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AUTHORITY OF THE FINANCIAL AUDIT BOARD AND FINANCIAL SUPERVISORY AGENCY AND DEVELOPMENT IN STIPULATION OF STATE EXTENSION AS A BASIS OF CRIMINAL INSTITUTE OF CORRUPTION

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ABSTRACT

Laws and regulations applicable in Indonesia have given attribution authority to BPK to conduct examination and determination of state losses as the basis for investigation of corruption crime by the investigating institutions both the Attorney and the Police. BPKP in accordance with the laws and regulations does not have the authority for the calculation and determination of state losses as the basis of investigation by the investigating institutions in the criminal act of corruption. The results of the examination and determination of state losses made by BPKP are often used as the basis for the investigation of corruption. This will lead to issues of legitimacy in the acts of government carried out by the apparatus of both the Attorney and the Police in the investigation of criminal acts of corruption; The type of normative legal research used in this study is a normative legal research called doctrinal research (Doctrinal Research). Doctrinal Research: Research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, predicts future development. Normative legal research is conducted to examine the authority of state institutions in determining the losses as the basis of investigation of corruption. The targets in this study are: a) Source and How to Obtain the Authority of BPK and BPKP in the Audit of State Finance Responsibility b) Authority of Stipulation of State Losses Based on Corruption Crime Investigation.

Keywords: Authority, State Loss, Corruption Crime Investigation

1. INTRODUCTION

The criminal act of corruption is now concerned about many parties, because corruption in Indonesia is very complex. Corruption has spread to various lines of government institutions, both executive, legislative and judiciary. The rise of corruption in Indonesia with various modus operandi causes the Government to strive to prevent and eradicate by conducting legislation and

regulation through Law Number 31 Year 1999 concerning the Eradication of Corruption as amended by Law Number 20 Year 2001. And to prevent And eradicating corruption, the Government of Indonesia establishes a Corruption Crime Court as a special court whose criminal process is also carried out by a special institution in the form of the Corruption Eradication Commission (KPK) to examine, hear and decide upon corrupt acts.

The criminal act of corruption in Law Number 31 Year 1999 has the bestandeel delict in the form of unlawful acts (Article 2) and abuse of authority (Article 3).

The criminal act of corruption is a formal offense, namely the existence of corruption is sufficient with the fulfillment of elements of action that has been formulated not with the onset of the result. That the nature of the illegality of formal law is synonymous with the contrary to the law or the public interest (deeds or effects) referred to in the law therefore the nature of the unlawful nature of law is identical with onwetmatige daad.

That the element of "misusing authority" as a bestanddeel delict and with the aim of favor ... "as" element delict ". Bestanddeel delict is always related to a criminal act (Strafbare handeling), while the delict element does not specify a criminal act or not. Therefore, if bestanddeel delict is not unproven then other elements as elements of delict include state losses, enrichment, enrichment of others need not be proven. To know to whom to be held accountable juridically to abuse of authority as a bestanddeel delict (core offense) must be viewed in terms of source or birth of authority. This is in accordance with the concept of administrative law that in every grant of authority to certain government bodies and / or government officials implied responsibility of the concerned body and / or official.

The concept of abuse of authority is the domain of administrative law because the concept of authority (bevoegdheid) is the concept of administrative law and constitutional law. On that basis to measure whether there is or not abuse of authority then the parameters that can be used are administrative law and constitutional law. Abuse of authority in the concept of administrative law is always paralleled with de'tournement de pouvoir.

The granting of authority to the agency and / or the officials shall bear the right and the obligation to achieve the aims and objectives set forth in the legislation. Deviations from the intended purpose and objectives are categorized as abuse of authority.

In measuring whether abuse has occurred, it must be proven that government officials have used improper authority, meaning that the administration of the government uses its authority for other purposes that deviate from the objective given to that authority, then the official violates the special principle (principle of purpose).

The occurrence of abuse of authority is not due to a negligence, but the abuse of authority is made consciously that is to divert the purpose that has been given to that authority. Goal redirection is based on negative personal interests, both for the sake of oneself or for others. If there is no evidence related to the transfer of destination, it means that there is no misuse of authority that leads to corruption.

Implementing responsibility for an activity using funds from the State Budget (APBN) or the Regional Budget (APBD), then each government official carries out the responsibilities under his / her own authority and knows the bestanddeel delict (core offense) In this case illegal acts and abuse of authority and delict elements such as state losses, enriching themselves, and enriching others in the implementation of government, it must be proven in advance with the results of supervision / audit responsibility of state financial management conducted by The state institution that has the authority to do so.

The calculation and determination of state losses must be made by the state institution which has the authority for it so that there is a legal certainty. With regard to the determination of state losses to be carried out by authorized state institutions, in Law No. 1 of 2004 on State Treasury has provided the definition of State Finance which creates legal certainty, namely as stated in Law No.1 Year 2004 About State Treasury, Article 1 Paragraph (22): "State / Region Loss is a lack of money, securities, and goods, which is real and inevitably the result of unlawful acts either intentionally or negligently". The above definition shows that "the state losses imposed by the state institutions authorized for it must be real and certain in number ...". This is to provide legal certainty.

In practice law enforcement, especially law enforcement against corruption is often questioned is the authority of determining state losses as the basis of investigation by investigators can be done by BPK and / or BPKP.

The normative state institution which has the authority attributively to the regulation in the Constitution of the Republic of Indonesia (UUD NRI 1945) to examine the management and responsibility of state finances and determine the state losses as the basis for the investigation of corruption is the BPK. Normative arrangements concerning the authority of the BPK are provided for in Article 8 paragraph (3) and (4) of the Supreme Audit Agency Law (Law Number 15 Year 2006 regarding the Procurement Entity) which affirms that:

(3) stating "If in the investigation is found criminal element, BPK shall report it to the authorized institution in accordance with the provisions of law and regulation no later than 1 (one) month since the existence of such criminal element".

(4) states "" The BPK report as referred to in paragraph (3) shall be the basis of investigation by the competent investigating authority in accordance with the law ".

The legislative ratio of the above provisions indicates that if a state is found to be detrimental (as a criminal element), the BPK Report shall serve as the basis of the investigation by the investigating authority rather than the investigator.

In relation to the authority of BPKP, in accordance with Law Number 15 of 2004 regarding Audit of Management and Financial Responsibility of the State asserted in Article 9 paragraph (1) and paragraph (2) as follows :

(1) In conducting the audit of state financial management and accountability, BPK may utilize the results of the internal government supervision apparatus.

(2) For the purposes referred to in paragraph (1), reports on the results of internal government audits shall be submitted to BPK.

The legislation of the above provisions indicates that BPKP is one of the institutions of the Government Internal Supervisory Apparatus as regulated in Article 49 of Government Regulation Number 60 Year 2008 regarding Government Internal Control System stipulates that:

(1) The internal government supervisory apparatus shall consist of:

A. BPKP
B. Inspectorate General or other entity functionally conducting internal supervision;
C. Provincial Inspectorate, and
D. Inspectorate `Regency / City

As the Internal Supervisory Authority, the Government shall, after performing the supervisory duties, the internal control apparatus of the government shall make a report of the results of the supervision and submit it to the supervised Government Leader and shall be submitted to the Supreme Audit Board. This means that the state institution which has authority for the calculation and determination of state losses as the basis of investigation by the investigating agency is the BPK not BPKP.

II. Formulation of the problem

Based on the background description of the above problems, then the formulation of the problem in this writing is as follows: The authority to determine the state losses that serve as the basis For conducting investigation against corruption is in the BPK or BPKP?

III. Writing purpose

This writing aims to examine the normative basis of authority determination of loss

2. WRITING METHOD

This study will use the type of normative legal research. According to Terry Hutchinson (Terry Hutchinson, 2002: 9), a normative legal research called Doctrinal

Research, Doctrinal Research: Research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules , Explains the areas of difficulty and perhaps predicts future development, as well as what Peter Mahmud Marzuki (Peter Mahmud Marzuki, 2007: 35) suggests, legal research is a process of finding the rule of law, the principles of law, Legal doctrines to address legal issues faced Normative legal research is conducted to examine legal concepts related to the authority of BPK and BPKP in determining and determining state losses that serve as a basis for investigation by investigative institutions.

1. Problem Approach

The problem approach used is the statute approach and the conceptual approach (Peter Mahmud Marzuki, 2007: 36).

2. Types and Resources of Legal Material

The legal material in this research consists of primary legal materials (secondary materials) and secundary materials (secundary materials). Primary legal material consists of various laws and regulations relevant to problem solving efforts in this research.

Secondary law materials in this study are literature, views, doctrines, research results, dissertations, theses, scientific journals, news and popular scientific articles.

IV. Procedures and Legal Material Collection

The primary legal materials in the form of legislation are collected by inventory and categorization methods. Secondary law materials are collected using a card system, either with an overview card (containing a summary of the original, outline and essay containing the original author's opinion); Citation cards are used to load key notes), as well as a review card (containing author's analysis and notes).

V. Processing and Analysis of Legal Material

Primary legal materials and secondary legal materials that have been collected (inventory), then grouped. This is then examined by the legislation approach to obtain an overview of the synchronization of all legal materials. Legal material that has been classified and systematized is studied, studied and compared with legal theories and principles put forward by experts, to finally be analyzed normatively.

3. RESULT AND DISCUSSION

1. Source And How To Obtain Authority Of BPK and BPKP In Audit Of State Financial Responsibility

Every governmental authority should be based on the legality provided by the Laws and Regulations. It means that any authority possessed by the government apparatus must have the source of authority sourced from the Laws and Regulations. In relation to the authority of BPK and BPKP, then the source of authority is based on legislation which in its regulation contains legal norms in the responsibility of supervision of state / regional financial management as the basis of investigation by the investigating agency.

Various literature is often found in terms of power, authority, and authority. Power is at the core of the administration of the state, so that the state can organize the government well, then (organ) the state should be given power. With this power the state can cooperate, serving its citizens. Max Weber refers to the rule of law as rational or legal authority, that authority based on a legal system is understood as the rules that have been recognized and obeyed by society and even strengthened by the state (Max Weber In A. Gunawan Setiardja, 1990: 22). Authority or authority has an important position in the study of constitutional law and administrative law.

The term authority or authority is aligned with "authority" in English and "bevoegdheid" in Dutch. Authority in Black`s Law Dictionary is defined as Legal power; A right to command or to act; The right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties. (Free translation: authority or authority is the rule of law, the right to govern or act, the right or power of public officials to comply with the rule of law within the scope of performing public obligations). "Bevoegdheid" in Dutch legal terms, Phillipus M. Hadjon gives a note concerning the use of the terms "authority" and "bevoegdheid". The term "bevoegdheid" is used in the concept of private law and public law, while "authority" is always used in the concept of public law (Philipus M. Hadjon, 1997: 1).

The concept of authority and authority formulated in the definition of Law No. 30 of 2014 on Administration of Government as follows :

Authority is a right owned by an agency and / or Government Official or other state organizer to take a decision and / or action in the administration of the government (Article 1 point 5), while the Authority of the Government hereinafter referred to as Authority is the authority of the Board and / or Government Official or Other countries to act in the public domain (article 1 point 6). This means that every act of government is required to rely on legitimate authority. Authority as the basis for the execution of government functions, is conducted based on the applicable laws and regulations as a source of authority.

In authority there are powers. The authority includes not only making the decisions of the government (besluit), but includes the authority in the context of carrying out the duties, and the establishment of authority and the distribution of the main powers set forth in the constitution (Philipus M. Hadjon, in Malik, 2007: 31).

Authority as a concept of public law consists of at least 3 (three) components, namely: influence; legal basis; Legal conformity.

The component of influence is that the use of authority is meant to control the behavior of legal subjects. The basic components of the law that the authority must always be subject to its legal basis. The conformity component implies the existence of a standard of authority that is the general standard (all types of powers) and special standards (for certain types of authority) (Philipus Hadjon, in Malik, 2007: 1-2)

Public legal entities in the form of state, government, department, local government, other government institutions, to be able to carry out their duties require authority. The granting of authority to the public legal entity can be seen in the constitution of each country.

The matter of authority is inseparable from the Constitutional and Administrative Laws because these two types of laws are the ones governing the authority. Constitutional law deals with the state or organ arrangement of the state (staats, inrichtingrecht, organisatierecht) and the legal position of citizens in relation to fundamental rights (grondrechten). In the upper organ of the state structure is set about :

1. State form
2. Form of government
3. The sharing of power within the State.

Sri Djatmiati in his dissertation describes the relationship between administrative law and authority. Administrative law or governance law ("administratiefrecht" or "bestuursrecht") contains the norms of governmental law. These governance norms serve as the parameters used in the exercise of authority exercised by government agencies. The parameters used in the use of

authority are legal compliance or improper legal ("improper legal" or "illegal improper"), so that if the use of authority is done by "illegal improper" then the authorized government agency must be accountable (Tatiek Sri Djatmiati, 2004: 62-63).

Administrative law is essentially related to the public authority and the means of testing its authority, as well as the law of control over such authority. (Philipus M. Hadjon, 1997: 1). The same opinion was put forward, H.D. Stout who said that: "Bevoegdheid is een begrip uit het bestuurlijke organisatierecht, wat it worden omschreven als het geheel van regels dat betrekking heeft op de verkrijging en uitoefening van bestuursrechtelijke bevoegdheden door publiekrechtelijke rechtssubjecten in het bestuursrechtelijke rechtsverkeer". (Free translation: Authority is an understanding derived from the laws of governmental organization, which can be explained as a whole of the rules concerning the acquisition and use of governmental authority by the subject of public law in public law relations) (HD Stout, De Betekenissen van de Wet, In Ridwan HR 2006: 102).

Thus, the authority is said to be the rule of law, since the authority as the concept of public law must always have a clear regulation both in the constitutional law and in administrative law, through such arrangement to give power or ability to the state administrative officer to carry out actions that cause Resulting in the field of public law. So strong is the relationship of authority and power, so often the two terms are used in the same sense as seen in the description of the various opinions that enrich this paper.

In line with the main pillars of the legal state, the legality principle (legaliteits beginselen or het beginsel wetmatigheid van bestuur), on the basis of the principle that the authority of the government comes from legislation, meaning the source of government authority based on legislation. Ridwan HR (Ridwan HR 2006: 100) further states that every state and government administration must have legitimacy, which is the authority granted by law. Thus, the substance of the principle of legality is the authority. As P. Nicolai, et.al; Who said that: "Het vermogen tot het verrichten van bepaalde rechtshandelingen", (P. Nicolai 1994: 4) (ability to perform certain legal actions).

With regard to the source of authority presented, Tatiek Sri Djatmiati stated that authority can be seen in the constitution of each country which gives a legitimacy to public bodies in order to perform its functions. (Tatiek Sri Djatmianti, 2004: 60) Philipus M. Hadjon states, at least the basic authority must be found in a law, if the authorities want to put the obligations above the citizens. Thus there is in it a democratic legitimacy. Through legislation, parliament as a legislator representing the people of his constituency also determines what obligations are appropriate for the people. (Philipus M. Hadjon 2007: 130).

In the administrative law literature there are two ways to obtain governmental authority: attribution and delegation; Sometimes, mandate, is placed as a separate way to gain authority. (Philipus M. Hadjon 2007: 130).

An attribution refers to the original authority on the basis of the provisions of constitutional law. Attribution is the authority to make a decision (besluit) directly sourced to the law in a material sense. Another formula says that attribution is the formation of certain authority and its giving to certain organs and which can form authority is the organ of authority according to the laws and regulations. (Philipus M. Hadjon 2007: 130).

Indroharto said that the attribution takes place the granting of authority of the new government by a provision in the legislation. Here born or created a new authority. It further states that competent legislators to provide the attribution of authority of the government are distinguished between:

1. domiciled as the original legislator; In our country at the central level is the People's Consultative Assembly as the constitution-makers and the DPR together with the government as the birth of a law, and at the regional level is the Regional People's Legislative Assembly and the Regional Government which gave birth to the Regional Regulation;
2. acting as a delegated legislator; Such as a president based on a provision of a law issuing government regulations in which government authorities are created to certain state administrative bodies or positions. Indroharto, 1993: 91).

Furthermore, (Suwoto, 1990: 79) mentions the attributes of authority attribution as follows :

1. The attribution of power creates new power, so that it is not derivative;

2. The granting of power through attributiveness does not result in responsibility, in the sense that it is not required to submit a report on the exercise of power.

3. The granting of powers through attribution shall be based on legislation

4. Basically the holder of power through attribution may bestow the powers of other bodies without first notifying the power-giving body.

Attribution is described as granting authority to another organ that exercises the powers on its behalf and in its own opinion, without the giver itself being appointed to exercise that authority. (Agussalim Andi Gadjong, 2007: 103).

The delegation confirms a delegation of authority to another government body. In the Dutch Administrative Law has formulated the notion of delegation in the Dutch wet famous with the abbreviation AWB (Algemene Wet Bestuursrecht). In Article 10: 3 AWB, delegates shall mean delegation of authority (to make "besluit") by a government official (administrative officer of the state) to another party and such authority shall be the responsibility of that other party. (J.B.J.M. ten Berge in Philipus M. Hadjon 2007: 5.) who grants / delegates authority called delegans and who receive the so-called delegataris. Thus a delegation is always preceded by an attribution of authority.

In the giving / delegation of authority or delegation there are requirements that must be met, namely:

1. delegates must be definitive, meaning delegans no longer use their own delegated authority;

2. delegates must be in accordance with the provisions of legislation, meaning that delegations are only possible if there are provisions in the laws and regulations;

3. delegates not to subordinates, meaning that in the hierarchy of personnel relationships no delegations are allowed;

4. the obligation to provide explanation (explanation), meaning that delegans have the authority to request an explanation of the exercise of such authority;

5. regulatory policy (beleidsregelen), meaning delegans give instructions (instructions) about the use of such authority. (J.B.J.M. ten Berge in Philipus M. Hadjon 2007: 5.)

If the concept of delegation like that, then there is no general delegation and there can be no delegation from superiors to subordinates.

Attribution with respect to the transfer of new powers, while delegates concerning the delegation of existing powers (by organs which have attributed authority to other organs); So delegates are logically always preceded by attribution. The word delegate (Delegatie) implies the surrender of authority from higher officials to the lesser. Such submission is deemed to be unjustified other than or under the rule of law. With the delegation, there is the transfer of authority from one governmental agency or government official to another government agency or official (Agussalim Andi Gadjong, 2007: 104).

A similar opinion is expressed by Heinrich Triepel, (Heinrich Trielpel, 1942: 23) who says that delegation in the sense of public law is intended for the legal action of stakeholders of a state authority. Thus, this delegation is a shift in competence, discharge and acceptance of authority,

both of which are based on the will of the party who submitted the authority. The delegating party must have an authority, which is not currently used, while those who accept delegation also usually have an authority, will now expand.

As for the mandate there is no delegation of any kind in the sense of giving authority, the mandated official acting for and on behalf of the mandator. In the mandate, the mandate officer appoints another official (mandate) to act on the behalf of mandans (mandator).

In connection with the concept of attribution, the delegation, the mandate is expressed by J.G. Brouwer and A.E.Schilder, that :

1. With attribution, power is granted to an administrative authority by an independent legislative body. The power is core (originair), which is to say that is not derived from a previously existed powers and assigns them to an authority.
2. Delegations are the transfer of an authorized authority to one another, so that the delegate (the body that has acquired the power) can exercise power in its own name.
3. With mandate, there is no transfer, but the mandate giver (mandans) assigns power to the other body (mandate) to make decisions or take action in its name. (Brouwer J.G and Schilder, l998: 16-18).

The intent of J.G. Brouwer and A.E.Schilder that on "attribution", authority is granted to an administrative body by an independent legislative body. This authority is genuine, which is not taken from the existing authority. The legislature creates an independent authority and not a prior authority decision and gives it to the competent.

Delegates are transferred from the authority of the attribution of one administrative body to another, so delegators / delegans (agencies that have given authority) can test the authority on its behalf. On the mandate there is no transfer of authority, but the mandator grants the authority of the other body (mandate) to make a decision or take an action on its behalf.

The above definition indicates that the mandate does not provide recognition or transfer of authority as to attribution and delegation. Because mandate is a delegation of authority to subordinates. This delegation intends to authorize subordinates to make decisions a.n. A State Administration official (TUN) who mandates. The decision was a decision of the TUN official who gave the mandate. Thus responsibility and accountability remain with the mandator. For the mandate there is no need for the provisions of the underlying legislation because mandates are routine in the intimate-hierarchical relationship of government organizations. (Philipus M. 2007: 7.)

The explanation as described above indicates that the authority derived by attribution is of an original nature derived from the constitution of a state or legislation, in which the organs of government obtain direct authority both constitutionally and from a law, so as to have strong legitimacy. Authority may create new powers or extend existing powers with responsibilities distributed entirely to the recipient of authority (attributes). In the delegation there is no authorization, but there is only the transfer of authority from one official to another (after authority Attribution). The juridical responsibilities are no longer the delegate, but the delegates (delegates). While the mandate, occurs between superiors and subordinates where the mandate receives (mandataris), acts for and on behalf of the mandator (mandans), and the final responsibility remains with the mandator.

In Law Number 30 Year 2014 defined the Attribution, Delegation and Mandate as follows: Attribution is the granting of Authority to the Agency and / or Government Officials by the Constitution of the Republic of Indonesia or the Act (Article 1 number 22).

Delegation shall be the delegation of Authority of a higher Governmental Body and / or Government Official to a lower Agency and / or Government Official with responsibility and accountability fully transfers to delegate recipients (Article 1 point 23).
A mandate is the delegation of Authority of a higher Governmental Body and / or Government Official to a lower Governmental Body and / or Government Official with responsibility and accountability lying in the mandate (Article 1 point 24).

Based on the source of authority described above, BPK obtains its attribution authority in determining state losses as stipulated in the 1945 Constitution of 1945 as well as the Law on the State Audit Board (Law Number 15 Year 2006).

Article 23E of the 1945 Constitution of the Republic of Indonesia

(1) To examine the management and responsibility of the State finance, a free and independent Audit Agency shall be established. Article 23G of the 1945 Constitution.

(2) Further provisions regarding BPK shall be regulated by law.

Based on the provisions of Article 23 E of the 1945 Constitution of the Republic of Indonesia, Law No. 15 of 2006 on the Supreme Audit Board (constituted by the 1945 Constitution of the Republic of Indonesia), regulates BPK's Duties and Authorities.

Article 6

(1) The BPK is responsible for examining the management and financial responsibility of the State conducted by the Central Government, Regional Government, other State

Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Bodies, Regional-Owned Enterprises and other financial institutions country.

(2) BPK audits include financial audits, performance checks, and inspections with specific objectives.

Article 8

(1) For the purpose of the follow-up to the results of inspection as referred to in Article 7 paragraph (1), BPK shall also submit written examination results to the President, Governor, Regent / Mayor in accordance with their authority.
(2) The follow up of inspection result as referred to in paragraph is notified in writing by the President, Governor, Regent / Mayor to BPK.
(3) If a criminal element is found in the investigation, the BPK shall report the matter to the competent authority in accordance with the provisions of legislation no later than 1 (one) month since the existence of the criminal element is known.
(4) The Report of the Supreme Audit Board as referred to in paragraph (3) shall be the basis of investigation by an authorized investigator in accordance with the laws and regulations.

BPK powers

Article 10

(1) The BPK shall assess and / or determine the amount of the state losses arising out of unlawful acts either intentionally or negligently committed by the treasurer, the manager of the BUMN / BUMD, and other institutions or bodies administering the state financial management.
(2) Assessment of financial losses of the state and / or the determination of the party who is liable to pay compensation as referred to in paragraph (1) shall be determined by a decision of BPK
(3) In order to guarantee the implementation of compensation payments, the BPK is authorized to monitor:

A. Settlement of state / regional compensation damages stipulated by the Government against non-treasurer and other officials;
B. Implementation of the imposition of state / regional compensation to the treasurer, the manager of the BUMN / BUMD, and other institutions or bodies managing the state finances set by the BPK; and;
C. Execution of the imposition of compensation of the state / region determined by a court decision which has had permanent legal force.

In relation to the authority of the Supreme Audit Board of BPKP, hereinafter abbreviated as BPKP as part of the Internal Audit Supervisory Apparatus as regulated in Law Number 15 of 2004 on Audit of Management and Financial Responsibility of State stipulates in Article 9 paragraph (1) and paragraph (2) as The following:

(1) In conducting the audit of state financial management and accountability, BPK may utilize the results of the internal government supervision apparatus
(2) For the purposes referred to in paragraph (1), Reports on internal government audit results shall be submitted to BPK.

Whereas Article 49 of Government Regulation Number 60 Year 2008 regarding Government Internal Control System affirms that:

(1) The internal government supervisory apparatus shall consist of:

A. BPKP
B. Inspectorate General or other entity functionally conducting internal supervision;
C. Provincial Inspectorate, and
D. Inspectorate Regency / City

As the Internal Supervisory Agency, after performing the supervisory duties, the internal control apparatus of the government shall prepare a supervisory report and submit it to the head of the supervised Government Institution (Article 54 paragraph (1), if BPKP exercises supervision over the general treasury activities of the state, Shall be submitted to the Minister of Finance as State Treasurer and to the supervised Government Institution Leader, thus the Supreme Audit Agency shall obtain the authority of attribution in the determination of state losses not BPKP, because in accordance with the legislation BPKP is the Government Internal Supervisory Apparatus having the obligation to report the results of its supervision to BPK.

2. The Authority of Stipulation of the State's Losses on the basis of Corruption Crime Investigation.

One of the most important processes in law enforcement against corruption is the investigation process. Criminal Corruption Authority investigation is given to several law enforcement agencies. The authority of Police Attribution investigation is referred to in Article 14 Paragraph (1) Sub-Paragraph g of Law Number 2 Year 2002 concerning the Police of the Republic of Indonesia affirmed "The Police is in charge of conducting investigations in a criminal act in accordance with criminal procedure law". While the authority of the investigation of the Public Prosecution Service is regulated in Article 30 paragraph (1) sub-paragraph d of Law Number 16

Year 2004 concerning the Prosecutor's Office of the Republic of Indonesia in the Criminal Section Article 26 of Law Number 31 Year 1999 on the Eradication of Criminal Acts of Corruption confirms "Investigation, Prosecution and Inspection In court proceedings against corruption, is conducted in accordance with criminal procedure law unless otherwise provided in this law ". The same clause is also stipulated in Article 39 Paragraph (1) of Law Number 30 Year 2002 concerning the Corruption Eradication Commission affirming "Investigation, Investigation and Prosecution of corruption crime is conducted based on applicable criminal procedure law and based on Law Number 31 of 1999 concerning Eradication of Corruption as amended by Act Number 20 of 2001 Concerning Amendment to Law 31 Year 1999 on the Eradication of Corruption, unless otherwise provided in this Law ". Meanwhile, the Corruption Eradication Commission Law states that Article 6 Sub-Article c of the Corruption Restricting Commission has the duty: "to conduct investigation, investigation and prosecution of corruption". This means that the investigation authority in corruption can be done by the Police, Justice and the Anti-Corruption Commission.

In the process of investigation to be conducted, the investigating agency requires evidence in the form of the examination results of state institutions that are given the authority to determine whether there has been misuse of authority that caused the state losses that can be used as the basis of investigation by the Police, Attorney and KPK.

The element of misusing authority in corruption is a delict species of the element against the law as the delict genus will always be related to the position of public officials, not in the relationship and understanding of positions in the realm of civil structure. Delik misuses its authority in corruption is regulated in Article 3 of Law Number 31 Year 1999 Juncto Law Number 20 Year 2001 concerning the Eradication of Corruption (PTPK Law), which is stated as follows: Any person with the purpose of benefiting himself or Another person or a corporation, misusing his or her authority, opportunity or facilities due to a position or position that could harm the state or economy of the State, with a life sentence or imprisonment of 1 (one) year and a maximum of 20 (twenty) years And or a fine of at least Rp. 50.000.000 (fifty million rupiah) and at most Rp. 1,000,000,000 (one billion rupiah).

The formulation of the criminal act of corruption should be interpreted as a state apparatus or a public official who certainly fulfills the elements, namely: appointed by an authorized official, holding a position or position, and performing part of the duty of state or state instrument equipment. So the provision of the meaning of "misusing authority" should be interpreted in the context of public officials, not private officials even though the private sector also has a position.

The process of law enforcement against corruption, especially the investigation conducted by the law enforcement apparatus both the Attorney and the Police, often does not make the Audit Result of BPK as the basis of investigation but uses the BPKP audit results.

In accordance with the provisions set forth in the 1945 Constitution of the Republic of Indonesia as well as the Law on the Supreme Audit Board (Law Number 15 Year 2006) clearly as described above, that the State institution having the attributive authority to define the State's losses is the CPC. And if there is a state loss (as a criminal element), then the BPK Report shall be the basis of investigation by the investigating authority rather than the investigator. This means that as a State Body authorized to determine and determine the state losses and be used as the basis for conducting an investigation is the BPK. This means that BPKP has no authority for the calculation and determination of state losses as the basis of investigation by the investigating institutions in the criminal act of corruption. If BPKP is a Government Internal Supervisory Apparatus as stipulated in Law Number 15 of 2004 on Audit of Management and Financial Responsibility of State Jo of Government Regulation No. 60 Year 2008 on Government Internal Control System) does not have the authority to determine the state losses that serve as the basis of the investigation Crimes of corruption, but the results of BPKP examination is often used as the basis for the investigation of corruption, it will lead to legitimacy problems in the acts of government conducted by the apparatus investigators both prosecutors and Police in the investigation of criminal acts of corruption.

Guarantees of Protection Laws in administrative law relate to general principles, one of the general principles adopted, namely: Legality Principles in the Implementation of Government (Wetmatigheid van bestuur: the matter of authority, procedure and substance). The meaning of this principle is that any government action undertaken by the Agency and / or Officials of government must be based on laws and regulations. This means, it is very unreasonable according to the law, prosecutors and police agencies, in the process of corruption criminal investigation does not use the results of examination and determination of state losses made by the BPK as the State Institution who obtain authority by attribution rather than using the results of BPKP examination to serve as Basis for conducting an investigation.

CONCLUSION

1. The authority of BPK and BPKP, then the source of authority is based on legislation which in its regulation contains legal norms in the responsibility of supervision of state / regional financial management as the basis of investigation by the investigating agency.
2. Protection of Legal In the administrative law relating to general principles, one of the general principles adopted is: Legality Principles In Government Implementation (Wetmatigheid van bestuur: the matter of authority, procedure and substance).

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