



## Implications of BPK's Juridic as the Only Status Institution Given Authority Declares State Financial Damages in Corruption Criminal Action

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### **Abstract**

BPK is the only state institution that is given constitutional authority to carry out Examination with Specific Purposes (PDTT) in order to state the presence or absence of state financial losses in the final conclusion of the Audit Report (LHP). Such provisions have legal implications, namely (1) juridical implications for the principle of legal certainty; and (2) implications for the principle of trial speed in law enforcement on criminal acts of corruption. Investigation of criminal acts of corruption on state financial losses, requires a real element of loss based on the calculation of the authorized agency. At this stage, there are still investigators who use the results of investigative audits rather than BPK, because of the long waiting time. This is the obstacle of investigators in dealing with corruption in state financial losses in the regions. Investigators are waiting for quite a long time to obtain the Audit Report (LHP) from the BPK, moreover the investigative audit was not carried out by the BPK representative auditor in the region but was carried out by the auditor at the BPK Headquarters in Jakarta. Delay in handling criminal acts of corruption of state financial losses, a legal breakthrough is needed by delegating authority (mandate) from the Central BPK to BPK Representative auditors in the regions, so that the BPK Representative has the authority to investigate investigations independently.

**Keywords:** *Juridical Implications; BPK, State Institutions; Declaring Authority; State Financial Losses*

### **Introduction**

Based on the provisions of Article 23 E paragraph (1) of the Third Amendment to the 1945 Constitution of the Republic of Indonesia, the BPK is held to carry out a free and independent examination of the management and responsibility of state finances. In carrying out the mandate of the constitution, the Parliament and the Government have enacted Law 15/2004 and Law 15/2006. BPK in

carrying out audits can carry out 3 (three) types of audits, namely: (1) financial audits; (2) Performance checks; and (3) Examination with a specific purpose.

Types of Examinations with Specific Purposes (PDTT) are examinations that are carried out with special objectives, outside of financial and performance audits. Included in the Examination with Specific Purposes (PDTT) is an investigative examination. Based on the State Financial Audit Standards (SPKN) Number 1 of 2017, Audits with Specific Purposes (PDTT) aim to provide conclusions in accordance with the stated audit objectives. Examination with Specific Purposes (PDTT) can be in the form of an investigative examination the results of which are set forth in an Audit Report (LHP) containing findings, conclusions, and recommendations. Examination with Specific Purposes (PDTT) is closely related to cases of corruption in state / regional financial losses. Basically, state / regional financial losses can only be revealed through investigative examination. This examination can be carried out if there are reasons that are strong enough and accurate, so that the investigative examination can be carried out objectively and can be accounted for. Investigative examination strictly regulated in Article 13 of Law 1/2004, in principle is an inspection mechanism that aims to collect and assess state / regional losses incurred in certain government agencies or reveal indications of criminal acts that can cause state financial losses. In other words, either state losses or regional losses the validity of the actual and exact loss can only be obtained through an investigative inspection procedure and that is the authority of the BPK. In using this authority, the BPK is guided by the prevailing work procedures within the BPK and the inspection standards.

It is clear that the BPK is the only state institution that is given constitutional authority to carry out Examination with Specific Purposes (PDTT) to state whether or not there is State financial loss in the final conclusion of the Audit Report (LHP). Such provision, based on the author's analysis, raises juridical implications, namely (a) juridical implications of the principle of legal certainty; and (b) implications for the principle of trial speed in law enforcement on criminal acts of corruption. Both of these juridical implications in practice have an impact on investigators who still use investigative audit (LHP) Reports not from BPK, but Investigative Audit Reports (LHP) from APIP (BPKP or Inspectorate), Public Accountants, and some even calculate themselves. Because, if you only rely on the Audit Audit Report (LHP), the audit from BPK will take a long time and the investigation process will be hampered. Moreover, Examination with Specific Purposes (PDTT) in the form of an investigative audit on BPK based on its provisions was not carried out by BPK Representative auditors in the regions but sent and audits carried out by auditors at the BPK Headquarters in Jakarta.

Delay in handling the criminal act of corruption in state financial losses, a legal breakthrough is needed so that the BPK can quickly calculate and declare in the conclusion of the Investigative Audit Report (LHP) that there has been a loss of State finance. Through this legal breakthrough, in the future there will be no investigators who will use the Investigative Audit Report (LHP) from the APIP (BPKP and Inspectorate), Public Accountants and calculate their own state financial losses to determine the status of a suspect. The legal retrieval is carried out by delegating authority (mandate) from the Central BPK to BPK Representative auditors in the regions, so that the BPK Representative has the authority to investigate investigations independently and can help accelerate the investigative audit report (LHP) process required by investigators.

### ***Formulation of the Problem***

What are BPK's juridical implications as the only state institution authorized to declare state financial losses in corruption ?

## Research Methods

This research is a legal research using a statutory and conceptual approach. The legal materials used are primary, secondary and tertiary legal materials which are analyzed using normative / prescriptive analysis.

## Analysis

### A. Juridical Meaning and Nature

Etymologically the word “implication” is a translation of the word “implication-implicate-imply”. The word “implication” has the meaning: intent, understanding; in knots; or involved. “Implicate” means involving or intimating. While “imply” which means impact, strong influence; or the word result, consequence which means the results, consequences and consequences.<sup>1</sup>

According to M. Irfan Islamy in his book *Principles for the Formulation of State Policy*, the implications are: "Everything that has been produced by the process of policy formulation. In other words the implications are the consequences and consequences caused by the implementation of certain policies or activities"<sup>2</sup>. According to Winarno, there are at least five dimensions that must be discussed in calculating the implications of a policy. These dimensions include:<sup>3</sup>

1. Policy implications on public matters and policy implications on the people involved;
2. The policy may have implications for circumstances or groups outside the policy goals or objectives;
3. Policies may have implications for present and future conditions;
4. Evaluation also involves another element, namely the direct costs incurred to finance public policy programs;
5. Indirect costs incurred by the community or some community members due to public policies.

According to Silalahi, the implication is "the consequences arising from the implementation of a program or policy, which can be good or not on the parties that are targeted for the implementation of the program or policy".<sup>4</sup>

In the legal literature, several legal scholars have provided definitions of the word "legal consequences". Ishaq in his book entitled *Fundamentals of Legal Studies*, gives the definition of legal consequences are: "The consequences caused by legal events because a legal event is caused by legal actions, while a legal act can also give birth to a legal relationship, then the legal consequences can also be interpreted as a result of a legal action and / or legal relationship".<sup>5</sup>

<sup>1</sup> John M. Echols dan Hassan Shadily, *Kamus Inggris Indonesia*, (Jakarta: PT. Gramedia, 2000), p. 313.

<sup>2</sup> M. Irfan Islamy, *Prinsip-Prinsip Perumusan Kebijakan Negara*, (Jakarta: Bina Aksara, 2003), p. 114-115.

<sup>3</sup> Budi Winarno, *Teori dan Proses Kebijakan Publik*, (Yogyakarta: Media Pressindo, 2002), p. 171-174.

<sup>4</sup> Ulber Silalahi, *Metode Penelitian Sosial*, (Bandung: Unpar Press, 2005), p. 43.

<sup>5</sup> Ishaq, *Dasar-Dasar Ilmu Hukum Cet. I*, (Jakarta: Sinar Grafika, 2008), p. 86.

According to Pipin Syarifin, legal consequences are: "All consequences that occur from all legal actions carried out by legal subjects to the object of law or other consequences caused by certain events by the law in question have been determined or considered as legal consequences".<sup>6</sup> Furthermore, according to Achmad Ali, the definition of a legal effect is "an effect caused by law, on an act carried out by a legal subject".<sup>7</sup> Whereas Soeroso defines the legal consequences, as follows: "It is a result of actions taken, to obtain an effect expected by legal actors. The intended effect is the effect regulated by law, whereas the action taken is a legal action that is an action that is in accordance with applicable law".

According to Soeroso, the legal consequences can be as follows :<sup>8</sup>

1. Birth, change or disappearance of a legal condition;
2. Birth, change or disappearance of a legal relationship between two or more legal subjects, where the rights and obligations of one party are dealing with the rights and obligations of the other party;
3. The birth of sanctions if actions are against the law.

In the context of this study the term juridical implication is used, rather than the term legal impact or legal effect. Because, the word juridical implications contained the purpose of the impact or legal consequences indirectly (implicit), while the word legal impact / legal effect contained the purpose of the impact or direct effect (explicit). Juridical implications can be interpreted as a result that occurs or is caused indirectly (implicit) from a legal event, arising from a legal policy or arising from a positive legal norm provisions. In other words, the juridical implications give birth to a legal condition.

Apart from that, in terms of the juridical implications contained the intention of legal responsibility to make changes to the law continuously, because the law itself continues to develop according to the demands of the reformation of his era. This is in line with one legal function, namely law as a means of social change (law is a tool of social engineering).<sup>9</sup>

## **B. Juridical Implications of the Principle of Legal Certainty**

The BPK regulation as the only state institution granted the authority to declare state financial losses in a criminal act of corruption, namely Article 23 E paragraph (1) of the 1945 Republic of Indonesia jo Article 1 number (1), Article 6 paragraph (1), and Article 10 paragraph (1) Law 15/2006 actually has legal certainty. It becomes a problem when the practice of investigating corruption in Article 2 paragraph (1) and Article 3 of Law 31/1999 jo. Law 20/2001 requires a real element of loss based on the calculation of the authorized institution, there are still investigators who use investigative audit report (LHP) not from BPK, but investigative audit report (LHP) from APIP (BPKP or Inspectorate), Accountant Public, some even calculate themselves. The reason, because of Law 31/1999 jo. Law 20/2001 does not mention explicitly in the norms of the article, the institution that has the authority to calculate and declare State financial losses. The authority to calculate and declare State financial losses is only regulated in the explanation of Article 32 paragraph (1) of Law 31/1999 jo. Law 20/2001, "the amount of losses that can be calculated based on the findings of the authorized agency or appointed public accountant". That is, norm conflicts occur between Law 31/1999 jo. Law 20/2001 with the 1945 Constitution of the Republic of Indonesia and Law 15/2006 relating to the regulation of state agencies or

<sup>6</sup> Pipin Syarifin, *Pengantar Ilmu Hukum*, (Bandung: CV. Pustaka Setia, 2009), p. 71.

<sup>7</sup> Achmad Ali, *Menguak Tabir Hukum*, (Bogor: Ghalia Indonesia, 2008), p. 192.

<sup>8</sup> Soeroso, *Pengantar Ilmu Hukum*, (Jakarta: Sinar Grafika, 2006), p. 295.

<sup>9</sup> Jazim Hamidi, *Revolusi Hukum Indonesia; Makna, Kedudukan, dan Implikasi Hukum Naskah Proklamasi 17 Agustus 1945 dalam Sistem Ketatanegaraan RI*, (Jakarta: Konstitusi Press, Yogyakarta: Citra Media, 2006), p. 199.

institutions that are authorized to calculate and declare State financial losses. Elucidation of Article 32 paragraph (1) of Law 31/1999 jo. Law 20/2001 provides an interpretation (interpretation) for investigators that the calculation of state financial losses can be carried out by several agencies such as the BPK, APIP (BPKP and Inspectorate), Public Accountants and some who calculate themselves.

The emergence of problems and debates of institutions authorized to declare state financial losses, caused the Constitutional Court (MK) to issue a decision and the Supreme Court (MA) issued a Supreme Court Circular (SEMA). MK Decision No. 31 / PUU-X / 2012, dated October 23, 2012 in its ruling, it stated: "In the form of evidence, it is intended to be a matter of corruption, the KPK will only be able to coordinate with the BPK on the basis of the act, for the purpose of being in line with the matter of the institution. BPKP and BPK, for example by inviting experts and asking for the general inspectorate or just having the functions that are available. Even, from the other parties (including from the company), it can be pointed out in the middle of a small fortune. While SEMA No. 4 In 2016, BAYGAN A, 6 states: "The competent agency stating whether or not there is state financial loss is the BPK which has constitutional authority while other agencies such as the BPKP / Inspectorate / Regional Work Unit (SKPD) remain authorized to conduct audits and audits of financial management. The State however is not authorized to declare or declare State financial losses. In certain cases, Judges based on the facts of the trial can assess the existence of state losses and the amount of state losses.

From the above explanation, the Investigative Audit Examination Report from the APIP (BPKP or Inspectorate) and Public Accountants used by investigators in proving criminal acts of corruption of state financial losses is an act that is not justified in law so as to present legal uncertainty for law enforcement officials and for suspects. Proving the detrimental element of state finances is required an investigative audit because investigative audit activities are the authority to carry out investigative activities "For Justice" or "Pro Justitia" or "For the Sake of Justice Based on Godhead" or the like must obtain a mandate from the law and mandate from the law the law must be certain to guarantee and protect the legal rights examined in investigative audits whose results can determine a person's legal status.

When the APIP (BPKP, Inspectorate) investigative audit (LHP) investigative audit report (LHP) and Public Accountant are still used by investigators as evidence, raising questions is how the position and authority of these institutions in conducting investigative audits for the purposes of proving a criminal case concerning the element of loss state finances? Both APIP (BPKP, Inspectorate) and Public Accountants do not have the authority to carry out investigative audits, because there are no statutory provisions that govern or authorize them to carry out investigative audits whose results are in the interests of proving a criminal case concerning the element of state financial losses.

On the basis of such legal arguments, up to now, the author has not been able to understand from a scientific or criminal law perspective regarding the consideration of the Constitutional Court Ruling Number 31 / PUU-X / 2012 which seems to confirm that these institutions have the authority to carry out investigative audits. Likewise, SEMA No. 4 In 2016, although the Supreme Court has determined the institution that can declare or declare state financial losses is only BPK, in practice it shows that BPKP still recognizes the existence of BPKP in calculating and declaring state financial losses. This shows the inconsistency within the Supreme Court itself as the party that issued the SEMA.

### **C. Implications of the Trial Speed Principle in Corruption Criminal Law Enforcement**

The judicial implication of the BPK as the only state institution given the authority to declare state financial losses affects the law enforcement of criminal acts of corruption by investigators namely inhibiting the principle of trial speed. BPK as the only external state financial audit institution in Indonesia, conducts yearly Financial Examinations, Performance Examinations and Examinations with Specific Purposes (PDTT) for all entities that use state funds. BPK within 1 (one) year checks 1,000

entities. The details are the regency / city regional government which includes Regional Owned Enterprises (BUMD) around 514 entities examined, then there are 34 provinces and the central government totaling 86 entities. Hundreds of thousands of financial reports conducted by the BPK to provide opinions or auditors on financial statements that have been prepared by leaders or management of agencies or work units that have been examined. So in 1 (one) year, in the first half of the semester, BPK must be preoccupied with auditing financial statements. If there is a request for an investigative audit of a corruption case of state financial loss, it can only be done in the seventh month or entered in the second semester (two).

This is an obstacle faced by police and prosecutors investigators in handling criminal acts of corruption in state financial losses in the regions. Investigators are waiting for quite a long time to obtain an investigative audit Report (LHP) from the BPK, especially since the investigative audit was not conducted by the BPK representative auditor in the region but was carried out by the auditor at the BPK Headquarters in Jakarta. Because indeed so far there has not been an investigative examination conducted by BPK Representatives without the approval of BPK (central). This is regulated in BPK Decree No.17 / K / I-XIII.2 / 12/2008 concerning Technical Instructions for Investigative Examination of Indications of Corruption Crimes resulting in state / regional losses as amended by BPK Decree Number 8 / K / I-XIII.2 / 12/2013 concerning Investigative Examination.

Delay in handling corruption due to the length of time waiting for the Audit Investigation Audit Report (LHP) of the BPK audit, a legal breakthrough is needed that can provide a solution to the problem in question. The author tries to provide a solution by delegating authority (mandate) to calculate and declare state financial losses from the Central BPK to BPK Representative auditors in the regions, so that the BPK Representative has the authority to investigate investigations independently.

Delegation of authority (mandate) can be done based on the assignment from the Central BPK to the BPK Representative for and on behalf of the BPK. As one of the elements of the state administration, the mandate given by the BPK to the BPK executives is, of course, also based on the general principles of good governance and legislation. This is because the BPK investigative audit report (LHP) is not the result of the work of an individual examiner or a work unit at the BPK such as a BPK representative, but is a product of the BPK RI state institution that can be accounted for truthfully.

As an entry point for delegation of authority (mandate) in the form of assignment to BPK Representative to examine or audit investigative cases of criminal acts of corruption in the regions, it can be based on the norms of Article 34 paragraph (1) of Law 15/2006 as the legal basis. Article 34 paragraph (1) of Law 15/2006 states that: "BPK in carrying out its duties and authorities is assisted by the BPK Executor, which consists of the Secretariat General, Executing Executing Unit, Executing Support Unit, Representative, Inspector, and other appointed officials. by BPK according to need ". In addition, in BPK Decree Number 39 / K / I-VIII.3 / 7/2007 and finally stated in BPK Decree Number 3 / K / I-XIII.2 / 7/2014 concerning Organization and Working Procedures of BPK (STOK) governed agency / Central BPK relations with representative BPK. Through the SOTK, the duties and authority of the Agency are carried out by the BPK Implementers, including Representatives. The relationship was also in the form of an obligation to submit reports from BPK executives including BPK Representatives who received assignments from the BPK.

Delegation of authority (mandate) from the Central BPK to BPK implementers including BPK Representatives as the implementation of the phrase or the word "assisted" in Article 34 paragraph (1) of the BPK Law governing the assignments of BPK executors. As the contents of Article 34 paragraph (1) states that the BPK can be "assisted" by the Provincial Representative BPK. This means that with the delegation of authority (mandate) in the form of the assignment, BPK representatives can act to carry out

investigative investigations independently based on direct orders from the board or agency (central BPK). Therefore, this does not conflict with the principle of delegation of authority in administrative law.

In the administrative and legal authority, there are two persons to obtain the authority of the government which is the contribution and delegation; sometimes, too, it is placed in a separate way to obtain authority. The mandate in Article 1 number 24 of Law 30/2014 states that: "Delegation of authority to lower government agencies and / or officials with responsibilities and accountability remains with the mandate". Furthermore, Article 14 paragraph (1) of Law 30/2014 states that: "Agencies and / or Government Officials obtain a Mandate if: a). Assigned by the Agency and / or Government Officer above it; and b). Is the implementation of routine tasks ". Then Article 14 paragraph (7) of Law 30/2014 states: "Government Agencies and / or Officers who obtain Authority through Mandates are not authorized to make strategic Decisions and / or Actions that have an impact on changes in legal status on aspects of the organization, staffing, and budget allocation ".

The delegation of authority (mandate) above, in the author's view, can also be done in a limited manner. In other words, the authority to carry out investigative audits delegated through assignments to the Representative BPK is based on the classification of cases of corruption of state financial losses. In certain cases, investigative audits of state financial losses are still carried out by the Central BPK auditor. Specific cases referred to, when cases of corruption of state financial losses involving state financial losses of at least Rp. 1,000,000,000.00 (one billion rupiah). Whereas corruption criminal cases are handled by police and prosecutors investigators in regions where the financial loss of the state is below Rp. 1,000,000,000.00 (one billion rupiahs), the delegation of authority (mandate) can be carried out to carry out an investigative examination of the BPK Representative examiner or auditor.

With regard to delegation of authority (mandate) in the form of assignments to BPK executives including BPK Representatives, is it against the law and the principle of delegation of authority in administrative law? Of course not, because in the opinion of Philipus M. Hadjon in the Constitutional Court Decision Number 54 / PUU-XII / 2014, that: The concept of "assisted" in Article 34 paragraph (1) of the a quo Law must be read contextually, so that representation is wrong one for those who help BPK. With this contextual understanding, the meaning of the phrase "assisted by representation" is the context of deconcentration. Deconcentration relates to regional or local forms of government organization. So that the BPK representative is the BPK tasker outside the state capital.

## **Conclusion**

Juridical implications of BPK as the only state institution given the authority to state state financial losses in corruption, namely (a) juridical implications for the principle of legal certainty; and (b) implications for the principle of trial speed in law enforcement for corruption, so that investigations into criminal acts of corruption are hampered because they only rely on BPK's investigative audit results (LHP). Legal breakthrough that can provide a solution to the problem of this juridical implication by delegating authority (mandate) to calculate and declare state financial losses from the Central BPK to BPK Representative auditors in the regions, so that the BPK Representative has the authority to independently investigate investigations. The authority to conduct investigative audits delegated through assignments to BPK Representatives is based on the classification of cases of criminal acts of state financial loss corruption. For example, corruption cases handled by police and prosecutors investigators in regions where the financial loss of the country is below Rp. 1,000,000,000.00 (one billion rupiahs), the delegation of authority (mandate) can be carried out to carry out an investigative examination of the BPK Representative examiner or auditor.

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