



Rights of Police Action by the Financial Audit Board of the Republic of Indonesia

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Abstract

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This study aims to describe the actions of the police conducted by the Financial Audit Board of the Republic of Indonesia (BPK RI) in the perspective of human rights in the context of ethics code and the fulfillment of rights. This research is normative law research, hence secondary data source or library data source used as main source in this research. The research method used in this research is qualitative analysis, which is descriptive by presenting the data in detail and make interpretations to answer the formulation of research problems. The conclusion of the research result is police action stipulated in Article 24 of Law No. 15 of 2006 on Indonesian Financial Audit Board which contains the police action conducted by BPK to examine a case conducted by order of the Attorney General after first obtaining written approval from the President. What is meant by police action (explanation of Article 24 of Law No. 15 of 2006) is a summons in connection with criminal acts, arrest, search and seizure. This police action is further regulated in BPK RI Regulation No. 2 of 2008 concerning the Procedure of Sealing in Implementation of Inspection and Regulation of BPK RI No.3 of 2008 concerning Procedure of Calling and Request of Information by BPK.

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INTRODUCTION

STATE FINANCE is all rights and obligations of the state that can be assessed with money, as well as everything in the form of money or in the form of goods that can be owned by the state related to the implementation of these rights and obligations. The foundation of state finance law² is Article 23, 23A, 23B, 23D, 23D of the 1945 Constitution; Law No. 17 Year 2003 on State Finance; Law Number 15 of 2004 on Audit of State Financial Management and Responsibility; Law No. 33 of 2004 Concerning the Central and Regional Financial Balance; and General Terms of Taxation. From the legal basis mentioned above there are two main elements, namely: (1) elements of priority, namely that the financial implementation carried out every budget year (usually on 1 January to 31 December); and (2) the element of juridity, namely that the realization of state finances should be established by law or by local regulation.

In the conduct of state financial affairs, it will not be possible to escape the so-called surveillance. Supervision is organized to check or assess whether the activities of state administration in accordance with the established provisions and avoid the practice of misuse. The 1945 Constitution legitimizes the amendment of the audit function of the Indonesian Financial Audit Board (BPK) which is not only aimed at the financial responsibility of the state, but also the management of state finances. With its function as an auditor of state financial responsibility, BPK is placed parallel to its position as a state institution. As a state agency that checks the state of financial responsibility, the BPK as an institution directly supervise and inspect the state financial policies (*fiscal policy audit*) by the government.³

In Article 23E of the 1945 Constitution governing the Supreme Audit Agency, “*to examine the management and accountability of state finances should be existed an Audit Board held a free and independent*”. BPK was established for the purpose of examining the management and responsibility of state finances.

Whereas state finance is one of the main elements in the implementation of state government and has a very important benefit in realizing the state’s goal to achieve a just, prosperous and prosperous society as mandated in the Preamble of the 1945 Constitution.

That for the achievement of state objectives, the management and financial responsibility of the state requires a free, independent and professional examiner institution to create a clean government free of corrupt, collusion and nepotism practices. So in carrying out its authority BPK is regulated independently in the Law No. 15 of 2006 on the Indonesian

² Arif Hidayat, 2009, *Hukum Administrasi Negara Lanjut*, Semarang: FH UNNES, p.29.

³ Arifin P. Soeria, 2009, *Keuangan Negara dalam Perspektif Hukum: Teori, Praktik, dan Kritik*, Jakarta: PT Rajawali Pers, p. 222.

Financial Audit Board considering that the law on the old BPK is not in accordance with the development of the existing era.

Whereas the APBN is the government's annual financial plan that will be implemented to achieve the state's objectives. In achieving the country's objectives the application of the APBN itself is very risky with the existence of corruption, collusion, and nepotism (KKN) practices.

This case, BPK based on the prevailing laws and regulations such as Article 23E of the 1945 Constitution and Law No. 15 of 2006 regarding BPK explain that the Indonesian Financial Audit Board has the authority to audit the management and responsibility on state finances. In the context of exercising its authority, BPK may carry out an act called '*police action*' which is further stipulated in Article 24 of Law Number 15 of 2006 concerning BPK.

Furthermore, in exercising the authority in the form of '*police action*', the Indonesian Financial Audit Board must obtain orders from the General Prosecutor after obtaining written approval from the President, and for the urgent circumstances the process is considered to be very long and inefficient on time so that BPK cannot perform a quick action considering that BPK and the Attorney and the President are different agencies.

Based on the above description of the background, then there are two issues to be discussed, *first*, what is a '*police action*' in the authority of Indonesian Financial Audit Board, and *second*, what is the procedure implementation of the '*police action*' by the Indonesian Financial Audit Board?

GENERAL DESCRIPTION OF FINANCIAL AUDIT BOARD OF THE REPUBLIC OF INDONESIA

THE SUPREME Audit Agency⁴ is a free and independent state institution tasked with auditing state financial management. The position of BPK is strengthened constitutionally, that is, by publishing the articles specifically regulating the BPK in the 1945 Constitution after the amendment. The arrangement of this institution in the 1945 Constitution, is placed in Chapter VIII A, Article 23E up to Article 23G.

In Article 23E paragraph (1) of the 1945 Constitution which stipulates that "*to examine the management and accountability of state finances Audit Board held a free and independent*". Free⁵ shall mean any action relating to the management and responsibility of state finances by not violating the provisions of applicable laws and regulations. Meanwhile, independent means

⁴ Martitah 2008, *Hukum Tata Negara*, Semarang: PKK UNNES, p.85.

⁵ Muhamad Djafar, 2011, *Hukum Keuangan Negara*, Jakarta: PT Rajagrafindo Persada, pp. 81-82.

to audit the management and financial responsibility of the state should not be influenced by anyone, including the executive, legislative judicative even from within the Financial Audit Agency itself. As a state institution conducting state audits and responsibilities, the Supreme Audit Agency has a detailed duty in:⁶

- a. Examination of management and accountability of state finances covering:
 - a) Addressed to the Central Government, Regional Government, Other State Institutions, Bank Indonesia, State-Owned Enterprises, Regional-Owned Enterprises, Public Service Bodies, and Institutions or other bodies managing state finances;
 - b) Conducted in accordance with the law on audit of management and responsibility of state finances;
 - c) Financial audits, performance checks, and checks for specific purposes;
 - d) In the event that an inspection is conducted by a public accountant under the provisions of law, the report of inspection result must be submitted to the Supreme Audit Board and published;
 - e) Discussion of examination findings with the object being examined in accordance with state financial auditing standards.
- b. Submission of audit results on the management and responsibility of state finances, consisting of:
 - a) To the People's Legislative Assembly, the Regional Representative Council, and the Regional People's Legislative Assembly in accordance with their authority;
 - b) Conducted according to the respective agreed procedures;
 - c) The People's Legislative Assembly, the Regional House of Representatives, and the Regional People's Legislative Assembly shall follow up in accordance with the Rules of Procedure of each representative institution;
 - d) To the Regional People's Legislative Assembly shall be conducted by a member of the State Audit Board or appointed official;
 - e) Has been submitted to the House of Representatives, Regional Representatives Council, and the Regional People's Legislative Assembly shall be declared open to the public.
- c. Follow-up of audit result of management and responsibility of state finance, consist of:
 - a) For the purposes of the follow up of audit results, the Supreme Audit Board shall also submit written examination results to the President, Governor, Regent/Mayor in accordance with their authority;
 - b) The follow up of the examination result of the Supreme Audit Board is notified in writing by the President, Governor, Regent/Mayor to the State Audit Board;

⁶ *Ibid.*, pp.81-85.

- c) If the examination is found in the criminal element, the Financial Audit Board reports to the competent authority in accordance with the applicable legislation, within one month of the identification of the criminal element;
- d) The report shall be the basis of investigation by the competent investigating authority in accordance with applicable laws and regulations;
- e) Monitor the implementation of the follow-up results of the examination conducted by the President, governors, regents/mayors.

To sustain or support the task, the Supreme Audit Board has authority in order to realize the implementation of people's sovereignty in the field of state financial management and responsibility. The authority of the Supreme Audit Board is as follows:

1. Determining the object of examination, planning and carrying out the examination, determining the time and method of examination as well as preparing and presenting inspection reports;
2. Request information and / or documents required by everyone, central government organizational unit, regional government, other state institutions, Bank Indonesia, state-owned enterprises, regional-owned enterprises, and other institutions or bodies managing state finances;
3. Conduct checks in the depository of state money and property, bookkeeping and administration of state finances, as well as examination of calculations, papers, evidences, checking accounts, accounts and other lists relating to the management of state finances;
4. Establish the type of documents, data, and information on the management and accountability of state finances shall be submitted to the Supreme Audit Board;
5. Establish state financial auditing standards after consultation with the central government, local governments that must be used in audits of management and accountability of state finances;
6. To stipulate the code of conduct of audit of management and accountability of state finances;
7. Using the code of conduct of audits of state financial management and accountability;
8. Fostering the functional position of the examiner;
9. Taking account of government accounting standards;
10. Giving consideration to the draft of the internal control system of the central government or local governments, before being passed by the central government or local governments.

STATE LOSSES

THE MANAGEMENT of state finances (Article 1 (8) of Law No. 15 of 2006) is the overall activity of the state financial management official in

accordance with its position and authority, which includes planning, implementation, monitoring and accountability. In the event of any irregularities or violations of the management and responsibility of the state finances, the Financial Audit Board is authorized to perform acts justified by the State Finance Law. Acts of deviation committed by a particular person or person will cause a state loss that leads to a criminal act. The state losses (Article 1 (15) of Law No. 17 of 2006) are the lack of money, securities and goods, which are real and inevitable in number as a result of unlawful acts either intentionally or negligently. State losses contain a broad meaning so it is very easy to understand and enforced in case of violations in the management of state finances. State losses should not be estimated as intended but must be ascertained the amount suffered by the state at that time, it is intended that there is a legal certainty on the financial state of the country experiencing deficit in order to be held responsible for the state losses.

The factors that cause the state losses are the improper implementation of policies, enriching themselves, others, or corporations. When the factors causing the loss of the state are reviewed in the legal aspects, the state losses are in the public domain, such as state finance law and criminal law. Both types of law have different substances but remain at the same goal of placing the state finances in a normal position. It is based that the state's finance is a carrying capacity in order to achieve the state's goals. State losses and compensation claims constitute a substance in state finance law involving state financial managers with the competent authorities to claim damages. When either party is unable to perform its functions, there are constraints to the enforcement of state finance law.

In the case of resolving state losses⁷, BPK is authorized to assess and/or determine the amount of state losses resulting from unlawful acts, whether intentional or negligent by treasurers, managers of State-Owned Enterprises, And monitoring the settlement of state/regional compensation payments to non-treasury officials and other officials, the implementation of the imposition of state/regional compensation to the treasurer, manager of State-Owned Enterprises and other institutions or bodies managing the established state finances Based on a court decision having a permanent legal power to be notified in writing to the DPR, DPD and DPRD in accordance with their authority.

While the related criminal law in the state losses because the act was done to enrich themselves, other people or corporations so as to cause financial losses to the state or even the economy of the country. It is based that the financial loss of the state or the state economy is one element in the criminal act of corruption. In Law No. 31 of 1999 *jo.* Law No. 20 of 2001 concerning to Eradication of Corruption does not mention explicitly the term of state loss

⁷ Kaka Alvarez, 2014, *Buku Lengkap Lembaga-Lembaga Negara*, Yogyakarta: Saufa, p. 95

but in this law there is the term 'harm the state finances'.⁸ The provisions on state financial harm contained in Article 2 and Article 3. Article 2 (1) of the Act PTPK states that:

“any person who acts unlawfully enrich themselves or another person or a corporation that could harm the state finance or state economy shall be punished with imprisonment for life or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp200,000,000 and most Rp1,000,000,000”.

Article 3 UUPTPK states that:

“Any person who with the intention benefited him/herself or another person or corporation, abuse of power, opportunities or facilities available to him because of the position or the position or the means available to him because of the position or positions that can be harmed state finances or economy of the country, shall be punished with imprisonment for life or imprisonment for a minimum of one year and a maximum of 20 (twenty) years and/or a fine of 50,000,000, - and most Rp1,000,000,000”.

In exercising its authority in relation to the indication of an act against the law that is the act that harms the state's finances, the BPK has an authority in the form of police action, as regulated in Article 24 of Law No. 15 of 2006 which states that: “*The actions of the police against members of the BPK to the examination of a case is done with the command Attorney General after prior written approval of President*”. This police action is further stipulated in the BPK Regulation.

POLICE ACTION BY THE STATE FINANCIAL AUDIT BOARD

ONE OF THE ACTIONS that may be performed by the State Financial Audit Board is the police action. Police action is regulated in Article 24 of Law No. 15 of 2006 concerning to BPK which contains the police action conducted by BPK to examine a case conducted by order of the Attorney General after first obtaining written approval from the President. What is meant by police action (explanation of Article 24 of Law No. 15 of 2006) is a summons in connection with criminal acts, arrest, search and seizure. This police action is further regulated in BPK-RI Regulation No. 2 of 2008

⁸ Abdul Halim, 2011, *Pengelolaan Keuangan Negara-Daerah: Hukum, Kerugian Negara, dan Badan Pemeriksa Keuangan*, Yogyakarta: UPP STIM YKPN, p. 24.

concerning Procedure of Sealing in Implementation of Inspection and Regulation of BPK-RI No.3 of 2008 concerning Procedure of Calling and Request of Information by BPK.

BPK-RI Regulation No. 2 of 2008 on Procedure of Sealing in Implementation of Inspection

IN BPK Regulation No. 2 of 2008 regulates the procedure of sealing in the conduct of inspection. What is meant by examination is an independent, objective, and professional identification, analysis and evaluation process based on inspection standards, to assess the truth, accuracy, credibility and reliability of information on the management and accountability of state finances. The inspection process is carried out by an auditor, the examiner is a person who performs the task of auditing the management and financial responsibility of the state for and on behalf of BPK. In the examination, the examiner performs a sweeping action performed on the depository of money, goods, and/or state financial management documents that are in the control and/or responsibility of the party examined or other parties related to the examination. The sealing shall only be conducted in the event that the examination shall be postponed if the party who holds and / or is responsible for money, goods, and/or state financial management documents is not present at the time of the hearing, natural disaster or limited time. Sealing is done at the most 2 x 24 hours by paying attention to the smooth implementation of the work/service of the place being examined. The procedure of sealing is regulated by Article 4 of BPK Regulation No. 2 of 2008, as follows:

1. The sealing is done by locking and/or placing a security mark, followed by attaching a seal paper to the storage of money, goods, and/or state finance management documents;
2. The seal paper is signed by 2 (two) Examiners and 2 (two) witnesses from the parties examined in Appendix I (sealing form).
3. The sealing shall be conducted by bringing the Minutes of Sealing in 2 (two) copies signed by the Examiner, the party responsible/responsible for money, goods and / or documents, and 2 (two) witnesses from the parties examined in Appendix II (Minutes of Sealing).
4. In the event that the inspected party refuses or obstructs the sealing, the Examiner shall remain sealed in the presence of the Local Government Apparatus and, if necessary, request the assistance of the Police. What is meant by Local Government Apparatus is the Village Head/Village Head and/or Device.
5. Reasons for refusing or blocking sealing are recorded in the Minutes of Sealing.

6. In the event that the inspected party refuses to sign the Minutes of Sealing, the denial is recorded in the Minutes of Sealing.
7. Attachment I and Attachment II as an integral part of this Regulation.

The opening of the seal is performed by the Examiner by removing the seal paper followed by unlocking and/or safety marks and proceeding by making Minutes of Opening of Seals in duplicate signed by the Examiner, the party responsible/responsible for money, goods and/or documents, and 2 (two) witnesses according to Appendix III (Minutes of Opening of Seals). If sealing is done for the reason that the sealing is postponed because the party who controls or is responsible for money, goods, and/or documents and when 2 x 24 hours has been exceeded, the controlling and/or responsible or money, goods and/or documents are not notified and/or unknown, the seal is opened to continue the examination. In the event that there is no notice and / or unknown presence of the controlling and/or responsible party or money, goods, and/or documents, then the party is considered to know the inspection. Opening of the depository of money, goods, and/or documents by the direct superior, the head of the entity and/or official appointed and witnessed by 2 (two) witnesses. In the case of direct supervisor, the management of the entity and/or the appointed official refuses to open the depository of money, goods and/or documents, then the Examiner shall prepare the Minutes of Rejection of Inspection in accordance with the applicable provisions, subsequently reported to the competent authorities. In the event that the seal paper is damaged and / or in any other way the sealing purpose is thwarted, the Examiner shall prepare the Minutes of Destruction of the Seal in 2 (two) copies according to Annex IV (Minutes of Seal Destruction) and report to the police to follow up in accordance with applicable provisions

BPK-RI Regulation No.3 of 2008 on Procedures for Summoning and Requesting Information by BPK

THE SUPREME Audit Board is authorized to carry out police action, one of the police actions that can be performed by BPK is the invitation and inquiry. For further regulation on police actions in the form of summoning and requesting information shall be regulated in BPK-RI Regulation No. 3 of 2008 concerning Procedures for Summoning and Requesting Information by BPK.

a) *Calling*

Calling (Article 1 Sub-Article 3 of BPK Regulation No. 3 of 2008) is the last act performed by BPK to present a person after efforts in order to obtain, complete, and/or believe that the information required in connection with the examination is unsuccessful. Calling takes place on weekdays.

b) *Request of statement*

Requests for information addressed to a person referred to in this BPK Rule. A person (Article 1 Sub-Article 4 of BPK Regulation No.3 of 2008) is an individual or legal entity that is responsible or related in the conduct of work financed by the state finances. A person who has been legally called must attend and cannot be represented. A call to a request for information shall be made on the working day of the BPK office specified in the summons. Request for information may be made by the Chairman, Vice Chairperson, Member of BPK, and Appointed Officer. The result of the inquiry is set forth in the Minutes of Inquiry Requests and signed by the person providing the information and the person requesting the information. In the event that a person being questioned refuses to sign a Notice of Inquiry, the refusal shall be recorded in a Notice of Inquiry with reference to the reason. A person who had or fulfilled the call but refused to give any information, signed the Minutes of Rejection of the Description and the BPK reported to the authorities

DIRECT POLICE ACTION BY BPK

BPK is entitled to take police action if it is indicated that an act is committed to enrich itself, others, or corporation to cause loss to the state. It is based that the financial loss of the state is one element in the criminal act of corruption as referred to in Law No. 31 of 1999 *jo.* Law No. 20 of 2001 on the Eradication of Corruption. However, in the event of urgent BPK may take direct police action without waiting for orders from the Attorney General.

Members of BPK may be subject to police action without waiting for orders from the Prosecutor General or written consent of the President, if: to be caught red-handed or suspected of committing a criminal offense punishable by capital punishment. This police action within 1 x 24 hours shall report to the Prosecutor-General who is obligated to notify the detention to the President, the People's Legislative Assembly and the Supreme Audit Board

CONCLUSIONS

THE SUPREME Audit Board is a free and independent state institution tasked with auditing state financial management. The position of BPK is strengthened constitutionally, that is, by publishing the articles specifically regulating the BPK in the 1945 Constitution after the amendment. The arrangement of this institution in the 1945 Constitution, is placed in Chapter VIII Article 23E up to Article 23G.

The management of state finances (Article 1 (8) of Law No. 15 of 2006) is the overall activity of the state financial management official in accordance with its position and authority, which includes planning, implementation,

monitoring and accountability. The factors that cause the state losses are the improper implementation of policies, enriching themselves, others, or corporations. When the factors causing the loss of the state are reviewed in the legal aspect, the state losses are in the public domain, such as state finance law and criminal law. Both types of law have different substances but remain at the same goal of placing the state finances in a normal position. This case was related to the criminal law in the context of State losses because the act was done to enrich themselves, others or corporations thereby causing financial losses to the state or even the economy of the country.

One of the actions that the Supreme Audit Board may take is the police action. Police action is regulated in Article 24 of Law No. 15 of 2006 concerning to BPK which contains the police action conducted by BPK to examine a case conducted by order of the Attorney General after first obtaining written approval from the President. Further regulation on police action is regulated in Regulation of BPK-RI No. 2 of 2008 concerning Procedure of Sealing in Implementation of Inspection and Regulation of BPK-RI No. 3 of 2008 concerning Procedure of Calling and Request of Information by BPK.

Suggestion for this case, that in implementing the action of the BPK Police must observe the prevailing laws and regulations so as not to exceed the authority granted by the prevailing laws and regulations.

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Laws and Regulation

Indonesian Constitution of 1945 Amendment IV

Law Number 17 of 2003 concerning to State Finances

Law Number 1 of 2004 concerning to Country Fundraising

Law Number 15 of 2006 concerning to the Audit Board

Regulation of BPK-RI Number 2 of 2008 concerning to Procedure of Sealing
in Implementation of Inspection

BPK Regulation No. 3 of 2008 on Procedures Dialing and Inquiries by
the BPK