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Philosophy and legal basis of corruption crime settlement based on the value of state losses through economic approaches to the law in Indonesia

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Abstract
Criminal suspects in corruption cases have not had an effect on improving morality and corruption is growing more widespread, the state loss is not recovered maximally but there is a tendency for state money leakage in the law enforcement sector because the value of the loss saved is smaller than the economic value of the lost state property. These problems need to be done through the study of philosophy through research with an economic analysis approach to the law. The purpose of this study is to analyze, and discover the philosophy of criminal acts of corruption based on the value of state losses; analyze and find a legal basis that accommodates the resolution of criminal acts of corruption based on the value of state losses with an economic approach to the law. This research uses normative legal research methods with various approaches, including the statute approach, comparative approach, case approach and conceptual approach. The analytic technique of this research is using library research. The results showed that the Law was formed to maintain orderly economic behavior and not hamper economic development with the formalistic character of law. Based on this direction, the effectiveness and efficiency of law enforcement against criminal acts of corruption can at least be seen from the essence of the criminal, namely for moral improvement through deterrence, and for the purpose of restoring state losses through paying compensation money and fines in order to create high efficiency to realize economic growth and National development. The PTPK Law was made for economic stability, therefore the solution to the problem of corruption cannot be separated from the consideration of the country's economy, and the costs that pose a relative risk to state expenditure affecting the country's economy.

Keywords: corruption, philosophy of corruption, economic analysis, law

Introduction
Promoting public welfare is a constitutional mandate [1]. Legislation is formed to stimulate behavior in the direction the state expects. For example, the outcomes aimed at general criminal law are to create social order, while the outcomes aimed at criminal law on corruption are to (1) eradicate corruption, recover state losses, and (3) high efficiency in order to realize economic growth and national development. Despite differences in outcomes, law enforcement is an action that is believed to have a sustainable effect in the future [2].

In reality, law enforcement practices (penalties) have not had an effect on improving morality and corruption, is growing more widespread, the state loss is not fully recoverable and there is a tendency for state money to leak in the law enforcement sector because the value of the loss saved is less than the economic value of the state's own economy. Lost. The impact is not creating high efficiency for economic growth and national development, but rather adding to the burden of state expenditure that does not contribute to the state. This encourages the need to do a review of the limitations of the use of criminal law with a test to reduce its economic value through rationality, effectiveness, efficiency, utilities, and transaction costs [3], so that it does not potentially cause leakage of state finances [4]. The effectiveness and efficiency of law enforcement transaction costs should not merely consider instrumental theory and criminal law policy theory [5]. The "economic analysis of the law" approach is important and is needed to maximize the effectiveness of the law to prevent corruption in the law enforcement sector [6].

Based on the background that has been explained above, the purpose in this paper is first to analyze, and find the philosophy of corruption based on state losses; second, analyzing and finding a legal basis that accommodates the settlement of acts of corruption based on the value of state losses with an economic approach to the law.

Research Method
This type of research is normative juridical research, examines the philosophy of eradicating corruption, recovering state losses, and high efficiency in order to realize economic growth and national development through

[1] Opening of the 1945 Constitution of the Republic of Indonesia, fourth century.
[2] President Joko Widodo's government efforts in eradicating corruption (the government's anti-corruption commitment) can be accessed on the website of the presidentri.go.id.
[3] John Kenedi, Kebijakan hukum pidana (penal policy) dalam sistem penegakan hukum di Indonesia, Yogyakarta, pustaka pelajar, 2017, p. 90-91.
[4] The 9th Directive Inpres No. 5 of 2004 states, "... Conducting a review and review of systems that have the potential to cause corruption in the scope of duties, authorities and responsibilities of each."
[5] Nazaruddin lathif, 'Teori Hukum Sebagai Sarana /Alat Untuk Memperbaharui Atau Merekayasa Masyarakat', *Journal of Law Review*, 2017, 3(1): 76-77.
[6] Law No. 7 of 2006 concerning ratification of the UN anti-corruption convention, 2003, Article 5 paragraph (3) and Article 30 paragraph (3).

an economic analysis approach to the application of its law [7]. The research approach used is the statute approach, comparative approach, case approach and conceptual approach [8]. The legal material from normative research can be divided into three namely,

1. Primary legal material, consists of the 1945 Constitution of the Republic of Indonesia, the Eradication of Corruption (PTPK) Law, the National Finance (KN) Law, the Corruption Eradication Commission (KPK) Law, the UNCAC ratification Act 2003, the Criminal Procedure Code (HAP)) Law, Presidential Instruction No. 5 of 2004 concerns the acceleration of corruption eradication.
2. Secondary legal law, books, scientific journals, articles, Strategic Plans to eradicate corruption, restorative justice, economic analysis of law, and guidelines for resolving criminal cases with restorative justice within the Police, which can answer the legal issues in this study.
3. Tertiary Law Materials are legal materials that provide an understanding of primary and secondary legal materials, including legal and political dictionaries, encyclopedias, empirical data, and others.

The technique of searching primary and secondary legal materials is done by studying literature and searching through the internet (internet searching) [9]. The analysis technique in this research is library reseacrh [10].

Results and Discussion

A. overview of crime management policies through the facilities of criminal law and economic analysis of the law

1. Policy to deal with corruption by means of criminal law in Indonesia

According to the Indonesian criminal law system, the mechanism for the recovery of state losses due to criminal acts of corruption is as follows:

a. Recovery of damages through additional crimes in the form of:

1. The seizure of assets belonging to the alleged perpetrator as the result of corruption as referred to in Article 18 paragraph 1 letter (a) of Law No. 31 of 1999 concerning PTPK.
2. Pay as much money as possible in the amount corrupted as stated in article 18 paragraph 1 letter (b) of Law No. 31 of 1999 concerning PTPK.
3. Booty was auctioned off by the prosecutor to fulfill the obligation to pay compensation money as stated in Article 18 paragraph 2 of Law No. 31 of 1999 concerning PTPK, in the event that the convicted person does not pay compensation in the month after the inchracht ruling.

b. Recovery of damages through a civil suit by the State Attorney General because after the inchract court verdict, the convicted person has not paid compensation money, and there are still assets resulting from corruption that have not been confiscated.

The truth and consistency of the criminalization of corruption in the PTPK Law, can be measured through multi-disciplinary analysis, as follows:

a. The criminalization policy in the PTPK Law has a philosophical value of truth if what is expected of the PTPK Law is in accordance with the nature of its philosophical hermeneutics and is a moral and rational objective and subjective legal principle, true value to be applied in the interests of social change.
b. Testing the truth of the PTPK Law in epistemology can be done by examining the substance of the PTPK Law and juxtaposing it with the substance of the KN Law, then analyzed based on the philosophical background of the formation of the PTPK Law.
c. Testing the economic rationality aspect of the application of the PTPK Law can be measured by the extent to which the successful implementation of the PTPK Law can achieve the objectives of the PKN and ET PEPN in terms of the economy.

Although the PTPK Law and the KN Law have the same goals and support each other in realizing the goals of the country, but because the KN Law does not provide explicit limits on the value of losses, the enforcement of corruption that does not recover the lost economic value of the state will be a trigger factor for an imbalance between the state budget used for law enforcement and the benefits received by the state, thus potentially resulting in a waste of state money. The impact of the basic principles and general principles of management of state finances in the KN Law becomes unconnected with its ethical value in the enforcement of the PTPK Law. Whereas the formulation of the PTPK Law considers the efficient use of the budget and the effectiveness of corruption eradication activities in a systematic, continuous and harmonious manner with other legal products, namely:

a. RI MPR Decree Number VIII / MPR / 2001 regarding recommendations on the policy direction of eradicating and preventing Corruption, Collusion and Nepotism;
b. Law No. 28 concerning the administration of a state that is clean and free of Corruption, Collusion and Nepotism;
c. Law No 30 of 2002 concerning the KPK;
d. Law No. 15 of 2004 concerning audits of management and responsibility for state finances;
e. Law No. 7 of 2006 concerning ratification of UNCAC, 2003 (United Nations Anti-Corruption Convention, 2003);
f. Law No 30 of 2014 concerning government administration;
g. PP No 60 of 2008 concerning government internal control systems;
h. Perpres No. 54 of 2018 concerning the National Strategy for Corruption Prevention; and implementing policy settings.

Basically, the handling of corruption by means of criminal law is intended to stimulate and manipulate behavior changes as desired by the state. Ideally, the results of the enforcement of corruption that are expected by the PTPK Law are corruption eradication, recovery of state losses, the realization of high efficiency in order to realize economic

[7] Marzuki, Peter Mahmud. Penelitian Hukum. Jakarta: Kencana Prenada Media, 2011, p.35.
[8] Ibid, p. 138.
[9] Satjipto Rahadjo, Ilmu Hukum, Bandung: Citra Aditya Bhakti, 2000, p. 255.
[10] Abdlatif and Hasbi Ali. Perihal Kaedah Hukum, Bandung: Citra Aditya Bakti, 2010, p.9.

growth and national development.

2. Economic analysis of tackling corruption

Basically, the economic value of criminal law can be seen from the extent to which the law is able to realize its objectives with a cost that is balanced with benefits (not the minimum cost). Effective legal rules are precise legal rules, which are responded by each individual, and provide economic incentives to the state for compliance with these rules [11]. Inaccurate rules, from an economic point of view there is an imbalance between social conditions and the practice of law, which triggers reduced compliance with the law itself.

The PTPK Law when viewed from a legal economic level, found juridical facts about the lack of precision of the rule, viz:

a. The effect of the absence of setting limits on the value of losses, opening up the potential allocation of costs that are not comparable to the value recovered in law enforcement because all cases of corruption must be tried through the Corruption Court by ignoring the costs incurred.
b. The formulation of criminal threats in the PTPK Law which is not effective for detention, is used by people who have a strong influence on intervention. Excess law enforcement tends to choose cases that are easy, quick to resolve and have low intervention. This condition is an embryo of the emergence of a logical choice to disobey the law.

3. Expert discourse on the use of economic analysis of crime prevention

The legalistic legal system is one of the factors that does not achieve the objectives of the law and the impact of the inability of the law to reduce the rate of total crime [12]. Experts explore adaptive legal values, which can reflect justice and expediency, which are both in substance and implementation consistent with constitutional policies. The following is the expert's view on the economic approach to law in legal development:

a. David fogel

According to David Fogel, injustice in the criminal system is the one that contributed greatly to making all convictions and correction or correctional institutions fail miserably in an effort to change the defendant to conscious or insyaf [13].

b. Gary becker (1968)

Gary Becker argues that, individuals weigh the various possibilities that exist (profit and loss) to commit or not commit a crime [14]

c. Willem Boger (1905)

Willem Boger argues that misery, which is nothing but arising from economic factors, is the cause of crime [15].

d. Talcott Parson

According to Talcott Parson law can be developed at the required level, the further away the normative independence of social structure components is from the urgency of political and economic interests and from the personal, organic and physical-environmental factors operating through them [16].

e. Marxime Ortodoks

Orthodox Marxism analyzes the relationship of law to the economic class, that "the error of instrumentalism or reductionism lies in the placement of necessary and direct relations between the two class interests on the one hand and the content of the rule of law or the outcome of the legal process."

f. Jeremi Bentham

Punishment is not a special sanction, but an ordinary sanction that is not immune to exceptions due to the 4 non-legal factors or 4T (unreasonable, ineffective, unprofitable and unnecessary). The 4 (four) exceptions to the application of Bentham's version of the law are described by Romli Atmasasmita as follows [17]:

Table 1: The 4 (four) exceptions to the application of Bentham's version

Chapter III Book One (KUHP)	4 unreasonable (J.Bentham)
Things That Eliminate Punishment	Unreasonable
Things That Relieve Punishment	Ineffective
Matters that aggravate the threat of punishment	Unfavorable, Not Necessary

g. Richard A Posner

According to Richard A. Posner, there are 3 propositions of economic analysis of the law, namely (1) the main function of law as a more efficient method, (2) Law is needed for public enforcement and non-monetary sanctions, (3) The purpose of law is to promote efficiency the economy.

h. Louis Kaplow and steven Shavel

According to Louis Kaplow and Steven Shavel, an economic framework for assessing social desires. Economic analysis attempts to answer two fundamental questions about law, namely what is the effect of law on perpetrators and what legal effects are socially desirable [18].

B. The meaning of countering corruption crime based on state financial losses value through economic analysis approach to law

1. The nature of the economic approach to law

Law is an inseparable part of national economic growth and development policies. If economic units are able to achieve prosperity, then prosperity will generally be realized. Justice, certainty, expediency, confrontation, order, peace are only alternative objectives. The following is the linkage between law and economics in realizing national development:

a. Economics is the study of how individuals and society make choices about the use of scarce resources that

[11] Johnny ibrahim, *Pendekatan Ekonomi Terhadap Hukum – Teori Dan Implikasi Penerapannya Dalam Penegakan Hukum*, ops cit, p. 68.

[12] According to data from the Director General of Corrections of the Republic of Indonesia Ministry of Law and Human Rights in 2016 as quoted by Romli Atmasasmita, the actual total of prisoners and detainees in 2015 was 176,707 people, while in 2016 there were 192,767 people.

[13] T.J. Gunawan, *Konsep pemidanaan berbasis nilai kerugian*, revised edition, Jakarta, Kencana, 2018.

[14] T.J. Gunawan, ibid p. 9.

[15] T.J. Gunawan, ibid p. 9.

[16] Alan Hunt, *Oxford Journal of legal strudies*, 6(1):4.

[17] Romli atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan – Geen Straf Zonder Schuld*, Jakarta, PT Gramedia Pustaka Utama, 2018, p. 20-21.

[18] Louis Kaplow and Steven Shavel, 'Economic Analysis Of Law, Harvard Law School And Nastional Bureau Of Economic Reseach', *Handbook Of Public Economics*, volume 3, edited by A.J. Aurbach and M. Feldstein, 2002, p. 1666.

have been provided by nature and previous generations [19], whereas the science of law studies how the actual position of the law in society, how the relationship or association between law with other sub-systems in society, such as politics, economics and so on [20]. In essence, the law regulates the behavior of economic agents towards order so as to achieve a balance in social life;

b. The function of law is as one of the variables in an effort to create balance through the regulation and protection of the behavior of individuals in meeting the needs of life, while the economic function as a variable meets the needs for the achievement of prosperity and prosperity.
c. The role of law and economics in national development is to create a balance in meeting the needs of the economy through the integration of the functions of economics and law.
d. The legal and economic position in development as a stabilizer of basic values that already exist and live in society. In dealing with social, legal and economic problems with its flexibility to correlate to be able to provide maximum benefits in improving welfare and prosperity.

2. Indicators in economic analysis of the law

The fundamental concept of economics which is an indicator of economic analysis of the law is:

a. Rationality

Rational according to the Big Indonesian Dictionary (KBBI) is according to logical thoughts and considerations; according to a healthy mind, fits the mind [21]. The efficiency of applying legal choices is to form a balance that produces the greatest happiness (great happiness). The balance point is as illustrated in the graph as follows [22].

Fig 1: Carl E. Case and Ray C. Fair Curves

Figure 1 above illustrates how individuals meet the needs to achieve maximum satisfaction. Economic rationality in meeting needs as explained by Carl E. Case and Ray C. Fair has a coherence with legal rationality in realizing social order. The coherence was born since the emergence of the process of fulfilling the needs of individuals who control each other to maximize the realization of their respective interests, so that it becomes a correlative factor criminogen (FKK). In this condition the public requires regulation in a legal system as an expression of the values that live in society to protect the community (social defense) in an effort to realize social welfare (social welfare).

b. Choice

Choice is an effort or a way to maximize the use of income to obtain economic resources to satisfy needs or to seek profit with the lowest possible cost. The choice of application of law in the economic approach is an effort to maximize the achievement of the objectives of the implementation of the law in its contribution to the state as a form of policy reduction for the realization of state objectives as mandated by the constitution.

c. Value

The use value theory can also be used to explain the value paradox, which is a condition where some types of goods which are very useful in daily life (such as water and air) have very low prices, while less useful items (such as diamonds) have very high prices [23].

d. Efficiency

An efficient economy is an economy that produces what people want at the lowest possible cost [24]. More carefully, the notion of economic efficiency (pareto optimal) can be emphasized, namely if an economy is no longer possible to make the allocation of resources that cause on the one hand to be more prosperous and the other party losers [25].

e. Utility

According to economic theory, there are two benefits (utility) namely total use value and marginal use value. Sadono Sukirno defines it as follows [26]:

"Total use value can be interpreted as the sum of all satisfaction obtained from consuming a certain amount of goods. Whereas marginal use value means the increase (or reduction) of satisfaction as a result and the increase (or reduction) of the use of one particular unit of goods."

Utility is the usefulness or function of something that is uncertain from something that is certain to increase profit or well-being [27]. The function of the utility concept is limited to helping people think about income and substitutes to get the best choice [28]. The income and substitution effects of price changes show that individual satisfaction is not the same. Frank describes the effect of quantity of goods consumed on satisfaction in the graph of total and marginal utility as follows [29]:

[19] T.J. Gunawan, Opscit p. 20.
[20] T.J. Gunawan, Opscit p. 20.
[21] https://kbbi.web.id/rasional.html.
[22] Karl E. Case dan Ray C. Fair, ibid p. 77.
[23] Sadono sukirno, opscit p. 165.
[24] Karl E. Case dan Ray C. Fair, *Prinsip-Prinsip Ekonomi*, Eight Edition, Jakarta, Erlangga, 1999, p. 18.
[25] M. Suparmoko, *Keuangan Negara Dalam Teori Dan Praktek*, Forth Edition, ibid. p. 34.
[26] Sadono sukirno, *Mikro Ekonomi – Teori Pengantar* Thirth Edition, Jakarta, PT RadjaGrafindo, 2009, p. 154.
[27] Fajar Sugiyanto, *Economic Approach To Law*, Jakarta, PT Kencana Prenada Media Group, 2013, p. 62.
[28] Karl E. Case dan Ray C. Fair, *Prinsip-Prinsip Ekonomi*, Eight Edition, Jakarta, Erlangga, 1999, p. 147.
[29] Karl E. Case dan Ray C. Fair, ibid p. 141.

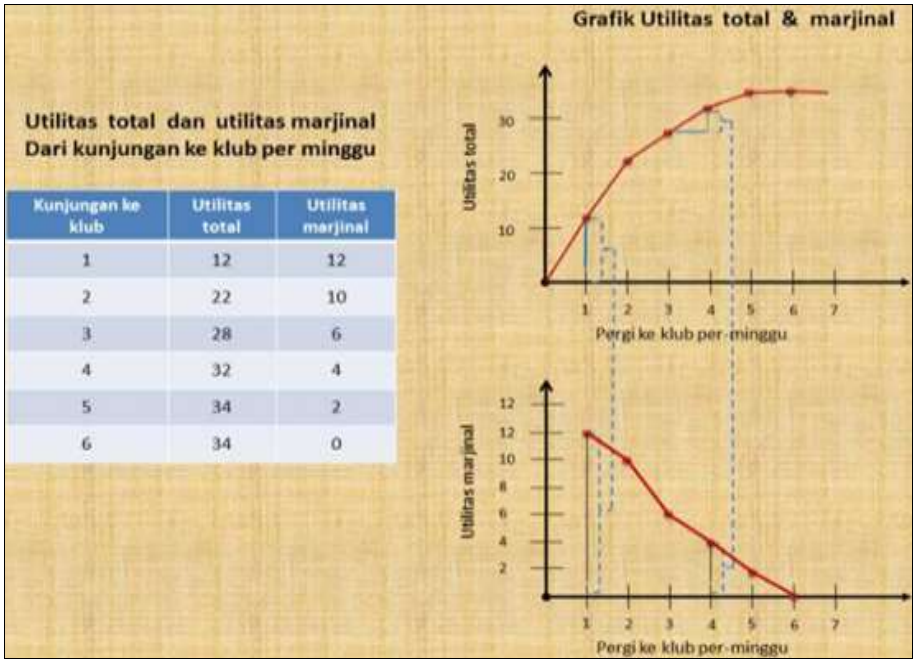

Fig 2: Total and marginal utility

If the graph is associated with price changes as Figure 1, the maximum satisfaction balance is influenced not only by the amount of goods consumed, but also by income. The higher the income, the more desire for needs that can be met. The more goods consumed in a certain period, the less satisfaction (utility) that results from consuming each additional unit (marginal) of the same goods [30].

f. Game Theory

Game theory analyzes oligopolistic behavior as a series of complex strategic movements and reactive responses between rival companies [31]. According to Karl E. Case and Ray C. Fair, game theory can be done in 2 (two) strategies, namely the dominant strategy and the maximal strategy. There are 3 (three) dominant strategy games, namely the game model, one of the players chooses a strategy without knowing the strategy used by the opponent, the game model of both players both have a dominant strategy and the one-player game model does not have a dominant strategy but the results can be predicted. The maximimin strategy is a strategy to maximize results. This strategy is done with the assumption that the opponent will use a strategy that can harm him. The game strategy in the economic approach can be applied in the application of law to obtain the rationality of law enforcement actions in terms of the purpose of benefit based on the philosophical foundation of the formation of the law. Because criminal offenders have thought economically profit, the application of the law must think economically so that they can canalize the profits of criminal offenders. Thus the criminal will think that committing a crime has no benefit.

g. Transaction Costs

Transaction costs are all costs incurred due to externalities in interacting or acting, in this case to make a decision, after considering the comparison between costs incurred with the level of confidence the value can be returned along with the interest as a risk.

3. Corruption Crime Countermeasures in the study meet the indicators of rationality

If corruption is said to be a moral crime, in fact many a-moral acts such as theft, embezzlement, fraud but do not constitute a crime of corruption. If some of the factors of corruption are a-moral acts, it implies that there are moral acts of corruption. From the implicit meaning contained in the PTPK Law and related realities that occur in the field, it illustrates that corruption is not synonymous with moral crime, but there are criteria for actions that are agreed upon and decided to be criminalized, then stated in the PTPK Law as acts called corruption. Then what about the concept of criminalization of the PTPK Law in relation to the flow of law regarding the concept of punishment? Answering this question needs to first review the PTPK Law from the point of view of the substance of sanctions. The formulation of double track punishment in the PTPK Law implicitly presents two concepts of punishment namely:

a. Criminalization for detention purposes.

The concept of punishment as a form of deterrence positions the law as an instrument of retaliation so that the perpetrators become deterrent. The length of imprisonment or confinement does not guarantee a deterrent effect, unless there is no longer an economic value that benefits the offender. The deterrence point is a balance point between the profits of the offender and the punishment received.

b. Penalties for the purpose of restoring state losses.

The concept of punishment for the recovery of state losses puts the law in the nature as an obligation of actors to recover state losses in order to realize high efficiency in the context of economic growth and national development (ET PEPN). Law enforcement against perpetrators of corruption

[30]Karl E. Case dan Ray C. Fair, ibid p. 140.
[31]Karl E. Case dan Ray C. Fair, ibid p. 370.

with an orientation to prioritize criminal prosecution without regard to costs and recovery of state losses is not in line with the basic norms of establishing the PTPK Law and will sacrifice the benefit of the people's interests, namely ET PEPN. If we examine more deeply on the standards of good and bad state administrators in managing state finances, then the reference / parameter of good measurement lies in the basic principles and general principles of management of state finances as article 3 of the KN Law.

Noting the above views, it was found that the substance of Indonesian legal products did not entirely punish on the basis of an assessment of morality. The PTPK Law penalizes eradicating corruption in the context of bringing about economic stability through PKN and ET PEPN. Implementation of corruption prevention must reduce economic fundamentals, as follows:

1. Rationality

The rationality in tackling corruption is a logical assessment of the desire to realize the objectives of the PTPK Law, namely the eradication of corruption because it harms the state, PKN and ET PEPN. The balance point between the concept of punishment for entrapment with PKN and ET PEPN can be illustrated in the following graph:

Fig 3: Corruption Crime and Recovery of Loss Value

The graph illustrates that imprisonment will benefit welfare through sustained economic growth, and the creation of efficient state spending the following year. When the perpetrators only serve prison sentences without recovering the lost economic value, law enforcement tends to harm the state. Conversely, if the perpetrator does not undergo a crime but only pays the recovery of the lost value plus a fine (the accumulation of maximum criminal costs in the economic calculation plus the economic value of the lost state property), the country will benefit economically. This is contrary to the philosophy of the PTPK Law because law enforcement is not for the purpose of seeking profit.

c. Choice

The problem of corruption demands that the PTPK Law be adaptive to the development of society. Regulations that implicitly take into account the potential losses and benefits in overcoming criminal acts of corruption, but do not reduce the economic concept, will not provide a legal solution unless it merely provides spaces of legal choice in combating corruption. The value of punishment must not be lacking in all cases what is sufficient to weigh the weight of the violation benefit [32].

d. Value

The economic value of law enforcement against corruption is the eradication of corruption so that the state does not lose, the state losses are recovered, the perpetrators are not profitable so that the deterrent, the results of loss recovery is useful to save state expenditure the following year. The non-use value of law enforcement on economic development, is the value of the educational effect of punishment that makes people not corrupt so as to create economic stability.

e. Efficiency

The efficiency of law enforcement against corruption is closely related to the use of the state budget. The measure of economic efficiency does not always take the form of using minimum costs to obtain maximum profits, but rather achieving economic value that can provide the intended welfare. Enforcement of the PTPK Law will be efficient if it contributes to the expectations of the country, and is able to influence the community to achieve economic goals namely maintaining economic stability and accelerating economic growth, the outcome of which is the achievement of prosperity.

f. Utility

The effect of the balance between deterrence, benefits, and justice in law enforcement against criminal acts of corruption is to minimize / prevent the occurrence of state losses in the context of efficiency in realizing economic growth and national development. If deterrence is identified with suffering, revenge, torture from the state (as a victim) against convicted of corruption, then the value of criminal benefit will be achieved if the essence of punishment is in line with the objective of establishing the PTPK Law. Deterrence, expediency and justice will be achieved if there is a balance between the lost economic value, the criminal imposed and the guaranteed legal protection rights for the perpetrators. Punishment that does not provide a sense of justice for the victim and does not affect deterrence for the perpetrator and cannot be an education for the community, does not provide benefits.

g. Game Theory

Game strategies that can be implemented in dealing with corruption include the theory of Karl E. Case and Ray C. Fair, viz:

2. A Dominant Strategy Game.

a. The game model one of the players chooses without knowing the strategy used by the opponent.

In this game, it is assumed that Law Enforcement Officials (APH) does not know the perpetrators' strategies in dealing with legal issues. The strategy game that APH can apply in the illustration is as follows:

- Circumstances where the perpetrator does not acknowledge his actions and do not show the results of his crime, while the APH does not pursue recognition from the perpetrators.

[32] TJ Gunawan, ibid p. 159.

In this condition, APH uses a strategy to collect evidence of actions against the law, trace the assets of perpetrators kept in their names or on behalf of other parties conditioned by the perpetrators. If the perpetrators do not carry out additional criminal penalties in the form of paying replacement money, then the property can be confiscated by the Prosecutor and auctioned off to cover the replacement money. Thus the perpetrators do not get the benefit of corruption, so that the deterrence effect is achieved and the state's losses are recovered.

- Conditions where the perpetrator acknowledges his actions and submits the proceeds of his crime to be confiscated, whereas APH does not pursue confession.

Under these conditions, APH chose not to trust the perpetrators' recognition. The strategy adopted by APH is to collect evidence of irregularities resulting in state losses. This is to canalize the profit space for the perpetrators so that the strategies of the perpetrators to hide the proceeds of corruption crime can be revealed and the assets can be confiscated. The end result of the deterrence effect is achieved and the country does not suffer any more losses.

- Circumstances where the perpetrators did not admit their actions and did not want to show the results of the crime of corruption, while the APH implemented a strategy to pursue recognition.

In this condition, APH aggressively presses the perpetrators with evidence of acts against the perpetrators' law. The evidence is expected to find the value of economic losses arising from the perpetrators' actions, where he keeps the proceeds of his crimes, and the good faith of the perpetrators to return the state losses incurred. The weakness of this strategy is the less information about storing the proceeds of corruption crimes committed by the perpetrators, the greater the failure of the state loss recovery effort.

- The circumstances in which the APH perpetrators admit to their actions, want to show the results of the crime of corruption, and so the APH pursues recognition.

In this position both players have the same will so that there is the highest balance point. This condition can be said to be a comfort zone for both APH and perpetrators, but this comfort zone does not mean that the target of eradicating corruption, PKN and ET PEPN is because it is very possible for the perpetrators to hide a calculated benefit if the worst happens, namely to go to prison. The economic level of overcoming corruption is not measured by the acknowledgment of the perpetrators and the delivery of the results of corruption.

b. The game model of both players have a dominant strategy.

This game model can be illustrated by the APH accusing the perpetrators of corruption, but the nature of unlawful acts by the perpetrators is not strong. If forced into the criminal legal process, the perpetrators can be free and the use of the state budget for criminal proceedings does not contribute to the state, even though the perpetrators' actions have clearly caused state losses. On the other hand, if prosecutors are required to recover state losses through civil lawsuits by state attorneys, the perpetrators will benefit from being free from criminal threats, while the APH must go through a civil lawsuit process which requires a long time. Faced with this situation, APH's strategy is to maximize evidence of unlawful actions which result in state losses. With this evidence at least the perpetrators are not free from legal sanctions and state losses can be recovered.

c. The one-player game model does not have a dominant strategy but the results can be predicted.

In this game model, it can be illustrated that APH does not have a strategy while the perpetrators have a strategy to break away from the bondage of law, but the direction can be predicted by APH. This situation brought APH into and followed the circle of perpetrators' games. APH's strategy is to maximize the evidence as a counter alibi for the offender so that the offender's strategy can be broken. The strong value of evidence against the perpetrators of law that is a factor causing the emergence of state losses automatically will also minimize the risk of perpetrators free from legal bondage and maximize recovery of state losses (PKN).

3. Maximum Strategy Game

This strategy is played with the illustration that the actor will choose to place himself at a disadvantage as an alternative to the smallest risk than the choice of other risks. Facing the perpetrators' strategy like this, APH must instead maximize the recovery of state losses by tracing the assets of the actors. The attitude of such actors has taken into account the benefits, and not the cooperative judgment in dealing with the legal process. The purpose of tracing the assets of the perpetrators is as an anticipatory step when the perpetrators in the next strategy do not carry out additional penalties in the form of paying compensation money. With their assets known, the APH (prosecutor) can confiscate and auction them off to fulfill the obligation of the offender to pay compensation. The loss of economic value derived from the proceeds of crime makes the perpetrators feel that corruption is not profitable. This text is a deterrent point, while the payment of compensation money in a fine is a form of restoration of state losses.

4. Mutual a

The game of mutual retaliation strategy can be illustrated in the state of APH and the perpetrators have equal power. APH has a dominant position with evidence of illegal acts committed by the perpetrators, while the perpetrators have power and strong influence that can intervene in the position of the APH. Conflicts of interest are very likely to arise in situations like this. Perpetrators will use their influence, or take refuge behind influential authorities, intervene in APH. The strong position of the APH in the evidence and the strength of the intervention of the perpetrators with influence and power, became the factors that pushed the two parties into the circle of the game strategy to reciprocate. APH and the perpetrators had the opportunity for collusion so that cooperative actors were present undergoing legal proceedings without detention.

h. Transaction Costs

Observing the morale of the PTPK Law contained in its philosophical background, the spirit of this Law is based on maintaining the stability of the country's economy so that its enforcement must take into account its economic level. The successful implementation of the PTPK Law can be viewed economically from the expectations of the results of government programs financed with the country's finances in the future. That is, costs arising from corruption prevention activities, which include investigative costs,

investigation costs, prosecution fees and judicial examination fees and the costs of guiding prisoners in prison, at least the same as the expected point of economic value of the state lost.

Conclusion

1. The function of law is to limit the character of free behavior in meeting economic needs, then the law cannot be formulated without taking into account its harmonization with other laws that live and apply in society. Likewise in the application of law, under certain conditions the application of law needs to let go of the principle of reality over sectoral egos that are unrealistic, irrational, and illogical in dealing with reality. Because the law was formed to maintain orderly economic behavior and not hamper economic development with the formalistic character of law. Based on this direction, the effectiveness and efficiency of law enforcement against criminal acts of corruption can at least be seen from the essence of the criminal, namely for moral improvement through deterrence, and for the purpose of restoring state losses through paying compensation money and fines in order to create high efficiency to realize economic growth and National development.
2. The PTPK Law was made for economic stability, therefore the solution to the problem of corruption cannot be separated from the consideration of the country's economy, and the costs that pose a relative risk to state expenditure affecting the country's economy. Juridical reality, the regulation of additional criminal charges, namely the penalty of paying as much as the amount of corrupt compensation as stated in Article 18 paragraph 1 letter (b) of the PTPK Law, if it is related to empirical facts about the imbalance between costs and the recovered economic value, is the reality is that the series of state expenses has increased. If the final result of law enforcement against corruption does not have an economic contribution to the state, then the law enforcement does not realize the essence of punishment and does not protect the values to be protected by the PTPK Law.

References

1. Abdlatif, Hasbi Ali. Perihal Kaedah Hukum, Bandung, Citra Aditya Bakti, 2010.
2. Alan Hunt, Oxford Journal of legal strudies, 6(1):4.
3. Fajar Sugiyanto, Economic Approach to Law, Jakarta, PT Kencana Prenada Media Group, 2013.
4. John Kenedi, Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum Di Indonesia, Yogyakarta, pustaka pelajar, 2017.
5. Johnny ibrahim, Pendekatan Ekonomi Terhadap Hukum–Teori Dan Implikasi Penerapannya Dalam Penegakan Hukum. Surabaya, Putra media nusantara dan ITS Press, 2009.
6. Karl E, Case dan Ray C Fair. Prinsip-Prinsip Ekonomi, edisi ke delapan, Jakarta, Erlangga, 1999.
7. Louis Kaplow and Steven Shavel, 'Economic Analysis Of Law', Harvard Law School And Nastional Bureau Of Economic Reseach, Handbook Of Public Economics, edited by A.J. Aurbach and M. Feldstein, 2002, 3.
8. Marzuki, Peter Mahmud. Penelitian Hukum, Jakarta, Kencana Prenada Media, 2011.
9. Suparmoko M, Keuangan Negara Dalam Teori Dan Praktek, Yogyakarta, BPFE, 1992.
10. Nazaruddin lathif. 'Teori Hukum Sebagai Sarana /Alat Untuk Memperbaharui Atau Merekayasa Masyarakat', Jurnal Pakuan Law Review. 2017; 3(1):76-77.
11. Romli atmasasmita, Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan – Geen Straf Zonder Schuld, Jakarta, PT Gramedia Pustaka Utama, 2018.
12. Sadono sukirno, Mikro Ekonomi – Teori Pengantar, edisi ke tiga, Jakarta, PT RadjaGrafindo, 2009.
13. Satjipto Rahadjo, Ilmu Hukum, Bandung, Citra Aditya Bhakti, 2000.
14. Gunawan TJ. Konsep Pemidanaan Berbasis Nilai Kerugian, edisi revisi, Jakarta, Kencana, 2018.
15. https://kbbi.web.id/rasional.html
16. https://presidenri.go.id
17. Indonesia, Presidential Instruction number 5 of concerning the acceleration of corruption eradication, 2004.
18. Indonesia, the Constitution of the Republic of Indonesia, 1945.
19. Indonesia, Law No. 7 of concerning the ratification of the UN anti-corruption convention, 2006.