

Juridical Analysis Of Proof Elements Harm State Finance In Criminal Actions Corruption In Indonesia

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Abstract. Policies that are often taken by public officials sometimes give rise to major criticism committing a pattern of criminal acts of corruption. Policies that are considered can fall into the action category corruption is policies that could harm state finances. So it's a loss State finances are one of the elements of criminal acts of corruption in Article 2 paragraph (1) and Article 3 Act No. 31 Year 1999 jo Act No. 20 Year 2001 about Eradication Act Criminal Corruption. The formulation of elements that are detrimental to state finances in these two articles is at the evidentiary level still raises various obstacles because it is an unclear and unclear norm multiple interpretations. Results from study show that prove that element harm state finances in criminal acts of corruption are still understood as formal criminal acts so that the proof Enough with fulfil deed the And No need There is consequence, Good Which potential harm finance country nor loss Which Actually, perpetrator can convicted. After Court Constitution through Decision Number 25/PUU-XIV/2016 mention that the word "can" in Article 2 paragraph (1) and Article 3 is unconstitutional and is fundamentally change qualification corruption become become crime material, However in its implementation There are different views regarding law enforcement officials in proving that element This is detrimental to state finances, giving rise to legal uncertainty. In the upcoming corruption criminal law reform, the more appropriate model of proof is with use draft loss finance country in meaning crime material. Through draft This, something deed new can seen fulfil elements follow criminal corruption with condition There must be a result of the state's loss being real and occurring (actual). lost). Proof concept loss state finances in meaning material ensure law Which fair certainty.

Say Key: Proof, Loss Finance Country, Act Criminal Corruption.

INTRODUCTION

Corruption is challenge general man, No There is culture Which truly free from corruption. Corruption is part from history creation culture man And is crime oldest Which own influence big to development economy something country country (Indrayana, 2016: 1). Convention UN 2003 against Corruption (UNCAC) define problem corruption as threat main for peace, security national And international, damage government, democratic principles, and justice and endanger economic growth and the rule of law (Mulyadi, 2007: 1; Atmasasmita, 2013: 24).

Corruption is not a new phenomenon in Indonesia, because it has been happening since the 1950s. And Currently, corruption is still one of the factors in Indonesia's economic slowdown (Chaerudin, et al, 2008:1). The effect corruption No only harm finance public, but also has an impact on lack of award to values public, specifically right For well-being, prosperity, and economic growth which are part of human rights (Mulyadi, 2007: 24). Due to the extent of its influence, criminal acts of corruption are categorized as crimes extraordinary (Effendi, 2012: 2), and it is very difficult to show that it is necessary action eradication that is

separate from criminal activities in general. Statistics show that nation Indonesia Still fight with corruption. Transparency International take notes that Regarding the 2019 Corruption Perception Index (CPI), Indonesia is ranked 85th with a score of 40 from 180 countries corrupted in world (www.transparency.org).

Rating This Not yet enter in category Good Because Indonesia Still is at in lower score 50. Reason corruption in Indonesia Still dominated by its height level corruption in bureaucracy, state administrators, and the law enforcement sector. Corruption crimes continue to increase from year on year, both in terms of the number of cases that occur and the amount of losses experienced finance country nor from facet quality follow criminal Which has committed the more systematicas well as in room scope they Which penetrate all aspect life public.

report Examiner Finance Body (CPC), Semester I Year 2019, There is 14,965 problem with potential state loss of Rp. 10.35 trillion, and in Semester II 2019 there were 4,904 findings with potency loss country as big as Rp. 7.15 Trillion (www.bpk.go.id). The size mark loss finance country Also can seen from prosecution case corruption Which handled by Eradication Corruption

Commission (KPK), Attorney General's Office and Police reports from 2014 - 2018 in table following:

Year	case	Number of suspects	Loss country
2014	629	1328	5.29 T
2015	550	1124	3.10 T
2016	482	1101	1.45 T
2017	576	1298	6.50 T
2018	454	1087	5.64 T

The data above shows that the country continues to experience significant financial losses as a result of corruption or irregularities in the management of state finances. Is money That No damaged, That will, Of course just Of course just, used For financing public For interestpeople. Therefore, efforts to eradicate corruption are directed not only at punishing parties the violation, but the most important thing is how to recover the financial losses suffered country as consequence from acts of corruption.

State financial losses as an element of criminal acts of corruption in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption (abbreviated as PTPK Law), formulated in Article 2 paragraph (1) and Article 3. Types of criminal acts in both of these articles are a formal crime. Confirmation as a formal crime (formeel delicten) explicitly stated in the Elucidation of the PTPK Law, even though the

proceeds of corruption have been returned to the state, perpetrators of criminal acts of corruption are still brought to court and continue to commit crimes criminal.

In this context, the PTPK Law adopts the concept of state financial losses in a formal sense crime. It means something action automatic considered harm public finance country, whereas consequence Which caused form loss finance country Not yet happen, but need has the ability to trigger harm to the State upon itself, a person would already be brought to court and sentenced criminal

Reconstruction to prove elements that are detrimental to state finances in action Criminal Corruption in Indonesia FSH UIN Sharif Hidayatullah Jakarta Cooperate with Postkolegnas UIN Jakarta - 675 violations, considering that other elements of Article 2(1) and Article 3 can be identified in court. Different with Act Number 3 Year 1971, follow criminal corruption is defined as material crime.

With addition say "Can" in front sentence, "harm finance country or economy country", the formulation follow criminal changed from follow criminal material in Chapter 1 paragraph (1) Law Number 3 of 1971 for formal crimes in Article 2 paragraph (1) and Article 3 of the PTPK Law. Change Which intended is For makes it easier proof reach mode operandi finance country Which the more advanced deviation (Tuanakotta, 2018: 104). Strategy eradicating corruption is not without obstacles. One of these obstacles comes from the formulation Chapter 2 verses (1) and Chapter 3 PTPK Law Which too broad and multi-interpretable.

By Because That in its implementation often misused For reach Lots acts that are alleged to be detrimental to state finances, including discretionary decisions urges for which no legal basis can be found. When this happens, there is potential for criminalization in the name Abuse of power often occurs, giving rise to legal uncertainty and injustice. As depicted by Erman Rajagukguk, that formulation Chapter 2 paragraph (1) And Chapter 3 Act PTPK Which contain say "can" is use say Which No clear. How law should be imposed or a penalty imposed based on an event that has not occurred yet Of course happen or maybe No happen happen.

Therefore, the word "can" in practice can mean anything according to the reader's choice (Rajagukguk, 2016:10). Actions Which harm finance country is "deed criminal", The principle being measured is "the existence of formal actions". violate the law" and the material consequences of loss Which real And Certain on finance country Which can calculated with mark Money. If material the consequences No happen, How somebody can said has enrich himself Alone? or people another or something corporation (Toegarisman, 2018: 3).

The weaknesses in the norms of these two articles were then corrected by the Constitutional Court in decision Number 25/PUU-XIV/2016, by deleting the word "can" in Article 2 paragraph (1) and Chapter 3 Because considered unconstitutional And No have strength law tie. Decision This No only change paradigm eradication corruption but Also implications onproof criminal act corruption.

Evidence plays an important role in the criminal investigation process because: This is the proof that the fate of the perpetrator of a criminal act is determined. In the context of a criminal act corruption, proves that the elements that harm state finances are the most important part in Chapter 2 paragraph (1) And Chapter 3 Act PTPK. Besides That, element "harm finance country" in a way is expressly stated in Article 2 paragraph (1) and Article 3, therefore it must be proven. This has been influencing the legal views of law enforcement officials in the process of handling criminal acts corruption. If this is not proven, it could have an impact on the perpetrator's freedom from legal entanglement, Good Because the investigation was stopped or released by the judge in court.

For example, major corruption cases handled by the Prosecutor's Office, such as Procurement of Access Fees Sisminbakum at the Ministry of Law and Human Rights, Procurement of Pertamina Tanker Ships (VLCC), and corruption in PT. Texmaco, investigation stopped Because No There is element harm finance country (Indonesia Corruption Witness, 2014: 17). Likewise, there are still corruption cases being filed And tried in court, but judge has decide For free For reason Which The same, that is non-fulfillment of elements that are detrimental to the state's finances, for example Supreme Court Decision No.69 K/ Pid.SUS/2013 dated 19 March 2013 and Supreme Court Decision No.2846 K/ Pid-sus/2015 dated August 8 2015. This means that evidence that is detrimental to state finances is one of the object Which must proven conclude For state somebody proven or No do criminal act; corruption according to second chapter the.

Prior to the issuance of Decree No.25/PUU-XIV/2016 of the Constitutional Court, Article 2(1) And Chapter 3 Regulation Legislation PTPK is considered as violation procedural Which No give rise to consequence What even in form loss finance country. However, after decision Constitution Court, Chapter 2(1) And Chapter 3 Statute PTPK is offense material, demand exists consequence form loss to public fund. There is Also transition from the possibility of a loss becoming a real loss. Legitimately, the consequence of this decision is that every effort to implement corruption laws must be taken to demonstrate that There is drain on state finances the real one before a defendant mentioned.

The proof, loss finance country is aspect Which must proven from corner prosecution. Without an investigation to determine the State's financial losses, people cannot stated as criminal based on two document This. Follow its publication Decision No.25/PUU-XIV/16 Year Court Constitution, challenge to arrangement violation has not been resolved. In judicial experience, judges do not fully apply decisionslike that appearance so that happen difference legal understanding institution enforcer.

This resulted in the birth of legal products, including judge's decisions. no decision uniform interpret elements Which harm finance country, Good in court level first, the appeal level and the cassation level, which are in conflict with each other prove these elements. For example, in Supreme Court Decision No.103K/PID.SUS/2013; Court Decision great No.819K/PID.SUS/2017; Decision Court great No.3225K/PID.SUS/2018; And decision No.29K/PID.SUS/2019.

From several decisions related to evidence that elements are detrimental to state finances still interpreted as either actual or potential losses and perpetrators of corruption Still punished. Problem other Which faced by enforcer law in apply proof ThisThese elements include different interpretations of state finances, including: question party where Which authorized count loss finance country Which can madeas tool proof law. Confusion Also happen after Court great emit SEMANumber 4 of 2016, which confirms that the BPK is the only authorized institution stating state financial losses that could hinder efforts; enforce the law regardingcorruption.

Starting from exists understanding Which different about proof exists element harm finance country will influence law enforcement law to corruption. During Act PTPKNot yet revised, can confusing enforcement law to corruption. Important For inspectAgain, the element is detrimental to state finances, namely as an effort to overcome interpretations different from each law enforcer and to further guarantee legal certainty in corruption Eradication. Therefore, this paper aims: first, analyze and explain What consequence law from formulation element harm finance country For proof follow criminal corruption? second, For offer model reconstruction For prove elements harmcountry deep finance criminal act corruption with certainty law And justice.

METHOD STUDY

This paper uses a normative legal analysis approach, namely legal research with analyze library materials or secondary evidence for the main assignment. Normative legal analysis is scientific research method to find facts based on legal scientific reasoning normative aspect

(Soekanto, 2015: 13-14). Therefore, this research departs from this view positive law norms that apply in the national legal system (Marzuki, 2016: 59). The approaches used are the statutory approach and the case approach. Secondary data mainly comes from statutory regulations regarding eradicating corruption and court decisions as the main legal material. The data has been obtained later analyzed thoroughly qualitative.

ANALYSIS DISCUSSION

1. Formulation Element Loss Finance Country And The law Consequence Proof Corruption Crime

Law Number 31 of 1999 as amended by Law Number 20 Year 2001 about Eradication Act Criminal Corruption (abbreviated Act PTPK), classified into 8 (eight) groups of criminal acts of corruption (Kristiana, 2016: 56). From 8 (eight) there are only two groups of articles, namely Article 2 paragraph (1) and Article 3 of the PTPK Law formulate the elements of state financial losses, while the rest is not necessary element loss finance country For prove There is or not follow criminal corruption in chapter-the article. chapter other.

The formulation of Article 2 paragraph (1) of the PTPK Law: Every person who violates the law the act of enriching oneself or another person or a legal entity that can cause harm state finances or the state economy is punishable by life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty). one year and a finemost A little Rp. 200,000,000,- (two hundred million rupiah) And maximum Rp. 1,000,000,000,- (One billion rupiah). Furthermore, in Article 3 of the PTPK Law: Whoever with the intention of making a profit yourself or another person or a corporation, abuse authority, opportunity or the means Because his position or position Which can harm finance country or state economy, is punishable by life imprisonment or imprisonment a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a minimum of Rp. 50,000,000,- (five tens million rupiah) And most Lots Rp. 1,000,000,000,- (One billion rupiah). Ifdetailed elements Chapter 2 paragraph (1) consists on: oppose law; enrich self Alone or personother or something corporation; Can harm country finance or country's economy.

Meanwhile, the elements of Article 3 can be specified: to benefit oneself or someone elseothers or corporations; abuses the power, opportunities, or means available to him Because position or position; can financially detrimental country or country's economy

There is similarity element between Chapter 2 paragraph (1) And Chapter 3, that is element "can harm financecountry or country's economy". Regarding the subject of criminal

acts of corruption, Article 2 means that Everyone is a legal subject in general without distinguishing certain qualifications. Viewed from formulation penalty the crime, penalty formulated in a way cumulative in Chapter 2 paragraph (1) And formulated jointly (cumulatively and alternatively) in Article 3 so that judges can choose one type of sanction or impose both. Meanwhile, from Dari's point of view punishment the, penalty Which dropped on Chapter 3 more light from on Chapter 2. paragraph 1). About element "harm finance country" with element "harm economy country", No always necessary, because There is say "or" Which shows character alternative.

This means that the elements of "state finance" or "state economy" cancel each other out (Minarno, 2009: 48). Although they own similarity, characteristics both of them the article varies, this is influenced by several elements, namely the characteristics of each action. Chapter 2 paragraph (1) Actions that are detrimental to the state are actions that enrich oneself or people another person, or a corporation, and the act is haram. Meanwhile in Article 3, deed Which can seen as reason loss financial is action abuse authority, chance, or means Because position or position, And For benefit oneself, other people, or the corporation (Witanto, 2012: 47) In fact, in Article 3 person Which abuse authority, chance or means Because position or position, can also be considered to be doing it illegally (Nelson, 2020: 52). In editorial In these two articles, the formulation of state financial losses as a criminal act of corruption has the phrase "can". This means that the element of state financial loss does not necessarily exist (Fathurohman, 2017: 17).

Thus, proving the element of state loss can be at the potential loss stage, so that type corruption is crime formal. As crime formal, the emphasis is on Act, without need consequence. In follow criminal formal, Certain the consequences only can burdensome or lighten up crime, but without as a result deed That Alone forbidden and can sentenced (Lamintang, 1997: 213). Lawmaker realize that in previous practice based on Law Number 3 of 1971, criminal acts of corruption were difficult to prove Because formulated as crime material, so that must happen loss country Which result on perpetrator follow criminal corruption often get away from snare law. By Because That, in Chapter 2 paragraph (1) And Chapter 3 Act PTPK, formulated as follow criminal formal, whereas results the corruption is returned to the state, the perpetrators of criminal acts of corruption are still brought to justice and still sentenced criminal, that is in a way firm stated in Chapter 4 PTPK Law.

Viewed from the perspective of process or procedural law, how to formulate it as a formal crime is intended to facilitate evidence to catch perpetrators of corruption. At this point, it can be concluded that is Possible For prove element loss finance country, Good in Chapter 2(1)

and Article 3 of the PTPK Regulation, utilizes two approaches, namely state financial losses actual loss (true loss) and the possibility of causing state financial losses (potential loss), Which element loss finance country fulfilled (Witanto, 2012: 47). In say This, Act PTPK adopting the idea of financial loss to the state in the context of structured crime. With In other words, intervention is automatically considered to be detrimental to the state's budget if the action has the potential to do so harm state finances (Indonesia Corruption Watch, 2014: 31).

For a person to be declared guilty of committing a criminal offense according to Article 2 paragraph (1) and Article 3, there does not need to be actual loss to the State, but rather possible loss occurs if the elements of the act are met, a person will now be brought to court and sentenced punishment crime. Fulfillment element "harm finance country" is important in proof something follow criminal corruption. Besides That, element "harm finance country" in a way firm mentioned in Chapter 2 paragraph (1) And Chapter 3 Act PTPK, by Because That must proven. By conceptually, "determining whether or not there is loss to state finances", formulating criminal acts corruption, and determining the causal relationship between unlawful acts and losses country Which as a result become authority investigator, investigator, And prosecutor general. Ascertaining and calculating the amount of state financial losses is the field of forensic accountants (auditor). The party who calculates the amount of state financial losses that qualifies as experts as referred to in the Criminal Procedure Code and according to Article 32 paragraph (1) PTPK Law (Tuanakotta, 2018: 175). The question arises, who counts and determines existence state financial losses, both actual losses and potential losses that will be used as goods proof in case corruption. The answer, For count loss finance country is not the authority of law enforcers (investigators, prosecutors and the public). Apparatus enforcer law (investigator) can request expert help in determine big loss state finances, then the expert as an auditor carries out an investigative audit (Makawimbang, 2014:201).

The investigation report is used by investigators as initial evidence designate someone as a suspect and as a basis for carrying out coercive measures, namely later become tool proof in court in case follow criminal corruption. After the issuance of Constitutional Court Decision No. 25/PUU-XIV/2016, fundamentally changes qualification corruption in Chapter 2 paragraph (1) And Chapter 3 from crime formal become crime material. This in itself influences the evidence that the element of causing harm to state finances is a criminal act corruption. As a material crime, it proves that the state's financial loss is no longer an element understood as an estimate (potential loss), but must have occurred or is real (actual loss). With this conception, he places the element of harming the state as a necessity and therefore an element criminal action is fulfilled. This means, to be able to investigate criminal acts of corruption and losses

actual state finances or losses what is actually required is proven with: loss calculation state finances by agency Which authorized.

Court Constitution opinion that principle loss real offer clarity procedural Which more rational And in line with effort For synchronization And harmonization legal instruments. The Court's opinion refers to the definition of "state loss" in Article 1 number 22 Law Number 1 of 2004 State Treasury and Article 1 number 15 Law Number 15 of 2006 concerning the Financial Audit Agency which defines loss country/region as lack Money, letters valuable, And goods Which realAnd Certain the amount as consequence from something deed oppose law, Good on purpose nor negligent. Likewise, the Elucidation of Article 32 paragraph (1) of the PTPK Law states "a loss has occurred country". financial matters that can be taken into account by authorized agencies or the public appointed accountant." Only just after decision MK the seen No finish variousproblems arising from the application of Article 2 paragraph (1) and Article 3 of the PTPK Law. If you look into it morecarry on, Court Constitution Not yet determine institution where Which authorized count finance country loss which can made tool proof in case corruption.

Therefore, the existence of investigative examinations in ascertaining financial losses The state has a position, namely providing legal certainty in connection with ambiguityauthority to calculate state financial losses in the PTPK Law. So far, many organizationsmeasuring state financial losses, including BPK, BPKP, experts from the Inspectorate General or other bodies with the same purpose, and the examiner himself, based on decision No. 31/PUU-X/2012 Court Constitution. However, This countered by Court great with published SEMA No. 4 of 2016 concerning Enforcement of Firmansyah, Topo Santoso, Febrian, Nashriana 682 – JURNAL CITA JUKUM (Indonesian Law Journal). Vol. 8 Number 3 (2020). P- ISSN: 2356-1440.E-ISSN: 2502-230X Formulation of Results of the Plenary Meeting of the Supreme Court Chamber as a Guide to the Implementation of Court Duties. The Supreme Court stated that Only the BPK has the authority to determine state financial losses, this is an obstacle corruption proof process.

Difference This become constraint for apparatus enforcer law For determine certainty the magnitude of the state's financial losses as follows regulated in Article 18 of the PTPK Law, in particular set penalty addition form Money replacement. Interpretation Which No uniform This precisely Becauseunclear formulation of Article 2 paragraph (1) and Article 3 of the PTPK Law itself. That's the formulation of action criminal law is necessary because of the principle of legality, and because one of the tasks of criminal law is to serve law in a country (Schaffmeister, et al, 2007: 21). The formulation of the criminal act is unclear or too complicated

only will give rise to uncertainty law And hinder effort For succeedenforce the law, which in turn can result in public distrust of law enforcement itself. There is still evidence of criminal acts of corruption several problems related to proving the element of harm to state finances in Article 2 paragraph 1 And Chapter 3 Act PTPK. A number of problem This; First, difference interpretation finance country.

Interpreting the meaning of state finances according to the principles of criminal law is not easy because can found in a number of regulation legislation. In context Act PTPK, finance country Which listed in Chapter 2 paragraph (1) And Chapter 3 Still own interpretation Which different, although in Explanation General PTPK In Constitution mentioned that State finances are all state assets in any form which are separated, or which No separated, including in inside all over part riches country And all right And obligations arising from (a) are under supervision, management and accountability administrators of state institutions, both at the central and regional levels; and (b) is below control, management and responsibility of State-Owned Enterprises/Regional-Owned Enterprises, foundation, body law, And company Which including capital country, or company Which enter capital party third based on agreement with Country.

The definition of state finances can also be found in Article 17 of Law Number 15 of 2006 regarding the Financial Audit Agency which provides the same interpretation as Article 1 1 Law Number 17 of 2003 concerning State Finance, namely 'State' finance is all state rights and obligations that can be valued in money, as well as everything in kind Money or merchandise which can can assessed with money.

Problem understanding And scope finance country often related with financeBUMN as capital participation from the government. According to Article 1 paragraph (1) in conjunction with Article 4 paragraph (1) Law Number 19 of 2003 concerning State-Owned Enterprises states that: BUMN is a business entity whose capital is wholly or largely owned by the state through inclusion direct from riches country Which separated. In in with respect, Fatwa Supreme Court: wkma/Yud/20/VIII/2006 dated 16 August 2006 confirmed that all Constitution Which decide riches country or riches area Which has divided ascapital BUMN, Persero, And Area Company Which shaped Company Limited No Again countryor asset area (Sutedi, 2018: 35). Fatwa This Also show that aspect harm finance state as an element of corruption is no longer placed in BUMN and Regional Corporations (Effendi, 2011: 106).

Explanation in on show that No There is definition Which uniform about country finance between Act PTPK, Act CPC, Act Finance Country, And Act BUMN. The difference Meaningfinance country in between Constitution the give rise to difficulty in effort eradicate corruption so that impact on uncertainty law. By Because That, need exists clear juridical definition of state finances, this is because the definition of state finances is scattered in some laws, which can hinder criminal law enforcement corruption. Apart from that, the PTPK Law does not provide a rigid definition of the meaning of "loss finance country". Formulation in articles PTPK Law only describe condition Whereas happen loss country Which real finance country And can give rise to loss finance country. Meanwhile, the calculation of state financial losses is based on the findings of officials authorized or appointed public accountant.

Indonesia own uniqueness separately in arrange element corruption in regulation legislation. In fact, state financial losses are the most important element in the article regarding criminal acts of corruption imposed on suspects or defendants of criminal acts of corruption. In UNCAC 2003 which has been ratified by Indonesia through Law Number 7 of 2006, "loss state" is no longer an important element. This can be seen from the sound of Article 3 number 2 UNCAC 2003 about "room scope" application" Which state that, "For implement Convention This is not allowed required, unless stated others here, for the crimes outlined in inside. to result in damage or loss of State property" (Atmasasmita, 2013: 14). These provisions require in-depth study when the government adopts the Convention in corruption law, where the element of state loss should be reviewed after the convention, as a harmonization effort to create legal certainty and justice in enforcement law criminal corruption. Second, Definition Economy Country who does not Clear.

formulation follow criminal corruption in Chapter 2 paragraph (1) And Chapter 3 Act PTPK, besides contain element "harm country". finance", there are also elements "harm economy country". The element of state economic loss still creates problems in its implementation, because even though the meaning of state economic loss has been explained in the General Explanation of the Law PTPK, Still Not yet applies. action harm economy country, can said almost No There is case Which decided by court. This Because meaning from "harm" to economy country" No held in realm enforcement law corruption, so that enforcer law seldom applied because there are no clear parameters for this definition (Supriyanto, et. all, 2017:11). Third, the polemic over the authority to calculate state financial losses. Regarding this matter, it always becomes polemic in court follow criminal corruption, Because Act PTPK does not arrange in a way explicit.

Problem This has produce various perspective And speculative about proof corruption. The Explanation of Article 32 of the PTPK Law only states "that what is meant by loss State finances are losses that have been calculated based on the findings of the agency authorized or public accountant". The formula can be used to guide in determining institution where Which most Lots authority For set exists loss finance countryin case corruption. A number of entity so far This capable measure cost finance country, like:as CPC And BPKP, but Also can Work The same with department other, And even prosecutorgeneral can prove Alone, based on decision No. 31/PUU-X/2012 Court Constitution.

The following is an example of a case of calculating the state: financial losses committed by public accountant And institution others, viz : Action Court Decision Corruption Crime on Medan District Court No. 93 / Pid.Sus/2016/PN.Mdn., 16 February 2017, calculation state financial losses were carried out by the Public Accounting Firm (KAP) Tarmizi Achmad & Partners (<http://mahkamahagung.go.id>); Decision Act Criminal Corruption Court Country Surabaya No.18/Pid.Sus/2011/PN.Sby, calculation loss finance country based on "Report Appraisal" prepared by Jhonny & Partners, Public Appraisal Services, Sucofindo Appraisal. Results calculation This, in level cassation, canceled by Court great on year his decision No. 69 K/Pid.Sus/2013. (<http://mahkamahagung.go.id>); Highest Decision Court Number 819 K/Pid.Sus/2017, Calculation of State Financial Losses is carried out by the Regional Revenue Service Regency estuary Enim (<http://mahkamahagung.go.id>); Decision Court great No. 501 K/PID.SUS/2010 date 14 April 2010, calculation finance country is calculated And concluded by the Prosecutor's Office Investigator (Makawimbang, 2014: 156); and Supreme Court Decisions No. 90 PK/PID.SUS/2010 30th November 2010, calculation loss finance country calculated and concluded by the Public Prosecutor's Office (Makawimbang, 2014:156). Likewise after Court great emit SEMA Number 4 Year 2016, Which confirm that CPC isthe only institution authorized to decrypt state financial losses that can hinder law enforcement towards action criminal corruption.

Therefore, to provide legal certainty in proving criminal acts of corruptionwhich is detrimental to state finances, the PTPK Law needs to be reformulated. In future revision PTPK Law, it is necessary to consider the authority to calculate state financial lossesin cases of corruption it needs to be expanded. Fifth, the Court is not bound by the calculation results finance country loss. Before stated fulfil element loss finance country follow Chapter 2 paragraph (1) And Chapter 3 Act PTPK, Act apparatus enforcer law can request helpauditor as an expert tasked with carrying out investigative checks and financial calculations loss country. Through investigative audits, it will pave the way for gathering facts and present evidence

accepted legally to reveal the occurrence of a criminal act corruption. Conclusion from auditing investigation stated form Report Calculation Loss Finance Country (LH-PKKN) Which will used as tool proof in court For determine worthy or or not something deed accused do follow criminal corruption.

In corruption cases, the LH-PPKN as proof can be carried out by the examiner, either by CPC, BPKP, APIP nor Which published by auditors other. LH-PKKN works as information regarding whether there are indications of state financial losses as well as calculating the value state financial losses arising as consideration in criminal acts of corruption; ordeal (Panjaitan, 2018: 125). If seen from the juridical framework of the evidentiary aspect, LH-PPKN is compiled by examiners in corruption cases is included in the category of valid evidence as tool proof as intended in Chapter 184 paragraph (1) Criminal Procedure Code. Mark strength proof letter from a formal perspective it is as perfect evidence, but from a material perspective, the judge is free assess the substance of the letter, based on the principle of the judge's belief and the principle of the minimum limit of evidence. Letter evidence as intended in Article 184 paragraph (1) Criminal Procedure Code, is not a tool proof Which tie but is tool proof Which stand Alone. In other say, mark strength tool documentary evidence, as well as the value of witness testimony and expert evidence, have the same value strength proof Which independent (vrij bewijskrach) (Please 2005: 310). jury No must LH-PPKN, It means judge will agree or set rule out proof with mention the reason. Even in case like That, judge based on proof the judge can evaluate Alone state losses and heavy its light that loss suffered by country.

2. Evidence of a Reconstruction Model for Elements Harming State Finances with Certainty Law And Justice

Implementation of Law no. 20 of 2001 concerning Amendments to Law no. 31 Years 1999 regarding the Eradication of Corruption Crimes is intended to guarantee procedural certainty, For prevent diversity interpretation law And For protect interest social And economy resident, as well as For ensure treatment Which fair in eradication follow criminal corruption. Beside Act PTPK arrange policy that loss finance country must returned or replaced by the perpetrator of corruption (asset recovery). In other words, it's Effort eradicating corruption should not only punish those who are proven guilty the most severe punishment, but also all state financial losses due to corruption can returned.

After the promulgation of the Law PTPK, change occurs fact that aspect Which harm Public finance in Article 2(1) and Article 3 of the PTPK Law is experiencing development. That's a meaningful move Indonesia has ratified UNCAC with Law no. 7 of 2006. Other reforms include various Constitution Which arrange finance country, And exists decision MK Which correctThe validity of the provisions of Article 2(1) and Article 3 of the PTPK Law has shifted the eradication paradigm corruption. All of these requirements provide time for the Eradication Act Corruption Crime revised. It can be said that the formulation of the elements is detrimental to the country's internal finances Article 2 paragraph (1) and Article 3 of the PTPK Law currently provide wider space and dimensionsfor enforcer law For interpret element loss finance country as follow criminal corruption.in inside implementation, often practiced in a way different, so that give rise to uncertainty law And contradictory with guarantee protection right basic man.

After the issuance of the Decision Constitutional Court Number 25/PUU-XIV/2016 not yet finish constraint in enforcement law corruption, start from difference interpretation finance the state and state financial losses to the polemic about the authority to calculate state finances losses in corruption cases. The PTPK Law also does not explicitly determine which institutions authorized count loss finance country. In practice so far This, calculation Losses can be made by the BPK or BPKP, the Accounting Society, or the investigators themselves. However, the publication of SEMA Number 4 of 2016, confirms that the BPK is the only one institution Which authorized judge remove loss finance country. In practice corruption courts, Constitutional Court decisions are not fully implemented by judges. Matter This seen in decision Court great No.69K/PID.SUS/2013; Decision CourtAgung No.103K/PID.SUS/2013; Supreme Court Decision Number 819K/PID.SUS/2017; Decision Court great No.3225K/PID.SUS/2018; And decision No.29K/PID.SUS/2019. A number of decisions related to evidence that elements detrimental to state finances are interpreted as something Which actual loss or potency loss And perpetrator follow criminal corruption still punished. Although Court Constitution has delete words "Can" in Chapter 2 paragraph (1) And Chapter 3 ActPTPK, in practice, proves detrimental to state finances in several decisions understood by the judge good evil formal nor crime material.

Therefore, best efforts to resolve many of the listed issues in on No stop after decision Court Constitution taken, but effort best Which can done is perfect regulation legislation PTPK And align it with various Constitution Which arrange room scope country financing so that it is explicitly legal to eradicate corruption. It's legal confusion and rule Which arrange budget country And deficit fiscal country is source difference in cornerlook institution enforcer law, result obscurity law. Model reconstruction law shows aspects that are detrimental to state finances in criminal acts of corruption, construction existing prove element loss finance country adhere to draft loss finance country in a formal sense and after going through the reconstruction process creates the concept of loss state finances in a material sense. This means that new actions can be seen as fulfilling element follow criminal corruption with condition: must There is loss country Which Actually And loss which are actually. The basic idea of this concept is to strengthen the Constitutional Court decision no. 25 / PUU- XIV/2016 which corrects the word "can" in Article 2 paragraph (1) and Article 3 of the PTPK Law so that become crime material. Conception country loss financial in meaning material ensure certainty law which is fair.

The concept of state financial loss in a material sense is in line with the 2019 RKUHP. Formulation The element of causing harm to state finances as a criminal act of corruption is regulated in Article 603 of the RKUHP taking over the formulation of Article 2 paragraph (1) and Article 604 of the RKUHP based on the formulation of Article 3 Act PTPK, However No Again use phrase "Can" before element the harm finance country so that nature material crime. Furthermore in explanation Chapter 603 RKUHP it is explicitly stated that what is meant by "harm to state finances" based on the results of examinations by state financial audit institutions. This means that If there is no criminal act of corruption, state financial losses will definitely occur (losses). Actually). Referring to UNCAC 2003 which has been ratified by Indonesia with the Law Law Number 7 of 2006 does not contain elements that are detrimental to state finances. In UNCAC 2003, the scope of corruption has been described in a limited way. Therefore, so as not to deviate from the spirit of UNCAC 2003 which includes elements of financial harm country in criminal act corruption, loss country Certain happen or real.

The concept of state loss in a material sense can also be read in Article 1 number 22 Constitution Number 1 Year 2004 about Treasury Country And Chapter 1 number 15 Law Law Number 15 of 2006 concerning Agency Financial Audit, which gives the meaning the same: "State/regional losses are a definite shortage of money, securities and goods as consequence deed oppose law Good on purpose nor No on purpose." Provision This in line with an explanation of Article 32 paragraph (1) of the PTPK Law which states that state finances are real loss is a loss that can be calculated based on the findings of authorized officials of the

agency or appointed public accountant. Based on these provisions, an action can be said harm finance country with condition must There is loss Which Actually for country or something amount which are actually (actual loss).

In side other, For overcome conflict understanding about draft "finance country" in meaning ius constitution, will become more easy If Language Chapter 2(1) And Chapter 3 Act PTPK about the meanings of "state finance" and "state financial losses" are synchronized with the meaning of "finance state" relating to Law Number 17 of 2003 concerning State Finance And Constitution Number 1 Year 2004 about Treasury Country. With thereby, can avoid interpretation Which different from enforcer law Which happen during This. In matter happen loss finance country or area, body or institution the authority For do calculation must expanded No only to CPC And BPKP, throughout Which do calculation is person Which competent person. Institution or party Which authorized in count loss finance country must confirmed in revision Act Eradication Corruption Which will come, that is For avoid multiple interpretations And problem law other in Then day. Objective calculation amount loss finance countries are: First, For determine big Money replacement in accordance Chapter 17 And Chapter 18 Act PTPK; second, If case Which happen is civil, calculation loss country used as material determination change make a loss And compensation mechanism. Future legislative policies on eradicating corruption are needed set various Constitution And regulation about finance country And finance country loss. Reform law And rule in paradigm clarity procedure And justice, as well as social and economic benefits, in the sense of establishing a basis for law enforcement to prosecute follow criminal violation. Improvement start from synchronization until modification Act PTPK, so that There is legal clarity the same one in eradication corruption.

CONCLUSION

Based on the review and debate above, it can be stated as follows: first, with Constitutional Court Decision No. 25/PUU-XIV/2016, there has been a shift activity oppose law deed despicable as intended in Chapter 2(1) And Chapter 3 Act PTPK as follow criminal material. As consequence from Constitution, proof from aspect Which harm fund public No Again understood as estimation (potency loss), but must it is understood that there has been a real loss (actual loss) so it can be included in follow criminal corruption. For overcome polemic institution Which authorized For count State financial losses in corruption cases need to be expanded, not just given to CPC but refers on decision MK Number 31/PUU-X/2012; And Second, model reconstruction Which more appropriate And ensure certainty law Which more

fair is with use country concept loss financial in meaning material.

In this concept, new actions can be seen as fulfilling the elements of a criminal act corruption with conditions that must exist; a result that state losses are real and occur (actual loss). The conception of state financial losses in a material sense guarantees legal certainty fair.

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