



The Realization of Factors Detrimental to State Finances in Corporate Activities

Ainuddin

Faculty of Law, Universitas Islam Al-azhar, Mataram , Indonesia

Abstract: The realization of state financial loss in corruption offenses involves demonstrating that a corrupt act has caused a tangible and specific detriment to state finances or the national economy. This study examines the clarity of legal material regarding state financial loss in corporate actions, focusing on the corruption case verdict No. 70/Pid.Sus-TPK/2023/PN.Plg. Using a normative legal methodology –incorporating legislative, conceptual, and case law studies, the study examines the legal frameworks surrounding corruption and state budget cuts, revealing differing interpretations of financial loss in corporate corruption cases. It emphasizes the need for clearer instructions on proving state financial loss and emphasizes the importance of a strong legal base in corruption cases. Findings reveal that the Public Prosecutor failed to convincingly establish the legal basis for proving state financial loss. The indictment claimed that PT. BA's acquisition of PT. SBS through its subsidiary PT. BMI resulted in a state financial loss of IDR 162,466,152,401. However, inconsistencies emerged in defining "state financial loss," assessing the loss amount, and qualifying it within the acquisition process. The Panel of Judges meticulously examined the charges under Article 2 of the Corruption Eradication Law (UU Tipikor). Upon reviewing the elements of the offense, the Judges concluded that the Prosecutor failed to substantiate the allegations. Consequently, the Panel issued a *vrijspraak* (acquittal) for Defendant "TI." This verdict fulfills juridical, philosophical, and sociological dimensions, rendering it legally sound and well-reasoned.

Keywords: State Financial Loss; Corruption Crime; Corporate Liability; Financial Audit

1. Introduction

The government, in its efforts to eradicate corruption, has firmly and clearly made corruption a common enemy in the context of national life. This is included in the main considerations that serve as the basis and rationale for the formation of legislation from Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Corruption crimes greatly harm the state's finances or the national economy and hinder national development (Khan, 2006; Kusworo & Anggraini, 2024; Mulyono & Maryana, 2023). Therefore, corruption must be eradicated in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution. In addition to causing financial losses to the state, corruption also negatively impacts the growth and sustainability of national development, which demands high efficiency.

Acts that harm the state's finances in corruption crimes are evident from several recent trends in corrupt behavior that have significantly increased and become widespread. The state finances, which should be allocated for the welfare of the people, are almost daily enjoyed by those who are not entitled to them for themselves or their groups (Stephenson & Schütte, 2016). The legal framework of corruption crimes indicates that such offenses severely undermine state finances and the national economy,

Correspondence:

Name: Ainuddin

Email: ainuddin@unizar.ac.id

Received: Jan 30, 2025;

Revised: Feb 06, 2025;

Accepted: Feb 15, 2025;

Published: Feb 28, 2025;



Copyright: © 2025 by the authors.

Submitted for possible open access publication under the terms and conditions of the Creative Commons

Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0) license (

<https://creativecommons.org/licenses/by-nc/4.0/>).

hence obstructing national progress. Consequently, they must be eliminated to achieve a just and wealthy society founded on Pancasila and the 1945 Constitution. The repercussions of corruption crimes thus far not only detriment state finances or the national economy but also obstruct progress and the sustainability of national development, which necessitates efficiency. The phrase "state financial loss" is specified in Law Number 31 of 1999 about the Eradication of Corruption Crimes, as revised by Law Number 20 of 2001, which amends Law Number 31 of 1999 on the same subject (hence referred to as the Corruption Eradication Law). Articles 2 and 3 incorporate state financial losses as components of the offense (Sari et al., 2024; Swardhana & Monteiro, 2023)

Furthermore, Article 32 paragraph (1) of the Anti-Corruption Law states, "in the event that the investigator finds and concludes that one or more elements of the corruption crime do not have sufficient evidence, while there has been a real financial loss to the state, 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 for a civil lawsuit." Then, in the explanatory provisions of Article 32 paragraph (1) of the Anti-Corruption Law, what is meant by "actually causing financial loss to the state" is a loss that can be quantified based on the findings of the authorized agency or the appointed public accountant (Citranu, 2020; Mulya, 2024; Sumarto & Rahadian, 2020). An in-depth analysis of state losses commences with an understanding of their definition and legal foundation, as delineated in Article 1, paragraph (22) of Law Number 1 of 2004 regarding State Treasury and Article 1, paragraph (15) of Law Number 15 of 2006 concerning the Audit Board. These provisions essentially define state losses as: "A deficiency of money, securities, and goods, the quantity of which is tangible and definitive, resulting from unlawful actions, whether deliberate or negligent."

From the above juridical understanding, to better comprehend what constitutes state loss, it can be further broken down into the following elements: An act can be categorized as a corruption crime if it meets several main elements. First, there must be an actor or responsible party who can be held legally accountable. Second, there is a shortage of money, securities, or goods that are the object of the loss. Third, the loss incurred must have a real and definite amount. Fourth, the act was committed unlawfully, either intentionally or due to negligence. Lastly, there must be a clear causal relationship between the unlawful act and the resulting loss.

The application of the calculation of state financial losses in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 on the Amendment of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes has undergone a shift in legal perspective/paradigm in implementing state losses, from those that have not yet occurred or are potentially harmful to state finances (potential loss) to those that must truly and certainly occur (actual loss). The change in the conception of the application of state financial losses materially is not without a clear basis and consideration, but rather, this change in application has been considered and accommodated in accordance with the spirit and substance of the Constitutional Court Decision Number: 25/PUU/XIV/2016 dated January 25, 2017.

In relation to the legal constraints associated with the necessity for certainty and authenticity in the assessment of state financial losses, the Author undertakes an in-depth examination of normative legal issues. This inquiry focuses on a particularly noteworthy case that has garnered significant public interest: the corruption case involving the corporate acquisition of PT. SBS by PT. BA (Persero), Tbk., executed through its subsidiary PT. BMI, as delineated in Decision Number: 70 / Pid.Sus-TPK / 2023 / PN.Plg. The Author aims to elucidate a viable solution and precise course of action concerning the issue at hand. In Decision Number: 70/Pid.Sus-TPK/2023/PN.Plg, it is articulated that the Public Prosecutor from the Muaraenim District Attorney's Office, in the formulation and presentation of the indictment prior to the trial, has directed arguments against the Defendant, identified by the initials "TI." This indictment is grounded in the Public Accountant's Report concerning the Assessment of State Financial Losses related to the alleged corruption case involving the acquisition process of PT. SBS by PT. BA (Persero), Tbk., executed through its subsidiary, PT. BMI. This report was prepared by the Public Accounting Firm (KAP) Drs. Chaeroni & Rekan, designated as Number: LI.23/MCI-Kjk/Sumsel/0627. Dated June 27, 2023, has the potential to adversely affect state finances or the state economy, specifically inflicting damage on the finances of PT. BA (Persero), Tbk., a State-Owned Enterprise (BUMN), amounting to Rp. 162,466,152,401.00 (one hundred sixty-two billion four hundred sixty-six million one hundred fifty-two thousand four hundred one rupiah) (Wahyudi, 2024)

The acquisition case of PT. SBS by PT. BA (Persero), Tbk. through PT. BMI was chosen as the focus of this research due to its legal, economic, and governance significance. Legally, the case raises critical questions about the definition and proof of state financial loss in corruption offenses, particularly in corporate transactions. Economically, the case involves a substantial alleged financial loss of IDR 162,466,152,401, making it highly relevant to state financial interests. From a governance perspective, the case highlights challenges in prosecuting corruption within state-owned enterprises (SOEs) and the complexities of holding corporate actors accountable under anti-corruption laws.

The objective of this article is to conduct a thorough analysis and examination of the legal dimensions involved in establishing the components of state financial loss in corruption offenses associated with corporate activities, particularly in the context of the acquisition of PT. SBS by PT. BA (Persero), Tbk. via its subsidiary, PT. BMI.

2. Materials and Methods

The research methodology employed in this study is normative legal research method, which involves utilizing established legal provisions as delineated in statutes and regulations, or as standards and norms deemed appropriate benchmarks for human conduct. The methodological framework employed in this paper encompasses the Statute Approach, which involves a comprehensive examination of all pertinent laws and regulations associated with the legal issue under investigation (Syahrums, 2022). Additionally, the Conceptual Approach is utilized, which entails referencing legal concepts through the perspectives of scholars and legal doctrines relevant to the matter being studied (Herianto, 2020). Furthermore, the Case Approach is implemented, involving an analysis of a case pertinent to the issue at hand that has culminated in a judicial decision. This research is characterized by a descriptive analytical approach, elucidating the rele-

vant laws and regulations in conjunction with legal theories pertinent to the implementation practices associated with the issue under investigation. This study examines the application of legal concepts in corruption cases, specifically case No. 70/Pid.Sus-TPK/2023/PN.Plg. It integrates legal theory with practical consequences for government and justice, examining juridical, philosophical, and sociological components. The selection of cases is based on their legal significance, precedential worth, societal influence, and judicial rationale. The study uses legislative, conceptual, and case methodologies to provide a comprehensive legal understanding, ensuring compliance with current statutes, elucidating essential legal terminology, and analyzing the practical application of laws. The methodology employed for the collection of legal materials involves theoretical literature reviews, specifically through the identification and acquisition of resources from libraries and online platforms (Marzuki, 2021). The analysis of legal materials employing qualitative legal methodologies involves an examination of the underlying significance of the realities or legal documents acquired, with the entirety of the research subject being the focal point of study.

3. Result and Discussions

This study mostly reveals that the Public Prosecutor failed to persuasively show that a state financial loss happened in the corruption case No. 70/Pid.Sus-TPK/2023/PN. The investigation reveals discrepancies in how "state financial loss" was defined, evaluated, and used within the acquisition process notwithstanding the indictment claiming that PT. BA's purchase of PT. SBS via its subsidiary PT. BMI resulted in a state financial loss of IDR 162,466,252. Following careful assessment of the case under Article 2 of the Corruption Eradication Law (UU Tipikor), the Panel of Judges concluded that the prosecution lacked evidence to support the claims. The defendant "TI" was therefore cleared (vrijspraak), with a legally defensible conclusion from juridical, philosophical, and social angles.

3.1. Realizing the legal aspects of how corporate actions can harm state finances in corruption cases.

The term "state finances" is defined broadly in Law Number 31 of 1999, as revised by Law Number 20 of 2001, which deals with the Eradication of Corruption Crimes (the "Corruption Eradication Law"). This includes all types of state wealth, whether divided up or not, as well as any and all parts of state assets and any rights and responsibilities related to these (Zahrulyani et al., 2024). Furthermore, these funds or assets are subject to the control, management, and accountability of State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), foundations, legal entities, and companies that incorporate state capital or engage third-party capital pursuant to agreements with the state.

According to Article 1, paragraph 1 of Law Number 17 of 2003 regarding State Finance, "State Finance encompasses all rights and obligations of the State that can be quantified in monetary terms, along with all assets, whether monetary or material, that the State can possess in relation to the execution of those rights and obligations." Article 2 delineates "State Finance" as referenced in Article 1, number 1 namely; (a) The state's authority to levy taxes, issue and circulate currency, and extend loans; (b) The state's obligation to fulfill public governance responsibilities and settle third-party obligations; (c) State Revenue; (d) National Expenditure; (e) Regional Revenue; (f) Regional Expenditure; (g) State and Regional assets managed independently or by others, including monetary resources, securities, receivables, goods, and other rights with monetary value, as well as assets segregated within state-owned or regionally-owned

enterprises; (h) Assets of third parties overseen by the government in the execution of governmental duties and/or for public benefit; (i) Assets of third parties acquired through the utilization of government-provided facilities.

Additionally, the definition of State Loss is provided in Article 1, number 22 of Law Number 1 of 2004 regarding State Treasury, which articulates that "State Loss is the deficiency of money, securities, and goods, the amount of which is tangible and definite, resulting from unlawful acts, whether deliberate or negligent" as cited in (Idris et al., 2023; Kasim, 2017). That based on the above normative juridical provisions and in connection with legal facts as well as the formulation/substance of the Public Prosecutor's Indictment as stated in Indictment Number: Reg. Case PDS-03/L.6.15/Ft.1/10/2023 submitted in the trial on Friday, March 15, 2024, to the Corruption Court at the Class I A Special District Court of Palembang, which the Public Prosecutor has described in the juridical analysis of the element "which can harm state finances or the state economy," related to the corruption crime concerning a corporate action, namely the acquisition process of PT. SBS by PT. BA (Persero), Tbk. through its subsidiary PT. BMI as stated in Decision Number: 70/Pid.Sus-TPK/2023/PN.Plg, carried out by "ADP" as the Director of Business Development of PT. BA Tbk. and as the Responsible Person for the Acquisition Team, together with "M" as the President Director of PT. BA, Tbk., "SI" as the Senior Manager of Corporate Planning of PT. BA, Tbk. and as the Chairperson of the Mining Service Acquisition Team and Supervisor and Director of Work of PT Bahana Securities Consultant, and "NT" as the Main Business Analyst of PT. BA, Tbk. and Vice Chairperson of the Acquisition Team, and Defendant "TI" as the Majority Shareholder of PT. SBS before the acquisition, which resulted in state financial losses, namely PT. BA, Tbk. through PT. BMI as a subsidiary of PT. BA, Tbk. as follows: (a) PT. Bukit Asam (Persero), Tbk (hence referred to as PT. BA) is a State-Owned Enterprise (SOE) operating in the coal mining industry. The Republic of Indonesia holds state capital participation in PT. Bukit Asam (Persero), Tbk as stipulated by Government Regulation Number 42 of 1980, which pertains to the establishment of a Limited Liability Company (Persero) for Bukit Asam Coal Mining Company. This was subsequently augmented by Government Regulation Number 55 of 2002, which addressed the increase in state capital participation in the share capital of PT. Bukit Asam Coal Mining Company. According to the Annual Report of PT. BA for 2015, the share composition is 65.02% owned by the Government of the Republic of Indonesia and 34.98% by public shareholders. (a) PT. BA purchased PT. SBS via its subsidiary PT. BMI on January 28, 2015, pursuant to Notarial Deed Number 16 executed before Notary Eka Purwanti, SH. (b) PT. BMI was established on September 9, 2014, under Notarial Deed Number 14, executed by Notary Fathiah Helmi, SH. The company's authorized capital amounts to Rp. 280,400,000,000, while the issued and paid-up capital is Rp. 70,100,000,000, distributed among shareholders as follows: a. PT. BA holds 70,000 shares with a nominal value of Rp. 70,000,000,000 and Yayasan Bukit Asam possesses 100 shares with nominal value of Rp. 100,000,000. (c) One of the objectives of establishing PT. BMI is to execute the acquisition of PT. SBS.

On January 28, 2015, PT. SBS was acquired by PT. BMI pursuant to Notarial Deed Number 16 executed before Notary Eka Purwanti, SH, which primarily stipulates: (a)

The augmentation and subsequent approval of the company's authorized capital to Rp. 200,000,000,000; (b) The increase and subsequent approval of the issued and paid-up capital of the company to Rp. 52,977,775,000, along with the approval for the issuance of 3,840,000 new shares by the company, with a nominal value of Rp. 48,000,000,000, for the acquirer, as well as the acquisition of 186,311 existing shares of the company (Defendant "TI"). (c) Approving the sale and transfer of the firm's shares, specifically the sale and transfer of all other existing shares in the company, excluding those held by PT. BMI and PT. Tri Ihwa Sejahtera.

Following the acquisition, PT. BMI obtained 3,840,000 new shares from the company, amounting to a total nominal value of Rp. 48,000,000,000,- (designated as new shares), and furthermore acquired 186,311 shares from the firm's existing shares (designated as existing shares). Moreover, the current shareholders possessing 5% in PT. SBS at the time of the acquisition participated in the trading of shares with PT. Tri Ihwa Sejahtera as detailed below: (a) Sale and Purchase Deed and Transfer of Rights to 104,911 shares at a price of Rp. 104,911,- (one hundred four thousand nine hundred eleven rupiah), as stated in Deed Number: 19 dated January 28, 2015, between the Defendant "TI" in his personal capacity and the Defendant "TI" in his capacity as Director of PT. Tri Ihwa Sejahtera; (b) The Sale and Purchase Deed and Transfer of Share Rights amounting to 86,872 shares at a price of Rp. 86,872,- (eighty-six thousand eight hundred seventy-two rupiah), as stated in Deed Number: 20 dated January 28, 2015, between the Defendant "TI" as the Director of PT. Tri Ihwa Samara and the Defendant "TI" as the Director of PT. Tri Ihwa Sejahtera; (c) Sale and Purchase Agreement and Transfer of Rights over 3,311 shares at a price of Rp. 3,311,- (three thousand three hundred eleven rupiah), as stated in Deed Number: 21 dated January 28, 2015, between Irsa Hermawan and the Defendant "TI" as the Director of PT. Tri Ihwa Sejahtera; (d) Sale and Purchase Deed and Transfer of Rights Over 3,321 shares at a price of Rp. 3,321.00 (three thousand three hundred twenty-one rupiah), as stated in Deed Number: 22 dated January 28, 2015, between Riza Setiawan and the Defendant "TI" as the Director of PT. Tri Ihwa Sejahtera; (e) The Sale and Purchase Deed and Transfer of Share Rights for a total of 8,494 shares at a price of Rp. 8,494,- (eight thousand four hundred ninety-four rupiah), as stated in Deed Number: 23 dated January 28, 2015, between Riza Setiawan as the President Director of PT. Dian Suryo Muncar and the Defendant "TI" as the Director of PT. Tri Ihwa Sejahtera; (f) Sale and Purchase Agreement and Transfer of Share Rights for a total of 4,698 shares at a price of Rp. 4,698,- (four thousand six hundred ninety-eight rupiah), as stated in Deed Number: 24 dated January 28, 2015, between Sutrisno Juremi and the Defendant "TI" as the Director of PT. Tri Ihwa Sejahtera; (g) Sale and Purchase Deed and Transfer of Rights Over 304 shares at a price of Rp. 304,- (three hundred four rupiah), as stated in Deed Number: 25 dated January 28, 2015, between Pranadi and the Defendant "TI" as the Director of PT. Tri Ihwa Sejahtera;

Consequently, the share ownership structure of PT. SBS post-Acquisition is as follows: (a) PT. BMI possesses 4,026,311 shares with a nominal value of Rp. 50,328,887,500 (fifty billion three hundred twenty-eight million eight hundred eighty-seven thousand five hundred rupiah); (b) PT. Tri Ihwa Sejahtera holds 211,911

shares with a nominal value of Rp. 2,648,887,500 (two billion six hundred forty-eight million eight hundred eighty-seven thousand five hundred rupiah).

Subsequently, on January 28, 2018, a cash deposit was executed as placement capital and paid-in capital from PT. BMI to PT. SBS via a BRI bank account registered under PT. SBS, with Account Number: 0443010000308, totaling Rp. 48,000,000,000 (forty-eight billion rupiah). Additionally, PT. BMI acquired 186,311 shares from the Defendant "TI" through a CIMB bank account associated with Defendant "TI," Account Number: 0201132134, amounting to Rp. 186,311.00 (one hundred eighty-six thousand three hundred eleven rupiah).

That on July 3, 2015, a long-term loan agreement was made between PT. BMI and PT. SBS, Number: 62.B/Eks-BMI/VII/2015 and Number: 69/SBS/HO/DIR/VII/2015 with a loan amount to the shareholders of PT. BMI of Rp. 49,600,000,000, - (forty-nine billion six hundred million rupiah) with a repayment period of 5 (five) years, with the following details: Stage I, amounting to IDR 33,000,000,000 (thirty-three billion rupiah), was paid on July 3, 2015. This was followed by Stage II, with a payment of IDR 7,600,000,000 (seven billion six hundred million rupiah) on August 3, 2015. Finally, Stage III was completed with a payment of IDR 9,000,000,000 (nine billion rupiah) on September 3, 2015.

- a. Subsequently, the long-term loan was disbursed to PT. SBS in three distinct phases, specifically:

The first stage of the transfer took place on June 22, 2015, with an amount of USD 550,000 (equivalent to IDR 7,324,000,900), which was directly transferred from PT. BA to PT. SBS's dollar account (No. 112-00-1110153-7). Additionally, on July 3, 2015, a transfer of IDR 25,675,100,000 was made from PT. BMI's Bank Mandiri account (No. 124-00-0682841-3) to PT. SBS's Bank Mandiri account (No. 112-00-8050058-5). The second stage occurred on August 3, 2015, with a transfer of IDR 7,600,000,000 (seven billion six hundred million rupiah) from PT. BMI's Bank Mandiri account (No. 124-00-0682841-3) to PT. SBS's Bank Mandiri account (No. 112-00-8050058-5). The third stage took place on September 9, 2015, involving a transfer of IDR 9,000,000,000 (nine billion rupiah) from PT. BMI's Bank Mandiri account (No. 124-00-0682841-3) to PT. SBS's Bank Mandiri account.

- b. That the total amount of money expended by PT. BMI as a subsidiary of PT. BA to PT. SBS, in the form of placement capital and paid-up capital amounting to Rp. 48,000,000,000,- (forty-eight billion rupiah) and share purchases amounting to Rp. 186,311,- (one hundred eighty-six thousand three hundred eleven rupiah) as well as loans to PT. BMI shareholders amounting to Rp. 49,600,000,000,- (forty-nine billion six hundred million rupiah), with a total of Rp. 97,600,186,311,-. (a) That at the time PT. BA through PT. BMI acquired PT. SBS, the equity value of 100% of PT. SBS shares as of January 28, 2018, was minus Rp. 160,285,112,697. (b) PT. BA is a state-owned enterprise with 65.02% of its shares owned by the Government of the Republic of Indonesia based on the Annual Report of PT. BA for the year 2015.

In light of the comprehensive description provided above, as well as the ramifications of the unlawful actions associated with the acquisition process of PT. SBS, as

delineated by the Public Prosecutor in their legal analysis concerning the "unlawful" element of the indictment in the aforementioned case, the Public Prosecutor contends in their indictment that these actions "resulted in financial losses to the state amounting to Rp. 162,466,152,401 (one hundred sixty-two billion four hundred sixty-six million one hundred fifty-two thousand four hundred one rupiah) at PT. BA, through its subsidiary PT. BMI." This assertion is based on a detailed calculation of the financial losses incurred by the state in relation to the corruption case surrounding the acquisition of PT. SBS by PT. BA via its subsidiary PT. BMI, which is outlined in the following calculation details:

a. State Financial Losses from the Acquisition of 95% of PT. SBS Shares

The amount of funds disbursed by PT. BA through PT. BMI amounted to Rp. 48,000,186,311,- which was used to purchase 3,840,000 new shares of PT. SBS with a total value of Rp. 48,000,000,000,- (forty eight billion rupiah) and 186,311 old shares (existing) with a value of Rp. 186,311,- according to the Notarial Deed of Acquisition Number: 16 dated January 28, 2015 made by Notary Eka Purwanti, SH, so that PT. BMI's share ownership in PT. SBS became 95% of the total issued and paid-up share capital. The equity value of 100% of PT. SBS shares as of January 28, 2015 was minus Rp. 160,285,112,697,- so that the equity for 95% of PT. BMI in PT. SBS is minus Rp. 152,270,857,062, - which should be the minimum value of PT. BMI's equity shares in PT. SBS equal to the amount of funds spent to acquire PT. SBS, which is Rp. 48,000,186,311, -. Thus there is a shortage of money and/or goods and/or securities of Rp. 200,271,043,373, - (Rp. 48,000,186,311, - + Rp. 152,270,857,062, -) which is a loss of PT. BA. Where PT. BA is a BUMN whose majority shares are owned by the Indonesian Government as much as 65.02% so that the state financial loss from the acquisition of PT. SBS shares that is recognized is only Rp. 130,216,232,401,- (Rp. 200,271,043,373,- X 95%).

b. State Financial Losses from Loan Provision to PT. SBS Post Acquisition

The amount of funds disbursed by PT. BA through PT. BMI amounted to Rp. 49,600,000,000,- which was used to provide loans to PT. SBS, which according to the initial plan would be used for investment by carrying out Revitalization & Equipment Inventory, Mobilization, and Working Capital. However, in reality, the loan funds were used for the purpose of providing loans to the Borrower's subsidiaries in order to pay off debt installments due and pay off other loans, as well as for the Borrower's operational needs.

Therefore, the loan funds were used not in accordance with their intended use, resulting in the loan funds not being able to be repaid by PT. SBS, which in the end were transferred as additional capital deposits from PT. BMI to PT. SBS. Thus there is a shortage of money which is a financial loss of PT. BA amounting to Rp. 49,600,000,000,-. Therefore, the ownership of the Indonesian Government's shares in PT. BA is only 65.02%, then the state financial loss calculated is Rp. 32,249,920,000,-. As a result of the actions of the Defendant "TI" together with the other Defendants, it caused a state financial loss in this case PT. BA amounting to Rp. 162,466,152,401,- (one hundred and sixty-two billion four hundred and sixty-six million one hundred and fifty-two thousand four hundred and one rupiah) as per the Public Accountant's Report on the Calculation

of State Financial Losses in the Alleged Corruption Case in the Acquisition Process of PT. SBS by PT. BA through its Subsidiary PT. BMI made by the Public Accounting Firm Drs. Chaeroni & Rekan Number: LI.23/MCI-Kjk Sumsel/0627 Dated June 27, 2023 or at least that amount.

In light of the two principal points articulated in the aforementioned description, as delineated in the Public Prosecutor's Letter of Charge in cassu, the Public Prosecutor concludes that the element "which can harm state finances" has been substantiated. In light of the comprehensive account of the events pertaining to the element "which can harm state finances," as articulated in the Public Prosecutor's Letter of Charge in the aforementioned case, and when correlated with the definition of "State Loss" as delineated in Article 1, number 22 of Law Number 1 of 2004 regarding State Treasury, it is asserted that "State loss refers to a deficiency in money, securities, and goods that is both tangible and quantifiable, resulting from unlawful actions, whether executed with intent or through negligence." Consequently, in alignment with the definition of "State Loss" under consideration, it is imperative to establish the parameters and metrics; thus, "State Loss" must be substantiated as a consequence of unlawful acts (Herdiyan, 2024). Moreover, in the Letter of Demand, the Public Prosecutor in cassu has delineated the foundation and presence of the element of "Unlawful" attributed to the Defendant "TI" concerning the alleged corruption offense in cassu (Fatkhurohman & Kurniawan, 2017). In principle, the Public Prosecutor delineates the element of "Unlawfulness" as follows: (a) Based on the audit report of the Public Accounting Firm (KAP) Yanuar and Riza, the total amount of debt of PT. Satria Bahana Sejahtera (SBS) as of June 30, 2014 was Rp. 389,682,027,359,- (three hundred eighty-nine billion six hundred eighty-two million twenty-seven thousand three hundred and fifty-nine rupiah) consisting of current liabilities of Rp. 172,421,126,442,- and non-current liabilities of Rp. 217,260,901,135,- and the equity of PT. SBS at that time was minus Rp. 161,493,083,142,- (one hundred sixty-one million four hundred ninety-three million eighty-three thousand one hundred and forty-two rupiah). (b) Then, with the situation and conditions of PT. SBS in point 1, the Public Prosecutor argued that the Decision of the Board of Directors of PT. BA to acquire PT. SBS, is not based on the principle of prudence because it takes a high risk by acquiring PT. SBS which has negative equity, and the Board of Directors' Decision cannot be categorized as a business risk protected by the Business Judgement Rule (BJR) principle, so that the actions of "ADP" and "M" as Directors of PT. BA do not implement the principles of good corporate governance (GCG) and this is contrary to the principles of GCG as stipulated in the Regulation of the Minister of State-Owned Enterprises Number PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance and Article 5 paragraph (3) of Law Number 19 of 2023 concerning State-Owned Enterprises. (c) Furthermore, "ADP" and "M" as Directors of PT. BA in carrying out the management of the Company do not carry out the management of the company for the benefit of the company and in accordance with the intent and purpose of the Company as stipulated in Article 92 paragraph (1) of Law No. 47 of 2007 concerning Limited Liability Companies and Article 1 number 2 of Law No. 19 of 2003 concerning State-Owned Enterprises, which states that "BUMN in the form of a Limited Liability Company (PT) whose capital is divided into shares of which all or at least 51%

(fifty one percent) of the shares are owned by the Republic of Indonesia, the main purpose of which is to pursue profit" and Article 2 paragraph (1) letter b of Law No. 19 of 2003 concerning State-Owned Enterprises which states, "The purpose and objective of establishing a BUMN is to pursue profit", with PT. SBS's equity still negative after the acquisition until 2022, and for the sustainability of PT. SBS's business, it requires continuous loans from related parties, including PT. BMI, PT. BSP, PT. BEI and PT. BA as stated in the Financial Report of PT SBS for 2015 to 2021. (d) Moreover, "ADP" and "M" as the Directors of PT. BA in making the Directors' Decision to acquire PT. SBS through PT. BMI and supporting the provision of long-term loans by PT. BMI to PT. The SBS is not based on the principle of prudence because it takes a high risk by acquiring PT SBS which has negative equity, and the decision of the board of directors cannot be categorized as a business risk protected by the BJR principle, so that the actions of "ADP" and "M" as Directors of PT. BA do not implement the principles of corporate governance (Good Corporate Governance) and this is contrary to the principles of GCG as stipulated in the Regulation of the Minister of State-Owned Enterprises Number PER-01 / MBU / 2011 concerning the Implementation of Good Corporate Governance and the purpose of establishing a BUMN to pursue profits as Article 2 paragraph (1) of Law No. 19 of 2023 concerning State-Owned Enterprises has not been achieved. (e) Then, as a result of the takeover of PT. SBS carried out by "ADP" together with "SI", "M", "NT" and the Defendant "TI" has enriched the Defendant "TI" as the majority shareholder of PT. SBS before the acquisition and the minority shareholder after the acquisition, namely by transferring PT. SBS's debt worth Rp. 417,662,444,977,- (four hundred seventeen billion six hundred sixty two million four hundred forty four thousand nine hundred seventy seven rupiah) as reported by the Public Accounting Firm (KAP) Yanuar and Riza as of January 28, 2015, became the debt burden of PT. SBS as a subsidiary of a BUMN (PT. BA), where the deposit money for capital and loans to PT. SBS came from PT. BMI which is a subsidiary of PT. BA. As well as PT. BA which is a BUMN Company with 65.02% ownership of shares by the Government of the Republic of Indonesia based on the Annual Report of PT. BA in 2015.

Furthermore, based on the entire description of the elements of "against the law" above and thus the Public Prosecutor also argues that there was bad intention from the Defendant "TI" as Commissioner of PT. SBS who had received money amounting to Rp. 17,600,000,000, - (seventeen billion six hundred million rupiah) for the sale of 5% of PT. TISE shares, even though the money for purchasing PT. TISE shares was a loan from PT. Bukit Asam Kreatif to PT. SBS. Then, the Defendant "TI" as the majority shareholder of PT. SBS has also been enriched by the transfer of PT. SBS's debt before the Acquisition to PT. SBS as a subsidiary of PT. BMI which acquired PT. SBS. Based on the entire description above, the Prosecutor in the description of the elements of "against the law" in his Letter of Charge is of the opinion that the element of "against the law" has been proven against the Defendant "TI". Furthermore, based on the overall substance of the descriptions in the Public Prosecutor's Letter of Demands above, the Author will then review them into two discussion topics which will become qualitative judicial annotation notes, including the following:

3.2. The Misinterpretation of the Element of "Detrimental to State Finances" by the Public Prosecutor

That in the description of the element of "detrimental to state finances" in his Letter of Indictment, the Public Prosecutor stated that the element of "detrimental to state finances" is a formal crime (Kusmono; Setiawan, 2023; Rahawarin, 2022; Toloh, 2024). Therefore, in proving this element regarding state losses, it is not absolutely necessary that they have occurred but can also be applied to state losses that have not yet occurred but have the "potential" to cause state or state economic losses, as long as the losses can be calculated. In relation to his statement, the Public Prosecutor has been guided by the Decision of the Constitutional Court Number: 003/PUU-IV/2006 dated July 24, 2006 regarding the request for a judicial review of the elements of this Article, which in its legal considerations the Constitutional Court is of the opinion, among other things, that the element of state losses must be proven and must be calculated, even though it is an estimate or even though it has not yet occurred.

Furthermore, the Public Prosecutor stated that the Constitutional Court Decision was in line with several Supreme Court jurisprudence that held the same view, such as Supreme Court Decision Number: 813 K/Pid/1987 dated 29 June 1989 in the case on behalf of the Defendant Ida Bagus Wedha, which in its considerations stated "That the amount of state financial loss due to the defendant's actions does not need to be certain, it is sufficient that there is a tendency for state financial loss to occur". That regarding what was described by the Public Prosecutor in his Letter of Indictment regarding the element "which can harm state finances" above, it seems to have eliminated the existence of the application and enforcement of developments and changes in legal principles that are clearly and definitely related to the formal crime in question has undergone changes and paradigm shifts in the legal sense after Decision Number 25/PUUXIV/2016 which stated that the phrase "can" in the provisions of Article 2 and Article 3 of the Corruption Law is contrary to the 1945 Constitution. The inclusion of the word "can" in Article 2 paragraph (1) and Article 3 of the Corruption Law makes the crimes in the two articles into formal crimes. According to the Court, in practice, this is often misused to cover many acts that are suspected of harming state finances, including policies or discretionary decisions or the implementation of the *freies ermesen* principle which are taken urgently and for which no legal basis has been found, so that criminalization often occurs with allegations of abuse of authority. Likewise, policies related to business but are considered to be detrimental to state finances, then with the understanding of the two articles as formal crimes, they are often subject to corruption. This condition can certainly cause public officials to be afraid to take a policy or worry that the policy taken will be subject to corruption, so that among other things it will have an impact on the stagnation of the state administration process, low budget absorption and disruption of investment growth.

The criminalization of policies occurs because there are differences in the meaning of the word "can" in the element of harming state finances in corruption by law enforcement officers, so that it often raises problems ranging from calculating the actual amount of state losses to which institution is authorized to calculate state losses (Bantekas, 2006; Pagrelia & Gunadi, 2024). The Court asserts that the inclusion of the term "can" in Article

2 paragraph (1) and Article 3 of the Corruption Law engenders legal ambiguity, which fundamentally contradicts the assurance of an individual's right to security and protection from fear, as enshrined in Article 28G paragraph (1) of the 1945 Constitution. Furthermore, the Court asserts that the term "can" in Article 2, paragraph (1), and Article 3 of the Corruption Law contravenes the principle of criminal act formulation, which necessitates that the law be codified (*lex scripta*), interpreted literally (*lex stricta*), and devoid of ambiguous interpretations (*lex certa*), thereby conflicting with the rule of law principle outlined in Article 1, paragraph (3) of the 1945 Constitution (Rauzi & Suriadiata, 2024).

It is in line with attempts to synchronize and harmonize national and international legal instruments, such as the Law on Government Administration, the Law on the State Treasury and the Law on the Audit Board, as well as the United Nations Convention Against Corruption, 2003, which Indonesia ratified through Law Number 7 of 2006, and the Court's determination that actual loss, in the sense of a mandatory material offense, provides more certainty of fair law when applying the element of financial loss. The following legal definitions are found in the laws governing the State Treasury and the BPK: "state/regional losses are shortages of money, securities, and goods, which are real and certain in amount as a result of unlawful acts, either intentionally or negligently" (Article 1 number 22).

This idea of state losses is based on the legal basis and regulations mentioned earlier. It refers to material offenses, where an act can be considered damaging to state finances if there is a truly real and certain loss to the state. If you look at Article 32 paragraph (1) of the Corruption Law, which states that "there has clearly been a state loss"—a loss that can be calculated based on the findings of the authorized agency or appointed public accountant—you'll see that this concept is identical to that explanation. Furthermore, for the inclusion of state loss as a component of corruption to remain true to the UN Anti-Corruption Convention, it must have really happened or be genuine and certain.

3.3 The Public Prosecutor's Inaccuracy in Qualifying State Financial Losses in the In Cassu Acquisition Process

The Public Prosecutor's Letter of Charge argues that the acquisition of PT. BA, the parent company of a BUMN, has caused harm to state finances. The author believes these statements are not based on strong legal principles, as the Supreme Court of Indonesia states that state assets are separate from state-owned company assets. The legal implications of state assets separated in the form of government capital participation (PMP) in a limited liability company can no longer be considered public finances. The legal status of these public finances changes to company money subject to laws and regulations in the field of public finance, causing the state's public immunity to be lost.

The two BUMN companies differ in their capital structure, with the former divided into shares and the latter pursuing profit-oriented goals. The risk of errors in management varies between the two entities, with Perum management being charged with Corruption Law and the company management being subject to Limited Liability Company Law. The legal study also questions the status of PT. BMI, a subsidiary of PT. BA, and whether the losses incurred due to the acquisition are considered state losses.

A subsidiary is a company owned by the parent or sub-holding of the parent company, and according to BUMN Regulation Number 4 of 2012 and BUMN Regulation Number 3 of 2020, it is a limited liability company with shares mostly owned by BUMN or a limited liability company controlled by BUMN. BUMN subsidiaries are not legally the same as their parent company, as their shares are not owned by the state and are not recorded by the state in the state-owned administration.

BUMN subsidiaries are separate legal entities from their shareholders or managers, and their assets are BUMN assets that have become independent assets of the BUMN subsidiary. The capital of a BUMN subsidiary differs from that of its parent BUMN, and losses incurred by BUMN subsidiaries are excluded from state losses.

The capital participation process between State-Owned Enterprises (BUMN) and their subsidiaries concerning "state finances" is executed through a resolution in the GMS and the board of directors, followed by disbursement from the BUMN treasury to the subsidiary's treasury. The wealth and capital are converted into the assets of BUMN subsidiaries, and the procedure of State Capital Participation in BUMN is executed by the allocation of funds in the State Budget Law, authorized by government rules, and then disbursed from the state treasury to the BUMN treasury. In BUMN subsidiaries, there is an absence of ownership or state rights as a shareholder.

4. Conclusions

The legal clarity regarding the element of state financial loss resulting from corporate actions in the corruption case decision number: 70/Pid.Sus-TPK/2023/PN.Plg remains unsubstantiated by the Public Prosecutor, as articulated in the Indictment and Charges presented at the Trial. Essentially, the Public Prosecutor contends that the unlawful actions of Defendant "TI" and the other four Defendants during the acquisition of PT. SBS by PT. BA through its subsidiary PT. BMI have incurred a financial loss to the state, amounting to Rp. 162,466,152,401 (one hundred sixty-two billion four hundred sixty-six million one hundred fifty-two thousand four hundred one rupiah) to PT. BA via PT. BMI. Moreover, the charges indicate that the public prosecutor misinterpreted the element of "causing loss to state finances," resulting in ambiguous and uncertain calculations of state financial losses, as well as a lack of precision in the public prosecutor's qualification of state financial losses in the specific acquisition process.

References

- Bantekas, I. (2006). Corruption as an international crime and crime against humanity: An outline of supplementary criminal justice policies. *Journal of International Criminal Justice*, 4(3), 466–484.
- Citrano, C. (2020). The State Financial Losses Calculation Legal Study of Corruption Consequence in The Supreme Court Of Decision Number 1958 K/Pid. Sus/2018. *Belom Bahadat*, 10(01), 75–99.
- Fatkurohman, F., & Kurniawan, N. (2017). Pergeseran Delik Korupsi dalam Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016. *Jurnal Konstitusi*, 14(1), 1–21.
- Herdiyan. (2024, March 21). Kasus Akuisisi PT SBS, Pakar: Kerugian Anak Usaha BUMN Bukan Kerugian Negara. <https://Sumatra.Bisnis.Com/Read/20240321/534/1751556/Kasus-Akuisisi-Pt-Sbs-Pakar-Kerugian-Anak-Usaha-Bumn-Bukan-Kerugian-Negara>.
- Herianto, H. (2020). *Teknik menulis artikel konseptual*.

- Idris, S., Kadir, Y., & Amu, R. W. (2023). Analisis Hukum Penyelesaian Kerugian Negara Ditinjau Dalam Perspektif Hukum Pidana. *Journal Evidence Of Law*, 2(3), 91–105.
- Kasim, H. (2017). Memikirkan Kembali Pengawasan Badan Usaha Milik Negara Berdasarkan Business Judgement Rules. *Jurnal Konstitusi*, 14(2), 440–462.
- Khan, M. H. (2006). Determinants of corruption in developing countries: the limits of conventional economic analysis. In *International handbook on the economics of corruption*. Edward Elgar Publishing.
- Kusmono; Setiawan, B. W. (2023). Legal Risks for the Business of Persero's State Owned Enterprise (SOE) and Their Implications for State Finance. *J. Int'l Legal Commc'n*, 8, 56.
- Kusworo, D. L., & Anggraini, T. (2024). Extensive interpretation of state financial losses in tin sector corruption: A comparative study of emerging economies. *Integritas: Jurnal Antikorupsi*, 10(2), 173–186.
- Marzuki, P. M. (2021). *Pengantar ilmu hukum*. Prenada Media.
- Mulya, J. F. (2024). Studi Kasus Putusan PN Jakarta Pusat terhadap Praktik Penggelembungan Saham Menimbulkan Unrealized Loss sebagai Kerugian Negara dalam Investasi. *Jurnal Global Ilmiah*, 1(9).
- Mulyono, M., & Maryana, E. (2023). Analysis of Handling State Losses In Corruption Crimes. *INTERNATIONAL JOURNAL OF SOCIAL, POLICY AND LAW*, 4(2), 1–9.
- Pagrelia, Y. T., & Gunadi, A. (2024). CONTRADICTIONS IN THE LEGAL STATUS OF STATE-OWNED ENTERPRISE (BUMN) SUBSIDIARIES IN THE PARENT HOLDING COMPANY. *POLICY, LAW, NOTARY AND REGULATORY ISSUES*, 3(1), 122–130.
- Putri, T. A., & Sitabuana, T. H. (2022). Pengawasan Pengelolaan Keuangan Negara Terhadap Badan Usaha Milik Negara (BumN). *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 1(7), 1003–1018.
- Rahawarin, A. R. (2022). Rematerialization Of Criminal Actions From The Loss Of State Finance In Indonesia. *Journal of Positive School Psychology*, 7514–7525.
- Rauzi, F., & Suriadiata, I. (2024). Legal Sources of Abuse of Authority in Corruption Crimes in Indonesia. *Media of Law and Sharia*, 5(4). <https://doi.org/https://doi.org/10.18196/mls.v5i4.174>
- Sari, R. D. P., Nurjaya, I. N., Puspitawati, D., & Monteiro, S. (2024). State Financial Losses as a Result of Environmental Damage. *Journal of Human Rights, Culture and Legal System*, 4(1), 121–148.
- Stephenson, M. C., & Schütte, S. A. (2016). Specialised anti-corruption courts: a comparative mapping. *U4 Issue*, 7.
- Sudarmono, N. M. (2023). Aspek Hukum Terhadap Pengawasan Pemerintah atas Penyertaan Modal Negara Dalam Rights Issue di BUMN. *Jurnal Penelitian Ilmu Sosial Dan Eksakta*, 2(2), 105–115.
- Sumarto, S., & Rahadian, Y. (2020). Evaluasi Penerapan Metode Penghitungan Kerugian Negara Dalam Membantu Penanganan Kasus Tindak Pidana Korupsi. *Jurnal ASET (Akuntansi Riset)*, 12(1), 117–129.
- Swardhana, G. M., & Monteiro, S. (2023). Legal Policy of State Financial Losses Arrangement in a State-Owned Enterprise. *Bestuur*, 11(1), 171–190.
- Syahri, A. (2023). Legal Analysis of Government Control Over the Company Subsidiaries in State-Owned Enterprises Holding. *Journal of Social Science*, 4(4), 950–961.
- Syahrum, M. (2022). *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi dan Tesis*. CV. Dotplus Publisher.
- Toloh, P. W. Y. (2024). Conflicts of interest and handling mechanisms in public finances management. *Integritas: Jurnal Antikorupsi*, 10(1), 65–80.
- Wahyudi, W. (2024, January 16). Sidang Kasus Korupsi PT Bukit Asam, Saksi Jelaskan Alasan Akuisisi PT SBS. <https://www.Tempo.Co/Ekonomi/Sidang-Kasus-Korupsi-Pt-Bukit-Asam-Saksi-Jelaskan-Alasan-Akuisisi-Pt-Sbs-97451>.
- Zahrulyani, A., Santoso, M. I., Maksum, I. R., & Pratiwi, S. (2024). Normative construction of restorative justice implementation in accelerating state losses return in corruption crimes. *Indonesian Journal of Multidisciplinary Science*, 3(9).