

Application of the Causality Doctrine in Criminal Acts of Corruption in the Forestry Sector

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Abstract: Indonesia has been experiencing severe deforestation resulting in natural disasters such as flash floods, forest fires, and landslides. Deforestation at the most severe level has occurred in Kalimantan and Sumatra, causing protected species to come closer to extinction and the decline of economic activities involving neighboring countries. Such conditions have adversely affected state finances; hence, it calls for application of the causality doctrine in seeking to uncover acts that bring prohibited consequences. Applying the juridical normative research method of descriptive type is applied, the findings of this research aim to provide input to law enforcement agencies and panel of judges in applying certain causality doctrines in adjudicating cases of criminal acts of corruption in the forestry sector.

1 INTRODUCTION

In 2017 Indonesia's forest area totaled approximately 133,300,543.98 Ha; at the same time, during the period 1950-2016, the condition of forests decreased by about 40% - 50%. It was mainly due to the commercial use of forests by way of exploration and exploitation (Anwar Tale, 2018). Based on data from the Asian Development Bank, it is estimated that the damage of forests in Indonesia has reached the range of 800,000 – 2.8 million hectares per year (EIA Telapak, 2007). At the same time, according to data of The World Bank in the period 1990-2016, Indonesia has been experiencing a rather significant level of deforestation and a yearly basis.

Based on the result of analysis of upper land, Indonesia experienced the lowest level of deforestation of approximately 1% or 400 thousand hectares per year, whereby based on forest resource projections conducted in 1990 - 2016 a total of 0.1% of forest area experienced deforestation compared to previous years, namely 1.31 million hectares per year. The most severe conditions faced by Indonesia occurred during the period 2011-2015.

One of the most influential factors contributing to extensive deforestation in Indonesia has been landed clearing by forest burning and illegal logging (Mark R. Harrisom et al., 2009). Land clearing by forest burning and forest logging creates harmful

conditions, damage to forests, which brings a negative impact on the community and causes losses to states (BBC, 2018). In addition to the damage of forests, it also creates financial losses to the state in the form of lost economic, natural resources as a result of illegal acts. (Transparency Internasional Indonesia, 2011).

Another important aspect related to the damage of forests is the abuse of power of office in issuing Forest Exploitation Permit (IPH) to certain corporations, for clearing land through corrupt practices. It was initially detected as a result of extensive forest fires that occurred during the past decade when KPK (Anti-corruption Commission) conducted sting operations (operasi tangkap tangan – OTT) against several government officials in issuing forest utilization permits (Ryan Nofitra, 2018). Criminal acts of corruption in the forestry sector occurring in various areas in Indonesia committed by government officials resulted in the disaster of forest damage, the loss of protected species, losses amounting to billions of Rupiah, and losses of human life (M. Syukur, 2018).

In a research conducted by the Center for International Forestry Research (CIFOR), as a result of acts, the state suffered losses totaling approximately USD3,077/hectar, which has brought a negative impact on the national economy (Sustainable Landscape Knowledge, 2016). Based on the several cases uncovered by the Anti-

corruption Commission, the Working Committee of the House of Representatives of the Republic of Indonesia on Forest Area Encroachment and Damage stated that corruption in the forestry sector in Indonesia had caused financial losses to the state.

Based on the research conducted by Forest Government Integrity (FGI), corruption occurring in the forestry sector belongs to the category of serial environmental crime, which causes losses in several areas (Transparency Internasional, 2010). According to the wording of laws and regulations concerning Criminal Acts of Corruption, Articles 2 and 3, it is stated that corruption is a criminal act that can potentially cause financial losses to the state. The second article quoted above contains the words "which causes," indicating that this article encompasses a material offence even though in the elucidation on the same article, it is declared to be a formal offence. The material offense is a crime defined in terms of the occurrence of a prohibited consequence, whereas such prohibited consequence is defined in the wording of the article itself (Ahmad Sofian, 2018).

Based on the foregoing, the aim of this study is to take an in-depth view of the criminal act of corruption in the forestry sector, causing prohibited consequences in the form of financial losses to the state, damage of forest biota, and even death. Corruption in the forestry sector as a material offence, which requires the existence of a cause and effect relationship, generally referred to as the causality doctrine. It involves a series of acts or a chain of acts that cause damage to the forest. Judges and public prosecutors often tend to have disparate views in determining the acts concerned, in determining the consequences and the cause and prohibited consequence relationship. Therefore, in critiquing such matters, the author will examine the causality doctrine in corruption cases in the forestry sector in Indonesia. The aim of doing so is to provide input and rectification of persisting views among law enforcement agencies in Indonesia related to the causality doctrine in adjudicating criminal acts of corruption in the forestry sector. The two issues examined and discussed in this article include positive law related to criminal acts of corruption in the forestry sector in conjunction with the causality doctrine and analysis of one court decision related to the criminal act of corruption in the forestry applying the causality doctrine.

2 RESEARCH METHOD

The method applied in this research is juridical normative or dogmatic legal research (dogmatic or theoretical law research) (Soerjono Soekanto, 1981). According to Soerjono Soekanto, this method examines the application of positive law norms in Indonesia, through a scientific in-depth multi-aspect approach, namely from the aspect of legislation, jurisprudence, theory, and principles of law related to the application of law composition in criminal acts of corruption and forestry. This research is being conducted with the aim of analyzing the development of legal theory.

3 FINDINGS AND DISCUSSION

3.1 The Causality Doctrine

The causality doctrine has the function of identifying acts which cause prohibited consequences and furthermore determining the relationship between such acts and prohibited consequences, with the ultimate purpose of determining criminal liability. In such a context, there are acts that cause direct consequences; however, there also acts where a certain period of time needs to elapse before such prohibited consequences occur. Under criminal law, it is important to apply the causality doctrine in offences, which cause prohibited consequences, considering that the consequences occurring as a result of a criminal event can be caused by either human or natural factors. At the same time, the causality doctrine can only be applied in offences, which cause prohibited consequences, namely material offences, offences qualified by consequences thereof, and delicto commissionis per omissionem. It can be briefly described as indicated in the table below:

Table 1: Offences Requiring the Causality Doctrine

Material Offence	Offence Qualified by Its Consequences	Delicto Commissionis Per Omissionem
The act of a person is deemed to fulfill criminal elements if a prohibited consequence occurs and	An act defined and determined as a prohibited act, and it will be aggravated if it causes a fatal consequence	Act consisting of violations of a certain obligation which is not fulfilled (omission)

if it is subject to punishment under the law		
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The causality doctrine used in this article will help the author analyze the extent to which the influence of the causality doctrine can be applied by law enforcers in Indonesia in corruption cases in the forestry sector. In criminal law, the causality doctrine is applied in determining acts that are the most responsible for a series of acts considered as causes. The causality doctrine in corruption cases in the forestry sector is applied to identify a series of acts which cause financial losses to the state.

Theoretically, the group causality doctrine, namely the causality doctrine developed by Von Buri more commonly known as the *conditio sine qua non* causality doctrine. The said doctrine teaches that all causes must be taken into account because eliminating one of the causes has an effect on the occurrence of a prohibited consequence. The said doctrine developed by Von Buri was critiqued by Traeger, as not all adequate factors would cause a prohibited consequence. According to Traeger, an act that causes a certain prohibited consequence must be selected. The theory of individualization and generalization subsequently emerged from Traeger's above-described view.

The individualization doctrine is used to identify a certain act after such act occurs (*post factum*). Several scholars adhere to this doctrine, among others Birkmeyer, Kohler, Karl Binding. The generalization doctrine is used to identify acts which cause consequences in *abstracto* using science. It was Rumelink, a leading figure in criminal law, who developed this doctrine. And finally, the relevance doctrine. According to this doctrine, a causal act is identified among the legislators. Leading figures of this doctrine have been Lengenmeijer and Mezger.

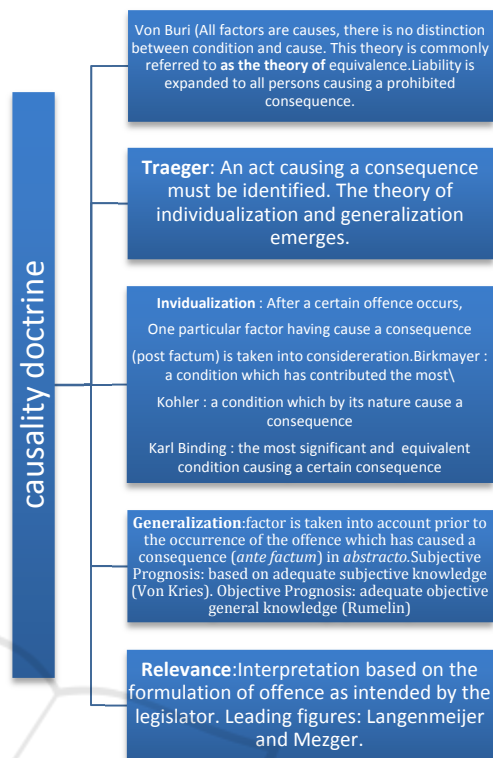


Figure 1: Doctrine of Causation

3.2 Positive Corruption Law in the Forestry Sector

The criminal act of corruption is an extremely complicated and serious crime; hence, lawmakers have provided for it under a special law, namely Law Number 31, the Year 1999 Jo. Law Number 20 the Year 2001 Concerning the Eradication of the Criminal Act of Corruption. The criminal act of corruption can involve anyone, and it can occur in any situation; hence, it has the nature of a covert and organized crime, which is harmful to state finances.

Offenses in the forestry sector are open to the possibility of potential corruption, as there are numerous loopholes in this sector that create the potential for the criminal act of corruption by state officials from the lowest to the highest ranks. There is three law which can be used to hold perpetrators of criminal acts in the forestry sector criminally liable. However, none of these three laws set out specifically the elements of the criminal act corruption in the forestry sector. These three laws are as follows:

1. Law Number 31 the Year 1999 Jo. Law Number 20 the Year 2001 Concerning the Criminal Act of Corruption;

2. Law Number 41 the Year 1999 Jo. Law Number 19 the Year 2004 Concerning Forestry;
3. Law Number 18 the Year 2013 Concerning the Prevention and Eradication of Forest Damage.

The criminal act of corruption in the forestry sector is a material criminal act that requires the causality doctrine, considering that such act contains elements of cause and effect which are inter-related with the occurrences of forest damage. Based on the causality doctrine, such a series of acts have an impact on the occurrences of forest damage.

In fact, the causality doctrine is not mentioned in criminal law; however, the causality doctrine can be found in the formulation model in criminal laws. In resolving cases of the criminal act of corruption in the forestry sector, law enforcers can use any type of causality doctrine developed by criminal law scholars. The doctrine is rather diverse, and any of its types can be selected depending on the context of a criminal act in the forestry sector. Accordingly, the causality doctrine needs to be adjusted to the extremely heterogeneous context of cases.

Therefore, in seeking the causes in a criminal act of corruption in the forestry sector, the causality doctrine which includes *conditio sine qua non* the causality doctrine, the generalization, individualization, as well as the relevance causality doctrine can be applied. The adequate objective generalization causality doctrine is an endeavor towards identifying a criminal event viewed from the point of view of consequence caused by it. The cause of the criminal act corruption in the forestry sector is a material criminal act which requires the causality doctrine in identifying the act committed by the perpetrator of the criminal act concerned because the criminal punishment imposed on the perpetrator is based on the consequence of the act committed by such perpetrator. The consequence of act as intended in court decisions is the causing of damage to the forest as the fundamental cause for criminal liability committed by the law subject by issuing a permit for the utilization of forest without the right or authority to do so.

As mentioned above, the criminal act of corruption in the forestry sector, particularly related to obtaining permits for forest utilization, potentially creates the ground for the occurrence of the criminal act of corruption. When the criminal act of corruption occurs, there is a need for the causality doctrine, as it is a material criminal act. The material criminal act as intended here is the criminal act of corruption, which causes financial losses to the state

as set out in the provisions of Article 2 and Article 3 of Law Number 30 the Year 1999 Jo. Law Number 20 the Year 2001.

The causality doctrine is used to identify acts which, as a consequence, cause financial losses to the state in permits for forest utilization. The relevance causality doctrine has been mentioned in this article being applied in determining causes based on existing provisions of the law. The legislator has determined the causes which bring about a prohibited consequence through certain acts as follows:

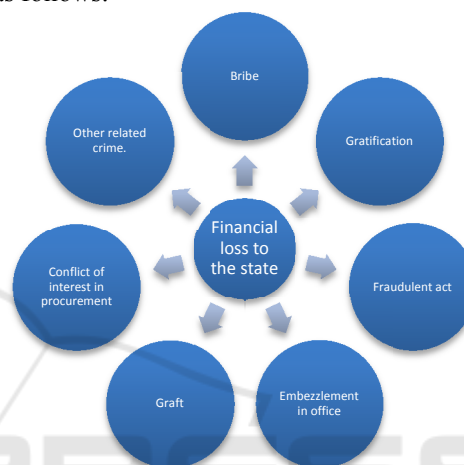


Figure 2: Acts Which Cause Prohibited Consequences Based on the Relevance Causality Doctrine

By virtue of Law Number 31, the Year 1999 Jo. Law Number 20 the Year 2001 causal acts have been formulated according to the above-mentioned scheme; the above-mentioned acts have been defined by the legislator as causes of the criminal act if corruption, which causes financial losses to the state.

Based on the foregoing, the relevance causality doctrine is going to help determine the most influential relationship based on the prohibited consequence as intended in Law Number 31, the Year 1999 Jo. Law Number 20 the Year 2001.

3.3 Analysis of a Decision

A case attracting quite a lot of attention nationwide has been the corruption case of former East Kalimantan Governor Suwarna Abdul Fatah, who issued a Forest Timber Utilization Permit (IPK) for the purpose of oil palm land clearing in Berau East Kalimantan.

It was found that Suwarna Abdul Fatah had collaborated in issuing IPK within a brief period of time to 11 oil palm companies, for clearing land for

oil palm plantations in the area of East Kalimantan and for selling timber as a result of logging. In March 2000, Suwarna Abdul Fatah issued a Recommendation for oil palm plantation development to PT. Berau Perkasa Mandiri, a company from the Surya Dumai group on an area of 18,000 Ha in accordance with the letter of the Governor Head of Level I Region of East Kalimantan No.: 521/2182/Proda.2.2/EK dated March 1, 2000.

It was found that prior to issuing a recommendation to the said company, 10 (ten) other companies had been granted Permit for Timber Utilization (IPK) on a total area of 182,850 ha, as well as Principle Approval for Land Clearing and Timber Utilization. None of such companies had obtained Plantation Business Permit (IUP), as provided for in the Decree of the Minister of Forestry and Plantations Number: 107/Kpts-II/1999 Concerning Plantation Business Permits. In addition to the company permits being incomplete, based on Decree of the Minister of Forestry and Plantations No. 107/Kpts-II/1999 dated March 3, 1999, Concerning Plantation Business Permits, the defendant did not have the authority to issue land clearing permits.

In order to facilitate the above described brief permit process, the defendant had granted dispensation from the obligation to deposit reboisation funds in each IPK issued and IPK extension, while the companies were obligated to submit a Bank guaranty for such PSDH-DR IPK. Consequently, the defendant was reported by the Anti-corruption Commission (KPK) on April 4, 2006 as being suspicious and having enriched a certain group of people, due to the great number of permits not meeting the requirements set forth in the Decree of the Minister of Forestry and Plantations No.107/Kpts-II/1999 dated March 3, 1999 Concerning Plantation Business Permits. As a consequence of such an act, the state suffered a loss of IDR346.7 billion and the damage of the function of the forest in the territory of Berau East Kalimantan.

The Public Prosecutor's claim reads as follows:

1. Declare Defendant Suwarna Abdul Fatah as having been proven guilty of committing the criminal act of corruption as set out and subject to criminal punishment under Article 2 Paragraph (1) Jo. Article 18 of Law Number 31 the Year 1999 Concerning the Eradication of the Criminal Act of Corruption as amended and supplemented with Law Number 20 the Year 2001 Concerning Amendment of Law

Number 31 the Year 1999 Concerning the Eradication of the Criminal Act of Corruption Jo. Article 55 paragraph (1) 1st of the Criminal Code Jo. Article 64 paragraph (1) of the Criminal Code as set out in the primary charges;

2. Impose criminal punishment on defendant Suwarna Abdul Fatah in the form of the criminal punishment of imprisonment for 7 (seven) years deducted by the time spent in detention and a fine of IDR250,000,000.- (two hundred and fifty million rupiahs) subsidiary 6 (six months of incarceration ordering that the convict be kept in detention;

The Anti-corruption Court at the Central Jakarta District Court in its decision Number : 18/Pid.B/TPK/2006/PN.Jkt.Pst, "Declaring Defendant Suwarna Abdul Fatah as having been validly and convincingly proven guilty of committing the the criminal act of "Corruption jointly and continuously" and "Impose therefore the criminal punishment on the defendant in the form of criminal punishment of imprisonment for 1 (one) year and 6 (six) months and the fine of IDR200,000,000 (two hundred million rupiah) if such fine is not paid it shall be substituted with the criminal punishment of incarceration for 3 (three) months". In its decision at the cassation level, the Supreme Court subsequently affirmed the appeal decision at the DKI Jakarta High Court, rejecting the cassation filed by the Cassation Petitioner I Prosecutor/Public Prosecutor of the Anti-corruption Commission (KPK) and Cassation Petitioner from Defendant Suwarna Abdul Fatah mentioned above.

Based on the judge's above-described considerations, analyzed using the causality doctrine applied the act of issuing forest utilization permit caused financial losses to the state. The causality doctrine was used to identify a series of acts which caused financial losses to the state and the damage of the forest, including causal relationships, which requires the judge's ability to engage in logical legal reasoning in resolving such case. In a series of acts in the criminal act of corruption in the forestry sector in the permit for forest utilization, there is a highly logical causal relationship mechanism due to the existence of a regular series of acts, thus fulfilling the element of a criminal act. The table below can be referred to in proving an act committed by the perpetrator of a criminal act:

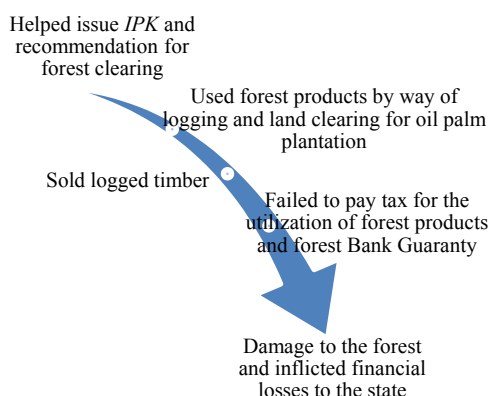


Figure 3 The causality doctrine in a Series of Acts

The above scheme describes the series of acts undertaken by the perpetrator, indicated in the matrix of acts committed by the perpetrator in causing the criminal act to occur. The above scheme makes it clear that had the defendant not helped the corporations concerned in issuing the IPK and the recommendation for land clearing, the forest would not have been possibly cut down, no damage to the forest, and no financial losses to the state would have occurred. Similarly, the corporation would not have failed to pay tax on forest products if it had not sold logged timber, and so on and so forth.

As all acts have been aligned in an orderly and logical manner, the public prosecutor charged the defendant with subsidiary charges namely with the allegation of having committed an unlawful act (tort) which has caused financial losses to the state or the national economy as set forth in Article 2 paragraph 1 of Law Number 31/1999 Jo. Law Number 20/2001. In the context of the causality doctrine, the panel of judges adjudicating the case applied the individualization causality doctrine, namely determining that not all acts are causes of prohibited consequences. This doctrine is confined to the most influential factor in causing the consequence; hence, the defendant's act of issuing the IPK and recommendation for land clearing is the most dominant in causing the corporation's act of conducting logging, failing to pay forest product tax and forest bank guaranty. Based on an even more in-depth analysis, it becomes evident that financial losses to the state and the damage of forest had not been committed by the defendant; rather, it was also contributed to by the corporations concerned causing financial losses to the state and damage of the forest.

Based on the judges' legal consideration, the panel of judges stated that the criminal act committed by Suwarna Abdul Fatah was a material criminal act that caused a consequence prohibited by the

legislator. Accordingly, acts envisaged by the adequate objective generalization causality doctrine mentioned above is a series of acts by the defendant considered to be the cause influencing the occurrence of a consequence prohibited by law based on the science of law. As evident in the excerpt from the considerations of the panel of judges in determining the acts with the greatest influence on the occurrence of financial losses to the state:

“Considering that the *Judex Facti* state "that based on the statement of expert witness from BPKP and documentary evidence in the form of Report on the Calculation of Financial Losses to the State Number: SR-868/D.6/I/2006, dated October 4, 2006, it has been proven that financial losses occurred to the state as a consequence of issuing an IPK which is not compliant with the technical requirements in the Forestry and Plantation sector.”

In the said excerpt from the decision, the panel of judges is seeking to determine an act by looking at the factor of subsequently occurring events (*post-factum*), with financial losses to the state occurring due to the defendant's act of issuing an IPK (Permit for Timber Utilization) which is not compliant with technical requirement in the Forestry and Plantation sector.

In the above mentioned excerpt from the relevant article, the public prosecutor's main focus is on the interpretation of the “unlawful act” (*tort*) as the definition of offence, which is relevant to the defendant's act which caused financial losses to the state, being an act contradictory to the technical requirements in the forestry and plantation sector.

Based on the above reasoning, the following is an illustration of the relevance causality doctrine applied by the public prosecutor:

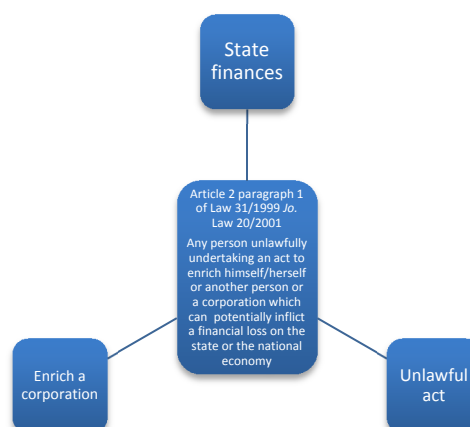


Figure 4: The prosecutor's relevance causality doctrine logic

4 CLOSING

4.1 Conclusion

In the criminal act corruption in the forestry sector, there are two articles frequently applied for indicting perpetrators. It is expected that the provisions of those two articles are capable of eradicating the criminal act of corruption in the forestry sector, in particular, considering that criminal acts of corruption in the forestry sector cause financial losses to the state and cause damage to the forest. The provisions of the said articles have been largely used by law enforcers in handling the criminal act of corruption in the forestry sector; however, they are still considered incapable of overcoming the criminal act of corruption in the forestry sector in general. It has been mainly due to the disparate interpretation of the formulation of offence, as a result of which the Law is yet to be optimally applied in the eradication of the criminal act of corruption in the forestry sector. In the said provision, the criminal act of corruption in the forestry sector should be understood as a material offence, so that the causality doctrine can be applied.

In court decisions at the first instance, the adequate objective generalization causality doctrine is applied, whereas, in appeal decisions, the panel of judges chooses to apply the relevance causality doctrine. The function of both of the said causality doctrines is to determine acts which cause prohibited consequences as provided for under the law; however, the consideration is based on acts considered based on science and the formulation of certain laws and regulations. At the same time, in determining acts that cause prohibited consequences, the Supreme Court tends to apply the relevance causality doctrine. In the legal considerations of Supreme Court justices it is stated that the consideration applied by the panel of judges at the appeal level was deemed to be more systematic and logical in determining an act causing a prohibited consequence, based on the interpretation of the formulation of a certain law, and it has more adequate relevance to the consequence which occurred. It is therefore evident from the foregoing that in cases of the criminal act of corruption in the forestry sector, the relevance causality doctrine is applied in seeking to identify an act which causes the occurrence of financial losses to the state.

4.2 Recommendations

Based on the author's research concerning the causality doctrine in the criminal act of corruption in the forestry sector, there is a need for an equal distribution of understanding of the causality doctrine. To date, there still a gap in understanding the causality doctrine among prosecutors and judges. By closing such a gap, the causality doctrine could be explored in a more insightful manner and aptly applied in seeking to identify acts that cause financial losses to the state, both in indictments, the Public Prosecutor's claim, as well as in the judge's verdict. Thus, applying the causality doctrine in cases of the criminal act corruption in the forestry sector would be helpful to prosecutors as well as judges in determining the liability of perpetrators of the criminal act of corruption in the forestry sector in a logical and juridical manner.

In court decisions, judges would have to include a certain type of causality doctrine in their considerations, thus creating a solid basis for such decisions from the doctrinal as well as juridical point of view. In the context of criminal acts in the forestry sector, causing financial losses to the state, it would be important to include the causality doctrine in the considerations underlying the judges' decision. By doing so, it would be possible to seek criminal liability for acts that cause financial losses to the state.

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