



Dispute of authority of BPK and BPKP in determining elements of state financial loss

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Abstract

The formation of the BPKP referred to Government Regulation Number 60 of 2008 concerning the Government's Internal Control System, the implementation of which was seen when the Presidential Regulation of the Republic of Indonesia Number 192 of 2014 concerning BPKP began to be formed. BPKP as part of the Government Internal Supervisory Apparatus (APIP) can carry out the same task as BPK, namely calculating the amount of state financial losses. However, the implication of the formation of the BPKP has led to the loss of the credibility of the BPK's role as a single institution and led to dualism in determining the amount of losses suffered by the state. The purpose of this study is to explain the role of the BPK and BPKP and the competent institutions in determining state financial losses so that judges can use them as a guide in giving consideration in corruption crimes. The method used is normative juridical. Based on the results of the research, the role of the BPK and BPKP in determining state financial losses in the system of laws and regulations is to improve the implementation of internal control by the BPKP in order to accelerate the completion of the follow-up of BPK audit results. The agency authorized to determine state financial losses is the BPK, which is based on Law no. 15 of 2006 has the authority to calculate state losses carried out by the Main Investigating Auditor (AUI) who has the authority to conduct investigative examinations. Based on Law no. 15 of 2006 concerning the Audit Board of the Republic of Indonesia and Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency show that the two institutions focus on the same thing, so that the principle of legislation is used *lex superior derogat legi inferiori* which means that higher level legal rules overrule higher laws.

Keywords: BPK; BPKP; corruption; authority; institution

Introduction

Every year, the government continues to strive to provide the best service to the community through power and authority. The power received by the government is the embodiment of a sovereign people. Indonesia adheres to a democratic system, namely the authority given by the people to those in power must be carried out in accordance with the legal ideals of the people as a form of embodiment of a democratic government. However, violations and irregularities often occur which lead to criminal acts of corruption committed by those in power.

Corruption is included in a form of extraordinary crime which is still happening in the Republic of Indonesia. It cannot be denied that in fact corruption is still rampant and efforts to deal with it are increasingly complex due to developments in the mode of operation of the corrupt practice itself^[1]. For Robert Klitgaard, "Corruption is an act of the people who deviate from the legal obligations of a state position because of profit, status or money involving individuals (individuals, close family, own group), or violating implementing regulations. Robert Klitgaard saw embezzlement, be it public administration or state administration, as an act of "using one's position for (gaining) individual gain". For Robert Klitgard, this method is used to win politics. Corruption gives rise to a series of cruel reflections that can interfere with perfection^[2]. Therefore, laws and regulations are formed in such a way as to reduce the rate of corruption.

The development of corrupt practices in the government requires a good strategy and planning by law enforcers to find the perpetrators of this crime and prove the existence of a crime. Corruption is not something easy. Given the

complexity of the *modus operandi* and how to carry out transactions, and the perpetrator is a professional who knows the loopholes in the applicable law.

Departing from these problems, cases of criminal acts of corruption committed by the government are certainly detrimental to the state. According to Law no. 31 of 1999 in general provisions states that state financial losses are reduced state assets caused by acts against the law, abuse of authority or opportunities or tools owned by a person, such as position or role, and negligence of a person or caused by circumstances beyond the competence of that person (*forje majeure*). State financial losses can be as follows:^[3].

1. Releasing a state/regional resource/wealth (can be in the form of money, goods) that should not have been issued;
2. The expenditure of a state/regional resource/wealth is greater than it should be according to the applicable criteria;
3. Loss of state/regional resources/wealth that should have been received (including receipts with counterfeit money, fictitious goods);
4. Receipt of state/regional resources/wealth is smaller/lower than what should be received (including receipt of damaged goods, of inappropriate quality);
5. The emergence of a state/regional obligation that should not have existed;
6. The emergence of a state/regional obligation that is bigger than it should be;
7. The loss of a state/regional right that should have been owned/received according to the regulations in force;
8. The state/regional rights received are smaller than what should have been received

Furthermore, Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission which is called the KPK Law. The KPK is obliged to coordinate with institutions entitled to eradicate corruption. Authorized institutions include the Audit Board of the Republic of Indonesia (BPK), the Financial and Development Supervisory Agency (BPKP), the State Officials Wealth Investigation Commission, and inspectorates at Non-Departmental Government Units or Institutions.

The establishment of the Financial and Development Supervisory Agency (BPKP) means that the BPK is no longer single in conducting national financial audits, because the duties and functions of the BPKP are almost the same as the BPK. The formation of BPKP refers to PP 60/2008 whose realization was seen when Presidential Decree 192/2014 began to be formed. This makes the BPKP part of the Government Internal Supervisory Apparatus (APIP), so that it can perform the same task as the BPK, which is to calculate the amount of national financial losses but only in the government's internal context. The implication of the formation of the BPKP apart from the loss of credibility of the role of the BPK as a "single" institution/organization also has an impact on the emergence of dualism in determining the amount of losses suffered by the state, which can lead to polemics in the handling of corruption cases. Basically, the eradication of corruption is not only limited to punishment for corruptors which provides a deterrent effect, but the recovery of state financial losses is also the main goal in handling corruption cases.

The provisions of Article 23 E paragraph (1) which state that: "In the framework of auditing the management and accountability of state finances, a free and independent Audit Board is formed" creates overlapping authorities and creates confusion in assessing the extent of losses suffered by the state. Sometimes, in casu the panel of judges handling corruption cases uses the results of calculations from the BPKP or BPK.

The concept and theory of the separation of powers is an important and indispensable part in formulating the relationship that accompanies the authority of every state institution in the Unitary State of the Republic of Indonesia. The formation of new state institutions that can change the position, form, and legal politics that can lead to very significant changes. This significant change is the establishment of a state commission which is often referred to as an independent state institution^[4]. The controversy over the audit, management and responsibility of authority over state finances is a very heavy role. Based on the 1945 Constitution of the Republic of Indonesia, it is necessary to establish an institution that is independent or free from the consequences of anyone, especially the authorities, namely the Supreme Audit Agency (BPK)^[4].

The dispute over the authority of BPK and BPKP has also been submitted for judicial review to the Constitutional Court which was filed by the former iMain Director of IPLN EWS, namely the request for an immaterial review of Law No. Article 23E paragraph (1) of the Constitution of the Republic of Indonesia 1945. The contents of this article have provisions that: "In order to examine the management and responsibility for state finances, an independent and independent financial audit agency will be established".

This case was handled and investigated by the Corruption Eradication Commission (KPK). KPK chooses to coordinate

with BPKP, not with BPK. With this in mind, the provision regarding the BPK Law which was issued in 12006, reappears in an even more recent regulation concerning the authority of the BPKP, President Regulation 192 of 12014 concerning the Supervisory and Development Agency^[4].

The Presidential Regulation Number 192 of 2014 concerning the Monitoring and Development Agency has created an icon of state institutional authority in the constitutional system of the Republic of Indonesia. Such conditions require that several changes occur in the implementation of international law. The change in state administration is a change in the state institutional structure. Other regulations regarding the existence of IBPKP are also contained in Government Regulation Number 160 of 2008 concerning Government Internal Control Systems. BPKP is included in the scope of the Government Internal Control Apparatus (APIP), but it is not only the IBPKP that is considered APIP, but there are also the Inspectorate General, the Provincial Inspectorate and the Regency/City Inspectorate. Law Number 130 of 2014 concerning Administration of Government, also does not explicitly stipulate which religious institution is called APIP.

Based on this conflict of authority, if the state institutions authorized to assess state financial losses are BPK and APIP which include BPKP and Inspectorate (IPP No. 160/2008), then this will raise new questions about which state institution has the authority to assess state financial losses. In the criminal act of corruption as well as the position of each institution in the constitutional system of the Republic of Indonesia^[4].

Based on the explanation above, the purpose of this study is to explain the role of BPK and BPKP in determining state financial losses in the system of laws and regulations and to explain which institutions are authorized and not authorized in determining state financial losses so that judges can use them as a guide in giving consideration in cases of acts corruption crime.

Research Method

This study uses qualitative research methods. Qualitative research is objective research that aims to understand events in social conditions by prioritizing in-depth communication processes between researchers and events being monitored. The research approach in this study uses normative juridical, namely what is written in laws and regulations (law in books) or law is conceptualized as a standard of human behavior that is considered appropriate^[5].

Result and Discussion

1. The Role of BPK and BPKP in Determining State Financial Losses

Role is the completeness of relationships based on the role that people have because they occupy special social statuses. According to Soerjono Soekanto, a role is a dynamic aspect of position (status), if a person carries out his rights and obligations in accordance with what has been determined then he carries out a role. Everyone has various characteristics in carrying out the duties, obligations or responsibilities that have been given by each in the organization or institution.

According to Gibson Invancevich and Donnelly, a role is someone who must relate to 2 (two) different systems, usually an organization^[6]. According to Riyadi, the role can be interpreted as the orientation and concept of the part

played by a party in social opposition. A role, both individual and organizational will behave according to the expectations of people or the environment. Roles are also interpreted as demands that are given structurally (norms, expectations, taboos, responsibilities and others). Role is a set of behavior with groups, both small and large, where each party carries out various roles [7]. Based on the definitions above, it can be concluded that a role is an action that limits a person or an organization to carry out an activity based on mutually agreed goals and conditions so that it can be carried out as well as possible.

One of the state institutions that have a functional role within the framework of the unity of the Republic of Indonesia is the BPK and BPKP institutions, as institutions that coordinate directly with the KPK in calculating state losses in cases of criminal acts of corruption committed by state officials. The existence of BPK itself so that it can

carry out calculations of state losses due to corruption in a comprehensive and integrated manner, so that the objectives of state institutions that are formed in accordance with their duties and functions can be carried out properly.

Establishing losses and assessments to calculate state losses is not easy. The determination of state losses is determined by the BPK and BPKP institutions, so that the two institutions need to know more deeply about their respective roles in terms of the regulations that shape them. This role is to differentiate the functions of each state institution so that there are no disputes over authority within state institutions. The author will make a comparison of the roles of these state institutions.

The comparative description of the roles of the Audit Board of the Republic of Indonesia and the Financial and Development Supervisory Agency can be seen in the table which has been described as follows.

Table 1: Comparison of the duties and authorities of the BPK and BPKP in the Indonesian Legislative Regulatory System

No.	Aspect	State Institutions that determine the Amount of State Financial Losses in Corruption Crimes	
		Badan Pemeriksa Keuangan (BPK)	Badan Pengawasan Keuangan dan Pembangunan
1.	Definition	The Supreme Audit Agency (BPK) or abbreviated as BPK is a state institution that has the authority to examine management and responsibility ¹ .	BPKP has the task of administering government affairs in the field of state/regional financial supervision and national development.
2.	Basis of Formation	The existence of BPK was first stipulated by the 1945 Constitution. Article 23 paragraph (5) of the 1945 Constitution contains the mandate: "To examine responsibility for state finances"	BPKP was formed because it was needed by the President as the Head of Government to assist him in supervising state administration.
3.	Duties and Authorities	The BPK is tasked with examining the management and accountability of state finances carried out by the Central Government, Regional Governments, other State Institutions.	BPKP has the main task of carrying out government affairs in the field of supervision of state/regional finances and national development.
4.	Function	operative function Judicial function advisory function	1. Formulation of a national policy on internal supervision of state/regional financial accountability 2. Implementation of audits, reviews, evaluations, monitoring, and 3. Internal supervision of the planning and implementation of utilization of state/regional assets; 4. Provision of consulting related to risk management, other businesses/agencies 5. Oversight of the planning and implementation of programs and/or activities that may hinder the smooth development

Source: Research Processed Results

Based on the table above, the synergy between the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP) is to improve the implementation of internal supervision by the BPKP in order to accelerate the completion of the follow-up of BPK audit results. In accordance with Soerjono Soekanto's role theory, role is a dynamic process of position (status) which means that each person has various characteristics in carrying out duties, obligations or responsibilities in each organization or institution. The roles of BPK and BPKP are of course different, but they are mutually sustainable between the roles of these state institutions. Based on the comparison table above, the BPKP carries out supervision of state/regional finances and national development, while the BPK carries out an audit of the management and responsibility of state finances ^[8].

The formal juridical provisions governing the duties and functions of the BPK prove that state losses have actually occurred. Based on the provisions of Article 23E paragraph (1) of the 1945 Constitution, BPK is given the authority to check the management and accountability of state finances.

The result of the audit of the Supreme Audit Board is the audit results report (LHP).

LHP has the functions as stated in BPK Regulation Number 1 of 2007 Appendix VI point 3. The implementation of audits, management and accountability of state finances by the BPK functions to minimize financial abuse, prevent corruption, and is used as a tool of strong facts in prosecution of acts of corruption ^[9].

2. Institutions Authorized in Determining State Financial Losses So that Judges Can Use It as a Consideration in Corruption Crime Cases

Authority according to Miriam Budiardjo is power is the ability of a person or group of people to influence the behavior of another person or group of people so that their behavior is in accordance with the wishes/goals of a person/group of people who have that power ^[10].

Judges are not required to use BPK audits in making decisions alone, even though the Supreme Council (MA) has issued MA Circular Letter (SEMA) Number 4 of 2016, which reads:

"The agency that has the right to report whether or not there is a loss of state finances is the Supreme Audit Agency because it has constitutional authority, whereas other agencies such as the Audit Board and the Financial and Development Supervisory Agency have the right to carry out audits of state financial management. However, it is not entitled to report or declare that there are state financial losses. In special cases, the judge relies on the fact that the trial can take into account the existence of state losses and the amount of state losses. The provisions in Article 10 of Law No. 15 of 2006 concerning the Supreme Audit Agency indicate that only the BPK has the right to declare that there has been a loss to the state"

The provisions in Article 10 of Law No. 15 of 2006 concerning the Supreme Audit Board indicate that only the BPK has the right to declare that there is a state loss and state the amount in accordance with the results of calculations in the LHP. That is, stating in terms of checking certainly has a different meaning. The method used as the basis for BPK in studying and calculating national financial losses must be accountable and refer to professional judgment, namely referring to Lawrence Friedman's legal system theory as an analytical tool in assessing substantial legal issues. In this provision, the BPK's authority to calculate and determine state losses is regulated in Article 10 paragraph (1) of the BPK Law.

In addition, the article on the authority of the BPKP has been regulated in Article 3 letter e of Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency. As quoted in the legal clinic article "Supervision of the audit of calculating state/regional financial losses", the parties entitled to assess/determine whether or not there were state financial losses are the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP). In this authority dispute, the BPK is most entitled to calculate state financial losses. Due to the principle of *lex superior derogat legi inferiori*.

The principle of *lex specialis derogat legi generali* is used to resolve conflicts between laws that have a broader regulatory substance and laws that have a narrower regulatory substance. For example, the conflict between the articles in the Civil Code and the Commercial Code. The articles in the Commercial Code are considered to be more specific, so these articles must be won. The structural analysis on the principle of *lex specialis derogat legi generali* in this paper shows that the hierarchy of laws (*lex*) here must be parallel. If hierarchically = these laws are no longer equal, then this principle cannot be used, so we have to look for other legal principles to resolve the conflict.

Conflicts between norms in laws and regulations can occur due to differences in hierarchies (vertical conflicts). For example, between the constitution and the law in a formal sense. All laws and regulations can also be called laws in a material sense. The law in the formal sense is definitely the law in the material sense, but the law in the material sense is not necessarily the law in the formal sense. All laws in this material sense, in legal terminology in Indonesia are called 'statutory regulations'. This vertical conflict will be resolved on the basis of *lex superior derogat legi inferiori*. Meanwhile, conflicts that occur between laws and regulations at the same level (one hierarchy or horizontally) regarding regulation of the same substance, are resolved by referring to the latest juridical enforcement among

conflicting laws. In this case, the *lex posterior derogat legi priori* principle is used. This principle can be applied in disputes over the authority of the BPK and BPKP

Based on Law No. 15 of 2006 concerning the Audit Board of the Republic of Indonesia and Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency, the two supervisory institutions regulate the same matters. Thus, the legal principle *lex superior derogat legi inferiori* is used, which means that a high level rule of law overrides or ignores a lower law. In order to avoid overlapping authorities in the laws and regulations regarding the two supervisory institutions, it is necessary to update the synchronization between Law No. 8 of 1981 concerning the Criminal Procedure Code, Law No. 31 of 1999 in conjunction with Law No. 20 2001 concerning Corruption Crimes, Law No. 15 of 2006 concerning the Audit Board of the Republic of Indonesia, and Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency.

Conclusion

The role of BPK based on Law No. 15 of 2006 BPK is tasked with examining the management and accountability of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, State-Owned Enterprises, and other institutions or agencies that manage state finances. The BPK has the authority to assess and/or determine the amount of state losses resulting from unlawful acts.

Based on the Regulation of the President of the Republic of Indonesia Number 192 of 2014, BPKP has the authority to formulate national plans at a macro level in the field of financial and development supervision, formulate policies in the field of financial and development supervision to support macro development, establish information systems in the field of financial and development supervision, fostering and supervising the implementation of regional autonomy which includes providing guidelines, guidance, training, direction and supervision in the field of financial and development supervision. The synergy of the two institutions, namely the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP) aims to improve the implementation of internal supervision by the BPKP in order to accelerate the completion of the follow-up of BPK audit results.

Based on Law Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia and Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency indicating that the two supervisory institutions regulate the same matters, the statutory principle *lex superior derogat legi inferiori* is used, which means the rule of law that higher levels can override lower laws. Based on this statutory principle, the institution authorized to determine state financial losses so that judges can use them as consideration in cases of criminal acts of corruption is the Supreme Audit Agency (BPK) because based on Law Number 15 of 2006, the BPK has the authority to calculate state losses made by the Principal Investigating Auditor (AUI).

The authority of AUI is to carry out investigative examinations, one of which is to calculate state losses submitted by the institution.

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