



The Lack of Authority in Determining State Losses: A Legal Anomaly in Corruption Cases

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Abstract

This study analyzes the legal problems of determining state losses in corruption cases in Indonesia, especially regarding the unclear institution that is legally authorized to determine it. This study was conducted using normative research with a statute approach. The results of the study indicate that there is no explicit norm that establishes the Audit Board of Indonesia (BPK) as the sole institution authorized to determine state losses in criminal cases. This opens up space for investigators and prosecutors to use internal estimates or audits from non-constitutional institutions, which raises the potential for excessive criminalization, inter-institutional conflict, and legal uncertainty. This study recommends harmonization of legislation that integrates BPK investigative audits as the main evidence in corruption criminal proceedings and encourages the reconstruction of inter-institutional procedures to ensure the principle of due process and legal justice.

Keywords: *authority; corruption crime; state financial loss*

A. Introduction

The element of state financial loss holds a central position in proving corruption crimes in Indonesia. This is explicitly reflected in Articles 2 and 3 of Law No. 31 of 1999 on the Eradication of Corruption, as amended by Law No. 20 of 2001, which stipulate that acts committed unlawfully or through abuse of authority resulting in state financial loss constitute corruption punishable under criminal law. The provision not only defines the nature of the conduct but also underscores that the resulting state loss is a constitutive requirement for an act to qualify as corruption.¹ In this context, the loss must not be speculative or merely estimated; it must be real and verifiable.² This necessity for a concrete loss demands accurate and objective proof, ideally obtained from an official state institution vested with the authority and technical capacity to conduct state financial audits.

The 1945 Constitution of the Republic of Indonesia, specifically Article 23E, designates the Audit Board of Indonesia (*Badan Pemeriksa Keuangan/BPK*) as the sole state institution authorized to examine the management and accountability of state finances. This authority is reinforced in Law No. 15 of 2006 on BPK, which grants the mandate to conduct investigative audits, access all state financial documents, and submit audit reports to the legislature. In the ideal configuration, BPK's position as an independent state auditor is intended to guarantee integrity, accountability, and transparency in determining state losses. Accordingly, criminal law

¹ Muh. Sudirman, A. Amiruddin, & L. Parman, *Tindakan Maladministrasi dalam Perspektif Tindak Pidana Korupsi*, *Pagaruyuang Law Journal*, Vol. 3 No. 2, 2020, p.232-258.

² Rizki Agung Firmansyah, *Konsep Kerugian Perekonomian Negara dalam Undang-Undang Tindak Pidana Korupsi*, *Jurist-Diction*, Vol. 3 No. 2, 2020, p. 669-686.



enforcement predicated on the element of state loss should be grounded in BPK audit results, conducted through professional mechanisms and methodologies, rather than in individual estimates or unilateral calculations by law enforcement agencies.

In practice, however, this ideal is often not realized in the enforcement of anti-corruption laws. In numerous cases, law enforcement officials—including police investigators, prosecutors, and investigators of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi—KPK*)—frequently rely on internally calculated estimates of state losses rather than official BPK audits. Reasons cited include efficiency, time constraints, and delays in obtaining audit results. Such an approach raises serious concerns regarding legal certainty and the protection of defendants' rights. The absence of uniform standards for determining state losses results in procedural vulnerability and disparities in law enforcement.³ Charges may be filed based on figures that cannot be tested scientifically or legally, thereby fostering uncertainty and creating opportunities for abuse of power.

A review of corruption court judgments reveals fundamental inconsistencies in the sources and methods used to determine state losses. Some judges accept loss figures calculated by prosecutors, even without BPK audits, while others dismiss charges for lack of formal audit evidence. This indicates the absence of a standardized evidentiary framework, despite state loss being a crucial element of material offenses (*delik materiil*). Without such a framework, proof of state loss becomes more a matter of procedural formality than substantive verification, undermining the integrity of judicial proceedings. This institutional fragmentation and divergence of perceptions among legal actors weakens the criminal justice system.

There is also a prevalent tendency to use audits from institutions other than BPK, such as the Financial and Development Supervisory Agency (Badan Pengawasan Keuangan dan Pembangunan—BPKP), or even investigators' own calculations. Normatively, BPKP is limited to internal oversight of ministries and agencies, not the determination of state losses for criminal proceedings. Nevertheless, in some cases, BPKP audits or expedited calculations by investigators form the primary basis for determining loss figures.⁴ This practice creates tension between the drive for enforcement efficiency and adherence to the principle of formal legality. Institutions without constitutional audit mandates thus produce figures that become the

³ Nashriana, Ica Ayu Nuraini Lestari, & Iza Rumesten RS, *Penilaian Kerugian Keuangan Negara Oleh Badan Pemeriksa Keuangan Republik Indonesia dalam Perkara Tindak Pidana Korupsi Taman Pemakaman Umum Baturaja*, *Jurnal Ilmiah Ilmu Hukum*, Vol. 30 No. 1, 2023, p. 156-172.

⁴ Unjur Marroha Situmeang, & Dwi Setiawan Susanto, *Evaluasi Metode Audit Penghitungan Kerugian Keuangan Negara Pada Badan Pengawasan Keuangan dan Pembangunan*, *Owner: Riset dan Jurnal Akuntansi*, Vol. 8 No. 3, 2024, p. 3056-3071.



foundation of criminal proof, raising serious questions about the juridical validity of the entire process.

More broadly, the determination of state losses occurs within an environment of procedural ambiguity. Law enforcement acknowledges the need for rapid figures to complete case files, while auditors stress that investigative audits cannot be expedited without compromising validity. Judges, in turn, report difficulty assessing calculation methods in the absence of BPK audits. This reflects not only insufficient legal norms but also a lack of inter-institutional coordination to establish standardized procedures. The regulatory void, combined with *ad hoc* approaches by individual agencies, perpetuates dual practices and generates inter-authority conflict.

The principal legal issue is the absence of explicit norms designating which institution holds lawful and constitutional authority to determine state losses for evidentiary purposes in corruption cases. This ambiguity creates broad interpretive space for law enforcement to establish loss figures based on practical considerations rather than normative authority. In modern legal systems, institutional authority must be grounded in valid attribution or delegation, not in institutional improvisation. In Indonesian anti-corruption enforcement, however, the attribution of audit authority is frequently disregarded.

When state loss is used as a constitutive element of a criminal offense, the legitimacy of the institution determining that loss is a precondition for fulfilling the principle of legality. If the loss is determined by an institution lacking constitutional attribution or normative legitimacy, the element becomes legally defective.⁵ The problem then is no longer merely technical but concerns legal certainty, procedural fairness, and institutional integrity. This necessitates a serious reassessment of the relationship between statutory provisions and institutional roles within the framework of state finance law and anti-corruption law.

The urgency of this study lies in addressing institutional and normative problems in determining state losses, which have serious implications for the validity of criminal proceedings in corruption cases. Unclear authority not only weakens evidentiary effectiveness but also opens avenues for injustice and abuse of power. This research is vital to building a harmonious system between audit institutions and law enforcement bodies and offers concrete contributions to legal policy formulation.

⁵ Anis Mustarani, Muwaffiq Jufri, & Cristovao Adao da Silva, *Kerugian Hak Konstitusional Perpanjangan Masa Jabatan Komisi Pemberantasan Korupsi*, *Diversi: Jurnal Hukum*, Vol. 9 No. 2, 2023, p. 410-441.



Previous studies have generally focused on theoretical aspects of corruption crimes, such as framing corruption as an extraordinary crime⁶ or adopting public morality approaches in enforcement.⁷ Very few, however, specifically examine how ambiguity in the determination authority directly affects the validity of legal proceedings. Some literature identifies BPK as the reference institution but does not explore the constitutional dimension or the juridical implications of overlapping roles with law enforcement. This study thus fills a normative and structural gap in the literature.

The study aims to identify the applicable legal norms governing the authority to determine state losses, map out actual institutional practices, and formulate normative and institutional solutions to resolve these conflicts. Its principal contribution lies in providing a stronger legal foundation for separating audit and enforcement functions and recommending explicit statutory provisions to ensure the involvement of official audit institutions in criminal proceedings.

B. Research Method

This study employs a normative legal research method. Normative legal research examines legal norms, statutory provisions, and legal principles contained in legislation. The research adopts a statute approach, namely by reviewing Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption, Law No. 15 of 2006 on the Audit Board of Indonesia (BPK), as well as other relevant legislative instruments. Data were collected through library research, which involved the systematic examination of primary legal materials (laws and regulations), secondary legal materials (doctrine, academic writings, and jurisprudence), and tertiary sources (legal dictionaries and relevant reference works). The collected data were then qualitatively analyzed to identify patterns, inconsistencies, and normative implications, and the findings were presented descriptively to provide a clear and structured understanding of the legal issues under study.

C. Results and Discussion

1. Theoretical and Legal Framework for Determining Authority in State Financial Law

Authority is the core of any act within administrative law. Public authority is established through the mechanisms of attribution, delegation, or mandate, each of which is based on distinct legal foundations.⁸ Attribution refers to the direct conferral of authority by legislation

⁶ Johari, & Teuku Yudi Afrizal, *The Criminal Acts of Corruption as Extraordinary Crimes in Indonesia. International Journal of Law, Social Science and Humanities (IJLSH)*, Vol. 1 No. 1, 2024, p. 27-37.

⁷ Mashudi, *Social Moral Approach in Reducing Corruption Rates, JASNA: Journal for Aswaja Studies*, Vol. 5 No. 2, 2025, p. 287-300.

⁸ Moh Gandara, *Kewenangan Atribusi, Delegasi, dan Mandat, Khazanah Hukum*, Vol. 2 No. 3, 2020, p. 92-99.



to a state institution, whereas delegation occurs when an institution vested with attribution transfers part of its authority to another institution on a limited basis. Mandate, in contrast, is administrative in nature and does not transfer legal responsibility. This concept is crucial in assessing the legitimacy of state institutions' legal acts, including the determination of state financial losses. If an institution acts beyond the scope of valid attribution or delegation, its actions may be considered *ultra vires*, or beyond its lawful powers.⁹ Accordingly, the question of who is legally authorized to determine state losses cannot be separated from the theoretical framework on the source and legitimacy of institutional authority.

Article 23E of the 1945 Constitution designates the Audit Board of Indonesia (*Badan Pemeriksa Keuangan*—BPK) as the institution responsible for independently and freely auditing the management and accountability of state finances. This provision underscores that BPK is not a direct part of the executive, legislative, or judiciary, but rather stands as an independent entity with a constitutionally mandated financial oversight function. From the perspective of modern separation-of-powers theory, BPK qualifies as a *quasi-judicial institution*—a body performing technical assessments that influence legal processes.¹⁰ BPK's constitutional status affirms that it alone possesses the authority to conduct comprehensive state audits, including the determination of state financial losses. Consequently, determinations made by law enforcement agencies without an official BPK audit not only create juridical problems but also weaken the institutional framework established by the Constitution.

The concept of state financial loss encompasses not only a fiscal dimension but also a legal one. Under state finance law, losses must be real, actual, and quantifiable. Estimates, potential losses, or projected impacts are insufficient. Law No. 1 of 2004 on State Treasury affirms that state loss occurs when there is a reduction in state assets caused by unlawful acts or negligence. Assessing both the existence and magnitude of such loss requires forensic audit methods, which can only be performed by competent auditors with full access to state accounting records. Accordingly, the calculation of state loss cannot be simplified as a routine administrative act; it must rest on both legal and scientific foundations.

The principle of legality (*nullum crimen sine lege*) requires that every element of a criminal offense, including state loss in corruption cases, be formulated in written, clear, and

⁹ Andika Pribadi Waruwu, Bismar Nasution, Sunarmi, & Mahmud Siregar, *Qualification of Ultra Vires Act by Board of Directors Company in Indonesian Law and Court*, *Locus Journal of Academic Literature Review*, Vol. 1 No. 5, 2022, p. 298-307.

¹⁰ Eki Furqon, *Kedudukan Lembaga Negara Independen Berfungsi Quase Peradilan dalam Sistem Ketatanegaraan Indonesia*, *Nurani Hukum: Jurnal Ilmu Hukum*, Vol. 3 No. 1, 2020, p. 77-85.



unambiguous terms.¹¹ The element of state loss must not be interpreted freely by investigators or prosecutors based on intuition or public pressure, as this would violate legal certainty. This principle safeguards against arbitrariness in criminal proceedings. In corruption cases, if state loss is not determined by an institution with valid attribution, the principle is breached. In other words, when investigators or prosecutors set loss figures without a legitimate audit basis, they expand interpretive scope beyond what the law mandates, rendering indictments vulnerable to dismissal for formal defects. Accuracy in establishing state loss is thus an inseparable part of upholding the legality principle.

The concept of *due process of law* within criminal justice ensures that all legal procedures are conducted fairly, transparently, and subject to challenge.¹² With respect to state loss determination, due process requires that defendants be given the opportunity to contest the validity of the evidence against them, including loss figures. If such figures are set unilaterally by investigators or based on audits from non-independent institutions, the defendant's ability to mount a defense is diminished. In a valid evidentiary system, financial data must originate from institutions with methodological integrity and accountability in court. Therefore, any legal process involving the element of state loss must ensure the participation of a competent institution so that the defense process remains procedurally fair and balanced.

The offenses under Articles 2 and 3 of the Anti-Corruption Law fall into the category of material offenses meaning they are only complete when the consequences of the act can be proven as real.¹³ In this context, state loss is not a supplementary element but the core of the offense itself. Proof of this element must meet high standards of accuracy and legality. If the consequence (loss) cannot be proven, or is based only on assumptions, the act cannot be deemed to fulfill the elements of corruption.¹⁴ A material offense requires a strong causal link between the unlawful act and the resulting harm.¹⁵ Accordingly, loss determinations by non-

¹¹ Suryani Yusi, & Erniwati, *Tinjauan Yuridis Normatif Eksistensi Asas Legalitas dalam Hukum Pidana Indonesia, Justice*, Vol. 15 No. 1, 2022, p. 15-22.

¹² Fitriah Faisal, *Due Process of Law: Pre-Trial and Preliminary Examination Judge on Indonesian Criminal Procedure Law, Scholars International Journal of Law, Crime and Justice*, Vol. 6 No. 3, 2023, p. 154-158.

¹³ Juandra, Mohd Din, & Darmawan, *Kewenangan Hakim Menjatuhkan Pidana Uang Pengganti dalam Perkara Korupsi yang Tidak Didakwakan Pasal 18 UU Tipikor, Jurnal Ius Constituendum*, Vol. 6 No. 2, 2021, p. 442-460.

¹⁴ Nur Fadhilah Mappaselleng, & Zul Khaidir Kadir, *Tanpa Kontrak, Tetap Korupsi: Menimbang Ulang Batas Doktrin dan Pembuktian, SUPREMASI: Jurnal Hukum*, Vol. 8 No. 1, p. 16-34.

¹⁵ Indah Nadilla, Elwi Danil, & Yoserwan, *Eksistensi Perbuatan Melawan Hukum Secara Materiil (Materiele Wederrechtelijkheid) dalam Arti Negatif Terhadap Tindak Pidana Korupsi, UNES Journal of Swara Justisia*, Vol. 7 No. 1, 2023, p. 133-147.



audit institutions or by methods lacking standardization run counter to the fundamental characteristics of the offense.

The theory of functional separation in public administration emphasizes that audit institutions and law enforcement agencies have distinct roles that must not overlap. Audit institutions verify the technical aspects of financial activities, while law enforcement prosecutes legal violations based on admissible evidence. When audit functions are taken over by investigators, a dangerous concentration of roles occurs, undermining both integrity and legality. Law enforcement should rely on audit results as the basis for action, not generate the data themselves. A sound criminal process depends on a clear division of functions to avoid conflicts of interest and abuse of power.

Investigative audits differ from regular audits in that they are conducted specifically for evidentiary purposes in legal proceedings. Such audits are forensic in nature, employing more rigorous methodologies focused on identifying legal violations and quantifying resulting losses. In corruption cases, investigative audits are often the only objective means to establish the occurrence of state loss. Only institutions with both constitutional authority and technical capacity may carry out such audits. Internal audits or rough estimates by investigators cannot substitute for legitimate investigative audits, as they fail to meet both scientific and legal standards. Thus, investigative audits are a key instrument in satisfying evidentiary standards that value accuracy and accountability in criminal law.

The concept of the rule of law requires that all government actions, including law enforcement, be based on clear, written, and accountable laws.¹⁶ From this perspective, the division of authority among state institutions is not merely administrative but is part of the constitutional architecture designed to ensure accountability and prevent arbitrariness. When an institution exceeds or deviates from its mandate, the rule of law is threatened. Therefore, in the context of determining state loss, recognition of the audit function as a legal instrument must be grounded in firm statutory norms, not in administrative custom or expedience. Without institutional certainty, the legal system becomes dependent on subjective interpretations, undermining predictability and equality before the law.

In the author's view, determining state loss in corruption cases is not merely a technical issue but a deeply fundamental legal matter. The complexities of authority theory, the principle of legality, the concept of material offenses, and the separation of functions between audit

¹⁶ Widiatama, Hadi Mahmud, & Suparwi, *Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia*, *Jurnal USM Law Review*, Vol. 3 No. 2, 2020, p. 310-327.



institutions and law enforcement are interrelated and mutually reinforcing. When any of these components is disregarded—such as granting audit authority to an institution lacking constitutional attribution—the entire legal process loses its legitimate foundation. The legal theory applied in this study demonstrates that state loss determination must be regarded as part of due process, not a mere administrative formality. Harmonizing theory and practice, authority and legitimacy, is therefore an essential foundation for building a fair and accountable system of anti-corruption law enforcement.

Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 positions state financial loss as a core element of the offense of corruption. Article 2 stipulates acts committed “unlawfully and for the benefit of oneself, another person, or a corporation,” followed by the phrase “which may cause a loss to the state’s finances or economy.” Article 3 focuses on abuse of authority resulting in state loss. These provisions define corruption as a material offense, in which the consequence—state loss—is not merely supplementary but constitutes the essential characteristic of the crime. This legal framework requires that proof of state loss be based on precise and verifiable figures, necessitating the involvement of a credible audit institution and transparent procedures.

Law No. 17 of 2003 on State Finance and Law No. 1 of 2004 on State Treasury define state loss as encompassing “loss of cash, loss of assets, and loss of the state’s economic rights.” This definition demands objective valuation based on official state accounts. The absence of a link between this definition and an institution vested with formal authority to confirm the loss risks eroding objectivity. Thus, although legislation sets out the categories of loss, institutional clarity is crucial for ensuring that calculated figures are admissible in criminal proceedings.

Law No. 15 of 2006 grants BPK (Audit Board of Indonesia) full authority to audit the management and accountability of state finances. Articles 7 and subsequent provisions provide BPK unrestricted access to documents, individuals, and financial information. However, there is no clause expressly stating that BPK audit results must be the sole legal basis for determining state loss in criminal cases. Nor is there a provision prohibiting the use of figures from other institutions, provided that law enforcement can establish their technical validity. This creates an open legal framework that enables dual authority, potentially leading to interpretive conflicts and institutional competition.

The Indonesian Penal Code (KUHP), the Criminal Procedure Code (KUHAP), and Law No. 19 of 2019 on the Corruption Eradication Commission (KPK) mandate law enforcement agencies to gather admissible evidence, including financial documents. Investigators and



prosecutors are thus empowered to generate state loss figures deemed relevant to investigations. However, there is no explicit provision governing calculation methods or auditor qualifications. This gap in KUHAP allows law enforcement to determine losses independently, creating the risk of employing non-standard methods that undermine the legal validity of evidence.

The Constitutional Court, in Decision No. 25/PUU-XIV/2016, held that the phrase “which may cause loss to state finances” must be interpreted strictly: the loss must be real and provable, not merely an estimate. The Court rejected the teleological expansion of this element. While the decision reinforces the limits of legality, it does not identify the specific institution authorized to calculate the loss. Consequently, while prosecutors must base charges on concrete figures, the ruling fails to resolve the question of which body holds the lawful mandate to produce those figures.

In certain decisions, the Supreme Court has permitted the use of figures from BPKP (Financial and Development Supervisory Agency) or other evidence to establish state loss, provided the defendant does not challenge the methodology. This reflects a judicial pragmatism that, while expedient, risks undermining the coherence of the Anti-Corruption Law’s application. As a result, the courtroom becomes a space for creative interpretation, often placing formal norms behind practical expedience.

A legal analysis of these instruments reveals that legislation establishes a normative basis for the necessity of audits in determining state losses, but fails to prescribe a hierarchy of institutions or designate a sole authorized body. The Constitutional Court tightens the interpretive scope of the loss element, but offers no institutional guidance. The Supreme Court’s flexible approach allows for application but does not resolve the normative gap. Systemically, this produces an “open norm” paradigm, enabling law enforcement to select audit instruments based on practical rather than legal considerations—an identity-structure conflict that must be addressed through legislative harmonization.

In principle, authority must be explicitly conferred through written norms.¹⁷ Attribution and delegation cannot be left ambiguous. If the law does not clearly designate the institution authorized to determine state loss, the task may be assumed through operational practice—a phenomenon known as implicit delegation.¹⁸ In orthodox legal doctrine, this is considered

¹⁷ I Komang Kawi Arta, & I Gede Arya WiraSena, *Kepastian Hukum Ketentuan Upaya Administratif Pasca Dikeluarkan Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan*, *Kertha Widya Jurnal Hukum*, Vol. 9 No. 2, 2022, p. 97-110.

¹⁸ Edy Basuki, *Implikasi Hukum Kewenangan Pengadilan Tata Usaha Negara dalam Pengujian Unsur Penyalahgunaan Wewenang yang Terkait dengan Tindak Pidana Korupsi*, *Jurnal Hukum dan Kenotariatan*, Vol. 6 No. 2, 2022, p. 1270-1296.



invalid. Accordingly, when law enforcement determines loss figures without explicit normative authority, such determinations risk being unlawful and create a “juridical grey area” that cannot be procedurally validated.

A state governed by law (*rechtstaat*) requires clear and measurable institutional structures, in which official actions are grounded in formal norms and exercised within the proper institutional domain. The use of state loss figures from non-audit institutions in corruption prosecutions constitutes a tangible departure from this principle. Prosecutors basing charges on figures not issued by BPK or another formally recognized audit body risk violating the principle of legal certainty. This undermines the realization of the rule of law, as criminal policy becomes dependent on individual institutional interpretation rather than established legal constructs.¹⁹

From a procedural law perspective, the use of loss figures not derived from an official audit diminishes the legal validity of evidence. Under KUHAP, evidence must be lawful, accountable, and methodologically sound. When the audit process is replaced by investigators’ estimates, indictments acquire formal defects. This increases the likelihood of case dismissals or reversals on appeal, trapping the justice system in uncertainty. Such erosion of legal formality not only endangers legal certainty but also erodes public trust in institutions.

To prevent such interpretive fragmentation, harmonization of provisions in the Anti-Corruption Law, the BPK Law, and KUHAP is essential, ensuring that state loss figures in criminal contexts are derived solely from BPK investigative audits. Such legislation must include explicit coordination procedures among BPK, KPK, the police, and prosecutors, covering time limits, verification methods, and the evidentiary legitimacy of financial data. This harmonization should take the form of *lex specialis* reformulations to protect the integrity of the legal process and bridge the gap between normative ideals and practical realities.

In the author’s view, the foregoing legal instruments and jurisprudence reveal a systemic inconsistency between conceptual frameworks, institutional structures, and practical implementation. The absence of a single institution with an unequivocal audit mandate for evidentiary purposes—despite the Constitution naming BPK as the state auditor—has fostered heterogeneous practices that obscure the legality of proving state loss. This systemic gap hampers fair and credible anti-corruption enforcement. The formulation of an integrated

¹⁹ Zul Khaidir Kadir, *Menggugat Netralitas Hukum Pidana: Perdebatan Ideologis di Balik Kebijakan Kriminal di Negara-Negara Liberal, Eksekusi: Jurnal Ilmu Hukum dan Administrasi Negara*, Vol. 2 No. 4, 2024, p. 380-400.



positive legal framework is imperative to ensure that law enforcement is based not only on persuasive argumentation but also on clear and accountable institutional legitimacy.

2. Practical Institutional Conflicts

In practice, the Financial and Development Supervisory Agency (*Badan Pengawasan Keuangan dan Pembangunan*—BPKP) is often perceived as the faster option for calculating state losses, whereas a BPK audit requires more time. Although BPKP is only authorized to conduct internal audits, its data are frequently relied upon in criminal proceedings without regard to their legal status. This reflects a misalignment between legal norms and institutional practice. While BPKP serves an administrative oversight function, in corruption cases its role is transformed into a juridical tool. Yet Law No. 15 of 2006 does not grant BPKP any role in the criminal domain. A fundamental question arises: should an institution like BPKP be recognized as an authoritative basis in determining state loss? When the official audit body is bypassed, BPK's role as the state's financial control institution is blurred, and the legitimacy of the loss figures becomes questionable in legal proceedings.

In several corruption cases, investigators have prepared their own estimates of state losses in the official Investigation Report (*Berita Acara Pemeriksaan*—BAP) based on preliminary data.²⁰ These estimates are then used by prosecutors as the basis for indictments without audit validation or consultation with qualified auditors. This practice demonstrates how investigators are often positioned as creators of loss figures rather than consumers of data. The combination of case resolution urgency and performance target pressures drives such practices. Procedural errors arising from these estimates often occur without formal accounting, making the figures difficult to test critically in court. Yet KUHAP requires that evidence be capable of verification, and when figures are derived from unilateral estimates, evidentiary quality is severely compromised.

To address these gaps, some institutions have signed Memorandums of Understanding (MoUs) to structure cooperation between audit bodies and investigative agencies. Such MoUs typically outline procedures for data submission, coordination, and even BPK's involvement in investigations. However, in practice, MoUs are not always followed by robust internal institutionalization, and are often overridden by administrative considerations. Without binding regulatory changes, MoUs can be easily disregarded when investigative deadlines loom. In the

²⁰ Meyla Rosada, Utang Rosidin, & Ikhwan Aulia Fatahillah, *Kewenangan Jaksa dalam Menghitung Kerugian Keuangan Negara Pada Tindak Pidana Korupsi (Tipikor) dalam Surat Penetapan Tersangka Nomor: Print 05/M.9.11.4/Fd.1/12/2017 Hubungannya dengan Sema Nomor 04 Tahun 2016, Varia Hukum*, Vol. 3 No. 1, 2021, p. 106-125.



author's view, inter-agency coordination remains dependent on institutional will rather than rooted in normative consistency.

Trial courts and appellate courts have, at times, accepted audit methods other than those of BPK as valid, provided the defendant does not object to them. Conversely, some judges reject indictments outright due to the absence of formal BPK audit figures. This divergence indicates that legal norms fail to provide clear guidance, forcing judges to rely on *ad hoc* interpretations. When a non-BPK auditor is used, the credibility of the loss figure depends largely on the presiding judge's discretion and the dynamics of the trial. The result is a variance in judgment quality, leading to judicial uncertainty.

BPK's investigative audits often require substantial time to complete, while law enforcement agencies face strict investigative deadlines.²¹ This temporal gap compels agencies to resort to non-BPK estimates. The lack of early independent audit involvement leads to the later use of BPK audits as "secondary justification" for pre-established figures. If BPK audits were available when indictments were filed, proceedings could progress more smoothly and require fewer corrections. This underscores the need for procedural reforms in audit timelines in the context of corruption cases.

In court, defense counsel frequently requests re-verification of loss figures when they are based on non-BPK data. Judges may then grant limited time to bring in an independent auditor or request a BPK audit. However, this depends on defense initiative rather than being a systematic safeguard. Not all defendants have the resources or legal capacity to employ such strategies. Principles of fairness should be structurally guaranteed so that defendants are not reliant on litigation skills but are protected by statutory requirements for audit and verification.

Praperadilan in some cases have sought audit confirmation as a basis to continue investigations. However, pre-trial proceedings do not automatically result in audits unless supported by strong legal arguments. This shows that the pre-trial mechanism remains reactive rather than serving as a tool to ensure procedural correctness.²² The success of pre-trial efforts in prompting BPK audits often depends on the assertiveness of defense counsel.

Law enforcement officers often lack accounting or state finance backgrounds, leading to calculation methods that are partial or assumptive. This creates vulnerabilities in indictment

²¹ Neni Maryani, & Usman Sastradipraja, *Peranan Audit Investigatif dalam Menjadikan Bukti Audit sebagai Bukti Hukum untuk Pembuktian Tindak Pidana Korupsi*, *Peranan Portofolio: Jurnal Ekonomi, Bisnis, Manajemen, dan Akuntansi*, Vol. 17 No. 2, 2020, p. 116-147.

²² Shandy Herlian Firmansyah, & Achmad Miftah Farid, *Politik Hukum Praperadilan sebagai Lembaga Perlindungan Hak Tersangka dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 mengenai Penetapan Tersangka*, *Jurnal Penegakan Hukum dan Keadilan*, Vol. 3 No. 2, 2022, p. 90-103.



quality and inaccuracy in figures. Technical guidelines for determining state losses remain non-standardized for investigators and prosecutors. Without training and technical support, agencies tend to use available data rather than the data that should be used, which in turn affects the legitimacy of loss figures.

Data on BPK investigative audits used in corruption cases are not always made public.²³ Typically, only the final figure is disclosed, without detailed methodology. This means that publication does not enable effective public oversight of loss determination methods. Legal transparency entails not only publishing results but also revealing how figures are produced and tested. The absence of this dimension heightens the risk of political conflict in legal processes and undermines public trust in institutional independence.

Bureaucratic and enforcement culture tends to emphasize meeting targets and producing quantitative results, with large loss figures perceived as achievements. This mindset influences how prosecutors construct indictments, often at the expense of accuracy. Without valuing data quality and methodology, the system incentivizes the production of inflated figures for publicity rather than precise figures for justice. Such institutional culture fosters an environment where legal norms may be sacrificed for prestige.

Regional government agencies outside the capital often face challenges in accessing BPK's investigative audit system due to geographic or national priority constraints. This disparity causes investigators in remote regions to rely more heavily on internal audits or their own estimates, resulting in heterogeneous evidentiary quality. Such institutional inequality generates disparities in law enforcement outcomes based on regional capacity.

From the author's perspective, the patterns reveal that current inter-agency cooperation is weak, *ad hoc*, and driven by situational demands rather than by sustained legal coordination. Audit mechanisms and law enforcement processes operate in parallel without institutional integration. The absence of binding legal norms requiring BPK audits in criminal contexts renders the system vulnerable to inefficiency, inconsistent judgments, and potential arbitrariness. To improve this landscape, a structural approach is essential—integrating legally mandated procedures, strengthening technical capacity, and reforming institutional culture to prioritize evidentiary quality.

3. Critical Analysis and Implications

²³ Baren Sipayung, Haris Retno Susmiyati, & Insan Tajali Nur, *Pencegahan dan Pemberantasan Korupsi: Upaya BPK dalam Bingkai Hak Asasi Manusia, Aliansi: Jurnal Hukum, Pendidikan, dan Sosial Humaniora*, Vol. 1 No. 2, 2024, p. 100-114.



Articles 2 and 3 of the Anti-Corruption Law stipulate that corruption is only complete when there is an element of state financial loss. However, proof of this element by investigators based on internal estimates is not envisioned under the Criminal Procedure Code (KUHAP) or the Audit Board Law (UU BPK). KUHAP requires evidence to be lawful and non-controversial, while the BPK Law provides a framework only for audits conducted by BPK itself. The absence of a legal norm mandating investigative audits by BPK in criminal proceedings has resulted in inconsistency, where conventional legality is enforced without sufficient institutional foundation. This allows an institution to generate loss figures despite lacking juridical legitimacy for such a function.

When investigators or prosecutors unilaterally determine state loss figures, the risk of over-criminalization increases. This practice is at odds with the *ultima ratio* principle in criminal law and the principle of proportionality.²⁴ If subjective estimates are deemed sufficient, any administrative irregularity could be reframed as corruption. The Anti-Corruption Law itself does not restrict the method of calculating state loss.²⁵ Thus, without systematic enforcement of the norm, criminal law may be applied expansively rather than being confined to serious violations, eroding its legitimacy as the ultimate safeguard of justice.

BPK audits require lengthy procedures under Law No. 15 of 2006, whereas KUHAP imposes strict deadlines for completing investigation files. This disparity creates procedural distortion, prompting agencies to rely on internal estimates for efficiency. As a result, audits are often sought only after indictments are filed, serving as post-hoc confirmation rather than an integral part of the process.²⁶ This subordinates legal norms to administrative pressure rather than upholding them as the guiding framework for criminal procedure.

Under KUHAP, investigators are not auditors. They lack the forensic accounting expertise mandated by the BPK Law. When investigators produce loss estimates as evidence, they breach the principle of separation of functions and competencies among institutions. This can be viewed as *ultra vires*, where an agency performs functions beyond its lawful domain. Although KUHAP and the BPK Law implicitly guard against such overlap, the lack of institutional clarity in practice has allowed this overlapping exercise of authority to persist.

²⁴ Emil Sliwinski, *Principle of Proportionality as a Threat to Criminal Law Related Fundamental Rights*, *New Journal of European Criminal Law*, Vol. 14 No. 3, 2023, p. 327-344.

²⁵ Dimas Naufa Abhinaya, *Peran Hukum Administrasi Negara Untuk Mencegah Korupsi di Indonesia*, *Gorontalo Law Review*, Vol. 6 No. 1, 2023, p. 149-154.

²⁶ Baren Sipayung, & Agus Prasetyo, *Audit Atas Biaya Perkara dalam Laporan Keuangan Mahkamah Agung dan Badan Peradilan yang Berada di Bawahnya*, *Ekalaya: Jurnal Ekonomi Akuntansi*, Vol. 1 No. 1, 2023, p. 68-78.



In bureaucratic efficiency theory, speed of case resolution is valued.²⁷ However, in corruption cases, the accuracy of loss figures is more critical, as it determines both the legal basis of the offense and the severity of potential punishment. Efficiency without accuracy yields verdicts that are vulnerable to challenge and diminishes institutional credibility. This paradox demands balance: if norms remain weak, procedures must be strengthened; conversely, if procedures are shortened for expediency, accuracy must be safeguarded through appropriate institutional mechanisms.

Article 15 of the BPK Law requires auditor independence but does not mandate public or defendant access to investigative audit methodologies. KUHAP, however, guarantees the right to review and challenge evidence. This creates a dilemma: if methodology is not transparent, the right to defense is curtailed; if fully disclosed, professional audit confidentiality may be compromised. Regulation must strike a balance—allowing methodology to be examined in court while preserving professional secrecy.

Supreme Court rulings that accept non-BPK figures reflect flexibility, but lack explicit normative basis. In practice, judges face a choice between formal legal certainty and contextual justice.²⁸ Such pragmatic interpretation produces inconsistency in rulings. Conversely, the Constitutional Court insists that state loss must be real, yet leaves the determination authority unresolved. These inconsistencies undermine the principle of reasonable legal expectation, leaving citizens uncertain as to which evidence is admissible.

Investigative audit standards require objectivity and absence of conflict of interest.²⁹ When law enforcement agencies generate their own loss figures, independence is compromised, as they are also the prosecuting party. This may also breach professional codes of ethics. Neither Law No. 15 of 2006 nor the BPK Code of Ethics addresses administrative consequences for using non-authoritative audits in criminal cases. From a constitutional standpoint, ethical considerations must be reinforced with concrete norms, ensuring that audits serve as both legal and ethical instruments.

The lack of standardization in determining state losses threatens the rights of defendants and the public to fair treatment. Indictments based on inaccurate figures risk imposing penalties disproportionate to the actual offense, amounting to a violation of the right to a fair trial

²⁷ Hannes Magdalena Hutagalung, *Peran dan Fungsi Kendala Birokrasi dalam Pelayanan Publik, Dedikasi: Jurnal Ilmiah Sosial, Hukum, Budaya*, Vol. 24 No. 2, 2024, p. 77-84.

²⁸ Alva Dio Rayfindratama, *Kebebasan Hakim dalam Menjatuhkan Putusan di Pengadilan, Birokrasi: Jurnal Ilmu Hukum dan Tata Negara*, Vol. 1 No. 2, 2023, p. 1-17.

²⁹ Mahendro Sumardjo, Najmatuzzahrah, & Khoirul Anwar, *The Quality of Investigation Audit Influenced by Independence and Integrity, Information Management and Business Review*, Vol. 14 No. 2, 2022, p. 15-27.



guaranteed under Article 28D of the 1945 Constitution. Moreover, institutional ambiguity fosters negative perceptions of the judicial system as a whole.

To reconcile procedural urgency with legal certainty in loss determination, the Anti-Corruption Law and KUHAP should be amended to require a BPK investigative audit before an indictment is filed. Audit timeframes could be governed under *lex specialis* provisions in procedural consolidation, stipulating that indictments may only proceed once an audit report is available or after a defined grace period. This would clarify institutional structures and prevent arbitrary authority.

In the author's view, overlapping authority and institutional flexibility have produced serious consequences: criminalization without objective basis, subordination of the legality principle, and potential human rights violations. Normative reform to clarify authority and audit procedures is imperative, ensuring that the determination of state loss is conducted lawfully, fairly, and accountably. The ideal legal model is one that integrates BPK's investigative audit authority into the trial process as the primary instrument for proving state loss—rather than as an optional or subordinate tool. Implementing this model would strengthen the legitimacy, accuracy, and fairness of anti-corruption enforcement in Indonesia.

D. Conclusion

The misalignment between legal norms and institutional practice in determining state financial losses has created a grey area that undermines the quality of anti-corruption law enforcement. This gap has led to divergent interpretations and implementation, where law enforcement agencies often rely on internal calculations or audits from institutions other than the Audit Board of Indonesia (BPK) as the basis for indictments. The absence of a clear normative instrument has amplified the risk of over-criminalization, weakened the principle of *due process*, and generated legal uncertainty for defendants. Determinations of state loss not grounded in official audit results also contravene the principle of legality and diminish the audit's role as an objective, scientific process.

Accordingly, harmonization of legal norms and institutional frameworks is urgently required to safeguard procedural validity and legal certainty in proving the element of state loss. Such synergy cannot be achieved merely through memoranda of understanding or technical inter-agency policies; it demands a statutory foundation in the form of amendments to the Anti-Corruption Law, the BPK Law, and KUHAP. These amendments must guarantee that legally valid loss figures originate solely from investigative audits that can be scientifically



verified. This approach would not only strengthen the legal position of both prosecutors and defendants but also foster a law enforcement system that is more predictable, fair, and grounded in integrity.

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