

# IDEAL CONSTRUCTION REQUIREMENTS FORMIL EXPERT PROOF AS A BASIS OF JUDGE CONSIDERATION TO DETERMINE COUNTRY FINANCIAL DAMAGES IN CORRUPTION CRIMINAL ACTIONS BASED ON JUSTICE VALUES

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**Abstract :** *State losses can only be calculated by an expert. The experts here are not only experts in the field of financial audit but also technical experts who will calculate the feasibility of a building construction in the case of a criminal act of corruption which is related to the construction field. The expert who has the competence to calculate the quantity of a building and the price of a building is someone who has a construction management certification. Information from Construction Experts who do not have competence in corruption cases, then their statements become invalid. the purpose of this study is to analyze the weaknesses of expert statements as a basis for judges consideration in corruption, and to construct expert statements as a basis for judges in determining state losses in corruption based on the value of justice. weaknesses in expert evidence as a basis for judges to determine state financial losses in current corruption cases, namely, Weaknesses in Legal Substance, Weaknesses in Legal Structures, Weaknesses in Legal Culture. So that the provisions of Article 1 number 28 of the Criminal Procedure Code and Article 168 of the Criminal Procedure Code need to be reconstructed based on the values of justice.*

**Keywords:** *Expert Statement, Competence, Corruption*

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## INTRODUCTION

Criminal law aims to obtain material truth in disclosing a criminal event. Efforts that can be made to explore material truth are through evidence at the trial. These efforts were carried out through evidence and evidence in order to obtain a conviction for the truth or not the criminal act was indicted and to find out whether there was any mistakes in the changed.

Bambang Peornomo stated that a legal proof is basically a process to determine the substance or the nature of the facts obtained through a reasonable measure with a logical mind to the facts in the past that are not bright to be facts that are bright in relation with a criminal case.<sup>2</sup>

According to Luhut M.P. Pangaribuan, criminal justice in the Criminal Code Procedure is divided into three phases, namely pre-adjudication, adjudication and post-adjudication. The pre-adjudication phase is the investigation

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and/or investigation phase, the adjudication phase is the examination phase of the judge in court, and the post-adjudication phase is the correctional punishment of a person.<sup>3</sup> Luhur M.P. Pangarian divides all criminal proceedings into 3 (three) phases/stages, namely the pre-adjudication phase, the adjudication phase, and the post-adjudication phase. The more general division of criminal proceedings consists of 4 (four) phases / stages, namely<sup>4</sup>: Investigation stage, Prosecution stage, The examination stage at the court hearing, and The implementation phase of the decision.

The criminal code procedure has established various types of legal evidence that can be used in criminal proceedings. It is stated in Article 184 of the Criminal Code Procedure : among others the following : (1) Valid evidence is: Witness statement, Expert statement, Letter, A clue and, Defendant's statement. (2) Things that are generally known do not need to be proven.

With regard to the above mentioned evidence, the judge did not fully acknowledge the truth. This depends on the judge's confidence in conducting an assessment of the evidence. The judge in assessing the truth of the testimony / proof, in the RIB is known as 3 systems of evidence, among others: free system (*Vrij Bewijk*), positive system (*wettelijk*), and negative system (*wettelijk*).

Of the three systems of evidence, it turns out that in the Criminal Code Procedure we adopt a third system, the "Wettelijk Negative System", which is a judge to declare someone guilty and in law there must be confidence in the judge, and that belief must be based on evidence legitimate<sup>5</sup>.

One of the evidences that can assist the judge in giving legal consideration is expert testimony. In certain criminal cases such as corruption, expert statements have a big role in determining whether there is a mistake made by a defendant. expert testimony is one of the evidences holding quite an important role as stipulated in Article 184 of the Criminal Code Procedure.

One important element in the criminal act of corruption is the real element of state loss. State losses can only be calculated by an expert. The experts here are not only experts in the field of financial audit but also technical experts who will calculate the feasibility of a building construction in the case of a criminal act of corruption which is related to the construction field.

In handling corruption cases, the process of calculating the amount of state losses in practice still causes different interpretations by the Prosecutor's Office, the Audit Board of Indonesia, the Financial and Development Supervisory Agency, and the court.

Expert testimony as one of the evidences in the trial, should only be given by someone who has special expertise in accordance with statutory provisions must meet certain requirements, but the judge does not consider the defendant's objection to expert testimony in the trial that does not meet the formal requirements of expertise with the reasons for the Criminal Code Procedure do not regulate such matters.

In the consideration of the panel of judges, even though formally according to statutory regulations outside the Criminal Code Procedure a person has not fulfilled the requirements as an expert, but because the Criminal Procedure Code does not regulate this matter, according to the panel of judges' views, it is permissible for a person to be presented as an expert as long as he has special expertise regarding things needed to make light of a criminal case. The expert's statement can be considered as one of the valid evidences according to Article 184 of the Criminal Code Procedure.

Judging from the aspect of the basic value of justice, the view of such judges does not yet reflect or uphold the value of justice, because such a view in legal theory, tends to be merely legalism without taking into account other legal norms outside the Criminal Code Procedure which require its specificity.

Based on the explanation above, a problem can be formulated as follows: What is the weakness in the evidence of expert testimony as a basis for judges to determine the state financial losses in the current corruption case. ideal construction requirements formil expert proof as a basis of judge consideration to determine country financial damages in corruption criminal actions based on justice values

## METHODS

The method used is the socio legal approach. Socio-legal is an approach that is done by looking at a legal reality in the community, and is an approach that is used to look at legal aspects of social interaction within the community, functioning as a support to identify and clarify the findings of non-legal materials for research purposes.<sup>6</sup>

<sup>3</sup> Luhur M.P. Pangaribuan, 2013, *Hukum Acara Pidana. Surat Resmi Advokat di Pengadilan, Papas Sinar Sinanti, Jakarta*, p. 35, 36

<sup>4</sup> M. Yahya Harahap, 2010, *Pembahasan Permasalahan dan Penerapan KUHAP, Sinar Grafika, Jakarta*, p. 229

<sup>5</sup> *Ibid*

<sup>6</sup> Zainuddin Ali, 2014 *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, p.103.

The data used are primary and secondary data<sup>7</sup>. then the data obtained from the literature and field will be validated and analyzed. The steps of this research data analysis technique follow an interactive model of data analysis as proposed by Matthew B. Miles and A. Michael Huberman, through three activities namely data reduction, data presentation and drawing conclusions or verification<sup>8</sup>.

## DISCUSSION

Expert statements are the opinions of people given under oath in a hearing about things known in their experience and knowledge<sup>9</sup>. This definition refers to the provisions of Article 1 point 28 of the Criminal Code Procedure which states that an expert's statement is a statement given by someone who has special expertise on the matters needed to make light of a criminal case for the purpose of an examination”.

Someone said to have or have special expertise, in this case a concept that is still abstract. Although it also has an abstract concept, in this case expert testimony is very important in order to help law enforcement officials, especially judges in court to prevent an error in the court, both errors in the subject, object and application of the law in the process of examination and criminal justice.

The special expertise mentioned in Article 1 point 28 of the Criminal Code Procedure, in this case, can be interpreted with regard to the ability to explain or describe a particular object in order to assist the criminal justice process. The ability here is based on experience, expertise or knowledge possessed by witnesses. The term "experience" is usually attached to the empirical world and vice versa the term "expertise" is usually placed in the theoretical realm, but it does not rule out someone can be said to have "special expertise" because it bears two professions at once, namely as a theoretical as well as a practitioner.

Judging from the rules in the Criminal Code Procedure above, when examined and examined where the Criminal Code Procedure does not specifically regulate what conditions he listens to as expert testimony in an examination in court. What is referred to in the Criminal Code Procedure is as long as he has 'special expertise' on what is needed to make a criminal case clear and submitted by certain parties, then his statement can be heard for the purpose of examination.

The presence of an expert at the hearing can be requested by the Defendant, as well as the Public Prosecutor. In addition, the presiding judge may appoint a person or several experts to provide information either by letter or writing, which is confirmed by an oath or promise according to the truth to the best of his knowledge and experience. Expert testimony is needed to increase the judge's confidence regarding an issue in a particular field, which indeed can only be explained by experts in the field concerned, for example experts in banking, experts in the field of State Administration, ballistics experts and others.

Article 184 paragraph (1) of the Criminal Code Procedure expressly designates expert testimony as one of the legal proofs, as seen in the formulation of Article 184 paragraph (1) of the Criminal Code Procedure, where it is determined that the legal evidence is:

- a. witness statement;
- b. expert statement;
- c. letter;
- d. instructions;
- e. defendant's statement.

However, even though expert statements have a stronger position in the Criminal Code Procedure, in the opinion of M. Yahya Harahap a Judge is not absolutely bound to an expert statement<sup>10</sup>. Yahya Harahap writes about the issue of the power of proof from expert statements as follows<sup>11</sup>:

“..., the value of the strength of proof attached to the evidence of expert testimony has the value of the strength of proof of "free" or vrij bewijskracht. In him there is no inherent value of the power of proof that is perfect and decisive. It is up to the judge's judgment. Judges are free to judge and are not bound by it. There is no obligation for the Judge to accept the truth of the expert's statement.

According to Lawrence W Fridemann, in his theory of the legal system, it is stated that the legal substance is all legal principles, legal norms, and legal rules, both written and unwritten, including jurisprudence.<sup>12</sup> The substance

<sup>7</sup> Soerjono Soekanto, 1983, *Pengantar Penelitian Hukum*, UI Press, Jakarta, p.49.

<sup>8</sup> Matthew B. Miles dan A. Michael Huberman, 1992, *Analisis Data Kualitatif*, UI Press, Jakarta: p. 20-22 see to Robert Bogdan and Steven J. Taylor, 1993, *Kualitatif: Dasar-dasar Penelitian, Usaha Nasional*, Surabaya, p. 31-32. See to Sanafiah Faisal, 1990, *Penelitian Kualitatif: Dasar-dasar & Aplikasinya*, Yayasan Asah Asih Asuh, Malang, p. 80.

<sup>9</sup> Sudikno Mertokusumo, 2008, *Hukum Acara Perdata Indonesia*, liberty, Yogyakarta, p. 165

<sup>10</sup> M. Yahya Harahap, *Op.Cit*, p. 230.

<sup>11</sup> *Ibid*, p. 230.

<sup>12</sup> Lawrence M. Friedmann, 2009. *Law and Behavioral Science*. Indianapolis: The Bobbs Herrin., p. 20.

of the law in cases of corruption lies in the norms contained in positive legal rules. The most important thing in uncovering a legal event in the form of a criminal act of corruption is actually at the proof stage. There are 2 (two) big questions that must be answered by the public prosecutor when indicting someone before a trial and will be tested by a panel of judges whether it can be proven or not. The two questions are:

Is an event a criminal offense or a criminal offense?

Can the criminal or criminal act be accounted for by the culprit?

In accordance with Article 186 of the Criminal Code Procedure, it is stated that the Expert Statement is what an expert stated in a court hearing. According to the provisions of Article 1 of the Criminal Code Procedure, it is stated that an expert's statement is a statement given by a person who has special expertise regarding matters needed to make a criminal case clear for the purpose of an examination.

In connection with a corruption crime case, the object of the examination is the construction or building, the information required based on legal reasoning is the information of an expert who has a construction or building background.

Based on the Law of the Republic of Indonesia Number 18 of 1999 concerning Construction Services (which has now been replaced with the enactment of Law No. 2 of 2017 concerning Construction Services ), in juncto with the Government Regulation of the Republic of Indonesia Number 29 of 2000 concerning the Implementation of Construction Services in juncto with the Government Regulation of the Republic of Indonesia Number 59 of 2010 Concerning Amendments to Government Regulation Number 29 of 2000 concerning the Construction Services in juncto Regulation of the National Construction Services Development Agency Number 4 of 2014 Regarding Expert Appraisers in the Construction Services Sector, Experts authorized to conduct an assessment of the quality of a building, are there failures in construction or failures in the building are expert Appraisers.

Expert Appraiser according to the provisions of Article 1 number 5 of the Regulation of the National Construction Services Development Agency Number 4 of 2014 Regarding Expert Appraisers in the Construction Services Sector is someone who has competency in expert evaluation in the field of construction services;

Furthermore, it is emphasized in the provisions of Article 37 of the Government Regulation of the Republic of Indonesia Number 29 Year 2000 concerning the Implementation of Construction Services:

Expert assessors as referred to in Article 36 section (1) must have a certificate of expertise and be registered with the Institution.

Based on the provisions as mentioned above, it can be understood if an expert evaluator must normatively meet the criteria and competencies as stipulated in the applicable laws and regulations, so that if someone who performs his duties as an expert appraiser does not meet the criteria and competencies as mentioned a quo, then he does not have the authority to carry out the evaluation and the result of the evaluation is not legal.

If in a trial of a criminal act of corruption with the object of examination of a building, then the background of expertise of an expert presented by the Public Prosecutor at the hearing must be in accordance with the object of examination, namely the building expert. If the Expert presented by the Public Prosecutor at a trial does not have or qualifies as an expert Appraiser, then according to the applicable laws and regulations, he is not authorized to carry out any activities related to the Expert Appraiser's profession.

As a result, if the expert presented by the Public Prosecutor is not an Expert Appraiser, the statement or the results of the report cannot be used as evidence at the trial because the report product made is not based on authority as governed by statutory regulations, meaning that the report product made is invalid because it was made by an unauthorized person.

The above description shows that the existence of technical experts in the process of examining corruption cases with the construction of buildings as the object of investigation is crucial to determine whether there is state financial losses, so that the statements of technical experts who do not meet the requirements as experts at trial greatly harm the defendant's legal interests.

The auditor as an expert in charge of calculating state financial losses depends on the results of the inspection of the quantity and price as well as the quality of buildings made by the Technical Expert or in this case the expert appraiser. Auditors without technical experts will find it difficult to conduct an investigative audit as a basis for conducting audits to determine whether there is a State loss, calculating the amount of state losses if they exist, determining the amount of State losses.

According to Lawrence W Fridemann, in the theory of the legal system (legal system) it is stated that the legal structure is all law enforcement institutions or institutions, along with all the apparatus that includes, the police with its police, prosecutors with their prosecutors, and all professions with their people.<sup>13</sup>

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<sup>13</sup> *Ibid.*

All evidence is needed to provide confidence in the judge of the indictment filed by the public prosecutor, so that in giving a court decision, the panel of judges is truly able to provide a basic value of justice to all parties involved in the trial process. Proof in the process of investigating criminal acts of corruption, is actually not as easy as the process of examining general criminal acts, considering that in criminal acts of corruption in addition to the elements of criminal acts must be fulfilled, it must also prove that there is a real loss of state finances.

At this stage of proving the existence of state financial losses, the role of an expert is needed, not only the auditor's expert who will calculate the state's financial losses, but also other experts who have competence according to the case being handled as the basis for the auditor to calculate the state's financial losses according to the methodology can be accounted for scientifically and normatively.

Expert testimony as one of the evidence set out in the provisions of Article 186 of the Criminal Code Procedure which states that the Expert Statement is what an expert stated in a court hearing. Expert statement, is a skill that is only owned by certain people in accordance with the knowledge they have. Because not just anyone can be used as an expert witness.<sup>14</sup> There are various fields of expert statements which can be in the form of expert doctors or commonly referred to as *Visum Et Repertum*, expert statements in criminal laboratories, expert information on firearms (ballistics) expert statements in the field of monetary policy, in the field of public policy, expert statements in the field of construction and buildings called expert assessors and so on.

The Criminal Code Procedure above, when examined and examined more closely, apparently does not specifically regulate the requirements for hearing it as expert testimony during hearings in court. What is referred to in the Criminal Code Procedure is as long as he has 'special expertise' on what is needed to make a criminal case clear and submitted by certain parties, then his statement can be heard for the purpose of examination.

Expert witness statements have different characteristics from ordinary witness statements. Wirjono Prodjodikoro stated that, in the matter of testimony, the Judge must be sure of the truth of the matters stated by the witness, while in the matter of expertise the Judge must be confident about the accuracy of the opinion expressed by an expert.<sup>15</sup>

The existence of an expert in a trial as regulated in the Criminal Code Procedure is one of the legal proofs in court, unfortunately the Criminal Code Procedure does not specifically regulate the conditions for becoming an expert. The absence of special rules in the Criminal Code Procedure regarding the requirements for someone to be an expert at a trial creates a difference of opinion for judges in determining the validity of evidence of expert testimony.

According to Lawrence W. Fridemann, in the theory of the legal system it is stated that the legal culture or legal culture is a habit, opinion, from law enforcers, from citizens who live and grow into a habit. Legal culture is a living law adopted by a community.<sup>16</sup> Practice in court shows that there are two different views in the judges' consideration relating to the presence of experts in the proceedings of corruption as follows:

- a. The Judge's view that considers, Even though Not Specified in the Criminal Code Procedure, the Expert presented at the Trial Must Meet the Special Skill Criteria as Desired for the Light of a Case
- b. Judges' Views That Assume, Because It Is Not Detailed In KUHAP, Experts Presented At Trial Do Not Have To Meet Specific Expertise Criteria As Long As Judges Believe Their Descriptions Are In Accordance With The Desire Of A Case.

According to the provisions of Article 186 of the Criminal Code Procedure, it is stated that the Expert Statement is what an expert stated in a court hearing. Furthermore, according to the provisions of Article 1 number 28 of the Criminal Code Procedure, it is stated that an expert statement is a statement given by a person who has special expertise regarding the matters needed to make a criminal case clear for the purpose of an examination.

In cases relating to construction or building construction, the information required is the information of experts who have a construction or building background. Based on Regulation of the National Construction Services Development Agency Number 4 of 2014 concerning Appraisers Construction Services Expert, Expert authorized to conduct an assessment of the quality of a building, is there a failure in its construction or is the failure in the building a Expert Appraiser.

The existence of experts in the trial and in the view of the judge, has caused a difference between the Prosecutor and the Legal Counsel. In general, the three views of law enforcement can be described as follows:

- a. Judges' Views

The existence of experts in case number: 33 / Pid.Sus / 2017 / PTK. PN.PLK, already reflects the basic value of justice because each party is given the same opportunity to present experts at the trial.

<sup>14</sup> Sherodji Hari, 2010, *Pokok-Pokok Kkriminalogi*. Jakarta: Aksara baru., p.14

<sup>15</sup> R. Wirjono Prodjodikoro, 2001, *Hukum Acara Pidana di Indonesia*, cet. 10, Bandung:Sumur, p.107.

<sup>16</sup> Esmi Warrasih, 2005, *Pranata Hukum sebuah telaah Sosiologis*, Semarang: Suryandaru Utama, p.72.

b. The views of the Public Prosecutor.

The existence of expert prosecutors does not violate the provisions of Article 1 number 28 of the Criminal Procedure Code and Article 186 of the Criminal Code Procedure, so that its presence is valid according to formal law.

c. Legal Advisory Views

The existence of expert prosecutors despite not violating the provisions of Article 1 number 28 of the Criminal Code Procedure and Article 186 of the Criminal Code Procedure, but because there are legitimate issues in competence, it should not be able to provide information as an expert, therefore the existence of experts from the Public Prosecutor does not provide fair value to the defendant .

In fact, the panel of judges argued that because the Criminal Code Procedure does not regulate in detail the requirements for expertise, the judge only relies on the provisions of Article 1 number 28 of the Criminal Code Procedure which states that expert testimony is information given by a person who has special expertise regarding the things needed to make clear a criminal case for the purpose of examination and Article 186 of the Criminal Code Procedure which states that an expert's statement is what an expert states in a court hearing. In the elucidation of Article 186 of the Criminal Code Procedure it is stated that this expert statement may also have been given at the time of the examination by the investigator or public prosecutor as outlined in a report and made in view of the oath when he received his position or occupation.

This is where the weaknesses of the norms in expert evidence show as a basis for judges to determine the state's financial losses in the current corruption case. The verification system in Indonesia is different from the verification system in other countries such as the United States and France. The verification system used in the United States and France is a system or theory of proof based on the judge's conviction alone (Conviction In Time).

This system adheres to the doctrine that the guilt of whether a person is committed to an act which is alleged, depends entirely on the judge's "belief" alone. The evidentiary system in America does not mention the existence of expert testimony and the defendant's statement as part of there is valid evidence. Expert statements and statements of the defendant are included in the evidence of the testimony, so according to the evidentiary system in America, the evidence of the testimony includes: witness statements, expert statements, the defendant's confession. In connection with the provisions of Article 1 number 28 of the Criminal Procedure Code and Article 186 of the Criminal Procedure Code, there is a thought that expert testimony as one of the evidences in a trial, should only be given by someone who has special expertise in accordance with the provisions of the laws and regulations must meet certain requirements. In practice, there were some judges who did not consider the defendant's objection to expert testimony at the trial that did not meet the formal requirements of expertise on the grounds that the Criminal Procedure Code did not regulate such matters. The absence of special requirements for someone to be able to provide information as an expert raises differences of opinion among law enforcers, therefore there is a need to reconstruct the provisions of Article 1 number 28 of the Criminal Procedure Code to become, Expert statement is information given by a person who has special expertise and meets the specified formal requirements by statutory regulations regarding matters needed to make light of a criminal case for examination purposes. Article 1 Number 28 of the Criminal Procedure Code which originally reads: "Expert statement is information given by a person who has special expertise on matters needed to make light of a criminal case for the purpose of an examination", reconstructed to become: "Expert statement is information given by a person has special expertise and fulfills formal requirements determined by statutory regulations regarding matters that are needed to make light of a criminal case for the purposes of investigation ". The absence of a provision for the conditions for someone to be able to provide information as an expert in Article 186 of the Criminal Procedure Code creates differences of opinion among law enforcement. Article 186 of the Criminal Procedure Code initially reads: "Expert statements are what an expert states in court proceedings". Reconstructed into: paragraph (1) Expert statement is what an expert declares in a court session, paragraph (2) To be able to provide information at a hearing, an expert must meet the requirements as an expert in a particular field, paragraph (3) The requirements referred to in paragraph (2) above is proven by a certificate of expertise issued by the institution or institution authorized for that based on the legislation in force. As for the reconstruction of the explanation of Article 186 of the Criminal Procedure Code reads: paragraph (1) This expert statement may also have been given at the time of the examination by the investigator or public prosecutor as outlined in a report and made in view of the oath when he received his position or occupation. If this was not given at the time of the hearing by the investigator or public prosecutor, then at the hearing at the hearing, asked to provide information and, recorded in the minutes of the examination. The statement is given after he has taken an oath or promise before a judge, paragraph (2) What is meant by qualifying as an expert in a particular field in this paragraph is a condition that has been determined by an institution or institution in a particular field such as construction, information technology and so forth in accordance with applicable laws and regulations, paragraph (3) The expertise

certificate in this paragraph is intended to ensure whether the expertise qualifications of the expert are in accordance with the minimum terms and conditions as an expert issued by an authorized institution or institution based on the applicable laws and regulations. . For example, except for the main expert, a person who is still a qualified young expert and an intermediate expert cannot provide information as an expert in the trial.

Judging from the theory of justice, the reconstruction of the provisions of Article 1 number 28 of the Criminal Procedure Code and Article 186 of the Criminal Procedure Code is expected to give more value to justice especially for the defendant in relation to the evidence of whether there is a state financial loss in a criminal act of corruption. Justice in the study of philosophy must meet two principles, namely the principle of not harming a person and the principle of treatment of each human being what is his right.<sup>17</sup>

Justice is actually a relative concept The word "just" is etymologically derived from the Arabic "adala" which contains a middle or middle meaning. The word fair is synonymous with inshaf which means conscious, because a fair person is someone who is able to stand in the middle without a priori taking sides<sup>18</sup>. According to the Al-Munawwir Dictionary the understanding of the word "just" (al'adl) means "middle of the matter"<sup>19</sup>. In terms of fairness it means "to equate something with another, both in terms of value and in terms of size, so that something becomes impartial, and becomes different from one another"<sup>20</sup>.

Clarity regarding the authority of a person in his position as an expert to provide information at trial so as not to prejudice the legal interests of the defendant in relation to proving the existence or absence of state financial losses in corruption. Authority is the overall rules relating to the acquisition and use of governmental authority by public law subjects in public law<sup>21</sup>. According to Salim, the notion of authority contains 2 (two) elements, namely elements of the existence of legal rules, elements of the nature of legal relations<sup>22</sup>. According to Ateng Syafrudin, authority is what is called formal power, power that comes from the power given by the law. In general, authority is defined as power, whereas power is the ability of a person or group to control others or other groups based on authority, authority, charisma, or physical strength.<sup>23</sup>

The theory of legal certainty was put forward with the aim of discussing and analyzing the information of construction engineering experts as a basis for judges to determine state financial losses in current corruption cases. Article 1 number 28 of the Criminal Procedure Code states that an expert statement is a statement given by a person who has special expertise regarding the matters needed to make a criminal case clear for the purpose of an examination.

Legal certainty is "Scherkeit des Rechts selbst" (certainty about the law itself)<sup>24</sup>. Ronald Dworkin said that: "We live in and by law ..., How can the law command when the law books are silent or unclear or ambiguous?" Whereas in situations where there is unclear regulation, the law cannot regulate accordingly<sup>25</sup>.

Legal certainty as people commonly understand, is not an automatic product of the law. In a country with a legal status, certainty does not necessarily emerge in the community. Gustav Radbruch conveys three basic values (Grundwerten), namely: Justice (Gerechtigkeit), expediency (Zweckmaessigkeit) and legal certainty (Rechtssicherheit), which are not always harmonious with each other, but confront each other, conflict and tension (spannungsverhaeltnis).<sup>26</sup>

In the context of the reconstruction of the provisions of Article 1 number 28 of the Criminal Procedure Code and Article 186 of the Criminal Procedure Code, expert testimony as one of the evidences in the trial, can only be given by someone who has special expertise and meets the requirements in accordance with certain statutory provisions. The provisions of Article 1 number 28 of the Criminal Procedure Code only provide material requirements, namely requiring a person who has special expertise without providing formal requirements, ie requiring a person to have certification as an expert on trial. The provision does not provide legal certainty in

<sup>17</sup> Sudarto.1996, *Kapita Selektta Hukum Pidana*, Alumni,Bandung, p 27.

<sup>18</sup> Mahmutarom, 2009, *Rekonstruksi Konsep Keadilan*, Undip, Semarang, p. 31.

<sup>19</sup> Ahmad Warson Al-Munawwir, 1997, *Kamus Al-Munawwir Arab-Indonesia Terlengkap*, Pustaka Progressif, Yogyakarta.p. 906.

<sup>20</sup> Raghieb al-Isfahani,2005, *Mufradaat alfadzil Qur'an, Daar al-Ma'rifah*, Beirut,p. 168.

<sup>21</sup> Ridwan HR, 2008, *Hukum Administrasi Negara*, Radja Grafindo Persada, Jakarta, p. 110.

<sup>22</sup> H Salim HS dan Erlies Septiana Nurbani, 20013, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Radja Grafindo Persada p.184.

<sup>23</sup> Ateng Syafrudin, 2000, *Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab*, Jurnal Pro Justisa edisi IV, Universitas Parahiayangan, Bandung.p. 22.

<sup>24</sup> Ahmad Ali, 2010, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) ; Termasuk Interpretasi Undang-Undang (Legisprudence) Vol. 1 Pemahaman Awal*, Kencana Prenada Media Group, Jakarta, p.292.

<sup>25</sup> Ronald Dworkin, 1990, *Essays in Epistemology Hermeneutics and Jurisprudence dalam Patrick Nerhot, Law Interpretation and Reality*, Kluwer Academic Publisher, AA Dordrecht, Netherlands, p.194.

<sup>26</sup> Ahmad Ali, *Op.Cit.*, p. 290.

requiring an expert to be questioned at trial. Fulfillment of expertise requirements for an expert in court is a mandate from the legislation, so there needs to be certain legal norms in the Criminal Procedure Code. Every person who wants to be presented as an expert to provide information at the trial is truly who has expertise and qualifies as an expert.

In general, these values govern the selection of right and wrong, good and bad, evil and virtue, or which is desired or rejected. These values are then crystallized into legal principles, and this principle retains its abstract value. From these legal principles, it will then be reconfigured into a norm or legal method (written and unwritten). The correlation of the three is very determining a process of law creation.<sup>27</sup>

The creation of law must be truly based on its normative basis so that the actualization of the norm system is in harmony and in accordance with the needs and social awareness.<sup>28</sup> Positive law exists to promote moral values, especially justice. According to ethical theory, law is solely aimed at justice. The contents of the law are determined by our ethical beliefs about fair and not. Therefore the law aims to realize or realize justice.<sup>29</sup>

The value of justice in the reconstruction of Norms Article 1 Number 28 of the Criminal Procedure Code and Article 186 of the Criminal Procedure Code is the strengthening of the basic value of justice in guaranteeing the defendant's right to refuse expert statements that do not meet the formal special skills requirements in accordance with applicable laws and regulations.

Reconstruction of formal requirements for expert evidence as a basis for judges to determine state financial losses in cases of criminal justice based on corruption, namely changes to the provisions of Article 1 Number 28 of the Criminal Procedure Code that reads Expert testimony is information given by a person who has special expertise on the matter required to make light of a criminal case for the purpose of auditing funds under Article 186 of the Criminal Procedure Code which reads:

- (1) Expert statement is what an expert declares in a court hearing
- (2) To be able to provide information at a hearing, an expert must meet the requirements as an expert in a particular field.
- (3) The requirements referred to in paragraph (2) are proven by a certificate of expertise issued by the institution or institution authorized for that based on the legislation in force.

## CONCLUSION

Based on the explanation in the foregoing discussion, it can be concluded that there are weaknesses in expert evidence as a basis for judges to determine state financial losses in current corruption cases, namely, Weaknesses in Legal Substance, Weaknesses in Legal Structures, Weaknesses in Legal Culture. The value of justice in the reconstruction of Norms Article 1 Number 28 of the Criminal Procedure Code and Article 186 of the Criminal Procedure Code is the strengthening of the basic value of justice in guaranteeing the defendant's right to refuse expert statements that do not meet the formal special skills requirements in accordance with applicable laws and regulations. So that the provisions of Article 1 number 28 of the Criminal Procedure Code and Article 168 of the Criminal Procedure Code need to be reconstructed based on the values of justice.

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<sup>28</sup> Ilham Yuli Isdiyanto, 2018, *Problematika Teori Hukum, Konstruksi Hukum dan Kesadaran Sosial*, jurnal Hukum Bovelty, vol 9 no 1, feb, p.63.

<sup>29</sup> Anis Mashdurohatun, Juramadi Efram, Teguh Prasetyo, Legal Protection for Indonesian Migrant Workers Based on National Philosophy Values, TEST, March-April .2020.p.2757.



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