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The Role of Granting Expert Information By The Indonesian Financial Examiner's Loss on the Judge's Decision In Proof of Criminal Offense

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Abstract

The study aims to analyze the role of expertory by the Indonesian finance ministry on assessing the state's losses to the judges decision on alleged criminal corruption and the obstacles it faced by the finance ministry's giving expert testimony in judicial proceedings. The type of research used by the writer is the type of empirical law study. The study is conducted at the finance ministry of the Indonesian Republic of Sulawesi representative and the makassar district court. The legal material used is the primary law ingredient, the data obtained directly from interviews and secondary law materials, data through literature, books, journals, and legislation studies. The material of the law is qualitatively analyzed and presented in descriptive terms. The results of the research, concluded that, (1) The role of giving expert information by BPK is important but evidence is not binding on the judge to render a ruling. So that the judge has the right and freedom to make an appraisal of his perfection and truthfulness, and the judge can either accept, regard and make into consideration the giving of expert information by the body of the financial examiner or not. (2) In general, there are 2 (two) obstacles to proving a link to the criminal corruption, which is a drawback to the country's limited human resources, time for checkups and budgets. And also obstacles during the process of giving expert explanations that include, psychological obstacles, communication barriers, inappropriate congregation schedules, impaired professional health, and lack of material mastery by the expert.

Keyword: Judge's Decision, Financial Examiner's Loss, Granting Expert Information

A. Introduction

In the Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia, it is stated that the Indonesian state is a legal state based on law (Rechtstaat) and not based on mere power (Machstaat).[1]All matters relating to the implementation of government administration related to the life goals of the Indonesian people must be in accordance with applicable law. This indicates that the Republic of Indonesia is a democratic legal state and cannot be separated from Pancasila and the 1945 Constitution, upholds human rights in the life of the nation and state, and guarantees that all Indonesian citizens have the same position in law and government and must uphold the law and regulations. government

[1] See Article 1 paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia.

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properly.[2] Because the "conception of democracy" has the assumption that the people are placed in a strategic position in the state administration system.[3]

Even though the Indonesian state is based on law, there are still many groups of people who don't care, they even continue to commit crimes, one of which is corruption. Even though this has become a collective awareness, that every act of corruption must be eradicated to its roots because corruption is an act that burdens the Indonesian people, especially the poor and also greatly endangers the stability of the country's finances.

If this happens continuously for a very long time, it can negate the sense of justice and the sense of trust in the laws and regulations that apply to citizens. The feeling of the crime of corruption indeed seems to be getting thinner, this can be proven from the number of people who want to take vigilante action against perpetrators of criminal acts of corruption in people's lives, both from the young group and from the elderly group in the name of unfair justice. can be obtained from the law, legislation, and also law enforcement officers in Indonesia.[4]

So that this does not continue to happen and is detrimental to the state, the corruptors must be punished according to applicable regulations, where it is important for the belligerent party to take the punishment for the corruptors is the judge. Therefore, a judge must be careful in adjudicating cases in order to make the most fair decision, because in the judge's decision there is a law based on God Almighty, namely the representative of God Almighty in resolving cases submitted to him.

In proving a criminal act of corruption, it certainly involves a lot of evidence to determine whether or not the crime has been committed. The power of evidence against court decisions to resolve cases related to criminal acts is very important for anyone who wants to settle a case in a criminal act. The strength of the evidence is certainly very helpful and useful for law enforcement officers in conducting investigations to uncover a criminal act, especially a criminal act of corruption, because with this evidence the investigator or judge can see in detail and as clearly as possible in conducting an examination. In Article 184 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), it is stated that there are 5 (five) valid evidences including witness statements,[5]

Regarding the evidentiary process in court regarding state losses in corruption crimes, expert testimony is also one of the most influential pieces of evidence. Information from experts is certainly very necessary because guarantees regarding the accuracy of the results of examinations that have been carried out by experts are based on knowledge and experience related to the field of science they have. The information of this expert is intended or useful to add data or information.[6]In this case, the expert needed is the Supreme Audit Agency. because one of the BPK's responsibilities is to assess state finances that have suffered losses, as well as provide expert information in

[2]Andi Hamzah, Corruption in Indonesia Problems and Solutions, Jakarta: Gramedia Pustaka Utama, 1991. Pg. 2.

[3] Connectivity of the State of Law and Democracy, accessed on https://www.kai.or.id/berita/14373/koneksitas-negara-law-dan-democracy.html. At 2:02 p.m.

[4]Evi Hartanti, Corruption Crime. Semarang: Sinar Graphic, 2005.

[5]Andi Hamzah, KUHP & KUHAP 17th Edition. Jakarta:Rineka Cipta, 2011, p.30

[6] R.Soeparmono, Expert Statements and Visum et Repertum in Legal Aspects of Criminal Procedure, Mandar Maju, Bandung, 2002, p.2

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the process of proving corruption crimes as contained in the internal regulations of the Supreme Audit Agency, namely the Supreme Audit Agency Regulation Number 3 of 2010 concerning Procedures for Providing Expert Information in Article 2 which reads:

1) BPK can provide expert information in the judicial process regarding state/regional losses.
2) The BPK may assign BPK Members, BPK Implementing Officers, examiners or Experts from outside the BPK who work for and on behalf of BPK to provide expert information.[7]

Based on the above background, the formulation of the problem in this thesis research is as follows:

1) What is the role of providing expert testimony by BPK RI on the calculation of state losses against the judge's decision in proving corruption?
2) What are the obstacles faced by BPK RI in calculating state losses and providing expert testimony in court?

B. Research methods

The author decides to use normative and empirical legal research methods. Normative research is research that focuses on written studies, namely legislation, legal theory, legal principles, legal principles and doctrines.[8] While empirical research is research that focuses on facts that occur directly in the field.[9]

In this study, the author chose two research locations, namely the Supreme Audit Agency of the Republic of Indonesia Representative of South Sulawesi and the Makassar District Court. Consideration of the selection of the research location, because there is sufficient relevant data regarding the relationship between the giver of expert testimony by the Supreme Audit Agency of the Republic of Indonesia on the calculation of state losses and the judge's decision in corruption.

The population used are parties who are directly related in the process of providing expert information and who decide cases of corruption. In this case the number of Auditors of the Republic of Indonesia Representative Office of South Sulawesi. While the sample used is a non-probability sample method which was chosen by the author himself to be used as a resource, namely the Auditor of the Supreme Audit Agency of the Republic of Indonesia representing South Sulawesi and the Judge of the Makassar City District Court. In this study, samples were selected, namely 3 (three) Auditors from the Supreme Audit Agency of the Republic of Indonesia, Representatives of South-Sulawesi and 2 (two) Judges who served in the Makassar City District Court.

In preparing this research, the data sources used are as follows:

1) Primary data are data obtained from field research conducted by conducting direct interviews with related parties in connection with the writing of this thesis, namely

[7] Beni Kurnia Divine, Muhammad Ikhsan Alia, Accountability for State Finance and Management through BPK and KPK Cooperation. West Sumatra, 2018

[8] Irwansyah, 2020, Legal Research, Choice of Article Writing Methods & Practices, Mirra Buana Media, Yogyakarta, page-98

[9]M. Ied Al Munir. Overview of Empiricism and Rationalism Methods, accessed athttps://media.neliti.com/media/publications/228431-review-against-method-empirism-dan-r-9612b688.pdf, at 15.00 WITA.

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the Auditors of the Supreme Audit Agency of the Republic of Indonesia and the Makassar District Court Judges.

2) Secondary data is data obtained through report materials, writings, archives, agency data and other documents that have existed before and have a close relationship with the problems discussed in writing this thesis.

The data collection techniques used by the author are as follows:

a) Interview technique (interview), which is interacting with the object under study by conducting questions and answers to related parties who handle problems related to the relationship between expert information providers by the Supreme Audit Agency of the Republic of Indonesia on the calculation of state losses and judges' decisions in criminal acts corruption
b) Documentation Studies, namely data collection techniques carried out by collecting data and reading various books, websites, newspapers, and other literature related and supporting this research.
c) Survey, survey method is a primary data collection method that uses oral and written questions. This method requires a contact or relationship between the researcher and the research subject (respondent) to obtain the necessary data. The data obtained is mostly descriptive data, but data collection can be designed to explain cause and effect or express ideas.

Based on data sources and data collection techniques used by the author, primary data and secondary data that have been obtained and collected are then processed and analyzed using an empirical normative approach, namely data that has been collected, inventoried and then analyzed using a theoretical approach, principles principles of criminal law and refers to the law. By taking a juridical approach with descriptive analysis techniques, the problems in this thesis can be drawn a desired conclusion.

C. Results and Discussion

1. The Role of Providing Expert Statements by the Supreme Audit Agency of the Republic of Indonesia on the Calculation of State Losses by Judges' Decisions in Proving Corruption Crimes.

The role of BPK in providing expert testimony at the trial is very important, this is because in evaluating state losses and calculating the amount of state losses in the process of proving in court related to criminal acts of corruption, BPK has the responsibility to assess state finances that have suffered losses due to corruption, so that the results of the examination from the BPK can guarantee the accuracy of a truth related to the corruption that has occurred.[10]

This is also in accordance with the authority of BPK in conducting audits, management and accountability of state finances, which can be seen in the Law of the Republic of Indonesia No. 15 of 2006 concerning the Supreme Audit Agency, in Article 6 which reads;

a The BPK is tasked with examining the management and responsibility of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service

[10] The results of the author's interview with Mr. Daniel Sembiring Brahmin, SH Examining Auditor, dated August 2, 2021.

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Agencies, State-Owned Enterprises, and other institutions or agencies that manage state finances.

b The implementation of the BPK audit as referred to in paragraph (1) is carried out based on the law concerning the Audit Management and accountability of state finances.

c BPK audits include financial audits, performance audits and audits with a specific purpose.

d In the event that the audit is carried out by a public accountant based on the provisions of the law, the report on the results of the audit must be submitted to the BPK and published.

e In carrying out the audit and management and accountability of state finances as referred to in paragraph (1), BPK shall discuss the findings of the audit with the object being examined in accordance with the standards for auditing state finances.

f Further provisions regarding the procedures for carrying out the duties of the BPK as referred to in paragraph (1) shall be regulated by BPK regulations.[11]

Regarding the provision of Expert Information provided by BPK, according to the Auditing Auditor, Daniel Sembiring Brahmana, as one of the examining auditors, he stated that the provision of such information was very important as a means of evidence to provide a clear point that it was true that a criminal act of corruption had been committed by a person, a group of people. or an agency before the trial as a consideration for the judge in deciding a criminal case.

Based on the above information regarding the importance of the role of providing expert testimony by the BPK on the calculation of state losses with the judge's decision in proving corruption, it can be proven by the existence of several cases in the last 3 (three) years related to corruption which require the provision of expert testimony by BPK in proving the crime. corruption in court, the case can be seen below:

1) There was 1 (one) corruption case in 2018 regarding the alleged corruption crime of irregularities in the financial management of Maddenrengpulu village, Kec. The Patimpeng of Bone Regency, which was requested directly by the Bone Police and has been given expert testimony at the trial by Br. Novi Adhityo Sidharta on October 18, 2018.
2) There were 3 (three) cases of corruption in 2019 including allegations of corruption in the construction of the Bonto Bahari Axis concrete road project, Bulukumba Regency, which was requested by the Bulukumba Police and given expert testimony at the trial by Mr. Andri Dwianto Irawan on May 13, 2019.
3) There is 1 (one) case of alleged corruption, irregularities in the financial management of Pattiro Riolo Village, Kec. Sibulue, Bone Regency which was requested directly by the Bone Police and has been given expert testimony at the trial by Br. Didi Atmaja on March 12, 2019.
4) There is a case of alleged corruption related to cash management at the PTPN IV Takalar sugar factory for the 2016 fiscal year which was requested by the Takalar prosecutor's office and has been given expert testimony at the trial by Mr. Gracia Septiana Dewi on May 6, 2019.

[11]Law of the Republic of Indonesia No. 15 of 2006 concerning the Supreme Audit Agency, Article 6 paragraphs (1-6)

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5) Then there was one case of corruption in 2020, which involved the Supreme Audit Agency in providing expert testimony in front of the trial regarding allegations of corruption in socialization/workshops/ counseling/ coaching/ training/ technical guidance at the Regional Financial and Asset Management Agency and 15 (fifteen) sub-district regional apparatus organizations (OPD) in the Makassar city area for the 2017 fiscal year which were requested directly by the Makassar Kejari and have been given expert testimony at the trial by Br. Oldy Nathanel on February 5, 2020.

Based on the table and explanation above, it can be said that in proving a criminal act of corruption, expert information provided by the BPK is very important as an effort to prove a criminal act of corruption, this is in accordance with the Criminal Procedure Code (KUHAP) in Article 184 which placing the evidence of expert testimony in second place.

However, based on the information provided by Mr. Rusdiyanto Lole as the author's resource person who is a judge of the Makassar City District Court, he said that the provision of expert testimony by the Supreme Audit Agency is indeed important but the evidence from the BPK's expert testimony cannot influence one hundred percent of the judge's decision. Thus, the evidence is often termed an independent evidence assessment or referred to as "vrij bewijskracht". Evidence that has independent evidentiary value cannot at all bind the judge. So that the judge has the right and freedom in making an assessment of its perfection and truth. So, it is up to the judge to accept, consider and take it into consideration or not at all. However, if the expert's statement is deemed to be in accordance with other information in the trial, then the expert's information is taken to be used as the judge's own opinion. However, if the expert's information is contradictory, then the expert's opinion can be set aside. However, in the expert testimony that is set aside, it must have clear power, because a judge cannot immediately set aside an opinion from the expert testimony without a clear basis and reason, because in essence the judge in using his power and authority in evaluating the evidence, the judge must be responsible with the truth, on a moral basis in order to achieve and realize a truth and also legal certainty. then the expert's information is taken to be used as the judge's opinion. However, if the expert's information is contradictory, then the expert's opinion can be set aside. However, in the expert testimony that is set aside, it must have clear power, because a judge cannot immediately set aside an opinion from the expert testimony without a clear basis and reason, because in essence the judge in using his power and authority in evaluating the evidence, the judge must be responsible with the truth, on a moral basis in order to achieve and realize a truth and also legal certainty. then the expert's information is taken to be used as the judge's opinion. However, if the expert's information is contradictory, then the expert's opinion can be set aside. However, in the expert testimony that is set aside, it must have clear power, because a judge cannot immediately set aside an opinion from the expert testimony without a clear basis and reason, because in essence the judge in using his power and authority in evaluating the evidence, the judge must be responsible with the truth, on a moral basis in order to achieve and realize a truth and also legal certainty.[12]

[12]The author's interview with Mr. Rusdiyanto Lole, SH, MH as the judge of the Makassar City District Court, on June 25, 2021.

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2. Obstacles Faced by the State Audit Board in calculating state losses and providing expert testimony in court.

The theory of the legal system of evidence, according to M. Yahya harahap, states that evidence is provisions that contain guidelines and guidelines for ways that are justified by law to prove the guilt charged to the defendant. Evidence is also a provision that regulates the evidence that is justified by law and may be used by judges in a trial to prove the guilt of the accused, especially in criminal cases.[13]It should be noted that in the evidence related to a criminal case there are also obstacles, both regarding the calculation of state losses and obstacles related to the provision of expert testimony at trial by the State Audit Board. These barriers are as follows:

3. Obstacles When Calculation of State Losses.

a Internal Constraints, internal constraints are obstacles that come from within oneself[14]. These constraints are as follows:
b The limited resources of the examiners owned;
c Limited time for inspection.
d External constraints, external constraints are barriers that come from outside the individual who are related to the physical and socio-cultural environment[15]. These obstacles include the following:
   a) The party being examined is not able to work well together.
   b) There are rules or regulations that can hinder the examination.
   c) The results of the examination conducted by the BPK were not followed up and were not used properly.
   d) Places or inspection locations that are not easy to reach

4. Obstacles in Providing Expert Statements in Court by the Supreme Audit Agency.

a. Communication Barriers,
b. Improper trial schedule,
c. Health is compromised, and
d. Lack of mastery of the material by experts,

Based on the description above, it can be concluded that the obstacles or obstacles experienced by the Supreme Audit Agency in the process of proof related to corruption in court are broadly divided into 2 (two) namely obstacles when calculating state losses which will be stated in the form of a report on the results of the examination. to be shown in court in proving corruption and obstacles during the process of providing expert testimony. Barriers or obstacles when calculating state losses consist of internal barriers and external obstacles. Internal barriers include the limited human resources in the audit they have and the limited time in the audit. Meanwhile, external obstacles are caused by the fact that the party who is the object of the examination is not able to cooperate properly. the existence of rules that hinder the audit such as regulations regarding bank secrecy, taxes and so on, the results of the

[13]Rahman Amin, Law of Evidence in Criminal and Civil Cases, Yugyakarta : CV Budi Utama. 2020, Pg.15
[14]Fence M. Wantu, Judges Constraints in Creating Legal Certainty, Justice, and Benefits in Civil Courts, Yogyakarta. 2016
[15]Siti Rahma Nurdianti. (2014) Analysis of Communication Barriers Factors in Disseminating Family Planning Programs in the Kebong Agung Samarenda community. Visual Post : e Journal of Communication Science,2014,2 (2): 145-159

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BPK examination are not followed up and not utilized properly by the auditee because the auditee requires coordination with the relevant agencies which takes a long time, and the place or location of the audit is difficult. to take. In addition, there are obstacles or obstacles faced by BPK in providing information in court which include psychological barriers, communication barriers, untimely trial schedules, disturbed health of experts, and lack of mastery of the material by experts. The results of the BPK's examination are not followed up and are not utilized properly by the Auditee because the Auditee requires coordination with the relevant agencies which takes a long time, and the place or location of the inspection is difficult to reach. In addition, there are obstacles or obstacles faced by BPK in providing information in court which include psychological barriers, communication barriers, untimely trial schedules, disturbed health of experts, and lack of mastery of the material by experts. The results of the BPK's examination are not followed up and are not utilized properly by the Auditee because the Auditee requires coordination with the relevant agencies which takes a long time, and the place or location of the inspection is difficult to reach. In addition, there are obstacles or obstacles faced by BPK in providing information in court which include psychological barriers, communication barriers, untimely trial schedules, disturbed health of experts, and lack of mastery of the material by experts.

D. Conclusion

1. The role of providing expert testimony by the State Audit Board is very important considering that evidence for providing expert testimony occupies the second position in the Criminal Procedure Code and considering that BPK is an institution that can examine the management and responsibility of state finances as well as declare losses. But the evidence cannot remember the judge in giving the decision. So that the judge has the right and freedom in making an assessment of its perfection and truth. So, the expert opinion can be ruled out.
2. Constraints or obstacles experienced by the Supreme Audit Agency in the process of proof related to criminal acts of corruption are broadly divided into 2 (two) namely obstacles when calculating state losses which will be stated in the audit report, hereinafter referred to as LHP and obstacles during the process of providing expert testimony. in evidence at trial. Barriers when calculating state losses consist of internal and external barriers.

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