

GRATIFICATION; CORRUPTION, REGIONAL LEADER, AND STATE FINANCIAL LOSS

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1 GRATIFICATION; CORRUPTION, REGIONAL LEADER, AND STATE FINANCIAL LOSS

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1 ABSTRACT

Corruption is an extraordinary crime because it is committed by state officials, which has an enormous impact on the state's losses. This also happened in Lampung Province; throughout 2017-2020, five regional heads (regents) were trapped. The regional leader who committed the act of corruption was dominated by gratification in which the pattern and mechanism used were almost the same, namely the receipt of project fees. The form of revenue for the fee mode is challenging to detect and prove because the receiving process tends to be complicated, involves many parties, and impacts huge state losses. Therefore, this article will comprehensively analyze the acts of corruption in Lampung Province, the patterns and mechanisms that regional heads use, and an assessment of the incurred state losses. So to analyze it, a normative approach will be used based on relevant legal materials.

Keywords: Corruption, Gratification, Financial Loss.

INTRODUCTION

Corruption, which is a form of economic crime, continues to experience developments in terms of cases that occur, regulatory reforms, to new efforts to eradicate actions that have caused losses to state finances. The form of state losses incurred can be seen in the Corruption Eradication Commission (KPK). In the first semester of 2019, it has reached IDR 2.13 trillion (Yuniar, 2020). The enormous financial losses were further exacerbated by the decline in the Corruption Perception Index (CPI), based on a survey from Transparency International (TI) Indonesia, which is ranked 102 out of 180 countries with a total score of 37 (International, n.d.). Several factors cause a decline in the quality of the description of corruption in Indonesia and the increase in corruption cases committed by state officials and corporations.

The number of corruption cases, which always increases every year, cannot be denied. It also occurs in Lampung Province, which is already in the eighth rank as the province with the highest corruption rate in Indonesia (Wawainews, 2020). This condition is evidenced by Operation Capture Hand (OTT) on five regional leaders at once in the 2017-2020 period (Rachman, 2019). The regional leader who was included as the perpetrator of the corruption crime for four years, among others, was related to bribery by Bambang Kurniawan as the former Regent of Tanggamus Regency, and Khamami as the former Regent of Mesuji Regency. Besides, there are also gratification cases by Zainudin Hasan as the former Regent of South Lampung Regency, Agung Ilmu Mangkunegara as the former Regent of North Lampung

Regency, and Mustafa as the former Regent of Central Lampung Regency that the case is still ongoing until 2021.

Based on the cases committed by the five regional leaders of Lampung Province, most criminal acts of corruption were related to gratification. This indicates that gratification has developed widely. The cases that occur have a specific pattern, so that it is indeed difficult to detect (Nazifah, 2019, p. 50). Moreover, gratification is also a unique and relatively new crime. Gratuities, which are generally a form of receiving gifts or facilities, are carried out by the regional leader and carried out by the private and civil servants (PNS) (Mauliddar, 2017, pp. 159–160). It also raises concerns about the dynamics of corruption cases in Lampung Province so that more massive eradication efforts are needed.

The rise of civil servants and state officials who commit crimes of gratification, especially in Lampung Province, is influenced by several factors. First, concerning the very minimal integrity of civil servants and state administrators, even though they know that receiving gifts or facilities other than basic salary and allowances is a form of gratification, these recipient parties are reluctant to report it to the KPK. This condition creates a culture in the government bureaucracy. **Or** in other words, gratification is considered a natural act. Second, related to gratification, **which has an impact on substantial state losses, this** is what causes economic development in Lampung Province to be hampered. As a result, of course, the community's welfare has been disrupted, and poverty has even widened.

Based on the problems of the crime of gratification that occurred in Lampung Province, it raises the first few questions, how is the development of the corruption crime by the regional head in Lampung Province? Second, what do regional leaders use the pattern or mechanism in committing corruption crimes? And third, how is the evidence of state losses and compensation money for the three regional heads in Lampung Province? To answer these three problem formulations, the author will explain them in detail through a normative approach: books, laws and regulations, court decisions, journals, electronic news, and author observations at the Tanjung Karang District Court in Bandar Lampung.

LITERATURE REVIEW

Corruption Theory

The theory of corruption, according to Robert Klitgaard, is often referred to as CDMA Theory. According to this theory, crime occurs due to power and monopoly factors that are not accompanied by accountability (Spora, 2015, p. 5). The broader definition states that corruption is a monopoly of power by the leadership (monopoly of power) coupled with the amount of power held (discretion of official) and without adequate supervision (minus accountability); this is a driving force for corruption. **The** driving factor is also supported by the change in the government system from centralized to regional autonomy, which has shifted corrupt practices that were previously only dominated by the central government (at that time, the power rests with the central government) to become widespread in the regions (because regional autonomy has given strength to leaders in the area). This is in line with Klitgaard's theory that corruption follows power (Waluyo, 2018).

Gratification

According to an extensive legal dictionary, Gratification comes from the Dutch language, namely Gratificatie or in English, namely Gratification, which means the gift of money—having the view that KBBI defines Gratification as giving cash prizes to employees outside the stipulated salary. In the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Crime in the elucidation chapter of Article 12 B paragraph (1), it is explained that Gratification is defined as giving in a broad sense, which includes the provision of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, free medical treatment, and other facilities, both domestic and foreign, using electronic and non-electronic means (Gandes Candra Kirana, 2018).

State Losses

The definition of state / regional losses based on article 1, number 15 of Law Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia (BPK) is a real and definite shortage of money, securities, and goods due to acts against the law, whether intentionally or negligently. Then, through article 32, paragraph (1) of the Law on Corruption, it is stated that what is meant by real state losses are state losses that can already be calculated based on the findings of the authorized agency or designated public accounts. The notion of state loss is also found in the doctrine, namely the opinion of Lilik Mulyadi, which states that an act of loss can simply be described as an act that causes loss or becomes reduced so that the element of "detrimental to state finances" is interpreted as a loss to state finances or a reduction in state finances (Damanik, 2016, p. 5).

Replacement Money

Replacement money was known in 1960 through Government Regulations Replace law number 24 of 1960 concerning Investigation, Prosecution, and Examination of Corruption, namely in Article 16 paragraph (3), that the convicted person may also be required to pay replacement money which is the same amount as property obtained from corruption. After Government Regulations Replace Law Number 24 of 1960 was replaced by Law Number 3 of 1971, the provisions regarding replacement money were still regulated by the same formula, namely in Article 34 paragraph (3). Likewise, in the Corruption Crime Law, the provision of replacement money is held in Article 18 paragraph (1) letter b. Article 18 paragraph (1) letter b, the regulation states that the payment of replacement money is as large as possible the assets obtained from the criminal act of corruption.

RESULT AND DISCUSSION

Development of Corruption Crime by Regional Leaders in Lampung Province

The implementation of regional government affairs to achieve inclusive public welfare is very much influenced by a regional leader's position. Besides leading the way in regional government affairs, regional leaders must also maintain order and order in society (Indoesia, 2009, p. article 65 section 1). Apart from that, specifically, the regional leader is also in charge of drafting and filing Regional Regulations (Perda) and representing the region regarding matters inside or outside the court (Indoesia, 2009, p. article 65 section 1). Of course, these duties are

also complemented by the authority they have; this includes the submission and stipulation of regional regulations, making decisions, making specific policies, and implementing other powers by statutory regulations (Indoesia, 2009, p. article 65 section 2).

Every task and authority towards the regional leader is what creates exclusivity related to power and policy. This condition creates vulnerability for regional leaders to take actions against the law and an abuse of power; one of them is the criminal act of corruption. When referring to corruption's origin, corruption is caused by a monopoly of power and discretion of officials, which arise without accountability (Sabputra, 2015, p. 9). This means that the regional leader has full authority in regulating regional government affairs through specific policies, especially since enacting the principle of provincial autonomy given by the central government to manage independently related to regional affairs in his power (Hartanti, 2005, p. 17). This can be an excellent opportunity for regional leaders to seek profit if there is no high ethical principle of responsibility from their self.

The big opportunity for regional leaders to commit acts of corruption, of course, is evident on a massive scale in Indonesia. For example, we can see that Lampung Province is currently in the third rank as the most corrupt province in Sumatra (Wawai news, 2020). Based on the recapitulation of the KPK, Lampung Province has contributed significantly to all cases of corruption by the end of 2019 (current year data), in quantity reaching 127 cases out of a total of 4,812 cases (Corruption Eradication Commission (KPK), 2019). Seeing the large number of cases related to corruption in Lampung Province shows that the bureaucratic system is very concerned, especially when five regents caught in corruption cases are vulnerable within four years (2017-2020). The five regents include:(Rachman, 2019)

1. Bambang Kurniawan, the former Regent of Tanggamus, based on Decision No.16/Pid.Sus-TPK/2017/PN TJK was proven to have committed bribery (Indonesia, n.d.-a).
2. Khamami, the former Regent of Mesuji, was proven guilty of bribery based on the trial on 15 August 2019 at the Tanjung Karang District Court (Kumparan, 2019).
3. Zainuddin Hasan, the former Regent of South Lampung, based on Decision No. 43/Pid.Sus-TPK/2018/PN TJK proved to have received gratification (Indonesia, 2020).
4. Agung Ilmu Mangkunegara, the former Regent of North Lampung, based on Decision No.6/Pid.Sus-TPK/2020/PN TJK.The proven to have received gratification (Indonesia, n.d.-b).
5. Mustafa, the former Regent of Central Lampung, based on Decision No.1 / Pid.Sus-TPK / 2021 / PN TJK was proven to have received gratification (Indonesia, 2021).

Based on the five cases above, the most cases committed by regional heads during 2017-2019 were gratuities. Although this type of offense is the latest offense regulated in the Law on Corruption Crime, many regional heads have been caught in connection with gratification. Gratification is even considered to be the root of other criminal acts of corruption because it occurs in very detailed, complex, and related patterns or ways. In addition, gratuities also have implications for state losses which are considered to be very large, this is evidenced by real state losses from regional heads in Lampung province.

Patterns or Mechanisms Used By Regional Leaders in Committing The Crime Of Gratification

The crime of gratification indeed dominated the cases that ensnared regional leaders in Lampung Province during 2017-2020. The gratuity itself is the giving of money, goods, rebates (discounts), interest-free loan commissions, travel tickets, lodging facilities, travel tours, "free" medical treatment, and everything included in the form of facilities (Corruption Eradication Commission (KPK), 2014, p. 4). These gifts are valid about receipts located inside or outside the country, and are recognized either using electronic or non-electronic means or media. (Indonesia, 1999, p. pasal 12 B ayat (1)) When referring to this definition, of course, gratification only applies to a broad or neutral meaning. There are no words or substances that are reprehensible or even have a negative connotation (Corruption Eradication Commission (KPK), 2014, p. 3).

The broad meaning of gratification does not refer to something negative then; why were three regional leaders in Lampung Province being convicted for the act of gratification? When referring to the criminal act of corruption with the type of gratification violation, the legal subjects in question are civil servants, state officials, and corporations (Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning Eradication of Corruption Crimes, 2001, p. article 12 B). In this case, the regional leader is a state administrator with authority and duties in every governmental affair. It is the duty and power that, if in its implementation, receives a gift or facility. As long as it is within 30 days since the estate or facility is accepted, but does not report it to the KPK, the regional head falls into the category of gratification (Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concerning Eradication of Corruption Crimes, 2001, p. article 12 C).

Receiving gifts or facilities included in the act of gratification does create disparities in opinion because a show committed to giving cannot be interpreted solely as a criminal act of corruption even though the perpetrators are civil servants, state administrators, and corporations (Mapuasari & Mahmudah, 2018, p. 166). Therefore, we need to examine the giver of the gratuity more deeply, whether it is only to give congratulations and a sign of gratitude, or the gift is intended to influence decisions and policies on related legal subjects, or in other words, there are indications of bribery (Saragih, 2018, p. 82). These allegations make gratification challenging to detect and prove. Still, when referring to cases committed by regional leaders in Lampung Province, we can see patterns or mechanisms often used. More details will be analyzed through three district leaders in the Lampung Province, based on the Table 1 below.

No.	Indicators	Regional Leaders		
		Zainudin Hasan	Agung Ilmu Mangkunegara	Mustafa
1.	Territory	South Lampung Regency	North Lampung Regency	Central Lampung Regency
2.	Time Vulnerable	2016-2018	2017-2019	2017-2018
3.	Fee	15-21%	20-30%	10-20%

4.	Related agencies	Public Works and Housing (PUPR) Service	Public Works and Housing (PUPR) Service and Trade Service	Bina Marga Service
5.	State Losses	IDR 66.772.092.145	IDR 74.634.886.000	IDR 65.000.000.000

Source: Directory of verdicts by supreme court of the republic of Indonesia (Indonesia, n.d.-c).

First, (Indonesia, 2020) concerning Zainudin Hasan as the Regent of South Lampung, who asked someone, namely Agus Nugroho, to receive a commission fee from a PUPR Service company. The order is intended to realize a work package. The work package or project can be realized, by applying a commitment fee from the partners who will receive the assignment. In detail, the intended package of activities or projects, amounting to 258 (two hundred and fifty-eight) packages, of which a fee is set at 15% to 17% of the value of the project undertaken. Zainudin Hasan himself determined packages and costs, or plotting, but he also mandated an intermediary named Syahroni to meet with one of the partners. This partner, Gilang Ramadhan, turned out to be getting a job plotting at the PUPR Agency, with a commitment fee of 21% for Zainudin Hasan.

Receipt of gratuities by the Regent of South Lampung also continued from February 29, 2016, to July 2018. The amount of the receipt was set at IDR 100,000,000 (million) per month with an account belonging to Gatoet Soeono at Bank Mandiri, which was split into two transactions. The first transaction from PT Baramega Citra Mulia amounted to IDR 65,500,000, and the second, from PT Jhonlin Baratama for IDR 37,500,000 (million). Both transactions were carried out through an undercover pattern or mechanism, meaning that the transaction was disguised as if the transaction was a commissioner's salary. Zainudin Hasan accepted Rp's salary. 3,162,500,000 (Billion). So, the total amount of gratuity received by Zainudin Hasan can be accumulated, amounting to Rp 7,162,500,000 (billion).

Second, (Indonesia, n.d.-b) regarding the case of Agung Ilmu Mangkunegara as the Regent of North Lampung, who collaborated with the Head of the Trade Service, Wan Hendri, and the Head of the PUPR Service on behalf of Syahbudin. This cooperation, in the form of receiving prizes in the form of money from company partners on Candra Safari and Hendra Wijaya Saleh's behalf. The money was given as a reaction to Agung Ilmu Mangkunegara's approval in providing a consultant and supervisory work package for the PUPR Office in the 2017 and 2018 Fiscal Years (TA), with the head of the agency Hendra Wijaya Saleh. Besides, approval was also given to the Trade Office, which Candra Safari headed.

The payment of fees in the North Lampung Regent case did not stop there, and this happened after the appointment of Wan Hendri as Head of the Trade Service in North Lampung, who was then ordered to collect fees. The fee is collected for physical project implementing partners in the trade office at 20% of the project value. The total fee of 20% is handed over to Agung Ilmu Mangkunegara at 15%, and the remaining 5%, is diverted for official operational needs. In this complicated case, Wan Hendri made a bargain with Hendra Wijaya Saleh regarding the Tata Karya Market's construction work, with a total value of Rp. 3,652,182,000 (billion). Bargaining is also related to the Comok Market development project worth IDR 1,056,699,428, for which a fee of 20% is set for the two projects.

The agreements given by the district head to the two agencies are required by paying the project fee. The fee is paid at 20% for physical work and 30% for non-physical work. In detail,

depositing fees is a little complicated because Syahbudin, as the Head of the PUPR Service, did potting, accompanied by several work package numbers for the 2017 Fiscal Year (TA) in North Lampung Regency, worth IDR 1,250,000,000 (billion). Then, for the plotting carried out by Syahbudin, Candra Safari, as the Head of the Trade Service, won the auction project. This is what raises suspicion because Candra Safari has even won the auction for 11 projects. This suspicion is certainly enormously strengthened by proof of the commitment fee that Syahbudin requested in 2018, amounting to IDR 100,000,000 (million). This means, indeed, in the previous year, there was a commitment fee that had to be paid to win the project auction.

Third,(Indonesia, 2021) regarding the case of the Regent of Central Lampung, namely Mustafa, whose pattern or mechanism is almost the same as the previous two regents. This pattern relates to the receipt of a fee of 10-20% for cooperation or games with the Bina Marga Service. The amount of the fee is known from the charges read out by the KPK at the trial on January 18, 2021, but the charges were not only that, but Mustafa was charged with a combination charge. The combination indictment referred to is related to article 12 a or article 11 of the Corruption Crime Law regarding bribery. In this case, Mustafa is suspected of receiving a bribe of Rp. 11,000,000,000 (billion) from an associate. Then, he was also charged with gratification, with a total receipt of Rp. 51,000,000,000 (Billion), which he also received from his partner.

State Losses and Replacement Money in Gratuities Against Three Regional Heads of Lampung Province

Based on the regional head's method or mechanism in making gratuities, the three regional leaders in Lampung Province both use the project fee as an opportunity to gain profits. These gains have resulted in state losses, which quantitatively have added up to reach IDR 206,406,978,146. The accumulated state losses raise the question of the steps¹⁷ methods that can be used to determine the state's losses? Assess state losses. Indonesia itself has be¹² carried out by several related parties, including the prosecutor's office, the KPK, the State Audit Agency (BPK), and the Supervisory and Development Agency (BPKP). Parties that determine whether or not there is a state loss against a criminal act of corruption will detect tangible and intangible losses to the state.

Evidence of state losses is also seen from the prospect or duration of the failure, namely the actual loss and the possibility of state loss (potential loss). Between the two-stat⁵ losses that can be given criminal sanctions are state losses that have occurred. It means that the criminal act of corruption, especially gratification, can be punished with a criminal penalty for the existence of state losses which only applies to state losses that have occurred, not those that have the potential for loss (Indonesia, 2016). Then, if we talk again about state losses, of course, not only about lost state assets but also closely related to obligations that shouldn't exist. Therefore, state losses are classified as coming from several sources: assets, liabilities, revenue, and expenditure (T.M, 2009). These sources can be proven concerning the presence or absence of state losses incurred. They will be analyzed through the concept of qualitative materiality, where the difference between what should be and what is in fact and the value obtained or incurred; it should be noted that the mechanism for determining state losses in Indonesia must follow existing guidelines or regulations (Astuti & Chariri, 2015, p. 7). It means that there is something unique about choosing state losses carried out by official state institutions, namely that it does not rely solely on quantitative or mathematical methods.

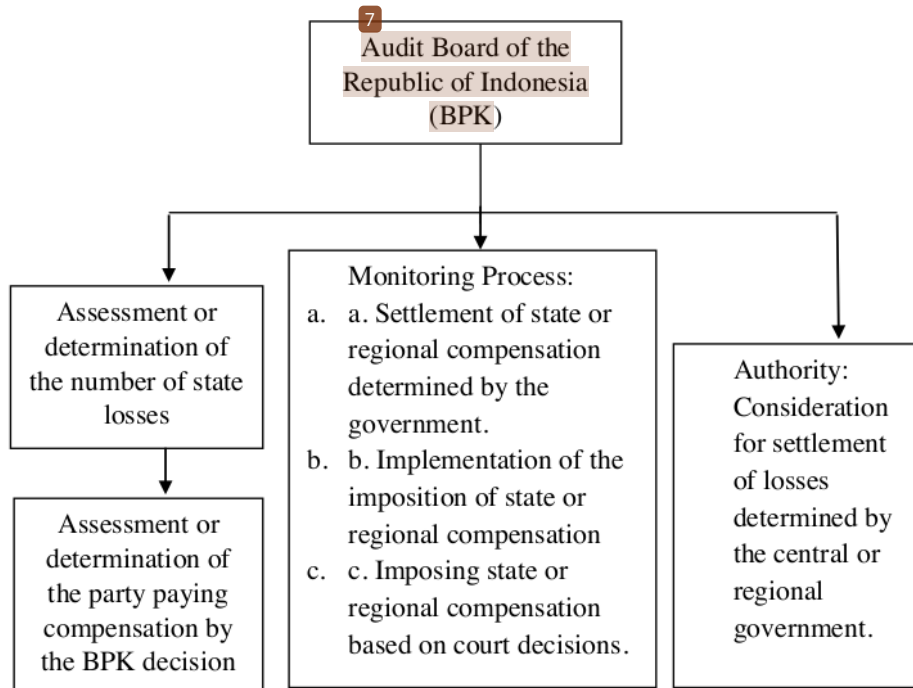


Figure 1
SCHEME OF THE AUTHORITY OF THE SUPREME AUDIT AGENCY (BPK) IN DETERMINING AND RESOLVING STATE LOSSES

*Source: Law Number 15 the Year 2006 concerning the Audit Board of the Republic of Indonesia (BPK).

The qualitative materiality method is also complemented by normative aspects through legal instruments and specifically proving state losses related to criminal acts of corruption, which can refer to the regulations in Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK). Why should you rely on these regulations? The BPK is the central institution authorized to determine state losses; for more details, please pay attention to the chart listed above. Through this institution, state losses will be determined based on the elements in article 1 point 15. The substance of the item in question certainly applies to the crime of gratification, which can be used as a juridical benchmark and related to case studies reviewed by the author, first, in the Zainudin Hasan case where, based on a court ruling, it was clear that money, securities, or goods had been reduced or suffered a loss. The second element relates to a definite nominal amount, in this case reaching IDR 66,772,092,145. Third, the gratuity committed by the related legal subject is very clear. It is proven to have committed an unlawful act in which the act of gratification in question includes the receipt of money worth IDR 200,000,000.00, which is used to pay for the villa in installments.

In the second case, namely Agung Ilmu Mangkunegara, based on the court's decision, the fulfilled elements were the first to reduce money, securities, and goods. Second, a definite nominal value of IDR 74,634,886,000. Third, based on the legal act committed, it is certain that it refers to the criminal act of corruption with the type of violation of receiving a gratuity. This

evidence is also by court facts which show that there are project fees received both physically and non-physically. It is the same with the case of the former Regent of Central Lampung, in which all the elements of the criminal act of gratification that have harmed the state have been fulfilled. First, there is reduced money, securities, and goods. Second, the nominal amount of state losses through a project fee of IDR 65,000,000,000, which is certain and clear. Third, regarding the violated legal action, namely acceptance of gratifications.

In connection with state losses that the BPK has proved, there is one more mechanism that is characteristic of corruption, namely the regulation of compensation for state losses incurred. Replacement money itself is a form of additional punishment in which the sanction aims to recover lost state losses. The defendants must pay juridically the compensation themselves on the condition that they are at the maximum equal to the property acquired by the convicted⁸ or defendant, meaning that what must be paid is not measured by the loss to the country (Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 Concernin⁴g Eradication of Corruption Crimes, 2001, p. article 18 section 1). This is also following the imposition of additional criminal sanctions in the form of replacement money for the three regional heads caught in gratuities. Zainudin Hasan had to pay a replacement fee of IDR 66,772,092,145, Agung Ilmu Mangkunegara IDR 74,634,886,000, and Mustafa IDR 65,000,000,000.

CONCLUSION

Gratification as a form of corruption is a problem that needs serious attention. When referring to Lampung Province as the province with the eighth highest vulnerability to corruption cases in Indonesia, this is because gratuities have caught three regional heads out of five regional directors throughout 2017-2020. The three regional leaders who have specific duties and authority in carrying out regional government affairs are proven to have received gratification, which means that the gift is considered a bribe. The process or mechanism of giving certainly has its pattern. However, between Zainudin Hasan (Regent of South Lampung), Agung Ilmu Mangkunegara (Regent of North Lampung), and Mustafa (Regent of Central Lampung), there are similarities concerning receiving project fees from partners.

The receipt of the project fee, which is considered as an act against the law and an abuse of power, is, of course, the reason the three regional heads were given criminal sanctions. Besides, criminal sanctions are also provided for real estate losses. The loss to the state can be proven by means of three parameters, namely the reduction of money, securities, and goods, a fixed nominal amount, and the legal action that has been violated. After determining state losses have been proven, then additional sanctions are imposed, namely replacement money. Compensation money must be paid not for the country's loss but in the maximum amount by the amount of state loss caused by the defendants' legal actions.

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