

## Legal Hermeneutics of Economic Loss to the State and Economic Expert Calculations

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### ABSTRACT

The elements of economic loss to the state are still characterized by generality, ambiguity, and an open texture, as emphasized in Articles 2 and 3 of the Eradication of Corruption Law. The research method uses two disciplines: a doctrinal approach by examining legislation through legal theory, legal principles, and legal hermeneutics, as well as an economic approach to demonstrate the impact of corruption on economic loss to the state. The results show that the legal hermeneutics regarding the elements of economic loss to the state that must be proven are the actual loss of economic and social rights due to the lack of benefits experienced by the community as a result of the abuse of authority, opportunities, or resources available to them because of their position regarding branches of production and important and strategic natural resources controlled by the state for the greatest benefit of the people's welfare but instead benefiting themselves, others, or corporations. The calculation of economic loss to the state, whether from a microeconomic or macroeconomic perspective, can be assessed with the involvement of economic experts, as there is no standard formulation based on the impacts of the losses experienced by the community, leading to the judges' confidence in the evidentiary statements provided by experts to decide on corruption cases related to economic loss to the state.

**Keywords:** economic loss; corruption; hermeneutics.

### INTRODUCTION

Economic growth can be defined as the process of continuous change in the economic conditions of a country towards a better state over a certain period. Economic growth represents a physical increase in the production of goods and services within a country. The success of the government's performance, along with related institutions and agencies, is often measured by the economic growth achieved.<sup>1</sup>

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Economic growth reflects the development of a country, which can be measured by national income or Gross Domestic Product (GDP) or Gross Regional Domestic Product (GRDP). Economic growth is the process of continuous output increase over the long term. High and sustainable economic growth is essential for the continuity of economic development and the improvement of

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<sup>2</sup> Muhammad Fajar and Zul Azhar, "Indeks Persepsi Korupsi dan Pembangunan Manusia Terhadap Pertumbuhan Ekonomi di Negara-Negara Asia Tenggara," *Jurnal Ecogen* 1, No. 3 (2019): 681, <https://doi.org/10.24036/jmpe.v1i3.5114>.

welfare.<sup>3</sup> Furthermore, according to Mankiw, economic growth is the increase in the real GDP of a country in a given year, indicating a rise in per capita income for each individual within the economy and in that country during that year. Economic growth can be observed from GRDP at the regional level as well as GDP at the national level, based on current prices or constant prices.<sup>4</sup>

Furthermore, economic growth is crucial in assessing a country's success in achieving economic development. The development process must have a direction beyond merely creating economic growth. According to Ananta and Aris, one direction for contemporary development must be the creation of good governance, which involves a government capable of fostering a sense of justice in society, meeting the public's needs for transportation and public facilities, and ensuring a corruption-free administration.<sup>5</sup>

The impact of corruption on economic aspects presents a significant issue that can hinder economic development in every country, both in developing and developed nations.<sup>6</sup> A common occurrence in developing countries is the prevalence of corruption at the public sector level and a persistent budget deficit. Continuous and widening budget deficits, along with various deficit financing methods, have a significant impact on the economy, particularly regarding private investment.<sup>7</sup> Economists, historians, and political scientists have long debated whether corruption can endanger a country's economic growth. According to Myrdal, corruption can lead to lower efficiency and ultimately act as a barrier to a country's development.<sup>8</sup> Corruption may diminish economic growth.<sup>9</sup> Moreover, countries with high levels of corruption experience lower<sup>10</sup> GDP growth rates and investment levels. Empirical findings regarding the impact of corruption in Tunisia in relation to economic development indicate that corruption negatively affects GDP per capita.<sup>11</sup>

The impact of economic growth can be observed through the Transparency International Corruption Perceptions Index (CPI) score. If the CPI score rises close to 100 (very clean), then the economic growth of a country is also likely to increase and move in a direction that tends to benefit the country. Conversely, if the score falls close to 0 (very corrupt), the economic growth of that

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<sup>3</sup> Amir Machmud, *Perekonomian Indonesia: Pasca Reformasi* (Jakarta, 2016).

<sup>4</sup> Amin Haqiqi and Husaeri Putra, "Korupsi dan Pertumbuhan Ekonomi," *Jurnal REP (Riset Ekonomi Pembangunan)* 5, No. 2 (2020): 154–65, <https://doi.org/10.31002/rep.v5i2.2325>.

<sup>5</sup> Sukarniati, Ramadhona Lubis, Amalia, and Zakkiyah, *Ekonomi Pembangunan Teori dan Praktik di Negara Berkembang* (UAD Press, 2021).

<sup>6</sup> Akhmad Faisal Lutfi, Zainuri Zainuri, and Herman Cahyo Diartha, "Dampak Korupsi Terhadap Pertumbuhan Ekonomi: Studi Kasus 4 Negara di ASEAN," *E-Journal Ekonomi Bisnis dan Akuntansi* 7, No. 1 (2020): 30, <https://doi.org/10.19184/ejeba.v7i1.16482>.

<sup>7</sup> Munazza Ahmed and Anam Alamdar, "Effect of Corruption and Budget Deficit on Private Investment: Evidences from Pakistan," *International Journal of Development and Sustainability* 7, No. 6 (2018): 1898–1913.

<sup>8</sup> Ibid.

<sup>9</sup> Mohamed Ali Trabelsi and Hédi Trabelsi, "At What Level of Corruption Does Economic Growth Decrease?," *Journal of Financial Crime* 28, No. 4 (2021): 1317–24, <https://doi.org/10.1108/JFC-12-2019-0171>.

<sup>10</sup> Ibid.

<sup>11</sup> Anas Al Qudah, Azzouz Zouaoui, and Mostafa E. Aboelsoud, "Does Corruption Adversely Affect Economic Growth in Tunisia? ARDL Approach," *Journal of Money Laundering Control* 23, No. 1 (2020): 38–54, <https://doi.org/10.1108/JMLC-12-2018-0076>.

country will also decline.<sup>12</sup> Therefore, the higher the perception of corruption in a country, the lower the actual corruption occurring in that nation. According to Transparency International's Global Coalition Against Corruption, Indonesia had a score of 34/100 in 2022, ranking 110 out of 180 countries.<sup>13</sup> In contrast, in 2021, Indonesia had a score of 38/100 and was ranked 98 out of 180 countries.<sup>14</sup> This indicates that the level of corruption in 2022 has increased.

It has been proven that throughout 2022, Indonesia Corruption Watch (ICW) successfully documented and discovered 597 cases, involving 1,396 suspects, resulting in state losses amounting to IDR 42.747 trillion. The cases include bribery amounting to IDR 639 billion, illegal levies or extortion totaling IDR 11.9 billion, and money laundering reaching IDR 955 billion.<sup>15</sup> Furthermore, corruption in the natural resources sector during the first semester of 2020 caused state losses of nearly IDR 30.5 billion. This loss stemmed from just five corruption cases, with two in the mining and energy sector and one in forestry. The control of land and natural resources for mining, palm oil, and forests by corporations in Indonesia reaches 94.8%, or approximately 53 hectares, while the public only controls about 2.7 hectares.<sup>16</sup>

The various cases mentioned above demonstrate that corruption not only leads to financial losses for the state but also impacts the country's economy. The Attorney General's Office has applied several cases related to the application and proof of economic loss to the state, establishing jurisprudence for law enforcement in making considerations and decisions, such as in Supreme Court Decision No. 4952K/Pid.Sus/2021 dated December 8, 2021, concerning a textile export case, which resulted in massive layoffs and decreased production.<sup>17</sup>

Additionally, corruption related to the granting of export licenses for crude palm oil that did not align with domestic selling prices has caused financial losses to the state<sup>18</sup> amounting to IDR 6.047 trillion and economic losses due to shortages and high prices of cooking oil totaling IDR 10.96 billion.<sup>19</sup> Furthermore, the shortage and high prices of cooking oil throughout Indonesia have even led to fatalities, such as in the case of a 41-year-old woman in Berau, East Kalimantan, who died from

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<sup>12</sup> Daniel Eriksson, "Corruption Perceptions Index," Transparency International, 2022, <https://www.transparency.org/en/cpi/2022>.

<sup>13</sup> Transparency International, "Corruption Perceptions Index," 2022, [https://www.transparency.org/en/cpi/2023?gad\\_source=1&gclid=Cj0KCQjwr9m3BhDHARIsANut04Y342Qmeyw8Syk3E\\_EJKj-2-yLbDxqAlbHffwnidEhGjSWQEY3ZSN4aAmqYEALw\\_wcB](https://www.transparency.org/en/cpi/2023?gad_source=1&gclid=Cj0KCQjwr9m3BhDHARIsANut04Y342Qmeyw8Syk3E_EJKj-2-yLbDxqAlbHffwnidEhGjSWQEY3ZSN4aAmqYEALw_wcB).

<sup>14</sup> *Ibid.*

<sup>15</sup> Andrrre Novelino, "ICW: Kejagung Kalahkan KPK Tangani Kasus Korupsi Terbesar Selam 2022," 2023, <https://www.cnnindonesia.com/nasional/20230303192621-12-920584/icw-kejagung-kalahkan-kpk-tangani-kasus-korupsi-terbesar-selama-2022>.

<sup>16</sup> Pusat Edukasi Antikorupsi, "Bagaimana Cara Sumber Daya Alam di Korupsi," 2023, <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230203-bagaimana-cara-sumber-daya-alam-dikorupsi>.

<sup>17</sup> Galuhpakuannusantara.com, "Penerapan Kerugian Perekonomian Negara dalam Perkara Korupsi yang Berkaitan Dengan Hajat Hidup Masyarakat," 2022, <https://www.galuhpakuannusantara.com/2022/04/penerapan-kerugian-perekonomian-negara.html>.

<sup>18</sup> Yulida Medistira, "Ini Peran 5 Tersangka Kasus Eksport Minyak Goreng," Detiknews, 2022, <https://news.detik.com/berita/d-6086651/ini-peran-5-tersangka-kasus-ekspor-minyak-goreng>.

<sup>19</sup> Juli Hantoro, "Kasus Korupsi Minyak Goreng, Eks Dirjen Pertambangan Luar Negeri di Tuntut 7 Tahun Penjara," Tempo.co, 2022, <https://nasional.tempo.co/read/1671318/kasus-korupsi-minyak-goreng-eks-dirjen-perdagangan-luar-negeri-dituntut-7-tahun-penjara>.

respiratory distress<sup>20</sup>, along with many other cases that have resulted in harm to the public due to the scarcity of cooking oil.

Substantively, the acts causing economic loss to the state are regulated in Articles 2 and 3 of the Eradication of Corruption Law; however, law enforcement has not maximized its application due to difficulties in interpreting the phrase "economic loss to the state," which remains very vague<sup>21</sup> and abstract. Furthermore, there are no regulatory provisions determining the authority to calculate economic losses to the state. This ambiguity regarding the meaning of economic loss creates a legal vacuum, necessitating legal discovery or *rechtsvinding* through an interpretive approach. Thus, the identified issues are: How does legal hermeneutics apply to the elements of economic loss to the state? And how does the testimony of economic experts support the calculation of economic loss to the state?

## METHODS

This research method applies two disciplines: First, a doctrinal approach that examines legislation, legal theories, legal principles, and legal hermeneutics. Second, an economic approach that studies economic theories related to the country's economy.

## DISCUSSIONS

### Legal Hermeneutics on the Elements of Economic Loss to the State

Criminal acts of corruption related to economic losses to the state are regulated in Articles 2 and 3 of the Eradication of Corruption Law, which pertain to material unlawful acts (*materiele wederrechtseijkhied*). It is essential to prove actual loss concerning economic loss to the state, rather than potential loss. The proof of actual loss begins with the Constitutional Court Decision No. 25/PUU-XIV/2016, which has substantively removed the phrase "may," thereby requiring law enforcement to definitively prove the existence of economic loss to the state.

Additionally, the enactment of Law No. 1 of 2023 concerning the Criminal Code has regulated acts harming the economy in Articles 603 and 604. The operational application of these articles is set to begin on 1 January 2026, at which point Articles 2 and 3 of the Eradication of Corruption Law will be replaced by Articles 603 and 604 or repealed, as stated in Article 622, paragraph (4), letters (a) and (b). The elements of criminal acts related to economic loss to the state are as follows: (i) enriching oneself, others, or corporations; (ii) abusing authority, opportunities, or resources available to them due to their position; (iii) harming the economy of the state.

Amongst the three objective elements, the element of harming the economy of the state is an absolute requirement of the offense that must be proven concretely. This means that there must be

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<sup>20</sup> Sapri Maulana and Febriyan, "Warga Meninggal Saat Antre Minyak Goreng di Berau, ini Kata Polisi," Nasional Tempo.co, 2022, <https://nasional.tempo.co/read/1570057/warga-meninggal-saat-antre-minyak-goreng-di-berau-ini-kata-polisi>.

<sup>21</sup> Rizki Agung Firmansyah, "Konsep Kerugian Perekonomian Negara Dalam Undang-Undang Tindak Pidana Korupsi," *Jurist-Diction* 3, No. 2 (2020): 669, <https://doi.org/10.20473/jd.v3i2.18211>.

a tangible economic loss to the state that can be quantified based on findings from the relevant authorities or appointed public accountants, with proof provided by experts in the state economy. Additionally, it is explained in Constitutional Court Decision No. 003/PUU-IV/2006, dated 24 July 2006, that states, "... whether financial losses to the state have occurred or not must be determined by experts in state finance, the state economy, and analysts who examine the relationship between individual actions and the losses incurred."

In practice, the application of the element of economic loss to the state has not been effective, resulting in suboptimal outcomes. This is evidenced by only four cases, as explained in the previous introduction, with tangible impacts such as the inability to utilize and allocate resources for public benefit, such as providing substantial loans during times when the country and society need grassroots economic development. Thousands of workers have faced layoffs, there have been shortages of cooking oil, household-related losses, casualties in the community, land use conflicts, and more.

The application of the element of economic loss to the state in a criminal act of corruption is intended to protect the economic rights of the public, both from a macroeconomic and microeconomic perspective. This policy is necessary to ensure that the circulation of the economy and the flow of money in society are not disrupted by the interests of individuals, groups, or factions that seek short-term profit. This includes ensuring that state financial revenues are not disturbed and are fulfilled by businesses.<sup>22</sup>

The suboptimal application of criminal acts of corruption related to economic losses to the state is due to the fact that the Eradication of Corruption Law does not provide a rigid<sup>23</sup> definition or explanation, making the interpretation of this element very broad, abstract, and passive. It is abstract because of its general nature and passive because it does not generate concrete legal implications.<sup>24</sup> The abstract nature uses general concepts, merely explaining that the state economy refers to an economic life organized as a collective effort based on the principle of kinship or independent community efforts guided by government policies, both at the central and regional levels, in accordance with applicable laws and regulations, aimed at providing benefits, prosperity, and welfare for the entire populace.

The explanation provided remains abstract, thus necessitating legal interpretation to address the legal vacuum that can be carried out by judges and other bodies related to judicial authority. This is considering the principle of *ius curia novit*<sup>25</sup>, which means "the court knows the law."<sup>26</sup> This

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<sup>22</sup> Tri Subarkah, "Penerapan Unsur Kerugian Perekonomian Negara Untuk Lindungi Masyarakat," Media Indonesia, 2022, <https://mediaindonesia.com/politik-dan-hukum/520043/penerapan-unsur-kerugian-perekonomian-negara-untuk-lindungi-masyarakat>.

<sup>23</sup> Suhendar, *Konsep Kerugian Keuangan Negara, Pendekatan Hukum Pidana, Hukum Administrasi Negara dan Pidana Khusus Korupsi*, Setara Press Malang, 2015.

<sup>24</sup> Arif Firmansyah, "Penafsiran Pasal 33 UUD 1945 Dalam Membangun Perekonomian di Indonesia" 13, No. 01 (2012): 264–88.

<sup>25</sup> Ahcmad Ali Wiwie Heryani, *Asas-Asas Hukum Pembuktian Perdata*, ed. Cover Irfan Fahmi, Percetakan Fajar Interpratama Offset, and Lay-out SatuCahayapro, Kesatu (Jakarta: Kencana PRENADA MEDIA GROUP, 2012).

<sup>26</sup> Lisa Spagnolo, "Iura Novit Curia and the CISG : Resolution of the Faux Procedural Black Hole Ius Novit Curia and the CISG : Resolution of the Faux Procedural," No. August (2016).

principle asserts that every judge is presumed to know the law concerning the case being examined or adjudicated. Based on this principle, judges are not permitted to reject a case presented to them on the grounds that there is no existing law or regulation governing it.<sup>27</sup> The Theory of Law as Interpretation states that judges do not create law but rather interpret what is already part of legal materials. If a judge ultimately discovers the law, it is the result of the interpretive process itself.<sup>28</sup>

Furthermore, it is explained in Law No. 48 of 2009 on Judicial Authority that courts are prohibited from refusing to examine, adjudicate, and decide on a case presented to them on the grounds that the law is non-existent or unclear. Instead, they are required to examine, explore, follow, and understand the legal values and sense of justice that exist in society, and then adjudicate and decide based on valid evidence according to the law and judicial belief that a person deemed responsible is guilty of the actions charged against them.

Every law is always accompanied by an explanation included in the supplementary state gazette. Although it is referred to as an explanation, it often does not provide clarity, as it is explained only sufficiently. Each legal regulation is abstract and passive. It is abstract due to its general nature and passive because it will not produce legal consequences unless a concrete event occurs.<sup>29</sup> This method of interpretation or interpretation is a means or tool for understanding the meaning of the law. Its justification lies in its utility for implementing concrete provisions and not for the sake of the method itself. Ultimately, explaining legal provisions serves the function of ensuring that positive law is applicable.<sup>30</sup>

This method of interpretation is a means or tool for understanding the meaning of the law.<sup>31</sup> According to Diah Imaningrum Susanti, interpretation is a process, a method, or an effort to explain the meaning of a text to discover its significance or to make it understandable.<sup>32</sup> Additionally, B. Arief Sidharta explains that legal hermeneutics is a philosophical teaching about understanding something or a method of interpreting texts, where the methods and techniques of interpretation are conducted holistically within the framework of the interrelation between text, context, and contextualization. The text can be in the form of legal texts, legal events, legal facts, official documents, ancient manuscripts, or sacred texts.<sup>33</sup>

The function and purpose of legal hermeneutics, according to James Robinson, is to clarify something that has become unclear, making it more comprehensible. The study of legal hermeneutics has also opened the door for legal scholars to not only engage with positivist paradigms and formal

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<sup>27</sup> M. Nasir Asnawi, *Hukum Pembuktian Perkara Perdata di Indonesia* (UII Press, 2013).

<sup>28</sup> Raymond Wacks, *Philosophy of Law: A Very Short Introduction: A Very Short Introduction, Very Short Introductions* (Oxford University Press, 2006), <https://play.google.com/store/books/details?id=W2jCrzKYqxMC>.

<sup>29</sup> Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum 2<sup>nd</sup> Edition* (PT. Citra Aditya, Bandung, 2013).

<sup>30</sup> *Ibid.*

<sup>31</sup> Ahmad Rifa'i, *Penemuan Hukum Oleh Hakim Dalam Hukum Progresif* (Sinar Grafika, Jakarta, 2014).

<sup>32</sup> Diah Imaningrum Susanti, *Penafsiran Hukum, Teori dan Metode* (Sinar Grafika, Jakarta, 2019).

<sup>33</sup> Jasim Hamidi, *Hermeneutika Hukum* (UII Press, Yogyakarta, 2010).

logical methods but, conversely, to encourage legal scholars to explore and investigate the meaning of law from the perspectives of its users and those seeking justice.

Thus, the object of study in legal hermeneutics is the meaning of the state economy in the Explanation of the Eradication of Corruption Law, which has correlations with Pancasila, the Opening of the 1945 Constitution Alinea No. 4, and Article 33 of the 1945 Constitution as a constitutional mandate for the economic system in Indonesia. Therefore, a systematic interpretative approach and a subsumptive interpretation regarding economic losses to the state are necessary.

**First**, Systematic or Logical Interpretation. This is a form of interpretation commonly found in the logical reasoning of judges when deciding cases. This approach treats the law as a system, within which there are legal subsystems that are interdependent and reciprocal with one another.<sup>34</sup> It interprets laws as part of the overall legal framework by connecting them with other laws that have correlations as objects of interpretation.

According to Quintin Johnstone, there are two ways to interpret laws: by linking the words within the law itself and by connecting the words in the law with legal materials outside of the law. Systematic interpretation of the state economy can be associated with the Fifth Principle, namely Social Justice for All Indonesian People, the Fourth Alinea of the Opening of the 1945 Constitution, which emphasizes that one of the goals of the Indonesian state is to advance the general welfare in achieving social justice for all Indonesian people, as well as Article 33 of the 1945 Constitution.

The meaning of the formulation of Article 33 of the 1945 Constitution as an interpretation of the elements of economic losses to the state includes the following: The economy is organized as a collective effort based on the principle of kinship, founded on economic democracy that aims to realize social justice for all Indonesian people (social justice, fairness, equity, equality)<sup>35</sup>, happiness, welfare, peace, and freedom. This means that economic policies must be systematic and comprehensive, from the national level down to the structures in provinces and regencies/cities throughout Indonesia, including important branches of production that control the basic needs of the people, which are controlled by the state, along with land, water, and strategic and productive resources. If these are unlawfully controlled by individuals, others, or legal entities, resulting in the denial of the rights of society and social benefits, leading to a lack of welfare and prosperity for all people, then the elements of economic losses to the state are fulfilled.

**Second**, Subsumptive Interpretation refers to the situation where a judge applies the text and words of a legal provision to the facts of a case (*in concreto*) using syllogism without involving any reasoning at all. Syllogism is a form of logical thinking that draws conclusions from general matters (major premise or legislation) to specific matters (minor premise or the events).<sup>36</sup> This condition is regarded as a subsumptive interpretation method because the judge only uses deductive reasoning, aligning the events with the violated legal regulations. In deciding a case, the judge should explore

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<sup>34</sup> Fajar Sugianto, Tomy Michael, and Afdhal Mahatta, "Konstelasi Perkembangan Hermeneutika Dalam Filsafat Ilmu Sebagai Atribusi Metode Penafsiran Hukum," *Negara Hukum* 12, No. 21 (2021): 307–28.

<sup>35</sup> Elli Ruslina, "Makna Pasal 33 Undang-Undang Dasar 1945 Dalam Pembangunan Hukum Ekonomi Indonesia," *Jurnal Konstitusi* 9, No. 1 (2016): 49, <https://doi.org/10.31078/jk913>.

<sup>36</sup> Riyanta, "Metode Penemuan Hukum (Studi Komparatif Antara Hukum Islam Dengan Hukum Positif)," *Jurnal Penelitian Agama* XVII, No. 2 (2008): 406–27.

the values of social justice present in society. This indicates that the theory of social justice itself is related to the concepts of welfare and equitable justice, necessitating the use of social justice studies, which is also one of the principles of Pancasila. Indonesia, as a Pancasila state and a nation that upholds social justice<sup>37</sup>, is significantly impacted by the rights of its society. Therefore, the elements of corruption related to economic losses to the state are fulfilled.

The criminal elements are as follows: the misuse of authority, opportunity, or means available to them due to their position or role in a policy of the central/regional/local government, both in the process of development and its implementation concerning important and strategic branches of production owned by the state, controlled by state-owned enterprises (SOE), regional-owned enterprises (ROE), or village-owned enterprises (VOE) with the aim of benefiting themselves, others, or a corporation. This results in losses to the economic and social rights of the community, both materially and immaterially. A very simple case example is the construction of a bridge infrastructure in a village where acts of corruption were found, thereby impacting the economic activities of the community and other social rights, indicating that the issue is not only related to financial losses to the state but also involves losses to the economy of the state.

### **Expert Economic Evidence on Economic Losses to the State**

In economic theory, there are micro and macro theories. Microeconomic theory, rooted in the work of Adam Smith, encompasses a smaller scope and variables, such as firms and households, whereas macroeconomic theory, based on Keynesian principles, covers a broader scope and variables related to government, such as national income and others.<sup>38</sup>

Macroeconomics encompasses three fundamental issues: inflation, output growth, and unemployment. Inflation is characterized as a simultaneous rise in prices; when it occurs at a low level, it poses no significant threat to the economic condition. However, when it escalates to a high level, it can severely damage the economy by sharply reducing the purchasing power of the populace. This situation results in a decline in the welfare of the community, particularly affecting those with low and relatively fixed incomes.<sup>39</sup> Furthermore, macroeconomics is defined as the study of the economy, encompassing the overall actions of consumers, the activities of entrepreneurs, and changes in overall economic activities. The emphasis of macroeconomic analysis lies in how demand and supply factors determine the level of economic activity, as well as the role of government policy and intervention in addressing economic issues.<sup>40</sup> Conversely, microeconomics pertains to pricing

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<sup>37</sup> Deviana Yuanitasari and Susilowati Suparto, "Peran Negara Dalam Sistem Ekonomi Kerakyatan Berdasarkan Pancasila untuk Mewujudkan Kesejahteraan Sosial," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan dan Ke-PPAT-An 4*, No. 1 (2020): 36–51, <https://doi.org/10.23920/acta.v4i1.327>.

<sup>38</sup> Gede Ali Yuniarta and I Gusti Ayu Purnamawati, *Ekonomi Mikro Suatu Pengantar* (Rajawali Pers PT, Rajagrafindo Persada, Depok, 2021).

<sup>39</sup> Tanti Novianti Rina Oktaviani, *Ekonomi Makro*, Unesa University Press (Pustaka Baru Pers, Yogyakarta, 2014), <https://dosenekonomi.com/ilmu-ekonomi/teori-ekonomi-makro>.

<sup>40</sup> *Ibid.*

issues, which is why it is often referred to as price theory. Additionally, microeconomics analyzes markets and the mechanisms that can establish prices relative to existing products and services, allocating limited resources among alternative uses to fulfill needs. Moreover, microeconomics examines market failures, particularly when the market fails to produce efficient outcomes, while also elucidating various theoretical conditions necessary for a perfectly competitive market.<sup>41</sup>

Corruption significantly affects both macroeconomic and microeconomic conditions, ultimately exerting specific detrimental impacts on the economic and social rights of the community. Economic and social rights, as articulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966 as a realization of the principles enshrined in the Universal Declaration of Human Rights (UDHR) of 1948, include, among others, the right to work, the right to just and favorable conditions of work, the right to social security, the right to an adequate standard of living, including the right to food, clothing, and housing, the right to health, and the right to education. The guarantee of these economic and social rights is further reinforced by the mandates of the 1945 Constitution of the Republic of Indonesia, which asserts rights to life, to sustain one's living and existence, to a healthy environment, to a prosperous life both materially and spiritually, and to access healthcare services, among others.

The economic and social rights of the community concerning the development process, or the exploitation of strategic branches of production or natural resources controlled by SOEs, ROEs, or VOs are frequently overlooked, leading to their appropriation for personal or corporate interests through the abuse of authority, opportunity, or available resources because one's position or status. This situation necessitates an assessment that transcends merely calculating the financial losses to the state; it requires a comprehensive evaluation of the economic losses incurred by the nation. The economic losses associated with corruption are inextricably linked to the financial losses of the state, as they constitute a loss to the nation that must be accounted for in both respects.

In economics, the term "multiplier effect" refers to the phenomenon where an investment in currency generates a positive impact on the economy that exceeds the initial amount invested.<sup>42</sup> For instance, when individual A receives an amount of 100 rupiah, it is possible that they spend 80 rupiah on individual B and save 20 rupiah. If the source of the funds for A is the government, we can consider this as the first round of "aid" from the government.

The 80 rupiah spent by A on B will then be further circulated; for example, B may spend 70 rupiah on individual C and save 10 rupiah. After this second round, the total amount of money in circulation in the economy exceeds 100 rupiah, as 80 rupiah has been spent plus the additional 70 rupiah. If C subsequently spends 50 rupiah of the money received and saves 20 rupiah, the total amount of currency circulating in the community increases again to 80 + 70 + 50, and this process continues indefinitely.

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<sup>41</sup> Gede Ali Yuniarta, I Gusti Ayu Purnamawati, *Ekonomi Mikro..... Op. Cit*, p. 21.

<sup>42</sup> Emi Nakamura and Jon Steinsson, "Identification in Macroeconomics," *Journal of Economic Perspectives* 32, no. 3 (2018): 59–86, <https://doi.org/doi=10.1257/jep.32.3.59>.

Conversely, a detrimental effect occurs when an individual appropriates resources that should be allocated for public services or facilities, diverting them instead to personal gain, as evidenced in various corruption cases. The amount taken or enjoyed by the individual is disproportionate to the reduction in public welfare experienced by the community. Numerous studies have been conducted to investigate the impact of corruption on economic growth, testing the hypothesis that the relationship between the two variables—corruption and economic growth—is nonlinear. In these analyses, it is asserted that economic growth is influenced by factors such as investment, inflation, trade openness, and the level of corruption. The calculations are performed as follows:<sup>43</sup>

$$\text{Growth}_{it} = \alpha_i + \beta \text{Inf}_{it} + \gamma \text{Trad}_{it} + \mu \text{Fdi}_{it} + \delta \text{Icrg}_{it} + \lambda \text{Icrg}_{it}^2 + \varepsilon_{it}$$

*Growth* : Annual growth rate of GDP per capita

*Inf* : Consumer price index inflation (annual %)

*Trad* : Exports plus imports as share of GDP

*Fdi* : Percent of Foreign direct investment per GDP

*Icrg* : International Country Risk Guide index of corruption, scale 0-6. Higher values indicate lower corruption

The calculations above indicate that during inflation, prices increase simultaneously. When inflation occurs at a low level, it is unlikely to endanger the economic condition; however, at high levels, it can severely harm the economy, as the purchasing power of the community will decrease sharply. This decline in purchasing power correlates directly with a reduction in the overall welfare of society. Research findings also reveal indirect effects stemming from corruption, particularly in the context of investments in physical infrastructure and human resource development. Therefore, the losses incurred from various corruption cases should not only account for the amount of currency taken or lost, but also consider both the direct and indirect impacts on the economic rights of the community due to disruptions in the economic machinery.

Economic and social rights, as outlined in the ICESCR adopted in 1966, serve to implement the principles enshrined in the UDHR of 1948. These rights include, among others, the right to work, the right to just and favorable working conditions, the right to social security, the right to an adequate standard of living—including the rights to food, clothing, and housing—the right to health, and the right to education. The guarantee of these economic and social rights is further reinforced by the mandates of the 1945 Constitution of the Republic of Indonesia, which asserts rights to life, to sustain one's living and existence, to a healthy environment, to a prosperous life both materially and spiritually, and to access healthcare services, among others.

The economic and social rights of the community concerning the development process or the exploitation of strategic branches of production or natural resources are often overlooked and appropriated for personal or corporate interests through the abuse of authority, opportunity, or available resources due to one's position or status. This neglect and appropriation of the community's

<sup>43</sup> Trabelsi and Trabelsi, "At What Level of Corruption Does Economic Growth Decrease?"

economic rights are key reasons why corruption not only results in financial losses for the state but also leads to broader economic losses for the nation.

The calculation of economic losses to the state resulting from acts of corruption can be illustrated through two cases as follows: **First**, the corruption related to the issuance of export permits for crude palm oil (CPO) that do not align with domestic selling prices has resulted in financial losses for the state. According to the audit findings from the Financial and Development Supervisory Agency (*Badan Pengawasan Keuangan dan Pembangunan/BPKP*) numbered PE.03/SR-511/D5/01/2022, dated 18 July 2022, the financial loss amounts to IDR 6.047 trillion. Furthermore, the economic losses incurred by the state, as detailed in the Report on the Analysis of Illegal Gains and economic losses resulting from the scarcity and high prices of cooking oil, total IDR 10.96 billion. This figure comprises household losses amounting to IDR 1.35 billion and business losses amounting to IDR 9.608 billion.

Additionally, the losses suffered by the public due to the cooking oil crisis, as estimated by the Institute for Demographic and Poverty Studies (IDEAS), indicate that the economic losses incurred by the community from the spike in cooking oil prices reached IDR 3.38 trillion. These losses accumulated over two periods of price increases: IDR 0.98 trillion during the April-September 2021 period and IDR 2.4 trillion during the October 2021 to 19 January 2022 period. The estimation of public losses is derived by using the average cooking oil prices from January to March 2021 as a baseline, a period during which prices were still considered normal.

Second, the calculation of economic losses to the state in the case of the conversion of natural forests into illegal palm oil plantations should be based on the volume of trees ( $m^3$ ) felled and the value of non-tax state revenue (*Penerimaan Negara Bukan Pajak/PNBP*) lost from the harvested timber ( $IDR/m^3$ ). Therefore, the economic loss to the state due to illegal palm oil plantations can be calculated as the volume of trees multiplied by the PNBP rate.

The assessment of state losses includes: (i) estimating the volume of trees. The exact volume of trees that have been felled in the past cannot be definitively determined, necessitating sampling to estimate the total tree population volume. If there remains natural forest within the location, sampling can be conducted by measuring the volume of the remaining natural trees. The results will serve as a basis for estimating the volume of trees throughout the illegally converted forest areas. For instance, if a sampling area consists of 20 plots, each 0.1 hectares in size and evenly distributed, with an average volume of  $5 m^3$  per hectare, and the area of illegally felled trees measures 1,000 hectares with a total volume of  $50,000 m^3$ , (ii) Estimating the PNBP value. The PNBP value established in the relevant regulations is also based on certain assumptions. For example, in determining the benchmark price of forest products that serves as the basis for setting PNBP, considerations include optimizing state revenue from forest resources, adjusting to changes in market prices of forest products, and ensuring the sustainability of forest management from economic, environmental, and social perspectives.<sup>44</sup>

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<sup>44</sup> Hariadi Kartodihardjo, "Kerugian Perekonomian Negara Dalam Korupsi," *Forest Digest*, 2022, <https://www.forestdigest.com/detail/2118/kerugian-negara-korupsi>.

From the two case examples mentioned above, the role of economists is crucial in calculating the economic losses to the state, even though their authority is not yet explicitly regulated in the statutory provisions. However, referring to the Constitutional Court Decision Number 31/PUU-XI/2012, dated 23 October 2012, it is clarified that investigators of corruption crimes have the right to coordinate with any institution, including the BPKP or other entities that have the capability to determine state losses. This indicates that coordination is not limited to BPKP and the Supreme Audit Agency (BPK) in proving a corruption offense but can also involve other agencies, and they may independently provide evidence outside of the findings from BPKP and BPK, for example, by inviting experts or requesting materials from the Inspectorate General.

Based on this reference, economists can conduct calculations; however, the assessment of the evidence ultimately rests with the panel of judges who examine and decide on the case in question. This is further emphasized in the excerpt from the Constitutional Court Decision No. 003/PUU-IV/2006, which states that consideration of the specific and concrete circumstances surrounding the events in question, from which it can logically be concluded whether state losses occurred, must be carried out by experts in state finance, national economics, and analysts who can evaluate the relationship between an individual's actions and the resulting losses.

Thus, the testimony provided should be in accordance with the expert's field and knowledge, thereby clarifying a criminal event. Expert testimony can serve as credible evidence for the judge, and consequently, such testimony plays a significant role in criminal proceedings. Therefore, in proving the existence of economic losses to the state, it is essential to involve several economists who can provide expert opinions to calculate both micro and macroeconomic losses for the purpose of law enforcement. This is reinforced by Andi Hamzah's assertion that an individual may offer testimony as an expert if they possess adequate knowledge, expertise, experience, training, or specialized education to meet the criteria for being considered an expert in relation to the matter at hand.<sup>45</sup>

Furthermore, according to Eddy O.S. Hiarej, if expert testimony is provided in writing and subsequently presented or read in court without the expert's presence, it is considered documentary evidence.<sup>46</sup> Additionally, expert testimony is typically general in nature, offering opinions on the fundamental issues of the criminal case being heard. An expert should not assess the specific case currently in litigation; this means that an expert must refrain from determining the guilt or innocence of a defendant.<sup>47</sup>

Thus, an economist must provide testimony within their area of expertise by accurately calculating the amount of economic losses incurred by the rights of the community and society. It is important to note that the evidentiary weight attached to expert testimony does not possess binding and determinative power. The evidentiary strength of expert testimony is analogous to that of

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<sup>45</sup> M.H. Annisa Febrina, S.H., M.H., Yetisma Saini, S.H., *Hukum Acara Pidana Indonesia, Hukum Acara Pidana Indonesia* (Sinar Grafika, Jakarta, 2022).

<sup>46</sup> M.H. H.S. Brahmana, SH., "Teori dan Hukum Pembuktian," *Pn-Lhoksukon.Go.Id*, 2012, p. 17.

<sup>47</sup> *Ibid.*

witness testimony, which also carries evidentiary value that is discretionary or *vrij bewijsrecht*. This means that witness testimony does not inherently carry perfect and determinative evidentiary power. The burden of proof ultimately rests with the judge, who is free to evaluate the evidence and is not bound by expert testimony. There is no obligation for the judge to accept the truth of the expert's testimony.<sup>48</sup>

Therefore, considering the extensive impact of corruption across various sectors of development-whether regional, national, or international-along with the losses incurred to the economic and social rights of the community, it is essential that in corruption cases related to economic losses to the state, as emphasized in Articles 2 and 3 of the Eradication of Corruption Law, the assessment should not be limited to merely calculating the financial losses to the state. Instead, these losses should be cumulatively evaluated or layered with the economic losses determined through actual loss calculations conducted by economists, incorporating the economic value of the detriment experienced by the community.

## CLOSING

The element of economic loss to the state that must be proven is the actual loss resulting from the infringement of economic and social rights due to the detriment experienced by the community as a consequence of the abuse of authority, opportunity, or resources available due to one's position or status concerning important and strategic branches of production and natural resources controlled by the state. These resources should be utilized to promote the welfare of the people, yet they are often exploited for personal gain or the benefit of others or corporations.

The calculation of economic losses to the state by economists will be tailored on a case-by-case basis, focusing on the actual loss from the impact experienced or felt directly by the community. This approach aims to instill confidence in the panel of judges regarding the expert testimony and/or documentary evidence when deciding corruption cases related to economic losses to the state under Articles 2 and 3 of the Eradication of Corruption Law or Articles 603 and 604 of Law No. 1 of 2023 concerning the Penal Code.

Law enforcement officials should not only calculate and recover financial losses to the state but also consider the losses related to economic and social rights resulting from the detriment experienced by the community. In this process, involving economists as documentary evidence and/or expert testimony is essential

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<sup>48</sup> M.Yahya Harahap, "Pembahasan Permasalahan dan Penerapan KUHAP," *Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali: Edisi Kedua*, Sinar Grafika, Jakarta, 2016, p. 273.

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