

## The Legal Standing Of Public Accountant Audit Results As A Basis For Determining State Losses: An Analysis Of The Medan District Court Decision Number 58/Pid.Sus.TPK/2022/PN.Mdn.

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### ABSTRACT

*The determination of state financial losses is a fundamental element in corruption law enforcement. Current judicial practice indicates a tendency among law enforcement officials to utilize public accountant audit results as the primary basis for establishing the element of state losses, which constitutionally falls within the domain of authority of the Audit Board of Indonesia (Badan Pemeriksa Keuangan - BPK). This study aims to dogmatically analyze the legal standing of public accountant audit results within the administrative law system and to examine the juridical implications of their use as an evidentiary instrument through an examination of the Medan District Court Decision Number 58/Pid.Sus.TPK/2022/PN.Mdn. This study employs a normative juridical method with a statutory approach (statute approach) and a case approach (case approach). The findings conclude that from an administrative law perspective, public accountants lack attribution, delegation, or mandate authority to issue state administrative decisions. Public accountant audit results are characterized by reasonable assurance, which is subject to a professional standards regime rather than constituting final legal truth. The utilization of public accountant opinions as the basis for determining state losses by the court in the a quo decision constitutes a category error that reduces the principles of legal governance to the supremacy of technical expertise. Furthermore, the analysis of trial facts and the Constitutional Court Decision Number 003/PUU-IV/2006 demonstrates a failure to disentangle the causality of criminal liability, which proportionately results in a distortion of the application of substantive criminal law against private legal subjects.*

**Keywords :** State Losses, Authority, Administrative Law, Public Accountant, Corruption Crimes.

### INTRODUCTION

The determination of state losses constitutes the primary cornerstone in efforts to eradicate corruption crimes and enforce accountable state financial governance. Within the Indonesian constitutional system, the constitution explicitly delegates the authority to audit the management and accountability of state finances to an independent state institution, namely the Audit Board of Indonesia (*Badan Pemeriksa Keuangan - BPK*), as formulated under Article 23E paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This position is reinforced through normative elaboration in Law Number 15 of 2004 concerning the Audit of State Financial Management and Accountability, as well as Law Number 15 of 2006 concerning the Audit Board of Indonesia.

The complexity of managing state finances within public entities (Central and Regional Governments), as well as entities intersecting with public finance, necessitates compliance with the principle of accountability (Halim, 2020). In practice, demands for transparency frequently involve external auditors, in this case, Public Accountants, to perform testing and provide opinions on the fairness of an entity's financial statements (Pramono, 2022). This practice is fundamentally aimed at fulfilling governance standards and administrative compliance (Sutedi,

2018). However, a conflict of norms arises when public accountant audit results are unilaterally transplanted into the realms of criminal law and administrative law as an independent basis for determining the occurrence of state financial losses.

The fundamental distinction between the audit function regime of the BPK and that of public accountants gives rise to dogmatic challenges. The BPK is a public law subject possessing constitutionally attributed authority, whereby its audit findings generate public law implications. Conversely, public accountants operate within the realm of private law, bound by the law of obligations, professional independence, and quality standards. This functional shift phenomenon raises theoretical questions regarding evidentiary validity and the legal standing of professional opinions within the state administrative law system, particularly when juxtaposed with the regime of Law Number 30 of 2014 concerning Government Administration.

The utilization of private audit results in corruption law enforcement carries serious implications for legal certainty and the principle of legality. There is a potential for a fundamental error in interpreting an auditor's professional judgment as an imperative legal judgment. This issue is vividly represented in the Medan District Court Decision Number 58/Pid.Sus.TPK/2022/PN.Mdn, wherein the construction of the element of state losses in the case of Affirmative and Performance School Operational Assistance (*Bantuan Operasional Sekolah - BOS*) Funds relied on the calculations of a Public Accounting Firm, culminating in the blurring of lines between administrative liability in goods and services procurement and criminal liability.

Against this background, this study dissects the authority to determine state losses from the perspective of state administrative law, the normative standing of public accountant audit results, and analyzes the legal implications through an examination of the court decision to rectify the distortion in the application of the law of evidence in handling corruption crimes.

## **METHODS**

This study constitutes normative legal research focusing on the discovery of legal rules, principles, and doctrines to address the analyzed legal issue (Marzuki, 2007). The approaches employed comprise the statutory approach to examine the hierarchy and synchronization of regulations concerning state financial audit authority, and the case approach through a comprehensive examination of the Medan District Court Decision Number 58/Pid.Sus.TPK/2022/PN.Mdn.

Primary legal materials encompass the 1945 Constitution of the Republic of Indonesia, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, Law No. 1 of 2004, Law No. 15 of 2004, Law No. 15 of 2006, Law No. 5 of 2011, and Law No. 30 of 2014. Secondary legal materials consist of literature on constitutional law, administrative law, criminal law, and professional audit standard references. Data analysis is conducted in a qualitative-prescriptive manner, wherein the data formulation is reduced and analyzed based on the Theory of Authority in State Administrative Law and the principles of Criminal Law to generate a comprehensive and coherent legal argument.

## **RESULTS AND DISCUSSION**

### **The Construction of Authority in Determining State Losses within the Administrative Law System**

Within the concept of the rule of law, the principle of legality constitutes a fundamental instrument that limits governmental action. No administrative action can be justified without a basis of authority mandated by statutory regulations (Mahfud MD, 2022). According to Indroharto (2002), authority is the legal power conferred upon government officials or bodies to make decisions or take actions within the administration of government. Authority relates not only to the scope of action but also to the legitimacy to produce legal consequences (Bagir Manan, 2018).

The definition of state losses is normatively constructed under Article 1 number 22 of Law Number 1 of 2004 concerning the State Treasury as a shortage of money, securities, and goods that is actual and certain in amount as a consequence of unlawful acts, whether intentional or negligent. This formulation confines the definition of state losses to cumulative prerequisites requiring that such losses are not merely an accounting deficit, but a legal fact arising from a juridical mechanism (Simatupang, 2022).

The authority to assess and determine state losses constitutes a product of public administrative law. With reference to the thought of Ridwan HR (2019) and as reaffirmed in Law Number 30 of 2014, the sources of authority are divided into attribution, delegation, and mandate. The authority to determine state financial losses is an attributive authority vested exclusively in the Audit Board of Indonesia (*Badan Pemeriksa Keuangan - BPK*) pursuant to Article 23E of the 1945 Constitution of the Republic of Indonesia and Article 10 paragraph (1) of Law Number 15 of 2006 (Ni'matul Huda, 2021). On the other hand, institutions such as the Financial and Development Supervisory Agency (*Badan Pengawasan Keuangan dan Pembangunan - BPKP*) or the Government Internal Supervisory Apparatus (*Aparat Pengawasan Intern Pemerintah - APIP*) operate within the scope of internal oversight, whose authority derives from a mandate or delegation (Tjandra, 2024).

A dogmatic issue arises when the calculation of loss is equated with the determination of state loss. Calculation is a technical and methodological activity that can be performed by any party possessing forensic accounting expertise. However, determination is a manifestation of a public law act that produces legal consequences, thereby requiring the authorization of state power (Tjandra, 2023). The failure of law enforcement officials to dichotomize these two terminologies results in a defect of authority (*onbevoegdheid*).

### **The Character and Normative Standing of Public Accountant Audit Results**

A public accountant is an independent profession subject to the regime of Law Number 5 of 2011 concerning Public Accountants. The law positions this profession within the scope of administrative licensing, rather than the regime of public office. Public accountants are private law subjects who obtain a state license to provide assurance and non-assurance services, operating on the basis of a civil engagement with service users. Strict functional boundaries exist within the scope of a public accountant's work, as set forth in the Public Accountant Professional Standards (*Standar Profesional Akuntan Publik - SPAP*). Audit Standard (*Standar Audit - SA*) 200 underlines that the objective of an audit is to enhance the degree of confidence of financial statement users through the provision of reasonable assurance, rather than absolute assurance. The final outcome of the audit is encapsulated in the Independent Auditor's Report, which exclusively contains a professional opinion (SA 700).

From the perspective of state administrative law, public accountant audit results do not qualify as a State Administrative Decision (*Keputusan Tata Usaha Negara - KTUN*). A private audit product suffers from fundamental weaknesses if directly converted into a public legal determination, inter alia:

1. Private-Contractual Nature: The report arises from a civil engagement between the auditor and the audited entity, not deriving from the exercise of governmental functions.
2. Absence of Public Binding Force (*Imperium*): The auditor's opinion lacks the capacity to establish rights, impose legal obligations, or inflict administrative sanctions upon other legal subjects.
3. Standards of Validity: The quality and validity of the product are measured by adherence to professional ethics and standards (SPAP), rather than the parameters of the general principles of good governance (*Asas-Asas Umum Pemerintahan yang Baik - AUPB*) or the lawfulness of a KTUN.
4. Limited Probative Value: As a written document or expert testimony, its evidentiary value is derivative. The validity of the report within the public sphere only arises if it is adopted or re-verified through the lawful authority mechanisms of a state organ.

Literally utilizing a public accountant's report as the basis for a public law determination is equivalent to privatizing judicial authority. The role of a public accountant remains within the orbit of guaranteeing information reliability, rather than the realm of formulating binding legal decisions that affect other legal subjects.

### **Analysis of the Medan District Court Decision Number 58/Pid.Sus.TPK/2022/PN.Mdn**

Decision Number 58/Pid.Sus.TPK/2022/PN.Mdn imposed a criminal penalty on the Defendant as the operator of CV XXX for an alleged corruption crime in the management of the 2019 Fiscal Year Affirmative and Performance School Operational Assistance (BOS) Funds in Mandailing Natal Regency. The court found the Defendant legally and convincingly guilty of violating Article 2 paragraph (1) in conjunction with Article 18 of the Law on the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) 1st of the Criminal Code (KUHP). A legal examination of this decision reveals flaws in judicial argumentation concerning the application of substantive law, the proof of state losses, and the drawing of causality in criminal liability.

First, the Reduction of the Principle of Authority in Determining State Losses. The court based the fulfillment of the element “potentially causing losses to state finances” entirely on the expert testimony of Binsar Sirait from the Public Accounting Firm (KAP) Ribka Aretha & Partners. The court's acceptance of calculations from a private auditor without validation from a state institution possessing attributive authority (the BPK) constitutes a category error. Citing administrative law arguments, the court has shifted the parameters of legal validity from “who is authorized by law” to “who possesses technical expertise.” This disregard for the supremacy of constitutional law causes the construction of state losses to lose its basis of legality.

Second, the Disregard of Constitutional Court Jurisprudence Regarding the Element of “Unlawfulness”. Constitutional Court Decision Number 003/PUU-IV/2006 reaffirmed the limits of interpreting the nature of unlawfulness, both formal and substantive, whereby the act must conflict with statutory regulations or conflict with the sense of justice and social norms. Trial

facts indicate that the Defendant, as a provider of ICT goods, received orders through permitted technical procedures (pursuant to the Regulation of the Minister of Education and Culture of the Republic of Indonesia No. 14 of 2020) during a SIPLah connection disruption, and had factually realized the delivery of the ordered ICT items to the schools. The performance of contractual obligations completed by the Defendant proves the absence of either formal unlawful acts or substantively reprehensible conduct committed by the Defendant in the ICT procurement.

Third, the Reduction of Factual Causality and Criminal Liability. The application of Article 55 paragraph (1) 1st of the Criminal Code (KUHP) concerning joint participation (*penyertaan*) demands strict proof regarding the unity of intent (*mens rea*) and the joint execution of the act (*actus reus*) (Hiariej, 2022). The court's decision failed to dissect the factual details of the flow of funds from the claimed state loss of IDR 746,678,964. Furthermore, the core problem that resulted in the non-realization of the orders lay in the furniture (*mobilier*) orders executed by CV XXX (Contractor), rather than the provision of ICT devices by CV YYY. Thus, imposing legal liability upon the Defendant to bear the burden of a custodial sentence and compensatory damages (*uang pengganti*) contradicts the principle of causality in criminal law. Systemic errors committed by budget management officials cannot simply be transmitted to a private contractor who has fulfilled their contractual obligations.

The enforcement of corruption law demands an evidentiary process that is clear and undeniable (*beyond a reasonable doubt*) in accordance with the regime of the Criminal Procedure Law (Hamzah, 2023). The utilization of a private audit product which generates a certainty of probability (*reasonable assurance*) is incompatible with the standard of criminal proof (Purnama & Widodo, 2023). The lack of synchronization between the public accountant's audit and the investigative examination by the authorized state authority has triggered an evidentiary asymmetry that prejudices the Defendant's rights to the due process of law.

## CONCLUSION

Based on the dogmatic analysis and case examination expounded above, the authority to determine state losses ontologically resides within the realm of public law, which is absolute in nature and bound by the instrument of attribution. Public accountant audit results are positioned purely as professional judgments within the civil realm to provide reasonable assurance, thereby lacking the capacity to serve as a sole juridical basis due to the absence of state administrative authority. This condition is reflected in the Medan District Court Decision Number 58/Pid.Sus.TPK/2022/PN.Mdn, wherein an improper application of law occurred through the reduction of the principle of administrative authority and the disregard for the jurisprudence of the Constitutional Court Decision regarding the nature of unlawfulness.

The court constructed the element of state losses utilizing the calculation figures of a private auditor, which failed to be measurably correlated with the causality of the Defendant's actions. Conversely, the legal facts confirm that the Defendant, as a private contractor, had fulfilled the performance of goods procurement, whereas the fictitious objects and the flow of corruption funds were absolutely enjoyed by other legal subjects. The criminalization of the Defendant through a joint participation scheme relying on the private audit instrument sets a precedent that blurs the dividing line between the realm of the law of civil obligations and substantive criminal law.

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