

**AUTHORITY OF SUPERVISORY APPARATUS INTERNAL GOVERNMENT
OR APIP IN DETERMINING STATE LOSSES DUE TO CORRUPTION IN
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Abstract

This time, there is often debate between two financial supervisory institutions, namely between APIP (Supervisory Apparatus Internal Government) and BPK (Financial Audit Institutions) relating to the existence of the same authority in these two supervisory institutions. This authority is related to the calculation of state losses as regulated in Decision of the Constitutional Court No. 31 / PUUX / 2012 related to testing Law No. 30 of 2002 concerning the Corruption Eradication Commission or the KPK against the Indonesia Constitution 1945 or UUD 1945. The decision states that the KPK can not only coordinate with the BPK and BPKP (Supervisory Financial and Development) in terms of proof of corruption but can also coordinate with other agencies, it can even prove itself apart from the findings of the BKP and BPKP. Based on this background, the problem in this research is how is the authority of APIP in calculating state losses due to corruption in Local Government agencies? The problem approach in this research is normative legal research, normatively is the approach by collecting and studying, documents, and applicable laws and regulations, which are related to the determination of state losses by APIP. The results of the research shows that based on Article 50 paragraph (1) of Government Regulation Number 60 Year 2008 concerning Government Internal Control Systems, APIP can conduct audits with specific objectives in order to calculate the state losses due to corruption. However, in calculating state losses, APIP must get a request from the legal apparatus first as stated in the cooperation agreement made by the Inspectorate and BPKP as APIP. Based on these rules, APIP only has a mandate from the legal apparatus so that the audit results of the APIP is informative and do not constitute a state administration decision. Therefore based on the Supreme Court Circular No. 4 of 2016 concerning the Imposition of the 2016 Supreme Court Chamber Room Plenary Meeting Results as a guideline for the implementation of duties for the court, APIP is only authorized to calculate state losses and can only determine state losses by BPK.

Keywords: Authority; APIP; State Losses; Local Government

INTRODUCTION

BPK's sovereignty as financial control is contained in Chapter VIIIA of the UUD 1945 Article 28E through Article 28G, supervision of state finances has a very important role in realizing the objectives of government to be a good government and clean government in order to create accountability in financial management.¹ There are 2 types of supervision in terms of management and accountability of state finances, in order to calculate state losses, namely:²

1. Internal Supervision consists of:
 - a. Supervision carried out by superiors to subordinates in the work environment;
 - b. Inspectorate General, Provincial Inspectorate, and City Inspectorate District;
 - c. Supervisory Financial and Development (BPKP);
2. External supervision conducted by the Financial Audit Institutions (BPK);

The internal supervision carried out by the BPK is regulated in the UUD 1945.

Based on the UUD 1945, the BPK is the only institution authorized to oversee state finances, which is then poured back in Law no. 15 of 2006 concerning the Supreme Audit Board in Article 10 which states "The BPK evaluates and / or determines the amount 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 management".³

Internal supervisor is carried out by APIP which is regulated in Government Regulation Number 60 Year 2008 concerning Government Internal Control System (SPIP), whose activities consist of auditing, evaluating, reviewing, monitoring and other supervisory activities.⁴ At this time what is often a debate between the two supervisory institutions is related to the authority between APIP and BPK where these two supervisory institutions have the same authority, namely authorized to calculate state losses as stated in the Constitutional Court Decision

¹ Dumaria Simanjuntak, "Pengisian Jabatan Anggota Badan Pemeriksa Keuangan (BPK) Untuk Mewujudkan BPK yang Independen", *Jurnal Hukum dan Pembangunan*, Vol. 47 No.2, 2017, p. 242.

² Utami Dewi, "Kedudukan Badan Pemeriksa Keuangan dan Pembangunan (BPKP) dalam Penentuan Unsur Kerugian Keuangan Negara dalam Kaitannya Dengan Optimalisasi Pengawasan Pengelolaan Keuangan Daerah (Studi Kasus di Kalimantan Barat)", *Jurnal Nestor Magister Hukum*, Vol. 4 No.4, 2017, p. 3.

³ Mieke Rayu Raba, "Peran Badan Pemeriksa Keuangan (BPK) dalam Melakukan Pemeriksaan Terhadap Pengelolaan Keuangan Negara Untuk Mewujudkan Pemerintahan yang Baik Menurut Uu No. 15 Tahun 2006", *Lex Crimen*, Vol. 6 No. 3, 2017, p. 153.

⁴ Dwi Alfianto, "Peran Aparat Pengawas Intern Pemerintah (APIP) Untuk Mewujudkan Good Governance Dalam Pencegahan Tindak Pidana Korupsi di Bidang Penyediaan Barang dan Jasa", *Hukum Pidana dan Pembangunan Hukum*, Vol.1 No.2, 2019, P. 3.

No. 31 / PUUX / 2012 related to testing Law No. 30 of 2002 concerning the KPK against the UUD 1945 which states that the KPK can not only coordinate with the BPK and BPKP in terms of proof of corruption but can also coordinate with other agencies, it can even prove itself apart from the findings of the BKP and BPKP.⁵

The facts that occur in the field that APIP is often recorded in the State Administrative Court because the Report on the Calculation of State Financial Losses (LHPKKN) conducted by APIP has been sued several times in the State Administrative Court (PTUN), one of the decisions, namely PTUN No. 75 PK / TUN / 2015 decided that the investigative audit report by BPKP was not a State Administration decision.⁶

Nevertheless in some cases the results of the calculation of state losses by the APIP were preferred by judges over the results of the calculation of state losses by the BPK. This is as the Supreme Court Decree No. 77PK / PID.SUS / 2015, in which in the decision the BPK stated that

there was no state loss, but BPKP as APIP stated that there was a state loss and in the end the judge accepted the BPKP calculation results as the basis for determining state losses.

Based on the explanation above regarding the calculation of state losses, the problem in this research is how is the authority of APIP in calculating state losses due to corruption in the Regional Government agencies? The problem approach that will be used in this study is normative juridical approach, namely research that refers to legal norms and regulations as a normative footing.

DISCUSSION

Determination of State Losses by APIP in Corruption in Local Government

Calculation of State Losses by APIP

Corruption in the local government is the biggest crime that occurred at the district / city level. This is based on the findings of Indonesia Corruption Watch, which states that local government officials, both at the provincial, district / city level are still the most corrupt actors in 2018.⁷ According to Article 3 of the Law

⁵ Muhammad Fadel Noerman, "Hubungan Hasil Pengawasan Apip dan BPK Dalam Rangka Audit Dengan Tujuan Tertentu Dalam Akuntabilitas Keuangan Daerah", *Tesis Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Lampung*, 2017, P. 5.

⁶ Rita Novita Sari, "Penghitungan Kerugian Keuangan Negara Oleh BPKP Sebagai Keputusan Tata Usaha Negara (Analisis Putusan Mahkamah Agung Nomor 75 PK/TUN/2015)", *Skripsi. Fakultas Hukum Universitas Lampung*, 2016, p. 7.

⁷ <https://nasional.kompas.com/read/2019/04/28/20144391/icw-pegawai-pemda-pelaku-korupsi-terbanyak-pada-tahun-2018>

on Corruption, corruption is any person who unlawfully commits acts of enriching oneself or others who are a corporation that can harm the country's finances or the country's economy.

According to Law No. 1 of 2004 concerning State Treasury, state losses caused by criminal acts of corruption must be verified in the real sense of state losses. Thus the financial supervisory institutions namely BPK and APIP can calculate state losses because they have expertise in calculating state losses. BPK has the authority to conduct 3 types of audits, as contained in the BPK Law, namely:⁸

- 1) Audit,
- 2) Performance check.
- 3) Examination with a specific purpose.

Audits with specific objectives of BPK are related to financial audits and investigative audits. Financial audit is an audit with a specific purpose which is intended to express an opinion regarding the value of state financial losses arising from a case of irregularities and is used to support litigation, while an investigative examination is the process of finding, and collecting evidence systematically aimed

at revealing whether or not an act and the culprit for further legal action.⁹

Overview of the results of the 2017 semester examination shows that several cases that did not receive any further from the BPK were due to the many requests for the calculation of state losses to the BPK, therefore legal apparatus was based on Law No. 30 of 2014 concerning Government Administration can request assistance from APIP as a competent agency to calculate the losses of the state so that they will immediately get the results of the state losses due to corruption in local government agencies. Thus APIP calculates state losses based on the mandate given by legal apparatus or other authorized institutions.

APIP conducts supervision to calculate state losses which through an audit. The intended audit based on Article 50 paragraph (1) of the SPIP Law consists of:

- a. Performance audit
- b. Audit with a specific purpose.

One specific audit conducted by APIP is investigative audit as conducted by BPK. An investigative audit is an examination of state finances to calculate state losses that are indicated as a criminal offense, this is also confirmed in Presidential Instruction No. 9 of 2014 concerning

⁸ Badan Pemeriksan Keuangan Republik Indonesia, *Standar Pemeriksaan Keuangan Negara*, Jakarta: Badan Pemeriksan Keuangan Republik Indonesia, 2017, p. 9.

⁹ *Ibid.*

Improving the Quality of the Internal Control System and the Reliability of the Implementation of the Internal Control Function in the Context of Creating People's Welfare.

In addition, the authority of APIP in calculating state losses is also regulated in the Appendix to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 35 of 2018 concerning the Policy of Supervision of Regional Government Administration in 2019, which explains the Supervision Activities carried out by APIP at Local Government Agencies. Activities related to the calculation of state losses, i.e.

- a. APIP's capacity building activities include:
 - 1) Technical guidance for investigative examinations;
 - 2) Technical guidance for procurement of goods and services (probity advice); and
 - 3) Technical guidance for implementing a risk management system.
- b. Examination activities, including:
 - 1) Performance; and
 - 2) With a specific purpose

Based on this Regulation of the Minister of Home Affairs, APIP as an internal supervisor has the authority to calculate state losses at local government

agencies. Thus APIP has the authority to calculate state losses, but it must be remembered that the calculation of state losses by APIP is given based on a mandate, because APIP in conducting investigative audits must get a request from the competent authority, so this does not conflict with the constitution.

The Authority of APIP in Determining State Losses Due to Corruption in Regional Governments

Determining the amount of state losses can only be done by competent agencies regulated in statutory regulations. APIP as an internal supervisor has the authority to conduct an investigative audit carried out to calculate the magnitude of state losses, then the problem this time is whether the results of the state loss calculation by APIP can be the basis for determining state financial losses to local government agencies.

Previously it had been emphasized that in the statutory regulations APIP has the authority to calculate financial losses, not in terms of determining state financial losses to the central or regional government.

The reason APIP is unable to determine state losses is because in calculating state losses APIP must be

based on requests from competent authorities such as legal apparatus. So that the BPKP's authority in calculating state financial losses originates from the mandate given by the legal apparatus to APIP.

The granting of a mandate by the legal apparatus to APIP in calculating state financial losses does not have any impact if it is not followed up by those who request the calculation of state losses, the responsibility remains with the legal apparatus as the mandator. Therefore, the legal apparatus as the mandate giver is not obliged to follow the results of the APIP Report.

Another reason for not being able to determine the state loss of the audit results from APIP is because the report from APIP is merely informative and does not constitute a KTUN. One example is the BPKP report as the APIP, which has been submitted several times to the State Administrative Court, that the BPKP investigative audit report is not included in the KTUN. This is reflected in the PTUN Decision No. 75 PK / TUN / 2015.

The BPKP report is not a KTUN because of the non-fulfillment matter such as individual matter, final and legal consequences for a person or legal entity, therefore the state financial loss report

from the BPKP as APIP is only an expert statement in calculating state losses as outlined in the report, so the value strength of the evidence is attached to the evidence of expert information that has the strength of evidence "free" or "*vrij bewijskracht*".¹⁰

thus legally in terms of determining the loss of state finances there is only one authorized institution, namely the BPK as regulated in Article 23 E paragraph (1) of the 1945 Constitution. Then the authority of the BPK in determining state losses is clarified in Article 10 paragraph (1) of the Law Invite No. 15 of 2006 concerning the BPK.

There are still many contradictions regarding the authority in determining state financial losses, such as the contradiction that state losses can be determined by the BPK alone as an Internal Supervisor, and other conflicts that determining the loss of the State finances can be carried out by BPKP as the APIP as an external supervisor. Therefore, to overcome this, the Supreme Court issued a Supreme Court Circular No. 4 of 2016 concerning the Imposition of the Results of the 2016 Supreme Court Chamber Plenary Meeting

¹⁰ Rita Novita Sari, *Op.Cit.*, p. 127.

as a Guideline for the Implementation of Duties for the Court, which states that.¹¹

“The authorized agency to declare whether there is a loss to the state finances is the Financial Audit Institutions/BPK which have constitutional authority while other agencies such as the BPKP / Inspectorate / Regional Apparatus Work Unit remain authorized to conduct audits of State financial management but are not authorized to 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.”

Then it can be seen, the authority to determine state losses at the SEMA, so if in the future there is debate about the results of the audit report that will be used between APIP and BPK then the authority to determine the loss of the state back to the judge.

Thus, APIP as an Internal Supervisor does not have the authority to determine losses of state assets, only has the authority to calculate state losses and the authority to determine state losses legally is the BPK. However, if in the future the Judge uses the BPK audit results to determine state losses resulting in con-

flict, the APIP audit results can become a second opinion that is only taken into consideration by the judge in deciding state losses and is not as binding as the KTUN.

CONCLUSIONS

APIP is only authorized to calculate state financial losses, because it has the authority to carry out investigative audits, which investigative audits are conducted in the event of state losses at the central or regional government level. Then in conducting an investigative audit, APIP must first obtain a mandate by the legal apparatus. However, in terms of determining the state losses due to corruption, one of the APIP BPKP does not have that authority. This is based on the Decree of the State Administrative Court No. 75 PK / TUN / 2015, that the BPKP audit report is not a KTUN because it is only informative and not final because this report must be followed up by the legal apparatus as the agency that mandates the BPKP to calculate state losses. This is confirmed by the issuance of SEMA No. 4 of 2014 concerning the Imposition of the Formulation of the Results of the Plenary Meeting of the Supreme Court on the Enactment of the Formulation of the Results of the Plenary Meeting of the Supreme Court, which clarifies the authority between the BPK

¹¹ R. Bayu Ferdian, Mohd. Din, M. Gaussyah, “Penetapan Kerugian Negara Dalam Perkara Tindak Pidana Korupsi”, *Syiah Kuala Law Journal*, Vol. 2 No.3, 2018, p. 33.

and BPKP in determining state losses. Therefore, the results of the BPKP report can only be used as second opinion, which is a material consideration in providing decisions regarding state financial losses.

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