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Juridical Study of Criminal Liability for State Financial Losses Based on Post-Audit Overpayment Calculations Following Constitutional Court Decision Number 28/PUU-XXIV/2026

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Abstract: Constitutional Court Decision Number 28/PUU-XXIV/2026 provides a constitutional interpretation of the phrase “state financial audit institution” in the Elucidation of Article 603 of Law Number 1 of 2023 concerning the Criminal Code. The ruling upholds Indonesia's Audit Board (BPK) as constitutionally authorized to investigate state financial losses, affecting evidence standards in graft prosecutions, especially regarding overpayment. This research aims to analyze the boundaries of criminal liability for state financial losses originating from overpayment findings and to examine the juridical implications of Constitutional Court Decision Number 28/PUU-XXIV/2026 on the authority of audit institutions in proving state financial losses. This study employs normative legal methodology combining statutory, conceptual, and case-based perspectives examining Constitutional Court rulings statutes and scholarship. Findings show that Constitutional Court Decision Number 28/PUU-XXIV/2026 does not change the actual loss doctrine that was established through Constitutional Court Decision Number 25/PUU-XIV/2016, but rather affirms that BPK is the audit institution possessing constitutional authority in the examination of state financial losses as referred to in the Elucidation of Article 603 of the National Criminal Code. Nevertheless, BPK’s audit results do not automatically give rise to criminal liability, because proving corruption still requires the fulfillment of the elements of real state financial loss (actual loss), unlawful conduct (*actus reus*), and the perpetrator’s fault (*mens rea*). Overpayment findings caused solely by administrative or technical errors cannot automatically be qualified as corruption crimes and, in principle, are more appropriately resolved through administrative law or civil law mechanisms in accordance with the principle of *ultimum remedium*.

Keyword: State Financial Loss, Overpayment, BPK, Criminal Liability, Constitutional Court Decision Number 28/PUU-XXIV/2026.

INTRODUCTION

The power to manage state finances is a primary instrument for the government to carry out public service functions (*bestuurszorg*) in order to realize social welfare as mandated in the Preamble of the 1945 Constitution of the Republic of Indonesia (Ridwan & Sudrajat, 2020). Based on the provisions of Article 23 paragraph (1) of the 1945 Constitution, the State Budget (APBN), as a form of state financial management, is determined annually by law and implemented openly and responsibly for the greatest prosperity of the people (Susanto, 2016). Given the large volume of the budget being managed, the risk of financial leakage that has implications for state financial losses becomes a real challenge in the system of government governance (Simatupang, 2021).

The development of law enforcement against corruption crimes in Indonesia has undergone a very fundamental doctrinal shift following the issuance of Constitutional Court Decision Number 25/PUU-XIV/2016 (Kristanto, 2019). That decision stated that the phrase *"may cause loss to state finances or the state economy"* in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Anti-Corruption Law) is contrary to the 1945 Constitution because it violates legal certainty (Kristanto, 2019). Through this decision, the character of the corruption offense relating to state financial loss officially shifted from a formal offense to a material offense. The implication is that law enforcement officers are no longer sufficiently required to prove the existence of potential loss, but must instead prove the existence of a real state financial loss whose amount is certain (actual loss) (Kristanto, 2019; Tarigan, 2022).

This actual loss doctrine is then reflected in the new substantive criminal law, as regulated in Articles 603 and 604 of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). A new constitutional issue then arose concerning the Elucidation of Article 603 of the National Criminal Code, which states:

> *"What is meant by 'harming state finances' is based on the results of an examination by a state financial audit institution."*

This elucidation provision has given rise to overlapping interpretations in practice regarding which supervisory institution is constitutionally authorized to calculate and determine state financial losses. On the one hand, the Audit Board (BPK) holds a direct mandate from the Constitution. On the other hand, the Financial and Development Supervisory Agency (BPKP), the Government Internal Supervisory Apparatus (APIP), and certified public accountants are also actively conducting calculations of state financial losses in order to accelerate the investigation process under other legal frameworks (Pinter Hukum, 2026).

This normative uncertainty was examined in Case Number 28/PUU-XXIV/2026 before the Constitutional Court. Although the Court rejected the material review petition filed by the Petitioners (Bernita Matondang and Vendy Setiawan), the Court's legal reasoning provided a binding constitutional interpretation. The Court affirmed that the phrase *"state financial audit institution"* in the Elucidation of Article 603 of the National Criminal Code specifically refers to BPK as the institution that is constitutionally free and independent (Jayanti, 2026).

However, this constitutional affirmation has triggered institutional tension at the level of law enforcement practice. The Deputy Attorney General on Special Criminal (Jampidsus) responded to the decision by issuing Circular Letter Number B-1391/F/Fjp/04/2026, instructing prosecutors throughout Indonesia to continue to adhere to previous Constitutional Court decisions (particularly Constitutional Court Decision Number 31/PUU-X/2012), which allow the calculation of state financial losses to be carried out by institutions other than BPK (Jayanti, 2026).

In addition, a classic problem that often drags government officials and private partners into criminal proceedings is the categorization of audit findings in the form of overpayment. Discrepancies in the volume of work or errors in administrative calculations are often directly qualified as corruption crimes by investigators without providing room for administrative resolution as regulated under state treasury legislation (Hutabarat et al., 2022). Therefore, an in-depth, normative, and critical juridical study is needed to map out the boundary of demarcation of criminal liability for overpayment following Constitutional Court Decision Number 28/PUU-XXIV/2026.

Based on the background described above, this research focuses on the issue of how the theoretical position and normative limits of criminal liability for state financial losses originating from audit overpayment findings are based on Indonesian positive law. In addition, this research also examines the juridical implications of Constitutional Court Decision Number 28/PUU-XXIV/2026 on the division of authority among audit institutions and the practice of proving state financial losses in corruption trials.

LITERATURE REVIEW

The Concept of State Finance and the Development of the Actual Loss Doctrine

The juridical definition of state finance is regulated in Article 1 number 1 of Law Number 17 of 2003 concerning State Finance (State Finance Law), namely all rights and obligations of the state that can be valued in money, as well as anything in the form of money or goods that can become state property in connection with the exercise of those rights and obligations (Simatupang, 2011; Sutedi, 2022). This concept positions the state as a sui generis entity that controls public wealth for the public interest.

The management of state finances contained in the State Budget is further elaborated in Law Number 1 of 2004 concerning State Treasury (State Treasury Law). Article 1 number 22 of the State Treasury Law formulates the definition of State/Regional Loss, namely:

> *"a shortage of money, securities, and goods, whose amount is real and certain, as a result of unlawful conduct, whether intentional or negligent."*

An identical definition is also regulated in Article 1 number 15 of Law Number 15 of 2006 concerning the Audit Board (BPK Law). Normatively, all three laws similarly define state loss as a loss that is real and certain in amount.

The development of the state loss doctrine in Indonesia shifted radically following Constitutional Court Decision Number 25/PUU-XIV/2016. Prior to this decision, law enforcement officers often used a formal offense approach, in which the existence of potential loss or an unrealized financial estimate was already sufficient to name a person a corruption suspect (Margono, 2026). The Constitutional Court ruled that this formal approach created legal uncertainty in violation of Article 28D paragraph (1) of the 1945 Constitution. Through the actual loss doctrine, the Court affirmed that state financial loss in corruption offenses must have genuinely occurred, be real, and have a certain amount that can be calculated based on the findings of the authorized institution.

Public Sector Audit Theory and International Standards

From the perspective of public finance law, public sector audits are carried out based on international standards set by the International Organisation of Supreme Audit Institutions (INTOSAI) through the International Standards of Supreme Audit Institutions (ISSAI). Based on these standards, the role of the Supreme Audit Institution (SAI), held in Indonesia by BPK, has a crucial function in maintaining public accountability and detecting fraud (anti-corruption) (Simatupang, 2018). The taxonomy of public sector audit is generally divided into three main categories (Wuisan et al., 2013):

1. Financial Audit: Aimed at assessing the fairness of the presentation of government entity financial statements with reference to Government Accounting Standards (SAP) in order to provide an audit opinion (such as Unqualified Opinion / WTP).

2. Compliance Audit: Assesses whether the management and accountability of state finances have complied with the entire corridor of statutory regulations.
3. Performance Audit: Assesses aspects of efficiency, effectiveness, and economy (value for money) in the management of government programs.

In addition to the three categories of audit above, there is also Investigative Audit (or State Financial Loss Calculation Audit). Based on Law Number 15 of 2004 concerning the Examination of the Management and Accountability of State Finance (Law 15/2004), an investigative audit is an examination with a specific purpose designed specifically to identify and prove the existence or absence of irregularities or indications of corruption crimes resulting in state financial loss (Juniarto, 2025).

Theory of Criminal Liability, Fault (*Mens Rea*), and Its Relation to the Element of State Financial Loss

In modern criminal law, the fundamental principle of *geen straf zonder schuld* or *actus non facit reum nisi mens sit rea* (no punishment without fault) applies. The theory of criminal liability requires cumulative proof of two main elements: an objective element in the form of an external act that violates the law (*actus reus*) and a subjective element in the form of a reprehensible state of mind (*mens rea*) (Sanjaya, 2025).

In corruption cases related to state financial loss, the subjective element of fault (*mens rea*) must be proven in the form of intent (*dolus*) or conscious will to commit the crime (*willens en wetens*). This state of mind is reflected in the presence of evil intent to enrich oneself, another person, or a corporation by misusing authority or committing unlawful conduct (Siddiq et al., 2026).

According to the theoretical analysis of Siddiq Armia, criminal law norms must be formulated firmly (*lex certa*) and without multiple interpretations so as not to open room for the criminalization of administrative relationships or purely civil disputes. If a state financial loss arises purely from administrative error or technical failure without any subjective element of fault (*mens rea*), then criminal liability cannot be applied. This is where the principle of *ultimum remedium* (criminal law as a last resort) must be upheld, in which resolution must be preceded by administrative law instruments (*primum remedium*) or civil law (Arief, 2023).

METHOD

This research is normative legal research, namely research that examines law as norms or rules that apply within the legal system. The research focus is directed at analysis of the regulations regarding criminal liability for state financial losses originating from audit overpayment findings and the implications of Constitutional Court Decision Number 28/PUU-XXIV/2026 on proving state financial losses in corruption crimes.

The approaches used include the statutory approach, the case approach, and the conceptual approach. The statutory approach is carried out by examining various statutory regulations governing state finance, corruption crimes, examination of state finances, and the National Criminal Code. The case approach is carried out through analysis of Constitutional Court Decision Number 28/PUU-XXIV/2026 along with Constitutional Court decisions related to proving state financial losses, particularly Decision Number 25/PUU-XIV/2016 and Decision Number 31/PUU-X/2012. Meanwhile, the conceptual approach is used to analyze the concepts of state financial loss, the actual loss doctrine, criminal liability, *actus reus*, *mens rea*, and the principle of *ultimum remedium* based on the views of experts.

The legal materials used consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2003 concerning State Finance, Law Number 1 of

2004 concerning State Treasury, Law Number 15 of 2004 concerning the Examination of the Management and Accountability of State Finance, Law Number 15 of 2006 concerning the Audit Board, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, Law Number 1 of 2023 concerning the Criminal Code, Constitutional Court Decision Number 25/PUU-XIV/2016, Constitutional Court Decision Number 31/PUU-X/2012, Constitutional Court Decision Number 28/PUU-XXIV/2026, as well as other related regulations and policies. Secondary legal materials consist of books, scientific journal articles, research results, and expert opinions relevant to the research theme. Tertiary legal materials include legal dictionaries, encyclopedias, and other reference sources that support the interpretation of primary and secondary legal materials.

The collection of legal materials was carried out through library research, namely by tracing, inventorying, and examining various statutory regulations, court decisions, scientific literature, and documents related to the research object. Analysis of the legal materials was carried out qualitatively using a descriptive-analytical method and legal interpretation techniques. The analysis began by identifying the legal norms governing state financial loss and criminal liability, then comparing provisions across regulations and examining the legal reasoning (*ratio decidendi*) in Constitutional Court Decision Number 28/PUU-XXIV/2026. Subsequently, systematic and conceptual interpretation was carried out to obtain legal argumentation regarding the boundary of criminal liability for state financial losses originating from audit overpayment findings following the decision.

RESULTS AND DISCUSSION

Analysis of the Ratio Decidendi of Constitutional Court Decision Number 28/PUU-XXIV/2026

1. Case Profile, Legal Standing, and Statements of the Parties

The material review petition in Case Number 28/PUU-XXIV/2026 was filed by Bernita Matondang (Petitioner I) and Vendy Setiawan (Petitioner II) represented by legal counsel from the Leo & Partners Law Office.

a. Petitioner I (Bernita Matondang): A law student representing the interests of her mother, Tukiyah, as the owner of a catering business (a third-party vendor) partnering with a regional government. Petitioner I claimed to have suffered constitutional loss because the lack of clarity in the Elucidation of Article 603 of the National Criminal Code created legal uncertainty (*lex certa*) for business actors. A purely civil relationship subject to the principle of *pacta sunt servanda* was considered vulnerable to being drawn into the realm of corruption due to the absence of a transparent standard for assessing state financial loss from the outset.
b. Petitioner II (Vendy Setiawan): A law student and prospective judge undergoing preparatory guidance for the judicial selection process, with administrative work experience at the National Land Agency (BPN) Land Office. Petitioner II claimed that the lack of clarity in the norm requires judges to bear uncertainty in assessing evidence of state financial loss, which has the potential to trigger disparity in decisions and undermine the independence of judicial power.

During the trial, the House of Representatives (DPR) of the Republic of Indonesia stated that the Elucidation of Article 603 of the Criminal Code is not contrary to the 1945 Constitution because it has provided a clear parameter that the calculation of state financial loss must be based on the results of an examination by a state financial audit institution, namely BPK. The DPR affirmed that this interpretation does not eliminate the authority of investigators to coordinate with other institutions based on prior jurisprudence, but rather affirms the constitutional position of BPK as the holder of the authority to make a final determination of loss (Muhammad, 2026).

The Government (President), in its oral statement, also expressed agreement with the DPR. The Government held the view that the Elucidation of Article 603 of the Criminal Code maintains the dignity of corruption eradication without violating the principle of legal certainty, because judges at trial are still given full independence to assess the quality of evidence based on the facts of the trial (Muhammad, 2026).

2. Critical Analysis of the Court's *Ratio Decidendi*

Although in its verdict the Constitutional Court rejected the Petitioners' petition in its entirety, a critical analysis of the ratio decidendi shows that the Court carried out a very crucial constitutional interpretation of the Elucidation of Article 603 of the National Criminal Code.

The Court stated that the phrase *"state financial audit institution"* referred to in the Elucidation of Article 603 of the National Criminal Code specifically refers to BPK. The Court based this argument on two main legal grounds:

a. Constitutional Ground: Article 23E paragraph (1) of the 1945 Constitution positions BPK as the sole state finance examining institution that holds a constitutionally free and independent position.
b. Attributive Statutory Ground: Article 10 paragraph (1) of the BPK Law grants attributive authority to BPK to assess and/or determine the amount of state loss caused by unlawful conduct, whether intentional or negligent.

The Court held that the formulation of the Elucidation of Article 603 of the National Criminal Code is not contrary to the principle of fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution.

3. Implications of the Decision on the Evidentiary System and the Position of Audit Results as Evidence

The Constitutional Court's affirmation in Decision Number 28/PUU-XXIV/2026 changes the dynamics of the position of audit results within the evidentiary system of corruption criminal justice. On the one hand, BPK's Examination Report (LHP) is positioned as documentary evidence carrying very strong evidentiary weight because it is issued by an institution with a constitutional mandate. However, within the Indonesian criminal justice system, which adheres to the principle of negative statutory proof (*negatief wettelijk "bewijsstelsel"*), BPK's audit results do not have absolute binding authority over the judge.

BPK's audit results remain one piece of evidence that must be assessed together with other evidence (such as witness testimony, expert testimony, and the defendant's statement) in accordance with the provisions of criminal procedural law (Setiyono et al., 2026). Judicial independence guarantees the freedom to examine the validity of the audit methodology, economic assumptions, and calculation models presented at trial. Judges retain the authority to independently assess the relationship between the defendant's unlawful conduct and the real amount of state financial loss caused.

Juridical Analysis of Criminal Liability for State Financial Loss Based on Overpayment Findings Following Constitutional Court Decision Number 28/PUU-XXIV/2026

1. Implications of Constitutional Court Decision Number 28/PUU-XXIV/2026 on the Determination of State Financial Loss

Constitutional Court Decision Number 28/PUU-XXIV/2026 is one of the decisions that provides a new direction for the interpretation of the element of state financial loss in corruption crimes, particularly following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The material review petition in that case was filed against the Elucidation of Article 603 of the National Criminal Code, specifically the phrase *"based on the results of* *an examination by a state financial audit institution,"* which was considered to give rise to legal uncertainty regarding the institution authorized to examine state financial loss. According to the Petitioners, this formulation opens the possibility of multiple interpretations because in law enforcement practice there are various institutions that have been calculating state financial losses, such as the Audit Board (BPK), the Financial and Development Supervisory Agency (BPKP), and the Government Internal Supervisory Apparatus (APIP).

In its verdict, the Constitutional Court rejected the Petitioners' petition in its entirety. Nevertheless, the Court provided a constitutional interpretation of the Elucidation of Article 603 of the National Criminal Code through its legal reasoning (*ratio decidendi*). The Court affirmed that the phrase *"state financial audit institution"* must be interpreted as the Audit Board (BPK), namely the state institution that obtains authority directly from the 1945 Constitution of the Republic of Indonesia to carry out examinations of the management and accountability of state finances. This interpretation was intended to provide legal certainty regarding the application of the element of state financial loss in corruption cases so that no differences of interpretation occur regarding which institution holds constitutional legitimacy in examining state financial losses.

The Court's consideration was based on the provisions of Article 23E paragraph (1) of the 1945 Constitution, which states that the examination of the management and accountability of state finances is carried out by an Audit Board that is free and independent. This constitutional provision is then further elaborated in Article 10 paragraph (1) of Law Number 15 of 2006 concerning the Audit Board, which grants BPK the authority to assess and/or determine the amount of state loss caused by unlawful conduct, whether committed intentionally or through negligence. Based on this construction, the Court held that the reference to *"state financial audit institution"* in the Elucidation of Article 603 of the Criminal Code cannot be separated from BPK's constitutional position as the state's independent external auditor.

This affirmation cannot be separated from the development of the state loss doctrine previously established through Constitutional Court Decision Number 25/PUU-XIV/2016. In that decision, the Court changed the paradigm of proving state financial loss from a potential loss approach to an actual loss approach, so that the element of state financial loss in corruption crimes must be proven as a real loss whose amount is certain. Decision Number 28/PUU-XXIV/2026 basically does not change that doctrine, but rather provides certainty regarding the institution that has a constitutional basis to examine state financial losses as part of proving the element of actual loss. Thus, the two decisions form a single unified legal construction that positions state financial loss as an element that must be proven in reality while also being examined by an institution that holds constitutional legitimacy.

Nevertheless, the Court did not position BPK's examination results as the sole basis that automatically gives rise to criminal liability. The existence of BPK's audit results is only related to proving the element of state financial loss, while criminal liability still requires proof of all elements of the crime as regulated in the provisions of substantive criminal law. Therefore, law enforcement officers remain obligated to prove the existence of unlawful conduct, the causal relationship between the conduct and the state financial loss, and the perpetrator's fault in accordance with the applicable evidentiary system. In other words, BPK's examination results do not eliminate the judge's authority to assess all evidence submitted at trial (Simatupang, 2020).

The juridical implication of Constitutional Court Decision Number 28/PUU-XXIV/2026 lies in the affirmation of the parameters for proving state financial loss in corruption cases. This decision does not change the elements of the corruption offense or close off the possibility of using examination results from other institutions in the evidentiary process, but clarifies that the interpretation of the phrase *"state financial audit institution"* in the Elucidation of Article 603 of the Criminal Code must be linked to BPK's constitutional position as regulated in the 1945 Constitution. Thus, the decision provides legal certainty regarding the determination of state financial loss while also serving as the basis for discussion of the position of other audit institutions in the evidentiary system of corruption crimes, which will be described in the following subchapter.

2. The Position of Audit Institutions in Proving State Financial Loss Following Constitutional Court Decision Number 28/PUU-XXIV/2026

The Constitutional Court's affirmation in Decision Number 28/PUU-XXIV/2026 regarding the meaning of the phrase *"state financial audit institution"* carries implications for the division of authority among audit institutions in proving state financial loss. Prior to this decision, law enforcement practice showed that investigators often used audit results issued by various institutions, whether the Audit Board (BPK), the Financial and Development Supervisory Agency (BPKP), the Government Internal Supervisory Apparatus (APIP), or public accountants appointed as needed for the examination. This practice then gave rise to debate regarding which institution has the authority to determine state financial loss as an element of corruption crimes. Through Decision Number 28/PUU-XXIV/2026, the Court provided a constitutional boundary on this issue without eliminating the function of other audit institutions in the evidentiary process.

BPK is a state institution that obtains authority directly from Article 23E paragraph (1) of the 1945 Constitution of the Republic of Indonesia to carry out examinations of the management and accountability of state finances. This authority is then further elaborated in Law Number 15 of 2006 concerning the Audit Board, which grants BPK the authority to assess and/or determine the amount of state loss caused by unlawful conduct. Therefore, following Constitutional Court Decision Number 28/PUU-XXIV/2026, BPK's position is further affirmed as the audit institution that obtains constitutional legitimacy in the examination of state financial loss as referred to in the Elucidation of Article 603 of the National Criminal Code.

Unlike BPK, the Financial and Development Supervisory Agency (BPKP) is a government internal supervisory apparatus under the President that carries out an internal supervisory function over the administration of government. This function includes audits, reviews, evaluations, monitoring, and investigative audits in order to support accountability in the management of state finances. Thus, BPKP's authority is more administrative and technical in nature as part of the government's internal supervisory system, so that audit results issued by BPKP are in principle a supporting instrument in the evidentiary process and not a constitutional determination of state financial loss as held by BPK's authority.

A nearly similar role is also carried out by the Government Internal Supervisory Apparatus (APIP). Based on Law Number 30 of 2014 concerning Government Administration and the provisions concerning the Government Internal Control System, APIP is tasked with providing guidance, internal supervision, and evaluation of the administration of government in order to prevent administrative irregularities. In the context of state financial management, APIP's examination results are basically intended as a means of administrative correction and governance improvement, so that its orientation differs from the proving of corruption crimes. Therefore, APIP's findings cannot be understood as a final determination regarding state financial loss, but rather as part of the internal supervisory process that can serve as preliminary information for law enforcement officers if more serious indications of irregularities are found.

In addition to government institutions, public accountants may also be involved in certain examinations in accordance with the provisions of statutory regulations. The examination results carried out by public accountants can provide information regarding financial condition, compliance with accounting standards, and indications of irregularities in an activity. However, the position of such audit results remains different from BPK's examination results because it does not arise from constitutional authority, but rather from an engagement relationship based on applicable law. Therefore, public accountants' audit results are more appropriately positioned as supporting evidence that can be considered together with other evidence in judicial proceedings.

Further development is shown through Supreme Court Circular Letter Number 2 of 2024, which provides guidance for judges in assessing evidence regarding state financial loss. The Circular still positions BPK as the primary institution in the examination of state financial loss, but at the same time provides room for judges to consider audit results from BPKP, APIP, or public accountants as long as they are submitted lawfully at trial. Thus, the main focus of Supreme Court Circular Letter Number 2 of 2024 is not to expand the authority of audit institutions, but to affirm judicial independence in assessing all evidence based on facts revealed at trial in accordance with the applicable evidentiary system.

This construction is basically not necessarily contrary to Constitutional Court Decision Number 31/PUU-X/2012. That decision provided room for law enforcement officers to coordinate with other institutions in the process of proving state financial loss as needed for investigation. Meanwhile, Constitutional Court Decision Number 28/PUU-XXIV/2026 focuses more on the interpretation of the Elucidation of Article 603 of the National Criminal Code and the affirmation of BPK's constitutional position as a state financial audit institution. Therefore, the two decisions need not be positioned as norms that contradict each other, but rather as regulations that operate in different contexts, namely between the technical needs of evidence and the affirmation of the constitutional authority of the audit institution.

Following the pronouncement of Constitutional Court Decision Number 28/PUU-XXIV/2026, the Attorney General's Office, through Circular Letter of the Deputy Attorney General for Special Crimes Number B-1391/F/Fjp/04/2026, instructed that audit results from BPKP, APIP, or public accountants may still be utilized in the handling of corruption cases. This internal policy shows that in law enforcement practice, there remains a need to utilize various audit instruments to support the effectiveness of investigation and prosecution. Nevertheless, in terms of the hierarchy of norms, this circular letter does not change or override the constitutional meaning that the Court has given to the Elucidation of Article 603 of the National Criminal Code. Thus, the existence of the Deputy Attorney General on Special Criminal (Jampidsus) Circular Letter is more appropriately understood as an internal technical guideline for law enforcement officers, while the constitutional interpretation of BPK's position still refers to the Constitutional Court's Decision.

Based on the above description, Constitutional Court Decision Number 28/PUU-XXIV/2026 does not eliminate the role of BPKP, APIP, or public accountants in the process of proving corruption crimes. The decision instead clarifies the division of function of each institution in the system of proving state financial loss. BPK remains positioned as the institution that obtains constitutional legitimacy in the examination of state financial loss, while audit results from other institutions can be used as technical data or supporting evidence that is subsequently freely assessed by the judge together with other evidence. With such a construction, the evidentiary system maintains a balance between legal certainty regarding the authority of audit institutions and the principle of judicial independence in examining and deciding corruption cases.

3. Criminal Liability for State Financial Loss Originating from Audit Overpayment Findings

Not every overpayment finding in the results of a state financial examination can automatically be qualified as a corruption crime. In the practice of state financial examination, overpayment findings are often a consequence of administrative error, errors in calculating the volume of work, errors in applying contract specifications, or weaknesses in internal control. Therefore, the existence of an overpayment finding basically only shows an indication of state financial loss that still requires further assessment regarding the cause, the nature of the violation, and whether or not there is a criminal element (Tarigan, 2022). This approach is in line with the concept of state financial loss in Law Number 1 of 2004 concerning State Treasury, which requires the existence of a shortage of money, securities, or goods whose amount is real and certain as a result of unlawful conduct, whether intentional or due to negligence (Yogiswari & Purwanto, 2023).

Following Constitutional Court Decision Number 25/PUU-XIV/2016, the element of state financial loss in corruption crimes is no longer understood based on a potential loss approach, but must be proven as actual loss, or loss that has genuinely occurred and whose amount can be ascertained. The Court's decision was then further affirmed through Decision Number 28/PUU-XXIV/2026, which provides certainty regarding the institution authorized to examine state financial loss as referred to in the Elucidation of Article 603 of the National Criminal Code. Thus, the existence of an overpayment finding is not yet sufficient to fulfill the element of state financial loss in corruption crimes if it has not yet been proven as a real and certain loss based on a lawful evidentiary mechanism.

In addition to proving the existence of state financial loss, criminal liability also requires the fulfillment of the element of the perpetrator's fault. In criminal law doctrine, the principle of *geen straf zonder schuld* is recognized, affirming that a person can only be punished if, in addition to committing unlawful conduct (*actus reus*), that person also has fault in the form of intent (*dolus*) or negligence (*culpa*) in accordance with the provisions of statutory regulations. Therefore, in cases originating from overpayment findings, law enforcement officers are not sufficiently required to prove only the existence of a payment discrepancy, but must also prove that the discrepancy arose from unlawful conduct committed intentionally to enrich oneself, another person, or a corporation, thereby causing state financial loss.

Conversely, if the overpayment occurred solely due to administrative error, technical mistake, or negligence in the execution of work without accompanying evil intent, then its resolution is in principle more appropriately pursued through administrative law or civil law mechanisms. This approach is in line with the principle of *ultimum remedium*, which positions criminal law as a last resort in resolving a legal problem. Thus, the use of criminal instruments must be limited only to conduct that genuinely fulfills all elements of the corruption crime, so that administrative errors in the management of state finances are not criminalized.

In this context, Constitutional Court Decision Number 28/PUU-XXIV/2026 not only clarifies the mechanism for proving state financial loss, but also strengthens the principle that the results of a state financial loss examination do not automatically give rise to criminal liability (no automatic criminal liability). Audit results only function as one piece of evidence regarding the existence of state financial loss, while the judge remains obligated to comprehensively assess whether there is a causal relationship between the defendant's conduct, the state financial loss caused, and the element of fault required in criminal law. Thus, criminal liability for state financial loss originating from audit overpayment findings can only be imposed if it is cumulatively proven that there is real state financial loss (actual loss), unlawful conduct (*actus reus*), and the perpetrator's fault (*mens rea*) as required under Indonesian positive law.

CONCLUSION

Based on the research results, it can be concluded that the position of audit overpayment findings cannot automatically be used as a basis for criminal liability for state financial loss. Criminal liability still requires the fulfillment of the elements of real state financial loss (actual loss), criminal conduct (*actus reus*), and fault (*mens rea*). In addition, Constitutional Court Decision Number 28/PUU-XXIV/2026 gives implications for the division of authority among audit institutions and the practice of proving state financial loss in corruption cases, so that legal certainty is needed in its application. In addition, there is a need for a more comprehensive statutory framework governing the calculation of state financial loss, including clear provisions on the competent authority, applicable methodology, and evidentiary value of audit findings in criminal proceedings. Such regulation is essential to ensure consistency in determining state financial loss and to prevent legal uncertainty arising from overlapping institutional authorities and differing calculation methods. Thus, harmonization of regulations regarding the proving of state financial loss is needed, particularly concerning the authority relationship between the Audit Board and other audit institutions, in order to avoid differences of interpretation in law enforcement practice. In addition, law enforcement officers should not automatically qualify every overpayment finding as a corruption crime, but must carry out comprehensive proof of the elements of actual loss, *actus reus*, and *mens rea*, and clearly distinguish between administrative error, contractual default, and corruption crime, so that the application of criminal law remains in line with the principle of *ultimum remedium* (Law on the Calculation of State Losses).

Based on this conclusion, the following recommendations can be put forward. First, for legislators, harmonization of regulations regarding the proving of state financial loss is needed, particularly concerning the authority relationship between the Audit Board and other audit institutions. Legislators should also formulate or strengthen statutory provisions specifically regulating the calculation of state financial loss, including uniform standards for its assessment, the institutions authorized to conduct such calculations, and the legal status of the resulting audit reports as evidence in corruption cases. This harmonization is important to avoid differences of interpretation in law enforcement practice and to provide legal certainty regarding the mechanism for proving the element of state financial loss in corruption crimes.

Second, for law enforcement officers, every overpayment finding in audit results should not be automatically qualified as a corruption crime. The handling of cases needs to be based on comprehensive proof of the elements of actual loss, *actus reus*, and *mens rea*, while clearly distinguishing between administrative error, contractual default, and corruption crime. This approach is needed so that the application of criminal law remains in line with the principle of *ultimum remedium* and does not give rise to the criminalization of administrative errors in the management of state finances.

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