

## Determination of State Financial Damages Performed by the Prosecutor in the Settlement of the Crime of Corruption



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**ABSTRACT:** This study aims, firstly, to find out that the Attorney General's Office is authorized to calculate state financial losses based on the applicable laws and regulations. second, knowing that the court's legal considerations in deciding the elements of state financial losses are fulfilled based on the results of the calculation of the Prosecutor's Office.

The problem to be answered is whether the Prosecutor's Office has the authority to calculate state financial losses based on the applicable laws and regulations? And how can the court's legal considerations in deciding the element of state financial loss be fulfilled based on the results of the prosecutor's calculation?

The approach used is a statutory approach, a conceptual approach and a case approach by analyzing the Court's Decision, namely District Court Decision No. 9/Pid.Sus-TPK/2019/PN Tte

**KEYWORDS:** Prosecutor's Authority, State Loss, Corruption.

### INTRODUCTION

That the crime of corruption is an extraordinary crime that damages and threatens the foundations of the nation's life. Various laws and regulations that are intended to eradicate corruption have been issued, but the practice of corruption is still ongoing and is increasingly complex in its realization. The problem of corruption is actually not a new problem in Indonesia, because it has existed since the era of the 1950s. Even various groups consider that corruption has become a part of life, become a system and integrate with the administration of state government (Chaerudin et.al., 2009: 1).

Comprehensive plans and strategies are urgently needed in disclosing cases of criminal acts of corruption, considering that proving the existence of a criminal act of corruption is not easy, due to the complexity of the modus operandi and sophistication of the transaction model, and is generally carried out by professionals in the field. One of the elements that must be proven in disclosures that often lead to polemics is the element of state losses as stated in Articles 2 and 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (Marwan Effendy, 2010: 79). Consequently, the eradication of corruption is not solely aimed at getting corruptors to be sentenced to a deterrent prison sentence, but must also be able to restore the state's losses that have been corrupted.

The calculation of state financial losses in corruption can only be carried out after it is determined that it is not against the law as the cause of state financial losses. In accordance with the main objective of enforcing the criminal law of corruption, namely to restore state losses, it is almost certain that in every legal settlement of corruption cases (which can harm legal interests regarding state finances or economy), profits and judges always prove the value (number) of state losses in real terms. At this stage of proving real losses, the role of the auditor becomes very important. To be able to determine and prove the actual amount of property obtained from the crime of corruption, not only enjoy the property controlled by the convict at the time of the court decision, but also the assets resulting from corruption that have been transferred to other people (Efi Laila Kholis, 2010: 5).

In accordance with the main objective of enforcing the criminal law of corruption is to restore state losses. So it is almost certain that in every legal settlement of corruption cases (which can harm legal interests regarding state finances or economy), prosecutors and judge can harm legal interests regarding state finances or economy), prosecutors and judges always prove the value (number) of real state losses. At this stage of proving real losses, the role of the auditor becomes very important. Determining the existence and magnitude of state losses has always been a debate between various parties, for example between the defendant and his defense and the public prosecutor. To determine this, so far the prosecutor has been assisted

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by many experts from the Financial and Development Supervisory Agency, or the Inspectorate or other appointed experts. Each party has its own opinion regarding who is authorized to determine the existence of state losses and the amount. In practice,

In that context, this research is intended to examine the problem of how to measure state financial losses in resolving cases of criminal acts of corruption, especially the misuse of village funds based on a case approach by examining several District Court Decisions No. 9/Pid.Sus-TPK/2019/PN Tte. The paradigm of this research rests on the doctrine of *ultimum remedium* or the teaching which views that criminal law should act as the last means, effort, and weapon in resolving corruption cases. This fulcrum was deliberately chosen by reasoning to limit the scope of the study as well as the starting point of analysis in this legal research. From the description of this background is whether the Prosecutor's Office has the authority to calculate state financial losses based on the applicable laws and regulations and how the Court's legal considerations in assessing the elements of state financial losses are fulfilled based on the results of the Prosecutor's Office calculation?

### RESEARCH METHODS

This research is legal research. Therefore, there is no need for a hypothesis to examine and explore legal issues related to the problem in the formulation of the problem, where the purpose of the research is to be able to provide a prescription regarding the legal problem being studied with what should be done without proving the truth of the hypothesis.<sup>1</sup>

In this study, the author uses several approaches, including: first, the statute approach, which is carried out by examining various laws and regulations related to legal issues in the formulation of the problem in this study. Second, a case approach that is different or not the same as a case study, where the prospective researcher conducts a study related to the court decision which is in *casu* South Jakarta District Court Decision No. 1783/Pid.B/2004/PN.Jak-Sel which was terminated on March 3, 2005, in order to explore the ratio decidendi or reasoning from the Court of Justice to arrive at a decision.

Then the third, the conceptual approach, namely moving from the views or doctrines of legal experts and legal principles related to legal issues in the formulation of this research problem. The legal materials used consist of primary legal materials, namely statutory regulations, related court decisions. The secondary legal materials used are from various types of literature, namely books, journals, scientific works (thesis) related to this research. besides that, legal dictionaries, popular dictionaries and so on.

After identifying the legal issues in this research and eliminating irrelevant matters and collecting legal materials. The researcher will conduct a study of the problems that become legal issues based on the data or legal materials that have been collected. Meanwhile, after conducting the study, conclusions were drawn in the form of arguments that answered the question of the statements of witnesses who were not present at the trial and whose statements were read by the Public Prosecutor and the rest of the legal issues related. Then the last step is to give a prescription based on the arguments that have been built in the conclusion. these steps are in accordance with the character of law as a prescriptive or applied science.<sup>2</sup> The author realizes that the nature of science is relative and will always experience continuous change,

### RESULTS AND DISCUSSION

Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (the "Prosecutor Law") regulates the duties and authorities in the criminal sector, including: (a) prosecuting; (b) implement judges' decisions and court decisions that have permanent legal force; (c) supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions. What is meant by "conditional release decision" is a decision issued by the minister whose duties and responsibilities are in the correctional sector;<sup>2</sup> (d) conduct investigations into certain criminal acts based on the law.

The authority in this provision is the authority as regulated for example in Law Number 26 of 2000 concerning Human Rights Courts and Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 jo. Law Number 30 of 2002 concerning the Corruption Eradication Commission. and (e) complete certain case files and for that purpose can carry out additional examinations before being delegated to the court which in its implementation is coordinated with investigators.<sup>3</sup> To complete the case file, additional examination is carried out by taking into account the following matters:

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<sup>1</sup>Peter Mahmud Marzuki, *Penelitian Hukum, edisi revisi*, cetakan kesembilan, (Jakarta: Kencana, 2014), hlm. 70.

<sup>2</sup>Lihat Penjelasan Pasal 30 huruf b Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia (Tambahan Lembaran Negara Republik Indonesia Nomor 4401).

<sup>3</sup>Lihat Pasal 30 Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 67).

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- a. Not carried out against the suspect;
- b. Only for cases that are difficult to prove, and/or can disturb the public, and/or which can endanger the safety of the State;
- c. must be completed in within 14 (fourteen) days after the implementation of the provisions of Article 110 and 138 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code;
- d. the principle of coordination and cooperation with investigators.

In carrying out a prosecution, the prosecutor may conduct a pre-prosecution. Pre-prosecution is the action of the prosecutor to monitor the progress of the investigation after receiving notification of the commencement of the investigation from the investigator, studying or examining the completeness of the case file resulting from the investigation received from the investigator and providing instructions to be completed by the investigator in order to determine whether or not the case file can be transferred to the prosecution stage.<sup>4</sup>

Meanwhile, in carrying out court decisions and judges' decisions, the prosecutor's office pays attention to legal values that live in society and humanity based on Pancasila without compromising firmness in attitude and action. Implementing court decisions, including carrying out the duties and authority to control the execution of the death penalty and court decisions on confiscated and confiscated goods for sale at auction.<sup>5</sup>

In addition to the duties and authorities mentioned in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office may be assigned other duties and authorities based on the law. In addition, in carrying out its duties and authorities, the Prosecutor's Office maintains cooperative relationships with law and justice enforcement agencies and state agencies or other agencies.

What is meant by fostering cooperative relations with law enforcement agencies/state agencies/other agencies is that it is an obligation for every state agency, especially in the field of law enforcement and justice to implement and foster cooperation based on the spirit of openness, togetherness, and integration in an atmosphere of familiarity in order to realize integrated criminal justice system. This cooperative relationship is carried out through periodic and continuous horizontal and vertical coordination while respecting each other's functions, duties, and authorities. Cooperation between the prosecutor's office and other law enforcement agencies is intended to facilitate law enforcement efforts in accordance with the principles of fast, simple and low cost, as well as free, honest and impartial in the settlement of cases.<sup>6</sup>

In the field of corruption law enforcement, in addition to carrying out the duties and authorities of the Prosecutor's Office as stated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The Prosecutor's Office is also given the authority in the event that the investigator finds and is of the opinion that one or more elements of a criminal act of corruption do not contain sufficient evidence, while in fact there has been a state financial loss, the investigator immediately submits the case file resulting from the investigation to the State Attorney for a civil suit or submitted to the aggrieved agency to file a lawsuit.<sup>7</sup>

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

Based on the provisions of these laws and regulations, in the field of law enforcement for the settlement of corruption cases, the prosecutor's office is not given the authority to calculate state losses because the elements of State Loss or the State Economy in Article 3 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption are elements important (essential). Moreover, since Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, a judicial review has been carried out and an official interpretation has been given by the Constitutional Court in Decision No. 26/PUU-XIV/2016, which states in its decree that it reads<sup>8</sup>:

1. Granting the petition of the Petitioners in part;
2. Stating the word "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Acts Corruption crime (State Gazette of the Republic of Indonesia of 2001 Number 134,

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<sup>4</sup>Lihat Penjelasan Pasal 30 huruf a Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia (Tambahan Lembaran Negara Republik Indonesia Nomor 4401)

<sup>5</sup>Lihat Penjelasan Pasal 30 huruf b Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia (Tambahan Lembaran Negara Republik Indonesia Nomor 4401).

<sup>6</sup>Lihat Penjelasan Pasal 33 Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia (Tambahan Lembaran Negara Republik Indonesia Nomor 4401).

<sup>7</sup>Pasal 32 ayat (1) Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 140).

<sup>8</sup>Lihat Putusan Mahkamah Konstitusi Nomor 26/PUU-XIV/2016, hal. 117

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Supplement to the State Gazette of the Republic of Indonesia Number 4150) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.<sup>14</sup>

The dictum of the Constitutional Court's Decision is based on legal considerations (*ratio decidendi*) the Judge stated that "...according to the Court the word "can" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law also contradicts the principle of the formulation of a criminal act that must meet the principle of law must be written (*lex scripta*), must be interpreted as it is read (*lex stricta*), and not have multiple interpretations (*lex certa*), therefore it is contrary to the principle of the rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution." With the abolition of the word "can" in Article 3 of the PTPK Law, the article 3 a quo offense has changed from a formal offense which only emphasizes the actions of the perpetrator to a material offense which emphasizes the consequences of an act of corruption in *casu* state losses from the actions of the perpetrator. This is explained very clearly and firmly by the Constitutional Court in legal considerations (*ratio decidendi*) as follows<sup>9</sup>:

**"[3.10.3]**Whereas after the Court's Decision Number 003/PUU-IV/2006, the legislators enacted Law Number 30 of 2014 concerning Government Administration (Government Administration Law) which contains provisions including; Article 20 paragraph (4) regarding the return of state losses due to administrative errors that occur due to an element of abuse of authority by government officials; Article 21 regarding the absolute competence of the state administrative court to examine the presence or absence of allegations of abuse of authority by government officials; Article 70 paragraph (3) concerning the return of money to the state treasury because the decision resulting in the payment of state money is declared invalid; and Article 80 paragraph (4) regarding the imposition of heavy administrative sanctions on government officials for violating provisions that cause state losses. Thus, based on these provisions, with the existence of the Government Administration Law, administrative errors that result in state losses and the presence of elements of abuse of authority by government officials are not always subject to criminal acts of corruption. Likewise, the solution is not always by applying criminal law, it can even be said to be in the settlement of state losses, the Government Administration Law seems to want to emphasize that the application of criminal sanctions is a last resort (*ultimum remedium*)." Administrative errors that result in state losses and the presence of elements of abuse of authority by government officials are not always subject to criminal acts of corruption. Likewise, the solution is not always by applying criminal law, it can even be said to be in the settlement of state losses, the Government Administration Law seems to want to emphasize that the application of criminal sanctions is a last resort (*ultimum remedium*)." Administrative errors that result in state losses and the presence of elements of abuse of authority by government officials are not always subject to criminal acts of corruption. Likewise, the solution is not always by applying criminal law, it can even be said to be in the settlement of state losses, the Government Administration Law seems to want to emphasize that the application of criminal sanctions is a last resort (*ultimum remedium*)."<sup>10</sup>

[3.10.6] Whereas the application of the element of financial loss by using the concept of actual loss, according to the Court, provides more legal certainty that is fair and in accordance with efforts to synchronize and harmonize national and international legal instruments, such as the Law on Government Administration as described in paragraph [3.10.2] and paragraph [3.10.3] above, Law Number 1 of 2004 concerning the State Treasury (Law on State Treasury) and Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK Law) as well as the United Nations Convention Against Corruption, 2003 (United Nation Convention Against Corruption, 2003) which Indonesia has ratified through Law Number 7 of 2006. Article 1 number 22 of the State Treasury Law and Article 1 number 15 of the BPK Law define, "Losses to the state/region are shortages of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, whether intentionally or negligently".<sup>11</sup>

The real or actual loss must have actually occurred/real whose amount can be calculated based on the findings of the authorized agency or public accountant. What is meant by "finding findings from the competent authority"? Referring to the Constitutional Court Decision Number 31/PUU-X/2012 explicitly (*expressis verbis*) explains the institution authorized to audit state losses as follows:<sup>12</sup>:

"That the authority of each BPKP and BPK has been clearly regulated in the legislation. BPKP is a government agency that works based on Presidential Decree Number 103 of 2001 concerning Positions, Duties, Functions, Authorities, Organizational Structures, and Work Procedures of Non-Departmental Government Institutions (hereinafter referred to as Keppres 103/2001). In this provision it is stated that BPKP has the authority to carry out government duties in the field of financial

<sup>9</sup>Lihat Putusan Mahkamah Konstitusi Nomor 26/PUU-XIV/2016, hal. 113-114.

<sup>10</sup>Lihat Putusan Mahkamah Konstitusi Nomor 26/PUU-XIV/2016, hal. 111-112.

<sup>11</sup>Lihat Putusan Mahkamah Konstitusi Nomor 26/PUU-XIV/2016, hal. 114.

<sup>12</sup>Lihat Putusan Mahkamah Konsitusi Nomor 31/PUU-X/2012 hal. 52-53

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supervision and development in accordance with the provisions of the applicable laws and regulations (see Article 52 of Presidential Decree 103/2001). In the General Provisions of Government Regulation Number 60 of 2008 concerning the Government's Internal Control System (hereinafter referred to as PP 60/2008) states, "The Financial and Development Supervisory Agency, hereinafter abbreviated as BPKP, is the government's internal supervisory apparatus which is directly responsible to the President". Regional-Owned Enterprises, and other institutions or bodies that manage state finances." (see Article 6 paragraph (1) of the BPK Law). Thus, the duties and authorities of each agency such as BPKP and BPK have been clearly regulated in the laws and regulations, so that the duties and authorities do not need to be further stated in the explanation of the KPK Law."

Based on the ratio decidendi a quo, the Constitutional Court has confirmed that the institution authorized to audit state losses is BPK and BPKP. This is in line with the explanation of Article 32 Paragraph (1) "what is meant by "there has actually been a state financial loss" is a state loss whose amount can be calculated based on the findings of the authorized agency or appointed public accountant." The agencies authorized to calculate state losses include the Inspectorate based on the government's internal control system (SPIP) as a way to achieve effective, efficient, transparent and accountable management of the state financial budget.<sup>13</sup>

Besides that, it is also more specific for the judiciary within the Supreme Court, by referring to the Circular Letter of the Supreme Court no. 4 of 2016 concerning the Implementation of the 2016 Supreme Court Chamber Plenary Meeting Results Formulation as a Guide to the Implementation of Duties for the Court, item 6 of the Criminal Chamber Legal Formulation expressly states that:

"5.The provisions for the 60-day time limit for refunding state losses on the recommendation of the State Audit Board/Financial and Development Supervisory Agency/Inspectorate in accordance with the provisions of Article 20 paragraph (3) of Law Number 15 of 2004 concerning Audit of State Finance Management and Accountability do not apply to Defendants who are not Officials (Private) who return losses to the State within the grace period, these provisions only apply to Government Organizers. However, it is not binding if the state administration is refunded after the 60-day deadline. It is the investigator's authority to carry out legal proceedings if an indication of a Corruption Crime is found;

**6.The agency authorized to state whether there is a loss to the state is the Supreme Audit Agency which has constitutional authority, while other agencies such as the BPKP/Inspectorate/SKPD are still authorized to conduct audits and audits of state financial management. However, it is not authorized to declare or declare a state financial loss. In certain cases, the judge based on the facts of the trial can assess the existence of state financial losses and the amount of state losses."**

On that basis, by referring to the legal norms mentioned above, it can be explained that since the issuance of Law Number 30 of 2014 concerning Government Administration, especially Article 20 paragraph (4) jo. Article 70 paragraph (3) and Article 80 paragraph (4) of Law Number 30 of 2014 concerning Government Administration regarding the imposition of severe administrative sanctions on government officials for violating provisions that cause state losses, administrative errors resulting in state losses and elements of abuse authority by government officials is not always subject to corruption.

Thus, based on the provisions of the applicable laws and regulations (be it Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Law Number 30 of 2014 concerning Government Administration) and Decisions of the Constitutional Court (Decision No. 26/PUU-XIV/2016 and No. 31/PUU-X/2012) as well as Supreme Court Circular Letter No. 4 of 2016 concerning the implementation of the formulation of the results of the plenary meeting of the Supreme Court Chamber of 2016. The Prosecutor's Office is not given

the authority to calculate state financial losses in corruption cases, but institutions such as the Supreme Audit Agency which has constitutional authority under the 1945 Constitution of the Republic of Indonesia, as well as by the Financial and Development Supervisory Agency, Inspectorate or public accountants, however, are not authorized to declare or declare a state financial loss. Or also In certain cases, judges of the Corruption Court based on the facts of the trial can assess the existence of state financial losses and the amount of state losses.

As for the corruption case which was examined and tried by the Corruption Court at the Ternate District Court with Number: 9/Pid.Sus-TPK/2019/PN.Tte which was decided on 5 September 2019 on behalf of the defendant named Rusni Teapon alias Runi as Treasurer at the Kou Village Office, East Mangoli District, Sula Regency. The defendant Rusni Teapon alias Runi was

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<sup>13</sup>Lihat Peraturan Pemerintah Nomor 60 Tahun 2008 Tentang Sistem Pengendalian Intern Pemerintah, (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 127).

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prosecuted by the Sula District Attorney's Office in the Letter of Claim Number: REG. PERKARA : PDS-05/Q.2.14/Ft.1/05/2019 dated August 23, 2021. In the Criminal Prosecution (Requisitoir), the Public Prosecutor The District Attorney's Office of Sula Regency requested that the Corruption Court at the Ternate District Court, which examined and tried this case, decide:

1. Stating that the Defendant RUSNI TEAPON, A.Md. Kom alias RUNI was not legally and convincingly proven guilty of "committing a criminal act of corruption together" as regulated in Article 2 paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999 concerning Eradication Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) of the 1st Criminal Code, which is indicted in the Primary Indictment;
2. Declaring that the Defendant, RUSNI TEAPON, A.Md.Kom, alias RUNI, was acquitted of the Primary Indictment;
3. To declare that the Defendant, RUSNI TEAPON, A.Md. Kom alias RUNI, was legally and convincingly proven guilty of "committing a criminal act of corruption together" as regulated in Article 3 jo. Article 18 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) 1 the Criminal Code, which is charged with the Subsidiary Charge;
4. Therefore, the defendant RUSNI TEAPON, A.Md.Kom Alias RUNI was sentenced to imprisonment for 1 (one) year and 6 (six) months and paid a fine of Rp. 50,000,000.- (fifty million rupiah) subsidiary 3 (three) months of confinement, minus the period of detention that has been served by the defendant, with an order that the defendant remains in custody.

In this case, the Public Prosecutor of the Sula District Prosecutor's Office calculated that it was the result of the actions of the defendant together with witness Basir

Duwila Alias Om Ba caused state losses of Rp. 248,907,000,- (two hundred and forty-eight million nine hundred and seven thousand rupiah) with the following description:<sup>14</sup>

- Whereas based on the Order for Disbursement of Funds (SP2D) Number: 3125/SP2D- LS/KS/2016 dated August 16, 2016, 60% of the Phase I Village Fund has been disbursed to the Village Account of Kou in the amount of Rp. 386,300,989,- (three hundred and eighty six million three hundred thousand nine hundred and eighty nine rupiah).
- That it was true that the defendant was together with the village head, Kou Basir Duwila and the village secretary, witness Muhamad. Ali Teapon went to Bank BPD North Maluku to disburse the Village Fund Phase I budget of 60%, with the details of the disbursement as follows

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No	Disbursement Date	Amount
1.	August 22, 2016	Rp. 186.000.000,-
2.	August 29, 2016	Rp. 100,000,000,-
3.	October 11, 2016	Rp. 50,000,000,-
4.	04 November 2016	Rp. 10,000,000,-
5.	11 November 2016	Rp. 40,000,000,-
Total number		Rp. 386,000,000,-

- That it is true that the defendant as Treasurer of Kou Village, East Mangoli District, Sula Islands Regency, with the knowledge and approval of witness Basir Duwila Alias Om Ba, has abused his authority by means of the defendant even though he knows that 60% of the expenditure of the Village Fund Phase I budget is not fully used to finance activities in accordance with APBDesa but still issued a budget that resulted in a burden on the APBDesa with a total expenditure of Rp. 386,000,000, - (three hundred and eighty-six million rupiah), which is used in part according to the provisions in the APBDesa with details:

<sup>14</sup>Lihat Surat Tuntutan Nomor: REG.PERKARA : PDS-05/Q.2.14/Ft.1/05/2019 tanggal 23 Agustus 2021.

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No	Activity	Amount	Realization
1	2	3	4
1.	<b>Field Implementation Village Development</b>		
	<b>1. Development Drainage / Got ± 500 M</b>	<b>Rp. 153,185,000,-</b>	
	a. Shopping goods and services	Rp. 56,575,000,-	
	- Wages	Rp. 45,500,000,-	Rp. 47.235.000,-
	- Executive Committee Honors	Rp. 1.700.000,-	Rp. 1,500,000,-
	- Transportation Rental	Rp. 9.375.000,-	Rp. 12.302.000,-
	b. Capital Expenditure	Rp. 96,610,000,-	
	- Hoe	Rp. 445.000,-	Rp. 400,000,-
	- scope	Rp. 500,000,-	Rp. 500,000,-
	- Crowbar	Rp. 200,000,-	Rp. 400,000,-
	- Sand	Rp. 14,000,000,-	Rp. 29.350.000,-
	- Rock	Rp. 29.400.000,-	Rp. 34,035,000,-
	- Krikil	Rp. 10,000,000,-	Rp. 9.250.000,-
	- Cement	Rp. 35,625,000,-	Rp. 42,000,000,-
	- wood Lata5 size m <sup>3</sup> x5x4	Rp. 1,500,000,-	Rp. 3,600,000,-
	- Wood Board 2.5x25x4 m size	Rp. 3,000,000,-	
	- Ruki's Rope	Rp. 40,000,-	Rp. 60,000,-
	- meters	Rp. 100,000,-	Rp. 150.000,-
	- Wei nails	Rp. 200,000,-	Rp. 400,000,-
	<b>2. Construction of Bridges / Decker 2 units</b>	<b>Rp. 5,625,000,-</b>	
	a. Shopping Goods and services	Rp. 2.450.000,-	
	- Executive Committee Honors	Rp. 300,000,-	Rp. 300,000,-
	- Transportation Rental	Rp. 150.000,-	Rp. 250.000,-
	b. Capital Expenditure	Rp. 3.175.000,-	
	- Wood board 2.5x25x4 m size	Rp. 150.000,-	Rp. 500,000,-
	- Nail	Rp. 50.000,-	Rp. 100,000,-
	- 10 mm iron	Rp. 665.000,-	Rp. 950.000,-
	- 8 mm iron	Rp. 490,000,-	Rp. 140.000,-

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	<b>3. Manufacture Road Footprint ± 200 M<sup>3</sup></b>	<b>Rp. 267,374,487,-</b>	
	a. Capital Expenditure	Rp. 212,287,500,-	
	- Ruki's Rope	Rp. 25.000,-	Rp. 40,000,-
2.	<b>Community Empowerment</b>		
	<b>1. Socialization Development Activities Cadre Law about Inheritance</b>	<b>Rp. 14,972,500,-</b>	
	Shop Goods and Service		
	a. Rent Sonsystem Mawaris Legal Cadre Socialization Development Activities	Rp. 1,500,000,-	Rp. 400,000,-
	<b>2. Improvement Activities Role and Functions of Youth Institutions and Functions of Social Institutions, PKK</b>	<b>Rp. 31,181,980,-</b>	
	<b>a. Facility Upgrade and PKK Infrastructure</b>		
	• Goods Shopping and Service	Rp. 21,000,000,-	
	- Official Clothing/ uniform+ attribute	Rp. 21,000,000,-	Rp. 21,000,000,-
	<b>b. Facility Upgrade and Supporting Infrastructure Youth</b>	<b>Rp. 63,971,423,-</b>	
	• Shopping Tenti	Rp. 63,971,423,-	Rp. 25,000,000,-
	<b>c. Youth Leader Election Activities</b>	<b>Rp. 19,000,000,-</b>	Rp. 10,000,000,-

- That it is true that the amount of the Village Fund budget for Phase I of 60% which is implemented in accordance with APBDesa Number: 02 of 2016 concerning APBDesa Kou Year 2016 is Rp. 239,862,000, - (two hundred and thirty-nine million eight hundred and sixty-two thousand rupiah) after deducting Rp. 386,000,000,- (total disbursement of phase I) leaving the Village Fund phase I of 60% of Rp.146,138,000,- (one hundred and forty-six million one hundred and thirty-eight thousand rupiah).
- That it is true that based on the Order for Disbursement of Funds (SP2D) Number: 0067/SP2D-LS/KS/2016 dated February 1, 2017, the Village Fund Phase II of 40% has been disbursed to the Village Account of Kou in the amount of Rp. 257,533,993,- (two hundred and fifty seven million five hundred thirty three thousand nine hundred and ninety three rupiah).
- That it is true that the defendant together with the witness, the Village Treasurer Rusni Teapon, A.Md.Km Alias Runi and the Village Secretary, witness Muhamad Ali Teapon went to the North Maluku BPD Bank to disburse the 40% Phase II Village Fund budget, with the details of the disbursement as follows:



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No	Disbursement Date	Amount
1.	03 February 2017	Rp. 257,000,000,-
Total number		Rp. 257,000,000,-

- That it is true that later on the disbursement of the Village Fund budget for phase II of 40% the Defendant as Treasurer of Kou Village, East Mangoli District, Sula Islands Regency, with the knowledge and approval of Basir Duwila Alias Om Ba, has abused his authority by means of the Defendant even though he was aware of the expenditure of the Phase II Village Fund budget. 40% is not fully used to finance activities in accordance with the Village Budget but still issues a budget that results in a burden on the Village Budget with a total expenditure of Rp. 257,000,000,- (two hundred and fifty-seven million rupiahs), which was used by the Defendant in part as stipulated in the Village Budget with details:

No	Activity	Amount	Realization
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
1.	<b>Field Implementation Village Development</b>		
	<b>1. Bridge Construction / decker 2 units</b>	<b>Rp. 5,625,000,-</b>	
	a. Shopping for Goods and Services	Rp. 2.450.000,-	
	- Wages	Rp. 2.000.000,-	Rp. 3,000,000,-
	b. Capital Expenditure	Rp. 3.175.000,-	
	- Sand	Rp. 150.000,-	Rp. 500,000,-
	<b>2. Manufacture Road Footprint ± 200 M<sup>2</sup></b>	<b>Rp. 267,374,487,-</b>	
	a. Shop Goods and Service	Rp. 55,086,987,-	
	- Wages	Rp. 41,886,987,-	Rp. 25,066,000,-
	- Honor Committee Executor	Rp. 2.700.000,-	Rp. 1.700.000,-
	- Rent Transportation	Rp. 10,500,000,-	Rp. 9.500.000,-
	b. Capital Expenditure	Rp. 212,287,500,-	
	- Cement	Rp. 39.900.000,-	Rp. 32,000,000,-
	- Rock	Rp. 54,000,000,-	Rp. 32,000,000,-
	- Krikil	Rp. 60,000,000,-	Rp. 22,500,000,-
	- Sand	Rp. 55,137,500,-	Rp. 11.310,000,-
2.	<b>Field Empowerment Public</b>		
	<b>1. Activities coaching Socialization Cadre Law on Inheritance</b>	<b>Rp. 14,972,500,-</b>	
	ShoppiSe Goods and rvice		
	a. Honor Committee Coaching Activities Socialization Cadre Inheritance law	Rp. 2.450.000,-	
	- in chargeab	Rp. 550.000,-	Rp. 550.000,-
	- chairman	Rp. 350.000,-	Rp. 350.000,-

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	- Member	Rp. 1.250.000,-	Rp. 250.000,-
	b. Consumption of Coaching Activities	Rp. 1.125.000,-	Rp. 1.125.000,-
	Socialization CadreRose's law		
	- Eat	Rp. 750.000,-	
	- Snack	Rp. 375.000,-	
	c. Print and Material Reproduction Socialization Development Activities Cadre Mawaris Law	Rp. 915.000,-	
	- Print	Rp. 750.000,-	Rp. 500,000,-
	d. Honor Trainer/Resource for Socialization Development Activities Cadre Mawaris Law	Rp. 5.100.000,-	
	- Master of Ceremony	Rp. 350.000,-	Rp. 50.000,-
	- Prayer Reader	Rp. 250.000,-	Rp. 50.000,-
	- Resource Person Honorarium	Rp. 4.500.000,-	Rp. 500,000,-
	e. Rent Mobility Outside Activity Socialization Development Cadre Mawaris Law	Rp. 1,500,000,-	
	- Transportation Assistance Source person	Rp. 1,500,000,-	Rp. 1,500,000,-
	f. Shopping Office stationery Activity Socialization Development Cadre Mawaris Law	Rp. 882,000,-	
	- Noot Bok	Rp. 375.000,-	Rp. 115.000,-
	- Plastic folder	Rp. 112,000,-	Rp. 165.000,-
	<b>a. Activity coaching and Landfill Management</b>	<b>Rp. 13.150.000,-</b>	
	• Shopping for Goods and Services	Rp. 5,400,000,-	
	- TPA Head Honors And Teacher Recite	Rp. 5,400,000,-	Rp. 5.000.000,-
	<b>b. Activity Infrastructure an Improvement</b>	<b>Rp. 6.550.000,-</b>	<b>Rp. 6.500.000,-</b>

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	<b>Posyandu Supporters</b>		
	<b>Total number</b>		<b>Rp. 154.231.000,-</b>

- That it is true that the amount of the second phase of the Village Fund budget of 40% in 2016 which is carried out in accordance with the APBDesa Number: 02 of 2016 concerning the 2016 APBDesa Kou is only Rp. 154.231.000,- (one hundred and fifty four million two hundred and thirty one thousand rupiah) so that the remaining 40% of the Phase II Village Fund budget is Rp. 102,769,000,- (one hundred two million seven hundred sixty-nine thousand rupiah) of the total disbursement of the Village Fund phase II is 40% which is disbursed in the amount of Rp. 257,000,000,-. (two hundred and fifty seven million rupiah).
- That it is true that the actions of the defendant together with the Kou Village Head witness Basir Duwila in managing the 2016 Kou Village Fund were not in accordance with the provisions so that there was a difference of:

Stage I 60%	:	Rp. 146.138.000,-
Phase II 40%	:	<u>IDR 102.769.000,- +</u>
<b>TOTAL</b>		<b>Rp. 248,907,000,-</b>

Not used for the benefit of Kou Village but used by the defendant including: Rp. 10,700,000, - (ten million seven hundred thousand rupiah) has been given to witness the Secretary of the Village Secretary Muhamad Ali Teapon in the amount of Rp. 3,500,000, - (three million five hundred thousand rupiah) and the defendant himself in the amount of Rp. 7,200,000,- (seven million two hundred thousand rupiah) and the remaining evidence cannot be shown by the defendant. And also used for the benefit of witness Basir Duwila, among others:

No	Expenditure Description	Date	Amount
1.	Basir Duwila Treatment	08-23-2016	Rp. 15,000,000,-
2.	Juf Down Payment	08-29-2016	Rp. 5.000.000,-
3.	Babinsa Transport Fee	29-10-2016	Rp. 500,000,-
4.	To go to Ambon	11-15-2016	Rp. 3,000,000,-
5.	Cash withdrawal	07-12-2016	Rp. 1.200.000,-
6.	Cash withdrawal	09-12-2016	Rp. 1.000.000,-
7.	Cash withdrawal	26-02-2017	Rp. 1,500,000,-
8.	Buy Deer	04-03-2017	Rp. 2,200,000,-
9.	Ball Transport	26-02-2017	Rp. 1.000.000,-
10.	Ball Registration	26-02-2017	Rp. 2.500.000,-
<b>TOTAL</b>			<b>Rp. 32.900.000,-</b>

- That it is true, besides that, witness Basir Duwila also bought 2 motorbikes without documents which were used for village purposes.
- That it is true that witness Basir Duwila's wife and children often take money from the defendant.
- That it is true that the defendant has returned part of the Village Fund in the amount of Rp. 7,200,000,- (seven million two hundred thousand rupiah) at the time of the investigation.
- That as a result of the actions of the defendant together with witness Basir Duwila caused a state financial loss of Rp. 248,907,000,- (two hundred and forty-eight million nine hundred and seven thousand rupiah) or around that amount.

Based on the demands (requisitoir), in the Ternate District Court Decision Number: 9/Pid.Sus-TPK/2019/PN.Tte, the panel of judges in their legal considerations (ratio decidendi) considered that based on witness testimony, expert testimony, and evidence letter, which was revealed at the trial as follows:

“Considering, that based on the defendant Rusni Teapon together with witness Basir Duwila Alias Om Ba in managing the Kou Village Fund did not comply with the provisions so that there was a difference in stage I of 60% of Rp. 146.138.000,- (one hundred and forty six million one hundred thirty eight thousand rupiah) and Phase II 40% of Rp. 102,769,000, - (one hundred and two million seven hundred and sixty-nine thousand rupiah). So the total difference between stage I and stage

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It is Rp. 248,907,000,- (two hundred and forty-eight million nine hundred and seven thousand rupiah)."

The judge's consideration (ratio decidendi) assessing state losses based on the facts revealed at the trial can be justified because it refers to the Circular Letter of the Supreme Court no. 4 of 2016 concerning the Implementation of the Formula for the Plenary Meeting of the Supreme Court Chamber of 2016 as a Guide to the Implementation of Duties for the Court, number 6 of the Criminal Chamber Legal Formula expressly states that "...In certain cases, judges based on the facts of the trial can assess the existence of state financial losses and the magnitude of state losses." Thus, the assessment of state losses by the panel of judges based on the facts revealed at the trial has a legal basis. However,

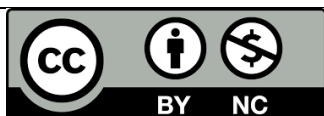
### CONCLUSION

Based on the description in the discussion of chapter IV, it can be concluded as follows:

1. Whereas based on the provisions of the prevailing laws and regulations, the Prosecutor's Office is not authorized to calculate state financial losses in corruption cases, but institutions such as the Supreme Audit Agency which has constitutional authority under the 1945 Constitution of the Republic of Indonesia, as well as by the Financial Supervisory Agency and Development, the Inspectorate or public accountant, however, is not authorized to declare or declare any state financial losses. Or also In certain cases, judges of the Corruption Court based on the facts of the trial can assess the existence of state financial losses and the amount of state losses.
2. That the judge's consideration (ratio decidendi) assessing state losses based on the facts revealed at the trial can be justified because it refers to the Circular Letter of the Supreme Court no. 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2016 as a Guide to the Implementation of Duties for the Court, number 6 of the Criminal Chamber Legal Formulation expressly (expressis verbis) states that in certain cases, judges based on trial facts can assess state financial losses and the amount of loss to the state. Thus, the assessment of state losses by the panel of judges based on the facts revealed at the trial has a legal basis.

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