


Implications of the Constitutional Court Decision on the Authority of the Financial and Development Supervisory Board in Determining State Losses

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Abstract

Introduction: This research examines the authority of the Financial and Development Supervisory Board in auditing state financial losses following Constitutional Court Decision Number: 28/PUU-XXIV/2026 in corruption cases, as regulated under Law Number 1 of 2023 concerning the Criminal Code. The decision emphasizes that auditing state losses constitutes the constitutional authority of the Supreme Audit Board.

Purposes of the Research: This study aims to examine and analyze the legal implications arising from Constitutional Court Decision Number 28/PUU-XXIV/2026 on the authority of Financial and Development Supervisory Board in auditing state financial losses. It focuses on assessing how the decision reshapes institutional roles and affects the legal framework governing the determination of state losses in corruption cases.

Methods of the Research: The research employs a normative juridical method (normative law research), which is based on legal norms applicable within society. This approach analyzes statutory regulations, legal principles, and relevant doctrines to understand how legal norms function as guidelines for behavior, particularly in relation to institutional authority in auditing state financial losses.

Findings of the Research: The findings show that the Constitutional Court's decision functionally limits the Financial and Development Supervisory Board authority in determining state losses, shifting it to the role of investigating support and initial data provider. However, structural uncertainties have not been fully resolved due to derivative regulations, such as Presidential Regulation Number 192 of 2014, which recognizes that Financial and Development Supervisory Board authority is still in effect without a clear transition mechanism. The novelty of this research lies in an in-depth analysis of the normative void after the Constitutional Court's decision that has not been addressed by implementing regulations, as well as its practical implications for the effectiveness of corruption eradication.

Keywords: State Financial Losses; Financial and Development Supervisory Board; Constitutional Court Decision.

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INTRODUCTION

The Republic of Indonesia constitutionally affirms itself as a state governed by law (*rechtsstaat*), as explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Within the *rechtsstaat* tradition, a rule-of-law state requires three fundamental pillars: (1) the protection of fundamental rights, (2) a clear separation of powers, and (3) the principle of legality in every act of governance. This conception further develops in the idea of *the rule of law* as articulated by Albert Venn Dicey, emphasizing the supremacy of law, equality before the law, and a constitution grounded in the protection of

individual rights.¹ Within this framework, every authority exercised by state institutions – including those in the field of state financial supervision and auditing – must be derived from valid, measurable, and accountable legal norms. Thus, the institutional design of state financial oversight is not merely an administrative choice but a constitutional imperative directly tied to the principles of legality and legal certainty as the core of the rule of law.

From a normative juridical perspective, the concept of state financial loss constitutes a fundamental element in the public financial law system as well as an essential component in the construction of corruption criminal law. Law Number 17 of 2003 on State Finance and Law Number 1 of 2004 on State Treasury establish a normative framework for state financial management that requires accountability and transparency. Legally, state financial loss is understood as a reduction in state assets – whether in the form of money, securities, or goods – resulting from an unlawful act, whether committed intentionally or through negligence. Historically, debates surrounding this concept have revolved around two approaches: *potential loss* (losses that are prospective or merely threatening) and *actual loss* (losses that are real, definite, and quantifiable).

Auditing state financial losses from a normative juridical perspective serves multiple purposes. Primarily, such audits aim to objectively quantify the extent to which state finances have been reduced as a result of unlawful acts or deviations from applicable regulations. Secondly, they function as evidentiary instruments in law enforcement processes, particularly in corruption cases where the element of “causing state financial loss” constitutes a material offense that must be proven.² From the standpoint of administrative law, these audits also strengthen public accountability through mechanisms of responsibility over the management of state assets and budgets.

Based on Article 27 of Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Board, as amended by Presidential Regulation Number 2 of 2025, the Deputy for Investigation of Financial and Development Supervisory Board is tasked with carrying out functions that include investigative audits of cases indicating state financial losses, audits for calculating state financial losses, and the provision of expert testimony. Two principal instruments employed by Financial and Development Supervisory Board in this context are investigative audits aimed at detecting the presence of fraud, and audits for calculating state financial losses, which are conducted to determine the concrete value of such losses.³

The enactment of Law Number 1 of 2023 on the Criminal Code introduces a new dimension to the normative construction of corruption offenses. The phrase “causing state financial loss” as stipulated in Articles 603 and 604 of the Criminal Code does not provide clear parameters regarding which institution is authorized to determine such losses, does not establish standardized methodologies for their calculation, and does not specify at what stage of proof such audit results must be presented and assessed.

¹ Divany Harbina et al., “Konsep Negara Hukum Dalam Perspektif Hukum Tata Negara Indonesia (The Concept Rule Of Law From The Perspective Of Indonesian Constitutional Law),” *Media Hukum Indonesia (MHI)* 2, no. 3 (2024): 290, <https://doi.org/10.5281/zenodo.11670332>.

² Cut Faizal Amalyh et al., “Peran BPK Sebagai Lembaga Negara Dalam Meningkatkan Akuntabilitas Keuangan Di Indonesia,” *Judge : Jurnal Hukum* 06, no. 01 (2025): 169–78, <https://doi.org/10.54209/judge.v6i01.938>.

³ Mecky Wurangian, Jullie J Sondakh, and Hendrik Manossoh, “Pengembalian Kerugian Negara Dalam Audit Investigatif Dan Audit Penghitungan Kerugian Keuangan Negara Kajian Dari Sudut Pandang Auditor Pada Perwakilan Badan Pengawasan Keuangan Dan Pembangunan Provinsi Sulawesi Utara,” *Jurnal Riset Akuntansi Dan Auditing “GOODWILL”* 12, no. 2 (2021): 264–75, <https://doi.org/10.35800/jjs.v12i2.37614>.

This normative gap gives rise to what scholars describe as *structural uncertainty*, a condition in which judges – who are prohibited from refusing to adjudicate cases due to unclear norms – simultaneously lack sufficient normative boundaries to assess the elements of an offense in an objective and measurable manner. In practice, law enforcement authorities, including the Corruption Eradication Commission, Financial and Development Supervisory Board, and internal forensic accounting units, have exercised relatively broad discretion in calculating state financial losses. In many cases, courts have accepted such calculations as valid evidence, provided they meet professional standards and can be openly examined during trial. This institutional pluralism, while pragmatically expediting case handling, raises fundamental issues concerning legal certainty and constitutional legitimacy that cannot be continuously overlooked.

The Constitutional Court Decision Number 28/PUU-XXIV/2026 marks a significant milestone in the national legal system by affirming that only the Supreme Audit Institution (BPK) is authorized to calculate and determine state financial losses. This ruling directly refers to Article 23E paragraph (1) of the 1945 Constitution and Law Number 15 of 2006, and it carries *erga omnes* effect – binding universally upon all judicial institutions in Indonesia. Although the Court formally rejected the petition, its legal reasoning is decisive: it emphasizes that state financial losses must be actual/material rather than potential and positions BPK as the sole authoritative institution to determine such losses. This decision also responds to the controversy arising from Supreme Court Circular Letter Number 2 of 2024, which had opened the possibility for non-BPK audit institutions to conduct such calculations – an approach considered inconsistent with the constitutional framework. Consequently, audits conducted by Financial and Development Supervisory Board or Inspectorates should be positioned only as preliminary or investigative audits, or as supporting evidence, rather than as a final basis for determining state financial losses. This implication raises a fundamental question regarding the future legal standing of Financial and Development Supervisory Board within the anti-corruption enforcement system.

This is where the core normative gap addressed in this study lies. The Indonesian legal system has long allowed two parallel currents to coexist: constitutionally designating BPK as the sole authority, while operationally relying on Financial and Development Supervisory Board and Government Internal Supervisory Apparatus. As a result, the norm is singular, yet its implementation is plural. The Constitutional Court Decision Number 28/PUU-XXIV/2026 provides crucial constitutional clarification but does not fully resolve the question of Financial and Development Supervisory Board future legal position: whether BPKP still retains any authority in calculating state financial losses or whether its function must be entirely repositioned as merely administrative support.

The role of institutions such as Financial and Development Supervisory Board and Inspectorates is thus likely to shift toward administrative support or the provision of preliminary data, rather than serving as final determinants. At the same time, the centralization of authority in BPK necessitates a significant enhancement of its capacity, independence, and integrity, given its increasingly decisive role. The legal basis of Financial and Development Supervisory Board authority, which rests on Presidential Regulation Number 192 of 2014 – hierarchically below statutory law and, ultimately, the Constitution – remains a vulnerable point that has yet to receive a definitive normative resolution following the Constitutional Court’s ruling.

METHODS OF THE RESEARCH

The research method employed in this study is normative juridical research, which is a type of legal research grounded in prevailing legal norms within society and functions as a guideline for individual legal behavior. Accordingly, this study utilizes a library-based approach as the primary method to examine legal issues, particularly in identifying the various types of legal research methodologies, their respective characteristics, and their functions in addressing contemporary legal problems.⁴

RESULTS AND DISCUSSION

A. The Concept of State Financial Losses and the Objectives of Loss Audits from a Normative Juridical Perspective

Within the framework of a rule of law state that upholds legality as the foundation of governance, this principle serves as the primary basis for assessing all actions related to state financial management. Conceptually, state financial losses in Indonesian positive law are defined across several interconnected statutory instruments. Law Number: 17 of 2003 defines state finances as all rights and obligations of the state that can be valued in monetary terms, including all assets in the form of money or goods associated with the execution of those rights and obligations. From this definition, state financial loss can be understood, *a contrario*, as any reduction in state rights resulting from actions or policies that deviate from applicable financial management norms.

A fundamental conceptual debate in this domain concerns the distinction between the *potential loss* and *actual loss* approaches. The potential loss approach considers that state losses may be established upon the emergence of a risk or possibility of financial reduction, even if such loss has not yet materialized concretely. In contrast, the actual loss approach requires that the loss must have genuinely occurred, be real, and quantifiable with certainty. The Constitutional Court, through a series of decisions—including Decision Number: 25/PUU-XIV/2016, Number: 142/PUU-XXII/2024, and Number: 28/PUU-XXIV/2026—has consistently steered constitutional interpretation toward the actual loss approach. This doctrinal stance implies that corruption offenses involving “state financial losses” are categorized as material offenses (*materiële delicten*), rather than formal offenses (*formele delicten*), meaning that the existence of a tangible loss is an essential element for criminal liability.

This conceptual framework raises further questions regarding the purpose and function of state financial loss audits within the legal system. Such audits serve at least two layered functions. First, the evidentiary function, whereby audit results act as valid legal evidence in criminal proceedings, particularly in proving the element of state financial loss in corruption cases. Second, the accountability function, which reinforces public accountability in state financial governance. Collectively, these functions require that loss audits be conducted not only with methodological rigor and accountability but also by institutions possessing unquestionable legal legitimacy derived from the highest norm in the legal hierarchy—the Constitution.

In relation to the evidentiary function, it is also crucial to distinguish between two types of audits with different legal implications: investigative audits and state loss calculation

⁴ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurangi Permasalahan Hukum Kontemporer,” *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145–60, <https://doi.org/10.14710/gk.2020.7504>.

audits. Investigative audits are exploratory in nature and aim to detect indications of irregularities or fraud, without necessarily producing a definitive loss figure. In contrast, state financial loss calculation audits are declarative, intended to establish the exact amount of loss.⁵ This distinction is not merely technical but juridically significant, as only declarative audits logically fulfill the evidentiary requirement for proving state loss in criminal indictments.

B. The Authority of Financial and Development Supervisory Board in Calculating State Financial Losses

The Financial and Development Supervisory Board is a non-ministerial government institution directly accountable to the President. Historically, its authority in overseeing state finances has evolved through various regulatory frameworks, from Presidential Decree Number: 103 of 2001 to Presidential Regulation Number: 192 of 2014, which currently serves as its primary legal basis. Under Articles 2 and 3 of this regulation, Financial and Development Supervisory Board is tasked with administering governmental functions in the supervision of state/regional finances and national development. One of its authorities, as stipulated in Article 3(e), includes assessing state financial losses in corruption cases—an authority that appears to overlap with that of the Supreme Audit Board.⁶

However, this institutional basis must be examined in light of Audit Board in constitutionally grounded authority. Article 23E (1) of the 1945 Constitution establishes Audit Board as an independent body responsible for auditing the management and accountability of state finances. Furthermore, Article 10 (1) of Law Number 15 of 2006 explicitly authorizes BPK to assess and/or determine the amount of state losses caused by unlawful acts. From a hierarchical perspective, Financial and Development Supervisory Board in authority carries a higher normative legitimacy as it is derived directly from the Constitution and implemented through statutory law.

By contrast, Financial and Development Supervisory Board in authority to conduct state loss calculations is based solely on a presidential regulation, which occupies a lower position in the hierarchy of laws. This discrepancy forms the core of institutional dualism in Indonesia's state loss calculation system: two institutions claim authority over the same subject, yet rely on different levels of normative legitimacy. The Constitutional Court, in Decision Number: 31/PUU-X/2012, affirmed that corruption investigators may coordinate with any institution capable of determining state losses, including Audit Board and Financial and Development Supervisory Board.⁷

In practice, this dualism has produced tangible legal consequences. Law enforcement agencies, particularly prosecutors and the Corruption Eradication Commission, often prefer to collaborate with Financial and Development Supervisory Board due to its responsiveness, regional presence, and flexible coordination compared to BPK's more formal procedures. This tendency has been reinforced through regulatory instruments such

⁵ Eko Syukri Mulyadi and Rachman Hakim, "Peran Audit Investigatif Badan Pemeriksa Keuangan Dan Whistleblowing System Dalam Penanggulangan Tindak Pidana Korupsi Di Indonesia," *Jurnal Hukum, Administrasi Publik Dan Negara* 2, no. 6 (2025): 72-84, <https://doi.org/10.62383/hukum.v2i6.704>.

⁶ Erry Gusman, "Kedudukan BPKP Dalam Mengaudit Kerugian Keuangan Negara Pasca Putusan Mahkamah Konstitusi Nomor: 31/PUU-X/2012," *Ensiklopedia Social Review* 1, no. 3 (2019): 348-57, <https://doi.org/10.33559/esr.v1i3.390>.

⁷ 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* 5, no. 2 (2023): 592-604, <https://doi.org/10.33772/holresch.v5i2.55>.

as Supreme Court Circular Letter Number 4 of 2016 and later Number 2 of 2024, which broaden the range of institutions permitted to conduct state loss audits. As a result, a form of *de facto* normative pluralism has emerged: while a single constitutional authority exists at the highest level, multiple competing authorities operate at the practical level. This situation generates legal uncertainty and opens the possibility of criminalization based on questionable assumptions when loss calculations originate from institutions lacking strong constitutional legitimacy.

From a constitutional law perspective, this dualism reflects a deeper inconsistency between constitutional institutional design and operational regulatory frameworks. Authority theory in administrative law distinguishes between attribution, delegation, and mandate. Financial and Development Supervisory Board in authority constitutes constitutional attribution, meaning it is directly granted by the Constitution and cannot be transferred or replaced by lower-level regulations. Conversely, Financial and Development Supervisory Board in authority resembles delegated or mandated power derived from the executive. Thus, the key issue is not merely which institution is more suitable to calculate state losses, but rather what type of authority ensures that such calculations carry binding constitutional validity in criminal proceedings.

Presidential Regulation Number: 192/2014 places Financial and Development Supervisory Board under the President as an internal supervisory body with functions including: investigative audits of irregularities indicating state loss, audits calculating state/regional financial losses, providing expert testimony, and corruption prevention efforts.⁸

C. Constitutional Court Decision Number: 28/PUU-XXIV/2026 and Its Implications for Financial and Development Supervisory Board in Authority

Constitutional Court Decision Number: 28/PUU-XXIV/2026 originated from a judicial review petition submitted by two applicants with distinct yet complementary constitutional interests. The applicants challenged the ambiguity in Articles 603 and 604 of the new Criminal Code (Law Number 1 of 2023), particularly regarding the absence of clarity on which institution is authorized to audit state financial losses, at what stage such audits are required, and whether judges are bound by audit findings. The applicants requested that the phrase “state financial loss” be declared conditionally constitutional, allowing for broader evidentiary interpretation beyond a single audit institution and emphasizing judicial independence in assessing evidence. However, the Court rejected the petition in its entirety. Despite this, the Court’s *ratio decidendi* provides significant constitutional guidance.

The Court reaffirmed that Audit Board is the constitutionally mandated institution to audit state finances, as established under Article 23E (1) of the Constitution and Law Number 15 of 2006. Consequently, the phrase “state audit institution” in Article 603 must be interpreted exclusively as referring to Audit Board. The Court also reiterated its consistent stance that state losses must be actual and measurable, thereby reinforcing the material nature of corruption offenses.

While the Court acknowledged that other institutions, including Financial and Development Supervisory Board, may provide expert input, such contributions are limited

⁸ Nadia Fitri Irawan and Afif Syarif, “Fungsi Badan Pengawasan Keuangan Dan Pembangunan (BPKP) Berdasarkan Peraturan Presiden Nomor 192 Tahun 2014,” *Mendapo Journal of Administration Law* 2 (2021): 6, <https://doi.org/10.22437/mendapo.v2i2.13222>.

to supporting roles and cannot serve as the primary declarative basis for determining state losses. This distinction significantly narrows Financial and Development Supervisory Board in role, positioning it as a supporting or preliminary actor rather than a decisive authority.

Following this decision, Financial and Development Supervisory Board can no longer present its loss calculations as definitive evidence in criminal indictments. The authority to formally determine state losses is now constitutionally centralized in Audit Board. Nevertheless, Financial and Development Supervisory Board retains its relevance in conducting investigative audits as part of preliminary inquiries.

The decision also highlights a pressing normative gap. Although constitutionally binding, it does not automatically amend existing regulations governing Financial and Development Supervisory Board. As such, legal harmonization is urgently required through revisions to the Anti-Corruption Law, Presidential Regulations, and procedural frameworks. Without such alignment, the gap between constitutional norms and operational practice risks undermining Indonesia's commitment to the rule of law.

CONCLUSION

The division of authority between the Supreme Audit Board and the Financial and Development Supervisory Board in determining state financial losses is not merely a matter of institutional technicality, but rather a constitutional issue that directly affects legal certainty in the enforcement of corruption laws in Indonesia. Normatively, Audit Board in authority to audit and determine state financial losses is derived from constitutional attribution under Article 23E paragraph (1) of the 1945 Constitution, as operationalized by Article 10 paragraph (1) of Law Number 15 of 2006. This grants Audit Board a higher degree of legitimacy within the hierarchy of laws compared to Financial and Development Supervisory Board, whose authority is based solely on Presidential Regulation Number 192 of 2014. The Constitutional Court Decision Number: 28/PUU-XXIV/2026 has reaffirmed this constitutional position by declaring that the phrase "state audit institution" in the elucidation of Article 603 of the Criminal Code must be interpreted exclusively as referring to Audit Board. At the same time, the decision reinforces the doctrine of material offenses in corruption law, which requires that state financial losses be actual, concrete, and measurable. The juridical consequence of this ruling is the functional reduction of Financial and Development Supervisory Board in role. It can no longer act as the final authority in determining the amount of state financial loss within the framework of criminal indictments, but is instead limited to an investigative supporting role and the provision of preliminary data during the inquiry stage. However, the Constitutional Court's decision alone is insufficient to resolve the broader structural uncertainties that persist. Presidential Regulation Number 192 of 2014 and its derivative regulations, which continue to recognize Financial and Development Supervisory Board in authority, remain in force without a clear transitional mechanism. Therefore, a comprehensive and systematic harmonization of legal norms is required. This should include revisions to the Anti-Corruption Law, adjustments to the institutional regulations governing Audit Board and Financial and Development Supervisory Board, the reconstruction of procedural law relating to evidentiary standards, and the issuance of proportional technical guidelines. Such measures are essential to ensure that the centralization of authority in Audit Board does not create structural bottlenecks in corruption cases, while also aligning constitutional institutional design with law enforcement practices in accordance with the principles of the rule of law.

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