THE ROLE OF THE FINANCIAL AUDIT BOARD IN THE PREVENTION AND PROSECUTION OF CORRUPTION CRIMINAL ACT IN BENGKULU PROVINCE

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ABSTRACT
Combating corruption requires synergy and coordination between law enforcement agencies with other agencies, including the Financial Audit Board (BPK). This study discusses the role of the Financial Audit Board in the prevention and prosecution of corruption in the province of Bengkulu. The objective to be achieved is to explain and describe the role of the Financial Audit Board in the prevention and prosecution of corruption. The method used is empirical legal research, with purposive sampling to the officials of state audit board and investigators of corruption. The results generally showed that the Financial Audit Board has a role in the prevention and eradication of corruption, it was seen in the investigation results and recommendations which were able to prevent the loss of state / regional area and there was an implementation of the calculation of state losses and provision of expert testimony in judicial proceedings.

Keywords: Financial Audit Board, prevention, prosecution, combating corruption.
A. INTRODUCTION

1. Background of the Research

The efforts to combat corruption are not only carried out by the police, prosecutors or the Corruption Eradication Commission as law enforcement officers, but also needs synergy and coordination from various agencies. The synergy was conducted among others by law enforcement officials with the Financial Audit Board (BPK) as the audit institution of management and responsibility of state financial. Financial Audit Board can be involved in the calculation of loss of the state / region related to corruption case based on Article 11 letter c of Law Number 15 Year 2006 regarding the Financial Audit Board which authorizes that the Financial Audit Board can provide information from expert in the judicial process regarding the losses of the state / region.

During the period of 2003 until June 2016, the Financial Audit Board had delivered findings of investigation that contains elements of criminal to law enforcement as much as 231 letters containing 446 findings worth Rp44.62 trillion. This is done by Financial Audit Board actively under the legislation as one form of the roles of the Financial Audit Board in eradicating corruption which requires a synergy between the institutions with other institutions in accordance with the duties and responsibilities of each.

Financial Audit Board Representative of Bengkulu Province as one of the elements of Financial Audit Board has a role in participating to combat corruption. The role of the Financial Audit Board Representative of Bengkulu province in the prosecution of corruption is seen in the implementation of the calculation of loss to the state / region (PKN) and the provision of expert testimony (PKA) at the request of law enforcement officers. However, the implementation of the calculation of loss to the state / region and the provision of expert testimony can not be implemented in accordance with the request. The implementation among others depends on the

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1 In Article 23E paragraph (1) of the 1945 Constitution stipulates that: To examine the management and accountability of state finances a Financial Audit Board which is free and independent.

2 Based on the Constitutional Court Decision No. 54 / PUU-XII / 2014 and the opinion of Laica Marzuki that the provision of Article 11 letter c of Law Number 15 of 2006 remains valid and does not conflict with the 1945 Constitution.

inspection tasks according to planning, quantity/number of competent Audit personnel, and the burden of routine inspection tasks, so that the implementation by the request requires process and time.

Background task of Financial Audit Board as state audit institution that is different from the task of law enforcement authorities becomes a particular challenge for the Financial Audit Board in coordinating to compliant expert inquiry and counting losses to the state/region. In addition, the ordinance or the mechanism of providing expert testimony and counting losses of state/regions has specific methods and ways, and between law enforcement authorities with the inspectors have not been at the same level of perception.

Related with a loss of state/regions and law enforcement of corruption criminal act, item 6 of The formulation of the Law of rooms Criminal in Circular No. 4 of 2016 on the Application of Formulation Results of Plenary Meeting Room of the Supreme Court 2016 As the Guidelines for the Implementation of Task For the Court, states that authorized agencies to declare the existence of the State financial loss is the Financial Audit Board which has the constitutional authority while other institutions remains authorized to perform inspections and audit of the financial management of the State financial but not authorized to declare the financial losses of the State.4

In addition to having a role in the prosecution, the Financial Audit Board also can play a role in the prevention of corruption in spite of the realm of law in the examination of the management and financial responsibility of the state belong to the realm of administrative law. In the investigation, it was often found the problem (the audit findings) in the form of an indication of further losses that can be solved by administratives, civil or criminal mechanisms. Investigation of the Financial Audit Board found indications of loss to the state/region and recommended to be restored is *premium remedium*, while the criminal proceedings are *ultimum remedium*. Thus, it is necessary to distinguish an indication of loss of state/local in accordance with settlement mechanisms (administrative, civil, or criminal).

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4Supreme Court Circular No. 4 of 2016 on the Application of Formulation Results of Plenary Meeting Room of the Supreme Court 2016 As the Guidelines for the Implementation Task For courts, the Supreme Court, Jakarta, 2016, p. 4-5.
The nature of the purpose of the audit of the management and financial responsibilities of the country basically is to support the successful implementation of the state administration, the orderly management, obedient to laws and regulations, efficient, economical, effective, transparent and accountable with regard to fairness and propriety. Objectives set out in the inspection can be seen as part of efforts to prevent corruption. The role of the Financial Audit Board in the prevention of corruption has not been apparent, so that it needs a research to describe it. Based on the above description of the background, academic research must be done in the form of a thesis with the title of The Role of Financial Audit Board on the Prevention and Prosecution of Corruption Criminal Act in Bengkulu Province.

2. Identification of the problems

Based on the description of the background above, the problems that can be identified is: how is the role of BPK in the prevention and prosecution of corruption in Bengkulu Province?

B. RESEARCH METHODS

The research type used in this paper is an empirical legal research. The data source of this research is in the form of primary data obtained directly from the respondent by means of structured interview on the official / inspector and investigator-related to the corruption. As for the secondary data include the official documents, the books, the research results that are tangible reports, and so on. This sociological/empirical legal research is also use the secondary data as the first data, it is also followed by primary or field data.

In order for this research to be more targeted and to save time and also cost, the sample in this research is the auditor of management and financial responsibility of the state and the prosecutor investigating corruption field. The data collection techniques used in this research is a structured interview for the primary data and the collection methods or the search data such as library research or the document study for secondary data.

The data that has been collected and processed next will be done on the final stages is the analysis data. The technique used to analyze the data is the

\footnote{5 The considerations of Law Number 15 Year 2004 concerning Management and Accountability of State Finance.}

\footnote{6 Amiruddin and Zainal Asikin, The Introduction to Legal Research Methods, Rajawali Pers, Jakarta, 2014, p. 30 and 133.}
way to describe the results as qualitatively, so that it will produce the expected quality. The data will be presented in a systematic form sentences by using the framework and based on the statements obtained from the primary or field data. The technical will facilitate the conclusion and answer the problems studied.

C. RESULTS AND DISCUSSION

1. The Institutional, Duties and Authority of BPK

To run the government and to achieve the state purposes, the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to Constitution of 1945) has been set up among other state institutions and state finances. The BPK is one of the state institutions regulated in the Constitution of 1945 which is tasked to examine the management and responsibility of state finances freely and independently. The inspection and institutional of BPK itself are arranged in the separate chapter namely Chapter VIII A on the Financial Audit Board that specified in Article 23E, 23F, and 23G of the Constitution of 1945. The third Amendment of the Constitution of 1945 is one of the provisions of the BPK reforms that have strengthened the presence and position of the BPK which is as one of the free and independent state institutions.7

The Preamble Law Number 15 of 2006 regarding the Financial Audit Board stated that the state finance is one of the main elements in the administration of state government and it have benefits that are very important in order to achieve the country's goal to achieve a society that are fair, and prosperous, as mandated in the Constitution of 1945. For the achievement of the country's objectives itself, The state financial management and accountability requires free, independent, and professional examiner to create clean and free government from corruption, collusion and nepotism.

The Article 6 of Law Number 15 of 2006 regarding the Financial Audit Board task set by the BPK as follows:

(1) The BPK has the authority to investigate the management and accountability of state finances conducted by the Central Government, Regional Government, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service offices, Regional-Owned Enterprises, and other institutions or offices managing state finances.

The General Explanation of Law Number 15 of 2006 regarding on the Financial Audit Board.
(2) The Implementation of the BPK investigation referred to in paragraph (1), is based on the Law regarding on the audit of the management and financial responsibility of the state.

(3) The BPK investigation covers the financial audit, performance audit, and inspection with a specific purpose.

The word “investigation” has been defined in Article 1 point 9 of Law No. 15 of 2006, as follows:

The investigation is a process of problem identification, analysis, and evaluation, conducted independently, objectively, and professionally based on the checking standard, to assess the validity, accuracy, credibility, and reliability of information on the management and financial responsibility of the state.

The provisions of Article 6 paragraph (2) and paragraph (3) of Law Number 15 of 2006 is related to the investigation types that are outlined in the Law Number 15 of 2004 on the Management and State Financial Responsibility, particular in Article 4 as follows:

(1) The investigation as referred to in Article 2 consists of financial audit, performance audit, and inspection with a specific purpose.

(2) The financial audit is the investigation of the financial statements.

(3) The performance audit is an investigation of the state financial management consists of the economic aspects investigation and efficiency also effectiveness aspects of the investigation.

(4) The investigation with a specific purpose is not included in the investigation as referred to in paragraph (2) and paragraph (3).

The description of Article 4 paragraph (4)

The investigation with the specific objectives included among others an investigation of other matters in the field of finance, investigative audit, and investigation of the internal control system of government.

To carry out the constitutional duties, the BPK has developed a BPK Strategic Plan 2016-2020 with the vision and mission as follows: 8

The Vision in the Strategic Plan formulated as follows: Being the driving public finance management to achieve the state objectives through a quality inspection and useful. To achieve the above vision, the BPK has a mission: (1) Investigate the management and financial responsibility of the country freely and independently; (2) Implement the corporate governance with integrity, independent, and professional.

The vision and mission have been formulated that in essence will support the implementation of the BPK tasks as stipulated in Law Number 15 of 2006 regarding on the

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Financial Audit Board which includes as follows:  

1. Investigating the management and financial responsibility of the state on the central government, local governments, other state institutions, Bank Indonesia, state-owned enterprises, public service agencies, local-owned enterprises, and institutions or other entities that manage state finances (Article 6 paragraph (1));

2. Do the discussions on the audit findings with the object being examined in accordance with the state financial audit standards (Article 6 paragraph (5));

3. Submit the results of the management and financial responsibility to the state of representative institutions dhi. DPR, DPD and DPRD as well as president / governor / regent / mayor to be used according to the task and authority (Article 7 (1));

4. Also submit the examination results in writing to the president, governors, regents / mayors in accordance with their authority for the purposes of follow-up examination results (Article 8 (1));

5. Reported the criminal element found in the investigation to relevant authorities in accordance with the provisions of the legislation later than 1 (one) month since the known presence of criminal elements (Article 8 paragraph (3)); and

6. Monitor the implementation of the follow-up results of the examination conducted by the officials as referred to in paragraph (1), and notify the result in writing to the DPR, DPD and DPRD, and the Government (Article 8 (5)).

In addition to the main task in Law Number 15 of 2006, there are still other tasks by legislation to another, for example as Treasury Demands Assembly, on the retention of financial records. In carrying out the tasks in Law Number 15 of 2006, the BPK has the authority regarding on the examination as follows:

1. Determining the investigations’ object, planning and carrying out the investigation, determine the time and investigations’ method as well as prepare and present the investigations’ report;

2. Request the information and / or documents that must be provided by each person, an organizational unit of the Central Government, Local Government, State institutions more, Bank Indonesia, State-Owned Enterprises, General Services Agency, Regional-Owned Enterprises and institutions or other bodies to manage finances country;

3. Conduct checks in the money depository and property of the state, in the implementation of activities, bookkeeping and administration of state finances, as well as an examination of the calculations, letters, proof, bank statement, accountability, and a list of other related with the management of state finances;

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10 Article 9 paragraph (1) of Law Number 15 of 2006 regarding on the Financial Audit Board.
4. Specify the documents’ type, data and information on the management and financial responsibilities of the state which must be submitted to the Financial Audit Board;
5. Set the standard financial examination after consultation with the Central Government / Local Government that must be used in the examination of the management and financial responsibility of the state;
6. Establish a code of conduct audit of the management and financial responsibility of the state;
7. Use the experts and / or labor inspectors outside the BPK to work for and on behalf of the BPK;
8. Educate the functional position of inspectors;
9. Give the consideration of the Government Accounting Standards; and
10. Give the consideration to the internal control system draft of the Central Government / Local Government before being passed by the Central Government / Local Government.

In addition to the authority related to investigation tasks, the BPK also has other authority as stipulated in the following article:

Article 10 paragraph (1) The BPK assess and / or set the amount of state losses caused by an unlawful act, either intentionally or negligent conducted by the treasurer, manager of BUMN/BUMD, and institutions or other entities operating in the management of state finances.

Article 11 BPK (The Audit Board of Indonesia) can provide:

a. Opinion to the House of Representatives, Local Representative, Regional House of Representative, Parliament, the Central Government / Local Government, Institution of Other Countries, Bank Indonesia, State-Owned Enterprises, General Services Agency, Regional Enterprise, Foundations, and institutions or other entities, which is necessary because the nature of the work;
b. Consideration of settlement of countries / regions losses specified by the Central Government / Local Government; and / or
c. Expert testimony in judicial proceedings regarding damages countries / regions.

In carrying out the duties and authority above, BPK assisted by the executives of BPK, including one of which is BPK of Bengkulu Province Representative as provided in BPK Implementing provisions, Article 34 verse (1) of Law Number 15 of 2006 regarding the Audit Board: BPK in performing its duties and authorities assisted by the Executive Audit Board, which consists of the General Secretariat, the unit of inspection executor, the unit of supporting executor, representative, Investigator, and other officials stipulated by BPK in accordance with the needs.

Furthermore, in SPKN (State Auditing Standards) also set regarding the benefits of audit of the management and financial
responsibility of the state as set forth in verse 19 as follows: 11

BPK’s investigation pushes the financial management of the state to achieve the objectives of the state, including through:

a. provision of examination results including the conclusion of an independent, objective and reliable, based on the evidence that is sufficient and appropriate;

b. strengthening efforts to eradicate corruption in the form of the submission of the findings that indicated a crime and / or losses in the financial management of the country to the relevant authorities for further action, as well as the form of prevention by strengthening the country’s financial management system;

c. Improvement of accountability, transparency, economic, efficiency, and effectiveness in the management and financial responsibilities of the state, in the form of recommendations that is constructive and effective follow-up;

d. improvement of adherence state financial management and accountability of the provisions of the legislation;

e. improvement of the effectiveness of the role of Government Internal Supervisory Apparatus; and

f. improvement of public confidence in the results of BPK and the management of state finances.

Based on the description above and associated with the role of BPK in the prevention and prosecution of corruption, it is known that under the legislation, BPK has related duty and authority either directly or indirectly in the prevention and prosecution of acts of corruption. Including the position of BPK’s Representative located in each province should also have a role in the prevention and prosecution of corruption.

2. The role of BPK in the Prevention and Prosecution of Corruption

Based on interviews with the auditor, 12 explained that BPK has a duty to examine the management and financial responsibility of the state based on the constitution and laws. The inspection tasks are also related to the prevention and prosecution of acts of corruption. The inspection tasks depend on the type of examination, they are financial audit, performance audit, and inspection with a specific purpose.

The third examination could greatly impact on prevention and prosecution of acts of corruption. In the past financial checks were just to give an opinion (fairness of presentation of financial statements), that in the private sector or accounting firms (ancient) presentation only, so it was only

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11 Appendix I of BPK Regulation No. 1 of 2017 on State Finance Inspection Standards, p. 9-10.

12 Interview with auditor of management and financial responsibility of the state, on June 16, 2017.
conformity to standards of accounting, internal controls, and disclosure. But with the development of science fields of accounting and auditing, administration expands opinion of its aspects to the aspect of compliance with laws and regulations. It is fundamentally related to the prevention and prosecution of corruption, namely recommendations to the local government in terms of the internal control system (SPI) and compliance with laws and regulations.

Implementation of the recommendations on the system improvements is included as part of local government in the prevention of corruption. In the period of 2015 to 2016 there were 21 findings of SPI with 61 recommendations that should be implemented by local governments. Implementation of these recommendations is binding on the local government under the provisions of law. As of the first semester of 2017 of the 61 recommendations, some 23 recommendations are appropriate, which means that local governments have to implement the recommendations as set forth in the examination results.

Associated with the opinion of Soerjono Soekanto, that the things above are the actual role (roles performed) by BPK in relation to the prevention and prosecution of acts of corruption. Furthermore, to determine the actual role from the standpoint of law enforcement officers, this study has been conducted interviews with investigators of corruption. The investigators who were respondents in this research were the investigators who had conducted coordination and cooperation with BPK in order to eradicate corruption.

BPK’s role in the prevention and prosecution of corruption according to attorney investigator, is associated with a particular task functions of Prosecutor Civil and Administrative Section of the State as well as Intelligence Section to utilize the results of BPK which contains recommendations for improvements in the system of government in the effort to prevent corruption. While related to the functions of the Special Criminal Section is the role in

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fulfilling the evidence in the investigation phase which is the expert testimony, that previously contained the counting process damages of the country / region.\textsuperscript{15}

Based on the explanation of respondents above, it appeared that there is a role of BPK in the stage of prosecution of corruption committed by law enforcement officials in accordance with applicable regulations. The role is to perform the calculation of loss to the state / region subsequently poured into the examination results. The next role is to give expert testimony in judicial proceedings based on the value of losses that have been done on the previous count.

Implementation of BPK’s role in the prevention of corruption in everyday practice can be illustrated in the following flow chart:

Based on the flow chart above, could be described the role of BPK in the implementation of inspection tasks and responsibilities of the management of state finances that generate the audit findings in the form of recommendation for improvement in internal control systems and compliance with local governments on the legislation. Implementation of the recommendation by the local government to improve the system and comply with laws and regulations is an effort in the prevention of corruption. Thus the role of BPK in the prosecution of corruption is illustrated in the following chart:

In the flow chart above showed the relationship between BPK to law enforcement officers that ask PKN (Calculation of State Losses) and PKA (Provision of Expert Information). In general, PKN process will begin after the investigation which is by issuing the application letter of PKN for a particular case. In the implementation of PKN, it is

\textsuperscript{15} Interview with attorney investigator, on 7\textsuperscript{th} September 2017.
conducted by the inspection team by basing evidence / documents from the investigation results (*pro justitia*) to be used as paper checks in order to calculate the loss on the related case. After the results of *PKN*is completed and submitted to law enforcement officers, the case will be followed up with demand for *PKA* filed as evidence. The answers to questions from investigators in the process of *PKA* will be awarded based on the results of *PKN* previously undertaken.

In addition to the matters concerning primary data mentioned above, there is also an expert opinion as secondary data that described the role in the prevention of corruption that are visible based on a literature review which among others stated that the administrative law also plays a role that prevention of corruption is by the application of administrative law. This is as opinion expressed by Philip M. Hadjon and Tatiek Sri Djatmiati, which essentially states that there is a link between the administrative law with the eradication of corruption.16

Examination of management and financial responsibilities of the state are belong to the realm of administrative law. This was shown by the definition of state financial management. State Financial Management is the overall activities of the state's financial management officer in accordance with the position and authority, which are includes planning, implementation, monitoring, and accountability.17

Furthermore, in the Law on State Finances stated that the managing authority is in principle was controlled by the President as Head of Government who holds the power of state financial management as part of the governmental power. The power then there are authorized and submitted to ministers / leaders of institutions as Budget User / Goods User and also to the governor / regent / mayor as the head of the regional administration.18 Thus the implementation of the audit of the management and financial responsibility of the state by *BPK* (Supreme Audit Board) (administrative law) occupy a role in tackling corruption, both preventive of prevention and repressive form that


17Article 1, item 6 of Law No. 15 Year 2004 concerning Management and Accountability of State Finances.

18Article 6, paragraph (1) and (2) of Law Number 17 Year 2003 on State Finance.
is handling / prosecution of corruption.

To carry out examination and responsibilities of management of state finances, particularly for matters relating to the role in the prevention and prosecution of corruption, BPK base on the applicable regulations and standards are as follows:

1. Law Number 17 Year 2003 on State’s Finance.
2. Law Number 15 Year 2004 concerning Audits of State Financial Management and Accountability
3. Law Number 15 Year 2006 regarding Audit Board
5. BPK Regulation No. 3 of 2016 on the Code of BPK.
6. BPK Regulation No. 1 Year 2017 on Audits of State Financial Standards.

Laws and regulations of BPK is used as a standard operating procedure in the role of prevention and prosecution of acts of corruption. Furthermore, based on Law No. 15 of 2004, that an examination of LKPD is a type of financial audit carried out by the BPK in order to give a statement about the level of the fairness opinion

the information presented in LKPD which is based on the following criteria: 19

1. compliance with governmental accounting standards
2. adequate disclosures,
3. compliance with laws regulations,
4. the effectiveness of internal control systems.

Criteria number three and number four, it looks there is a link with the prevention of corruption and has been run in accordance with applicable regulations. As for the calculation of losses to the state / region and providing expert testimony, has been regulated in Law No. 15 of 2006. According to Theodore M. Tuanakotta in his book states that: 20

Understanding of experts are different from KUHAP and Law Number 15 Year 2006 regarding the Audit Board. Article 11 c of the law reads as follows: BPK may provide experts in the judicial process regarding losses countries / regions.

Parties that provide information on Expert is BPK, not private (members, employees, auditors, and so on). This is different understanding of experts according to the KUHAP. Experts as the institution of BPK testified about the loss of state within the competence of

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19Elucidation of Article 16 (1) of Law No. 15 Year 2004 concerning Management and Accountability of State Finance.
the BPK, not personal competencies, so it is not attached to the private office holders or members of BPK, or BPK, examiner.

Based on the description above, it can be seen that BPK, has a role in the prevention and prosecution of corruption. The role which has been performed by the BPK in theory is included as a role considered by themselves (perceived role) and the actual role performed (actual role, role performance or role playing).

Role in the prevention of criminal acts of corruption can be seen with the implementation of the audit of the management and financial responsibilities of states that are part of the law as part of the administration and law enforcement. While the role in the prosecution of corruption can be seen by the PKN and PKA request of law enforcement officers and their handling by the CPC in judicial proceedings or law enforcement corruption cases which are total losses the country / region. The judicial process is in the process of investigation and trial.

D. CLOSING
1. Conclusion
   a. BPK is able to contribute to the prevention of criminal acts of corruption, namely with their examination results and recommendations to the local government to make improvements to the system so as to prevent loss of state / region larger. In addition, BPKis also to contribute to the prosecution of criminal acts of corruption, by their handling of the request of PKN and PKA from law enforcement agencies in order to assist the prosecution is in the stage of investigation and prosecution in the judicial process.

   b. Implementation of inspection tasks and responsibilities of the management of state finances and ensuring that compliance with the request of PKN and PKA by BPKis based on the laws and regulations applicable BPK as standard operating procedure.

2. Suggestion
   a. To increase its role in the prevention of criminal acts of corruption, BPK, may encourage local governments to utilize the inspectorate provincial / district / city by governors / regents / mayors to monitor and coordinate the implementation of the completion of the follow-up examination.
b. The need for improvement of facilities or adequate facilities at the level of the Representative BPK to handle the investigative checks (including the implementation of PKN and PKA) at the request of authorities.

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