ANALYSIS OF FACTORS THAT HAVE IMPLICATIONS ON THE QUALITY OF THE RESULTS OF CALCULATION OF STATE LOSSES AT THE CORRUPTION CRIME COURT (CASE STUDY ON ABC DIRECTORATE)

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ABSTRACT

Handling corruption cases in Indonesia often involves forensic accountants who play a role in calculating state losses. In recent years there has been a phenomenon of rejection of PKN results and the number of PKN results not used in determining state losses. This research aims to analyze factors that caused judges to reject the PKN results and the number of PKN results not used in determining state losses. The research design uses a qualitative approach through document analysis and interviews with practitioners of forensic accountants, construction experts, public prosecutors, forensic accounting experts, and former judges of corruption. The research finds seven factors that have implications for the quality of PKN. Two factors caused judges to reject PKN results, and five factors caused the number of PKN not used in determining state losses. Those two factors, namely: 1) no malicious intent *(mens rea)* in the defendant, and 2) the judges rejected the results of the technical experts underlying the PKN. Those five factors, namely: 1) return to the state/regional treasury, 2) payment of case deposit in the APH holding account, 3) funds disbursed in the implementation of activities, 4) the scope of the loss is limited to the defendant, and 5) the results of technical experts are not accurate. This research also contributes recommendations to improve the quality of PKN so that it becomes a judge's consideration in making decisions and determining the number of state losses. Future research expects to complement the seven factors from current research results.

Keywords: calculation of state losses, corruption, forensic accounting, investigative audit.

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1. INTRODUCTION

The testimony of an expert in court plays a vital role in proving a case (Garrett & Mitchell, 2018). Expert testimony is one of the legal pieces of evidence in handling criminal cases in Indonesia, according to the Criminal Procedure Code (KUHAP). Experts are needed to clarify technical matters that judges cannot solve, so their statements expect to help judges find the substance of the truth (Amarini & Kartikawati, 2020). Criminal case handling often uses many expert witnesses, one of which is corruption. The types of corruption cases handled by Law Enforcement Officials (APH) in the last three years in Indonesia are present in Figure 1 below.
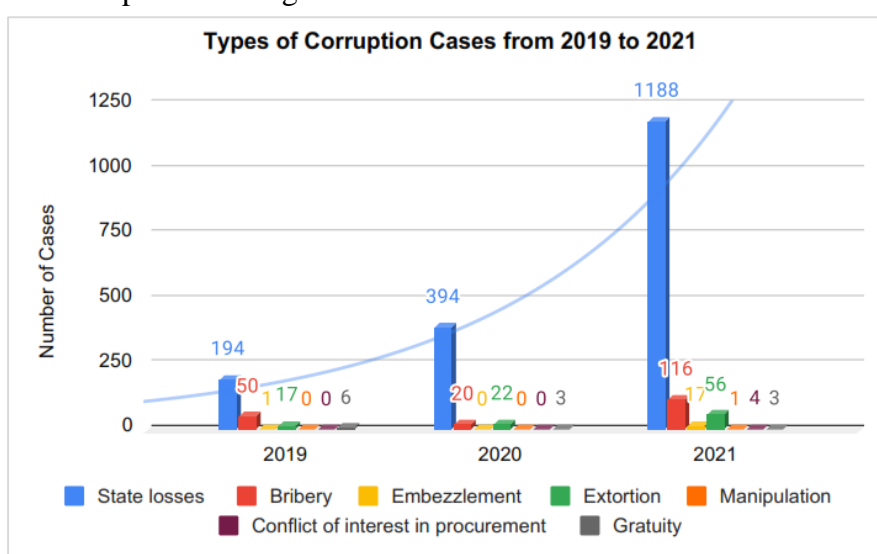

Figure 1. Number of Corruption Cases based on the Indictment for the period 2019 to 2021
Source: ICW, Trends in Prosecution of Corruption Cases 2019, 2020, and 2021 (2022)

Figure 1 above shows that corruption cases in Indonesia in the last three years dominate by types of corruption that have resulted in state losses. State/regional losses are a real and definite lack of money, securities, and goods due to unlawful acts, either intentionally or negligently (Law Number 1 of 2004 concerning State Treasury Article 1 number 22). According to this definition, state losses must be real and definite so that they are not allowed to be in the form of assumptions or estimates. That is why experts with audit capabilities and the calculation of state losses (PKN) are essential in handling corruption cases (Koswara, 2019). In the development of the accounting discipline, we know this kind of expert as a forensic accountant.

Forensic accountants in the implementation of PKN use an investigative audit approach to test the presence or absence of unlawful acts (PMH), malicious intent *(mens rea)*, and abuse of power. Results of the investigative

audit stated in the PKN report, a letter of evidence according to KUHAP that supports the provision of an expert witness at trial (Susanto, 2018). Although the role of forensic accountants is crucial in corruption trials, the PKN report is not the only evidence judges use in deciding cases. The judge will also assess other evidence, such as fact witnesses, letters, clues, and statements from the defendant (Satyawan & Khusna, 2017).

Every profession has its challenges, and forensic accountants are no exception. In recent years, there has been a phenomenon of rampant forensic accountants' results excluded by judges in corruption trials. The judge excluded forensic accountants' results in two forms, namely:

a. *The judge rejected the results of the PKN and gave an acquittal and not guilty sentence.*

In the last three years, there has been an increasing trend of acquittal and not guilty sentences in corruption cases in the courts of the first instance (ICW, 2022), as shown in Figure 2 below.

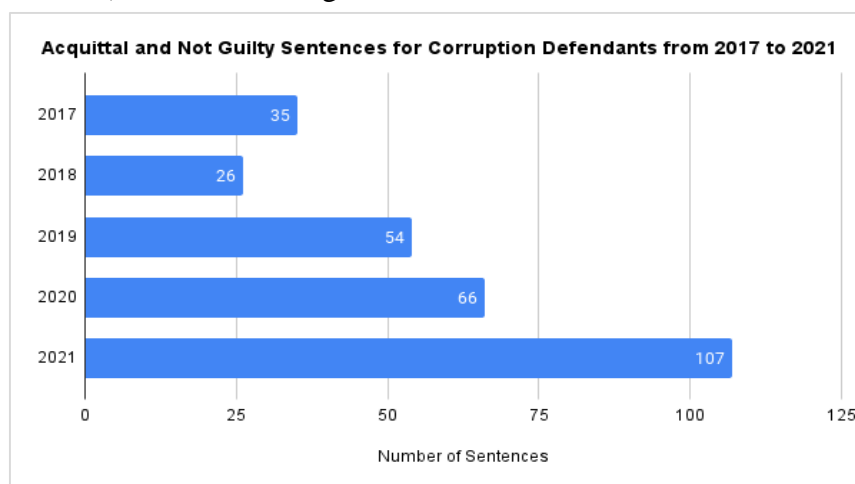**Acquittal and Not Guilty Sentences for Corruption Defendants from 2017 to 2021**

Figure 2. Acquittal and Not Guilty Sentences for Corruption Defendants from 2017 to 2021
Source: ICW, Report on Monitoring Results of Trends in Corruption Sentences 2021 (2022)

Figure 2 above shows that there has been an increase in acquittal and not guilty sentences in the last three years. The acquittal and not guilty sentences in 2021 far exceeded the previous years, with an increase of 41 sentences or 62.12% from 2020. The acquittal and guilty sentences are contrary to the PKN results that convince there was a criminal act of corruption. The acquittal sentence is given by the judge when the court convinces that the defendant's guilt has not been legally and convincingly proven (KUHAP Article 191 paragraph 1). The not guilty sentence is given by the judge when the court convinces that the alleged was legally and convincingly proven. However, the act is not a criminal act (KUHAP Article 191 paragraph 2).

A search of the sentences document (putusan3.mahkamahagung.go.id, 2022) shows that the judge rejected the PKN results issued by various forensic accounting organizations, some of which list in Table 1 below.

Table 1. Acquittal and Not Guilty Sentences in Corruption Cases

No	Sentences Number	Party Conducting PKN (Forensic Accountant)	State Loss of PKN Result (IDR)	Sentences	Judges' Considerations in Imposing Acquittal/Not Guilty Sentences
1.	1555 K/Pid.Sus/ 2019	Audit Board of the Republic of Indonesia (BPK)	4,580,000,000,000,000	Not guilty	The act committed by the defendant is an administrative or procedural error, where the issuance of a Certificate of Settlement is carried out in the context of an office order by applicable regulations.
2.	121 K/Pid.Sus/ 2020	Public Accounting Firm	568,066,000,000	Not guilty	The actions carried out by the defendant were solely a corporate action to increase oil and gas reserves which did not fall outside the realm of the *business judgment rule,* marked by the absence of elements of *fraud.*
3.	2573 K/PID.SUS/2021	Finance and Development Supervisory Agency (BPKP)	66,643,013,678	Acquittal	Considering that the land does not belong to the regional government, the defendant is not proven to have transferred or transferred assets by abusing his authority.
4.	3/Pid.Sus-TPK/2022/PT Amb	Inspectorate	3,823,562,280	Acquittal	The Landrad Sentence (PN Ambon) proves that the defendant has rights and is entitled to receive compensation. These rights grounds eliminate the unlawful nature alleged to the defendant, mainly when the defendant has distributed the compensation money to his extended family.

Table 1 above shows that the judge's consideration in giving an acquittal and not guilty sentence focuses on the unlawful acts (PMH) aspect. The trial facts seem insufficient to prove the PMH committed by the defendant. The judge rejected the PKN results, which concluded that there were irregularities with indications of a criminal act of corruption that make state losses.

b. *Judges do not use the number of PKN results to determine state losses.*

The judge can also exclude the PKN results by not using them as a reference in determining state losses. The judge agreed with the PKN results regarding PMH, but the judge did not agree with the number of state losses. A search of the corruption case sentence document shows at least eight

sentences (putusan3.mahkamahagung.go.id, 2022) that state loss
determination does not refer to the number of PKN results. It shown in Table
2 below.

**Table 2 Sentences Where Judges Determine State Loss Not Using Number of PKN
Results**

No	Sentences	Party Conducting PKN (Forensic Accountant)	Case Description	State Losses of PKN (IDR)	State Losses Determined by Judges (IDR)
1.	70/Pid.Sus-TPK/2016/PN PBR	Inspectorate	Bridge construction	621,357,689	335,402,689
2.	10/Pid.Sus-TPK/2019/PN Srg	Inspectorate	Dam construction	1.887.810.168	2,979,602,511
3.	39/Pid.Sus-TPK/2016/PN PBR	Finance and Development Supervisory Agency (BPKP)	Procurement of hostel land	8,333,476,250	7,033,476,250
4.	9/Pid.Sus-TPK/2018/PN Bna	Finance and Development Supervisory Agency (BPKP)	Procurement of campus land	826,193,810	347,655700
5.	94/Pid.Sus-TPK/2018/PN.Bdg	Finance and Development Supervisory Agency (BPKP)	Providing credit facilities	17.930.000.000	2,861,764,390
6.	1/Pid.Sus-TPK/2020/PN Tte	Finance and Development Supervisory Agency (BPKP)	Village fund management	422.449.046	454.1600.002
7.	18/Pid.Sus-TPK/2017/PN.Kpg	Public Accounting Firm	Bridge construction	685,473,492	347,243,601
8.	51/Pid.Sus-TPK/2017/PN.Jkt.Pst	Audit Board of the Republic of Indonesia (BPK)	Rice procurement	30,141,000,000	4,718,180,000

Table 2 above shows a difference in the number of state losses between
judges and forensic accountants. Judges do not use the number of PKN
results to determine state losses. The non-use of PKN results as a reference
in determining state losses indicates that the number of PKN results is not
entirely accurate. It shows that the value of state losses resulting from PKN
has not met the real and definite elements in the eyes of the law.

That two phenomena made stakeholders criticise the quality of PKN.
Research on the role of forensic accountants as experts in court (expert
witnesses) has been conducted quite a lot outside Indonesia, including research
that discusses the rejection of forensic accountants' statements by judges.
Ricchiute (2004) and Domino (2015) conducted research that explicitly
discusses the rejection of forensic accountants' statements. Quite a few studies
in Indonesia have discussed PKN. However, no one has specifically discussed
the rejection of PKN results and the non-use of PKN numbers in determining

state losses. Previous research in Indonesia has focused on evaluating the PKN method, as did Ali (2018) and Sumarto (2020).

The absence of research in Indonesia that specifically addresses the topic of the rejection of PKN results and the non-use of PKN numbers in determining state losses are the motivations for conducting this research. Another motivation is that the topics can occur in all organisations. The researcher must investigate this topic to optimise forensic accountants' role in handling corruption cases. The research aims to analyse factors that caused judges to reject PKN results and the factors that caused the number of PKN results not used by judges in determining state losses. The research questions are as follows:

1. Why did the corruption judge reject the result of the PKN? What factors are the cause?
2. Why is the number of PKN results not used by the corruption judge in determining state losses? What factors are the cause?

This research expects to contribute to identifying the factors causing the rejection of the results of the PKN and not using the number of the PKN in determining state losses. At the end of the study, recommendations will present to improve the quality of PKN to assist judges in deciding cases and determining the number of state losses.

2. LITERATURE REVIEW

Crumbley (2002) defines forensic accounting as "Simply put, forensic accounting is legally accurate accounting. That is, accounting that is sustainable in some adversarial legal proceedings, or within some judicial or administrative review". A technical guide is needed to explain the Crumbley concept so that it becomes a reference for practitioners. Tuanakotta introduced the *Forensic Accounting Triangle* framework (2010) to help define the meaning of forensic accounting, as presented in Figure 3 below.
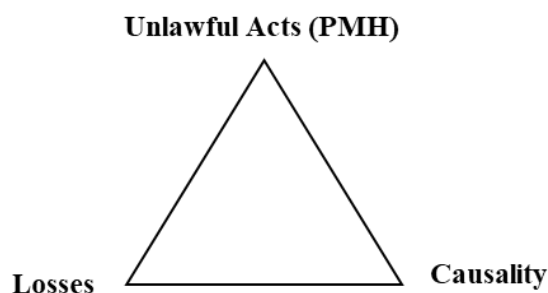
Figure 3. *Forensic Accounting Triangle*
Source: Tuanakotta, Forensic Accounting and Investigative Audit (2010)

Figure 3 above shows that forensic accounting has three elements: Unlawful Acts (PMH), Losses, and Causality. Each element of the *Forensic Accounting Triangle* describes in the discussion below.

2.1. Unlawful Acts (PMH)

The PMH element has to be fulfilled for the defendant to declare a criminal act of corruption. Fulfilment of PMH elements on corruption offences that result in state losses refers to Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU PTPK) Article 2 paragraph (1) and Article 3 (Latif, 2010). There are different views on law enforcement in formulating Article 2 paragraph (1) and Article 3. Some interpret PMH in Article 2 paragraph (1) and Article 3 as against the formal law. In contrast, some interpret PMH as against formal and material law. Against formal law are things contrary to written rules, while against material law is defined as things contrary to the law in force in society or the principle of propriety (Yunus, 2021).

In judicial practice in Indonesia, the Supreme Court (MA) tends to adhere to the teachings of nature against material law. Corruption can be criminalized based on written criminal law provisions and unwritten law according to norms or justice in society (Wibowo, 2015). In addition, judges in Indonesia often face a situation where there is a legal vacuum due to the absence of legal regulations. It has prompted judges to follow the existing jurisprudence. Jurisprudence is new rules overruling the laws and regulations in sentences with permanent legal force (Research and Development Agency for Kumdil Education and Training, Supreme Court, 2013). One often used jurisprudence is the Supreme Court Sentence Number: 42 K/Kr/1966. In this sentence, the Supreme Court believes three conditions cause the loss of the unlawful nature of a crime: the defendant does not benefit, the state does not harm, and the public's interests are served (Yunus, 2021).

2.2. Losses

From a legal perspective, losses must reflect in a real and definite way. Constitutional Court (MK) Sentence Number 25/PUU-XIV/2016 has revoked the phrase "can" in Article 2 paragraph (1) and Article 3 of the PTPK Law. After MK Sentence was issued, the clause "...can harm state finances..." changed to "... harm state finances... ". It has the consequence that state losses must occur

(actual loss) and not in the form of potential or estimates (potential loss). The Court is of the view that the phrase "can" in Article 2 paragraph (1) and Article 3 of the PTPK Law creates legal uncertainty and injustice in eradicating corruption (Fatkhurohman, 2017).

State losses can come from receipts, expenses, assets, and liabilities in REAL Tree's public sector accounting (Tuanakotta, 2018). The four branches of the REAL Tree have different numbers of branches which symbolize the modus operandi of corruption that results in state losses. The REAL Tree concept is present in Figure 4. As presented in Figure 4, the REAL Tree will help forensic accountants identify the source of state losses and determine the appropriate calculation pattern. Although the way of corruption has developed from year to year, the REAL Tree concept is still relevant to use as a reference in mapping the sources of state losses.
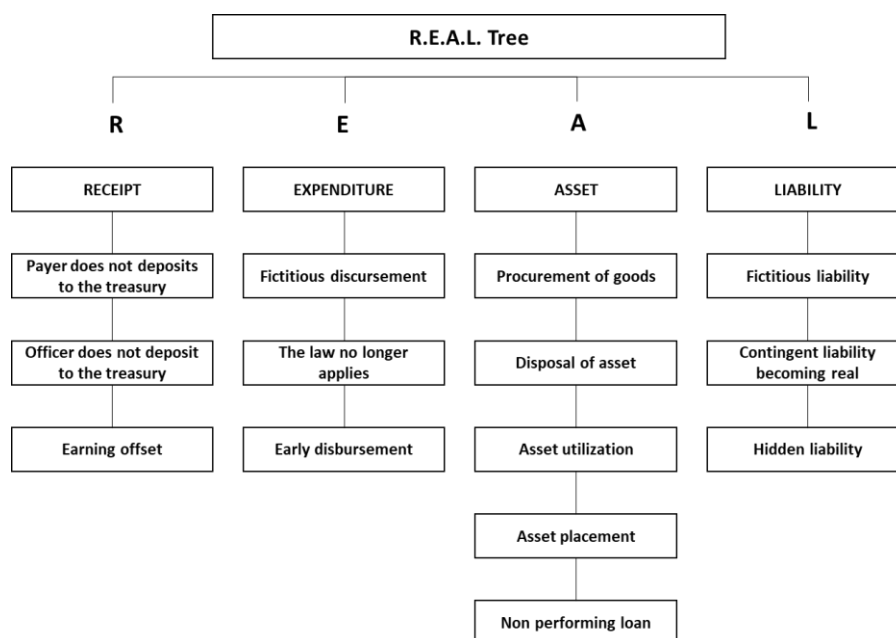

Figure 4 State Losses Tree (REAL Tree)
Source: Tuanakotta, Calculating State Financial Losses in Corruption Crimes, Edition 2 (2018)

Forensic accountants' method of calculating losses must follow the case context they are handling. Calculating losses cannot be uniform because it will eliminate flexibility in handling complex cases (Tuanakotta, 2018). The Supreme Audit Agency (BPK), as one of the forensic accounting institutions, determines the PKN method based on three things: deviations that occur, the availability of sufficient and appropriate evidence, and the work results. The PKN method has followed a particular pattern. The court accepts the PKN method, including Total Loss, Net Loss, Real Cost, and principal plus interest (Sumarto, 2020). The judge will consider the PKN result numbers in

determining the replacement money for the defendant. Although in practice, judges do not always refer to the results of the forensic accountant's PKN in determining substitute money (Ali, 2014).

2.3. Causality

In the context of corruption, two teachings of causality can be applied to understand the case (Sofian, 2018), namely:

a. The teaching of causality, according to Daniel E. Littles (1991)

This teaching emphasizes that all actions must be causality with the resulting consequences. There are two models in this teaching, namely: (1) actions are interconnected with each other (regularly); and (2) actions are not related to each other (irregularly). The first and second models of causality theory according to Daniel E. Littles are presented in Figures 5 and 6 below.
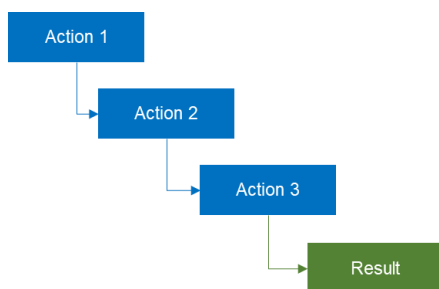

Figure 5. Regular Causality Model
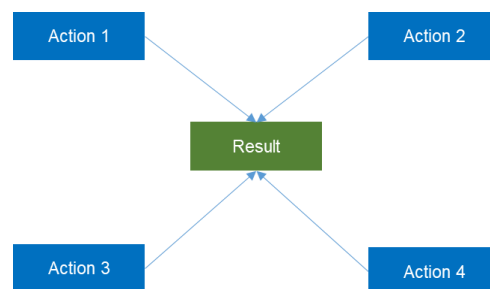Source: Sofian, Teachings of Causality in
Criminal Law (2018)

Figure 6. Irregular Causality Model
Source: Sofian, Teachings of Causality in
Criminal Law (2018)

b. The teaching of causality, according to Hart & Honore (1959)

The approach in this teaching is to look for legal causes, namely any actions classified as PMH. We will first look at all the facts (factual cause) in this teaching. After obtaining the factual cause, the next step is to determine the legal cause according to the context of the case at hand. Not all actions in factual cases can be classified as legal causes. Only acts against the law and correlated with consequences (state losses) are classified as legal causes. According to Hart & Honore's theory, the causality model is presented in Figure 7 below.
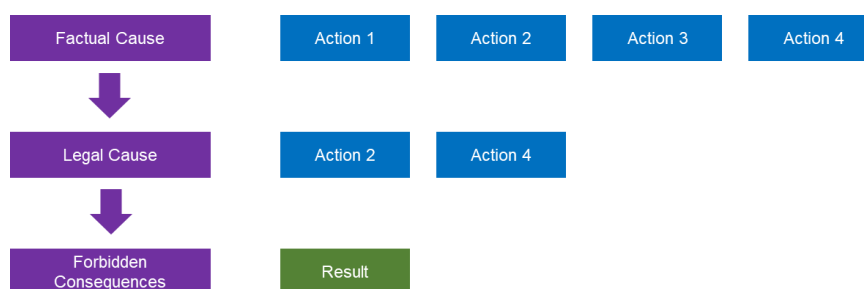
Figure 7. Legal Cause Causality Model
Source: Sofian, Teachings of Causality in Criminal Law (2018)

3. RESEARCH METHODS

The first step in this research is to study the judge's sentences and the forensic accountant's exposure material at the trial. Based on the initial information from the judge's sentences and the exposure material, the researcher conducted interviews with eight forensic accountants to represent each case studied. The interview focused on confirming whether the judge's considerations in the decision document were following the facts of the PKN. Additional interviews were conducted with construction experts and public prosecutors to supplement the information. The results of the first stage of the interview are used as material for analysis to produce research findings. Furthermore, the researcher conducted interviews in stage 2 with a forensic accounting expert and former corruption judge to understand the ideal concept of PKN from an accounting and legal perspective. The results of the interview stage 2 then become the basis for the formulation of conclusions and recommendations. An overview of the research steps presents in Figure 8 below.
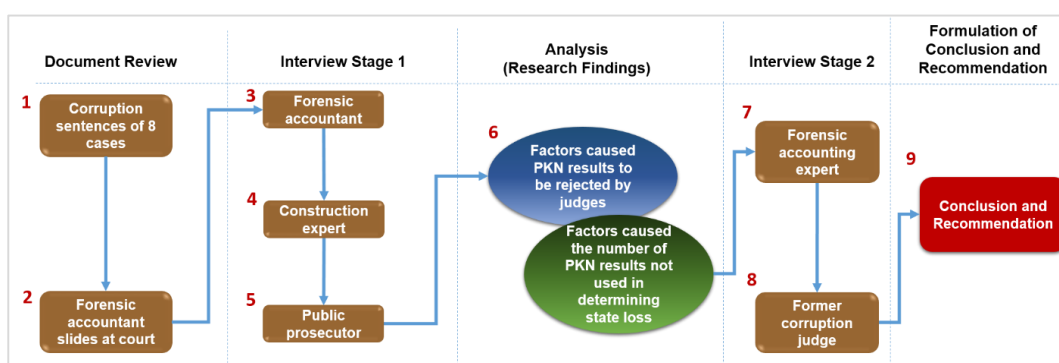

Figure 8. Overview of Research Steps

The interviews were conducted with twelve participants representing five professional categories, as presented in Table 3.

Table 3 List of Research Participants

No	Profession	Number of Participants	Interview Method
1.	Forensic accountant (ABC Directorate)	8	Face to face and *zoom meeting*
2.	Construction expert	1	Phone
3.	Public prosecutor	1	Phone
4.	Forensic accounting expert	1	Phone
5.	Former corruption judge	1	*Zoom meeting*
	Total	12	

The researcher conducts interviews with twelve participants in Table 3 between April and May 2022. The identities of the participants of the ABC Directorate forensic accountants, construction experts, and public prosecutors in this research are disguised. The researcher obtained the consent of the two participants, a forensic accounting expert and a former corruption judge, so their identities were not disguised.

4. ORGANIZATION PROFILE

The ABC Directorate is one of the work units in the state audit institution. The ABC Directorate has the primary task and function to carry out investigative examinations on the management and responsibility of state finances, calculating state/regional losses and providing expert witnesses. The ABC Directorate received PKN requests for corruption cases from APH, namely the Corruption Eradication Commission (KPK), the Indonesian National Police (Polri), and the Republic of Indonesia Attorney's Office. As of December 31, 2021, the ABC Directorate has issued 157 PKN reports at the request of APH and provided expert testimony for 110 corruption cases. The collection of sentence documents revealed two cases where the judge rejected PKN results and six cases where the judge did not use the number of PKN results to determine state losses. The research will analyze factors causing judges rejected PKN results and the number of PKN results not used in that eight cases.

5. RESULT

The analysis of the eight corruption cases shows seven factors that have implications for the quality of PKN. Two factors caused judges to reject PKN results, and five factors caused the number of PKN not used in determining state losses. The seven factors showed in Figure 9 below.
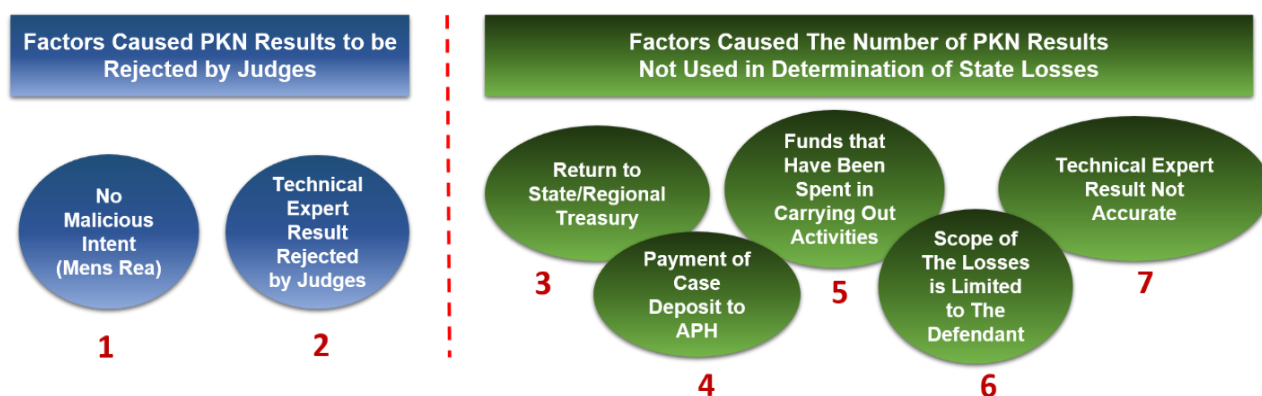
Figure 9. Factors Caused PKN Results to be Rejected by Corruption Court Judges and Number of PKN Results
Not Used in Determination of State Losses

Factors Caused PKN Results to be Rejected by Corruption Judges

Analysis showed that two factors caused judges to reject the PKN result: 1) the absence of malicious intent *(mens rea)*, and 2) the judge's rejection of the technical experts underlying PKN. The discussion of these two factors describes as follows.

5.1. No malicious intent found (mens rea)

The results of the PKN describe the facts and process of events in a case, including the parties involved. Forensic accountants define who the parties involved are after carrying out a series of procedures and obtaining relevant evidence. However, in deciding whether someone is guilty or not, the judge has additional considerations. When the judge judges that the defendant has no malicious intent *(mens rea)* for his actions, the judge can acquit the defendant.

In case 1, the forensic accountant believed that one of the DPRD members was involved in irregularities (PMH) that resulted in state losses. It refers to the fact that there was engineering in preparing grant proposals with the businessman, proof of submission of proposals from applicants, and receipts from local governments. However, after examining all the evidence and testimony from the defendant at trial, the judge decides acquittal sentence. The judge considered that the defendant had no malicious intent *(mens rea)* in order to benefit herself/other people/corporation:

> *"The defendant has no intention or purpose of benefiting herself or another person or corporation […] This can be proven from the efforts made by the Defendant against the witness […] to cancel 6 (six) proposals […]"* (Case 1 sentence)

The forensic accountant who handled case 1 explained that the testimony of the defendant at the trial was different from the facts of PKN:

"So I can say that at the time of our investigation, we did not find any facts [...] there was an attempt to cancel the proposal. [...] our source documents are letters of delivery and receipt by the government" (Forensic Accountant 1)

From a forensic accounting perspective, proving the element of malicious intent *(mens rea)* is beyond the control of the forensic accountant:

" [...] an investigator does not need to go there. [...] investigators simply present facts and evidence to help judges conclude" (Director of the Center for Forensic Accounting Studies, Islamic University of Indonesia)

From a legal perspective, malicious intent *(mens rea)* is crucial in proving corruption cases, and this is the authority of the judge:

"That is the main element. [...] if as a judge it is instinct to speak, he can see from the process of the case in question whether there is a mens rea or not [...] Therefore I do not think it is the auditor's domain" (*Ad Hoc* Anti-Corruption Court Judge for the period 2007 to 2021)

This finding aligns with Kharismadohan's (2020) research, where judges will consider two things in making sentences: juridical and non-juridical considerations. One of the judge's non-juridical considerations is the perpetrator's malicious intention *(mens rea).*

5.2. *The judge rejected the result of the technical expert that underlies the PKN conclusion.*

Forensic accountants seek the assistance of technical experts when dealing with technical matters, such as construction work, machine manufacturing, or procurement of information systems. The testing results of technical experts become a reference for forensic accountants in drawing conclusions and determining the PKN method. When the judge rejects the results of the technical experts, it will also impact the rejection of the results of the PKN.

In case 2, the forensic accountant handled a case related to a building construction planning consultant. A forensic accountant enlists the help of geotechnical and construction experts to examine the planning consultant's final report. The examination results concluded that the final report was not feasible, invalid, and could not use as a reference in implementing construction activities. That result becomes a basis for forensic accountants to use the total loss method in calculating state losses. When presented in court, the judge rejected the result of the geotechnical and construction expert and believed there was no state loss:

> *" [...] the physical construction has been carried out by the contractor, [...] Therefore, the calculation of state financial losses using the total lost method is not appropriate and cannot be considered "* (Case 2 sentence)

The forensic accountant who became an expert at the trial of case 2 explained that the consideration of using the total loss method refers to the result of technical experts:

> *" [...] whether we like it or not, we will depend on other expert reports. [...] If other experts cannot convince (the judge), our report will also be affected"* (Forensic Accountant 2)

From a forensic accounting perspective, forensic accountants do not have the competency to assess the work of technical experts:

> *"[...] If we evaluate the work of the experts who are asked to help, maybe individually, we cannot [...] if we talk about theory, it means we cross-check with other experts"* (Director of the Center for Forensic Accounting Studies, Islamic University of Indonesia)

From a legal perspective, PKN results must be accurate to help the judge decide the case:

> *"So the more accurate the calculations (forensic accountants) are, the better. [...] for example, the calculation of building construction. [...] So those who count are people whose jobs are specifically for that"* (*Ad Hoc* Anti-Corruption Court Judge for the period 2007 to 2021)

The case was in the cassation process when the researcher conducted this research. Until the end of the research, the cassation sentence was not yet available on the Supreme Court's sentence directory page.

The findings of this study broadly support the results of previous research (Maharani, 2018). It says that if the process of proving a crime requires many opinions from experts, the judge must make an assessment and have arguments in accepting or rejecting expert testimony. In addition, expert testimony must be based on reliable science and supported by scientific explanations tested to be accepted by the jury or judge (Giocoli, 2020).

Factors That Cause the Number of PKN Results Not Used in Determining State Loss

The analysis shows that the five factors that cause judges not to use the value of PKN in determining losses are: 1) return to the state/regional treasury, 2) payment of case deposit in the APH holding account, 3) funds disbursed in the implementation of activities, 4) the scope of the loss is limited to the defendant, and 5) the results of technical experts are not accurate. The discussion of these five factors describes as follows.

5.3. Return to state/regional treasury

Based on Law Number 1 of 2004 concerning State Treasury Article 1 number 22, when PMH has occurred, then state losses have arisen. It makes forensic accountants present the number of state losses equal to total state expenditures (total loss method) or expenses that should not spend (real cost method). However, the judge held the opposite view. The existence of a return to the state/regional treasury is a fact that relieves the defendant so that the number compensates for the state losses incurred. It makes state losses determined by the judge not to use the number of PKN results.

In case 3, the number of PKN results is Rp. 100,000,000,000.00 (total loss method) while the judge determines the state loss is Rp. 30,582,536,065.32 after considering the return to the regional treasury. In case 4, the number of PKN results is Rp. 18,405,000,000.00 (total loss method) while the judge determines the state loss is Rp. 4,943,662,200.00 after considering several items, one of which is the return to the regional treasury. In case 5, the number of PKN results is Rp. 1,714,067,500.00 (real cost method) while the judge determines the state loss is Rp. 528,090,000.00 after considering the return to the regional treasury.

The forensic accountant who became an expert at the trial on case 4 also emphasized that the return to the state/regional treasury did not affect the state losses that had occurred:

> *"[…] the title is just a 'refund'. How much is the loss? its loss in the initial position, at the time of the money spent."* (Forensic Accountant 4)

Regarding returns to the state/regional treasury, forensic accounting experts emphasize the importance of forensic accountants complying with PKN standards:

> " *[…] if from the forensic facts the standard is a total loss, it means total loss […] because if […] the investigator then deviates from that standard […] we will leave a gap later to be attacked […] that it is not appropriate with standards* " (Director of the Center for Forensic Accounting Studies, Islamic University of Indonesia)

From the perspective of the former judge, the return to the state/regional treasury took into consideration in determining the penalty for replacement money:

> *"[…] the state's financial loss is an additional penalty that must be returned by the defendant, the amount of which is compensated with the amount he has deposited. […] "* (*Ad Hoc* Anti-Corruption Court Judge for the period 2007 to 2021)

5.4. Payment of case deposit to APH

Similar to the third factor (return to the regional treasury), the judge also considers case deposit money as an element to reduce the number of state losses. Case deposit money is a return made by the defendant to the APH holding account. Unlike the third factor, case deposit money has not been deposited into the state/regional treasury. In case 4, the number of PKN results is Rp. 18,405,000,000.00 (total loss method) while the judge determines the state loss of Rp. 4,943,662,200.00 after considering several items, one of which is the payment of case deposit money.

The forensic accountant, the expert witness on case 4, explained that the payment of case deposit money was made after the PKN report was published.:

> *"[…] the facts […] there are some that are (in the report) […]. There was someone after (the report was published) […] if the information was indeed the confiscated money […] was taken into consideration (the judge)"* (Forensic Accountant 4)

For law enforcers, the money deposited by the defendant is one the evidence in handling corruption cases:

> *" […] is used to prove (case) […] if we deposit it directly to the treasury (regional treasury) […] the money that has been entered into the treasury can not be withdrawn again"* (Public Prosecutor)

From a forensic accounting perspective, as previously described, forensic accountants must comply with established standards of PKN. So the *case deposit money* does not reduce the number of PKN results. From a legal perspective, the *case deposit money* will affect the number of the replacement punishment:

> *" In certain cases, the defendant has already deposited it with the prosecutor concerned. […] It will be written in the sentence […]"* (*Ad Hoc* Anti-Corruption Court Judge for the period 2007 to 2021)

5.5. *Funds disbursed in the implementation of activities*

As the third factor (return to the regional treasury) and the fourth factor (payment of case deposits to the APH), the judge also considers funds spent on implementing activities as an element in reducing the number of state losses. In case 4, the number of PKN results is Rp. 18,405,000,000.00 (total loss method) while the judge determines the state loss is Rp. 4,943,662,200.00 after considering several items, one of which is the cost of buying land and building construction by the grantee:

> *" […] So that the total amount of state financial losses that must be returned […] is deducted by the costs used for the physical construction of buildings and the purchase of land […]"* (Case 4 sentence)

The forensic accountant, the expert witness in case 4, explained that the construction of the building was not completed:

> "[…] there is a building erected on the suspect's land. […] built a building there, but the building was not finished. […] We have stated the facts there […] Maybe it will be a consideration from the judge […]"
> (Forensic Accountant 4)

In case 6, the value of the PKN result is Rp. 1,514,993,578.00 while the judge determined the state loss of Rp. 882,493,578.00 after considering the cost of purchasing the machine and its supporting components:

> "Considering that if the machinery and other goods that have been purchased […] must be handed over to the Government […], then the price of the machinery and other equipment must be deducted from the state losses." (Case 6 sentence)

The forensic accountant who became an expert at the trial of case 6 stated that the consideration of the cost of buying a machine as a deduction from the PKN result numbers was the judge's authority:

> " […] the item was not in accordance with the purpose of procurement. Therefore that's why the total loss. […] However, there is a separate authority from the panel of judges […] including perhaps considering mitigating factors for the accused […]" (Forensic Accountant 6)

From a forensic accounting perspective, as previously described, forensic accountants must comply with established standards of PKN. Suppose a forensic accountant uses the total loss method. In that case, the funds spent on activities cannot be used as an element to reduce state losses. Former judges also have a similar view:

> "The capital that he has spent […] but he has committed an act or act against the law […] it is not counted. […] this is all subjective, right? I do not know about the other panel of judges" (Ad Hoc Anti-Corruption Court Judge for the period 2007 to 2021)

Based on the description above, we know that the former judge participant has different views from the panel of judges in cases 4 and 6. In cases 4 and 6, the panel of judges consider the funds spend on activities as an element in reducing the number of state losses. The former judge participant has stated that this is his opinion subjectively so that other judges may have different views from him.

5.6. The scope of state losses is limited to the defendant.

In PKN, forensic accountants calculate state losses in a case as a whole. Actions taken by the parties involved in PMH caused the state losses. In

handling investigations and prosecutions, it may not be possible for all parties involved to propose as defendants. In case 7, related to cash management at the expense treasurer, the forensic accountant calculated a state loss of Rp 5,698,732,336.00 (real cost method). This number is the total state loss on managing operational expenditures involving all parties. The defendants brought in this case are the treasurer of expenditure and treasurer of assistant expenditure. Because not all parties proposed as defendants, the judge determined a state loss of Rp. 4,100,211,518.00, referring to the shortfall in the remaining cash, which was the defendant's responsibility:

> " [...] against the financial management, which is the responsibility of the defendant [...] the unused/absorbed money that must be returned to the Regional Treasury [...] amounting to IDR 4,100,211,518.00" (Case 7 sentence)

Regarding the determination of state losses based on the scope of the defendant's responsibility, the forensic accountant who handles case 7 respects the judges:

> "[...] the KN (state loss) calculation that we do is the state loss that arises from the whole process of managing expenditure. [...] so we do not separate the state losses according to the related parties [...] " (Forensic Accountant 7)

From a forensic accounting perspective, forensic accounting experts can understand the judge's consideration in case 7:

> "If I were the judge, maybe yes. [...] because what is proposed is only the treasurer [...] If the judge has to expand it to others, he doesn't have a basis for facts and evidence" (Director of the Center for Forensic Accounting Studies, Islamic University of Indonesia)

From a legal perspective, in line with the above, the judges cannot impose a sentence on someone for something they did not do:

> "[...] can't we also burden someone, punish someone, for things he did not do right ? That is a cruel name. That tyrant. That is not true either." (Ad Hoc Anti-Corruption Court Judge for the period 2007 to 2021)

5.7. The result of the technical expert that underlies the PKN are not accurate

In case 8, the forensic accountant handled a case related to the construction of a soil pile road. The construction project was completed in 2015, and the technical expert test was carried out in 2021. The results of the technical expert test found that there was a lack of volume for the work. Forensic accountants calculate state losses of Rp. 114,594,000,180.83 (net loss method)

referring to the results of the technical expert. However, the judge believed that the results of the technical expert's work were inaccurate. Considering that the work is in the form of a soil pile, the judge assessed that the road conditions in 2021 (when physical testing was carried out) were not the same as in 2015 (when the handover of the work was complete):

> " [...] with a span of 5 (five) years, of course, the road conditions were not the same as when the project was handed over in 2015. [...] road conditions have undergone many changes, such as erosion, abrasion, and the decline/shrinkage due to being passed by heavy vehicles" (Case 8 sentence)

Regarding the number of the PKN results not used to determine the state losses, the forensic accountant handling case 8 respects the judge's s sentence:

> "[...] he might think that our calculations do not reflect the actual conditions [...]" (Forensic Accountant 8)

The technical expert used by the forensic accountant in case 8 explained that land subsidence would not occur. It considers that there is geotextile and the soil condition are compacted:

> "[...] (soil) can't go anywhere, because it's already covered by geotextile [...] That's why geotextile is installed there, so it doesn't mix with the landfill. [...] can (span of five years) affect, but it is very unlikely (probable) because the soil is compacted" (Construction Expert)

From a forensic accounting perspective, forensic accounting experts can understand the judge's consideration in case 8:

> "That is a bit of a dilemma. [...] The judge must find the best logic to see this case." (Director of the Center for Forensic Accounting Studies, Islamic University of Indonesia)

From a legal perspective, as previously described on the second factor, PKN results must be accurate to help the judge decide. The case was in the cassation process when the researcher conducted this research. Until the end of the study, the cassation sentence was not yet available on the Supreme Court's sentence directory page.

The five factors that caused the number of PKN results not to be used in determining state losses above broadly strengthen the results of Ali's research (2014). It says that the determination of state losses for criminal compensation does not entirely refer to the PKN method of forensic accountants. In several sentences, judges have their considerations in determining state losses which are the basis for imposition of substitute money.

6. DISCUSSION

The judge's rejection of the results of PKN showed that all *Forensic Accounting Triangle* elements were not fulfilled. In research conducted by Sumarto (2020), it is known that the judge gave an acquittal sentence, among others, because there was no PMH element in the defendant. Hart & Honore's (1959) teaching of causality only acts against the law and correlated with consequences (state losses) are classified as legal causes. In case 1, the judge assessed that the defendant's actions could not be classified as a legal cause because there was no malicious intent *(mens rea)*. As for case 2, the judge assessed that the results of the planning work had met the technical requirements so that PMH did not occur. The non-fulfillment of the PMH element impacts the non-fulfillment of two other elements in the *Forensic Accounting Triangle*, namely loss and causality.

In cases 5 and 7, all elements of the *Forensic Accounting Triangle* were fulfilled. The difference between judges and forensic accountants is more because the judge adapts to current conditions and the case's context. In case 5, the judge adjusted the number of state losses based on the current condition in the form of the last position of the money that the defendant had not returned until the verdict was read. As for case 7, the judge adjusted the loss number based on the scope of state financial management, which was the defendant's responsibility, by taking some of the information from the PKN report.

In cases 3, 4, 6, and 8, the element of loss in the *Forensic Accounting Triangle* was not fulfilled because the judge disagreed with the PKN method. In case 3, the judge considered the return to the regional treasury carried out by the related parties to reduce the number of state losses resulting from the total loss method. In case 4, the judge considered funds spent on land acquisition costs and building construction as a deducting element. In case 6, the judge considered the cost of purchasing the machine and its supporting components as a deducting element. Furthermore, in case 8, the testing results of technical experts that underlie the net loss method were deemed inaccurate.

7. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Based on the analysis and discussion above, the researcher can conclude seven factors that have implications for the quality of PKN. Two factors caused judges to reject PKN, namely: 1) no malicious intent *(mens rea)* in the

defendant, and 2) the judges rejected the results of the technical experts underlying the PKN. The judge to reject the PKN result indicates that it is not fulfilling the Unlawful Acts (PMH) element in the *Forensic Accounting Triangle* framework. Five factors caused the number of PKN results not used in determining state losses, namely: 1) returns to the state/regional treasury, 2) payment of case deposit in the APH holding account, 3) funds disbursed in the implementation of activities, 4) the scope of the loss is limited to the defendant, and 5) the results of technical experts are not accurate. The number of PKN results not used in determining state losses indicates that it is not fulfilling the Losses element in the *Forensic Accounting Triangle* framework.

Limitations

This research has limitations where researchers cannot conduct interviews with all forensic accountants who are experts at the trial due to mutations and promotion. In addition, not all sentences were uploaded on the Supreme Court website, so the analysis is limited to the available sentence documents. Researchers could also not conduct interviews with judges who decided the eight cases that were the object of research. It is because there is a code of ethics for judges regulated in the Joint Regulations of the Supreme Court and the Judicial Commission Number 02/PB/MA/IX/2012 and 02/PB/P.KY /09/2012.

Implications and Recommendations

This research implies that forensic accountants must consider the legal perspective in publishing the PKN results so the judge can accept them at a corruption trial. Recommendations for forensic accountants are :

a. Prepare undeniable key evidence for the occurrence of fraud, for example, communication evidence that shows there was a conspiracy between the parties.

b. Need to seek a second opinion from other technical experts to corroborate the results of the PKN.

c. Should present the return number to the state/regional treasury as additional information, so it will be the judges' consideration to determine state losses.

d. Should present the case deposit money as additional information, so it will be the judges' consideration to determine state losses.

e. May use other PKN methods (e.g., real cost or net loss) if the judge does not accept the total loss method in court. However, suppose a forensic accountant believes that the appropriate PKN method is a total loss. In that case, PKN has to present the loss number based on the money spent.

f. Need to confirm that PKN carries out to calculate losses for a case as a whole. Determining the parties as a defendant is uncontrollable, considering that the authority lies with the law enforcer.

g. Must seek a second opinion from other technical experts and establish coordination with other professional associations.

Future Research Recommendations

Further research can be carried out at other institutions or working units, considering many organizations can carry out PKN. Thus, the entire research series can produce a catalogue or directory, causing the rejection of the PKN results and the non-use of the number of PKN results in determining state losses. It will be a valuable contribution to developing forensic accounting science for academics, practitioners, law enforcers, and judges handling corruption cases.

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