



THE REFUND OF STATE FINANCIAL LOSSES DUE TO CRIMINAL ACTS OF CORRUPTION THROUGH AUDIT AGENCY AUDIT INVESTIGATION

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ABSTRACT

The aim of this research is to analyze the concept of returning state financial losses resulting from criminal acts of corruption based on Audit Board of the Republic of Indonesia audits and to analyze the form of follow-up to recommendations from Financial Audit Agency audit results regarding elements of state losses resulting from criminal acts of corruption. This research is normative research. The approach method used in this research is a statutory approach. The results of this research are the role of the Financial Audit Agency terms of returning state financial losses, the Audit Board of the Republic of Indonesia has the authority to make demands for compensation from parties proven to have committed unlawful acts which resulted in state financial losses through criminal law instruments, through civil law instruments or through administrative legal instruments. The Financial Audit Agency as the holder of audit power has the right to supervise the management of state finances and provide recommendations on audit results to the House of Representatives, Regional Representative Council and Regional People's Representative Assembly for political follow-up as a supervisory function and provide recommendations to law enforcers in the event of indications of criminal acts

A. INTRODUCTION

The Financial Audit Agency is a body whose task is to examine the management and responsibility of state finances freely and independently,¹ as mandated in Article 23 E paragraph (1) of the 1945 Constitution of the Republic of Indonesia.² Indonesia as a country that adheres to a modern democratic system, the existence of the Financial Audit Agency in carrying out its duties and functions also adopts modern management functions in managing the country's finances and is also required to be transparent and accountable in its implementation. A democratic country will not be realized without upholding 'transparency' and 'accountability' in its government.

1 Mieke Rayu Raba., Peran Badan Pemeriksa Keuangan Dalam Melakukan Pemeriksaan Terhadap Pengelolaan Keuangan Negara Untuk Mewujudkan Pemerintahan Yang Baik Menurut UU No. 15 Tahun 2006, *Lex Crimen* 6, No. 3 (2017): 152-160

2 Undang-Undang Dasar Negara Republik Indonesia, Jakarta: Sekretariat Jenderal MPR RI, (2013):90.

Transparency means being open and nothing is hidden in front of all the people and accountability means being able to be fully accounted for both morally and legally. Likewise, the Financial Audit Agency in carrying out its duties and functions must uphold the two things referred to, namely 'transparency' and 'accountability'.

The constitutional provisions of Article 23 E paragraph (1) are the 'key article' in the regulation of the Financial Audit Agency and are a form of commitment by the drafters of the 1945 Constitution of the Republic of Indonesia in the third amendment, as an effort to empower the Financial Audit Agency as a fundamental function of safeguarding and saving state finances as well as a strategic partner in eradicating corruption.³ Before the democratic era like now, the Financial Audit Agency was not able to play an optimal role so that the management of state finances could not run according to provisions, there was misuse, budget leaks and even corruption in state finances. With the formulation of the 'key article', it is hoped that the Financial Audit Agency can appear more excellent in overseeing state financial management that can run in accordance with regulations and is free from irregularities and corrupt practices. More than that, the Financial Audit Agency must also be a high-ranking state institution whose audit results can effectively become an entry point for recovering state financial losses and eradicating criminal acts of corruption in Indonesia.

In the formulation of Article 23 E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it emphasizes two aspects inherent in the Financial Audit Agency, namely 'free' and 'independent' as a form of constitutional guarantee to the Financial Audit Agency. With the presence of these two words, the Financial Audit Agency can become a state institution capable of producing audit products in the form of conclusions that are correct, objective, critical and in favor of the values of truth and facts. Bearing in mind that state financial problems are a very vital aspect of the country and really determine the success of the government in carrying out government and development. If in carrying out its duties and functions the Financial Audit Agency is 'not free' and 'not independent' it will result in the process and results of the Financial Audit Agency's performance not being in accordance with the values of truth and facts.⁴

Bearing in mind that the objects of auditing state finances carried out by the Financial Audit Agency are other state institutions whose position is equal to its own, the two words 'free' and 'independent' in the Financial Audit Agency are expected to carry out its constitutional duties without any hesitation or hesitation, so that indirectly as a form of checks and balances between state institutions. Therefore, every attempt at intervention from any party, whether executive, legislative, judiciary or extra political triad

3 Fery Aferio (et. al)., *Kebebasan Dan Kemandirian Badan Pemeriksa Keuangan Dalam Pengawasan Penggunaan Keuangan Negara Berdasarkan Undang-undang Dasar Negara Republik Indonesia Tahun 1945*, JOM Fakultas Hukum II, No. 2 (October 2015): 1-14

4 Bachrul Amiq., *Pengawasan BPK Dalam Mewujudkan Pengelolaan Keuangan Daerah Yang Bebas Korupsi*, Jatiswara 31, No. 2 (2016): 249-263

outside the Financial Audit Agency, which is contrary to the formulation of the words 'free' and 'independent' is a serious constitutional violation.

Article 23 E paragraph (2) of the 1945 Constitution of the Republic of Indonesia explains that "The results of state financial audits are submitted to the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, in accordance with their authority"⁵ The mechanism in the provisions of the article in question shows checks and balances, that the Financial Audit Agency cannot follow up on the results of its own work, and submits the results of its work to other institutions. The submission of Financial Audit Agency work results is intended to be material for the three representative institutions in carrying out their supervisory function to the government in using the budget, so that the effectiveness of the supervisory function will be well realized based on Financial Audit Agency Audit Results data. These constitutional practices ensure that there are no dominant and uncontrolled state institutions, especially in using state budgets.

Article 23 E paragraph (3) of the 1945 Constitution of the Republic of Indonesia explains "The results of the inspection are followed up by representative institutions and/or bodies in accordance with the law"⁶ The results of the Financial Audit Agency examination can conclude allegations of inaccuracy in the management of state finances to the conclusion of alleged 'criminal acts' in the management of state finances. From a political perspective, if this happens, it can be followed up by the House of Representatives, Regional Representative Council and Regional People's Representative Assembly, but from a criminal law perspective, these findings can be followed up by the Police, Prosecutor's Office, Corruption Eradication Commission in accordance with the contents of the conclusions of the Audit Results conducted by the Financial Audit Agency. If this role is implemented by the institutions in question correctly and with full responsibility, leaks in the state budget and corrupt practices can be minimized, so that the constitutional ideals of realizing a just and prosperous society will slowly be realized.

Recovering state financial losses following the results of audits carried out by the Financial Audit Agency will be effective if the coordination pattern between the relevant institutions is effective.⁷ Thus, any discovery of state losses by the Financial Audit Agency from the results of the audit it carries out is immediately reported to the competent authorities to see whether the state losses that are returned constitute an unlawful act or not. Considering that in proving the element of "harm to state finances", there is also confusion. Sometimes in judicial practice the element of "harming state finances" has been proven, however, the element of enriching oneself or

5 Ibid : 90.

6 Ibid : 90.

7 Citra Nasir., Follow Up Report of Examination Result Of Supreme Audit Agency For State Financial Management, *Al-Mahkamah: Jurnal Hukum, Politik dan Pemerintahan* 1, No. 2 (2024): 1-24

another person or a corporation in Article 2 paragraph (1), or the element of "benefiting oneself or another person or a corporation" has not been proven. This is used as a reason to release suspects of criminal acts of corruption.⁸

So the lack of precise juridical construction is an obstacle to the law enforcement process. If the element of state loss is proven, it means that money or state wealth has been lost. This ensures that the suspect has enriched himself or another person or a corporation with money or state assets that have been proven missing. Thus, if the element of state financial loss is proven in a trial, it can be said that the element of enriching oneself or another person or a corporation, or has benefited oneself or another person or a corporation, can also be proven.⁹ If this is not the case, then there will be an illogical juridical construction.

Basically, the method for calculating state losses cannot be determined standardly to be used as a guide/reference in calculating state losses. This is because the *modus operandi*, cases of irregularities and forms of state loss can vary in carrying out audits, auditors can choose the method that is considered most appropriate.

The method for calculating state financial losses can be explained through several methods, including: Total loss method, where the state financial losses are calculated by means of the entire amount paid being declared as state financial losses; Total Loss with adjustments, the total loss method with adjustments is like the Total Loss method, only with upward adjustments. Adjustments are required if the purchased goods must be destroyed and the destruction is costly. State financial losses are not only in the form of expenses for procuring these goods, but also the costs required or incurred to destroy these goods; Net Loss Method In the net loss method, the method is the same as the total loss method. Only with downward adjustments. Net loss is the total loss minus the net value of goods that are considered to still have value. The net value is the difference usually obtained minus salvaging costs; Fair price method, in this method of calculating state financial losses, the fair price is used as a comparison for the realized price. State financial losses where transactions are not fair are in the form of the difference between the fair price and the realized price.¹⁰

In this method of calculating state financial losses, the fair price is used as a comparison for the realized price.¹¹ State financial losses where

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- 8 Ivan Satria Wijaya., *Pertanggungjawaban Pengurus Badan Usaha Milik Negara Terhadap Kerugian Keuangan Negara Pada Pengelolaan Persero*, *Calyptra: Jurnal Ilmiah Mahasiswa Universitas Surabaya* (Maret) 4, No. 2 (2016): 1-20
 - 9 Zulkifli., *Penerapan Unsur Tindak Pidana Korupsi Pada Pelaksanaan Program Kemitraan Dan Bina Lingkungan (Studi Putusan Perkara Nomor 6/Pid.Sus-TPK/2016/Pn.Pdg dan Nomor 07/Pid.Sus-TPK/2016/PN.Pdg)*, *Unes Law Review* 1, No. 2 (2018): 222-232
 - 10 Karel Antonius Paeh., *Pengembalian Kerugian Negara Berdasarkan Rekomendasi Badan Pemeriksa Keuangan (BPK) Hubungan Dengan Unsur Kerugian Negara Dalam Tindak Pidana Korupsi*, *e Jurnal Katalogis* 5, No. 2 (February 2017): 53.
 - 11 Ahmad Feri Tanjung dan Ronald Hasudungan Sianturi., *Kerugian Keuangan Negara Dalam Pengadaan Alat Kesehatan Di Indonesia*, *Jurnal Hukum; Ius Quia Iustum* 26, No.1 (2019): 133-154

transactions are not fair are in the form of the difference between the fair price and the realized price. So, with this method, facing the return of state financial losses can be accelerated and corruption involving systemic and institutional practices can be dismantled and eradicated. Therefore, the Financial Audit Agency must be able to create a strategy so that efforts to recover state financial losses can be maximized and the eradication of corruption becomes increasingly clear.

Previous research from Baren Sipayung et al. in a journal entitled "Preventing and Eradicating Corruption: Financial Audit Agency's Efforts in the Frame of Human Rights" found that " Financial Audit Agency's efforts in preventing and eradicating corruption have a very important role and are relevant to human rights principles because they protect human rights, promote justice, education, health, and a just, transparent and accountable society. However, this role must be carried out in compliance with basic Human Rights principles and needs to overcome existing challenges and obstacles. Transparency, accountability, protection of corruption whistleblowers, and fair law enforcement are an integral part of the Financial Audit Agency's approach to addressing corruption."¹²

Other research from Immanuel Simanjuntak et al. in a journal entitled "Accountability of the Financial Audit Agency in Calculating State Financial Losses in Corruption Crimes (Medan District Court Data) found that "To reveal state financial losses, the role of the Financial Audit Agency is necessary to carry out examinations of state financial losses. State financial audits include preventive and repressive audits. Preventive audits are carried out before there are state losses, while repressive audits are carried out when there is information or suspicion of state losses. And audits of state financial losses carried out by the Supreme Audit Agency are regulated by law."¹³

This research aims to analyze the concept of returning state financial losses resulting from criminal acts of corruption based on Financial Audit Agency audits and to analyze the form of follow-up to recommendations from Financial Audit Agency audit results regarding elements of state losses resulting from criminal acts of corruption.

B. RESEARCH METHODS

This research is normative legal research. According to Soerjono Soekanto, normative legal research or also called library legal research is legal research carried out by examining library materials or secondary data alone.¹⁴ In this research, the object studied is the role of the Financial Audit

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- 12 Baren Sipayung (et. al)., Pencegahan dan Pemberantasan Korupsi: Upaya BPK dalam Bingkai Hak Asasi Manusia, Aliansi: Jurnal Hukum, Pendidikan dan Sosial Humaniora 1, No. 2 (2024): 100-114
 - 13 Immanuel Simanjuntak (et. al)., Pertanggungjawaban Badan Pemeriksa Keuangan Menghitung Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi (Data Pengadilan Negeri Medan), Jurnal Hukum Bisnis 10, No. 3 (August 2021): 1-5
 - 14 Soerjono Soekanto, Sri Mamuju., Penelitian Hukum Normatif; Suatu Tinjauan Singkat, (Jakarta: Raja Grafindo Persada, 2010): 13-14

Agency in recovering state financial losses resulting from criminal acts of corruption. The approach used in this research is the statutory approach, which is an approach used to study and analyze all laws and regulations related to the legal issue to be studied, namely related to the role of the Financial Audit Agency in recovering state losses resulting from acts of corruption crime. Processing of legal materials is carried out using qualitative analysis, which is an analysis of legal materials that does not use numbers, but rather descriptively.

C. RESULTS AND DISCUSSION

1. The Concept of Returning State Financial Losses Resulting from Corruption Crimes Based on Financial Audit Agency Audits

State finances are fundamental in the administration of a country's government. In order to safeguard and save state assets, provisions are needed that regulate sanctions and prosecution of anyone whose actions cause harm to state finances.¹⁵ According to Edy Mulyadi Supandi¹⁶ understand state financial losses as one of the elements of criminal acts of corruption. If viewed from the cause, state losses can occur due to: Human actions, namely intentional actions, unintentional actions due to negligence, negligence, mistakes or incompetence, as well as supervision of the use of finances. inadequate state; Natural events, such as natural disasters and natural processes; Legal regulations and/or the monetary/economic situation, namely state financial losses due to money redlining, monetary turmoil which results in a decrease in the value of money thereby increasing the amount of state liabilities and so on. The treasurer's actions include payments, gifts or expenditures to unauthorized parties, accountability/reports that do not correspond to reality, embezzlement, criminal acts of corruption and theft due to negligence.

In the case of State Losses, we need to know first about Information and Verification of State Losses, while information about state losses can be known from the results of Financial Audit Agency examinations and supervision by functional supervisory officers.

The results of the Financial Audit Agency audit are stated in the form of a Financial Audit Agency Audit Results Report. This is information about state losses. The Financial Audit Agency plays an important role in conducting audits of the management and responsibility of state finances, as well as providing findings that can identify state losses. The Financial Audit Agency audit report usually includes details regarding misuse or discrepancies in the management of state finances, which can then be used as a basis for carrying out follow-up actions in legal or administrative processes.¹⁷

15 Abdul Halim, Icku Bawono., Op.Cit. : 28.

16 Ibid.

17 Beni Kurnia Illahi dan Muhammad Ikhsan Alia., Pertanggungjawaban Pengelolaan Keuangan Negara Melalui Kerja Sama BPK dan KPK, *Integritas* 3, No. 2 (2017): 37-78

Supervision by functional supervisory authorities such as the Inspectorate General and Financial Audit Agency plays an important role in detecting state losses. If indications of state losses are found, the head of the work unit is obliged to immediately report this matter to the Minister or Head of the Institution and notify the Financial Audit Agency within a maximum of 7 working days of the discovery of the loss. In the event that the treasurer is negligent, unable to make an accountability report, or in special circumstances such as death or absconding, the calculation of losses is carried out ex-officio by the appointed official. If the ex-officio calculation results show no state loss, then the treasurer concerned remains responsible for the shortfall.¹⁸

Apart from the information above, sources of information on state losses can be obtained from public supervision/complaints as well as mass media and electronic media. Information on state losses must be managed by each work unit head.¹⁹ Each work unit head is obliged to examine whether the information received is related to the state assets which he/she is managing/is responsible for. If the information relates to state assets which are managed/are their responsibility, then the head of the work unit is obliged to re-examine whether the matter meets the requirements to be followed up in the process of resolving state losses. To follow up on information about state losses, the head of the agency where the state loss is suspected is required to form a State Loss Settlement Team.²⁰ The State Loss Settlement Team consists of the Secretary General/head of secretariat of other agencies/regional secretaries of provinces/districts/cities as chairman; Inspector General/head of internal supervision unit/provincial/ regency/city inspector as deputy chairman; Head of Bureau/finance section/head of regional financial management agency as secretary; Other personnel from work units in the fields of supervision, finance, personnel, legal, general and other related fields as members; and Secretariat.

State Loss Settlement Team is tasked with assisting agency leaders in processing the settlement of state losses to the treasurer whose charges will be determined by the Financial Audit Agency. In order to carry out these tasks, State Loss Settlement Team carries out functions to²¹ Inventory cases of state losses received. This inventory aims to identify and record all cases of losses that occur, so that the settlement process can be managed systematically and in accordance

18 Abdul Haris dan Heri Kusmanto, Fungsi Pengawasan Inspektorat Kabupaten Serdang Bedagai, *Jurnal Administrasi Publik* 6, No. 1 (June 2016): 75-86

19 Nursamsir (et. al.), Peran Pemerintah Daerah dan DPRD Dalam Pengawasan Dana Desa di Kabupaten Kolaka Utara. *Musamus Journal of Public Administration* 6, No. 2 (2023): 659 - 669

20 The State Loss Resolution Team, hereinafter abbreviated as TPKN, is a team that handles the resolution of state losses appointed by the Minister of Finance, see: Regulation of the Minister of Finance Number 193/PMK.01/2009 concerning Guidelines for the Settlement of State Loss Compensation for Treasurers within the Ministry of Finance..

21 Ibid.

with applicable procedures; Calculating the amount of state losses. This calculation is carried out to ensure the value of losses accurately, based on available data and evidence, so that the process of recovering and settling losses can be carried out appropriately in accordance with applicable legal provisions; Collecting and verifying supporting evidence. This process includes collecting documents, data and information related to state losses, as well as ensuring the validity and accuracy of this evidence. The verification carried out by State Loss Settlement Team aims to validate whether the evidence collected really supports claims for state losses, so that it can be used in the process of determining and settling losses appropriately and legally; Inventory the assets belonging to the person concerned which can be used as collateral to settle state losses. This function includes identifying and recording assets belonging to the treasurer which can be used to cover state losses. This inventory is important to ensure that existing assets can be used effectively in the loss recovery process and fulfill the treasurer's obligations in accordance with applicable legal provisions; Settle state losses through a Certificate of Absolute Responsibility, By issuing, State Loss Settlement Team ensures that the treasurer is fully responsible for the losses incurred and must make recovery or payments in accordance with applicable regulations, so that the loss settlement process can be carried out clearly and effectively; Providing consideration to agency leaders regarding state losses as material for decision making in determining temporary charges. By providing appropriate analysis and recommendations, State Loss Settlement Team assists agency leaders in determining appropriate steps to handle state losses and ensuring that decisions are taken in the process of resolving losses. in accordance with applicable laws and regulations; Administering the settlement of state losses. By administering this process, State Loss Settlement Team ensures that all steps for settlement of losses are carried out periodically, transparently and in accordance with applicable regulations, as well as making it easier to monitor the handling of state losses; Submit a progress report on the settlement of state losses to the head of the agency with a copy submitted to the Financial Audit Agency. This report must include the latest information regarding the status and progress in settlement of state losses.

If deemed necessary, the head of the work unit can form an ad hoc team to resolve state losses that occur in the work unit concerned. The ad hoc team collects data/information and verifies state losses based on assignments from the heads of work units. The head of the work unit reports the implementation of the ad hoc team's duties to the head of the agency concerned with a copy to the State Loss Settlement Team for further processing. Verification is intended to obtain certainty regarding: The amount/amount of state losses; Parties who must be

responsible for state losses; and Written evidence that can be accounted for to support the two things above.²²

In dealing with state losses, the head of a work unit can form an ad hoc team to resolve problems that occur in his work unit. The ad hoc team is tasked with collecting relevant data, documents and evidence, as well as carrying out verification to determine the amount of state losses, the parties responsible and supporting written evidence. The results of this process are expressed in the form of an Audit Results Report, Audit Minutes, or other research documents, which are then reported to the head of the agency and a copy is submitted to the State Loss Settlement Team for further processing.

After carrying out the duties of the ad hoc team, the treasurer's direct superior or work unit head is required to report any detected state losses to the head of the agency and notify the Financial Audit Agency no later than 7 working days after the loss is discovered. The notification must be accompanied by data, evidence and documents as well as other equipment that leads to proof of the occurrence of state losses.²³

Agency leaders, after receiving reports regarding state losses, must immediately assign State Loss Settlement Team to follow up on the case within 7 days at the latest. State Loss Settlement Team is responsible for continuing the process of resolving state losses, based on the information and reports that have been submitted, to ensure that state losses can be handled in accordance with applicable regulations.²⁴

Meanwhile, there are several methods for recovering state losses. The procedures carried out outside of court in order to recover state losses are regulated in the Financial Audit Agency Law and implemented by the financial audit body. Settlement of state losses in the form of treasury claims and compensation claims is an effort to resolve through administrative law which does not go through the trial system in court.²⁵ The form of settlement carried out by the financial audit body is in the form of a claim for compensation related to state finances which is categorized as a state loss. Claims for compensation imposed by financial audit bodies on parties who commit unlawful acts in the form of acts that cause state financial losses include:

The claim for compensation, the imposition of a claim for compensation, has two things that are related to each other, namely imposing sanctions in the form of compensation and the party who is subject to the claim for compensation. The party making the claim may not arbitrarily impose a claim for compensation without being based on evidence permitted by the applicable statutory provisions as a form of legal certainty. Meanwhile, the party subject to a claim for compensation is obliged to make payment as a form of compensation for state losses

22 Ibid.

23 Ibid.

24 Ibid.

25 Abdul Halim, Icuk Bawono., Op.Cit. :28.

when there is sufficient evidence that the person concerned has done so.²⁶

Exemption from claims for compensation, exemption from claims for compensation usually occurs if the requirements have been fulfilled in the form of the state's claim rights being in an expired state so that the state is not permitted to claim state compensation. Treasurers, non-treasurer civil servants and other officials can be exempted from claims for state compensation if the requirements for this are met, such as state rights being declared to have expired within a period of five years from the time the loss is discovered without demanding compensation; The state's rights are declared expired if within eight years of the loss occurring no prosecution is carried out. The state's rights are declared null and void when the authorized official does not convey the existence of state losses to the treasurer, non-treasurer civil servant or other official within three years of the court decision determining the guardianship.

The procedure for returning state losses through the judiciary is based on criminal law instruments and civil law instruments but both contain different procedures for returning state losses due to legal substance which causes differences in application in the courts, namely criminal law instruments and civil law instruments.²⁷

The criminal law instrument related to recovering state losses through the judiciary is the Corruption Eradication Law. Corruption Eradication Law²⁸ contains provisions related to actions or legal actions that cause state losses and require appropriate resolution without violating the human rights of parties caught as perpetrators of criminal acts of corruption. As explained above, 'understanding state financial losses as one element of criminal acts of corruption', the mechanism is based on the provisions of Article 2 paragraph (1) of the Corruption Crimes Law, so that settlement of state financial losses through criminal law is carried out against those who are legally and convincingly proven to have complied. criteria/elements of criminal acts of corruption in the form of punishment, either imprisonment and/or fines, so that resolution is carried out through a trial mechanism in court.²⁹ Regarding the application of the Corruption Crime Law as a criminal law instrument for the recovery of state losses through the judiciary, it must not be related to its function of *ultimum remedium*. Based on the function in question, there is no certainty when the state's financial losses will be returned. The application of the Corruption Crime Law as a criminal law instrument to recover state losses through justice always functions as a

26 Riawan Tjandra., *Hukum Keuangan Negara*, (Jakarta: Gramedia, 2014): 160.

27 Michael Julnius Christophor Siahaya, *Pengembalian Kerugian Keuangan Negara Dalam Tahap Penyidikan Tindak Pidana Korupsi*, *Lex Crimen* 4, No. 2 (2015): 13-22

28 Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

29 Abdul Halim, *Icuk Bawono*, *Op.Cit.* :28.

premium remidium. Thus, the return referred to is not a sanction/punishment, but is an obligation that must be carried out so that state finances remain in a normal condition.³⁰

In a criminal act of corruption, apart from the public prosecutor, the defendant also has the burden of proof, namely that the defendant is obliged to prove that his property was not obtained due to corruption. The burden of proof in question is called the 'limited reverse burden of proof.'³¹ It should be understood that the return of state losses carried out by the treasurer, non-treasurer civil servants or other officials does not eliminate criminal penalties for perpetrators of criminal acts involving the management of state finances. State returns are only a mitigating factor. Then, in accordance with the provisions of Article 32 of the Corruption Eradication Law, it is possible to resolve state financial losses using court mechanisms using civil law. The article in question is a connecting article between resolving state financial losses through criminal law with civil law and administrative law. Settlement using civil law is a mechanism for resolving state losses through trial. Apart from the provisions of Article 32 of the Corruption Eradication Law, this is also based on the provisions of Article 1365 of the Data Audit Code on Unlawful Acts which is also one of the conditions for determining state losses in both Article 1 paragraph (22) of the Treasury Law and Article 2 paragraph (1) Corruption Eradication Law. Efforts to recover state financial losses through civil means are subject to material and formal civil law. In the process of recovering state losses, formal evidence is often more complex than material evidence, where the plaintiff must prove the actual existence of the loss, the relationship between the loss and the suspect's actions, and the suspect's assets that can be used for recovery. Restitution of state losses can be done through the courts or outside the courts. Returns outside of court are not considered as sanctions, but rather as compensation for certain losses, whereas returns through court require a legal process and can take the form of criminal sanctions and/or fines imposed by the court.

Administrative legal instruments, in this legal instrument, if there is a state loss committed by a state official or civil servant, personal liability or criminal liability may not be used unless, in the exercise of authority there is an attempt to enrich oneself, another person or corporation may be subject to personal liability which results in on criminal liability.³² Settlement of state losses in the form of treasury claims or claims for compensation is a legal remedy through

30 Atep A. Brata dan Bambang Tri Hartono., *Perbendaharaan dan Pemeriksaan Keuangan Negara/ Daerah*, (Jakarta: PT. Elex Media Komputindo, 2005): 118.

31 Article 37 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes.

32 Marojahan Panjaitan, *Penyelesaian Penyalahgunaan Wewenang yang Menimbulkan Kerugian Negara Menurut Hukum Administrasi Pemerintahan*. *Jurnal Hukum Ius Quia Iustum* 24, No. 3, (2018): 431-447.

administrative law which does not go through the court trial system. According to M. Djafar Saidi, returning state losses without explanation focuses on administrative aspects but remains within the corridors of state financial law. If there is a loss of money or goods that is detrimental to state finances, the Financial Audit Agency will issue a decision letter regarding the time limit for the treasurer's accountability for the shortfall if there has not been an appropriate resolution. to applicable procedures. The Treasurer has 14 working days to submit an agreement or defense to the Financial Audit Agency after receiving the decision. If it is not approved or rejected, the Financial Audit Agency will issue a decision letter on charging compensation to the treasurer. Procedures for resolving state compensation are determined by the Financial Audit Agency after consultation with the government and also apply to public company managers of corporate companies whose shares are wholly or at least 51% owned by the Republic of Indonesia as long as they are not regulated in a separate law.³³

Financial Audit Agency as Holder of Auditative Power. Basically, the Financial Audit Agency is tasked with supervising the management of state finances. With this supervision, it is hoped that there will be no irregularities or criminal acts of corruption. Juridically, the Financial Audit Agency's authority is regulated in Article 23 E of the 1945 Constitution of the Republic of Indonesia, namely to examine the management and responsibility of State Finances. Apart from that, Law Number 15 of 2004 concerning Auditing the Management and Responsibility of State Finances also emphasizes the duties and authority of the Financial Audit Agency to examine the Government's responsibilities regarding State Finances, examine all implementation of the APBN, and have the authority to ask for information regarding the tasks it carries out. This is where the role of the Financial Audit Agency is to always report or coordinate audit results to institutions authorized by law, both politically and legally. The validity of Financial Audit Agency data can be used as initial data for law enforcers to carry out investigations into reported indications of corruption. An accurate Financial Audit Agency report will also be used as evidence in court. This shows that the role of the Financial Audit Agency has quite a big influence on the process of recovering state financial losses both through administrative, civil and criminal mechanisms through prosecuting corruption cases, so many legal processes will be hampered if the results of the Financial Audit Agency audit are not completed.

2. A Form of Follow-up to Recommendations from Financial Audit Agency Audit Results Regarding Elements of State Losses Resulting from Corruption Crimes

33 Atep A. Brata dan Bambang Tri Hartono., *Perbendaharaan dan Pemeriksaan Keuangan Negara/ Daerah*, (Jakarta: PT. Elex Media Komputindo, 2005): 118.

The provisions of Article 23 E paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulate that the results of Financial Audit Agency audits are submitted to the House of Representatives, Regional Representative Council and Regional People's Representative Assembly in accordance with their authority.³⁴ Then in the provisions of Article 23 E paragraph (3) "The results of the examination are followed up by representative institutions and/or bodies in accordance with the law." So the 1945 Constitution of the Republic of Indonesia stipulates that the main thing to follow up on the results of the Financial Audit Agency audit is the new representative body of another body in accordance with the law.³⁵ What is meant by other bodies in accordance with this law also includes government institutions, especially the President, Governors, District Heads/Mayors, as well as law enforcement institutions as far as the results of examinations that contain criminal elements are concerned, as regulated in Law no. 15 of 2004 and Law no. 15 of 2006.³⁶

Financial Audit Agency in Corruption Crime Cases The scope of audits carried out by the Financial Audit Agency based on Financial Audit Agency Regulation Number 01 of 2007 concerning Financial Audit Standards includes audits of state finances, performance audits and audits with specific objectives. State financial audit is an examination of the State's financial reports.³⁷ State financial audits aim to provide adequate confidence that the State's financial reports have been presented correctly. The presentation includes all material matters in accordance with generally accepted accounting principles in Indonesia or a comprehensive accounting basis other than those generally accepted accounting principles. What is examined are financial reports originating from the Central Government/Regional Government, Bank Indonesia, other State Institutions, State/Regional Owned Enterprises, Public Service Agencies, other Agencies or Institutions that carry out management and responsibility for State finances.

Performance inspection is an examination of the management of State finances which consists of examination of economic and efficiency aspects as well as examination of economic aspects.³⁸ In carrying out performance checks, auditors also test compliance with statutory provisions and internal controls. Performance audits are carried out

34 Baharudin Aritonang., *Financial Audit Agency Dalam Sistem Ketatanegaraan*, (Jakarta: Kepustakaan Populer Gramedia, 2019): 137-138.

35 *Ibid*, : 138.

36 *Ibid*, : 138.

37 Maulidya Rahmi dan Nita Erika Ariani, Pengaruh Temuan Audit Dan Tindak Lanjut Rekomendasi Hasil Pemeriksaan Terhadap Opini Atas Laporan Keuangan Pemerintah Kabupaten/Kota Di Privinsi Aceh, *Jurnal Ilmiah Mahasiswa Ekonomi Akuntansi (JIMEKA)* 5, No. 4, (2020): 497-505

38 Munzil, F., Analisis Yuridis Peranan Badan Pemeriksa Keuangan Terhadap Kinerja Pengelolaan Keuangan Daerah, *Jurnal Hukum Media Justitia Nusantara* 2, No.1 (2022): 88-97.

objectively and systematically on various types of evidence to be able to carry out independent assessments of the performance of the entity or program/activity being examined.

An examination with a specific aim aims to provide a conclusion on the matter being examined. The examination can be an examination, review or agreed procedure. This inspection includes, among other things, examination of other matters in the financial sector, investigative examination and examination of the internal control system.³⁹ The Audit Result Report of the Audit Board contains four types of opinions that can be given by the examiner on behalf of the Audit Board after carrying out the audit, namely: The best opinion is Reasonable Without Exception, The second best opinion, The worst opinion, The Opinion Does Not Give an Opinion.

The best opinion is Unqualified, this opinion is given because the auditor believes, based on the audit evidence collected, the financial statements are free from material errors or mistakes. A financial report with a WTP opinion is the examiner's conclusion regarding the level of fairness of the information presented in the financial report (Article 1 Paragraph 11 of Law 15 of 2004 concerning Audit of State Financial Management and Responsibility). In other words, WTP opinion is the highest form of appreciation in assessing financial report management.⁴⁰

The second best opinion is Fair With Exceptions, an opinion given because even though there are errors, the errors or errors as a whole do not affect the fairness of the financial statements.⁴¹

The worst opinion is Unreasonable, the opinion is given because the auditor believes, based on the evidence he has collected, that the financial statements contain a lot of material errors or errors. This means that the financial statements do not describe the financial condition correctly.⁴²

Opinion Not providing an opinion or refusing to provide an opinion does not mean that the financial statements are correct or wrong. An opinion is given because the auditor cannot be sure whether the financial statements are true or false. This happens because the auditor cannot obtain the evidence needed to be able to conclude and state whether the report has been presented correctly or incorrectly.⁴³

The Financial Audit Agency Audit Result Report has a very important function in Corruption Crime cases because through the

39 Muhammad Djafar Saidi., *Hukum Keuangan Negara, Edisi Revisi*, (Jakarta: PT. Grafindo Persada, 2011): 96

40 Zulkarnain., *Opini Audit Financial Audit Agency-Ri Dan Substansi Kinerja Keuangan Pemerintah Daerah Kota/Kabupaten Di Provinsi Kalimantan Barat, Cakrawala 1, No. 1 (April 2018): 58-74*

41 Ibid.

42 Taufik Taufik., *Analisis Perbandingan Kinerja Keuangan Pemerintah Kabupaten Kota Sumatera. Jurnal Gema 7, No. 1 (February 2017): 993-1012*

43 Margareth Carla Rampengan., *Fungsi Laporan Hasil Pemeriksaan (LHP) Badan Pemeriksa Keuangan Dalam Kasus Tindak Pidana Korupsi, Lex Crimen 2, No. 2 (2013): 172-181*

Financial Audit Agency Audit Result Report it is known that a government agency has been identified or has misappropriated funds which resulted in State financial losses. Apart from that, this Financial Audit Agency Audit Results Report functions to minimize financial abuse and prevent symptoms of corruption as well as being a very strong piece of evidence in solving a Corruption Crime case.⁴⁴

Use of Financial Audit Agency examination reports by Investigators in Corruption Crime Cases. The initial stage of the criminal case handling process begins with a report which can be made by the victim, witness or anyone who knows that there has been a crime, then investigations and inquiries are carried out at the police level and then continued with prosecution at the prosecutor's office and finally examination at court until the implementation of the court decision. In this case, the evidence that can be used and makes it easier for investigators to handle Corruption Crime cases is the Financial Audit Agency Audit Results Report. This Financial Audit Agency Audit Results Report can be categorized as documentary evidence because based on its definition, a letter is anything that contains reading marks which are intended to express one's heart or convey one's thoughts and are used as evidentiary material. Thus, everything that does not contain signs of reading, still does not contain thoughts, is not included in the definition of written evidence or letters..⁴⁵ The Financial Audit Agency Audit Result Report can be categorized as documentary evidence because in the Financial Audit Agency Audit Result Report whether with a Fair Without Exception, Fair With Exception, Unreasonable opinion or Statement of Refusal to Give an Opinion there is a written statement along with punctuation as shown is in the sense of a letter.

The Financial Audit Agency is responsible for examining state finances.⁴⁶ The Audit Board is an independent institution and the Ministry of Finance is responsible to the president.⁴⁷ The results of the examination are submitted to the People's Representative Council, Regional Representative Council and Regional People's Representative Council in accordance with their authority. The Financial Audit Agency examines all implementation of the State Revenue and Expenditure Budget. The inspection is carried out based on the provisions contained in the Law. The audits carried out by the Financial Audit Agency include financial audits, performance audits and we also need to know that the challenges for the Financial Audit Agency in the future will be very

44 Ibid.

45 Alfitra., *Hukum Pembuktian dalam Beracara Pidana, Perdata dan Korupsi di Indonesia*, (Jakarta: Raih Asa Sukses, 2012): 86

46 Surya Kusuma., *Tanggung Jawab Badan Pemeriksaan Keuangan Dalam Melaksanakan Pemeriksaan Pengelolaan Keuangan Negara Untuk Mewujudkan Pemerintahan Yang Baik Dan Bersih*, *Lex Administratum* 6, No. 3 (2018): 78-86

47 Fadjar Tri Sakti (etc)., *Perspective of Public Financial Management: The Role of The Ministry of Finance and The Supreme Audit Agency in Indonesia*, *Jurnal Dialektika: Jurnal Ilmu Sosial* 22, No. 2 (2024): 288-296

complex and varied from the few problems that exist today. Therefore, institutionally the Financial Audit Agency cannot stand alone without involving the widest possible space for public participation other than the institutions that have been determined by law. Therefore, Financial Audit Agency's future vision must also be based on civil society participation. Currently, Financial Audit Agency, apart from not having opened wide public access, has also not maximized its coordination function with state institutions, especially law enforcement officials; for example, Corruption Eradication Commission, Prosecutor's Office, Police, and so on. The lack of coordination between state institutions in the context of building a good government system that is clean and free from corrupt practices (clean and good governance), will make it difficult and become an inhibiting factor in realizing this order.

In essence, the lack of coordination space between institutions that has been determined by law will hamper the follow-up to the results of the Financial Audit Agency audit, which in fact gives rise to indications of large state losses, such as criminal acts of corruption. What needs to be noted is that the Financial Audit Agency does not have authority in the context of law enforcement in the downstream sector. And of course, if the results of the Financial Audit Agency audit are not followed up procedurally, then the results of the audit will not have a real impact or benefit, especially in recovering state financial losses or eradicating criminal acts of corruption. If such conditions occur then the Financial Audit Agency will be the same as a 'toothless tiger', where the results of the inspection are not followed up. In principle, the Financial Audit Agency cannot be blamed, because in fact the Financial Audit Agency has carried out its duties and functions as it should up to the stage of exposing the results of the audit carried out, however the Financial Audit Agency still did not make a real contribution until the final stage of following up on the results of the Financial Audit Agency audit. The important point here is that in the future the Financial Audit Agency must focus on aspects of intense coordination within an integrated system framework with law enforcement agencies in particular, so that the results of audits from the Financial Audit Agency are followed up professionally and proportionally. This means that the Financial Audit Agency's future vision must also focus on the coordination function, the real manifestation of which must be within the Financial Audit Agency's implementing structure. Such as the Main Directorate of Planning, Evaluation and Development of State Financial Audits as well as the Main Directorate of Legal Development and Development of State Financial Audits as stated in the provisions of Article 4 of the Republic of Indonesia Financial Audit Agency Decree concerning the Organization and Work Procedures of Financial Audit Agency Implementers. So in the future it is necessary to add a special Directorate that has orientation and competence in the coordination aspect, especially in terms of following up on audit results, for example

the Main Directorate for Coordination and Supervision of Follow-up to Financial Audit Agency Report Results.

The Financial Audit Agency must be able to align its functions and authorities with similar institutions or institutions that are identical to the duties and functions of the Financial Audit Agency, in this case the Financial Audit Agency and various internal supervisory organizations in various government organizations and departments, such as the Inspectorate General, Deputy Supervision, Supervisory Unit Internal, Regional Inspectorate or Bawasda (Regional Supervisory Agency, now its name is Regional Inspectorate). The results of the Financial Audit Agency audit as mentioned above, are the final result of the process of assessing the truth, compliance, accuracy, credibility and reliability of data/information regarding the management and responsibility of state finances which is carried out independently, objectively and professionally, which is stated in the audit report as a decision.

Rather than creating new directorates or focusing solely on coordination mechanisms, integrating a real-time digital platform for communication and case tracking between the Financial Audit Agency, law enforcement, and internal supervisory bodies could create a seamless and transparent flow of information. This would enable quicker responses and more efficient monitoring of audit follow-up actions. Making audit follow-up data more transparent to the public by publishing progress reports on the implementation of audit recommendations would increase external pressure on institutions to act. Leveraging public scrutiny can drive enforcement agencies to prioritize the follow-up on Financial Audit Agency's findings

D. CONCLUSION

The Financial Audit Agency has the authority to make demands for compensation from parties proven to have committed unlawful acts resulting in state financial losses through criminal law instruments, through civil law instruments or through administrative law instruments. Regarding the application of the Corruption Crime Law as a criminal law instrument for the return of state financial losses through the judiciary, the criminal law instrument functions as a premium remedium, thus the return in question is not a sanction/punishment, but is an obligation that must be carried out so that state finances remain in a normal condition. The Financial Audit Agency as the holder of auditative power has the right to supervise the management of state finances and provide recommendations on the results of audits to the the House of Representatives, Regional Representative Council and Regional People's Representative Assembly to be followed up politically as a supervisory function as well as providing recommendations to law enforcers, namely the Police, Prosecutor's Office and Corruption Eradication Committee in the event of indications of action. criminal. That the lack of coordination will hinder the follow-up to recommendations from the Financial Audit Agency's audit results, which in fact will give rise to

indications of state losses such as corruption, considering that the Financial Audit Agency does not have authority in the context of law enforcement, the follow-up to the Financial Audit Agency's audit report becomes the 'main key' or 'entrance' to recovering losses. state finances and eradicating corruption, if the results of the Financial Audit Agency audit are not acted upon, then the results of the audit will not provide any real impact or benefit.

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