

Return of State Losses Through State Administrative Instruments : an Effort to Avoid Criminal Liability

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Abstract

This study aims to analyze and give birth to the concept of state financial loss return through state administrative legal instruments and to give birth to a loss recovery model in the form of state financial loss return through compensation claims. This study uses a normative type of research using primary, secondary and tertiary legal materials. Legal materials are obtained through library research, then analyzed with qualitative techniques by drawing conclusions in a deductive way. The result of State financial losses due to unlawful acts, both intentional and negligent, that have implications for corruption crimes are problems that can hinder the growth and continuity of development. The return of state financial losses through criminal law instruments in the form of payment of compensation has failed to recover state financial losses. Enforcement of the criminal law on corruption should be the ultimate remedium, not the premium remedium. The legal instrument of state administration offers the recovery of losses through the return of state financial losses in the form of compensation claims. The instrument was used as an effort to avoid criminal liability, but it was successful in recovering losses. This research is very urgent in giving birth to the concept and model of returning state financial losses for the growth and sustainability of national development.

I. Introduction

In the conception of the Indonesian state, the Government has a crucial role in realizing welfare for the wider community. Being within the scope of a democratic state of law, the government in carrying out its actions or deeds does not avoid the important principles in it, none other than the principles in the state of law itself, the principle of legality and the general principles of good governance for the realization of the desired administration or *good government*.

The principle as a legal basis in forming other laws, the Government in the implementation of government needs legal instruments themselves in the form of Laws and Regulations or their policies that have one direction towards legal certainty that comes from the Laws and Regulations themselves. Such provisions provide the government with the legitimacy to act and avoid problems that are contrary to the provisions of the law itself.

The dynamics of the development of the constitution in the modern era are nothing but a form of legal dynamism that also adjusts to the developments that occur in the midst of society, and also influences the government in carrying out its duties and responsibilities. This legal dynamism does not all have a positive impact on the government, but also has a negative impact on the implementation of government in Indonesia. One of them is about state financial management which often causes problems in its implications.

State financial management is part of the implementation of state government and as a tangible form and benchmark in providing welfare for the community¹, this must be in accordance with the will of the applicable laws and regulations in order to provide guarantees and certainty to the wider community about the form of its management. State Financial Management is a government action that is carried out based on the authority given by laws and regulations so that it gives rise to administrative responsibility.

Current developments have an impact on the presence of problems in the implementation of government actions in the field of administration which also affect the system of community life. This is reflected in the fact that management that is not in line with the Laws and Regulations affects the condition of the country, especially in the economic sector, which is often said to be the term state financial loss.

Tracing the terminology that state finance concerns all the rights and obligations of the state that can be valued in money, as well as everything both in the form of money and in the form of goods that can be used as state property in relation to the implementation of

¹ Fitria. Ridham Priskap. Afif Syarif, 2020, *Return of State Losses Due to Abuse of Authority in Regional Financial Management*, Journal of Socio-Humanor Sciences, Vol. 4 No. 1, p. 120.

these rights and obligations. The scope of the State Finance includes²:

1. The right of the state to collect taxes, issue and circulate money, and make loans;
2. The obligation of the state to carry out the public service duties of the state government and pay the bills of third parties;
3. State Revenue;
4. National Production;
5. Regional Revenue;
6. Regional Expenditure;
7. State Wealth/Regional Wealth managed by itself or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including wealth separated from State Companies/Regional Companies;
8. the wealth of other parties controlled by the government in the context of carrying out government duties and/or the public interest; and
9. wealth of other parties obtained by using facilities provided by the government.

The state loss is further a contradiction to the definition of state finance by using the Laws and Regulations as a benchmark to declare the form of shortage of money, securities and goods, which are real and definite in amount as a result of unlawful acts either intentionally or negligently. The elements of state losses, namely: the existence of perpetrators/responsible persons, lack of money, securities, and property, real and definite losses, intentional or negligent actions that are unlawful, and the existence of a causal relationship between unlawful acts and losses suffered. State financial losses are shortages of money, securities, and property in real amounts and are determined as a result of legal acts, either intentional or due to negligence.

The cause of state financial losses as referred to in the explanation of Article 59 paragraph (1) of the State Treasury Law emphasizes that *"State losses can occur due to violations of the law or negligence of state officials or non-treasurer civil servants in the context of exercising administrative authority or by the treasurer in the context of exercising treasury authority"*. The meaning of this explanation is that the occurrence of state financial losses can be caused by violations of the law or negligence of state officials or civil servants or by the treasurer or non-treasurer. Based on the law, there are only 2 (two) things that can cause state financial losses, namely due to violations of the law or due to negligence. If there is a state financial loss, then the action that needs to be taken is according to the explanation of Article 59 paragraph (1) of the law is *that the settlement of state losses needs to be carried out immediately to restore the lost or reduced state wealth and increase the*

² Attachment to the Regulation of the Financial Audit Board No. 1 of 2017 concerning State Financial Audit Standards, pp. 5-6.

discipline and responsibility of civil servants/state officials in general, and financial managers in particular.

The elements mentioned above can be concluded that in every state loss there is a causal relationship between the unlawful act and the loss that occurred and there is a perpetrator/person responsible for the loss that occurred. According to Hans Kelsen, a person is legally responsible for a certain act or that he bears legal responsibility means that he is responsible for a sanction if his actions are contradictory. Contrary acts referred to by Hans Kelsen can be in the form of mistakes (*culpa*) or negligence (*negligence*).

The basic principle of state/regional financial management is that all actions that violate the law or negligence of a person that causes state/regional financial losses must be reimbursed by the guilty party, because with such reimbursement, state/regional financial losses can be recovered. The formulation of Article 1 number 22 of Law No. 1 of 2004 concerning the State Treasury as amended several times and finally with Law No. 7 of 2021 concerning the Harmonization of Tax Regulations which is hereinafter referred to as the State Treasury Law, the elements of state losses are as follows:

1. There is a shortage of money, securities, and goods;
2. The numbers are real and definite, and;
3. As a result of unlawful acts, both intentional and negligent.³

From that understanding itself, it is clearly described that in the event of losses arising from the management of State or Regional finances, it is not enough to be examined and traced from the study of only one branch of law, but this act offends several other branches of law

The country's financial recovery is a serious challenge that requires a holistic approach in maintaining a country's economic stability. The government can understand the economic consequences of actions that harm the country's finances, such as corruption or abuse of authority, and design recovery mechanisms that are not only legally valid but also economically optimal.

Legal instruments always provide options for making various efforts to save state finances, both state administrative law instruments, civil law instruments and criminal law instruments. Although the focus on restoring state finances will be more alluding to settlement with an administrative view, these administrative legal instruments are not

³ Law Number 1 of 2004 concerning the State Treasury.

able to comprehensively recover state financial losses. Criminal law instruments through corruption law enforcement actions are the next option which is also expected to recover state financial losses by of course carrying out acts of rebuke and corporal punishment against the perpetrators of corruption crimes.

Problems in law enforcement in the current conditions are more important to be solved by resolving criminal acts, especially under the legal umbrella of corruption. However, the problem of the law enforcement system and sanctions for criminal acts is not enough to rely only on the imposition of criminal sanctions but also to take the path of efforts to recover state financial losses incurred based on state administrative law.⁴

One form of realization of the return of financial losses of the Indonesian state is through criminal legal instruments for the payment of replacement money. The penalty of paying substitute money is only an additional crime that is facultative in nature and can be subsidized with a prison sentence whose duration must not exceed the maximum threat of the main penalty. Efforts to subsidize the crime of paying substitute money with a prison sentence should be carried out after all efforts to pay substitute money through tracing the convict's assets have been carried out optimally. In Indonesia, until now the return of state financial losses due to corruption crimes by law enforcement is still not optimal, because the orientation of sanctions is still imprisonment rather than the return of state financial losses and the calculation of state financial losses is still far-sial, and the management of confiscated objects is still not transparent and accountable.

It appears that Indonesia still has various weaknesses in regulation that result in the return of state financial losses cannot be implemented optimally, both in terms of asset tracing, asset confiscation and asset confiscation for perpetrators. The orientation of Indonesian criminal law enforcement still boils down to the punishment of criminals, so that if the perpetrators of crimes are successfully put in prison, it is considered that law enforcement has succeeded, and there is no form of recovery for the State's financial losses.

The recovery of state financial losses is actually a mandate of Article 59 paragraph (2) of Law Number 15 of 2004 concerning the State Treasury affirming that "*The Treasurer, civil servants who are not treasurers, or other officials who, because their actions violate the law or neglect the obligations imposed on them directly harm the state finances, are obliged to compensate for such losses*". If the person concerned does not compensate for the loss, then according to the provisions of Article 59 paragraph (3) of the law affirms that every leader of the state ministry/institution/head of the regional apparatus work unit can immediately

⁴ Yayan Indriani, 2018, *Return of State Financial Losses in Corruption Crime Cases*, Cepalo Journal, Volume 2 Number 2, p.121.

make a claim for compensation, after knowing that in the relevant state ministry/institution/regional apparatus work unit there is a loss due to the actions of any party. This provision has actually given an affirmation to all of us that if there is a state financial loss due to unlawful acts or due to negligence, the most important thing to do is to recover state financial losses.

State/Regional financial losses committed by the treasurer, the treasurer as the perpetrator/responsible person can be held accountable in 2 forms, namely state administrative accountability and criminal liability. This is stated in Article 62 paragraphs (1) and (2) of the State Treasury Law. In paragraph (1) states that the imposition of state/regional compensation against the treasurer is determined by the Financial Audit Board, this means the settlement of losses according to the state administrative law. Furthermore, paragraph (2) states that if in the examination of state/regional losses as referred to in paragraph (1) criminal elements are found, the Financial Audit Agency will follow up on it in accordance with the applicable laws and regulations. The accountability procedure of the treasurer through state administrative law is further regulated through BPK Regulation Number 3 of 2007. The establishment of this regulation is a mandate from Article 22 of Law Number 15 of 2004 concerning the Audit of State Financial Management and Responsibility.

For almost 8 years, the Constitutional Court has given its interpretation in the Constitutional Court Decision No. 25/PUU-XIV/2016 emphasizing the importance of strengthening the administrative legal regime in eradicating corrupt acts or actions that lead to the loss of the state. Since then, it has also expressly separated the regime of legal responsibility of state administration into the front line, not only relying solely on criminal liability considering its essence to return state finances taken or controlled by the administrative officials themselves, and of course this is in line with Law Number 30 of 2014 concerning Government Administration, hereinafter referred to as UUAP.⁵

The importance of harmonizing the legal approach of state administration and the criminal approach. Moreover, in the study of state financial management, it will be more determinant on the form of abuse of authority which is the scope of the State Administrative Law itself.

2. Research Method

Normative legal research type. legal research that puts the law as a norm system. "The

⁵ Enrico Simanjuntak, 2018, *The Urgency of Legal Harmonization in the Field of Maladministration in the Form of Abuse of Authority*, Peratun Law Journal, Volume 1 Number 1, pp. 34-35.

norm system in question is the synchronization of laws and regulations, including court decisions, agreements, and doctrines. In finding accurate legal materials, the author then chooses library research using legal materials consisting of Legal Literature and Laws and Regulations.

The technique of collecting legal materials is carried out by applying literature research by collecting legal materials which is carried out by reading, quoting, recording and understanding various legal literature and laws and regulations that are in accordance with the discussion. Furthermore, the results will be interpreted using a deductive way of thinking, which is a way of drawing conclusions that come from general discussions to specific discussions.

The legal materials that have been collected are then systematically compiled and analyzed using qualitative methods, namely expressing and understanding the truth of the problem and discussion by interpreting the legal materials that have been obtained and poured out in the form of sentences that are arranged in detail and systematically.

3. Results and Discussion

Return of State Financial Losses Through State Administrative Law Instruments

The general principle of state administration or government which is within the scope of state administrative law is called the General Principle of Good Governance is an important instrument in assessing every policy and/or decision of the state administrator. The UUAP provides an explanation of policies that do not only rely on laws and regulations, but the General Principles of Good Governance are considered as limits on every government action.

State Financial Management is one of the current forms of government actions to realize welfare for the wider community in accordance with the goals of the State of the Republic of Indonesia in the 1945 Constitution. The basic principle of state/regional financial management is that all actions that violate the law or someone's negligence that causes state/regional financial losses must be reimbursed by the guilty party, because with such reimbursement, state/regional financial losses can be recovered. In this regard, the researcher will focus on the study and analysis of state/regional financial losses through state administrative legal instruments. In this aspect, the researcher will look at the authority and administrative responsibility in carrying out the settlement of the financial losses of the country/region.

As previously described, the settlement of state/regional financial losses through

administrative actions is carried out through 2 (two) ways, namely through the settlement of state compensation against the treasurer within government agencies/state institutions and other treasurers who manage state finances⁶ and the settlement of state compensation through demands for state/regional compensation against civil servants other than the treasurer or other officials⁷.

Studies and analyses related to the administrative authority to settle state/regional financial losses, beginning with studies related to supervision and accountability for state/regional financial management. State/regional financial management must be carried out effectively, efficiently, transparently, and accountably. At the regional level, the Governor and Regent/Mayor are in charge of the internal control system of the local government⁸. The guidance and supervision of the Governor, Regent/Mayor of the regional apparatus is assisted by the regional inspectorate through audit, review, monitoring, evaluation, monitoring, and technical guidance activities as well as other forms of coaching and supervision⁹. The duties and responsibilities of supervising the implementation of local government are technically carried out by the Government Internal Supervisory Apparatus (APIP).

In order to strengthen and support the effectiveness of the Internal Control System, internal supervision is carried out on the implementation of the duties and functions of Government Agencies including state financial accountability and coaching the implementation of SPIP, through audits, reviews, evaluations, monitoring and other supervisory activities. SPIP consists of BPKP, Inspectorate General (which functionally carries out internal supervision),¹⁰ Provincial Inspectorate and Regency/City Inspectorate. The Provincial Inspectorate supervises all activities in the context of implementing the duties and functions of the provincial regional apparatus work unit funded by the provincial Regional Revenue and Expenditure Budget¹¹. The Regency/City Inspectorate supervises all activities

⁶ Regulation of the Financial Audit Board No. 3 of 2007 concerning Procedures for Settlement of State Compensation against the Treasurer.

⁷ Government Regulation No. 38 of 2016 concerning Procedures for Claims for State/Regional Compensation Against Civil Servants Other than Treasurers or Other Officials, jo Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Claims for Regional Compensation Against Civil Servants Other Treasurers or Other Officials.

⁸ Article 47 paragraph (1) of Government Regulation Number 60 of 2008 concerning the Government's Internal Control System.

⁹ Article 17 paragraph (3) of Government Regulation Number 12 of 2017 concerning Guidance and Supervision of Regional Government Implementation.

¹⁰ Article 1 number 5 of Government Regulation Number 60 of 2008 concerning the Government Internal Control System

¹¹ See Article 49 paragraph (5) of Government Regulation Number 60 of 2008 concerning the Government Internal Control System

in the context of implementing the duties and functions of the district/city regional apparatus work unit funded by the Regency/City Regional Revenue and Expenditure Budget¹².

The State Treasury Law, which broadly regulates the procedures for settling state/regional losses caused by the treasurer, non-treasurer civil servants, or other officials. These provisions are further regulated in Government Regulation Number 38 of 2016 concerning Procedures for Claims for State/Regional Compensation Against Civil Servants Other than Treasurers or Other Officials and Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Regional Compensation Claims Against Civil Servants Other than Treasurers or Other Officials as well as BPK Regulation Number 3 of 2007 concerning Procedures for Settlement of State Compensation Against the Treasurer.

The law provides an affirmation that any state/regional losses caused by unlawful acts or negligence of a person must be resolved immediately in accordance with the provisions of the applicable laws¹³. Specifically for state/regional losses caused by the Treasurer, Article 22 paragraph (4) of Law No. 15 of 2004 concerning the Audit of State Financial Management and Responsibility mandates the BPK to compile and stipulate provisions regarding the procedures for settling state/regional compensation against the treasurer. The law requires that in the preparation of these provisions, the BPK consults with the government. As a follow-up to this mandate, BPK has stipulated BPK Regulation Number 3 of 2007 concerning Procedures for Settlement of State Compensation Against the Treasurer. The substance of the BPK regulation also applies to the settlement of cases of losses caused by the treasurer to the local government.

The procedures for settling state/regional financial losses as referred to above, in this study and analysis are divided into 2 (two) ways, namely:

1) Treasury Demands

In this discussion and analysis, the researcher uses the phrase treasury demand in describing and analyzing the claim for compensation against the treasurer. Article 59 paragraph (1) of the State Treasury Law emphasizes that any loss of the state/region caused by an unlawful act or negligence of a person must be resolved immediately in accordance with the provisions of the applicable laws. Specifically for state/regional losses caused by the Treasurer, Article 22 paragraphs (1) to (3) of Law No. 15 of 2004 concerning

¹² See Article 49 paragraph (6), *ibid*

¹³ See Article 59 paragraph (1) of Law No. 1 of 2004 concerning the State Treasury as amended several times and the last with Law No. 7 of 2021 concerning the Harmonization of Tax Regulations, namely:

the Audit of State Financial Management and Responsibility stipulates as follows:

1. BPK issued a decree determining the deadline for the treasurer's accountability for the shortage of cash/goods that occurred, after knowing that there was a shortage of cash/goods in inventory that was detrimental to the state/regional finances.
2. The Treasurer may submit an objection or self-defense to the BPK within 14 (fourteen) working days after receiving the decision letter from the BPK.
3. If the treasurer does not raise an objection or his defense is rejected, the BPK stipulates a decree on the imposition of state/regional compensation on the treasurer concerned.

Article 22 paragraph (4) of Law No. 15 of 2004 concerning the Audit of State Financial Management and Responsibility mandates the BPK to compile and stipulate provisions regarding the procedures for settling state/regional compensation against the treasurer. Law No. 15 of 2004 concerning the Audit of State Financial Management and Responsibility requires that in the preparation of these provisions, the BPK consults with the government. Following up on the mandate of Article 22 paragraph (4), BPK then issued BPK Regulation Number 3 of 2007 concerning Procedures for Settlement of State Compensation Against the Treasurer. In substance, BPK Regulation Number 3 of 2007 also applies to the settlement of cases of losses caused by the treasurer to local governments.

BPK Regulation Number 3 of 2007 requires the Governor/Regent/Mayor to form a Regional Loss Settlement Team (TPKD) in their respective regions. TPKD consists of the Regional Secretary as chairman; Regional Inspector as vice chairman; Head of the Regional Financial Management Work Unit as Secretary; other personnel from work units in the fields of supervision, finance, personnel, legal, general, and other related fields as members; and team secretariat. The functions of TPKD are as follows:

1. Inventory cases of state losses received;
2. Calculate the amount of state losses;
3. Collect and verify supporting evidence that the treasurer has committed unlawful acts, either intentionally or negligently, resulting in state losses;
4. Inventory the treasurer's assets that can be used as collateral for the settlement of state losses;
5. Resolving state losses through SKTJM;
6. Giving consideration to agency leaders about state losses as decision-making material in determining temporary burdens;
7. Administering the settlement of state losses;
8. Submit a report on the progress of the settlement of state losses to the head of the agency with a copy submitted to the Financial Audit Agency.

The procedure for settling regional compensation against the treasurer based on BPK Regulation Number 3 of 2007 concerning Procedures for Settlement of State/Regional Compensation against the Treasurer is as follows:

1. The direct supervisor or head of office is obliged to report any state loss to the regional head and notify the BPK no later than 7 (seven) working days after the regional loss is known.
2. The regional head immediately assigns TPKD to follow up on every case of regional losses no later than 7 (seven) days from receiving the report.
3. TPKD collects and verifies related documents and must complete the verification within 30 (thirty) days from the assignment.
4. TPKD reports and submits the verification results in the Regional Loss Verification Results Report to the regional head.
5. The regional head submits the above Regional Loss Verification Report to the BPK no later than 7 (seven) days after receiving it from TPKD.
6. BPK conducts an audit of regional loss reports based on the report of research results to conclude that regional losses have occurred which include the value of losses, unlawful acts either intentionally or negligently, and the person in charge.
7. If the results of the audit prove that there is an unlawful act, the BPK issues a letter to the head of the agency to process the settlement of state losses through a Certificate of Absolute Responsibility (SKTJM).
8. The regional head instructed TPKD to strive for the treasurer to be willing to make and sign the SKTJM no later than (7) days after receiving the letter from the BPK.
9. In the event that the treasurer signs the SKTJM, the person concerned is obliged to submit a guarantee to TPKD, among others, in the form of proof of ownership of goods and/or other assets in the name of the treasurer and a power of attorney to sell and/or disburse goods and/or other assets from the treasurer.
10. State compensation is carried out in cash no later than 40 (forty) days after the SKTJM is signed.

If the treasurer is not willing to make and sign the SKTJM or has made and signed the SKTJM, but it turns out that the treasurer does not fulfill the obligation to compensate the state/region in cash within 40 days at the latest since the SKTJM is signed, then the settlement of state/regional compensation is carried out through the process of imposing state compensation through the following three stages:

1. The issuance of a Decree (SK) on Temporary Burden is a decree issued by ministers/heads of institutions/heads of other agencies/governors/regents/mayors regarding the imposition of temporary

reimbursement for state/regional losses as a basis for carrying out bail confiscation. The decree is issued in the event that the SKTJM is not obtained or cannot guarantee the return of state/regional losses. The decree is issued within 7 (seven) days from the time the treasurer is not willing to sign the SKTJM and the regional head notifies the decree to the BPK.

2. The issuance of the Decree on the Determination of the Time Limit (SK PBW) is a decree issued by the BPK regarding the provision of opportunities for the treasurer to submit objections or self-defense to demands for compensation for state/regional losses. This decree is issued if the BPK does not receive the State/Regional Loss Verification Report from the agency head and based on the notification of the agency head about the implementation of the SKTJM, it turns out that the treasurer does not implement the SKTJM. The Treasurer may submit an objection to the PBW Decree to the BPK within 14 (fourteen) days after the date of receipt of the PBW Decree. BPK accepts or rejects the objection of the treasurer within 6 (six) months from the receipt of the objection letter from the treasurer. If after a period of 6 (six) months, the BPK does not issue a decision on the objection of the treasurer, the objection from the treasurer is accepted.
3. The issuance of the Decree on the Imposition of State Compensation is a decree issued by the BPK that has the final legal force regarding the imposition of state/regional compensation on the treasurer. BPK issues a Decree on Burden if:
 - a. The time limit for filing an objection has been exceeded and the treasurer has not filed an objection.
 - b. The treasurer raised an objection but was rejected.
 - c. It has exceeded the period of 40 (forty) days since the signing of the SKTJM but the state losses have not been fully reimbursed.

The imposition decree has final legal force. Based on the Decree on Burden from the BPK, the treasurer is obliged to compensate the state/regional losses by depositing in cash into the state treasury within a period of no later than 7 (seven) days after receiving the Decree on Burden. If the treasurer/custodian/person who obtains rights/heirs submits an objection and the objection is approved by the BPK, then the BPK issues an exemption decree and for the decree the government/local government deletes the value of the loss from the list of state/regional losses.

BPK established the Treasury Claims Tribunal in order to process the settlement of state/regional losses against the treasurer. The Treasury Demands Council consists of the Director of the Assembly (Chairman of BPK), the Chairman of the Assembly (Vice Chairman

of BPK) and Members of the Assembly (all BPK Members). BPK Regulation Number 3 of 2007 contains an expiration provision for bandahara to pay compensation obligations if within 5 years from the time the state/regional loss is known or within 8 years from the occurrence of the state/regional loss is not prosecuted. Heirs, guardians, or other parties who obtain rights from the treasurer are also exempt from responsibility for compensation if more than 3 years have passed since the court decision that established the bailiff or since the treasurer is known to have fled or died without being notified by the authorized official of the loss of the country/region.

1. Claims of Non-Treasurer or Other Officials

Other administrative actions in the demand for state financial compensation are against Civil Servants Other Treasurers or Officials.

State/regional compensation claims against non-treasurer civil servants or other officials are regulated through Government Regulation Number 38 of 2016 concerning Procedures for State/Regional Compensation Claims Against Non-Treasurer Civil Servants or Other Officials and Minister of Home Affairs Regulation No. 133 of 2018 concerning the Settlement of Regional Compensation Claims Against Non-Treasurer Civil Servants or Other Officials.

The provisions of Article 2 of the Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Regional Compensation Claims against Civil Servants Other than Treasurers or Other Officials that the Governor¹⁴, Regent/Mayor¹⁵ are authorized to settle regional financial losses.

It is observed that the form of completion is carried out in 2 forms, namely:

1. Claims for compensation against non-treasurer civil servants or other officials in ministries/institutions or claims for compensation made by Governors, Regents/Mayors are carried out by the State Loss Settlement Team (TPKN).
2. Claims for compensation against civil servants other than treasurers or other officials that occur in local governments, are carried out by the Regional Loss Settlement Team (TPKD)

¹⁴ Article 2 paragraph (1) of the Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Regional Compensation Claims Against Non-Treasurer Public Employees or Other Officials

¹⁵ Article 2 paragraph (2) of the Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Regional Compensation Claims Against Non-Treasurer or Other Officials

In this regard, the duties and authorities of the Governor, Regent/Mayor are:¹⁶

1. monitoring the settlement of Regional Losses;
2. forming and appointing a Regional Loss Resolution Team (TPKD) tasked with processing the settlement of Regional Losses;
3. approve or reject the report on the results of the TPKD inspection;
4. notify indications of Regional Losses to the Financial Audit Agency;
5. forming and appointing the Assembly;
6. stipulates the Decree on the Imposition of Temporary Compensation (SKP2KS) which is a letter made by the Governor, Regent/Mayor/Head of SKPKD in the event that SKTJM is impossible to obtain. SKP2KS;
7. stipulates the Decree on the Imposition of Compensation (SKP2K) which is a decree stipulated by the Governor, Regent/Mayor who has permanent legal force regarding the imposition of compensation for Regional Losses to Non-Treasurer Civil Servants or Other Officials; and
8. exempt or eliminate the reimbursement of Regional Losses.

Regional Loss Resolution Officer (PPKD) is the Governor, Regent/Mayor whose duties and authorities are carried out by the Regional Financial Management Work Unit (SKPKD) as the regional general treasurer except for duties and authorities, except for forming and determining the Assembly, determining the SKP2K; and exempt or eliminate the reimbursement of Regional Losses, which remains the authority of the Governor, Regent/Mayor. TPKD, consisting of officials in the SKPD unit who carry out functions in the field of supervision as the chairman of the TPKD, officials in the SKPKD as members, and other related officials as needed

PPKD establishes a Assembly to settle Regional Losses whose members amount to 3 (three) or 5 (five) people consisting of Regional Secretaries, Inspectors, and Other Officials as necessary in accordance with their expertise. The settlement of losses that became the assembly, namely: ¹⁷

1. It is not due to unlawful acts or negligence of Non-Treasurer Civil Servants or Other Officials;
2. The Aggrieved Party/Facilitator/Acquirer/Heir is declared in default on the

¹⁶ See Article 3 paragraph (1) of the Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Regional Compensation Claims against Non-Treasurer Civil Servants or Other Officials

¹⁷ See Article 4 paragraph (3) and Article 6 paragraph (2) of the Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Regional Compensation Claims against Non-Treasurer Civil Servants or Other Officials

settlement of District Losses that has been issued by the HCS. or

1. Acceptance or objection of the Aggrieved Party/Facilitator/Beneficiary/Heir to the issuance of SKP2KS.

Efforts to Prevent the Avoidance of Criminal Liability Through the Return of State Financial Losses through State Administrative Legal Instruments

The recovery of state losses has a central role in maintaining economic stability and justice in the legal system. The existence of *the Economic Analysis of Law* (EAL) approach is crucial in developing policies that can effectively recover state losses. EAL provides a special focus on analyzing the economic impact arising from violations of laws and regulations.¹⁸ Evaluating these impacts, the government can accurately identify losses and design appropriate recovery strategies. Laws and regulations such as Law No. 1 of 2004 concerning the State Treasury as amended several times and finally with Law No. 7 of 2021 concerning the Harmonization of Tax Regulations and Law No. 25 of 2007 concerning Investment as amended several times and finally by Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, become a relevant legal basis. The Act provides the necessary legal framework for designing EARL-based recovery approaches, allowing governments to optimize their efforts in ensuring efficient loss recovery.

There are many views that affirm that APIP's legal actions in carrying out supervisory duties on the abuse of authority and the return of state losses without accountability clash with the provisions of Article 102 paragraph (1) of the Criminal Procedure Code regarding the existence of public complaints as the basis for Law Enforcement Officers (APH) to conduct inspections, because the Law has regulated this. as if the Criminal Procedure Code has closed the space for APIP to take administrative actions related to the management of state/regional funds that are not carried out as they should, resulting in state/regional financial losses. According to researchers, these administrative actions are quite good as a first step in reimbursing state/regional financial losses.

Administrative actions in terms of reimbursement of state financial losses can be carried out by:

1. Administrative Errors

Article 20 paragraph (4) of the Government Administration Law¹⁹ affirms that the State Civil Apparatus (ASN) who make mistakes or make administrative mistakes in carrying out

¹⁸ M. Rahmah, *Investment Law*. Jakarta: Kencana Prenada Media Group, 2020.

¹⁹ Article 20 paragraph (4) of Law Number 30 of 2014 concerning Government Administration.

a state administration, the approach taken is an administrative approach. If there is an administrative error, follow-up is carried out in the form of administrative improvement and if the results of APIP supervision there are administrative errors that cause state financial losses, then the state financial losses will be refunded no later than 10 (ten) working days from the decision and the issuance of the supervision results. The burden of reimbursement of losses is given to government agencies, if administrative errors occur not due to elements of abuse of authority²⁰. The burden of reimbursement of losses is given to Government Officials, if administrative errors occur due to elements of abuse of authority²¹.

2. Memorandum of Understanding between APIP and APH

The recovery of state financial losses through administrative actions was then formulated in the Memorandum of Understanding between the Ministry of Home Affairs and the Prosecutor's Office and the Police of the Republic of Indonesia Number 100.4.7/437/SJ, Number 1 of 2023, Number NK/1/I/2023 concerning the Coordination of Government Internal Supervision Apparatus and Law Enforcement Officials in Handling Reports or Complaints on the Implementation of Local Government. The memorandum of understanding is to provide certainty/clarity to the coordination procedures of the Government Internal Supervisory Apparatus (APIP) and Law Enforcement Apparatus (APH) without negating or overriding the duties, functions and authorities of both APIP and APH.

The memorandum of understanding provides an affirmation that when there is a report/complaint about the implementation of local government, the APIP conducts an investigation in accordance with the examination standards. If in the investigative investigation APIP finds indications of corruption, then APIP submits it to the police or the prosecutor's office to conduct an investigation. Likewise, if the police or prosecutor's office finds an administrative error, the police or prosecutor's office submits it to APIP to make an administrative settlement.²² In relation to the description mentioned above, in the implementation of local government, APIP and APH at the regional level must be subject to the memorandum of understanding. The memorandum of understanding is certainly expected that in the implementation of local government duties, local governments will no longer be afraid/burdened in carrying out their duties and responsibilities according to the

²⁰ Article 20 paragraph (5), *ibid*.

²¹ Article 20 paragraph (6), *ibid*.

²² Article 4 paragraphs (1), (2), and (3) of the Memorandum of Understanding between the Ministry of Home Affairs and the Prosecutor's Office and the Police of the Republic of Indonesia Number 100.4.7/437/SJ, Number 1 of 2023, Number NK/1/I/2023 concerning the Coordination of Government Internal Supervision Apparatus and Law Enforcement Officials in Handling Reports or Complaints on the Implementation of Local Government

authority given by the provisions of laws and regulations, will easily become suspects/defendants in corruption crimes.

3. Constitutional Court's Decision

In addition to the memorandum of understanding as described by the researcher above, there is also a Constitutional Court Decision Number: 25 / PUU-XIV / 2016 affirming that *"Thus, based on these provisions, with the existence of the Government Administration Law, administrative errors that result in state losses and the existence of elements of abuse of authority by government officials are not always subject to corruption crimes. Likewise, the solution is not always by applying the criminal law, it can even be said that in the settlement of state losses, the Government Administration Law seems to want to emphasize that the application of criminal sanctions is a last resort (ultimum remedium)"*

Consideration of the Constitutional Court's decision mentioned above which provides an affirmation that with the birth of the Government Administration Law, when there is an administrative error in the administration of government that results in state/regional financial losses due to abuse of authority, it cannot be subject to the crime of corruption, because for the Constitutional Court that criminal efforts are the *ultimate remedium*.

The researcher sees the intention of the Constitutional Court's decision with the purpose of the memorandum of understanding as previously described, it turns out that there is a fundamental difference in interpreting the consideration of the Constitutional Court's decision and the will of the Constitutional Administration Law. Where, according to the researcher, all government administrative actions that harm the state's finances, due to acts of abuse of authority, should be given the opportunity for APIP to make efforts to recover state financial losses through compensation claims or treasury demands. After the claim for compensation or the treasury demand does not succeed in recovering the state/regional financial losses, then APH will take action to enforce the criminal law on corruption. According to the researcher, the meaning of the consideration of the Constitutional Court's decision *is not always by applying criminal law*.

4. Conclusion

The mechanism for the return of State Financial Losses through State Administrative Instruments is carried out in 2 (two) ways, namely treasury demands and compensation claims against civil servants other than treasurers or other officials. The mechanism of the treasury claim is carried out based on BPK Regulation Number 3 of 2007 concerning Procedures for Settlement of State/Regional Compensation against the Treasurer, which is carried out through the BPK by forming a treasury claim panel and if it is proven that the SKTJM is charged, the payment of state/regional financial losses is subsequently made. The

mechanism for claiming compensation against non-treasurer or other officials is Government Regulation No. 38 of 2016 concerning Procedures for Claiming State/Regional Compensation Against Non-Treasurer or Other Officials and Regulation of the Minister of Home Affairs No. 133 of 2018 concerning the Settlement of Regional Compensation Claims Against Non-Treasurer Civil Servants or Other Officials as well as BPK Regulation Number 3 of 2007 concerning Procedures for Settlement of Compensation State losses to the treasurer. The mechanism is carried out through the formation of TPKN/TPKD and the formation of a compensation demand panel and if it is proven that there is a state/regional financial loss, then the SKTJM will be charged and the payment of state/regional compensation will be continued.

Efforts to prevent the avoidance of criminal liability through the return of state financial losses are carried out through an administrative mechanism carried out based on the Memorandum of Understanding between the Ministry of Home Affairs and the Prosecutor's Office and the Police of the Republic of Indonesia Number 100.4.7/437/SJ, Number 1 of 2023, Number NK/1/I/2023 concerning the Coordination of Government Internal Supervision Apparatus and Law Enforcement Officials in Handling Reports or Complaints on the Implementation of Local Government and consideration of the Constitutional Court Decision Number: 25 / PUU-XIV / 2016. Both affirmed that the occurrence of state/regional financial losses due to administrative errors caused by abuse of authority, it is resolved through treasury demands or compensation claims.

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