

Legal Progression in the Assessment of Harmful Elements of the State's Economy

Moch. Choirul Anam¹, Pujiyono²

^{1,2} Master of Law, Universitas Diponegoro, Jl. Imam Bardjo No. 1, Pleburan, South Semarang, Central Java, 50241



ABSTRACT: The purpose of this study is to find out how the forms of legal breakthroughs are known in law enforcement practices in the application of elements detrimental to the state economy related to handling cases of criminal acts of corruption, is it possible?. This study uses a doctrinal juridical approach. The results of the study explain that in terms of both legal and formal in the form of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, legal doctrines and the existence of a judicial review decision of the Constitutional Court of the Republic of Indonesia Number: 25/PUU-XIV/2016, Legal breakthroughs in the application of elements detrimental to the economy countries related to the handling of cases of criminal acts of corruption, can be held criminally accountable with criminal sanctions in accordance with the provisions of Article 2 paragraph (1) or Article 3 of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in an objective and casual manner. If there is an element of "harming the country's economy" in accordance with the provisions of criminal law, especially the eradication of corruption.

KEYWORDS: legal breakthroughs, elements of harming the country's economy, handling corruption cases

I. INTRODUCTION

Indonesia is a state of law, this is clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, of course the law must be used as a commander in carrying out the wheels of life in the nation and state, the law is enforced with the aim not only to create certainty law and justice, but also can create a peaceful life in society and provide benefits in it.

The law was created not for itself, but the law was created for something wider than that. The law was created with the intention of protecting the rights possessed by a person, even the law itself has been attached to a person when the person is still in his mother's womb until the person later dies.

The law regulates the relationship between humans and God as the creator, regulates the relationship between humans and other humans, and also the relationship between humans and the universe and others. It is clear that all aspects of human life cannot be separated from the law. Therefore, Van Apeldorn said that humans can be referred to as legal humans "homo juridicus" namely humans who in their lives are inseparable from the role of law.¹

Law and justice are like two sides of a coin, both cannot be separated, are closely related to one another, law itself has a goal, namely to create justice, and justice without law is like something that is meaningless. Justice is not necessarily easily obtained, it is even possible that justice seekers must fulfill unfair procedures, so that the law is seen by the community as something terrible.

In criminal law itself there is the term "double-edged sword", meaning that the law in addition to protecting the legal interests owned by a person but also in its implementation the law can also rob the legal interests of that person.²

In reality the law is deemed unable to provide justice for the community, the law is seen by the community as a tool for the authorities to be able to extract as much profit as possible for themselves, without the need to look at the actual purpose of the law itself, even people say that the law is blunt to the point of view. up and sharply down. The law will show its true identity when the law is dealing with people in the lower classes, but the law will be "embarrassed" when dealing with the law is a community that has a position in society.

¹ Van Apeldorn, Pengantar Ilmu Hukum, PT Pradnya Paramita, Jakarta, 1986, hal. 18

² Masruchin Ruba'i, Asas-Asas Hukum Pidana, UM PRESS, Malang, 2001, hal. 4

Legal Progression in the Assessment of Harmful Elements of the State's Economy

In the midst of rampant corruption cases that are happening in Indonesia today, where corruption cases make people feel angry about the behavior of corruptors who can be said to be inhumane by harming state finances or the country's economy, or in other words, corruption in Indonesia is currently arguably the cause of the country's economic downturn. How the criminal acts of corruption that occur in a systemic, massive, and structured manner have consequences that are not only detrimental to the state's financial condition but also acts of corruption that violate the social and economic rights of the community at large. The crime of corruption is a crime against humanity, because it has violated the basic rights of a person as stated in the 1945 Constitution of the Republic of Indonesia. social rights and economic rights of the community, so that it is not only classified as an ordinary crime but is an extraordinary crime.

The word corruption comes from the Latin "corruptio", which among other things means to destroy, to make rotten, to bribe.³ The word corruption was later standardized in the RI Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, in the narrow sense of M. Darin Arif Mu'allifin, interpreting that the definition of corruption in the RI Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, emphasized that the Corruption is every act of a person or legal entity that violates the law to enrich oneself or another person or a legal entity that directly harms the state finances and/or the state economy or is known to suspect that the act is detrimental to state finances.⁴

Various efforts to prevent and eradicate corruption have been carried out, through improving the legal system, namely first, improving regulations in the form of laws and regulations and their implementing rules; second, efforts to improve development, supervision, and eradication by institutions such as the Police, Attorney General's Office, KPK, Government Internal Supervisory Apparatus (APIP), Ombudsman, ICW and other non-governmental organizations; and third, the legal culture of the community. Regarding the legal culture of the community, Dr. Makhдум Priyanto in the subject matter of the Ethics and Leadership Integrity training stated that although the policies that have been made in the form of various regulations, various codes of ethics and codes of conduct, in law enforcement agencies, the reality is that corruption still occurs. Ethical dilemmas occur because integrity does not appear suddenly but is evolutive in nature, which affects firmness in following one's conscience, awareness in animating the straight path, so as not to be tempted in any form.

Data on the settlement of corruption cases (TPK) throughout Indonesia collected from the Directorate of Prosecution at the Junior Attorney General for Special Crimes at the Attorney General's Office of the Republic of Indonesia between 2017-2019 amounted to 5,317 cases with a total state financial rescue of Rp3, 081,910,817.35 (three trillion eighty-one billion nine hundred ten million nine hundred ten thousand eight hundred seventeen Rupiah point thirty-five cents).

Data on Corruption Crime Cases from 2017 to 2019

1. Data on Corruption Crime Cases in 2017

No.	Work unit	LID	DIK	Prosecution			Execution	State Finance Rescue
				DIK Attorney	DIK Police Of The Republic Of Indonesia	Amount		
1.	attorney General's Office	56	81	56	31	87	0	212,011,823,105.00
2.	High Prosecutor, State Prosecutor, State Prosecutor Branch	1275	1283	988	843	1831	1672	522,072,839,552.71
Amount		1331	1364	1044	874	1918	1672	734,084,662,657.71

2. Data on Corruption Crime Cases in 2018

No	Work unit	LID	DIK	Prosecution			Execution	State Finance Rescue
				DIK Attorne y	DIK Police Of The Republic Of Indonesia	Amount		
1.	attorney General's Office	83	74	0	0	0	0	27,478,108,387.00
2.	High Prosecutor, State Prosecutor, State Prosecutor Branch	1423	986	927	876	1803	1762	815,386,576,347.09
Amount		1506	1060	927	876	1803	1762	842,864,684,734.09

³ JE. Sahetapy, Kapita Selekt Kriminologi, Alumni, Bandung, 1979, hal. 45

⁴ M. Darin Arif Mu'allifin, Problematika dan Pemberantasan Korupsi Indonesia, AHKAM, Volume 3, Nopember 2015, hal. 45

Legal Progression in the Assessment of Harmful Elements of the State's Economy

3. Data on Corruption Crime Cases in 2019

No.	Work unit	LID	DIK	Prosecution			Execution	State Finance Rescue
				DIK Attorney	DIK Police Of The Republic Of Indonesia	Amount		
1.	attorney General's Office	52	33	24	18	42	0	19,550,000,000.00 USD 61,899.05 SGD 20,000.00
2.	High Prosecutor, State Prosecutor, State Prosecutor Branch	1143	805	735	819	1554	1418	1,485,561,563,425.55
Amount		1195	838	759	837	1596	1418	1,505,111,563,425.55 USD 61,899.05 SGD 20,000.00

Of the 5,317 cases that have permanent legal force, the Public Prosecutor has proven the corruption crimes committed by the convicts with the following details:

- 1) A total of 886 cases were declared convicts proven to have violated Article 2;
- 2) A total of 3014 cases were declared convicts proven to have violated Article 3;
- 3) A total of 136 cases were declared convicts proven to have violated Article 5;
- 4) A total of 574 cases were declared convicts proven to have violated Article 11;
- 5) A total of 707 cases were declared convicts proven to have violated Article 12.

These data show that the most corruption crimes that were proven in the Corruption Court were corruption crimes in violation of Article 2 and Article 3 of Law No. 31/1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, the Public Prosecutor tends to prove the element of "harming state finances", in addition to proving elements of violating the law, abuse of authority or enrichment, benefiting oneself or others. Of the 5317 cases that were tried, not a single corruption case was proven by the Public Prosecutor on the element of "harming the country's economy". For the completeness of the two articles, it reads:

Article 2 paragraph (1) of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, namely:

"Every person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy is sentenced to life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years. and a minimum fine of Rp. 200,000,000.00 (two hundred million Rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion Rupiah)."

A person can only be punished if the defendant fulfills all the elements of the article he is charged with, based on evidence that is sufficient to give an illustration that the defendant is guilty of corruption. Article 2 paragraph (1) contains several alternative actions that can be used to prove the guilt of the perpetrators of the crime. The word "or" in Article 2 paragraph (1) of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, provides an option that it is sufficient to prove that one of the parties is enriched; self; or enriching other people or enriching corporations, to be able to punish criminals if all elements of the crime are proven. Likewise, the word "or" in the element is detrimental to state finances or the state economy. As described above, of the 5,317 cases handled, none of them chose to prove the state's economic loss, it would provide great benefits to the community, because the law actually functions to restore the condition of the community, so that it will have an impact on improving price stability, improving distribution which should be followed by improvements. governance at every level. The crime of corruption related to the loss of the state economy is also closely related to the implementation of government program policies to accelerate the rate of economic growth and safeguard the natural resources that control people's lives. And the death penalty can be imposed for crimes related to the country's economy, for which Article 2 paragraph (2) of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, reads:

While Article 2 paragraph (2) of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, namely:

"In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed".

Legal Progression in the Assessment of Harmful Elements of the State's Economy

The death penalty cannot be imposed on an alternative sub-element of the article on state economic losses, which relates to the abuse of authority, opportunity or means in Article 3 of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, because the heaviest threat of life imprisonment can be imposed. For completeness, Article 3 of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, reads:

Article 3 of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, namely:

"Every person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of a position or position that can harm the state's finances or the state's economy, is sentenced to life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million Rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion Rupiah)".

The definition of the country's economy is described in the explanation. Meanwhile, Article 2 paragraph (2) of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, which reads as follows:

"The state economy is an economic life that is structured as a joint effort based on the principle of kinship or an independent community effort based on government policies, both at the central and regional levels in accordance with the provisions of the applicable laws and regulations aimed at providing benefits, prosperity and welfare. to all people's lives.

Thus, the definition of the state economy has a broad meaning that includes economic life, and is based on government policies both at the central and regional levels, for the purpose of providing benefits, prosperity and welfare to the entire life of the Indonesian people. Regarding joint efforts based on the principle of kinship, it is regulated in Article 33 of the 1945 Constitution, which reads: The economy is structured as a joint effort based on the principle of kinship. Production branches which are important to the State and control the livelihood of the people are controlled by the State. The land, water and natural resources contained therein shall be controlled by the State for the greatest prosperity of the people. The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence and maintaining a balance of progress and national economic unity. Further provisions regarding the implementation of this article are regulated in the Law.

Cases related to natural resources based on the Center for Criminal Statistics Data from the Deputy Attorney General for Special Crimes at the Attorney General's Office of the Republic of Indonesia, amounting to 71 cases, including the IM2 case, which covertly used a frequency of 2.1 GHz and caused a loss to state finances of Rp1, 4 Trillion. The Public Prosecutor charged the defendants with a mistake in causing financial loss to the state, thus demanding the defendant for the auction value of the frequency of 2.1 GHz, as indicated by the sale of the frequency line that the defendant made a large profit and harmed the public at large because Indosat as the operator of the telecommunications network has divided the frequency line into 2 .1 GHz, as if IM2 is the network operator which causes the signal received by the user community to be very disrupted and is very detrimental to the country's economy. It is appropriate for the defendant to be demanded to return all proceeds from the sale of the frequency network illegally, so that saving the state financial losses, the value of the price of the 2.1 GHz frequency being auctioned by the government of Rp.

Many export-import crimes that have a broad impact on people's livelihoods are carried out by importers together with Customs and Excise officers, for example cases with an Investigation Order Letter from the East Nusa Tenggara High Prosecutor's Office Number: Print-01/P.3/Fd. 1/03/2019 dated March 11, 2019, but the case has not been followed up because there are no technical instructions for solving it.

The current state of the country's economy has been greatly impacted by the Corona Virus Disease (Covid-19) Pandemic, and has affected investment, exports-imports, and overall economic growth. To overcome the slowdown in economic growth and development due to the spread of the Covid-19 pandemic, the government has taken various policies contained in Perpu Number 1 of 2020 concerning ..., and strengthening measures in various sectors such as the health sector, fiscal sector stimulus, social assistance for the community. the poor and affected, the recovery of MSMEs in trade and industry, as well as tourism development.

Based on the Regulation of the Minister of National Development Planning / Head of the National Planning Agency of the Republic of Indonesia Number 2 of 2019 concerning the Government Work Plan (RKP) 2020 which prioritizes national development on human development and poverty alleviation, infrastructure and regional equity, added value to the real sector, industrialization and opportunities employment, food security, energy water, environment and defense and security stability. The national development plan is described in accordance with the duties and functions of the Indonesian Attorney General's Office and has been stated in the Attorney General's Regulation Number 5 of 2020 concerning the Work Plan of the Republic of

Legal Progression in the Assessment of Harmful Elements of the State's Economy

Indonesia Attorney's Office for 2020, which focuses on management support programs and the implementation of technical tasks, education and training programs for the Indonesian Attorney General's Office, program of investigation/security/raising of legal issues in the field of IPOLEKSOSBUD Law and Defense, program for solving general criminal cases and specific crimes of gross human rights violations and corruption cases. In addition, the targets for the development of the Indonesian Prosecutor's Office in 2020 include increasing the optimization of the performance of the Indonesian Prosecutor's Office apparatus in an effort to prevent corruption in handling criminal cases. Therefore, the application of the element of state economic loss in resolving corruption cases is very important and urgent.

It is important to apply the element of "harming the country's economy" for securing the national economy, providing a deterrent effect, and optimizing saving state money. The perpetrators who have made huge profits, endanger the survival of many people. The deterrent effect is in the form of the imposition of the death penalty for perpetrators of corruption, which meets the criteria of Article 2 paragraph (1) of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, in its explanation states: "What is meant by "certain circumstances" in this provision is intended as a burden for perpetrators of criminal acts of corruption if the crime is committed in when the country is in a state of danger in accordance with applicable laws, when a national natural disaster occurs, as a repetition of a criminal act of corruption, or when the country is in a state of economic and monetary crisis". Especially during the pandemic, the government has tried to take several important policies so that national economic growth grows positively, and keeps Indonesia from crisis. Government policies must be maintained with strict supervision. The hope of the community that there is a weighting of corruption perpetrators and prosecute the perpetrators of corruption with the death penalty, will soon be realized by proving the element of state economic loss, because it is closely related to the economic policies taken by the government and the mandate of the 1945 Constitution.

These cases are handled by applying Article 2 paragraph (1) or Article 3 of the Republic of Indonesia Law Number 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption by proving the element of "detriment to state finances". In fact, among the 5,317 cases that have been tried, there are indications of corruption cases that meet the element of "harming the country's economy", but only prosecutions are carried out by proving the element of "harming state finances". Such as the corruption case in the procurement of seeds and fertilizers for PT Sang Hyang Sri farmers, which directly or indirectly damaged the foundations of the country's economy, damaged markets, reduced purchasing power, and damaged the economic system. Meanwhile, evidence against the element of "harming the state's economy" has only been used in the case of importing garlic with the defendant Nurdin Halid. Proving the element of "harming the country's economy" will have an impact on optimizing the saving of state money, as well as a deterrent effect on perpetrators of corruption. In the corruption case committed by the defendants, they were only required to compensate for the losses enjoyed by the defendant in the amount of approximately Rp. 112 billion. From the Rp 1.2 trillion budget ceiling allocated for the procurement of seeds and fertilizers throughout Indonesia, the perpetrators engineered the seeds so that they did not meet specifications, and did not distribute fertilizers to farmers in accordance with the specified amount. As a result, crop failure occurred, rice production decreased, farmers' income decreased, the amount of production and national rice stock fell, rice imports occurred, as well as other widespread impacts experienced by farmers and the community. In cases like this, the perpetrators should be prosecuted with severe punishments and have interfered with government policies in the food sector so as to fulfill the element of "harming the country's economy". Therefore, the perpetrators should be severely punished and sentenced to return the state money of IDR 1.2 trillion.

Corruption related to the element of "harming the country's economy" is closely related to government policies to increase national economic growth, in the context of implementing the provisions of Article 33 of the 1945 Constitution, namely: The economy is structured as a joint effort based on the principle of kinship. Production branches which are important for the State and affect the livelihood of the people are controlled by the State. The land, water and natural resources contained therein shall be controlled by the State for the greatest prosperity of the people. The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence and maintaining a balance of progress and national economic unity. Further provisions regarding the implementation of this article are regulated in the Law.

Utilization of limited natural resources needs to be closely monitored to prevent important production branches and natural resources in Indonesia from being exploited by a group of people, who even cooperate with foreign parties. In order to avoid the occurrence of social inequality, criminal instruments by proving the element of "harming the country's economy" need to be implemented to provide a deterrent effect to the perpetrators, as well as to implement the mandate of Article 27 paragraph (2) of the 1945 Constitution which states that every citizen has the right to work and a decent life. worthy of humanity.

Furthermore, supervision over the implementation of all economic policies in order to stimulate the market and economic growth needs to be tightened so that there is no failure of government programs, so that the government's intention to provide protection for the fulfillment of the basic rights of the community can be realized. Because the perpetrators of corruption who meet the element of "harming the country's economy" are included in the category of criteria for "certain circumstances" which

Legal Progression in the Assessment of Harmful Elements of the State's Economy

are formulated in Article 2 paragraph (1) or Article 3 of Law No. 31 of 1999 Jo. Law of the Republic of Indonesia Number 21 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, therefore the death penalty can be imposed, as well as to fulfill people's expectations to be able to provide a deterrent effect for perpetrators of criminal acts of corruption and even to return state money which can impoverish the perpetrators. corruption itself. This study raises issues regarding legal breakthroughs in the application of elements of state economic losses related to handling corruption cases, including: What is the scope of legal breakthroughs (rule breaking) in the application of elements of state economic losses related to handling corruption cases? How should a legal breakthrough (rule breaking) be in the Corruption Court Decision at the Central Jakarta District Court Number: 55/Pid.Sus-TPK/2020/PN.Jkt.Pst An. Defendant Drs. Irianto, regarding the application of the element of state economic loss?

II. RESEARCH METHODE

This study uses a doctrinal juridical approach, namely an approach that views law as a doctrine or a set of normative rules. This approach is carried out through an effort to study or research legal literature. In this case, the author analyzes the relevant laws, legal principles, legal norms, and the opinions of scholars or legal experts. The data used in this research is secondary data in the form of documents, books, scientific works and papers, journals and others. After the secondary data is collected, it is then analyzed qualitatively to analyze and answer the problem.⁵

III. DISCUSSION

1. Scope of Legal Breakthrough (*Rule Breaking*)

The presence of progressive law does not just appear as a concept of thought for law enforcers, progressive law appears in the midst of the downturn in the legal situation that occurred at the end of the 20th century, where many law enforcers have legalistic-positivistic views or are only fixated on the text contained in the law. the law so that the law is only seen as law with judges as the mouthpiece without wanting to dig deeper into the values of justice that exist in society.

The characteristics of progressive law are that first, progressive law considers itself as an institution that is dynamic, meaning that progressive law rejects all assumptions that legal institutions are final and absolute institutions, on the contrary progressive law believes that legal institutions are always in the process of continuing to be (law). as a process, law in the making). Second, progressive law as a teaching about humanity and justice, its basic philosophy is progressive law as an institution that aims to deliver humans to a just, prosperous and happy life.⁶ Progressive law departs from the basic assumption that the law is for humans and not the other way around.⁷ Based on this, the birth of law is not for itself, but for something wider, namely for human dignity, happiness, welfare and human glory. That is why when there is a problem in the law, it is the law that must be reviewed and corrected, not humans who are forced to be included in the legal scheme.

Third, progressive legal orientation rests on the aspects of rules and behavior (rules and behavior).⁸ Regulations will build a positive legal system that is logical and rational, while the behavioral or human aspects will drive the rules and systems that have been built. Because the assumption built here is that the law can be seen from the social behavior of law enforcement and society. Fourth, progressive law places itself as a "liberating" force, namely freeing itself from legalistic-positivistic types, ways of thinking, principles and legal theories. With the characteristic of "liberation", progressive law prioritizes "goals" rather than "procedures". In this context, to carry out law enforcement, creative, innovative steps are needed and if necessary carry out "legal mobilization" or "rule breaking".

As in handling cases that are extraordinary crimes such as corruption, judges are also expected to be able to take steps in the form of a legal breakthrough so that in their decisions they create something that can be used as a basis for deciding the next case. Because of its extraordinary nature, in eradicating corruption, a breakthrough can also be made.

2. Decision of the Corruption Court at the Central Jakarta District Court Number: 55/Pid.Sus-TPK/2020/PN.Jkt.Pst An. Defendant Drs. Irianto, does not reflect a legal breakthrough (rule breaking).

Judges in handling cases that are extraordinary crime, apart from making legal breakthroughs, they are also expected not only to act as mouthpieces of the law, meaning that judges as formulators and explorers of legal values that live in society, plunge into the midst of society to know, feel and experience. and able to explore the legal feeling and the sense of justice that live in society, so that in dealing with a case or case that is included in a statutory provision which turns out to be inconsistent with the values of

⁵ Setiono, Pemahaman Metodologi Penelitian Hukum, Surakarta, 2010, hlm. 25

⁶ Mahmud Kusuma, Melayani Semangat Hukum Progresif; Terapi Paradigmatik Atas Lemahnya Penegakan Hukum Indonesia, LSHP, Yogyakarta, 2009, hlm. 31

⁷ Satjipto Rahardjo, Membedah Hukum Progresif, Jakarta, Penerbit Kompas, 2007, hlm. 228

⁸ Ibid., hlm. 90

Legal Progression in the Assessment of Harmful Elements of the State's Economy

truth, justice as well as morality and ethics, the judge can convey the provisions in the law, and make decisions that are in accordance with legal values and a sense of justice that live in society.

In the theory of decision-making, there is a balance theory, meaning that the theory is a balance between the conditions determined by law and the interests of the defendant, such as mitigating and aggravating things, these things can be taken into consideration by the judge in deciding a thing. The interests of the community are found in matters that are aggravating to the defendant, and the interests of the accused are found in matters that relieve the defendant.

In addition to the balance theory, there is also a scientific approach theory in a decision-making process. Where the starting point of this theory is that the process that must be taken by a judge in making a decision must be carried out systematically and carefully, especially with regard to the previous judge's decision whose aim is to ensure the consistency of a decision. The approach in this theory, in addition to using intuition (belief), judges are also required to have a scientific insight not only in the legal field, but also other scientific insights that can support the creation of a decision that is being handled. This is also in accordance with progressive legal thinking which thinks holistically, not isolated, not closed and not confined, but is interconnected with various sciences that support the resolution of these problems.

In the Corruption Court Decision at the Central Jakarta District Court Number: 55/Pid.Sus-TPK/2020/PN.Jkt.Pst An. Defendant Drs. Irianto, in his considerations related to the elements of "harming the country's economy" namely:

"that until now there has been no agreement among economists regarding the methodology for calculating state economic losses, the definition of the state economy is very broad in terms of the aspects of life in society, there may be one element or group of people experiencing economic losses but there are also other groups experiencing economic losses. profit from a legal event." (Vide page 366 of Central Jakarta District Court Decision Number: 55/Pid.Sus/TPK/2020/PN.JKT.PST dated 07 April 2021);

"That the notion of "harming the country's economy in the corruption law must be left to economists to formulate it because this is the realm of economics." (Vide page 366 of Central Jakarta District Court Decision Number: 55/Pid.Sus/TPK/2020/PN.JKT.PST dated April 07, 2021);

The Panel of Judges in their Decision page 366, among other things stated: "The definition of the state economy is very broad in terms of the aspects of life in society, there may be one element or group of people experiencing economic losses but there are also other groups that actually benefit from a legal event."

There should be a logical consequence of this understanding because the state economy should be understood as an element of a criminal act of corruption, namely "harming the country's economy" as referred to in Article 2 paragraph (1) and Article 3 of Law no. 31 of 1999 jo. UU no. 20 of 2001 concerning the Eradication of Corruption Crimes. This means that if the element of harming the country's economy can be proven, the perpetrator should be punished according to his actions. It's not like the juridical construction built by the Panel of Judges which states "it may be that one element or group of people suffers economic losses but there are also other groups who actually experience benefits from a legal event," which is as if the Panel of Judges will state that there are other elements of society. who benefits from a criminal event, there is no loss to the country's economy and the perpetrators do not need to be punished.

In addition, judges can use the Ratio Decidendi theory, which is a theory that uses a basic philosophical approach, which considers all aspects related to the subject matter of the case, then looks for relevant laws and regulations to be applied as the legal basis in deciding a case, and the judge must also have a motivation to enforce the law and provide justice for the community.

Based on the legal facts revealed at the trial, the notion of harming the country's economy has been clearly explained by Expert Dr. RIMAWAN PRADIPTYO, S.E., M.Sc., Ph.D, with his knowledge, using the Minimum Irreducible Approach Method, which means that the country's economic losses that occur cannot be lower than that number but are very likely higher than that figure, have succeeded in finding the existence of State Economic Losses, but the Panel of Judges (judex facti) actually used Tax Expert Prof. Dr. HAULA ROSDIANA, M.Si who is not an Expert or Lecturer of Economics from the Faculty of Economics who is competent to provide an opinion on the notion of harming the country's economy as well as on the methodology for calculating state economic losses, but he is a TAX POLICY SCIENCE TEACHER at the FACULTY of ADMINISTRATIVE SCIENCE, UNIVERSITY OF INDONESIA (vide : <https://fia.ui.ac.id/detail-prof-haula-rosdiana/>), which states that until now there has been no agreement among economists on the methodology for calculating state economic losses.

Likewise, if the Panel of Judges (judex facti) follows the opinion of Prof. Dr. ROMLI ATMASASMITA, SH., LL.M who is of the opinion that "the meaning of state economic loss in the Corruption Law must be left to economists to formulate it because it is the realm of economics," then the notion of harming the country's economy should have been obtained by the Panel of Judges (judex facti) through Expert Opinion Dr. RIMAWAN PRADIPTYO, S.E., M.Sc., Ph.D, and there is no need to look for other meanings, especially regarding the unclear agreement of economists regarding the form or format of the agreement in the world of science. This is an absurd logic, where the Panel of Judges (judex facti) ignores the empirical-linear approach in the world of criminal justice, which must also be realized that judges as ordinary people are supposed to decide a criminal event is what is actually revealed in a noble trial.

elements that are detrimental to state finances or the state economy as referred to in Article 2 paragraph (1) and Article 3 of Law no. 31 of 1999 jo. UU no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, are alternative elements,

Legal Progression in the Assessment of Harmful Elements of the State's Economy

which cancel each other out, which have different meanings and different ways of proving it, even though the two elements are related as a genus (state economy) and species (state finances). Some considerations, as follows:

a. The Meaning of State Finance and the State Economy

Linguistically, the word "finance" comes from the concrete noun "money" which has the meaning: 1) paper, gold, silver, or other metal that is printed with a certain image form issued by the government of a country as a means of exchange or standard of measuring value (unity of value). count) is valid; or 2) assets. The word "money" with the addition of the suffix to "finance" refers to the meaning of stating a condition, intricacies or affairs related to money. -principles of production, distribution, and use of goods and wealth (such as finance, industry, and trade) 2) utilization of valuable money, energy, time and parts; 3) economic life system (a country); 4) household financial affairs (organization or state). The word "economy" by adding the suffix to "economy" refers to the meaning of actions, rules or procedures, which also means economic or economic processes.

A brief explanation of the meaning of the language, implies that "finance" which comes from the formation of the noun "money" which is concrete that can be captured by the five senses, then the circumstances or details can be chopped or calculated with certainty, while the economy that comes from the formation of the noun Abstract "economics" which cannot be grasped by the five senses, so actions, rules or procedures cannot be counted or calculated with certainty. The sign in terms of language is in line with the juridical meaning of the meaning of finance or the economy which is combined with the word state.

The term juridical state finance is good in the General Elucidation of Law no. 31 of 1999 jo. UU no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and administrative legislation, for example Article 1 Number 1 in conjunction with Article 2 of Law no. 17 of 2003 concerning State Finances, Article 1 Number 1 of Law Number 1 of 2004 concerning the State Treasury, Article 1 Number 7 of Law Number 15 of 2006 concerning the Supreme Audit Agency of the Republic of Indonesia, Article 1 Number 10 of Law Number 19 of 2003 concerning State-Owned Enterprises, clearly shows the meaning that state finances are something that can definitely be enumerated or calculated in amount. This is in line with the meaning of "finance" in terms of language which shows a concrete condition.

Meanwhile, the juridical term of the state economy shows the meaning that the state economy is something that is uncertain, cannot be enumerated or cannot be calculated. This is in line with the meaning of "economy" in terms of language which shows an action, rule or procedure that is abstract in nature. This can be seen from the formulation of the country's economy, among others, as follows:

1) Law Number 24 (Prp) of 1960 concerning Criminal Acts of Corruption.

In formulating the element of harming the country's economy, the legislator only provides an explanation of Article 1 paragraph (1) sub a, namely by including the element "harming the country's economy". state finances. Thus, this law only provides an affirmation that acts detrimental to the state are a genus, which includes actions in the economic field and acts that harm state finances. However, this law also does not explain what is meant by harmful acts in the economic field.

2) Law Number 3 of 1971 concerning Eradication of Criminal Acts of Corruption

In this law, for the first time the legislators provide an explanation regarding the elements of harming the country's economy, namely what is meant by actions that can harm the country's economy are criminal violations of the regulations issued by the Government in the field of its authority as referred to in this law. in MPRS Decree Number XXIII/MPRS/1966.

The Decree of the MPRS of the Republic of Indonesia Number XXIII/MPRS/1966 concerning the Policy Renewal of the Economic, Financial and Development Foundation was born due to the decline in the Indonesian economy caused by mismanagement, waste, bureaucracy, corruption, and so on, coupled with the rebellion against the G.30.S counter-revolutionary movement. /PKI and violations of the 1945 Constitution, it is necessary to reform policies in the fields of Economy, Finance and Development, with the first step towards improving the people's economy is the reassessment of all the foundations of economic, financial and development policies, with the aim of to obtain the right balance between the efforts made and the goals to be achieved, namely the Indonesian Socialist society based on Pancasila. Thus the element of harming the country's economy according to Law Number 3 of 1971 leads to violations of national and regional economic policies.

3) Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption

In the general explanation of this law, it is stated that what is meant by the state economy is economic life that is structured as a joint effort based on the principle of kinship or an independent community effort based on government policies, both at the central and regional levels in accordance with the provisions of the legislation. - applicable laws that aim to provide benefits, prosperity and welfare to all people's lives.

Thus the element of harming the state economy according to Law Number 31 of 1999, although more abstract than the explanation in Law Number 3 of 1971, in the opinion of the Public Prosecutor, still leads to violations of central and regional government policies that related to the achievement of economic life which is structured as a joint effort based on the principle of kinship or an independent community effort. This means that policies or actions that lead to a system of "free-fight liberalism," a system of "etatism" and "monopoly" in the economy are one element in proving the element of harming the country's economy.

4) Law of the Republic of Indonesia Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs

Legal Progression in the Assessment of Harmful Elements of the State's Economy

In, Article 102B formulates elements that are almost meaningful with elements of harming the country's economy, namely by causing disruption to the foundations of the country's economy. However, this law also does not explain what is meant by the pillars of the country's economy.

b. Formulation of Article 32 of Law Number 31 of 1999 jo. Law Number 20 of 2001

The formulation of Article 32 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001, which reads:

"In the event that an investigator finds and believes that one or more elements of a criminal act of corruption do not have 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 lawsuit or submitted to the agency. aggrieved to file a lawsuit."

In the formulation of the article, it expressly states that "there has clearly been a state financial loss," which is in line with the decision of the Constitutional Court Decision Number 25/PUU-XIV/2016 dated January 25, 2017 when it is devoted to the word "can" in conjunction with the phrase "financial loss". country." However, the formulation of Article 32 paragraph (1) does not adopt the phrase "harming the country's economy." Thus, if following the logic of Article 32 paragraph (1), the phrase "harming the country's economy" does not have to be real and cannot be submitted to the State Attorney for a civil lawsuit.

The legislators are consistent in formulating Article 32 paragraph (1), with the following reasons:

- 1) State financial loss is something real and the injured party is the ministry/institution, local government, BUMN/BUMD. Therefore, it can be submitted to the State Attorney for a civil lawsuit.
- 2) The state's economic loss is something that is uncertain (abstract) and the party who is harmed is generally the wider community. Therefore, it cannot be submitted to the State Attorney for compensation because the Prosecutor's Office through the State Attorney's Office cannot represent individuals or communities in civil or state administrative courts.

Based on the description above, it can be said that the formulation of Article 32 paragraph (1) confirms that the legislators are of the opinion that state economic losses are something that is uncertain (abstract) so that the proof is different from concrete state financial losses.

c. Jurisprudence of the Supreme Court of the Republic of Indonesia related to elements that harm the country's economy.

- 1) Supreme Court Decision No. 1164K/Pid./1985 October 31, 1986 in a case on behalf of the Defendant Tony Gozal alias Go Tiong Kien;

In its consideration, the Panel of Cassation Judges stated that the Defendant was a businessman who rented the waters of the Ujung Pandang port covering an area of 4857 m² and the defendant had paid rent/compensation to the state for the land he used. In fact, the defendant had stockpiled water areas other than the area that had been rented by the defendant so that the land used by the defendant became 8,625 m² to build a restaurant and hotel. With the defendant building a restaurant and hotel in the waters of the Ujung Pandang port, part of the waters of the Ujung Pandang port can no longer be used for public purposes. The water area is owned by the state where there is a policy related to the port water area to improve the people's economy, especially the fishing community so that the defendant has harmed the country's economy.

- 2) Supreme Court Decision Number: 714 K/Pid/2006 dated 3 May 2006 with the defendant ir. Adiwarsito Adinegoro, Number: 716 K/Pid/2006 dated 3 May 2006 with the defendant Drs. Yusran Sharif, Number 718 K/Pid/2006 dated May 3, 2006 with the Defendant Ir. H. A. Fattah DS in the corruption case against the Indonesian Forest Entrepreneurs Association (APHI) in 1998.

In its consideration, the Panel of Judges of Cassation stated that the actions of the Defendant as indicted by the Public Prosecutor and proven legally and convincingly, were not civil acts, because the money collected by APHI came from the concessionaires of US\$ 1/M³ logs and US\$ 2/M³ of processed wood. Based on the policy of the Government Cq. The Director General of Forest Concession, HPH entrepreneurs are obligated to take aerial photographs, delineate boundaries, other forest planning needs, support fire prevention efforts and research efforts to improve forest exploitation stability and sustainability for the benefit, prosperity and welfare of the Indonesian people/nation, because forests have multiple functions. for the life of the people, may not be used other than those specified above. In fact, the money has been used beyond its original purpose, so that aerial photography and mapping of HPH areas and other actions as described above were not carried out properly. Because of that, the country's economy as formulated in the general explanation of the Corruption Crime Act has been harmed.

IV. CONCLUSION

Law is always outdated compared to the development of society, resulting in legal vacuums in the course of time. This is even more pronounced in the current era of reform and transformation. Meanwhile, legal problems in the community continue, which require legal settlement, through the judicial process. To fill this legal vacuum, qualified judges and other law enforcement officers are needed, who are able to play a role in legal discovery and are able to make legal breakthroughs. For this reason, a judge must have the knowledge and thought processes as described in this paper. If if, all judges have such qualities, then every court decision will be able to color every legal development in this beloved country.

Thus, so that the application of the element of "State Economic Loss" related to the handling of cases of criminal acts of corruption, can be in line and produce quality decisions in every settlement of handling cases of corruption that have a direct

Legal Progression in the Assessment of Harmful Elements of the State's Economy

impact on the country's economy so that apart from providing legal certainty, the value of justice and expediency will be able to succeed the role of law in national economic recovery.

REFERENCES

BOOKS:

- 1) Van Apeldorn, Pengantar Ilmu Hukum, PT Pradnya Paramita, Jakarta, 1986
- 2) JE. Sahetapy, Kapita Selekta Kriminologi, Alumni, Bandung, 1979
- 3) Masruchin Ruba'I, Asas-Asas Hukum Pidana, UM PRESS, Malang, 2001
- 4) Satjipto Rahardjo, Membedah Hukum Progresif, Penerbit Kompas, Jakarta, 2007
- 5) Mahfud Kusuma, Melayani Semangat Hukum Progresif: Terapi Paradigmatik Atas Lemahnya Penegakan Hukum Indonesia, LSHP, Yogyakarta, 2009
- 6) Setiono, Pemahaman Metodologi Penelitian Hukum, Surakarta, 2010

JOURNAL ARTICLE:

- 1) Johan Graf Lambsdorff, "Corruption In Empirical Research: A Review, Transparency", International Working Paper, November 1999
- 2) David Jay Green, "Investment Behavior And The Economic Crisis In Indonesia", Journal of Asian Economics, Volume 15, Nomor 2, April 2004
- 3) Lintang O. Siahaan, "Peran Hakim Dalam Pembaruan Hukum Di Indonesia: Hal-Hal Yang Harus Diketahui (Proses Berfikir) Hakim Agar Dapat Menghasilkan Putusan Yang Berkualitas", Jurnal Hukum dan Pembangunan Tahun Ke-36, Nomor 1, Januari-Maret 2006
- 4) Rizki Agung Firmansyah, "Konsep Kerugian Perekonomian Negara Dalam Undang-Undang Tindak Pidana Korupsi", Jurist-Diction, Volume 3, Nomor 2, Maret 2020
- 5) Trifena Julia Kambey, Tonny Rompis, Altje A. Musa, "Analisis Yuridis Mengenai Unsur Merugikan Perekonomian Negara Dalam Undang-Undang Tindak Pidana Korupsi", Lex Crimen, Volume IX, Nomor 3, Juli-September 2020
- 6) RB. Soemanto, Sudarto, Sudarsana, "Pemahaman Masyarakat Tentang Korupsi" Yustisia, Volume 3, Nomor 1, Januari- April 2014
- 7) M. Darin Arif Mu'allifin, "Problematika Dan Pemberantasan Korupsi Di Indonesia", AHKAM, Volume 3, Nomor 2, November 2015
- 8) Duwi Handoko, "Re-Evaluasi Proses Pemberantasan Tindak Pidana Korupsi Di Indonesi", Riau Law Journal, Volume 3, Nomor 2, November 2019



There is an Open Access article, distributed under the term of the Creative Commons Attribution–Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.