



The Authority of the Financial Audit Agency and the Government Internal Supervisory Apparatus in Assessing Elements of State Losses

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Abstract

This study aims to analyze the scope of authority of the Supreme Audit Agency (BPK) and the Government Internal Supervisory Apparatus (APIP) in assessing elements of state losses. The main focus of this study is to determine the scope of authority of the BPK and APIP in assessing elements of state losses. The method used is normative-empirical legal research with a statutory, conceptual, and sociological approach. Data were obtained through a literature study of laws and regulations, legal literature, and interviews with auditors from the NTB Representative Office of the BPK and the NTB Provincial Inspectorate. The results of the study indicate that the BPK's authority is derived directly from the constitution, is attributive, and has final legal force in determining state losses. Meanwhile, the APIP's authority is derivative, limited to internal oversight functions, and does not have the authority to determine final state losses. The difference in the character of this authority indicates the importance of synchronizing regulations to avoid overlap between supervisory institutions.

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Introduction

Indonesia is a state of law (*rechtsstaat*) and not a state of power (*machtsstaat*). This principle is expressly stated in the 1945 Constitution of the Republic of Indonesia (UD 1945), which places law as the highest foundation in the implementation of national and state life (Article 1 paragraph 3 of the 1945 Constitution). The concept of a state of law essentially aims to limit power so that it is not abused, as Lord Acton's adage states that *power tends to corrupt, and absolute power corrupts absolutely*. Therefore, normative supervision and control are essential elements in the Indonesian state system. (Aqil Irham, 2017) ^[3].

The idea of a state based on law has long developed through three major concepts, namely *rechtsstaat* in Continental European countries, *rule of law* in Anglo-Saxon countries, and *socialist legality* in communist countries (Oemar Seno Adji, 1980) ^[26]. According to Jimly Asshiddiqie, the concept of *rechtsstaat* popularized by Julius Stahl contains four main elements, namely: (1) recognition and protection of human rights; (2) division of power (*trias politica*); (3) government based on law (*wetmatig bestuur*); and (4) the existence of state administrative courts to test the government's legal actions (*onrechtmatige overheidsdaad*). (Jimly Asshiddiqie, 2011) ^[18]. Meanwhile, AV Dicey in the concept of *rule of law* emphasizes three main elements, namely: (1) supremacy of law, (2) equality before the law, and (3) guarantee of basic rights through due process of law.

The principle of the supremacy of law affirms that state power must be subject to the law, not the other way around. In this context, the constitution serves as *the supreme law of the land*, serving as the reference for all laws and regulations. This concept aligns with the doctrine of constitutionalism, which places limitations on power as the primary guarantee for upholding citizens' rights. Therefore, every form of state power must be based on the principles of law, transparency, and accountability. (Law No. 15 of 2006).

One manifestation of the principle of the rule of law in Indonesia is the management of state finances that is carried out openly and responsibly for the greatest prosperity of the people as stated in the 1945 Constitution. This idea demands accountability and transparency in the management of state finances as part of the implementation of clean government (*good governance*). This principle places every state administrator to be responsible for the use of state finances managed. Therefore, the system of supervision of the management and accountability of state finances is an important instrument to ensure that there are no irregularities that cause losses to state finances (Asshiddiqie, 2011) ^[4].

From this perspective, there are two main institutions that play a role in overseeing and auditing state finances: the Supreme Audit Agency (BPK) as an independent external institution, and the Government Internal Supervisory Apparatus (APIP) as the government's internal oversight agency. These two institutions have different legal standing and authority. However, in practice, there is often overlap in assessing elements of state losses, particularly regarding who has the authority to determine the final state loss (Suhendar, 2019) ^[29].

State finances encompass all state rights and obligations that can be valued in money or in the form of goods that can be owned by the state, including state revenues and expenditures, state assets, and other assets controlled by the government for the purpose of administering government and public services. (Law No. 17 of 2003).

In the context of state financial oversight, the Supreme Audit Agency (BPK) plays a central role as an institution constitutionally mandated to audit the management and accountability of state finances as stipulated in Article 23E of the 1945 Constitution and further elaborated in Law Number 15 of 2006 ^[19] concerning the Supreme Audit Agency. Following the amendment to the 1945 Constitution, the BPK's position has become stronger and more independent, as it is no longer a subordinate government institution but a state institution that is free and autonomous in carrying out its external oversight function. (BPK Secretary General, 2011).

The BPK carries out its audit function through three types of audit report results (LHP): Financial LHP, Performance LHP, and Specific Purpose LHP. These reports serve as the basis for assessing the accuracy, accuracy, and reliability of state financial management. In carrying out its duties, the BPK has the authority to assess and/or determine the amount of state losses resulting from unlawful acts, whether committed intentionally or through negligence (BPK Law).

Meanwhile, the Government Internal Supervisory Apparatus (APIP), consisting of the Financial and Development Supervisory Agency (BPKP), the Inspectorate General of Ministries/Institutions, and Regional Inspectorates, is involved in assessing state losses. APIP is tasked with conducting internal oversight within the executive branch, as stipulated in Government Regulation Number 60 of 2008 ^[10] concerning the Government Internal Control System (SPIP). Through this mechanism, APIP plays a role in ensuring that government administration is carried out efficiently, effectively, and in accordance with laws and regulations, including through performance audits and specific objective audits (PP No. 60 of 2008).

In practice, this often creates legal uncertainty, particularly in the law enforcement process for corruption crimes, which make "state financial loss" one of the main elements that must be proven in court. The unclear boundaries of authority between the Supreme Audit Agency (BPK) and the Auditor General Apparatus (APIP) in assessing state losses often lead to discrepancies in audit results, which are then inconsistently exploited by law enforcement officials (Government Administration Law).

Juniver Girsang, in his book *Abuse of Power*, asserts that legal uncertainty in handling corruption cases often arises from the lack of clarity regarding the institution authorized to declare state financial losses. This situation then prompted the need for an in-depth study of the authority relationship between the Supreme Audit Agency (BPK) and the Audit Board of Indonesia (APIP) in assessing state losses, in order to create legal certainty, justice, and an effective state financial oversight system. (Juniver Girsang, 2012) ^[8].

This paper will further examine this issue by referring to the research results in a thesis entitled "The Authority of the Audit Board and the Government's Internal Supervisory Apparatus in Assessing Elements of State Losses".

Research methods

This research uses the normative-empirical legal method, which is a method that combines normative studies of positive legal norms with empirical observations of their application in the field. This approach aims to provide a comprehensive understanding of the relationship between applicable legal rules and the reality of the practice of implementing state financial supervision by the Supreme Audit Agency (BPK) and the Government Internal Supervisory Apparatus (APIP) (Marzuki, 2011) ^[21]. The approaches used are the Conceptual Approach, the Statute Approach, and the Sociological Approach (Socio-Legal Approach).

The data used in this study consists of secondary data and primary data. Data collection techniques were carried out through literature studies, document studies, and interviews. The collected data were then analyzed qualitatively, with an emphasis on legal interpretation and the relationship between legal norms and their implementation practices in the field (Moleong, 2017) ^[23]. Data analysis was carried out using a deductive method, namely by drawing conclusions from general legal norms and theories to the concrete cases studied, especially regarding the authority of the BPK and APIP in assessing elements of state financial losses (Ibrahim, 2018) ^[15].

Discussion

1. Theoretical Approaches to Authority, Supervision, and the Hierarchy of Legal Norms

The theoretical approach in this research serves as a basis for understanding how the authority of state institutions, particularly the Supreme Audit Agency (BPK) and the Government Internal Supervisory Apparatus (APIP), is constructed and implemented within the Indonesian constitutional system. The theories used include the theory of authority, supervision, and the hierarchy of legal norms as analytical tools to assess the legitimacy, relationships, and limits of the authority of these two state financial supervisory institutions.

Theory of Authority

In the context of administrative law and constitutional law, authority (*bevoegdheid/authority*) is the core of governmental action. According to Philipus M. Hadjon, every governmental action must be derived from legitimate authority, which is obtained through attribution, delegation, or mandate. (Philipus M. Hadjon, 2019) ^[12]. Attributive authority originates directly from law or the constitution, while delegative and mandatary authority are delegated from higher officials.

In this context, the BPK derives its attributive authority from Article 23E of the 1945 Constitution, which affirms that the BPK is an *independent and autonomous institution* in auditing the management and accountability of state finances. This is further affirmed in Law Number 15 of 2006 ^[19] concerning the BPK, which legitimizes the BPK to assess and determine state losses as a constitutional consequence of its external audit function (BPK Law).

In contrast, the APIP derives its authority derivatively, through delegation from the executive branch under Government Regulation No. 60 of 2008 concerning the Government Internal Control System (SPIP). This means that the APIP's authority is administrative and limited to internal oversight, not derived directly from the constitution (PP No. 60 of 2008).

From the perspective of authority theory, this difference in legitimacy places the Audit Board of Indonesia (BPK) in a higher legal position than the Audit Board of Indonesia (APIP). This is because the BPK has a constitutional basis, while the APIP is based solely on derivative regulations within the government system. Therefore, hierarchically, the BPK has strong legitimacy to determine audit results that contain elements of state losses. Furthermore, the views of FAM Stroink and JG Steenbeek also emphasize that the concept of authority in public law consists of three elements: influence, legal basis, and legal conformity. (Bagir Manan, 2013) ^[5].

In the context of the BPK and the Internal Auditor General (APIP), "influence" is reflected in the institution's ability to control and assess state financial actions, "legal basis" determines the legitimacy of actions, and "conformity" serves as a benchmark for the appropriateness of the exercise of authority with applicable legal principles. Thus, the theory of authority provides an important foundation for distinguishing the legal character between the BPK's external audits, which are final and legally binding, and the APIP's internal audits, which are more recommendatory and administrative in nature.

Supervision Theory

Supervision theory positions the control function as a crucial instrument in realizing good governance. According to George R. Terry, supervision is the process of determining performance standards, measuring implementation, and taking corrective action against any deviations that occur (Ibid, Irwin 2010).

Supervision can also be classified into two: internal control and external control. In this context, the Audit Board of Indonesia (BPK) carries out external oversight of state financial management by government institutions, while the Audit Board of Indonesia (APIP) acts as an internal supervisor within the executive branch. The fundamental difference between the two lies in their independence and scope of authority. External supervision by the BPK has a

post-audit (a posteriori) character, namely, it is carried out after budget implementation, with the aim of assessing accountability and detecting potential irregularities that could result in state losses. In contrast, supervision by the APIP is preventive and consultative in nature, carried out during the program implementation process to ensure compliance with SPIP procedures and standards.

According to Mockler, an effective oversight function is not merely administrative but must also ensure that government activities are conducted in accordance with legal norms and public morality. (Mockler as quoted by Nina Dedeckova 2020). In this regard, oversight theory provides an analytical basis for distinguishing the roles and power of audit results between the Supreme Audit Agency (BPK) and the Internal Auditor General (APIP). Normatively, this theory also emphasizes that the effectiveness of oversight is determined by the independence of the supervisory institution. Therefore, the BPK's position as a constitutionally free and independent institution gives its audit results higher legal force than those of the Internal Auditor General (APIP), which remains under the executive's command.

Theory of the Hierarchy of Legal Norms

The theory of the hierarchy of legal norms as put forward by Hans Kelsen and developed by Hans Nawiasky, emphasizes that the legal system is a hierarchical order of norms (*stufenbau des rechts*), where lower norms must be derived from and must not conflict with higher norms (Hans Kelsen, 2017) ^[14].

In the context of the authority of the BPK and the APIP, this theory explains the legal position of the two institutions. The BPK's authority stems from the 1945 Constitution (the state's fundamental norm), while the APIP's authority stems from Government Regulation No. 60 of 2008, which is hierarchically far below the law and the Constitution.

Consequently, the results of the BPK audit, which are outlined in the Audit Result Report (LHP), have higher legal force and can be used as evidence in criminal and administrative legal proceedings, as recognized by the Constitutional Court in several of its decisions (Constitutional Court Decision Number 31/PUU-X/2012). In contrast, the results of APIP supervision are administrative in nature, not final, and only calculate state losses. By applying the theory of the hierarchy of legal norms, it can be concluded that in the Indonesian legal system, the BPK has stronger normative legitimacy because the source of its authority is rooted in higher legal norms. Provisions of regulations below it, such as PP 60 of 2008 concerning SPIP, cannot exceed or eliminate the BPK's authority guaranteed by the constitution.

2. Analysis of the BPK's Authority in Assessing Elements of State Losses

The authority of the Supreme Audit Agency (BPK) in assessing elements of state losses is an integral part of its constitutional function as an *independent and autonomous external audit institution*. Based on Article 23E paragraph (1) of the 1945 Constitution, the BPK was established to *audit the management and accountability of state finances*. This norm is of a direct attribution nature, meaning that the BPK obtains this authority directly from the constitution, not from delegation from another institution. (1945 Constitution)

The BPK's position in the state structure is not subordinate to the executive, legislative, or judicial institutions, but stands as an independent state institution with a *check and balance*

function in the state financial system. This authority was then operationalized through Law Number 15 of 2006^[19] concerning the BPK, which confirms that the BPK has the authority to assess and/or determine the amount of state losses due to unlawful acts, whether intentional or negligent, committed by treasurers, managers of state-owned enterprises (BUMN/BUMD), and other institutions that manage state finances. (BPK Law).

Normatively, the authority of the BPK is regulated in two main laws, namely Law Number 15 of 2004 concerning the Audit of State Financial Management and Accountability and Law Number 15 of 2006^[19] concerning the BPK. Article 6 paragraph (1) of the BPK Law states that "The BPK has the authority to conduct audits of state financial management and accountability carried out by the Central Government, Regional Governments, Bank Indonesia, BUMN/BUMD, and other institutions or bodies that manage state finances." Furthermore, Article 10 paragraph (1) of the BPK Law states that the BPK assesses and/or determines the amount of state losses resulting from unlawful acts, whether intentional or negligent. This provision provides a legal basis for the BPK to produce an Audit Result Report (LHP) which has legal force as an official state document. Thus, the assessment of the elements of state losses by the BPK is not merely an administrative result, but rather an audit result that has legal consequences, because it can be valid evidence in criminal proceedings, especially in corruption cases. The Constitutional Court in Decision Number 31/PUU-X/2012 emphasized that the results of the BPK audit are constitutional products that cannot be intervened by the executive branch.

From the perspective of authority theory, the BPK is an example of an institution with attribution authority, namely authority granted directly by the 1945 Constitution. This differs from the APIP, whose authority is a form of derivation from executive authority. According to Philipus M. Hadjon, attribution authority is original (*original competence*) and cannot be taken over by another institution except through constitutional amendments. (Philipus M. Hadjon, 2017). The BPK's authority in assessing state losses includes the audit process, verification, and determination of the real and definite value of financial losses. Based on the State Financial Audit Standards (SPKN) stipulated through BPK Regulation Number 1 of 2017^[6], the BPK conducts three main types of audits:

1. Financial Audit, which produces an opinion on the fairness of the financial statements.
2. Performance Audit, which assesses the efficiency and effectiveness of state financial management.
3. Audits with Specific Purposes (PDTT), including investigative audits and audits to calculate state losses.

Investigative audits and PDTT are the primary basis for assessing state losses, as they enable auditors to identify indications of unlawful acts resulting in state losses. Interviews with auditors from the BPK Representative Office of West Nusa Tenggara Province revealed that the BPK's state loss assessment process is conducted through investigative audit stages guided by the SPKN (National Audit Commission). The auditors explained that the BPK

assesses state losses through calculating and determining state losses. (Interview Results with BPK Auditors from the NTB Representative Office, 2005). This information demonstrates that the BPK's audit approach is objective and based on empirical evidence, rather than on perceptions or estimates. This reinforces the principle of auditor independence as mandated by oversight theory, where effective oversight can only be carried out by an institution free from interference by other powers. (Mulyadi, 2018)^[24]. In addition, the auditor also emphasized that the BPK's LHP containing findings of state losses is final and binding, so it can be used as a basis for law enforcement by law enforcement officials (the Prosecutor's Office, the Corruption Eradication Commission, and the Police). When viewed through the theory of the hierarchy of legal norms, the BPK's authority regulated by law (high-level norms) has stronger power than the APIP's authority regulated by government regulations (middle-level norms). According to Hans Kelsen, lower legal norms must not conflict with higher norms (*lex superior derogat legi inferiori*). (Hans Kelsen 2017)^[14]. In this case, the provisions of Article 10 paragraph (1) of the BPK Law provide higher legal legitimacy than Article 11 of PP Number 60 of 2008 concerning SPIP. This means that the results of the BPK audit cannot be replaced or refuted by the results of the APIP audit. This principle is also in line with Constitutional Court Decision Number 31/PUU-X/2012, which emphasizes that other institutions may not take over the constitutional function of the BPK in assessing state losses.

Thus, the BPK's authority is final, conclusive, and constitutional, while other institutions can only play a supporting role in the state financial oversight system. Functionally, the BPK's authority reflects the principle of external control in oversight theory. External oversight carried out by the BPK is intended to maintain transparency and accountability of state finances and provide reports to the public and the DPR as representatives of the people. (Terry, G.R, 2010)^[31]. This means, within the framework of *good governance*, BPK oversight is *post-audit in nature*, where this institution not only assesses compliance with the law (*compliance audit*), but also measures the effectiveness, efficiency, and economy of budget use. This emphasizes the BPK's function as a *guardian of public accountability*. As emphasized in an interview with the BPK NTB auditor, the BPK audit results are not merely a financial control tool, but also a *legal instrument* that has juridical consequences. (Results of Interview with the BPK NTB Representative Auditor, 2025). However, in practice, the BPK NTB Representative is only invited to discussions by the APH. They were never involved by law enforcement officials (APH) in conducting an investigative audit to calculate state financial losses in NTB. (Ibid).

3. Analysis of APIP's Authority in Assessing Elements of State Losses

The Government Internal Supervisory Apparatus (hereinafter APIP) is an agency established by the government with a mandate to carry out internal audit functions *within* the central and regional governments. Its existence is intended to ensure that all government administration activities are

carried out in accordance with the principles of efficiency, effectiveness, transparency, and accountability in state financial management. The APIP consists of the Financial and Development Supervisory Agency (BPKP) and the Financial and Development Supervisory Agency (BPKP). Inspectorate General of the Ministry (Itjen), Inspectorate of Province, Regency, City and Internal Supervision Unit, (PP No. 60 of 2008).

APIP covers a whole series of activities including audits, reviews, evaluations, monitoring, and various other forms of supervision of the implementation of the tasks and functions of government organizations. The main objective of implementing internal supervision is to provide adequate assurance to agency leaders that all activities have been carried out in accordance with established benchmarks and standards, and are running effectively, efficiently, and in accordance with the principles of good governance, (Ibid).

Internal control, or internal oversight, is a supervisory mechanism implemented within a government organization itself. This oversight aims to ensure that all government activities, including financial management and program implementation, comply with applicable policies, procedures, and laws and regulations.

According to the Institute of Internal Auditors, the Internal Auditor's (APIP) role is to encourage increased effectiveness in risk management, control, and organizational governance. According to Pitt, the nature of the work that can be undertaken and carried out by internal auditors will depend on the maturity of the internal audit function and the organization (Dicky Adharya, 2018) ^[1]. This aligns with *the Supplemental Guidance's* view that internal auditors are a crucial element in a strong public sector governance structure. Internal audit activities can support the government's role through *oversight, insight, and foresight* (Ibid.).

In research conducted at the NTB Provincial Inspectorate, the Duties and Functions of the NTB Provincial Inspectorate are regulated through Governor Regulation (Pergub) No. 12 of 2023 concerning the Position, Organizational Structure, Duties and Functions and Work Procedures of the NTB Provincial Inspectorate. The Governor's Regulation is a further implementation of the provisions stipulated in Government Regulation Number 60 of 2008 ^[10] concerning *the Government Internal Control System* and Government Regulation Number 72 of 2019 concerning *Regional Apparatus*.

The Government Internal Supervisory Apparatus (APIP) plays a central role in the government's internal supervisory system, especially as an internal control tasked with supporting the success and improvement of the operational quality of government organizations. Its main task is to ensure that all activities are carried out according to established plans and comply with all applicable laws and regulations. The position of APIP is very strategic in supporting the management and achievement of government programs. The forms of APIP supervision in carrying out its duties and functions are carried out in the form of audits, reviews, evaluations, monitoring and other supervision. Supervision in the form of audits and reviews is the basis for APIP to assess state losses as regulated in Article 48 Paragraph (2) of Government Regulation Number 60 of 2008 ^[10] concerning the Government Internal Control System.

According to Article 57 of PP 60 of 2008, APIP is required to review state/regional financial reports. The results of the

review must be reported to the APIP's superior before being submitted for audit by the BPK. If the results of the review indicate administrative errors that result in state/regional losses, APIP must submit the findings to the head of the relevant institution, as regulated in Article 54 paragraph (1) of PP 60/2008.

The head of the supervised agency is then required to submit the results of the review to the government agency whose report was reviewed. This follow-up aims to make improvements and recoup state losses within a specified timeframe. This provision aligns with Article 20 of Law Number 30 of 2014 ^[20] concerning State Administration, which emphasizes that oversight of the prohibition on abuse of authority as stipulated in Articles 17 and 18 is the responsibility of the APIP. The results of the APIP's oversight process can be three possible outcomes:

1. No errors found;
2. There was an administrative error; or
3. Administrative errors that result in state financial losses.

If the audit reveals administrative errors, the necessary follow-up steps include administrative improvements in accordance with statutory provisions. However, if the audit results indicate administrative errors that result in state financial losses, the relevant agency is required to reimburse the losses within ten working days of the audit's decision and issuance. (Government Administration Law).

Responsibility for restitution of state financial losses may be placed on a government agency if the error is not accompanied by an element of abuse of authority. Conversely, if the state loss arises from abuse of authority, then responsibility for restitution rests with the government official who committed the act.

Furthermore, in Article 50 Paragraph (1) of Government Regulation Number 60 of 2008 ^[10], it is stated that there are two types of APIP audits, namely performance audits and audits with specific objectives. Performance audits are audits of state financial management and the implementation of government agency functions consisting of aspects of economy, efficiency, and effectiveness. Meanwhile, audits with specific objectives, commonly called investigative audits, are not included in performance audits. Performance audits include audits of budget preparation and implementation, audits of receipt, distribution, use of funds, and audits of asset and liability management. Meanwhile, specific audits include investigative audits, audits of SPIP implementation, and others outside of performance audits.

Based on the interview results, the Inspectorate only has the authority to calculate state losses, not to declare or determine them. This authority stems from Government Regulation Number 72 of 2019, Government Regulation Number 60 of 2008 ^[10], and Governor Regulation Number 12 of 2023 ^[9] concerning the Position, Organizational Structure, Duties, Functions, and Work Procedures of the NTB Provincial Inspectorate. (Results of Interviews with NTB Provincial Inspectorate Auditors, 2025).

In its implementation, the audit is carried out by Assistant Inspector V (Irbansus) who is tasked with carrying out supervision of the implementation of regional government specifically, including public complaints, handling of alleged corruption cases, and implementing audits of the Calculation of State Financial Losses (PKKN). According to the results

of an interview with Muhandi Mansyur, based on PP Number 72 of 2019 and Pergub Number 12 of 2023, the authority to calculate state losses is special, because the Inspectorate can carry out PKKN audits without assignment from the governor or minister if there is an alleged abuse of authority or potential state/regional losses.

PKKN audits can also be conducted based on public complaints. Audits are conducted by Special Assistant Inspectors, with two main types of audits: performance audits and specific-purpose audits within the Provincial and Regency/City Governments. Interviews indicate that Specific-Purpose Audit Reports are thematic in nature, encompassing audits of Regional Original Revenue (PAD), grant audits, and PKKN audits supporting litigation. The NTB Inspectorate's PKKN audit standards are regulated in NTB Inspectorate Decree Number 70 of 2021^[25] concerning Technical Guidelines for Audit Calculations. In exercising this authority, based on interviews, the Inspectorate uses several methods for calculating state financial losses: total loss; total loss with adjustments; net loss; and real costs. However, implementation depends heavily on the availability of evidence and the characteristics of the case. Nevertheless, the Inspectorate tends to use total loss audits.

Field findings also revealed that during 2023–2024, the NTB Provincial Inspectorate was requested by Law Enforcement Officers (APH) to conduct PKKN audits six times in six cases throughout NTB, including:

1. The alleged corruption case in the procurement of metrology equipment at the Dompu Regency Industry and Trade Service (2018 FY);
2. The alleged corruption case of KONI grant spending in Dompu Regency (2018–2021 FY);
3. The case of the construction of the Gunung Tunak road, the NTB Provincial PUPR Service (2020 FY);
4. The alleged corruption case of goods and services purchases by the Dompu Regency Transportation Service (2017–2020 FY);
5. The case of procurement of passenger ships at the Bima Regency Transportation Agency (2019 FY);
6. Case of construction of the Dompu City Community Health Center building (2021 FY).

4. The overlap of the authority of the BPK and APIP in assessing elements of state losses

The Supreme Audit Agency (BPK) is a high-ranking state institution with the constitutional authority to assess and determine state financial losses. This is affirmed in Article 10 of Law Number 15 of 2006^[19], which states that the BPK has the authority to assess and/or determine the amount of state financial losses resulting from unlawful acts, whether intentional or negligent, committed by treasurers, managers of state-owned enterprises (BUMN)/regional-owned enterprises (BUMD), or other institutions that manage state finances. (BPK Law).

This authority is attributive, meaning it is granted directly by law. As an independent institution free from influence by the executive, legislative, and judicial branches, the Supreme Audit Agency (BPK) carries out an external oversight function over state financial management. Therefore, the results of the audit and determination of state losses by the

BPK have valid and binding legal force. The Supreme Court emphasized this through a Supreme Court Circular (SEMA), which states that the only institution authorized to declare state financial losses is the BPK. Other institutions, such as the Financial and Development Supervisory Agency (BPKP), the Inspectorate, or Regional Work Units (SKPD), only have the authority to conduct audits and examinations of state financial management, but are not authorized to officially determine state losses. (SEMA Number 4 of 2016).

The Government Internal Supervisory Apparatus (APIP) was established as part of the internal oversight system within the government structure under the executive branch. Based on Government Regulation No. 60 of 2008 concerning the Government Internal Control System (SPIP), the APIP's primary function is to conduct oversight through audits, reviews, evaluations, monitoring, and other oversight activities regarding government administration (PP No. 60 of 2008).

However, the APIP's authority to assess state losses is not explicitly regulated. Based on Article 20 of Law Number 30 of 2014^[20] concerning State Administration, the APIP is only authorized to supervise abuse of authority and can produce conclusions in the form of: (a) no error; (b) there is an administrative error; or (c) an administrative error that results in state financial losses. This means that the APIP's authority is administrative, not judicial, and the results of such supervision are only valid for internal government interests. In this context, audits conducted by the APIP, including investigative audits, should be used to improve the system of governance (good governance) and not be used as primary evidence in the process of enforcing the law on corruption crimes. (Government Administration Law).

In practice, law enforcement officials such as the police, the prosecutor's office, and the Corruption Eradication Commission (KPK) often involve the Internal Audit Agency (APIP), particularly the Financial and Development Supervisory Agency (BPKP), to calculate state losses. This involvement is usually done when the BPK audit results are deemed inadequate or do not align with the desired evidentiary framework. This creates overlapping authority because audits conducted by the BPK and the Internal Audit Agency (APIP) do not always reach the same conclusions. For example, in some cases, the BPK states that the problems found are administrative in nature, while the Internal Audit Agency concludes that there has been state loss. In such circumstances, law enforcement officials often choose audit results that are more favorable to proving elements of corruption, thus giving rise to forum shopping and legal uncertainty.

Field research at the NTB BPK Representative Office and the NTB Provincial Inspectorate reinforces this fact. In 2023 and 2024, the NTB BPK Representative Office was never requested by law enforcement officials to conduct a State Financial Loss Calculation (PKKN) audit, while the NTB Provincial Inspectorate was involved in six audit cases. This situation demonstrates a shift in legal practice that is inconsistent with the authority norms stipulated in the law.

The overlapping authority between the BPK and the APIP has also been the object of testing in the Constitutional Court. In Decision Number 31/PUU-X/2012, the Court emphasized

that in proving corruption, the KPK can coordinate with the BPK, the BPKP, or other relevant institutions, and can even conduct its own evidence through independent experts. However, this decision does not mean that these institutions have the constitutional authority to determine state losses. Meanwhile, the Supreme Court, through the Criminal Chamber's Legal Formulation, stated that the authorized agency to determine whether or not state losses exist is the BPK, because this institution has a constitutional basis. Other institutions such as the BPKP and the Inspectorate can only assist in the audit context, but do not have the authority to legally determine state losses. (Constitutional Court Decision Number 31/PUU-X/2012)

In administrative law theory, an institution's authority can be derived from three sources: attribution, delegation, and mandate. The BPK's authority is attributive, granted directly by law, while the APIP's authority is delegative, granted by the President through implementing regulations. (Philipus M. Hadjon, 2019)^[12]. Therefore, when the APIP is used to assess state losses in the context of criminal evidence, it exceeds its authority (*ultra vires*). The principle of legality in administrative law emphasizes that every action of a state institution must have a clear legal basis and must not exceed the limits of authority granted by statutory regulations. The overlapping authority between the BPK and the APIP creates legal uncertainty that contradicts the principle of due process of law in criminal law enforcement. Therefore, legal clarification is needed that clearly differentiates between administrative audits by the APIP and investigative audits to determine state losses by the BPK.

Conclusion

The Supreme Audit Agency (BPK) has the authority to assess state losses, which are constitutional and attributive, as expressly stated in the 1945 Constitution of the Republic of Indonesia and the Supreme Audit Agency Law. This authority encompasses state financial governance and accountability. The scope of this authority includes declaring and calculating state losses. The authority of the Government Internal Supervisory Apparatus (APIP) to assess state losses stems from the implementation of its audit function. These audits consist of performance audits and investigative audits. Government Regulation No. 60 of 2008 does not clearly regulate the APIP's authority to assess state losses. However, the APIP is often coordinated by the Police and Prosecutors to conduct audits on the Calculation of State Financial Losses. Based on interview findings, the APIP is only authorized to calculate state losses.

The results of the BPK and APIP audits have legal implications based on the objectives of the audits, both in the administrative and criminal law dimensions. In many respects, the results of the BPK and APIP audits have similarities, particularly regarding the Investigative LHP, which can be used as documentary evidence in cases involving state losses. However, the fundamental differences between the BPK and APIP audits stem from their institutional status, source of authority, scope of authority, and position as auditors. The BPK is an external auditor, while the APIP is an internal auditor.

The government and the House of Representatives must revise Government Regulation No. 60 of 2008 concerning the Government Internal Control System. This revision should clarify the authority of the Audit Board of Indonesia (APIP) in assessing state losses to avoid legal uncertainty,

particularly in handling cases related to state losses. Law enforcement officials must prioritize the results of the Audit Board of Indonesia (BPK) audits over those of the APIP when investigating cases related to state losses. This is crucial given the BPK's constitutional position and authority to assess state losses, both in declaring and calculating state losses.

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