

## **Audit of state losses by the Gorontalo attorney general in a corruption case**

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### **Abstract**

*In the process of proving Corruption Crime, it must fulfill the three elements contained in corruption, one of the elements of which is the loss of state finances as well as the Corruption Act. To prove the State's loss, the institutions that are authorized to audit the results of State losses will be involved. In this case the Supreme Audit Agency (BPK). As in Law No. 15 of 2006 and other institutions regulated outside the constitution, based on Circular of the Chief of the Supreme Court Number 4 of 2016, and based on the Decision of the Constitutional Court Number. 31 / PUU-X / 2012. But in some of the decisions of the Corruption Criminal Court, the process of proving the loss of state finances was carried out by the Gorontalo High Prosecutor's Office who did not have the authority to audit state financial losses in cases of corruption.*

**Keywords:** *Legal Analysis; Audit; State Losses and Corruption*

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### **1. Introduction**

In the administration of the state, sometimes the government often acts against the law, so that it triggers the loss of state finances. The state's own financial losses in Article 1 number 22 of Act Number 1 of 2004 concerning State Treasury are: "State / Regional losses are a reduction in money, securities, and goods that are real and certain in number as a result of unlawful or negligent acts" .

Based on the above understanding, the elements of state losses can be stated, namely:

1. State loss is a reduction in state finances in the form of valuable money, state property of the amount and / or value that should be.
2. The deficiency in the state finances must be real and certain in number or in other words the loss has actually occurred with the amount of loss that can be determined by the amount, with the amount determined, thus the state's loss is only an indication or in the form of potential loss.
3. The loss is due to unlawful acts, whether intentional or negligent, the element of violating the law must be proven carefully and accurately.

State losses from aspects of Law Number 15 of 2004 concerning Examination of Management and Accountability of State Finance can occur in two stages, namely at the stage of funds going to the state treasury and at the stage of funds going out of the state treasury. At the stage of the funds going to the state treasury, it can occur through: tax conspiracies, conspiracy fines, conspiracy to recover losses from state finances and smuggling. Whereas at the stage of funds going out of the state treasury, losses occur as a result of: mark up, bad credit, implementation of activities that are not in accordance with the program and others (Muhammad Djafar Saidi, 2013: 113).

To overcome the things mentioned above, the government needs to conduct supervision / audit on the use of funds obtained from the State Budget for Expenditures and Expenditures, the Regional Revenue and Expenditure Budget and separated state assets that are used by government agencies or other government-owned bodies. Understanding of supervision according to the State Administration Law itself is a process of activities that compares what is carried out carried out, or held it with what is desired, planned, or ordered (Adrian Sutedi, 2010: 172)

The purpose of the supervision is to find out whether the task and work have been done according to the right or not. The form of supervision in the context of management and responsibility of state finances in terms of calculating state financial losses can be in the form of:

a. Internal monitoring

1. Performed by superiors against subordinates in a work environment;
2. Inspector General, Provincial Inspectorate and Inspectorate of the city district;
3. Financial and Development Supervisory Agency;

b. External Oversight by the Supreme Audit Agency

At this time, what is often a debate is related to the authority of agencies that can calculate and determine the state financial losses. As is known that in the legal process of criminal acts of corruption, the proof must fulfill 3 elements contained in corruption and one of the elements is the existence of state financial losses in accordance with Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended and supplemented by Law- Law Number 20 of 2001 concerning changes to Law Number 31 of 2001 concerning Eradication of Corruption Crimes.

Besides BPK, BPKP and INSPEKTORAT. In the practice of law enforcement of the Prosecutor's Office whose function is as a Public Prosecutor and as an Executor, in fact it often also proves the existence of state financial losses against corruption, even though the Prosecutor has the authority to conduct investigations into Certain Crimes but does not mean the Prosecutor can audit State financial losses in decision No. 5 / Pid.Sus-TPK / 2018 / PN Gto, and Decision No. 6 / Pid.Sus-TPK / 2018 / PN Gto.

In the decision of the Corruption Criminal Court, the process of proving the loss of state finances was carried out by the Gorontalo High Prosecutor's Office so that the author was interested in explaining who has the authority to audit state financial losses in corruption and know whether the prosecutor has the authority to audit state financial losses against corruption.

## **2. Institutions authorized to audit state financial losses in corruption crimes**

To find out which institution has the authority to audit losses on state finances, this requires a systematic and comprehensive scientific breakdown based on the entire legal product of the prevailing laws and regulations. So that in the end the conclusions we take are based on full consideration and the objectivity can be accounted for.

With this authority, the function of the BPK actually consists of three main areas, namely (Jimly Asshiddiqie, 2006; 168):

- a. Operative function, namely in the form of examination, supervision, and investigation of mastery, management and management of wealth over the state.

- b. Judicial functions, namely in the form of authority to demand treasury and claims for compensation to treasurers and civil servants not treasurers who because of their actions violate the law or neglect obligations that cause financial loss and state wealth.
- c. Advisory function, namely giving consideration to the government regarding management and management of state finances.

For this reason, from the provisions of Article 23E of the 1945 Constitution of the Republic of Indonesia, the only body that has constitutional legitimacy in determining the alleged loss of state finances, especially in cases or acts of corruption is the Supreme Audit Agency (BPK). So as to facilitate the implementation of this authority, Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK) was established.

The provisions of Article 10 of Act Number 15 of 2006 concerning the Supreme Audit Agency, confirm the following:

Paragraph (1): The Supreme Audit Agency assesses and / or determines the amount of state losses caused by unlawful acts, both intentionally and negligently carried out by the Treasurer, the management of State-Owned Enterprises / Regionally-Owned Business Entities, and other institutions or bodies that conduct management of state finances.

Paragraph (2): Evaluation of state financial losses and / or the determination of parties that are obliged to pay compensation as referred to in paragraph (1) shall be stipulated by the decision of the Supreme Audit Board.

The determination of the amount of state financial losses by the Supreme Audit Agency is confirmed by the Chair of the Supreme Court of the Republic of Indonesia. The affirmation is stipulated in the form of the fatwa of the Supreme Court of the Republic of Indonesia Number 068 / KMA / HK.01 / VII / 2012, July 27, 2012. Actually, the fatwa of the Supreme Court of the Republic of Indonesia is a guide or guideline for judges in examining and deciding cases or cases that related to state financial losses. If there is an institution other than the Supreme Audit Agency that determines the amount of state financial losses, then the determination of the state's financial losses is null and void by law. Because of its existence to determine the amount of state financial losses not recognized by the 1945 Constitution of the Republic of Indonesia. Thus, there is no other body or accountant authorized to determine the amount of state financial losses, except the Supreme Audit Agency.

In addition to the fatwa issued by the Chairperson of the Supreme Court above, a Circular of the Chief of the Supreme Court was issued No. 4 of 2016 concerning the Implementation of the Formulation of Results of the 2016 Supreme Court Room Plenary as Implementation Guidelines for Judicial Duties.

Letter A Legal Form of Criminal Chamber number 6 of the a quo circular stipulates that: "The authorized agency declares whether or not there is a state financial loss is the Supreme Audit Agency which has constitutional authority while other institutions such as the Financial and Development Supervisory Agency / Regional Work Unit still has the authority to carry out audits and audits of state financial management but is not authorized to declare or declare the existence of state financial losses. In certain cases the judge based on the facts of the trial can assess the state's loss and the amount of state losses.

According to the author, besides the above description. There are appropriate changes that must be considered carefully regarding the determination of state financial losses. That is a change based on the Decision of the Constitutional Court Number 25 /

PUU-XIV / 2016, where previously the criminal act of corruption was a formal offense turned into a material offense.

In its decision, the Constitutional Court stated that: "the word" can "in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law is against the 1945 Constitution and does not have binding legal force". Strictly speaking, the element of detrimental to state finances is no longer understood as an estimate (potential loss), but must be understood to have actually happened or actual (actual loss) in criminal acts of corruption

### **3. Authority of the Prosecutor's Office in Auditing State Financial Losses Against Corruption**

Before describing the legal position regarding the authority of the prosecutor's office in auditing state financial losses against corruption cases. It is important to describe in advance some theories of authority:

Authority is often equated with the term authority. The term authority is used in the form of nouns and is often equated with the term "bevoegheid" in Dutch legal terms. According to Philipus M. Hadjon, if observed, there is little difference between the term authority and the term "bevoegheid". The difference lies in its legal character. The term "bevoegheid" is used in the concepts of public law and private law. In our legal concept the term authority or authority should be used in the concept of public law (Philipus M. Hadjon, Without Year: 20).

Every government action and / or public official must rely on legitimate authority. The authority is obtained through 3 sources, namely:

#### **a. Attribution**

In a legal state, every act of a state administrative body or official must be based on law, and such principle is called the principle of legality. The implementation of the principle of legality is done through attribution, so that every authority of the body or state administration official is obtained through attribution authority (S.F. Marbun, 2018: 85).

Attribution is related to the surrender of new authority. In other words, attribution means the emergence of new authority that previously had the authority, not owned by the organ of the government / institution concerned.

Attribution is also said to be a normal way to obtain government / agency authority. So that it seems clear that the authority gained through attribution by government organs / institutions is the original authority, because the authority is obtained directly from the legislation (especially the 1945 Constitution).

#### **b. Delegates**

Delegation is the surrender of authority that belongs to the organ of government to other organs. In the delegation it contains a submission, namely what was originally the authority of the A, henceforth it becomes the authority of B. The authority that has been given by the delegate is then the responsibility of the authority. This means that there is a transfer of responsibility from the delegate to the recipient of the delegation (delegetaris).

#### **c. Mandate**

The mandate is the authority originating from the process or procedure of delegation from a higher official or body to lower officials (subordinate superiors)

Tables and Figures are presented center and cited in the manuscript. The figures should be clearly readable and at least have a resolution of 300 DPI (Dots Per Inch) for good printing quality. Table made with the open model (without the vertical lines) as shown below:

From the 3 theories of authority sources described above. So to assess whether the prosecutor has the authority or not in auditing state financial losses against corruption cases. This can be traced based on the authority of attribution which is basically given in the provisions of Law Number 16 of 2004 concerning the Prosecutor's Office.

Affirmed in Article 30 of Law Number 16 Year 2004, namely:

- a. In the criminal field, the Prosecutor's Office has the duty and authority:
  - 1) Prosecuting;
  - 2) Carry out the determination of judges and court decisions that have obtained permanent legal force;
  - 3) Supervise the implementation of conditional criminal decisions, criminal supervision decisions, and conditional release decisions;
  - 4) Investigate certain crimes based on the Law;
  - 5) Completing certain case files and for that can carry out additional examinations before being delegated to the Court which is coordinated with the investigator.
- b. In the field of civil and administrative affairs, the Prosecutor's Office with special powers can act both inside and outside the court for and on behalf of the state or government.
- c. In the field of public order and peace, the Prosecutor's Office also organizes activities:
  - 1) Increasing community legal awareness;
  - 2) Safeguarding law enforcement policies;
  - 3) Safeguarding circulation of printed goods;
  - 4) Supervision of the flow of trust that can endanger the community and the State;
  - 5) Prevention of abuse and / or blasphemy of religion;
  - 6) Research and develop criminal law and statistics.

From the authority of attribution Article 30 of Law No. 16/2004 concerning the prosecutor's office above, specifically paragraph (1) in a criminal case in casu for criminal acts of corruption. None of the attribution authority gives legitimacy to the prosecutor's office to audit state financial losses against corruption.

The opinion of the Gorontalo High Prosecutor's Office that there is currently no regulation that regulates the authority of the prosecutor's office to carry out its own calculations of state financial losses in cases of corruption. but on the other hand, there are also no rules that prohibit the prosecutor from calculating state financial losses in TIPIKOR.

However, by mentioning the provisions of Article 30 of Law No. 16/2004 concerning the Prosecutor's Office, regarding the duties and authorities of the prosecutor's office, one of them is to investigate corruption. As well as based on the provisions of Article 1 number 2 of the Criminal Procedure Code which states that, an investigation is a series of investigative actions in terms of and according to the method stipulated in the law to search for and collect evidence which makes it clear about a crime happens and in order to determine the suspect.

Of the two provisions. According to you. Moh. Mulyadi Abdullah as KASI for the Supervisory Office of the Gorontalo Prosecutor's Office, that:

"The Attorney General's Office of Investigation in carrying out its duties (main duties and functions) as stipulated in the Act, namely investigating criminal cases, especially corruption in an effort to uncover the truth and determine the amount of state losses, there are still two opinions, namely that corruption cases where the amount of state financial losses are truly real and clear, the prosecutor can calculate state financial losses that can be obtained from letters, files or data as well as from other evidence, but some say that the prosecutor cannot calculate the state's own financial losses, arguing that those who calculate and determine the state's financial losses must be experts ".

For the second opinion, the prosecutor said that he could not calculate the financial losses of his own country. According to you. Moh. Mulyadi Abdullah, this opinion is not wrong, because for the calculation of state financial losses in complicated TIPIKOR cases, such as in cases of corruption in construction-related work, special experts are required to perform calculations so that the truth and accuracy of the losses can be believed. state finance that has been caused in the corruption act.

Separately, Mr. Imam Makmur Saragih, as the Gorontalo High Prosecutor's Office Coordinator, confirmed that:

"One of the reasons for the prosecutor's office is calculating state financial losses in corruption cases whose state losses are real and clear, because if you use an auditor from the BPK or BPKP, it takes quite a long time (months), so that corruption will harm the country. already exists and clearly, the prosecutor's office can calculate the losses of their own country. For example cases of corruption that occurred at the Pohuwato District Prosecutor's Office were carried out by the treasurer of expenditure and financial operators that had been decided and had permanent legal force.

From some of the statements or answers of officials at the Gorontalo High Prosecutor's Office above. In the opinion of the author, there are several important things to comment on again, namely:

First; a statement that there is also no rule that prohibits the prosecutor from calculating state financial losses in criminal acts of corruption, so that this is the reason the prosecutor's office calculates its own financial losses. According to the author, this is not a valid legal reason. Because, the calculation of state financial losses is an act whose legitimacy must be based on orders or authority that are governed by the provisions of legislation (attribution authority). An action without authority can cause the action to be defective in authority, so that it can result in the act / action being null and void (van rechtswege nietig). This is even an indicator of abuse of authority.

It is also like the concept of Philipus M. Hadjon's thinking which deals with the parameters of authority of the agency. According to him, it can be seen from "Rechmatig Bestuur", in more detail, saying "Rechmatig Bestuur is the principle of government that relies on the principle of state law, namely the principle of legality. Based on the principle of legality, every government action must be based on legitimate authority, appropriate procedures and the right substance (Hernold Ferry Makawimbang, Yogyakarta: 53).

As little explained above, that the implementation of the principle of legality is the granting of authority to administrative bodies or officials in carrying out actions must be based on the orders of legislation (attribution). This is what the prosecutor does not have in exercising his authority to audit state financial losses.

Second; Based on two opinions, where the prosecutor's office can calculate state losses against events that have been truly real and clear. As well as opinions that state

prosecutors cannot calculate the losses of their own country in complicated TIPIKOR cases. Save Author, this argument cannot be legally justified. Because, the provisions of the law relating to proof of state financial losses, do not classify the clear / tangible state financial losses and complicated losses of state finances. Both clear and complicated both should be left to competent institutions in determining or determining the state financial losses.

#### **4. Conclusion**

First, the authority to audit state financial losses in cases of corruption, constitutionally and derivatives are regulated under Law No. 15 of 2006 is the authority of the Supreme Audit Agency (BPK). While other institutions are regulated outside the constitution, based on Circular of the Chief of the Supreme Court Number 4 of 2016, and based on the Decision of the Constitutional Court Number. 31 / PUU-X / 2012, Namely, the Financial and Development Supervisory Agency (BPKP), State Administrators Wealth Examination Commission (KPKPN), Inspectorates in Departments or Non-Departmental Government Institutions and the Corruption Eradication Commission (KPK).

Secondly, the Prosecutor's Office does not have the authority granted by legislation (attribution authority) to audit the loss of state finances in cases of corruption.

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