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The Importance of Prosecutorial Auditors in the Calculation of State Financial Losses

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ABSTRACT
The fight against corruption must consider state losses as a form of violation of broad social and economic rights. The existence of state losses or state economies is the main element of the crime of corruption. The urgency of the Procurator's Office auditor in the calculation of the state financial losses, the legal status of the results of the Procurator's Office auditor's examination of the indications of the state financial losses in connection with the system of evidence in the criminal procedure, and the legal implications of the calculation of the state financial losses by the Procurator's Office auditor are the objectives of this research. The method used in this research is normative legal research with several approaches, including the statutory approach, conceptual approach, and case approach. The results showed that the legal force of the results of the audit of the Prosecutor's Office auditor on the evidence of state financial losses related to the evidence system in criminal procedure law can make a significant contribution to the law enforcement process while still being guided by the applicable legal procedures to ensure justice and legal validity. And the calculation of state financial losses by the Prosecutor's Office auditor has major implications for the law enforcement process of criminal acts that harm state finances.
Keywords: *Prosecutorial Auditors; Calculation of Stante Financial Loses; Normative legal method*
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A. Introduction

Law enforcement activities follow the tenets of the rule of law, which include the existence of the rule of law, the idea of equality before the law, and the protection of human rights by laws and court rulings. This is because the state is founded on the rule of law (*rechtstaat*) and not just on brute force (*machtsstaat*). Within the framework of the welfare state's precepts, the state is required to coordinate efforts to achieve national objectives and promote general welfare for the populace with law enforcement activities grounded in the principles of justice. Such reasoning dictates that, in order to effectively address crimes with economic motivations, the state must receive the money and tools for criminal offenses in order to benefit the community.

Corruption has become more prevalent in Indonesia and has affected practically every aspect of daily life. The state's losses as a result of social and economic rights violations must be included in the fight against corruption. The fundamental goal of shielding the state from financial losses has inevitably led to a pursuit, through criminal or civil channels, of the fastest possible recovery of any state damages resulting from corrupt activities. The Anti-Corruption Law's articles have meaning and content because of this fundamental principle. The primary component of corruption is the existence of losses for the government or the economy[1].

In the context of Indonesian public and private officials, corruption is not a recent criminal violation. The government has made an effort to stop this practice by creating unique institutions and authorities to handle these cases, as well as special legislation on charges including corruption. These actions are being taken as a practical form of government to fight corruption, which is a serious threat to the state economy and finances and impedes national growth. Overcoming corruption is necessary to achieve a just and successful society founded on Pancasila and the 1945 Constitution.

The corruption laws, which are outside the Criminal Code (henceforth referred to as KUHP) (*Lex Specialis Derogate Legi Generali*), are created by the government and designate corruption as a particular criminal offense. This way, laws that can adapt to society's changes and stay up with the times are used to combat corruption. This demonstrates the government's resolve to combat corruption that has hurt, is harming, and will continue to undermine the state's economy and growth. These regulations cover everything from Military Regulation No. PRT/PM/06/1957 issued during the military's rule to Law No. 20 of 2001, which amends Law No. 31 of 1999 on the eradication of corruption, and Law No. 30 of 2002, which establishes the Corruption Eradication

[1] Agung Tri Wahyudianto, *Kewenangan Kejaksaan Dalam Penetapan Kerugian Negara Dan Perhitungan Keuangan Negara Dalam Perkara Tindak Pidana Korupsi*, Badamai Law Journal, Vol. 3, Issues No. 2, Program Magister Ilmu Hukum Universitas Lambung Mangkurat, September 2018, p.246.

Commission, which is the most recent legislation[2].

Corruption must be eradicated in the process of handling corruption offenses. This is done in accordance with the procedures specified in the criminal procedure law, both those stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter abbreviated as KUHAP) and those stipulated in the law specifically concerning corruption. In some cases, these laws deviate from the provisions of the KUHAP.

The Public Prosecutor's Office is authorized to investigate and prosecute criminal offenses related to corruption. Article 1, paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2021 Number 298 and Supplement to the State Gazette of the Republic of Indonesia Number 6755) (hereinafter abbreviated as Law No. 11) The Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government agency whose functions are related to judicial power. It exercises state power in the field of prosecution and other authorities based on the law. The prosecutor's office is explicitly granted authority to eradicate corruption in Article 30, paragraph (1), letter d of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2004 Number 67 and Supplement to the State Gazette of the Republic of Indonesia Number 4401) (hereinafter abbreviated as Law No. 16/2004). This law states that "in the criminal field, the prosecutor's office has the duty and authority to conduct investigations into certain criminal offenses based on the law."

This provision is based on the authority set out in Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001. The results of ICW monitoring regarding the imposition of articles used by law enforcement institutions to ensnare corruption perpetrators are clear. ICW relies on the authority of Law Number 31 of 1999 concerning the Eradication of Corruption (State Gazette of the Republic of Indonesia of 1999 Number 140 and Supplement to the State Gazette of the Republic of Indonesia Number 3874) (hereinafter abbreviated as Law No. 31/1999). Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of the Crime of Corruption (hereinafter abbreviated as Law No. 31/1999) Jo[3].

Table 1. Mapping of Corruption Cases by Type of Corruption in 2019-2023 Based on Law No. 31/1999

KN Value (Rp)	Gratification (Rp)	Illegal levy value (Rp)	TPPU (Rp)
28.412.786.978.089,-	Rp.422.276.648.24	10.156.703.000	256.761.818.137

The data clearly shows that, according to Indonesia Corruption Watch (ICW), there has been a significant increase in both the number of cases (791) and the number of suspects (1,695). In Indonesia, the existence of losses to state finances or the state economy is an element of the offense of corruption as stipulated in Articles 2 and 3 of Law No. 31/1999 in conjunction with Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Eradication (State Gazette of the Republic of Indonesia of 2001 Number 134 and Supplement to the State Gazette of the Republic of Indonesia Number 4150) (hereinafter abbreviated as Law No. 20/2021), which states that

> "Every person who unlawfully commits an act of enriching himself or herself or another person or corporation that may 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. 200,000,000,000 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).".

State losses can occur due to violations of the law or negligence by state officials or non-treasury civil servants in the context of exercising administrative authority or by treasurers in the context of exercising treasury authority[4]. In the case of criminal acts of corruption, there are four elements that must be proven: acts against the law, abuse of authority, opportunity, or facilities; enriching oneself, others, or corporations; and harming the state's finances or the state's economy.

In handling corruption cases that violate Articles 2 and 3 of Law No. 31/1999 and Law No. 20/2001, it is crucial to calculate and prove the existence of state financial losses. This is essential for holding the perpetrators

[2] Evi Hartanti, *Tindak Pidana Korupsi Edisi Kedua*, Sinar Grafika, Jakarta, 2007, p. 22.

[3] ICW, 2024, *Tren Korupsi di Indonesia Tahun 2023*, URL : https://nasional.okezone.com/read/2024/05/20/337/3010611/icw-tren-korupsi-di-indonesia-tahun-2023-meningkat-potensi-kerugian-capai-rp28-4-triliun

[4]Karel Antonius Paeh, *Pengembalian Kerugian Keuangan Negara Berdasarkan Rekomendasi Badan Pemeriksa Keuangan (BPK) Hubungan Dengan Unsur Kerugian Negara Dalam Tindak Pidana Korupsi*, Jurnal Hukum Universitas Tadulako, Palu, 2017, p. 50.

of corruption accountable and returning the losses caused by their actions to the state treasury. The calculation of state financial losses is the basis for the prosecutor's indictment, which determines the amount of the state's financial losses due to the defendant's actions in a corruption case. Similarly, the judge must determine the amount of state losses that must be returned by the defendant.

Which institution is authorized to calculate state financial losses related to corruption crimes? The Corruption Eradication Law does not explicitly regulate this, but it can be found in the explanation of Article 32, paragraph 1, of Law No. 31/1999, which states that

> "What is meant by there has actually been a loss of state finances is a loss of state finances that can be calculated based on the findings of the authorized agency or appointed public accountant."

This is to clarify the formulation in Article 32, paragraph (1) of Law No. 31/1999, which states that "there has been a real loss of state finances[5]. It is clear that there are no rules that prohibit or allow the prosecutor's auditor to calculate the state's own losses. However, in accordance with the provisions of Article 30 of Law No. 16 of 2004 concerning the Prosecutor's Office, one of the tasks of the Prosecutor's Office is to investigate corruption. This article makes the Prosecutor's Office, through its auditors, calculate state finances in order to complete or complete the handling of corruption cases.

Then the explanation of Article 32, paragraph 1, of Law. No. 31 of 1999 states: What is meant by "there has been a clear loss to state finances" is a loss that can be calculated based on the findings of the authorized agency or appointed public accountant. After the Constitutional Court's decision no. 28/PUU-XXI/2023 was read aloud on Tuesday, January 16, 2024, it was decided to reject all requests for judicial review of the prosecutor's office's authority to conduct investigations, particularly in cases involving corruption, where it is known that the prosecutor's office's authority is required to conduct investigations in the interest of law enforcement. In particular, the prosecutor's office's authority is granted in cases involving corruption crimes because the legislator views corruption as a distinct crime, meaning that the prosecution of corruption crimes cannot be handled by one authority alone.

In reality, though, the AGO constantly works in tandem with other organizations to calculate state losses, including the Independent Auditors, the Financial and Development Supervisory Agency (abbreviated BPKP), the Regional Inspectorate, and the Supreme Audit Agency (abbreviated BPK). Conversely, the prosecutor's office has the expertise of auditors who are chosen and approved through recruiting that the prosecutor's office opens, in addition to human resources in the form of prosecutors. Therefore, to make the prosecutor's office's handling of corruption cases more efficient and effective in terms of budget and coordination, it can employ its own internal auditor to quantify state financial losses. Based on the author's view, the urgency of the prosecutor's auditor in calculating state financial losses, the legal position of the results of the prosecutor's auditor's audit of indications of state financial losses related to the evidentiary system in criminal procedure law, and the legal implications in calculating state financial losses by the prosecutor's auditor have never been published before.

B. Research Methods

This study employs a number of methodologies, including the statutory approach, conceptual approach, and case approach, to conduct normative legal research. (A Methodical Approach). In order to address pertinent legal issues, normative legal study looks at positive legal rules, legal principles, legal policies, and legal doctrines. Legal research, in the words of Peter Mahmud Marzuki, is the act of locating legal doctrines, norms, and principles to address pertinent legal issues[6]. Consequently, it is clarified that the goal of conducting legal research is to provide novel theories, arguments, or conceptions that can be useful in resolving the issue at hand and that the conclusions drawn from it can be correct, appropriate, inappropriate, or incorrect. As a result, it is possible to say that the findings of the legal study are already valuable.

This kind of normative legal research is conducted in relation to this research issue to ascertain if the prosecutor's auditor can be involved in the computation of state losses. The legal method, on the other hand, is used to examine how one regulation relates to others as an integral whole, particularly when it comes to laws and rules pertaining to the prosecution of corruption offenses and, more precisely, the determination of state losses. Furthermore, a number of experts' analyses and explanations of legal literature—including books, scientific journals, research findings, and documents—are needed for the conceptual approach. In order to obtain legal arguments in order to respond to legal research inquiries, this conceptual approach is employed. Similarly, in the case approach (ace approach), where in the practice of calculating state losses, several related agencies are often involved, such as the Supreme Audit Institution (BPK), the Financial and Development Audit Institution (BPKP),

[5] Amir Ilyas Mispansyah, *Tindak Pidana Korupsi Dalam Doktrin dan Yurisprudensi*, Raja Grafindo Persada, Jakarta, 2016, p. 32.

[6] Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media, Jakarta, 2005, p 35.

and the Inspectorate in the Government.

Legal research recognizes techniques for collecting legal materials, namely document studies, interviews, observations, and those obtained through literature studies in personal libraries, postgraduate libraries, and through searching on the internet.

The legal material collection techniques used are document study techniques and interviews. The document study technique is to collect documents and data needed for research problems and then examine them intensely so that they can support and increase the trust and proof of an event. Document study is the first step for legal research, both from normative studies and empirical studies, because legal research departs from the provisions of normative premises. To support the writing of this research, the collection of legal materials is obtained through:

1. The collection of primary legal materials is carried out by collecting laws and regulations relating to the issues discussed.
2. The collection of secondary legal materials is carried out by means of library research, which aims to obtain legal materials sourced from books, draft laws, national and foreign journals, legal papers, or views of legal experts contained in the mass media and news on the internet related to the problems to be discussed in this study.

In addition, in the management of legal materials, in addition to conducting literature searches through existing libraries and literature and browsing the Internet, it is also supplemented by observations and interviews, i.e., legal materials collection techniques often used in qualitative empirical legal research. In addition, in the management of legal materials, in addition to conducting literature searches through existing libraries and literature and browsing the Internet, it is also supplemented by observations and interviews, i.e., legal materials collection techniques often used in qualitative empirical legal research.

The normative legal science research recognizes qualitative analysis models. Therefore, according to the type of research, the research results use qualitative data analysis. Qualitative normative juridical research is research that refers to legal norms contained in laws and court decisions as well as norms that live and develop in society.

The collected legal materials, both primary legal materials and secondary data, are then processed and analyzed using qualitative descriptive analysis techniques, namely by describing all data according to the quality and nature of legal symptoms and events by linking primary data with secondary data. After that, the data are presented in a descriptive analysis by describing them systematically and comprehensively in order to answer the problem.

C. Results And Discussion

Constitutionally, the institution that determines state losses is the authority of the Supreme Audit Institution (hereinafter referred to as the BPK). This is regulated in Article 23 E to Article 23 G of the 1945 Constitution (hereinafter referred to as UUD45) and continued by Law No. 15 of 2006 on the Supreme Audit Institution (hereinafter referred to as the BPK Law). Article 10(1) and (2) of the BPK Law explicitly state the authority of the BPK to assess and determine the amount of losses incurred by the state. The authority possessed by the BPK in the performance of its auditing duties is attributive authority, which means that it has authority derived from the 1945 Constitution and the BPK Law, and the BPK is an independent institution that is not included in the branch of government[7].

In addition to the BPK, there is another institution that participates in the audit of state losses due to corruption crimes, namely the Financial and Development Supervisory Agency (BPKP), which is based on Government Regulation No. 60 of 2008 concerning the Government Internal Control Systems. The BPKP has the duty of being an internal supervisor responsible for state finances, and the regulation of its authority is regulated in Presidential Regulation No. 192 of 2014 on the Financial and Development Supervisory Agency (hereinafter referred to as Perpres BPKP). In practice, the institutions that are often involved by the prosecution in the calculation of state losses are the Supreme Audit Institution (BPK) and the Financial and Development Supervisory Agency (BPKP). Outside of these two institutions, the calculation of state losses may also be carried out, for example, by public accountants. Even in some cases, the Public Prosecutor's Office and the Court of Cassation have made their own calculations of the state's financial losses.

There are at least two laws that have been established for the movement to eradicate corruption, namely Law No. 31 of 1999 and subsequently amended Law No. 20 of 2001 and Law No. 19 of 2019. Looking at the laws that regulate the crime of corruption, there have been many previous changes. In addition to the

[7] Pradnyana, I. M. F., & Parsa, I. W. (2021). Kewenangan BPK dan BPKP dalam Menentukan Kerugian Keuangan Negara pada Perkara Korupsi. Jurnal Magister Hukum Udayana (Udayana Master Law Journal), 10(2), 344. https://doi.org/10.24843/JMHU.2021.v10.i02.p.11.

establishment of new institutions for the eradication of corruption, this law also applies a reverse proof system, or reversal of the burden of proof. The reverse burden of proof applied in Indonesia is limited or balanced.

Regulations regarding the element of state financial loss are contained in Law No. 31 of 199 Jo Law No 20 of 2001. Article 32 paragraph (1) states that "In the event that the investigator finds and is of the opinion that one or more elements of a corruption crime do not contain sufficient evidence, while there has clearly been a state financial loss, the investigator shall immediately submit the case file resulting from the investigation to the State Attorney for a civil lawsuit or submit it to the aggrieved agency to file a lawsuit." Paragraph (2) states that "a verdict of acquittal in a corruption crime case does not waive the right to sue for damages to the state's finances.

The above explanation, in this case, is associated with the theory of proof. In this problem, the element of state financial loss that must be proven in the crime of corruption is the occurrence of the crime of corruption, not only the occurrence of the crime, because it involves state money. And the crime of corruption certainly imposes sanctions on the defendant based on a system in accordance with the theory of proof, namely based on the theory of law in the negative (*negatief wettellijk bewijis theotrie*),

BPK.RI Decree Number 17/K/I-XII.2/12/2008 has basically explained that the implementation of the calculation of state financial losses needs to be carried out with an investigative examination approach, namely an examination with a specific purpose carried out with a specific purpose outside of financial audits and performance audits, namely to provide conclusions on an examined matter, which is reactive and is an examination of the continuation of the previous examination, a more specialized and in-depth examination. The goal to be pursued here is to disclose irregularities.

The method of calculating government financial losses, according to Tuanakotta (2009), can be divided into six concepts consisting of: 1) total loss (actual loss); 2) total loss with adjustment; 3) net loss; 4) fair price; 5) opportunity cost; 6) opportunity cost method; if there is an opportunity or chance to get the best, but instead this opportunity is sacrificed, then this sacrifice is a loss; and 6) interest (*interst*).

Normally, the agencies authorized to calculate state financial losses are the Supreme Audit Agency (BPK) and the Finance and Development Audit Agency (BPKP). In addition to these two agencies, law enforcement agencies often also involve the prosecutor's office and other auditors in calculating state financial losses.

BPK's authority in calculating state losses is regulated in Article 10 of Law No. 15 of 2006 concerning the Supreme Audit Agency (BPK Law), which states that "BPK assesses and/or determines the amount of state losses caused by unlawful acts either intentionally or negligently committed by treasurers, managers of state-owned enterprises or region-owned enterprises, or other institutions or bodies that carry out state financial management." Furthermore, Article 6 paragraph (1) also explains the duties of BPK, namely, "BPK is tasked with examining the management and responsibility of state finances carried out by the Central Government, local governments, other state institutions, Bank Indonesia, BUMN, public service agencies, BUMD, institutions, and other bodies that manage state finances".

The issuance of TAP MPR VI/ MPR/ 2002 further strengthened the position of the BPK. The government explicitly reaffirmed its status as the sole forum for independent financial auditing without interference. BPK is an organization that aims to "audit the management and accountability of government finances". This is undoubtedly a vital function in the state administration system. Therefore, only an independent organization has the right to audit the management of the state. The establishment of an independent state institution means that it is expected that the BPK cannot be interfered with by any power in the exercise of its authority. As a result, it is hoped that the results of the audit will be truly objective and can be used as a benchmark for good public administration[8].

The issuance of SEMA No. 4 of 2016 makes BPK institutions able to get or ask for help from other agencies in accordance with the contents of SEMA. BPKP is one of the institutions that can calculate state financial losses in accordance with the provisions of Article 2 of Presidential Regulation of the Republic of Indonesia No. 192 of 2014 concerning the Financial and Development Supervisory Agency (Perpres BPKP), "The Financial and Development Supervisory Agency (BPKP) has the task of organizing government affairs in the field of state and regional financial supervision and national development."

The BPKP is not the only institution or organ of the state with the same authority as the BPK and the BPKP, as explained in SEMA No. 4 of 2016 on the Implementation of the Formulation of the Results of the Plenary Session of the Supreme Court Chamber in 2016 as Guidelines for the Implementation of the Court's Duties. SEMA No. 4 of 2016 states that the Government Internal Supervisory Apparatus (APIP) and the BPKP, as well as the Inspectorate/Regional Work Unit, are still permitted to audit or conduct examinations of the management of state finances. Internal supervisory units in other government legal entities in accordance with the law are among the institutions covered by the APIP. These include the Inspectorate, which is made up of the

[8] Setiawan, Adam. "Eksistensi Lembaga Pengawasan Pengelolaan Keuangan Negara ." Jurnal Hukum & Pembangunan 49, no. 2 (2019): 265–278

Inspectorate (General Inspectorate of the Ministry, Inspectorate/Internal Supervisory Unit at the Ministry of State, Main Inspectorate/Inspectorate of Non-Departmental Government Institutions, Inspectorate/Internal Supervisory Unit at the Secretariat of State Higher Institutions and State Institutions, Provincial, District, and City Inspectorates).

The issuance of the SEMA states that not only the BPK can calculate state losses. In 2007, a Memorandum of Understanding between the Attorney General's Office of the Republic of Indonesia, the Indonesian National Police, and BPKP No. 1093/K/D6/2007 was also signed. KEP-1093/K/D6/2007 on Cooperation in Handling Cases of Irregularities in the Management of State Finances Indicating Corruption, including Non-Budgetary Funds (hereinafter referred to as the "Memorandum of Understanding between the Attorney General's Office of the Republic of Indonesia, the Indonesian National Police, and the BPKP"), Article 5, Paragraph 4, stated:

> "In any investigation and/or inquiry conducted by both the Attorney General's Office and the National Police, the BPKP shall assign professional auditors to conduct investigative audits or calculations of state losses in accordance with the request."

In addition, Article 6(3) of the Memorandum of Understanding between the Attorney General's Office of the Republic of Indonesia, the Indonesian National Police, and the BPKP states:

> "Investigation agencies determine violations of the law. Meanwhile, the BPKP determines whether there are indications of state losses or not, so that the status of the case can be determined whether it is a corruption crime or not."

The Public Prosecutor's Office is regulated by Law No. 16 of 2004, which is the basis for the regulations of the Public Prosecutor's Office, which in SEMA No. 4 of 2016 and the Memorandum of Understanding of 2007 gave the Public Prosecutor's Office the authority to calculate the financial loss to the state. The calculation of the financial loss to the state in corruption cases already at the investigation stage usually requires the assistance of the BPK and the BPKP, which is always based on a request from the investigator. The calculation is carried out when expert testimony is obtained to supplement or give an opinion prior to the trial. In principle, there are no rules that prohibit or allow the Public Prosecutor to calculate the loss to the state himself, but according to Article 30 of Law No. 16 of 2004, one of the duties of the Public Prosecutor's Office is to investigate corruption crimes (Explanation of Law No. 16 of 2004).

SEMA No. 4 of 2016 number 6 states that:

> "The agency authorized to declare whether or not there is a state financial loss is the Supreme Audit Agency, which has constitutional authority, while other agencies such as the Financial and Development Supervisory Agency, Inspectorate, and Regional Apparatus Work Unit are still authorized to conduct examinations and audits of state financial management but are not authorized to declare the existence of a state financial loss. In certain cases, judges, based on the facts of the trial, can assess the existence of state losses and the amount of state losses."

The issuance of SEMA No. 4 Year 2016 provides that the internal regulation of the Supreme Court applies to all judges under the Supreme Court. SEMA in Criminal Chamber Number 6 states:

> "In certain cases, the judge, based on the facts of the trial, may assess the existence of state losses and the amount of state losses.".

This statement proves that judges are authorized to independently assess state losses not related to the results of the trial audit. Judges are allowed to assess themselves based on the facts of the trial, even though the value of state losses determined by the judge is different from the results of the agency's calculation. This is in line with Article 10 of Law No. 48/2009 on Judicial Power, which states that judges may not reject cases[9].

Assessments by judges based on their knowledge are not arbitrary but must contain sufficient evidence to prove that the value of state losses is in accordance with the facts. Based on SEMA No. 4 of 2016, judges can assess and determine the state's losses based on the facts of the trial, namely the evidence according to Article 184 of KUHAP No. 8 of 1981. Assessing and determining state losses at trial does not have to be a difference in two or more State Financial Loss Audit Reports (LHPKKN) brought by the authorized agency. If there is only one examination report or one report by the prosecutor's office, the judge can still assess and determine the amount of state losses based on the facts of the trial.

The Prosecutor's Office of the Republic of Indonesia is one of the bodies whose functions are related to judicial power. This is in accordance with Article 24 of the 1945 Constitution and is a government agency that exercises state power in the field of prosecution and other powers carried out independently and organized by the Attorney General's Office, the High Prosecutor's Office, and the District Attorney's Office. The implementation

[9] Tarigan, Edy Suranta, et al. "Eksistensi Kewenangan Jaksa dalam Menentukan Unsur Kerugian Keuangan Negara Sebagai Pembuktian pada Perkara Tindak Pidana Korupsi." Locus Journal of Academic Literature Review (2023): 183-192.

of the Prosecutor's Office function in calculating state losses in corruption crimes, namely the results of investigations. In an interview, a public prosecutor stated that in practice, the determination of state losses is not required to be carried out by an auditor but can be done by the prosecutor himself as long as the loss is clear, real, and not complicated with easy proof.

For the determination of state losses, it is necessary to first look at the case. If, in practice, the corruption case is simple, then sometimes the state losses can be calculated and determined directly by the prosecutor, but if the case is complex, then the prosecutor can coordinate with BPK, BPKP, the Inspectorate, or the Work Unit. In terms of the Supreme Audit Agency (BPK), being able to examine state finances is regulated in Article 23 paragraph (5) of the 1945 Constitution, with the mechanism of work of the Supreme Audit Agency (BPK) carried out with a mandatory nature.

The existence of the Prosecutor's Auditor in calculating state financial losses has an important juridical and sociological basis. This explanation relates to the function, authority, and role of the Prosecutor's Auditor in overseeing and evaluating the management of state finances. In addition to the juridical basis above, from a sociological perspective, the Prosecutor's Office auditor plays an important role in building public trust in the management of state finances. By conducting audits in a transparent and accountable manner, they help ensure that public funds are used efficiently and in accordance with the objectives desired by society.

The existence of the Prosecutor's Auditor encourages public participation in the supervision of state finances. The public can monitor audit results to ensure accountability and provide input related to the management of state finances. Prosecutorial auditors can assist in detecting and preventing corruption and abuse of power in the management of state finances. By providing clear and accurate reports, they help ensure compliance with the principles of ethics and integrity. Through transparent audits, prosecutorial auditors invite the public to get involved in corruption prevention by providing the necessary information and motivating the public to participate in maintaining the integrity of the state's financial management.

By combining juridical and sociological aspects, the existence of prosecutorial auditors in the calculation of state financial losses has a significant impact on maintaining compliance, accountability, and public trust in state financial management.

1. Legal Power of Audit Results by Prosecutor's Auditors in Calculating State Financial Losses.

a. Legal Arrangements on the Existence of Prosecution Auditors

In Indonesia, the institution responsible for the audit of government finances is the Supreme Audit Agency (BPK). BPK has a role as an independent external audit institution, and its duties include examining the finances of central and local governments, state-owned enterprises (SOEs), and other institutions that use the state budget. Here are some of the things that underlie the existence of prosecutor auditors in Indonesia:

1) Constitution of the Republic of Indonesia Year 1945
2) Law No. 15/2004 on Audit of State Financial Management and Responsibility
3) Law Number 11 of 2021 Concerning the Amendment to Law Number 16 of 2O04 Concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Office Law)
4) Presidential Regulation No. 96/2016 on the Financial Management of Investigating and Public Prosecuting Agencies
5) Regulation of the Attorney General of the Republic of Indonesia Number PER-008/A/JA/07/2017 concerning Guidelines for the Implementation of Financial Control and Supervision at the Attorney General's Office of the Republic of Indonesia.

With their authority, the Prosecution Auditors play an important role in ensuring the accountability, transparency, and effectiveness of financial management within the Office of the Attorney General of the Republic of Indonesia in accordance with the provisions set forth in the Regulation of the Attorney General.

b. Competence and Authority of Prosecutorial Auditors in Calculating State Financial Losses

Competence is the ability to perform a job or task based on knowledge, skills, and the work attitudes required by the job. Thus, competence has substance: knowledge, skills, and professional work attitudes in the field of work. Competence is a person's ability to perform at a satisfactory level in the workplace, including their ability to transfer and apply these skills and knowledge to new situations and increase the agreed benefits.

Competencies also identify the characteristics of knowledge and skills that individuals possess or need to perform their duties and responsibilities effectively and to raise the standard of professional quality in their work.

There are five types of competency traits, as follows[10]: a). Motive is something people consistently think or want that causes action. Motives drive, direct, and select behavior toward specific actions or goals. b). Traits are physical characteristics and consistent responses to situations or information. Reaction speed and acuity are physical characteristics of a fighter pilot's competence. c). Self-concept is a person's attitudes, values, or self-image. Self-confidence is a person's belief that they can be effective in almost any situation and is part of a

[10] Moehariono, *Pengukuran Kinerja Berbasis Kompetensi*, Rajawali Pers, Jakarta, 2012, p. 5

person's self-concept. d). Knowledge is the information that people have in a particular area. Knowledge is a complex skill. Scores on knowledge tests often fail to predict job performance because they do not measure knowledge and skills as they are actually used on the job. e). Skills are the ability to perform specific physical or mental tasks. Mental or cognitive skills include analytical and conceptual thinking.

The word authority comes from the root word authority, which is defined as authority, the right, or the power to do something. Authority is formal power, power granted by law or from administrative executive power. Juridically, the definition of authority is the ability given by legislation to cause legal consequences. Bevoegheid wet kan worden omscrevenals het geheel van bestuurechttelijke bevoegheden door publiekrechtelijke rechtssubjecten in het bestuurechttelijke rechtsverkeer that authority can be explained as the whole of the rules relating to the acquisition and use of government authority by public law subjects in public law[11].

Authority or power in the concept of constitutional law is described as "rechtsmacht" (legal power). There is a slight difference between authority (authority, gezag) and power in public law, which is what is referred to as formal power, power that comes from being granted by law or the legislature. Authority (competence, bevoegdheid) only concerns a certain underdeel (part) of authority. The concept of bevoegdheid in the Netherlands is used both in the field of public law; therefore, bevoegdheid does not have a legal character, whereas in Indonesia, the concept of authority is always interpreted as a public law concept because authority is always associated with the use of power. In accordance with the above opinion, authority is the power to perform all actions in the field of public law, while the power to perform actions in the field of private law is called rights.

The terms power, authority, and authority are often found in the literature of political science, public administration, and law. Power is often simply equated with authority, and authority is often confused with power, and vice versa. Power usually takes the form of a relationship in the sense that there is a party that rules and the other party that is ruled (the rule and the ruled). Based on the above understanding, there can be power that is not related to the law. Henc van Maarseven calls power that is not related to the law "blote match," while Max Weber calls power that is related to the law "rational or legal authority," i.e., authority based on a legal system, understood as a rule that has been recognized and obeyed by the community and even reinforced by the state.

Authority consists of at least three components: influence, legal basis, and legal conformity. The influence component means that the use of authority aims to control the behavior of legal subjects. The legal basis component means that authority must be based on a clear law, and the legal conformity component requires that authority have clear standards (for general authority) and specific standards (for specific types of authority). In legal terms, authority is the ability granted by laws and regulations to perform actions that have legal consequences[12]. Any use of authority must have a legal basis in positive law to prevent arbitrary action. The use of governmental authority is always within the limits set, at least by positive law. In relation to the concept of the rule of law, the use of authority is limited or always subject to written and unwritten law, which in turn for unwritten law in government law in Indonesia is called the general principles of good governance. This is in line with the explanation of Article 4 Letter (a) of Law of the Republic of Indonesia No. 37 of 2008 concerning the Ombudsman, which says that the state of law is a state that in all aspects of community life, nation, and state, including in the administration of government, must be based on law and general principles of good governance aimed at improving a prosperous, just, and responsible democratic life.

As noted above, authority in public law is related to power. Power has the same meaning as authority because the powers possessed by the executive, legislative, and judicial branches are formal powers. Power is an essential element of a state in the process of governance. Power is the ability of an individual or group to carry out its will in the face of other parties who oppose it[13].

Authority is what is called formal power—power that is derived from the power granted by the law or the legislature, from executive or administrative power. Authority is the power of a certain group of people or the power over a certain sphere of government or governmental affairs that is unanimous, while authority is only about a certain part of authority. Authority is the right to give orders and the power to demand compliance. Authority can also be defined as the power to make decisions, give orders, and delegate responsibilities to others.

c. The Legal Power of Audit Results of State Financial Losses by Prosecutor's Auditors

The crime of corruption that causes losses to state finances is one of the crimes that has the most severe punishment among other types of corruption. This is certainly in line with the function of state finances, which is

[11] rfan Fachruddin, *Pengawasan Peradilan Administrasi Terhadap Tindakan Pemerintah*, Alumni, Bandung, 2004, p 4.

[12] Indroharto, *Usaha Memahami Peradilan Tata Usaha Negara* , Pustaka Sinar Harapan, Jakarta, 2002, p. 68

[13] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum Edisi Revisi*, Kencana Pranadamedia Group, Jakarta, 2014, p.73.

to finance state activities whose purpose is to improve the welfare of the people. Besides that, one of the sources of state finances is the tax contributions of the people. In order to ensnare the perpetrators of corruption under the above-mentioned law, there must be an element of loss to the state finances or the state economy, which must be proved by the implementation of the calculation of the state losses by the authorized body. Although the Anti-Corruption Law, especially Articles 2 and 3, regulates the element of state financial loss as a corruption offense, this regulation does not explicitly mention which agency or party is authorized to determine the calculation of state losses. In the explanation of Article 32 of the Anti-Corruption Law, it is only stated that "state financial losses are losses that can be calculated based on the findings of the authorized agency or appointed public accountant".

Prosecutors, as officials authorized to act as public prosecutors and executors of court decisions, play a very important role. Given the very important role, a prosecutor is required to be able to work professionally in accordance with the applicable legal provisions[14]. In accordance with the attachment to the Decree of the Attorney General of the Republic of Indonesia Number Kep.074/J.A/1987, dated July 17, 1987, the definition of prosecutor is: "The word prosecutor comes from the verse *satya adhy wicaksana*, which is the *trapsila adhyaksa*, which is the foundation of the soul and the achievement of the ideals of every *adhyaksa* citizen, and has the following meaning and significance: Satya is loyalty that comes from a sense of honesty, both to God Almighty, to oneself, and to one's family and fellow human beings. Adhya, perfection in duty, is the main element of possessing a sense of responsibility to God Almighty, family, and fellow human beings. Wicaksana, wisdom in speech and conduct, especially in the exercise of power and authority.

According to Max Weber, authority is "a right that has been established in a social order to establish policies, determine decisions, recognize important issues, and resolve conflicts." For this main task, the public prosecutor is given duties and authority as stipulated in Article 13 of the Criminal Procedure Code, and Article 14 of the Criminal Procedure Code specifies the tasks that must be carried out by the public prosecutor. Meanwhile, Article 137 of the Criminal Procedure Code determines the authority of the public prosecutor.

Universally, the position and function of the Prosecutor's Office in various parts of the world are almost no different; it is part of the law enforcement function of a state. In Indonesia, the Prosecutor's Office of the Republic of Indonesia is one of the law enforcement institutions whose position is within the executive power (government), which functions to carry out the power of the state in the field of prosecution, as expressly stipulated in Article 2, paragraph 1, of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, in addition to carrying out other power functions granted by law. The function of the prosecutor's office in accordance with Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia includes preventive and repressive aspects in criminal matters, as well as the State Attorney in Civil Affairs and State Administration. Preventive aspects include increasing public legal awareness, securing law enforcement policies, securing the circulation of printed matter, monitoring the flow of beliefs, preventing the abuse and/or blasphemy of religion, legal research and development, and criminal statistics.

Among other forms of corruption, the crime of causing losses to state finances is one of the ones with the harshest punishment. This is undoubtedly consistent with the role of state finances, which is to support initiatives taken by the government to raise public welfare. In addition, the public's tax payments are one of the sources of state funding. Under the aforementioned statute, there must be a loss to the state economy or finances in order to apprehend those responsible for corruption. This loss must be demonstrated by the authorized body's implementation of the state loss calculation.

The functions of the Prosecutor's Office in accordance with Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia include preventive and repressive aspects in criminal matters, as well as state lawyers in civil matters and state administration. In accordance with Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Public prosecutors are given duties and authorities as stipulated in Article 13 of the Criminal Procedure Code, and in Article 14 of the Criminal Procedure Code, the duties that must be carried out by public prosecutors are determined. Meanwhile, Article 137 of the Criminal Procedure Code determines the authority of public prosecutors, namely: "The public prosecutor is authorized to prosecute anyone charged with a criminal offense within his jurisdiction by submitting the case to the court authorized to hear it." As has been explained, the authority of the prosecutor is to act as a public prosecutor and as an executor. While the investigator is in the hands of the police, as stipulated in Article 1 point I of the Criminal Procedure Code, which states, "Investigators are the State Police of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations" and are further regulated in Article 6 of the Criminal Procedure Code.

The increase in corruption cases today is inseparable from the dissatisfaction with the assets of officials or those who have power or authority, so the public prosecutor has to work harder to exercise his authority in the corruption trial process. One of the things that hinders the implementation of the calculation of the state's

[14] Yesmil Anwar dan Adang, *Sistem Peradilan Pidana*, Widya Padjajaran, Bandung, 2009, p. 196

financial losses is the calculation of the state's losses, which requires an audit by the BPK in the handling of corruption cases. The performance carried out to determine the calculation of losses is very slow, which takes months, and even the audit results can take up to 1 year, so this slows down the investigation process.

Therefore, it is essential to strengthen the competence of law enforcement personnel, particularly prosecutors who handle corruption cases, in order to enforce the calculation of state losses. This can be done in the following ways: a). Increasing the transparency and accountability of the law enforcement process through the improvement of law enforcement agencies' management systems with indicators to be met will make data collection simpler and more organized; b). enhancing and putting into practice policies for public complaint services that include information on employee conduct and attitudes and indicate that the public actively supports campaigns to combat corruption, particularly that which occurs in law enforcement agencies; c) Attending training sessions in asset tracing, legal audit, forensic accounting/forensic audit, and public relations within the framework of the legal system with indications of successful resolution of more complex corruption cases in order to grant the prosecutor the ability to compute state losses in the capacity of an auditor.

Audit of State Financial Losses by the Prosecutor's Office Auditor is a process carried out by the Prosecutor's Office to examine and evaluate state financial management carried out by government entities or institutions. The results of this audit have important legal force in order to uphold the rule of law and state financial accountability. If studied further, then according to the author, the legal force of the results of the audit of state financial losses by the Prosecutor's Office Auditor, namely: The Prosecutor's Auditor has the authority that can be granted by law to conduct audits of state financial management. This authority includes the examination, evaluation, and assessment of the compliance of government entities or institutions with applicable laws.

The audit process is carried out based on laws and regulations governing the procedures for managing state finances, such as Law Number 17 of 2003 concerning state finances. Prosecutorial auditors use this legal basis as a guideline in conducting audits to assess whether government entities or institutions have complied with existing provisions. Prosecutorial auditors conduct audits with the aim of finding potential losses to state finances caused by irregularities, violations, or non-compliance with legal rules. These findings are documented in detail in the audit report. Based on the audit findings, the Prosecutor's Office Auditor provides recommendations and advice to the audited entity or government institution on how to make improvements and repairs to their financial management system in order to prevent future losses to state finances.

Prosecutorial auditors prepare an audit report containing their findings, recommendations, and conclusions. This report is an official document that has legal force and can be used as evidence in law enforcement proceedings. If there are indications of violations of the law that cause financial losses to the state, the prosecutor's auditor may take legal action in accordance with the provisions of the applicable law. This includes submitting a report to authorized parties, such as the police or other law enforcement, to conduct further investigation and follow up on the violation.

The results of audits of state financial losses by the Auditor of Public Prosecutions have a significant influence on the processes of law enforcement and state financial accountability. The audit report can be the basis for the government to take corrective action and law enforcement to take action against violations that occur. Thus, the legal force of the results of the audit of state financial losses by the prosecutor's auditor is binding and plays a role in maintaining integrity and accountability in the management of state finances.

D. Closing

Based on the results and discussion in this study, it can be concluded that:

1. The legal force of the results of the Prosecutor's Office auditor's audit of indications of state financial losses related to the evidentiary system in criminal procedure law can make a significant contribution to the law enforcement process while still being guided by applicable legal procedures to ensure justice and legal validity. Evidence of the calculation and determination of state financial losses carried out by the Prosecutor's Office Auditor has value as evidence of clues that are in accordance with other evidence and based on the judge's belief that a corruption crime that has been proven has a state loss even though the calculation does not involve BPK or BPKP. The results of the audit by the Prosecutor's Office auditor can be considered preliminary evidence or a strong basis for following up on indications of state financial losses. Audit findings can be a starting point for further investigation to ascertain the existence of a violation of the law.
2. The calculation of state financial losses by the Prosecutor's Office auditor has major implications for the law enforcement process for criminal acts that harm state finances. Audit results that indicate the existence of state financial losses can have legal consequences for the parties responsible for the management of these finances. Audit findings regarding state financial losses can be the basis for making corrections and improvements in the state financial management system. This may include the implementation of tighter internal controls to prevent the recurrence of errors and fraud. The legal

implications of the calculation of state financial losses by the Prosecutor's Office auditor not only include legal sanctions for violators but also an instrument to improve better public financial governance and realize the efficiency and effectiveness of law enforcement that causes state financial losses.

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