



Total Loss In State Losses: Is It Really Only Caused By Fictitious Elements, And Useless?

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How to Cite :

Suprihatin, K, K, M., Yanti, H, B. (2025). *Total Loss In State Losses: Is It Really Only Caused By Fictitious Elements, And Useless?* EKOMBIS REVIEW: Jurnal Ilmiah Ekonomi Dan Bisnis, 13(4). DOI: <https://doi.org/10.37676/ekombis.v13i4>

ARTICLE HISTORY

Received [17 May 2025]

Revised [14 September 2025]

Received [27 September 2025]

KEYWORDS

Auditing, Forensic Accounting, Investigative Audit, State Losses, Total Loss Method.

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ABSTRACT

This research seeks to clarify how the total loss method is applied in calculating state financial losses. The study is grounded in the principle that such losses must be actual and definite. State financial losses are crucial because they serve as a material element in proving corruption offenses. While various methods exist to calculate these losses, there is no standardized approach, and they cannot be universally applied. One commonly used approach is the total loss method. This study employs a qualitative methodology with a single case study design focused on the PT Timah Tbk case. It draws on secondary sources, including court ruling No. 70/Pid.Sus-TPK/2024/PN.Jkt.Pst., as well as in-depth interviews supported by data triangulation. The findings show that in the PT Timah Tbk case, the financial losses to the state meet the criteria of being actual and definite. The use of the total loss method was justified not only due to fictitious or unusable work or activities, but also due to the involvement of illegal goods or activities in the case.

INTRODUCTION

Indonesia has not yet escaped the challenge of corruption that is getting stronger. Transparency International Indonesia released the Corruption Perception Index (CPI) score for 2024 of 37/100, ranking 99 out of 180 countries. The GPA score in 2024 increased compared to the previous year (score 34), but there was a decrease in the Anti-Corruption Behavior Index (IPAK) in 2024 as issued by the Central Statistics Agency (BPS). The IPAK showed a score of 3.85 out of 5 in 2024, a decrease compared to 2023 (score of 3.92). This shows that people are increasingly permissive of corruption and have experience related to acts of corruption. Society's permissiveness is seen by the decline in the Perception Index and the experience of corruption is seen from the Experience Index.

In 2024, the Corruption Eradication Commission has taken action in the form of 73 cases of investigation, 154 cases of investigation, 90 cases of prosecution, 91 cases of inkraht, and 108

cases of execution with a total of 516 corruption cases. Listyo Sigit Prabowo (2024) revealed that the National Police had handled 1,280 corruption cases with 830 suspects named. Harli Siregar (2024) said that the Attorney General's Office has investigated 2,316 corruption cases with a fantastic state loss of Rp310 trillion. This data shows that the incidence of corruption is still high followed by a significant impact, namely state losses.

In the disclosure of corruption crimes, based on the Corruption Law Number 31 of 1999 which has been amended by Law 20 of 2001, it is explained that the crime of corruption is a formal offense so that it focuses on the fulfillment of the elements of the act, not the consequences in the form of state financial losses. However, after the decision of the Constitutional Court Number 25 of 2016 and the stipulation in Law Number 1 of 2023 concerning the Criminal Code, state financial losses have become a material offense in the sense that state financial losses are mandatory and must be fulfilled together with the elements against the law in order to fulfill the crime of corruption. This shows the important position of calculating state financial losses in efforts to prosecute corruption.

The agency authorized to perform the calculation has also experienced dynamics. Through SEMA Number 4 of 2016, the Supreme Court formulated that the authority to declare state financial losses is BPK, while other agencies, namely BPKP / inspectorate / regional apparatus work units, are still authorized to conduct examinations but are not authorized to declare the presence / absence of state financial losses like BPK. Furthermore, through SEMA Number 2 of 2024 which amends SEMA Number 4 of 2016, the Supreme Court again explained that agencies other than the BPK, namely the BPKP/inspectorate/regional apparatus work units/certified public accountants are authorized to conduct examinations and conduct audits, the results of which can be used as a basis for determining the presence or absence of state financial losses. Thus, the polemic regarding the agency authorized to conduct examinations or audits to calculate state financial losses can be ended.

Furthermore, related to the operationalization of calculations with a method of calculating state financial losses, there is research conducted by Amrizal (2012) which explains that there cannot be a uniform method or method of calculating state financial losses as a result of the diverse *modus operandi* of each corruption case. Munthe (2017) and Sumarto and Rahadian (2020) also stated that there is no standardization of methods for calculating state financial losses. Furthermore, Tuanakotta (2014) explains that standardizing the calculation method can provide certainty but risks eliminating flexibility or creative thinking needed in dealing with corruption cases with various modes. However, the calculation pattern can be Tuanakotta (2014) identified in a State Financial Loss Tree (REAL Tree) so as to illustrate a pattern of calculation methods that lead to the expected certainty and also flexibility of use by prioritizing the thought process in each corruption case.

One of the known calculation patterns is the total loss method, according to Tuanakotta (2014) the entire amount that has been paid by the state is a state financial loss. The cause that is used as the basis for using the total loss method with a case study at BPK is explained by Sumarto and Rahadian (2020), namely the results of work on the procurement of goods / services whose financing comes from the state cannot actually be fully utilized. Furthermore, Syahwaluna and Arsyfi (2023) describe that the total loss method is applied by BPKP in cases of fictitious procurement of goods/services and goods that cannot be utilized. Anwar and Supriyadi (2017) with a case study at BPKP explained that the total loss method was applied because there were fictitious expenses or expenses that occurred and had been accounted for but the work performance as the basis for the expenditure was fictitious. Thus, previous research concluded that the pattern of calculating state financial losses in the form of the total loss method can be used if it fulfills fictitious and useless elements.

In 2024, Indonesia was shocked by a corruption case with fantastic state losses in the corruption case of tin commodity trading in the mining business license (IUP) area at PT Timah Tbk in 2015-2022. The Panel of Judges (2024) read out the verdict that the tin mining activities

had resulted in state losses of IDR 300.003 trillion consisting of environmental damage worth IDR 271.07 trillion, losses on cooperation in leasing tin processing equipment worth IDR 2.28 trillion, and losses on payment of tin beans from illegal tin mining IDR 26.65 trillion. One of the calculation methods used is the total loss method even though tin ore is real and can be utilized by PT Timah Tbk.

In previous studies, it can be concluded that there is no standardization of the calculation method, but there is an illustration in the form of a pattern of calculating state financial losses in REAL Tree. One of the calculation methods or patterns identified is the total loss method which calculates the entire amount of payment by the state as a state financial loss caused by fictitious elements and cannot be utilized. However, based on the case of PT Timah Tbk, there is a utilization of the total loss method even though it does not meet the fictitious elements and cannot be utilized.

This research aims to explain the operationalization of the total loss method in calculating state financial losses that are not only based on fictitious elements and / or cannot be utilized in the corruption case of tin commodity trading in the mining business permit (IUP) area at PT Timah Tbk 2015-2022.

This research is expected to provide benefits by contributing to the development of auditing and forensic accounting in the form of using the total loss method in the audit of calculating state financial losses in the absence of standardization of methods while still meeting the actual and definite requirements.

LITERATURE REVIEW

Amrizal (2012) in a dissertation with an empirical study in the form of a forensic audit at BPKP with the period 2002 to 2009, explained that the ability to identify and select methods of calculating state financial losses is an expertise that must be possessed in order to make light of a case by forensic accountants or forensic auditors. In addition, it is explained that the calculation method cannot be uniformly applied due to the impact of the diverse modus operandi of each corruption case.

Munthe (2017) analyzed the calculation of state financial losses carried out by BPKP with the conclusion that the calculation method to provide an opinion in the form of the value of state financial losses cannot be uniformed between cases. Furthermore, Sumarto and Rahadian (2020), who evaluated the application of the method of calculating state financial losses at BPK, concluded that the selection of calculation methods at BPK is very diverse with the basis of consideration in the form of assessing irregularities that occur. These two studies both state that there is no standardization of the method of calculating state financial losses.

Furthermore, Tuanakotta (2014) presents problems related to inconsistencies in the application of calculation methods. With the conclusion that standardizing the calculation method can provide certainty but risks eliminating the flexibility or creative thinking needed in dealing with corruption cases with various modes. However, the calculation pattern can be Tuanakotta (2014) identified in a State Financial Loss Tree (REAL Tree) so that a pattern of calculation methods that lead to the expected certainty and also flexibility of use by prioritizing the thought process in each corruption case.

In addition, Tuanakotta (2014) explains the total loss method which is the entire amount that has been paid by the state is a state financial loss. In state expenditures, the total loss method is calculated because there are state expenditures or expenditures for fictitious activities, so that the entire value of the state expenditure becomes a state financial loss.

The causes used as the basis for using the total loss method are also explained in a case study at BPK by Sumarto and Rahadian (2020). In research using policeman theory, it is concluded that the calculation method used by BPK in the examination of calculating state financial losses is identified as total loss, net loss, real cost, and principal and interest.

Meanwhile, the total loss method is used for the results of work on the procurement of goods / services whose financing comes from the state, in fact, cannot be fully utilized.

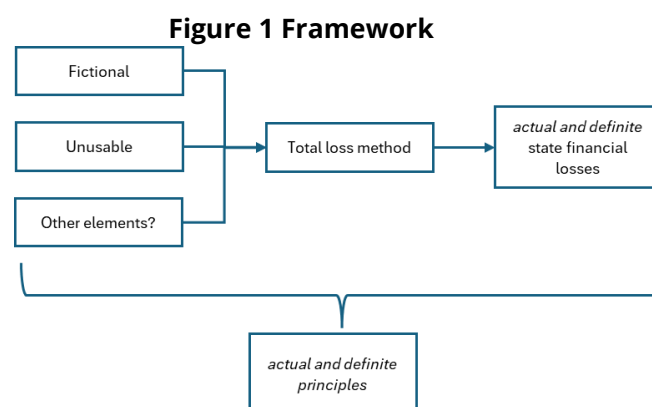
Furthermore, Syahwaluna and Arsyfi (2023) conducted research with the research object of the Deputy for Investigation at BPKP with a multiple case study approach. BPKP also does not have a standardized calculation method. The results identified the methods used by BPKP are total loss, net loss, and real cost. The total loss method is applied by BPKP to cases of fictitious procurement of goods/services and goods that cannot be utilized.

Anwar and Supriyadi (2017) with a case study at BPKP in the form of corruption of District Government grants to KONI, explained that the use of calculation methods is influenced by construction, cases, irregularities, and evidence obtained. In addition, the total loss method is applied because there are fictitious expenses or expenses that have occurred and have been accounted for but the work performance as the basis for these expenses is fictitious. The understanding of the total loss method was also explained by Timur (2021), Lubis et al (2023) and Rusdiana & As'ad (2023). Thus, from these previous studies, it is known that the pattern of calculating state financial losses in the form of the total loss method can be used if it meets the fictitious and useless elements.

This research uses a single case study on the corruption case of tin commodity trading in the mining business license (IUP) area at PT Timah Tbk for 2015-2022, which has been carried out calculating state financial losses by BPKP and has obtained a decision in the form of a decision in the Corruption Court at the Central Jakarta District Court Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst. Based on the gap between previous research and the facts of the PT Timah Tbk case, this research is expected to describe the reasons used as the basis for BPKP auditors in calculating state losses using the total loss method even though it does not meet the elements of fictitious and/or unusable.

The theory used in this research is the principle of actual and definite. Law Number 1 Year 2004 on state treasury Article 1 point 22 "State / Regional Losses are shortages of money, securities, and goods, which are actual and definite in amount as a result of unlawful acts either intentionally or negligently". Furthermore, the Corruption Crime Law Number 31 of 1999 which has been amended by Law Number 20 of 200, in the explanation of Article 32 paragraph (1) states "what is meant by "there has been a actual loss of state finances" is a loss that can be calculated based on the findings of the authorized agency or appointed public accountant". The Constitutional Court Decision No. 25/2016 which eliminates the word "may" from "may harm state finances" has implications for the fulfillment of material offense or actual or real harm to state finances. Siswo (2024) as a state finance expert explained that what is meant by actual and definite is that the value can be measured and is not based on an assumption in calculating the value of the loss.

Thus, the framework for this research can be seen in the following figure.



METHODS

This research is a qualitative study that uses a single case study obtained through secondary data with the aim of exploring and reconstructing “what” and “how” to use the total loss method in calculating state financial losses. In addition, this research uses a best practice approach obtained from informants or sources at BPKP. Informants are BPKP auditors who have experience in state financial loss calculation audits with a minimum of 10 years of experience.

The data collection technique in this study uses in depth interviews and data triangulation which is a combination of observation, interviews and documentation of information from informants in cases handled through state financial loss calculation audits. The data analysis used is thematic analysis. According to Braun & Clarke (2006), thematic analysis is a method to identify, analyze, and report themes/patterns in data. This is done by organizing and explaining the research data grouped by themes/patterns in depth and detail.

RESULTS AND DISCUSSION

This research uses secondary data from the website at www.mahkamahagung.go.id to explore the corruption case of tin commodity trading in the mining business license (IUP) area at PT Timah Tbk 2015-2022. This case has been decided at the Corruption Court at the Central Jakarta District Court, one of which is verdict Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst with the verdict point that there were irregularities that resulted in state financial losses totaling IDR 300 trillion. This decision was appealed, and the Court of Appeal decided to increase the sentence and increase the restitution of the defendant. Thus, it shows that the Panel of Judges already believes that the state financial losses calculated by the Expert have met the actual and definite elements.

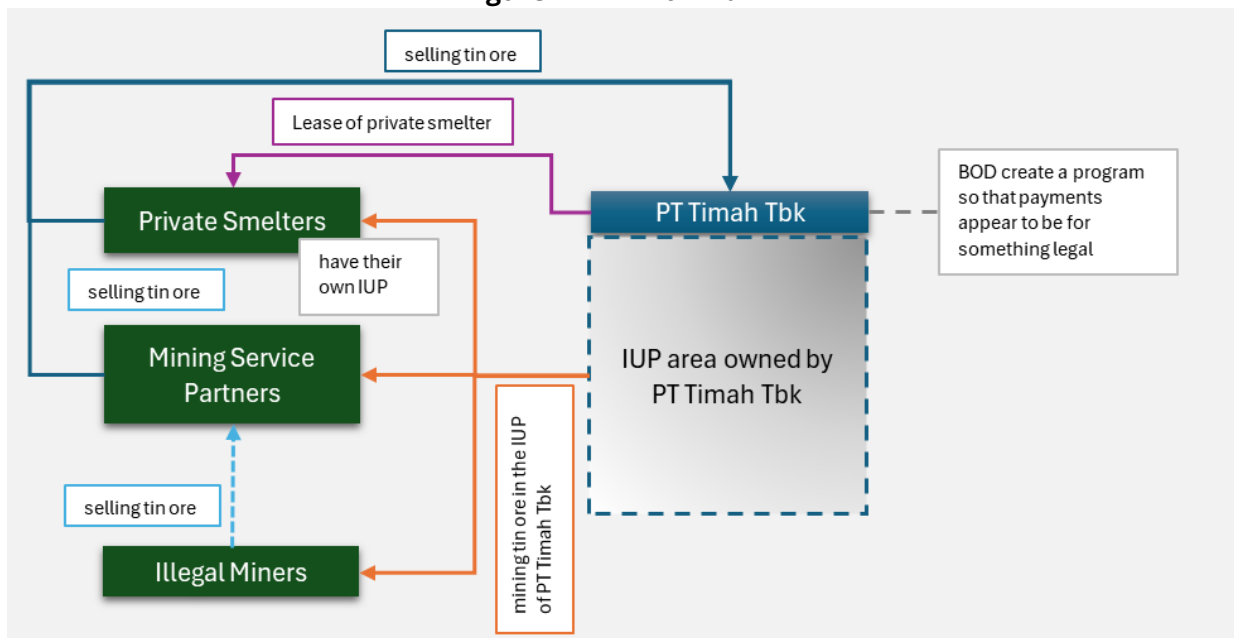
Corruption in PT Timah Tbk is carried out through fraudulent practices or violations of regulations on mining in the Mining Business License Area (IUP) owned by PT Timah Tbk which is carried out by illegal miners and illegal mining service partners, PT Timah Tbk should conduct its own mining in its IUP area. IUP is a government control tool in mining by giving permission to control and mine in a certain area for a certain mineral. Both groups, namely illegal miners and mining service partners, conduct mining in the PT Timah Tbk IUP area, regulations prohibit this, which then sells the tin ore back to the IUP owner. This illegal mining has an impact on environmental damage in the PT Timah Tbk IUP area.

PT Timah Tbk, in this case the board of directors (BOD) is aware of this illegal practice, and even initiated efforts to legalize the practice. This was done with the aim of improving the company's performance through increased production despite no longer conducting land mining of tin ore since 2015. The initiation was carried out through cooperation with the two groups through the residual processing program and the mining service partner cooperation program. Through the wrap program, PT Timah Tbk seeks to legalize payments made for the purchase of illegal tin ore. In fact, the BOD ordered the creation of a standard operational procedure (SOP) that allows the Company to purchase tin ore from various sources with cash payments. In addition, there is also an instruction to the Security Division and Production Unit to secure tin ore from illegal mining in the Company's IUP area. The existence of this instruction is also utilized by the BOD itself by creating a private company as a collector of tin ore from illegal miners which is then sold to PT Timah Tbk. For this purchase, the company has issued financing with sources from bank loans.

Payment for tin ore was made under the scheme of accumulation of mining service fee and proportional production management service fee and over production management service (exclude tax) in 2015. However, in 2016, the payment scheme changed with the purchase of tin ore purchased from miners multiplied by the market price of tin ore at that time. However, the company recorded it as if it was a service business expense as in 2015.

This was done because miners no longer wanted to sell to PT Timah Tbk, but to private collectors/smelters. Sales to private collectors have higher prices and faster payments than sales to PT Timah Tbk. Tin ore sold to PT Timah Tbk has low quality, but is valued high at the current market price. Sales to collectors or private smelters have an impact on PT Timah Tbk's production targets that are not achieved. In fact, this private smelter actually also has an IUP in a certain area and has a Budget Activity Plan, but instead conducts mining in PT Timah Tbk's IUP, for example PT RBT. The ESDM Office does not conduct adequate supervision so that this practice can occur.

Figure 2 PT Timah Tbk



The practice of purchasing illegal tin ore occurs because it begins with several meetings between PT Timah Tbk and private smelter owners. In this meeting, it was agreed that there would be cooperation in purchasing illegal tin ore originating from PT Timah Tbk's IUP and leasing private smelters through a lease contract for salting equipment. The activities that took place eventually had an impact on damage to the mining environment.

The facts of the trial showed that there was an initial critical point of fraud committed jointly between the BOD of PT Timah Tbk, private smelters, mining service partners, illegal miners, and related government agencies. The tipping point occurs at the stages of planning, licensing, mining, cooperation mode, and supervision that should be carried out by government agencies. Fraud that is contrary to this regulation forms a series of facts that strengthen the existence of corruption because it is accompanied by abuse of authority / opportunity by the BOD of PT Timah Tbk and unscrupulous government agencies. Efforts to enrich themselves / others / corporations are also evident from the disclosure of facts and the impact of these actions has harmed state finances.

The series of facts of irregularities is crucial in the audit of calculating state losses. This is used as a basis for consideration in the use of the calculation method. Sumarto and Rahadian (2020), from the analysis of the judge's decision in the tipikor criminal court, it was concluded that unlawful acts had been fulfilled, the responsibility for proof was in the hands of law enforcement, while the auditors had fulfilled the causal relationship between unlawful acts and their impact in the form of state losses. Syahawaluna and Arsyfi (2023) concluded that the determination of the method of calculating state losses is influenced by several things, one of which is the causal relationship between unlawful acts or irregularities and state finances.

Furthermore, informant KR as Auditor of BPKP explained this causality as the main factor underlying the determination of the method. It is necessary to pay attention to the construction of the case and the causality of irregularities with the calculation method. Informant AA as BPK Auditor added that state losses can only be declared if there is evidence of unlawful acts, either intentionally or negligently, which have a direct causal relationship or have causality with the occurrence of state losses. Evidence of unlawful acts also serves to distinguish whether an act committed is still included in the scope of the Business Judgement Rule, or indeed includes fraud, which will affect the conclusion whether the losses incurred are business losses or state losses. Thus, causality or a direct causal relationship between unlawful acts that have an impact on losses to state finances is an important element in determining the calculation method.

In addition to causality, there is a actual and definite principle that must be proven in court in order to fulfill the meaning of state losses as stipulated in the State Treasury Law, namely a real and certain shortage. In this case, auditors who conduct audits of state loss calculations need to pay attention to this principle so that the calculated state losses are indeed losses that have actually occurred and with a definite value. Mubarak and Trisna (2021), the determination of state financial losses in corruption crimes emphasizes actual losses, not potential losses. Syahawaluna and Arsyfi (2023), if the hypothesis of state financial losses can be ascertained to meet the actual and definite elements, only then can a calculation audit be carried out.

Informant AA as a BPK Examiner said that the elements of actual and definite are very necessary, meaning that they really happened and can be calculated, so that they can objectively provide justice and legal certainty for the parties concerned. In the decision 70/Pid.Sus-TPK/2024/PN.Jkt.Pst, Prof. Agus Surono as a Criminal Law Expert explained that actual can be interpreted as a shortage suffered by the state, in this case a shortage in state finances which can then be proven by relevant, reliable and valid state-owned documents. The value resulting from the calculation must be actual not an estimate or potential. Meanwhile, certain is interpreted as a shortage whose amount is certain, not an estimate or assumption, not just an event of money coming in and out but the entire value of transactions recorded as book value and has actually been reduced in a relevant, valid, and reliable manner.

Thus, the actual and definite element is an important thing that needs to be considered before conducting a calculation audit to ensure that an unlawful act or deviation has actually harmed the state by a certain amount. In addition, it is an element that needs to be considered in the implementation of the audit so that the value of state financial losses generated in the audit process has taken into account justice and legal certainty which is useful as a consideration for the decision of the panel of judges in the trial.

In the case of PT Timah Tbk, there are state financial losses originating from 3 clusters, namely private smelter leases, illegal tin ore purchases and environmental damage. State losses in the purchase of illegal tin ore by PT Timah Tbk from illegal mining in its IUP area using the total loss method with a loss value of IDR 26.6 trillion. This method is used by the auditor despite the fact that there is a sale and purchase of tin ore which is then utilized by PT Timah Tbk for its production process.

The tin ore purchased by PT Timah Tbk is used in the production process which then brings benefits to the company in the form of profits from the sale of tin products. The tin ore traded is in fact not fictitious and is utilized in the production process. Tuanakotta (2014), the total loss method is calculated because there are state expenditures or expenditures for fictitious activities, so that the entire value of state expenditures becomes a loss to state finances. Sumarto and Rahadian (2020), the total loss method is used for the results of work on the procurement of goods / services whose financing comes from the state, in fact, cannot be fully utilized. The total loss method is used for fictitious goods / activities and does not provide benefits also stated in the research of Syahwaluna and Arsyfi (2023), Anwar and Supriyadi (2017), Timur (2021), Lubis et al (2023) and Rusdiana & As'ad (2023). Thus, in the case of PT Timah Tbk,

the method of calculating state losses in the purchase of tin beans is not in accordance with previous research because it is not fictitious and has provided benefits.

In this case, the expert on calculating state financial losses still uses the total loss method. Informant GB as an auditor of BPKP, the calculation method used in the tin case is the total loss method even though the elements of fictitious and unusable are not fulfilled. In other words, the case is not fictitious because there is indeed a sale and purchase of tin ore between PT Timah Tbk and private smelters and/or other illegal miners. This purchase is not a fictitious purchase because PT Timah Tbk received the tin ore. It does not fulfill the element of "does not provide benefits" because the tin ore purchased from illegal miners actually provides benefits to PT Timah Tbk, namely as raw material in its production process and generates revenue to PT Timah Tbk. In this case, the total loss method is used because there is an illegal element. There is illegal mining in the IUP area of PT Timah Tbk which is accompanied by formal requirements in the form of a formality RKAB.

Furthermore, Informant FR as the BPKP Auditor explained that in the calculation it is not the purchase of tin beans that is the object, but the value of tin taken illegally in the PT Timah Tbk IUP area, then to find out the value of tin that has been taken illegally it is through the price purchased by PT Timah Tbk. Informant KR as BPKP auditor also explained that fictitious activities can also be the basis for determining the total loss method. Informant ZR as Auditor of BPKP added that the use of the total loss method in PKKN must be supported by providing a description of a series of activities that show the intention of the perpetrators of fraud not only because it is fictitious and / or does not provide benefits, but from the beginning that the criminal act was "intentionally" carried out from the planning process, selection of goods / services providers, implementation to utilization.

Thus, it can be concluded that the basis for determining the method of calculating state losses in this case is the existence of illegal activities in the form of illegal mining activities carried out by partners and other illegal miners in the PT Timah Tbk IUP area.

Munthe (2017) and Sumarto and Rahadian (2020) stated that there is no standardization of the method of calculating state financial losses. Thus, there is a keypoint that becomes a guide in determining methods that have not been standardized. The use of the total loss method in calculating state losses in illegal activities is carried out based on the auditor's professional judgment. This was conveyed by informant KR as Auditor of BPKP, in choosing the method used in calculating state financial losses, auditor judgment is needed by paying attention to the construction of the case and the causality of irregularities with the calculation method.

Related to this case, informant SU as State Financial Calculation Expert explained the consideration of determining the total loss method in the payment of illegal tin beans by PT Timah Tbk that as described in Decision Number 70/Pid. Sus-TPK/2024/PN.Jkt.Pst, the consideration used by the calculation expert from BPKP is a regulation in the form of Article 33 of the 1945 Constitution related to the use of land, water, and natural resources for the prosperity of the people and in the control of the state. So that the modes used by PT Timah Tbk and partners can be said to be contrary to Article 33. Technical expert opinions are also used as material for auditor consideration so that they can provide confidence. The technical experts used are State Administration Law Experts, Criminal Law Experts, State Financial Law Experts, and State Financial Experts.

Furthermore, factors in the form of irregularities and the support of technical experts can support the auditor's confidence to conclude the presence / absence of irregularities that have an impact on state losses. This needs to be paired with professional judgment. Professional judgment greatly influences the right audit conclusion. According to the audit guidelines for calculating state losses, the calculation method is specific and casuistic, so it needs to be developed by the auditor by taking into account the business process and irregularities that occur. Moreover, there is no standardization in the calculation method. Auditors also need to

predicate in order to be sure whether a fraud has occurred or not through testing fraud axioms, namely fraud is hidden and reverse proof.

CONCLUSION

State financial losses in the tin case at PT Timah Tbk have fulfilled the actual and definite elements proven as an impact of an illegal act indicated by the decision of the Panel of Judges at the District Court and the High Court. The calculation method in this tin corruption case uses the total loss method even though the work/goods are not fictitious and can be utilized by PT Timah Tbk. Determination of the method of calculating state financial losses must pay attention to causality or a direct causal relationship between unlawful acts that have an impact on losses to state finances.

The actual and definite elements are also important things that need to be considered both before and during the implementation of the calculation audit. In this case, the determination of the state loss calculation method in this case is the existence of illegal activities in the form of illegal mining activities carried out by partners and other illegal miners in the PT Timah Tbk IUP area. The use of the total loss method in calculating state losses in illegal activities is carried out based on the professional judgment of the auditor which is a keypoint that becomes a guide in determining a method that has not been standardized.

LIMITATION

This qualitative research has limitations because it is only based on a single case study, in this case the corruption case at PT Timah Tbk. This has an impact on the limitations of generalizing the findings. The scope of the study is also affected due to the single case study and the limited use of secondary data. Thus, this research is only contextual and explorative of the corruption case at PT Timah Tbk.

The findings in this study are only one of the inputs in the operationalization of the total loss method. More comprehensive research using multiple case studies is needed to capture all variations in the operationalization of the total loss method. The use of qualitative data analysis software is also needed in the future to obtain more comprehensive research results.

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