Jurnal Hukum UNISSULA

Volume 41 No. 4, December
P-ISSN: 1412-2723

THE CRIMINALIZATION OF CIVIL DISPUTES: A LEGAL ANALYSIS OF THE APPLICATION OF CRIMINAL CHARGES IN CASES INVOLVING STATE FINANCES

Nurmalah
Institut Rahmaniyah Sekayu, Musi Banyuasin, Indonesia, E-mail: mala_advokat@yahoo.com

Hamzeh Abu Issa
Applied Science Private University Amman, Jordan, E-mail: h_abuissa@asu.edu.jo

Hendro Widodo
Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: hendro.w@unissula.ac.id

HD Djunaedi
Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: d.djunlawyer@unissula.ac.id

Andhika Yuli Rimbawan
Universitas Patria Artha, Makassar, Indonesia, E-mail: andhikageyer@gmail.com

ARTICLE INFO

Keywords:
Criminalization; Civil; Disputes; Finances; State.

DOI :
10.30659/jh.v41i4.48749

ABSTRACT

The phenomenon of criminalization of civil disputes involving state finances has created controversy in Indonesian legal practice. The unclear boundary between administrative-civil state losses and corruption has led to law enforcement practices that often exceed the principle of ultimum remedium. This paper aims to analyze the legal application of criminal charges in civil cases impacting state finances by examining the normative framework, court decisions, and the practice of calculating state losses by state auditors. This research uses a normative-doctrinal approach through analysis of laws, decisions of the Constitutional Court and the Supreme Court, and concrete case studies. The results of the study indicate that inconsistent definitions of "state losses" and the absence of standard calculation methods increase the risk of criminalization of acts that should be resolved administratively or civilly. This article recommends the need for standardization of audit methodology, strengthening the mechanism for claiming compensation for state losses in the administrative realm, and affirming the principle of ultimum remedium in prosecution policy.

1. Introduction

The criminalization of civil disputes involving state finances is a serious problem in Indonesian legal practice.[1] A number of cases that are essentially civil,[2] such as procurement contract disputes, breach of contract, or administrative negligence, are often brought into the criminal realm on charges of causing state financial losses.[3] However, conceptually, state losses resulting from breach of contract or administrative negligence should be more appropriately resolved through administrative or civil mechanisms, rather than criminal law. Recent comparative studies on the criminalisation of new online behaviours indicate that extending penal law into domains typically governed by administrative regulation may obscure the civil–criminal distinction and threaten proportionality.[4]

Corruption is an act of abuse of power or position for personal or group interests that can harm other parties, especially the state and society.[5] The Corruption Eradication Law (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001) contains a formulation that broadens the scope of the offense, particularly through the phrase "may cause harm to state finances."[6] This phrase opens up the opportunity for law enforcement to equate potential losses with actual losses.[7] As a result, policies or administrative actions of public officials are often considered corruption even though there has been no real, definite, and measurable calculation of state losses.[8] This situation raises the risk of over-criminalization, weakens the principle of *ultimum remedium* in criminal law, and creates legal uncertainty for public officials and business actors who collaborate with the government.[9]

On the other hand, the Indonesian legal framework actually provides

1 Marthen H. Toelle., Kriminalisasi Berlebih (Overcriminalization) Dalam Kriminalisasi Korupsi. *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol.9 No.2, 2015, page 113-132.

2 Kartika Dewi Irianto, dan Radella Elfani., Penyelesaian Sengketa Wanprestasi pada Kontrak Jasa Konstruksi di Pemerintahan Daerah Kota Bukittinggi. *Pagaruyuang Law Journal*, Vol.4 No.1, 2020, page. 134-148.

3 Noor Alhendi, et. al., Emoji Crimes On Social Media Applications, Cogent Social Sciences, Vol.10 Issue.1, 2024, page 1-12

4 Hamzeh Abu Issa, et. al., From Streets To Screens: Legal Implications Of Internet Begging*, Humanities and Social Sciences Communications,* Vol.12 No.916, 2025;

5 Bambang Tri Bawono, and Jamaludin Malik., Depenalization of the Threat of Death Penalty Sanctions for Perpetrators of Corrupt Criminal Acts Based on the Values of Justice. *KnE Social Sciences*, Vol.10 No.28, 2025, page.1-16

6 Arif Wijaya., Pemberantasan Tindak Pidana Korupsi Menurut UU No. 31 Tahun 1999 jo. UU No. 20 Tahun 2001. *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol.2 No.1, 2016, page. 178-209.

7 A. Djoko Sumaryanto. *Ius Constituendum Pembalikan Beban Pembuktian Dan Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi*. Surabaya: Jakad Media Publishing, 2020, page.44

8 Zulfitra Ramadana and Yusuf M. Said., Sulitnya Pembuktian Kerugian Perekonomian Negara Pada Perkara Korupsi. *Jurnal Konsep dan Implementasi Hukum* , Vol.7 No.4, 2024.

9 Mukum Syahrir, Firman Dwi Anindito, and Dwi Cahyo Nugroho., Building Public Trust in Indonesia's Legal System: Case Analysis and Social Implications. *Hakim: Jurnal Ilmu Hukum dan Sosial*, Vol.3 No.2, 2025, page.1148-1163.

administrative and civil mechanisms for claiming state losses.[10][11] Law No. 1 of 2004 concerning the State Treasury, for example, stipulates that state losses are real and definite shortages of money, securities, or goods resulting from unlawful acts, whether intentional or negligent.[12][13] The compensation claim mechanism (TGR) is further regulated in Government Regulation No. 38 of 2016, which provides an administrative settlement path for state losses, including for issues related to alleged irregularities in national strategic projects, as amended by Presidential Regulation No. 3 of 2016, as well as Presidential Instruction No. 1 of 2016. However, in practice, this administrative path is often ignored and immediately replaced by criminal proceedings, even though the legal facts are more inclined towards civil disputes. Comparative criminal-law scholarship emphasises that when an administrative or civil remedy is available and capable of effectively addressing losses, criminalisation should be considered a last resort; otherwise, the use of criminal tools may encroach upon policy or contract-management areas.[14]

Constitutional Court decisions (e.g., Decision No. 25/PUU-XIV/2016) have warned about the dangers of criminalizing public policy.[15] The Constitutional Court emphasized that state losses must be real and measurable, not merely potential. However, law enforcement practices still demonstrate a pattern of investigations and prosecutions that proceed before a final calculation of state losses. This is exacerbated by the lack of a standard for calculating state losses among state audit institutions (BPK, BPKP, and the Inspectorate), resulting in frequent discrepancies in audit results that weaken the quality of evidence in court.

Putri's previous research stated that an effective strategy to address public financial protection can be carried out by strengthening the internal monitoring and audit system, increasing transparency/public participation and firm and consistent law enforcement can help overcome these problems both now and in

10 Suhendar Suhendar, and Kartono Kartono., Kerugian Keuangan Negara Telaah Dalam Perspektif Hukum Administrasi Negara Dan Hukum Pidana. *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*, Vol.11 No.2, 2020, page. 233-246.

11 Syifa Roudhotul Aulia, et al., Pertanggungjawaban Pejabat Publik dalam Keputusan Administratif yang Merugikan Masyarakat: Antara Unsur Maladministrasi dan Perdata. *Constituo: Journal of State and Political Law Research*, Vol.4 No.1, 2025, page. 54-67.

12 Mardian Putra Frans, Agustina Indah Intan Sari, and Iddo Eldillon., Analysis Environmental And State Losses In Corruption Offences. *Jurnal Hukum Sehasen*, Vol.11 No.1, 2025, page. 23-30.

13 Yudhi Christiawan Samuel, Sahuri Lasmadi, and Elly Sudarti., Pertanggungjawaban Pidana Pelaku Tindak Pidana Korupsi Pengadaan Barang Dan Jasa Dalam Perspektif Peraturan Perundang-Undangan. *Hangoluan Law Review*, Vol.1 No.1, 2022, page. 1-35.

14 Lucky Omega Hasan., *Dampak Hukum Kriminalisasi Klausula Baku Perjanjian terhadap Bisnis Perbankan: Berdasarkan Analisis Hukum Bisnis, Hukum Pidana, dan Hukum Islam-Jejak Pustaka*. Yogyakarta: Jejak Pustaka. 2025, page.52

15 Dadin E. Saputra, and Afif Khalid., Implikasi Hukum Atas Putusan Mahkamah Konstitusi Nomor 25/Puu-Xiv/2016 Terhadap Pemberantasan Tindak Pidana Korupsi*. Syariah: Jurnal Hukum dan Pemikiran*, Vol.18 No.1, 2018, page. 1-18.

the future.[16] Another study from Selalahi stated that the change from formal crimes to material crimes after the Constitutional Court decision Number 25/PUU-XIV/2016 was considered to provide more certainty of fair law as referred to in Article 28D paragraph (1) of the 1945 Constitution, because the element of state loss must be real (actual loss) and can be proven first.[17]

Thus, the main problem that arises is not only conceptually regarding the definition of state losses, but also in law enforcement practices, which tend to ignore the distinction between civil/administrative liability and criminal liability. This situation results in legal disharmony, uncertainty for policymakers, and a decline in the legitimacy of law enforcement in the public eye.

The purpose of this study is to analyze the conceptual boundaries of civil and criminal disputes in state financial cases and to analyze the constitutional basis for the authority to enforce state losses.

2. Research Methods

This research is normative legal research[18] which is descriptive analytical. The data used in this study is secondary data. According to the data that has been obtained, it is then analyzed using qualitative data analysis.[19] This research uses the concept of law where, law is positive norms in the national legal system of legislation[20] and a case study approach. This research was chosen because the primary focus of the study is to examine positive legal norms, legal principles, and legal doctrines related to state financial losses and the limits of the application of criminal instruments in civil disputes.[21] The author collects primary, secondary, and tertiary legal materials from national legal databases and analyzes court decisions by identifying patterns of criminalization in civil disputes through concrete cases.[22] The statutory approach is used to examine the Corruption Eradication legislation; State Treasury regulations; Supreme Audit Agency regulations; and Compensation

16 Elivia Pasma Putri dan Arisman., MengungkapPenyalahgunaanKeuangan Publik: Bentuk, Dampak serta Strategi Penanggulangan, *Journal of Economics*, *Business, Accounting and Management (JEBAM)*, Vol.3 No.1, 2025, page.76-88

17 Rio Rinaldi Silalahi., Penegakan Hukum Pemberantasan Tindak Pidana Korupsi Pasca Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016, Lex Rainessance, Vol.3 No.2, 2018, page. 304-320

18 Tunggul Ansari Setia Negara., Normative Legal Research In Indonesia: Its Originis And Approaches. *Audito Comparative Law Journal (ACLJ)*, Vol.4 No.1, 2023, page. 1-9.

19 I Dewa Gede Semara Putra, and Sri Endah Wahyuningsih., Judges' Decisions Under the Minimum Criminal Penalty in Law Enforcement of Drug Crimes Based on the Perspective of Legal Certainty and Justice. *KnE Social Sciences*, Vol.10 No.28, 2025, page.201-12

20 Jawade Hafidz., An Ethical And An Intelligent Bureaucratic Law Reform, JPH: Jurnal Pembaharuan Hukum, Vol.7 No.3, December 2020, page. 287-299

21 Rusdin Tahir, et al., *Metodologi Penelitian Bidang Hukum: Suatu Pendekatan Teori Dan Praktik*. Jambi: PT. Sonpedia Publishing Indonesia, 2023.

22 Achmad Irwan Hamzani, et al., Legal Research Method: Theoretical And Implementative Review. *International Journal of Membrane Science and Technology*, Vol.10 No.2, 2023, page. 3610-3619.

regulations. The Conceptual Approach is used to differentiate civil, administrative, and criminal liability, and to analyze the limits of criminalization by referring to the *ultimum remedium* theory and legal economic analysis. The Case Approach is used to examine relevant court decisions, including several decisions on corruption crimes in the Corruption Court that contain elements of civil disputes.[23]

3. Results And Discussion

3.1. The Conceptual Boundaries between Civil and Criminal Disputes in State Financial Cases

Criminalization is the process of determining an act that was previously not a crime to become a punishable act through legal instruments.[24] Muladi and Barda Nawawi Arief emphasize that criminalization must be based on the principle of *ultimum remedium*, namely, criminal law is used as a last resort when other legal instruments (civil or administrative) are ineffective. This principle aims to prevent the excessive use of criminal law (over-criminalization) that can lead to injustice.[25]

In the context of state finances, problems arise when acts of contractual default, administrative errors, or policy actions are criminalized under the pretext of "state losses." This phenomenon demonstrates a shift in the criminal instrument from *ultimum remedium* to primum remedium, which contradicts the basic theory of criminalization.[2627]

The legal boundaries lie in Nature of the loss: is it real and certain (civil/administrative) or only potential (should not be criminal). Mens rea: criminal penalties can only be applied if there is malicious intent to enrich oneself or another person.[28] Settlement mechanism: whether administrative/civil channels have been taken before criminal proceedings.[29]

Normatively, state losses from a civil/administrative perspective relate to the responsibility for compensation resulting from breach of contract or administrative

23 Muhammad Zaki, et al., The Problem of Corruption Law Enforcement That Causes State Losses Since the Constitutional Court of The Republic Of Indonesia Number 25 PUU-XIV 2016 Decision. *Policy, Law, Notary and Regulatory Issues (POLRI)*, Vol.1 No.3, 2022, page. 17-34.

24 Riadhus Sholihin, Rahma Rahma, and Zaiyad Zubaidi., Kriminalisasi Homoseksual Sebagai Tindak Pidana: Studi Determinasi Moral Sebagai Hukum Pidana. *Tasyri': Journal of Islamic Law*, Vol.2 No.1, 2023, page. 69-94.

25 Muladi and Barda Nawawi Arief., *Teori-teori dan Kebijakan Pidana*, Bandung: Alumni, 2010, page. 86

26 Mario Agritama SW Madjid, and Muh Ilham Akbar., Kerugian Keuangan Negara Atas Penyalahgunaan Wewenang Dalam Instrumen Hukum Administrasi Negara. *Sanskara Hukum dan HAM*, Vol.2 No.2, 2023, page. 66-79.

27 Aura Diva Shabila Zachry and Risma Nur Arifah., Negosiasi Non-Litigasi Sebagai Solusi Penyelesaian Sengketa Wanprestasi Jasa Konstruksi Pemerintah Daerah Indonesia. *Journal of Islamic Business Law*, Vol.9 No.3, 2025, page. 1-11.

28 David Lind Budijanto Njoto., Rekonstruksi Asas Actus Non Facit Reum Nisi Mens Rea Dalam Tindak Pidana. *JIIP-Jurnal Ilmiah Ilmu Pendidikan*, Vol.7 No.3, 2024, page. 3344-3355.

29 Gunawan Widjaja., Analisis Penegakan Hukum Administratif, Perdata, Dan Pidana Di Indonesia: Tinjauan Literatur. *Journal Of Community Dedication*, Vol.4 No.4, 2025, page. 184-196.

error. The instrument used is a civil lawsuit or claim for compensation (TGR).[30] Legally, there is a fundamental difference between state losses understood in a civil/administrative context and state losses in a criminal context. [31] Civil/Administrative: According to Article 1 number 22 of Law No. 1 of 2004 concerning State Treasury, state losses are a real and definite shortage of money, securities, and/or goods due to unlawful acts,[32] whether intentional or negligent. The emphasis on "real and definite" emphasizes that the responsibility is administrative or civil in nature, and the settlement mechanism is carried out through Compensation Claims (TGR) as regulated in PP No. 38 of 2016. Criminal (Corruption): In the Corruption Eradication Law, the phrase used is "may cause harm to state finances". This phrase broadens the scope by including potential losses, not just actual losses. This opens up the opportunity for criminalization of administrative actions that should be resolved through non-criminal mechanisms.

This difference in terminology often creates disharmony in legal practice. [33] emphasize that state losses in the criminal realm must be limited to actual losses to avoid an overbroad definition that obscures the distinction between civil/administrative liability and criminal liabilitycoma.[34] The importance of precise legal definitions in preventing over-breadth is well established; even minor draughting ambiguities in fundamental penal concepts can lead to broad interpretations.[35] Another important limitation is the mens rea (malicious intent) aspect. In a criminal context[36], state losses can only be classified as a crime if: Elements of intent (dolus) or gross negligence (culpa lata), In criminal law, the requirement for mens rea means that the perpetrator had malicious intent (dolus) or at least committed gross negligence (culpa lata).[37] Dolus includes direct intent (for example, an official misusing funds to enrich himself) as well as deliberate intent with deliberate omission (for example, knowing the procedure is wrong but deliberately allowing it to happen for personal gain). [38] Culpa lata means very

30 Riedel Timothy Runtunuwu., Kajian Terhadap Tanggung Gugat Karena Wanprestasi Dan Perbuatan Melanggar Hukum Berdasarkan Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, Vol.10 No.1, 2022.

31 Eka Ayu Safitri, Ratih Damayanti, and Tri Sulistiyono., Batasan Dan Mekanisme Penerapan Sanksi Pidana Perpajakan Di Indonesia Dalam Perspektif Asas Ultimum Remedium. *Jurnal Hukum Statuta*, Vol.4 No.3, 2025, page. 144-158.

32 Sirait, T. Mangaranap., *Hukum Pidana Khusus Dalam Teori Dan Penegakannya*. Yogyakarta: Deepublish, 2021, page.22

33 Satjipto Rahardjo., *Ilmu hukum*. Bandung, Citra Aditya Bakti, 2012, page.5

34 Jimly Asshiddiqie., *Hukum Tata Negara Dan Gagasan Konstitusionalisme*. Jakarta: Rajawali Pers. 2015, page. 18

35 Hamzeh Abu Issa, et. al., Definition of the Term "The Wound" in the Jordanian Penal Law, Theory and Practice in Language Studies, Vol.12 No.8, 2022, page. 1630-1633

36 Chuasanga A., Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019

37 Sri Ayu Irawati., Perbedaan Sengaja dan Tidak Sengaja dalam Hukum Pidana. *Ideas: Jurnal Pendidikan, Sosial, dan Budaya*, Vol.10 No.4 2024, page. 1137-1146.

38 Andi Bau Mallarangeng and Ismail Ali., Pembuktian Unsur Niat Dikaitkan Dengan Unsur Mens Rea Dalam Tindak Pidana Korupsi. *Legal Journal of Law*, Vol.2 No.2, 2023, page. 11-24.

serious negligence, almost equivalent to intention, such as an official who blatantly ignores his supervisory obligations so that public funds disappear. If there is only ordinary negligence, this cannot be qualified as a criminal offense, but falls into the administrative/civil realm. [39] Comparative doctrine indicates that offences safeguarding market integrity, such as goods fraud, depend on intent rooted in deception and cannot be simplified to mere performance failures or administrative non-compliance. The distinction between dolus-driven fraud and civil breach underscores that criminal liability should be imposed only when a culpable mental state is demonstrated.[40] Act against the law, State losses constitute a crime only if they are based on unlawful acts, such as abuse of power, collusion in tenders, and the use of funds for personal gain. If the losses arise from policies that are within the scope of discretion (for example, choosing a procurement method permitted by the rules, even though the results are less than optimal), it is more appropriate to view this as an administrative matter, not a criminal one. Actual state loss. Constitutional Court Decision No. 25/PUU-XIV/2016 affirms that state losses in the context of criminal acts must be real, certain, and measurable, not merely potential losses.[41] Examples of real losses include funds withdrawn from personal accounts, fictitious goods/services, or actual price differences due to markups. Examples of potential losses include the risk of losing deposit interest due to delays, failed investment opportunities, or delays in contracts that could still be corrected. These matters fall within the administrative realm.

Meanwhile, in the administrative realm, state losses can occur due to ordinary negligence (culpa levis), for example procedural errors in contracts or late payments, administrative errors in salary/travel allowance payments, which do not automatically fall under the criminal realm.[42] This situation can indeed cause state losses, but the resolution uses the Compensation Claim (TGR) mechanism or administrative sanctions, not criminal ones.

3.2. The Constitutional Basis for the Authority to Determine State Losses

Constitutionally, the Supreme Audit Agency (BPK)[43] is the only state institution

39 Ernest Sengi., Konsep Culpa Dalam Perkara Pidana Suatu Analisis Perbandingan Putusan Nomor 18/Pid. B/2017/PN. TOBELO. *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, Vol.17 No.2, 2019.

40 Mohammad Nasr Khater, et. al., The Crime of Goods Fraud In The Jordanian Penal Code, Vol.7 Issue.2, 2024

41 Dadin E. Saputra, and Afif Khalid. Implikasi Hukum Atas Putusan Mahkamah Konstitusi Nomor 25/Puu-Xiv/2016 Terhadap Pemberantasan Tindak Pidana Korupsi. *Syariah: Jurnal Hukum dan Pemikiran*, Vol.18 No.1, 2018, page. 1-18.

42 Karianga, Hendra., Pertanggungjawaban Kerugian Negara Dalam Pengelolaan Keuangan Daerah. *Edukasi-Jurnal, Pendidikan*, Vol.16 No.1, 2018.

43 Tubagus Muhammad Nasarudin., Kedudukan Badan Pemeriksa Keuangan (BPK) Sebagai Lembaga Negara Di Bidang Pengawasan Keuangan Negara. *Justicia Sains: Jurnal Ilmu Hukum*, Vol.5 No.1, 2020, page. 78-92.

authorized to determine and calculate state losses.[44] This is stipulated in Article 23E of the 1945 Constitution, which states that the BPK is tasked with auditing the management and accountability of state finances.[45] The Constitutional Court, through Decisions No. 31/PUU-X/2012 and No. 25/PUU-XIV/2016, emphasized that only the BPK has the authority to determine state losses, while other institutions such as the BPKP or the inspectorate only have an internal oversight function, not a final determination.

Despite lacking constitutional authority, the Financial and Development Supervisory Agency (BPKP) and inspectorates at ministries/institutions/regions are often used by law enforcement officials to calculate state losses during the investigation phase. This practice creates legal disharmony because BPKP/inspectorate audit results are often used as the basis for indictments, even though they do not have the same constitutional force as BPK audit results. For example, in the e-KTP Procurement case (2017), KPK investigators used BPKP audit results as the basis for calculating state losses of Rp2.3 trillion. However, in their defense, the defendant challenged the validity of the audit results because they did not originate from the BPK. This dispute over authority slows down the trial process and sparks academic debate. In the Kominfo 4G BTS case (2023), there were differences in audit results between BPKP and BPK. This sparked controversy because the loss figures differed, while the prosecutor's indictment relied on the loss value. This difference demonstrates the urgency of standardizing audit methodology to ensure a biased and inconsistent legal process.

One of the major challenges in determining state losses is the lack of a standard audit methodology. Differences in methodology between the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), and the Inspectorate often result in different loss figures. For example, the BPK calculates losses based on actual losses. The BPKP tends to use a potential loss approach, which can result in higher loss figures. The Inspectorate often focuses on administrative violations rather than material aspects of losses. These methodological differences not only create legal confusion but also weaken evidence in court. Constitutional Court Decision No. 25/PUU-XIV/2016 emphasized that state losses must be real, measurable, and determined by the BPK. Harmonization of state loss audit methodologies that apply nationally is needed. For example, the use of accrual-based accounting in accordance with government accounting standards (SAP) and uniform guidelines among state auditors. The focus should be directed towards recovering state losses through administrative/civil mechanisms, rather than simply criminalization. Thus,

44 Sabrina Hidayat, et al., Kewenangan Badan Pemeriksa Keuangan (BPK) Dan Badan Pemeriksa Keuangan Dan Pembangunan (BPKP) Dalam Menentukan Kerugian Keuangan Negara. *Halu Oleo Legal Research*, Vol.5 No.2, 2023, page. 592-604.

45 Listia Rahmawati Bumulo., Ratio Legis For The Establishment Of a State Audit Board. *Estudiante Law Journal* , 2020, page. 138-152.

consistent calculations will have a direct impact on state financial recovery.[46]

3.3. The Principles of *Ultimum remedium* and Restorative Justice and Their Application to Criminal Prosecutions in Civil Cases Involving State Finances

The principle of *ultimum remedium* places criminal law as a last resort,[47][48] while restorative justice emphasizes restitution and social balance rather than punishment alone.[49] In the context of civil disputes involving state finances, restorative justice can be implemented through a mechanism for recovering state losses (restitution) without requiring criminal prosecution.[50]

Previous studies have shown that the application of restorative justice in state financial cases can accelerate the recovery of losses while preventing excessive criminalization.[51] Restorative justice is a criminal law paradigm that emphasizes restoring the circumstances and losses resulting from criminal acts rather than simply punishing the perpetrator.[52] The focus is on restitution to the victim/state and improving social relations, rather than simply imposing prison sentences.[53] Restorative justice is: Victim-oriented: Recovering the losses of victims/states. Accountability: The perpetrator is actively responsible, for example by returning the loss. Reconciliation: There are efforts to improve social relations, not just creating stigma for the perpetrator.[54] Diversion: Avoiding a case from criminal proceedings if it can be resolved through compensation or an agreement. The focus is on restoring the losses of the victims/state and improving social relations, not just giving prison sentences.

Similarly, *Ultimum remedium* (last remedy) is a principle in criminal law that

46 Sulistyowati Irianto., *Restorative Justice Dalam Hukum Pidana Indonesia*. Jakarta: Obor, 2019, page. 29

47 Adhalia Septia Saputri and Lusia Sulastri., Penerapan Asas Ultimum Remedium dalam Pemidanaan Tindak Pidana Pencucian Uang. *Journal of Mandalika Literature*, Vol.6 No.1, 2025, page. 244-250.

48 Yuni Ginting., Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas Ultimum Remedium. *The Prosecutor Law Review*, Vol.2 No.1, 2024.

49 Gholin Noor Aulia Sari, et al., Tinjauan Filosofis Keadilan Restoratif Dalam Lensa Teori Keadilan. *Hukum dan Politik dalam Berbagai Perspektif* , Vol.3, 2024.

50 Pardomuan Gultom., Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di Indonesia (Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indonesia). *Jurnal Hukum dan Kemasyarakatan Al-Hikmah*, Vol.3 No.1, 2022.

51 Albert Hama, Hedwig A. Mau, and Mohammad Ismed., Pengembalian Kerugian Keuangan Negara Melalui Pendekatan Keadilan Restoratif Dalam Perkara Tindak Pidana Korupsi Dana Desa Di Kabupaten Halmahera Barat. *SINERGI: Jurnal Riset Ilmiah*, Vol.2 No.7, 2025, page. 3276-3288.

52 Gholin Noor Aulia Sari, et al., Tinjauan Filosofis Keadilan Restoratif Dalam Lensa Teori Keadilan. *Hukum dan Politik dalam Berbagai Perspektif*, Vol. 3, 2024.

53 Sri Wulandari., Reintegrasi Sosial Dalam Sistem Pemasyarakatan Sebagai Visi Pemidanaan Dalam Hukum Nasional. *Seminar Nasional Teknologi Dan Multidisiplin Ilmu (SEMNASTEKMU)*. Vol.3 No.2, 2023.

54 Nur Amin Saleh., *Restorative Justice*. Makassar: PT. Literasi Indonesia Group, 2025. page 65

emphasizes that criminal law should only be used as a last resort when other legal instruments (administrative or civil) are ineffective in resolving the problem.[55][56] This principle aligns with the view that criminal law is repressive and has significant social impacts, so its use must be cautious. The purpose of *ultimum remedium* in criminal law isavoids over-criminalization of acts that could otherwise be resolved administratively.[57] Furthermore, this principle ensures that criminal law focuses on acts with mens rea and serious consequences. Furthermore, *ultimum remedium* provides space for faster, simpler, and more efficient dispute resolution through civil/administrative mechanisms.[58] These two principles complement each other: *Ultimum remedium* prevents criminal action from being used indiscriminately, while restorative justice ensures that resolution focuses more on restoration, rather than just punishment.

The principle of *ultimum remedium* requires criminal law to be used as a last resort after civil or administrative instruments are ineffective. Contractual disputes, breach of contract, or maladministration in state financial management should first be resolved through a Claim for Compensation, a civil lawsuit, or an internal oversight mechanism.[59]

However, in practice, many civil disputes are immediately classified as criminal acts of corruption simply because of the phrase "potentially causing state losses" as stipulated in the Corruption Law. The following is a comparative analysis of several decisions on similar cases namely cases that started as administrative/civil issues and were then brought to the criminal realm, or conversely, cases that are indeed worthy of criminal punishment because they fulfill the elements of mens rea and real state losses.[60]

The corruption case involving the construction of 4G Base Transceiver Station (BTS) towers under the Telecommunications and Information Accessibility Agency (BAKTI) of the Ministry of Communication and Information for the 2020–2022 period is a clear example of the proper application of the *ultimum remedium*

55 Novita Sari, J. M. H. No, and Cawang–Jakarta Timur., Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika. *Jurnal Penelitian Hukum,* Vol.17, 2017, page. 8561.

56 Eka Ayu Safitri, Ratih Damayanti, and Tri Sulistiyono., Batasan Dan Mekanisme Penerapan Sanksi Pidana Perpajakan Di Indonesia Dalam Perspektif Asas Ultimum Remedium. *Jurnal Hukum Statuta*, Vol.4 No.3, 2025, page. 144-158.

57 Pande Komang Surya Mahesa, and Ayu Putu Laksmi Danyathi., Penerapan Prinsip Ultimum Remedium Dalam Kebijakan Kriminalisasi Di Indonesia: Tinjauan Teoritis Dan Praktis. *Jurnal Media Akademik (JMA)*, Vol.3 No.9, 2025.

58 Yuni Ginting., Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas Ultimum Remedium. *The Prosecutor Law Review* , Vol.2 No.1, 2024.

59 Petrus Richard Sianturi., Pembalikan Beban Pembuktian Sebagai Primum Remedium Dalam Upaya Pengembalian Aset Negara Pada Kasus Tindak Pidana Korups. *Simbur Cahaya*. 2020, page.19-42.

60 Kiki Saraswaty., Teori Turut Serta Melakukan (Medeplegen) Pejabat Pemerintah Dalam Tindak Pidana Korupsi Bantuan Sosial. *Ranah Research: Journal of Multidisciplinary Research and Development* , Vol.6 No.6, 2024, page. 2469-2485.

principle in criminal corruption law. On November 8, 2023, the Central Jakarta Corruption Court sentenced BAKTI's CEO Anang Achmad Latif, then Minister of Communication and Information Johnny G. Plate, and Yohan Suryanto to prison. The panel of judges found that there had been collusion, mark-up practices, and abuse of authority that caused significant state financial losses. Johnny Plate's petition for judicial review was rejected by the Supreme Court on May 13, 2025, making his 15-year prison sentence final. This case illustrates the presence of mens rea in the form of fabrication and collusion, unlawful gains, and actual losses to state finances; therefore, it is correctly classified as a criminal act of corruption under Articles 2 and 3 of the Law on the Eradication of Corruption Crimes (Anti-Corruption Law), rather than a mere administrative or contractual dispute.

The electronic ID card (e-KTP) procurement project also falls under the category of pure corruption that is criminally prosecutable. The verdict against Setya Novanto in 2018 confirmed the existence of conspiracy and receipt of bribes or kickbacks in the e-KTP project, which caused state losses of approximately IDR 2.3 trillion. The elements of Article 3 of the Anti-Corruption Law were fully satisfied, as clear criminal intent, unlawful enrichment, and measurable state losses were proven. Like the 4G BAKTI case, this does not constitute criminalization of administrative policy, since the core conduct involved deliberate corruption to enrich oneself or others.

The Jiwasraya corruption case demonstrates that although substantively classified as corruption, issues arose during the execution stage of asset recovery. Defendants such as Heru Hidayat and Benny Tjokrosaputro were sentenced to heavy penalties, even life imprisonment, for manipulating investments that caused multi-trillion-rupiah state losses. However, the emergence of a "zero verdict" (vonis nihil) in a related case sparked debates over substantive versus procedural justice, as well as challenges in executing asset restitution after the Supreme Court decision became final. In this context, Articles 32–34 and 38C of the Anti-Corruption Law provide an opportunity for supplementary civil lawsuits when criminal sanctions alone are insufficient to restore state losses.[61]

The ASABRI case likewise reflects the validity of criminal corruption law enforcement, although debates arose regarding the calculation of state losses. The Audit Board of Indonesia declared total losses amounting to IDR 22.7 trillion using the total loss method. However, differences in opinion emerged over the accuracy of this methodology, as some amounts were considered merely potential rather than actual losses. The defendants including officials and investment partners—were sentenced to severe penalties and ordered to pay compensation. This debate highlights the importance of consistent audit methodology standards, as the Constitutional Court, through Decision No. 25/PUU-XIV/2016, affirmed that state losses must be real and not merely potential. Thus, consistency in BPK audit

61 Tempo., *Flawed auction of Jiwasraya assets*. Acessed on https://www.tempo.co

reports is crucial for legitimizing indictments and court judgments in corruption cases.

In contrast to these cases, there are also groups of cases categorized as "criminalization of administrative or civil policies," in which contractual or administrative disputes are unjustifiably turned into criminal cases. Based on the economic analysis of law, the law should function as an instrument of social efficiency rather than a repressive tool that increases legal transaction costs. Criminalizing conduct that should be resolved through administrative or civil mechanisms only prolongs dispute resolution, heightens legal uncertainty, and negatively impacts the business climate. Therefore, such disputes should prioritize restitution or recovery of state losses through administrative or civil means rather than criminal prosecution. This approach is not only more economically efficient but also more legally proportionate, as it distinguishes administrative errors from corruption, which involves mens rea and demonstrable state losses.

Based on the results of the decision on the State Loss case, the author recommends the following:

First, it is necessary to conduct an administrative legal review before escalating a case to the realm of corruption crimes. The Constitutional Court Decision No. 25/PUU-XIV/2016 reinterpreted Articles 2 (1) and 3 of the Corruption Eradication Law, shifting them from formal offenses to material offenses, meaning that state financial losses must be real and legally provable. The phrase "can cause losses" can no longer be interpreted as merely a potential loss. The implication of this reinterpretation is that every alleged corruption case must first undergo administrative or civil examination, including internal institutional mechanisms. In this context, the Government Accounting Standards (SAP) as regulated in Government Regulation No. 71 of 2010 serve as an objective reference to assess materiality and the recognition of state financial losses. Additionally, the Compensation Claim (TGR) mechanism can be used to recover administrative losses without immediately resorting to criminalization. Contract clauses such as delay penalties, liquidated damages, and performance bonds should also be implemented first as the first line of defense. For instance, in regional procurement scenarios, delays in the supply of goods should be considered contractual violations subject to administrative fines, not automatically classified as corruption offenses—especially if the goods are ultimately delivered and do not result in actual loss. Therefore, an "administrative-first" SOP must be applied, meaning that an administrative-legal review should be conducted based on SAP, TGR, and contractual clauses before moving to criminal proceedings, except in three conditions: (i) there is mens rea or criminal intent; (ii) there is unlawful gain; and (iii) there is an actual loss that cannot be recovered through administrative mechanisms.[62]

62 Khairunnisa Dhiavella Asy'ari and Nathalina Naibaho., Perampasan Aset dalam Upaya Pemulihan Aset Hasil Tindak Pidana Korupsi di Indonesia, Vol.4 No.4, 2025, page. 1966–1973.

Second, it is necessary to establish a state loss accounting blueprint in the form of a measurable verification checklist to ensure consistency in interpreting what constitutes "state loss" in accordance with Constitutional Court Decision No. 25/PUU-XIV/2016. Many corruption cases fail in court due to differing interpretations between actual and potential losses.[63] Therefore, a quantification checklist is required to clearly distinguish between the two. The recommended minimum components include: (1) cash-out, referring to cash outflows that are not returned (for example, payments for fictitious goods); (2) foregone revenue, referring to revenue that is certainly not received due to a voided contract; and (3) cost of delay, meaning measurable and billable delay costs (not merely lost opportunities). All these components must be tested using the recognition and measurement criteria of SAP/PSAP and verified by the Audit Board of Indonesia (BPK) to serve as valid legal evidence. Thus, only figures that meet accounting standards can be classified as state losses in a material offense. For example, in the Jiwasraya case, BPK determined a loss of IDR 16.8 trillion (2008–2018) based on the reduction of investment value (cash-out/reduced investment value), which qualifies as an actual loss. Conversely, in the ASABRI case, the claim of IDR 22.7 trillion sparked debate because some experts argued that part of it was still potential due to differences in portfolio valuation methodologies. This demonstrates the need for a blueprint and methodological triangulation to avoid discrepancies in determining the final figure of state losses.

Third, the asset recovery strategy must be carried out comprehensively by combining criminal and civil law mechanisms in accordance with Articles 32, 33, 34, and 38C of the Corruption Eradication Law to maximize the recovery of state losses. These provisions provide a legal basis for the state to pursue a civil (in rem) route when the criminal process faces obstacles, such as insufficient evidence, the defendant's death, or acquittal.[64] This route also enables the state to file a civil claim for damages after a criminal verdict becomes final and binding. The primary focus of this approach is to recover state losses first, rather than merely punishing the perpetrators. The 2024 Indonesian Corruption Watch (ICW) study on the Jiwasraya case revealed disparities in the execution and auction of seized assets, indicating that criminal law enforcement alone is insufficient. Therefore, a combination of civil and criminal proceedings is essential to close the asset recovery gap. The proposed mechanisms include: (1) parallel track, whereby the Prosecutor's Office handles the criminal prosecution while the State Attorney simultaneously prepares a civil lawsuit based on Articles 32–34/38C to trace assets across parties; (2) escalation rule, meaning that if the criminal case fails (due to insufficient evidence or acquittal), it automatically transitions into a civil lawsuit; and (3) execution transparency, involving the publication of asset lists, auction base prices, and sales results to prevent fire sales or preferential treatment.

63 LP2M Undana., *Eksaminasi Publik Jiwasraya*. Kupang: Universitas Nusa Cendana, 2024, page 5

64 PSHK., *Restatement: Perampasan Aset Tanpa Pemidanaan*. Jakarta: Pusat Studi Hukum dan Kebijakan. 2019, page 68

Through this integrated approach, the asset recovery system becomes more comprehensive, accountable, and aligned with the state's financial interests.

The novelty of this research lies in the reconstruction of the conceptual boundaries between civil, administrative, and criminal liability in state financial cases through the dual paradigm of *ultimum remedium* and *restorative justice*. This study introduces a systematic "administrative-first" approach that requires disputes to be resolved first through administrative and civil mechanisms, such as Compensation Claims (TGR) and contractual sanctions, before being escalated to the realm of criminal corruption, thereby preventing excessive criminalization of policy or procedural errors.

4. Conclusion

In addressing the issue of criminalization of civil-administrative disputes or cases involving state finances, this study recommends several strategic measures, including revising the Corruption Eradication Law, particularly by removing the phrase "may cause losses to state finances" to align with the principle of actual loss. Law enforcement must also be based on the principles of *ultimum remedium* and *restorative justice*, which position criminal law as a last resort, focusing primarily on restoring state losses (restitution) rather than merely imposing punishment. The novelty of this research lies in the reconstruction of the conceptual boundaries between civil, administrative, and criminal liability in state financial cases through the dual paradigm of *ultimum remedium* and *restorative justice*. This study introduces a systematic "*administrative-first*" approach that requires disputes to be resolved first through administrative and civil mechanisms, such as Compensation Claims (TGR) and contractual sanctions, before being escalated to the realm of criminal corruption, thereby preventing excessive criminalization of policy or procedural errors.

BIBLIOGRAPHY

Journals :

Achmad Irwan Hamzani, et al., Legal research method: Theoretical and Implementative Review. *International Journal of Membrane Science and Technology*, Vol.10 No.2, 2023;

Adhalia Septia Saputri and Lusia Sulastri., Penerapan Asas *Ultimum remedium* dalam Pemidanaan Tindak Pidana Pencucian Uang. *Journal of Mandalika Literature*, Vol.6 No.1, 2025;

Albert Hama, Hedwig A., Mau, and Mohammad Ismed., Pengembalian Kerugian Keuangan Negara Melalui Pendekatan Keadilan Restoratif Dalam Perkara Tindak Pidana Korupsi Dana Desa Di Kabupaten Halmahera Barat. *SINERGI: Jurnal Riset Ilmiah*, Vol.2 No.7, 2025;

Andi Bau Mallarangeng and Ismail Ali., Pembuktian Unsur Niat Dikaitkan Dengan Unsur Mens Rea Dalam Tindak Pidana Korupsi. *Legal Journal of Law*, Vol.2 No.2, 2023;

Arif Wijaya., Pemberantasan Tindak Pidana Korupsi Menurut UU No. 31 Tahun 1999 jo. UU No. 20 Tahun 2001 *Al-Jinayah: Jurnal Hukum Pidana Islam*, Vol.2 No.1, 2016;

Aura Diva Shabila Zachry and Risma Nur Arifah., Negosiasi Non-Litigasi Sebagai Solusi Penyelesaian Sengketa Wanprestasi Jasa Konstruksi Pemerintah Daerah Indonesia. *Journal of Islamic Business Law*, Vol.9 No.3, 2025;

Bambang Tri Bawono, and Jamaludin Malik., Depenalization of the Threat of Death Penalty Sanctions for Perpetrators of Corrupt Criminal Acts Based on the Values of Justice. *KnE Social Sciences*, Vol.10 No.28, 2025;

Chuasanga A., Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019;

Dadin E. Saputra, and Afif Khalid., Implikasi Hukum Atas Putusan Mahkamah Konstitusi Nomor 25/Puu-Xiv/2016 Terhadap Pemberantasan Tindak Pidana Korupsi. *Syariah: Jurnal Hukum dan Pemikiran*, Vol.18 No.1, 2018;

Dadin E. Saputra, and Afif Khalid., Implikasi Hukum Atas Putusan Mahkamah Konstitusi Nomor 25/Puu-Xiv/2016 Terhadap Pemberantasan Tindak Pidana Korupsi. *Syariah: Jurnal Hukum dan Pemikiran*, Vol.18 No.1, 2018;

David Lind Budijanto Njoto., Rekonstruksi asas actus non facit reum nisi mens rea dalam tindak pidana. *JIIP-Jurnal Ilmiah Ilmu Pendidikan*, Vol.7 No.3 2024;

Eka Ayu Safitri, Ratih Damayanti, and Tri Sulistiyono., Batasan Dan Mekanisme Penerapan Sanksi Pidana Perpajakan Di Indonesia Dalam Perspektif Asas *Ultimum remedium*. *Jurnal Hukum Statuta*, Vol.4 No.3, 2025;

Eka Ayu Safitri, Ratih Damayanti, and Tri Sulistiyono., Batasan Dan Mekanisme Penerapan Sanksi Pidana Perpajakan Di Indonesia Dalam Perspektif Asas *Ultimum remedium*. *Jurnal Hukum Statuta*, Vol.4 No.3, 2025;

Elivia Pasma Putri dan Arisman., MengungkapPenyalahgunaanKeuangan Publik: Bentuk, Dampak serta Strategi Penanggulangan, *Journal of Economics, Business, Accounting and Management (JEBAM)*, Vol.3 No.1, 2025;

Ernest Sengi., Konsep Culpa Dalam Perkara Pidana Suatu Analisis Perbandingan Putusan Nomor 18/Pid. B/2017/PN. TOBELO. *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, Vol.17 No.2, 2019;

Gholin Noor Aulia Sari, et al., Tinjauan filosofis keadilan restoratif dalam lensa teori keadilan. *Hukum dan Politik dalam Berbagai Perspektif*, Vol.3, 2024;

Gholin Noor Aulia Sari, et al., Tinjauan filosofis keadilan restoratif dalam lensa teori keadilan. *Hukum dan Politik dalam Berbagai Perspektif*, Vol.3, 2024;

Gunawan Widjaja., Analisis Penegakan Hukum Administratif, Perdata, Dan Pidana Di Indonesia: Tinjauan Literatur. *Journal Of Community Dedication*, Vol.4 No.4, 2025;

Hamzeh Abu Issa, et. al., Definition of the Term "The Wound" in the Jordanian Penal Law, *Theory and Practice in Language Studies*, Vol.12 No.8, 2022;

Hamzeh Abu Issa, et. al., From Streets to Screens: Legal Implications Of Internet Begging*, Humanities and Social Sciences Communications,* Vol.12 No.916, 2025;

I Dewa Gede Semara Putra, and Sri Endah Wahyuningsih., "Judges' Decisions Under the Minimum Criminal Penalty in Law Enforcement of Drug Crimes Based on the Perspective of Legal Certainty and Justice. *KnE Social Sciences*, Vol.10 No.28, 2025;

Jawade Hafidz., An Ethical And An Intelligent Bureaucratic Law Reform*, JPH: Jurnal Pembaharuan Hukum,* Vol.7 No.3, December 2020;

Karianga, Hendra., Pertanggungjawaban Kerugian Negara Dalam Pengelolaan Keuangan Daerah. *Edukasi-Jurnal, Pendidikan*, Vol.16 No.1, 2018;

Kartika Dewi Irianto, dan Radella Elfani., Penyelesaian Sengketa Wanprestasi pada Kontrak Jasa Konstruksi di Pemerintahan Daerah Kota Bukittinggi. *Pagaruyuang Law Journal*, Vol.4 No.1, 2020;

Khairunnisa Dhiavella Asy'ari and Nathalina Naibaho., Perampasan Aset dalam Upaya Pemulihan Aset Hasil Tindak Pidana Korupsi di Indonesia, Vol.4 No.4, 2025;

Kiki Saraswaty., Teori Turut Serta Melakukan (Medeplegen) Pejabat Pemerintah Dalam Tindak Pidana Korupsi Bantuan Sosial. *Ranah Research: Journal of Multidisciplinary Research and Development*, Vol.6 No.6, 2024;

Listia Rahmawati Bumulo., Ratio Legis for the Establishment of a State Audit Board. *Estudiante Law Journal*, 2020;

Mardian Putra Frans, Agustina Indah Intan Sari, and Iddo Eldillon., Analysis Environmental And State Losses In Corruption Offences. *Jurnal Hukum Sehasen*, Vol.11 No.1, 2025;

Mario Agritama SW Madjid, and Muh Ilham Akbar., Kerugian Keuangan Negara Atas Penyalahgunaan Wewenang Dalam Instrumen Hukum Administrasi Negara. *Sanskara Hukum dan HAM*, Vol.2 No.2, 2023;

Marthen H. Toelle, Kriminalisasi Berlebih (Overcriminalization) Dalam Kriminalisasi Korupsi. *Refleksi Hukum: Jurnal Ilmu Hukum,* Vol.9 No.2, 2015;

Mohammad Nasr Khater, et. al., The Crime of Goods Fraud in the Jordanian Penal Code, Vol.7 Issue.2, 2024;

Muhammad Zaki, et al., Jurnal: The Problem of Corruption Law Enforcement That Causes State Losses Since the Constitutional Court of the Republic of Indonesia Number 25 Puu-Xiv 2016 Decision. *Policy, Law, Notary and Regulatory Issues (POLRI)*, Vol.1 No.3, 2022;

Mukum Syahrir, Firman Dwi Anindito, and Dwi Cahyo Nugroho., Building Public Trust in Indonesia's Legal System: Case Analysis and Social Implications. *Hakim: Jurnal Ilmu Hukum dan Sosial*, Vol.3 No.2, 2025;

Noor Alhendi, et. al., Emoji Crimes on Social Media Applications, Cogent Social Sciences, Vol. 10, Issue 1, 2024;

Novita Sari, J. M. H. No, and Cawang–Jakarta Timur., Penerapan Asas *Ultimum remedium* Dalam Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika. 17. *Jurnal Penelitian Hukum,* 2017;

Pande Komang Surya Mahesa, and Ayu Putu Laksmi Danyathi., Penerapan Prinsip *Ultimum remedium* Dalam Kebijakan Kriminalisasi Di Indonesia: Tinjauan Teoritis Dan Praktis. *Jurnal Media Akademik (JMA)*, Vol.3 No.9, 2025;

Pardomuan Gultom., Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di Indonesia (Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indonesia). *Jurnal Hukum dan Kemasyarakatan Al-Hikmah*, Vol.3 No.1, 2022;

Petrus Richard Sianturi., Pembalikan Beban Pembuktian Sebagai Primum Remedium Dalam Upaya Pengembalian Aset Negara Pada Kasus Tindak Pidana Korupsi. *Simbur Cahaya*, 2020;

Riadhus Sholihin, Rahma Rahma, and Zaiyad Zubaidi., Kriminalisasi Homoseksual Sebagai Tindak Pidana: Studi Determinasi Moral Sebagai Hukum Pidana. *Tasyri': Journal of Islamic Law*, Vol.2 No.1, 2023;

Riedel Timothy Runtunuwu., Kajian Terhadap Tanggung Gugat Karena Wanprestasi Dan Perbuatan Melanggar Hukum Berdasarkan Kitab Undang-Undang Hukum Perdata. *Lex Privatum*, Vol.10 No.1, 2022;

Rio Rinaldi Silalahi., Penegakan Hukum Pemberantasan Tindak Pidana Korupsi Pasca Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016, *Lex Rainessance,* Vol.3 No.2, 2018;

Sabrina Hidayat, et al., Kewenangan Badan Pemeriksa Keuangan (BPK) Dan Badan Pemeriksa Keuangan Dan Pembangunan (BPKP) Dalam Menentukan Kerugian Keuangan Negara. *Halu Oleo Legal Research*, Vol.5 No.2, 2023;

Sri Ayu Irawati., Perbedaan Sengaja dan Tidak Sengaja dalam Hukum Pidana. *Ideas: Jurnal Pendidikan, Sosial, dan Budaya*, Vol.10 No.4, 2024;

Sri Wulandari., Reintegrasi Sosial Dalam Sistem Pemasyarakatan Sebagai Visi Pemidanaan Dalam Hukum Nasional. *Seminar Nasional Teknologi Dan Multidisiplin Ilmu (SEMNASTEKMU)*. Vol.3 No.2, 2023;

Suhendar Suhendar, and Kartono Kartono., Kerugian Keuangan Negara Telaah Dalam Perspektif Hukum Administrasi Negara Dan Hukum Pidana. *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*, Vol.11 No.2, 2020;

Syifa Roudhotul Aulia, et al., Pertanggungjawaban Pejabat Publik dalam Keputusan Administratif yang Merugikan Masyarakat: Antara Unsur Maladministrasi dan Perdata. *CONSTITUO: Journal of State and Political Law Research*, Vol.4 No.1, 2025;

Tubagus Muhammad Nasarudin., Kedudukan Badan Pemeriksa Keuangan (BPK) Sebagai Lembaga Negara Di Bidang Pengawasan Keuangan Negara. *Justicia Sains: Jurnal Ilmu Hukum*, Vol.5 No.1, 2020;

Tunggul Ansari Setia Negara., Normative Legal Research In Indonesia: Its Originis And Approaches. *Audito Comparative Law Journal (ACLJ)*, Vol.4 No.1, 2023;

Yudhi Christiawan Samuel, Sahuri Lasmadi, and Elly Sudarti., Pertanggungjawaban pidana pelaku tindak pidana korupsi pengadaan barang dan jasa dalam perspektif peraturan perundang-undangan. *Hangoluan Law Review*, Vol.1 No.1, 2022;

Yuni Ginting., Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas *Ultimum remedium*. *The Prosecutor Law Review*, Vol.2 No.1, 2024;

Yuni Ginting., Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas *Ultimum remedium*. *The Prosecutor Law Review*, Vol.2 No.1, 2024;

Zulfitra Ramadana and Yusuf M. Said., Sulitnya pembuktian kerugian perekonomian negara pada perkara korupsi. *Jurnal Konsep dan Implementasi Hukum*, Vol.7 No.4, 2024.

Books:

A. Djoko Sumaryanto., 2020, *Ius Constituendum Pembalikan Beban Pembuktian Dan Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi*. Jakad Media Publishing, Surabaya;

Jimly Asshiddiqie., 2015, *Hukum Tata Negara Dan Gagasan Konstitusionalisme*. Rajawali Pers. Jakarta;

LP2M Undana., 2024, *Eksaminasi Publik Jiwasraya*. Universitas Nusa Cendana, Kupang;

Lucky Omega Hasan., 2025, *Dampak Hukum Kriminalisasi Klausula Baku Perjanjian terhadap Bisnis Perbankan: Berdasarkan Analisis Hukum Bisnis, Hukum Pidana, dan Hukum Islam-Jejak Pustaka*. Jejak Pustaka. Yogyakarta;

Muladi and Barda Nawawi Arief., 2010, *Teori-teori dan Kebijakan Pidana*, Alumni, Bandung;

Nur Amin Saleh., 2025. *Restorative Justice*. PT. Literasi Indonesia Group, Makassar;

PSHK., 2019, *Restatement: Perampasan Aset Tanpa Pemidanaan*. Pusat Studi Hukum dan Kebijakan. Jakarta;

Rusdin Tahir, et al., 2023. *Metodologi Penelitian Bidang Hukum: Suatu Pendekatan Teori Dan Praktik*. PT. Sonpedia Publishing Indonesia, Jambi;

Satjipto Rahardjo., 2012, *Ilmu hukum*. Citra Aditya Bakti, Bandung;

Sirait, T. Mangaranap., 2021, *Hukum Pidana Khusus Dalam Teori Dan Penegakannya*. Deepublish, Yogyakarta;

Sulistyowati Irianto., 2019, *Restorative Justice Dalam Hukum Pidana Indonesia*. Obor. Jakarta;

Websites:

Tempo. *Flawed auction of Jiwasraya assets*. Acessed on https://www.tempo.co;