

Contante Justitie System in Corruption Cases in Indonesia: A Legal Constructivism System Paradigm

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Abstract

The legal consequences of Constitutional Court Decision Number 25/PUU-XIV/2016 stating that Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes which is contrary to the 1945 Constitution and specifically deletes the phrase "can" in Article 2 paragraph (1) and Article 3 of the Eradication of the Criminal Act of Corruption Law have a legal impact on the characteristics of the offense. This was normative legal research which uses a statutory and conceptual approach. Results showed that the Financial Audit Board's future arrangements can fulfill the principle of Contante Justitie, namely speeding up the investigative examination process. It was applied by delegating authority from the Central BPK to the Regional BPK Representative auditors so that the latter have independent investigative audit authority to speed up the investigative Audit Result Report process in handling corruption to fulfill the legal system constructivism concept.

Keywords: *Contante Justitie, Corruption, Indonesia, Legal Constructivism, Constitutional Court.*

INTRODUCTION

Corruption is part of a criminal act of fraud carried out with the motive of plunder, robbery, theft, or embezzlement, either secretly or openly for personal interests that harm others. This opinion is expressed by the Association of Certified Fraud Examiners (ACFE) and classifies it in a Fraud Tree which is divided into three main types, namely: Corruption, Misuse of Assets, and Financial Statement Fraud. Indonesian Corruption Watch (ICW) data for 2016 showed a total of IDR 3 trillion in total state losses due to corruption. Then the ICW Judicial and Legal Supervision Division stated that there was around IDR 3,085 trillion in state losses due to corruption cases in Indonesia. Thus, corruption is a crime that is very detrimental and endangers the survival of the country. Handling corruption with anti-corruption efforts by state and internal institutions to prevent state losses does not appear to have produced satisfactory results because the numbers have not decreased (Prihanto & Gunawan, 2020).

In Indonesia, corruption has become a major threat to the government's efforts to achieve national development goals. Corruption weakens and destroys state structures and institutions that shape society's life. instability (Wibowo et al., 2023) Corruption harms the economy, worsens income disparities, and increases government instability (Suprihanto et al., 2023). Corruption problems occur because of bad governance (Black et al., 2000; Monteduro et al., 2016). At least, since the early 1960s, there have been efforts to combat corruption in Indonesia. In terms of laws relating to eradicating corruption, there is evidence that can be traced clearly. The regulations governing criminal acts of corruption are very strict and aim to make the fight against corruption more dynamic. In addition, relevant laws are also established to achieve this goal (Isra et al., 2017).

One of the juridical aspects that is currently being debated in Indonesia is the regulation of corruption offenses containing elements of state financial loss in Law Number 31 of 1999 in conjunction with Law Number 20 of

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2001 concerning the Eradication of Corruption Crimes (hereinafter abbreviated to the PTPK Law). Of the 30 types of criminal acts of corruption mentioned in the PTPK Law, Article 2 paragraph (1) and Article 3 are among those that have become the subject of much discussion and debate and even have been tested at the Constitutional Court (hereinafter referred to as the MK). The MK has received a request for legal review (judicial review) of Article 2 paragraph (1) and Article 3 of the PTPK Law and has decided through MK Decision Number 25/PUU- In the norms of Article 2 paragraph (1) and Article 3 of the PTPK Law is unconstitutional or contrary to the 1945 Indonesian Constitution and does not have binding legal force (Rinaldi Silalahi, 2018).

Juridically, the deletion of the phrase "can" in Article 2 paragraph (1) and Article 3 of the PTPK Law has a legal impact on the characteristics of the offense, which was originally a formal offense, to turn into a material offense by requiring a consequence, namely that the element of state financial loss must be calculated in real/definite manner by authorized institutions. This element is important in determining whether or not the perpetrator of a criminal act of corruption can be prosecuted. This means that law enforcement officials must prove that there are losses to state finances before investigating corruption cases. Because the element of state financial loss is placed as a necessity for the fulfillment of an offense, it often depends on the results of an audit of state financial losses (Pratama et al., 2023).

Article 2 paragraph (1) and Article 3 of the PTPK Law state that:

Article 2 paragraph (1):

"Any person who unlawfully commits an act of enriching himself or another person or a corporation which can harm the state's finances or the state's 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 Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiahs)."

Article 3:

"Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or power which can harm the state's finances or the state's economy, shall be punished by life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and a minimum fine of Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiahs)."

From the formulation of Article 2 paragraph (1) and Article 3 of the PTPK Law, criminal acts of corruption that are detrimental to state finances can be detailed into three classifications, namely:

Criminal acts to unlawfully enrich oneself or another person or a corporation which can harm state finances or the state economy.

Criminal acts with the aim of benefiting oneself or another person or a corporation which can harm state finances.

Criminal acts of abusing the authority, opportunities, or facilities available to him because of his position or power which can harm state finances or the state economy.

The existence of MK Decision Number 25/PUU-XIV/2016 implies that the law enforcement process will be hampered. This condition certainly affects the effectiveness of case handling because investigators have to wait for the results of the state loss audit for quite a long time before being able to determine the suspect. Based on the provisions of Article 23 E paragraph (1) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia, the BPK was held to carry out audits of the management and responsibility of state finances freely and independently. In implementing the constitutional mandate, the DPR and the Government have enacted Law Number 15 of 2004 concerning the Auditing of Management and Responsibility of State Finances (hereinafter abbreviated to the PPTKN Law) as well as Law Number 15 of 2006 concerning the Financial Audit Agency (hereinafter abbreviated to the BPK Law). In carrying out audits, the BPK can carry out 3 (three) types of audits, namely: (1) financial audits; (2) Performance inspections; and (3) Inspections for a specific purpose,

(Undang-Undang No. 15 Tahun 2004, Tentang Pemeriksaan Atas Pengelolaan Dan Pertanggungjawaban Keuangan Negara (Law No. 15 of 2004, Concerning Examination of State Financial Management and Accountability), 2004).

It is clearly understood that the BPK is the only state institution that is constitutionally given the authority to carry out Audits with Specific Purposes (PDTT) to state whether or not there are losses to the State's finances in the final conclusion of the Audit Result Report (LHP). Such provisions, based on the author's analysis, give rise to juridical implications, namely (a) juridical implications for the principle of legal certainty; and (b) implications for the principle of trial speed in law enforcement for criminal acts of corruption. These two juridical implications in practice have an impact on investigators who still use investigative LHP which is not from the BPK, but LHP from the Government's Internal Supervisory Apparatus (APIP) such as BPKP or Inspectorate, Public Accountants, and some even calculate it themselves. Because, if the process relies only on the LHP for an investigative audit from the BPK, it takes quite a long time and the investigation process will be hampered. Moreover, PDTT in the form of investigative audits at the BPK based on its provisions are not carried out by BPK Representative auditors in the regions but are sent and the examination is carried out by auditors at the BPK Head Office in Jakarta.

Delays in handling criminal acts of corruption causing state/regional financial losses by the BPK can open up gaps in the ineffectiveness of eradicating corruption in Indonesia (Yuntho et al., 2014). Therefore, this research has a very important position and urgency in terms of contributing to juridical and theoretical studies in the aspect of eradicating corruption in Indonesia.

METHODS

Normative legal research examines laws considered norms or rules that function in society and become a reference for everyone's behavior (Sunstein, 1996). Normative legal research is also referred to as library legal research, theoretical/dogmatic legal research, or normative legal research that examines library materials or secondary data (Posner, 2002). In this research, a statutory approach is used to carry out an in-depth analysis of the available legal materials (Baker et al., 2014). This approach observes and analyzes all laws and regulations related to the legal issue being addressed. This method is available for initial research articles and is documented descriptively. Secondary legal materials consist of all publications about law including textbooks, legal dictionaries, legal journals, and comments on court decisions (Dimiyati and Wardiono, 2004)

RESULTS

Corruption

Etymologically (Hamzah, 1991) according to Fockema Andreae, corruption comes from Latin, namely corruption or *corruptus*, and the older Latin term is used as *corruptere* (Somawijaya & Ramdan, 2015). From Latin, it descended to various languages of nations in Europe. In English, corruption means bribery or seduction, in French: corruption, and in Dutch, corruptive and *korruptie* (Dwiputrianti, 2009). which then descended into Indonesian Corruption. The literal meaning of the word is rottenness, ugliness, depravity, dishonesty, corruptibility, immorality, and deviation from holiness. (Yuspin et al, 2022)

Transparency International defines corruption as (Pope, 2003), "Abuse of power and public trust for personal gain. So, it contains three elements, namely:

Abuse of power;

Entrusted powers (in the public and private sectors);

Personal gain (not necessarily only for the individual who abuses power, but also for family members and colleagues).

Robert Klitgaard, Ronald Maclean – Abaroa, H. Lindsey Parris argue that (Klitgaard, 2002):

“Corruption means charging money for services that should be provided or using authority to achieve illegitimate goals. Corruption is not carrying out duties due to negligence or on purpose. Corruption can

include both legitimate and illegitimate activities. Corruption can occur within the organization (for example, embezzlement) or outside the organization (for example, extortion). Corruption gives rise to inefficiency, injustice, and inequality."

Furthermore, the definition of corruption according to the PTPK Law of 1999, namely (Adji, 1983):

"Everyone who is categorized as violating the law, committing acts to enrich themselves, benefiting themselves or other people or a corporation, abuses authority or the opportunities or means available to him because of his position or power which can be detrimental to state finances or the country's economy". Meanwhile, the definition of corruption according to the PTPK Law of 2001 is "acts against the law to enrich oneself, others, or corruption which results in harm to the state or the country's economy".

Types of Corruption

Observing the provisions of the 1999 PTPK Law in conjunction with the 2001 PTPK Law, criminal acts of corruption can be grouped into 8 (eight) types, namely:

Corruptions which are related to state finances as regulated in Article 2 and Article 3;

Bribery corruption as regulated in Article 5 paragraph (1) letter a, Article 5 paragraph (1) letter b, Article 13, Article 5 paragraph (2), Article 12 letter a, Article 12 letter b, Article 11, Article 6 paragraph (1) letter a, Article 6 paragraph (1) letter b, Article 6 paragraph (2), Article 12 letter c, Article 12 letter d;

Corruptions in the form of embezzlement in office as regulated in Article 8, Article 9, Article 10 letter a, Article 10 letter b, Article 6 paragraph (2), Article 12 letter c, Article 12 letter d;

Extortion corruption as regulated in Article 12 letter e, Article 12 letter g, Article 12 letter f;

Corruptions in the form of fraudulent acts as regulated in Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter, Article 7 paragraph (1) letter d, Article 7 paragraph (2), Article letter h;

Corruptions in the form of conflict of interest in office as regulated in Article 12 letter i; g. Gratification corruption as regulated in Article 12 B in conjunction with Article 12 C; h. Corruption is another criminal act related to corruption as regulated in Article 21, Article 22 in conjunction with Article 28, Article 22 in conjunction with Article 29, Article 22 in conjunction with Article 35, Article 22 in conjunction with Article 36, and Article 24 in conjunction with Article 31.

The types of criminal acts of corruption can be described in the form of a flow chart as follows:

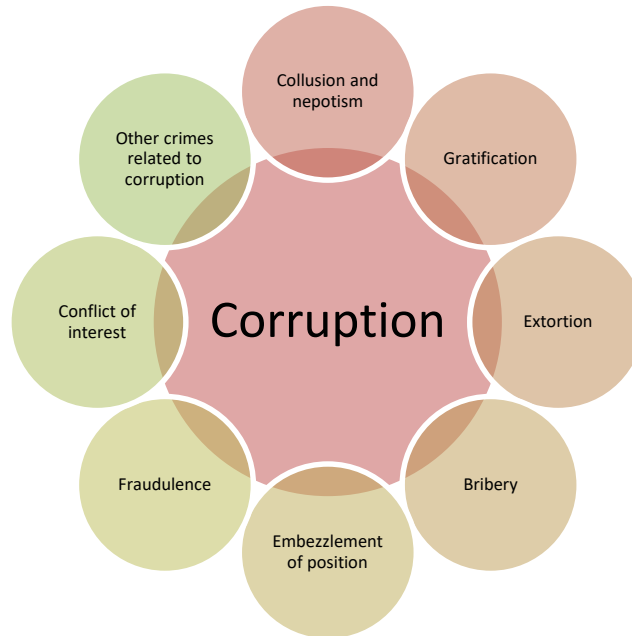


Figure 1. Types of Corruption

State/Regional Financial Losses

The definition of state finances according to the PTPK Law is:

"All state assets in any form separated or not separated include all parts of state assets and all rights and obligations arising, because:

It is under the control, management, and responsibility of officials of state institutions, both central and regional levels;

It is under the control, assignment, and responsibility of State-Owned Enterprises/Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third-party capital based on an agreement with the state.

Article 1 number 1 of Law Number 17 of 2003 concerning State Finance (hereinafter abbreviated to the State Finance Law) regulates the definition of State finance, namely (Undang-Undang Republik Indonesia Nomor 17 Tahun 2003 Tentang Keuangan Negara (Law of the Republic of Indonesia Number 17 of 2003 on State Finances), 2003):

"All the rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be made the property of the state in connection with the implementation of these rights and obligations."

In Article 1 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter abbreviated to the BUMN Law) (UU No. 19 Tahun 2003 Tentang Badan Usaha Milik Negara (UU No. 19 of 2003 on State-Owned Enterprises), 2003):

"State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose capital is wholly or largely owned by the state through direct participation originating from separated state assets."

Furthermore, Article 1 point (10) of the BUMN Law:

"Separated state assets are state assets originating from the APBN to be used as state capital participation in Persero and/or Perum and other limited liability companies."

The formulation of state financial losses is based on an interpretive approach to state finance formulas and state loss formulations, so based on the formulation of the Explanation to Paragraph 3 according to the PTPK Law, it is as follows (Adji, 1983):

Lack of state assets in any forms, separated or not separated, including all parts of state assets and all rights and obligations arising from being under the control, management, and responsibility of officials of state institutions, both at the central and regional levels, as a result of intentional unlawful acts;

Lack of state assets in any forms, separated or not separated, including all parts of state assets and all rights and obligations arising from being under the control, management, and responsibility of BUMN/BUMD, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on an agreement with the state, as a result of unlawful acts.

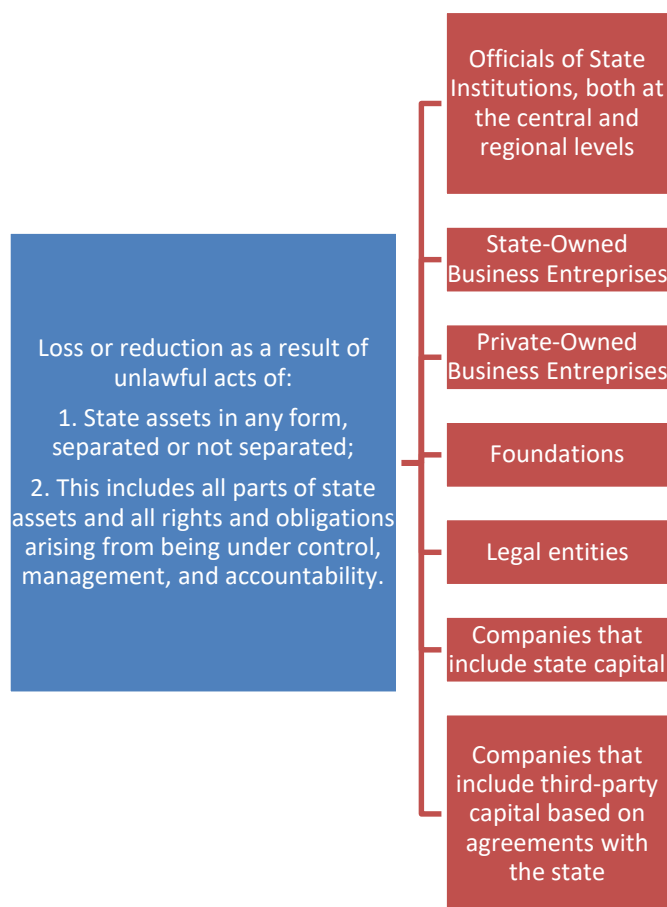


Figure 2. State Financial Losses as a Domain of Criminal Regulation Perspective of Article 2 of the PTPK Law

Contante Justitie System (Trial Speed)

The Contante Justitie system is the system of fast, easy, and cheap justice. In fact, the principles set out in the Criminal Procedure Code are a translation of the Law on Basic Provisions of Judicial Power. Speedy justice is part of human rights. This is especially important to avoid lengthy detention before a judge's decision. Likewise with the system of free, honest, and impartial justice promoted by the Law (Hamzah, 2006). Officials at all levels of investigation are obliged to appoint legal advisors for suspects and defendants who have committed crimes that carry the death penalty or a sentence of fifteen years or more, for those who are unable or do not have their own legal advisor, to ensure speedy, cheap, and simple distribution of justice (Prodjohamidjojo, 1982).

This system has been formulated in Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power (hereinafter abbreviated to the Judicial Power Law), which requires that the implementation of Indonesian law enforcement be guided by the principles of fast, precise, simple and low cost. In addition, it should be straightforward and not complicated. Several provisions of the Criminal Procedure Code as an explanation of the principles of fast, accurate, and low-cost justice, include, among others, that the suspect or defendant has "the right" to (Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman (Law Number 48 of 2009 Concerning Judicial Power), 2009):

1. immediately receive an examination from the investigator;
2. immediately be submitted to the public prosecutor by investigators;
3. immediately be submitted to the court by the public prosecutor; And
4. have the right to be immediately tried by a court.

The system of fast, precise, and low-cost justice is the right of every person who comes into conflict with the law. Likewise, in the process of investigating someone who is indicated to have committed a criminal act of corruption that is detrimental to state finances, he or she has the right to be treated quickly and appropriately in the legal process. Moreover, it is known that the process of criminal corruption cases is quite long in the context of time starting from investigation, prosecution, and trial.

M. Friedman's Theory of Legal Systems

According to Lawrence M. Friedman, the three main components of a legal system are Structure, Substance, and Culture. Legal structure according to Friedman is "The structure of a system is its skeletal framework; ... the permanent shape, the institutional body of the system." This shows that structure is the core of the system; it is a fixed and institutional structure. Furthermore, "The substance of law is composed of substantive rules and also about how institutions should behave". This shows that legal substance consists of substantial norms that regulate how organizations should act. Meanwhile, according to Friedman, "Legal culture is the element of social attitude and value. Behavior depends on judgment about which options are useful or correct. Legal culture refers to those parts of general culture—customs, opinions, ways of doing and thinking that bend social forces toward or away from the law" (Horwitz et al., 1977). This shows that social attitudes and values comprise legal culture.

In making plans for national legal development, Lawrence M. Friedman's legal system theory has been used. The inclusion of Legal System Theory in the Law of the Republic of Indonesia Number 17 of 2007 concerning the 2005–2025 National Long Term Development Plan (RPJPN) proves this. In the attachment, it is stated that the aim of legal development is to build a national legal system based on Pancasila and the 1945 Constitution. Legal development includes material formation, including legal apparatus and legal infrastructure, as well as the formation of a society that has a high legal culture. Legal development aims to build a legal state and create a just and democratic society (The Government of the Republic of Indonesia, 2007).

Lawrence M. Friedman's legal system theory is also used as the initial basis for the preparation of the Grand Design for National Legal Development, where legal development is directed towards the realization of a national legal system that is stable and capable of functioning both as a means of achieving order and prosperity and as a means for implementing development. Basically, legal development includes the arrangement of material (substance), institutions (structure), and culture. Because these elements influence each other, laws must be created in an integrated, sustainable manner and with a global perspective. To build a national legal system, legal materials must be created to reflect social values and interests as well as the realization of a legal society demonstrated by high compliance with the law. Legal materials must ensure stability and legal order and protect human rights. Legal material must also be able to build discipline, obedience, and respect for the law so that in the end it can encourage the formation of a national legal system (Pokja Penyusunan Hukum Nasional (National Law Drafting Working Group), 2018):

Legal Constructivism Theory

Constructivism theory emerged as a replacement for positivism theory. The positivistic paradigm considers law to be rigid, inhumane, and monotonous in its enforcement. Then the constructivism paradigm which offered new legal concepts and criticized the legal concepts adopted by positivism emerged. The constructivism paradigm has a strong relationship with humanism. The main focus is that humans are the source of all sources and centers of life in the world, including in the field of law. According to the constructivism paradigm, law is an integral part of empirical reality and human social dynamics (Sadzali, 2018).

In the context of the philosophy of science, placing legal science in its basic character means that science functions to reveal the truth. Likewise, in producing something useful for human life now and in the future. (Hidayati, 2021) The main task of legal science is to realize substantive justice. Here, changing the way legal science functions in law enforcement to make it more humane, stand for justice for all people, and protect and nurture society as a whole, not the ruling class and economic elite is necessary. This is where the importance of formulating a legal science paradigm increases. Paradigms serve as guides for research through problem and solution models. In addition, paradigms can serve as primary cognitive resources for scientific activities that determine the rationality of a particular scientific discipline (Peczenik et al., 1984).

Constructivism is a new paradigm that can be used to achieve substantive justice and fight bureaucratic and liberal modern legal schools. A more empirical legal theory emerged as a result of this constructivist paradigm. Roscoe Pound came up with the idea of "sociological jurisprudence" (Nalbandian, 2011), followed by Karl Llewellyn and Jerome Frank with "realistic jurisprudence" (Rea-Frauchiger, 2011), or legal realism, and Roberto Unger with the theory of "critical legal research" (Unger, 2019). When positivism emerged and became the dominant school of law, all these ideas emerged. As stated by C. Langdell, who equates law with exact science, where jurists work in libraries as laboratories, the school of thought considers law to be mechanical, deterministic, and separate from things outside the law.

DISCUSSION

The Problem of Delays in Handling Corruption Crimes in Indonesia

At the investigation stage of corruption crimes, investigators are faced with the process of determining the existence of state financial losses. After determining the existence of state financial losses, they proceed to the second stage, namely calculating and this can only be obtained by investigators through audit results from authorized institutions. Through the results of the investigative audit (calculation), a conclusion can be obtained in the form of stating whether or not there are state financial losses (Kurniawan, 2022). If the authority to declare state financial losses can only be exercised by the BPK, it can have implications for the non-implementation of the principle of speed trial or fast and precise justice. This is because it takes quite a long time to wait for the audit results from the BPK which contain the final conclusion stating that there has been a state financial loss. On the other hand, law enforcement officials are obliged to fulfill the suspect's rights to undergo legal proceedings quickly and accurately.

Regulations regarding the authority to declare "state financial losses" are still widely debated by legal experts as to whether this authority is only given to the BPK as the only financial audit institution based on the constitution. However, on the other hand, the presence of the PTPK Law does not regulate this. If people trace the body of the PTPK Law, there are no regulations regarding the definition of State financial losses and which institutions have the authority to calculate and declare State financial losses. Regarding the phrase State financial loss, after searching, the authors found the phrase State financial loss in the explanation of the articles of the PTPK Law, namely in the explanation of Article 32 paragraph (1) of the PTPK Law, "losses whose amount can be calculated based on the findings of the competent authority or appointed public accountant". From the explanation of this article, it seems that the PTPK Law at the time of its formation did not refer to the provisions of Article 23E paragraph (1) of the 1945 Republic of Indonesia Constitution and the BPK Law, so it is stated in its explanation that state financial losses are the findings of the authorized agency or an appointed public accountant. The implication is that law enforcement officials interpret that the authorized agency apart from the BPK also includes APIP (BPKP and Inspectorate) and can be carried out by public accountants (Illahi &

Alia, 2017). This condition has the potential to give rise to juridical problems (legal problems). This juridical issue concerns the "Conflict of Norms" between the PTPK Law explaining Article 32 Paragraph (1) and Article 23 E of the Third Amendment to the 1945 Republic of Indonesia Constitution and the BPK Law.

Theoretically, there must be synchronization and harmonization between one Legislative Regulation and another, be it vertical synchronization or horizontal harmonization (Zainuddin, 2013). A vertical Legislative Regulation may not conflict with other Legislative Regulations which in the hierarchy of Legislative Regulations have a lower position. Likewise, horizontally one regulation may not conflict with other Legislative Regulations which in the hierarchy of Legislative Regulations have an equal position. On the contrary, things regulated in a Legislative Regulation must show relevance or relationship with one another. (Yusnizar, Harun and Azhari, 2021)

Hierarchically, the position of the 1945 Republic of Indonesia Constitution is higher than the Law (Muchsin, 2006). The explanation of Article 32 Paragraph (1) of the PTPK Law is vertically contrary to the Legislation which has a higher position, namely Article 23 E paragraph (1) of the 1945 Republic of Indonesia Constitution, which reads:

"To examine the management and responsibility of state finances, a free and independent Financial Audit Agency was established."

In addition, the explanation of Article 32 paragraph (1) of the PTPK Law also horizontally conflicts with the BPK Law. According to Article 1 point (1) of the BPK Law:

"The BPK is a state institution whose task is to examine the management and responsibility of state finances as intended in the 1945 Constitution of the Republic of Indonesia".

Article 10 paragraph (1) of the BPK Law, states:

"The BPK has the authority to assess and/or determine the number of state losses resulting from acts that violate the law, either intentionally or negligently, committed by treasurers, officials, BUMN/BUMD managers, and other institutions or bodies that carry out state financial management."

This conflict of norms or antinomies (Ibrahim, 2007) reflects the lack of relevance among the regulations that apply to institutions authorized to declare state financial losses in criminal acts of corruption. Responding to this conflict of norms, the MK issued an MK Decision in 2012 and the Supreme Court (hereinafter referred to as the Supreme Court) issued a Supreme Court Letter (hereinafter referred to as SEMA) in 2016 concerning the polemic regarding the basis for determining state losses. and the process of determining state losses in criminal acts of corruption. MK Decision Number 31/PUU-X/2012 dated 23 October 2012 was due to the judicial review of Article 6 letter a, of the Corruption Eradication Committee Law on the 1945 Constitution of the Republic of Indonesia which was proposed by Eddie Widiono Suwondho through his lawyer. In its decision, the Constitutional Court argued:

"To prove a criminal act of corruption, the KPK can not only coordinate with the BPK and BPKP, but can also coordinate with other agencies, even KPK can prove it outside of the findings of the BPKP and BPK, for example by inviting experts or by requesting materials from the inspector general or a body that has the same function as that. In fact, from other parties (including companies), that can show material truth in calculating state financial losses and/or data can prove the matter at hand."

The MK decision Number 31/PUU-X/2012 is the basis for reference for expert information provided by the public prosecutor in trials of cases of alleged criminal acts of corruption. The MK decision is also used as a legal basis for law enforcement officials other than the KPK (Prosecutor's Office and Police) to calculate state losses with or without assistance from the BPK, even the KPK can calculate the losses independently. In this case, there was widespread legal interpretation by the Prosecutor's Office and the Police regarding MK Decision Number 31/PUU-X/2012 which actually provided legal interpretation only for the Corruption Eradication Commission concerning its duties. and the authority attached to it, namely inter-agency coordination in efforts to eradicate criminal acts of corruption. So, this legal interpretation does not apply to other law enforcement

officials outside the KPK and is also not aimed specifically at calculating state losses. This condition gives rise to a juridical contradiction between the broad interpretation of the Constitutional Court Decision Number 31/PUU-X/2012 and Article 10 paragraph (1) of the BPK Law.

In the context of legal certainty, the BPK is the only state institution that is given the authority to declare state financial losses in criminal acts of corruption, namely Article 23 E paragraph (1) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia in conjunction with Article 1 number (1), Article 6 paragraph (1), and Article 10 paragraph (1) of the BPK Law actually has legal certainty. It becomes a problem when the practice of investigating criminal acts of corruption in Article 2 paragraph (1) and Article 3 of the PTPK requires the element of real loss based on the calculations of the authorized institution, there are still investigators who use LHP not from the BPK. The reason is the implication of the explanation of Article 32 paragraph (1) of the PTPK Law providing an interpretation for Investigators that the calculation of state financial losses can be carried out by several agencies such as the BPK, APIP (BPKP and Inspectorate), Public Accountants and some investigators calculate it themselves. In practice, the issue of institutions having the authority to carry out investigative audits has given rise to legal uncertainty when the body of the PTPK Law does not regulate such matters.

***Contante Justitie* System and Speedy Trial in Building the Effectiveness of Corruption Crime Action**

One of the objectives of an investigative audit is to carry out calculations and state whether or not there are state financial losses at the final conclusion of the audit results so that it can reveal the extent of state financial losses caused by unlawful acts. The results of the audit are used as information that can direct investigators in searching for legal evidence. Investigators can develop the information contained in the Investigative Results Report (Fernaldi & Ratnawati, 2024).

The questions are whether it can be used as "legal evidence" constitutionally, and who or which agency has the authority to calculate the certainty of the value of state financial losses and conclude in the form of stating that there has been a state financial loss." The objective of a forensic audit can be achieved if the audit results are issued by an authorized institution. Constitutionally, this is the authority of the BPK, but in practice, investigators still use the results of examinations from institutions outside the BPK, which has implications for issues regarding the legality of government actions carried out by investigative officials in investigating criminal acts of corruption in the regions.

The guarantee of legal protection in Administrative Law is related to general principles. One of the general principles adopted is the principle of legality in the implementation of Government (*Wetmatigheid van bestuur*: questions of authority, procedure, and substance) (Beljaars, 1995). The meaning of this principle is that every government action carried out by Government Agencies and/or officials must be based on Legislative Regulations (Tedi Sudrajat & Endra Wijaya, 2021). This means that, according to the law, investigators in the process of investigating criminal acts of corruption do not use the results of calculations and determination of state losses carried out by the BPK as a State Institution that has attributive authority, but instead often use the results of examinations from other institutions.

The use of the results of investigative examinations from other institutions as a basis for conducting investigations into criminal acts of corruption is due to the need for investigators to fulfill the trial speed principle in the criminal justice process. This means that waiting for the audit results from the BPK takes quite a long time while the legal process must continue. Alternatively, investigators ask for assistance from the BPKP, Inspectorate, and Public Accountants to carry out an investigative examination so that the results of the examination can be issued quickly and can be used as a basis for determining a suspect against someone suspected of committing a criminal act of corruption that is detrimental to state finances. However, what the law enforcement officers did was unconstitutional and had no legal certainty. The actions of law enforcement officials are unconstitutional because the authority to calculate and declare state financial losses is the attributive authority of the BPK as the free and independent Supreme Audit Institution (SAI) in Indonesia which has been stated in the 1945 Republic of Indonesia Constitution and the BPK Law. Apart from that, when examined

from the aspect of authority between the BPK and APIP, there are differences, namely that the BPK is an external audit body while the APIP is the government's internal supervisory apparatus.

To fulfill the principle of trial speed in the criminal justice process in cases of corruption involving state financial losses, what is needed is how the BPK is regulated in the future so that it can fulfill the principle of trial speed, namely speeding up the investigative examination process which has been complained about and hampering the process of investigating corruption cases. Therefore, there is a legal vacuum in its implementation, demanding that a legal breakthrough be needed so that the BPK can quickly carry out calculations and state in the conclusion of its LHP that there has been a financial loss to the State, especially in terms of law enforcement for criminal acts of corruption in the regions. Through this legal breakthrough, there are no longer any investigators who use the LHP of investigative audits from APIP (BPKP and Inspectorate) and Public Accountants and calculate the state's financial losses themselves to determine a person's suspect status.

This legal breakthrough was carried out by delegating authority (mandate) from the Central BPK to the Representative BPK auditors in the regions so that the Representative BPK has independent investigative audit authority and can help speed up the investigative LHP process that investigators need in dealing with criminal acts of corruption in the region. So, in this idea, a legal constructivism is formed to realize the principle of effective enforcement of criminal law on corruption with the principle of *Contante Justitie*. This principle can also fulfill the principles of a legal system with a constructivist nuance, where the structure is in line with the existing regulatory hierarchy and is not inconsistent. Then, in substance, it can speed up the prosecution of criminal acts of corruption which are of great concern in Indonesia, and in terms of legal culture, law enforcement should be enforced based on laws that have been explored, and made from the values contained in the society itself.

CONCLUSION

In the future, the BPK should be arranged to fulfill the principle of *Contante Justitie*, namely speeding up the investigative examination process which has been complained about as hampering the process of investigating corruption cases, and calculating the state's own financial losses to determine a person's suspect status. This legal breakthrough is carried out by delegating authority (mandate) from the BPK to the Representative BPK auditors in the regions so that the Representative BPK has independent investigative audit authority and can help speed up the investigative LHP process that investigators need in dealing with criminal acts of corruption in the region so that it fulfills the concept of legal system constructivism. This concept can make it easier for investigators to process quickly and precisely to eradicate criminal acts of corruption in Indonesia.

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