
Optimizing The Recovery of State Loss Assets Through an Administrative Compensation Mechanism

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ABSTRACT

The settlement of losses in criminal justice proceedings may, in theory, serve as an *ultimum remedium* capable of delivering a sense of justice, legal certainty, and benefits to society and the state. Nevertheless, the regulatory framework in the field of state finance also provides law-enforcement instruments within the domain of public financial law, particularly an administrative compensation mechanism that can optimize the recovery of state losses alongside criminal sanctions. Based on data from the Audit Board of Indonesia (BPK) Semester II 2025 Summary of Audit Results, state losses were recorded at IDR 71.57 trillion, while the Corruption Eradication Commission (KPK) recovered only IDR 2.54 trillion over the 2020-2024 period, and the Attorney General's Office recovered IDR 24.72 billion in 2025, indicating a significant recovery gap. The research method employed was normative legal research, based on a literature review of theories and regulations in the fields of state financial law and administrative law. This study finds that the administrative compensation mechanism offers five advantages over criminal proceedings: final and binding decisions (reducing lengthy litigation), liability extended to heirs (maximizing recovery), no subsidiary custodial substitution (unlike criminal judgments), responsible parties remain productive (able to earn income for repayment), and criminal verdicts do not eliminate administrative claim authority. When properly implemented, this administrative compensation mechanism can enhance the recovery of state losses.

INTRODUCTION

Corruption in Indonesia has reached a critical level, permeating nearly all layers of bureaucracy and society (Kurniawati & Saprudin, 2025; Prabowo & Cooper, 2016). The 2025 Corruption Perceptions Index published by Transparency International Indonesia (TII) assigns Indonesia a score of 34, ranking it 109th out of 182 countries. This result is a decline compared to the results in 2024, when Indonesia scored 37 and ranked 99th out of 180 countries. Much like a chronic disease, corruption is deeply entrenched and difficult to eradicate. It not only gradually erodes state structures but also undermines the fundamental foundations of governance (Fukuyama, 2017; Jacobsson et al., 2015; Kettl, 2015).

The effort to accelerate the eradication of corruption, both theoretically and institutionally, has been vigorously pursued by the Indonesian state since the 1998 reform era. These efforts include criminal law enforcement through strengthening the Indonesian National Police and the Indonesian Attorney General's Office, as well as the establishment of a new

state institution through the Corruption Eradication Commission (KPK) (Dwinugroho, 2024; Hutahaean & Indarti, 2020; Saktiawan et al., 2025; Sufriadi, 2024; Wijaya & Santiago, 2024).

According to the Summary of Audit Results for Semester II of 2025 published by the Audit Board of Indonesia (BPK), in the first semester of 2025, BPK completed and issued 26 Reports on the Calculation of State Losses, with a value to IDR 71.57 trillion (Audit Board of the Republic of Indonesia, 2025) These consisted of four reports concerning the central government totaling IDR 223.28 billion, fifteen reports concerning regional governments and regionally owned enterprises totaling IDR 390.62 billion, and seven reports concerning regionally owned enterprises amounting to IDR 70.96 trillion.

Based on data on the recovery of state losses during the 2020–2024 period reported by the Corruption Eradication Commission (KPK), the institution recovered a total of IDR 2,544,426,279,509 (two trillion five hundred forty-four billion four hundred twenty-six million two hundred seventy-nine thousand five hundred nine rupiah). Meanwhile, according to the 2025 performance report of the Indonesian Attorney General's Office, the recovery of state financial losses in corruption cases amounted to IDR 24,716,743,351 (twenty-four billion seven hundred sixteen million seven hundred forty-three thousand three hundred fifty-one rupiah) (Attorney General's Office of the Republic of Indonesia, 2026).

The value of asset recovery achieved by the KPK over the four-year period, as well as by the Attorney General's Office in 2025, remains disproportionate to the figures reported in BPK's Summary of Audit Results (IHPS), which recorded state losses of IDR 71.57 trillion in the first semester of 2025 alone. The prevailing construction of criminal law in Indonesia continues to prioritize the disclosure of criminal acts, the identification of offenders, and the imposition of criminal sanctions, particularly custodial penalties such as imprisonment or detention (Mantri et al., 2025; Widyawati et al., 2025). Meanwhile, developments in the international legal sphere, particularly concerning the seizure and confiscation of proceeds and instrumentalities of crime, have yet to be fully integrated into Indonesia's criminal law system. Accordingly, the enactment of an Asset Confiscation Law is expected to enhance the recovery of assets derived from corruption offenses (Esoimeme, 2020; Saktiawan et al., 2025; Trinchera, 2020).

A reported corruption case involving Asuransi Jasa Indonesia (Jasindo) resulted in state losses of IDR 6.5 billion. The case was legally processed and has obtained final and binding legal force (Crema & Solum, 2022; Farikhah, 2021). In this case, the Public Prosecutor sought a sentence of nine years' imprisonment for Budi Tjahjono, the President Director, along with a fine of IDR 600 million and an order to compensate state losses valued at IDR 6.5 billion (Kompas.com, 2019, as cited in the performance records).

From the experience of the Jasindo corruption case, the existence of a “choice” between compensating the state loss or replacing it with a custodial sentence undermines the core objective of asset recovery in corruption offenses. This option, particularly in cases involving substantial state losses increases the likelihood that convicted persons will opt to serve subsidiary custodial sentences rather than fulfill their restitution obligations, thereby leaving the state's losses unrecovered.

It is not widely recognized that, beyond criminal law enforcement mechanisms, asset recovery may also be pursued through an administrative state compensation framework. The administrative settlement of state losses is governed by a set of laws in the field of state finance,

including Law No. 17 of 2003 concerning State Finance, Law No. 1 of 2004 concerning State Treasury, and Law No. 15 of 2006 concerning the Audit Board of Indonesia (Law No. 17 of 2003; Law No. 1 of 2004; Law No. 15 of 2006). Within this framework, the Audit Board of Indonesia (BPK) is authorized to assess and/or determine state losses to treasurers, managers of state-owned and regional-owned enterprises (SOEs/ROEs), and other entities managing state finances. In contrast, for non-treasurer civil servants, the authority to resolve state losses rests with the head of the relevant institution, commonly exercised through the Compensation Claim mechanism (Tuntutan Ganti Rugi or TGR). In general, the authority to assess and/or determine state losses is characterized as quasi-judicial.

Against this background, this paper examines state losses from the perspective of administrative law and analyzes administrative compensation mechanisms that can optimize the recovery of state-loss assets.

METHOD

This study employed a normative legal research method based on a literature review, adopting two approaches. First, a statutory approach, involving the examination of legislation in the field of state finance, particularly Law Number 17 of 2003 concerning State Finance, Law No. 1 of 2004 concerning State Treasury, and Law No. 15 of 2006 on the Audit Board of Indonesia (Law No. 17 of 2003; Law No. 1 of 2004; Law No. 15 of 2006). Second, a conceptual approach, which analyzes the mechanism for the settlement of state losses from the perspective of administrative law.

RESULT AND DISCUSSION

State Losses from the Perspective of Administrative Law

Article 1 point 22 of Law No. 1 of 2004 concerning State Treasury stipulates that State/Regional Losses are the reduction of money, negotiable papers, and properties that are real and definite in amount as the result of deliberate tort or failure (Law No. 1 of 2004).

Based on the above definition of state loss, the elements of state loss are as follows:

- a. reduction of money, negotiable papers, and properties;
- b. The amount of loss is real and definite;
- c. Deliberate tort or failure;
- d. The existence of a responsible party/perpetrator of the loss; and
- e. A causal relationship between the unlawful act and the loss that occurred.

When the state suffers losses due to improper management of state finances, the state is obliged to impose a compensation claim on the responsible party. Such claims aim to restore diminished state finances to their original condition so that they may be utilized again in achieving state objectives.

According to Dian Puji Simatupang, the essence of state loss is characterized by the following:

- a) Loss represents a reduction in money, goods, and securities;
- b) It is definite, meaning that the amount of reduction has been ascertained through the examination of financial statements;
- c) It is real, meaning that the reduced assets constitute legitimate rights and/or obligations of the state; and

- d) The reduction arises from unlawful acts (criminal or civil) or negligence (administrative).

In the context of legislation related to public administration, the existence of state loss must be assessed based on two key elements: authority and purpose/intent. According to E. Utrecht, state loss may be categorized as a criminal unlawful act if it involves a legal defect, namely:

1. Coercion (*dwang*) or bribery (*omkoperij*), referring to losses caused by coercion, whether direct or indirect or political pressure, or accompanied by promises or inducements that influence actions leading to the reduction of state assets;
2. Fraudulent deception (*kuntsgrepen*), referring to losses arising from the manipulation of the spend of money, securities, or goods in a manner that appears compliant with regulations but is, in fact, contrary to actual circumstances or legal requirements for the use of such money, securities, or goods..

Thus, in principle, any state loss that fulfills the elements set out in Article 1 point 22 of Law No. 1 of 2004 falls within the domain of administrative law. It shifts into the realm of criminal law only where subsequent proof by law enforcement authorities establishes the existence of legal defects, such as coercion (*dwang*), bribery (*dwang*), or fraudulent deception (*kuntsgrepen*) involving the misuse of state funds in violation of statutory provisions.

Within the framework of administrative law, the definition of state loss is further elaborated in Audit Board of Indonesia Regulation No. 3 of 2007 concerning Procedures for the Settlement of Compensation for State Losses against Treasurers, as well as Government Regulation No. 38 of 2016 concerning Procedures for Compensation Claims for State/Regional Losses against Non-Treasurer Civil Servants or Other Officials. Both instruments adopt definitions consistent with those set out in Law No. 1 of 2004 and Law No. 15 of 2006.

Having said that, Government Regulation No. 38 of 2016 also provides specific provisions regarding the valuation of reductions in state/regional property, as well as property not owned by the state but under the control of non-treasurer civil servants or other officials in the performance of governmental duties. Such valuation is based on two approaches: First, book value; and Second, fair value of comparable goods. The method for determining these values is set out in the Explanation to Article 39 paragraph (2), which states:

“The value of such goods may be determined based on book value, namely the acquisition cost less accumulated depreciation over the asset’s useful life, or fair value, namely the estimated price that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between knowledgeable and willing market participants at the valuation date. The determination of value is carried out by the TPKN/TPKD with due regard to fairness”.

Where both book value and fair value can be determined, the value applied shall be the higher of the two.

Administrative Mechanism for Settlement of State Losses

State losses within the domain of administrative law are regarded as a consequence of the improper management of state finances. In the definition of “state loss” as set out in Article 1 point 22 of Law No. 1 of 2004 and Article 1 point 15 of Law No. 15 of 2006, the phrase “real and definite” is emphasized. Practitioners interpret this phrase as referring to losses that have actually been incurred or have definitively occurred. Theodorius M. Tuanakotta states that,

within the framework of Law No. 1 of 2004, such an interpretation is appropriate, particularly in cases involving reduction of money, negotiable papers, and properties.

When the state suffers losses due to improper management of state finances, the state is obliged to impose a compensation claim on the party responsible. The imposition of a compensation claim aims to recover the state finances that have decreased and return them to their original condition so that they may again be used to achieve state objectives.

Article 59 of Law No. 1 of 2004 on State Treasury regulates the principles of settlement of state losses as follows:

- a) Paragraph (1): Every state/regional loss caused by the unlawful action or negligence of a person is resolved in accordance with the provisions of the prevailing legislations
- b) Paragraph (2): The treasurer, non-treasurer civil servant or another official whose actions violate the law or who neglect the obligations assigned to him/her so that such actions directly harm the state finance is obligated to pay for compensation.
- c) Paragraph (3): Each head of state ministry/institution/head of regional work unit may promptly conduct the claim for compensation after determining that in the related state ministry/institution/regional work unit losses have occurred due to actions of any parties

In administrative law, pursuant to Article 62 paragraph (1) of Law No. 1 of 2004, the imposition of compensation for state/regional losses on treasurers is determined by BPK. Furthermore, under Article 63 of the same law, the imposition of compensation for state/regional losses on non-treasurer civil servants is determined by the minister, head of institution, governor, regent, or mayor, while the procedures for such compensation claims are regulated by government regulation.

The main principle of state financial management in order to realize accountable and professional state financial management is the separation of government responsibilities in technical governmental affairs as Chief Operational Officer (COO) and as financial manager or Chief Financial Officer (CFO). This division is part of the system of checks and balances designed to promote professionalism in the performance of governmental duties.

In this context, unlawful acts causing state losses committed by non-treasurer civil servants are not subject to administrative assessment and/or determination by the BPK. This is because, in their capacity as COO, ministers or heads of institutions act as the primary supervisors of technical functions as well as of the non-treasurer civil servants concerned. Accordingly, the authority to assess and determine such losses rests with the head of the relevant institution.

By contrast, the imposition of compensation for state losses on treasurers, which falls within the authority of BPK, is governed by BPK Regulation No. 3 of 2007 concerning Procedures for the Settlement of Compensation for State Losses against Treasurers. Under this regulation, based on a report from the head of the institution, BPK through the Board of Treasury Claims (Majelis Tuntutan Perbendaharaan or MTP) conducts hearings to assess and determine state losses. These proceedings establish whether the case constitutes a treasury claim, whether an unlawful act has occurred, and the amount of loss to be compensated by the treasurer. The outcome of the MTP hearing is then communicated to the head of the institution for settlement through amicable means, formalized by the signing of a Statement of Responsibility (Surat Keterangan Tanggung Jawab Mutlak or SKTJM) by the treasurer.

The SKTJM contains an acknowledgment of deliberate tort or negligence by the treasurer accompanied by a commitment to settle the payment within 40 days. The final outcome of the compensation mechanism for state losses imposed on treasurers by BPK is the issuance of a decision letter on claim for compensation (Surat Keputusan Pembebanan or SKP), which is final, binding, and enforceable. BPK Regulation No. 3 of 2007 further provides that liability for state losses may also be extended to heirs, insofar as the assets under their control originate from the treasurer.

Meanwhile, the mechanism for compensating state losses to non-treasurer civil servants is governed by Government Regulation No. 38 of 2016 concerning Procedures for Compensation Claims for State/Regional Losses against Non-Treasurer Civil Servants or Other Officials. The settlement process is conducted due to the occurrence of a reduction of money, securities, goods owned by the state or money/property not owned by the state but under the control of a non-treasurer civil servant or other official resulting from deliberate tort or negligence. Information regarding such losses may originate from: 1) supervision by direct superiors; 2) the Government Internal Supervisory Apparatus; 3) audits conducted by BPK; 4) written reports from the individual concerned; 5) credible written information from the public; 6) ex officio calculations; and/or 7) whistleblower reports.

The settlement of state losses involving non-treasurer civil servants and other officials involves the State/Regional Loss Settlement Team (Tim Penyelesaian Kerugian Daerah or TPKD) and the State/Regional Loss Settlement Officer (Pejabat Penyelesaian Kerugian Negara/Daerah or PPKN/D), who serves ex officio as the head of the institution. The PPKN/D may establish a panel comprising representatives from the General Secretariat/Regional Secretariat, the Inspectorate, and other relevant officials, depending on the required expertise. During hearings, the panel examines the elements of state loss and submits its findings to the PPKN/D. The Compensation Claim under Government Regulation No. 38 of 2016 is conducted either through the SKTJM mechanism or through the issuance of a Decision Letter on Claim for Compensation (Surat Keputusan Pembebanan Penggantian Kerugian or SKP2K), which is final and binding. As with the mechanism applicable to treasurers, this regulation also provides for the extension of liability to heirs where the responsible party has died.

In general, both the MTP within BPK and the panel established by the PPKN/D under the non-treasurer regime conduct an administrative assessment of the elements of state loss. These include: the existence of a real and definite shortage of state funds; the occurrence of an unlawful act, whether intentional or negligent; the identification of the party responsible for such act; and the causal relationship between the unlawful act and the resulting loss, as elaborated below:

- a) Reduction of state money which is real and definite

Article 1365 of the Indonesian Civil Code states: "Every unlawful act that causes damage to another obliges the person through whose fault the damage was caused to compensate such damage." The philosophy and norm of Article 1365 of the Civil Code are found in Article 35 of the State Finance Law and Article 59 paragraphs (1) and (2) of the State Treasury Law, whose settlement process is carried out under a special legal regime and is "immediate" in order to protect the interests of the state.

This can be seen in the Elucidation to Article 59 paragraph (1), which states:

“State loss may be resulted by violation of law or negligence by state official or non-treasurer civil servant in the context of implementation of administrative authority or by the treasurer in the context of implementation of treasury authority”.

The compensation as referred to in this section is based on the provision of Article 35 Law Number 17 of 2003 on State Finance.

“The settlement on state loss should be made immediately in order to recover the state’s loss or decreasing asset and to improve the discipline and responsibility of civil servant/state official in general, and financial management administrator in specific”.

b) Unlawful act

According to Wirjono Prodjodikoro, unlawful acts are closely related to the domain of civil law. An unlawful act cannot be separated from the existence of an agreement. An agreement itself is defined by Wirjono Prodjodikoro as a legal relationship concerning property between two parties, in which one party promises or is deemed to promise to do something or not to do something, while the other party is entitled to demand performance of that promise. The essence of an unlawful act is: 1) contrary to the legal duty of the actor; or 2) violating the subjective rights of another person; or violating moral norms (*goede zeden*); or 3) contrary to the principles of propriety, caution, and prudence in social life.

The concept of an unlawful act (*Perbuatan Melawan Hukum* or PMH) was originally recognized within civil law and is codified in Article 1365 of the Civil Code, which provides that any unlawful act causing loss to another obliges the person responsible for such loss, by reason of fault, to compensate for it.

Thus, the elements contained in Article 1365 of the Civil Code itself are the requirements that must be fulfilled in an unlawful act, namely as follows:

- a) There is an act.
- b) The act is unlawful, both formally and materially. PMH in the formal sense means an act that violates the provisions of statutory regulations. PMH in the material sense means an act that is considered reprehensible because it is inconsistent with a sense of justice or the norms of social life in society.
- c) There is fault on the part of the actor, whether intentional or negligent. PMH is said to be intentional when the act contains the following elements: awareness to perform the act; awareness of the consequences of the act; and the reasonable anticipation that such an act will certainly cause consequences. PMH is said to be negligent when the act contains the following elements: ignoring something that should have been done; or failing to carry out the duty of caution.
- d) There is a loss suffered. Compensation consists of the loss suffered and the profit that has disappeared.

There is a causal relationship between the act committed and the loss that occurred. The loss that occurs is a direct result, without intermediary, and is also a foreseeable consequence of the act.

The party responsible for the state loss

The parties responsible for state losses include treasurers, non-treasurer civil servants, managers of state-owned and regional-owned enterprises (SOEs/ROEs), as well as other officials or entities managing state finances. Determining the status of the responsible party is essential in distinguishing the applicable mechanism for assessing and/or determining

compensation for state losses, as such mechanisms depend on the authority vested in the relevant institution. This distinction arises because different regimes apply: the treasurer regime under BPK Regulation No. 3 of 2007 and the SOE/ROE management regime, both of which fall under the authority of the BPK, and the non-treasurer or other official regime under Government Regulation No. 38 of 2016, which falls under the authority of the head of the relevant institution. In addition, state losses may also arise from actions attributable to third parties.

Where the party responsible for the loss is a third party, Article 10 paragraph (3) of Law No. 15 of 2006 provides that, in order to ensure the payment of compensation, the BPK is authorized, *inter alia*, to monitor the implementation of compensation imposed pursuant to a court decision that has obtained final and binding legal force. The Elucidation to this provision further clarifies that the settlement of state losses arising from unlawful acts committed by third parties is conducted through judicial proceedings.

Causal Relationship

The causal relationship between the state loss and the unlawful act constitutes a fundamental element that must be established. According to Rosa Agustina, as cited by Theodorus M. Tuanakotta, the doctrine of causality is essential not only in criminal law but also in civil law. In criminal law, it serves to determine who may be held responsible for the occurrence of a consequence (*strafrechtelijke aansprakelijkheid*), whereas in civil law it is used to assess whether a causal link exists between the unlawful act and the resulting loss, thereby establishing liability

The causal relationship between an unlawful act and state/regional loss constitutes one of the key bases for determining the existence of an unlawful act in the assessment of a state loss. This causal link serves to establish whether fault can be attributed to a treasurer, a non-treasurer civil servant, or another official whose conduct resulted in the loss. Where such fault is established on the part of the treasurer concerned, liability for the state loss may be imposed on the responsible party.

The procedures provided under state financial law offer a mechanism for the recovery of state losses without recourse to judicial proceedings. In essence, such recovery emphasizes administrative processes while remaining within the framework of state financial law. According to Muhammad Djafar Saidi, the recovery of state losses through non-judicial mechanisms is, in fact, more effective and efficient than recovery pursued through judicial proceedings.

Efforts to optimize the recovery of state loss assets through an administrative state compensation mechanism

First, the administrative settlement of state losses is final, and therefore more efficient than criminal proceedings, which take a long time until the judgment truly becomes final and binding (*inkracht*) and can be executed. The execution of MTP decisions under BPK Regulation No. 3 of 2007 is carried out by the head of the institution no later than seven days after the issuance of the Decision Letter on Claim for Compensation by submitting a request to the competent authority to carry out seizure and auction sale of the assets of the responsible party for the state loss. Meanwhile, under Government Regulation No. 38 of 2016, the collection process must be initiated no later than 30 days after the issuance of the SKP2K, by

referring the matter to the institution responsible for state receivables management, namely the State Assets and Auction Service Office (Kantor Pelayanan Kekayaan Negara dan Lelang). Second, liability for compensation does not stop only at the responsible party (the defendant in the criminal law domain), but may also be imposed on heirs. This provision means that recovery of state losses is not limited to the assets of defendants seized by law enforcement agencies/courts, but may also reach the heirs, so that the reduction of state money may be recovered to the maximum extent.

Third, in terms of the effectiveness of state loss recovery, the administrative recovery regime has the instrument of a Provisional Decision Letter on Claim for Compensation (Surat Keputusan Pembebanan Sementara or SKPS by BPK, and SKP2KS by the head of the institution), which may be used to carry out collateral confiscation of the assets of the responsible party and his/her heirs. In addition, the MTP or the panel in the TGR mechanism may issue a decision either imposing or not imposing state losses on the responsible party through a Decision Letter on Claim for Compensation (SKP). This makes the responsible party inevitably required to compensate for the loss and surrender his/her property to be seized by the state, due to the absence of substitute or subsidiary custodial sanctions (imprisonment or detention), as typically imposed in criminal proceedings.

Fourth, the “advantage” of administrative settlement of state losses compared to criminal proceedings is that the responsible party is not detained or imprisoned even though he/she has been ordered to compensate for the state loss, so the responsible party may still work and earn income to compensate for the loss.

Fifth, criminal proceedings and criminal judgments against suspects/defendants in criminal cases do not eliminate the authority of the MTP or the head of the institution to process the settlement of the state loss that has occurred. Article 64 paragraph (1) of Law No. 1 of 2004 states that

“The treasurers, civil servants of non-treasurer and other officials who have been assigned to indemnify the state/regional loss may be subject to administrative sanctions and/or criminal sanctions”.

Article 64 paragraph (2) further stipulates that

“Criminal verdict does not exempt from claim for compensation”.

Furthermore, Article 42 paragraphs (1) and (2) of BPK Regulation No. 3 of 2007 state that:

(1) “a judge’s decision sentencing a treasurer that has obtained permanent legal force may be used as evidence of a deliberate tort or negligence, in the process of claiming compensation for state losses”;

(2) if the amount of compensation for state losses based on a court decision that has obtained permanent legal force differs from the amount of state loss in the Decision Letter on Claim for Compensation, then the state loss must be recovered in the amount stated in the Binding Determination Letter”.

CONCLUSION

Settlement of state losses through an administrative state compensation mechanism can serve as an instrument to optimize asset recovery alongside criminal proceedings. Recovery of state losses through either the BPK MTP or the TGR mechanism by the head of the institution

can proceed optimally because the decisions are final; compensation for state losses may be imposed on heirs; there is no verdict that may replace the obligation to restore state losses with a custodial sentence; the responsible party is not detained and remains productive in order to compensate for the state loss; and a criminal judgment does not eliminate the authority of the BPK MTP or the head of the institution to assess and/or determine state losses against the responsible party.

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