

ABSTRAK

Korupsi dalam pengadaan barang dan jasa pemerintah merupakan permasalahan sistemik yang terus mengancam keuangan negara dan menghambat pembangunan nasional di Indonesia. Data Indonesia Corruption Watch (ICW) menunjukkan bahwa pada periode 2019–2023 terdapat 1.189 kasus korupsi pengadaan barang dan jasa dengan 2.898 tersangka, sementara potensi kerugian negara mencapai Rp 279,9 triliun namun pengembaliannya hanya Rp 28,5 miliar atau kurang dari 0,01% dari total kerugian. Kondisi ini mencerminkan lemahnya efek jera (*deterrence effect*) dari sistem pemidanaan konvensional yang berlaku selama ini.

Penelitian ini bertujuan untuk menganalisis problematika penetapan dan pemulihan kerugian keuangan negara dalam perkara tindak pidana korupsi pengadaan barang dan jasa, serta mengkaji urgensi dan mekanisme penerapan pendekatan *Economic Analysis of Law* (EAL) sebagai solusi untuk meminimalisir kerugian negara. Jenis penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan preskriptif-analitis yang mengintegrasikan perspektif EAL, menggunakan kerangka teori Becker-Ehrlich tentang *optimal deterrence* sebagai landasan konseptual, didukung data empiris dari empat kabupaten di wilayah Madura.

Hasil penelitian menunjukkan bahwa problematika penetapan dan pemulihan kerugian keuangan negara dalam tindak pidana korupsi yakni terdapat ketidakseimbangan struktural antara *expected benefit* dan *expected cost* dari perbuatan korupsi, di mana sanksi yang dijatuhkan jauh lebih kecil dibandingkan keuntungan yang diperoleh pelaku. Selain itu, metode penghitungan kerugian negara yang ada masih bersifat konvensional dan hanya memperhitungkan kerugian langsung (*direct loss*) tanpa mempertimbangkan *opportunity cost* dan dampak ekonomi jangka panjang. Sedangkan urgensi dan mekanisme penerapan pendekatan *Economic Analysis of Law* dalam meminimalisir kerugian negara pada perkara tindak pidana korupsi pengadaan barang/jasa menawarkan mekanisme alternatif melalui tiga jalur penanganan, yakni pidana, perdata, dan administratif, yang dipilih berdasarkan analisis *cost-benefit* secara proporsional. Pendekatan ini diharapkan mampu menciptakan *optimal deterrence*, meningkatkan efisiensi penegakan hukum, serta memaksimalkan pemulihan kerugian keuangan negara secara berkelanjutan.

Kata Kunci: *Economic Analysis of Law*, Tindak Pidana Korupsi, Pengadaan Barang dan Jasa, Kerugian Keuangan Negara, *Deterrence Effect*.

ABSTRAC

Corruption in government procurement of goods and services is a systemic problem that continues to threaten the state's finances and hinder national development in Indonesia. Data from Indonesia Corruption Watch (ICW) shows that between 2019 and 2023, there were 1,189 corruption cases involving the procurement of goods and services, with 2,898 suspects, while potential state losses amounted to Rp 279.9 trillion; however, only Rp 28.5 billion less than 0.01% of the total losses has been recovered. This situation reflects the weak deterrent effect of the conventional criminal justice system that has been in place until now.

This study aims to analyze the issues surrounding the determination and recovery of state financial losses in criminal corruption cases involving the procurement of goods and services, as well as to examine the urgency and mechanisms for applying the Economic Analysis of Law (EAL) approach as a solution to minimize state losses. The study employs a normative legal research design with a prescriptive-analytical approach that integrates the EAL perspective, using the Becker-Ehrlich theoretical framework on optimal deterrence as its conceptual foundation, supported by empirical data from four regencies in the Madura region.

The research findings indicate that the problem with determining and recovering state financial losses in corruption cases lies in a structural imbalance between the expected benefits and expected costs of corrupt acts, whereby the penalties imposed are far smaller than the profits gained by the perpetrators. Furthermore, existing methods for calculating state losses remain conventional and account only for direct losses without considering opportunity costs and long-term economic impacts. Meanwhile, the urgency and mechanisms for applying the Economic Analysis of Law approach to minimize state losses in criminal corruption cases involving the procurement of goods and services offer an alternative mechanism through three avenues of resolution criminal, civil, and administrative selected based on a proportional cost-benefit analysis. This approach is expected to create optimal deterrence, improve the efficiency of law enforcement, and maximize the sustainable recovery of state financial losses.

Keywords: *Economic Analysis of Law, Corruption Offenses, Procurement of Goods and Services, State Financial Losses, Deterrence Effect.*