the Central Jakarta District Court Decision Number 62/Pid. Sus-TPK/2022/PN.Jkt.Pst

Legal considerations are defined as a stage in which the panel of judges considers the facts revealed during the trial, starting from the indictment, charges, and exceptions from the defendant in connection with evidence that meets formal and material requirements, which are presented in the evidence and plea. Legal considerations also include the articles of the legal regulations that form the basis of the decision (Seno Aji, 2014).

The judge's considerations or *ratio decidendi* are the arguments or reasons used by the judge as legal considerations that form the basis for deciding the case. According to Rusli Muhammad, the judge's considerations are substantially classified into two types, namely juridical considerations and sociological considerations (Rusli Muhammad, 2011).

In case No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst, the defendants, Surya Darmadi and H. Raja Tamsir Rachman, were charged by the Public Prosecutor with committing the crime of corruption as referred to in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law. The defendants' actions were classified by the public prosecutor as acts of corruption that caused economic losses to the state amounting to Rp 73,920,690,300,000.00 (seventy-three trillion nine hundred twenty billion six hundred ninety thousand three hundred thousand rupiah). The calculation of the state economic loss consists of household and business losses as stated in the Report on the Analysis of the Calculation of the Social Costs of Corruption and Illegal Profits in the Corruption and Money Laundering Case Related to the Illegal Land Transfer of PT. Duta Prima Group in Indragiri Hulu Regency, Riau Regency, published by the Research and Training Institute of Economics and Business, Faculty of Economics and Business, University of Gadjah Mada.

In addition to causing economic losses to the state, the defendant's actions in this case also caused financial losses to the state amounting to IDR 4,798,706,951,640.00 (four trillion seven hundred ninety-eight billion seven hundred six million nine hundred fifty-one thousand six hundred forty rupiah) and USD 7,885,857.36 (seven million eight hundred eighty-five thousand eight hundred fifty-seven thirty-six US dollars).

The calculation of state financial losses is in the form of state revenue not received from the utilization of forest resources in the form of forest resource provisions and reforestation, forest exploitation fines, and forest area usage fees. State financial losses incurred from forest resources due to irregularities in the conversion of forest areas for plantation activities are calculated based on the cost of restoring damaged land and the environment.

Because the defendant in case No. 62/Pid. Sus-TPK/2022/PN.Jkt.Pst was charged by the public prosecutor with a subsidiary joint indictment, the judge in the case first considered the first primary indictment, namely Article 2 paragraph (1) of the Anti-Corruption Law.

Based on the wording of Article 2 paragraph (1) above, the elements of the criminal offense considered by the judge are as follows:

1. **Element of Every Person**

    Based on the legal facts revealed at the trial, the defendant confirmed his name and identity as stated in the indictment, namely Surya Darmadi as the owner of Damex Group, which owns the subsidiaries Banyu Bening Utama, PT Suberida Subur, PT Panca Agro Lestari, PT Kencana Amal Tani, and PT Palma Satu, so that in this case there was no error regarding the defendant's identity (*error in persona*). The defendant Surya Darmadi appeared in court in good physical and mental health. Judging from his intellectual level, educational background, and work experience, the panel of judges concluded that the defendant was an individual capable of supporting his rights and obligations, able to determine his will, aware of his actions to commit or not commit a criminal act, and that there were no elements of coercion, excuses or justifications that would eliminate the defendant's criminal responsibility for his actions, so that the defendant has the ability to take criminal responsibility for his actions. Furthermore, the panel of judges considered that the defendant was able to answer all questions posed by the Panel of Judges, the Public Prosecutor, and his Legal Counsel properly and fluently. Therefore, based on these considerations, the panel of judges concluded that the defendant fulfilled the element of "Every Person" as referred to in the Anti-Corruption Law.

2. **Element of Unlawfulness**

    Based on the facts of the trial, it is known that the technical recommendations on land availability and technical recommendations on land suitability issued to companies owned by the defendant Surya Darmadi from 2004 to 2007 were not in accordance with the results of a survey conducted by the Indragiri Hulu District Forestry and Plantation Service Team, which recommended that these companies release the forest area. These recommendations were only made as a formality to meet the requirements for the issuance of a Plantation Business Permit.

    From the beginning of the Plantation Business Permit application process, the defendants Surya Darmadi and H. Raja Thamsir Rachman knew and were aware that the plantation area requested by the defendant was a forest area, but they deliberately issued Plantation Business Permit that did not comply with the applicable procedures , thereby violating the laws and regulations.

    In addition to applying for an Plantation Business Permit at the same time as the Plantation Business Permit issued by Surya Darmadi, he also applied for a Location Permit. Based on the facts revealed during the trial, from 2014 to 2011, Surya Darmadi's company, located in a forest area, did not have investment approval (a requirement for

a location permit) and did not meet several other requirements, but Surya Darmadi's company was still issued a Location Permit.

The Panel of Judges further considered that in the Surya Darmadi case, there were financial losses to the state and economic losses to the state from unlawful actions, which are characteristic (*golden evidence*) of criminal acts of corruption. These losses to the state were caused by Surya Darmadi's actions in conducting plantation business activities, starting from the licensing process for both the Plantation Business Permit and Location Permit, which did not comply with the provisions/procedures. Surya Darmadi, together with H. Raja Thamsir Rachman, knew that these activities were taking place in a forest area but continued to carry out plantation business activities, thereby generating profits, as revealed in the facts of the trial. Based on the facts of the trial, the panel of judges was convinced that Surya Darmadi, together with H. Thamsir Rachman, had committed the crime of corruption.

Based on the above description, the panel of judges concluded that the element of "unlawfulness" had been proven legally and convincingly from the actions committed by Surya Darmadi.

3. **Element of Enriching Oneself or Others or a Corporation**

Based on the facts revealed at trial, the matters considered by the judge in relation to the element of enriching oneself or others or a corporation were Surya Darmadi's actions resulting in household losses due to the company not organizing smallholder oil palm plantations, with losses amounting to Rp 556,086,968,453.00 (five hundred fifty-six billion eighty-six million nine hundred sixty-eight thousand four hundred fifty-three rupiah). Furthermore, based on the facts of the trial, it is known that Surya Darmadi's actions caused conflict between the community and companies owned by Surya Darmadi, which has been ongoing since 2003 until now. The obstacle to resolving this conflict is that the agreement reached between the community and Surya Darmadi's companies has never been fulfilled.

4. **Element of Financial Loss to the State or the National Economy**

Substantively, in South Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst, the judge considered that forest areas are a component that supports the state economy, and that the government has a mandate to regulate the allocation and use of space above ground, below ground, in river basins, lakes, seas, and the air. The allocation and utilization of this space must be carefully regulated and managed by the government through strict licensing, so that economic activities and development can run sustainably, fulfilling the principles of equitable efficiency and environmental awareness. Development will not be sustainable if environmental awareness is not established as one of the pillars that must be upheld and fought for. Careful allocation and management of space will support economic activity and

development not only in the short term but also in the long term, so that sustainability can be achieved.

Based on the facts of the trial, Surya Darmadi's actions in carrying out oil palm plantation activities within the forest area have caused damage that has resulted in environmental losses to the forest area in Indragiri Hulu Regency, Riau Province, resulting in economic losses to the state amounting to Rp 39,751,177,520,000.00 (thirty-nine trillion seven hundred fifty-one billion one hundred seventy-seven million five hundred twenty thousand rupiah).

Based on considerations of the elements of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, the Panel of Judges at the Central Jakarta District Court ruled that the actions of the defendant (Surya Darmadi) had caused economic losses to the state, as decided in Decision No. 62/Pid. Sus-TPK/2022/PN.Jkt.Pst. However, the defendant (Surya Darmadi) filed an appeal with the Jakarta High Court, which upheld the decision at the first level (*judex facti*) as decided in Decision No. 18/Pid.Sus-TPK/2023/PT DKI.

However, in the cassation appeal at the Supreme Court, as decided in Decision No. 490 K/Pid.Sus/2023, the judex juris judge disagreed with the judex facti judge who qualified the defendant's (Surya Darmadi) actions as causing economic losses to the state amounting to Rp 39,751,177,520,000.00 (thirty-nine trillion seven hundred fifty-one billion one hundred seventy-seven million five hundred twenty thousand rupiah) consisting of household losses and business losses as stated in the Report on the Analysis of Social Costs of Corruption and Illegal Profits in Corruption and Money Laundering Cases, prepared by the Institute for Economic and Business Research and Training, Faculty of Economics and Business, Gadjah Mada University. The considerations of the judex juris judge are as follows:

1. The calculation of losses to the state economy links the defendant's actions to various laws and regulations, including the Forestry Law, Plantation Law, and Environmental Law, even though these laws and regulations have their own authority to prosecute a perpetrator of a criminal act, thereby obscuring the main focus of the public prosecutor's indictment. Although these laws and regulations are correlated with the Anti-Corruption Law, criminal acts that cause financial losses to the state cannot necessarily be categorized as state losses in corruption crimes because the calculation of state losses is limited by Constitutional Court Decision No. 25/PUU-XIV/2016 dated January 25, 2017, which states that state financial losses must be *actual losses* and not *potential losses.*

2. The calculation of state economic losses in the Report on the Analysis of the Social Costs of Corruption and Illegal Profits in Corruption and Money Laundering Cases, prepared by the Institute for Economic and Business Research and Training, Faculty of Economics and Business, Gadjah Mada University, was carried out by analyzing the impact of palm oil plantation activities in forest areas, which resulted in costs

forrecovering the damage to state assets that must be borne by the government. Therefore, this calculation method predicts the costs that must be borne for the recovery of environmental damage that will be borne by the state, which constitutes a *potential loss* and is therefore not included as state losses in the realm of criminal corruption and is more appropriately pursued in a civil lawsuit.

Obstacles and Constraints in Proving the Element of State Economic Loss in Corruption Crimes

In the process of enforcing the law on corruption crimes, particularly in proving the element of state economic loss, the Supreme Court, as the highest judicial institution, faces various internal obstacles that affect the consistency and effectiveness of its decisions. In addition, the ambiguity of legal norms and differences in interpretation of the meaning of "state economic loss" further strengthen the challenges for judges in upholding substantive justice. Therefore, it is important to further examine the various internal obstacles faced by the Supreme Court in the context of proving this element, in order to understand the root of the problem and find a direction for reform that can strengthen the role of the judiciary in eradicating corruption in Indonesia. The obstacles in proving state economic losses in corruption cases are as follows:

1. **Substantive Legal Obstacles**

   One of the main obstacles stems from the conceptual ambiguity surrounding the element of state economic loss as stipulated in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law. The Supreme Court often faces a dilemma in determining whether macroeconomic impacts, such as loss of potential revenue, environmental damage, or market distortion, can be categorized as actual state economic *loss*.

   As a result, there is inconsistency in jurisprudence, where some decisions accept the potential loss approach, while others reject it by referring to the interpretation of Constitutional Court Decision No. 25/PUU-XIV/2016. This obstacle indicates the absence of comprehensive internal guidelines or judicial guidelines, either in the form of PERMA (Supreme Court Regulations) or SEMA (Supreme Court Circular Letters), within the Supreme Court to standardize the interpretation of this element across all Corruption Chambers.

2. **Capacity of Corruption Crimes Judges**

   Structurally, the Supreme Court faces *a case overload*, which limits the time judges have to conduct in-depth reviews of complex cases, including corruption crimes with broad economic and environmental dimensions.

   Disparities in technical competence among judges are also an obstacle. Not all judges have sufficient backgrounds in economics, public finance, or forensic accounting to assess multidisciplinary evidence of state economic losses.

In addition, the issue of proving state economic losses has become increasingly complex due to the absence of an institution authorized to determine the existence or absence of state economic losses. This situation differs from the proof of state financial losses, where the institution constitutionally authorized to determine the existence or absence of state financial losses is the Supreme Audit Agency.

Thus, the internal capacity of Supreme Court judges in understanding economic and environmental evidence still needs to be strengthened through training or the presence of *judicial expert support systems*.

3. **Internal Coordination and Technical Support**

The Supreme Court does not yet have an integrated internal cross-chamber mechanism for handling cross-sectoral corruption cases (e.g., involving criminal, administrative, and environmental law). The lack of *cross-chamber coordination* means that corruption verdicts are often inconsistent with verdicts in administrative or civil chambers, particularly in terms of assessing economic losses to the state resulting from administrative policies or business licenses.

In addition, the Supreme Court does not yet have a technical support unit (*research division*) that can provide economic analysis, statistics, and policy impact assessments for the justices to consider when evaluating evidence of economic losses to the state. This lack of technical support results in the assessment of economic evidence often being normative rather than analytical.

In addition to obstacles in proving the element of state economic loss as referred to in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, in practice there are obstacles to proving the element of state economic loss in criminal acts of corruption, namely as follows:

1. **Unclear Concept of State Economic Loss in Corruption Crimes**

One of the most fundamental external obstacles is the lack of harmony in the national legal system in defining the element of state economic loss. The Anti-Corruption Law does not provide a detailed explanation of the definition of "economic loss to the state." Meanwhile, Law No. 17 of 2003 on State Finances has a different orientation and regulatory object. As a result, law enforcement officials often find it difficult to determine whether macroeconomic impacts such as a decline in investment value, damage to the environmental ecosystem, or a decline in community productivity can be categorized as economic loss to the state.

2. **No Authorized Institution to Calculate Economic Losses to the State**

Formally, the Anti-Corruption Law does not explicitly state which institution is authorized to calculate or assess state economic losses. So far, institutions such as the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP) have been more often asked to calculate state financial losses, not state

economic losses. These two institutions have different mandates ( ). The BPK is constitutional and independent, while the BPKP is under the President, so the results of its audits often differ and give rise to legal debates about their validity in court. The absence of an official institution with specific authority to audit state economic losses raises several issues:

a) Uncertainty in proving losses because there are no nationally recognized standards or methodologies for calculating macroeconomic, ecological, or social losses resulting from corruption.

b) Differences in interpretation between law enforcement agencies: The KPK, the Attorney General's Office, and the police often use different audit results, which leads to differences in the value of losses and makes it difficult for judges to assess the material truth.

c) Limited legitimacy of expert calculations: if the evidence of losses is based solely on the testimony of economic experts or academics without the basis of an official audit, the defendant's defense often questions the authority and objectivity of the calculations.

In the context of the Surya Darmadi case, the economic losses to the state resulting from the conversion of forest areas cannot be fully audited by the BPK or BPKP, because most of the losses are ecological and potential (such as lost tax revenue and impacts on the regional economy). As a result, the calculations are inconsistent and make it difficult for judges to assess whether the element of economic loss to the state has been fulfilled with certainty.

Thus, it can be concluded that the absence of an institution that has specific legal authority to audit state economic losses is a significant external obstacle in the process of proving criminal acts of corruption. This condition emphasizes the importance of establishing a national economic audit institution or standard that is clearly regulated in order to ensure legal certainty, consistency of evidence, and substantive justice in corruption cases that have a broad impact on the national economy.

Based on the above discussion, it can be concluded that the obstacles and constraints in proving the element of state economic loss in corruption crimes stem from internal and external factors that are interrelated and affect the effectiveness of law enforcement. From an internal perspective, the Supreme Court still faces problems of legal uncertainty, disparities in judges' understanding, limited technical capacity, and the absence of judicial guidelines that can standardize the interpretation of the element of state economic loss in a consistent manner. Meanwhile, from an external perspective, the lack of harmony between regulations and the absence of an institution that is legally authorized to audit state economic losses has led to uncertainty in proving these losses and differences in the calculations of law enforcement agencies.

4. Conclusions

The basis for the judge's consideration of the element of state economic loss in Central Jakarta District Court Decision Number 62/Pid.Sus-TPK/2022/PN.Jkt.Pst shows that there have been efforts to enforce the law oriented towards substantive justice through a broad interpretation of the element of "economic loss to the state" as referred to in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law. The first-level panel of judges assessed that environmental damage and the loss of potential state revenue due to the illegal conversion of forest areas were part of the actual economic loss to the state, while the Supreme Court emphasized the importance of limiting this element to actual losses in accordance with Constitutional Court Decision No. 25/PUU-XIV/2016.

The obstacles and constraints in proving the element of state economic loss in corruption crimes stem from internal and external factors that are interrelated and affect the effectiveness of law enforcement. From an internal perspective, the Supreme Court still faces problems of legal uncertainty, disparities in judges' understanding, limited technical capacity, and the absence of judicial guidelines that can standardize the interpretation of the element of economic loss to the state in a consistent manner. Meanwhile, from an external perspective, the lack of harmony between regulations and the absence of an institution that is legally authorized to audit state economic losses has led to uncertainty in proving these losses and differences in calculations between law enforcement agencies.

References

Rizky, et al., "Efforts to Eradicate Corruption: Challenges and Concrete Steps," Manuhara Journal of Management and Business Research, Vol. 1 No.4, 2023, pp. 407. https://doi.org/10.61132/manuhara.v1i4.726

Harly Clifford and Jonas Salmon, "The Relationship Between Corruption Crimes and State Economic Losses," LUTUR Law Journal, Vol. 5 No. 2, 2024, pp. 97-104.

Ade Mahmud, "The Urgency of Progressive Law Enforcement to Recover State Losses in Corruption Crimes," Journal of Legal Issues, Vol. 49 No.3, 2020, pp. 256-271.

R. Wiyono, Discussion of the Corruption Crime Law, Jakarta: Sinar Grafika, 2008.

Supriyanto et al., "Redefining the Element of 'Harmful to State Finances (Economy)' in Corruption Crimes," Amanna Gappa Journal, Vol. 25 No. 2, 2017, pp. 11.

Nurul Diva, "Summary of the Harvey Moeis Tin Corruption Case from Start to 6.5-Year Prison Sentence," Liputan 6, December 2024, Sunday, https://www.liputan6.com/hot/read/5855246/rangkuman-kasus-korupsi-timah-harvey-moeis-dari-awal-hingga-divonis-65-tahun-penjara?page=10

Rizki Agung Firmansyah, "The Concept of State Economic Loss in the Corruption Criminal Law," Jurnal Jurist-Diction, Vol. 3 No. 2, 2020, pp. 669-686. https://doi.org/10.20473/jd.v3i2.18211

Duwi Handoko, Principles of Criminal Law and Penitentiary Law in Indonesia, Pekanbaru: Hawa dam Ahwa, 2017.

Soerjono Soekanto and Sri Mamudji, Normative Legal Research: A Brief Review, Jakarta: Raja Grafindo Persada, 2010.

Seno Aji, Criminal Laws, Jakarta: Erlangga, 2014.

Rusli Muhammad, The Indonesian Criminal Justice System, Yogyakarta: UII Press, 2011.

Arifin P. Soerja Atmadja, Public Finance from a Legal Perspective (Theory, Practice, and Criticism), Jakarta: PT. Raja Grafindo Persada, 2017.

Dian Puji Nugraha Simatupang, State Finance and State Losses from a Phenomenological and Legal Reconciliation Perspective, Jakarta: Damera Press, 2022.

Ali Rido, Legal Entities and the Position of Legal Entities, Associations, Cooperatives, Foundations, Waqf, Bandung: Alumni, 2004.

Eny Suastuti, Responsibility of Directors of State-Owned Enterprises (Persero), Surabaya: Scopindo Media Pustaka, 2022.

Rodliyah and H.Salim, Introduction to Criminal Law on Corruption, Jakarta: PT.Raja Grafindo Persada, 2022.

P.A.F. Lamintang, Fundamentals of Indonesian Criminal Law, Bandung: Citra Aditya Bakti, 2011.

Kiki Kristanto, "Legal Implications of Constitutional Court Decision Number 25/PUU-XIV/2016 on the Enforcement of Corruption Crimes Against State Financial Losses," Tambun Bungai Law Journal, vol. 4, no.2, pp. 562-579, 2019. https://doi.org/10.61394/jihtb.v4i2.82

Fachrul Rozi, "The System of Evidence in Court Proceedings for Criminal Cases," UNAJA Law Journal, vol. 1, no. 2, pp. 20, 2018. https://doi.org/10.35141/jyu.v1i2.154

Adami Chazawi, Law of Evidence in Corruption Crimes, Bandung: PT. Alumni, 2008.

Flora Dianti, Criminal Evidence Law in Indonesia: A Comparison of HIR and KUHAP, Jakarta: Sinar Grafika, 2023.

Alfitra, Evidence Law in Criminal, Civil, and Corruption Proceedings in Indonesia, Revised Edition, Depok: Raih Asa Sukses, 2011.

Theodorus M. Tuanakota, Calculating State Financial Losses in Corruption Crimes, Jakarta: Penerbit Salemba Empat, 2014.

Febby Mutiara Nelson, Criminal Justice System and Corruption Prevention in Indonesia, Depok: Rajawali Pers, 2020.

Ridwan Kahirandy, "Corruption in State-Owned Enterprises, Especially Limited Liability Companies: A Study of the Meaning of Separated State Assets and State Finances," Jurnal Hukum Bisnis (Business Law Journal), vol. 16, no. 1, pp. 73, 2009.