

# Legal Implications of Corruption Cases Without Initial State Losses in Audit but Found During Investigation Case Of Issuing Ship Permits

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**Abstract.** The calculation of state financial losses is crucial in proving corruption cases. Besides serving as evidence in corruption cases, state financial losses are also one of the elements that must be proven in a corruption case. The calculation of state financial losses forms the basis for the public prosecutor's indictment to determine the extent of the state's financial losses caused by the defendant's actions in a corruption case. Likewise, the judge must determine the amount of state losses the defendant must repay. The institution authorized to calculate state financial losses related to corruption cases is implicitly stated in the explanation of Article 32 paragraph (1) of the Law on the Eradication of Corruption, which stipulates that actual state financial losses are those that can be calculated based on findings from competent institutions or appointed public accountants, namely BPK (State Audit Board). However, based on Article 30 of Law No. 16 of 2004, one of the duties and authorities of the public prosecutor is to gather data and collect evidence. In certain cases, the public prosecutor can easily calculate the amount of state losses, enabling the prosecutor to calculate and determine the state financial losses independently.

## 1 Introduction

A philosophical perspective on corruption suggests that it is a behaviour that contravenes the values of justice and truth and has become a legal phenomenon [1]. Corruption has the potential to have very dangerous consequences for various aspects of people's lives, including social, political, bureaucratic, economic, as well as cultural aspects and individual lives. Based on the recommendations of the United Nations Convention Against Transnational Organised Crime (UNTOC), corruption has been placed as one of the organized and transnational crimes [2]. The scope of this crime must extend beyond its traditional boundaries, encompassing not only the state's financial and economic stability, but also its social and economic rights as part of a broader human rights framework [3]. The Law No. 31/1999 on the Eradication of the Criminal Act of Corruption, as amended by Law No. 20/2001 (hereinafter referred to as the "Anti-Corruption Law"), which forms the basis for efforts to prevent and eradicate corruption, has undergone several judicial reviews. The first judicial review occurred on July 24, 2006 when the Constitutional Court through Decision Number 003/PUU-IV/2006 declared the norm of the Explanation of Article 2 paragraph (1) of the Corruption Eradication Law conditionally unconstitutional, so that it became a formal

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norm [4]. The second judicial review occurred on 25 January 2017, when the Constitutional Court in Decision Number 25/PUU-XIV/2016 deleted the word “may” in Article 2 paragraph (1) and Article 3 of Anti-Corruption Law [5]. The Constitutional Court Decision Number 25/PUU-XIV/2016 and its similarity to the previous Decision Number 003/PUU-IV/2006 highlight a case of "nebis in idem". Both decisions involve the same basis of testing, examining Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law against Article 28D paragraph (1) of the 1945 Constitution. While the previous decision concluded that the phrase "may harm the state finances or the state economy" in the Anti-Corruption Law was not unconstitutional, the latest decision declares it contrary to the Constitution [6]. This change in stance has created inconsistencies in interpretation, leading to legal uncertainty. The uncertainty arises from a shift in corruption offences from formal to material criteria, requiring law enforcers to prove actual losses in state finances or the state economy. Consequently, there must be evidence of actual state financial losses, which renders the eradication of corruption inconsistent and relies on institutions such as the Supreme Audit Agency (BPK), Finance and Development Supervisory Agency (BPKP), Inspectorate, or public accountants to conduct audits [7]. This reclassification of the crime of corruption as a material offence necessitating a quantifiable state financial loss has rendered the previously formal offence a material offence in its own right, requiring a tangible effect in terms of quantifiable state financial loss. (Maryana, 2023) This means that, following the decision, the offences in Article 2, paragraph (1), and Article 3 of Anti-Corruption Law, are now considered invalid and contrary to the 1945 Constitution. The Anti-Corruption Law as set out in Law Number 20 of 2001, has been declared invalid and contrary to the 1945 Constitution. Subsequent to this, the crime of corruption based on the two articles must be interpreted as an offence of a material nature. This is to say that the offence in question is one that is aimed at causing the occurrence of prohibited consequences, namely the real or actual state financial losses that may ensue.

In addition, Constitutional Court Decision No. 25/PUUXIV/2016 has significantly restricted the authority of investigators and judges to apprehend individuals engaged in corrupt activities (i.e., "corruptors") [8]. Now, individuals cannot be subjected to punishment without explicit legal mandates and concrete evidence of financial losses to the state. The legal impact of this decision is that law enforcement officials must be able to prove the existence of tangible state losses before investigating corruption cases [9]. There has been a substantial amount of discourse surrounding the entity that is entitled to determine the extent of financial loss incurred by the state. This discussion is particularly relevant in the context of corruption offences, where the issue of state financial loss has emerged as a crucial factor. In investigating corruption offences, investigators employ various state institutions for the purpose of calculating state losses. These institutions include the Supreme Audit Agency (BPK), Supreme Audit Agency (BPKP), Provincial Inspectorate, Regency/City Inspectorates and even the Prosecutor's Office Internal Auditor. (Dimiyati, 2018) The deletion of the word 'may' based on the Constitutional Court Decision Number 25/PUUXIV/2016 results in the following consequence should the prohibited consequences, namely the infliction of harm upon the state's finances or economy, have not yet materialised or not yet occurred, while other elements, namely the enrichment of oneself or another person or a corporation, have been fulfilled in an illicit manner, it can be concluded that a criminal act of corruption has not been committed [10]. The Constitutional Court's decision is *erga omnes* (applicable to all citizens) and thus requires that the constitutional court's decision on criminal law must adhere to the principles of criminal law. In order to ensure legal certainty, expediency, and justice, the formulation of criminal offences must adhere to the principles of *lex previa* (not retroactive), *lex certa* (must be clear), *lex stricta* (must be strict), and *lex scripta* (must be written) [11]. This is in accordance with the conception of the rule of law as intended in Article 1 Paragraph (3) and Article 28D Paragraph (1) of the 1945 Constitution. If the above

principles are not fulfilled, the formulation of such criminal offences is contrary to our Constitution [12].

The Constitutional Court Decisions Number 003/PUU-IV/2006 and Number 025/PUU-XIV/2016 reinforce the position of the principle of legality formally, which complicates the enforcement of corruption crimes. In contrast, the development of jurisprudence leads to the application of the principle of material legality. Judges must be careful because the goal is to achieve substantive justice, and formal/state courts are the *ultimum remedium* [13]. Article 10, paragraph (1) of Law Number 15 Year 2006 concerning the Supreme Audit Agency of the Republic of Indonesia states that BPK has the authority to assess and determine the number of financial losses incurred by the state as a result of unlawful acts, whether intentional or negligent, committed by treasurers, managers of state-owned enterprises (BUMN), and other institutions or bodies involved in state financial management. These institutions or bodies may include government ministries or departments, BUMN, or any other entity involved in state financial management. The authority to conduct investigative audits is conferred upon the BPK in accordance with Articles 13 and 14 of Law Number 15 of 2004 concerning Audit of State Financial Management and Responsibility. This legislation empowers the BPK to undertake investigative audits with a view to identifying instances of state or regional losses and/or criminal activity. In the event that the examination uncovers evidence of criminal conduct, the BPK is obliged to report this to the relevant authority without delay. Conversely, Supreme Court Circular Letter No. 4/2016 on the implementation of the Formulation of the 2016 Plenary Meeting of the Supreme Court Chamber elucidates that in Part A, point (6) In Supreme Court Circular Letter (SEMA) No. 4/2016, it is stated that the agency authorized to determine whether or not there is a financial loss to the State is the BPK, which has constitutional authority. This implies that other audit bodies, aside from BPK, are not authorized to determine whether there is a state loss. Other audit bodies, including BPKP, are only authorized to audit and examine the management of state finances.

In addition, this study also focuses on the calculation of state losses carried out by the Public Prosecutor's Office. Examples of the calculation of state losses by the AGO are seen in two cases. First, the alleged corruption of KSPPS BMT Koto Lua, Pauh District, Padang City in 2019-2020, which was audited by the West Sumatra High Prosecutor's Office with report No. R-478/L.3/Hs/08/2021 dated August 10, 2021: R-478/L.3/Hs/08/2021 dated August 10, 2021. Second, alleged corruption in the construction of indoor tennis courts at the Public Works and Spatial Planning Office of West Pasaman Regency for the 2018 fiscal year, with audit report No. R-362/L.3/Hs/08/2021 dated August 10, 2021: R362/L.3/Hs/04/2022 dated April 25, 2022. In both cases, the defendants were found guilty and harmed the state, sentenced to punishment, and the verdicts were legally binding. (Auditor Internal, 2018) This research aims to analyze and evaluate the regulation of corruption from the perspective of national criminal law and Islamic criminal law. By exploring the similarities and differences in the two legal systems' approaches to corruption, this research provides a comprehensive understanding of the legal framework and its implications for anti-corruption law enforcement in Indonesia. In addition, this research also investigates the impact of differences in the calculation of state losses between the BPK and the Attorney General's Office on law enforcement of corruption cases.

## 2 Literature Review

### 2.1 The Theory of Authority

The concept of authority is a fundamental tenet of administrative law. The term authority or authority is analogous to the English term "authority" and the Dutch term "bevoegdheid". According to Black's Law Dictionary, authority is defined as "legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties." The term "authority" is itself a legal power, as well as the right to command or to act. It is the right of public officers to require obedience to their orders, which are issued within the scope of their public duties [14]. The delegation of authority can be carried out in three alternative ways. Firstly, there is an explicit order regarding the subject of the implementing institution that is given delegated authority, and the form of implementing regulations to the delegated regulatory material. Secondly, there is an explicit order regarding the form of implementing regulations to express the delegated regulatory material. Thirdly, there is an explicit order regarding the delegation of authority from the law or law-forming institution to the institution receiving the delegation of authority, without mentioning the form of the delegated regulatory material. An analysis of the concept of authority can be achieved by examining the sources of authority and the justification for acts of government power. The theory of the source of authority encompasses the concepts of attribution, delegation and mandate. The term "authority" is used to refer to formal power, which is derived from legislative or executive/administrative authority [15]. Authority is defined as power that extends to a specific group of people within a unified field of government (or field of governance), whereas power is limited to a specific area. Within the context of authority, there are various forms of authority. The Theory of Evidence

The term 'proof' is derived from the Latin "proba", meaning "to prove". From the perspective of lexicography, 'proof' is a process, method, act of proving, an effort to show the right or wrong of the defendant in a court session. From a juridical perspective, evidence is also the central point of criminal procedure law [16]. This can be proven since the beginning of the investigation, investigation, pre-prosecution, additional examination, prosecution, examination at the court session, the judge's decision and even up to legal remedies. The process of proof is of paramount importance in court hearings, as it enables the ascertainment of the material truth of the events in question and the formulation of a decision that is both just and fair [17]. In the context of criminal law, evidence is a system that falls within the broader category of formal criminal law, which is also known as criminal procedural law (starfvordering). Nevertheless, there are those who contend that evidence is a component of material criminal law. This latter opinion is more influenced by the approach taken in civil law [18]. Since the enactment of the Criminal Procedure Code (KUHP) through Law Number 8 Year 1981, the issue of evidence has been expressly regulated in the formal legal system group (procedural law) [19].

Adami Chazawi posits that proof can be conceptualized as a system comprising a series of interrelated and interdependent provisions pertaining to evidentiary activities. This evidentiary system, in the context of criminal law, regulates the occurrence and operation of evidence. It serves to corroborate the defendant's involvement in material acts, which ultimately lead to a conclusion regarding the defendant's guilt or innocence in the criminal act (offence) that has been charged against him [20]. Thus, essentially the issue of proof in criminal law is very urgent. The conclusion of this proof is carried out through a judicial process so that it will determine whether the defendant can be sentenced (veroordeling)

because from the results of the trial it is proven legally and convincingly to commit a criminal offence, then can also be acquitted of the charges (*vrijspraak*) because it is not proven to commit a criminal offence, or released from all legal charges (*onslag van alle rechtsvervolging*) because what is charged is proven but the act does not constitute a criminal offence [21]. The law of evidence is a component of the law of criminal procedure that defines the types of admissible evidence according to the law, the system for presenting evidence, the conditions and procedures for submitting such evidence, as well as the authority of judges to accept, reject and assess evidence [22].

## **2.2 The Theory Of Legal Certainty**

The theory of legal certainty represents one of the primary objectives of law. The concept of legal certainty has a tangible form, namely the implementation and enforcement of a legal act against an individual who has committed an offence. Through legal certainty, all individuals are able to predict what they will experience if they undertake a specific legal action [23].

The concept of legal certainty ensures that individuals are able to engage in behaviors in accordance with legal provisions, and that the same is true in reverse. Absent legal certainty, there is no clear basis for behaviors. According to Jan M. Otto, legal certainty can be achieved if the substance of the law is in accordance with the needs of the community, where legal certainty according to Otto is required to be several things as follows (Soeroso, 2011): 1) Legal certainty provides legal rules that are clear and clear, consistent and easy to obtain or access; 2) Several authorities or government agencies can apply the rule of law in a consistent manner and can submit to or obey it; 3) The behaviour of citizens will also adjust to the regulations that have been issued by the government; 4) Judges of the judiciary have an independent nature; 5) Judicial decisions can be concretely implemented. Furthermore, Jan M. Otto posits that the rule of law, in order to engender legal certainty, must emanate from a culture that is reflective of societal values. This concept is known as realistic legal certainty. In order for legal certainty to be realized, there must exist harmony between the State and the people who possess an orientation and understanding of the country's legal system [24].

When it comes to changes in the regulation of corruption offences, it is essential to maintain clarity regarding the definitions of corruption, the elements constituting the criminal offence, and the legal enforcement mechanisms that will be employed. This level of legal certainty provides clear guidelines for law enforcement officials, courts, as well as for the general public, in understanding and implementing the legal framework against corruption [25].

## **3 Method**

In the context of legal studies, research that pertains to the principles and regulations of the legal system is categorized as normative legal research. The primary legal materials utilized in this research include Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, Law Number 15 of 2006 concerning the Supreme Audit Agency, Law Number 20 of 2001 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, and Anti-Corruption Law. The technique of analysing legal materials using qualitative data analysis, namely discussing the legal

materials that have been obtained by referring to the existing theoretical basis, with the legal interpretation used being grammatical interpretation and systematic interpretation [26].

## **4 Results and Discussion**

### **4.1 The Regulation of Corruption Offenses Addressed from The Perspective of National Criminal Law and Islamic Criminal Law**

The regulation of corruption offenses can vary significantly between national criminal law systems and Islamic criminal law, as they are based on different legal frameworks and principles. In national criminal law systems, including those based on Western legal traditions, corruption offenses are typically addressed through specific statutes and regulations. These laws define various forms of corruption, such as bribery, embezzlement, and abuse of power, and prescribe penalties for those found guilty of such offenses [27]. The enforcement of these laws often involves investigative agencies, such as anti-corruption commissions or law enforcement agencies, which gather evidence, prosecute offenders, and seek judicial remedies. Penalties for corruption offenses can range from fines and imprisonment to forfeiture of assets and disqualification from public office. The Indonesian government has implemented numerous initiatives to combat corruption. One such initiative was the enactment of Law No. 28/1999 on Clean and Free State Administration from Corruption Collusion and Nepotism during the presidency of B.J. Habibie. Furthermore, during the presidency of K.H. Abdurrahman Wahid, who is commonly referred to as "Gus Dur," efforts to eradicate corruption continued through the establishment of an anti-corruption institution known as the Joint Team for the Eradication of Corruption (TGPTPK), based on Government Regulation Number 19 of 2000 concerning the Joint Team for the Eradication of Corruption. Subsequently, during the Megawati Soekarnoputri administration, comparable endeavors were reaffirmed with the establishment of the Corruption Eradication Commission (KPK), which remains active in its mission to eradicate corruption in Indonesia. This step is reflected in Law Number 30 of 2002 concerning the Corruption Eradication Commission. The aforementioned effort underwent alterations during the tenure of the previous president, Susilo Bambang Yudhoyono. These alterations were implemented through the formation of the Corruption Eradication Task Force, which was established via Presidential Decree Number 61 of 2005. Indonesia has encountered numerous challenges in its efforts to combat corruption, which have been met with various initiatives and policies [28].

The ratification of the 2023 Criminal Code on 6 December 2022 has the potential to create turbulence and dynamics in the eradication of corruption in Indonesia. Public expectations that corruption eradication will improve will be challenging to fulfil in light of the rules set out in the 2023 Criminal Code. This serves to illustrate that the political and legal direction of the government and the DPR in enforcing corruption law is still open to question. The majority of the articles pertaining to corruption within the Criminal Code actually impede the process of eradicating corruption. The enactment of the 2023 Criminal Code has resulted in a lack of clarity regarding the orientation of the government and the Parliament in formulating a strategy to eradicate corruption. Despite President Joko Widodo's assertion on World Anti-Corruption Day 2022 that corruption is the root cause of Indonesia's development challenges, his response was the ratification of the government's proposed Criminal Code, which includes reduced penalties for corrupt individuals. Furthermore, the content of the RKUHP ratification, including its formal aspects, is fraught with serious problems. For example, during the ratification of the KPK Bill in 2019. In this instance, the council members' comprehension of the formal prerequisites for the formulation of legislation and regulations is questionable. Furthermore, there are aspects that are of

paramount importance to consider in the drafting of legislation, namely community participation and interests [29].

The emergence of corruption can be attributed to two primary motivations. The first is intrinsic motivation, which is the urge to derive satisfaction from corruption. In this case, the perpetrators perceive that they derive satisfaction and comfort from their actions. Over time, corruption becomes a lifestyle, habit, and culture that is considered commonplace by the perpetrators. Second, extrinsic motivation, which represents the impetus for corruption from outside the perpetrator [30]. This motivation is distinct from the first, as it is not inherent to the perpetrator. It is evident in instances where the perpetrators commit corruption for economic reasons, ambition to achieve a certain position, or obsession with improving living standards or job careers by shortcuts. The factors that cause corruption can be classified into two broad categories. The first category encompasses internal factors, which include the encouragement of trustees to abuse their power. These factors can be further subdivided into three subcategories: greed for wealth, envy of others, and urgent needs. The second category encompasses external factors, which include an unbalanced system of government or leadership that can provide opportunities for trustees to commit corruption [31]. It is of significant importance that the occurrence of financial losses resulting from corruption be calculated and proven in order to facilitate the prosecution and punishment of the corruptors, as well as to provide state compensation. Prosecutors, as investigators and public prosecutors, will undoubtedly require authentic evidence related to the losses incurred in order to serve as the legal basis for the indictment of the perpetrators of corruption crimes. Nevertheless, a significant legal uncertainty persists regarding the authority to calculate state losses in corruption cases. Article 32 Paragraph (1) merely stipulates that state financial losses are recognized when the nominal amount can be calculated based on the findings of an authorized agency or appointed public accountant [32]. The term "authorized agency" is not clearly defined, which contributes to legal uncertainty due to the potential for differing interpretations by law enforcement agencies. Nevertheless, if we consider further the authorized institutions and their competence in relation to state finances and accounting, it can be argued that the main institutions in question are BPK and BPKP. This is based upon the 1945 Constitution, the Law on the BPK, Circular Letter No. 4 of 2016 and presidential regulations. Islamic criminal law, also known as Sharia law, is based on the teachings of the Quran and the Hadith (sayings and actions of the Prophet Muhammad). While Islamic legal systems vary across different countries and regions, they generally share common principles derived from Islamic jurisprudence. In Islamic law, corruption offenses are considered violations of the principles of justice, honesty, and accountability. Islamic legal scholars interpret Quranic injunctions and Hadiths to identify prohibitions against bribery, fraud, and other forms of corruption. Islamic legal systems typically prescribe penalties for corruption offenses based on the severity of the offense and the harm caused to individuals or society. Punishments may include fines, imprisonment, restitution, and public humiliation. Additionally, Islamic law emphasizes the importance of repentance and seeking forgiveness for wrongdoing, and offenders may be encouraged to confess their crimes, make amends, and seek redemption through sincere repentance.

The state of Indonesia is founded upon the belief in the existence of God Almighty. In addition to the general criminal law system, this country is also inextricably linked to the Islamic legal system, which is the dominant legal system in Indonesia, where the majority of the population is Muslim. It is therefore misguided to dismiss religious teachings as a means of persuading corrupt actors to acknowledge and address the root causes of corruption. In Islamic teachings, corrupt behaviour is explicitly prohibited. This is exemplified by the Hadith of the Prophet Muhammad, as narrated by Ibn Abbas, in which the Messenger of Allah states, "A body fed with haram will not enter Paradise." In addition, the Quranic verse 2:18,

which is part of the Al-Baqarah surah, also provides insight into this matter. Furthermore, it is impermissible for some individuals to exploit the wealth of others through illicit means. Similarly, it is unethical for individuals to bring their property before a judge with the intention of acquiring wealth through illegitimate means, despite being aware of the illegality of such actions [22]. Some types of criminal offences (jarimah) in Islamic crimes that are close to the terminology of corruption in the present day include ghulul(embezzlement), risywah (bribery), ghashab (taking by force the rights / property of others), treason, and almaks(illegal fees) [3].

#### **4.2 The Impact of Discrepancies in State Loss Calculations By The State Audit Board (BPK) and The Prosecutor's Office On Law Enforcement in Corruption Cases**

In relation to law enforcement, it is evident that in carrying out activities that fall under the umbrella term “criminal acts”, a predetermined procedure must be adhered to, namely that set out in the law. To provide an example of this, it can be observed that one area of law enforcement that continues to cause concern within the community and the state is related to corruption [12]. It is evident that corruption remains a significant problem within Indonesia, which clearly harms the interests of both the state and society. In terms of eradicating corruption, it is not sufficient to merely punish the perpetrators of corruption; we must also consider other aspects. One such aspect is the reimbursement of state losses resulting from the perpetrator's actions. Therefore, the occurrence of state financial losses is the primary factor determining the existence of a corruption crime. Corruption necessitates a detailed and comprehensive investigation of state losses. Theodorus M. Tuanakotta identifies three stages in determining these losses:

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

Although the Constitutional Court did not grant all of the Petitioners' requests, it ultimately interpreted that one of the elements of the corruption offence is “actual loss” (real state losses) and not “potential loss” (potential state financial losses or estimates of state financial losses) as has been regulated and practiced. As a consequence of this, the meaning of the offences in Articles 2(1) and 3 of the AntiCorruption Law has undergone a shift. Previously, they encompassed both formal and material offences; now, they only apply to material offences. Indeed, the provisions of Articles 2(1) and 3 of the AntiCorruption Law are often used by public prosecutors in indicting corruption suspects. It is notable that the Petitioners' argument that the element “may harm the state finances or the state economy” is contrary to the 1945 Constitution has been made [6]. In contrast to what was stated earlier, it can be observed that the use of the provisions of Article 2, paragraph (1), and Article 3 of the AntiCorruption Law is indeed a dominant factor in the indictment of corruptors by the Public Prosecutor. The rationale behind the use of these provisions is to ensure the preservation of state finances and the state economy, and not to the contrary. When considered from two distinct vantage points, the stipulations of Article 2(1) and Article 3 of the Anti-Corruption Law may be perceived as potentially engendering legal ambiguity [27].

Discrepancies in state loss calculations by the BPK and the Prosecutor's Office can have several significant impacts on law enforcement in corruption cases. When there are

discrepancies in state loss calculations between the BPK and the Prosecutor's Office, it can create challenges in prosecuting corruption cases. The Prosecutor's Office relies on accurate assessments of state losses to build its case against alleged offenders. If there are discrepancies or inconsistencies in these calculations, it may weaken the prosecution's arguments and undermine its ability to secure convictions. Discrepancies in state loss calculations can also provide opportunities for defense attorneys to challenge the prosecution's case. Defense lawyers may argue that the charges are based on flawed or inaccurate calculations, casting doubt on the credibility of the prosecution's evidence and potentially leading to acquittals or reduced penalties for the defendants. Public perception of the effectiveness of law enforcement in combating corruption can be negatively impacted by discrepancies in state loss calculations. It was appropriate for the panel of judges to reach a decision on the case in question, given the need for evidence of financial losses to be calculated by competent institutions at state level. In contrast, the prosecutor was unable to present evidence in the form of examination reports from BPK or BPKP institutions, which were required by the trial process. In essence, the panel of judges in this instance employed an argument based on the correlation between acts of corruption and state losses incurred. This interpretation was subsequently modified by the Constitutional Court, as evidenced by Constitutional Court Decision Number 25/PUU-XIV/2016, which changed the interpretation of state financial losses from potential to actual. Corruption crimes were initially proven through the existence of acts of corruption, namely formal offences. These then led to material offences that result in corruption crimes, which are not only proven through the existence of acts of corruption but also result in a material impact on the state. Consequently, it can be said that every corruption case must be proven to have caused real financial losses. This is achieved through precise calculations by relevant institutions [22].

The Constitutional Court Decisions Number 003/PUU-IV/2006 and Number 025/PUU-XIV/2016 reinforce the principle of legality. The two Constitutional Court decisions stipulate that convictions for corruption cases must be based on laws and regulations, and that the existence of state losses must be actual and not merely potential. The principle of legality plays a crucial role in ensuring that punishable acts are determined in an objective and impartial manner. This principle allows for the assessment of criminal law enforcement practices, including the investigation, court proceedings and verdicts. Furthermore, it serves as a foundation for establishing whether an act constitutes a criminal offense. Therefore, the principle of legality is a fundamental tenet of criminal law [11].

A perception that law enforcement agencies are unable to accurately assess the extent of corruption or hold offenders accountable may erode public confidence in the criminal justice system. Disparities in state loss estimates may also affect the allocation of resources within law enforcement agencies. In instances where discrepancies emerge between the BPK and the Prosecutor's Office regarding the magnitude of state losses in corruption cases, it is possible that this may lead to disputes over the allocation of resources for investigating and prosecuting these cases. This could potentially result in delays in the resolution of cases and inefficiencies in the wider criminal justice system. In order to mitigate the impact of discrepancies in state loss calculations on law enforcement in corruption cases, it is of the utmost importance for relevant agencies to establish clear protocols and mechanisms for cooperation and coordination. This may entail regular communication between the BPK and the Prosecutor's Office, as well as the development of standardized methodologies for assessing state losses in corruption investigations.

Furthermore, transparency and accountability in the investigative and prosecutorial processes can assist in fostering public trust and confidence in efforts to combat corruption.

The legal certainty theory emphasizes the importance of consistency, clarity and predictability in the application of law to create a stable and fair legal environment [22]. In the context of differences in the calculation of state losses by the BPK and the Prosecutor's Office in corruption cases, the concept of legal certainty becomes relevant because these differences can interfere with consistency and clarity in law enforcement. When there are discrepancies in the calculation of state losses between the BPK and the Prosecutor's Office, this can create uncertainty in law enforcement. Legal actors, including prosecutors, are accustomed to clear standards and procedures in evaluating evidence and determining guilt in corruption cases. However, if there are discrepancies in the calculation of state losses, this could confuse legal actors and produce inconsistent results in the prosecution of corruption cases. This uncertainty can be detrimental to various parties. Firstly, for the accused, discrepancies in the calculation of state losses may provide an opening for their legal representatives to challenge the legitimacy of the case brought against them by the prosecution. They may use this discrepancy to question the integrity of the evidence presented by the prosecution, as well as to challenge the legal basis of the charges brought.

Second, for the general public, uncertainty in law enforcement can result in reduced trust in the justice system and in the government as a whole. If the public perceives that the law is not consistently or fairly applied, this can erode the legitimacy of the government and increase levels of distrust in legal institutions. Third, for the law enforcement process itself, differences in the calculation of state losses can impede the progress of corruption cases, potentially slowing down or preventing investigations from reaching a conclusion. Discussions and disputes between the BPK and the Prosecutor's Office on the calculation of state losses have the potential to consume valuable time and resources, resulting in delays in the investigation and prosecution of cases. In the context of legal certainty theory, it is important to minimize the negative impact of differences in state loss calculations by improving coordination and cooperation between the BPK and the Prosecutor's Office. This can be achieved through the formulation of transparent guidelines and procedures for the assessment of state losses in corruption cases, in addition to enhanced communication and information exchange between the two institutions. Consequently, clarity, consistency and predictability in law enforcement can be maintained, thereby supporting the ultimate objective of legal certainty theory.

## **5 Conclusion**

Corruption-related financial losses must be calculated and proven for prosecution, punishment, and state compensation. However, legal uncertainty exists regarding the authority to calculate state losses in corruption cases. Article 32 Paragraph (1) only recognizes losses when determined by an authorized agency or appointed public accountant. Some types of criminal offences (*jarimah*) in Islamic crimes that are close to the terminology of corruption in the present day include *ghulul* (embezzlement), *risywah* (bribery), *ghashab* (taking by force the rights / property of others), treason, and *al-maks*(illegal fees). Discrepancies in state loss calculations by the State Audit Board (BPK) and the Prosecutor's Office can have several significant impacts on law enforcement in corruption cases. When there are discrepancies in state loss calculations between the BPK and the Prosecutor's Office, it can create challenges in prosecuting corruption cases. The Prosecutor's Office relies on

accurate assessments of state losses to build its case against alleged offenders. If there are discrepancies or inconsistencies in these calculations, it may weaken the prosecution's arguments and undermine its ability to secure convictions. Discrepancies in state loss calculations can also provide opportunities for defense attorneys to challenge the prosecution's case. Defense lawyers may argue that the charges are based on flawed or inaccurate calculations, casting doubt on the credibility of the prosecution's evidence and potentially leading to acquittals or reduced penalties for the defendants. Public perception of the effectiveness of law enforcement in combating corruption can be negatively impacted by discrepancies in state loss calculations.

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