

A Juridical Analysis of the Overlapping Authorities of the Audit Board of Indonesia (BPK) and the Finance and Development Supervisory Agency (BPKP) in Auditing State Finances (An Analysis of Supreme Court Decision No. 886 K/Pid.Sus/2019)

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This thesis examines the juridical analysis of overlapping authority between the Audit Board of the Republic of Indonesia (Badan Pemeriksa Keuangan/BPK) and the Finance and Development Supervisory Agency (Badan Pengawas Keuangan dan Pembangunan/BPKP) in conducting state financial audits, with particular reference to Supreme Court Decision Number 886 K/Pid.Sus/2019. The study is motivated by the existence of dual audit results issued by BPK and BPKP concerning the same audit object, which resulted in significantly different calculations of state financial losses and raised issues of legal uncertainty in corruption law enforcement. This research employs a normative juridical method with statutory, conceptual, and case approaches. Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, laws and regulations governing state financial audits, presidential regulations concerning BPKP, and relevant judicial decisions, particularly the Supreme Court ruling under study. Secondary legal materials include legal doctrines, scholarly writings, and journal articles. Data are analyzed qualitatively using deductive legal reasoning. The findings reveal that constitutionally and statutorily, BPK holds exclusive authority as the external auditor responsible for examining the management and accountability of state finances, including determining state financial losses. Meanwhile, BPKP functions as an internal government supervisory body whose authority is derived from presidential delegation within the executive branch. The overlap in audit practices between BPK and BPKP, as demonstrated in Supreme Court Decision Number 886 K/Pid.Sus/2019, reflects normative ambiguity and weak coordination mechanisms, leading to inconsistencies in audit outcomes and potential violations of legal certainty principles. This study concludes that the overlapping authority between BPK and BPKP in state financial audits necessitates clearer normative boundaries and harmonization of regulations to ensure legal certainty, prevent duplication of audits, and strengthen the credibility of state financial accountability and corruption law enforcement in Indonesia.

Keywords: state financial audit, overlapping authority, BPK, BPKP, legal certainty, Supreme Court decision.

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1. Introduction

In the constellation of a state governed by law, the constitution represents the highest normative framework that serves as the foundation for the exercise of state power. The constitution functions not only as a guideline for the administration of government but also as a mechanism to limit state power in order to prevent its abuse. In modern constitutional states, the existence of a written constitution with supreme legal authority is regarded as a fundamental characteristic. According to Francois Venter, as cited by Denny Indrayana, a modern constitutional state is defined by the presence of a written constitution that possesses the highest legal value within the legal system [1].

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The constitution essentially regulates the structure of state power, the distribution of authority among state institutions, and the protection of fundamental rights, including civil, political, economic, social, cultural, and educational rights. Furthermore, it affirms the form of the state and determines the powers and functions of state institutions. In Indonesia, the constitution is embodied in the 1945 Constitution of the Republic of Indonesia, which has undergone four amendments since the reform movement of 1998. These constitutional amendments introduced fundamental changes to Indonesia's constitutional system, particularly in restructuring state power in accordance with democratic principles and the rule of law [2].

One of the primary objectives of the constitutional amendments was to establish a system of checks and balances among state institutions. The distribution of power was designed to prevent the concentration of authority within a single institution, as excessive accumulation of power may undermine democratic governance. Therefore, a clear separation and distribution of powers within the constitutional framework is essential to prevent abuse of power and to ensure the protection of citizens' rights [3].

In line with the doctrine of separation of powers, state authority is generally divided into legislative, executive, and judicial powers. Although the boundaries between these powers are not always absolute, their functional distinction remains essential for effective governance. In addition to the classical trias politica doctrine, the development of modern constitutional systems has introduced additional state functions, including financial oversight. In Indonesia, this function is constitutionally assigned to the Supreme Audit Board, which exercises examinative power [4].

The amended 1945 Constitution recognizes several state powers and institutions, including legislative power exercised by the People's Consultative Assembly, executive power exercised by the President and Vice President, judicial power exercised by the Supreme Court and the Constitutional Court, and examinative power exercised by the Supreme Audit Board (BPK). In addition, auxiliary state institutions exist to support the implementation of state functions, including internal government supervisory bodies. These institutional arrangements aim to ensure accountability, transparency, and effective governance within the state system [5].

State finance constitutes a crucial element in the administration of government and the realization of national objectives. Proper management of state finances is indispensable for achieving public welfare and economic stability. Consequently, the supervision and audit of state financial management are integral components of good governance. From a constitutional perspective, the authority to examine the management and accountability of state finances is granted to the Supreme Audit Board under Article 23E of the 1945 Constitution [9].

However, in practice, the Supreme Audit Board is not the sole institution involved in auditing state finances. The Financial and Development Supervisory Agency (BPKP), as an internal government supervisory body operating under the President, also holds authority to conduct audits, reviews, evaluations, and calculations of state financial losses based on presidential regulations [12]. This dual authority has the potential to create overlaps and jurisdictional conflicts between external and internal audit institutions, particularly in determining state financial losses in corruption cases.

Such overlap is evident in judicial practice, as demonstrated in Supreme Court Decision Number 886 K/Pid.Sus/2019, where audits conducted by the Supreme Audit Board and the Financial and Development Supervisory Agency on the same object produced significantly different results. This discrepancy raises serious legal issues concerning legal certainty, institutional authority, and the harmonization of the state financial audit system [13].

Based on these considerations, this study aims to conduct a juridical analysis of the overlapping authority between the Supreme Audit Board and the Financial and Development Supervisory Agency in auditing state finances. By examining Supreme Court Decision Number 886 K/Pid.Sus/2019, this research seeks to clarify the boundaries of institutional authority, promote legal certainty, and contribute to the development of a more coherent and effective state financial audit framework.

2. Literature Review and Problem Statement

Previous studies on state financial oversight in Indonesia largely emphasize the constitutional role of the Supreme Audit Board (Badan Pemeriksa Keuangan/BPK) as the external auditor of state finances. Scholars argue that BPK holds exclusive constitutional authority to examine the management and accountability of state finances, as mandated by Article 23E of the 1945 Constitution and reinforced by statutory regulations [2], [9]. Other studies focus on the position of the Financial and Development Supervisory Agency (Badan Pengawas Keuangan dan Pembangunan/BPKP) as an internal government supervisory body operating under the President, with authority derived from presidential regulations [6], [12]. Research in this area generally highlights the functional distinction between external audit institutions and internal supervisory bodies, emphasizing accountability, transparency, and efficiency in public financial management [7]. However, several empirical and normative studies indicate inconsistencies in practice, particularly when BPKP conducts audit investigations and calculates state financial losses in corruption cases, a function traditionally associated with BPK [8].

Despite extensive discussion on the legal basis and institutional roles of BPK and BPKP, existing literature reveals a significant research gap concerning the juridical implications of overlapping audit authority between these two institutions. Most prior research examines the authority of either BPK or BPKP separately, without comprehensively analyzing situations in which both institutions audit the same object and produce conflicting results. Furthermore, limited attention has been given to judicial perspectives in resolving such overlaps, especially in Supreme Court decisions that implicitly legitimize the use of different audit results. This gap gives rise to the central problem of this research, namely the lack of legal certainty and harmonization in determining institutional authority for state financial audits. Accordingly, this study formulates the following problem statement: How is the overlapping authority between BPK and BPKP in auditing state finances legally constructed and justified within the Indonesian constitutional and statutory framework, as reflected in Supreme Court Decision Number 886 K/Pid.Sus/2019? Addressing this problem is essential to clarify institutional boundaries, strengthen legal certainty, and improve the coherence of the state financial audit system.

3. Method

This study employs a normative juridical research method, which focuses on examining legal norms, principles, and regulations through the analysis of statutory provisions, legal doctrines, and relevant literature. Normative legal research places legal materials as the main source of data and aims to analyze legal issues based on existing legal norms and principles [13], [14]. The nature of this research is descriptive-analytical, meaning that it describes applicable legal provisions and systematically analyzes them to understand issues related to the authority in auditing state financial management.

This research applies several approaches, namely the statute approach, conceptual approach, and historical approach. The statute approach examines relevant laws and regulations, including the 1945 Constitution of the Republic of Indonesia, Law No. 17 of 2003 concerning State Finance, Law No. 1 of 2004 concerning State Treasury, and Law No. 15 of 2004 concerning the Audit of State Financial Management and

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Accountability. The conceptual approach examines legal doctrines and principles in legal literature, while the historical approach analyzes the development of regulations related to state financial audits [15].

The data used in this study are secondary data, consisting of primary, secondary, and tertiary legal materials. Data collection was conducted through library research, and the data were analyzed qualitatively using descriptive analytical methods to interpret legal norms and formulate systematic conclusions [14], [15].

4. Results and Discussion

State Financial Audit in Determining State Financial Losses

The results of this study indicate that the determination of state financial losses is a crucial element in proving corruption cases. Juridically, the definition of state finance is regulated in Article 1 paragraph (1) of Law No. 17 of 2003 concerning State Finance, which states that state finance includes all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be used as state property in relation to the implementation of those rights and obligations. Furthermore, Article 1 paragraph (22) of Law No. 1 of 2004 concerning State Treasury and Article 1 paragraph (15) of Law No. 15 of 2006 concerning the Audit Board of Indonesia state that state losses refer to shortages of money, securities, or goods that are real and definite in amount resulting from unlawful acts, either intentionally or due to negligence.

In law enforcement practice, investigators and prosecutors generally do not have the technical competence to directly calculate state financial losses. Therefore, they require assistance from institutions that have auditing authority, such as the Supreme Audit Board (BPK), the Financial and Development Supervisory Agency (BPKP), and forensic accountants [1]. According to T. M. Tuanakotta, sources of state losses may originate from several components, namely revenue, expenditure, assets, and liabilities [2]. In addition, the process of determining state financial losses involves three main stages: identifying whether a loss exists, calculating the amount of the loss, and formally determining the value of the loss.

Normatively, the authority to determine state financial losses lies with the Supreme Audit Board (BPK). This is stipulated in Article 10 of Law No. 15 of 2006 concerning the Supreme Audit Board, which states that BPK has the authority to assess and determine the amount of state losses caused by unlawful acts committed by treasurers, state-owned enterprises, regional-owned enterprises, or other institutions managing state finances. This provision is further strengthened by the Supreme Court Circular Letter No. 4 of 2016, which was later updated through Supreme Court Circular Letter No. 2 of 2024, stating that the institution authorized to declare the existence of state financial losses is the Supreme Audit Board (BPK).

Meanwhile, the authority of BPKP in state financial audits is primarily limited to internal government supervision. According to the Regulation of the Head of BPKP No. PER-1314/K/D6/2012, BPKP has the authority to conduct investigative audits aimed at identifying indications of irregularities that may cause state financial losses [3]. However, such authority is limited to conducting examinations and calculations, while the formal determination of state losses remains within the authority of BPK.

Overlapping Authority between BPK and BPKP in State Financial Audits

The results also show that in practice there is an overlap of authority between BPK and BPKP in conducting audits of state financial management, particularly in corruption cases. This overlap can be observed in Supreme Court Decision No. 886 K/Pid.Sus/2019, which serves as the case study in this research.

In the construction project of Pamarayan Public Health Center in Serang Regency, two different audit results were found regarding the same object of examination. The audit conducted by BPK identified state financial losses amounting to IDR 60,465,273. Meanwhile, the investigative audit conducted by BPKP Representative of Banten Province identified state losses amounting to IDR 260,008,943.

This difference indicates a dualism in determining the amount of state financial losses arising from the same project. Furthermore, it was found that BPKP conducted an investigative audit on an object that had previously been audited by BPK without prior coordination with BPK as the external auditor of state finances. This practice potentially creates legal uncertainty in determining state losses in corruption cases.

Discussion

The findings of this study demonstrate that the overlapping authority between BPK and BPKP in state financial audits arises primarily from the unclear boundaries between external and internal government auditing functions. Constitutionally, BPK is the institution that holds examinative authority to audit the management and accountability of state finances as stipulated in Article 23E of the 1945 Constitution of the Republic of Indonesia. Meanwhile, BPKP acts as the Government Internal Supervisory Apparatus responsible for supervising financial management within the executive branch.

The different institutional positions between BPK and BPKP should theoretically place BPK as the primary institution authorized to determine state financial losses. However, in practice, investigative audit results issued by BPKP are frequently used as evidence in corruption trials. This situation may lead to inconsistencies in the calculation of state losses and create legal uncertainty in law enforcement.

In Supreme Court Decision No. 886 K/Pid.Sus/2019, a dissenting opinion was expressed by Justice Surya Jaya, who argued that the investigative audit conducted by BPKP Banten did not comply with the provisions of statutory regulations and ignored the coordination mechanism required with BPK. According to Article 9 paragraph (2) of Law No. 15 of 2004 concerning the Audit of State Financial Management and Accountability, internal supervisory bodies must submit their audit results to BPK.

Furthermore, the Constitutional Court Decision No. 31/PUU-X/2012 states that in corruption cases, law enforcement agencies such as the Corruption Eradication Commission (KPK) may coordinate with institutions such as BPK and BPKP to calculate state losses. However, this decision does not eliminate the constitutional authority of BPK as the institution responsible for auditing the management and accountability of state finances.

Therefore, the overlap between BPK and BPKP in auditing state finances can be categorized as functional overlapping rather than direct conflict of authority. This overlapping occurs because both institutions perform audit functions related to state financial management but within different institutional scopes. Without clear coordination mechanisms, such overlap may lead to inconsistencies in audit findings and affect the credibility of financial loss calculations in corruption cases.

5. Conclusion

Based on the results of this study, it can be concluded that the Supreme Audit Board of Indonesia (BPK) holds a constitutional position as the external state audit institution authorized to examine and determine state financial losses, as regulated in the 1945 Constitution and relevant statutory laws. In contrast, the Financial and Development Supervisory Agency (BPKP) functions as an internal government supervisory body whose authority is limited to internal oversight within the executive branch. Although both institutions are involved in auditing state financial management, their different institutional positions create potential

overlaps in authority, particularly in determining state financial losses in corruption cases. This overlap was evident in Supreme Court Decision No. 886 K/Pid.Sus/2019, where differing audit results between BPK and BPKP highlighted inconsistencies in the mechanism for calculating state financial losses. Therefore, legal certainty regarding the authority to determine state financial losses must be reaffirmed by emphasizing the role of BPK as the supreme audit institution, while ensuring proper coordination with internal supervisory bodies such as BPKP to avoid overlapping authority and to strengthen the integrity of financial audits in corruption law enforcement..

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