

The Responsibility for State Financial Loss the Corruption Crimes in Indonesia

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ABSTRACT

Research Objectives to analyze the accountability for state financial losses in criminal acts of corruption in Indonesia. This study uses primary data obtained from the Tipikor Court, with samples of the Central Jakarta, Corruption Court the Palu, Tipikor Court the Banda Aceh, Corruption Court the Samarinda, Corruption Court the Corruption Court Jayapura. The results show: Implementation of evidence of state financial losses occurs in disparities, the judge assesses the report on the results of the examination of state financial losses not in one institution that is authorized to calculate state financial losses, the judge is not binding at SEMA Number 4 of 2016. The ideal concept of authorized institutions and uniformity of standard standards the method of calculating and declaring state financial losses is that the BPK is an institution established based on the order of the 1945 Constitution, has attribution authority, BPK has set State Financial Audit Standards.

KEYWORDS: accountability; Loss; State finances; Corruption

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I. INTRODUCTION

State finances are regulated in the 1945 Constitution of the Republic of Indonesia (UUDNRI) in CHAPTER VIII concerning Finance, namely Article 23, Article 23A to Article 23G, and further regulated in various laws and regulations.¹ State finances are needed to finance government administration to create people's welfare. Various laws and regulations are enacted to protect state finances from acts of abuse that result in state financial losses. One of them is Law Number 31 of 1999 concerning Eradication of Corruption Crime which has been amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (Corruption Law).²

The Anti-Corruption Act contains elements of a criminal act that are categorized as corruption. One of the elements is state financial losses regulated in Article 2 and Article 3, as follows:

Article 2

(1) Any person who illegally commits an act of enriching himself or another person or a corporation which can *harm the state finances* or the state economy shall be sentenced to imprisonment with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah);

(2) If the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed;

Article 3

Any person who, to benefit himself or another person or a corporation, misuses his / her authority, opportunity or means because of his position or position which may *harm the state finances* or the state economy, shall be punished with life imprisonment or imprisonment at the minimum. 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah);

The Corruption Law Article 2 and Article 3 subsequently underwent developments and changes through a *Judicial Review* to the Constitutional Court (MK), as follows:

¹Huda, NM (2017). Honorary Article: The Urgency of Village Regulation in the 1945 Constitution of the Republic of Indonesia. *Padjadjaran Journal of Law*, 4(1), 1-18.

²Pitriyantini, PE (2019). Policy Regulations Incurring State Financial Losses as Elements of Corruption Crime. *Journal of Legal Communication (JKH)*, 5(2), 76-88.

1. Constitutional Court Decision Number: 003 / PUU-IV / 2006 dated July 24, 2006. The decision states that the Elucidation of Article 2 paragraph (1) which was initially interpreted as *material wederrechtelijkheid*, has been interpreted as *formal wederrechtelijkheid*. Whereas *material wederrechtelijkheid* contradicts the principle of legal certainty;
2. Delegation of the Constitutional Court Number: 31 / PUU-X / 2012 dated 23 October 2012. The Constitutional Court emphasized that in proving corruption, the KPK can not only coordinate with BPK and BPKP, but can also coordinate with other agencies, and can even prove itself beyond its findings. BPK and BPKP;
3. The Constitutional Court Decision Number: 25 / PUU-XIV / 2016 dated January 25, 2017. The Constitutional Court emphasized that the *phrase* "can" in the formulation of Article 2 and Article 3 of the Corruption Act is against the constitution.

The legal consequences of several MK decisions have resulted in various interpretations and implementations of the meaning of state financial losses. The Supreme Court has issued SEMA Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Supreme Court Plenary Meeting as Guidelines for the Implementation of Duties for Courts. Based on SEMA Number 4 of 2016 letter A concerning the Legal Formulation of the Criminal Chamber number 6 confirms that "*The agency authorized to declare whether there is a loss to state finances is the BPK which has constitutional authority, while other agencies such as BPKP / Inspectorate / Regional Work Units are still authorized to conduct inspections and state financial management audit but is not authorized to declare or declare a state financial loss. In certain cases, the judge based on the facts of the trial can judge the existence of state losses and the number of state losses*".

The authority to declare a state financial loss is often a polemic in court corruption cases. The problem that arises is regarding which institution has the most authority to determine whether or not there is a state financial loss.³ The Elucidation of Article 32 paragraph (1) of the Corruption Eradication Law ensures that state financial losses must be real and the amount can already be calculated by the competent agency or public accountant.⁴

Kerugian state finances must be real, quantifiable and definite.⁵ Therefore, the institution that has the authority to declare a state financial loss will determine the follow-up actions to be held accountable for the perpetrators of corruption by the Panel of Judges.⁶ Institutional arrangements that have the authority to determine the existence of state financial losses must create legal certainty and justice as guaranteed by Article 28D paragraph (1) of the 1945 Constitution and must realize that the management of state finances is carried out openly and responsibly for the greatest prosperity of the people. In other words, the spirit of the formation and enforcement of the Corruption Act can be interpreted as providing guarantees of legal certainty and protecting state finances.

Legal uncertainty regarding the most competent institution constitutionally to calculate and *Men-declare* their state financial losses often being debated in the trial of corruption cases.

II. RESEARCH METHOD

The research used is juridical-empirical legal research, namely legal research which is carried out based on legal norms that are scattered in various laws and regulations relevant to the object of research. Meanwhile, an empirical approach based on existing facts concerns the interpretation and implementation of determining state financial losses in the accountability of criminal acts of corruption through judicial decisions. This research is intended to review and analyze several court decisions from the beginning of 2017 to the end of 2019, with the approach of various laws and regulations as well as the existence of SEMA Number 4 of 2016 dated 9 December 2016. The samples of this study will be randomly selected, each 1 (one) Corruption Court in each of 5 (five) Islands in Indonesia as follows: Java Island Corruption Court in Central Jakarta District Court, Sulawesi Island Corruption Court in Palu District Court, Sumatra Island Corruption Court in Banda Aceh District Court, Kalimantan Island Corruption Court at Segeri Court in Samarinda, Papua Island Corruption Court in Jayapura District Court. The research data is obtained, then identification and organization of legal

³Yasir, R., Rani, FA, & Din, M. (2019). Authority to Determine State Financial Losses in Corruption Crime Cases. *Syiah Kuala Law Journal*, 3(2), 281-295.

⁴Mawardi, M. (2015). Asset Recovery Results of Corruption Crime in the Aspect of Criminal Law Policy. *IUS Journal of Law and Justice Studies*, 3(1), 74-92.

⁵Setiawan, A., & Ma'ruf, U. (2017). Application of Elements Can Adverse State Finances in Corruption Crime. *Khaira Ummah Journal of Law*, 12(3), 517-526.

⁶Ferdian, RB, Din, M., & Gaussyah, M. (2018). Determination of State Losses in Corruption Crime Cases. *Syiah Kuala Law Journal*, 2(3), 320-337

norms are carried out and then compiled systematically then analyzed qualitatively to be discussed descriptively.

DISCUSSION

A. Implementation of Corruption Criminal Accountability Through Judges' Decisions.

This discussion is done by determining a sample of 1 (one) Corruption Court in each of 5 (five) islands, namely:

- 1) Java Island, the Corruption Court at the Central Jakarta District Court. established based on Presidential Decree No. 59 of 2004;
- 2) Sulawesi Island, the Corruption Court at the Palu District Court was established based on the Decree of the Chief Justice of the Supreme Court Number 153 / KMA / SK / X / 2011;
- 3) Sumatra Island, the Corruption Court at the Banda Aceh District Court was established based on the Decree of the Chief Justice of the Supreme Court Number 153 / KMA / SK / X / 2011;
- 4) Kalimantan Island, the Corruption Court at the Segiri Samarinda Court was established based on the Decree of the Chief Justice of the Supreme Court Number 22 / KMA / SK / II / 2011;
- 5) Papua Island, the Corruption Court at the Jayapura District Court was established based on the Decree of the Chief Justice of the Supreme Court Number 22 / KMA / SK / II / 2011;

This discussion will focus on analyzing case decisions, especially regarding Judges' considerations regarding the existence of evidence for the Audit Result Report on state financial losses by the BPK and BPKP, as well as other institutions whose authority is based on laws and regulations with a period between 2017 and 2019, after the existence of SEMA Number 4 of 2016 concerning Enforcement of the Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting.

Based on the descriptions of several Corruption Court Decisions, regarding the implementation of criminal liability for state financial losses in the Corruption case in the Corruption Court case from 2017 to 2019, it can be observed that there is accountability. There are disparities in the implementation of institutions that have the authority to determine state financial losses which are considered by judges in the Corruption Court. Of course, this is largely determined by the judge's interpretation of the state financial loss report. The considerations of the Judges at the Corruption Court in determining the existence of criminal responsibility through the report on the results of state financial losses did not strictly and strictly focus on one institution that has the authority to calculate and declare *the* existence of state financial losses. Although based on SEMA Number 4 of 2016 concerning the Enforcement of the Formulation of the 2016 Supreme Court Chamber Plenary Meeting, it can be seen that the existence of the SEMA is not a consideration for judges in deciding corruption cases. Judges in considering state financial losses are more based on consideration for the constitutional Court Decision Number 31 / PUU-X / 2012 dated 23 October 2012 emphasized that to prove a criminal act of corruption, the KPK can not only coordinate with BPKP and BPK but can also coordinate with Other agencies can even prove themselves outside the findings of the BPKP and BPK, for example by inviting experts or by requesting materials from the Inspectorate General or bodies having the same function. In fact, from other parties (including from companies), who can show material truth in calculating state financial losses and/or can prove the case that is being handled. Likewise, the provisions of the Elucidation of Article 32 paragraph (1) explain that "What is meant by" in fact, there have been losses to state finances "are losses which have been calculated in an amount based on the findings of the authorized agency or appointed public accountant."

Based on SEMA Number 4 of 2016, it is also emphasized that "... 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 financial losses". This provision provides the basis for the Judge to be able to assess the existence of state financial losses and the magnitude of state financial losses underlie the facts of the trial. However, if you understand the substance of the SEMA, there is a clause that states that "BPK has constitutional authority while other agencies such as the BPKP / Inspectorate / Regional Work Units are still authorized to carry out audits and audits of state financial management but are not authorized to declare or declare financial losses. country. SEMA Number 4 of 2016 certainly has contradictions, on the other hand, it affirms that the BPK as an institution has the constitutional authority and has the authority to declare or declare *the* existence of state financial losses and limit the authority of other institutions (BPKP / APIP and Public Accountants) to just count but cannot declare or declare *the* existence of state financial losses, but on the other hand give authority to the Judge based on the facts of the trial to be able to assess the existence of state financial losses and the amount of state financial losses. Regarding the polemic of the authority to calculate and declare *the* existence of state financial losses, the Chief Justice of the Supreme Court M Hatta Ali said:

"The public prosecutor often asks BPKP to calculate state losses because it is faster and the existence of the BPK does not reach remote districts/cities. "Therefore, to determine state losses, it is highly requested to the BPK because it is more precise," Even so, the Chief Justice acknowledged that the SEMA formula no. 4 of 2016 is not forever binding on judges. Anyone who checks state losses, both BPK and BPKP, does not have to

be followed by a judge. Likewise with experts. If there is an expert who believes that there is no loss to the state, the judge is also not obliged to follow. This is because, according to Hatta, judges can have their own opinion, although in principle the formulation of the plenary results of the rooms contained in the SEMA binds the judges. "SEMA is not always binding on judges, it does not have to be the same (as in the SEMA formulation), first look at case by case (casuistic),"

Head of Law and Public Relations Bureau MA Ridwan Mansyur told about the appearance of this formula in SEMA. He explained:

"BPK and BPKP have a different scope of duties. Not infrequently the BPK calculation is different from the BPKP calculation. This is because so far the results of BPK audit and BPKP results have been different. The defendant with testimony (expert testimony) made it easier to propose an *independent auditor*. I like this it will continue to be a debate. This is also for equality and acceleration of the handling of corruption cases, "

The panel of judges in finding and putting the truth to be handed down in the verdict must be based on various evidence that has been determined by law in an imitative manner as regulated in Article 184 of the Criminal Procedure Code and the Criminal Code. Corruption.⁷ So that the Judge should not let the judge's conviction embodied in the Decision go out of the provisions stipulated in the applicable procedural law. Hukum criminal procedure in Indonesia adheres to the system of proof under the legislation negatively (*negative wettelijk bewijs theorie*) based on Article 183 Criminal Procedure Code states as follows:

"The judge must not convict to one unless at least two valid evidence he obtained the belief that a criminal act occurred and that the defendant was guilty of committing it "guilt

Whereas from the description of Article 183 of the Criminal Procedure Code stated, the Judge decides a criminal case (states against the defendant) if it is supported by 2 (two) evidence (*positive theory wettelijk bewijs theorie*) and gain confidence that the belief that a crime occurred and that the defendant was guilty of committing it (*conviction raisonnee theory*). So there is a combination of the *positive wettelijk bewijs theorie* and the theory conviction *raisonnee*, so that it can be said that Indonesia's criminal procedural law adheres to the teachings of the theory of proof based on the law negatively (*negative wettelijk bewijs theorie*).⁸ Based on the provisions of Article 183 of the Criminal Procedure Code above, it can be understood that to impose a sentence on a defendant, the following must be: The

- a. guilt is proven by at least two valid pieces of evidence;
- b. For at least two valid evidence, the judge is convinced that the criminal act occurred and that it was the defendant who was guilty of committing it;

As a judge, the law is given the authority to believe whether a person is guilty or not. However, his belief cannot stand alone. Instead, it must come from at least two valid pieces of evidence that have been determined by law. According to Subekti, he said:

"The judge's conviction must be based on something that is called by law as evidence. If the judge bases his decision solely on his belief, that is where legal uncertainty and arbitrariness occur.

Judges may not punish a person guilty solely based on his conviction or because of the Judge's doubts but must be supported by at least two valid evidence, it is from that evidence that the Judge is convicted of whether the Defendant is guilty or not.⁹ A judge may not impose a sentence on a person unless with at least two valid pieces of evidence the Judge is convinced that a criminal act occurred and that the defendant was guilty of committing it. This is reaffirmed by the Law on the Principles of Judicial Power, that no one can be convicted of a criminal offence, unless the Court, due to legal means of evidence according to the law, believes that someone who is deemed to be responsible has been guilty of the act he is accused of. With a system like this, it results in piles of evidence in a case, has met the minimum limit of proof or even more, if the Judge does not arrive at his conviction obtained from the various Evidence tools do not lead to the conviction of the defendant's guilt, the Judge may not. blaming and punishing the Defendant. However, the prerequisite for the judge's conviction, of course, should not be interpreted as arrogant absolutes by the Judge for a criminal decision. By him that, in connection with corruption cases, particularly about the existence of reports the results of state financial losses were calculated and expressed */declare* by the competent institution throughout the quality

⁷Nugroho, B. (2017). The Role of Evidence in Criminal Cases in Judges' Decisions according to KUHP. *Yurika*,32(1), 17-36.

⁸Putra, EP, & Iqbal, M. (2020). Implementation of the Concept of Justice with the Negative *Wettelijk* System and the Principle of Judge's Freedom in Deciding a Criminal Case in terms of Article 1 of Law No.4 of 2004 concerning Judicial Power (Analysis of decision No. 1054 / Pid. B / 2018 / PN. Jkt. Sel). *Rechtsregel: Journal of Legal Studies*,3(1), 40-58

⁹Abdurrachman, H., Nugraha, RA, & Majesty, N. (2020). *Hammer of Judges Versus Sense of Justice An Introduction to Disparity in Judge Decisions in Corruption Crimes*. Deepublish.

validation of both methodologies raw and competence institutional, then the truth of the matter that should be a source of There is a Judge's conviction to decide that there is criminal responsibility for the accused of a criminal act of corruption.

B. Ideal Concept of Institutional Authority in Determining State Financial Losses The

The authority of BPK in calculating and declaring state financial losses in corruption cases is part of the Audit with Specific Purposes (PDTT). An audit with a specific purpose is carried out with a specific purpose, outside of a financial examination and a performance examination.¹⁰ An examination with a specific objective is aimed at providing conclusions on a matter being examined which will then produce a report on the results of the examination with a specific objective containing a conclusion on the existence of a state financial loss. Thus, the existence of the CPC calculate and declare state financial losses remains a constitutional authority, which is the source of authority is attribution and included in the institutions set up under the command of the Constitution (*constitutionally entrusted power*),

Constitutionally authorized body examines the management and accountability of the state financial responsibility and assessing and declaring the amount of state financial loss is the BPK. However, in practice, this is also done by BPKP, Inspectorate and Public Accountants. Examination of state financial losses is carried out using a predetermined method, then the audit report on state financial losses becomes evidence in a criminal act of corruption. Apart from that, in the practice of calculating and determining the existence of state financial losses, it is not uncommon for differences in the methods of examination and calculation of the value of state financial losses carried out by each authorized institution based on the request of the Investigator or by auditors and expert witnesses submitted by the suspect or defendant. As research conducted by Masdar Ryketeng¹¹, it can be described as follows:

a) In 2013, based on Decision No. 30 / Pid.Sus / 2013 / P. Tp score. Yk, the corruption case of Trans Jogja Bus Vehicle Operating Costs (BOK) by PT. Jogja Tugu Trans causes losses to state finances. According to expert calculations carried out by BPKP DIY Representatives, there is no indication of state financial losses in this case. BPK gave different calculation results, based on its report No. 07A / LHP / XVIII.YOG / 06/2013 in Decision Number 30 / Pid.Sus / 2013 / P.Tpkor. Yk explained that there was a state loss of Rp. 413,437,743.00;

b) Differences in the calculation of state financial losses in 2014, the case of assistance in the provision of 13 (thirteen) medical devices at the Yogyakarta City Regional General Hospital (RSUD). According to expert calculations carried out by BPKP DIY Representatives, stated in the Audit Result Report (LHP) Number SR-335 / PW12 / 5/2014, the State's financial loss was Rp. 861,731,583.00 due to the procurement of medical devices. However, according to the public prosecutor, after recalculating the state's financial losses as stated in the case registration claim letter Number PDS-03 / YOGYA / Ft.1 / 06.2014 there was a state loss of Rp. 467,111,822.00. The Panel of Judges at the Yogyakarta Corruption Court disagreed with the results of the BPKP DIY Representatives count and the calculations made by the Public Prosecutor. The Panel of Judges thought that the state financial loss was only Rp. 106,696,209.00 as stated in Decision Number 14 / Pid.Sus-TPK / 2014 / PN.Yyk;

a) In 2015, the use of grant funds provided by the Bantul Regency Government to the Indonesian National Sports Committee (KONI) which was then given to Persiba Bantul in its management caused losses to the state's finances. According to expert calculations carried out by BPKP DIY Representatives, stated in the report on the results of the examination Number: SR-362 / PW- 12/5/2014 there was a state financial loss of Rp. 817,980,100.00 in the management of grant funds. However, according to the Bantul Regency Inspectorate, according to LHP Number: X.900 / 175/2013 in decision No.4 / Pid.Sus-TPK / 2015 / PN.Yyk, there was a state financial loss of Rp. 740,952,250.00. The Panel of Judges at the Yogyakarta Corruption Court disagreed with the results of the BPKP DIY Representatives count and the calculations carried out by the Bantul Regency Inspectorate. The Panel of Judges thought that the state's financial loss was IDR 1,040,779,560.00, as stated in Decision Number 4 / Pid.Sus-TPK / 2015 / PN.Yyk.

The difference in calculations in the three cases described above indicates that there are different methods used in the calculation of state financial losses by the competent authority or the specifically requested agency. Determination of the appropriate loss has the benefit of returning the amount of replacement money that must be returned by the perpetrator of corruption who has become a defendant. To resolve this controversy, investigators in law enforcement institutions must coordinate optimally with institutions that are authorized to calculate and declare state financial losses for the sake of realizing legal certainty in the eradication of

¹⁰Fatah, A., Jaya, NSP, & Juliani, H. (2016). Juridical Study of the Application of Adverse Elements of State Finances in Law Enforcement of Corruption Crimes. *Diponegoro Law Journal*, 6(1), 1-15.

¹¹Ryketeng, M. (2020). Factors Causing Differences in Calculation of State Financial Losses in Corruption Crimes (Corruption Case of the Persiba Bantul Grant Fund). *YUME: Journal of Management*, 3(1), 62-90.

corruption, so there is no disparity in calculation and determination. loss of state finances which is of course very detrimental to the rights of the suspect or defendant who is suspected of committing a criminal act of corruption, even detrimental to the efforts to claim compensation, fines and the application of compensation money sanctions to be applied

Eradicating corruption will not succeed if there is no good and maximum synergy between auditors, investigators or law enforcement officials, including state institutions tasked with eradicating corruption by the Corruption Eradication Commission, as well as judges who try and give a verdict at the Corruption Court. Constitutionally, Article 23E of the 1945 Constitution of the Republic of Indonesia, from historical, institutional aspects, as well as from the existence of standard standards for examining state financial losses, the ideal institution to be authorized to calculate and declare state financial losses is the BPK. The BPK institution has set a standard for auditing state finances which must be guided by all related institutions in combating corruption. However, when it comes to the existence of BPK resources that are not available in the regions so that it becomes an excuse that will hinder the extortion and enforcement of the law on corruption, the authors provide alternative solutions as follows:

- 1) As mandated by the BPK Law, that ideally there are BPK representatives up to provincial areas scattered in the territory of Indonesia, the government must immediately form BPK representatives;
- 2) The existence of an investigative audit standard that has been set by the BPK as a standard reference for examining state financial losses, at least, must be guided by the BPKP auditors and public accountants in calculating and determining the existence of state financial losses in criminal acts of corruption;
- 3) The existence of auditors from BPKP and the Public Aluntan are required to obtain certification of eligibility as auditors who are competent in calculating and determining the existence of state financial losses;
- 4) The existence of a Standard Code of Ethics for auditors set by the BPK in auditing state finances must serve as a guideline for implementing the code of ethics by auditors at the BPKP institution and public accountants;
- 5) There is strict supervision and sanctions coordinated by the BPK Institution involving Law Enforcement agencies if there are auditors from both BPKP and Public Accountants who carry out audit duties that violate the code of ethics or abuse their authority to hinder the implementation of the examination of state financial losses in corruption cases;

III. CONCLUSION

The implementation of criminal liability applied by Judges of the Corruption Court in Indonesia, particularly regarding the involvement of judges in the Audit Result Report on state financial losses conducted by institutions whose authority has been granted by statutory regulations, with a sample of 1 (one) Corruption Court in each 5 (five) islands, from 2017 to 2019, namely:

- a. Java Island, the Corruption Court at the Central Jakarta District Court;
- b. Sulawesi Island, the Corruption Court in the Palu District Court;
- c. Sumatra Island, the Corruption Court at the Banda Aceh District Court;
- d. Kalimantan Island, the Corruption Court at the Samarinda Segiri Court;
- e. Papua Island, Corruption Court in Jayapura District Court;

It can be observed that there is a disparity in the evidence of state financial losses regarding the institutions authorized to calculate and declare state financial losses which are part of the consideration of the Judges at the Corruption Court. The Judges of the Corruption Court in their decision assessed that the State Financial Loss Audit Result Report does not only focus on one institution that has the authority to calculate and declare *the* existence of state financial losses, the Judge also does not tie its considerations to SEMA Number 4 of 2016;

IV. SUGGESTIONS

The suggestions that can be made from the results of this study are as follows:

1. So that the Corruption Court as a judicial institution that examines, adjudicates and decides cases of corruption can maintain and guarantee the implementation of legal order and legal certainty, especially regarding the competence of institutions or auditors as well as standard methods calculating and declaring state financial losses by still considering legal facts in court in terms of assessing state financial losses;
2. For the BPK Institution to calculate and declare the existence of state financial losses consistently based on the State Financial Audit Standards as standard standards, BPKP, the Inspectorate and Public Accountants in calculating state financial losses must also refer to the State Financial Audit Standards as standard standards, so that there is a uniform method of calculating state financial losses.

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