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Investigative Audit Authority of the Supreme Audit Agency in Auditing the Management and Responsibility of State Finances

Lalu Romi Nasution; Kaharuddin; RR. Cahyowati

Master of Law Program, Postgraduate, University of Mataram, Indonesia

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Abstract

The authority of an investigative examination is part of an examination with a specific purpose, namely to reveal indications of state/regional losses and/or criminal elements within the scope of state financial management and responsibility. The purpose of this study is to analyze the investigative audit authority of the Supreme Audit Agency in the management and responsibility of state finances. The research method, the type of normative legal research with the rule of law approach, and the conceptual approach. The sources of legal materials used are; primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials are discussed, criticized and analyzed using prescriptive analysis.

Keywords: *Investigative Audit Authority; Supreme Audit Agency*

Introduction

The authority of an investigative examination is part of an examination with a specific purpose, namely to reveal indications of state/regional losses and/or criminal elements within the scope of state financial management and responsibility, this is regulated in Law Number 15 of 2004 concerning Audit Management and Accountability. Responsible for State Finance, Article 13 states that the examiner of the State Audit Board (hereinafter abbreviated as BPK)

"Investigators can carry out investigative examinations to reveal indications of state/regional losses and/or criminal elements."

Furthermore, in Article 2 paragraph (1), (2) BPK Regulation No. 1 of 2020 concerning Investigative Examinations, Calculation of State/Regional Losses, and Provision of Expert Information, states that investigative examinations consist of two types of examinations, namely:

- a. Investigative Examination; and
- b. Investigative Examination in the context of calculating state/regional losses, hereinafter referred to as calculating state losses.¹

¹ Article 2 paragraphs (1) and (2), Regulation of the Supreme Audit Agency Number 1 of 2020 concerning 2020 concerning Investigative Audits, Calculation of State/Regional Losses, and Provision of Expert Information;

Reports on the results of investigative examinations carried out by BPK often become news headlines both through print and electronic media. The investigative examination carried out by the BPK is an effort to complete the elements in the construction of articles on allegations of corruption. The element in question is the element of "detriment to state finances".²In Article 1 of Law No. 15 of 2006 concerning BPK, what is meant by State/Regional Losses is a shortage of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, either intentionally or negligently.³

In carrying out financial management and responsibility for state finances, there are several principles of good financial governance. The implementation of accountability and transparency is realized by the running and functioning of the role of the auditor or auditor of state or regional finance. In the context of realizing a government administration that can manage state finances and regional finances based on the principles of accountable and transparent financial governance, the authority of investigative examination is not only the authority of the BPK,

Thus, the implementation of activities in a Government Agency, starting from planning, implementation, supervision, to accountability, must be carried out in an orderly, controlled, and efficient and effective manner.⁴

There are related cases with allegations of corruption involving regional officials ranging from governors, regents and mayors to even village heads. The Corruption Eradication Commission (KPK) has named as many as 127 regional heads as suspects.⁵ Data from Indonesia Corruption Watch (ICW) in 2019, of 271 corruption cases, 46 cases were related to the village budget which cost the state 32.3 billion rupiah.⁶This shows that there are problems that need to be addressed and strengthened in the state/regional financial management system. The government as the state administrator continues to strive to make improvements and strengthening by making improvements to regulations, structuring institutions and strengthening the role of the Government Internal Supervisory Apparatus (APIP).

One of the objectives of the establishment of APIP is to provide adequate assurance for the effectiveness and efficiency of achieving the objectives of state administration, reliability of financial reporting, safeguarding state assets, and compliance with laws and regulations.⁷ In carrying out its duties and functions, APIP as the supervisory apparatus carries out supervision through the implementation of audits, reviews, evaluations, monitoring, and other supervision.⁸

The government's internal supervisory apparatus is the Financial and Development Supervisory Agency (hereinafter abbreviated as BPKP), the Inspectorate General or other names that functionally carry out internal supervision, the Provincial Inspectorate and the Regency/City Inspectorate.⁹The audit authority exercised by APIP consists of performance audits and audits with specific objectives. The audit authority in implementing APIP's duties and functions is only different from the audit of financial statements with the authority of the BPK.

The existence of the same authority between the BPK and the Government's Internal Supervisory Apparatus in carrying out duties and functions related to audits or investigative examinations can cause

² Articles 2 and 3 of Law Number 33 of 1999 concerning Corruption Crimes as amended by Law 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes;

³ Pasal 1 point 15 of Law 15 of 2006 concerning the Supreme Audit Agency;

⁴ Explanation on Government Regulation of the Republic of Indonesia Number 60 of 2008 concerning Government Internal Control System;

⁵ Dian Fath Minutes, "It turns out that this many regional heads are entangled in corruption cases", *Republika*, Sunday 28 February 2021, downloaded Thursday, 6 January 2022.

⁶ Ardito Ramadhan, "ICW Records of Most Village Fund Corruption Cases Appeared in 2019", *Kompas.com*, 18 February 2020, downloaded Thursday 6 January 2022.

⁷ Article 2 Paragraph (3), Government Regulation 60 of 2008 concerning the Government Intren Control System;

⁸ *Ibid*, Article 48 Paragraph (2);

⁹ *Ibid*, Article 49 Paragraph (1);

legal problems which if in the implementation of their duties and authorities are not regulated by good and clear regulations related to the implementation of these authorities, so the focus of this research is are: “the investigative audit authority of the State Audit Board in the management and responsibility of state finances”.

Research Method

The research method, the type of research is normative legal research with a statutory approach, and the conceptual approach. The sources of legal materials used are; primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials are discussed, criticized and analyzed using prescriptive analysis.

Discussion

Arrangement of Investigative Audit Authority in Audit of State Finance Management and Accountability

In every implementation of the authority that has been obtained by an institution, it must be based on the principle of legality, starting from the granting of the authority to the stage of implementing the authority. The principle of legality becomes very important in legal countries, one of which is Indonesia because Indonesia itself is a legal state, this is based on the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Article 1 paragraph (3) which states that the State of Indonesia is State law.¹⁰

Authority is the power to carry out a public legal action, for example the authority to sign/issue permits from an official on behalf of the Minister, while the authority remains in the hands of the Minister (delegation of authority). In addition, the right is the power to carry out a private legal action or private law (civil law). Muhammad Abdul Kadir is of the opinion that the definition of competence that is approached in the legal aspect is the authority to adjudicate cases or disputes from a court. In addition, another definition of competence is the authority (power) to determine something.¹¹

We need to distinguish between authority (authority, *gezag*) and authority (competence, *bevoegdheid*) although in practice the distinction is not always felt necessary. Authority is what is called “formal power”, power that comes from legislative power (given by law) or from executive administrative power.¹²The authority which usually consists of several powers is the power over a certain group of people or the power over a certain unanimous area of government, while the authority is only about certain parts. Within the authority there are powers (*rechts bevoegdheden*).

Regarding the substance and procedures for regulating the implementation of the investigative examinations of these institutions, it can be described in table 1:

¹⁰Muhammad Yasin, 2017, meaning of the principle of legality in state administrative law, <https://m.hukonline.com/klinik/detail/ulasan/c16989/makna-asas-legalitas-dalam-Hukum-administrasi-negara/> in Articles on the Implementation of Administrative Law State in Attribution Authority Based on Legality Principle, uploaded by RA Regita Ramadhania on 29 October 2019. RA Regita Ramadhania;

¹¹ Ibid;

¹² S. Prajudi Atmosudirdjo, State Administrative Law, Ghali Indonesia, 10th Printing, Jakarta, 1994, page 26;

Table 1. Source of Authority: Legal Basis, Institutional Relations, Type of Audit, Object, Nature and Authority of BPK, BPKP and APIP Institution

No	Description	Audit Board of the Republic of Indonesia	Financial and Development Supervisory Agency	Inspectorate General Ministries/Agencies	Provincial Inspectorate	District/City Inspectorate
1	Legal basis	Law 15 of 2006	PP 60 of 2008	PP 60 of 2008	PP 60 of 2008	PP 60 of 2008
2	Institutional Relations	DPR, DPD, DPRD	Appointed and Responsible to the President	Appointed and Responsible to the Minister	Appointed and Responsible to the Governor	Appointed and Responsible to the Regent/Mayor
3	Audit Type	1. Examination of Financial Statements 2. Performance Check 3. Purposeful Examination	1. Performance Audit 2. Audit with a Specific Purpose	1. Performance Audit 2. Audit with a Specific Purpose	1. Performance Audit 2. Audit with a Specific Purpose	1. Performance Audit 2. Audit with a Specific Purpose
4	Object	Checking the Management and Accountability of State Finances (including Regional Finances) APBN and APBD	Overseeing the Activities of the State General Treasury Sourced from the State Budget	Supervise certain activities sourced from the state budget from the ministry	Supervise certain activities sourced from the provincial budget	Supervise Certain Activities Sourced from Regency/City APBD
5	Nature	External Government	Government internal	Government internal	Government internal	Government internal
6	Authority and Function	1. Carry out inspections and request information and/or documents regarding the Management and Responsibility of State Finances	1. Giving Early Warning and increasing the effectiveness of risk management	1. Giving Early Warning and increasing the effectiveness of risk management	1. Giving Early Warning and increasing the effectiveness of risk management	1. Giving Early Warning and increasing the effectiveness of risk management
		2. Setting the standard for auditing State Finances	2. maintain and improve the quality of governance of government agencies	2. maintain and improve the quality of governance of government agencies	2. maintain and improve the quality of governance of government agencies	2. maintain and improve the quality of governance of government agencies
		3. Fostering the Functional Position of Examiner	3. provide adequate assurance on compliance, efficiency and effectiveness	3. provide adequate assurance on compliance, efficiency and effectiveness	3. provide adequate assurance on compliance, efficiency and effectiveness	3. provide adequate assurance on compliance, efficiency and effectiveness
		4. Giving Consideration to Government Accounting Standards and the design of the central government/local government internal control system				
		5. Assess and/or determine the amount				

No	Description	Audit Board of the Republic of Indonesia	Financial and Development Supervisory Agency	Inspectorate General Ministries/Agencies	Provincial Inspectorate	District/City Inspectorate
		of state losses				
		6. Monitor the settlement of state/regional compensation				
		7. Provide expert testimony in the judicial process regarding state/regional losses				

Source: Processed Primary Legal Materials

Table 1 shows that the regulation of legal standing or the principle of legality in state administrative law underlies the implementation of the authority of the BPK, BPKP and APIP institutions. Elucidation of Law Number 15 of 2006 concerning the BPK and Government Regulation (PP) 129 of 2014 concerning BPK and PP 60 of 2008 concerning the Government's Internal Control System (SPIP), explains that investigative examinations are within the scope of examinations with a specific purpose.

Investigative Audit Authority of the Supreme Audit Agency (BPK)

In examining the management and responsibilities of state finances, BPK may conduct investigative examinations as regulated in Article 13 of Law Number 15 of 2004 concerning Audit of State Finance Management and Responsibility, which states that:

"Investigators can carry out investigative examinations to reveal indications of state/regional losses and/or criminal elements".

The investigative examination is carried out freely and independently by the BPK. Article 2 of BPK Regulation Number 1 of 2020 concerning Investigative Examination, Calculation of State Losses and Provision of Expert Information, states that the investigative examination carried out by the BPK consists of the investigative examination itself and investigative examination in the context of calculating state/regional losses.

In carrying out investigative audits, BPK has the authority to:

- a. request Documents that must be submitted by officials or other parties related to the implementation of investigative Audits;
- b. access all data stored in various media, assets, locations, and all types of goods or documents in the control or control of the entity that is the object of the Audit or other entities deemed necessary.
- c. sealing the place for storing money, goods, and documents of state financial management;
- d. ask for information and/or make a summons to someone;
- e. photographing, recording, and/or taking the necessary evidence as a tool for the Examination;
- f. use experts and/or examiners from outside the BPK;
- g. coordinate with the Authorized Agencies to obtain input related to the Criminal Element; and
- h. coordinate with the Authorized Agencies and/or other agencies to obtain Audit Evidence.

In Article 4 of BPK Regulation Number 1 of 2020 concerning Investigative Audits, Calculation of State/Regional Losses, and Provision of Expert Information, the implementation of investigative Audits can be carried out by BPK based on:

- a. requests from Representative Institutions and/or Authorized Agencies;
- b. development of Examination Results; or
- c. results of analysis and/or evaluation of information received by BPK regarding irregularities in financial management and state financial responsibility.

The request for an investigative examination is submitted in writing to the Chairman of the BPK through a letter from the Head of the Representative Institution or an authorized official within the competent agency.¹³ The investigative examination is carried out based on the Audit Standards set by the BPK.¹⁴

Based on the source of obtaining investigative audit authority, BPK has a direct mandate from the constitution as regulated in Article 23 E of the 1945 Constitution of the Republic of Indonesia juncto Law Number 15 of 2006 concerning BPK juncto of Law Number 15 of 2004 Auditing the Management and Responsibility of State Finances.

In accordance with the purpose of implementing the investigative examination authority to reveal indications of state/regional losses and/or criminal elements within the scope of state financial management, it is closely related to the absolute authority of BPK in determining state losses as regulated in Article 10 paragraph (1) and paragraph (2) Law 15 of 2006, which states that:

- (1) BPK assesses and/or determines the amount of state losses caused by unlawful acts, whether intentionally or negligently committed by treasurers, managers of State-Owned Enterprises/Regional-Owned Enterprises, and other institutions or entities that manage state finances.
- (2) The assessment of state financial losses and/or the determination of the party who is obliged to pay compensation as referred to in paragraph (1) shall be determined by a BPK decision.

In the juridical setting of the implementation of BPK's investigative authority as regulated in Article 13 of Law 15 of 2004, BPK has established a special work unit that is authorized to carry out investigative examination activities. In the BPK Regulation Number 1 of 2019 concerning the Organization and Work Procedure of the Audit Board of the Republic of Indonesia, as amended by the BPK Regulation Number 2 of 2020 concerning the Amendment of the BPK Regulation Number 1 of 2019 concerning the Organization and the Implementing Work Procedure of the State Audit Board, Article 4 paragraph (1) letter m, states that the Implementing BPK consists of one of the Main Investigation Auditors (AUI).¹⁵

AUI has the task of carrying out investigative examinations of the management and responsibility of state finances, calculating state/regional losses, and providing expert information. Furthermore, one of the duties and functions of AUI as regulated in Article 824 letter c of the BPK Regulation Number 2 of 2020 is the preparation of programs, implementation and control of investigative audit activities, calculation of state/regional losses and the provision of expert information on the scope of AUI's duties, whether the audit is carried out by AUI or assigned to the BPK Representative.

¹³ Article 5 of BPK Regulation Number 1 of 2020 concerning PI, PKN and PKA;

¹⁴ Ibid, Article 7;

¹⁵ Article 4 Paragraph (1) BPK Regulation Number 1 of 2019 concerning the Organization and Work Procedure of the Audit Board of the Republic of Indonesia, as amended by BPK Regulation Number 2 of 2020 concerning the Amendment of BPK Regulation Number 1 of 2019 concerning the Organization and Work Procedure of the Audit Board of the Republic of Indonesia;

Authority of Investigative Examination of Government Internal Supervisory Apparatus (APIP)

The authority of BPKP as one of the government's internal supervision apparatus¹⁶Based on Presidential Regulation Number 192 of 2014 concerning BPKP, BPKP has the task of carrying out government affairs in the field of state/regional financial supervision and national development which is responsible to the president. Regarding the implementation of investigative authority, in accordance with the organizational structure, BPKP has fields related to investigative activities, namely, deputy for investigation.¹⁷

Deputy for Investigation is an element implementing the duties and functions of BPKP in the field of investigation which is under and responsible to the Head, to carry out tasks in the field of investigation, Deputy for Investigation, performs functions, one of which is the implementation of price adjustment audits, claims audits and investigative audits. on cases of irregularities with indications of harming state finances, audits of calculating state financial losses, and providing expert information to central and regional agencies, and/or other activities whose finances are wholly or partly financed by the state budget and/or subsidies, including business entities and corporate bodies. other matters in which there are financial or other interests of the Central Government and/or Regional Governments, as well as efforts to prevent corruption.

Audit activities as a form of supervision carried out by APIP outside of the audit of financial statements, audits carried out by APIP are the same as those carried out by BPK, namely performance audits and audits of certain objectives.¹⁸ Furthermore, regarding specific audit objectives, in the elucidation of Article 50 paragraph (3) of PP 60 of 2008, it is explained that what is meant by audits of certain objectives include investigative audits, audits of the implementation of SPIP, and audits of other matters in the financial sector.

The investigative audit authority carried out by APIP is based on the provisions of Article 58 paragraph (2) of Law Number 1 of 2004 concerning the State Treasury, which states that in order to improve the performance, transparency and accountability of state financial management, the President as the Head of Government regulates and administers the system. internal control within the government as a whole.¹⁹

This means that the authority of the investigative examination carried out by APIP is an authority obtained by delegation as a form of delegating the authority of the president as the head of government which regulates and administers the internal control system within the government as a whole. The issuance of Government Regulation Number 72 of 2019 concerning Amendments to Government Regulation Number 18 of 2016 concerning Regional Apparatuses which is based on strengthening the role and capacity of Regional inspectorates to be more independent and objective in order to realize the implementation of Regional Government that is clean and free from corruption, collusion and nepotism.²⁰

Government Regulation Number 72 of 2019 gives authority to the Provincial/Regency/City Inspectorate in the event of potential abuse of authority and/or state/Regional financial loss to conduct an investigative audit as carried out by the BPK, BPKP and the Inspectorate General.

¹⁶ Article 1 Paragraph (1) Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency;

¹⁷ Ibid, Article 4 Letter (G);

¹⁸ Ibid;

¹⁹ Article 58 Paragraph (1); Law Number 1 Year 2004 concerning State Treasury;

²⁰ Considering Dictum, Government Regulation Number 72 of 2019 concerning Amendments to Government Regulation Number 18 of 2016 concerning Regional Apparatus;

Investigative Examination Attribution Authority

Law Number 30 of 2014 concerning State Administration recognizes the terms attribution, delegation, and mandate. The three terms contain almost the same meaning, namely the authority given by the state to run a government wheel so that the government runs according to the objectives mandated by the Constitution, in fact the three terms are different.²¹

Attribution is government authority given by lawmakers to government agencies/institutions besides attribution, namely government authority given by law to government agencies/institutions to carry out decisions (*beschikking*) that come directly from law as formal legality, the formation of authority and grant it to certain organizations.²²

Delegation is the delegation of existing government authority (from attribution authority) from government organizations to other government organizations. Mandate is the authority given by government agencies/institutions to other agencies/institutions on their behalf and with the permission of the authority holder and usually in routine relationships occurs from superiors to subordinates unless expressly prohibited by law. In order to improve the quality of service to the community, government administrators, government agencies and or officials in exercising their authority must refer to the general principles of good governance and refer to the legislation. current legal reality, particularly in examining the management and responsibilities of state finances, including state/regional finances, shows a portrait of the problem that gives rise to different interpretations of the authorized institution in determining state financial losses. There are various government legal policies that also create various institutions that regulate the authority, function and responsibility in determining/determining and assessing state or regional financial losses, so that sometimes it creates friction of power between these institutions and can create legal uncertainty.

However, according to the results of the review and assessment, it was found that of the various state financial auditing or supervising institutions, constitutionally the one who has the power and authority to conduct audits of regional financial management and responsibility is none other than the State Audit Board.²³

According to Kusnu Goesniadhie, theoretically, legislation is a system that does not want and does not justify any conflict between the elements or parts in it. Laws and regulations are interrelated and are part of a system, namely the national legal system. In terms of the national legal system, the laws and regulations governing governance overlap because they are not yet integrated and the laws and regulations that are sectoral in nature are synergistic.²⁴

According to LM Gandhi as quoted in Kusnu Goesniadhie, Harmonization in law includes adjustments to laws and regulations, government decisions, judges' decisions, the legal system and legal principles with the aim of increasing legal unity, legal certainty, justice and comparability, usefulness and clarity of law without obscuring and compromising legal pluralism.²⁵

The authority of investigative examination in its implementation is not only carried out by the BPK but can also be carried out by the Financial and Development Supervisory Agency (BPKP) or other institutions such as the Inspectorate General or Inspectorate of Provincial Government, Regency and City Governments.

²¹Moh Gandara, Journal of Legal Khazanah, Vol. 2 No. 3: 92-99, Attribution Authority, Delegation And Mandate, pp. 92-99;

²² Ibid;

²³Saryono Yohanes, (2020), Harmonization of Regulatory Powers and Authorities of State Institutions in Conducting Management Audits and Assessments or Determination of State Financial Losses in the Framework of Realizing Legal Certainty and Justice, Journal of Jurisprudential Law, Vol. 19, No. 2, September, p.1;

²⁴Kusnu Goesniadhie. S, (2010), Harmonization of Legal Systems Realizing Good Governance, Nasa Media, First Printing, Malang, page 1;

²⁵ Ibid;

The state government system is emphasized in the 1945 Constitution of the Republic of Indonesia, that Indonesia is a country based on law (*rechtsstaat*), an Indonesian state based on law (*rechtsstaat*), not based on mere power (*machtsstaat*). This implies that the state, including the government and state institutions such as the BPK and APIP, in carrying out any actions must be based on law or can be legally accounted for.²⁶

Conclusion

The regulation of the investigative audit authority of the State Audit Board in the management and accountability of State finances is the articulation authority granted by law to the State Audit Board as the auditing agency which is regulated in Law 15 of 2004 concerning Audit of State Financial Management and Accountability. However, unlike APIP, the investigative authority it has is the Mandate authority given by the president as head of government to APIP which is given the authority as a government internal supervisory agency established by the President based on Government Regulation Number 60 of 2008 concerning Government Internal Control System Article 50 Junto Presidential Regulation Number 142 of 2014 concerning BPKP Article 3 letter e as a form of internal control system over state/regional financial management and responsibility.

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²⁶Dr. Sarbudin Panjaitan, SH, MH, Auditor in Corruption Cases in Indonesia Based on Justice Values, CV Budi Utama, Seleman, Yogyakarta, p.1;

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