



The Authority of the Audit Agency (BPK) In Calculation of State Financial Losses in Criminal acts of Corruption

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Abstract

This study aims to analyze the authority of the Supreme Audit Agency (BPK) in determining state financial losses due to corruption and the legal implications of calculations by institutions other than the BPK. The method used is normative legal research with a statutory, conceptual, and case-based approach. The results show that the BPK has attributive constitutional authority in determining state financial losses, which cannot be replaced by other institutions. The results of the BPK audit have binding legal force and serve as important evidence in proving corruption. Meanwhile, the results of audits by other institutions are administrative in nature and do not have the same evidentiary force. The legal implication is the importance of legal certainty and clarity of authority in the process of enforcing the law on corruption.

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Introduction

Indonesia, as a state based on law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, demands that state financial management be carried out in an accountable and legal manner. Within this framework, the Supreme Audit Agency (BPK) has a constitutional position as stipulated in Article 23E of the 1945 Constitution as an independent institution authorized to audit and assess the management and accountability of state finances.

Problems arise in the practice of law enforcement for corruption crimes, particularly regarding the determination of state financial losses as a crucial element of evidence. Law enforcement officials frequently use audit results from the Financial and Development Supervisory Agency (BPKP) in investigations and prosecutions. However, Law Number 15 of 2006 normatively grants the BPK attributive authority to determine state financial losses. This is further reinforced by Constitutional Court Decisions Number 31/PUU-X/2012 and Number 25/PUU-XIV/2016, as well as Supreme Court Circular Letter Number 4 of 2016.

On the other hand, the Financial and Development Supervisory Agency (BPKP), as the government's internal oversight body established under Presidential Regulation No. 192 of 2014, only has administrative audit authority. Consequently, BPKP audit results do not have the same evidentiary weight as BPK audit results. This difference in status raises legal issues, particularly when there are differences in the calculation of state losses between the two institutions for the same object.

Furthermore, following Constitutional Court Decision No. 25/PUU-XIV/2016, the element of state financial loss in corruption crimes must be proven with actual evidence (*actual loss*). This emphasizes the importance of clarifying the authority of the institution authorized to determine state losses to ensure legal certainty and consistency of evidence.

Based on this, this study examines the authority of the BPK in determining state financial losses and the legal implications of using audit results from institutions other than the BPK in enforcing the law on corruption crimes.

Research Methods

This research is normative legal research (doctrinal legal research) that focuses on the study of secondary legal materials, including legislation, legal literature, and expert doctrines or opinions. This approach is used to analyze applicable legal norms and identify basic principles for resolving the legal issues under study.

In line with Soetandyo Wignjosoebroto's view, doctrinal legal research is not limited to exploring positive norms but also encompasses the study of doctrine and the thinking of legal scholars as a basis for analysis. Therefore, this research uses a normative method to comprehensively examine the legal authority that is the object of the study.

This research uses three approaches: the statute approach, *the analytical* approach, and the case approach. The statutory approach examines various relevant regulations to identify the legal basis and potential disharmony of norms. The analytical approach examines legal concepts, principles, and theories through interpretation of applicable norms. The case approach analyzes court decisions to understand the application of the law in practice and the judge's considerations.

Through these three approaches, this research is expected to be able to provide a comprehensive analysis, both from normative and implementative aspects, of the legal problems studied.

Results and Discussion

1. The Position of the BPK in the Indonesian Constitutional System

The Supreme Audit Agency (BPK) is a state institution with direct authority derived from the 1945 Constitution of the Republic of Indonesia, specifically Article 23E, which affirms its role as an independent and autonomous auditing agency for the management and accountability of state finances.^[1] This position places the BPK as a constitutional organ functioning within a *checks and balances mechanism*.^[2]

The strengthening of the BPK's position is inseparable from the amendments to the 1945 Constitution, which provide a normative basis through Articles 23E-23G and are supported by a package of state financial laws, including Law No. 15 of 2006 concerning the Supreme Audit Agency.^[3] Institutionally, the BPK is an independent external supervisory body *and* is not subordinate to the executive, legislative, or judicial branches of government.^[4]

As an external oversight institution, the BPK has auditing, advisory, and quasi-judicial functions in determining compensation for state losses.^[5] This constitutional position provides strong legitimacy for the BPK's audit findings, including in determining state financial losses.

In the context of criminal acts of corruption, state financial

loss is an essential element as stipulated in Articles 2 and 3 of the Corruption Eradication Law and Articles 603 and 604 of the Criminal Code.^[6] Therefore, the determination of state losses must be made by an institution with strong legal legitimacy. The Constitutional Court, through Decisions No. 25/PUU-XIV/2016 and 28//PUU-XXIV/2026, emphasized that this authority rests with the Supreme Audit Agency (BPK) as a manifestation of the principle of state financial accountability.^[7]

Thus, the BPK's audit findings have greater constitutional weight and legal force than those of internal government oversight bodies. This confirms that the BPK is the institution with constitutional authority to determine state financial losses to ensure legal certainty in enforcing corruption crimes.

2. The Authority of the BPK from the Perspective of State Administrative Law

In state administrative law, the concept of authority (*authority bevoegdheid*) is a fundamental element determining the legitimacy of a government action. According to Philipus M. Hadjon, authority is the legal power (*rechtsmacht*) granted by statute to government organs to act within the realm of public law.^[8] This authority is normative because it stems from law and not merely factual power.

Furthermore, Indroharto divides the sources of government authority into three forms: attribution, delegation, and mandate.^[9] Attribution is the granting of original authority by the legislators or the constitution to a state organ. Delegation is the transfer of authority from one organ to another, accompanied by a transfer of responsibility. A mandate is the transfer of authority without a transfer of responsibility.

Within this theoretical framework, authority derived from attribution has the strongest position because it is directly attached to the institution receiving the authority and does not depend on other organs.

In the doctrine of state administrative law, attributive authority granted by law is complete and cannot be delegated unless expressly stipulated by statute.^[10] Indroharto emphasized that attributive authority can only be exercised by an organ directly appointed by the legislator.^[11]

Based on this doctrine, the calculation and determination of state financial losses are part of the state's administrative authority, which rests exclusively with the Supreme Audit Agency (BPK). Therefore, the results of loss calculations by other institutions can only be viewed as supporting material or tools, not as final determinations.

3. The BPK's Attribution Authority in Corruption Cases

In the context of criminal acts of corruption, the element of state financial loss is an essential element, particularly in the

¹ Article 23E paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

² Jimly Asshiddiqie, *Introduction to Constitutional Law*, Jakarta: Rajawali Pers, p. 20.

³ Law Number 17 of 2003 concerning State Finance; Law Number 1 of 2004 concerning State Treasury; Law Number 15 of 2004 concerning Audit of State Financial Management and Accountability; Law Number 15 of 2006 concerning the Audit Board.

⁴ Fachruddin, *State Financial Supervision*, Jakarta: (adjust publisher), p. 20.

⁵ Article 10 paragraph (1) of Law Number 15 of 2006 concerning the Audit Board.

⁶ Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption; Law Number 1 of 2023 concerning the Criminal Code.

⁷ Constitutional Court Decision Number 25/PUU-XIV/2016 and Decision 28//PUU-XXIV/2026.

⁸ Philipus M. Hadjon, *Introduction to Indonesian Administrative Law*, Gadjah Mada University Press, Yogyakarta, 2011. p. 130.

⁹ Indroharto, *Efforts to Understand the Law on State Administrative Courts*, Sinar Harapan Library, Jakarta, 2000, pp. 65–66.

¹⁰ Bagir Manan, *The Authority of Provinces, Regencies, and Cities in the Framework of Regional Autonomy*, FH UII Press, Yogyakarta, 2005, p. 14.

¹¹ Indroharto, *Efforts to Understand the Law on State Administrative Courts*, Sinar Harapan Library, Jakarta, 2000. p. 68.

offenses stipulated in Article 2 and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, or now also regulated in Article 603 and Article 604 of Law Number 1 of 2023 concerning the Criminal Code (KUHP).^[12] Therefore, the determination of the amount of state financial loss must be carried out by an institution that is legally authorized and authorized by law.

The BPK's attribution authority provides legal certainty (*rechtszekerheid*) for law enforcement officials and judges, as its audit results have a clear constitutional and legal basis. This aligns with the principle of the rule of law (*rechtsstaat*), which requires that all government and law enforcement actions be based on legitimate authority.^[13]

On the other hand, the use of audit results from other institutions that do not have attribution authority to determine state financial losses has the potential to give rise to legitimacy problems and legal uncertainty, especially if the audit results differ from the BPK audit results.

4. Strength of Evidence of Audit Results of BPK with BPKP Study Decision Number 24/Pid.Sus-TPK/2024/PN Mtr

The problem of authority is clearly reflected in the Decision of the Corruption Crime Court at the Mataram District Court Number 24/Pid.Sus-TPK/2024/PN Mtr, which relates to the construction of the Manggelewa Pratama Hospital, Dompu Regency, in the 2017 Budget Year with a budget ceiling of IDR 17,000,000,000.00 (seventeen billion rupiah).

In this case, the BPK RI Representative Office of West Nusa Tenggara through an audit in November 2017 found state financial losses due to a shortage of work volume amounting to Rp528,172,594.63, (five hundred twenty-eight million one hundred seventy-two thousand five hundred ninety-four rupiah and sixty-three cents) as stated in the State Financial Loss Calculation Audit Report (PKKN) Number PE.03.03/SR/LHP 741/PW23/5/2022 dated December 30, 2022. The loss has even been followed up with a return to the state treasury through a fourth installment payment deduction mechanism, as evidenced by a deposit receipt dated December 18, 2017.

However, in 2021, the West Nusa Tenggara Regional Police conducted a re-investigation and investigation, involving the Financial and Development Supervisory Agency (BPKP). The BPKP audit revealed a significantly larger state financial loss of Rp1,336,217,922.32 (one billion three hundred thirty-six million two hundred seventeen thousand nine hundred twenty-two rupiah and thirty-two cents), consisting of losses on physical work and supervisory work.

Significant differences between the audit results of the Indonesian Supreme Audit Agency (BPK RI) and the Financial and Development Supervisory Agency (BPKP) on the same objects and subjects created legal uncertainty in determining state financial losses. Nevertheless, the Panel of Judges in the *a quo decision* used the BPKP audit results as the basis for legal considerations.

The Panel of Judges' choice was not without legal criticism, as reflected in the *dissenting opinion* of member judge Irawann Ismail, SH, MH, who asserted that the constitutional authority to audit and determine state financial losses rests with the Indonesian Supreme Audit Agency (BPK RI). This

dissenting opinion aligns with the theory of authority, which positions the BPK's attribution authority as a genuine authority that cannot be replaced by another institution without a legal basis that is equal to or superior to that of the BPK.

5. Critical Analysis of the Panel of Judges' Considerations in Corruption Crime Decisions

The Panel of Judges' considerations on pages 279 and 280 of Decision Number: 24/Pid.Sus-TPK/2024/PN Mtr related to the NTB Provincial Representative of the Supreme Audit Agency (BPK) from the document of the Audit Result Report on Regional Expenditures of Dompu Regency for the 2017 Fiscal Year by the BPK and the existence of evidence of deposits to the regional treasury amounting to Rp.528,172,594.63, (five hundred twenty-eight million one hundred seventy-two thousand five hundred ninety-four rupiah and sixty-three cents) the PKKN Expert from the BPKP, namely Nedi Apriandi, SE explained that the object being audited in the construction work of the Pratama Hospital in Manggelewa District, Dompu Regency was the same object carried out by the Auditor from the NTB Provincial Representative of the BPK, but the audit results carried out by the NTB Provincial Representative of the BPK contained a small part or slice of the final report made by a construction expert from the University of Mataram. The difference between the audit activities carried out by the Expert and the auditor from the NTB Representative of the BPK is in the audit objective, namely the audit objective for calculating state financial losses is to express an opinion regarding the value of state financial losses resulting from irregularities in the alleged corruption case for the Construction of the Pratama Hospital in Manggelewa District at the Dompu Regency Health Office in the 2017 Budget Year.

Meanwhile, the purpose of the audit conducted by the BPK as stated in the audit report is to determine and assess whether the Internal Control System (SPI) for the realization and accountability of regional expenditure is adequate and whether the management of the regional expenditure budget has been implemented in accordance with laws and regulations and taking into account economic, efficient and effective aspects.

The existence of state losses occurs when the expenditure of a state/regional resource/wealth is greater than it should be according to the applicable criteria, so in this case there is an expenditure of Rp1,311,549,422.32, (one billion three hundred eleven million five hundred forty nine thousand four hundred twenty two rupiah and thirty two cents) which should not have been issued from the regional treasury, and according to the Expert the deposit for payment of the shortage in work volume amounting to Rp528,172,594.63, (five hundred twenty eight million one hundred seventy two thousand five hundred ninety four rupiah and sixty three cents) is a follow-up to the existing state losses so that the state losses remain at Rp1,311,549,422.32, (one billion three hundred eleven million five hundred forty nine thousand four hundred twenty two rupiah and thirty two cents) in accordance with the State Financial Loss Calculation Audit Report (PKKN) with Number: PE.03.03/SR/LHP-

¹² Article 2 and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

¹³ Ridwan HR, *State Administrative Law*, Jakarta: Raja Grafindo Persada, 2018, p. 98.

741/PW23/5/2022 dated December 30, 2022.

The panel of judges' considerations in Decision Number 24/Pid.Sus-TPK/2024/PN Mtr only examined the audit's objectives. The BPK audit aims to determine and assess the Internal Control System (SPI) for regional spending realization and accountability, while the BPKP audit aims to express an opinion on the amount of state financial losses resulting from irregularities in the alleged corruption case.

Based on the theory of authority, the use of the BPKP audit results in this case can be seen as problematic, because the BPKP does not have the authority to determine state financial losses, but rather functions as an internal government oversight apparatus.^[14] Therefore, using the BPKP audit results as the primary basis for determining state financial losses has the potential to blur the lines of authority between state institutions.

From a rule of law perspective, this practice risks setting a precedent that undermines the BPK's constitutional standing and opens up room for inconsistencies in the enforcement of corruption laws. Therefore, *the dissenting opinion* in this decision reflects a more appropriate application of the theory of authority and aligns with the principle of constitutional supremacy.

Furthermore, based on the Circular Letter of the Supreme Court Number 04/Bua.6/Hs/SP/XII/2016 (SEMA No. 4 of 2016) that report results audit BPK nature concrete, real or *actual loss* and is final, whereas based on the Decision Review of the Supreme Court of the Republic of Indonesia Number 95/PK/TUN 2014 that the report results audit BPKP only nature opinion or suggestion And not of a nature final, with thus in a way qualitative report results audit BPK position law or the quality more tall compared to with the audit report from BPKP which is only an opinion or suggestion which in a way hierarchy normative, order order position institutional, BPK as institution tall country Which nature free, independent and independent, as auditor external own position, position the law and its power of application are higher and stronger than the BPKP which is under the authority of the president, not free and independent (*non independent*).

Thus, the BPK's position as an independent high-ranking state institution confirms that its audit findings carry stronger legal weight than those of internal government oversight bodies. This difference in institutional characteristics not only impacts administrative aspects but also directly impacts the strength of evidence in law enforcement proceedings, particularly in corruption cases.

In line with this, the Constitutional Court, through Decision Number 28/PUU-XXIV/2026, affirmed the relevance and position of state losses within the legal framework of corruption. This decision reinforces that determining state losses cannot be separated from the principles of legality and the authority of the competent institution, thus serving as a crucial basis for assessing the validity and evidentiary value of an audit result in the judicial process.

In legal considerations, Decision Number 28/PUU-XXIV/2026 overlaps with Decision of the Constitutional Court Number 25/PUU-XIV/2016 which was pronounced in a plenary session open to the public on January 25, 2017, including:^[15]

... *State losses become an element of the crime of corruption*

if there are elements of unlawfulness and abuse of authority. In the case of abuse of authority, an act can only be classified as a crime of corruption if it has implications for state losses (except for the corruption crimes of bribery, gratuities or extortion), the perpetrator benefits unlawfully, the public is not served, and the act is a reprehensible act. The testing of Article 603 and Article 604 of the Criminal Code, when linked to Article 2 paragraph (1) and Article 3 of the Corruption Law, the application of the element of state financial loss has shifted by emphasizing the existence of consequences, no longer just actions. In other words, state losses are the implications of: 1) the existence of unlawful acts that benefit oneself or another person or a corporation as referred to in Article 2 paragraph (1) of the Corruption Law and 2) abuse of authority with the aim of benefiting oneself or another person or a corporation as referred to in Article 3 of the Corruption Law. Based on this, according to the Court, the element of causing loss to state finances is no longer understood as an estimate (potential loss) but must be understood as having actually occurred or being real (actual loss) in order to be applied in criminal acts of corruption.

Based on the above quotation of legal considerations, the concept of state losses adopted by Indonesia is the concept of state losses in the sense of material offenses, namely an act can be said to be detrimental to state finances on the condition that there must be a real or actual state loss. This means that the amount of state losses can be calculated based on the findings of authorized agencies or institutions. This concept is similar to the Explanation of Article 603 of Law 1/2023 which provides the understanding that "detrimental to state finances" is based on the results of an audit by a state financial audit institution. Therefore, by referring to the Explanation of Article 603 of Law 1/2023, the state institution authorized to audit state finances is the Supreme Audit Agency (BPK) as mandated in Article 23E paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states, "To examine the management and responsibility for state finances, an independent and autonomous Supreme Audit Agency shall be established." Furthermore, in the provisions of Article 10 paragraph (1) of Law Number 15 of 2006 concerning the Audit Board, it states that the BPK also has the authority to assess and/or determine the amount of state losses resulting from unlawful acts. The BPK's authority to declare and determine the amount of state losses is related to the law enforcement process for actions or deeds that result in state losses.

6. The Position of the BPKP Audit Results with the BPK in Corruption Crime Cases

The authority of the Supreme Audit Agency (BPK) in determining state financial losses is expressly regulated in Law Number 15 of 2006, specifically Article 10 paragraph (1), which gives the BPK the authority to assess and/or determine state losses resulting from unlawful acts. This determination is made through a BPK decision and has final and binding legal force, in line with its constitutional basis in Article 23E of the 1945 Constitution of the Republic of Indonesia. In addition, the BPK also has the authority to provide expert testimony in judicial proceedings.

Unlike the BPK, the Financial and Development Supervisory Agency (BPKP) is a Government Internal Supervisory

¹⁴ Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency.

¹⁵ Constitutional Court Decision Number 28/PUU-XXIV/2026, pp. 38-39.

Apparatus (APIP) whose authority is administrative and internal, as regulated in Government Regulation Number 60 of 2008 and Presidential Regulation Number 192 of 2014 in conjunction with Presidential Regulation Number 20 of 2023. BPKP has a supervisory function, including investigative audits and calculating state losses, but is more oriented towards prevention and internal supervision, rather than final determination.

In practice, the Financial and Development Supervisory Agency (BPKP) can conduct audits to calculate state losses, but this authority does not stand alone. Under BPK Regulation Number 3 of 2022, the BPK can involve APIP (State Audit Agency) as auditors or experts working for and on its behalf. This demonstrates the BPKP's subordinate role within the BPK's authority framework.

Legally, this difference in authority is emphasized by Constitutional Court Decisions No. 31/PUU-X/2012 and No. 25/PUU-XIV/2016, as well as Supreme Court Circular Letter No. 4 of 2016, which emphasize that the institution authorized to declare state financial losses is the Audit Board (BPK). Meanwhile, other institutions, including the Financial and Development Supervisory Agency (BPKP), only have the authority to conduct audits without declaratory authority. Thus, although the BPK and BPKP both have a role in auditing state finances, the authority to determine and declare final state financial losses remains with the BPK, while the BPKP functions as an internal supervisor and technical supporter in the system of monitoring and enforcing the law on corruption crimes.

Conclusion

This study confirms that the Supreme Audit Agency (BPK) is a constitutional institution with attribution authority to determine state financial losses, thus its audit results have final and binding legal force in proving corruption. In contrast, the Financial and Development Supervisory Agency (BPKP) only acts as an internal supervisory apparatus with administrative authority and lacks the legitimacy to declare state losses. Inconsistencies in judicial practice, as reflected in Decision Number 24/Pid.Sus-TPK/2024/PN Mtr, indicate a disharmony between legal norms and their application. Therefore, affirmation and consistency in the use of the BPK's attribution authority are needed to ensure legal certainty in enforcing corruption crimes.

Suggestion

To ensure legal certainty, lawmakers need to establish a normative affirmation of the BPK's exclusive authority to determine state financial losses. Law enforcement officials and judges should consistently use BPK audit results as the primary basis for evidence, while BPKP audit results serve as supporting evidence. Furthermore, coordination between the BPK and BPKP is needed to prevent overlapping authority and ensure alignment between legal norms and judicial practices in handling corruption cases.

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