

Implications of the Authority in Determining State Financial Losses to Corruption Crimes Post Constitutional Court Ruling Number 31/PUU-X/2012

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Abstract

Corruption in Indonesia is considered to be very detrimental to the country's finances. Juridically, it is not easy to set limits provided state financial losses, giving rise to juridical debate in the doctrine and practice of law enforcement for criminal acts of corruption, namely debates on the limits of understanding and the scope of state finances, elements that can harm state finances, and others. The study's purpose is to analyze and find out the implications for the institution that is authorized to determine state financial losses in corruption. This research is normative legal research with a legislation, concept, and comparative approach. The legal material analysis technique is done by the method of interpretation. The results showed that based on the 1945 Constitution, the Financial Audit Agency abbreviated as BPK was the only state institution authorized as an auditor to conduct audits on the management and financial responsibility of the State. The calculation of state financial losses by the BPK needs to be standardized and must have standards so that there is certainty regarding the method in determining the losses of state finances, so there is a common view or understanding of the meaning of state finances.

Keywords: Corruption, Indonesia, Country's finance, state financial losses, the Financial Audit Agency abbreviated (BPK).

Introduction

Indonesia Corruption Watch (ICW) explained the state loss in 2017 due to corruption cases, corruption which harmed the country was considered very high as presented in the following table.

Table 1. Total State Losses Due to Corruption in Indonesia in 2017

No	Period	Corruption Cases	State Losses
1	January–April	49 cases	1,2 Trillion
2	May-August	76 cases	1, 8 Trillion
3	September–December	91 cases	2,9 Trillion
	Total	216 cases	5,9 Trillion

Source : Indonesia Corruption Watch / icw.go.id (February 2018)

Seeing this condition according to ICW the number of corruption cases and state losses will increase every year if there is no serious attention from law enforcement parties to eradicate corruption which is detrimental to the country's finances.

These institutions are between the Financial Audit Agency abbreviated as BPK and the Financial and Development Supervisory Agency abbreviated as BPKP. Weaknesses in the Indonesian financial system inherited from the New Order government are fundamental. Weaknesses include the design and implementation of the Internal Control System (SPI), noncompliance with laws and regulations, irregularities in state finances and the inconsistent disclosure of SAL (Over Budget Budget)" (Anis Chariri, 2015).

Does thus the BPK only examines the State finances as stated in paragraph (5) and not examine the State Budget because the State finances and the State Budget are as if two things are different. This is where the explanation function of paragraph (5). The explanation of this paragraph mentions concrete areas of government responsibility in state finances (how to use state expenditure money that has been approved by the People's Representative Council (DPR) to be commensurate with the State Budget Law). In other words, the understanding of state finances includes the State Budget (APBN) plus others" (Ibid, p.23).

In Indonesia, the BPK is able to carry out the calculation of state losses or research on-state losses. The calculation of state losses by the BPK is used as the basis for evidence of corruption cases in Indonesia. Therefore, the focus of this research is to understand the calculation methods carried out by BPK in determining the amount of state losses, especially those that are potential in Indonesia. The calculation of state losses is not merely related to aspects of accounting techniques (Jaka Isgiyarta, 2017). The calculation of potential state losses is highly dependent on the ability of auditors to understand the meaning of state losses, understand various methods of calculating state losses and analyze the methods that are believed to be most appropriate for each corruption case. Understanding really depends on the auditor's point of view. Therefore, this research is needed with a qualitative approach to explore meaning, the method used in the calculation of state losses.

The results of audits of state finances by the BPK according to Article 23 E paragraph (2) of the 1945 Constitution, namely: "Submitted to the People's Representative Council (DPR), Regional Representative Council (DPD), Regional People's Representative Council (DPRD), in accordance with their authority. The next task is the results of audits of state finances by the BPK according to Article 10 of the 1945 Constitution

Number 15 of 2006, namely:

1) The BPK assesses and/or determines the number of state losses caused by intentional or negligent unlawful acts committed by treasurers, BUMN/BUMD managers, and other institutions or bodies that carry out state financial the management.

2) Assessment of state financial losses and/or determination of parties who are obliged to pay compensation as referred to in paragraph 1) shall be determined by BPK's decision" (Law Number 15 of 2006),

Management of state finances still needs continuous improvement adjusted to the dynamics of national development. The government has gradually implemented changes regarding the management of state finances with the adoption of:

- a. Law Number 17 of 2003 concerning State Finance
- b. Law Number 1 of 2004 concerning State Treasury
- c. Law Number 15 of 2004 concerning the Audit of State Financial Management and Responsibility.

State losses are not only real but also potential ones, that is, those that have not yet occurred, such as state revenues that will be received. Application of the element of detrimental to state finances in the offense of criminal acts of corruption There is also an opinion that sees the loss of a transaction in which there are elements of the state, in this case for example, SOEs, not necessarily the loss becomes a state loss. In many cases of corruption, both investigators, public prosecutors, and even judges in court failed to agree on the determination of the amount of state financial losses in the criminal act of corruption that is being handled.

This happens because there is no unity of perspective on the country's finances themselves. The renewal of various laws and regulations in the field of state financial management is intended to replace and overcome the weaknesses of the legislation in the field of state financial management before, but in its development, the renewal of laws and regulations in the field of state financial management has not been able to reduce the level of state financial leakage effectively; among others, it can be measured from the increasing criminal acts that cause state financial losses or the potential to cause state financial losses that are submitted to the Court as corruption. Corruption crime which is very detrimental to state finances is reaffirmed in the General Explanation of Law Number 31 of 1999 concerning Eradication of Corruption, that: "In reality, the existence of corrupt acts has caused enormous state losses which in turn could have an impact on the onset of a crisis in various fields. For this reason, efforts to prevent and eradicate corruption need to be increased and intensified while upholding human rights and the interests of society".

This condition shows that there is a very close relationship between the laws in the field of management of state finances and the criminal act of corruption as a means of saving the state's financial losses through law enforcement of criminal acts of corruption using criminal law instruments.

The terminology of the element of "State Financial Losses" which is still a matter of debate is in the case of corruption committed by the former president of the State Electricity Company (PLN), Ir. Eddie Widiono Suwondho (Soepomo, 2012). Corruption court judges sentenced five years in prison to former PLN Managing

Director Eddie Widiono Suwondo. From the count of the Financial and Development Supervisory Agency (BPKP), said the panel, the project should have only spent a budget of Rp. 46.08 billion. As for the difference, it is considered to have made PT Netway Utama enriched while at the same time causing state losses of Rp.46.18 billion. The Assembly also considered that Eddie's step did not get approval from the PLN Board of Commissioners. But by Eddie, as if there had been an agreement from the Minister of SOEs as the Board of Commissioners of PLN, the five-year sentence itself was two years lighter than the prosecutors demanded. Earlier, the KPK prosecutor asked the court to sentence him to seven years in prison and a fine of Rp 500 million in subsidies six months in prison (Simanjuntak, 2019).

It is burdensome for Eddie's verdict, his actions are considered unprofessional as a state official. "The actions of the defendant who approved the direct appointment of the CIS-RISI project were unprofessional." While mitigating Eddie still had family responsibilities, he was not proven to enjoy money from the Customer Information System-Information System Master Plan (CIS-RISI) project and was always polite in court. Based on this decision, both Eddie and the Public Prosecutor (KPK) of the KPK have not yet decided to accept or submit an appeal. Eddie and his legal counsel and prosecutor expressed their thoughts. But after the trial, Eddie said he was disappointed with the decision. Eddie objected to the enactment of Article 6 letter a of the KPK Law because the KPK coordinated with an institution deemed unauthorized in auditing the assets of state officials, BPKP. Eddie assessed that the authority to audit assets for the purpose of investigating corruption cases should not be in the hands of BPKP. That authority should belong to the Supreme Audit Board. Related to this decision, Constitutional Justice Anwar Usman stated that the KPK could coordinate with any institution, not only with BPKP or BPK. That is for the sake of opening up material facts in the calculation of state finances in order to prove a case.

Based on the description that has been presented, the problem of corruption is not just a problem faced by the Indonesian state. However, the efforts made by Indonesia in tackling corruption are still considered not to the maximum extent that has been achieved by other countries. Therefore this research will discuss the Implications of the Authority in Determining State Financial Losses in the Corruption Case Post Constitutional Court Ruling Number 31/PUU-X/2012".

Research Methods

This research is juridical-normative research, with the Law approach, comparative approach, and concept approach (Wignjosoebroto, 2012). The legal materials used in this study consist of three legal materials, namely primary, secondary and tertiary legal materials (A.Hamid S. Attamimi, 2010). Primary legal material is the main legal material that is the subject of this research study. Secondary legal materials are obtained from law books, including theses, legal theses and dissertations, and legal journals (Ibid, p.77). Tertiary legal materials are taken from the Indonesian public dictionary, legal dictionary, and English dictionary (Khoirun nisa, 2013). The research was conducted by collecting data directly from the competent parties, for that the interview method was conducted with the authorities in the Central Jakarta District

Court related to state loss audits in the decision of the Central Jakarta District Court No.25/PIDSUS/TPK/2014/PN.JKT.PST. This interview is expected to be a reference as well as a reference for law enforcement officers, especially judges in making decisions that indeed create a sense of justice and public trust in law enforcement officials who are professional and proportionate in carrying out their functions and duties. Legal material analysis techniques using the method of interpretation.

Results and Discussion

Strengthening the Role of BPK as Mandataries of the 1945 Constitution in Examining State Financial Management

In Act Number 15 of 2006 concerning BPK, it explains; Article 6 paragraph (1): "BPK is tasked with examining the management and responsibilities of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regionally-Owned Enterprises, institutions, and entities. another manages state finances", furthermore article 7 paragraph (1):" BPK submits audit results on the management and responsibility of state finances to the DPR, DPD, and DPRD in accordance with their authority".

Article 8 paragraph (1): "For the purpose of following up on the results of the examination referred to in article 7 paragraph (1), the BPK shall also submit the results of the examination in writing to the president, governor, regent/mayor in accordance with their authority. Paragraph (3) "If a criminal element is found in the examination, the BPK shall report the matter to the competent agency in accordance with the provisions of the law no later than one month after the existence of the criminal element is known. Paragraph (5) "The BPK monitors the implementation of follow-up to the results of examinations conducted by officials as referred to in paragraph (1), and the results are notified in writing to the DPR, DPD, DPRD, as well as the government.

The BPK is a state agency tasked with examining the management and responsibilities of state finances. The principal role of the BPK is to examine the origin and extent of state revenue from any source and must know where the state money is stored and what the state money is used for. Some of the stages that BPK has gone through in carrying out the inspection are; the planning, implementation and reporting of inspection results. Each principle stage is carried out independently and independently. Inspections carried out freely and independently will produce an objective report of the examination (LHP), so that the real problems of the management and responsibilities of state finances can be identified, and then they can be properly recommended to solve the problem. The stages are:

Audit Planning. To realize comprehensive planning, the BPK can utilize the results of the examination of the government's internal supervisory apparatus, pay attention to requests, suggestions, and opinions of representative institutions, as well as consider information from the government, the Central Bank and the public. The audit plan must clearly specify the audit objectives, audit authority, and inspection methods. The examination methodology includes:

- Audit the subject, determine what is checked.
- Audit objectives, set audit objectives.
- Audit scope sets the system, functions, and parts of the organization that will be specifically examined.
- Audit procedures and steps for data gathering, conducting audits to examine and review controls, determine who will be interviewed.
- Evaluate the results of tests and examinations, specifically, for each organization.
- Communication procedures with management, specific to each organization.
- Audit Report Preparation sets out how to, reviewing the results of the audit, namely the evaluation of expertise from the documented procedures, and policies of the organization being audited.

Examination. Freedom to conduct an examination includes freedom in determining the time for conducting an examination and an examination method, including in investigative investigations. Including part of BPK's independence in financial audits is the adequate availability of human resources, budgets, facilities, and other supporting infrastructures.

The BPK can utilize the results of work carried out by the government's internal supervisory apparatus. Thus, the extent of the audit can be adjusted and focused on areas that have the potential to impact on the reasonableness of the financial statements and the level of efficiency and effectiveness of the management of state finances. For this reason, the government's internal supervisory apparatus must submit the results of the audit to BPK. For the central government financial reports submitted by the president to the Supreme Audit Board no later than 3 months after the fiscal year ends. Likewise, local government financial reports are submitted by Governors, Regents/Mayors to BPK no later than 3 months after the budget ends. The financial statements above contain, among others: APBN (State Budget) /APBD (Regional Budget) realization reports, balance sheets, cash flow reports, notes to financial statements, attached with the financial statements of state / regional companies.

The form and content of the accountability report on the implementation of the APBN/APBD are presented by following with Government Accounting Standards prepared by an independent standards committee and stipulated by a Government Regulation after prior consideration from the BPK. In carrying out an examination of the financial statements, the criteria used are the applicable financial accounting principles. For performance checks, the criteria used are efficiency, effectivity, and economics. Whereas in the investigation the criteria used are state losses from the element of corruption. Examining include:

- Deviations that interfere with the fairness of the presentation of financial statements.
- Deviations from established criteria/regulations.
- Deviations that can disrupt the principle of savings.
- Deviations that can disrupt the principle of efficiency.
- Deviations that can result in not achieving the planned program.

The results of the examination are the final results of the process of evaluating the truth, compliance, accuracy, credibility, and reliability of information/data regarding the management and financial responsibility of the state which are carried out

independently, objectively, and professionally based on inspection standards as outlined in the audit report as a BPK decision.

Embodiment of Good Governance

The implementation of good governance is the main prerequisite for realizing the aspirations of the people in achieving the goals and ideals of the nation in the country. For this reason, a proper, clear and real accountability system must be implemented so that good governance is free from corruption (Ihwan fahrojih and mokh Najih, 2009).

To support the realization of good governance in the administration of the state, financial management needs to be carried out professionally, openly, and responsibly by following the basic rules stipulated by the 1945 Constitution. To support the important role of BPK in conducting financial audits some principles are set State Finance Law Namely:

- The principle of results-oriented accountability is the principle which stipulates that every activity and the end result of the management of state finances must be accountable to the people as the holder of the highest sovereignty of the nation by following the provisions of the applicable laws and regulations;
- The principle of proportionality is a principle that emphasizes the balance between the rights and obligations of managing state finances;
- The principle of professionalism is a principle that prioritizes expertise based on a code of ethics and the provisions of applicable laws and regulations;
- The principle of openness and management of state finances is a principle that opens itself to the right of the public to obtain true, honest, and non-discriminatory information about the management of state finances while still paying attention to the protection of personal, group and state secrets rights;
- The principle of financial audit by a free and independent auditing body is a principle that gives freedom to the financial audit body to carry out financial audits by not being influenced by anyone.

Law Number 15 Year 2006 article 7 paragraph (3) explains that; "The results of the examination of the management and responsibility of state finances which have been submitted to the DPR, DPD, and DPRD are declared open to the public". BPK in the achievement of good governance (good governance), must be transparency, accountability. In terms of transparency and accountability, it is very important in managing state finances. Transparency is to provide financial information to the public openly and honestly while accountability is a form of accountability for the management of state finances. Transparency and accountability influence the implementation of good governance because it is part of the principles of good governance applied by the BPK. Transparency and accountability of state finances make it easier for the government as the manager of the country's finances to know each of their own financial conditions to make arrangements for funding planning (BPK RI, Op.Cit. p.36-37).

Article 10 paragraph (1) of Law Number 15 Year 2006 explains that; "BPK assesses or determines the amount of state losses caused by illegal or intentional or negligent

acts committed by treasurers, managers of BUMN / BUMD and other institutions that carry out management of state finances". BPK must have human resources (HR), especially auditors, who are professionals. The auditor as the spearhead of the examination must be supported by independence, ability, willingness and adequate work experience, and supported by the ethical sensitivity of the auditor profession. Ability, willingness and work experience reflect the competence of auditors.

The role of the BPK is very helpful in overcoming state losses due to poor financial management by state institutions. For this reason, BPK needs to know the extent of competence possessed by auditors to carry out audit tasks. The competencies possessed by auditors are expected to be able to improve their performance. The increasing performance of the auditors, one of which is to create a good economic situation in Indonesia, for example by reducing the level of corruption that occurs (Trisnanta, 2014). Article 8 paragraph (3) explains that; "If a criminal element is found in the audit, the BPK reports the matter to the competent authority by following the provisions of the legislation no later than one month after the element of the crime is known".

The BPK is responsible for reporting elements of a crime to the authorities. The authorities are the police, prosecutors and the KPK. The BPK report is used as a starting material for the basis of an investigation or investigation by an authorized investigating official. Furthermore, article 11 of Law Number 15 of 2006 explains that "BPK can provide expert testimony in the judiciary regarding state/regional losses (BPK RI, Op.Cit p.94-95). For the sake of orderly administration of the state there is a prohibition for the BPK when carrying out its duties as an examiner:

- a. Slow down or not report the results of the examination that contains criminal elements to the authorized agency.
- b. Use information, materials, data, information and other documents obtained at the time of carrying out tasks that exceed the limits of his authority except the interests of the investigation related to the existence of a criminal offense.
- c. Directly or indirectly become the owner of all, part, or guarantor of business entities that conduct business to gain profit or profit from the financial burden of the state.
- d. Concurrently in the environment of other state institutions, other bodies that manage private / foreign state finances.
- e. Become a member of a political party.

The independence of the BPK is one of the cornerstones for reducing the practice of corruption, collusion and nepotism (KKN) and exposing all forms of crime against state finances. Inspections conducted by the BPK to detect the weaknesses of the management system to realize good governance. The existence of LHP is a form of the implementation of the principle of accountability that every activity and end of the activities of state administrators must be accountable to the community or the people as the highest authority in accordance with the applicable laws and regulations, which is one part of the General Principles of Government *yan Baik* (AAUPB) in Indonesia. The presence of the BPK will make every party who manages the country's finances aware, that if they misuse the budget, the action is known and dismantled by an independent inspection agency.

Legal Certainty as a Result of State Financial Audit

The 1945 Constitution and the three Laws on State Finance of 2003-2004 and Law No. 15 of 2006 concerning BPK assigns BPK as the sole auditor to examine the financial statements of three layers of government in Indonesia: Central, Provincial and Regency/City. In a democratic country, the government sector is strictly separated from the state sector and the economy as a whole. Policies and management functions in the state sector must be made transparent and wide open in general.

In the context of state life in Indonesia today, the 1945 Constitution created the BPK as a high state institution with the main task of examining the management and responsibilities of state finances, both in the form of stock assets and transactions in spending on their activities. BPK checks on state finances at all levels of government in Indonesia. The third amendment to the 1945 Constitution places the BPK in a separate chapter which was only mentioned in paragraph (5) of Article 23 in the original version of the 1945 Constitution. The position, tasks, organization and method of electing BPK members are also more clearly regulated in the third amendment to the 1945 Constitution. To be able to carry out their duties, Article 23 G, paragraph 1 of the 1945 Constitution states that, "BPK is domiciled in the national capital, and has representation in each province." Thus, the position and role of the BPK in realizing fiscal transparency and creating clean government and good governance in Indonesia become clearer and stronger in the third amendment to the 1945 Constitution. The purpose of the audit by BPK is to maintain fiscal transparency to create clean government and good governance.

The main element of fiscal transparency is in the form of integrity or the truth of the country's financial statements. In the international community, state sector accounting standards are prepared by the Public Sector Committee of the International Federation of Accountants (IFACPSC). Meanwhile, international organizations of high institutions conducting audits or audits of state finances (INTOSAI-the International Organization of Supreme Audit Institutions) have compiled state financial audit standards. The standards compiled by the two international organizations, as well as the standards compiled by the International Monetary Fund (IMF), are considered the best practices that are the world's reference. Seen from the perspective of management science, audits of state finances carried out by the BPK are the link between the long-term national planning cycle and the annual budget cycle.

In this regard, Article 23E paragraph (2) of the third amendment to the 1945 Constitution mandates that the BPK be able to submit its audit results promptly to the DPR, DPD and DPRD by following their respective authorities. The mandate of the 1945 Constitution was translated into Law No. 17 of 2003 which mandated BPK to submit financial reports from the Central Government and 3 regions to the DPR and DPRD no later than six months after the end of the fiscal year. After completing the inspection, the BPK compiles a written report on the results of the inspection. The inspection report should be independent, objective, fair and constructive. A report is constructive if it is followed by suggestions for improvement on the findings of

existing deficiencies or deviations. Article 23E of the 1945 Constitution mandates that the results of BPK audits be followed up by representative institutions and/or bodies by following the law.

The contents of the BPK report are at the same time an assessment of fiscal and macroeconomic projections that form the basis of preparing the state budget. To provide a fair and objective opinion, the third amendment to the 1945 Constitution establishes the BPK as an independent and independent institution (Article 23 F paragraph 1). Paragraph (2) of article 23 F then stipulates that BPK members are elected by the DPR by taking into account DPD considerations and formalized by the president. The BPK leadership is chosen from and by its members. However, the term of office and the method of dismissal of a BPK member still need to be regulated in a separate law. The separate law on BPK is expected to simultaneously regulate BPK's duties, authorities and accountability.

This includes regulations regarding the essence of BPK's independence in terms of budget, legal protection and the relationship as well as ways of resolving conflicts with other government agencies. BPK's independence does not mean that it is not accountable, can run alone without control or supervision from other institutions. Whether in terms of policy or budget. What is meant by BPK independence only relates to its working relationship with other government agencies, especially by the submission of opinions and corrective suggestions on the findings of its examination. The 1945 Constitution places a high position on the BPK as a separate state high institution to examine all sources of state finance, depositing and using them objectively, as they are. BPK's audit report (LHP) is useful for the auditee to improve its internal system, for the people and the DPR / DPRD in exercising their budgetary rights. LHP becomes a reference for investors buying Government Securities to find out the state's financial position. The same LHP is the basis for law enforcement to carry out investigations.

Conclusions

In the context of determining the loss of state finances it should be surrendered only to BPK as the only state institution whose authority is governed directly by the 1945 Constitution as an auditor to conduct audits of the management and responsibilities of the State finances. Legally the calculation of state financial losses by the BPK needs to be standardized and must have standards, and standardization to determine state financial losses can be done with consideration:

- a. Considering that state financial losses vary with the standard calculation method, the amount of state financial losses can be determined.
- b. State losses can be mapped based on considerations of receipts, expenditures, differences, assets / liabilities, and liabilities, so that a standard of results that can be accepted by all parties can be obtained.
- c. Considering that the state financial loss is an element of the formulation of a criminal act of corruption, which legally influences the calculation of state financial losses will also establish a process of proof at the trial and sanctions thereof.

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