



JLPH: Journal of Law, Politic and Humanities

<https://dinastires.org/JLPH> [✉ dinasti.info@gmail.com](mailto:dinasti.info@gmail.com) [☎ +62 811 7404 455](tel:+628117404455)

E-ISSN: 2962-2816
P-ISSN: 2747-1985

DOI: <https://doi.org/10.38035/jlph.v6i3>
<https://creativecommons.org/licenses/by/4.0/>

State Financial Rescue Through Return of Replacement Money In The Case of Road Landscaping Project In Fiscal Year 2022- 2023 (Case Study of The Medan District Attorney's Office)

Eirene Clarisa Br. Silalahi^{1*}, Haposan Siallagan², Samuel Situmorang³

¹Faculty of Law, HKBP Nommensen University, Indonesia, eirene.silalhi@studen.uhn.ac.id

²Faculty of Law, HKBP Nommensen University, Indonesia, haposansiallagan@uhn.ac.id

³Faculty of Law, HKBP Nommensen University, Indonesia, samuel.situmorang@uhn.ac.id

*Corresponding Author: eirene.silalhi@studen.uhn.ac.id

Abstract: Efforts to rescue state finances through a compensation mechanism for the 2022–2023 Road Landscape Arrangement project in Medan City, which has resulted in potential losses to the Regional Revenue and Expenditure Budget due to work that does not comply with technical specifications. This study uses an empirical normative legal method with a statutory regulatory approach and case study analysis. The results show that the Medan District Attorney's Office has a strategic role in the process of recovering state losses through criminal law mechanisms and through non-litigation legal assistance in its capacity as a State Attorney. The return of funds to the regional treasury is a form of recovery of state losses, but this action does not eliminate criminal liability if the elements of the crime are still met. The return of losses can only be used as a mitigating consideration for judges in issuing decisions, so that the law enforcement process must still be carried out based on the principles of legality and legal certainty.

Keywords: State Financial Recovery, Return of Replacement Funds, Authority of the Attorney General.

INTRODUCTION

From a philosophical perspective, the fourth paragraph of the 1945 Constitution of the Republic of Indonesia states that the establishment of the Unitary State of the Republic of Indonesia is based on specific objectives aimed at improving the general welfare of the people (Constitution of the Republic of Indonesia, 1945, Preamble). This objective implies that the state is obliged to manage all resources, including state finances, optimally to meet the interests and needs of the community. State finances serve as the primary instrument for financing the implementation of government and national development, therefore their management must be based on the principles of justice, benefit, and public accountability.

The constitutional basis for managing state finances is also stated in Article 23 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the State Budget must be implemented transparently and responsibly to achieve maximum public

welfare (Constitution of the Republic of Indonesia 1945, Art. 23(1)) . This phrase emphasizes that every use of public funds must not only be legally valid but also provide tangible benefits to the community. Therefore, failure to manage finances, particularly regarding the purchase of government products and services, can be viewed as a deviation from the constitutional mandate.

In the practice of regional governance, state financial management often faces the problem of mismatches between planning, implementation, and results. Failure of goods and services procurement projects has the potential to result in state financial losses or, at the very least, eliminate the economic and social benefits that should accrue to the public (Mardiasmo, 2018). Therefore, the state is required not only to take repressive action through criminal law, but also to prioritize preventive and corrective measures through mechanisms to rescue state finances.

Regulations regarding financial rescue measures or the recovery of state assets are outlined in Attorney General Regulation No. 7 of 2021. This regulation establishes guidelines for the implementation of legal proceedings, the provision of legal aid, the evaluation of lawsuits, and other legal measures within the realm of civil and administrative law (Attorney General's Office of the the Republic of Indonesia, 2021, Regulation No. 7) . This provision states that state financial rescue is a manifestation of the Attorney General's Office's activities aimed at recovering and returning state finances or assets to the state or regional treasury. This demonstrates that the Attorney General's Office's duties lie not only in enforcing criminal acts through indictments, but also plays a crucial role as a prosecutor in protecting state financial interests through civil law mechanisms and non-procedural measures (Ricky Setiawan Anas & Faisal Santiago, 2024). Therefore, the Attorney General's Office has the institutional authority and responsibility to actively undertake state financial rescue efforts, both through debt collection and other legal actions aimed at optimizing the recovery of state or regional finances.

The implementation of state financial rescue can be seen in the road landscape improvement activities in Medan City in the 2022–2023 fiscal year. The Medan City Government allocated funds of approximately Rp25.7 billion from the Regional Revenue and Expenditure Budget for the construction of lighting and aesthetics on a number of strategic road sections, and has been paid to the contractor in the amount of Rp21 billion. However, the implementation of these activities still faces various obstacles, including non-compliance with the established technical specifications, inadequate material quality, and work results that cannot be used as intended. Based on the results of the Medan City Inspectorate's inspection, the project was declared a total failure (total loss) and is not suitable to be used as a regional asset (Medan City Inspectorate, 2023). This condition indicates that the implementation of these activities does not meet the principles of effectiveness, efficiency, and accountability in regional financial management, thus potentially causing state financial losses and demanding the implementation of steps to save state finances and a comprehensive evaluation of the governance of regional government projects.

The failure of this project raises serious issues in the context of accountability in regional budget management. The project was paid to the contractor, but it did not produce the expected public benefits. This situation highlights the effectiveness of the local government's internal oversight system and the government's procurement system, especially since the Medan city government has so far received an unqualified opinion from the Indonesian Supreme Audit Court (Supreme Audit Agency of the Republic of Indonesia, 2023) . This phenomenon highlights a gap between administrative compliance and the quality of development outcomes perceived by the public.

Based on the legal principles of government procurement contracts, if work is not carried out according to the contractual provisions, the local government has the right to demand a partial or full refund (Presidential Regulation No. 16 of 2018 as amended by

Presidential Regulation No. 12 of 2021) . This refund represents a concrete form of state financial rescue, allowing the disbursed public funds to be returned to the regional treasury. In this context, the Medan Prosecutor's Office acted as a prosecutor, offering legal support to the Medan City Government through a non-litigation process to recover claims arising from the failed project and ensure the repayment of the payments.

As a result of the state financial rescue efforts, the contractor returned Rp7,852,233,756 after tax, which was then deposited into the Medan City Regional General Treasury Account (Supreme Audit Agency of the Republic of Indonesia, 2023). This action reflects the effectiveness of the Attorney General's Office's role in recovering state funds outside of criminal justice mechanisms. However, this practice also raises academic questions regarding the legal basis, mechanisms, and limits of the Attorney General's authority in recovering state funds through the restitution of compensation.

The state financial recovery in the case of the 2022–2023 road landscape project in Medan City is highly urgent because it is directly related to the protection of public assets and the fulfillment of the state's constitutional objectives. The 1945 Constitution of the Republic of Indonesia, specifically Article 23 paragraph (1), emphasizes that state financial management must be conducted in an open and accountable manner to maximize public welfare (Constitution of the Republic of Indonesia 1945, Art. 23(1). This provision implies that every use of the Regional Revenue and Expenditure Budget (APBD) must provide tangible benefits to the community. When a project is declared a total failure (total loss) and cannot function as intended, it constitutes a deviation from the principles of effective and accountable state financial management. In this context, state financial recovery is an urgent corrective instrument to ensure that regional losses can be recovered and public funds are not lost without legal accountability.

Based on this description, this research is crucial for an in-depth examination of state financial recovery through the return of replacement funds in procurement projects declared failed. This study aims to provide theoretical and practical contributions to strengthening regional financial administration and optimizing the role of the prosecutor's office within the context of responsible state financial administration oriented toward public welfare. Therefore, this study is entitled " State Financial Rescue Through Return Of Replacement Money In The Case Of Road Landscaping Project In Fiscal Year 2022-2023 (Case Study Of The Medan District Attorney's Office)."

Problem Formulation

1. How is the recovery of state finances in the case of a roadside landscaping project conducted by the Medan District Attorney's Office in accordance with Indonesian positive law, specifically the Criminal Procedure Code?
2. How is the recovery of state finances considered as a legal basis for determining whether or not a criminal offense in a roadside landscaping project case should be dismissed against the perpetrator?

RESEARCH METHOD

A research method is a scientific method or procedure used by researchers to obtain data, analyze it, and draw conclusions to answer the research problem formulation (Sugiyono, 2007). This study employed an empirical normative legal research method, a method that integrates the study of law as written norms with the reality of its application in law enforcement practice. This method was chosen because the research not only examines the positive legal provisions governing state financial rescue and the restitution of compensation, but also directly examines how these norms are implemented in case handling at the Medan District Attorney's Office.

The research object covers the legal conditions and practices of implementing state financial rescue, including the legal mechanisms and procedures adopted by the Medan District Attorney's Office in providing non-litigation legal assistance, the process of project payments being returned by contractors to the Medan City Government, which are then deposited into the Regional General Treasury Account, and the legal status of state financial restitution.

Data were obtained through questionnaires or interviews, both verbally and in writing. Data for this study were collected using two types of data: primary data and secondary data. Data were collected directly in the field through in-depth interviews with public prosecutors. Secondary data was collected through several documents, such as the 2022–2023 Medan City Regional Budget (APBD), Attorney General's Office documents related to regional financial recovery, procurement documents such as work contracts, and laws and regulations related to state finances and the procurement of goods/services.

Data analysis in this study was conducted qualitatively using a normative juridical approach combined with case studies. The data were systematically analyzed to address the research question regarding the recovery of state finances through the restitution of compensation in the 2022–2023 Road Landscaping Project case at the Medan District Attorney's Office. The analysis began with a review of primary legal materials, such as the Criminal Procedure Code (KUHAP) and regulations related to prosecutorial authority. This was followed by an analysis of empirical data from case handling practices to assess the alignment between implementation in the field and applicable positive law.

RESULTS AND DISCUSSION

State Financial Recovery in the Road Landscape Project Case Through the Medan District Attorney's Office Within Indonesian Positive Law

The case of the road landscape project in Medan City for the 2022–2023 fiscal year is an example of problems in regional financial management that have the potential to cause state losses. The Medan City Government, through the Regional Revenue and Expenditure Budget (APBD), allocated approximately IDR 25.7 billion for the construction of street lighting and aesthetic elements on several strategic roads. The project aims to enhance the city's beauty and support street lighting for the public. The project was carried out by a contractor appointed through the government procurement mechanism. The Medan City Government paid the contractor approximately IDR 21 billion as part of the contract. However, during the implementation process, various problems were discovered related to the quality of the work and compliance with the technical specifications stipulated in the contract documents. Over time, the project came under public scrutiny due to the work results not being in accordance with the initial development objectives (Badan Pemeriksa Keuangan Republik Indonesia, 2024). The landscape lights installed on several roads were deemed to be non-functional and the quality of the materials used did not meet technical standards. Furthermore, the lamp design, perceived by the public as resembling a particular shape, led to the project being popularly known as the "pocong lamp."

Based on an internal audit by the local government, the project was deemed unable to deliver the planned benefits. In fact, the project was subsequently declared a total loss because the work was unfit for use and could not be included as a regional asset. This situation indicates that the project's implementation failed to meet the principles of effectiveness, efficiency, and accountability in state financial management. This project's failure poses potential regional financial losses, as public funds were disbursed but did not generate any benefits for the community. Therefore, the Medan City Government, in conjunction with law enforcement officials, particularly the Medan District Attorney's Office, took steps to restore regional finances through a state financial rescue mechanism.

"In the case of the road landscape improvement project for the 2022–2023 Fiscal Year in Medan City, funded through the Regional Budget (APBD), legal issues arose when the project was declared non-compliant or failed, resulting in potential regional financial losses. Based on Law of the Republic of Indonesia No. 1 of 2004 concerning State Finance, specifically Article 59, any losses suffered by the state or region due to illegal actions or individual negligence must be borne by the relevant party. In this case, the Medan District Attorney's Office can act as the local government's legal representative to collect the funds and ensure the funds are returned to the Regional General Treasury Account." (Interview with Mr. Fauzan Irgi Hasibuan, S.H.)

In discussing the recovery of state finances in the case of the road landscape improvement project, it is important to first understand the normative concept of state finances as defined in laws and regulations. This is directly related to the financial losses suffered by the state, which form the basis for legal accountability. General Explanatory Notes on Law Number 31 of 1999 concerning the Eradication of Corruption. According to the provisions of the law, state assets are defined as all forms of state property, including all parts and legal consequences of the rights and obligations attached to such assets.

1. Controlled, managed, and accounted for by state officials at both the central and regional levels.
2. Management and accountability for state assets are carried out by institutions such as state-owned enterprises (BUMN), regional-owned enterprises (BUMD), and foundations, including business entities that receive state or third-party capital based on formal agreements with the state (Indraguna, K.P.H & Hasibuan Kayaruddin, 2020).

According to the legal theory of state financial administration, every use of public funds must be implemented based on the principles of accountability, transparency, and effectiveness in order to provide benefits to the community (Mardiasmo, 2018). If a project deviation or failure occurs, the state is obliged to make efforts to recover these losses through applicable legal mechanisms. The Supreme Audit Agency (BPK), as a state institution authorized to audit the management and accountability of state finances, plays a crucial role in identifying potential state losses in government projects. In the case of a road landscape project in Medan City, discrepancies were found in the implementation of the work during the construction of 1,700 streetlights, which is an indicator of irregularities in regional budget management. During the monitoring process, the audit of this project found that the work did not comply with the technical specifications stipulated in the work contract. Some findings included the quality of the materials used, the method of installing the lights, and the results of the work that could not be utilized properly. The audit findings indicated that the project did not meet the required quality standards and could not function optimally as a means of lighting or an aesthetic element of the city. Therefore, this project is declared as a project that is not worthy of being a regional asset because it does not provide benefits to the community. From the perspective of state financial law, this condition can be categorized as a potential state loss if the use of the budget does not provide benefits in accordance with the stated objectives. State losses themselves according to the State Finance Law are a real and definite shortage of money, securities, or goods as a result of unlawful acts, whether intentional or due to negligence (Harahap, 2017). Therefore, any party that causes state losses is obliged to be responsible for their actions in accordance with applicable legal provisions.

The findings from this audit then serve as the basis for the regional government to take corrective measures to recover state finances. In practice, this recovery can be carried out through administrative, civil, or criminal mechanisms, depending on the level of error and the elements of the unlawful act found. As a follow-up to the findings related to the failure of the road landscape improvement project, the Medan City Government, together with the Medan District Attorney's Office, took steps to recover regional financial losses. The Medan District

Attorney's Office in recovering state finances in the case of road landscape arrangement based on Article 30a of Law No. 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, which states, "In asset recovery, the Attorney General's Office is authorized to carry out activities to trace, confiscate, and return assets obtained from criminal acts and other assets to the state, victims, or those entitled to it" (Prosecutor's Story, 2024). In this case, the Medan District Attorney's Office acts as a State Attorney (JPN), providing legal assistance to the regional government in efforts to recover state finances. Through this mechanism, the contractor responsible for the project implementation is required to return the funds received from the regional government. This process was conducted through a non-litigation approach, aiming to quickly recover state financial losses without the need for lengthy legal proceedings. As a result of this process, the contractor ultimately returned Rp7,852,233,756 after taxes. The funds were then deposited into the Medan City Regional General Treasury Account (RKUD) as part of regional financial recovery.

This refund represents a form of state financial recovery, as stipulated in Attorney General Regulation Number 7 of 2021 concerning the implementation of the duties and functions of the prosecutor's office in civil and state administrative matters. This provision explains that the prosecutor's office has the authority to undertake state financial recovery efforts through both litigation and non-litigation legal actions. According to the theory of criminal law on corruption, the restitution of state losses is a crucial instrument in efforts to recover state assets. However, this restitution does not automatically eliminate criminal liability if the elements of a crime have been met (Atmasasmita, 2018). Although the contractor has partially reimbursed the funds, this does not mean that all state financial losses have been fully recovered. Based on the project value reaching approximately IDR 25.7 billion and the total payment to the contractor amounting to IDR 21 billion, the refund of IDR 7.8 billion indicates that not all of the budget that has been spent can be returned to the regional treasury (Audit Agency of the Republic of Indonesia Representative Office of North Sumatra Province, 2024).

Thus, it can be concluded that the state financial rescue in this case was only partial and did not fully recover all potential state losses arising from the project's failure. This indicates that recovering state losses through administrative or non-litigation mechanisms has limitations in recovering all losses incurred. From a criminal law perspective, recovering state losses does not eliminate the criminal element that may have occurred in a corruption crime. This provision is expressly stipulated in Article 4 of the Corruption Eradication Law, which states that recovering state losses does not eliminate criminal penalties for perpetrators of corruption. Therefore, even though the funds have been recovered, the law enforcement process can still continue if there is evidence indicating a criminal element in the project's implementation. Recovering state losses can only be used as a mitigating factor by the judge in issuing a verdict (Chazawi, 2016). Thus, in the case of the road landscape project in Medan City, efforts to rescue state finances by returning replacement money are a positive step in recovering some of the regional losses. However, this step does not eliminate the possibility of criminal liability for the parties involved if proven to have committed unlawful acts that harm state finances.

Restitution of State Funds Considered as a Legal Basis for Determining Whether or Not to Expunge a Criminal Act in the Road Landscaping Project Case

In criminal law, an act is punishable if it meets the elements of a crime as defined by law. These elements generally include the existence of an unlawful act, the perpetrator's fault, and the absence of a reason that can eliminate criminal liability. Therefore, even if an act meets the elements of a crime, the perpetrator cannot always be punished if there is a reason that can eliminate the crime. This concept is known as a justification for criminal liability in criminal law. Theoretically, reasons that can eliminate criminal liability are divided into two main

categories: justification and excusal. A justification is a reason that eliminates the illegal nature of an act, so that the act is considered legally correct. Meanwhile, an excusal is a reason that does not eliminate the illegal nature of an act, but rather eliminates the perpetrator's fault, so that the perpetrator cannot be held criminally responsible (Moeljatno, 2015). Thus, the existence of a justification for criminal liability is a crucial factor in determining whether or not a person can be held criminally responsible for their actions.

The provisions regarding the grounds for expungement of criminal penalties in Indonesian criminal law were initially regulated in the Criminal Code (old KUHP) which originated from the *Wetboek van Strafrecht*. In the old KUHP, several provisions included in justification reasons were regulated in Article 48, Article 49 paragraph (1), Article 50, and Article 51 paragraph (1). Article 48 of the KUHP regulates force majeure or *overmacht*, namely a situation where a person commits an act due to pressure or unavoidable circumstances. In such conditions, the perpetrator cannot be punished because the act was carried out under duress. Furthermore, Article 49 paragraph (1) of the KUHP regulates the defense of necessity (*noodweer*). This provision provides justification for a person who commits an act to defend themselves or others from unlawful attacks. If the defense is carried out proportionally and in urgent circumstances, then the act cannot be considered a crime. Article 50 of the KUHP also regulates that a person who commits an act to implement the provisions of the law cannot be punished. Likewise, Article 51 paragraph (1) of the Criminal Code states that a person who commits an act on the orders of a legitimate position cannot be punished because his actions are considered to be the implementation of a legal obligation. In addition to justification, the old Criminal Code also regulates reasons for forgiveness that can eliminate the perpetrator's guilt. One of the provisions regarding reasons for forgiveness is contained in Article 44 of the Criminal Code which states that a person who commits a criminal act but cannot be held responsible for his actions due to mental disorders cannot be punished (Sudarto, 2009, p. 87). In addition, Article 49 paragraph (2) of the Criminal Code also regulates forced defenses that exceed the limits due to severe mental shock. In such circumstances, the perpetrator can be forgiven even though his actions are still considered unlawful.

In the development of criminal law in Indonesia, regulations regarding grounds for expungement of criminal offenses are also accommodated in Law Number 1 of 2023 concerning the Criminal Code which will replace the old Criminal Code. The new Criminal Code retains the concept of justification and forgiveness as part of the criminal accountability system. In her presentation, Prof. Harkristuti Harkrisnowo, as Professor of Criminal Law at the Faculty of Law, University of Indonesia, explained that the doctrine of expungement of criminal offenses is divided into two main categories, namely Justification and Excuse. In the new Criminal Code, the regulation regarding Justification is placed in the Criminal Acts section, while Excuse is regulated in the Criminal Accountability section. Doctrinally, there is a fundamental difference between the two. In Justification, the perpetrator's actions are considered not against the law even though they are formally prohibited and subject to sanctions by law. Conversely, in Excuse, the perpetrator's actions are still categorized as against the law, but the element of guilt is removed or forgiven. Prof. Harkristuti details the provisions of Justification in the New Criminal Code as follows:

1. Article 31: Implementing statutory provisions.
2. Article 32: Carrying out official orders from authorized officials.
3. Article 33: Emergency.
4. Article 34: Defense against immediate, unlawful attacks on oneself or others, including honor (morality) and property.
5. Article 35: Absence of unlawful nature.

Furthermore, regarding perpetrators with disabilities, Prof. Harkristuti emphasized that, based on Article 38 of the New Criminal Code, persons with mental or intellectual disabilities

can be subject to criminal penalties or have their sentences reduced. Meanwhile, perpetrators with disabilities who meet the requirements of Article 39 cannot be subject to criminal penalties but can still be subject to legal penalties. The provisions on Excuses in the New Criminal Code are implemented in the following articles:

1. Article 40: Minors.
2. Article 42: Coercive power.
3. Article 43: Excessive coercive defense.
4. Article 44: Carrying out an illegal official order, but the perpetrator does so in good faith, believing the order to be legitimate. (Dandapala, 2025)

The provision explains that a person cannot be punished if the act was committed in an emergency, in self-defense, in the implementation of statutory provisions, or in the implementation of a legitimate official order. Furthermore, the new Criminal Code also recognizes the existence of exculpatory reasons such as the inability to take responsibility due to mental disorders or certain circumstances that eliminate the perpetrator's culpability (Chazawi, 2016). In the context of crimes related to state financial losses, one issue that often arises is whether the restitution of state financial losses can be used as a basis for eliminating the crime that has occurred. Andi Hamzah explains that in modern criminal law, punishment not only considers the act committed, but also the subjective condition of the perpetrator and the circumstances behind the act. Therefore, an analysis of the reasons for eliminating criminal liability, such as justification and exculpatory reasons, is important in determining whether a person can be held criminally responsible in a criminal case (Andi Hamzah, 2010). In law enforcement practice in Indonesia, the restitution of state losses often occurs in cases of corruption or misuse of state funds. However, normatively, the restitution of state losses does not automatically eliminate criminal liability.

Provisions regarding this matter have been expressly regulated in Article 4 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which states that the return of state financial or state economic losses does not eliminate the criminal penalty for perpetrators of criminal acts of corruption (Law Number 31 of 1999 in conjunction with Law Number 20 of 2001). This provision shows that the return of state losses is only a form of state financial recovery, but cannot eliminate the criminal element that has occurred. From a criminal law perspective, the return of state losses is not included in the category of justification or excuse (Mahrus Ali, 2014, p. 123). This is because the return of state losses is carried out after the unlawful act has occurred. Meanwhile, justification and excuse are basically related to the circumstances that occurred at the time the act was committed (Riska Andi Fitriano, 2019, p. 215). Therefore, the return of state losses cannot erase the unlawful nature of an act or erase the perpetrator's guilt.

Evi Hartanti stated that in crimes related to state finances, state losses are often related to irregularities in the implementation of government projects, particularly when there is a discrepancy between the planning, implementation, and results of work funded by the state budget. Therefore, any government project that is not implemented in accordance with the contract provisions and does not provide benefits to the public has the potential to incur state losses that must be recovered through applicable legal mechanisms (Evi Hartanti, 2016). However, the restitution of state losses remains important in the law enforcement process because it can be used as a consideration in mitigating the perpetrator's sentence. In judicial practice, judges often consider the good faith of the perpetrator, who is willing to reimburse the state for the losses, as a factor influencing the severity of the sentence imposed (Atmasasmita, 2018). In the case of a road landscaping project in Medan City, the contractor returned funds to the local government as part of an effort to salvage state finances. This restitution represents a partial recovery of regional financial losses arising from the project's failure. However, the restitution of funds does not necessarily eliminate the possibility of

criminal elements in the project's implementation. If in the process of investigation and inquiry it is found that there are elements of unlawful acts, such as abuse of authority, manipulation in the procurement process of goods and services, or other actions that cause state financial losses, then the responsible party can still be held criminally responsible (Ridwan Arifin, 2018, p. 276). Thus, the return of state losses in this case only serves as an effort to save state finances and not as a legal basis to eliminate the criminal acts that have occurred.

"Returning state funds is indeed seen as a crucial step in the case handling process, particularly in recovering state losses that have occurred. However, the goal of criminal law is not only to punish the perpetrator, but also to ensure restitution for public losses. In practice, if a suspect or defendant returns state losses, this can be a mitigating factor in the prosecution or judge's verdict. However, such restitution does not automatically erase the crime, as the elements of the act and fault are still assessed based on applicable legal provisions. In other words, restitution is seen more as a form of good faith that can influence the severity of the sentence, rather than as a reason to eliminate criminal liability." (Interview with Mr. Fauzan Irgi Hasibuan, S.H.)

In the case of the road landscaping project in Medan, the mechanism for restitution of state losses plays a crucial role in the process of recovering state funds. As in prosecutorial practice, project implementers who fail to fulfill technical contracts and cause potential losses to regional treasury can be required to return the funds through a replacement payment mechanism or a restitution agreement with the local government (Meliana, Y, 2024). However, even if the funds have been returned, criminal liability for the actions that caused the loss can still be enforced as long as the formal or material elements of the crime have been fulfilled according to positive law (Antara News, 2024). This means that the return of the money is not a legal basis for eliminating the crime, but rather part of the recovery effort carried out in parallel with the criminal process.

The discourse on the elimination of criminal offenses through the restitution of state losses has attracted public attention and academic discussion. Statements by public officials about the possibility of providing perpetrators with the opportunity to "repent" after returning state funds have drawn sharp criticism from legal academics, as this could result in weak law enforcement and potentially minimal deterrent effect for perpetrators of criminal acts (Herman, 2025). Critics argue that the restitution of state losses should be seen as a mitigating factor that reduces punishment, rather than a reason to abolish primary criminal penalties, so as not to set a bad example for the criminal justice system in Indonesia (Hiariej, Eddy O.S., 2016). If the restitution of losses is used as a reason to eliminate criminal liability, it will give the impression that perpetrators can "buy" freedom by returning the proceeds of their crimes. Indriyanto Seno Adji emphasized that the restitution of state losses should not be used as a "shortcut" in law enforcement. He stated that "if the restitution of state losses is used as a reason to abolish criminal offenses, then criminal law will lose its deterrent effect and open up room for compromise that undermines the integrity of the justice system." Therefore, restitution of losses must remain a mitigating factor, not an expungement of criminal liability (Adji, Indriyanto Seno, 2009). This has the potential to weaken the deterrent effect, undermine the public's sense of justice, and uphold the principle of equality before the law.

Therefore, restitution of state losses cannot eliminate the criminal element in a crime that has already occurred. Such restitution can only be considered a mitigating factor in the criminal justice process. Therefore, in the case of a road landscaping project in Medan City, the contractor's partial restitution of state funds cannot be used as a legal basis to waive criminal liability if criminal elements are proven to have occurred in the project's implementation. Law enforcement must remain based on the principles of legality and legal certainty to ensure transparent, accountable, and responsible management of state finances.

CONCLUSION

The rescue of state finances in the case of the road landscape arrangement project through the Medan District Attorney's Office with the provisions of Indonesian positive law is the Medan District Attorney's Office in carrying out state financial recovery in the road landscape arrangement case based on Article 30a of Law No. 11 of 2021 concerning the Republic of Indonesia Attorney General's Office which states "In asset recovery, the Attorney General's Office is authorized to carry out activities to trace, confiscate, and return assets obtained from criminal acts and other assets to the state, victims, or those entitled to it."

The return of state finances is considered the legal basis for determining whether or not a criminal offense in the road landscape project case is waived. The existence of justification and forgiveness is not a reason for waiving a criminal offense. In the old Criminal Code, several provisions included justification and forgiveness, including Article 44, Article 48, Article 49 paragraph (1), Article 50, and Article 51 paragraph (1). And in the development of criminal law in Indonesia, regulations regarding the reasons for the elimination of criminal penalties are also accommodated in Article 31-34 of Law Number 1 of 2023 concerning the Criminal Code.

Recommendations

Based on the research findings, it is recommended that law enforcement officials, particularly the Medan District Attorney's Office, continue to pursue legal proceedings in the Medan City road landscape development case, despite the restitution of state financial losses through the payment of compensation. Restitution of state losses is essentially an effort to restore state financial losses, but it does not eliminate criminal liability for the corruption that has occurred. Therefore, the law enforcement process must continue to operate consistently to provide a deterrent effect, uphold the principle of legal certainty, and maintain public trust in the criminal justice system. Furthermore, local governments are expected to strengthen their oversight and control systems in the implementation of regional development projects to prevent potential budget misuse from the planning stage through implementation. Therefore, efforts to salvage state finances should not only be undertaken after losses occur, but also through preventative measures that support transparent, accountable, and integrated governance.

REFERENCE

- Adji, Indriyanto Seno. *Korupsi dan Penegakan Hukum*. Jakarta: Diadit Media, 2009.
- Andi Hamzah, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 2010.
- Antara News. (30 Desember 2024). *Pakar: Pengembalian uang korupsi tidak boleh hapus tuntutan pidana*, diakses pada 12 Februari 2026 https://www.antaraneews.com/berita/4554994/pakar-pengembalian-uang-korupsi-tidak-boleh-hapus-tuntutan-pidana?utm_source
- Atmasasmita, Romli, *Hukum Pidana Korupsi di Indonesia*. Jakarta: Kencana, 2018.
- Badan Pemeriksa Keuangan Republik Indonesia Perwakilan Provinsi Sumatera Utara (10 Januari 2024). *Seluruh Kontraktor Telah Kembalikan Uang Rp 21 Miliar Proyek Gagal 'Lampu Pocong' di Medan*, diakses pada 10 Januari 2024. <https://sumut.bpk.go.id/wp-content/uploads/2024/01/Seluruh-Kontraktor-Telah-Kembalikan-Uang-Rp-21-Miliar-Proyek-Gagal-Lampu-Pocong-Di-Medan.pdf>
- Badan Pemeriksa Keuangan Republik Indonesia, *Laporan Hasil Pemeriksaan atas Laporan Keuangan Pemerintah Daerah Kota Medan*.
- Chazawi, Adami, *Hukum Pidana Materil dan Formil Korupsi di Indonesia*. Malang: Bayumedia, 2016.
- Chazawi, Adami, *Pelajaran Hukum Pidana*. Jakarta: Raja Grafindo Persada, 2016.

- Dandapala. (20 Juni 2025). *Alasan Pembenaar dan Pemaaf dalam KUHP Baru*, diakses 10 Maret 2026. <https://dandapala.com/article/detail/alasan-pembenaar-dan-pemaaf-dalam-kuhp-baru>
- Evi Hartanti, *Tindak Pidana Korupsi*, Jakarta: Sinar Grafika, 2016.
- Harahap, M. Yahya, *Pembahasan Permasalahan dan Penerapan KUHAP*. Jakarta: Sinar Grafika, 2017.
- Herman. "Recovery of State Financial Losses as a Strategy for Combating Corruption Crimes", *Jurnal Ilmiah Mizani wacana Hukum, Ekonomi dan Keagamaan*, 2025.
- Hiariej, Eddy O.S. *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka, 2016. <https://story.kejaksaan.go.id/berita-daerah/kejaksaan-selamatkan-uang-rp78-miliar-di-kasus-lampu-pocong-90776-mvk.html>.
- Indraguna, K.P.H & Hasibuan Kayaruddin, *Memahami Tafsir Pasal Tindak Pidana Korupsi*, Jakarta: Tras Mediacom, 2020.
- Laporan Hasil Pemeriksaan Inspektorat Kota Medan terhadap Proyek Penataan Lanskap Ruas Jalan Tahun Anggaran 2022–2023.
- Mahrus Ali, *Hukum Pidana Korupsi di Indonesia*, (Yogyakarta: UII Press, 2014), hlm. 123.
- Mardiasmo. *Akuntansi Sektor Publik*. Yogyakarta: Andi, 2018.
- Marzuki, Peter Mahmud, *Penelitian Hukum*. Jakarta: Kencana, 2019.
- Meliana, Y. Mengurai Tantangan Uang Pengganti dalam Kasus Tipikor", *Jurnal Pendidikan Indonesia*, 2024
- Moeljatno. 2015. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Pasal 23 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Pembukaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Peraturan Kejaksaan Republik Indonesia Nomor 7 Tahun 2021 tentang Pedoman Pelaksanaan Penegakan Hukum, Bantuan Hukum, Pertimbangan Hukum, dan Tindakan Hukum Lain di Bidang Perdata dan Tata Usaha Negara.
- Peraturan Presiden Nomor 16 Tahun 2018 tentang Pengadaan Barang/Jasa Pemerintah sebagaimana diubah dengan Peraturan Presiden Nomor 12 Tahun 2021.
- Ricky Setiawan Anas dan Faisal Santiago, "The Role of the Prosecutor's Office in Safeguarding State/Regional Assets as an Efforts to Prevent Corruption in Indonesia", *International Journal of Law, Crime and Justice*, 2024
- Ridwan Arifin, "Pertanggungjawaban Pidana dalam Tindak Pidana Korupsi yang Menimbulkan Kerugian Keuangan Negara," *Jurnal Yuridika*, Vol. 33 No. 2, 2018, hlm. 276
- Riska Andi Fitriyono, "Pengembalian Kerugian Negara dalam Tindak Pidana Korupsi dan Pengaruhnya terhadap Pertanggungjawaban Pidana," *Jurnal Yudisial*, Vol. 12 No. 2, 2019, hlm. 215.
- Story Kejaksaan. (27 Februari 2024). *Kejaksaan Selamatkan Uang Rp7,8 Miliar di Kasus "Lampu Pocong"*, diakses 10 Maret 2026
- Sudarto, *Hukum Pidana I*, Semarang: Yayasan Sudarto, 2009, hlm. 87.
- Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, Bandung: Alfabeta, 2007.
- Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi jo. Undang-Undang Nomor 20 Tahun 2001