

## **Legal Consequences of Calculating State Financial Losses by Prosecutors in Corruption Crimes based on Decision Number: 69 K/Pid.Sus/2013**

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### **ABSTRACT**

State losses due to corruption are certainly detrimental to the country's economy. However, law enforcement against corruption crimes must still go through applicable legal procedures. Prosecutors do not have rules that specifically allow them to calculate and determine state losses. The research used is normative juridical. The research approach used is through legislation and cases. Based on Decision Number: 69 K/Pid-Sus/2013, it shows that the legal consequences of the calculation of state losses carried out by the prosecutor are the non-fulfillment of the element of harm to state finances or the non-fulfillment of formal requirements in terms of calculating state losses because it is not based on the calculation of institutions that have the authority and competence related to this matter, namely BPK or BPKP. The prosecutor in this case has violated the principle of legal certainty because it is out of the corridor of the applicable positive law.

### **Keywords:**

Corruption;  
Calculation of state  
financial losses:  
Prosecutor

### **INTRODUCTION**

Speaking of law enforcement, in carrying out law enforcement or more precisely those related to criminal acts, of course, it must go through a predetermined procedure, namely through the law. For example, until now we know that one form of law enforcement in criminal acts that is still a concern of the community, and the state is related to corruption. Corruption in Indonesia is still rampant to this day, which clearly and clearly harms the interests of the state and the people. Indonesia's Corruption Perception Index is currently ranked 110 out of a total of 180 countries surveyed. More precisely, Indonesia's score is 34/100, which represents a 4-point drop from 2021 and the lowest point since 1995 (Transparency International Indonesia, 2023). In 2021 alone, ICW has found 209 corruption cases being tried by the authorities with 482 suspects. In 2021 the state suffered a loss of 26.8 trillion rupiah. Every month there are at least 35 corruption cases with 80 suspects named (Anandya, et al, 2021).

In terms of eradicating corruption, it is not just about punishing the perpetrators of corruption, but we must also focus on other aspects. One of them is related to the reimbursement of state losses due to the perpetrator's actions. Therefore, the occurrence of state financial losses is the main factor that determines the existence of a corruption crime. Corruption requires a detailed and comprehensive investigation of state losses. Theodorus M. Tuanakotta states that there are several stages involved in determining these losses, namely: (Tuanakotta, 2009)

1. Determine whether the state suffered a loss;
2. Accumulate the total state financial loss if any; and
3. Determining state losses.

Calculating and proving the occurrence of state financial losses due to corruption is an important element in punishing the perpetrators (corruptors) and in this case, state financial compensation. Prosecutors as investigators and public prosecutors will certainly need authentic evidence related to the losses incurred to

further serve as the legal basis for the indictment of the perpetrators of corruption crimes. However, what is problematic is that there is legal uncertainty in the corruption law because it does not specifically and explicitly mention which institutions legally have the authority to calculate state losses. Article 32 Paragraph (1) only provides an explanation that "state financial losses are recognized when the nominal amount can be calculated based on the findings of the authorized agency or appointed public accountant". The meaning of the phrase "authorized agency" here is also not conveyed thoroughly, causing legal uncertainty because it can make a form of legal procedure that can lead to various interpretations by law enforcers. However, if we examine further related to the authorized institutions and also have competence related to state finances and accounting, it can refer to the main institutions, namely BPK based on the 1945 Constitution, the Law on BPK and Circular Letter No. 4 of 2016 and BPKP through presidential regulations.

The problem that then arises to determine state financial losses is when the Prosecutor as calculating and determining the value of state losses himself where basically there is no clear policy that allows or prohibits the Prosecutor to calculate state losses plus if without coordinating or cooperating with BPK or BPKP so that in the end it does not follow applicable legal procedures. In practice, prosecutors as investigators can perform their own calculations with benchmarks that are easy to calculate, small nominal state financial losses and a low level of complexity so that they can determine state financial losses themselves. Calculations from BPK or BPKP will be required if their competence is needed by the prosecutor (Wahyudianto, 2018). Basically, there are no rules that allow or do not allow prosecutors to calculate state losses, but based on the Prosecutor's Office Law, namely Article 30 Paragraph (1) letter d states that prosecutors can investigate criminal acts, one of which is related to corruption (Suranta, et al., 2023). From this article, it seems that prosecutors can calculate state financial losses by expanding the meaning that investigators are also tasked with exploring data and collecting evidence. Investigations carried out by prosecutors are obtained from data in the form of documents and other evidence related to corruption crimes, the number of losses incurred exists and is calculated so that it can determine the amount of loss (Wahyudianto, 2018). This certainly raises the unclear norm that investigations cannot be equated with being able to calculate or determine state losses arising from corruption because there are other institutions that clearly have this authority. Therefore, this scientific paper aims to further elaborate and analyze the legal consequences of calculating state financial losses by prosecutors in corruption crimes based on Decision Number: 69 K/Pid.Sus/2013.

## **METHODS**

The method used in this research is the normative juridical method which is a process of exploring certain rules, legal principles, and various kinds of doctrines which the ultimate goal is to answer the legal issues being studied by using a statutory approach to the legal phenomenon being studied as well as a case approach based on Decision Number: 69 K/Pid.Sus/2013 (Marzuki, 2017). The method of searching for legal materials used is to use a literature study of legal materials to be collected and used (primary, secondary, tertiary) which will then be used as a method of analyzing legal materials through the use of qualitative descriptive methods with the aim of describing the legal problems faced and then analyzed based on the theory and legal materials obtained (Sugiyono, 2018).

## RESULTS AND DISCUSSION

The defendant, Ir. Gatot Suharto, served as the Team Leader of CV. Aulia Konsultan Teknik, appointed as the Supervisory Consultant for the Elevator Work by the Surabaya City Government under Work Order Number: 641/1121/436.6.2/2009 dated June 16, 2009. The task involved supervising the Surabaya City Government Elevator project, with a budget ranging from 2 to 5 million. The Public Prosecutor charged Gatot Suharto with engaging in unlawful acts that resulted in potential financial losses for the state, as outlined in Decision Number: 69 K/Pid.Sus/2013.

The charges against Gatot Suharto stemmed from various actions alleged to have occurred during the project. Firstly, it was noted that in Fiscal Year 2009, the Surabaya City Human Settlements and Spatial Planning Office received a budget allocation from the Surabaya City Government's APBD for the construction of a Type C Building to accommodate the installation of a city government elevator, with a budget of Rp. 2,239,824,404. Gatot Suharto, as the Team Leader of CV. Aulia Konsultan Teknik, was tasked with supervising this project, as per the Work Order.

However, it was alleged that Gatot Suharto did not fulfill his supervisory duties as outlined in the Work Order. Consequently, deviations from the technical specifications were observed in the construction, leading to potential financial losses. Gatot Suharto was accused of signing off on documents indicating that the work had been completed 100%, despite evidence to the contrary. This led to the payment of supervision costs without the work being completed as required, resulting in an alleged loss of Rp. 2,085,143,465.

During the legal proceedings, the Public Prosecutor failed to provide evidence of state financial losses from audits conducted by authorized institutions such as BPK or BPKP. The absence of such evidence led the Surabaya District Court to acquit Gatot Suharto of all charges. This decision was upheld at the cassation level, with the panel of judges emphasizing the responsibility of BPK or BPKP in determining state losses and the prosecution's duty to prove any unlawful acts.

If we examine further based on the case above, we can use the table below as a benchmark to examine the authority of each institution related to the issues raised which are as follows:

**Table 1: Institutional Authorities in Calculating State Losses**

Law No. 11/2021 on the Amendment to Law No. 16/2004 on the Prosecutor's Office	
Article	Explanation
Article 30	<p>(1) In the criminal field, the Public Prosecution Service has the following duties and powers:</p> <ol style="list-style-type: none"> <li>Conduct prosecution;</li> <li>Implementing court decisions that have obtained permanent legal force;</li> <li>Supervise the implementation of conditional sentence, supervision sentence, and parole sentence;</li> <li>Investigate criminal offenses based on the law;</li> <li>Completing certain case files and possibly conducting additional examinations before submission to the court, which is done with the assistance of investigators</li> </ol>

<b>Law No. 8/1981 on the Criminal Procedure Code</b>	
<b>Article</b>	<b>Explanation</b>
Article 6	a. Prosecutors are officials authorized by this law to act as public prosecutors and execute court decisions that have obtained permanent legal force. b. Public prosecutors are prosecutors who are authorized by this law to conduct prosecutions and execute judicial decisions.
<b>Law No. 15/2006 on the Supreme Audit Agency (BPK)</b>	
<b>Article</b>	<b>Explanation</b>
Article 10 (1) and (2)	(1) BPK assesses and/or determines state financial losses caused by intentional or negligent violations of the law committed by treasurers, managers of BUMN/BUMD, and other institutions or bodies that manage state financial management. (2) BPK's decision stipulates the assessment of state financial losses and/or the determination of the party that must pay compensation as mentioned in paragraph (1).
<b>Presidential Regulation No. 20/2023 on the Amendment to Presidential Regulation No. 192/2014 on the Financial and Development Supervisory Agency (BPKP)</b>	
<b>Article</b>	<b>Explanation</b>
Article 27	The Deputy for Investigations assists the head in the field of supervision in running cross-sectoral programs, preventing corruption, price adjustment audits, claims audits, investigative audits of irregularities that have the potential to harm state finances, audits of calculating state financial losses, and providing expert testimony.

It seems that prosecutors do not have a clear basis in calculating state losses, unlike BPK and BPKP which are explicitly regulated. This is because BPK and BPKP are institutions that carry out state accounting functions, especially audit functions. In relation to Ridwan H.R.'s opinion, the basic principle of the rule of law is guided by the principle of legality that must be fulfilled so that legislation is a legitimate source of authority for the government. If based on theoretical knowledge, the authority obtained through legislation can be obtained through 3 (three) ways as follows: (Ridwan, 2006)

#### 1. Attribution

In Indonesian positive law, attribution is defined as the transfer of authority to government officials by the 1945 Constitution. In other words, through certain wording and articles, the law grants authority directly to government institutions. In the context of attribution, authority can be expanded to create new authority.

#### 2. Delegation

Delegation is the granting of authority from a body/official who by law has a higher position than the body/official authorized to act in a legal action. From the delegation of authority, all responsibilities are fully submitted to the delegator. However, what needs to be noted is that in the concept of delegation no new authority arises but only the transfer of certain authorities between bodies or officials.

#### 3. Mandate

It is different with a mandate, which is a grant of authority a body/official who by law has a higher position to a lower one and the party giving the mandate as the responsible party. Therefore, it can be interpreted that the mandate recipient only takes action on behalf of the party giving the mandate.

Based on the background of the problem, table, and explanation of the theory above, it can be concluded that BPK gets its authority based on attribution, which is the authority of the constitution and legislation. Meanwhile, BPKP gets its authority by delegation because it comes from the authority of an institution that is delegated to other state institutions under it, because BPKP is formed based on a Presidential

Decree which is then outlined in a Presidential Regulation. Another case with the Attorney General's Office where the prosecutor does not have any authority and competence based on the applicable positive law relating to state losses.

As a result, the conclusion that can be drawn from the calculation of state losses made by the prosecutor in Decision Number: 69 K/Pid-Sus/2013 without going through an audit by BPK or BPKP as an authorized institution is that no element of state financial or economic loss can be proven. This is because the calculation of state losses was not carried out by an authorized institution in accordance with statutory regulations. Therefore, what was done by the prosecutor in this case did not fulfill the element of legal certainty so the panel of judges ultimately decided to acquit the defendant of all charges. The decision above shows that, although the actions of the defendant (Gatot Suharto) were materially proven legally and convincingly to have abused the power and opportunities given to him because of his position which caused state losses in the construction of the Type C Building for the installation of the Surabaya City Government elevator, the formal requirements related to the state losses incurred were not met because there was no valid calculation by an authorized institution in the form of an examination report.

Therefore, the actions of the public prosecutor who conducted the calculation independently have no legal force or are unfounded because they are contrary to the 1945 Constitution and the principle of legality in criminal law. The application and interpretation of the law by the public prosecutor contradicts *lex scripta*, which means that criminal law must be written, *lex stricta*, which means that criminal law can only be interpreted based on written law and no analogies are allowed, and *lex certa*, which means that criminal law must be clear. Referring to the authority of the prosecutor's office, there are no explicit rules that give them the authority to be able to carry out these legal actions. The corruption law does not directly mention which institutions are authorized, but if reviewed through other laws and regulations, it can be concluded that the authorized institutions in this case are BPK or BPKP. Another case is if there is no regulation governing institutions that are allowed to calculate state financial losses, then the panel of judges can carry out legal interpretation to find legal rules to decide the case.

The panel of judges was right to decide the case because it required evidence of calculations from competent institutions related to state financial losses while the prosecutor could not present evidence in the form of examination reports from both BPK or BPKP institutions at the trial. In fact, what was done by the panel of judges in this case was a form of legal reasoning that there was a correlation between acts of corruption and state losses incurred and several years after the decision, the Constitutional Court Decision Number 25/PUU-XIV/2016 was issued which changed the interpretation of state financial losses from potential losses to actual losses. Initially, corruption crimes were proven through the existence of acts of corruption, namely formal offenses, turning into material offenses that lead to corruption crimes that are not only proven through the existence of acts of corruption but also result in the impact of real state financial losses so that every corruption case must be proven to have caused real state financial losses through precise calculations by related institutions (Tulung, 2018). According to the theory of legal certainty conveyed by Lon Fuller in his book "The Morality of Law" where there are 8 important elements so that a law can fulfill legal certainty. The point he wants to convey is that the form of law is that there must be certainty between the applicable laws and regulations and the

implementation of existing laws in the field so that positive law can be carried out properly and correctly (Fuller, 1964). What was done by the public prosecutor in this case was contrary to the principle of legality and undermined legal certainty, the public prosecutor's action in referring the case to the court without any calculation of state financial losses by an authorized institution was a form of oversight or a real mistake.

### **Analysis and Discussion**

The case presented sheds light on the multifaceted nature of determining state financial losses within corruption cases, delineating the roles and authorities of various institutions involved. While institutions such as the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP) are endowed with explicit mandates to audit and ascertain state financial losses, the jurisdictional purview of public prosecutors in this regard appears less defined. This discrepancy arises from the absence of a clear legal framework empowering prosecutors to independently calculate state losses. Consequently, the principle of legality and legal certainty, crucial in ensuring the integrity of the legal process, comes into question. The judiciary, in its adjudicative capacity, assumes a crucial role in upholding legal standards and principles. The decision to acquit the defendant in this case underscores the judiciary's commitment to ensuring compliance with legal requirements, particularly the need for state losses to be substantiated through audits conducted by authorized institutions. Moreover, the discourse surrounding shifts in legal interpretation, especially regarding the definition of state losses, highlights the evolving landscape of legal norms and the imperative of adapting legal practice accordingly. In essence, this case underscores the necessity for clarity and coherence in legal regulations to uphold the principles of legality and legal certainty, thereby safeguarding the integrity of the judicial process.

### **CONCLUSIONS**

State financial losses arising from corruption are clearly detrimental to the people and the state so that the government must aggressively combat it. However, in the process of law enforcement in order to eradicate corruption, especially in relation to state finances, it must be carried out through established legal procedures so as to ensure justice, legal certainty for all parties to the case. Therefore, the author concludes that based on the theory of authority and legal certainty, the prosecutor does not have the authority at all to calculate the state losses incurred so that the legal consequences and juridical implications of the actions taken by the prosecutor in Decision Number: 69 K/Pid-Sus/2013 without going through the audit process by BPK or BPKP as an authorized institution are that the elements that cause financial or economic losses to the state are not fulfilled. The panel of judges in the decision was correct in acquitting the defendant due to lack of evidence and the prosecutor could not show evidence of state financial losses arising from the absence of an audit report (LHP) from an authorized institution. The prosecutor in this case exceeded his authority and did not fulfill the element of legal certainty because the prosecutor did not have a strong legal basis in calculating state financial losses and there were differences between the applicable positive law and the implementation of the law.

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