

Implementation Of Economic Crime After The Provision Of Law Number 11 Of 2021 Concerning The Prosecutor

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Abstract

*The Criminalization of Economic Crimes occurred on May 11, 1995 which was marked by the birth of the Law on Economic Crimes (UUTPE). Since the birth of the law, the term "harming the economy" has emerged, which is similar to the element "harming the country's economy" in the Corruption Crime (TPK) offense. On December 31, 2021, the Prosecutor's Law (UUK) was promulgated which gives authority to investigate, investigate and prosecute cases of Economic Crimes (TPE), but in the explanation of Article 35 paragraph (1) letter k provides an interpretation of economic crimes such as the interpretation of "harmful" the country's economy" in the TPK. The use of the phrase "harming the country's economy" in the explanation of Article 35 paragraph (1) letter k of the UUK raises interpretation problems regarding the meaning of "harming the economy" as referred to in the UUPE which can have an impact on implementation in creating justice and legal certainty in handling TPE cases. Therefore, this study formulated the formulation of the problem as follows: (1) How to interpret the TPE regulated in the UUTPE (2) How to distinguish the TPE regulated in the UUTPE and UUTPK and (3) How to measure the authority of the Prosecutor's Office in handling TPE cases so as to create justice and legal certainty. The research method used is normative juridical, namely a method that refers to the applicable laws or regulations, legal theories or opinions of scholars. The research is based on secondary data, while the research specifications used are descriptive analytical. The data sources used consist of primary legal materials and secondary legal materials. The results of the study conclude that: (1) UUTPE has not been revoked and is still valid as *ius constitutum*, (2) The basic differences in the state economy between UUTPE and UUTPK are: TPE is more related to the world of trade and is not related to strategic policies of the central or regional government and (3) Based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 the Prosecutor's Office has the authority*

Kata kunci:

*Pidana, ekononomi,
perekonomian, negara,
kewenangan, kejaksaan.*

to handle TPE cases, but the definition of the state economy according to the law is still confusing because it is equated with the meaning in the UUTPK

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Abstrak

Kriminalisasi Tindak Pidana Ekonomi terjadi pada tanggal 11 Mei 1995 yang ditandai lahirnya dengan Undang-Undang Tindak Pidana Ekonomi (UUTPE). Sejak kelahiran UU tersebut muncul istilah “merugikan perekonomian”, yang mirip dengan unsur “merugikan perekonomian negara” di dalam delik Tindak Pidana Korupsi (TPK). Pada tanggal 31 Desember 2021 diundangkan Undang-Undang Kejaksaan (UUK) yang memberikan kewenangan dalam penyelidikan, penyidikan dan penuntutan perkara Tindak Pidana Ekonomi (TPE), namun dalam penjelasan Pasal 35 ayat (1) hurufk memberikan tafsiran tindak pidana ekonomi seperti penafsiran “merugikan perekonomian negera” dalam TPK. Penggunaan frasa “merugikan perekonomian negara” di dalam penjelasan Pasal 35 ayat (1) hurufk UUK menimbulkan problem interpretasi tentang makna “merugikan perekonomian” sebagaimana dimaksud dalam UUTPE yang dapat berdampak pada implementasi dalam menciptakan keadilan dan kepastian hukum penanganan perkara-perkara TPE. Oleh karena itu penelitian ini dirumuskan rumusan masalah sebagai berikut : (1) Bagaimana memaknai TPE yang diatur di dalam UUTPE (2) Bagaimana membedakan TPE yang diatur di dalam UUTPE dan UUTPK dan (3) Bagaimana mengukur kewenangan Kejaksaan dalam menangani perkara TPE sehingga tercipta keadilan dan kepastian hukum. Metode penelitian yang digunakan adalah yuridis normatif, yaitu metode yang mengacu pada hukum atau peraturan perundang-undangan yang berlaku, teori hukum atau pendapat para sarjana. Penelitian yang didasarkan pada data sekunder, sedangkan spesifikasi penelitian yang digunakan deskriptif analitis. Sumber data yang digunakan terdiri dari bahan hukum primer dan bahan hukum sekunder. Hasil penelitian berkesimpulan bahwa: (1) UUTPE sampai saat ini belum dicabut dan masih berlaku sebagai ius constitutum, (2) Perbedaan mendasar perekonomian negara antara UUTPE dan UUTPK yaitu :

TPE lebih berhubungan dengan dunia perdagangan dan tidak berkaitan dengan kebijakan strategis pemerintah pusat atau daerah dan (3) Berdasarkan UU Nomor 11 Tahun 2021 tentang Perubahan UU Nomor 16 tahun 2004 Kejaksaan berwenang menangani perkara TPE, namun pengertian perekonomian negara menurut undang-undang tersebut masih membingungkan karena disamakan dengan pengertian di dalam UUTPK.

Kata Kunci: Pidana, ekonomi, perekonomian, negara, kewenangan, kejaksaan

I. Introduction

The Criminalization of Economic Crimes (TPE) occurred on May 11, 1995, which was marked by the birth of Emergency Law Number 7 of 1955 concerning Investigation, Prosecution, and Judiciary of Economic Crimes as supplemented by Law Number 8 of 1958 (UUTPE). However, the UUTPE does not define TPE but provides a category that includes TPE, namely acts regulated in several provisions of the existing laws (Indonesian UUTPE, Article 1). Since then, the concept of "harming the economy" version of the UUTPE (Indonesian UUTPE, Consideration letter a) was born.

On March 27, 1971 Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption was enacted which contained almost the same offense, namely "harming the country's economy" (Indonesian Law Number 3 of 1971, Article 1 paragraph (1) letters a and b), continued until replaced by Law Number 31 of 1999 as amended by Law Number 20 of 2001 (UUTPK) as regulated in Article 2 paragraph (1) and Article 3. Judging from the title of UUTPE it can be guessed that UUTPE criminalizes actions that have implications for economic losses. The emergence of the term "harming the country's economy" as an element of the offense in the UUTPK can be confusing when juxtaposed with TPE, whether the two have the same meaning or have different meanings.

On December 31, 2021, Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office (UUK) was promulgated. Article 35 paragraph (1) letter k emphasizes the authority of the Attorney General in dealing with criminal acts that harm the country's economy, which in full reads "The

Attorney General has the duty and authority: to handle criminal acts that cause state economic losses and can use peaceful fines in economic crimes. based on statutory regulations". In the explanation of Article 35 paragraph (1) letter k of the third paragraph, it is stated that "The use of peaceful fines in the case of economic crimes is a form of application of the opportunity principle possessed by the Attorney General in tax crimes, customs crimes, or other economic crimes based on Constitution".

The emergence of the phrase "peaceful fines" in Article 35 paragraph (1) letter k which is juxtaposed with "harming the country's economy" indicates that the new authority granted by the UUK is related to the handling of TPE instead of TPK because the authority in the field of TPK has been regulated separately in Article 30 paragraph (1) letter d. Based on the description, the use of the phrase "harming the country's economy" in the explanation of Article 35 paragraph (1) letter k of the UUK can cause problems (abuse) interpretation of the meaning of "harming the economy" as referred to in UUPE. This interpretation problem will have an impact on implementation in creating justice and legal certainty in handling TPE cases.

2. Methods

The research method used is normative juridical, namely a method that refers to applicable laws or regulations, legal theories, or opinions of scholars (Soerjono Soekanto, et al, 1985). The research specifications used are descriptive-analytical, namely research that describes the laws and regulations The applicable legislation is related to positive legal theories concerning the problems being studied (Rony Hanitijo Soemitro, 2010). The analysis is carried out utilizing precise, systematic, factual, and accurate interpretation of the facts and data that have been collected (Moh. Nasir, 1998). This study will describe in detail the law that applies to the UUTPE and the problems of its intersection with the UUTPK and UUK as well as the impact on the practice of enforcing TPE cases.

The data obtained will be presented in the form of a description that is arranged systematically as a complete series so that the method used in writing this law is qualitative. This means that the data obtained are arranged systematically in the form of descriptions or explanations to describe the research results (Soerjono Soekanto, 1986).

3. Result and Discussion

3.1. Economic Crime According to the TPE Law

The term Economic Crime (TPE) appears in a series of titles of Law Number 7 of 1955 which reads "Regarding the Investigation, Prosecution, and Judiciary of Economic Crimes". The UUTPE does not provide a terminology understanding of what is meant by TPE but mentions the categories of actions regulated in certain provisions as TPE. Article 1 states that what is referred to as TPE is:

1) Article 1e: violation of a provision in or based on:

a. "*Ordonnantie Gecontroleerde Goederen 1948*" (*Staatsblad* 1948 No. 144), as amended and supplemented by *Staatsblad* 1949 No. 160.

This Ordinance relates to the sale, delivery, transportation, handling, and/or processing of goods under government control both from and within the country, the "Controlled Goods Ordinance 1948". This Ordinance was mutated so that Law No. 8 Prp of 1962 was born concerning the Trade in Goods Under Supervision which revoked several provisions, namely:

a. Export Crisis Act 1932 (LN 1933 No. 353).

b. Law on Goods Under Control 1948 (LN 1948 No. 144).

c. Rice Law 1948 (LN 1948 No. 253).

d. UU no. 7/Drt of 1952 (LN 1952 No. 33) and,

e. Law on Hoarding of Goods 1951 (LN 1953 No. 4).

Law Number 8 Prp of 1962 was again revoked by Law Number 7 of 2014 concerning Trade. The provisions concerning the supervision of the entry and exit of goods about exports and imports have currently been accommodated in Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs.

b. "*Prijsbeheersing-ordonnantie 1948*" (*Staatsblad* 1948 No. 295).

The 1948 Price Control Regulation was repealed by Law Number 9 Prp of 1962 concerning Price Control. Article 5 states that violations of the provisions in or based on this Government Regulation in place of Law are economic crimes.

c. "Hoarding of Goods Law 1951" (State Gazette of 1953 No.4);

Provisions for the Hoarding of Goods in 1951 are regulated in Law Number 1 of 1951 concerning the Stipulation of Emergency Law Number 17 of 1951 as Law (State Gazette of 1953 No. 4). According to this law, goods are goods that are under the

control of the government. The law prohibits anyone from keeping or controlling either for himself, for another person, or together with other people, having an inventory of goods under control without a permit in an amount greater than the amount determined at the time of appointment of the goods as goods under control. (Indonesian Emergency Law Number 17 of 1951, Articles 1 and 2). Law Number 8 Prp of 1962 was again revoked by Law Number 7 of 2014 concerning Trade. Law Number 7 of 2014 was last amended by Law Number 11 of 2020 concerning Job Creation.

d. "Rijsterdonnantie 1948" (*Staatsblad* 1948 No. 253).

Rijsterdonnantie 1948 is the 1948 rice ordinance or Village Barn, including granaries managed by farmers to supply food during the famine, and for seed needs for farmers who hold the granaries, under the supervision of the Ministry of Agriculture or the Autonomous Regional Government. Revoked simultaneously with the Hoarding of Goods Law of 1951 based on Law Number 8 Prp of 1962 concerning Trade in Goods Under Supervision and revoked again with Law Number 7 of 2014 concerning Trade, Law Number 7 of 2014 last amended by Law Number 11 of 2020 concerning Job Creation. In principle, this Ordinance requires or prohibits actions related to matters including ownership of a certain amount of rice stock (1,000 kg) unless it has a permit, limits on the amount of supply and sale of rice in a certain amount (Indonesia Rijsterdonnantie 1948, Article 2 paragraph (1) and Article 6).

e. "Emergency Law on the Obligation of Rice Milling and Trade in Foodstuffs" (State Gazette of 1952 Number 33).

Emergency Law on Rice Milling Obligations or Law Number 7/Drt of 1952 (State Gazette of 1952 No. 33). This law was repealed by Perpu No. 8/1962 and revoked by Law No. 7/2014 on Trade. Last amended by Law Number 11 of 2020 concerning Job Creation. In principle, the Emergency Law on Milling Obligations of 1952 regulates matters relating to the purchase of rice and rice mills, including obligations, and permits for management that are not in accordance with government regulations (Indonesian Law Number 7/Drt of 1952, Articles 6,7,8 and 11).

f. "Deviezen Ordonnantie 1940" (*Staatsblad* 1940 No. 205).

Revoked by Law Number 32 of 1964 concerning Foreign Exchange Traffic Regulations. Law Number 32 of 1964 was later repealed by Law Number 24 of 1999 concerning Foreign Exchange Traffic and the Exchange Rate System. According to

Article 1, foreign exchange flows are the transfer of financial assets and liabilities between residents and non-residents, including the transfer of foreign financial assets and liabilities between residents. Foreign exchange is defined as financial assets and liabilities used in international transactions (Indonesian Law Number 32 of 1964, Article 1 number 1).

2) Article 2e, the criminal acts mentioned in Articles 26, 32, and 33 of this emergency law. Several acts of violation of the provisions of criminal acts as economic crimes are determined:

a. Article 26, intentionally does not fulfill the demands of the investigating officer based on a provision in the law.

b. Article 32, intentionally doing or not doing something that is contrary to 1). An additional penalty as stated in Article 7 sub s, b, and c. 2). Disciplinary action as stated in Article 8. 3). A regulation referred to in Article 10. 4). A temporary disciplinary action or avoiding additional penalties/temporary disciplinary measures as mentioned above.

c. Article 33, intentionally either alone or through other people's intermediaries to withdraw parts of wealth to avoid:

1). bills,

2). Implementation of punishment or temporary disciplinary action, which is imposed by law.

3) Article 3e, a violation of one provision in or based on another law, simply states that the violation is a TPE.

Article 1 paragraph (3e) reads the UUPE "violation of one provision in or based on another law, only that the law calls the violation an economic crime". This article opens up opportunities for other types of TPE that are outside Article 1 of the UUTPE or are not adopted by the UUTPE, such as:

a. *Crisis-uitvoerordonnantie* 1939 (*Staatsblad* 1939 No. 658) or the Export Crisis-Related Ordinance 1939, which was revoked by government regulation in lieu of law No. 8/1962 and revoked by Law No. 7/2014 on Trade. Last amended by Law Number 11 of 2020 concerning Job Creation.

b. *Rechterordonnantie* (*Staatsblad* 1882 No. 240) or Provisions for Receipt and

Insurance of Export Rules Invention, which has been revoked by Law Number 10 of 1995 concerning Customs.

- c. *Scheepvaartverordening* 1936 ("*Staatsblad*" 1936 No. 703), or the terms/rules for the delivery of goods. This provision is in addition to what is stated in Law Number 8 of 1958.

UUPE is a form of criminalizing certain behavior as an economic crime (penal law), not regulating administrative actions, and violations are therefore given criminal sanctions (administrative penal law). However, the UUTPE does not provide an understanding of TPE, so it is not an easy task to find the limits, whether violations of all offenses regulated in the law are drawn ex officio as TPE or not, whether TPE must always be linked to an understanding of state economic losses.

In view of the ambiguity of the definition of TPE, it is necessary to conduct a study and interpretation, especially through grammatical interpretation (grammar in the articles) and systematic interpretation through the method of connecting each related article along with its explanation and the relevant law (SR.Sianturi, 1996).

Article 5 of the UUTPE reads "If the law does not provide otherwise, then no other provisions may be made in the sense of criminal law or disciplinary action than criminal penalties or disciplinary actions that can be carried out in accordance with this emergency law". In his explanation it says "This article prohibits the use of criminal penalties and other disciplinary measures than those stipulated in this emergency law". From this provision, if there is an event that meets the qualifications of an economic crime even though it has been regulated in another law, the UUPE must still be applied.

Furthermore, the transitional rule in Article 50 says "If the provisions in or based on other laws conflict with the provisions of this law, the provisions of this law will apply". This transitional rule is commensurate with the provisions of Article 5 along with its explanation that the UUPE must take precedence as long as it meets the qualifications of an economic crime. The same understanding can also be examined through the General Elucidation of the Third Alenia which reads "If in the future it is deemed necessary to violate a provision in or based on other laws controlled by this Emergency Law, then this can be achieved by mentioning - in the Law concerned - those violations as economic crimes

(Article 1 sub 3°) or by including the relevant criminal articles in Article 1 sub 2°". From the explanation above, a common thread can be drawn that the offense regulated in the law drawn by the UUTPE is automatically TPE, while other laws must submit to the violation in the law concerned as TPE.

In general, economic crimes are divided into two perspectives, namely in a narrow sense and a broad sense. In a narrow sense, it is all actions listed in UUPE. This type of crime is called narrow because it substantially contains a small part of the overall economic activity. In a broad sense are all criminal acts outside the UUTPE. This includes various criminal acts in the economic field which are regulated in other laws and regulations such as the Corruption Law, Banking Law, Company Competition Law, Insurance Law, and others (Patricia Rinwigati, 2016). Apart from the differences, the two definitions have something in common, namely that they both have an economic motive and/or have a negative influence on the economic and financial activities of the state and the business world (Andi Hamzah, 1993).

In fact, until this moment there has never been a revocation of UUPE. This means that conceptually the UUPE is still *ius constitutum* even though the majority of TPE objects regulated in Articles 1e, 2e, and 3e have been transformed into separate laws and the original laws have been abolished based on the new law. Therefore, according to the author, in giving the meaning of TPE, the main footing is UUPE, which until now has not been revoked.

Although many administrative laws with criminal sanctions have an economic dimension, not all violations of these laws are seen as TPE as long as they do not meet the TPE limits regulated in the UUTPE and are subject to the UUTPE. For this reason, it is necessary to formulate the definition of what is referred to as TPE according to the UUTPE so that it is not difficult to implement. According to the author, to achieve legal certainty and justice at the level of legal practice, TPE must be interpreted narrowly.

Observing the general considerations and explanations of the UUPE, in principle, an economic crime is any activity related to "economic loss". In the first preamble language, UUTPE mentions the active verb "harming the economy" (Indonesian UUTPE, Consideration letter a). UUPE does not include the word "state" as in the TPK element,

namely "harming the country's economy". In the General Explanation Numbers 3 and 4 of the UUTPE, it mentions the characteristics of TPE, which do not mention the implication of the loss being related to the state. The details are as follows:

- a. The birth of economic crimes as criminal acts was not long ago, namely only since 1941, so many violators think that the violation of economic crimes is not an extraordinary thing and that the prosecution and investigation of these acts is a "*bedrijfsrisico*". "mediocre that can be taken into account in the "*calculatie*". In trading circles, there are many elements who will not stop this evil practice as long as they have the opportunity to do so.
- b. Threatens and harms interests that are so "*gecompliceerd*" that ordinary people often - judges and prosecutors sometimes - do not have a true picture of those interests and thus assign values to them very different from one another.
- c. Provide great benefits to the offender who is always very attractive to the offender both with and without taking into account the profit and loss for carrying out the act. In order to convince people that economic crimes are criminal acts and to eradicate the opinion referred to in sub a, it is necessary to carry out "*repressie*" actions in criminal justice as regulated in Articles 7 and 8 of this Emergency Law.

Based on the description above, a common thread can be drawn that according to UUPE, economic losses are not related to the strategic policies of the government or the state in the economic sector, but it is sufficient if the actions taken threaten and harm the economic interests of the people or in UUTPE terms "*gecompliceerd*" or complicated (complex). Illusions that can be put forward, for example, are related to hoarding of goods by certain parties (monopoly, oligopoly) which threatens scarcity and makes the price of goods very expensive than usual. The hoarding act is not directly related to government or state policies in certain fields but has an impact on loss to the general public.

- a) For this reason, according to the author, the meaning of "harming the economy" in UUPE at least has specific categorical elements, namely:
- b) Occurs in trade circles including export, import, or industry.
- c) Threatening and harming the public interest "*gecompliceerd*" or complex (complicated).
- d) Gives advantage to the offender.
- e) Not related to the strategic policy of the central or regional (state) government.

The question now is: do all the TPEs referred to in the law referred to in Article 1 of the UUTPE have to have an economic loss effect? This question becomes very important

because the offenses regulated in the law that are withdrawn to Article 1 of the UUPE are not all of the elements of "economic loss". *Ordonnantie Gecontroleerde Goederen* 1948 as referred to in Article 1 paragraph (1e) letter a UUPE, one of which was transformed into Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs (Customs Law). Article 102B expressly states "Violations, as referred to in Article 102 and Article 102A which result in disruption of the foundations of the country's economy (underlined by the author), shall be punished with imprisonment for a minimum of...etc.". Article 102B of the Customs Law draws elements of the state economy, but the meaning is different from UUPE because there is an element of "state" in the elements of the article. This means that the meaning is closer to Articles 2 and 3 of the UUTPK besides the evidentiary aspect, it is also not different because "they are both placed as elements of the article", while in the UUTPE it is only a consideration and explanation of the article.

The "element" of the article is the core part of the offense (*bestand delict*) which is strung together so that it becomes the formulation of the criminal article (Andi Hamzah, 2008). The act of a person who is threatened with a crime must be following the core parts of the offense so that it can be punished. For this reason, in the criminal process, the Public Prosecutor must prove the act based on sufficient evidence. When certain phrases are listed in the law but are not part of the core of the offense, they do not need to be proven.

In principle, according to Article 1 of the UUPE, economic crimes are violations of certain provisions in certain ordinances and laws, the crimes referred to in Articles 26, 32, and 33 of the emergency law and violations of one provision in other laws, are merely statutes. it called the violation an economic crime. Not all offenses (UUTPE term violations) in the law referred to by UUPE require an element of economic loss. The consequence is that the TPE investigation does not need to prove an economic loss. The emergence of the phrase "harming the economy" which is clarified in the general explanation of the UUPE is intended to show the philosophical value (ontology) of how dangerous TPE is, so it needs to be eradicated by including violations in several laws as TPE.

Next question: what does it mean to include a violation of some statutory provisions as a TPE? UUTPE is penal law, while some of the provisions of the law referred to by UUPE are administrative penal law. The administrative penal law is interpreted as a product of

legislation in the field of administration that has criminal sanctions such as customs, taxation, trade, and others (Indriyanto Seno Aji, 2009).

The characteristics of penal law outside of codification include the specificity of procedural law which is not regulated in generally accepted procedural law. Articles 7 and 8 of the UUPE introduce additional penalties that are not known in the criminal procedure law (KUHP) such as revocation of certain rights or certain benefits, closure of the convicted company, confiscation of certain goods belonging to the convict, confiscation of the convict's company, placing the company in custody and others. other. This type of additional punishment was also not known in the administrative penal law before being drawn into UUPE. Referring to the preamble letter of UUPE, the purpose of the additional punishment is to recover the impact of economic losses caused by criminal acts that were not previously regulated in the administrative penal law.

In addition to offenses that have an impact on economic losses, the UUPE also includes acts that are not directly related to trading activities and the impact of economic losses but are classified as TPE (Indonesian UUPE, Article 1 paragraph 2e), namely:

- a) Failure to comply with an investigator's order based on UUPE.
- b) Doing an act that is contrary to additional punishment or disciplinary action.
- c) Concealing a share of wealth to avoid prosecution or execution of punishment or disciplinary action.

Based on the foregoing, can be drawn a definition of TPE in terminology, namely every act within the scope of production and trade that threatens, harms the interests of the community at large (*gecompliceerd*), thereby providing benefits to the perpetrators, including other actions not related to production and trade as determined by the law. law as TPE. According to the author, the meaning of "that threatens and harms the interests of the wider community" is the meaning of the notion of "harming the economy" according to UUPE.

In the author's research, not all statutory provisions that have been issued from UUPE and metamorphosed into new laws include elements of the offense or at least contain an explanation regarding the "impact of economic losses". But at least it can be concluded that the UUPE which was born in 1955 is still in effect and offense violations regulated in

the derivative law (the result of metamorphosis) can still be applied, even those that do not originate from UUTPE but subject themselves to UUTPE then can be charged with UUTPE.

The author's reason is:

- a) Until now, UUPE has never been revoked.
- b) The abolition of the law that was withdrawn by the UUTPE into a new law does not eliminate the binding force of the UUTPE because the subject matter regulated is the same.
- c) In accordance with the provisions of Article 1 paragraph (3e) of UUTPE and General Elucidation, it is possible to have TPE outside the law that has been withdrawn by UUTPE, as long as the law submits itself to the UUTPE.

The main TPE is regulated in Emergency Law Number 7 of 1955 as added to the Emergency Law Number 8 of 1958, so that the implementation of TPE violations in various laws that have turned into new laws and other laws that submit to UUTPE, its implementation must be linked to UUTPE. Therefore, to determine whether a statutory provision can be linked to UUPE or not, two things must be observed:

- a) The law is the result of a fraction of the provisions or ordinances that have ever been danced into the UUTPE
- b) The new administrative penal law subjugates itself to the UUTPE as referred to in General Elucidation Number 2 of the UUTPE.

Based on the description above, to maintain certainty, justice, and the benefit of the law and to create a due process of law, the right point of view that can be applied based on UUPE is a narrow perspective. By adhering to this view, it will eliminate the arbitrariness of law enforcement officials because not every law is drawn into the TPE.

3.2. Detrimental to the Country's Economy According to UUTPK

One of the elements of Article 2 paragraph (1) and Article 3 of the Corruption Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 (UUTPK) is "harming the state's finances" which is alternatively "harming the country's economy". The last element at a glance coincides with the meaning of the phrase "harming the economy" contained in the UUTPE, the difference is that in UUTPE there is no word "state". The inclusion of the

element in the article "harming the country's economy" has the consequence that that element must be included in the indictment as part of the formulation of the article and the Public Prosecutor must prove the defendant's actions. This is different from the UUPE which does not make the phrase "economic loss" part of the element of the offense.

According to the general explanation of the UUTPK, what is referred to as the state economy is economic life that is structured as a joint effort based on the principle of kinship or an independent community business based on government policies, both at the central and regional levels following the provisions of the applicable laws and regulations aimed at providing benefits, prosperity, and welfare to all people's lives.

The word "detrimental" is the same as being a loss or becoming less, thus harming the country's economy means the country's economy is at a loss or becomes less active (R. Wiyono, 2008). This measure of causing harm is based on experience and logic or people's minds in general by paying attention to aspects around actions that enrich/benefit oneself or others (Adhami Chazawi, 2011). According to the definition of state economic losses according to the UUTPK, the characteristics of "state economic losses" can be identified as follows: (Ali Mukartono, 2020)

Related to economic development.

Directly related to the strategic policies of the central or regional government in the field of economic development.

Not carried out in the context of implementing programs/activities in the APBN/APBD.

Economic losses are not interpreted as accounting losses.

Does not have to provide economic benefits for criminals.

According to Ali Mukartono, the scope of the limitation of proving the element of harming the state economy in a criminal act of corruption, as a reference so as not to cause abuse with state financial losses, needs to be observed:

The starting point for proving the element of harming the country's economy must first be to look at the linkage of criminal acts/crimes with economic development policies both nationally and regionally, including :

Policies towards economic stability and production recovery (rehabilitation) with the following priority scales:

- inflation control;
- control of the monetary economy;
- adequate food, clothing, and shelter needs;
- rehabilitation of economic infrastructure and facilities; and
- increased export/import activities.

Central and local government policies regarding the development of economic potential. Deviant actions at the stage of formulating/making policies of the central government and local governments; and/or Acts of implementation that deviate from the intent and purpose of the stipulation of a policy, either to the policy of the central or regional government.

Each of them results in the impact of not achieving economic life which is structured as a joint effort based on the principle of kinship, or an independent community effort based on government policy, and does not provide benefits, prosperity, and welfare to all people's lives.

The series of actions have causality with the impact of state economic losses in the form of State Financial Losses (explicit consequences) with Opportunity Costs and Social Multiplier Impacts (implicit consequences); or Opportunity Cost and Social Multiplier Impact (implicit effect). The examples of Opportunity Cost and Social Multiplier Impact can be described as follows:

Opportunity cost, an example of its form is the emergence of other costs that must be incurred by textile producers due to corruption-related to deviations in textile import-export policies.

The multiplier economy impact, an example of its form is the existence of a criminal act of corruption related to irregularities in the export-import policy of textiles resulting in many textile factories losing the opportunity to make profits because their factories were closed, besides that many workers who were supposed to work normally had to stop because the factories were closed, thus affecting economic conditions national and regional.

Based on the description above, the definition of "harming the country's economy" according to UUTPK has a different meaning from the meaning of "harming the economy" according to UUTPE. One of the most prominent features of the notion of "harming the country's economy" in the UUTPK is related to the strategic policies of the central/regional government in the economic sector, while in UUTPE it is closer to the trade mechanism between legal subjects which has nothing to do with the strategic policies of the government/regions in certain.

To see which statutory provisions can be applied if there is an administrative penal law with an economic dimension so that UUTPE applies, the key is as stated in the previous description. As long as the new law resulting from the fractional ordinance in UUTPE specifically includes the element of "state economic losses", it is also possible to apply UUTPK in addition to UUTPE. Everything depends on the facts, whether they qualify for

corruption or economic crimes. For example, the criminal provisions regulated in Article 102B of the Customs Law as mentioned earlier.

Article 102B of the Customs Law expressly withdraws the element of state economic loss which has the same meaning as the UUTPK. With the inclusion of this element, if the economic loss is related to the policies of the central or regional government, it is included in the TPK classification, but if it is related to business or trade, it is classified as TPE. This means specifically that customs crimes can be drawn into the UUTPK or UUIPE, depending on the legal facts that occur.

3.3 The Prosecutor's Authority in the Legal Process of TPE Law

In Article 17 paragraph (1) of the UUIPE, it states "Apart from those who are generally charged with investigating (underlined by the author) criminal acts, those who have the right to investigate economic crimes are employees appointed by the Prime Minister after hearing the Minister concerned. ". UUIPE uses the terminology of investigation in mentioning the term criminal process, which is completely unknown in the Criminal Procedure Code. However, there is no further explanation regarding the meaning of the investigation. KUHP uses the term investigation, investigation in addition to the terms prosecution and trial in criminal proceedings.

According to the Indonesian Dictionary (KBI) "investigation" means a noun which means the process, method, act of investigating; inspection; an investigation or an attempt to find evidence if it is suspected that someone has committed a crime (Department of the National Education Ministry's KBI Drafting Team, 2008). Consideration of letter a of UUUTP juxtaposing investigation and prosecution, in full reads "that it is necessary to have effective regulations regarding the investigation, prosecution, and trial of acts that harm the economy".

The word "investigation" is placed before the word "prosecution", according to the author, the word "investigation" must be interpreted as an investigation and investigation. This means that the authority to investigate and investigate TPE cases at that time, in addition to investigators/investigators based on the *Het Herziene Indonesische Reglement* (HIR), namely the Police and Prosecutors, also certain employees appointed by the Minister

(Prime Minister). Meanwhile, the task of prosecuting is still borne by the Prosecutor and to judge is charged to the judge as referred to in General Elucidation number 8.

This opinion is reinforced by the provisions of Article 25 that for the investigation of economic crimes, the provisions in the HIR shall apply unless the emergency law provides otherwise. In addition, the Elucidation of Article 17 reads "According to the editor of this article, the rights of investigators who are generally charged with investigating criminal acts are not reduced or eliminated. Everyone has the right to investigate. This article only expands the existence of officials who will have the right to investigate economic crimes".

In fact, in the opinion of the author, the legislators deliberately assign the main task of investigating and prosecuting TPE cases to the Prosecutor, while the task of adjudicating remains on the shoulders of the judge. The mention of the Prosecutor in the task of investigating TPE is an additional task that is not regulated in Law Number 16 of 2004 concerning the Prosecutor's Office. The General Explanation of number 8 in the second paragraph of the UUTPE reads:

"By assigning economic criminal cases to prosecutors and judges who are solely tasked with solving the criminal case (underlined by the author), the Government hopes that they, assisted by agencies and liaison officers who are considered experts in the economy, are obliged to provide his assistance to judges, prosecutors and investigators, both outside and inside the trial (Article 49), also assisted by special investigators (Article 17) with special rights (Articles 18 and later), will carry out their obligations in the best possible way. Due to the severe shortage of judges and prosecutors, it is possible to employ a judge and prosecutor in more than one Economic Court (article 36 and article 38)".

On December 31, 2021, Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office (UUK) was enacted. In Article 35 paragraph (1) letter k, it is expressly stated that the Attorney General has the duties and authorities: to handle criminal acts that cause economic losses to the state and can use peaceful fines in economic crimes based on laws and regulations.

The meaning of the phrase "handling" is not given an adequate explanation. However, when referring to the authority of the Prosecutor's Office in Article 30 paragraph (1) letter d of the UUK along with the explanation, namely conducting investigations into certain criminal acts based on the law (corruption crimes, serious human rights, KKN), it is

related to the investigation authority (Indonesian UUK, Article 30B letter a) and other authorities such as prosecution, legal action, and execution, then the definition of "handling" is defined as a series of legal processes from investigation to execution.

Regarding the notion of harming the country's economy, the explanation of Article 35 paragraph (1) says as follows:

"The state economy is an economic life that is structured as a joint effort based on the principle of kinship or an independent community effort based on government policies, both at the central and regional levels under the provisions of laws and regulations aimed at providing benefits, prosperity, and welfare to all people's life".

Observing the explanation of Article 35 paragraph (1) letter k of the UUK feels very strange because the editor of the explanation is the same (copy and paste) as the explanation of the UUTPK regarding the meaning of the state economy. The result of such an explanation has the potential to lead to a "misguided" interpretation as if there is no difference between TPE and TPK that is detrimental to the country's economy. The concepts and objectives of the two laws are very different.

The authority to handle cases that are detrimental to the country's economy as regulated in Article 35 paragraph (1) letter k is not defined as the authority for TPK cases that are detrimental to the state economy as regulated in Article 3 and Article 2 paragraph (1) of the UUTPK. The reasons that support this statement include:

- a) The authority of the Prosecutor's Office in handling TPK cases is regulated in Article 30 paragraph (1) letter d along with the explanation.
- b) Criminal acts that are detrimental to the country's economy as regulated in Article 35 paragraph (1) letter k can be settled with a peaceful fine. Normatively, the concept of a peaceful fine is completely unknown in the TPK because the TPK is agreed as an "extraordinary crime".

In this case, there is an inaccuracy of the legislators when formulating the definition of the TPE version of the country's economy. Responding to this situation when implementing the handling of TPE cases, according to the author, must be based on the concept of ontology, namely the existence of an explanation of "the notion of harming the country's economy" is interpreted by the UUTPE version, because if its meaning is equated with TPK, there will be legal chaos, potentially causing arbitrariness, creates uncertainty, injustice and leaves the purpose of enforcing TPE cases. If the

meaning is equated, the provisions of Article 35 paragraph (1) k of the UUK become meaningless because there is already a UUTPK that is more repressive in nature.

4. Conclusions and Recommendations

4.1. Conclusions

Based on the description of the discussion above, it can be concluded as follows:

Until now, UUPE has not been revoked even though the provisions drawn into UUPE have been removed and replaced with new laws. The change in the new law can still be withdrawn by UUPE as long as it meets the qualifications that are detrimental to the country's economy according to UUTPE. The basic differences in the state economy between UUTPE and UUTPK are: TPE is more related to the world of trade and is not related to central or regional government policies, while TPK is related to central/regional government policies as an absolute requirement.

The Prosecutor's Office has the authority to handle TPE cases, especially after the issuance of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office, but the definition of the state economy according to the law is still confusing because it is equated with the meaning in the UUTPK. The provisions of Article 35 paragraph (1) letter k of the UUK are an affirmation of the authority of the Prosecutor's Office in handling TPE cases so that the implementation of TPE cases must be oriented towards understanding economic losses according to UUPE.

4.2. Recommendations

1. UUPE needs to be revived in its implementation considering a quo law until now there has been no revocation.
2. In processing TPE reports or events to ensure that the state economic losses that arise are not related to the strategic policies of the central/regional government.
3. The meaning of the state economy in the explanation of Article 35 paragraph (1) letter k of the UUK is to return to the meaning referred to in the UUPE. In addition, to avoid misinterpretation, the explanation needs to be improved.

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References

A. Undang-Undang

1. Undang-Undang Darurat Nomor 5 Tahun 1957 tentang Pengusutan, Penuntutan dan Peradilan Tindak Pidana Ekonomi (LN Tahun 1955/27, TLN Nomor 801).
2. Undang-Undang darurat Nomor 8 Tahun 1958 tentang Penambahan UU Darurat Nomor 7 Tahun 1955 (LN Tahun 1958/156, TLN Nomor 1684).
3. Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi (LN Tahun 1999/140, TLN Nomor 3874).
4. Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan (LN Tahun 2004/67, TLN Nomor 4401).
5. Undang-Undang Nomor 17 Tahun 2006 tentang Perubahan atas UU Nomor 10 Tahun 1995 tentang Kepabeuan (LN Tahun 2006/93, TLN Nomor 4461).
6. Undang-Undang Nomor 20 tahun 2001 tentang Perubahan UU Nomor 31 Tahun 1999 (LN Tahun 2001, TLN Nomor 4150).
7. Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan UU Nomor 16 Tahun 2004 tentang Kejaksaan (LN Tahun 2021/298, TLN Nomor 6755).

B. Buku

1. Hamzah, Andi, *Hukum Pidana Ekonomi*, Pradnya Paramita, Jakarta, 1993.
2. -----, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2008.
3. Chazawi, Adami, *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*, Bayu Media Publishing, Malang, 2011.
4. Hanitijo Soemitro, Rony. *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, 2010
5. Kamus Bahasa Indonesia, Tim Penyusun, *Kamus Bahasa Indonesia*, Pusat Bahasa Depdiknas, Jakarta, 2008.
6. Mukartono, Ali, *Pembuktian Kerugian Perekonomian Negara*, disampaikan dalam

- Ceramah Rakernis Jampidsus Tahun 2020.
7. Nasir,Moh, *Metode Penelitian*, Jakarta, Ghalia Indonesia, 1998.
 8. Rinwigati, Patricia, *Tindak Pidana Ekonomi dalam RKUHP : Quo Vadis?*, Aliansi Nasional Reformasi KUHP, Jakarta, 2016.
 9. Seno Aji, Indriyanto, *Korupsi dan Penegakan Hukum*, Diadit Media, Jakarta, 2009.
 10. Siregar, Bosar Z, *KUHAP dan KUHP*, Braja Pustaka,Jakarta, 2015.
 11. Sianturi.S.R, *Asas-asas Hukum Pidana dan Penerapannya*, Alumni Ahaem-Petehaem, Jakarta, 1996.
 12. Soekanto, Soerjono, *Pengantar Penelitian Hukum* , UI Press, Jakarta, 1986.
 13. Soekanto,Soerjono,dkk, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta, PT. Raja Garfindo Persada, 1985.
 14. Wiyono.R, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*, Sinar Grafika, Jakarta, 2008.