

REDEFINING THE STATE FINANCES AND THE STATE ECONOMY LOSS: A REVIEW OF THE ERADICATION OF CORRUPTION IN INDONESIA

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ABSTRACT

This research reviews the implementation of element “that can damage state finances and the state economy” as stipulates in Indonesian Corruption Act. The type of study was a normative research with approaches of statute, case, comparative and conceptual. The outcomes of the research indicate that there are the complexity of issues in implementing the element “that can damage state finances and the state economy” in the regulation applied in Indonesia, includes: differences in perception about the meaning of state finances, unclear the sense of damage state economy (vague), the understanding of actual loss or potential loss of state losses, where the authorities determine (calculate) state losses or economy and calculating state losses decelerate the completion of corruption cases. In order to support the success of corruption eradication in Indonesia, then the element “that can damage state finances and the state economy” in corruption is not an element that must be proven, but only as a reason of prosecution and to determine the amount of substitute money to the defendant.

Keywords: Corruption, State Economy, State Finances

Introduction

The corruption in developing countries may impair the ability of governments to redistribute wealth among their citizens. Specifically, corruption may impose substantial limitations on developing countries' redistributive efforts, and may help explain the low level of transfer programs in developing countries.¹ Corruption crime impacted massively in the economic development of a country.² In the context of Indonesia, one issues that often arise and debated in the handling of corruption cases is an element “that can damage state finance or economy” in Article 2 and Article 3 of Act No. 31 of 1999 on Corruption Eradication (hereinafter, UU PTPK). The Komisi Pemberantasan Korupsi (KPK)³ is the state institute in conduct its duties and authorities are independent and must be free from any influence, it is similar to other institutions have the authority to carry out duties and its objectives. In outline, the authority of the Corruption Eradication Commission in Act No. 30 of 2002 on the Corruption Eradication Commission can concluded with the details; the authority as duties of the Corruption Eradication Commission, the rights to exercise authority, the authority relating to technical implementation of duties and others.

In practice, a number of corruption cases handled by law enforcement, such as the provision of *access fees* at the Ministry of Justice and Human Rights; the procurement of Pertamina tankers (VLCC); and corruption in PT. Texmaco, where the investigation is discontinued (SP3) for not found the element “that can damage state finance and economy”. Similarly, there are still some corruption cases that have been filed and tried in court, but were acquitted by the judges for the same reasons, i.e non-fulfillment an element that can damage state finance and economy.⁴

The condition of handling the corruption cases in Indonesia, described by former Chief of Supreme Court, Harifin A. Tumpa⁵ in a press conference “Year-End Note of Supreme Court Performance,” states that throughout the course of 2011, the Supreme Court dealing with 956 cases of corruption. From total cases, 40 cases of corruption were acquitted at the level of cassation, with a percentage of 10.31% of 956 case goes to the Supreme Court in 2011.

¹ Olken, B. A. (2006). “Corruption and the Costs of Redistribution: Micro Evidence from Indonesia”. *Journal of Public Economics*, 90(4), 853-870.

² Aidt, T. S. (2009). Corruption, institutions, and economic development. *Oxford Review of Economic Policy*, 25(2), 271-291.

³ The Komisi Pemberantasan Korupsi (KPK) is the Indonesian Corruption Eradication Commission, which was formed after special consideration on the extraordinary nature of corruption in Indonesia, which has become systemic and widespread, and has violated the human rights of the Indonesian people. The KPK was formed under Act No. 30 of 2002 on the Corruption Eradication Commission.

⁴ Indonesia Corruption Watch. (2014). *Hasil Penelitian Penerapan Unsur Merugikan Keuangan Negara Dalam Delik Tindak Pidana Korupsi*. (Report). Jakarta, p. 17

⁵ Harifin A. Tumpa, Chief of Supreme Court, in press conference “Year-End Note of Supreme Court Performance” at Supreme Court Building, Jakarta, Kompas.com, Jum’at 30 December 2011. As cited on Hernold F. Makawimbang. (2014). *Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi, Suatu Pendekatan Hukum Progresif*. Jakarta: Thafa Media, p. 2

Article 2 and 3 of UU PTPK as favorite articles are often used by law enforcer to eradicate corruption. Based on data was collected by LeIP in 2013, there were 503 cases out of 735 cases or 68.43% using article 3 of UU PTPK, 147 cases or 20% use article 2 of UU PTPK and its remaining 26 cases or 11.57% use other article.⁶ In fact, one of elements that must be proved in *a quo* article is element “that can damage state finance or economy” with juridical consequences, if these elements are not proven, then the case will be acquitted by the judge. While, many problems faced in implementing these elements, includes: differences in perception about the meaning of state finances in some legislation, unclear the sense of damage state economy (vague) in UU PTPK, the understanding of *actual loss* or *potential loss* of state losses, where the authorities determine (calculate) state losses or economy making an obstacle in accelerating the eradication of corruption.

A discussion of law enforcement (including corruption crime), cannot be separated by legal system that exist. According to Friedman that the components that affect the legal system are:⁷ (i) legal structure, i.e the legal apparatus; (ii) legal substance, i.e legislation (laws); and (iii) legal culture, i.e attitude and socio-cultural values of society. In this case, the main focus is the issue of legal substances, i.e UU PTPK that “problematic” in particular the element “that can damage state finance or economy.”

Method of the Research

The type of research was normative legal research, which is a process of finding the rule of law, legal principles and doctrines in order to address the legal issues at hand. Legal research was conducted to produce arguments, theories or new concepts as prescriptions in solving problems.⁸ This research was to find the problematic in the implementing the element “that can damage state finance or state economy” in article 2 and 3 of UU PTPK and to provide prescription of ideal formulation of corruption eradication in Indonesia. This research uses approaches of statute, case, comparative and conceptual. Legal materials were analyzed by syllogism of induction, deduction and interpretation, detailed, comprehensive, objective and in-depth.

Juridical Consequences of Implementing the Element “that Can Damage State Finance or State Economy”

In practice, the implementation of element “that can damage state finance or state economy” in Article 2 and 3 of UU PTPK reap many problems. Debates are often happening between investigator and public prosecutor, judge, lawyers and even the experts. It concerns the differences in the perception of the meaning of state finances (especially SOEs), unclear understanding of damage state economy (vague), the sense of *actual loss* or *potential loss* to calculate state finance or economic, and which the authorities to determine (calculate) state losses or economy, whether the BPK or BPKP or other institutions, and in practice the calculation of financial loss to the state or economy require a long time.

Certainly, various problems inhibit law enforcement of corruption in Indonesia. Some of these problems could be interpreted in accordance with their respective interests and different viewpoints. If this continues, it will cause unfavorable impact on law enforcement for corruption.

State Finance in the State Owned Enterprises (SOEs)

Article 1 paragraph 1 of Act 17 of 2003 on State Finance defines state finance as all rights and obligations of the state which can be valued by money and everything in money or in goods which could be used as state property in relation to the implementation of rights and obligations. Furthermore, article 1 paragraph 1 of Act No. 19 of 2003 on State-Owned Enterprises (SOEs) defines SOEs as a business entity that is wholly or largely the capital is owned by the state through direct investments coming from state assets set aside. Therefore, state-owned enterprises is a business entity that is wholly or largely the capital is owned by the state that coming from state asset set aside through direct participation.

According to Atmadja,⁹ when the governments participate in capital with the company and involve bearing the risk and responsible for operating losses were financed, then the position of government is not in a position as a public legal entity but a private legal entity. Thus, the provision of management and accountability of state financial in the form of shares automatically apply and be based on the legislation of Limited Liability Company. This condition results in the termination of financial invested in a limited liability company as a financial state, thereby changing its legal status to a limited liability company finances.

Company Limited Company is no longer a public institution, but a private institution with rights and obligations as other Limited Liability Company. If the understanding that the assets of Limited Liability Company is a state asset, it will lead to consequences that are inconsistent with the independence of the legal entity. Even more worrying is, with such legal construction could affect the responsibility of a Limited Liability Company and will also as responsibility of the state directly.

In relation that, the Supreme Court of Indonesia were issued a decision No. WKMA/Yud/20/VIII/2006 dated 16 August 2006 which essentially stated that:

- a. SOEs’ receivable is not a state’s receivable as intended by Article 1 paragraph 6 of Act No. 1 of 2004 on State Treasury;

⁶ Arsil. Paper presented on Focus Group Discussion. *Disparitas Putusan Dalam Perkara Korupsi – ICW*, Gren Alia, Sept 19, 2013.

⁷ Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial*, Bandung, Nusa Media, 2011, Page. 15

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media Group, Jakarta, 2010, Page 35.

⁹ Arifin P. Soeria Atmadja, *Keuangan Publik dalam Perspektif Hukum: Toeri, Praktik, dan Kritik*, FH-UI Press, Jakarta, 2005, Page 98

- b. The provisions on SOE receivables in Act No. 49 Prp. of 1960 is no longer legally binding in the presence of Act No. 19 of 2003 regarding SOE which is a special law (*lex specialis*) and newer;
- c. And also the scope of state financial that listed in Article 2 letter g of Act No. 17 of 2003 on State Finance, as long concerns the asset that separated of state company/local with the issues of Act No. 19 of 2003 on SOE said not have legally binding force.

By contrast, on a general explanation of Act No. 31 of 1999 on Corruption Eradication mentioned:

State financial is entire state asset in any form, separated or not separated, including all parts of state asset and all rights and obligations arising from:

1. *Being in the control, management and accountability of state officials at both central and regional levels;*
2. *Being in the control, management and accountability of the State Owned Enterprises/Regional Owned Enterprises, foundations, legal entities and companies that participates state capital or companies that participate third-party capital under the agreement with the state.*

Thus, it is clear “overlap” the meaning of state financial in Act No. 17 of 2003 on State Finance, Act No. 31 of 1999 on the Eradication of Corruption, Act No. 40 of 2007 on Limited Liability Companies and Act No. 19 of 2003 on SOEs. It contains a consequence, in case of financial losses at SOEs whether UU PTPK be imposed on the SOE? These provisions give rise to a long debate. The pro with the expanded definition of state finances, will be adhering to the provisions of UU PTPK,¹⁰ if occurs losses at state-owned enterprises and limited liability companies, law enforcement agencies use the provisions of Article 2 letter g of State Finance Act which essentially the participation of state that separated is state assets which by their nature are within the realm of law public. Therefore, in case of state losses, the provisions of UU PTPK can be applied on SOEs management.

While, the parties want a narrowing of the definition of state finance, especially for state-owned enterprises, using the provisions of Act No. 19 of 2003 on State-Owned Enterprises and Act 40 of 2007 on Limited Liability Company which essentially states that the participation of state is state assets was separated. When the state asset has been separated then such asset is no longer into the domain of public law, but in private law.

The Definition of State Economy in Corruption Crime

In the practice of law enforcement of corruption, rarely found cases decided by the court that the defendant was found guilty of corruption for damage the state economy. In effect, what happens during this time is corruption because the damage of state financial. Therefore, the former Attorney General, Baharuddin Lopa ever said that in view of the definition in the science of law, what is meant by “state economy”, as mentioned in the general explanation of Act No. 31 of 1999 is very vague, consequently very difficult to define what is meant by “damage state economy” in the practice of law enforcement. Therefore, it is not surprising if it is not so much or rare court ruling within the legal considerations contain clearly proving the element of “damage state economy”.¹¹

Similarly, it presented by former Deputy Attorney General for Special Crimes, Marwan Effendy, associated with the definition of state economy. According to him, the Act No. 31 of 1999 jo Act No. 20 of 2001 does not explicitly emphasize the definition the state economy. In contrast to Act No. 3 of 1971 in the explanation of Article 1 sub (a) states:

“The act which could damage the state economy is criminal violations against regulations issued by the government in their authority as referred to in MPRS No. XXIII/MPRS/1966”.

While the regulations were issued by the government in its authority in accordance with MPRS’s decree, should be investigated its existence based on the rules, so it does not overlap, especially conflicting with each other, particularly the provisions of laws and regulations concerning the policy of economics and monetary.¹² In practice, it seems never an accused of corruption are proven actions can satisfy the formulation of this damage state economy.

As general explanation of Act No. 31 of 1999 on Corruption Eradication, that is:

“State economy is the economic life which is structured as a joint venture based on the principle of family or community businesses independently based on government policy, both at the central and local levels in accordance with the provisions of the legislation in force that aims to benefit, prosperity and welfare to all peoples”.

The definition is unclear, vague and not implementable in the domain of law enforcement against corruption, so it is hardly ever applied by law enforcement because there are no clear parameters against these terms.

Economic system of Indonesia is not capitalism nor socialism, but a mixed economic system accordingly in the 1945 Constitution, namely Pancasila economic system or people economic system that focuses on cooperative with kinship principles. Pancasila economic system is an economic system that is spirited with the ideology of Pancasila, the economic system is a joint venture based on kinship and national cooperation.¹³ Principle of family in the Indonesian economy is set by constitutional

¹⁰ Definition of state finance is debated again, Hukumonline, Monday, 31 July 2006, <http://www.hukumonline.com/berita/baca/hol1524/definisi-keuangan>

¹¹ Baharuddin Lopa and Moh. Yamin, *Undang-Undang Pemberantasan Tindak Pidana Korupsi*, Kipas Putih Aksara, Jakarta, 1977, Page. 19

¹² Marwan Effendy, “Korupsi Dalam Pengadaan Barang dan Jasa Pemerintah”, (Paper: Presented on National Seminar by Majalah Hukum Prosekutor di Hotel Patra, Semarang, tanggal 19 April 2011, Pages. 25-26

¹³ Mubyarto, *Ekonomi Pancasila : Gagasan dan Kemungkinan*, LP3ES, Jakarta, 1987, Page. 31

article 33 paragraph (1) of the 1945 Constitution, that “the economy is structured as a joint venture based on kinship principles”. The meaning of economy is structured as a joint venture based on family principles is cooperative.

In contrast, it does not mean that only the cooperative as form of business entity that is appropriate to achieve common prosperity, for cooperatives, state-owned enterprises and private enterprises are three entities are inseparable from one another. The mandate of Article 33, paragraph (1) of the 1945 Constitution is that the principle of kinship should animate all business entities, not just the only cooperative enterprises. Therefore, if there are state-owned enterprises or private enterprises that purpose and its principle based on mutual cooperation and kinship and as joint venture, then it is a “cooperative”.

While the meaning of community business independently which is based on government policy, both at the central and local levels in accordance with the provisions of the legislation in force that aims to benefit, prosperity and welfare to the whole life of people is not clear, abstract and multi-interpretation.¹⁴ Therefore, it is necessary clear formulation of the meaning of damage state economy in the corruption.

Differences in Understanding of State Financial Losses or Economy as Actual Loss or Potential Loss

In practice, there is a debate in the understanding of the application of the phrase “can damage”. Because, it contrary to the concept of *actual loss*, in which, losses should actually happened. While, the concept the potential losses allow that with their actions (against the law or abuse of authority) self-enrich (favorable) or another person or a corporation, although there has been no financial loss to the state or economy for sure, the state loss is already can be applied.

The different understanding of the elements “that can damage state finance or economy” can be seen in a corruption case that involving the Board of Directors of Bank Mandiri “ECW Nelloe, et al,” in which judgment ruling of District Court of South Jakarta that freeing the defendants (ECW Nelloe, et.al) with stated elements “that can damage state finance or economy” is not proven. The loan given by Bank Mandiri to PT. Cipta Graha Nusantara (CGN) cannot be said damage state because the credit agreement is still ongoing until September 2007 and CGN always pay its debt. Hence, the Council argues in substance that Bank Mandiri did not experience a loss so that the state is not damaged. The consideration refers to the definition of state losses in article 1 paragraph 22 of Act No. 1 of 2004 on State Treasury which requires the state losses were really real.

Unlike the case with the decision of the Constitutional Court No. 003/PUU-IV/2006, which states that “can damage state finance and economy” means there is an actual loss or only potential losses. Understanding of the word “*can*” in article 2 paragraph (1) and article 3 of UU PTPK cause act to be prosecuted not only because such actions “damage the state finance and economy”, but only “*can*” cause loss alone, if the element of corruption is filled, it can be submitted to the court.¹⁵

The understanding of the word “*can*” should be interpreted according to the explanation of Article 2, paragraph (1) of UU PTPK which states that the word “*can*” before the phrase “damage state finance or economy”, showing that the crime is a formal offense, namely the existence of corruption is quite the fulfillment of the action elements defined, not by the occurrence of consequences.¹⁶ Thus, the element “that can damage state finance or state economy” can be proved by two approaches: *First*, it is real state financial loss and already happening; *Second*, the possibility can cause losses to the state or economy.

The construction is in line with the view of Komariah Emong,¹⁷ which embraced the concept of state financial or economic losses in the sense of formal offense. Elements “can damage state finance or economy” should be interpreted as to damage state in direct or indirect senses; it means an act automatically may be considered to damage state finance or economy where such action would potentially cause state losses. Thus, the presence or not state losses in real terms is not important. The concept of state losses in the sense of formal offense is already known in the old UU PTPK, Act No. 3 of 1971.”¹⁸

However, based on the decision of the Constitutional Court No. 25/PUU-XIV/2016 dated 25 January 2017 stating that the word of “*can*” in Article 2 paragraph (1) and article 3 of UU PTPK contrary to the 1945 Constitution and not legally binding, with the consideration that the inclusion of the word “*can*” in UU PTPK creates legal uncertainty and the potential for abuse of authority of law enforcement and the application of elements of state losses to the conception of *actual loss* gives more legal certainty and corresponds to the efforts of synchronization and harmonization of national and international legal instruments.¹⁹ This condition progressively increased unclear elements “that can damage state finance and economy” in corruption, because both the Constitutional Court give a ruling different considerations against the same problems as the decision of the Constitutional Court No. 003/PUU-IV/2006 dated 25 July 2006 and No. 25/PUU-XIV/2016 dated 25 January 2017.

Calculate the State Financial Losses or State Economy; Decelerate the Handling of Corruption

The calculation of state financial losses or state economy often decelerate the completion of corruption, because the process of calculation of state losses or economy takes quite a long time and often protracted for various reasons. One example is the

¹⁴ Titahelu, J., Irwansyah, I., Awaludin, H., & Ashri, M. (2015). “Strengthening Pela-Gandong Alliance Based on John Rawls’ Theory of Justice”. *Hasanuddin Law Review*, 1(3), 417-429. doi: <http://dx.doi.org/10.20956/halrev.v1n3.119>

¹⁵ The Indonesian Constitutional Court Decision No. 003/PUU-IV/2006 dated 25 July 2006

¹⁶ See explanation of Article 2 paragraph (1) Act No. 31 of 1999 on The Eradication of Corruption.

¹⁷ A Professor of Criminal Law of Padjajaran University, Indonesia.

¹⁸ *UU Korupsi Menganut Kerugian Negara Dalam Arti Formil*, Hukumonline, dated 21 February 2006

¹⁹ See decision of Constitutional Court No. 25/PUU-XIV/2016 dated 25 January 2017

handling of corruption cases in Hambalang project. The Komisi Pemberantasan Korupsi (KPK)²⁰ efforts to process Deddy Kusdinar, AA Mallarangeng and Teuku Bagus Mohammad Noor as defendants on the level of prosecution is inhibited because the KPK is still awaiting the results of audit and calculation of state financial loss in the project.²¹ Not only the case of corruption at the national level, a number of handling for corruption cases in the region is also inhibited because awaiting the results of audit or calculation of state financial losses.

The monitoring report of KP2KKN Semarang mention in 2013 there were at least 17 corruption cases were handled by attorneys and police in Central Java are unresolved because awaiting the audit or calculation of state financial loss from BPK or BPKP. Not to mention the delay is due to debate about who is authorized to calculate (audit) of state financial losses, whether BPK only, or including BPKP, inspectorate and law enforcement. There is no same perception among investigators, the public prosecutor, judge, experts and stakeholders concerned.

Ideal Formulation of Article 2 and 3 of UU PTPK in Indonesia

Some problems as described above related to the application of the element “that can damage state finance or state economy” which in its downstream became bottlenecks in the eradication of corruption in Indonesia. Therefore, to accelerate the eradication of corruption, it should the element of “that can damage state finance or economy” in the offense of corruption in Article 2 (1) and 3 of UU PTPK are appropriately eliminated,²² by several reasons:

First, the element “that can damage state finance or economy” is not included as one element in corruption according to the UNCAC which has been ratified by Act No. 7 of 2006. *Second*, a lot of corruptions are not damage state finances directly, such as bribery. *Third*, there is equal treatment between SOEs and private enterprises in case of corruption that involving the corporation. *Fourth*, opportunities prosecute state non-financial losses. The impact of corruption is not only caused losses to the state, but also other losses such as social loss, the private sector, losses in ecological and other losses.

Fifth, without having to prove the state loss can accelerate the handling of corruption cases. To calculate state losses by BPK or BPKP require a long time, not to mention concerned about who is authorized to calculate the state loss. This is consistent with the view of Indriyanto Seno Adji,²³ that the placing of state loss became an obstacle for law enforcement. Based on the principle of criminal law, in fact quite the act shall be punished illegal acts or abuse of authority. The existence of state loss, increasingly impede the investigation of corruption because the calculation is conducted by another institution, namely BPK or BPKP.

Sixth, the main advantage of the exclusion of the state loss as an element of the offense of corruption is not a polemic about the concept of state finance and economy and also the authority in calculating state losses. *Seventh*, as a general explanation of Act No. 31 of 1999 on the Eradication of Corruption in the Act, corruption defined explicitly as a formal offense, namely the existence of corruption is quite the fulfillment of action that formulated, not by the occurrence of consequences.

Thus, according to the author, the ideal formulation of the provisions in Article 2 paragraph (1) of UU PTPK is “*everyone acts unlawfully to enrich themselves or others or a corporation*”. As for article of 3 UU PTPK is “*any person with the intention of enriching themselves or another person or corporation, abuse of authority, opportunity or means available to them because their position*”. Such formulation, then the law enforcement does not need to prove their state losses or economy in the aforementioned article.

In a comparative approach, the provision of article 2, paragraph (1) and article 3 of UU PTPK that determines the element of state financial loss or economy as one of the constitutive elements are characteristic of the legislation of corruption in Indonesia, which is not found in the legislation of corruption in other country.²⁴ With such a concept, will make it easier for law enforcement to catch corruptor, so that corruption in Indonesia will decrease and prosperity of people will increase.

The Provision of UNCAC which not adopted in Indonesian Corruption Act

About 55 articles in UU PTPK of Indonesia with some types of qualification of corruption, but there is still some types of corruption that exists in UNCAC has not formulated into UU PTPK, as follows:

- a. Article 16 (1) of UNCAC, on bribery of foreign public officials and officials of public international organizations, stated:

²⁰ The Komisi Pemberantasan Korupsi (KPK) is the Indonesian Corruption Eradication Commission, which was formed after special consideration on the extraordinary nature of corruption in Indonesia, which has become systemic and widespread, and has violated the human rights of the Indonesian people. The KPK was formed under Law No. 30 of 2002 on the Corruption Eradication Commission.

²¹ Republika.co.id, Jakarta-KPK until now not receive audit result of Hambalang project investigation of Stage II from BPK to bring the case of corruption into the process of prosecution. “When the calculation of state finance in BPK is not finish, may inhibit to the process of prosecution”, said spokesman of KPN Johan Budi in Jakarta, Monday 29 July 2013

²² Yunus Husein emphasized for future to be change the mindset, do not problematize the presence or not the state loss in a corruption case (Opini Sindo, 2008)

²³ Pembuktian Kerugian Negara Menghambat, Kompas, dated 30 September 2013, Available online at: <http://www.kok.go.id/berita/berita.sub/1413-pembuktian-kerugian-negara-menghambat>. Accessed on May 16, 2016.

²⁴ Romli Atmasasminta and Kodrat Wibowo, *Analisis Ekonomi Mikro tentang Hukum Pidana Indonesia*, Prenadamedia Group, Jakarta, 2016, p. 204

“States parties shall take legislative and other measures necessary to establish as a crime, when committed intentionally, the promise, offer or giving undue benefit to a foreign public official or official of public international organization, directly or indirectly, to only public officials or another person or entity in order that the official act or not act in carrying out official duties, in order to obtain or retain business or other undue benefit in relation to the conduct of international business.”²⁵

- b. Article 21 letters *a* and *b* of UNCAC, on bribery in the private sector: “States parties shall consider taking legislative measures and other necessary for a criminal offense, when committed intentionally in the framework of economic, financial or trade: (a) the promise, offering or giving, directly or indirectly, benefits improperly to the person who leads or works, in any position, for a private sector entity, for himself or for another person, so that he violated his/her duty, action or inaction; (b) the appeal or acceptance, directly or indirectly, of an undue benefit by a person who leads or works, in any position, in private sector, for himself or for another person, so that he violated his/her duty to act or not to act.”²⁶
- c. Article 22 of UNCAC, on asset embezzlement in the private sector: “States parties shall consider taking legislative measures and other necessary for a criminal offense, when committed intentionally in the framework of economic, financial or trade, embezzlement by a person who lead or works, in any position, in the private sector, the asset, private funds or securities or other items of value entrusted to him/her because the positions.”²⁷

Seeing some provisions of UNCAC that have not been entered into UU PTPK shows that the positive law on the Eradication of Corruption in Indonesia is still not fully aligned with UNCAC. This makes the prevention and eradication of corruption in Indonesia is still not optimal, while some these provisions is corruption that inhibit national development.

Conclusion

The application of elements “that can damage state finance or state economy” in UU PTPK face many obstacles, thus affecting the success of the eradication of corruption in Indonesia. Some inhibiting factors, includes: “overlap” in the meaning of state financial; the definition of state economic in UU PTPK is unclear, vague and multi-interpretation, so there are no clear parameters for law enforcement officers; misunderstanding of state losses or economy as *actual loss* or *potential loss*; until lack of understanding regarding the authorized institutions in calculate (audit) of financial losses in corruption crime.

Hence, the application of elements “that can damage state finance or economy” many make problems, it should be that element is not an element that must be proven. But enough as a reason for prosecution and determine the amount of compensation to be paid by the defendant. In addition, UU PTPK Indonesia is also not yet fully aligned with UNCAC. Therefore, legislation policy necessary to revises the material in UU PTPK for the successful of corruption eradication agenda in Indonesia.

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²⁵ See Indonesian translation in Article 16 paragraph (1) of the United Nations Convention Against Corruption, 2003.

²⁶ See Indonesian translation in Article 21 letter a and b of the United Nations Convention Against Corruption, 2003.

²⁷ See Indonesian translation in Article 22 of the United Nations Convention Against Corruption, 2003.

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