

FORENSIC AUDIT IN REVEALING CRIMINAL ACTION OF GOVERNMENT'S GOODS/SERVICES PROCUREMENT CORRUPTION

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Abstract: *The phenomenon of corruption actions that have changed in terms of the form or method undertaken by corruptors increasingly imposes law enforcement to execute relevant disclosure actions for alleged corruption crimes. It is important to conduct several methods that can be more effective in following the development of corruption crimes so that the law is considered not to be hobbled in responding to the challenges of the times, especially in the preparation of regulations and increasing the competence of law enforcement. The disclosure model of corruption crimes must be renewable by looking at other aspects or forms of examination to open initial loopholes in the disclosure of corruption crimes. Forensic Audit, which is currently applied, can be used as a model for disclosing corruption crimes, especially those that ensnare State officials. By examining the forensic audit, other veiled motives can be found affecting a state official in fulfilling his administrative and legal obligations.*

Keywords: *Forensic Audit; Disclosure; Corruption Criminal Act.*

INTRODUCTION

As anticipated, the eradication of corruption in Indonesia has made significant strides toward more efficient crime prevention and suppression (Muchsin, 2018). As outlined in the fifth paragraph of the Elucidation of Law of the Republic of Indonesia, Number 31 of 1999 Concerning Eradication of Criminal Acts, the corruption eradication framework that is currently being prepared for implementation is intended to cover increasingly sophisticated and complex irregularities in government finances or the state's economy. In the process of administering the legal system in Indonesia, corrupt actors continue to hunt for flaws in the design of law enforcement in terms of structure, culture, and substance (Naibaho & Purwoto, 2016). Legal factors that promote changes to a legal value are not laws but factors such as population expansion, differences in values, altering ideologies, and advancing technology (A. Ali, 2015).

Corruption is frequently viewed as a common phenomenon, and some even consider it the standard in the administration of particular organizational processes or certain institutions (Yuwono, 2020). There is a close relationship between and power, as expressed by Lord Acton in Naibaho and Purwoto (2016) stated that Power tends to corrupt, and absolute power corrupts absolutely, which equates to "corrupt power is for corruption, and absolute power corrupts.

Moreover, covert action characterizes corruption as a white-collar crime, as argued by Adji (2006), who identified corruption as a white-collar crime experiencing a dynamic modus operandi from all sides. Therefore, it was considered an invisible crime for which treatment required a criminal law policy. As a great crime, corruption involves at least four distinguishing traits. First, corruption is a systematic, organized money laundering operation. Second, corruption is typically perpetrated through complex means, making it difficult to prove. Third, corruption is always tied to power. Fourth, corruption is a crime that affects the destinies of many people, as public funds that can be harmed are crucial for enhancing the populace's well-being (Hiariej, 2012). Corruption requires extraordinary steps (extra measures) and extreme enforcement based on its status as an unusual crime (Yunus et al., 2021). Moreover, there are so-called Whistleblowers and Justice Collaborators (JC) who attempt to expose criminal acts of corruption (Satria, 2016; Wijaya, 2012). Article 10 of the Law of the Republic of Indonesia Number 13 of 2006 on the Protection of Witnesses and Victims, as amended by Law Number 31 of 2014 on the Protection of Witnesses and Victims, addresses the role

of witnesses and victims in the disclosure of certain crimes and/or certain legal actions, contains the technical configuration governing the functions of whistleblowers and justice collaborators (Wijaya, 2018).

A forensic audit is a subset of forensic accounting that applies auditing, accounting, and investigative expertise to circumstances with legal consequences (Akinbowale et al., 2020). In addition, forensic auditing applied auditing expertise to a scenario with legal implications (S. A. Ali et al., 2022). This study aims to project the conceptual framework behind the practice of forensic audits in fulfilling anti-corruption objectives.

METHOD

This study was legal research on the disclosure of forensic audits of government good/service procurement corruption. The research method adopted was normative-empirical. Empirical normative legal research was a study about implementing normative legal provisions, such as codifications, laws, and contracts, through inaction on particular legal events that occur in society (Irwansyah, 2021; Taekema, 2021).

Qualitative research method using purposive sampling technique. Participation was voluntary with 155 respondents giving positive responses out of 260 respondents contacted. Usable data were 35 of the 155 respondents who responded. Data was collected through journal entries, surveys and interviews. Information was obtained from a combination of data sets.

The researchers informed the respondents at the beginning of the study that they were not staff members i researchers on this project. The purpose of the data collection was explained, and respondents were invited to volunteer. Anonymity was assured and respondents were free to withdraw at any time. Permission to conduct the research was obtained from the relevant university authorities. All data were discussed with co-researchers and member checks were conducted to ensure accuracy. Four sets of data were triangulated - journals, surveys, interviews and observations. We used an open format for the journals as we believed that this would replicate the realistic conditions of the respondents. The survey, conducted at the end of each activity, was mostly open-ended with some closed questions specifically aimed at understanding the use of audit results, key takeaways from the audit, and clarity of instructions and guidelines. Usable survey data was obtained from 35 respondents. Fifteen face-to-face virtual interviews and 20 face-to-face group interviews were conducted.

The data from the three sources were categorized and coded. We categorized the data deductively, according to the approved budget. The inductive process consisted of aligning with the budget used for departmental expenditure. The main codification method was structured to provide findings relating to the questions of inquiry. All data was discussed with research colleagues and member checks were conducted to ensure accuracy. The findings and analysis in this paper are limited to budget expenditure.

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RESULTS AND DISCUSSION

Jurists answer fundamental questions concerning the nature of law following the schools of thought they profess (Ali, 2015). Each law enforcement officer's epistemological concerns generate a distinct perspective, which is the primary cause for the existence of diverse views. It is also a natural consequence of the learning outcomes of each partner, particularly the investigator. In this case, the investigator is in charge of efforts to disclose corruption. As a result of the Constitutional Court's Decision of Number 25/PUU-XIV/2016, which amended the existing provisions in Articles 2 and 3 of the Corruption Eradication Law (UU PTPK) regarding the meaning of the word "able," the fulfillment of the elements of a criminal act of corruption, which was initially a formal offense, is now a material offense. The content of state financial losses, which was originally juxtaposed as one of the elements of a criminal act of corruption, became a charge of fulfilling the cumulative element, which was not only the fulfillment of elements of unlawful acts and/or enriching oneself or other individuals or businesses. It becomes the normative basis for fulfilling the requirements of Article 2, paragraph (1).



The fulfillment of the elements in Article 2 paragraph (1) of the Corruption Eradication Law (UU PTPK) cannot be used as a basis for indicting a civil servant or state official, or administrator. In the context that the three elements of the offense contained in Article 2 paragraph (1) are: against the law, enrich oneself or another person or corporation, and harm the state's financial affairs, cannot be used to place a State official as a subject to fulfilling the elements in the offense of the Article (M. Ali, 2016). The normative framework based on the placement of a state official in an endeavor to satisfy the elements of a criminal act of corruption examines the official's position to determine whether the scope of the authority is appropriate (Pio, 2019). Therefore, the completion of the criteria imposed on a state official resides in Article 3, notably the element of misusing power. If the element of abuse of authority in Article 3 of the PTPK Law is not shown, then the element of profit motive need not be proven separately (Gunawan, 2020). Kaplan in Budiarjo (2013) argued that authority was that

"a formal power which has the right to issue orders and make regulations and has the right to expect compliance with the rules."

The authority in dispute is the imposition of administrative aspects on a state official, in this example, the State Civil Apparatus (ASN), who then carries out government functions, including the form of decision making and policy considerations, as an act of good governance with legal consequences for the government (Lantapon, 2018). Regulations in the form of orders or directives to other employees or legal penalties on the administration of State funds that apply to the central government and regional governments following Law No. 1 of 2004 relating to the State Treasury.

1. Administrative Approach in the Corruption Eradication Framework

A single rule of law cannot isolate the close relationship between administrative actions and corrupt crimes. It can be regarded as a framework for anti-corruption activities. The most significant relationship between corruption and organizational activity is inherent authority, as described in one of the elements of Article 3 of the Corruption Eradication Law (UU PTPK), which is a misuse of power. The authority outlined in Article 1, number 22, 23, and 24 of the Government Administration Law, which describes the authority itself, is formally separated into three parts, namely:

- 1) Authority based on the 1945 Constitution of the Republic of Indonesia or the Law, also known as Attribution, granted to government agencies and/or officials;
- 2) authority derived by a delegation from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability which is entirely transferred to the recipient of the authority, also known as Delegation; and
- 3) the authority retains jurisdiction based on Delegation from the highest Government Agency and/or Official to a higher Government Agency and/or Official to a lower Government Agency and/or Official, along with responsibility and accountability.

Article 17, paragraph 2 of the Government Administration Law specifies the restriction on misuse of authority, which includes the following:

- a. Prohibition beyond authority;
- b. prohibition of mixing authority; and/or
- c. prohibition of acting arbitrarily.

The practice found during the sentencing phase relates to the fulfillment of the element of misusing authority, including placing the subject in charge of a particular position and making them the target of an administrative action or legal product. With the office he holds, or the authority delegated to him, he is a public official with legal and administrative duties. Abuse of authority in the context of criminal law is defined by Djaja (2010) as using the authority or power, facilities, or opportunities attached to the position or position currently held or occupied by the perpetrator of a criminal act of corruption for purposes other than the purpose of granting authority or power, opportunity, or the means.

Generally, efforts to disclose criminal acts of corruption based on authority abuse are identified in the implementation of government procurement of goods/services (*Pengadaan Barang dan Jasa* abbreviated PBJ) (Yuwono, 2020). State authorities have primary responsibilities and special



functions (Tupoksi) as PBJ organizers. Each tiered structure inside an agency tribe, for instance, is automatically allocated a specific role during the implementation of PBJ.

For example, it can be seen with the Main Official, called the Head of the Agency, who is then in charge of the main functions of the Budget User (PA) in the implementation of PBJ, as well as the tiered structure such as the Head of Division in the same Agency who then has primary responsibilities and special functions (Tupoksi) as the Budget User Authority (KPA). It is also different from officials who are at other tiers of the tiered structure for technical implementation in PBJ, such as officials who are appointed as Commitment Making Officers (PPK) and Technical Implementation Officers (PPTK) who have primary responsibilities and duties on technical aspects in the form of Delegation of responsibility for the implementation of PBJ using State Budget/Regional Revenue and Expenditure Budget (APBN/APBD). Moreover, it can be found in the technical arrangements for implementing PBJ, which also engages the private sector as a provider to meet the needs of government administration. In addition to the previous context of the PBJ framework as the sector in which State officials are most entangled through the fulfillment of the element of abuse of authority, another formulation can be understood more widely in terms of administrative acts of State officials. Considering the elements of bribery or gratification, investigators typically attempt to uncover corruption offenses committed by state officials by examining the evidence of bribery or gratification. It is evident, considering the majority of corruption cases involving public officials include acts of bribery or gratification. Consequently, it is simple for investigators to prove that state officials engaged in criminal acts of corruption by conducting in-depth investigations related to access granted to state officials, for example, social media conversations and the flow of financial transactions requested by investigators to cellular providers and related banks to track the existence of suspicious actions.

The 2003 United Nations Convention Against Corruption, which was ratified into Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption (UNCAC), defines the scope of corruption in a manner that is comparable to the perspective of acts of corruption in the formulation of the Corruption Eradication Law (UU PTPK), namely: (1) Bribery of the national public; (2) bribery of foreign public officials and officials of public international organizations; (3) embezzlement, misappropriation, or other diversions of property by a public official; (4) trading in influence; (5) abuse of functions; (6) illicit enrichment; (7) bribery in the private sector; (8) embezzlement of property in the private sector (Hiariej, 2019)

It can be found in the scope of corruption that is interpreted based on the United Nations Convention Against Corruption (UNCAC) 2003, mainly that public officials are taking bribery. Bribery is mentioned multiple times, even though number 5 specifies authority or abuse of office. The description of the administrative approach to corruption can be found in the following: (1) The primary responsibilities and functions (Tupoksi) of a state administrator, in this case, a Civil Servant Apparatus (ASN); (2) the burden of legal responsibility for the position attached to him; (3) aspects of State/Regional financial management lie in the special tasks assigned to their roles; (4) if it is sourced from the state, facilities, and infrastructure are attached to his position (Hiariej, 2013) .

The previously discussed elements can serve as a framework for examining the form and substance of administrative officials' authority in the context of corruption. A construction built through the authority of a state official automatically carries administrative and legal responsibilities. However, the state administrative law level continues to construct additional constructions to satisfy several legal requirements in the state administration aspect.

2. Methods of Disclosure of Corruption Crimes Through Forensic Audit Practices

The Audit Board (BPK) of the Republic of Indonesia uses forensic auditing. However, it is not referred to as a forensic audit but rather as an examination with a specific purpose (*Pemeriksaan Dengan Tujuan Tertentu*, abbreviated PDTT). Therefore, forensic auditing is unfamiliar, yet it is utilized frequently in practice, particularly when analyzing government procurement programs for goods and services or PBJ.

The first model is based on the willingness of investigators to access the phases of PBJ implementation to monitor and analyze a particular project. For instance, a project tender employs a relatively big state/regional budget, such as a project with a construction cost over Rp. 1,000,000,000.00 - (one



billion rupiah), investigators will pay extra attention to supervising it from the beginning of the tender phase procedure. Investigators can conduct surveillance during the qualification of goods/services vendors and recovery of provider selection papers. At this phase, investigators typically oversee the process of identifying providers susceptible to collusion and nepotism in implementing the program. The exclusivity of projects that involve particular aspects and undertake specific inspections is different. Adjustments are made to the work's value, weight, and specifications, which the executor previously set during the qualification phase. One of the assessment criteria is the alignment between the Self Estimated Price (HPS) and the Budget and Cost Plan (RAB) supplied by the provider. Up to 80 % resemblance between the given HPS and RAB documents is one of the justifications employed to conduct an initial search for evidence of corruption. In certain instances, investigators use it as a primary justification to initiate an investigation.

In the argument, it is asserted that there is evidence of a conspiracy or intentional conspiracy to win over a certain provider. However, communication between the procurement official and the provider was previously revealed. It occurred in a 2019 case that fell under the Regional Police of South Sulawesi. In this case, it was revealed that criminal acts of corruption were uncovered with one of the initial arguments through the recap of the HPS and RAB documents, which were almost identical so that from the evidence, an intensive investigation was conducted, one of which was revealed in the Minutes (BAP) of a procurement official at the Ministry of Defense. At that time, he had the status of a witness who acknowledged that he had purposefully disclosed Self Estimated Price (HPS) materials to gain favor with a certain provider in the expectation of distributing a portion of the work's value, so his position was upgraded to suspect.

The second model is based on information from the community or non-governmental organizations (NGOs) reporting allegations of irregularities in a nearby government project. Investigators will gather information (*Pengumpulan Bahan Keterangan* abbreviated Pulbaket) based on the information report filed to the Corruption Crime Sub-Directorate III of the Directorate of Special Criminal Investigation (DIT RESKRIMSUS) of the Regional Police of South Sulawesi. Information reports from the public typically contain information on field data that, according to independently collected data, indicates that there are aspects that do not follow the implementation of the project so that the initial evidence gathered can be used to file a report with the police. Several witnesses, including procurement authorities and service providers working on the project, are interrogated further as part of the system that commences when the information report is submitted. During the inspection, a mismatch is discovered between the validation of the procurement documents and the work conditions on the job site. Then, a thorough investigation will be conducted on the procurement officials, providers, and other parties involved.

Whenever there is sufficient evidence to subpoena witnesses, police investigators conduct a thorough investigation. The witness subpoena aims to confirm the information on the ongoing project. Combined with letter evidence, then used as the preliminary step for an inquiry. An investigation was conducted to trace any provisions broken in implementing the PBJ by procurement officials and service providers, resulting in losses to the state due to the construction project. During collecting evidence and witness statements, the investigator requests information from experts to assist in the investigation process, such as asking a construction expert to examine an assessment of construction work and/or other non-construction works that cost a significant amount of money. After determining that the collected evidence and witness testimony are sufficient, police investigators identify the suspects and witnesses before delivering the case files to the Prosecutor's Office.

In recent years, police investigators have initiated investigations into cases of alleged criminal acts of corruption involving procurement authorities and providers who engaged in actions detrimental to the state's budget. Investigators generally postulate it based on a continuous wicked consensus that knowingly conducts an illegal act so that the procurement project causes losses to the state. In some instances, Police investigators request that the Audit Board (BPK) or the Financial and Development Supervisory Board (BPKP) execute an audit of particular project activities of which method and results suggest corruption. In the PBJ procedure, investigators focus more on analyzing the flow of financial transactions that occur in a project than on determining the number of state losses



associated with it. In line with Articles 183 and 184 of the Criminal Code Procedure (KUHP), the rest of the examination is conducted in the same manner as any other examination of a criminal act, requiring the production of two pieces of sufficient evidence.

The disclosure and evidence models are explained by investigators of the prosecutor's office who found in interviewees that the dominant control of corruption cases in the PBJ field was identified based on public reports or examinations at the PBJ implementation phase, namely from planning to maintenance work. Forensic analysis, which in the context of an inquiry is a forensic audit undertaken by the Audit Board (BPK) or the Financial and Development Supervisory Board (BPKP), is coordinated by an investigator assigned to a particular case, who then requests that BPK and/or BPKP audit a specific project. The investigator will subsequently issue a letter requesting an audit. In the context of the forensic examination, the prosecutor's investigator coordinates with the BPK and/or BPKP auditors to perform an audit of the calculation of state financial losses, also known as an audit of the estimate of state losses (PKKN).

The disclosure model based on examining state losses in the PBJ field contains two different lines of disclosure model. It is almost the same as the previously described information submitted by the Police investigators. This is through reports from the public on a series of project work activities presented with sufficient evidence to an investigation that has begun on the subject of the report in question and the disclosure model through the supervision room provided to the police investigators to discover acts of corruption. Then, prosecutors' investigators collect information (Pulbaket) on witnesses and supporting documents during tracing based on public reports. After the initial collection of evidence is deemed sufficient, a suspect is identified based on the elements of Article 2 or Article 3 of the Law on the Eradication of Criminal Acts of Corruption, based on which the perpetrator was initially suspected. The investigator then requested through a letter that the BPK and/or BPKP perform a PKKN audit. In recent years, however, requests for audits on particular projects tend to take a long time, and there is even an instance in which prosecutors' investigators only completed the PKN audit request after a six-month waiting period. Under specific circumstances, the prosecutor's investigators disclose that they can request a PKKN audit from the Public Accounting Firm (KAP) to determine the financial cash flow balance of a PBJ project under investigation by the Prosecutor's Office. It is generally accomplished due to the time required for a BPK and/or BPKP audit of the PKKN. In contrast, the Criminal Code Procedures (KUHP) specifies a deadline for current investigations.

At the end of the implementation phase of a PBJ, the project is the audit phase. This audit phase should then be maximized by the Government Internal Supervisory Apparatus (APIP) to review the Agency's PBJ project comprehensively (Alfianto, 2019). In particular, there were various competency gaps in the APIP organization that were inconsistent with its expertise, which caused the audit process not to run correctly.

The audit implementation outlined in Presidential Regulation (Perpres) Number 16 of 2018, which was later amended by Presidential Regulation (Perpres) Number 12 of 2021, concerning Goods/Services Procurement of Government revealed that the APIP conducted the audit and that the Budget User (PA) of the Agency that performs PBJ work supervised the PBJ work. The Attorney investigators revealed that the final phase of the PBJ implementation was frequently neglected because of PBJ actors' lack of focus on the audit process that should have occurred. Consequently, PBJ work is often performed by BPK and/or BPKP throughout the auditing process phase. In this context, technical investigators additionally clarify that the audit implementation by BPK and/or BPKP auditors used the sampling approach by selecting many tasks with similar variables carried out by different agencies with varying audit or review budgets intensively. The audit results were then included as part of a routine investigation to evaluate the BPK and/or BPKP's viewpoint. This space is then used by the attorney and police investigators to analyze specific tasks, particularly those with high budgets and based on specific activities, either through public reports or in the public eye.

Based on what has been revealed regarding the respective models used by the APIP, the BPK, and/or the BPKP auditors, as well as attorney investigators and police investigators, the framework of



monitoring and prevention of actions has the potential to undermine state finances through corruption. The primary focus is on APIP supervision of PBJ work performed by particular agencies, as it occurs before each phase of PBJ activity (Alfianto, 2019). APIP should be more receptive to the presence of the Law Enforcement Officer (*Aparatur Penegak Hukum*, abbreviated APH) to examine criminal acts in the PBJ-related work it oversees as part of its oversight aimed at preventing the involvement of PBJ perpetrators. Each model implemented is a joint operation designed to minimize state financial losses while implementing PBJ activities.

CONCLUSION

During this study, the researchers were not permitted to survey related agencies, particularly BPK and BPKP. Also, empirical research was conducted at the South Sulawesi Provincial General Prosecutor's Office and the South Sulawesi Regional Police. In an attempt to find corruption in the government PBJ sector, investigators utilized the forensic audit model when conducting searches, as revealed by the findings of the interview with the informants. As long as investigators perform their tasks, they have worked with BPK and/or BPKP auditors to aid in calculating state financial losses to acquire evidence that can be used to prove corruption offenses as the completion of state financial loss elements. When viewed based on a forensic audit, the disclosure model is a physical examination of the results of PBJ work by focusing on the physical appearance and function of the effects of PBJ work to determine whether it is following the proposed specifications. If possible, further investigation is conducted, such as trials in the laboratory regarding the strength of the concrete elements (for example, in construction PBJ) at a certain level of Violence (K).


Furthermore, the inspection at the filing stage of the PBJ process using a forensic audit takes precedence if it is under the scrutiny of superiors or the public eye. Based on this information, an investigation was conducted that enabled investigators to access the stages of the PBJ implementation process using the forensic examination technique, namely by examining the running process, craftsmanship, and maintenance stage. Consequently, the forensic audit, a framework mechanism in the examination method based on the details of the model obtained through this study, has been implemented and utilized by investigators to aid in the task of inquiry and investigation to facilitate the disclosure and evidence of corruption in court.

Police investigators and attorney investigators, in some instances, are required to request the BPK and/or BPKP auditors to reveal the results of calculating state losses on a particular project to gather evidence along with offenders and witnesses who may be labeled as suspects. However, it was found that delays in the disclosure procedure needed for bureaucratic estimates of state financial losses by BPK and/or BPKP auditors tended to be pretty long due to a lack of personnel as a team to conduct forensic audits of State financial losses. After the investigator submits an official letter requesting an audit, the BPK and/or BPKP should immediately assign the auditor team to undertake an examination to acquire a precise computation of state financial losses on the requested PBJ project. Therefore, based on the technical and normative measurement balance, the bureaucratic pattern of disclosure and tracing of state financial losses is deemed ineffective, as it requires the calculation results to await a response from the technical team at BPK and/or BPKP to conduct a temporary audit based on the submitted interview data. Six months (maybe sooner or later than the expected running time) have passed since the application was raised, and the auditor team has not yet arrived to assess the state's loss.

Furthermore, it complicates the task of investigators who should conduct the inquiries and investigations process to uncover corruption allegations as outlined in the Criminal e Code Procedures (KUHAP). It includes the detention period, the time interval for the start of the investigation, and the period of collecting evidence, which must be extended despite many reports of alleged criminal acts. Ongoing corruption makes it difficult for investigators to determine which instances have and have not been requested for an audit of the calculation of state losses to the BPK and/or BPKP.

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