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# Supreme Audit Institution Recommendations and the Legal System: The Case of Indonesia

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**Abstract:** The audit recommendations of the Indonesian supreme audit institution (*Badan Pemeriksa Keuangan*, BPK) acquired new significance after the collapse of the authoritarian state in 1998 and constitutional amendments in 1999–2002 that reformed the regulation and institutional governance of public sector audit in Indonesia. However, while the reform of public sector audit regulation was carried out through a strong adoption of private sector audit standards and the Westminster SAI model, the BPK retained some of its Napoleonic legacy. This syncretic organisation led to confusion about the BPK's role and position in the Indonesian legal system. Using a historical and case study approach, this paper analyses the relationship between the BPK's audit recommendations and the Indonesian legal system. It argues that it is important for the BPK to develop auditing standards that take full account of higher rules, administrative law, and national interests, or at least not to adopt and abolish auditing standards that are counterproductive to its judicial function – not merely to accommodate private international law instruments developed by private non-state actors operating outside the legal framework of a sovereign state.

**Keywords:** administrative law; private international law; audit recommendations; legal system; public sector audit regulation; supreme audit institutions

**JEL Classification:** K; K23; M4

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# 1 Introduction

In democratic nations, the supreme audit institution (SAI) fulfills a significant duty in ensuring public sector fiscal accountability by conducting audits and publishing reports that oversee the activities of local and central governments. Most reports from SAIs link their findings to audit recommendations, as the implementation and follow-up of SAIs' audit recommendations are important for measuring the instrumental impact of their audits (Eurosai 2021). Without follow-up on audit recommendations, SAI audit results are less useful for realizing public sector financial accountability (Setyaningrum 2017). In contrast, SAI audit recommendations that are followed up properly by the auditee are expected to improve the quality of financial reports and public services organized by the government (Furqan et al. 2020).

In Indonesia, the audit recommendations of the Indonesian SAI (*Badan Pemeriksa Keuangan*, BPK) acquired new significance after the collapse of the authoritarian state

in 1998 and constitutional amendments in 1999–2002.[1] Under Article 20 and 26(2) State Audit Act 2004[2] as a derivative regulation of Article 23E the Amended Constitution of 1945,[3] BPK audit recommendations must be followed up by the auditee and enforced under the threat of administrative and criminal sanctions. This never happened in previous eras. Under an authoritarian state with power completely centered on the executive,[4] there is no legal framework that regulates in detail the follow-up to BPK audit reports and recommendations. There was even a period when BPK couldn't include audit recommendations in its audit report (BPK 1972). Moreover, BPK audit results are not freely accessible and the House of Representatives, the only institution with full access to BPK audit results, has never used them as a tool to monitor government performance (Dwiputrianti 2011).

Linking follow-up on SAI audit recommendations to administrative and even criminal sanctions is unusual in any jurisdiction, but this is clearly the regulator's response to the collapse of the authoritarian state. In Germany and India, there are no provisions for the imposition of administrative and criminal sanctions for non-implementation of SAI audit recommendations (Bundesrechnungshof 2020; Comptroller and Auditor General of India 2021). China has similar provisions to Indonesia, but the Chinese SAI cannot impose sanctions directly and must apply to the courts (National Audit Office of the People's Republic of China 2017). Mzenzi and Gaspar (2015)'s study of Tanzanian SAIs, for example, shows that non-follow-up of audit recommendations is one of the reasons why SAI audit results are less able to

**1** Throughout its history, Indonesia has had four constitutions, namely the Constitution of 1945 (18 August 1945–27 December 1949 and 5 July 1959–19 October 1999), the Constitution of United States of Indonesia (27 December 1949–17 August 1950), the Provisional Constitution of 1950 (17 August 1950–5 July 1959), and the Amended Constitution of 1945 (19 October 1999–now).

**2** Article 20 State Audit Act 2004 states, "Officials who are known not to carry out the obligations as referred to in paragraph 1 (follow up on BPK audit recommendations no later than 60 days after the audit report is received) may be subject to *administrative sanctions* in accordance with the provisions of laws and regulations on civil service." Article 26(2) State Audit Act 2004 states, "Any person who does not fulfill the obligation to follow up on the recommendations submitted in the audit report as referred to in Article 20 *shall be punished with a maximum imprisonment of 1 year and 6 months and/or a maximum fine of IDR 500 million*."

**3** Article 23E the Amended Constitution of 1945 states, "(1) To audit the management and accountability of the state finances, a free and independent Supreme Audit Agency shall be established. (2) The results of the state financial audit shall be submitted to the House of Representatives, the Regional Representative Council, and the Regional House of Representatives in accordance with their authority. (3) The results of the audit shall be followed up by representative institutions and/or bodies in accordance with the law."

**4** The authoritarian state here refers to the second period of the Constitution of 1945, namely Sukarno's Guided Democracy (1959–1965) and Suharto's New Order (1965–1998). In the regimes of these two Indonesian presidents, the role of the BPK was structurally (in the Sukarno era) and functionally (in the Suharto era) castrated.

contribute to improving government accountability. Umor, Zakaria, and Sulaiman (2016)'s study of Malaysian SAIs showed similar results. However, although BPK does not have direct authority to impose sanctions, so far there have been no reports in Indonesia stating that certain auditees have been sanctioned for not following up on BPK audit recommendations.

Regardless of their new significance after the collapse of the authoritarian state and constitutional amendments, BPK audit recommendations have long intersected with the national legal system. It is about the relationship between BPK audit recommendations and the concept of "state losses" (*kerugian negara*). The concept of state losses in the Indonesian legal system contains dualism: it is not only related to aspects of criminal law[5] but also administrative law. In administrative law, the settlement of state losses is regulated by a long, complicated, and tortuous procedure. Settlement of state losses pursued administratively does not eliminate criminal sanctions imposed in the anti-corruption court[6] and vice versa, criminal sanctions do not eliminate the obligation to settle state losses administratively.[7]

In the context of state losses, the BPK plays an important role in two legal systems at once: administrative law and criminal law. Based on regulations, BPK is administratively authorised to assess and determine state losses to treasurers, SOE management, or other agencies that manage state finances through a judicial function called the Treasury Claims Court (*Majelis Tuntutan Perbendaharaan*, MTP). BPK can also play a role in corruption trials as the party that calculates state losses and provides expert testimony.[8]

In this article, we examine how the new significance of the BPK's audit recommendations is part of a broader agenda of institutional change influenced by private international law instruments, which has only been able to operate on a massive scale after the collapse of the authoritarian state and constitutional amendments. We have analysed five cases to show how SAI audit recommendations are directly

**5** As defined by the Indonesian law, there are thirty types of corruption which fall into seven categories, namely state losses, bribery, gratification, occupational embezzlement, conflict of interests in procurement of goods and services, extortion, and deception (Prabowo 2014).

**6** Article 4 Anti-Corruption Act 1999/2001 states, "The recovery of state losses does not eliminate the criminal sanctions as referred to in Article 2 and Article 3."

**7** Article 64 State Treasury Act 2004 states, "Criminal conviction does not exempt from compensation."

**8** According to Indonesian criminal procedural law, judges may not impose a sentence without at least two valid evidences. Expert testimony is one of the evidence in addition to witness testimony, document, indication, and accused testimony. This is a dilemma because BPK can provide two pieces of evidence at once: document evidence in the form of BPK's audit report and expert testimony. This has been submitted for a judicial review to the Constitutional Court and the Court decided that the BPK auditor can be categorized as an expert as long as he is *not* an auditor who finds indications of a criminal act (Mahkamah 2014).

related to the legal system: presenting alternatives, competing, and often ironically being defeated.

After outlining the literature review related to our research topic and identifying areas that have not been covered to build our own theoretical framework in Section 2, we will briefly explain the history of the BPK in Section 3. We will then explore the historical roots of Indonesian law in Section 4. In Section 5, we will examine the development of public sector audit regulation in Indonesia as influenced by the global order. In Section 6, we will specifically analyse the genealogy of the concept of state loss as an element that creates an intersection for the audit process and legal process, as well as administrative law and criminal law. Using five case studies as examples, in Section 7 we will analyse the BPK's audit recommendations and their implications for the Indonesian legal system, based on the theoretical framework we have developed.

# 2 Literature Review and Theoretical Framework

## 2.1 Models of SAIs and Legal Systems of Countries in the World

There is very little literature on public sector audit in the universe of audit literature, most of which focuses on private sector audit (van Helden and Uddin 2016). Most of the literature on public sector audit generally discusses SAIs in the context of New Public Management (NPM) (Hay and Cordery 2018; Manes Rossi, Brusca, and Condor 2021; Mattei, Grossi, and James Guthrie 2021) or the role of SAIs in conducting performance and financial audits (Manes Rossi, Brusca, and Condor 2021) and how the Westminster model SAI works (Bonollo 2019). On the other hand, ironically, there is very little discussion in the literature about compliance audits carried out by SAIs and how Napoleonic SAIs work (Bonollo 2019). Thus, there is a gap in the study of public sector audit, particularly with regard to the role of SAIs that perform not only accounting-oriented audit functions, as private audit firms do, but also legal functions, as judicial institutions do.

The literature on SAIs generally classifies SAIs into three models (see, e.g. Blume and Voigt 2011; Cordery and Hay 2019; Dye and Stapenhurst 1997; Kayrak 2008; Kontogeorga 2018; Ortiz Ramirez and Cruz Pérez 2016; Stapenhurst and Titsworth 2002; Yoram, Elie, and Alon 2019). First, the Napoleonic model SAI, judicial, court, court of audit, court of accounts, court of auditors, *cour des comptes*, *corte dei conti*, or *tribunal de cuentas*. In this model, the SAI serves as the judicial branch and thus has independence from the legislative and executive powers (Yoram, Elie, and Alon 2019).

Members of the Napoleonic SAI usually enjoyed unlimited tenure as they were magistrates. SAIs have the competence to impose penalties if they discover illegal financial transactions. Wrongdoers are usually held personally liable and can be penalised (Blume and Voigt 2011). In some countries such as Belgium, Italy, Luxembourg, Greece, and Portugal, SAIs also have an *ex ante* (pre-audit, *a priori*) function, i.e. a preventive audit before financial transactions take place (Kontogeorga 2018). The type of audit commonly conducted at Napoleonic SAIs is a compliance audit of laws, regulations (Kayrak 2008) and administrative law rules (Yoram, Elie, and Alon 2019). Questions of efficiency and effectiveness often play only a minor role as the main focus is on legal issues.

In addition to the countries mentioned above, Napoleonic SAI is adopted by Latin European countries, as well as Greece, Turkey, and most of the former colonies of France, Spain, and Portugal (Noussi 2012). Napoleonic SAIs currently gather in the Forum of Jurisdictional SAIs at International Organisation of Supreme Audit Institutions (INTOSAI)[9] which seeks to be a space for reflection, collaboration, and exchange of good practices among Napoleonic SAIs through the drafting of principles, standards, and guidelines. The Forum was initiated by the SAIs of Brazil, Chile, France, Italy, Morocco, Peru, Portugal, Spain, Tunisia, and Turkey on 13 November 2015 and resulted in the Paris Declaration (Turkish Court of Accounts 2018) which contains three main statements on jurisdictional competence, shared values, and a programme of action (Latvijas Republikas Valsts Kontrole 2022).

Second, Westminster, monocratic, audit office, Anglo-Saxon, or parliamentary SAIs (Chêne 2018). In this model, the SAI reports its work to a public accounts committee (PAC) that is part of parliament (Cordery and Hay 2022) and publishes its own report for the government to respond to. Traditionally, the chair of the PAC is the government opposition. The staff of this model of SAI are usually trained accountants and auditors and the traditional type of audit performed is a financial audit (Blume and Voigt 2011). The Westminster SAI does not have a judicial function but, if required, its audit findings can be forwarded to legal authorities for action. These SAIs usually have a single head called the auditor-general or president. The auditor-general's term of office is usually limited to a specific time (Noussi 2012).

Westminster SAIs are adopted by the United Kingdom and Commonwealth countries or former British colonies such as Australia, Canada, India, most Sub-Saharan African and Caribbean countries, Anglophone Pacific countries, as well as Austria, Denmark, Ireland, the United States, and some Latin American countries (Noussi 2012). In addition, Sweden, Finland, and Poland are also known to follow the

**9** INTOSAI is an international organization that brings together SAI worldwide. Founded in 1953, INTOSAI now has 195 SAI members. See INTOSAI, 'Overview' <https://www.intosai.org/about-us/overview> accessed 26 January 2023.

Westminster SAI model (Cordery and Hay 2022). Most of the literature on SAIs classifies the Chilean SAI as an example of an SAI that adheres to the Westminster model (see, e.g. Blume and Voigt 2011; Chêne 2018; Cordery and Hay 2022), whereas, as explained above, the Chilean SAI is one of the ten SAIs that initiated the Forum of Jurisdictional SAIs. As such, such claims need to be re-examined.

Third, the council, collegiate, or board model of SAI. This model is similar to the Westminster model where parliament is the main addressee.[10] The difference between the two is that the council model is not controlled by one person like the Westminster model, but by a council that is led in a collegial manner. This can be both a strength and a weakness. The outcome of the SAI's work is less dependent on one person, but on the other hand the board structure can make decision-making complicated and slow (Blume and Voigt 2011). The board model is adopted by most Asian countries, such as Japan, South Korea, and the Philippines (Yoram, Elie, and Alon 2019), as well as Argentina, the Netherlands, Norway, and the European Court of Auditors (ECA) (Cordery and Hay 2022). Most literature categorises Indonesian SAIs (BPK) into this model (see, e.g. Noussi 2012; Yoram, Elie, and Alon 2019). Section 3 will examine the claim.

Rejecting the three-model division, Shand (2013) categorised the SAI into only two models, namely Napoleonic and Westminster. Similarly, Kontogeorga and Papapanagiotou (2022) categorise SAIs into court (French, francophone) and Anglo-Saxon (anglophone) models and Reichborn-Kjennerud et al. (2019) divide SAIs into two major competing models, the audit office and the court of auditors. While agreeing with the three SAI models, Hay and Cordery (2018) argue that the board model is merely similar to the Westminster model in that a panel or board replaces the function of a single auditor-general.[11]

Moreover, Posner and Shahan (2014) divided SAIs into four groups, namely Napoleonic court of accounts, collegiate body, SAIs as government department, and legislative audit office. It appears that the latter two groupings are actually further elaborations of the Westminster model. It can thus be concluded that SAIs generally fall into two broad models, namely the Westminster and Napoleonic (see Table 1). Based on the mimetic isomorphism perspective that Cordery and Hay (2022) used to analyse SAIs worldwide, countries that lack stability such as less developed countries are more likely to imitate relatively stable countries by adopting the Westminster model. Furthermore, from a normative isomorphism perspective, countries with

**10** With regard to the council model, Yoram, Elie, and Alon (2019) wrote, "The audit institutions that operate in accordance with this model are similar to the audit institutions that operate according to the Westminster model."

**11** As Kayrak (2008) also stated, "[T]he board system governed by an audit board […] is akin to the Westminster model."

**Table 1:** Differences between Napoleonic and Westminster SAIs.

| No | Napoleonic SAI | Westminster SAI |
|---|---|---|
| 1 | Financial control | Financial audit |
| 2 | Compliance with legal rules including accounting ones | Compliance with accounting rules |
| 3 | Check for mismanagement and fraud, including over-payments | Focus on financial effectiveness and efficiency, with less attention to issues such as fraud and other non-compliance |
| 4 | Has a judicial function or jurisdiction (the power to impose sanctions or penalties on the person causing the damage) | No judicial function |
| 5 | Can perform ex ante function | Does not perform ex ante function |
| 6 | Named court of audit, court of accounts, court of auditors, cour des comptes, corte dei conti, or tribunal de cuentas. Some SAIs, such as the European Court of Auditors and the Netherlands Court of Audit, although named "court", cannot be included in this category because they do not have a judicial function | Usually named audit office |
| 7 | In the constitutional system, the SAI is a judicial institution | SAI is part of the legislative or executive power |
| 8 | In addition to auditors, SAIs also have judges, magistrates, and prosecutors | No judges, magistrates, or prosecutors, only auditors |
| 9 | Some SAIs are collectively run and may serve for life | Often led by a single leader with term limits |
| 10 | Practised by European countries as well as Greece, Turkey and most of the former colonies of France, Spain, and Portugal. Countries that make up the Forum of Jurisdictional SAIs | Practised by the United Kingdom and Commonwealth countries or former British colonies such as Australia, Canada, India, most Sub-Saharan African and Caribbean countries, Anglophone Pacific countries, as well as Austria, Denmark, Ireland, the United States, and some Latin American countries, Sweden, Finland, and Poland |
| 11 | Historically rooted in the French (francophone) continental tradition | Historically rooted in the English (anglophone) tradition, the Anglo-Saxon |

strong and established accounting and auditing professions, particularly in the private sector, are more likely to adopt the Westminster model as well. While each country is likely to have some unique features and it is clear that there is no single standardised model, Cordery and Hay (2022) argue that these isomorphic forces will in turn drive worldwide SAI convergence towards the Westminster model.[12]

**12** Studies using this isomorphism perspective were first carried out by Judge, Li, and Pinsker (2010) to analyse the process of convergence of IFRS international accounting standards around the world.

The dynamics of SAI worldwide can also be assumed to have a direct or indirect correlation with the world's two dominant legal systems, namely common law and civil law. Blume and Voigt (2011)'s quantitative study shows that Napoleonic SAIs tend to be applied in countries with civil law systems, while Westminster SAIs tend to be applied in countries with common law systems.

A debate exists on discovery and deterrence performance by SAI models. Blume and Voigt (2011) boldly claim that countries that follow the Westminster SAI tend to have lower levels of corruption than countries that follow the Napoleonic SAI. Such results, according to Kontogeorga and Papapanagiotou (2022), are not theoretically expected as Napoleonic SAIs tend to emphasise compliance and have the power to impose sanctions in cases of misuse of public funds, which would have a deterrent effect on corrupt practices. Kayrak (2008) also stated that the Napoleonic SAI can detect more corruption cases than a council system that only focuses on corruption prevention. Reichborn-Kjennerud et al. (2019) argue that if the law mandates SAIs to combat corruption, the Napoleonic model will be more effective than the Westminster model.

Studies linking the SAI and the legal system in the Indonesian context are very limited, if not non-existent. This is because the Indonesian SAI has never been considered as a law enforcement agency with judicial functions, especially since its reform at the beginning of this century. In fact, the Indonesian SAI has inherited the characteristics of the court (Napoleonic) model SAI, so that its audit activities and results are directly related to the law enforcement process.

## 2.2 Globalisation and Private International Law: The Influence of Expertise and Private Standards

Globalisation has made the legal territorial boundaries between countries borderless, and the national laws of one country are affected globally, both internationally and transnationally. In the context of public sector auditing, globalisation allows for the adoption or incorporation of private sector auditing standards into public sector auditing standards. Audit norms, which are a manifestation of these global regulations, take the form of guidelines, standards, or statements produced by an organised transnational network consisting of private, public, or a combination of both actors (hybrid actors) (Brenninkmeijer et al. 2018).

In a further development, private sector audit norms applied to the public sector are also massively globalised by international donor agencies and international financial organizations (International Monetary Fund [IMF], World Bank) in the context of legal reform – often as a condition precedent to obtain funding – in developing countries (Harun, Van-Peursem, and Eggleton 2015; Hay 2019;

Humphrey, Loft, and Woods 2009; Prabowo, Leung, and Guthrie 2017). Private sector audit standards are seen as creating flexible, informal, and more effective institutions, while at the same time reducing the regulatory role of the state (Brenninkmeijer et al. 2018). Harmonisation between private and public sector audit standards is considered to be able to meet international investment needs and other multinational business objectives (Haapamäki and Sihvonen 2019). However, while the globalisation of private sector accounting standards into public sector accounting standards has been widely criticised (Biondi and Suzuki 2007; Biondi 2012, 2016; Ramanna 2013), for example in relation to Fair Value Accounting (FVA) (Biondi 2011; Le Manh 2022; Perry and Nöelke 2005; Richard 2015), the globalisation of private sector auditing standards into public sector auditing standards has not.

Globalisation is challenging the role of the state and opening up opportunities for non-state actors to participate in law-making. Globalisation has changed the key role of the state as regulator and legislator. National public law, such as administrative law, is being challenged because one of the characteristics of the global era is the shift from centralised regulation by the state, which has a command and control character, to regulation shaped by private actors, including the delegation of certain public functions and responsibilities to the private sector (Aman 2001). The interaction between the market and the law, as well as between private and public actors in globalisation, requires greater accountability and public participation in relation to policy outcomes delegated to the market and private actors. Administrative law must be able to create a flow of information to ensure the accountability of government and private actors (Aman 2001).

Globalisation challenges two main aspects of law-making in modern democracies, namely sovereignty and rights and obligations as a result of law-making. Mückenberger (2010) introduces the concept of "transnational norm-building networks" (TNN), which consists of three types of institutionalisation, i.e. "governance by government" (rejecting the involvement of non-state actors in law-making), "governance with government" (allowing hybrid law-making with cooperation between state and non-state actors) and "governance without government" (enacting legislative and regulatory delegations to private actors). In areas close to the market, such as accounting, TNN has shifted from "governance with government" to "governance without government" (Mückenberger 2010).

Increasing globalisation at the end of the twentieth century has also encouraged the development of private international law[13] in the form of international soft law.

13 Legal scholars also refer to this discipline as transnational private law. It is called transnational rather than international because, despite its cross-border impact, it is not based on the cooperation of states reflected in international treaties. It is called private because the main actors are non-state

Soft law is "law"[14] that results from interactions between states, international organisations, transnational professional associations and other public and private associations. Soft law arises from the growing role of non-state actors, including traditional interest groups, epistemic communities based on professional expertise and disciplines, and non-governmental organisations (NGOs) committed to normative values (Abbott and Snidal 2000).

There is no definitive form of soft law, but there is general agreement on its characteristics, namely that it is non-binding, contains general norms or principles rather than rules (Boyle 1999), its implementation is accepted voluntarily, does not contain detailed rights and obligations, contains general objectives and programmatic measures, and may not contain legal content – the opposite of these characteristics is referred to as hard law (Chinkin 1989).[15] Moreover, soft law is often associated with the New International Economic Order and is the subject of study in international economic and trade law (Abbott and Snidal 2000). This is not surprising given that, historically, the idea of soft law was originally proposed by Joseph Gold, an international law expert who served as General Counsel of the IMF (Lichtenstein 2001). In this field and object of study, soft law has received attention because "soft law is quicker, cheaper and more flexible; its non-binding nature appeals to fast-moving regulators who need to try things out; it is what bureaucrats have the professional capacity to do; and soft law imposes low sovereignty costs" (Kelly 2012).

As a form of soft law, standards play the most prominent functional role in the era of globalisation and free market ideology dissemination. Schepel (2005) argues that standards are the product of discussion, negotiation, deliberation, and compromise between engineers, manufacturers, academic experts, professionals, trade unions, representatives of consumer organisations, and public officials who meet in councils, committees, task forces, and working groups within associations or

actors, including civil society or NGOs and corporations or associations. See, for example, Scott, Cafaggi, and Senden (2011); Calliess and Zumbansen (2010).

**14** The quotation marks indicate that the concept of law in soft law cannot be interpreted in the traditional and conventional sense. In fact, Blutman (2010) argues that the very term soft law is a misleading and contradictory legal metaphor, and is terminologically fraught with deep doctrinal difficulties. Moreover, "[a] negative concept of soft law usually amounts to a critique of the state-centred vertical and hierarchical law-making model", although the concept of soft law can actually be explained genealogically from neo-medievalist thought, Savigny's idea of law and language, Ehrlich's idea of living law, Gierke's theory of association, Romano's theory of plurality of legal orders, Gurvitch's idea of legal sociology, to de Sousa Santos's postmodern pluralism (Robilant 2006).

**15** The term hard law refers to legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and delegate to an authority the task of interpreting and applying the law (Abbott and Snidal 2000).

other organisations. These actors bring economic, political, moral and technical arguments to the table and ultimately arrive at solutions that to some extent disadvantage some groups and to some extent favour others: consumers or producers, importers or domestic producers (Schepel 2005). According to Brunsson and Jacobsson (2002), areas dominated by highly established professions, such as health care and the legal system, tend to show relatively little standardisation. Within professions and their spheres of activity, coordination and control can be exercised through shared norms, leaving little room for following externally imposed standards. In this sense, strong professions are similar to strong organisations (Brunsson and Jacobsson 2002).

Paiement (2015) analyses the implementation of private environmental standards, namely the sustainable forestry standard established by the Forest Stewardship Council (FSC), the sustainable palm oil production standard established by the Roundtable on Sustainable Palm Oil (RSPO), and the governance standards of voluntary sustainability standards (VSS) organisations, including FSC and RSPO, established by the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance. Paiement (2015) describes the complexities of non-state lawmaking and the practices of political representation found within it, such that there is a need to critically assess regulatory capacity within the broader global governance networks in which such practices are situated. Issues of representation and participation in these private law regimes will always be questions that will need to be constantly revisited (Paiement 2015).

Brummer (2010) analyses that the sources of international financial law are dominated by private standards, which may be informal but also enforced through treaties. Authorities may select certain aspects of such international treaties without adopting them in their entirety. A country may choose to comply with standards that suit its national economic interests and policies. In contrast, most standards are set by informal intergovernmental bodies that operate by consensus, are non-binding and are not coordinated or led by the head of state but by subordinate bodies. In addition, there are other standard-setting bodies that deal with very specific financial areas, such as the International Accounting Standards Board (IASB) and the International Federation of Accountants (IFAC). The influence of these private standards means that international financial law is not considered to be "law" by legal scholars, especially positivists, due to the absence of a centralised and coercive authority. Unlike other areas such as economic law and international trade, the lack of traditional signposts of legitimacy, the lack of binding force, and the unclear legal identity of international financial lawmakers have not attracted much interest from international law scholars (Brummer 2015).

In international financial law enforcement, political power alone is not enough.[16] There are additional supporting mechanisms to enhance compliance, namely expertise and market pressure (Schemmel 2016). Private standards are created on the basis of expertise, and compliance with standards derives its legitimacy from this expertise. Synonymous with expertise is what Porter (2005) calls technical authority, which is a key element of private standards alongside public and private authority. According to Porter (2005), technical authority is shaped by scientific and technical rules that are legitimated by reference to the scientific method. However, scientific authority that is not aligned with public and private authority becomes abstract knowledge with little relevance to the public good or individual welfare and thus loses its authoritative quality (Porter 2005).

In order to expand compliance in the domestic sphere, some private standards are elevated to public law by regulators who gain democratic legitimacy. Therefore, a common issue regarding the enforcement of these private standards is always legitimacy (see, for example, Richardson and Eberlein 2011), as there is a general view that standard setters tend to act in secret, are dominated by industry and do not represent all interested parties (Schemmel 2016).

The development of private standards in the international financial sector demonstrates that global governance is complex, multi-layered and shaped by a network of different governance infrastructures. This global governance tends to consist of different institutions and networks with overlapping jurisdictions. Loft, Humphrey, and Turley (2006) conclude that, overall, private governance emerges where powerful states choose not to regulate, or where states actively support private actors in creating their own regimes and then work closely with these regimes.

## 3 A Brief History of the Indonesian SAI

Before the proclamation of Indonesian independence (17 August 1945), on 29 April 1945, the Japanese troops who had seized power from the Dutch East Indies colonial government during World War II formed a committee to prepare for Indonesian independence.[17] The committee, called the Investigation Committee for the

**16** Indeed, as Musto (2022) points out, in the case of technocratic governments controlled by experts, the role of politics is marginalised by the economy. Drawing on the writings of Karl Marx, he argues that democracy is threatened by the transfer of political elements to the economy. Beyond democratic jurisdiction and control, economic power dominates politics and dictates its agenda and decisions.

**17** This effort was initiated by the 16th Army (*Rikugun*), the Japanese military corps that carried out the occupation of Java as the first step in fulfilling the promise made by Japanese Prime Minister Kuniaki Koiso on 7 September 1944 to grant independence to all Indonesians (Latif 2013).

Preparation of Indonesian Independence (*Dokuritu Zyunbi Tyoosa-kai* or *Badan oentoek Menjelidiki Oesaha-oesaha Persiapan Kemerdekaan* or BPUPK), was tasked with drafting the Indonesian constitution (Kusuma 2004). In addition to the drafting of the Indonesian constitution, the BPUPK meeting also discussed Montesquieu's doctrine of *trias politica*.

In *De l'esprit des lois*, Montesquieu (1689–1755) mentions three kinds of state power: legislative, executive, and judicial. These three state powers should be exercised by different persons or bodies. If the legislative and executive powers are exercised by the same person or body, there will be no freedom because of the fear that tyrannical lawmakers will also exercise them tyrannically. Similarly, if the judiciary is not separated from the legislative and executive powers, judges will tend to be arbitrary and oppressive (Montesquieu 1989). During the BPUPK meeting, BPUPK member A.A. Maramis explained the need to form a government based on Montesquieu's doctrine of *trias politica*. Maramis' opinion was rejected by Sukarno and Supomo, another BPUPK member, who said that *trias politica* was conservative and insufficient for a government that aimed to achieve social justice. The majority of BPUPK members tended to agree with Sukarno and Supomo and drafted a constitution that was not based on the *trias politica* (Kusuma 2004).

During the BPUPK meeting, seven of the 77 BPUPK members[18] proposed special provisions in the constitution for a state institution authorised to audit state finances, such as the Court of Audit (Algemene Rekenkamer) in the era of the Dutch East Indies government, which was called *Badan Pemeriksa Keuangan*. The text drafted by the BPUPK, which later became the Constitution of 1945, does not specify the duties of the BPK, except that it is to audit the government's responsibility for state finances and to report the results of the audit to the House of Representatives. The explanation of the Constitution of 1945 drafted by Supomo based on Mohammad Hatta's proposal (Kusuma 2004) emphasises the independence of the BPK from the executive.[19] Based

**18** They were Mohammad Hatta, Samsi (Sastrawidagda), K.R.M.T.A. Woerjaningrat, K.R.T. Radjiman Wediodiningrat, R. Abdoelrahim Pratalykrama, R. Ayu Maria Ulfah Santoso, and A.M. Dasaad. The membership of the BPUPK consisted of a chairman (*kaico*), two chairmen (*fuku kaico*) and 60 members (*iin*), followed by six additional members, bringing the total to 69. There were also eight non-voting Japanese special members. The membership of the BPUPK was divided into five groups, namely the Muslim group, the movement group, the pangreh praja (resident/deputy resident, regent), the bureaucratic group (heads of ministry), the royal representative (*kooti*), the *Peranakan* Chinese group (four persons), the Arabs (one person), and the Dutch (one person). The composition of the BPUPK membership also included two women (Latif 2013).

**19** The draft provision that later became Article 23(5) of the Constitution of 1945 states, "To audit the responsibility of the state finances, a Supreme Audit Board is established by law. The results of the audit shall be notified to the House of Representatives," while the explanation states, "The way in which the government spends the money approved by the House of Representatives must be commensurate with that decision. In order to check the government's responsibility, it is necessary to

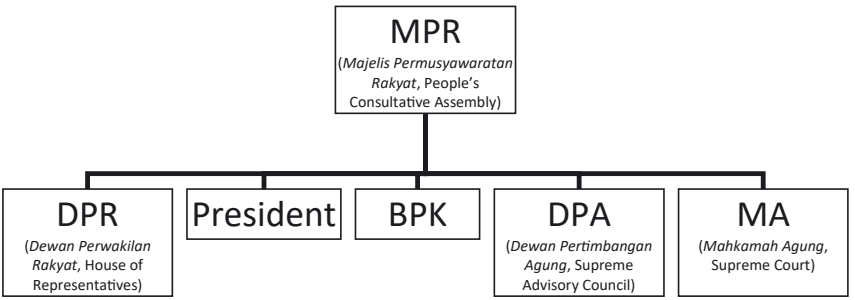


**Figure 1:** Position of BPK in the Indonesian constitutional system (before the amendment).

on the Constitution of 1945, the BPK's position in the Indonesian constitutional system is shown in Figure 1 below.

Article 23(5) of the Constitution of 1945 implies the independence of the BPK only from the government (President), while the independence of the BPK from other high state institutions such as the People's Consultative Assembly, House of Representatives, Supreme Advisory Council, and Supreme Court is not explained. Moreover, it soon became clear that the government of the new country, the Republic of Indonesia, had little choice but to retain, with minor modifications, the institutions of the Dutch East Indies colonial government (Soetoprawiro 2016). Established as one of the few major organs of the state, called "high state institutions" (*lembaga tinggi negara*), the BPK used the colonial legacy regulations of the Court of Audit of the Dutch East Indies.[20] These colonial regulations positioned the SAI within the Napoleonic model. This is not surprising. In the past, the Netherlands (and the Dutch East Indies) were French territories, and the Court of Audit of the Dutch East Indies was established during the regime of H.W. Daendels, who was appointed by Louis Napoléon Bonaparte (King Lodewijk I) as Governor-General of the Dutch East Indies in 1808–1811 (Atmadja 1982; Balk et al. 2007; BPK 1972). Under these colonial regulations, the SAI exercised the *ex ante* functions typical of Napoleonic SAIs. In addition, the SAI set up a treasury court to resolve cases involving state losses. The Cour des comptes, a French SAI run on a judicial model, was the inspiration for the concept.

The rejection of the doctrine of *trias politica* by the framers of the Constitution of 1945 meant that it was both possible and impossible to classify the BPK as part of the

have a body that is independent of the government's influence and power. A body that is subordinate to the government cannot fulfil such a heavy obligation. On the other hand, it is not a body that is above the government. Therefore, the powers and duties of this body are defined by law."

**20** They are the ICW, IAR, and IBW. See Section 5.

judiciary. Possible because all high state institutions in the Constitution of 1945 can have executive, legislative, and judicial functions at the same time. Impossible because the Constitution of 1945 clearly regulates the judicial power in a separate article that has no direct connection to the provisions of the BPK.[21] This is problematic because the technical regulations used by the BPK are colonial regulations that contain the concept of state losses and the judicial function of the BPK in relation to the settlement of state losses.[22] Under Sukarno, Indonesia's first president, the BPK's membership was very large, up to 20 people (BPK 1972), and they could serve for life[23] – something common in the Napoleonic SAI. The BPK could also appoint investigators,[24] as was common in law enforcement agencies. Under Suharto, Indonesia's second president, the BPK had a judicial function to prosecute treasurers and other officials who committed unlawful acts that caused state losses.[25]

Later, the idea of the BPK's independence from the executive was a myth. This was partly due to the unstable governance in the post-independence period, and partly due to the dominance of the executive, which placed the BPK chairman as a minister in Sukarno's cabinet (BPK 1972). This was a common symptom of the perversion of Sukarno's Guided Democracy (1959–1965). Twisting the idea of 'rejecting the doctrine of *trias politica*' from the framers of the constitution, Sukarno sought to place all branches of power, including the BPK and the Supreme Court, under his control. As Pompe (2005) put it, the role of the Supreme Court was drastically reduced in Sukarno's Guided Democracy. In Fakih (2020)'s words, Sukarno's Guided Democracy inadvertently provided a strong managerial blueprint for the establishment of the authoritarian-military-developmentalist New Order state. Sukarno's notion of an integralist state (Nasution 1992) – with himself as "father" and the people as "children" – and his idea of uniting the three major ideologies of nationalism, religion, and communism (*Nasakom*) hastened his downfall.

Through a "crawling coup", which has been replicated in many other countries as the "Jakarta method", the army under the command of General Suharto, with the support of the US Central Intelligence Agency, succeeded in dethroning Sukarno, followed by the mass murder of millions of communists, the banning of the

**21** The provision on the judiciary is found in Article 24 ("Judicial power shall be exercised by a Supreme Court and other judicial bodies in accordance with the law. The composition and powers of these judicial bodies shall be determined by law"), immediately after the provision on the BPK in Article 23(5) of the Constitution of 1945.

**22** For example, Article 58 of the ICW states that the BPK's decision on the settlement of state losses is equivalent to a judge's decision with binding legal force.

**23** Article 116(1) the United States of Indonesia Constitution; Article 81(1) the Provisional Constitution of 1950.

**24** Article 28 BPK Act 1965.

**25** Article 2(2) BPK Decree No 15 of 1971 on BPK Code of Conduct.

ideology of communism/Marxism-Leninism, and the dissolution of the Indonesian Communist Party – the world's largest communist party outside the Soviet Union and China – forever (Bevins 2021). Taking a stand against Sukarno's anti-capitalist and pro-communist policies, Suharto dissolved the Jakarta-Beijing alliance, rejoined the UN, IMF, and World Bank, and ended the conflict with Malaysia in order to obtain economic aid from the West and Japan. In addition, Suharto's New Order also sought economic advice from a group of economists from the Universitas Indonesia's Faculty of Economics, dubbed the "Berkeley Mafia" because several of these economists, including their leader, Widjojo Nitisastro, had studied economics at the University of California, Berkeley (Dick 2002).

During Suharto's New Order, the role and position of the BPK was structurally strengthened and restored on the basis of the Constitution of 1945. Functionally, however, the BPK could not be said to be independent. The Chairman of the BPK, like other state institutions, was chosen by General Suharto from among those closest to him in the military. Three of the four BPK chairmen during the New Order era were senior military officers, i.e. Lieutenant General D. Suprayogi, General Umar Wirahadikusumah, and General M. Jusuf. On the other hand, in 1983 President Suharto established the Financial and Development Supervisory Agency (*Badan Pengawasan Keuangan dan Pembangunan*, BPKP), which played a dominant role in public sector auditing in Indonesia and took over many of the functions of the BPK (Dwiputrianti 2011; Rahman 2018; Syukri 2023), except for its judicial function.

On 21 May 1998, after more than 30 years in power, President Suharto resigned following the collapse of the national economy. This was the widespread impact of the Asian financial crisis, which began in Thailand in 1997. Fragile banking structures and weak corporate governance, dominated by poorly supervised and collusive state-owned banks and companies, led to a systemic banking crisis that shook the national economy and caused mass unrest (Omori 2014). Suharto's New Order was one of the strongest and most effective authoritarian regimes of the Cold War era (Warburton and Aspinall 2019). This is marked by so many violations of human rights; corruption, collusion, and nepotism (*korupsi-kolusi-nepotisme*, KKN); suppression of press freedom (Aspinall 2005); the economic disparity between the center and the regions (Schwarz and Paris 1999); domination of the state and marginalization of the rights of citizens (Aspinall 2005); and centralization of power to the president and the weakening of other branches of power in the state administration system (Robison 2009).

On the same day as President Suharto's resignation, Vice-President Habibie was sworn in as Indonesia's third president. In his short reign, President Habibie immediately responded to public demands for *Reformasi 1998*,[26] e.g. constitutional

**26** In modern Indonesia, the term "Reformasi 1998" refers to the collapse of Suharto's authoritarian New Order. As with the period following Sukarno's authoritarian Guided Democracy, the transition

amendments; law enforcement, human rights, and democracy; and guarantees of press freedom. Last but not least, the eradication of the KKN and the abolition of the dual function of the military.[27] The project to combat the KKN began with the enactment of the Anti-Corruption Act 1999/2001 and the establishment of a specialised law enforcement agency, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK) (Butt 2012). On the other hand, to rescue the national economy, Indonesia received financial assistance from the IMF, World Bank (Wihantoro et al. 2015), and Asian Development Bank (Juwana 2005) which required legal reforms to replace the state budgeting and audit system and introduced a decentralization policy for local governments (Harun, An, and Kahar 2013).

Finally, the amendment to the Constitution of 1945 declared the BPK as the only institution with the power to audit state finances, and the results of the audit are submitted to and followed up by the DPR.[28] The constitution also stipulates that BPK members will no longer be chosen by the President, but entirely by the House of Representatives,[29] and that a BPK office will be established in every province in Indonesia.[30] These provisions have in turn led to the BPK not being independent of

from an authoritarian state has always been referred to using symbols with positive connotations such as "new order" and "reform".

**27** The project to eradicate the KKN and abolish the dual function of the military is in line because the corruption, collusion, and nepotism in Suharto's New Order were partly caused by the misuse of the military's dual function doctrine, which originated from the "middle way" doctrine proposed by General Abdul Haris Nasution in the 1950s. The doctrine sought to give the military a place in all of society's endeavours and activities (ideological, political, economic, social, and cultural). In Suharto's New Order, the doctrine further opened up space for the military to enjoy political life in government and other sectors, such as state-owned and private enterprises (Hariyono 2004; Robison 2009), resulting in a crony capitalist state.

**28** Before the amendment, the Constitution of 1945 stated that the results of BPK audits were "notified" to the House of Representatives and there was no specific stipulation that the House of Representatives should follow up on the results of BPK audits. After the amendment, the audit results "shall be submitted" to the House of Representatives. This shows that the BPK's position, which was previously equal to the House of Representatives, has become subordinate to the House because the results of its work must be submitted to the House.

**29** Before the amendment, the constitution did not specifically regulate the election mechanism of BPK members. After the amendment, the constitution states that BPK members are elected by the House of Representatives. Therefore, although BPK members are independent from the executive branch, they are not independent from the parliament (Simanjuntak 2017).

**30** Indonesia is the largest archipelago in the world, consisting of 17,504 islands with land areas separated by water. Under these conditions, and with development concentrated in densely populated areas such as Java, transport facilities are limited and clearly not easily accessible. Regardless of its formal purpose, the opening of BPK representative offices in 38 provinces in Indonesia is an attempt to control auditor loyalty with the threat of transfer to remote areas, which has implications for disrupting auditor independence (Sumiyana et al. 2021).

parliament (Simanjuntak 2017) and its auditors being subject to a political hegemony (Sumiyana et al. 2021). Thus, since the amendment of the Constitution of 1945 the BPK has been transformed into an SAI that tends to adhere to the Westminster model, as evidenced by its dependence on parliament and lack of judicial independence (Kleinman, Anandarajan, and Palmon 2012). As we will show in Section 5, the BPK has incorporated a number of private international law instruments into its public sector audit regulation, further cementing its Westminster character. These private international law instruments are shaped by actors outside the Indonesian legal framework and non-state (private) actors. These actors, consisting of global professional accounting bodies, draw heavily on private sector auditing standards and focus more on accounting work than on law.

However, the institutional change project did not eliminate the judicial character of the BPK. This is because the national law that replaced the colonial law on public sector auditing still retains the concept of state losses and the BPK's judicial function in relation to the settlement of state losses. This in turn creates confusion about the BPK's position in the Indonesian legal system. As we will show in the case studies in Section 7, the BPK's audit findings and recommendations are often not in line with the judicial process. As Rahman (2018) writes, BPK audits and their functions have shifted from "protecting state funds" to "public accountability and transparency", and from "recovering state losses" to "benefiting citizens".

# 4 Historical Roots of Indonesian Legal System in a Nutshell

The Indonesian legal system, according to Jaspan (1965), is a legal syncretism that causes perplexity. Isra and Tegnan (2021) argue that it was through such syncretism that the founding fathers were able to prevent the newly formed nation from breaking up into "a thousand little states". Although eventually continuing the practice of colonial law, the early period of the Indonesian national government in 1945–1950 attempted to find a national law that was compatible with the "features of the nation" (*kepribadian bangsa*) (Wignjosoebroto 1995). Historically, this can be traced back to the influence of Cornelis van Vollenhoven in 1905, when the Dutch East Indies government wanted to impose the uniformity of European (Dutch) law on the entire population. With the professional authority of Leiden University and his academic network in the Netherlands and the Dutch East Indies, van Vollenhoven succeeded in getting the government to abandon the plan, promoting the existence of indigenous customary (*adat*) law and, thus, legal pluralism (Lev 1985).

Ultimately, the Indonesian national government established laws based on adat law, Islamic law, and the civil law system inherited from the Dutch East Indies colonial government. The civil law system plays a role in providing legal substance (criminal and civil) and legal structures (judiciary and law enforcement agencies). In contrast to the criminal law, which was made applicable to the entire population through the enactment of the Dutch East Indies Criminal Code (*Wetboek van Strafrecht*, WVS) in 1946 with minor modifications,[31] the national government maintained the plurality of civil law, so that Western civil law both coexisted and competed with customary and Islamic law. Although it no longer differentiated the population by class, this pattern (unification of criminal law and pluralism of civil law) was a policy of the colonial government that was maintained by the national government.

Continuing the Japanese occupation government's policy of reorganising and eliminating judicial dualism (1942–1945) (Han 1998; Wignjosoebroto 1995), the national government established a tiered judiciary consisting of district courts and high courts (1945), as well as special courts such as military courts (1946), state administrative courts (1986), religious courts (1989), and tax courts (2002) – all under the Supreme Court. Following the constitutional amendment, the government established a special court to review laws against the constitution (the Constitutional Court)[32] and independent institutions with quasi-judicial functions, such as the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*, KPPU), the Electoral Supervisory Commission (Badan Pengawas Pemilihan Umum, Bawaslu), the Information Commission (*Komisi Informasi*), the Broadcasting Commission (*Komisi Penyiaran Indonesia*, KPI), and the Honourable Board of Election Organisers (*Dewan Kehormatan Penyelenggara Pemilihan Umum*, DKPP). Judges, prosecutors, and the police are the main actors and representatives of the state in the law enforcement process. As described by Lev (1965), these three actors have competed for political influence and power since the early days of the modern state, which has influenced the development of Indonesian law today.

No more *adat* courts since 1960 (Lev 1973). However, the legislature, and executive powers issue laws that require judges to consider the laws that live in the community,[33] and the state provides recognition and guarantees for the existence of

**31** The Dutch East Indies Criminal Code reenacted as national law is the Dutch East Indies Criminal Code published on 8 March 1942. In Dutch and without an official Indonesian translation, it was in force from 1946 to 2023. On 2 January 2023, the government of President Joko Widodo created a new criminal code with 624 articles.

**32** The Constitutional Court then became a new high state institution in the Indonesian constitutional system based on the Amended Constitution of 1945, equal to the President, the People's Consultative Assembly (no longer the highest state institution), the House of Representatives, the Supreme Court, and the BPK.

**33** Article 5(1) Judicial Power Act.

indigenous and tribal peoples.[34] President Sukarno's regime (1950–1966) created the jargon of "revolutionary law" to lift the unwritten *adat* law to replace the colonial law that was still in effect after Indonesia's independence. Sukarno referred to Karl Liebknecht (1871–1919) to attack old-fashioned legal experts who are still stuck in colonial law enforcement: "One cannot make a revolution with a lawyer." Despite the support of influential legal experts such as Wirjono Prodjodikoro (Chairman of the Supreme Court, 1952–1966) and Sahardjo (Minister of Justice, 1959–1963), it was not easy for the judges to implement Sukarno's ideas because these young judges who were educated in civil law teachings did not dare to make new laws (based on *adat* values) and develop a tradition of precedent (Lev 1965).

Islamic law gives influence not only in substance but also in the structure of national law. Indonesia is widely recognised as the world's most populous Muslim country, but has chosen not to make Islamic law the basis of the state. Nevertheless, the relationship between religion (Islam) and the state has been an ongoing issue since the country's founding in 1945. As a result, Muslim aspirations have coloured the style of national law that has evolved. Islamic law seeks to replace Western civil law in civil matters for Indonesian Muslim citizens. Examples include the Marriage Act 1974 and a number of other regulations based on the provisions of Islamic law. In 1989, religious courts were established to resolve disputes over Muslim civil matters. The government also established the office of religious affairs (*Kantor Urusan Agama*, KUA), under the structure of the Ministry of Religious Affairs, to facilitate the registration of marriages under Islamic law (Kharlie, Fathudin, and Triana 2021).

The above-mentioned legal pluralism, as a *de facto* condition that post-colonial Indonesia maintains, raises the question of what kind of national law should be formed to replace colonial law. In the context of public sector audits, legal reforms of colonial law are not entirely "national" in the sense of being based on the "features of the nation", as Sukarno claimed, but are subject to transnational forces that operate beyond the sovereignty of the nation-state, as we will show further in Section 5.

## 5 From Colonial to (Private inter)national Law: The Development of Indonesian Public Sector Audit Regulation

In the authoritarian states of Sukarno's Guided Democracy and Suharto's New Order, Indonesia's public sector audit regulations did not evolve. From independence in 1945 until the collapse of the New Order in 1998, Indonesia retained

**34** Article 18B(2) the Amended Constitution of 1945.

colonial laws inherited from the Dutch East Indies government as the technical regulations for public sector auditing used by the BPK. The colonial law consists of the Dutch East Indies Accountability Act (*Indische Comptabiliteitswet* [ICW] 1864), the Instruction and Further Provisions for the Court of Audit of the Dutch East Indies (*Instructie en Verdere Bepalingen voor de Algemene Rekenkamer* [IAR] 1898), and the Dutch East Indies Companies Act (*Indische Bedrijvenwet* [IBW] 1927). The enactment of the regulation is based on the transitional rule in the Constitution of 1945, which states that all existing regulations remain in effect until a new regulation is enacted.

The persistence of colonial regulations in Indonesian public sector auditing is therefore inconsistent with Sukarno's "revolutionary law" in the early period of his rule.[35] After the collapse of the authoritarian state in 1998 and constitutional amendments in 1999–2002, instead of creating a genuine national law to replace the colonial law, Indonesia massively adopted private international law instruments in public sector auditing legislation. The project reformed the more than 50-year-old colonial public sector audit regulations and produced the so-called "State Finance Law Package", consisting of the State Finance Act 2003, State Treasury Act 2004, State Audit Act 2004, and BPK Act 2006.

The State Audit Act 2004 opens space for the involvement of actors outside the Indonesian legal framework and non-state (private) actors in the law-making process of public sector audit regulation in Indonesia. As stated in the State Audit Act 2004, "the conduct of the audit […] *shall be based on an audit standard*. These standards are prepared by the BPK taking into account *the standards of the international auditing profession*. Before setting the standards, BPK must consult with the government and *professional organisations in the field of auditing*."[36]

In order to carry out its duties, the BPK issues various technical regulations related to public sector auditing, which are internally applicable to the BPK and/or other parties working for and on behalf of the BPK[37] in the form of regulations or BPK decisions. They are legally binding. The technical regulations, in the form of standards, guidelines, instructions, and technical guidance, refer to a number of private international law instruments commonly used and developed in the private sector of international finance. The pattern of adoption or law-making process of public sector audit regulations in Indonesia conducted by the BPK is also influenced by the audit

**35** See Section 4.

**36** In addition, Article 5(2) of the State Audit Act 2004 states, "The process of drafting the standards includes steps that need to be taken carefully (due process) by involving relevant organisations and taking into account international audit standards in order to produce generally accepted standards."

**37** According to State Audit Act 2004 and BPK Act 2006, the purpose of this formulation is private sector accountants. This shows the involvement of non-state actors not only in law-making, but also in the implementation of state duties and authorities.

practices of other countries and the principles, standards, and guidelines issued by international organisations such as INTOSAI.[38]

On 7 March 2007, the BPK issued BPK Regulation No 1 of 2007 on Auditing Standards (*Standar Pemeriksaan Keuangan Negara*, SPKN) as a technical regulation of the State Audit Act 2004 and the BPK Act 2006. In addition to referring to the Government Auditing Standards (*Standar Audit Pemerintahan*, SAP) issued by the BPK itself in 1995,[39] SPKN 2007 refers to six regulations issued by actors outside the Indonesian legal framework and by non-state (private) actors (see Table 2). First, Generally Accepted Auditing Standards (GAAS) [2002] issued by the American Institute of Certified Public Accountants (AICPA).[40] Second, Standards for the Professional Practice of Internal Auditing [2003] issued by the Institute of Internal Auditors (IIA).[41] Third, Professional Standards of Public Accountants (*Standar Profesional Akuntan Publik*, SPAP) [2001] issued by the Indonesian Institute of Accountants (*Ikatan Akuntan Indonesia*, IAI).[42] Fourth, Auditing Standards [1995] issued by the INTOSAI. Fifth, Internal Control Standards [2001] issued by the INTOSAI. Sixth, Generally Accepted Government Auditing Standards (GAGAS) [2003] issued by the US General Accounting Office (US GAO).[43]

On 6 January 2017, the BPK replaced SPKN 2007 and issued the BPK Regulation No 1 of 2017 (SPKN 2017). The new SPKN also refers to standards developed by a number of actors outside the Indonesian legal framework and non-state (private) actors (see Table 3). The first is the Auditing Standards (*Standar Audit*, SA) [2013] issued by the Indonesian Institute of Certified Public Accountants (*Institut Akuntan Publik Indonesia*, IAPI). The IAPI was a section of the IAI that evolved into a division

**38** BPK has been involved in INTOSAI since 1968. See Badan Pemeriksa Keuangan, 'Hubungan Internasional' <https://www.bpk.go.id/page/hubungan-internasional> accessed 26 January 2023.

**39** SAP 1995 is not an official, legally binding standard like SPKN 2007.

**40** The AICPA is a private professional association that accommodates certified public accountants (CPAs). With historical roots dating back to 1887 in the United States, the AICPA develops standards for auditing private companies, provides educational guidance materials to its members and monitors and enforces compliance with professional technical and ethical standards. See AICPA, 'History' <https://www.aicpa.org/resources/article/history> accessed 26 January 2023.

**41** Founded in 1941, the IIA is a private professional association with headquarters in United States. The IIA is an internal audit professional authority working in the areas of internal audit, risk management, governance, internal control, information technology auditing, education and security. See IIA, 'About the IIA' <https://www.theiia.org/en/about-us> accessed 26 January 2023.

**42** The IAI is a private professional association that brings together all Indonesian accountants, whether they practice as public sector accountants, private sector accountants, educator accountants, public accountants, management accountants, tax accountants and forensic accountants. See IAI, 'Profile' <http://iaiglobal.or.id/v03/tentang_iai/tentang-iai> accessed 26 January 2023.

**43** The US GAO is an independent, nonpartisan United States SAI working for Congress. See US GAO, 'About' <https://www.gao.gov/about> accessed 26 January 2023.

**Table 2:** SPKN 2007 references.

| No | Standard | Standard setter | Standard source(s) |
|---|---|---|---|
| 1 | GAAS 2002 | AICPA, a US private body | – |
| 2 | Standards for the Professional Practice of Internal Auditing 2003 | IIA, a US private body | – |
| 3 | SPAP 2001 (full adoption of financial audit and attestation) | IAI, an Indonesian private body | AICPA Professional Standards 1998 |
| 4 | Auditing Standards 1995 | INTOSAI, a public-private body | – |
| 5 | Internal Control Standards 2001 | INTOSAI, a public-private body | – |
| 6 | GAGAS 2003 | US GAO, a US public body | AICPA Professional Standards |
| 7 | SAP 1995 | BPK, an Indonesian public body | IAI SPAP 1994; US GAO GAGAS 1994 |

and then reorganised into a separate institution in 2007 to become a member of the IFAC.[44] Founded in Germany in 1977, headquartered in New York, USA, and registered as an NGO in Geneva, Switzerland (Loft, Humphrey, and Turley 2006) – identities that clearly indicate the "global" nature of the institution – IFAC has two independent bodies, the International Public Sector Accounting Standards Board (IPSASB) and the International Auditing and Assurance Standards Board (IAASB). The IPSASB develops International Public Sector Accounting Standards (IPSAS), which are accounting standards specifically for the public sector. IPSAS are developed based on the International Financial Reporting Standards (IFRS) issued by the IASB (Christiaens, Reyniers, and Rollé 2010). On the other hand, the IAASB develops International Standards on Auditing (ISAs) that govern the education, ethics, and auditing practices of auditors (Boolaky and Soobaroyen 2017). As a result, IAPI SA [2013] converges with IAASB/IFAC ISA [2009]. Second, Fraud Examiners Manual [2014] issued by the Association of Certified Fraud Examiners (ACFE), a private organisation based in Texas, USA. Third, the International Standards of Supreme Audit Institutions (ISSAI) issued by the INTOSAI. The ISSAI adopts the IAASB ISAs, specifically of financial audit. Fourth, GAGAS [2011] issued by the US GAO.

Drawing on international standards from global accounting bodies, SPKN has reshaped BPK's institutional model and function in public sector auditing in Indonesia. Before the reform of the public sector audit legislation in 2003–2006, the BPK worked on the basis of a free interpretation of the ICW, IAR, and IBW and was

**44** IAPI, 'IAPI History' <https://iapi.or.id/sejarah-iapi> accessed 22 September 2022.

**Table 3:** SPKN 2017 references.

| No | Standard | Standard setter | Standard source |
|---|---|---|---|
| 1 | SA 2013 | IAPI, an Indonesian private body | IAASB/IFAC ISA 2009 (full adoption) |
| 2 | Fraud Examiners Manual 2014 | ACFE, a US private body | – |
| 3 | ISSAI | INTOSAI, a public-private body | IAASB/IFAC ISA 2009 (full adoption, specifically of financial audit) |
| 4 | GAGAS 2011 | US GAO, a US public body | AICPA Statements on Auditing Standards |

institutionally guided by the BPK Acts of 1963, 1965, and 1973. During this period, interaction with transnational actors was not established, although the BPK has been a member of the INTOSAI since 1956. After the reform, the BPK issued SPKN 2007, the first legally binding standard for public sector auditing, which largely adopts the IAI's SPAP. After ten years, BPK replaced SPKN 2007 on the pretext that it was no longer in line with the development of international auditing standards. The most obvious difference between SPKN 2007 and SPKN 2017 is the shift from rule-based to principle-based standards.[45] The BPK is currently drafting a new SPKN to replace SPKN 2017. The draft SPKN 2022 still refers to standards issued by non-state (private) actors and outside the Indonesian legal framework.[46] Figure 2 below provides an overview of the development of public sector audit regulation in Indonesia.

Following the idea of Brenninkmeijer et al. (2018), we agreed that there are fundamental differences in the orientation of private and public sector audits. The private sector audit is oriented towards the profit of the audited economic or business entity, while the public sector audit is oriented towards the compliance of the public funding authority in achieving the objectives of the public entity. In the Indonesian context, the public sector audit conducted by the BPK is aimed at

**45** This shift from rules-based to principles-based standards is closely related to changes in international accounting standards. Rules-based standards are accounting standards originally developed by the Financial Accounting Standards Board (FASB), a private accounting standard-setting body in the United States, with its Generally Accepted Accounting Principles (GAAP). Meanwhile, IFRS, developed by the IASB, are principles-based standards. After the Enron case, the US authorities questioned GAAP, which had been used for years in the United States to improve compliance and protect companies from litigation risks (Porter 2005).

**46** See BPK, 'Permintaan Tanggapan atas Draf Eksposur SPKN' [Request for comments on the SPKN Exposure Draft] <https://www.bpk.go.id/page/standar-pemeriksaan-keuangan-negara> accessed 13 March 2023.

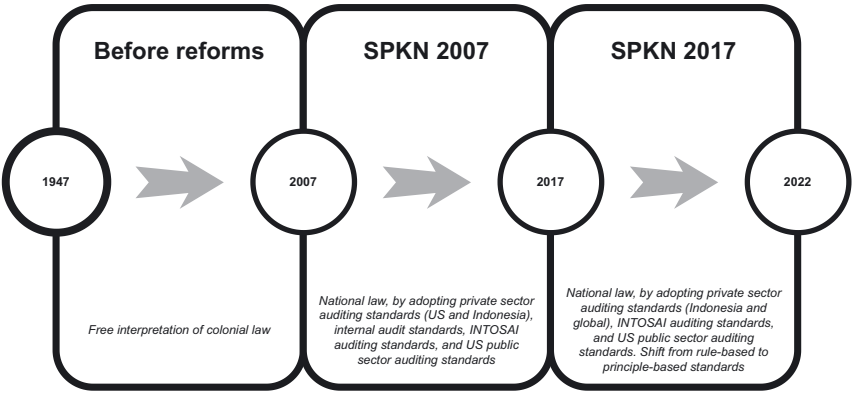


**Figure 2:** Development of Indonesia's public sector audit regulations.

achieving the state's objectives as set out in the Constitution of 1945, i.e. to promote public welfare.

However, external influences that occurred during and after Indonesia's constitutional amendment led the BPK to massively adopt private sector audit standards and Westminster SAI audit standards, such as the US GAO (Noussi 2012). Such adoption is part of a wider agenda in which transnational forces are operating and influencing public sector audit reform in Indonesia, both legally and institutionally. The collapse of the authoritarian state opened the door to the involvement of globally connected transnational private actors organised into professional bodies. As we show in the case studies in Section 7, the adoption of auditing standards from different jurisdictions is not always consistent with a country's legal system. In the case of Indonesia, while policymakers retained the judicial function that the BPK inherited from the Napoleonic SAI, the adoption of private standards and the Westminster SAI ultimately undermined the credibility of the BPK's audit reports and recommendations.

## 6 Genealogy of the Concept of State Losses and the Main Role of the Indonesian SAI

The concept of state losses has its historical roots in the concept of civil losses in the Dutch East Indies Civil Code (*Burgerlijk Wetboek*, BW) (Pramono 2020). Articles 1365–1367 of the BW state, "Any unlawful act that causes loss to another obligates the person who caused the loss through his/her fault to compensate for the loss. A person

is liable not only for loss caused by his/her own acts, but also for loss caused by his/her negligence or recklessness. A person is liable not only for loss caused by his/her own acts, but also for the acts of his/her dependants or property under his/her control."

The BW is a revised version of the Napoleon Code with the old customary law and institutions of the Netherlands (Oppusunggu 2015). The Napoleonic Code of 1807 was a revision of the *Code Civil des Francais* published in 1804. The Napoleonic Code was a combination of Roman law, old French customary law (Germanic), and canon law (Catholic). The Napoleonic Code was enacted in the Netherlands when it was a French territory and was eventually enacted in the Dutch East Indies as BW in 1847 (Hariyanto 2013). The enactment of the BW in the Dutch East Indies is evidence of a policy of legal pluralism. This is because the BW does not apply to the entire population, but only to Europeans, Japanese, Chinese, and others identified with these groups. The indigenous population was governed by customary or Islamic law. As mentioned in Section 4, the unification of criminal law and the pluralism of civil law were a compromise between the colonial government's policy of maintaining the supremacy of Western law in the colonies – called *bewuste rechtspolitiek* – and the protests of legal scholars such as van Vollenhoven and his student Barend ter Haar Bzn, who understood the reality of legal pluralism in the colonies. After Indonesia's independence and to this day, the BW remains the basis of consideration for judges in deciding civil cases for all groups without distinction (Hariyanto 2013).

The concept of civil losses from the BW published in 1847 was later transferred to the concept of state losses in the Dutch East Indies Accountability Act (ICW) published in 1864 and the Instruction and Further Provisions for the Court of Audit of the Dutch East Indies (IAR) published in 1898. These regulations empowered the Court of Audit of the Dutch East Indies (Algemene Rekenkamer) to settle state losses caused by treasurers (Articles 77 and 78a–88 ICW; Articles 36 and 39 IAR) or non-treasurer officials (Article 74 ICW).

After Indonesia's independence, the concept of state loss was maintained through the re-enactment of the ICW and IAR based on the transitional provisions of the Constitution of 1945. Towards the birth of Sukarno's Guided Democracy, marked by the resignation of Mohammad Hatta as Indonesian Vice-President on 1 December 1956[47] and followed by a series of regional rebellions, the concept of state loss was incorporated into the anti-corruption regulations. This stemmed from President

**47** As the twin proclaimers of Indonesian independence, Sukarno and Hatta are always mentioned together. Despite their contrasting personalities, the two were very much united in the early days of the independence struggle and eventually succeeded in leading their nation to the gates of independence. With his oratorical skills, Sukarno stirred the spirit of the people to participate in the physical struggle. With his diplomatic skills, Hatta won much international sympathy for Indonesian independence.

Sukarno's policy of declaring a state of war emergency on 14 March 1957 in response to these rebellions, which were generally led by army officers outside Java, namely in Sumatra and Sulawesi (Hariyono 2004). The declaration of a state of war opened up the army's involvement in economic, social and political life. General Abdul Haris Nasution's "middle way" approach also gained momentum.[48] In fact, the declaration of a state of war was Nasution's idea that Sukarno realised (Hariyono 2004).

A few days after the declaration of a state of war, Nasution, as the central warlord and head of the army, and other army leaders held a meeting to design an anti-corruption operation. This operation gave the army the legal authority to examine, investigate, and prosecute state officials suspected of corruption. This was an unconventional policy, but it received a lot of support from the public (Hariyono 2004). In the end, the military abused its anti-corruption role to protect corrupt acts committed by the military itself. The military's involvement in the takeover of Dutch companies and plantations gave it access to informal sources of funding that were not subject to public scrutiny. This allowed military officers to obtain large amounts of slush funds, which were used to increase their influence and power. The military also obtained other funding opportunities for its role in import-export to overcome the country's economic difficulties, which were also eventually abused. For example, in the Tanjung Priok case in late 1958, when Attorney General Gatot Tarunamihardja wanted to investigate smuggling (illegal export-import) by military officers, he himself was arrested by Nasution, having previously been the victim of a collision allegedly orchestrated by the military (Hariyono 2004).

As a legal basis for his anti-corruption operations, Nasution issued what is known as the first anti-corruption regulation in Indonesia, Military Emergency Regulation No. PRT/PM/06/1957. The regulation adopted the concept of state losses from the ICW and IAR by defining corruption as "any act by any person, whether for the benefit of him/herself, another person or entity, which directly or indirectly causes losses to the state's finances or economy". The adoption of the concept of state losses from the ICW and IAR has in turn created a special offence that does not exist in the historical roots of Indonesian criminal law, the Dutch East Indies Criminal Code (Komisi Pemberantasan Korupsi et al. 2019). Later, this provision was always present and continuously maintained in subsequent anti-corruption regulations, such as the Army War Regulation No. PRT/Perpu 013/1958, Anti-Corruption Act 1960, Anti-Corruption Act 1971, and Anti-Corruption Act 1999/2001.

In 2012, the United Nations reviewed Indonesia's implementation of the United Nations Convention against Corruption (UNCAC) and recommended that Indonesia remove the state loss element from the Anti-Corruption Act 1999/2001 (United Nations 2012). To date, however, Indonesia has not implemented this recommendation.

**48** See footnote number 27.

Indonesia's reluctance to remove the state loss element from its anti-corruption regulations is understandable because, so far, of the seven categories of corruption offences under the Anti-Corruption Act 1999/2001,[49] state loss corruption regulated under Articles 2[50] and 3[51] is the most popular corruption offence (Komisi Pemberantasan Korupsi et al. 2019). For example, of the 1385 corruption indictments in 2021, 1188 indictments (85.78 %) were for violating Articles 2 and 3 of the Anti-Corruption Act 1999/2001, and 1078 people were convicted by judges for violating these articles (Ramadhana, Easter, and Anandya 2022).

On the other hand, after the constitutional amendments of 1999–2002, although the ICW and IAR were replaced by the State Finance Act 2003, State Treasury Act 2004, State Audit Act 2004, and BPK Act 2006, Indonesia retained the concept of state losses and the role of the BPK in the settlement of state losses. These regulations define state losses as "shortages of money, securities, and goods that are real and certain in amount as a result of unlawful acts either intentionally or negligently" and the BPK is empowered to assess and/or determine the amount of state losses committed by treasurers, managers of state-owned enterprises (SOEs), and other institutions or bodies that manage state finances. These regulations also contain provisions for the settlement of state losses based on three subjects, i.e. state losses caused by unlawful acts of (1) treasurers, (2) other civil servants, and (3) SOEs managers. The procedure for the settlement of state losses caused by unlawful acts of treasurers and SOEs managers is the BPK domain and is regulated through BPK Regulation No. 3 of 2007. Meanwhile, the procedure for the settlement of state losses caused by unlawful acts of other civil servants is the government domain and is regulated through Government Regulation No. 38 of 2016.

The procedure for the settlement of state losses under the two regulations is similar (see Figure 3). First, the information or indication of state losses must be verified by the head of the work unit where the indication of state losses occurred. Second, the results of the verification are submitted to the BPK (if the subject is a

**49** See footnote number 5.

**50** Article 2 Anti-Corruption Act 1999/2001 states, "(1) Any person who unlawfully commits an act to enrich himself or herself or another person or company that may cause losses to the state's finances or economy shall be punished by life imprisonment or imprisonment for a term of not less than four years and not more than twenty years and a fine of not less than IDR 200 million and not more than IDR 1 billion; (2) If the offence referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed."

**51** Article 3 Anti-Corruption Act 1999/2001 states, "Any person who, with the aim of benefiting himself or herself or another person or company, abuses his or her authority in a way that may cause losses to the state finances or economy shall be punished with life imprisonment or imprisonment for a term of not less than one year and not more than twenty years and/or a fine of not less than IDR 50 million and not more than IDR 1 billion."

treasurer) and to the highest authority of the work unit (if the subject is another civil servant). Third, if the element of unlawful acts is proven (by the BPK if the subject is the treasurer and by the highest authority of the work unit if the subject is another civil servant), the highest authority of the work unit asks the treasurer and another civil servant to sign the absolute liability letter (*Surat Keterangan Tanggung Jawab Mutlak*, SKTJM). Fourth, if the SKTJM is not obtained from the treasurer and another civil servant, the highest authority of the work unit issues a temporary charge decision (*Surat Keputusan Pembebanan Penggantian Kerugian Negara Sementara*, SKP2KS). For SKP2KS, an appeal can be made and processed by the Advisory Council for the Settlement of State Losses (*Majelis Pertimbangan Penyelesaian Kerugian Negara*), which is formed by the highest authority of the work unit. Fifthly, the BPK, through the Treasury Claims Court, issues a charge decision (*Surat Keputusan Pembebanan*, SKP) against the treasurer, and the highest authority of the work unit, based on the decision of the Advisory Council for the Settlement of State Losses, issues SKP against the other civil servants. SKTJM, SKP2KS, and SKP are the basis for claiming compensation for state losses.

It can be argued that state loss is a resilient concept because it continues to survive despite several changes of political regime. Reforms and major changes in the constitutional system have not diminished its appeal as it continues to be contested by a number of parties with different interests. In addition to the BPK's authority to resolve state losses, the State Audit Act 2004 also gives the BPK the power to conduct an "investigative audit to uncover evidence of state losses and/or criminal elements". This unfamiliar term in the audit literature raises new problems because, first, the investigative function is well established in the Indonesian criminal justice system and has its own institutional structure, so that, as we show in the case analysis in Section 7.4, the findings of BPK investigative audits are easily countered by the status quo.

Second, as we show in the case analyses in Section 7.5, there is an assumption that investigative audits, which are a form of special purpose audit of the BPK according to the State Audit Act 2004, have a different role and purpose from financial (and performance) audits. This, in turn, is one of the reasons why auditors are less free to detect and investigate fraud, illegal acts, and abuse in financial and performance audits, assuming that this should be done in investigative audits. Third, the inclusion of the term investigative audit in the law restores the existence of a competing institution to the BPK, which in the past was part of an authoritarian system of government.[52] As we show in Sections 7.2, 7.3 and 7.5, the credibility of the BPK's audit results is undermined by the results of the BPKP's investigative audits in corruption cases involving state losses.

52 See Section 3.

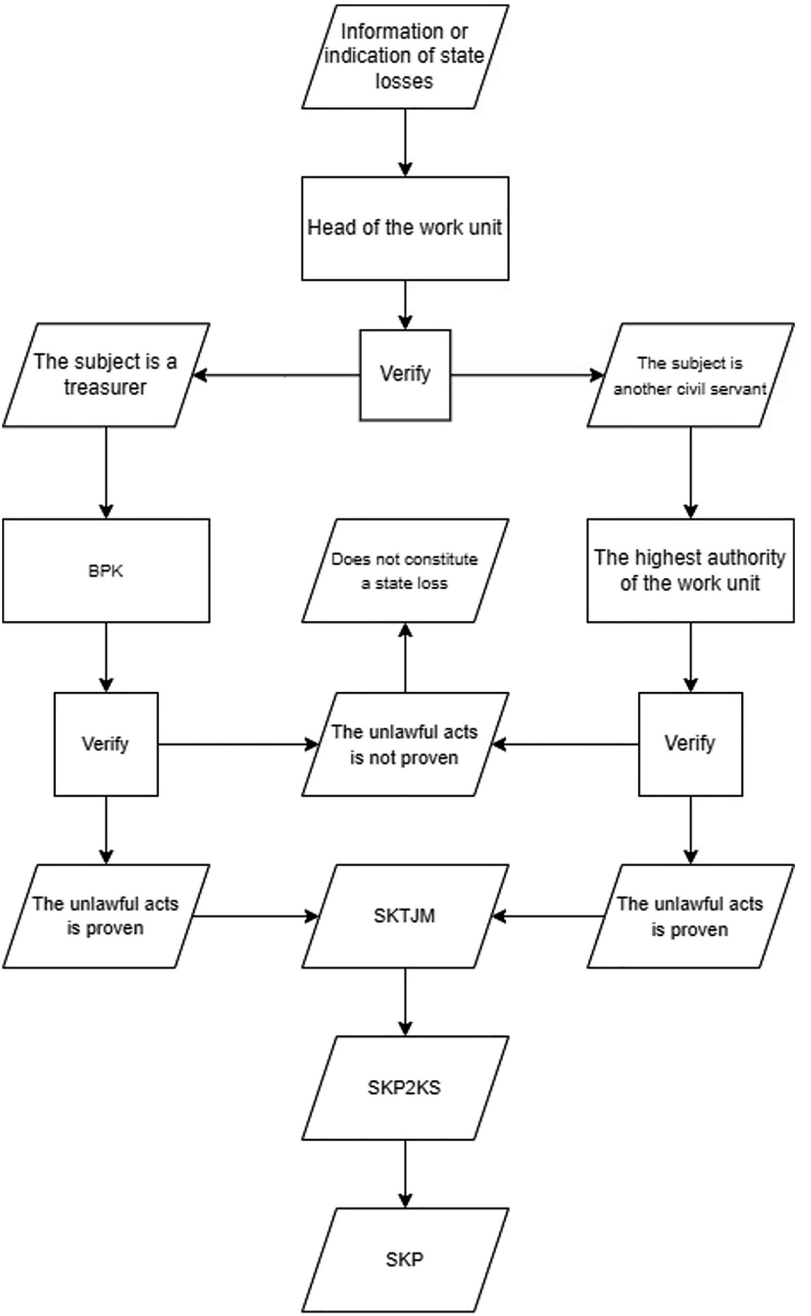


**Figure 3:** Administrative settlement of state losses. Note: BPK: *Badan Pemeriksa Keuangan* (Indonesian SAI). SKTJM: *Surat Keterangan Tanggung Jawab Mutlak* (absolute liability letter). SKP2KS: Surat Keputusan Pembebanan Penggantian Kerugian Negara Sementara (temporary charge decision). SKP: *Surat Keputusan Pembebanan* (charge decision).

# 7 Audit Recommendations of the Indonesian SAI in a Post-authoritarian State: Case Studies

## 7.1 The Formulation of Audit Recommendations in the BPK Audit Report

As we wrote in Section 1, the BPK's audit recommendations acquired new significance after the collapse of the authoritarian state in 1998 and the constitutional amendments of 1999–2002. With stricter and more detailed rules on the follow-up of audit recommendations, auditees have followed up on 624,137 audit recommendations (94.44 %) out of a total of 660,894 audit recommendations issued by the BPK since 2005 (BPK 2022a). The audit recommendations are derived from the financial audit report, the performance audit report, and the special purpose audit report. Based on the BPK Act 2006, all types of BPK audit reports are BPK decisions. This means that BPK audit reports are legal products that have legal consequences and are subject to judicial review.

Since the enactment of the State Audit Act 2004 and BPK Act 2006, BPK has developed a formulation of audit reports that are constructed through standards, guidelines, instructions, and technical guidelines that are embodied in administrative law products. The structure of the BPK audit report usually consists of one or more audit findings consisting of condition, criteria, effect, cause, response of the responsible official, and recommendation. The format of these audit findings is set out in SPKN 2007 and fully adopts the format of audit findings set out in the US GAO audit standard (2003).[53] However, SPKN 2007 modifies the format by adding the response of the responsible official. Table 4 below shows an example of the format of BPK's audit findings based on the audit findings we analysed in Section 7.3 (BPK 2014).

The formulation of audit recommendations by BPK is dependent on the comprehensiveness and lucidity of audit findings information provided by the auditors. Complete and clear information will facilitate the formulation of audit recommendations. In addition, auditors need to provide legal arguments for any problems they find. Like judges (Kleinman, Anandarajan, and Palmon 2012; Paiement 2019), the role played by BPK auditors in each audit assignment is an attempt to compare conditions and criteria. Criteria are almost always in the form of formal written rules. Audit findings brought by auditors from the field must be reviewed in stages by team leaders, supervisors, and audit leaders as part of quality control.

**53** US GAO GAGAS 2003 (Chapter 5 Reporting Standards for Financial Audits; Chapter 6 General, Field Work, and Reporting Standards for Attestation Engagements; Chapter 7 Field Work Standards for Performance Audits; Chapter 8 Reporting Standards for Performance Audits).

**Table 4:** Format of BPK audit findings.

| Audit finding | Section | English summary |
|---|---|---|
| *Keterlambatan penyelesaian pekerjaan atas 51 paket pekerjaan belanja mod20al tahun anggaran 2013 pada 22 satker di lingkungan Kementerian Pendidikan dan Kebudayaan belum dikenakan sanksi denda keterlambatan kepada rekanan penyedia barang/jasa minimal sebesar Rp10,54 miliar.* | Title | Fines of IDR 10.54 billion not imposed for late completion of 51 capital expenditure projects in 2013. |
| *BPK telah melakukan pemeriksaan secara uji petik atas pelaksanaan pekerjaan-pekerjaan yang dianggarkan dalam belanja modal pada satker-satker di lingkungan Kementerian Pendidikan dan Kebudayaan (Kemendikbud) selama tahun anggaran 2013 dan ditemukan Pejabat Pembuat Komitmen/Kuasa Pengguna Anggaran (PPK/KPA) pada 22 satker di lingkungan Kemendikbud tidak menetapkan denda keterlambatan sekurang-kurangnya sebesar Rp10.546.174.978,34 atas 51 paket pekerjaan senilai Rp560.242.440.277,00 yang mengalami keterlambatan antara 2 s.d. 102 hari kalender. Rincian denda dapat dilihat pada Lampiran 9.*<br>*PPK tidak mengenakan denda keterlambatan antara lain dengan alasan karena keterlambatan pengesahan DIPA dan terdapat permasalahan teknis pada sarana prasarana di lapangan (bongkaran bangunan lama, daya listrik, perizinan) sehingga penyelesaian pekerjaan menjadi terhambat. Namun, alasan-alasan tersebut tidak sesuai dengan ketentuan dalam pengelolaan keuangan negara, di mana jangka waktu penyelesaian pekerjaan adalah sebagaimana yang disepakati dalam perjanjian antara PPK dan penyedia jasa.*<br>*BPK telah melakukan pemeriksaan secara uji petik atas pelaksanaan pekerjaan-pekerjaan yang dianggarkan dalam belanja modal pada satker-satker di lingkungan Kementerian Pendidikan dan Kebudayaan (Kemendikbud) selama tahun anggaran 2013 dan ditemukan Pejabat Pembuat Komitmen/Kuasa Pengguna Anggaran (PPK/KPA) pada 22 satker di lingkungan Kemendikbud tidak menetapkan denda keterlambatan sekurang-kurangnya sebesar Rp10.546.174.978,34 atas 51 paket pekerjaan senilai Rp560.242.440.277,00 yang mengalami keterlambatan antara 2 s.d. 102 hari kalender. Rincian denda dapat dilihat pada Lampiran 9.* | Condition | The results of BPK's audit of the realisation of capital expenditure in the Ministry of Education and Culture in 2013 showed that fines of at least IDR 10.54 billion were not imposed on 51 work packages worth IDR 560 billion that were completed late by vendors. The responsible officials have not imposed fines because there are technical problems that are not exempted reasons under the contract. There are also fines that have been set that are not in line with the regulations. |

**Table 4:** (continued)

| Audit finding | Section | English summary |
|---|---|---|
| *PPK tidak mengenakan denda keterlambatan antara lain dengan alasan karena keterlambatan pengesahan DIPA dan terdapat permasalahan teknis pada sarana prasarana di lapangan (bongkaran bangunan lama, daya listrik, perizinan) sehingga penyelesaian pekerjaan menjadi terhambat. Namun, alasan-alasan tersebut tidak sesuai dengan ketentuan dalam pengelolaan keuangan negara, di mana jangka waktu penyelesaian pekerjaan adalah sebagaimana yang disepakati dalam perjanjian antara PPK dan penyedia jasa.*<br>*Selain itu, terdapat PPK/KPA di lingkungan Kemendikbud yang telah menetapkan denda keterlambatan atas pekerjaan-pekerjaan yang penyelesaiannya melampaui batas waktu yang diperjanjikan dalam kontrak, tetapi penetapan dendanya tidak sesuai dengan ketentuan. Oleh karena itu, terhadap rekanan harus dikenakan denda keterlambatan dan harus menyetorkan ke kas negara sekurang-kurangnya dengan rincian terlampir.* | | |
| *Kondisi tersebut tidak sesuai dengan:*<br>*1) Undang-Undang Nomor 1 Tahun 2004 tentang Perbendaharaan Negara dalam Pasal 21 yang menyatakan bahwa pembayaran atas beban APBN/APBD tidak boleh dilakukan sebelum barang dan/atau jasa diterima;*<br>*2) Peraturan Pemerintah Nomor 45 Tahun 2013 tentang Tata Cara Pelaksanaan Anggaran Pendapatan dan Belanja Negara dalam: (1) Pasal 162 ayat (1) yang menyatakan bahwa sisa pagu DIPA yang tidak terealisasi sampai akhir tahun anggaran berakhir tidak dapat digunakan pada periode tahun anggaran berikutnya; dan (2) Pasal 163 huruf (a) yang menyatakan bahwa terhadap sisa pekerjaan dari kontrak tertentu yang tidak terselesaikan sampai dengan akhir tahun anggaran berlaku ketentuan sisa nilai pekerjaan dari kontrak tahunan yang dibiayai dari rupiah murni tidak dapat diluncurkan ke tahun anggaran berikutnya;*<br>*3) Peraturan Presiden Nomor 70 Tahun 2012 tentang Perubahan Kedua atas Peraturan Pemerintah Nomor 54 Tahun 2010 tentang Pengadaan Barang/Jasa* | Criteria | This condition is not in accordance with the Act, Government Regulations, Presidential Regulations, and Minister of Finance Regulations. |

**Table 4:** (continued)

| Audit finding | Section | English summary |
|---|---|---|
| *Pemerintah dalam: (1) Pasal 95 ayat (4) yang menyatakan bahwa Panitia/Pejabat Penerima Hasil Pekerjaan menerima penyerahan pekerjaan setelah seluruh hasil pekerjaan dilaksanakan sesuai dengan ketentuan kontrak; dan (2) Pasal 120 yang menyatakan bahwa selain perbuatan atau tindakan sebagaimana dimaksud dalam Pasal 118 ayat (1), Penyedia Barang/Jasa yang terlambat menyelesaikan pekerjaan dalam jangka waktu sebagaimana ditetapkan dalam kontrak karena kesalahan Penyedia Barang/Jasa, dikenakan denda keterlambatan sebesar 1/1000 (satu perseribu) dari nilai kontrak atau nilai bagian kontrak untuk setiap hari keterlambatan; 4) Peraturan Menteri Keuangan Nomor 163/PMK.05/2013 tentang Pedoman Pelaksanaan Penerimaan dan Pengeluaran Negara pada Akhir Tahun Anggaran dalam: (1) Pasal 7 ayat (3) yang menyatakan bahwa dalam hal pelaksanaan pekerjaan tidak diselesaikan/tidak dapat diselesaikan 100% (seratus persen) sampai dengan berakhirnya masa kontrak, Kepala KPPN berwenang mengajukan klaim pencairan jaminan untuk untung kas negara; dan (2) Pasal 7 ayat (4) yang menyatakan bahwa besarnya klaim sebagaimana dimaksud pada ayat (3) sebesar persentase pekerjaan yang tidak diselesaikan/tidak dapat diselesaikan ditambah sanksi dengan memperhatikan ketentuan yang berlaku.* | | |
| *Hal tersebut mengakibatkan:*<br>*1) hasil pengadaan tidak dapat segera dimanfaatkan sesuai tujuannya;*<br>*2) kekurangan penerimaan dari sanksi denda keterlambatan yang belum dikenakan kepada rekanan penyedia barang/jasa minimal sebesar Rp10.546.174.978,34.* | Effect | These conditions resulted in (1) goods that had been procured could not be used immediately and (2) a shortfall in revenue from fines not imposed on vendors of at least Rp 10.54 billion. |
| *Permasalahan tersebut disebabkan:*<br>*1) lemahnya pengawasan berjenjang yang dilakukan oleh KPA;*<br>*2) tim teknis, konsultan pengawas, dan penyedia jasa tidak membuat dokumen progres pekerjaan sesuai kondisi yang sebenarnya; dan*<br>*3) PPK belum mengenakan denda keterlambatan kepada penyedia jasa.* | Cause | These conditions were caused by (1) the lack of tiered supervision by responsible officials, (2) the technical team and vendors not reporting work progress according to actual conditions, and (3) responsible officials not imposing fines on vendors. |

**Table 4:** (continued)

| Audit finding | Section | English summary |
|---|---|---|
| *Atas kondisi tersebut Kemendikbud menanggapi sebagai berikut.*<br>*1) Kemendikbud akan melakukan verifikasi terhadap permasalahan keterlambatan penyelesaian pekerjaan tersebut dan meminta kepada satker terkait untuk mempertanggungjawabkan dan mengenakan denda sesuai ketentuan perundang-undangan;*<br>*2) Kemendikbud akan meminta kepada para pimpinan satker terkait untuk meningkatkan pengendalian terhadap pelaksanaan kontrak;*<br>*3) Kemendikbud akan meningkatkan pengendalian pelaksanaan kontrak dengan meningkatkan peran Inspektorat Jenderal dan SPI;*<br>*4) Sebagian kantor/satker terkait telah melakukan penyetoran ke kas negara.* | Response from responsible official | The Minister of Education and Culture stated that he would review the late completion of the works, ask the responsible officials to impose fines on the vendors, and ask the responsible officials to improve control over the implementation of the contracts. The Minister also said that some of the fines for late completion had been paid into the state treasury. |
| *Atas hal tersebut, BPK tidak sependapat karena sesuai dengan Peraturan Presiden Nomor 70 Tahun 2012 dalam Pasal 120 dinyatakan bahwa penyedia barang/jasa yang terlambat menyelesaikan pekerjaan dalam jangka waktu sebagaimana ditetapkan dalam kontrak karena kesalahan penyedia barang/jasa dikenakan denda keterlambatan sebesar 1/1000 (satu perseribu) dari nilai kontrak atau nilai bagian kontrak untuk setiap hari keterlambatan.* | BPK's response to the responsible official's response (optional) | The BPK disagrees with the amount of the fine imposed by the Ministry of Education and Culture, which is reported to have been paid into the state treasury. According to the BPK, the appropriate fine is 1/1000 of the value of the work for each day of delay. |
| *BPK merekomendasikan Menteri Pendidikan dan Kebudayaan agar:*<br>*1) memberikan sanksi sesuai ketentuan kepada: (1) KPA yang lemah dalam melaksanakan pengawasan; (2) tim teknis, konsultan pengawas, dan penyedia jasa yang tidak membuat dokumen progres pekerjaan sesuai dengan kondisi yang sebenarnya; (3) PPK yang belum mengenakan denda keterlambatan;*<br>*2) memerintahkan PPK menarik denda keterlambatan dan menyetorkan ke kas negara minimal sebesar Rp9.070.316.004,34 (Rp10.546.174.978,34 – Rp1.475.858.974,00).* | Recommendation | The BPK recommends that the Minister of Education and Culture impose sanctions and instruct relevant officials to impose fines on vendors and deposit at least IDR 9.07 billion in the state treasury. |

If the BPK seems to be very careful in formulating certain audit recommendations and takes full account of the legal provisions, this is not the case when formulating audit recommendations on audit findings containing elements of state losses. On the latter point, the BPK appears to be very confident in formulating audit recommendations in order to circumvent administrative procedures for settling state losses.[54] The BPK ignores the long, complicated, and tortuous administrative law procedure for the settlement of state losses when formulating audit recommendations containing elements of state losses. In most of its audit reports, the BPK makes audit recommendations that require the responsible officials to recover the state losses found by making direct payments to the state treasury, local treasury, or company treasury. This practice is evident, for example, in the case studies we discuss in Section 7.5 (BPK 2017d) and in a number of audit findings – which are not our case studies – in BPK's audit reports in Sections 7.2 (BPK 2010), 7.3 (BPK 2014), 7.4 (BPK 2015b), and 7.5 (BPK 2017d).

Such practices are not only incompatible with administrative law, but also lack a clear legal basis (legality) and cannot guarantee legal certainty. On the basis of the overview of audit results from 2005 to 2022 (BPK 2022a), the BPK distinguishes between monitoring reports on the follow-up of audit recommendations (whether or not they contain a monetary value) and monitoring reports on state losses processed through administrative state loss settlement procedures. Monitoring reports on the follow-up of audit recommendations with monetary value include findings of state losses that are not settled administratively, but through direct payments to the state treasury, local treasury, or company treasury, and findings that contain monetary value but do not constitute state losses, such as findings of revenue shortfalls (*kekurangan penerimaan*).[55] Based on this overview (BPK 2022a), audit recommendations for state loss findings that are not administratively processed or that require the responsible officials to recover the state loss found by making direct payments to the state treasury, local treasury, or company treasury (A) have a lower percentage of completion compared to state loss findings that are administratively processed or that perform the judicial function of the BPK (B), as we present in Table 5 below.

Table 5 shows that although the completion rate of B is slightly higher than that of A, A collects a much larger amount of money than B. This is because A contains several components that are not present in B. For example, in addition to the component of findings of state losses, as in B, A also contains other monetary findings that do not constitute state losses, such as findings of revenue shortfalls. On the other hand, the findings of state losses in B are actually the findings of state losses in A that

**54** See Section 6 and Figure 3.

**55** See Table 4 and Section 7.3 for examples of audit findings and recommendations with monetary value other than state losses.

**Table 5:** Comparing the percentage of BPK monitoring reports.

| | Monitoring follow-up of audit recommendations (A) | Monitoring of state loss settlement (B) |
|---|---|---|
| Monetary value (a) | IDR 303 trillion | IDR 4,6 trillion |
| Paid (b) | IDR 148 trillion | IDR 2,6 trillion |
| Remaining (a – b) | IDR 155 trillion | IDR 2 trillion |
| Percentage (b : a) | 48,84 % | 56,52 % |

A: audit recommendations for state loss findings that are not administratively processed or that require the responsible officials to recover the state loss found by making direct payments to the state treasury, local treasury, or company treasury. B: state loss findings that are administratively processed or that perform the judicial function of the BPK.

have been legally determined by the judicial function of the BPK. Therefore, B is part of A but has a legality that A does not have.

The practice of recommending direct payment for state losses incurred may be an attempt by the BPK to "protect" the audited entity from criminal charges. Since its adoption as one of the corruption offences, the concept of state loss has become a very sensitive issue in public sector auditing. If the BPK recommends the settlement of state losses through administrative procedures, the follow-up of audit recommendations may become so protracted that it is open to intervention by the police and prosecutors. Such an idea is not unreasonable, because if one observes the wording of several recent audit recommendations on audit findings that contain elements of state losses, the BPK no longer declares them as state losses, but with a more subtle phrase, namely "overpayment". The public can be misled by the shift from legal terms to accounting terms (Akçakanat and Duran 2021). It is rarely recognised that an overpayment is a type of audit finding that is classed as a state loss (BPK 2010).

The disregard of administrative law in the formulation of audit recommendations for audit findings containing elements of state loss is an influence of private sector audit norms that operate transnationally. As we will show through the case studies in Sections 7.2–7.5, the influence of these private international law instruments is due to a lack of understanding of the BPK's position as a constitutional state institution with a judicial function and a leading role in the settlement of state losses. This has resulted in the BPK and its audits of the public sector becoming overly influenced by Westminster values, while gradually distancing itself from its Napoleonic roots.

It is exactly what Cordery and Hay (2022) predicted when analysing SAIs from the perspective of mimetic and normative isomorphism, that all SAIs worldwide will eventually converge towards the Westminster model. However, according to

Reichborn-Kjennerud (2014)'s analysis, the Westminster model embraced by certain Scandinavian SAIs, including the Norwegian, Danish, and Swedish SAIs, generally regards matters of public concern such as corruption as beyond the purview of auditors. Reichborn-Kjennerud et al. (2019) identified a correlation between SAIs with this model and private sector auditors, who frequently sidestep anti-corruption endeavours. According to Jeppesen (2019) and Reichborn-Kjennerud et al. (2019), private sector auditors are responsible for detecting fraud but exclude corruption from their definition of fraud. Instead, they define it as non-compliance with laws and regulations, which should be discussed with management regarding further reporting to law enforcement.

## 7.2 The Bengkulu City Roadworks Case

On 21 January 2010, the BPK issued an audit report on the expenditure management and accountability of the Bengkulu city government for 2009. The audited entity is located on the southwest coast of Sumatra, the sixth largest island in the world. The objectives of the audit were to assess (1) the appropriateness of expenditure planning and prioritisation; (2) the compliance of expenditure procedures, particularly those related to the procurement of goods and services, with laws and regulations; (3) the conformity of the quantity and quality of goods and services with contracts; and (4) the conformity of the use of goods and services with the purpose for which they were procured. The audit covered expenditure on infrastructure (roads, buildings, and bridges) and equipment and machineries in the Bengkulu City Education Office, Health Office, and Public Works Office. This audit is based on SPKN 2007 (BPK 2010).

In its audit report, the BPK stated that the audit was conducted because the results of the BPK's audit of the financial statements of several local governments in the previous year, 2008, showed that there were irregularities and inefficiencies in the implementation of expenditures that caused state losses. Thus, this audit was a continuation of the previous BPK audit, but with different objects (financial statements vs. local expenditures) and different years (2008 vs. 2009). The audit period from 9 November 2009 to 14 December 2009 (35 days) indicates that the audit was carried out while the expenditure was being implemented. BPK stated that it audited the implementation of IDR 44.8 billion (87 %) of the total capital expenditure budget of IDR 51.5 billion (BPK 2010).

The BPK's audit report consists of ten audit findings, most of which contain issues relating to volume deficiencies in road and bridge works, which can be classified as state losses. In this audit, the methods used by the auditors were document review, interviews, confirmation, and physical testing on site. The BPK's audit recommendations for the ten findings varied, ranging from adding volume deficiencies

to ongoing work, calculating the monetary value of volume deficiencies for the next term payment, to imposing fines on contractors for late completion of work (BPK 2010).

In audit finding number 3, the BPK outlined problems in post-disaster hot mix road construction worth IDR 1.4 billion. This work was carried out by a private company on the basis of a contract with the Head of the Bengkulu City Public Works Office with an implementation period of 120 days. Based on BPK's audit findings, there was a volume deficiency (state loss) of IDR 32 million in the work, and BPK recommended that the responsible official calculate the monetary value of the volume deficiency in the next term payment (BPK 2010). This is interesting because the BPK did not recommend the settlement of state losses on the basis of administrative law, nor did it order payments to the local treasury. In fact, however, the follow-up to the audit recommendation was a payment to the local treasury on 15 March 2010 (Mahkamah Agung 2011).

Meanwhile, on 20 June 2012, the District Court judge convicted the Head of the Bengkulu City Public Works Office in the corruption trial for his role in the work audited by the BPK. The judge imposed a two-year prison sentence and a fine of IDR 50 million. The judge stated that the defendant's actions violated Article 3 Anti-Corruption Act 1999/2001. The criminal case was in no way related to the BPK audit, but was initiated by the police. Based on the evidence presented by the prosecutor at the trial, the value of state losses differs from that determined by the BPK, which was IDR 380 million. The value of the state loss was determined by BPKP auditors[56] assisted by so-called "construction experts" from universities (Mahkamah Agung 2011). On appeal, the High Court judge upheld the decision of the District Court judge (Mahkamah Agung 2012). In cassation, the Supreme Court judge increased the sentence to four years imprisonment and fined IDR 200 million (Mahkamah Agung 2014).[57] On 1 March 2016, the convicted person's legal counsel, acting for and on behalf of the convicted person, filed a request for judicial reconsideration of the cassation decision. The panel of judges rejected the request (Mahkamah Agung 2016).

**56** Note that despite the similarity in name, the BPKP is different from the BPK. The BPKP was an auditing body set up during the authoritarian era of Suharto to take over the powers of the BPK (see Section 3). After the constitutional amendment, there was a proposal to merge the BPKP with the BPK, but this was never implemented. The fact that the BPKP continues to exist and even attempts to compete with the BPK again as an institution with an equal role in determining the elements of state loss in corruption trials in post-authoritarian states is an interesting topic for further study.

**57** The panel is headed by Supreme Court Judge Artidjo Alkostar, who is widely known as a judge who always increases the sentences of those convicted of corruption. See Kompas.com, 'Artidjo Alkostar, Vonis Berat Kasasi, dan Kontroversinya' [Artidjo Alkostar, the Harsh Cassation Sentences, and the Controversy] <https://jeo.kompas.com/obituari-artidjo-alkostar-vonis-berat-kasasi-dan-kontroversinya> accessed 10 March 2023.

This case illustrates the close intersection between the BPK's audit recommendations and the legal system. There are two issues that can be learned from this case, namely the dilemma between expertise and authority in public sector auditing and the doctrine that the recovery of state losses does not remove criminal sanctions and vice versa, as we mentioned in Section 1.

### 7.2.1 Expertise versus Authority: The Dilemma of Public Sector Audit

SPKN 2007, a legally binding guideline for all BPK auditors, states:

> Auditors who carry out financial audits must have expertise in accounting and auditing and an understanding of generally accepted accounting principles relevant to the entities they audit. (They) shall collectively possess the required expertise and a generally recognised certification of expertise. The person in charge of the financial audit shall have a professionally recognised certificate of expertise. Internal and external specialists who assist in the performance of audit work shall have the necessary qualifications or certifications and shall be required to maintain professional competence in their areas of expertise.[58]

It is immediately apparent that the statement replicates the AICPA auditing standard (1998), which states:

> In the performance of the audit which leads to an opinion, the independent auditor holds himself out as one who is proficient in accounting and auditing.[59] When assessing the internal auditors' competence, the auditor should obtain or update information from prior years about such factors as: professional certification.[60] The auditor should consider the following to evaluate the professional qualifications of the specialist in determining that the specialist possesses the necessary skill or knowledge in the particular field: the professional certification, license, or other recognition of the competence of the specialist in his or her field, as appropriate.[61]

The AICPA auditing standards used as private sector financial auditing standards in the United States were fully adopted by the IAI in 2001 as the Indonesian private sector financial auditing standards (SPAP) after translation into Indonesian with minor modifications. SPKN 2007 fully adopted SPAP for financial and special purpose audits. For performance auditing, SPKN 2007 adopted most of the US GAO's performance auditing standards (Syukri 2023). The US GAO's standards for financial audits

**58** *PSP 01 Standar Umum* [General Standards].

**59** AICPA Professional Standards 1998, AU Section 210 Training and Proficiency of the Independent Auditor.

**60** AICPA Professional Standards 1998, AU Section 322 The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements.

**61** AICPA Professional Standards 1998, AU Section 336 Using the Work of a Specialist.

and attestation engagements, which have many similarities to the AICPA's auditing standards, were also partially adopted by SPKN 2007.

The extract from the standard statement above shows that SPKN 2007 gives a very large portion of the auditor's expertise and even more, the certification of expertise. SPKN 2007 contains many statements about proficiency (*kecakapan*), ability (*kemampuan*), and competence (*kompetensi*), all of which have the same meaning as expertise. The conflict between competence and auditor independence in audit regulation has been discussed (Humphrey, Moizer, and Turley 2006; Power 1994). So has the auditor's reliance on nuanced concepts of expertise such as reasonable assurance, which has been likened to a "experts at work here, do not proceed" sign (Roberts and Dwyer 1998). However, the elaboration between competence or expertise and auditor authority has not been done. In the public sector, authority is very important because public sector audits, regardless of the type of audit, must first be carried out on the basis of authority.

Authority derives from the rule of law, constitutionalism, and the mandate of the people. Authority is a matter of an established hierarchy, characterised by the authority of primary rules over the production of secondary rules, or the authority of abstract norms over the production of concrete norms. The concept of authority links law to the political structure of the state (Cotterrell and Del Mar 2016) In the Indonesian context, the source of authority for public sector auditing and its institutions is a hierarchy of regulations starting with the constitution, acts, government regulations, presidential regulations, and so on. The overemphasis on expertise in SPKN 2007 has blurred the boundaries of authority. The metaphor of expertise derived from "private authority" morphs into "technical authority" and eventually displaces "public authority" (Porter 2005).

The effect of this tendency to prioritise expertise over authority (SPKN 2007 does not contain any statement on the authority of the auditor) is that the credibility of public sector audit findings before the judicial process is compromised. In the Bengkulu City roadworks case, it appears that the BPK's audit findings were countered by those of other institutions that based their existence and relevance on claims of expertise. However, in court, these expertise claims were challenged by other expertise claims that considered the first expertise claim problematic because it did not meet technicalities such as the non-registration of the expertise certificate and the incompatibility of the certificate with the expertise required in the case (Mahkamah Agung 2011).

Furthermore, this case shows that the direct conflict between the BPK's audit findings and the judicial process is due to a lack of understanding and recognition of the BPK's judicial function. Since the judge's reasoning is similar to that of the BPK audit (according to the judge, the defendant violated the law by simply failing to supervise the work of his subordinates, which resulted in state losses), the case

should have been resolved through administrative procedures for state loss settlement instead of corruption trials. In addition, the judge decided not to impose an additional criminal sanction[62] in the form of compensation, because the state losses had been recovered through payment to the local treasury. The judge stated, "An audit object cannot be audited more than once. The defendant has followed up on the state loss determined by the BPK, so the defendant cannot be burdened a second time" (Mahkamah Agung 2012). Thus, the judge accepted the value of the state losses based on the BPK audit instead of the BPKP, even though the latter based the relevance of its involvement on claims of auditor expertise.

### 7.2.2 The Recovery of State Losses Does not Remove Criminal Sanctions, and Vice Versa

This case is an example of the implementation of the doctrine "recovery of state losses does not remove criminal sanctions" in the Anti-Corruption Act 1999/2001 and "criminal sanctions do not remove the obligation to settle state losses administratively" in the State Treasury Act 2004. In this case, the judge continued to impose criminal sanctions on the defendant despite the recovery of state losses. While this doctrine is not entirely consistent in its implementation – in some cases, investigators have stopped legal proceedings after state losses have been recovered (Yuntho et al. 2014) – it summarises the latent problems of public sector auditing and the legal system in Indonesia. First, the operation of the same element (state losses) in two different legal systems (administrative law and criminal law). Second, the degradation of the BPK's judicial function as the sole authority in the settlement of state losses.

We have explained the genealogical roots of the first latent problem in Section 6. The adoption of the concept of state loss, which was the remit of the Napoleonic SAI, in the anti-corruption regulations originally drawn up by the military, is the main reason why Articles 2 and 3 of the Anti-Corruption Act 1999/2001 contain problematic elements such as "any person who is unlawful"; "any person who benefits himself or herself or another person or company"; "enriches himself or herself or another person or company"; "abuses authority, opportunity, or means"; "may cause loss to the state finances or economy". These elements are problematic because their definitions are unclear, inconsistently applied, ambiguous in

62 The Indonesian Criminal Code provides for two types of criminal sanctions, namely principal criminal sanctions and additional criminal sanctions. The principal criminal sanctions include the death penalty, imprisonment, detention, fines, and closure. Additional criminal sanctions include the deprivation of certain rights, the confiscation of certain property, and the announcement of the judge's decision. The Anti-Corruption Act 1999/2001 adds an additional criminal sanction specifically for offenders of corruption causing state losses, namely compensation.

meaning, subject to misinterpretation by judges (in some cases private unlawful acts are considered criminal unlawful acts), and do not provide a clear boundary between administrative and criminal errors (Prahassacitta 2018).

Articles 2 and 3 of the Anti-Corruption Act 1999/2001 are not only highly favoured by law enforcement agencies, but are also the corruption offences that are most subject to judicial review by the Constitutional Court (FNH 2016). However, the Constitutional Court's decisions on these two articles are inconsistent with each other (Fatkhurohman and Kurniawan 2017). In its most recent decision, the Constitutional Court removed the word "may" from the phrase "may cause losses to state finances or the economy". With this removal, proving the element of state loss is no longer optional, but mandatory. This development is a clear move away from the United Nations' recommendation on Indonesia's implementation of the UNCAC, which states that:

> Indonesian legislation does not contain a general definition of the abuse of functions offence, even though existing norms reflect most of its definition. It was observed that the law requires that the abuse is made with a view to enrichment, which implies receiving a material advantage, while the Convention is broader and covers any advantages including those of a non-material nature. Article 3 of Law No. 31/1999 contains a reference to the detrimental effect of the perpetrator's behaviour to the finances of the state. This pre-occupation with the need to show a loss to the state might limit the fight against corruption.
>
> Ensure that the existing norms on abuse of functions cover also non-material advantage, and consider revising the laws to remove the reference to state loss (United Nations 2012).

On the other hand, however, SPKN 2007 does not contain any statement on state losses, even though the higher regulations – the State Treasury Act 2004, the State Audit Act 2004, and the BPK Act 2006 – give the BPK a judicial function in the settlement of state losses. This is not surprising: the auditing standards adopted by the BPK are the private sector auditing standards of the AICPA and the public sector auditing standards of Westminster SAIs such as the US GAO (Noussi 2012). Instead of regulating state losses, SPKN 2007 contains statements on abuse, fraud, and non-compliance with laws and regulations, as well as limitations that auditors must follow in detecting abuse, fraud, and non-compliance with laws and regulations. This, in turn, limits the audit function of the BPK, especially in its unique role as an SAI inheriting the Napoleonic character.[63]

By adopting auditing standards that are inconsistent with its judicial function, the BPK is trapped in an ambiguous position that ultimately diminishes its primary role in settling state losses. As we alluded to in Section 3, Indonesia is a country that was not historically formed and run on the basis of the doctrine of *trias politica*.

**63** See Section 7.3.2 for further analysis on this point.

However, there does not seem to be complete agreement on this point. This case shows that investigators, prosecutors, and judges are explicitly rejecting the judicial function of the BPK by involving institutions other than the BPK to re-examine the value of state losses found in the BPK audit process.

## 7.3 The Jambi University Hospital Medical Equipment Procurement Case

Jambi University is a public university located in Jambi Province, on the east coast of central Sumatra. The finances of this public university are managed by the Ministry of Education and Culture, and its financial statements are consolidated with the Ministry's financial statements. On 23 May 2014, the BPK issued an audit report on the 2013 financial statements of the Ministry of Education and Culture. This audit is a routine annual task of the BPK on the financial statements of the central government (state institutions, ministries and government agencies) and the financial statements of local governments (provincial governments and district/city governments).

The audit aims to express an opinion on the fairness of the presentation of the financial statements by considering four aspects, namely (1) the conformity of *the presentation of the financial statements* with government accounting standards, (2) the adequacy of the disclosure of *financial information in the financial statements in accordance with the disclosures that should be made based on government accounting standards*, (3) the audited entity's compliance with laws and regulations *relating to financial reporting*, and (4) the effectiveness of the internal control system *designed and implemented by the audited entity in relation to financial reporting* (BPK 2014). These audit objectives are the auditor's development (see italicised phrases) of the four aspects of financial audits set out in Article 16(1) of the State Audit Act 2004, namely conformity with government accounting standards, adequacy of disclosures, compliance with laws and regulations, and effectiveness of internal control systems. The development of audit objectives that are overly focused on financial reporting, particularly in relation to compliance with laws and regulations, as we will explain later, results in auditors failing to detect fraud in audit findings, which in turn is not aligned with law enforcement.

Furthermore, in addition to the usual reference to SPKN 2007, the BPK openly states in this audit report that this audit also refers to IAI's SPAP (BPK 2014). This shows the tendency of BPK auditors to defer to private sector auditing standards when conducting public sector audits.

The BPK's audit report on the 2013 financial statements of the Ministry of Education and Culture consists of three parts, referred to as "books", namely Book I, which contains the BPK's opinion on the audited financial statements; Book II, which

contains audit findings on the internal control system; and Book III, which contains audit findings on compliance with laws and regulations. In Book I, the BPK issued an unqualified opinion on the financial statements. Within 92 days, the BPK audited IDR 12 trillion in revenue realisation, IDR 72 trillion in expenditure realisation, IDR 116 trillion in assets, and IDR 3 trillion in liabilities (BPK 2014).

In audit finding number 2.3.4 in Book III, BPK described the non-compliance of 22 work units in the Ministry of Education and Culture regarding the imposition of fines for the late completion of capital expenditure works (infrastructure, equipment, and machinery), including the Jambi University (BPK 2014). Based on BPK's audit report, the procurement of medical equipment for Jambi University's teaching hospital worth IDR 19.7 billion, which was carried out by a private company based on a contract with the rector of Jambi University, was 21 days late. Therefore, BPK recommended the imposition of a fine of IDR 638 million on the private company (BPK 2014). The fine was not classified as a state loss, but in a different category that BPK called "revenue shortfall" (BPK 2010).

On 26 January 2017, three years after the audit report was published, the District Court judge convicted the director of the private company in a corruption trial for his role in the work audited by the BPK. The judge imposed a four-year prison sentence and a fine of IDR 200 million. The judge stated that the defendant had violated Article 2 Anti-Corruption Act 1999/2001. Based on the evidence presented by the prosecutor, the state loss was IDR 3.99 billion. The value of the state loss, as determined by the BPKP auditor, took into account sales profits that the company should not have received. However, the judge disagreed with the value of the state loss and decided that the value of the state loss was IDR 944 million. This value was based on the price of four medical equipment that should not have been paid because the technical specifications of the goods did not comply with the contract. The judge's decision clearly contradicted the BPK's audit, which found no state losses on the work. The judge ordered the defendant to pay compensation in the amount of the state loss (Mahkamah Agung 2016).

On appeal, the High Court judge upheld the decision of the District Court judge (Mahkamah Agung 2017). On cassation, the Supreme Court judges increased the sentence to eight years' imprisonment, a fine of IDR 500 million, and compensation of IDR 3.99 billion (Mahkamah Agung 2017). The panel of judges agreed with the value of state losses determined by the BPKP auditor. The panel was chaired by Supreme Court Judge Artidjo Alkostar, the same judge who presided over the Bengkulu City roadworks case. On 19 December 2018, the convicted person's legal counsel, acting for and on behalf of the convicted person, submitted a request for judicial review of the cassation decision. The panel of judges accepted the request, overturned the cassation decision and sentenced the convicted person to four years' imprisonment, a fine of IDR 200 million, and compensation of IDR 944 million (Mahkamah Agung

2019). The judges of the court of cassation thus agreed with the judges of the District Court and the High Court.

This case illustrates the close interaction between the BPK's audit recommendations and the legal system. There are two lessons to be learned from this case: first, public sector audits are overly focused on audit objectives, which in turn lead to audit limitations; second, public sector auditors' competence and authority are limited by provisions in audit standards.

### 7.3.1 The Allegory of the Audit Objective: The Limits of Public Sector Audit

SPKN 2007 prescribes audit objectives for the three types of audits under the BPK's authority. The audit objective is a familiar term in the private sector audit environment, but it is not sufficiently recognised in the State Treasury Act 2004, the State Audit Act 2004, and the BPK Act 2006. In the private sector audit environment, the audit objective is related to the financial audit objective, which is to express "an opinion on the fairness with which it presents, in all material respects, its financial position, results of operations and cash flows in conformity with generally accepted accounting principles".[64]

Tracing the historical roots of audit objectives through literature from the UK and the US, Power (1997) argues that the detection of fraud and error, which was the primary objective of the audit prior to the twentieth century, has become a derivative or secondary objective, resulting in an "expectation gap" between what the public expects – the detection of fraud – and what auditors claim should be the outcome: an opinion on the financial statements that relates to concepts such as "fairness" or "true and fair". As Power (1997) concludes, "[A]udit practitioners have mostly, until very recently, claimed that the problem lies with the misunderstanding of the public. They also argue that, on grounds of cost and technical feasibility, the primary responsibility for the detection and prevention of fraud lies with management and its systems. Attempts to build this view into official audit guidance are revealing."

Therefore, the audit objective in the context of public sector auditing, especially in Indonesia, is an allegory. Its presumably positive intentions are not in line with its application, which, as seen in the Jambi University Hospital medical equipment procurement case, limits the diversity of functions and complexity of public sector auditing. The allegory of audit objectives runs through many of the statements in SPKN 2007. One of the auditing standards in SPKN 2007 states that:

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**64** AICPA Professional Standards 1998, AU Section 110 Responsibilities and Functions of the Independent Auditor.

> Every audit begins with the establishment of objectives and the determination of the type of audit to be performed and the standards to be followed by the auditor. A financial audit aims to obtain reasonable assurance about whether the financial statements are presented fairly, in all material respects, in accordance with Indonesian generally accepted accounting principles or a comprehensive basis of accounting other than Indonesian generally accepted accounting principles. A performance audit (aims to) assess the results and effectiveness of a programme; measure the extent to which a programme achieves its objectives. (It is also to) assess economy and efficiency in terms of whether an entity has used its resources in the most productive way to achieve programme objectives. A special purpose audit aims to reach conclusions (which may include) audits of other financial matters, investigative audits and audits of internal control systems.[65]

The statement replicates the US GAO audit standard (2003), which states:

> All engagements begin with objectives, and those objectives determine the type of work to be performed and the auditing standards to be followed. The types of work, as defined by their objectives that are covered by GAGAS, are classified in this document as financial audits, attestation engagements, and performance audits. *Engagements may have a combination of objectives that include more than one type of work described in this chapter or may have objectives limited to only some aspects of one type of work.*[66]

It appears that SPKN 2007 does not fully converge with the US GAO auditing standards (2003) and misses the most important part of the auditing standards statement (in italics), which gives auditors the flexibility to set one or a combination of more than one audit objective. In this Jambi University Hospital medical equipment procurement case, the BPK auditors focused too much on the financial audit objective, which was only to provide reasonable assurance on the financial statements based on accounting principles. In the end, the auditors thought it was enough to detect the delayed work and calculate the fines to be imposed, without examining the possibility of fraud in the delayed conditions, which was indeed proven.

SPKN 2007 further states:

> Audit findings, such as inadequate internal control, non-compliance with laws and regulations, fraud and abuse, usually consist of conditions, criteria, effects, and causes. However, the elements required for an audit finding depend entirely on the audit objectives. Therefore, an audit finding or group of audit findings is complete to the extent that the audit objectives have been met and the report clearly links the audit objectives to the audit findings.[67]

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**65** *Pendahuluan Standar Pemeriksaan* [Introduction to the Audit Standard].

**66** US GAO GAGAS 2003, Chapter 2 Types of Government Audits and Attestation Engagements.

**67** *PSP 02 Standar Pelaksanaan Pemeriksaan Keuangan* [Financial Audit Implementation Standards]; *PSP 04 Standar Pelaksanaan Pemeriksaan Kinerja* [Performance Audit Implementation Standards]; *PSP 05 Standar Pelaporan Pemeriksaan Kinerja* [Performance Audit Reporting Standards].

The statement replicates the US GAO audit standard (2003), which states:

> Audit findings, such as deficiencies in internal control, fraud, illegal acts, violations of provisions of contracts or grant agreements, and abuse, have often been regarded as containing the elements of criteria, condition, and effect, plus cause when problems are found. However, the elements needed for a finding depend entirely on the objectives of the audit. Thus, a finding or set of findings is complete to the extent that the audit objectives are satisfied. When problems are identified, to the extent possible, auditors should plan audit procedures to develop the elements of a finding to facilitate developing the auditors' report.[68]

In addition, SPKN 2007 states:

> Auditors need to report audit findings that answer the audit objectives. In reporting audit findings, the auditor should disclose sufficient, competent, and relevant information to enable the audit findings to be understood. Auditors should also report background information that is necessary for the users of the audit report to understand the audit findings.[69]

The statement replicates the US GAO audit standard (2003), which states:

> Auditors should report findings by providing credible evidence that relates to the audit objectives. These findings should be supported by sufficient, competent, and relevant evidence. They also should be presented in a manner to promote adequate understanding of the matters reported and to provide convincing but fair presentations in proper perspective. The audit report should provide selective background information to provide the context for the overall message and to help the reader understand the findings and significance of the issues discussed.[70]

These statements point to the need for BPK's auditors to develop and report audit findings that address – and are consistent with – the audit objectives. In the earlier part of this case, it was explained that BPK's auditors had set audit objectives that focused solely on financial reporting, including aspects of compliance with laws and regulations. A compliance audit focused solely on financial reporting regulations resulted in the BPK auditors not being able to detect fraud, abuse, illegal acts, and violations of contract terms. BPK's auditors were ultimately only able to recommend fines for late work and did not further investigate the causes of delays.

### 7.3.2 The Limits of the Competence and Authority of Auditors in the Public Sector

In this case, in addition to the BPK auditors' adherence to the allegory of audit objectives, their failure to detect fraud was also due to their adherence to the

**68** US GAO GAGAS 2003, Chapter 4 Field Work Standards for Financial Audits.

**69** *PSP 05 Standar Pelaporan Pemeriksaan Kinerja* [Performance Audit Reporting Standards].

**70** US GAO GAGAS 2003, Chapter 8 Reporting Standards for Performance Audits.

provisions of SPKN 2007 that limit the competence and authority of auditors. The SPKN 2007 contains statements on abuse, fraud, and non-compliance with laws and regulations, as well as limitations that auditors must follow in detecting abuse, fraud, and non-compliance with laws and regulations. This, in turn, limits the audit function of the BPK, especially in its distinctive role as a Napoleonic SAI. For example, SPKN 2007 states:

> Abuse is different from fraud or deviation from the provisions of laws and regulations. Abuse is not caused by these two things, but by actions that go far beyond the bounds of reason or sound practice. Auditors need to be alert to situations or events that may indicate abuse. If information obtained by the auditor (through audit procedures, complaints, or other means) indicates that abuse has occurred, the auditor should consider whether the abuse *has materially affected the audit results*. Because the determination of whether abuse has occurred is subjective, the auditor is not expected to provide reasonable assurance in detecting abuse. The auditor should consider both quantitative and qualitative factors in assessing whether the abuse is likely to be significant and whether the auditor needs to extend the audit steps and procedures.[71]

The statement replicates the US GAO audit standard (2003), which states:

> Abuse is distinct from fraud, illegal acts, and violations of provisions of contracts or grant agreements. When abuse occurs, no law, regulation, or provision of a contract or grant agreement is violated. Rather, abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Auditors should be alert to situations or transactions that could be indicative of abuse. When information comes to the auditors' attention (through audit procedures, allegations received through a fraud hotline, or other means) indicating that abuse may have occurred, auditors should consider whether the possible abuse *could affect the financial statement amounts or other financial data significantly*. Auditors should consider both quantitative and qualitative factors in making judgments regarding the materiality of possible abuse and whether they need to extend the audit steps and procedures. However, because the determination of abuse is subjective, auditors are not expected to provide reasonable assurance of detecting abuse. [72]

In the italicised phrase, it appears that the SPKN 2007 drafters have changed the requirement for the auditor to consider "the effect of the abuse on the financial statements and other financial data" to the auditor's consideration of "the effect of

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**71** *PSP 02 Standar Pelaksanaan Pemeriksaan Keuangan* [Financial Audit Implementation Standards]; *PSP 04 Standar Pelaksanaan Pemeriksaan Kinerja* [Performance Audit Implementation Standards]; *PSP 06 Standar Pelaksanaan Pemeriksaan dengan Tujuan Tertentu* [Special Purpose Audit Implementation Standards].

**72** US GAO GAGAS 2003 (Chapter 4 Field Work Standards for Financial Audits; Chapter 6 General, Field Work, and Reporting Standards for Attestation Engagements; Chapter 7 Field Work Standards for Performance Audits).

the abuse on the audit results". In addition, the SPKN 2007 drafters translated "abuse" in the original text as "*ketidakpatutan*", which is closer in meaning to the word "impropriety" in English. In Indonesian, "abuse" is usually translated as "*penyalahgunaan*". This translation of "abuse" into "impropriety" can be understood as a form of caution (or avoidance) by SPKN 2007 to disclose one of the elements of Article 3 Anti-Corruption Act 1999/2001 in the audit process.

SPKN 2007 further states:

> Auditors should use their professional judgement in examining evidence of fraud, noncompliance, or abuse without interfering with any subsequent investigation or legal proceedings, or both. The auditor may also be asked to stop or suspend further audit procedures so as not to interfere with the investigation.[73]

The statement replicates the US GAO audit standard (2003), which states:

> Auditors should exercise professional judgment in pursuing indications of possible fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse, in order not to interfere with potential investigations, legal proceedings, or both. Auditors may also be required to withdraw from or defer further work on the engagement or a portion of the engagement in order not to interfere with an investigation.[74]

Further restrictions for BPK auditors in detecting fraud are set out in the following SPKN 2007:

> The auditor's training, experience and understanding of the programme being audited may provide a basis for the auditor to be more aware that some actions brought to his attention may be indicative of fraud. Whether an act is fraudulent or not must be determined by the judicial system and is beyond the professional competence and responsibility of the auditor.[75]

The statement replicates the AICPA auditing standard (1998), which states:

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**73** *PSP 02 Standar Pelaksanaan Pemeriksaan Keuangan* [Financial Audit Implementation Standards]; *PSP 04 Standar Pelaksanaan Pemeriksaan Kinerja* [Performance Audit Implementation Standards]; *PSP 06 Standar Pelaksanaan Pemeriksaan dengan Tujuan Tertentu* [Special Purpose Audit Implementation Standards].

**74** US GAO GAGAS 2003 (Chapter 4 Field Work Standards for Financial Audits; Chapter 6 General, Field Work, and Reporting Standards for Attestation Engagements; Chapter 7 Field Work Standards for Performance Audits).

**75** *PSP 04 Standar Pelaksanaan Pemeriksaan Kinerja* [Performance Audit Implementation Standards]. This statement applies specifically as a performance auditing standard. However, since this statement from the AICPA's private sector auditing standards is adopted by the IAI's private sector auditing standards, and since SPKN 2007 also states that public sector auditing standards "apply any financial auditing standard and statement of auditing standards issued by the IAI, unless otherwise specified", this statement also applies as the BPK's financial auditing standards.

> Whether an act is, in fact, illegal is a determination that is normally beyond the auditor's professional competence. An auditor, in reporting on financial statements, presents himself as one who is proficient in accounting and auditing. The auditor's training, experience, and understanding of the client and its industry may provide a basis for recognition that some client acts coming to his attention may be illegal. However, the determination as to whether a particular act is illegal would generally be based on the advice of an informed expert qualified to practice law or may have to await final determination by a court of law.[76]

These US private sector auditing standards have also been adopted by the US GAO in its auditing standards (2003), which state:

> Whether a particular act is, in fact, illegal may have to await final determination by a court of law or other adjudicative body. Thus, when auditors disclose matters that have led them to conclude that an illegal act is likely to have occurred, they should not unintentionally imply that a final determination of illegality has been made.[77]

In the practice of private sector auditing in Indonesia, the AICPA auditing standard is also adopted by the IAI in its auditing standard which states:

> Determining whether an act is in fact illegal is usually beyond the professional competence of an auditor. Auditors position themselves in relation to the presentation of financial statements as competent parties in accounting and auditing. The auditor's training, experience, understanding of the client's business and industry environment may provide a basis for identifying client conduct that is an element of illegal acts. However, the determination of whether an act is illegal or not is usually based on the judgement or advice of a legal professional who has studied the matter and has the expertise to do so, or the determination is awaited in a court of law.[78]

The provisions of SPKN 2007 that limit BPK auditors in detecting fraud, abuse, illegal acts, and violations of contracts contradict the State Finance Law Package, which gives BPK a judicial function in public sector audits. The State Finance Law Package contains a number of provisions stating that, first, the BPK audit report is a formal decision that is legally binding (Article 1 BPK Act 2006) and as such has legal consequences. Second, the BPK's audit recommendations must be followed up with the threat of administrative and criminal sanctions (Articles 20 and 26(2) State Audit Act 2004). Finally, the BPK has the power to assess and determine state losses (Article 10 BPK Act 2006) resulting from intentional or negligent unlawful acts (Article 1 State Treasury Act 2004; Article 1 BPK Act 2006).

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**76** AICPA Professional Standards 1998, AU Section 317 Illegal Acts by Clients.

**77** US GAO GAGAS 2003 (Chapter 4 Field Work Standards for Financial Audits; Chapter 5 Reporting Standards for Financial Audits; Chapter 6 General, Field Work, and Reporting Standards for Attestation Engagements; Chapter 8 Reporting Standards for Performance Audits).

**78** IAI SPAP 2001, PSA No. 31, *SA 300 Standar Pekerjaan Lapangan* [Fieldwork Standards], *SA Seksi 317 Unsur Tindakan Pelanggaran Hukum oleh Klien* [Elements of Client's Unlawful Acts].

This means that in the context of state losses, the BPK has absolute jurisdiction and authority to determine whether there have been intentional unlawful acts (fraud and abuse) or negligent unlawful acts (illegal acts and violations of contract). However, this case clearly shows that the BPK fails to exercise its judicial function and prefers to adhere to its own auditing standards, which adopt private sector auditing standards and are outside the Indonesian legal framework. Contrary to higher regulations, the adoption of private international law instruments has ultimately limited the competence and authority of BPK auditors to assess fraud, abuse, illegal acts, and violations of contracts.

## 7.4 The Sumber Waras Hospital Land Case

The Sumber Waras Hospital land case was the hottest Indonesian issue during the early period of the reign of the seventh president of Indonesia, Joko Widodo. This case, in addition to showing the strong relationship between audit and the legal system, is also full of political nuances because it involves the president's closest ally when he led the Jakarta Province, Basuki Tjahaja Purnama (Ahok). This case emerged when BPK announced its audit results of the 2014 Jakarta Provincial Government financial statements. Jakarta is the capital of Indonesia and is located on the northwest coast of Java, the 13th largest island in the world and the most densely populated island in Indonesia, so BPK audit reports on the region always make national news.

Within 75 days, the BPK has audited IDR 44 trillion of revenue realisation, IDR 38 trillion of expenditure realisation, IDR 425 trillion of assets and IDR 578 billion of liabilities. The BPK issued a qualified opinion on the financial statements (BPK 2015b). In audit finding number 30 in Book III, the BPK found problems in the implementation of capital expenditure for land acquisition of 36,410 m2 worth IDR 756 billion, resulting in state losses of IDR 191 billion (BPK 2015b). Referring to SPKN 2007, the BPK audited the payment of Sumber Waras Hospital[79] land by the DKI Jakarta provincial government for the construction of a specialised heart and cancer hospital.

These BPK result audits in the Sumber Waras Hospital land case are interesting because they do not bypass legal procedures as usual: BPK does not recommend deposits to the state treasury or local treasury but recommends auditees to recover

79 Sumber Waras Hospital is a private hospital managed by the Sumber Waras Health Foundation. It was founded by the Sin Ming Hui (now Tjandra Naja) Social Society on 3 January 1956. See Sumber Waras, 'Sejarah RS Sumber Waras' [History of Sumber Waras Hospital] <https://rssumberwaras.co.id/sejarah/> accessed 7 March 2022.

indications of state losses through formal procedures (BPK 2015b). With 15 pages of audit findings, very long for a financial audit finding, the BPK auditors carried out legal analysis and interpretation and then tried to show fraud in the realisation of expenditure. According to the auditors, there were three main issues of non-compliance with laws and regulations that led to fraud and state losses, i.e. the absence of an emergency as one of the conditions for budget changes, the absence of a planning process, and the oddity of the payment mechanism. These three issues, the BPK's audit recommendations, and their implications are discussed in more detail below.

### 7.4.1 Audit Findings – And Legal Issues

In Indonesia, every expenditure incurred for government activities and public services must be based on a budget agreed upon by the executive and legislature, both at the central and local government levels. In the middle of the current budget year, budget changes are usually made to accommodate (1) developments that are not by the general budget policy assumptions, (2) conditions that require budget shifts between units, (3) circumstances that cause the budget balance over the previous year to be used in the current year, (4) emergencies and (5) extraordinary circumstances. The land acquisition of Sumber Waras Hospital is an expense that is in the budget change but, based on the BPK audit, does not match the five reasons for the budget change.

According to BPK, only an emergency allows the land acquisition for Sumber Waras Hospital to be included in the budget change. Based on regulations, emergencies include programs and basic public services activities for which funds are not yet available in the current fiscal year which if postponed will cause greater losses to the government and society. However, according to the BPK audit report, the land acquisition for Sumber Waras Hospital to build a special heart-and-cancer hospital is not classified as an emergency condition (BPK 2015b).

In addition, the BPK found several problems in the land acquisition of RS Sumber Waras, caused by neglect of the planning stage. For example, first, the legal status of the land purchased is building use rights (*hak guna bangunan*, HGB) which expire three years from the date of payment. Indonesian law classifies land status into property rights (*hak milik*, HM), cultivation rights (*hak guna usaha*, HGU), HGB, use rights (*hak pakai*), building lease rights, or management rights (*hak pengelolaan*). The expiry of the HGB will leave the status of land purchased by the Jakarta Provincial Government unclear. The HGB is the right to construct and own buildings on land that is not one's own, which can be state land, management right land, or property land. In this case, the status of the Sumber Waras Hospital land is

controversial. There are strong claims that the land is state land (Adhyatmoko 2016). Therefore, the repurchase of state land by the state is a grotesque mistake.

Second, the location of land acquisition was determined unilaterally by the Governor of Jakarta, even though at that time the holders of land rights were still bound by a land sale and purchase agreement – which was later purchased by the Jakarta Provincial Government – with other parties. Based on the BPK audit, the Jakarta Provincial Government paid more for land than the land price in the agreement. This price difference is then taken by BPK as an indication of state losses. Third, the payment is made before the holder of the land title (the seller) pays off the tax arrears on the land. The BPK audit shows that the Provincial Government of Jakarta continues to realize payments even though the land has not been paid for its tax arrears of IDR 6.6 billion.

Fourth, the location of land acquisition unilaterally determined by the Governor of Jakarta contradicts the criteria for the feasibility of the location and the condition of the land, i.e. that the land must be ready to build, free from flooding, has access to major roads, and is easily accessible. According to the BPK audit, the Sumber Waras Hospital land purchased by the Jakarta Provincial Government is not ready for construction because the land is prone to flooding, is not on a major road, is not strategically located, is difficult to access, is prone to traffic congestion, and does not have an access road. In addition, there are several buildings on the site that are still used as the operational base for Sumber Waras Hospital.

All these conditions occur because the Jakarta Provincial Government ignores the planning stage as an important and integral part of all stages of land acquisition which consists of the planning, preparation, implementation, and submission stages according to Land Acquisition Act 2012. The Jakarta Provincial Government argues that land acquisition with an area of not more than five hectares (50,000 $m^2$) can be carried out directly between government institutions and land rights holders by buying and selling, exchanging or other agreed methods, without going through all stages of procurement land under Land Acquisition Act 2012. This argument is based on Article 121 President Regulation No 71 of 2012 and Head of National Land Agency Regulation No 5 of 2012. The BPK audit found that the two technical regulations issued by the executive violated the hierarchy of Indonesian legal norms by negating the main provisions of the Land Acquisition Act 2012, which was drafted through a democratic process based on an agreement between the executive and the legislature (BPK 2015b).

Finally, the BPK found irregularities in the payment mechanism for the land acquisition of Sumber Waras Hospital. On 22 December 2014, the regional general treasurer of Jakarta Province transferred funds of IDR 800 billion to the account of the expenditure treasurer of the Jakarta Provincial Health Office. Of this amount, land payments were made to the Sumber Waras Health Foundation by check for IDR

756 billion on 30 December 2014 and has been disbursed by the foundation on 31 December 2014. The payment was made without going through the usual "direct" (*langsung*, LS) payment mechanism but through the "supply money" (*uang persediaan*, UP) payment mechanism proposed by the Jakarta Provincial Health Office's expenditure treasurer on 15 December 2014.

According to Indonesian public financial regulation, the LS payment mechanism is used for capital expenditure payments to third parties, while the UP payment mechanism is used for daily operational activities. This is because there are differences in characteristics between the LS payment mechanism and the UP payment mechanism. In the LS payment mechanism, the amount of funds is relatively large (usually more than IDR 50 million) and is transferred directly from the regional general treasurer to a third-party bank account. Meanwhile, in the UP payment mechanism the amount of funds is not large (usually no more than IDR 50 million; depending on the policy of each region), which is transferred by the regional general treasurer to the expense treasurer's account and used to fund small-scale daily office operations and expenses. Thus, based on the BPK audit, transactions worth hundreds of billions of rupiah using the UP payment mechanism in the land acquisition of Sumber Waras Hospital are a real oddity (BPK 2015b).

### 7.4.2 The Impact of the BPK's Audit Recommendations, Law Enforcement, and Political Pressure

The three legal issues developed based on the factual conditions above led BPK to conclude that there are indications of state losses in the realization of the 2014 Jakarta Provincial Government expenditures. Therefore, BPK recommends to the Governor of Jakarta to cancel the purchase of the land for Sumber Waras Hospital and, if the cancellation cannot be carried out, to recover the claimed state losses of at least IDR 191 billion (BPK 2015b).

The BPK audit report was published in the midst of Indonesia's unfavourable political situation following the presidential election. In 2014, Indonesia held a presidential election to choose two pairs of presidential and vice-presidential candidates: Joko Widodo-Jusuf Kalla and Prabowo Subianto-Hatta Rajasa. The narrow victory of Joko Widodo-Jusuf Kalla created polarisation in parliament and among its voters. In such a situation, the BPK audit report on the financial statements of the Jakarta provincial government led by Governor Ahok, a close ally of the president-elect, gained momentum and was immediately seized upon by opposition politicians. The BPK audit results, which revealed fraud and non-compliance with laws and regulations resulting in state losses, were used by opposition politicians as one of the issues to discredit the president-elect's reputation, alongside others such as religious tolerance (La Batu 2017; Ramli 2016) and communism (The Jakarta Post 2018).

But it was precisely at this point, for the first time since the post-authoritarian institutional reform, that the BPK and its audits came under public scrutiny. There are not many parties that support the BPK audit as there are many that oppose it. The binary opposition and polarisation that is forming in society, with the influence of mass media coverage and the growing potential of social media, has made BPK receive a lot of criticism (Budiari 2016). The BPK's recruitment process and the composition of its members, which are full of political nuances (Simanjuntak 2017), make the BPK's negotiating position with the public difficult. The BPK's audit, and in particular its legal analysis and interpretation, has been the subject of heated debate in cyberspace between pro- and anti-government netizens.

Academics reacted differently to the BPK audit. Legal scholars generally sided with the BPK audit when accounting scholars argued otherwise. Legal scholars state that the BPK audit should be the basis of the law enforcement process and should not be ignored by law enforcement officials (Amdani 2018; Rahman 2016). On the other hand, accounting scholars argue that the BPK audit, which includes legal analysis and interpretation, goes beyond professional skills that are not within the auditor's competence (Sopian 2017).

Finally, the KPK started an investigation and asked the BPK to conduct an investigative audit. The BPK's investigative audit report, which came to more or less the same conclusion as the financial audit report, was submitted to the KPK. Surprisingly, the KPK chairman announced that the KPK investigators did not find any unlawful acts from the Sumber Waras Hospital land case (The Jakarta Post 2016). This statement is interesting because he, as the KPK chairman, stated that it was the investigators – not the KPK as an institution – who did not find any unlawful acts.

Second, it is still controversial which institution is authorised to determine whether there is an unlawful act in an indication of a state loss.[80] As stipulated in the procedure for settling state losses caused by the treasurer,[81] the BPK has the authority to decide whether or not there is an unlawful act in information or indications of state losses. In its audit report, the BPK did not mention the treasurer as one of the parties causing the indication of state losses, although the audit findings mentioned the treasurer's role in proposing an odd payment mechanism for large expenditures (BPK 2015b). This can be interpreted as the BPK submitting the settlement of state losses to the government through the procedure for the settlement of state losses caused by civil servants. Thus, it is impossible to complete the settlement

**80** See Section 7.6 for a good example of how the BPK, which has a judicial function, and the Supreme Court disagree on the same issue regarding unlawful acts.

**81** See Section 6.

of state losses because the government itself is opposed to the results of the BPK audit.

More than five years after the BPK announced its audit into the purchase of the Sumber Waras Hospital land, there has been no news except that the KPK has not stopped its investigation into the case (Aji 2020). On the other hand, the Jakarta Province Specialist Heart and Cancer Hospital, which was supposed to be built on 36,410 $m^2$ of land, has yet to show any signs of existence. The Sumber Waras Hospital is also still operating as usual. After seven years, an NGO asked the KPK to continue investigating the Sumber Waras Hospital land case and other controversial cases when Ahok was governor of Jakarta (Ihsanuddin 2022).

Ultimately, astute observers will note that in the Sumber Waras Hospital land case, the adoption of private international law instruments in Indonesia's public sector audit regulation does not completely eliminate the role of the BPK in the law enforcement process. In fact, the BPK can make a significant contribution to how the rule of law should be analysed and interpreted. A lack of understanding of the BPK's judicial function, which plays an important role in the settlement of state losses, has led to its legal analyses and interpretations being undermined by ad hoc law enforcement agencies such as the KPK.

Observers may also note that after the furore over the Sumber Waras Hospital land case died down, the BPK revised SPKN 2007 to SPKN 2017. SPKN 2017 deletes the SPKN 2007 provision that auditors must be free from political pressure ("Auditors must be free from political pressure in order to conduct audits and report audit findings, opinions, and conclusions objectively, without fear of political pressure").[82] The provision is taken from the US GAO audit standard (2003), which states, "Auditors need to be sufficiently removed from political pressures to ensure that they can conduct their audits objectively and report their findings, opinions, and conclusions objectively without fear of political repercussions."[83] Removing this provision could make political interference in the audit process normal rather than prohibited. As shown by Sumiyana et al. (2021), auditor independence and BPK audit results are undermined by the active intervention of political hegemony.

In addition, SPKN 2017 also adopts the concept of predication, derived from the ACFE's Fraud Examiners Manual, to limit the auditor's assessment of compliance with laws and regulations that may detect fraud and state losses.[84] On the other hand, under the pretext of a shortage of auditors, the BPK has increasingly outsourced the task of auditing government accounts to private sector auditors. Fauzia, Setyaningrum, and Martani (2022) show that private sector auditors working for and on behalf

**82** *PSP 01 Standar Umum* [General Standards].

**83** US GAO GAGAS 2003, Chapter 3 General Standards.

**84** See Section 7.5.1.

of the BPK produce fewer audit findings than BPK auditors in the same amount of time but at a much higher cost.

## 7.5 The Makassar City Craft Studio Case

The previous three cases show BPK audit results related to SPKN 2007. In this case, we will show the problems of the BPK audit related to SPKN 2017. On 29 May 2017, BPK issued an audit report on the 2016 financial statements of the Makassar City Government. Makassar City is located on the southwest coast of Sulawesi, the 11th largest island in the world. Like the Jambi University Hospital medical equipment procurement case and the Sumber Waras Hospital land case, this audit is BPK's annual routine audit of government financial statements. The audit report explains that the objective of this audit is to provide reasonable assurance whether the 2016 financial statements of the Makassar City Government are presented fairly, in all material respects, in accordance with generally accepted accounting principles in Indonesia or a comprehensive basis of accounting other than those accounting principles, taking into account, among other things, compliance with laws and regulations (BPK 2017d).

The audit was conducted using a risk-based approach to test management's assertions in the financial information, namely existence and occurrence (all accounts in the financial statements actually exist and have occurred and are supported by adequate evidence), completeness (all accounts have been presented in the financial statements), rights and obligations, and valuation and allocation (all accounts, including expenditures, have been presented with appropriate amounts and values). The method of this audit is a sample audit based on the auditor's professional judgement, taking into account the level of risk (if the internal control of the account is weak or has inherent risk, the sample for that account should be increased, or vice versa) and cost-benefit (the benefit of a sample audit of a transaction must be greater than the cost of the audit). Within 30 days, the BPK audited IDR 3.5 trillion of revenue realisation, IDR 3.2 trillion of expenditure realisation, IDR 28 trillion of assets, and IDR 141 billion of liabilities. The BPK issued an unqualified opinion on the financial statements (BPK 2017d).

The BPK audit report contains fourteen audit findings related to weaknesses in the internal control system (Book II) and nine audit findings related to non-compliance with laws and regulations (Book III). In audit finding number 2 in Book III, BPK identified the problem of procurement of goods that did not comply with the provisions of laws and regulations at the Makassar City Office of Cooperatives, Small, and Medium Enterprises. The BPK found non-compliance in the implementation of IDR 1.4 billion worth of expenditure for the establishment of

craft studios, resulting in an overpayment of IDR 50 million. According to the BPK, non-compliance included the splitting of work packages into several contracts to avoid auctions, goods not received by the studios, and goods not received according to specifications. For these issues, the BPK recommended the imposition of administrative sanctions on the civil servants involved and the direct payment of the overpayment to the local treasury (BPK 2017d).

This is an example of an audit finding where the BPK has replaced the term "state loss" with "overpayment" – perhaps to make the audit finding an administrative matter only, in order to protect the auditee from criminalisation.[85] However, these efforts, if any, were unsuccessful because two years after the BPK issued its audit report, the District Court Judge convicted the two officials responsible for the BPK's audited expenditures. Convicted of violating Article 3 of the Anti-Corruption Act 1999/2001, both were sentenced to one year and four months in prison and fined IDR 50 million (Mahkamah Agung 2019). The judge also ordered one of the defendants to pay compensation of IDR 330 million. This amount is the value of state losses calculated by the BPKP auditor of IDR 380 million, reduced by the defendant's return of state losses in the BPK audit report of IDR 50 million (Mahkamah Agung 2019).

The involvement of BPKP auditors in this case, as well as in the Bengkulu City roadworks and Jambi University Hospital medical equipment procurement cases, was initiated by investigators and prosecutors. Although the value of state losses based on the BPK's audit report is taken into account by the judge as a penalty deduction, the difference in the value of state losses between the BPK and the BPKP clearly tests the credibility of the BPK's audit results. Perhaps for this reason, the prosecutor also invited the BPK to give expert testimony, represented by an employee appointed by a member of the BPK.

In the trial, the BPK employee explained that, first, the types of audits conducted by the BPKP and the BPK were different. The audit conducted by BPKP is an investigative audit, which aims to determine the existence of state losses due to violations of laws and regulations, while the audit conducted by BPK is a financial audit, which aims to provide an opinion on the government's financial statements. Audit results may differ according to the objectives of each type of audit. According to the BPK employee, the audit results that can be presented to the court are investigative audit results, not financial audit results.

Second, the value of state losses is different because financial audits use sampling techniques while investigative audits use population techniques. BPK sampled only four craft studios, not all craft studios, resulting in different values of state losses. Third, BPKP can audit activities that were audited by BPK. Recoveries of state losses in BPK's financial audit are recalculated in BPKP's investigative audit. Fourth,

**85** See Section 7.1.

the BPK employee stated that BPK's opinion on the financial statements does not guarantee the existence of corruption (Mahkamah Agung 2019).

### 7.5.1 The Dichotomy of Public Sector Audit Types: The Emergence of the Concept of Predication

The opinion of the BPK employee is interesting because, as a representative of her institution in court, she placed the BPK's audit results in a subordinate position to the BPKP's audit results. In line with the allegory of audit objectives that limit the performance of public sector auditors,[86] she assumed that the results of investigative audits (conducted by the BPKP) are more credible than the results of financial audits (conducted by the BPK) because they are more specialised in uncovering state losses (Mahkamah Agung 2019). In fact, based on the State Audit Act 2004, investigative audits to uncover state losses are the authority of the BPK.[87] Investigative audits by internal auditors such as the BPKP are possible, but the authority comes from a regulation lower in the hierarchy than the act, namely government regulation. Therefore, the BPK's authority to conduct audits – regardless of the type of audit – cannot be overridden by the expertise of auditors from other institutions. Prioritising expertise over authority is the current trend in Indonesian public sector auditing. This is clearly influenced by the adoption of private international law instruments produced by transnational private actors, who often use claims of expertise to legitimise their products.[88]

Second, the BPK employee's opinion reflects the SPKN 2017, which has modified the definition and limitations of the types of audits that the BPK can conduct. Based on the 2004 State Audit Act, the BPK conducts three types of audits, namely financial audits, performance audits, and special purpose audits. Following the audit standards of the US GAO, the BPK initially included compliance with laws and regulations in all types of audits in SPKN 2007. However, in its evolution, the US GAO auditing standard removed the element of compliance with laws and regulations in its definition of performance audit, which was followed by the INTOSAI auditing standard and, of course, SPKN 2017. This, according to Syukri (2023), shows the penetration of neoliberal discourse into public sector auditing. In addition to removing the element of compliance with laws and regulations and replacing it with the metaphor of "leading to improvements" in performance audits (Syukri 2023), while retaining the element in financial audits, SPKN 2017 has redefined special purpose audits from "audits of other financial matters, investigative audits, and audits of government

**86** See Section 7.3.1.

**87** See Section 6.

**88** See Section 7.2.1.

internal control systems" under the State Audit Act 2004 to (only) "compliance and investigative audits".

The redefinition of audit types in SPKN 2017 means that the role of BPK auditors in assessing non-compliance with laws and regulations is limited to financial and special purpose audits. Furthermore, the logic of private sector auditors in financial audits, which is only oriented towards assessing the fairness of financial statements and evasion to detect fraud (Jeppesen 2019; Reichborn-Kjennerud et al. 2019), is then adopted by BPK auditors, which in turn creates a perception of inequality between audit types: the assessment of non-compliance with laws and regulations to detect state losses or fraud is only valid in special purpose audits, especially investigative audits. In fact, based on the State Audit Act 2004, all three types of audits have the same and equal position and role in assessing non-compliance with laws and regulations.

The opinion of the BPK employee that the audit results that can be submitted to the court are investigative audit results and not financial audit results is also contrary to practice. Despite the neglect of the BPK's audit recommendations for the settlement of state losses by the BPK's own judicial function, several cases show that the findings, recommendations, and reports of the BPK's financial audits conducted on the basis of SPKN 2017 (BPK 2017c, BPK 2017e, BPK 2018d) are consistent with and even fully used in corruption trials (Mahkamah Agung 2018, 2019a,b). The BPK employee's opinion may be based on an understanding of the statement in SPKN 2017, which is rooted in the AICPA auditing standard (1998), which states:

> Whether an act is, in fact, illegal is a determination that is normally beyond the auditor's professional competence. An auditor, in reporting on financial statements, presents himself as one who is proficient in accounting and auditing. The auditor's training, experience, and understanding of the client and its industry may provide a basis for recognition that some client acts coming to his attention may be illegal. However, the determination as to whether a particular act is illegal would generally be based on the advice of an informed expert qualified to practice law or may have to await final determination by a court of law."[89]

The AICPA auditing standards, which are used as private sector financial auditing standards in the United States, were fully adopted by the IAI in 2001 as private sector financial auditing standards in Indonesia, and by the US GAO in 2003 as standards for financial audits, performance audits, and attestation engagements (public sector) in the United States. In preparing SPKN 2007 as the first legally binding public sector auditing standard in Indonesia, BPK adopted the AICPA, IAI, and US GAO auditing standards as its stated financial and performance auditing standards:

89 AICPA Professional Standards 1998, AU Section 317 Illegal Acts by Clients.

> The auditor's training, experience and understanding of the programme being audited may provide a basis for the auditor to be more aware that some actions brought to his attention may be indicative of fraud. Whether an act is fraudulent or not must be determined by the judicial system and is beyond the professional competence and responsibility of the auditor.[90]

In its development, SPKN 2007, which has been replaced by SPKN 2017, no longer differentiates auditing standards based on the type of audit, so that one standard statement applies to the three types of audits conducted by the BPK. SPKN 2017 retains and modifies the auditing standards derived from AICPA, IAI, US GAO, and SPKN 2007 by stating:

> The auditor only deals with early indications of fraud that have a material effect on the opinion or conclusions. Even if the auditor finds early indications of fraud, the auditor is not authorised to declare that fraud has occurred, as the concept of fraud is a legal matter.[91]

To further limit the auditor's role in detecting fraud, SPKN 2017 introduces the concept of predication, which is described as:

> [T]he totality of events, the circumstances in which they occurred and any related or connected matters that would lead a reasonable, professional, and prudent person to believe that fraud has occurred, is occurring, or will occur. Predication is the basis for initiating a special purpose audit in the form of an investigative audit. An investigative audit will only be carried out if there is sufficient predication. Predication may come from audit findings other than investigative audits, or information from parties internal and external to the BPK. Such findings or information must be tested before they can be accepted as predication.[92]

The inclusion of the concept of predication in SPKN 2017 is further evidence of the influence of private international law instruments on the regulation of public sector auditing in Indonesia. The concept of predication comes from the Fraud Examiners Manual published by ACFE, a private organisation based in Texas, USA. The manual states:

> Fraud examinations must adhere to the law; therefore, fraud examiners should not conduct or continue fraud examinations without proper predication. Predication is the totality of circumstances that would lead a reasonable, professionally trained, and prudent individual to believe that a fraud has occurred, is occurring, and/or will occur. In other words, predication is the basis upon which an examination, and each step taken during the examination, is commenced. A fraud examiner acts on predication when he has a sufficient basis and legitimate reason to take each step in an examination.[93]

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**90** *PSP 04 Standar Pelaksanaan Pemeriksaan Kinerja* [Performance Audit Implementation Standards].
**91** *PSP 100 Standar Umum* [General Standards].
**92** *PSP 100 Standar Umum* [General Standards].
**93** ACFE Fraud Examiners Manual, Section 3 Investigation: Planning and Conducting a Fraud Examination.

SPKN 2017 thus modifies the statement in the ACFE's Fraud Examiners Manual as the "theoretical" basis for investigative audits. Comparing the two quotes above, it is clear that SPKN 2017 equates the concept of fraud examination with investigative audit. Like state loss, investigative audit is a concept that is arguably unique to Indonesia and is hardly recognised as a type of audit with a clear theoretical basis. The two concepts have a very close relationship because the concept of investigative audit is made possible by the concept of state loss. Since state loss was adopted as an offence of corruption,[94] an audit was needed to prove this element in court. Hence the emergence of investigative audits, i.e. audits designed to support the investigation of corruption cases involving state losses in court.

The emergence of the concept of investigative audit, in turn, interferes with the BPK's judicial function and its primary role in the settlement of state losses. In the end, state losses are understood as a purely criminal concept that can only be determined through a criminal trial, and the role of the BPK is merely to support the criminal justice system. Investigative audits, which were originally the authority of the BPK, can also be carried out by institutions other than the BPK, ironically testing the credibility of the BPK's audit results in court. Investigative audits carried out by institutions other than the BPK are questionable in terms of validity because they are merely calculations of state losses that can be carried out by anyone without special expertise.

### 7.5.2 The Concept of Materiality in Public Sector Auditing

The BPK employee's explanation that the difference in the value of state losses between the BPK audit results and the BPKP audit results was caused by differences in the number of samples selected is an excess of an inappropriate understanding of the concept of materiality in public sector auditing. The concept of materiality in auditing, along with related concepts such as reasonable assurance and audit risk, has been criticised as part of the mystification and paternalism of the profession, where the auditor's interest is "to mystify the functions of a profession … to justify heightened social status and to restrict access to the occupation" (Roberts and Dwyer 1998). Auditors, according to Roberts and Dwyer (1998), determine materiality on behalf of users, but do not disclose the considerations for this determination, which "reduces users' decision-making autonomy to an unacceptable level". On the other hand, "auditors' judgments regarding materiality are often not in agreement with those of other classes of reasonable persons" (Roberts and Dwyer 1998).

**94** See Section 6.

The BPK employee's understanding probably stems from the provision of SPKN 2017, which states:

> Auditors consider materiality in the audit process. The concept of materiality is relevant for all types of audits. Something is material if knowledge of it could affect decision-making by users of the audit report. Materiality is determined using professional judgement and depends on the auditor's interpretation of the needs of the users of the audit report and the provisions of laws and regulations. Materiality has both quantitative and qualitative aspects. Materiality considerations influence decisions about the nature, timing and scope of audit procedures and the evaluation of audit results.[95]

The statement replicates the INTOSAI ISSAI 100 auditing standard, which states:

> Materiality is relevant in all audits. A matter can be judged material if knowledge of it would be likely to influence the decisions of the intended users. Determining materiality is a matter of professional judgement and depends on the auditor's interpretation of the users' needs. *This judgement may relate to an individual item or to a group of items taken together*. Materiality is often considered in terms of value, but it also has other quantitative as well as qualitative aspects. *The inherent characteristics of an item or group of items may render a matter material by its very nature. A matter may also be material because of the context in which it occurs.* Materiality considerations affect decisions concerning the nature, timing and extent of audit procedures and the evaluation of audit results. *Considerations may include stakeholder concerns, public interest, regulatory requirements and consequences for society*.[96]

It appears that SPKN 2017 does not fully adopt the INTOSAI ISSAI 100 auditing standard and misses the most important part (italicised) of the auditing standard, namely that the auditor's consideration of materiality: (1) may relate to an individual item or a group of items taken together that is material because of its inherent characteristics or the context in which it occurs, and (2) may include stakeholder concerns, public interest, regulatory requirements and consequences for society. In the Makassar City craft studio case, it could be interpreted that the BPK applied the concept of materiality to the sample in such a way that transactions that were tested on the basis of materiality considerations were tested again on the basis of the concept of materiality ("materiality within materiality"). We believe that the concept of materiality should not be applied to the selected sample. If the auditor has selected a transaction as a sample and finds evidence of fraud, illegal act, abuse, or violation of contract in it, then all aspects of the sample should be fully and completely tested.

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**95** *Kerangka Konseptual Pemeriksaan* [Conceptual Framework of Audit].

**96** ISSAI 100 Fundamental Principles of Public-Sector Auditing, General Principles, Paragraph 41.

## 7.6 The Case of Judicial Review of the BPK's Judicial Decision: Implementing Administrative Law to Meet Accounting Requirements

The fifth case we have analysed in this study is the judicial review of the BPK's decision. This case is unique in that it demonstrates the strong interaction between public sector audit recommendations, the SAI institutional model and the legal system. For the first time, the BPK's judicial function in the settlement of state losses has been judicially tested. This stems from the BPK's audit report on the 2015 financial statements of the Ministry of Religious Affairs, where it audited IDR 2 trillion in revenue realisation, IDR 54 trillion in expenditure realisation, IDR 40 trillion in assets, and IDR 2.4 trillion in liabilities within 80 days. The BPK issued a qualified opinion on the financial statements (BPK 2016b). In audit finding number 1.3.1 in Book II, the BPK found that cash balances reported in the financial statements were not supported by their physical existence, also known as fictitious, amounting to IDR 2.4 billion, including cash balances in the expenditure treasury of Sultan Syarif Kasim State Islamic University (UIN Suska) of IDR 700 million (BPK 2016b). UIN Suska is located in Pekanbaru City, in the centre of the island of Sumatra. Unlike the finances of non-religious public schools and universities, which are administered by the Ministry of Education and Culture, religious public schools and universities such as UIN Suska are administered by the Ministry of Religious Affairs.

BPK's audit findings showed that the cash balance of IDR 700 million was supply money in 2014, which was lost due to violent theft on 22 May 2014 and reported to the police. Based on these findings, BPK recommended that the state loss be settled administratively through treasury claims (BPK 2016b). The BPK did not detect the issue in its audit of the Ministry of Religious Affairs' financial statements for the previous year, 2014, with an unqualified opinion (BPK 2015a). The Ministry of Religious Affairs' financial statements for the years after 2015, namely 2016 and 2017 (still with an unqualified opinion), did not explain the actual cash situation in detail based on BPK's findings (BPK 2017b, BPK 2018c). It was only in the 2018 financial report (with an unqualified opinion) that it was explained that the cash balance of IDR 700 million had been decided as a state loss by the BPK on 22 February 2018, and that the BPK required the treasurers to compensate the state loss and sign an SKTJM. However, the treasurers refused to sign the SKTJM (BPK 2019c). In the 2019 financial report of the Ministry of Religious Affairs (with an unqualified opinion), it was explained that the Rector of UIN Suska attempted to reclassify the balance of the cash account to a receivables account, the success of which had to wait for the issuance of a final and binding BPK decision (in the form of an SKP) (BPK 2020b). In the end, the

balance was successfully reclassified to long-term receivables in the financial statements of the Ministry of Religious Affairs for 2020 and 2021 (BPK 2021, 2022b).

On 11 January 2021, the treasurers filed a lawsuit with the Administrative Court against the SKP issued by the BPK on 16 July 2020, which imposed state losses (cash loss of IDR 700 million) on the treasurers. The plaintiffs asked the judge to declare the SKP null and void and to order the defendant (BPK) to revoke it. In his decision, the judge argued that, first, the BPK's SKP could be reviewed, examined, and adjudicated by the Administrative Court and was not a final decision. Second, the judge disagreed with the BPK's argument that the plaintiffs had committed unlawful acts that had caused the state losses. Third, the judge stated that the BPK's SKP had violated the general principles of good governance, namely the principle of accuracy. Therefore, the judge granted the plaintiffs' lawsuit in its entirety (Mahkamah Agung 2021).

On 1 July 2021, the defendant (BPK) appealed the decision of the first instance judge. In his legal judgement, the appellate judge reaffirmed that the BPK's SKP could be reviewed, examined, and adjudicated by the Administrative Court because "it was not issued in the context of law-making or judicial implementation". However, the appellate judge overturned the first instance judge's decision on the grounds that the plaintiffs' lawsuit was out of time and should not have been accepted (Mahkamah Agung 2021). On 25 November 2021, the plaintiffs filed a cassation appeal against the appellate judge's decision. The cassation judge dismissed the appeal and confirmed the legal reasoning of the appeal judge (Mahkamah Agung 2022).

The appellate judge's decision, which was upheld by the cassation judge, contains a contradiction in that it states that the BPK's SKP is not a final and legally binding decision, while on the other hand it decides that the lawsuit is time-barred based on the formal procedure of issuing the BPK's SKP as a final decision. Almost all challenges to BPK products – audit findings, recommendations and reports – are ruled inadmissible. This shows the confusion of the judges in dealing with the position of the BPK and its products. As a high state institution on a par with the Supreme Court, the BPK should clearly not be seen as an ordinary state institution whose products can be reviewed and overturned by the courts. However, the judges also did not see the BPK as a judicial institution that can issue products that are final and legally binding. It is clear from this case that the judges' reasoning for overturning the core argument of the BPK's decision – that the treasurers had committed an unlawful act – clearly demonstrates the judges' rejection of the BPK's judicial function.

Held hostage by accounting logic after years of familiarity with the adoption of private sector audit standards and the audit standards of Westminster SAIs such as the US GAO (Noussi 2012), the BPK failed to elaborate on the judicial function it inherited from the Napoleonic SAI. As the main actor in the settlement of state losses, instead of carrying out administrative procedures for the settlement of state losses,

the BPK has chosen a practice that has no clear legal basis, namely the formulation of audit recommendations related to state losses in the form of direct payment to the state treasury, local treasury, or company treasury. This practice may be an attempt to implement the norm in SPKN 2007, which states:

> The value of an audit lies not in the audit findings or recommendations, but in the effectiveness of the actions taken by the audited entity. Management of the audited entity is responsible for following up on recommendations and for establishing and maintaining a process and information system to monitor the status of follow-up on audit recommendations. If management does not have such a system, the auditor should recommend that management monitor the status of follow-up on audit recommendations. Continued attention to significant audit findings and recommendations can help auditors ensure that the benefits of the audit are realised.[97]

The auditing standard replicates the US GAO auditing standard, which states:

> Providing continuing attention to significant findings and recommendations is important to ensure that the benefits of the auditors' work are realized. Ultimately, the benefits of audit work occur when management of the audited entity takes meaningful and effective corrective action in response to the auditors' findings and recommendations. Management of the audited entity is responsible for resolving audit findings and recommendations directed to them and for having a process to track their status. If management of the audited entity does not have such a process, auditors may wish to establish their own process.[98]

The case in Section 7.5 shows that audit recommendations in the form of direct payments to the state treasury or local treasury do not guarantee auditors' success in circumventing fraud detection and corruption eradication efforts, as is the prevailing trend among private sector auditors (Jeppesen 2019; Reichborn-Kjennerud et al. 2019). Ironically, the BPK only activated its judicial function after a crucial accounting issue. According to the accountants' judgement, even the smallest problematic cash balance is material and has an impact on the presentation of the financial statements, which in turn leads to an audit opinion. Therefore, it is necessary to make a decision that can be the basis for transferring the balance to an account that has less impact on the financial statements. Thus, the BPK issued the SKP in order to "save" the audit opinion, but on the other hand it does not necessarily guarantee the recovery of the state losses because the problematic cash balance has been transferred to a long-term receivables account.

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**97** *PSP 02 Standar Pelaksanaan Pemeriksaan Keuangan* [Financial Audit Implementation Standards]; *PSP 04 Standar Pelaksanaan Pemeriksaan Kinerja* [Performance Audit Implementation Standards]; *PSP 06 Standar Pelaksanaan Pemeriksaan dengan Tujuan Tertentu* [Special Purpose Audit Implementation Standards].

**98** US GAO GAGAS 2003, Chapter 4 Field Work Standards for Financial Audits; Chapter 6 General, Field Work, and Reporting Standards for Attestation Engagements; Chapter 7 Field Work Standards for Performance Audits.

# 8 Strengthening the Judicial Function of the Indonesian SAI

The five case studies above clearly demonstrate both the interplay and the inherent conflict between the Indonesian SAI's audit recommendations and the legal system. As summarised in Table 6 below, the five case studies discuss the ontological dimensions of the existence of SAIs and public sector auditing in Indonesia. All five case studies attempt to problematise this issue: Either SAIs and public sector auditing are sufficiently managed in the same way as private sector auditing, or – assuming that they are institutions established for a specific public mission and historical foundation – they should be interpreted in a pluralistic, interdisciplinary, and local way, giving SAIs and their auditors room for manoeuvre, including, but not limited to, the freedom to analyse, interpret, and carry out a law enforcement process.

The main point of our argument is that the adoption of private international auditing standards (private international law instruments), which are inconsistent with the institutional nature of the BPK, has undermined its role in law enforcement. As an SAI with a Napoleonic character, the BPK and its auditors can play a leading role in (administrative) law enforcement related to the settlement of state losses and should be able to optimise this function in public sector auditing. Concepts such as expertise, audit objective, and predication, which are replicated in the BPK's hard law public sector audits – SPKN 2007 and SPKN 2017 – have weakened the BPK's audit results and placed it in a diametrical position with the audit results of other institutions and tended to subordinate it to the conventional judiciary.

Based on the five cases we analysed, the judicial system itself is problematic because it produces inconsistent judgments: demonstrating the judges' confusion about the position of the BPK and its audit results. While the judge in *the Bengkulu City roadworks case* accepted the BPK's audit results while rejecting the audit results of the BPKP, which was involved in the case, and the judge in *the Makassar City craft studio case* accepted both the BPK's and the BPKP's audit results, the judge in *the Jambi University Hospital medical equipment procurement case* rejected the audit results of both institutions and decided to determine the value of the state losses on his own. On the other hand, the BPK's audit results in *the Sumber Waras Hospital land case* and *the case of judicial review of the BPK's judicial decision* generated in the exercise of its judicial function were countered by conventional law enforcement agencies by rejecting the value of state losses and elements of illegal acts determined by the BPK.

The concept of state loss and the mechanism for its recovery and settlement through the judicial function of the BPK still exists today. This historical reality may be open to speculation in terms of its explanation. Why the BPK has retained a

**Table 6:** Summary and implications of the case study.

| No | Cases | Summary | Implications and Lessons Learned |
|---|---|---|---|
| 1 | The Bengkulu City roadworks case | – In its audit report, the BPK found volume deficiency (state loss) issues worth IDR 32 million in roadworks and recommended that the responsible official calculate the monetary value of the volume deficiency in the next term payment. The responsible official followed up the audit recommendation by paying the amount of state losses identified by BPK to the state treasury.<br>– The criminal court judge sentenced the responsible official for the BPK-audited work to a four-year prison sentence and a fine of IDR 200 million for violating Article 3 of the Anti-Corruption Act 1999/2001. In his legal reasoning, the judge did not convincingly elaborate on the criminal offence committed by the defendant and only reiterated the substance of the BPK audit findings which was actually an administrative issue *per se*. On the other hand, the judge did not accept the state loss of IDR 380 million that was recalculated by the BPKP auditor. | – The public sector audit standards (SPKN 2007) place a very strong emphasis on auditor expertise and certification of expertise, rather than on auditor authority. However, authority is very important because public sector audits, regardless of the type of audit, must first be carried out on the basis of authority.<br>– The effect of this tendency to prioritise expertise over authority is that the credibility of public sector audit findings before the judicial process is compromised. The BPK's audit findings were countered by those of other institutions that based their existence and relevance on claims of expertise.<br>– This case is an example of the implementation of the doctrine "recovery of state losses does not remove criminal sanctions and vice versa". This doctrine summarises the latent problems of public sector auditing and the legal system in Indonesia: the operation of the same element (state losses) in two different legal systems (administrative law and criminal law) and the degradation of the BPK's judicial function as the sole authority in the settlement of state losses.<br>– The SPKN 2007 does not contain a statement on state losses, although the higher regulations give the BPK a judicial function in the settlement of state losses. This is because the auditing |

**Table 6:** (continued)

| No | Cases | Summary | Implications and Lessons Learned |
|---|---|---|---|
| | | | standards adopted by the BPK are the private sector auditing standards and the public sector auditing standards of the Westminster SAIs. This in turn limits the audit function of the BPK, especially in its unique role as an SAI inheriting the Napoleonic character.<br>– This case shows that investigators, prosecutors, and judges are explicitly rejecting the judicial function of the BPK by involving institutions other than the BPK to re-examine the value of state losses found in the BPK audit process. |
| 2 | The Jambi University Hospital medical equipment procurement case | – The BPK found problems with the procurement of medical equipment worth IDR 19.7 billion, which was 21 days late. BPK recommended a fine of IDR 638 million. The fine was not classified as a state loss, but in a different category that BPK called revenue shortfall.<br>– The criminal court judge sentenced the director of the private company to four years in prison, a fine of IDR 200 million, and compensation of IDR 944 million for his role in the work audited by the BPK. The compensation is the value of the state losses that the defendant must pay to the state treasury. (The judge disagreed with the BPKP auditor's calculation of IDR 3.99 billion.) | – This case presents an allegory of audit objectives in public sector auditing in Indonesia. Its presumably positive intentions are not in line with its application, which limits the diversity of functions and complexity of public sector auditing.<br>– The development of audit objectives that are overly focused on financial reporting, particularly in relation to compliance with laws and regulations, results in auditors failing to detect fraud in audit findings, which in turn are not aligned with law enforcement.<br>– The BPK auditors focused too much on the objective of the financial audit, which was only to provide reasonable assurance on the financial statements based on accounting principles. In the end, the auditors thought it was enough to identify the delayed work and |

**Table 6:** (continued)

| No | Cases | Summary | Implications and Lessons Learned |
|---|---|---|---|
| | | | calculate the fines to be imposed, without investigating the possibility of fraud in the delayed conditions, which was indeed proven. |
| 3 | The Sumber Waras Hospital land case | – In its audit report, the BPK found problems in the implementation of IDR 756 billion worth of capital expenditure on land acquisition, resulting in state losses of IDR 191 billion. The BPK auditors carried out legal analysis and interpretation and then tried to show fraud in the expenditure. According to the auditors, there were three main issues of non-compliance with laws and regulations that led to fraud and state losses, i.e. the absence of an emergency as one of the conditions for budget changes, the absence of a planning process, and the oddity of the payment mechanism. The BPK recommends that the responsible official cancel the purchase of the land for the Sumber Waras Hospital and, if the cancellation cannot be carried out, to recover the claimed state losses of at least IDR 191 billion.<br>– The KPK launched an investigation and asked the BPK to conduct an investigative audit. The BPK's investigative audit report, which reached more or less the same conclusion as the financial audit report, was submitted to the KPK. However, after receiving the investigative audit report from the | – For the first time since the post-authoritarian institutional reform, the BPK and its audits have come under public scrutiny. The BPK's audit, particularly its legal analysis and interpretation, has been the subject of heated debate in cyberspace between pro- and anti-government netizens.<br>– Academics reacted differently to the BPK audit. Legal scholars state that the BPK audit should be the basis of the law enforcement process and should not be ignored by law enforcement officials. On the other hand, accountancy scholars argue that the BPK audit, which includes legal analysis and interpretation, goes beyond professional skills that are not within the auditor's competence.<br>– In this case, the adoption of private international law instruments in Indonesia's public sector audit regulation does not completely eliminate the role of the BPK in the law enforcement process. In fact, the BPK can make a significant contribution to how the rule of law should be analysed and interpreted. A lack of understanding of the BPK's judicial function, which plays an important role in the settlement of state losses, has led to its |

**Table 6:** (continued)

| No | Cases | Summary | Implications and Lessons Learned |
|---|---|---|---|
| | | BPK, the KPK chairman announced that the KPK investigators had not found any unlawful acts in the Sumber Waras Hospital land case, thus contradicting the results of the BPK audit. | legal analyses and interpretations being undermined by ad hoc law enforcement agencies such as the KPK.<br>– After the furore over this case died down, the BPK revised SPKN 2007 to SPKN 2017. SPKN 2017 removes the provision in SPKN 2007 that auditors must be free from political pressure. Removing this provision could make political interference in the audit process normal rather than prohibited. SPKN 2017 also adopts the concept of predication, derived from the ACFE's Fraud Examiners Manual, to limit the auditor's assessment of compliance with laws and regulations that may detect fraud and state losses. On the other hand, the BPK has increasingly outsourced the task of auditing government accounts to private sector auditors. |
| 4 | The Makassar City craft studio case | – In its audit report, BPK identified the problem of procurement of goods that did not comply with the provisions of laws and regulations. The BPK found non-compliance in the implementation of IDR 1.4 billion worth of expenditure for the establishment of craft studios, resulting in an overpayment of IDR 50 million. According to the BPK, non-compliance included the splitting of work packages into several contracts to avoid auctions, goods not received by the studios, and goods not received according to | – This case shows that the prioritisation of expertise over authority is the current trend in Indonesian public sector auditing. This is clearly influenced by the adoption of private international law instruments produced by transnational private actors, who often use claims of expertise to legitimise their products.<br>– The redefinition of audit types in SPKN 2017 means that the role of BPK auditors in assessing non-compliance with laws and regulations is limited to financial and special purpose audits. Furthermore, the logic of |

**Table 6:** (continued)

| No | Cases | Summary | Implications and Lessons Learned |
|---|---|---|---|
| | | specifications. For these issues, the BPK recommended the imposition of administrative sanctions on the officials involved and the direct payment of the overpayment to the local treasury.<br>– The criminal court judge sentenced the official responsible for the BPK-audited work to one year and four months in prison, a fine of IDR 50 million, and compensation of IDR 330 million. This amount is the value of the state losses calculated by the BPKP auditor at IDR 380 million, minus the compensation of IDR 50 million compensation paid by the defendant in the BPK audit report. (The judge agreed with the value of state losses calculated by the BPK and BPKP auditors.) | private sector auditors in financial audits, which is only focused on assessing the fairness of financial statements and evasion to detect fraud, is then adopted by BPK auditors, which in turn creates a perception of inequality between audit types: the assessment of non-compliance with laws and regulations to detect state losses or fraud is only valid in special purpose audits, especially investigative audits. In fact, based on the State Audit Act 2004, all three types of audits have the same and equal position and role in assessing non-compliance with laws and regulations.<br>– The emergence of the concept of investigative audit, in turn, interferes with the BPK's judicial function and its primary role in the settlement of state losses. In the end, state losses are understood as a purely criminal concept that can only be determined through a criminal trial, and the role of the BPK is merely to support the criminal justice system. Investigative audits, which were originally the authority of the BPK, can also be carried out by institutions other than the BPK, ironically testing the credibility of the BPK's audit results in court.<br>– In this case, it could be interpreted that the BPK applied the concept of materiality to the sample in such a way that transactions that were tested on |

**Table 6:** (continued)

| No | Cases | Summary | Implications and Lessons Learned |
|---|---|---|---|
| | | | the basis of materiality considerations were tested again on the basis of the concept of materiality ("materiality within materiality"). This is an excess of misunderstanding of the concept of materiality in public sector auditing and incomplete adoption of the concept of materiality in INTOSAI ISSAI 100. |
| 5 | The judicial review of the BPK's decision | – In its audit report, BPK found that cash balances reported in the financial statements were not supported by their physical existence, also known as fictitious, amounting to IDR 2.4 billion, including cash balances in the expenditure treasury of IDR 700 million. BPK recommended that the state loss be settled administratively through treasury claims.<br>– The cash balance of IDR 700 million had been decided as a state loss by the BPK on 22 February 2018 and the BPK required the treasurers to compensate the state loss and sign an SKTJM. However, the treasurers refused to sign the SKTJM. On 16 July 2020, the BPK issued an SKP (a final and binding judicial decision of the BPK), which imposed a state loss on the treasurers.<br>– On 11 January 2021, the treasurers filed a lawsuit with the Administrative Court against the BPK's judicial decision. The judge granted the plaintiffs' lawsuit to declare the SKP null | – Held hostage by accounting logic after years of familiarity with the adoption of private sector audit standards and the audit standards of Westminster SAIs such as the US GAO, the BPK has been less successful in elaborating the judicial function it inherited from the Napoleonic SAI. As the main actor in the settlement of state losses, instead of carrying out administrative procedures for the settlement of state losses, the BPK has chosen a practice that has no clear legal basis, namely the formulation of audit recommendations related to state losses in the form of direct payments to the state treasury.<br>– Ironically, the BPK only activated its judicial function after a crucial accounting issue. According to the accountants' judgement, even the smallest problematic cash balance is material and has an impact on the presentation of the financial statements, which in turn leads to an audit opinion. Therefore, it is necessary to make a decision that can be the basis for |

**Table 6:** (continued)

| No | Cases | Summary | Implications and Lessons Learned |
|---|---|---|---|
| | | and void and to order the defendant (BPK) to revoke it.<br>– On 1 July 2021, the defendant (BPK) filed an appeal against the first instance judge's decision. The appellate judge overturned the first instance judge's decision on the grounds that the plaintiffs' lawsuit was out of time and should not have been accepted. Finally, the cassation judge dismissed the appeal, upholding the legal reasoning of the appellate judge. | transferring the balance to an account that has less impact on the financial statements. Thus, the BPK issued the SKP in order to "save" the audit opinion, but on the other hand it does not necessarily guarantee the recovery of the state losses because the problematic cash balance has been transferred to a long-term receivables account. |

judicial function in the settlement of state losses, when its "patron" institution in the Netherlands has long since abandoned this function (Stuiveling and Turksema 2005), is a topic that should be addressed in a separate study. Initially, this may have been a purely pragmatic stance due to a lack of capacity to replace colonial regulations. Alternatively, it could be an attempt by the newly independent state to stabilise itself against potential divisions, particularly within the government. For the same reason, the military, which had a vested interest in the integrity of the state, was involved in the drafting of Indonesia's first anti-corruption law, adopting key concepts from this function.[99] The retention of the BPK's judicial function from the turn of the century to the present suggests that this policy is a necessity and has always been a local aspiration.

Although the BPK's judicial function has a clear historical basis and has been normatively institutionalised, implementation is not simple due to disruptions caused by criminal law enforcement carried out by the police, prosecutors, and the KPK. Instead of following the UN recommendation that Indonesia remove the state loss element in the Anti-Corruption Act 1999/2001,[100] state loss is still one of the main elements in Indonesia's anti-corruption regulations. The same element operating in two different processes leads to an inevitable ambiguity between the public sector audit and the criminal law enforcement functions. The influence and adoption of

**99** See Section 6.

**100** See Sections 6 and 7.2.2 for an explanation.

private international law instruments in the SPKN formulation makes BPK auditors work like Westminster SAI auditors. Westminster SAI auditors, who have much in common with private sector auditors, have a different perception of corruption eradication and tend to shy away from such public issues (Jeppesen 2019; Reichborn-Kjennerud et al. 2019). Meanwhile, BPK auditors authorised to identify state losses have been arrested for alleged extortion and accepting bribes in public sector audits (Ihsanuddin 2017; Warsudi 2022).

The BPK's policy of delegating some of its authority to private sector auditors (Fauzia, Setyaningrum, and Martani 2022) and increasing performance audits (Irawan and McIntyre-Mills 2016) can be seen as an effort to reduce BPK auditors' contact with the law enforcement process, thus freeing BPK auditors from the risk of abuse of authority that plagues Indonesian law enforcement today (Hermanto and Riyadi 2022). However, a focus on performance auditing that turns SAIs into mere evaluators or consultants (Pierre, Peters, and De Fine Licht 2018) risks degrading their primary function as guardians of public funds.

On the other hand, the settlement of state losses through criminal law enforcement has its own problems. In the judicial process for corruption of state losses (Articles 2 and 3 of the Anti-Corruption Act 1999/2001), in addition to punishing the defendant with imprisonment and fines, the judge usually imposes an additional punishment in the form of payment of compensation for state losses incurred. The amount of compensation to be paid by the defendant to the state through the state treasury, local treasury, or company treasury is equal to the value of the state losses. In the verdict, the judge usually states that, first, if the defendant does not pay the compensation within a certain period of time after the court decision has become final, the defendant's property may be confiscated by the prosecutor and sold at auction. Second, if the defendant does not have sufficient property to pay compensation for state losses, the defendant will be sentenced to imprisonment.

In the financial statements of the Indonesian Attorney General's Office (AGO, *Kejaksaan RI*) and the KPK, two institutions that have the authority to execute compensation for state losses, compensation that has not been paid by the convicted person is recorded in the compensation receivable account. In accordance with the regulations, compensation receivables on behalf of convicted persons are written off in full from the financial statements if (1) the compensation has been paid in full by the convicted person, (2) the convicted person's property has been confiscated and auctioned at the value of the state losses, (3) the convicted person has completed the term of imprisonment in lieu of compensation, or (4) the convicted person has died (BPK 2020a).

Based on the BPK's audit reports on the financial statements of the AGO and the KPK, the management of compensation receivables at the AGO and the KPK has always been a problem, as revealed in various BPK audit findings. These problems

include, first, that IDR 8.5 billion worth of compensation was written off from the compensation receivable account without adequate documentation or basis (BPK 2016a). Second, IDR 836 billion in compensation receivables are potentially irrecoverable because the court decision files are not under the management of the AGO (BPK 2017a). Third, the convict's compensation payment of IDR 615 million has not been deposited into the state treasury (BPK 2018a).

Fourth, IDR 1.5 trillion in compensation from final judgements since 1990 has not yet been processed (BPK 2019a). Fifth, the payment of IDR 477 billion in compensation by the convicted persons to the state treasury may cause legal problems because it comes from a private engagement (BPK 2020a). Sixth, IDR 29 billion in compensation receivables for 15 convicts have not been paid even though the convicts have been released (BPK 2018b). Seventh, loss of state revenue due to underpayment of compensation totalling USD 30,000, which was recorded as having been paid in full (BPK 2019b).

The provision on the abolition of the additional penalty for state losses (compensation receivables) due to the death of the convicted person is not in line with the administrative procedures for the compensation of state losses, which do not recognise the abolition. According to BPK Regulation No. 3 of 2007 and Government Regulation No. 38 of 2016, if the treasurer or the party causing the state loss is under guardianship, absconds, or dies, the compensation for state losses is transferred or charged to the guardian, the party acquiring the rights, or the heirs. In addition, the obligation to pay compensation for state losses, which may be replaced by imprisonment, contradicts the doctrine that "criminal sanctions do not eliminate the obligation to settle state losses administratively", which is stipulated in the State Treasury Act 2004.

Both problems are caused by dualism in the formation of norms related to the settlement of state losses. First, the concept of state losses is incorporated into criminal offences (corruption), and the settlement of state losses seems to be constructed to run independently through the doctrine of "the recovery of state losses does not remove criminal sanctions and vice versa". Second, the authority to settle state losses, which is genealogically in the hands of the Napoleonic SAI (BPK), is dispersed among many institutions, including criminal law enforcement agencies, so that it is not coordinated and integrated in a single way (Pramono 2020).

Therefore, it is necessary to restore the sole authority in the settlement of state losses by strengthening the judicial function of the BPK. The State Finance Law Package should be revised to give the BPK the authority to settle state losses, whether caused by treasurers or other public officials. The BPK also needs to be equipped with asset forfeiture officers to further optimise the execution process in the settlement of state losses. In the draft law on asset forfeiture currently under discussion in

Indonesia, the BPK should also be included as one of the institutions that will play an important role in asset forfeiture to settle state losses.

The Anti-Corruption Act 1999/2001 and other laws and regulations on corruption of state losses also need to be revised by removing the state loss element in corruption offences as a follow-up to the UN recommendations. This removal is important so that law enforcement officials can focus more on efforts to prove criminal offences (malice, abuse, fraud, deception, coercion, extortion, etc.) without having to focus on the impact or consequences of the state losses caused. As stated in the UN recommendation: "This pre-occupation with the need to show a loss to the state might limit the fight against corruption … [because] abuse of functions [should] cover also non-material advantage … " (United Nations 2012).

Finally, the BPK needs to remove or not replicate international auditing standards that are counterproductive to its judicial function. It should consider the audit standards of the Napoleonic SAIs and the INTOSAI P-50 Principles of Jurisdictional Activities of SAIs when drafting the SPKN and other technical regulations on public sector auditing. Although the implementation of international regulations may reduce the influence of local political hegemony (Sumiyana et al. 2021) and imply a lack of local sovereignty (Ramanna 2013), some concepts in international auditing standards can have a positive and productive impact on the BPK if properly adopted and applied. For example, based on our case studies, the statement that BPK auditors should be free from political pressure, which was included in SPKN 2007 but not in SPKN 2017. In addition, the statement that BPK auditors should consider materiality, which refers to an item or group of items that are significant due to their inherent characteristics or the context in which they occur, and may include stakeholder concerns, public interest, regulatory requirements, and societal consequences.

# 9 Conclusion: Theoretical Contributions and Limitations

The audit recommendations of the Indonesian SAI (BPK) acquired new significance after the collapse of the authoritarian state in 1998 and constitutional amendments in 1999–2002 that reformed the regulation and institutional governance of public sector audit in Indonesia. However, the policy was problematic because while the reform of public sector audit regulation was carried out through a strong adoption of private sector audit standards and the Westminster SAI model, the BPK retained some of its Napoleonic legacy, namely the concept of state losses and the judicial function in the settlement of state losses. This syncretic organisation led to confusion about the BPK's role and position in the Indonesian legal system. As we show in the case

studies, the BPK's audit findings and recommendations are not consistent with the judicial process. This, in turn, challenges the BPK's credibility as one of the few constitutional state institutions in Indonesia.

In our view, as the high state institution in a country that was not historically established to adhere to the doctrine of *trias politica*, the BPK has the legitimacy to strengthen its judicial function and freely and independently conduct public sector audits, including but not limited to the freedom to analyse, interpret, and conduct a law enforcement process. By adopting private sector auditing standards and the Westminster SAI, which operates with allegories of expertise, audit objectives, and predication, the BPK is held hostage to accounting logic and fails to fulfil its public mission. Therefore, it is important for the BPK to develop auditing standards that take full account of higher rules, administrative law, and national interests, or at least not to adopt and abolish auditing standards that are counterproductive to its judicial function – not merely to accommodate private international law instruments developed by private non-state actors operating outside the legal framework of a sovereign state.

This study complements previous studies on public sector auditing and the influence of the adoption of private international law instruments on the institutional functioning of public sector auditing, particularly in relation to SAIs in post-colonial countries, which have been limited. However, as this research is entirely doctrinaire and based on literature and legal documents, it may be less able to capture the background of discretionary decisions made by auditors in relation to the norms set out in auditing standards, including but not limited to decisions made as a result of political pressure (Sumiyana et al. 2021).

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