



Application Criminal Chamber Formulation Number 6 in Circular of the Supreme Court No. 4 of 2016 concerning the Authority of the State Audit Agency Declares State Losses (Case Study in the Corruption Court at the Padang District Court)

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Abstract

In the formulation of the criminal chamber number 6 of the Supreme Court Circular Letter Number 4 of 2016 states that the authorized agency states that there is no state financial loss is the State Audit Agency while other agencies such as the Financial and Development Supervisory Agency or other institutions are still authorized to conduct audits and audits of state financial management but not authorized to declare a state financial loss. The Supreme Court Circular was not in line with the decision of the Constitutional Court Number 31 / PUU-X / 2012 dated October 8, 2012 which stated that both the Supreme Audit Agency and the Financial and Development Supervisory Agency could calculate and declare state financial losses. Based on this, this study raises the problem, namely: First, How is the application of the Supreme Court Circular Letter Number 4 of 2016 (formulation of criminal chamber number 6) in the Corruption Court at the Padang District Court from 2016 to 2019. Second and What are the Judges' considerations in applying / not applying the Supreme Court Circular No. 4 of 2016. The research method used is the empirical juridical research method. Based on the results of research that has been done, the application of the criminal chamber formula number 6 in the Supreme Court Circular is not yet fully carried out. This can be seen from the case data submitted to the Corruption Criminal Court showing the low application of the Supreme Court Circular Letter Number 4 of 2016. From the number of cases that have been tried and decided during 2016 to 2019, there are only 16 cases of corruption that use experts from the Supreme Audit Agency. The amount is far less when compared to cases that use experts from the Financial and Development Supervisory Agency and other institutions that is 127 cases. This means that throughout 2016 until 2019, only as many as 11.11% of the total cases of 144 cases that apply the Criminal chamber formula number 6 of the Supreme Court Circular. Although the basis of authority of the Supreme Audit Agency is clearly and firmly regulated in article 23E of the 1945 Constitution. The legal basis of the authority of the Supreme Audit Agency is governed by regulations at the highest level. Unlike the basic authority of the Financial and Development Supervisory Agency which is only based on government regulations and regulations below, the position of the Supreme Audit Agency is very strong. The reality is that in practice there is dualism in the application of the authorized institution in declaring state losses in the Corruption Court at the Padang District Court. In consideration, Judge's consideration in applying or not applying the Supreme Court Circular Letter is that the judge is not bound by the Supreme Court Circular and the judge himself can assess the existence of state financial losses.

Keywords: *Application; Circular; Authority; The State Audit Agency; Financial Losses*

Introduction

Corruption in various modes that occur at this time deserves great attention for all instruments of the nation. Corruption is everywhere in this world and its age has been throughout human history.¹ At present, corruption seems to have become something normal for the Indonesian people. Even for queuing matters to the doctor is also colored by corruption because it just wants to take precedence and does not need to be queued so that by giving a few thousand rupiahs money one does not need to queue for too long. Very sad because corruption does not only occur in government buildings but in daily life corruption always colors the lives of the Indonesian people.

Corruption has become a tradition in our country. Corruption has also become an important part of collective behavior. Corruption becomes a habit in the bureaucracy and the state. Corruption plagues like a disease that undermines the political system, the economic system and the bureaucracy.²

The term corruption comes from the Latin *corruptie* or *corruptus*.³ *Corruptie* comes from *corruptore*, an old Latin word.⁴ Whereas according to the Indonesian Encyclopedia it is stated that corruption comes from the Latin of the word *corruptio* means bribery and from the word *corruptore* means to corrupt, a symptom in which officials, state bodies abuse authority with the occurrence of bribery, counterfeiting and other irregularities.

Literally, corruption is something rotten, evil and destructive. That is because, when discussing corruption, such facts will be found because corruption involves moral aspects, the nature and state of decay, positions in government agencies or apparatus, abuse of power in office because of gifts, economic and political factors and the placement of families or groups into office under the authority of his position. So that corruption has a broad meaning.⁵

The mention of corruption itself is that corruption is one form of crime as business, economic crime, white collar crime, official crime or as a form of abuse of power.⁶ The notion of corruption itself has been conveyed by experts including the understanding according to Jacob van Klaveren, that a corrupt soul state servant considers his office as a trading company so that in work he will try to find as much income as possible.⁷ According to M.C. Mullan, a government official is called corrupt if he receives money as an encouragement to do something that can actually be done in his duties and positions, even though he is not allowed to get such things while carrying out his duties. Furthermore, the formulation of corruption according to Carl. J. Friesrich, if someone who holds power or has the authority to do certain things expects monetary rewards or some other kind of gift that is not permitted by law, persuades to take steps or help anyone who provides a gift so that it truly jeopardizes the interests general.⁸ From the standpoint of the sociologist, Syeh Hussein Alatas, stated that corruption arises when a civil servant receives a gift from someone with the intention to influence it so as to give special attention to the interests of the giver.⁹

The existence of Law 31 of 1999 concerning Corruption Crimes has been amended Law No. 20 of 2001 did not significantly bring about changes in Corruption in Indonesia. Corruption cases are still

¹ Robert Klitgaard, *Eradicating Corruption*, Obor Foundation, Jakarta, 1998, p. 16.

² Farida Patittingi & Fajlurrahman Jurdi, *Corruption of the Power of Law Enforcement Dilemma above the Hegemony of Oligarchy*, PT. RajaGrafindo Persada, Jakarta, 2016, p. 100.

³ Ismansyah, *Investigation and Prosecution in the Field of Banking*, PT. Raja Grafindo Persada, Jakarta, 2015, p. 82.

⁴ Lilik Mulyadi, *Corruption Crime, Special Review of the Process of Investigation, Prosecution, Judicial and Legal Remedies According to Law Number 30 of 1999*, PT. Citra Aditya Bakti, Bandung, 2000, p. 16.

⁵ Evi Hartanti, *Criminal Acts of Corruption*, Sinar Grafika, Jakarta, 2008, p. 9.

⁶ Elwi Danil, *Corruption. The Concept, Criminal Acts and Eradication*, PT. Rajagrafindo Persada, Jakarta, 2011, p. 61.

⁷ Jawade Hafidz Arsyad, *Corruption in the Perspective of State Administrative Law*, Sinar Grafika, Jakarta, 2015, p. 6.

⁸ *Ibid.* p. 7.

⁹ *Loc Cit.*

tried in the Corruption Court. This is due to various obstacles in the implementation of the law on corruption. One obstacle in the implementation of the Act is the emergence of various laws and regulations that overlap each other so that it causes differences in the perception of law enforcers in its implementation.

In Law No.31 of 1999 has been amended by Law No.20 of 2001 concerning Eradication of Corruption, there are several acts that are included in the classification of Corruption Crimes. These acts include acts that cause state losses, embezzlement in office, extortion, fraudulent acts, conflict of interest in procurement and gratification. In fact, there is one element that is often debated between law enforcers and defendants at trial, namely the element that is detrimental to the country's finances. The debate is related to institutions which have the right to calculate losses to the State finances.

Law No.31 of 1999 concerning Eradication of Criminal Acts of Corruption does not clearly and expressly regulate the institutions authorized to calculate State financial losses. However, in the explanation of article 32 paragraph (1) of Law No.31 of 1999 concerning Eradication of Corruption, it is stated that what is actually meant is that there are State financial losses that can be counted based on the findings of authorized agencies or appointed public accountants.

The existence of institutions that calculate the loss of state finances in corruption cases such as the Supreme Audit Board, the Financial and Development Supervisory Agency and the Inspectorate often becomes a debate in the process of law enforcement for Corruption. Since the issuance of the Supreme Court Circular No. 4 of 2016 specifically the criminal chamber plenary formulation point 6 regulates that the authorized agency declares whether there is a state financial loss is the Financial Audit Agency that has constitutional authority while other agencies such as the Financial and Development Supervisory Agency / Inspectorate / Regional Apparatus Work Unit are still authorized to conduct audits and audit of management of State finances but is not authorized to declare or declare State financial losses. In certain cases, based on the facts of the trial the Judge certainly can assess the State's losses and the magnitude of the State's losses, debates on which institution is most authorized to calculate the State's financial losses are increasingly frequent. The rules that are not synchronous regarding the calculation of state financial losses often become polemic in corruption cases. The problem that often arises regarding who is most authorized to state the presence or absence of state financial losses.

Regulations regarding the authority to calculate state losses and state state financial losses in the 1945 Constitution are regulated in article 23E. The article formulates in paragraph (1). To examine the management and responsibilities of state finances, a free and independent Audit Agency of the State is held. In paragraph (2) the results of a state financial audit are submitted to the House of Representatives, the Regional House of Representatives and the Regional House of Representatives in accordance with their interests. In the formulation of article 23E it regulates the authority of the Financial Supervisory Agency as the auditor of the management and responsibility of the State finances. Further regulation regarding the authority of the Financial Supervisory Agency is regulated in Law No.15 of 2006 concerning the Financial Supervisory Agency.

Furthermore, in article 1 number 1 of Act No. 15 of 2006 concerning the Financial Supervisory Agency states that the Supreme Audit Agency is a state institution tasked with examining the management and financial responsibility of the State as referred to in the 1945 Constitution. Furthermore article 10 paragraph (1) Law No.15 of 2006 concerning the Supreme Audit Agency states that assesses and / or determines the amount of state losses caused by unlawful or deliberate acts committed by treasurers, managers of State-Owned Enterprises / Regional-Owned Enterprises and other institutions / bodies that carry out State financial management.

The Supreme Court Circular No. 4 of 2016 specifically for the formulation of the criminal chamber number 6 is different from the Constitutional Court Decision No.31 / PUU-X / 2012 dated October 8, 2012 which was decided before the issuance of the circular letter. Decision of the Constitutional Court No.31 / PUU-X / 2012 dated October 8, 2012 which in essence stipulates that the Financial and Development Supervisory Agency also has the authority to calculate the financial losses of the State because both the Financial and Development Supervisory Agency and the Supreme Audit Agency have their respective authorities regulated. clearly in statutory regulations.

The Financial and Development Supervisory Agency as regulated in Government Regulation No.60 of 2008 concerning the Government Internal Control System, the Financial and Development Supervisory Agency is the Government Internal Supervisory Apparatus. Article 48 paragraph (2) letter a Government Regulation No.60 of 2008 regulates the government's internal supervision apparatus conducting internal supervision through audits.

There are two types of audits regulated in article 50 paragraph (1) Government Regulation No.60 of 2008, one of which is an audit with a specific purpose. In the explanation of article 50 paragraph (3) Government Regulation No.60 of 2008 states that audits with specific objectives include investigative audits, audits of the implementation of the Government Internal Control System and audits of other matters in the financial sector.

In addition, article 49 paragraph (2) letter c of Government Regulation No.60 of 2008 regulates that the Financial and Development Supervisory Agency conducts internal oversight of the State's financial accountability for certain activities which include other activities based on assignments from the President. The duties and functions of the Financial and Development Supervisory Agency are regulated in Presidential Decree No. 103 of 2001 was later replaced by Presidential Regulation No. 192 of 2014 concerning the Financial and Development Supervisory Agency. Based on the provisions of article 3 letter e of the Presidential Regulation, the audit function of the Financial and Development Supervisory Agency includes conducting investigative audits of cases of irregularities that indicate detrimental to State / Regional finances, auditing the calculation of State / Regional financial losses, providing expert statements and preventing corruption.

The technical guidelines for conducting the audit are regulated through Regulation of the Head of the Financial and Development Supervisory Agency No. PER-1314/K/D6/2012 concerning Guidelines for Assignment in the Field of Investigation with the contents:

1. An audit in the context of the Calculation of State Financial Losses is an audit with a specific purpose intended to express an opinion regarding the value of the State financial loss arising from a case of irregularities and used to support litigation actions.
2. The results of the audit in the context of the Calculation of State Financial Losses in the form of the opinion of the auditor of the Financial and Development Supervisory Agency regarding the amount of the State financial losses are the opinions of the auditor's professional expertise set forth in the Report on the Results of the State Financial Losses Calculation.
3. As a result of the Expert's opinion, the Report on the Calculation of State Financial Losses was signed by the Audit Team and the Head of the Work Unit as an Expert.
4. Reports on the Results of the Calculation of State Financial Losses are submitted to the head of the investigating agency requesting that they be done with a cover letter coded with a secret letter signed by the work unit.

The aforementioned rules are the basis for law enforcement officials requesting the calculation of state financial losses from the Financial and Development Supervisory Agency in Corruption Crimes. Furthermore, from the calculation of the State's financial losses, the case is transferred to the Corruption

Criminal Court. Reports on the Results of the Calculation of the State's Financial Losses from the Financial and Development Supervisory Agency have often been used by the public prosecutor in substantiation in court and the judge also acknowledged the calculation of the state's financial losses.

As for existence Reports on the Results of Calculation of State Financial Losses from the Financial and Development Supervisory Agency recorded several times been sued to the State Administrative Court. The decision on the lawsuit also has permanent legal force. Most of the claims won the Financial and Development Supervisory Agency. The reason, the judge considered the object of the dispute was not a State Administration Decree, was not individual in nature, not yet final (it needed a follow-up to law enforcement officials), and the Report on the Results of the Calculation of State Financial Losses was part of a series of criminal law enforcement processes.

- That the corruption case that was tried before the issuance of the Supreme Court Circular No. 4 of 2016 specifically for the formulation of the criminal chamber number 6, the panel of judges accepted and made the expert calculation from the Financial and Development Supervisory Agency regarding the magnitude of the state's financial losses into consideration of its decision. For example, the corruption case of the Rehabilitation / Retrofitting Work of the Boarding House of the West Sumatra Provincial Training and Education Agency for the 2012 budget year on behalf of Emrizal and friends who used the calculation of the state financial losses from the Financial and Development Supervisory Agency with a loss of Rp. 337,447,859.87 (three hundred thirty seven million four hundred forty seven thousand eight hundred fifty nine point eighty seven rupiah).

That in this case, the defendant Emrizal and his friends were brought before the trial by the public prosecutor with the primair indictment in violation of article 2 paragraph (1) of Law No.31 of 1999 concerning Eradication of Corruption Crimes as amended by Law No. 20 of 2001, in conjunction with article 55 paragraph (1) of 1 of the Criminal Code, subsidair violates article 3 of Law No.31 of 1999 concerning Eradication of Corruption Crimes as amended by Law No.20 of 2001, jo Article 55 paragraph (1) 1 of the Criminal Law Code. The defendants were charged with violating the law / abusing their authority Emrizal as Acting Technical Officer and Ir. Firman Dalil as the Budget User's Power in the Work of Rehabilitation / Retrofitting of the West Sumatra Provincial Agency of Education and Training Boarding House building for the 2012 budget year. Rp.337.447.859.87, - (three hundred thirty seven million four hundred forty seven thousand eight hundred fifty nine point eighty seven rupiah). In its claim the public prosecutor stated that the defendants were proven guilty of committing criminal acts of corruption together with abusing their authority so that it had benefited witnesses from Bastian Sinaga and caused State financial losses of Rp.337,447,859.87.

Next after discharge Supreme Court Circular Letter No. 4 of 2016 specifically for the formulation of the criminal chamber number 6, in 2019 the Public Prosecutor from the Padang District Attorney has also submitted a corruption case to the Padang Corruption Court using an expert from the State Audit and Development Agency for the calculation of financial losses The country is in the case Samsurijal and Enni Haswita. The defendants were tried in connection with the case of the Collection of Levies for Medical Services and Animal Medicine at the Laboratory of Clinical and Animal Health Services of the Regional Technical Service Unit of the West Sumatra Province Livestock Service in the 2016 fiscal year.

Result and Discussion

Circular of the Supreme Court as a guideline for Judges in examining and deciding a case of a criminal act of corruption, should be applied in accordance with what has been formulated in the circular letter. The application of the formulation of the criminal chamber number 6 in the Supreme Court

Circular Letter Number 4 of 2016 can be seen from the corruption cases that have been examined and decided in the Corruption Court at the Padang District Court.

The Corruption Court at the Padang District Court as a place to obtain data and information regarding the application of the Supreme Court Circular No.4 of 2016, is part of the Padang District Court. Namely the court specifically examined and tried cases related to criminal acts of corruption. The jurisdiction of the Corruption Court covers the entire territory of West Sumatra Province. The existence of the Padang District Court has existed since the days of the Dutch occupation under the name Landraad Padang. But the name has changed several times. In the Japanese era, named Liho Noin until now known as the Padang District Court. Likewise, the location of the court was moved to Bukittinggi, the city of Pariaman and returned to the city of Padang.

Examination of corruption cases was initially carried out using the name Padang District Court. But then based Law Number 46 of 2009 concerning the Corruption Court at the Padang District Court, all forms of administration and examination of cases of corruption have used the name Padang Corruption Court. Since that time also in the implementation of trial cases of corruption have used ad hoc judges in addition to career judges who served in the area of West Sumatra Province.

1. Application of Criminal Chamber Formulation Number 6 in the 2016 Supreme Court Circular Letter 2016 in the Corruption Court at the Padang District Court in 2016.

To find out how to apply Supreme Court Circular No.4 of 2016 (formulation of Criminal Chamber number 6) in the Corruption Court at the Padang District Court, it needs to be seen from the corruption cases that have been tried at the court. The Corruption Court at the Padang District Court in 2016 received 39 cases of corruption cases. The case files are from all of the Public Prosecutors' Office in West Sumatra Province.

Of the 39 corruption cases examined and decided by the Corruption Court at the Padang District Court, only 2 cases used experts who calculated the state's financial losses from the Supreme Audit Agency. While as many as 37 cases using experts who calculate the loss of state finances from the Financial and Development Supervisory Agency, Inspectorate and Institute for Construction Services Development. Meanwhile cases that do not use experts who calculate state losses are those charged with charges other than articles 2 and 3 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes that have been added to Law Number 20 of 2001.

Corruption cases that use experts from the Supreme Audit Agency are cases on behalf of Prof. Salmadani and the case on behalf of Eli Satria Pilo. Both of these cases are Corruption Crimes related to the acquisition of land for the construction of the Imam Bonjol Padang Institute of Islamic State campus campus for the 2010 fiscal year. The results of calculations from the Supreme Audit Agency, for the actions of the defendants, have caused state financial losses of Rp.1,900,000,000 (one billion nine hundred million rupiah).

The application of the criminal chamber formulation number 6 in the Supreme Court Circular Letter No.4 of 2016 (which states that the authorized agency declares whether there is a state financial loss is the Supreme Audit Agency has constitutional authority while other agencies such as the Financial and Development Supervisory Agency / Inspectorate / Unit Regional Government Work is still authorized to conduct audits and audits of state financial management but is not authorized to declare or proclaim state financial losses) at the Padang Corruption Court in 2016, not implemented as formulated in the circular. This can be seen from the number of cases that have been examined and decided, there are only 2 cases of criminal acts of corruption that apply the formulation in the circular.

2. Application of the 2016 Supreme Court Circular No. 4 (formulation of criminal chamber number 6) in the Corruption Court at the Padang District Court in 2017.

In 2017, the Corruption Court at the Padang District Court examined and decided 44 corruption cases. Of the 44 Corruption Cases that have been examined and decided by the Corruption Court at the Padang District Court, none of the cases used experts from the Financial Supervisory Agency as experts who calculated the losses of state finances. Thus the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter 4 of 2016 does not apply at all to examining cases of corruption in the Corruption Court at the Padang District Court in 2017.

3. Application of the 2016 Supreme Court Circular No. 4 (formulation of criminal chamber number 6) in the Corruption Court at the Padang District Court in 2018.

In 2018, the Corruption Court of the Padang District Court examined and decided 40 criminal cases of corruption. Of the 40 cases of Corruption Crimes that have been examined and decided by the Corruption Court at the Padang District Court, there are 11 cases that use experts from the Financial Supervisory Agency as experts who calculate losses of state finances. While as many as 30 cases of criminal acts of corruption using experts from the Financial and Development Supervisory Agency, the Inspectorate and the Construction Services Development Institute.

The case that uses experts from the Supreme Audit Agency is on behalf of: Yusafni, Budi Susanto, Hendra Satriawan, Adrian Asril, Syaflinda, Yeni, Sofyan, Kurniawan Sedahteraa, Asmardi, Erizal, Bentowarman and Syafri Muchtar and friends. The case included the transfer of case files from the Padang District Attorney and the West Sumatra High Prosecutor's Office.

The case on behalf of Yusafni in connection with the Fictional Liability Letter on the Spatial Planning and Settlement Road Infrastructure Office of West Sumatra Province in the 2012 to 2016 fiscal year. Rp.62.500.000,000, - (sixty two billion five hundred million rupiah).

Thus, the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter 4 of 2016 has not been applied as it should be in the Corruption Court at the Padang District Court. However, there has been an increase where in 2016, corruption cases that used experts from the Supreme Audit Agency were only 2 cases. Furthermore, in 2017, none of the cases referred to the Corruption Criminal Court used an expert from the Supreme Audit Agency as an expert to calculate state financial losses. Then in 2018 there would be an increase to 11 cases.

4. Application Supreme Court Circular No.4 of 2016 (formulation of criminal chamber number 6) in the Corruption Court at the Padang District Court in 2019.

In 2019, the Corruption Court at the Padang District Court examined and decided 30 cases of Corruption. Of the 30 corruption cases that have been examined by the Corruption Court at the Padang District Court. A total of 21 cases have been dropped out and of the 21 cases that have broken up there are 4 cases that have used experts from the Financial Supervisory Agency as experts who calculate the losses of state finances. While as many as 17 cases of criminal acts of corruption use experts from the Financial and Development Supervisory Agency and the Inspectorate.

The case that used experts from the Financial Supervisory Agency was a case on behalf of Irdahendri, Benni Ardi, Mai Afri Yuneti and Adhitya Gumay Fajrin. Cases on behalf of Irdahendri, Benni Ardi and Mai Afri Yuneti et al are cases of corruption related to infrastructure development in the aftermath of natural disasters in South Solok for the 2016 fiscal year. Rp.1,087,942,813 (one billion eighty-seven million nine hundred forty-two thousand eight hundred and thirteen rupiah).

Based on the results of research that has been done, it can be seen that the application of the Supreme Court Circular No. 4 of 2016 specifically the formulation of the criminal chamber number 6 namely regarding the authority of the State Audit Agency states the loss of state finance, as an institution that is constitutionally regulated in the Act Basic 1945 has not been fully carried out in the Corruption Court.

Based on the description above, the number of cases that have been tried and decided during 2016 to 2019, there are only 16 cases of corruption that use experts from the Supreme Audit Agency. The amount is far less when compared to cases that use experts from the Financial and Development Supervisory Agency and other institutions that is 127 cases. This means that throughout 2016 until 2019, only as many as 11.11% of all cases (144 cases) that applied the Supreme Court Circular No.4 of 2016 (Criminal chamber formulation number 6). Based on these facts it can be concluded that there is dualism in the application of the formulation of criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016. Some of the judges applied the Supreme Court Circular Letter 4 of 2016 specifically for the formulation of the criminal chamber number 6 and some other judges thought that it was not required to apply it.

Furthermore, based on data obtained from the Corruption Court at the Padang District Court, from the total value of the state's financial losses, it can be seen that cases calculated by the Supreme Audit Board, the country's financial losses amount to more than one billion. Whereas corruption criminal cases examined by the Financial and Development Supervisory Agency have a value of state financial losses below one billion.

In addition, the corruption case verdicts examined in the Corruption Court at the Padang District Court, with experts from the Supreme Audit Agency throughout 2016 to 2019, were all found guilty and sentenced to imprisonment. While corruption criminal cases with experts from the Financial and Development Supervisory Agency throughout 2016 until 2019 there were 5 cases that were decided free from indictments by the public prosecutor. The details are that there are 2 cases that were free in 2016 and there were 3 cases that were free in 2018.

Based on the two comparisons above, it can be seen that the case with experts from the Supreme Audit Agency has better evidence in court. This was proven by the success of the public prosecutor in proving his indictment because it was supported by expert statements from the Supreme Audit Agency. This was later believed by the panel of judges and the defendant to be found guilty. Whereas experts from the Financial and Development Supervisory Agency in providing information as experts have not been fully able to provide confidence to the panel of judges so that there are still 5 cases that end in a free decision.

Throughout 2016 until the end of 2019, there were 144 cases of corruption that have been examined and decided at the Corruption Court at the Padang District Court. Of this number, 16 experts used experts from the Supreme Audit Agency. The rest use the Financial and Development Supervisory Agency or Inspectorate.

This is not in line with the formulation of criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016, which should be a benchmark for judges who hear corruption cases. The circular stipulates that the authorized institution stating whether or not there is state financial loss is the State Audit Agency that has constitutional authority while other agencies such as the Financial and Development Supervisory Agency / Inspectorate / Regional Apparatus Work Unit are still authorized to conduct audits and audits of state financial management but not authorized to declare or declare state financial losses.

According to a spokesman for the Supreme Court Suhadi, with the issuance of the circular, the judge must be guided by the circular including for the use of audits of state financial losses from the Supreme Audit Agency¹⁰. This is because so far in the judicial process, there are often differences in the calculation of state financial losses by the State Audit Agency and the Financial and Development Supervisory Agency.

Based on the results of interviews conducted with the Judge who heard the corruption case, namely Judge Agus Komarudin. Judge Agus Komarudin believes that the circular issued by the Supreme Court is a technical guide for judges in examining and deciding a case. But according to him, the judge is still given the freedom to determine his own opinion. In the Supreme Court Circular Letter Number 4 of 2016 specifically the formulation of criminal chamber number 6 has also been given freedom for the judge to calculate the amount of state financial losses he believes. Therefore, Judge Agus Komarudin did not reject the corruption case that used experts other than the Supreme Audit Agency and continued to examine and decide on the case. This is as long as the judge believes that based on the evidence obtained at the hearing, it is true that there has been a state financial loss in the case. Therefore, according to Judge Agus Komarudin, judges are not bound by the Supreme Court Circular Letter 4 of 2016 specifically for the formulation of criminal chamber number 6, as long as the judge believes that what is calculated by experts other than the Supreme Audit Agency is in accordance with the facts in the trial¹¹.

The same was conveyed by Judge Yose Ana Rosalinda, who also examined and decided cases of corruption both using experts from the State Audit Agency and experts from the Financial and Development Supervisory Agency or the Inspectorate. According to him, the circular issued by the Supreme Court did not limit the judge's room but could be used as a guide. If the judge believes other than what is stipulated in the circular, the judge is free to determine his attitude. This is as long as it is supported by valid evidence in accordance with statutory provisions. According to him, a judge is given the freedom to examine and decide on a case and if in one panel there are differences of opinion, then a judge who has a different opinion can express his opinion through a dissention opinion.¹²

Contrary to the opinions of the two previous judges, Judge Sri Hartati argued that since the issuance of the Supreme Court Circular No. 4 of 2016 specifically the formulation of criminal chamber number 6, the judge examining and deciding cases of criminal acts of corruption must guide the circular. But in practice it is difficult to implement the circular because in several cases of criminal acts of corruption that he tried, there are those who use experts from the Financial and Development Supervisory Agency¹³.

Thus based on the opinions of several judges who have been interviewed, it can be concluded that the basis of the judges applying or not applying the circular is the freedom of judges not to be bound by the Supreme Court Circular Letter Number 4 of 2016 specifically the formulation of the criminal chamber number 6. This can be done as long as the judge believes that what is calculated by the expert other than the Supreme Audit Agency is in accordance with the facts at the trial and the judge believes that there is a state financial loss due to the defendant's actions.

Seen from the standpoint of legislation namely in Law Number 11 of 2012 concerning Formation of Regulations and Regulations, the basis of authority of the Supreme Audit Agency is set clearly and expressly in article 23E. The legal basis for the authority of the Supreme Audit Agency is regulated by the highest regulation, the 1945 Constitution. Then to carry out the mandate of the constitution, Law 15/2006

¹⁰ <https://m.merdeka.com> was accessed last time on May 8, 2020 at 23.38. PM.

¹¹ Interview with Agus Komarudin, Corruption Court Judge at the Padang District Court, on 11 February 2020 at 13.45 PM.

¹² Interview with Yose Ana Rosalinda, Judge of the Corruption Court at the Padang District Court, on 12 February 2020 at 11.00.P.M.

¹³ Interview with Sri Hartati, Corruption Court Judge at the Padang District Court, on December 5, 2019 at 14.20 WIB.

concerning the Supreme Audit Agency was formed, which regulates the duties and authority of the Supreme Audit Agency.

When compared with the basis of the authority of the Financial and Development Supervisory Agency based only on government regulations and regulations below, the position of the Supreme Audit Agency is very strong. Because the basis of its authority is governed by regulations higher than the legal basis of the Financial and Development Supervisory Agency. However, in practice the basis of this authority does not necessarily make the Supreme Audit Agency the only institution authorized to declare a loss of state finances.

In practice, a judge cannot refuse a case simply because they do not use experts from the Supreme Audit Agency. The basis is article 10 of Law Number 48 of 2009 concerning Judicial Power. The formulation of article 10 of the law is:

"The court may not refuse to examine, try and decide on a case which is filed under the pretext that the law is absent or unclear, but rather obliged to examine and try it."

Thus a good case that applies the Supreme Court Circular Number 4 of 2016 specifically the formulation of the criminal chamber number 6 or not, then the judge is obliged to examine and try the case. This can open up opportunities for judges not to apply the Supreme Court Circular Letter 4 of 2016 specifically for the formulation of the criminal chamber number 6.

Judging from the legal objectives of justice, certainty and usefulness, then with the issuance of the Supreme Court Circular No. 4 of 2016 specifically the formulation of criminal chamber number 6 there is a legal certainty that only the Supreme Audit Agency has the authority to declare state financial losses. So that it is hoped that there will be no more rival in a corruption trial. Regarding the legal purpose of realizing justice with the issuance of the Supreme Court Circular No. 4 of 2016 specifically the formulation of the criminal chamber number 6, it cannot be ascertained because justice until now is an ideal that is difficult to realize for various parties. Meanwhile, from the point of benefit, with the issuance of the Supreme Court Circular Letter Number 4 of 2016 specifically for the formulation of the criminal chamber number 6 it is feared that it will be difficult to provide a benefit. This is because if each case of a criminal act of corruption to be tried must use experts from the Supreme Audit Board, it will be difficult for investigators to ask for assistance from the Supreme Audit Agency considering the limited number of auditors compared to the number of cases of criminal acts of corruption that must be examined. In practice it will also slow down the investigation of a case because there are still cases where the initial findings are from the results of inspections from the inspectorate or the Financial and Development Supervisory Agency, but when investigating and the calculation of state financial losses from the Supreme Audit Agency is requested, the matter is rejected. This is because if each case of a criminal act of corruption to be tried must use experts from the Supreme Audit Board, it will be difficult for investigators to ask for assistance from the Supreme Audit Agency considering the limited number of auditors compared to the number of cases of criminal acts of corruption that must be examined. In practice it will also slow down the investigation of a case because there are still cases where the initial findings are from the results of inspections from the inspectorate or the Financial and Development Supervisory Agency, but when investigating and the calculation of state financial losses from the

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Related to law enforcement in the application of the Supreme Court Circular No. 4 of 2016 (specifically the formulation of the criminal chamber number 6), it can be viewed from 3 points of view, namely, legal substitution, legal structure and legal culture. The legal substance is related to the material from the circular itself. The legal structure is related to law enforcement officers who carry out the circular. Finally, legal culture is related to the culture or habits of the community in receiving the circular.

Based on the results of research on the application of the Supreme Court Circular Number 4 of 2016 (specifically the formulation of the criminal chamber number 6) in the Padang Corruption Court, in terms of substance as explained in Chapter II, that the circular constitutes a circular form of the leadership of the Supreme Court to all levels of the judiciary containing instructions, reprimands or warnings as a form of guidance in the administration of justice and in the context of carrying out the supervisory function. Therefore, the Supreme Court Circular has internal or internal ties. However, even though the Supreme Court Circular Letter Number 4 of 2016 (specifically the formulation of the criminal chamber number 6) is a guide for judges in examining and deciding a case of corruption, but the judge himself is not absolutely bound to the circular letter. At the end of the Circular Letter of the Supreme Court Number 4 of 2016 (specifically the formulation of criminal chamber number 6) stated "in certain cases judges based on the facts of the trial can assess the existence of state losses and the amount of state losses". The last sentence in the criminal formula number 6, gives an opportunity for the judge to assess whether there is a state loss as well as the nominal. Even though at the trial, the experts presented did not come from the Supreme Audit Agency as required in the circular. So, from the point of view of the substance of the circular itself it is possible for judges to use expert opinions from institutions other than the Supreme Audit Agency. This then becomes the basis for the judges in the Padang Corruption Court not to refuse and continue to examine and decide on every corruption case that has been delegated at the Padang Corruption Court. Although not using experts from the Supreme Audit Agency provide an opportunity for judges to assess whether there is a state loss as well as the nominal. Even though at the trial, the experts presented did not come from the Supreme Audit Agency as required in the circular. So, from the point of view of the substance of the circular itself it is possible for judges to use expert opinions from institutions other than the Supreme Audit Agency. This then becomes the basis for the judges in the Padang Corruption Court not to refuse and continue to examine and decide on every corruption case that has been delegated at the Padang Corruption Court. Although not using experts from the Supreme Audit Agency provide an opportunity for judges to assess whether there is a state loss as well as the nominal. Even though at the trial, the experts presented did not come from the Supreme Audit Agency as required in the circular. So, from the point of view of the substance of the circular itself it is possible for judges to use expert opinions from institutions other than the Supreme Audit Agency. This then becomes the basis for the judges in the Padang Corruption Court not to refuse and continue to examine and decide on every corruption case that has been delegated at the Padang Corruption Court. Although not using experts from the Supreme Audit Agency. The experts presented were not from the Supreme Audit Agency as required in the circular. So, from the point of view of the substance of the circular itself it is possible for judges to

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From the point of view of the legal structure, the application of the Supreme Court Circular Letter Number 4 of 2016 (specifically the formulation of the criminal chamber number 6) must actually start from the common perception or view of all law enforcement agencies involved in Corruption Crime, which starts from investigators, public prosecutors and judges alone. There must be a common view of who is authorized to calculate the financial losses of the state and state the financial losses of the country. Must base on higher rules in assessing who is more authorized to declare the country's financial losses. Where in this case the Supreme Audit Agency is an institution that is constitutionally regulated as an institution that can calculate state financial losses and determine whether there are state financial losses.

But in practice, the emergence of other regulations in the form of a decision of the Constitutional Court No.31 / PUU-X / 2012 dated October 8, 2012 which in essence stipulates that the Financial and Development Supervisory Agency is also authorized to calculate the State financial losses because both the Financial and Development Supervisory Agency and the Financial Supervisory Agency each authority has been clearly regulated in laws and regulations. This creates confusion for law enforcers in determining experts who will calculate the state financial losses. In the end in the Padang Corruption Court there were many corruption cases that used experts other than the Supreme Audit Agency.

Legal culture is one of the aspects that needs to be discussed in relation to the application of the Supreme Court Circular No. 4 of 2016 (specifically the formulation of criminal chamber number 6). The legal culture associated with this circular is closely related to the attitude of the perpetrators of criminal acts of corruption in order to prove that he is innocent and then also look for experts who can support his wishes. So in the trial often a rival expert appeared from the defendant who tried to break the expert's argument from the public prosecutor. This phenomenon then came to the attention of the Supreme Court. So that issued the Supreme Court Circular No. 4 of 2016 (specifically the formulation of the criminal chamber number 6) to emphasize that constitutionally, the Supreme Audit Agency has the authority to declare that there is no loss in the country's finances. With the issuance of the Supreme Court Circular No. 4 of 2016 (specifically for the formulation of criminal chamber number 6), it is expected that there will be no more confusion in determining which institution is most authorized to declare financial losses. That is because even though the circulars are internally binding, the substance regulated in the Supreme Court Circular No. 4 of 2016 (specifically the formulation of the criminal chamber number 6) actually reaffirms what has been outlined by article 23E of the 1945 Constitution.

Conclusion

1. The application of the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016 concerning the Authority of the Supreme Audit Agency stated that the state's financial losses in the Corruption Court at the Padang District Court had not been fully carried out. This can be seen from the case data submitted to the Corruption Criminal Court showing the low application of the criminal chamber formula number 6 in the Supreme Court Circular Letter Number 4 of 2016. Based on the number of cases that have been tried and decided during 2016 to 2019, then there are only 16 cases of corruption that use experts from the Supreme Audit Agency. The amount is far less when compared to cases that use experts from the Financial and Development Supervisory Agency and other institutions that is 127 cases. This means that throughout 2016 until 2019, only as many as 11.11% of all cases (144 cases) that apply the formulation of criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016. Even though from the standpoint of legislation that is in Law Number 11 of 2012 concerning Formation of Legislation, the basis for authority of the Supreme Audit Agency is clearly and expressly regulated in article 23E. The legal basis for the authority of the Supreme Audit Agency is governed by the highest regulation, namely the 1945 Constitution. Then to carry out the mandate of the constitution, Law No. 15/2006 concerning the Financial Supervisory Agency was formed, which regulates the duties and authorities of the Financial Supervisory Agency. When compared with the basis of the authority of the Financial and Development Supervisory Agency based only on government regulations and regulations below, the position of the Supreme Audit Agency is very strong. But in practice it is not considered. In reality there is dualism in the application of the authorized institution in declaring state losses in the Corruption Court at the Padang District Court. Some of the judges apply the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016 in hearing corruption cases but when the case is delegated, the expert declares that his country's financial loss is not from the Supreme Audit Board, then some other judges, still accept and examine and decide upon the case. then the position of the Supreme Audit Agency is very strong. But in practice it is not considered. In reality there is dualism in the application of the authorized institution in declaring state losses in the Corruption Court at the Padang District Court. Some of the judges apply the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016 in hearing corruption cases but when the case is delegated, the expert declares that his country's financial loss is not from the Supreme Audit Board, then some other judges, still accept and examine and decide upon the case. In reality there is dualism in the application of the authorized institution in declaring state losses in the Corruption Court at the Padang District Court. Some of the judges apply the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016 in hearing corruption cases but when the case is delegated, the expert declares that his country's financial loss is not from the Supreme Audit Board, then some other judges, still accept and examine and decide upon the case. In reality there is dualism in the application of the authorized institution in declaring state losses in the Corruption Court at the Padang District Court. Some of the judges apply the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016 in hearing corruption cases but when the case is delegated, the expert declares that his country's financial loss is not from the Supreme Audit Board, then some other judges, still accept and examine and decide upon the case. In reality there is dualism in the application of the authorized institution in declaring state losses in the Corruption Court at the Padang District Court. Some of the judges apply the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016 in hearing corruption cases but when the case is delegated, the expert declares that his country's financial loss is not from the Supreme Audit Board, then some other judges, still accept and examine and decide upon the case.

2. The basis for consideration of the Padang Corruption Court Judge in applying / not applying the formulation of the criminal chamber number 6 in the Supreme Court Circular Letter Number 4 of 2016 based on interviews with judges at the Padang Corruption Court that has been conducted shows that there are differences of opinion among the judges in see and apply the circular. Some judges are of the opinion that the judge is not bound by the circular so that in practice the judge does not reject cases of corruption that do not use experts from the Supreme Audit Agency. Basically the circular itself because in the last sentence the formulation of the criminal chamber number 6 in the Circular of the Supreme Court No. 4 of 2016 states that "in certain cases judges based on facts of the trial can assess the existence of state losses and the amount of state losses". Conversely there are also judges who argue that with the issuance of the circular, the judge guides it in examining and deciding a case of corruption. The basis is the circular itself which is an affirmation of what has been outlined by the 1945 Constitution in article 23E. the judge guided him in examining and deciding a case of corruption. The basis is the circular itself which is an affirmation of what has been outlined by the 1945 Constitution in article 23E. the judge guided him in examining and deciding a case of corruption. The basis is the circular itself which is an affirmation of what has been outlined by the 1945 Constitution in article 23E.

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