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## #837 Summary

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### Submission

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Title	Measuring the State Losses in Corruption Cases at the Village Credit Institutions in Bali
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### Title and Abstract

Title	Measuring the State Losses in Corruption Cases at the Village Credit Institutions in Bali
Abstract	<p>Introduction: Until the end of 2021, the legal issue having been an actual trending topic and hot issue which attracts the attention of scholars and researchers, is the phenomenon of the emergence of criminal acts of corruption committed in congregation by the management of the Village Credit Institution in Bali. Generally, the resolution of these cases is carried out in a traditional manner with the spirit of local wisdom and kinship through the Paruman Krama of Traditional Villages to attain an agreement or consensus. The prosecutor's office, however, enters into this customary realm, then participates in conducting preliminary investigations and investigations. The involvement of prosecutor is only on the basis of a document issued in 1988 regarding the Bali Governor's Assistance amounting to two million rupiah as the initial capital for the establishment of the Village Credit Institution. Purposes of the Research: The present study aims at identifying whether or not the results of the regency inspectorate's audit can be used as a basis for prosecuting suspects in the cases of abuse of Village Credit Institution finance as well as alternative solutions that necessarily need to be taken to resolve the cases. Methods of the Research: The first problem is examined using the Theory of Penalty and the second one is examined using the Theory of the Welfare State Law. The research method used is a mixed legal research method. Data are presented using a systematic description technique. Results of the Research: The solution that is expected is this study sheds light on whether or not the results of the regency inspectorate's audit can be used as a basis for prosecuting suspects in cases of abuse of the Village Credit Institution finance, what factors are the causes of the liquidity crisis and whether the present study results can be applied as an alternative solution that should be taken in resolving cases at the regency level. The target to be achieved in the research is publication on the electronic media Bali TV in the regional seminar on "Menghitung Kerugian Negara dalam Kasus Korupsi Pada Lembaga Perkreditan Desa di Bali". The expected output from the study is the results will be published in the Sinta I indexed journal.</p>

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## #837 Review

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### Submission

**Authors** I Ketut Widia

**Title** Measuring the State Losses in Corruption Cases at the Village Credit Institutions in Bali

**Section** Articles

**Editor** Muchtar Labetubun

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# Measuring the State Losses in Corruption Cases at the Village Credit Institutions in Bali

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<b>Article Info</b>	<b>Abstract</b>	
<b>Keywords:</b> Village Credit Institution; Finance; Corruption; State Loss; Liquidity	<p><b>Introduction:</b> Until the end of 2021, the legal issue having been an actual trending topic and hot issue which attracts the attention of scholars and researchers, is the phenomenon of the emergence of criminal acts of corruption committed in congregation by the management of the Village Credit Institution in Bali. Generally, the resolution of these cases is carried out in a traditional manner with the spirit of local wisdom and kinship through the Paruman Krama of Traditional Villages to attain an agreement or consensus. The prosecutor's office, however, enters into this customary realm, then participates in conducting preliminary investigations and investigations. The involvement of prosecutor is only on the basis of a document issued in 1988 regarding the Bali Governor's Assistance amounting to two million rupiah as the initial capital for the establishment of the Village Credit Institution.</p> <p><b>Purposes of the Research:</b> The present study aims at identifying whether or not the results of the regency inspectorate's audit can be used as a basis for prosecuting suspects in the cases of abuse of Village Credit Institution finance as well as alternative solutions that necessarily need to be taken to resolve the cases.</p> <p><b>Methods of the Research:</b> The first problem is examined using the Theory of Penalty and the second one is examined using the Theory of the Welfare State Law. The research method used is a mixed legal research method. Data are presented using a systematic description technique.</p> <p><b>Results of the Research:</b> The solution that is expected in this study sheds light on whether or not the results of the regency inspectorate's audit can be used as a basis for prosecuting suspects in cases of abuse of the Village Credit Institution finance, what factors are the causes of the liquidity crisis and whether the present study results can be applied as an alternative solution that should be taken in resolving cases at the regency level. The target to be achieved in the research is publication on the electronic media Bali TV in the regional seminar on "Menghitung Kerugian Negara dalam Kasus Korupsi Pada Lembaga Perkreditan Desa di Bali". The expected output from the study is the results will be published in the Sinta I indexed journal.</p> <hr/> <p><b>Pendahuluan:</b> Sampai di penghujung tahun 2021 isu hukum yang trending topic dan hot issue, aktual dan menarik untuk dibahas dan diteliti adalah, fenomena munculnya kasus tindak pidana korupsi yang dilakukan secara berjamaah oleh pengurus Lembaga Perkreditan Desa di Bali. Umumnya penyelesaian dilakukan secara adat bersemangat kearifan lokal dan kekeluargaan melalui paruman krama desa adat untuk mendapatkan kesepakatan atau kemufakatan. Namun demikian pihak kejaksaan masuk ke ranah adat ini, lalu turut melakukan investigasi, penyelidikan, dan penyidikan. Masuknya kejaksaan hanya dengan dasar dokumen yang diterbitkan pada tahun 1988 tentang bantuan Gubernur Bali sebesar dua juta rupiah untuk modal awal pendirian LPD.</p> <p><b>Tujuan Penelitian:</b> Tujuan penelitian ini untuk mengetahui dapatkah hasil audit inspektorat kabupaten dipakai dasar untuk menuntut tersangka penyalahgunaan keuangan LPD dan solusi alternative yang seharusnya dipakai dalam rangka menyelesaikan kasus penyalahgunaan.</p> <p><b>Metode Penelitian:</b> Permasalahan pertama akan dianalisa menggunakan Teori Pidanaan, permasalahan yang kedua akan dianalisa menggunakan Teori Negara Hukum Kesejahteraan. Metode penelitian yang dipakai adalah, penelitian hukum campuran atau mix legal research method. Penyajian data menggunakan teknik deskripsi sistematis.</p> <p><b>Hasil Penelitian:</b> Solusi yang diharapkan dapat mengetahui dapatkah hasil audit inspektorat kabupaten dipakai dasar untuk menuntut tersangka penyalahgunaan keuangan LPD dan faktor apa yang menjadi penyebab terjadinya krisis likuiditas dan solusi alternative yang seharusnya dipakai dalam rangka menyelesaikan kasus penyalahgunaan keuangan LPD. Target yang ingin dicapai dalam penelitian ini adalah Publikasi pada media elektronik Bali TV pada saat seminar regional tentang "Menghitung Kerugian Negara Dalam Kasus Korupsi Pada Lembaga Perkreditan Desa di Bali". Luaran yang akan disampaikan adalah hasil penelitian ini terpublikasi di jurnal terindex Sinta I.</p>	

## 1. INTRODUCTION

In essence, whatever is attempted and done by human beings in the community both as an institution or as a community actually aims to improve the welfare of themselves, their families and society. In addition, the things done are also in order to ensure the realization of social order. Unfortunately, in practice, there are many obstacles, challenges, and hindrances in realizing the intended goal. One of them is the corrupt and mental behavior that ignores the procedural process and is very concerning. Criminal acts of corruption by stealing people's money have really worst results. They are considered as extraordinary crimes, because they can damage the democratic system and undermine the competitiveness of the nation, besides being able to loosen the spirit of the younger generation to study and struggle.

Speaking of corruption as an obstacle to development, it turns out that by the end of 2021, the legal issue having appeared as an actual and interesting trending topic and hot issue to be discussed and researched has emerged in Bali. In particular, it is the phenomenon of the emergence of cases of criminal acts of corruption committed in congregation by the management of the Village Credit Institution in the area. The Village Credit Institution (in Indonesian 'Lembaga Pengkreditan Desa' and abbreviated as LPD) refers to microfinance institution belonging to traditional villages that are established based on local wisdom.

In the case of a criminal act of corruption in the form of abuse of money at the Village Credit Institutions, the losses suffered are not half-hearted; it reaches hundreds of billions of rupiah. Generally, these cases are resolved in a traditional method with the spirit of local wisdom filled with a sense of kinship. They are resolved through deliberation or *Paruman Krama* of Traditional Villages to reach an agreement or consensus. However, the prosecutor's office suddenly entered the realm of this custom, and then took part in conducting preliminary investigations and investigations. The result is actually counter-productive, because positive law enforcement by the prosecutor's office on this case is considered not beneficial to the community, especially in calculating the state losses with very minimal findings so that they tend to lighten penalties for violators of this customary village mandate.

The involvement of the prosecutor's office in resolving cases of criminal acts of corruption at the Village Credit Institution is only based on a document published in 1988 regarding the Bali Governor's Assistance amounting to two million rupiah as the initial capital for the establishment of the institution. In other words, the truth is not the material truth required in the realm of criminal law, but only the formalistic truth as required by the realm of civil law. It is because it appears that in the realm of empirical facts, the initial capital for the establishment of the Village Credit Institution originated from the collective funds collected by the *karma* (community) of Traditional Villages in the form of *urunan* or *pecingkremen*. The matter that is even more concerning is the distortion of the gap regarding the amount of state losses determined by the prosecutor. For example, an audit conducted by a traditional village officer or administrator through the Village Credit Institution Asset Rescue Team found the potential loss to the community was IDR 3,000,000,000 (three billion rupiah). Then, the Prosecutor's Office claimed the state's loss was only IDR 1,000,000,000 (one billion rupiah). Thus, it became out of sync with the basis of the document for capital participation from the Governor of Bali which amounted to IDR 2,000,000 (two million rupiah) in 1988 with claims for state losses that reached IDR 1,000,000,000, and also with the results of the audit by the traditional village management or administrators who found the community concerned suffered losses of up to IDR 3,000,000,000.

The prosecution's claim is considered a far-fetched and light act by the public; as if the practice of the legal mafia had occurred. Based on observations in the field, the reason why many traditional villages have not established a Village Credit Institution is they feel unable to manage it professionally. They doubt that an institution which in essence has a noble purpose for the welfare of the community turns out to serves as the cause of disastrous divisions and commotion for the community due to the wrong management and administration. If examined in more depth, it appears that this reasoning is true, considering that until the end of 2021, there had been many Village Credit Institution administrators who were detained by the prosecutor's office because they were indicated to have abused public funds collected in the institution. There is a lot of news regarding the Village Credit Institution that went viral on social media because its administrators were indicated to have committed criminal acts of corruption. Among them are the following:

- 1) The Head of LPD Anturan Buleleng, being indicated to have abused funds of approximately IDR 174 billion.
- 2) The Head of LPD Kapal Badung, being indicated to have abused public finances of no less than IDR 240 billion.

- 3) The Head of LPD Desa Tuwed, the Regency of Jembrana, being indicated to have abused public funds up to IDR 2.4 billion. There are many more LPD heads who are entangled in legal cases alleging committed criminal acts of corruption of public money or harming the state.
- 4) The Head of LPD Sunantaya, the Regency of Tabanan, being indicated to have abused public funds of approximately IDR 125 million.
- 5) The Head of LPD Temukus, the Regency of Buleleng, being indicated to have abused public funds of approximately IDR 1.2 billion.
- 6) The Head of LPD Tamlang, the Regency of Buleleng, being indicated to have abused public funds amounting to IDR 700 million.
- 7) The Head of LPD Manik Liu Tampaksiring Gianyar, being indicated to have abused public funds of approximately IDR 240 million.

The data above represent the data regarding the criminal acts of corruption committed at the Village Credit Institutions in Bali which went viral after reported by the mass media, both electronic and print media. Of course, with the present research, cases of corruption at other Village Credit Institutions experiencing a liquidity crisis will be revealed and the number will certainly be very large. This is mainly because the institution's financial management system is not yet based on Information Technology whose data can be accessed anytime, anywhere, and by anyone (Rusli, 2017:2).

This research is designed to answer the basic problems regarding cases of criminal act of corruption at the Village Credit Institution in Bali by measuring losses the state suffered. Therefore, the problems examined in this study are formulated as follows:

- 1) Can the results of the audit of the regency/municipality inspectorate be used as a basis for prosecuting suspects in cases of financial abuse committed at the Village Credit Institutions?
- 2) What alternative solutions should be taken in an effort to resolve the cases of financial abuse at the Village Credit Institutions?

The study is conducted with the following objectives.

- 1) To shed light on whether the results of the audit of the regency inspectorate can be used as a basis for prosecuting suspects in the cases of financial abuse at the Village Credit Institutions.
- 2) To find alternative solutions that should be taken in an effort to resolve the cases of financial abuse at the Village Credit Institutions.

## **2. RESEARCH METHOD**

This research belongs to the type of mixed legal research method. There are two research approaches applied in this study. The purpose is to make the legal materials and data collected more accurate and guarantee the validity of the research results. Legal materials were collected using document search methods and library materials by means of identification and text analysis. The process was performed by collecting data and legal materials in the form of laws and regulations, minutes and notations, legal documents, scientific books, publication documents or journals, and other sources of information related to the problem under the study, including field-based information collected through interviews. All legal materials and data that had been collected were comprehended, reviewed, recorded, and clarified to be adapted to the material in the research problems. The research was conducted in Bali Province by taking one sample from the village credit institutions in each of the five regencies – consisting of Buleleng Regency, Karangasem Regency, Klungkung Regency, Tabanan Regency, and Jembrana Regency.

## **3. RESULTS AND DISCUSSION**

### **3.1 The Audit Results of the Regency/Municipality Inspectorate Cannot Be Used as a Basis for Prosecuting Suspects in Financial Abuse Cases at Village Credit Institutions**

Quo Vadis in this context appears in the form of putting aside, not respecting, and ignoring the decisions of indigenous peoples that are autonomous, unique, and religiously magical by law enforcers who work in the name of legal certainty, benefit, and justice. Law enforcers carry out their duties at a cost of approximately fifty million rupiah to deal with one corruption case at the Village Credit Institutions. However, it is as if the law enforcers are deliberately setting aside the miseries, screams, and cries of the people who save their money at the Village Credit Institution when the money has been abused by the administrators of the Village Credit



Institution. Thus, it can be argued that the model of law enforcement applied by the prosecutor's office is out of a sense of justice and there is no sensitivity to public unrest and suffering; and therefore, it is useless.

In fact, the wider community and law enforcers do not need to be too excessive in judging the Village Credit Institution or its administrators as a failed financial institution. Especially if the law enforcers drag their administrators to the Criminal Acts of Corruption Court (Pengadilan Tipikor) on charges of committing a crime of corruption. All parties should always keep the atmosphere in the traditional village conducive, as the Village Credit Institution indeed belongs to the traditional village and does not belong to the State. The logical construction of legal thinking is the problem has been resolved in a customary method, but then it is drawn into the realm of state law into a crime of corruption that is detrimental to the state. In fact, the capital to establish a Village Credit Institution is the *urunan* or *pacingkrem* or the voluntary assistance of the local indigenous *krama* (community). In other words, the Village Credit Institution belongs to the indigenous peoples, not the State. Ideally, the alleged loss to the management and the loot that has been taken back should be returned to the Village Credit Institution, because it would be very strange if the confiscated proceeds were returned to the State treasury in the name of legal certainty, truth, and justice based on the One Godhead.

Thus, law enforcement like this is "a misguide". The point here is the legal basis used to drag and prosecute Village Credit Institution administrators who are experiencing problems is a wrong legal basis. Despite being wrong, the legal basis in question continues to be applied for prosecution, without the will and courage to make improvements. In this context, the legal basis referred to refers to the results of an audit conducted by the Regency/Municipality Inspectorate to ensnare the problematic management of the Village Credit Institution; that is the wrong base; and thus, it should be called "misguiding". In this context, there are at least three regulations that have been ruled out by law enforcement, namely:

- 1) The Minister of Home Affairs Regulation (PERMENDAGRI) Number 64 of 2007 concerning Organizational Technical Guidelines and Work Procedures for Provincial and Regency/Municipality Inspectors, in particular Article 3 paragraph (2) expressly states that, the Regency Inspectorate has absolutely no authority to audit the finances of traditional village institutions, and of course, including the village credit institutions.

Original quote from the PERMENDAGRI Number 64 of 2007:

### CHAPTER III

#### Article 3:

- (2) The regency/municipality inspectorate has the task of supervising the implementation of administration affairs in the regency/city area, the implementation of guidance on the administration of village government and the implementation of village administration affairs.

The village referred to in this regulation refers to the "service village", not at all "customary village". Accusing and punishing the Village Credit Institution management on the basis of the audit results from the regency/municipality inspectorate is "misguiding". The Inspectorate is an institution that has absolutely no competence, no authority, and no right to audit the Village Credit Institution's finances. This was emphasized by the Head of the Inspectorate of Jembrana Regency saying "We have no right to audit the Village Credit Institution's finances. The Village Credit Institution does not belong to the State".

Thus, accusing and dragging Village Credit Institution administrators by law enforcement on charges of corruption is a wrong legal construction from the start. If it is forced, of course in the future law enforcement in Indonesia will no longer be trusted by the public because law enforcement is principally based on legal certainty, targets and budgets. It is conceivable that punishing people, in this case the Village Credit Institution administrators, with a wrong legal basis will certainly cause the court process to lose the public's trust.

As the law enforcement jargon says, "It is better to release a hundred criminals than to punish one innocent person". The implication is the law in Indonesia pays very serious attention to human rights and provides legal protection to citizens who do what is right and have good intentions.

Moreover, the Village Credit Institution management who abused the finances of the institution had a good intention to return client/public funds by voluntarily surrendering their assets. The state certainly has an obligation to provide protection to every citizen of good faith. This is the regulation that is violated and set

aside by law enforcers with the argument for legal certainty without paying attention to the principles of expediency and justice as the goal of law enforcement.

- 1) Law Number 1 of 2013 concerning Microfinance Institutions, especially the provisions of Article 39 which expressly states that “This Village Credit Institution is an institution that is exempt from the supervision of the Financial Services Authority and is exempted from the obligation to pay taxes’. It means that financial problems that took place at the Village Credit Institutions are not within the authority of the State to manage, because no State finances are harmed, considering that the Village Credit Institutions do not belong to the State, but belong to traditional village institutions.

The original quote of Law Number 1 of 2013 Article 39 Paragraph (3) is as follows:

“Village Credit Institutions and Lumbung Pitih Nagari as well as similar institutions that existed before this Law came into effect shall be declared to be recognized for their existence based on customary law and not subject to this Law.”

This means, if there is a financial problem at the Village Credit Institution, it does not necessarily involve law enforcement in its resolution, but should be resolved in a traditional manner through deliberation to reach consensus in accordance with local wisdom. This does not mean that law enforcers intervene in the name of law and truth which are very normative.

- 2) Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali. Article 28 juncto Articles 30 and 36 of this regulation confirms that: “Baga Kerta Desa shall be obligated to resolve talks/problems’ in traditional villages based on local wisdom”.

The original quotation from the Article 30 letter (e) and Article 4 Paragraph (2) in the Bali Provincial Regulation Number 4 of 2019 is as follows:

Article 30 letter (e)

- (e) Prajuru Desa Adat shall be obliged to settle customary/talk cases that occur in the *Wewidangan* of Traditional Village;

Article 34

- (2) In carrying out the task of resolving customary/talk cases as referred to in Article 30 letter (e), the Traditional Village Prajuru shall be accompanied by the *Kerta* of Traditional Village.

Therefore, the presence of law enforcement in this context, in addition to using the wrong legal basis in carrying out prosecutions, is also flawed in the way to protect the public. It means that law enforcement becomes like “wearing horse glasses”, completely insensitive to the suffering of the people who are obliged to be protected by the State.

### **3.2 Alternative Solutions That Should Be Taken in Efforts to Resolve Financial Abuse Cases at Village Credit Institutions**

In the event that an act of financial abuse occurred at a Village Credit Institution and was committed by the management of the institution, based on the Regional Regulation of the Province of Bali Number 4 of 2019 concerning Traditional Villages in Bali, the case shall be settled in a traditional manner based on local wisdom, a sense of kinship, and deliberation to reach consensus. If this approach cannot be achieved, the best way to take is to report to the police on the basis of the provisions of Article 372 of the Criminal Code on Embezzlement and Article 362 of the Criminal Code on Fraud.

Based on the findings serving as the results of this study, behind the occurrence of financial abuse at the Village Credit Institution which amounts to billions of rupiah, there are five leading factors identified. They are:

- a) The supervision of management is not optimal
- b) The emergence of Illegal credit or lending of funds outside the existing mechanism and not recorded in the Village Credit Institution administration
- c) The emergence of non-performing loans
- d) Fraudulent credit collector

- e) Expansion of credit with incorrect calculations.

There are a great number of Village Credit Institutions administrators who manage finances by means of speculation, joining in with the act of “land grabbing”. Land is purchased at a relatively low price but then offered at a high price. Not only that, these speculative lands were reported as high-value assets that the supervisors thought the Village Credit Institution was earning a large and healthy profit. In fact, that is not true at all. Moreover, if the plot of land does not sell because it is not suitable for sale, the people’s purchasing power has decreased due to the Covid-19 pandemic which is still raging, and the public’s lack of interest in purchasing the land because the price is expensive and the location is far and remote.

#### 4. CONCLUSION

- 1) Based on the problems and research findings, it turns out that established on the regulation of Law Number 1 of 2013 concerning Microfinance Institutions, the Inspectorate Service at both the regency/municipality level is not permitted to conduct audits of financial abuse committed by the Village Credit Institution management. This is especially in the provisions of Article 39 paragraph (3) which affirms: “Village Credit Institutions and Lumbung Pitih Nagari as well as similar institutions that existed before this Law came into effect shall be declared to be recognized for their existence based on customary law and not subject to this Law.”

The material used to accuse the Village Credit Institution management personnel on committing financial abuse by law enforcement is the result of an audit conducted by the regency/municipality Inspectorate Institution. In addition to the wrong use of the legal basis, the law enforcement actions referred to are also wrong in fulfilling the elements of the articles of the law on corruption as confirmed in the provisions of Law Number 31 of 1999 concerning the Crime of Corruption, which requires state losses. This law confirms that:

“Anyone whosoever unlawfully commits an act to enrich himself or herself or another person or a corporation that can harm the state’s finances or the state’s economy, shall be sentenced to life imprisonment or to a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years of imprisonment.”

- 2) Alternative solutions that should be taken in an effort to prevent and overcome cases of criminal acts of abuse of Village Credit Institution finance are as follows.
  - a) Supervision of the management must be maximized by both internal and external supervisors from the Village Credit Institution at every level.
  - b) Credit expansion out of concerned traditional villages must be strictly avoided, unless cooperation has been established between customary village institutions in terms of credit disbursement.
  - c) Handling non-performing loans must be carried out professionally and decisively, while still prioritizing a sense of kinship.
  - d) The selection of credit collection workers must be conducted in a professional manner, not based on close kinship.
  - e) Credit management must be based on technology, computers and internet networks. Thus, Village Credit Institutions finances can easily be monitored from remotely with an android device.

There are recommendations offered from this study.

- 1) The Government, in this case the Promotion and Development Institution for Village Credit Institution at all levels, needs to be more active in providing counseling and education to Village Credit Institutions management, especially regarding responsibility, transparency, management, and the ability to use technology. This is very important to ensure data falsification and technological stutter do not take place. The community also needs to be facilitated so that at any time they can access their finances through applications remotely.
- 2) Village Credit Institution administrators are highly recommended to improve their quality, dedication and prioritize working hard, working smart, and working thoroughly. Good service will trigger strong trust from the community.
- 3) The community, especially those who take advantage of the Village Credit Institution facilities, should maintain their spirit to balance rights and obligations; especially obligations that must be paid. Failure to

pay obligations makes the Village Credit Institutions having been instrumental in providing facilities unhealthy. The result will be worst for the Village Credit Institution because it causes the institution to be unable to pay the interest and savings entrusted to it by the public. Even more fatal, public confidence will be reduced and this will result in the Village Credit Institution experiencing a liquidity crisis.

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# Measuring the State Losses in Corruption Cases at the Village Credit Institutions in Bali

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<b>Article Info</b>	<b>Abstract</b>	
<b>Keywords:</b> Village Credit Institution; Finance; Corruption; State Loss; Liquidity	<p><b>Introduction:</b> Until the end of 2021, the legal issue having been an actual trending topic and hot issue which attracts the attention of scholars and researchers, is the phenomenon of the emergence of criminal acts of corruption committed in congregation by the management of the Village Credit Institution in Bali. Generally, the resolution of these cases is carried out in a traditional manner with the spirit of local wisdom and kinship through the Paruman Krama of Traditional Villages to attain an agreement or consensus. The prosecutor's office, however, enters into this customary realm, then participates in conducting preliminary investigations and investigations. The involvement of prosecutor is only on the basis of a document issued in 1988 regarding the Bali Governor's Assistance amounting to two million rupiah as the initial capital for the establishment of the Village Credit Institution.</p> <p><b>Purposes of the Research:</b> The present study aims at identifying whether or not the results of the regency inspectorate's audit can be used as a basis for prosecuting suspects in the cases of abuse of Village Credit Institution finance as well as alternative solutions that necessarily need to be taken to resolve the cases.</p> <p><b>Methods of the Research:</b> The first problem is examined using the Theory of Penalty and the second one is examined using the Theory of the Welfare State Law. The research method used is a mixed legal research method. Data are presented using a systematic description technique.</p> <p><b>Results of the Research:</b> The solution that is expected is this study sheds light on whether or not the results of the regency inspectorate's audit can be used as a basis for prosecuting suspects in cases of abuse of the Village Credit Institution finance, what factors are the causes of the liquidity crisis and whether the present study results can be applied as an alternative solution that should be taken in resolving cases at the regency level. The target to be achieved in the research is publication on the electronic media Bali TV in the regional seminar on "Menghitung Kerugian Negara dalam Kasus Korupsi Pada Lembaga Perkreditan Desa di Bali". The expected output from the study is the results will be published in the Sinta I indexed journal.</p> <hr/> <p><b>Pendahuluan:</b> Sampai di penghujung tahun 2021 isu hukum yang trending topic dan hot issue, aktual dan menarik untuk dibahas dan diteliti adalah, fenomena munculnya kasus tindak pidana korupsi yang dilakukan secara berjamaah oleh pengurus Lembaga Perkreditan Desa di Bali. Umumnya penyelesaian dilakukan secara adat bersemangat kearifan lokal dan kekeluargaan melalui paruman krama desa adat untuk mendapatkan kesepakatan atau kemufakatan. Namun demikian pihak kejaksaan masuk ke ranah adat ini, lalu turut melakukan investigasi, penyelidikan, dan penyidikan. Masuknya kejaksaan hanya dengan dasar dokumen yang diterbitkan pada tahun 1988 tentang bantuan Gubernur Bali sebesar dua juta rupiah untuk modal awal pendirian LPD.</p> <p><b>Tujuan Penelitian:</b> Tujuan penelitian ini untuk mengetahui dapatkah hasil audit inspektorat kabupaten dipakai dasar untuk menuntut tersangka penyalahgunaan keuangan LPD dan solusi alternative yang seharusnya dipakai dalam rangka menyelesaikan kasus penyalahgunaan.</p> <p><b>Metode Penelitian:</b> Permasalahan pertama akan dianalisa menggunakan Teori Pidanaan, permasalahan yang kedua akan dianalisa menggunakan Teori Negara Hukum Kesejahteraan. Metode penelitian yang dipakai adalah, penelitian hukum campuran atau mix legal research method. Penyajian data menggunakan teknik deskripsi sistematis.</p> <p><b>Hasil Penelitian:</b> Solusi yang diharapkan dapat mengetahui dapatkah hasil audit inspektorat kabupaten dipakai dasar untuk menuntut tersangka penyalahgunaan keuangan LPD dan faktor apa yang menjadi penyebab terjadinya krisis likuiditas dan solusi alternative yang seharusnya dipakai dalam rangka menyelesaikan kasus penyalahgunaan keuangan LPD. Target yang ingin dicapai dalam penelitian ini adalah Publikasi pada media elektronik Bali TV pada saat seminar regional tentang "Menghitung Kerugian Negara Dalam Kasus Korupsi Pada Lembaga Perkreditan Desa di Bali". Luaran yang akan disampaikan adalah hasil penelitian ini terpublikasi di jurnal terindex Sinta I.</p>	

## 1. INTRODUCTION

In essence, whatever is attempted and done by human beings in the community both as an institution or as a community actually aims to improve the welfare of themselves, their families and society. In addition, the things done are also in order to ensure the realization of social order (Burger 1977). Unfortunately, in practice, there are many obstacles, challenges, and hindrances in realizing the intended goal. One of them is the corrupt and mental behavior that ignores the procedural process and is very concerning. Criminal acts of corruption by stealing people's money have really worst results. They are considered as extraordinary crimes (Prahassacitta 2016), because they can damage the democratic system and undermine the competitiveness of the nation, besides being able to loosen the spirit of the younger generation to study and struggle.

Speaking of corruption as an obstacle to development, it turns out that by the end of 2021, the legal issue having appeared as an actual and interesting trending topic and hot issue to be discussed and researched has emerged in Bali. In particular, it is the phenomenon of the emergence of cases of criminal acts of corruption committed in congregation by the management of the Village Credit Institution in the area (Padmawati 2021). The Village Credit Institution (in Indonesian 'Lembaga Pengkreditan Desa' and abbreviated as LPD) refers to microfinance institution belonging to traditional villages that are established based on local wisdom (Suwitra et al. 2020; Putra and Sarjana 2018; Putri and Withnall 2018).

In the case of a criminal act of corruption in the form of abuse of money at the Village Credit Institutions, the losses suffered are not half-hearted; it reaches hundreds of billions of rupiah (Padmawati 2021). Generally, these cases are resolved in a traditional method with the spirit of local wisdom filled with a sense of kinship. They are resolved through deliberation or *Paruman Krama* of Traditional Villages to reach an agreement or consensus (Widia 2021). However, the prosecutor's office suddenly entered the realm of this custom, and then took part in conducting preliminary investigations and investigations (Wahyuningsih and Sunaryo 2017). The result is actually counter-productive, because positive law enforcement by the prosecutor's office on this case is considered not beneficial to the community (Raydika 2013), especially in calculating the state losses with very minimal findings so that they tend to lighten penalties for violators of this customary village mandate.

The involvement of the prosecutor's office in resolving cases of criminal acts of corruption at the Village Credit Institution is only based on a document published in 1988 regarding the Bali Governor's Assistance amounting to two million rupiah as the initial capital for the establishment of the institution. In other words, the truth is not the material truth required in the realm of criminal law, but only the formalistic truth as required by the realm of civil law. It is because it appears that in the realm of empirical facts, the initial capital for the establishment of the Village Credit Institution originated from the collective funds collected by the *karma* (community) of Traditional Villages in the form of *urunan* or *pecingkreman* (Iswara and Wirawan 2020). The matter that is even more concerning is the distortion of the gap regarding the amount of state losses determined by the prosecutor. For example, an audit conducted by a traditional village officer or administrator through the Village Credit Institution Asset Rescue Team found the potential loss to the community was IDR 3,000,000,000 (three billion rupiah). Then, the Prosecutor's Office claimed the state's loss was only IDR 1,000,000,000 (one billion rupiah). Thus, it became out of sync with the basis of the document for capital participation from the Governor of Bali which amounted to IDR 2,000,000 (two million rupiah) in 1988 with claims for state losses that reached IDR 1,000,000,000, and also with the results of the audit by the traditional village management or administrators who found the community concerned suffered losses of up to IDR 3,000,000,000 (Astuti and Chariri 2015).

The prosecution's claim is considered a far-fetched and light act by the public; as if the practice of the legal mafia had occurred. Based on observations in the field, the reason why many traditional villages have not established a Village Credit Institution is they feel unable to manage it professionally. They doubt that an institution which in essence has a noble purpose for the welfare of the community turns out to serves as the cause of disastrous divisions and commotion for the community due to the wrong management and administration. If examined in more depth, it appears that this reasoning is true, considering that until the end of 2021, there had been many Village Credit Institution administrators who were detained by the prosecutor's office because they were indicated to have abused public funds collected in the institution. There is a lot of news regarding the Village Credit Institution that went viral on social media because its administrators were indicated to have committed criminal acts of corruption. Among them are the following:

- 1) The Head of LPD Anturan Buleleng, being indicated to have abused funds of approximately IDR 174 billion.

- 2) The Head of LPD Kapal Badung, being indicated to have abused public finances of no less than IDR 240 billion.
- 3) The Head of LPD Desa Tuwed, the Regency of Jembrana, being indicated to have abused public funds up to IDR 2.4 billion. There are many more LPD heads who are entangled in legal cases alleging committed criminal acts of corruption of public money or harming the state.
- 4) The Head of LPD Sunantaya, the Regency of Tabanan, being indicated to have abused public funds of approximately IDR 125 million.
- 5) The Head of LPD Temukus, the Regency of Buleleng, being indicated to have abused public funds of approximately IDR 1.2 billion.
- 6) The Head of LPD Tamlang, the Regency of Buleleng, being indicated to have abused public funds amounting to IDR 700 million.
- 7) The Head of LPD Manik Liu Tampaksiring Gianyar, being indicated to have abused public funds of approximately IDR 240 million.

The data above represent the data regarding the criminal acts of corruption committed at the Village Credit Institutions in Bali which went viral after reported by the mass media, both electronic and print media. Of course, with the present research, cases of corruption at other Village Credit Institutions experiencing a liquidity crisis will be revealed and the number will certainly be very large. This is mainly because the institution's financial management system is not yet based on Information Technology whose data can be accessed anytime, anywhere, and by anyone.

This research is designed to answer the basic problems regarding cases of criminal act of corruption at the Village Credit Institution in Bali by measuring losses the state suffered. Therefore, the problems examined in this study are formulated as follows:

- 1) Can the results of the audit of the regency/municipality inspectorate be used as a basis for prosecuting suspects in cases of financial abuse committed at the Village Credit Institutions?
- 2) What alternative solutions should be taken in an effort to resolve the cases of financial abuse at the Village Credit Institutions?

The study is conducted with the following objectives.

- 1) To shed light on whether the results of the audit of the regency inspectorate can be used as a basis for prosecuting suspects in the cases of financial abuse at the Village Credit Institutions.
- 2) To find alternative solutions that should be taken in an effort to resolve the cases of financial abuse at the Village Credit Institutions.

## **2. RESEARCH METHOD**

This research belongs to the type of mixed legal research method. There are two research approaches applied in this study. The purpose is to make the legal materials and data collected more accurate and guarantee the validity of the research results. Legal materials were collected using document search methods and library materials by means of identification and text analysis. The process was performed by collecting data and legal materials in the form of laws and regulations, minutes and notations, legal documents, scientific books, publication documents or journals, and other sources of information related to the problem under the study, including field-based information collected through interviews. All legal materials and data that had been collected were comprehended, reviewed, recorded, and clarified to be adapted to the material in the research problems. The research was conducted in Bali Province by taking one sample from the village credit institutions in each of the five regencies – consisting of Buleleng Regency, Karangasem Regency, Klungkung Regency, Tabanan Regency, and Jembrana Regency.

## **3. RESULTS AND DISCUSSION**

### **3.1 The Audit Results of the Regency/Municipality Inspectorate Cannot Be Used as a Basis for Prosecuting Suspects in Financial Abuse Cases at Village Credit Institutions**

Quo Vadis in this context appears in the form of putting aside, not respecting, and ignoring the decisions of indigenous peoples that are autonomous, unique, and religiously magical by law enforcers who work in the name of legal certainty, benefit, and justice (Poetra 2021; Suhariyanto 2013). Law enforcers carry out their duties at a cost of approximately fifty million rupiah to deal with one corruption case at the Village Credit Institutions (Yuliastina et al. 2021). However, it is as if the law enforcers are deliberately setting aside the miseries, screams, and cries of the people who save their money at the Village Credit Institution when the

money has been abused by the administrators of the Village Credit Institution. Thus, it can be argued that the model of law enforcement applied by the prosecutor's office is out of a sense of justice and there is no sensitivity to public unrest and suffering; and therefore, it is useless.

In fact, the wider community and law enforcers do not need to be too excessive in judging the Village Credit Institution or its administrators as a failed financial institution. Especially if the law enforcers drag their administrators to the Criminal Acts of Corruption Court (Pengadilan Tipikor) on charges of committing a crime of corruption. All parties should always keep the atmosphere in the traditional village conducive, as the Village Credit Institution indeed belongs to the traditional village and does not belong to the State (Piadnyan, Budiarta, and Arini 2020). The logical construction of legal thinking is the problem has been resolved in a customary method, but then it is drawn into the realm of state law into a crime of corruption that is detrimental to the state. In fact, the capital to establish a Village Credit Institution is the *urunan* or *pacingkrem* or the voluntary assistance of the local indigenous *krama* (community). In other words, the Village Credit Institution belongs to the indigenous peoples, not the State. Ideally, the alleged loss to the management and the loot that has been taken back should be returned to the Village Credit Institution, because it would be very strange if the confiscated proceeds were returned to the State treasury in the name of legal certainty, truth, and justice based on the One Godhead.

Thus, law enforcement like this is "a misguide". The point here is the legal basis used to drag and prosecute Village Credit Institution administrators who are experiencing problems is a wrong legal basis. Despite being wrong, the legal basis in question continues to be applied for prosecution, without the will and courage to make improvements. In this context, the legal basis referred to refers to the results of an audit conducted by the Regency/Municipality Inspectorate to ensnare the problematic management of the Village Credit Institution; that is the wrong base; and thus, it should be called "misguiding". In this context, there are at least three regulations that have been ruled out by law enforcement (Jamin 2014), namely:

- 1) The Minister of Home Affairs Regulation (PERMENDAGRI) Number 64 of 2007 concerning Organizational Technical Guidelines and Work Procedures for Provincial and Regency/Municipality Inspectors, in particular Article 3 paragraph (2) expressly states that, the Regency Inspectorate has absolutely no authority to audit the finances of traditional village institutions, and of course, including the village credit institutions.

Original quote from the PERMENDAGRI Number 64 of 2007:

### CHAPTER III

#### Article 3:

- (2) The regency/municipality inspectorate has the task of supervising the implementation of administration affairs in the regency/city area, the implementation of guidance on the administration of village government and the implementation of village administration affairs.

The village referred to in this regulation refers to the "service village", not at all "traditional villages". Accusing and punishing the Village Credit Institution management on the basis of the audit results from the regency/municipality inspectorate is "misguiding". The Inspectorate is an institution that has absolutely no competence, no authority, and no right to audit the Village Credit Institution's finances. This was emphasized by the Head of the Inspectorate of Jembrana Regency saying "We have no right to audit the Village Credit Institution's finances. The Village Credit Institution does not belong to the State".

Thus, accusing and dragging Village Credit Institution administrators by law enforcement on charges of corruption is a wrong legal construction from the start. If it is forced, of course in the future law enforcement in Indonesia will no longer be trusted by the public because law enforcement is principally based on legal certainty, targets and budgets. It is conceivable that punishing people, in this case the Village Credit Institution



administrators, with a wrong legal basis will certainly cause the court process to lose the public's trust (Jamin 2014).

As the law enforcement jargon says, "It is better to release a hundred criminals than to punish one innocent person". The implication is the law in Indonesia pays very serious attention to human rights and provides legal protection to citizens who do what is right and have good intentions.

Moreover, the Village Credit Institution management who abused the finances of the institution had a good intention to return client/public funds by voluntarily surrendering their assets. The state certainly has an obligation to provide protection to every citizen of good faith. This is the regulation that is violated and set aside by law enforcers with the argument for legal certainty without paying attention to the principles of expediency and justice as the goal of law enforcement.

- 1) Law Number 1 of 2013 concerning Microfinance Institutions, especially the provisions of Article 39 which expressly states that "This Village Credit Institution is an institution that is exempt from the supervision of the Financial Services Authority and is exempted from the obligation to pay taxes". It means that financial problems that took place at the Village Credit Institutions are not within the authority of the State to manage, because no State finances are harmed, considering that the Village Credit Institutions do not belong to the State, but belong to traditional village institutions.

The original quote of Law Number 1 of 2013 Article 39 Paragraph (3) is as follows:

"Village Credit Institutions and Lumbung Pitih Nagari as well as similar institutions that existed before this Law came into effect shall be declared to be recognized for their existence based on customary law and not subject to this Law."

This means, if there is a financial problem at the Village Credit Institution, it does not necessarily involve law enforcement in its resolution, but should be resolved in a traditional manner through deliberation to reach consensus in accordance with local wisdom. This does not mean that law enforcers intervene in the name of law and truth which are very normative.

- 2) Bali Provincial Regulation Number 4 of 2019 concerning Traditional Villages in Bali. Article 28 junto Articles 30 and 36 of this regulation confirms that: "Baga Kerta Desa shall be obligated to resolve talks/problems' in traditional villages based on local wisdom".

The original quotation from the Article 30 letter (e) and Article 4 Paragraph (2) in the Bali Provincial Regulation Number 4 of 2019 is as follows:

Article 30 letter (e)

- (e) Prajuru Desa Adat shall be obliged to settle customary/talk cases that occur in the *Wewidangan* of Traditional Village;

Article 34

- (2) In carrying out the task of resolving customary/talk cases as referred to in Article 30 letter (e), the Traditional Village Prajuru shall be accompanied by the *Kerta* of Traditional Village.

Therefore, the presence of law enforcement in this context, in addition to using the wrong legal basis in carrying out prosecutions, is also flawed in the way to protect the public. It means that law enforcement becomes like "wearing horse glasses", completely insensitive to the suffering of the people who are obliged to be protected by the State.

### **3.2 Alternative Solutions That Should Be Taken in Efforts to Resolve Financial Abuse Cases at Village Credit Institutions**

In the event that an act of financial abuse occurred at a Village Credit Institution and was committed by the management of the institution, based on the Regional Regulation of the Province of Bali Number 4 of 2019 concerning Traditional Villages in Bali, the case shall be settled in a traditional manner based on local wisdom, a sense of kinship, and deliberation to reach consensus. If this approach cannot be achieved, the best way to

take is to report to the police on the basis of the provisions of Article 372 of the Criminal Code on Embezzlement and Article 362 of the Criminal Code on Fraud.

Based on the findings serving as the results of this study, behind the occurrence of financial abuse at the Village Credit Institution which amounts to billions of rupiah, there are five leading factors identified. They are:

- a) The supervision of management is not optimal
- b) The emergence of Illegal credit or lending of funds outside the existing mechanism and not recorded in the Village Credit Institution administration
- c) The emergence of non-performing loans
- d) Fraudulent credit collector
- e) Expansion of credit with incorrect calculations.

There are a great number of Village Credit Institutions administrators who manage finances by means of speculation, joining in with the act of "land grabbing". Land is purchased at a relatively low price but then offered at a high price. Not only that, these speculative lands were reported as high-value assets that the supervisors thought the Village Credit Institution was earning a large and healthy profit. In fact, that is not true at all. Moreover, if the plot of land does not sell because it is not suitable for sale, the people's purchasing power has decreased due to the Covid-19 pandemic which is still raging, and the public's lack of interest in purchasing the land because the price is expensive and the location is far and remote.

#### **4. CONCLUSION**

- 1) Based on the problems and research findings, it turns out that established on the regulation of Law Number 1 of 2013 concerning Microfinance Institutions, the Inspectorate Service at both the regency/municipality level is not permitted to conduct audits of financial abuse committed by the Village Credit Institution management. This is especially in the provisions of Article 39 paragraph (3) which affirms: "Village Credit Institutions and Lumbung Pitih Nagari as well as similar institutions that existed before this Law came into effect shall be declared to be recognized for their existence based on customary law and not subject to this Law."

The material used to accuse the Village Credit Institution management personnel on committing financial abuse by law enforcement is the result of an audit conducted by the regency/municipality Inspectorate Institution. In addition to the wrong use of the legal basis, the law enforcement actions referred to are also wrong in fulfilling the elements of the articles of the law on corruption as confirmed in the provisions of Law Number 31 of 1999 concerning the Crime of Corruption, which requires state losses. This law confirms that:

"Anyone whosoever unlawfully commits an act to enrich himself or herself or another person or a corporation that can harm the state's finances or the state's economy, shall be sentenced to life imprisonment or to a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years of imprisonment."

- 2) Alternative solutions that should be taken in an effort to prevent and overcome cases of criminal acts of abuse of Village Credit Institution finance are as follows.
  - a) Supervision of the management must be maximized by both internal and external supervisors from the Village Credit Institution at every level.
  - b) Credit expansion out of concerned traditional villages must be strictly avoided, unless cooperation has been established between customary village institutions in terms of credit disbursement.
  - c) Handling non-performing loans must be carried out professionally and decisively, while still prioritizing a sense of kinship.
  - d) The selection of credit collection workers must be conducted in a professional manner, not based on close kinship.
  - e) Credit management must be based on technology, computers and internet networks. Thus, Village Credit Institutions finances can easily be monitored from remotely with an android device.

There are recommendations offered from this study.

- 1) The Government, in this case the Promotion and Development Institution for Village Credit Institution at all levels, needs to be more active in providing counseling and education to Village Credit Institutions management, especially regarding responsibility, transparency, management, and the ability to use technology. This is very important to ensure data falsification and technological stutter do not take place. The community also needs to be facilitated so that at any time they can access their finances through applications remotely.
- 2) Village Credit Institution administrators are highly recommended to improve their quality, dedication and prioritize working hard, working smart, and working thoroughly. Good service will trigger strong trust from the community.
- 3) The community, especially those who take advantage of the Village Credit Institution facilities, should maintain their spirit to balance rights and obligations; especially obligations that must be paid. Failure to pay obligations makes the Village Credit Institutions having been instrumental in providing facilities unhealthy. The result will be worst for the Village Credit Institution because it causes the institution to be unable to pay the interest and savings entrusted to it by the public. Even more fatal, public confidence will be reduced and this will result in the Village Credit Institution experiencing a liquidity crisis.

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