



Jurisdictional Consequences of Government Administration Law on the Implementation of Duties and Authorities of the Financial Audit Agency

Nizam Burhanuddin

Fakultas Hukum Universitas Muhammadiyah Jakarta
bucapris14@gmail.com

Dwi Putri Cahyawati

Fakultas Hukum Universitas Muhammadiyah Jakarta

Abstract - In the perspective of administrative law, the existence of a state agency BPK is a manifestation of the existence of another form of power from state power, namely the power of supervision of state finances or power of inspection. In carrying out its duties and authorities to examine the management and responsibilities of state finances, BPK is often faced with problems that are closely related to the dynamics of law and legislation. Authority disputes, overlapping regulations, to technical matters related to inspection procedures are examples of some of these problems. Problems that have been and will continue to exist along with development developments that demand the birth of new legal dynamics that are increasingly complex. To the development of administrative law. Law Number 30 of 2014 concerning Government Administration which applies to all government functions contained in Ministries and Institutions has juridical consequences from this to the implementation of government administration contained in BPK, thus regarding the delegation of authority from BPK to BPK Implementers must be clearly regulated in BPK's legal products.

Keywords: Government Administration, Juridical Consequences, BPK

I. INTRODUCTION

The independent and sovereign Republic of Indonesia is not only an antithesis to colonialism in the past, but also brings with it various ideals, ideas, concepts, and even certain ideologies which later became the foundation of the nation and state. The notion of a national state or nationalism, the notion of democracy, and the notion of a welfare state based on law were living ideas that characterized the state or the struggle to establish a state at that time. The conception of the welfare state requires that the state take the widest possible role in providing protection and guarantees not only regarding security, but also economic and social welfare for its citizens. In the Indonesian context, the concept of a welfare state is elaborated in the text of the Preamble to the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia. To achieve the goals of the state, a state government was formed to carry out government functions in various fields. The implementation of the state government gives rise to state rights and obligations that can be valued in money that need to be managed in a state financial management system.

In the administration of the state, arrangements that can reduce the rights and freedoms of citizens, arrangements that can burden the assets of citizens, and arrangements regarding expenditures by state administrators, need to be controlled as well as possible by the people themselves. If the regulations regarding these three things are not controlled by the people

(through their representatives), then the power in the hands of the government can fall into its own natural tendency to be arbitrary (Asshiddiqie, 2006).

Article 23 paragraph (5) of the 1945 Constitution (before the amendment) stipulates that to examine the responsibility for state finances a Supreme Audit Agency is established whose regulations are stipulated by law. The results of the examination were submitted to the DPR. In the process of forming the 1945 Constitution, the idea of the need for a financial audit institution with an independent character has been the subject of discussion by the founding fathers. This is recognized as the basis for the importance of audit institutions for the survival of the state with good governance.

After the amendment, the 1945 Constitution mandates that to examine the management and responsibility of state finances, an independent and independent Supreme Audit Agency is established. As the basis for the formation of state institutions, the regulation of the BPK in the 1945 Constitution has become very strategic. One of the most important institutional strengthening is through the phrase "one free and independent Supreme Audit Agency".

One BPK is an illustration of the commitment of the Indonesian people that in the administration of the state, only one institution is needed to examine the management and responsibility of state finances. Examination of state finances was realized from the outset that the management of state finances was complex and prone to abuse. Examination or supervision of state financial management requires special expertise and state institutions whose position is equal to other state institutions being audited so that audits can be carried out effectively and efficiently. The rationale for this is that money can be a real source of power and power, power is money and money means power. Therefore, every financial management must be carried out according to the right rules, and to ensure this, an audit mechanism is needed called a financial audit. Such an examination of the management of state finances requires a separate state institution, which in its work is autonomous or independent (independent) (Asshiddiqie, 2006).

In the perspective of administrative law, the existence of a state agency BPK is a manifestation of the existence of another form of power from state power, namely the power of supervision of state finances or the power of inspection. In this perspective, Prajudi Atmosudirja equates the BPK's supervisory powers with legislative, executive, and judicial powers (Atmosudirjo, 1994).

In carrying out its duties and authorities to examine the management and responsibilities of state finances, BPK is often faced with problems that are closely related to the dynamics of law and legislation. Authority disputes, overlapping regulations, to technical matters related to inspection procedures are examples of some of these problems. Problems that have been and will continue to exist along with development developments that demand the birth of new legal dynamics that are increasingly complex. Based on the background as described, there are the following problems:

1. What is the position of BPK as a state institution within the scope of government administration in Indonesia.
2. What are the juridical consequences of the issuance of Law Number 30 of 2014 concerning Government Administration on BPK as a state institution.

II. METHOD

In this writing, the author uses normative research methods, namely research conducted by examining library materials or secondary data using a juridical approach which is intended to explain various legal theories and laws and regulations governing state institutions, government administration, and delegation of authority and link them. with the implementation of duties and authorities by BPK.

III. DISCUSSION

3.1 The Supreme Audit Agency within the Scope of Government Administration

The state is an organization of positions or functions that is intentionally formed to achieve the common goal of establishing a state. With this position, the state becomes dynamic, because

in the position the functions, duties and authorities given by law are attached. Positions are permanent, officials alternate. The preamble to the 1945 Constitution determines the common goals and ideals of the Indonesian state to be established, namely to achieve an independent, sovereign, just and prosperous Indonesia. This is the ultimate goal of all state organs in carrying out their functions and authorities (Zoelva, 2017).

In classical absolute monarchy countries, the administration of state power is in one hand, namely the King. The absolutism of the king gave birth to the French revolution in 1789-1799. Before the birth of the French revolution, scientists had put forward findings on how important it was to limit power by means that power was not in one hand through the separation of powers between state organs. John Locke (1632-1704) put forward the teachings of trias politica (legislative, executive and federative) then followed by Montesquieu (1689-1755) argued for the separation of powers between legislative, executive and judicial powers. The essence of this teaching contains the intention to limit power to one state organ so that it does not harm the people (Zoelva, 2017).

This teaching of separation of powers never occurs in practice, because it is impossible for each state organ to operate separately. If the exercise of power is separated rigidly, the administration of the state cannot achieve its objectives because between state organs there will be interlocking of others. Nevertheless, the teaching of separation of powers still inspires the importance of limiting state power through the division of power between state organs so that state power is not in one hand. Therefore, from the teaching of separation of powers gave birth to the doctrine of power sharing and checks and balances, namely the power of state organs which are divided into several state organs which balance each other and carry out integrated functions to achieve state goals, through a clear division of power and while avoiding power. the state is not in one hand.

In Indonesia, the financial audit institution was established by the BPK, which had the duties and authorities in the 1945 Constitution before the amendments were post-pragmatism. Meanwhile, the 1945 Constitution (UUD 1945 after the amendment) is neo-conservatism. Both certainly affect the position of the BPK as a state institution that is equal to the President and other state institutions. The BPK as a state organ established by the constitution, has the same important position as the MPR, DPR, DPD, President, MA, MK and KY established by the Constitution. With this philosophical foundation, the makers of the 1945 Constitution Before the Amendment had the concept of an ideal institutional position so that the position of the BPK as a state institution was essentially equal to other state institutions being audited (Zoelva, 2017).

The expansion of the reach of the BPK through the constitutional mandate to establish representatives in all provinces, is intended to strengthen the BPK as a state institution because the framers of the amendment to the 1945 Constitution wanted that when the scope of the BPK was sufficient, BPKP would no longer be needed.

According to Yos Johan Utama, in relation to BPK as an entity, it is as follows (Utama, 2017):

- a. The State Audit Board is a state institution tasked with examining the management and responsibility of state finances as referred to in the 1945 Constitution of the Republic of Indonesia.
- b. BPK is a unitary institution or entity and not a collection of people.

3.2 Applicability of the Government Administration Law for BPK

According to Dian Puji Simatupang, the general principles related to the Government Administration Act are as follows (Simatupang, 2017):

- a. The Government Administration Law is a positive law/material law for state administration;
- b. The Government Administration Law contains a positive fictie principle, namely if an official/public body does not respond to a submitted application, it is deemed to have agreed.

Made Subawa further stated that BPK has independence according to the 1945 Constitution, functionally in carrying out BPK audits it is not allowed to intervene. However,

structurally, as long as BPK carries out government duties, it is subject to the Government Administration Law (Subawa, 2017).

Associated with the position of the BPK in the state administration, the position of the BPK with respect to Government Administration is as follows (Sukardi & Salman, 2017):

- a. BPK is included in the element that carries out Government Functions, in this case as other state administrators, in accordance with Article 1 point 3 of the Government Administration Law. Thus, the provisions of the Law on Government Administration are binding on BPK.
- b. The consequences of non-compliance with decisions issued by BPK with respect to the format regulated in the Law on Government Administration, viewed from the perspective of administrative law, including defects in authority, both product and substance, are canceled. But when the matter is entered in court, then everything returns to the judge's conviction.

This is in line with the opinion of Yos Johan Utama who stated that (Utama, 2017):

- a. Based on Article 1 point 3 of the Government Administration Law, Government Agencies and/or Officials are elements that carry out Government Functions, both within the government and other state administrators.
- b. BPK is a state administrator, so the Law on Government Administration also applies to BPK.

Complementing this opinion, Miftah Thoha said that (Toha, 2017):

“Government administration covers all activities in the state. Although the BPK is a state institution that carries out functional duties, it does not mean that it is separated from state administration. The executor is the functional executor. As long as the state official is appointed by the president and the executor of the BPK is still an employee within a state institution, then the executor is a state civil apparatus, then the BPK is subject to the Law on Government Administration concerning Government Administration.”

3. 3 Juridical Consequences of Enforcement of Law NO. 30 of 2014 on the Implementation of the Duties and Authorities of BPK

The Government Administration Law has regulated the delegation of authority, as a consequence of BPK's submission to the Government Administration Law, the delegation of authority within the BPK is subject to the provisions of the Government Administration Law. Talking about the delegation of authority within the BPK cannot be separated from the relationship between the BPK and the BPK Executor.

The relationship between BPK and BPK Implementers regarding the delegation of authority according to several experts is as follows:

- a. Made Subawa
In Article 23G of the 1945 Constitution, BPK is domiciled in the state capital, and has representatives in each province, and further provisions regarding the Supreme Audit Agency are regulated by law. From this construction, it should be seen that the BPK (central) has attribution authority, while the Representative (provincial) BPK has delegation or mandate authority? (Subawa, 2017)
- b. Frans Limahelu
The BPK's authority is derived directly from the constitution. Because the constitution has given the trust to carry out audits of the management and responsibility of state finances to the BPK, then in accordance with the principle of "delegates non posttest delegates" BPK is not allowed to hand over this authority to other organs. Thus, the form of delegation to BPK implementers is Mandate.
- c. Yos Johan Utama
 - 1) The BPK implementer acts for and on behalf of the BPK. The existing construction in the current law is that the BPK Implementer carries out the mandate.
 - 2) The implementation of the duties of the BPK Implementer is not an expropriation of authority.

- 3) The examiner carries out the mandated duties given by his superior official through the BPK Decree concerning the Organization and Work Procedure of the existing BPK, with permanent responsibility on the BPK as an institution (Utama, 2017).
- d. Miftah Toha
- 1) The main authority of the audit rests with BPK Members, BPK Members then distribute the authority to senior executives (Echelon I Officials). Because they have received delegation from BPK Members, usually senior executives can act alone.
 - 2) The senior executive is the first unit to receive the delegation of authority, so there is no need to use "on behalf of the Agency" because there has been a delegation of authority. The use of "on behalf of" is used by the head of the representative on behalf of the senior executive.
 - 3) Senior executives can delegate their authority to the representative office. The form of delegation of authority is delegation (Toha, 2017).

e. Mahkamah Konstitusi

The Constitutional Court in Legal Considerations as stated in the Decision of the Constitutional Court Number 54/PUU-XII/12/2014 states that:

The Representative BPK is the executor of the BPK that assists the BPK in examining the management and responsibility of regional finances at the Provincial Government, Regency/City Government, BUMD and related institutions within the entity, so that the Representative BPK does not stand alone but is an integral part of the BPK institution because of the results of the BPK examination. Representatives reported to BPK.

Based on the opinions and descriptions above, the form of delegation of authority that can be carried out from BPK to BPK Implementers is a mandate. This is in accordance with the existing construction in Law 15 of 2006 concerning the Supreme Audit Agency (BPK Law). The mandate is carried out in the context of carrying out the routine work of the organization and is limited in nature and must be stated clearly what is mandated. The authority remains with the mandate giver, so it can be exercised or withdrawn at any time by the mandate giver. All actions carried out by BPK Implementers must be viewed as institutional BPK actions.

Every government action is required to rely on legal authority, without any legal authority an official or State Administration Agency cannot carry out a government action. Therefore, legitimate authority is an attribute for every official or for every agency. The legitimacy of government action is measured based on the authority regulated in the legislation. The authority of government in administering government cannot be separated from the application of the principle of legality, the principle of legality is the basis for the legitimacy of government actions, in other words, every state and government administration must have legitimacy, namely the authority granted by law. Authority (*gezag*) itself is formalized power for certain people or power over certain areas of government originating from legislative power or from the government (Soeprijanto, nd).

Law in its original form is limiting power and trying to allow balance in social life, while authority (*bevoegdheid*) is the ability to take certain legal actions. In the conception of the rule of law, the government's authority comes from the applicable laws and regulations, as stated by Huisman, that a government organ cannot assume that it has its own government authority. Authority is only given by law. Legislators not only give government authority to government organs but also to employees or special agencies, or even to private legal entities. In line with the main pillar of the conception of the rule of law, namely the principle of legality (*legaliteitsbeginsel* or *het beginsel van wetmatigheid van bestuur*), based on this principle it is implied that government authority comes from laws and regulations, which means that the source of authority for the government is in the laws and regulations (Jayantara, 2015).

In line with the above principles, Law no. 30 of 2014 stipulates that, the use of state power is not without conditions, decisions and/or actions must be in accordance with the provisions of laws and regulations and general principles of good governance (AUPB), AUPB as stated in Article 10 of Law no. 30 of 2014, it is determined that the requirements for the

fulfillment of AUPB consist of the principles of legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest, and good service.

On the principle of legality and AUPB Article 52 paragraph (1) of Law no. 30 of 2014, stating that the legal requirements for a decision include being determined by an authorized official, made according to procedures, and the substance is in accordance with the object of the decision. The non-fulfillment of the components in the procedure for obtaining the authority may result in a defect in authority (*onbevoegdheid*), the consequences of the defect in authority being regulated in Article 56 of Law no. 30 of 2014 which states that decisions that do not meet the requirements set by the competent authority are invalid decisions, and decisions that do not meet the requirements are made according to procedures, and the substance in accordance with the object of the decision is a decision that is void or can be canceled.

Regarding the non-fulfillment of the legality principle and AUPB as stated above, there are differences of opinion from State Administrative Law Experts, namely:

1. Prof. M. Laica Marzuki dan Dr. Dian Puji N. Simatupang, stated that the non-fulfillment of the formal requirements in the implementation of the delegation of authority had implications for the legality of the decision of the public body dhi. Prof. Laica stated that if the formal writing of the decision was not appropriate, the decision could be annulled (Simatupang, 2017).
2. Prof Philipus M. Hadjon, formal stated that if the formal writing of the decision was not appropriate, because the agency's official document had not been regulated, it would not automatically eliminate the mandate's authority, but the person who was responsible for signing the report would be responsible;
3. Prof. Yos Utama stated that if the assignment letter does not use "on behalf of", it is only an error in the implementation or an error in the official document, does not abolish the authority that has been delegated in the OTK (Utama, 2017).

The principle of legality and AUPB above when associated with the signing of the Letter of Assignment and LHP by the BPK Implementer, there are several things that need attention, namely the type of delegation of authority given to the BPK Implementer must be firmly established, because each type of authority has different legal consequences, including regarding the legality of the official authorized to sign the Letter of Assignment and LHP, and accountability for the legal action, and if these formal requirements are not met, it will potentially lead to defects in authority and legal problems in the future.

IV. CONCLUSION

- a. The position of BPK as a state institution is as a constitutional state institution and the only one authorized to carry out audits on the management and responsibility of state finances.
- b. BPK as a state institution does not carry out any of the functions of the executive, legislature or judiciary when it is associated with the scope of government administration in Indonesia;
- c. Law Number 30 of 2014 concerning Government Administration applies to all government functions contained in Ministries and Institutions;
- d. The implementation of government administration is subject to Law Number 30 of 2014 concerning Government Administration, but can be specifically regulated by Ministries and Institutions in accordance with their duties, functions, and authorities;
- e. The implementation of government administration contained in the BPK is subject to Law Number 30 of 2014 concerning Government Administration, thus regarding the delegation of authority from the BPK to the BPK Implementer, it must be clearly regulated in the BPK legal product;
- f. The delegation of authority from BPK to BPK Implementers can be regulated in BPK's legal products in the form of:
 - 1) Mandate, can be regulated through internal BPK regulations; or

- 2) Delegation, with a note that the delegation of authority from the BPK to the Implementing BPK must be based on the mandate of the Act. Until now, Law no. 15 of 2006 does not contain provisions that allow for delegation of authority, so it can only be done by first making amendments to Law no. 15 of 2006 concerning BPK.
- g. Article 71 paragraph (1) of Law Number 30 of 2014 concerning Government Administration states that Decisions and/or Actions of Government Agencies and/or Officials can be canceled if there is a procedural error.
- h. Dalam kaitannya dengan penandatanganan Laporan Hasil Pemeriksaan BPK oleh Kepala Perwakilan, untuk menghindari permasalahan hukum terkait penandatanganan LHP, maka lebih tepat dilakukan perbaikan prosedur dalam bentuk formil mengenai pelimpahan wewenang untuk penandatanganan LHP;

4.1 Suggestion

Submission of the implementation of government administration contained in the BPK in accordance with Law Number 30 of 2014 concerning Government Administration, it is necessary to form a legal product that regulates government administration at the BPK, especially regarding the delegation of authorities to be carried out from the BPK to the BPK Executor to avoid any lawsuits from outside parties.

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