

The Role Of The Prosecutor's Office And The BPK In The Process Of Returning State Losses Between Dominus Litis And Justice

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Abstract

This study examines the role of the prosecutor's office and the Supreme Audit Agency (BPK) in the process of returning state losses due to corruption, especially in relation to the dominus litis principle and the dimension of Justice. The method used is juridical normative approach to legislation and conceptual through the study of literature (library research). The results showed that the relationship of authority between the prosecutor's office and the BPK is complementary but has not been coordinated systematically, resulting in normative gaps that weaken the effectiveness of state asset recovery. The dominus litis principle that gives prosecutorial authority to prosecutors is in practice limited by the principle of functional differentiation that separates investigation and prosecution. The restorative justice approach and the establishment of an Asset Recovery Agency is a positive institutional breakthrough, but requires strengthening interagency coordination regulations so that the goal of returning state losses can be optimally achieved. This study concludes the need for special regulations that regulate formal coordination between the prosecutor's office and the BPK as the foundation for fair and measurable recovery of State losses.

Keywords: Audit Board, Dominus Litis, Attorney General, Justice, State Losses

1. INTRODUCTION

State loss is one of the fundamental issues in public financial governance that not only affects the fiscal aspect, but also touches the broader dimension of social justice. In the context of Indonesia, the return of State losses due to corruption is a priority agenda involving various law enforcement institutions, especially the Attorney General of the Republic of Indonesia and the Supreme Audit Agency (BPK). These two institutions have intersecting but not identical functions: the prosecutor's Office assumes the dominus litis principle as the prosecution's controller, while the BPK is authorized to officially determine the value of State losses through investigative audits. This intersection of authority often causes normative tensions in law enforcement practice, especially when the findings of the BPK audit are not necessarily aligned with the direction of prosecution built by the prosecutor's Office.

The principle of dominus litis places the prosecutor as "master of the case" (dominus litis means Master of the lawsuit/case), which means the

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prosecutor has full authority to determine whether a case is worthy of being transferred to court. However, in the context of asset recovery and the return of State losses, the dominance of the authority has the potential to cause a gap when the value of the losses calculated by the BPK differs significantly from the figures used in the indictment. This situation not only weakens legal certainty, but also reduces the effectiveness of returning losses to the state treasury, which should be the main goal of corruption convictions.¹

From a theoretical point of view, this debate boils down to the tension between two great principles: the efficiency of law enforcement, which is the domain of the prosecutor's office, and the financial accountability of the state, which is the constitutional mandate of the BPK.² Law No. 15 of 2006 on the BPK gives the institution exclusive authority to declare the presence or absence of State losses, but in criminal justice practice, judges are not always bound to the calculation of the BPK if there is other valid evidence.³ The inconsistency of this approach creates a disparity of decisions that ultimately have an impact on the low rate of return on state losses in real terms.⁴

Previous research has addressed separate aspects of this issue. Nursyamsudin and Samud examined the role of the prosecutor's office in the integrated criminal justice system from a criminological perspective, while Fitri and Fitryantica analyzed the position of the BPK in the post reform Indonesian Constitutional system.⁵ Another study by Arifin et al. highlights the asset recovery mechanism within the framework of the United Nations Anti-Corruption Convention (UNCAC) which has been ratified by Indonesia. However, there is no study that specifically brings together the dominus litis principle of the prosecutor's office with the BPK loss calculation authority in a comprehensive analysis frame.

This research Gap is the starting point of this study. Novelty (novelty) this article lies in an effort to build an integrative normative framework that

¹ Muhammad Hasan Pakaja, Ronald J. Mawuntu, dan Caecilia J. J. Waha, "Implementasi Peran Jaksa Pengacara Negara Yang Profesional, Proporsional Dan Akuntabel Dalam Pemulihan Kerugian Negara," *Innovative: Journal Of Social Science Research* 5, no. 4 (2025): hlm. 3880-3895, <https://doi.org/10.31004/innovative.v5i4.20513>.

² Gabriel Kalalo dan Arman Tjoneng, "Peran Komisi Kejaksaan Dalam Mengawasi Kinerja Kejaksaan Sebagai Pelaksana Asas Dominus Litis Dalam Penyelesaian Perkara Korupsi," *Unes Law Review* 6, no. 4 (2024): 9935, <https://review-unes.com/https://creativecommons.org/licenses/by/4.0/>.

³ Nursyamsudin Nursyamsudin dan Samud Samud, "Sistem Peradilan Pidana Terpadu (Integreted Criminal Justice System) Menurut Kuhap," *Mahkamah: Jurnal Kajian Hukum Islam* 7, no. 1 (2022): 149, <https://doi.org/10.24235/mahkamah.v7i1.10413>.

⁴ Rizki Rahayu Fitri dan Agnes Fitryantica, "Transformasi Konstitusional Pertanggungjawaban Presiden Dalam Sistem Ketatanegaraan Indonesia Pasca Amandemen UUD 1945," *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* 2, no. 2 (2025): 105–15, <https://journal.uui.ac.id/psha/article/view/44964>.

⁵ Ridwan Arifin, Sigit Riyanto, dan Akbar Kurnia Putra, "Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 329–43, <https://doi.org/10.22219/ljih.v31i2.29381>.

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brings together the authority of dominus litis prosecutor's office with the audit function of the BPK as the basis for calculating state losses, in the perspective of restorative justice (restorative justice). Based on the description, the formulation of the problem of this study are: (1) How is the relationship of authority between the prosecutor's office and the BPK in the process of returning state losses in terms of the dominus litis principle? and (2) to what extent does the relationship of authority reflect the value of justice in the Indonesian legal system? The purpose of this study is to analyze and formulate institutional coordination models that can optimize the return of State losses fairly and measurably. In practical terms, this study is expected to provide policy recommendations for law makers and law enforcement officials in refining regulations related to the recovery of state assets.⁶

2. RESEARCH METHOD

This study uses normative juridical approach (normative legal research), which is a method that focuses on the study of written legal norms as the main object of analysis.⁷ This approach was chosen because the problems studied concern the relationship of authority between state institutions derived from normative constructions, not empirical phenomena that require field observations. Thus, this study seeks to understand, interpret and evaluate the applicable legal provisions in a systematic and coherent manner within the framework of positive legal Sciences.⁸ Data collection is carried out through library research, namely by collecting and analyzing various primary and secondary sources of law in depth. The primary sources of law used include two main regulations, namely Law No. 15 of 2006 on the Audit Board, which regulates the constitutional authority of the BPK in determining state financial losses , and Law No. 16 of 2004 on the prosecutor's Office of the Republic of Indonesia⁹ which is the normative basis for the implementation of the dominus litis principle in the prosecution process. These two regulations were chosen because they directly regulate the relationship of authority that is the focus of the study.¹⁰

⁶ Aulia, Muhammad Nur, dan Sulaiman, "Termination Of Investigation Of Corruption Offences By The Prosecutor's Office Against The Return Of State Financial Losses," *Jurnal Suloh: Fakultas Hukum Universitas Malikussaleh* 13, no. 1 (2025): 41–66, <https://doi.org/10.29103/sjp.v13i1.19122>.

⁷ Maswandi, A. S. (2024). *Metode Penelitian Hukum Normatif (Mekanisme Dalam Penulisan Ilmiah)*, Mazda Media, Malang.

⁸ Mahmud Marzuki, "Penelitian Hukum: Edisi Revisi," in *Prenada Media* (Prenada Media, 2021), hal 270, <https://books.google.co.id/books?id=CKZADwAAQBAJ>.

⁹ Undang-Undang Republik Indonesia, "Undang-undang (UU) No. 15 Tahun 2006 Badan Pemeriksa Keuangan," 2006, <https://peraturan.bpk.go.id/Details/40184/uu-no-15-tahun-2006>.

¹⁰ Undang-Undang Republik Indonesia, "Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia," *CWL Publishing Enterprises, Inc., Madison*, 2004, 352, <https://peraturan.bpk.go.id/Details/40511/uu-no-16-tahun-2004>.

The secondary sources of law include national and international legal scientific journals published between 2021 and 2025, legal reference books, relevant court decisions, and official policy documents that can be accessed publicly.

Data analysis is done by prescriptive-analytical method, where the researcher not only describes the existing norms, but also evaluates the conformity between the norms with the legal objectives to be achieved, namely Justice and certainty in the return of State losses. Conceptual approach (conceptual approach) and statutory approach (statute approach) are applied simultaneously in order to obtain a complete understanding of the legal construction that governs the coordination between the prosecutor's office and BPK. The entire analysis process is directed to produce legal propositions that can be normative recommendations for the improvement of existing regulations.¹¹

3. RESULT AND ANALYSIS

A. Relations of the prosecutor's office and the CPC In The Return of State losses

The return of state financial losses is one of the main objectives in the eradication of Corruption (corruption eradication) in Indonesia. Normatively, Article 1 Number 15 of Law Number 15 of 2006 on the Audit Board defines state losses as the lack of money, Securities, and goods in a definite amount as a result of unlawful acts, whether intentional or due to negligence.¹² The definition is a normative footing for the BPK in carrying out the investigative audit function, the results of which are a reference for the prosecutor's office in the prosecution process. The prosecutor's office, through criminal and civil mechanisms, has the authority to pursue assets suspected of corruption. Based on Law No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia, the prosecutor acts as a representative of the state who has the right to file a civil lawsuit against the defendant or his heirs for property acquired unlawfully. In practice, the prosecutor's office often faces limitations in optimizing this role, especially when the process of handling cases only stops at the stage of court decisions without adequate follow-up on the execution of fines, replacement money, and auctions of confiscated assets.¹³

¹¹ Sitompul, A. (2022). *Metode Penelitian Hukum Normatif (Strategi Praktis Penulisan Skripsi, Tesis, Disertasi)*.

¹² Sitompul, A. (2026). *Legal Analysis of Savings and Loan Cooperatives with Money Laundering with the Origin of Fraud Together and Continues in Decision No. 2113 K / Pid.Sus/2023. International Asia Of Law and Money Laundering (IAML)*, 5(1), 18–22. <https://doi.org/10.59712/iaml.v5i1.158>

¹³ Puteri Kencana Surya Erlangga, Mulyono, dan Fauziah, "Efektifitas Peran Kejaksaan Dalam Pengembalian Kerugian Keuangan Negara Dalam Perkara Korupsi Melalui Pelaksanaan Putusan Pengadilan," *Jurisdictie* 5, no. 2 (2023): 137–56, <https://doi.org/10.34005/jhj.v5i2.132>. lihat juga Sitorus, N. T., & Sitompul, A. (2025). *Maswandi Criminal Liability For Corruption By Public Officials: Analysis Of Decision No. 141/Pid. Sus-TPK/2024/PN Mdn: Criminal Liability For Corruption By Public Officials: Analysis Of Decision No. 141/Pid. Sus-TPK/2024/PN Mdn. Pena Justisia: Media Komunikasi dan Kajian Hukum*, 24(1), 4416-4423.

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The relationship between the prosecutor's office and the BPK in the process of returning state losses is complementary but prone to overlapping authorities. The CPC establishes the value of the loss officially, while the prosecutor's Office determines the prosecution strategy based on the construction of the indictment that it builds itself. When the BPK version of the loss figure is different from that used in the indictment, there is a normative gap that has the potential to weaken asset recovery efforts. This condition is compounded by the lack of a formal coordination mechanism that requires the synchronization of loss data between the two institutions before the case is transferred to court. Attorney General Regulation Number 3 of 2024 concerning the Asset Recovery Agency (BPA) is actually a progressive step that strengthens the prosecutor's institutional capacity in tracing and seizing assets from crimes. However, in the absence of systematic data synergy with the BPK, the effectiveness of BPA remains dependent on the quality of cross-agency coordination which in practice is still ad hoc and not standardized.¹⁴

B. Implementation of Dominus Litis principles in handling corruption cases

The dominus litis principle places the public prosecutor as the full controller of a criminal case, as stated in Article 1 Number 25 of Law Number 16 of 2004 concerning the prosecutor's Office of the Republic of Indonesia. This principle conceptually gives prosecutors exclusive authority to determine the direction of prosecution, including whether a case is worthy of going to court or being resolved through other mechanisms. In the context of combating corruption, the implementation of this principle faces various structural challenges, ranging from bribery practices aimed at weakening indictments, the issuance of controversial P3 letters, to the manipulation of exceptions in indictments to alleviate charges.¹⁵ These conditions indicate that the application of dominus litis in practice is far from ideal and requires closer supervision from external institutions, including the prosecutor's Commission whose role is to supervise the performance of prosecutors to be in harmony between norms and practices in the field. Without effective supervision, the dominus litis principle is at risk of being misused so that it hinders the process of returning state losses which is the main goal of corruption law enforcement.¹⁶

¹⁴ Pakaja, Mawuntu, dan Waha, "Implementasi Peran Jaksa Pengacara Negara Yang Profesional, Proporsional Dan Akuntabel Dalam Pemulihan Kerugian Negara."

¹⁵ Sitompul, A., & Sipayung, I. M. (2025). The Development of the Death Penalty for Corruption Committed by Judges in Indonesia. *Pakistan Journal of Criminology*, 17(02), 95-109.

¹⁶ Kalalo dan Tjoneng, "Peran Komisi Kejaksaan Dalam Mengawasi Kinerja Kejaksaan Sebagai Pelaksana Asas Dominus Litis Dalam Penyelesaian Perkara Korupsi." Lihat juga Sitompul, A. (2024). The Role Of The State In Conducting Civil Suits In The Results Of Corruption Controlled By The Heirs Of The Perpetrators Of Corruption. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 23(002), 1614-1623.

The issue of the implementation of the dominus litis principle is also closely related to the institutional design of the Indonesian criminal justice system which adheres to the principle of functional differentiation between investigation and prosecution. In this framework, the prosecutor does not have full control over the investigative process dominated by the police, so the authority of dominus litis is in reality limited and partial. Comparative studies with the United States and the Netherlands show that closer coordination between investigators and prosecutors has been shown to significantly increase the effectiveness of handling cases. In the United States, prosecutors have a determinant role in determining the viability of a case to proceed to trial, while in the Netherlands, institutional integration under a single ministry allows for smoother coordination. Indonesia needs to consider similar reforms within the framework of the draft Criminal Procedure Code (KUHAP) that is being prepared, so that the dominus litis principle can be implemented more optimally and fairly.¹⁷

C. The mechanism for The Return of State losses: criminal and civil paths

The return of state financial losses in corruption cases can be taken through two main channels, namely the criminal mechanism and civil mechanism (civil mechanism). Through the criminal route, efforts to recover State losses begin at the investigation stage, continue at the prosecution, examination of the trial, until the execution of the court decision. At each of these stages, the public prosecutor has attribution authority derived directly from Law Number 31 of 1999 jo. Law No. 20 of 2001¹⁸ on the eradication of corruption (PTPK), which explicitly regulates substitute money instruments as a mechanism for recovering state losses. Data from Indonesia Corruption Watch (ICW) shows that throughout 2023, prosecutors handled 1,649 corruption cases with a total demand for replacement money of IDR 82.6 trillion, or more than 99 percent of the total national replacement money demands. Although this figure seems large, the actual return realization is still far from the demand figure, indicating a gap between *Das sollen* and *das sein* in the implementation of the criminal mechanism.¹⁹

Meanwhile, the civil route opens space for the State Attorney General (JPN) to file a lawsuit against the defendant or related parties for assets

¹⁷ Ahmad Sofian, "Penguatan Kapasitas Jaksa Melalui Koordinasi dalam Proses Penyidikan dan Penuntutan dalam RUU KUHAP: Studi Perbandingan AS, Belanda dan Indonesia," *PAMPAS: Journal of Criminal Law* 6, no. 2 (2025): 183–217, <https://online-journal.unja.ac.id/Pampas/article/view/42540>. lihat juga Sitompul, A. (2025). The Dynamics of Corruption in Indonesia Between Prevention and Eradication. *LEMKAPI: Journal of Law & Policy Studies*, 1(1), 22–29. Retrieved from <https://lemkapi.com/index.php/lkp/article/view/7>

¹⁷ Undang-Undang Republik Indonesia, "Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi," 1999, 475.

¹⁸ Undang-Undang Republik Indonesia, "Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi," 1999, 475.

¹⁹ Undang-Undang, "Nomor 20 Tahun 2001 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi," 1999, 1–20.

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acquired unlawfully, as stipulated in Article 32 of Law Number 31 of 1999 jo. Law No. 20 of 2001 on PTPK.²⁰ This mechanism becomes relevant especially when the criminal route is not able to cover all losses incurred, for example when assets have been transferred to third parties or have passed the time limit for the execution of a criminal decision. The NRD carries out its duties based on Attorney General Regulation Number 7 of 2021 with a scope that includes law enforcement, legal assistance, legal considerations, other legal actions, and legal services. However, in practice, civil lawsuits filed by the NRD often face obstacles in the form of legal resistance from the defendant, as seen in the case of the seizure of PT Fikasa Group's assets by the Pekanbaru State Prosecutor's Office, which set an important precedent in strengthening the role of the NRD in the field of state asset recovery.²¹

D. Restorative Justice approach in the termination of the investigation and the efficiency of handling cases

In an effort to improve the efficiency of handling corruption cases, the prosecutor's Office has adopted a restorative justice approach as an alternative solution, especially for cases with relatively small state losses. This policy is based on the circular clock-Pidsus number B-1113/F/Fd.1/05/2010, which regulates the priority of handling corruption cases and encourages the use of restorative justice approach for cases with small-scale losses. Theoretically, this approach is in line with the principle of Economic Analysis of Law (EAL), which assesses the effectiveness of a legal policy based on a comparison between the cost of handling and the benefits obtained.²² The cost of handling corruption cases is large, if it is not proportional to the value of State losses recovered, then it is economically counterproductive for the country's own finances. The termination of an investigation with the condition of the return of State losses can be an effective instrument if it is carried out transparently, accountable, and under close supervision.

The implementation of the restorative justice approach by the prosecutor's office in practice can only be carried out at the investigation level and requires cooperation with the government's internal control apparatus (APIP) and BPK to verify the value of the losses returned. This

²⁰ Helmy Febrianto Rasyda, Tofik Yanuar Chandra, dan Mohamad Ismed, "Kewenangan Jaksa Penuntut Umum dalam Penyelesaian Pengembalian Kerugian Keuangan Negara pada Perkara Tindak Pidana Korupsi," *Jurnal Penelitian dan Pengkajian Ilmiah* 2, no. 8 (2025): 305–16, <https://doi.org/10.62335/cendekia.v3i2.2417>. lihat juga Sitompul, M. N. ., & Sitompul, A. . (2023). Application of money laundering in corruption cases in maintaining state stability. *The International Journal of Politics and Sociology Research*, 11(1), 94–102. <https://doi.org/10.35335/ijopsor.v11i1.121>

²¹ Pakaja, Mawuntu, dan Waha, "Implementasi Peran Jaksa Pengacara Negara Yang Profesional, Proporsional Dan Akuntabel Dalam Pemulihan Kerugian Negara."

²² Aulia, Nur, dan Sulaiman, "Termination Of Investigation Of Corruption Offences By The Prosecutor's Office Against The Return Of State Financial Losses."

provision shows that the BPK has an integral role even in the scheme of resolving cases outside the formal channels of the court. However, its implementation still faces challenges in the form of a lack of uniform operational standards in each Prosecutor's work unit, so that its application is inconsistent. This study also shows that the success of returning state losses through the restorative justice approach depends on the quality of interagency coordination, especially between the prosecutor's Office, BPK, and APIP, as well as on the integrity of the implementing apparatus in the field. Regulatory reform that regulates this coordination mechanism is an urgent need so that the restorative justice approach is not abused as a loophole for the release of corruption perpetrators.²³

E. Asset seizure and institutional strengthening in the recovery of State losses

Asset forfeiture is a legal instrument that is substantively most effective in recovering state financial losses due to corruption. Normatively, the asset seizure mechanism is regulated in various regulations, including Law No. 31 of 1999 jo. Law No. 20 of 2001 on PTPK, although the regulation is considered not sufficiently explicit and comprehensive. The absence of a special law on asset forfeiture in Indonesia is a normative loophole that is often used by corruption perpetrators to hide or transfer criminal assets before the legal process is complete. The presence of the prosecutor's Asset Recovery Center (PPA) as the central unit in asset recovery management is a positive institutional step, because it provides a more integrated organizational structure in coordinating each stage of recovery, ranging from tracing, securing, to managing seized assets.²⁴

Strengthening the prosecutor's institution through the establishment of the Asset Recovery Agency (BPA) based on Attorney General Regulation Number 3 of 2024 marks a new chapter in the history of state asset recovery in Indonesia. BPA is mandated to conduct tracing, forfeiture, and restitution of Criminal Assets in a more systematic and coordinated manner. However, the effectiveness of BPA is largely determined by its ability to build synergies with other institutions, including the BPK as the state auditor, The Corruption Eradication Commission (KPK), the Center for reporting and analysis of financial transactions (PPATK), and the judiciary. Without clear data integration and coordination protocols, the potential of BPA to optimize the recovery of state assets will remain limited. Therefore, derivative regulations are needed that specifically regulate the coordination

²³ Salsabila dan Tri Slamet Wahyudi, "Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan Restorative Justice," *Jurnal Masalah-Masalah Hukum* 51, no. 1 (2022): 61–70, <https://doi.org/10.14710/mmh.51.1.2022.61-70>.

²⁴ Fajri Kurniawan, Muhammad Syammakh Daffa Alghazali, dan Afdhal Fadhila, "Determinasi Upaya Pemulihan Kerugian Keuangan Negara Melalui Peran Kejaksaan terhadap Perampasan Aset Tindak Pidana Korupsi," *Jurnal Hukum Lex Generalis* 3, no. 7 (2022): 565–88, <https://doi.org/10.56370/jhlg.v3i7.279>.

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mechanism between these institutions so that the return of State losses can be carried out optimally, measurably, and fairly.²⁵

4. CONCLUSION

The relationship of authority between the prosecutor's office and the BPK in the return of State losses is complementary but has not been optimally coordinated. The dominus litis principle gives prosecutorial authority to the prosecutor's office, but its implementation is still hampered by limited Interagency Coordination, normative gaps in the regulation of asset seizure, as well as inconsistencies in the application of restorative justice approaches. The establishment of the Asset Recovery Agency is a progressive step, but requires strengthening coordination regulations with the BPK so that the recovery of State losses can be effective, transparent, and fair. It is necessary to establish a special regulation that regulates the formal and standardized coordination mechanism between the prosecutor's office and the BPK in every stage of handling corruption cases, from investigation to decision execution. In addition, strengthening the capacity of the State Attorney General through Asset recovery Technical Training and the development of an integrated data system between law enforcement agencies is an urgent need. Legal reform within the framework of the draft Criminal Procedure Code also needs to accommodate the strengthening of dominus litis principles more explicitly in order to increase the effectiveness of overall corruption law enforcement.

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²⁵ Erlangga, Mulyono, dan Fauziah, "Efektifitas Peran Kejaksaan Dalam Pengembalian Kerugian Keuangan Negara Dalam Perkara Korupsi Melalui Pelaksanaan Putusan Pengadilan."

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