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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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THE TASK RECONSTRUCTION AND BPKP'S AUTHORITY IN THE CASE OF JUSTICE VAUE BASED CORRUPTION

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A. BACKGROUND

According to UUD 1945 (the 1945 Constitution of Republic of Indonesia), where one of the inter-state institutions has correlation based on audit system and assessment is State Audit Board or Supreme Audit Board (BPK) is to investigate the management and accountability of state finances, there shall be a single Supreme Audit Board which shall be free and independent. The result of any investigation of state finances shall be submitted to The House of Representatives (DPR) in line with their respective authority.

In handling corruption crimination cases in Indonesia, whether conducted by Polices, Prosecutors, and Corruption Eradication Commission (KPK), the investigators of the above institutions to determine the state loss by asking the expert witnesses from BPKP not from BPK, whereas based on Laws and Regulations who authorize in determining the state loss and also to appoint the expert witnesses in litigation is BPK not BPKP. The current situation of law enforcement is extremely debatable by criminal law experts at mass-media and at the Court of Corruption Crimination.

B. PROBLEM FORMULATION

Based on the above background, the writer here can formulate the problems as follows:

1. How the implementation of tasks and authority of BPKP in auditing towards current corruption cases in Indonesia?
2. How the weakness of implementation of tasks and authority of BPKP in auditing towards current corruption cases in Indonesia?
3. How the reconstruction of implementation of ideal tasks and authority of BPKP in auditing towards current corruption cases based on justice value?

C. DISCUSSION

1. Implementation of tasks and authority of BPKP in auditing towards current corruption cases in Indonesia

Whereas the position of BPKP according to Presidential Decree of RI (KEPPRES) Number 103/2001 concerning to Position, tasks, Functions, and Authority, Organizational Structure, and Work-Procedures of Government Institution non department in Article I point (1) stated, the Government Institution non department: *Lembaga Pemerintah Non-Departemen* (LPND) is a Government Institution which is formed to implement a certain tasks of government from President, and point (2) stated that LPND is responsible to President. BPKP is one of government institutions as mentioned in Article 3 of the above KEPPRES.

The tasks of BPKP has been regulated in Article 2 KEPPRES Number 103/2001, namely BPKP has the task of carrying out government duties in the field of financial control and development in accordance with the provisions of the legislation in force and the tasks regulated in details in Article 52 of the above KEPPRES.

To differ the authority of BPK is regulated in Law Number 15/2006 Article 10 as follows (1) :

BPK assess and/or set the amount of state losses caused by an unlawful act, either intentionally or negligent conducted by the treasurer, manager of State-Owned Enterprises/Regional Owned Enterprises, and the institution or other entity that organizes the management of state finances.

Then to become an expert from BPK it has been firmly regulated in Article 11 paragraph (3) stated that, Expert testimony in judicial proceedings regarding damages countries/regions.

BPKP (Finance and Development Supervisory Board) performs its tasks and functions to audit corruption cases in Indonesia nowadays based upon investigators' order. BPKP performs the audit the state loss based upon investigative audit by matching documental data or the proofs of state finance spendings which are confiscated by official investigators from corruption crimination without physical auditing towards cased object, then the audit of state loss given by BPKP to investigators to be evidence as meant in Article 184 (1) Letter c KUHAP.

2. Weakness of implementation of tasks and authority of BPKP in auditing towards

current corruption cases in Indonesia

BPKP (Finance and Development Supervisory Board) performs its tasks and functions to audit corruption cases in Indonesia nowadays having some weaknesses, namely the audit of state loss based upon investigative audit and documental data without auditing physical investigation towards object. Therefore, the validity of investigation result is hasitated to be claimed at court session

While to based on According to Presidential Decree Number 103/2001 Concerning to Position, tasks, Functions, and Authority, Organizational Structure, and Work-Procedures of Government Institution of non department in Article 54:

- a. The preparation of a comprehensive national plan in its field;
- b. Formulation of policies to support macro development;
- c. The establishment of a statistical information system;
- d. Guidance and supervision on the implementation of regional autonomy that includes giving guidance, counseling, training, direction, and supervision in the field;
- e. Determination of requirements for accreditation of educational institutions and certification of professionals / experts and the work requirements in the field;
- f. Other authorities in accordance with the provisions of the legislation in force, namely:
 1. Entering all the offices, workshops, warehouses, buildings, places of hoarding, etc;
 2. Examine all records, electronic data, documents, books calculations, the evidential documents, the minutes of the committee meetings and the like, the survey reports management, and other papers required in supervision;
 3. Supervision of cash, marketable securities, inventory warehouses and others;
 4. Inquire about follow-up the results of monitoring, both the supervisory BPKP itself nor the results of the supervision of the Audit, and agencies Other surveillance.

3. Reconstruction of implementation of ideal tasks and authority of BPKP in auditing towards current corruption cases based on justice value

Based upon justice, in Indonesia the auditors ideally carry out the state finance conducted by Central Government, Regional Government, Bank of Indonesia, BUMN/BUMD (State Owned Enterprises), BLU (Public Service Board). The authorized state institution to audit the state loss is BPK (Supreme Audit Board) like iin China,

Vietnam, Holland and Malaysia

Because The task of BPK is regulated in Law Number 15/2006 Article 6.

1. BPK in charge of examining the management and financial responsibilities country conducted by the Central Government, Local Government, other state institutions, Bank Indonesia, State-Owned Enterprises, Public Service Board, Regional-Owned Enterprises and institutions or other entities that manage state finances.
2. Implementation of the BPK examination referred to in paragraph (1), is based on the law on audit of the management and financial responsibility of the state.
3. BPK's audit covers financial audit, performance audit, and inspection with a specific purpose.
4. In the case of the examination conducted by public accountants under the provisions of law, the examination report shall be transmitted to the BPK and published.
5. In conducting the management and financial responsibilities of the States referred to in paragraph (1), the BPK held discussions on the audit findings with the object being examined in accordance with the standards of the state financial audit.
6. Further provisions concerning the procedures for the implementation of the tasks the BPK as referred to in paragraph (1) shall be regulated by the BPK regulation.

The specific tasks of BPK are firmly regulated in Article 8 as follows:

1. For the purposes of the follow-up examination as referred to in Article 7 paragraph (1), the BPK also submit examination results in writing to the President, Governor, Regent/Mayor in accordance with their authority.
2. Follow-up examination as referred to in paragraph (1) shall be notified in writing by the President, Governors, Regents/Mayors to theBPK.
3. If found in the examination of criminal elements, BPK reported the matter to the relevant authorities in accordance with the provisions of the legislation no later than 1 (one) month since the known existence of the criminal element.
4. BPK report referred to in paragraph (3) used as the basis of an investigation by the investigation authorities in accordance with the legislation.
5. BPK monitor the implementation of the follow-up results of the examination conducted by the officials as referred to in paragraph (1), and the result is notified in writing to the DPR, DPD and DPRD, as well as the Government.

Based on Law Number 15/2006 regarding to Supreme Audit Board (BPK) in Article 2 and 3 stated that: BPK is a state agency that is free and independent in

examining the management and financial responsibility of the state. Article 3, BPK is based in the state capital. BPK has representatives in every province which has nine members and the period of position for five years.

D. Recommendation

From all kinds of legal debates, the investigators still use the auditors from BPKP particularly in auditing corruption crimination in Indonesia, therefore it is suggested that the investigators from Police Department, Prosecutors and KPK in handling state loss in corruption crimination not asking the auditors from BPKP, but they should ask from BPK, because the auditors from BPKP in deciding a state loss in corruption crimination is not their authority based upon Article 23 E UUD 1945 and UU RI No. 15/2006 regarding to BPK.

1. BPKP (Finance and Development Supervisory Board) performs investigative audit and decides the state loss in corruption crimination just based upon the state spendings of regional offices. And juridically the evidence result from BPKP is in doubt and not valid to be claimed at court session. The judges are suggested to judge the corruption case and asking the lawyers of accused to reject the audit from BPKP. The valid audit should be from BPK.
2. So as not to be ambiguity, the authority in corruption cases should be from BPK as sole auditor. Therefore, the Government Regulation RI Number 129/2014 regarding to BPKP must be abolished so that the tasks and authority of BPKP as internal auditor of government institutions as regulated in Government Regulation RI Number 60/2008 regarding to Government Internal Control Systems,

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