

## THE CORRELATION BETWEEN THE UNQUALIFIED OPINION BY THE AUDIT BOARD OF INDONESIA AND ANTI CORRUPTION ACT

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### ABSTRACT

An Unqualified Opinion (*Opini Wajar Tanpa Pengecualian*) is an assessment provided by the Audit Board of Indonesia to state institutions whose financial management is deemed appropriate. However, it is often observed that entities receiving the An Unqualified Opinion designation are subsequently found to have engaged in criminal acts of corruption, which raises public doubts concerning the credibility of BPK's assessments. This study elucidates the correlation between BPK's authority to issue opinions and efforts to combat corrupt practices. The research methodology employed is juridical-normative with a legislative and case-based approach. The findings indicate that Audit Board of Indonesia plays a pivotal role in the fight against corruption. Audit Board of Indonesia's authority to provide opinions hinges on compliance with the relevant legislation, suggesting that Audit Board of Indonesia can detect the presence or absence of criminal elements committed by the audited entities. The occurrence of corruption cases involving an Unqualified Opinion recipients is primarily due to opportunities and disclosure gaps in the audit process. A correlation exists between Audit Board of Indonesia's opinions and anti-corruption efforts, albeit limited to the specific category of corruption related to the state's financial scope under Article 2 of Law No. 17/2003. Thus, Audit Board of Indonesia can only identify cases of corruption directly linked to the state's finances, namely Corruption Adversely Affecting State Finances under Articles 2 and 3 of Law No. 31/1999 and Embezzlement in Office under Article 8 of Law No. 20/2001.

**Keywords:** criminal corruption; state finance; unqualified opinion.

### INTRODUCTION

Supervision is an indispensable activity within a democratic state. It serves as a crucial means of overseeing the functioning of government and the administration of the state, encompassing both the exercise of authority and the allocation of budgets or finances. Explicates that in matters of state governance, supervision and examination are interconnected, with examination forming an integral part of the supervisory process. Examination, in the context of public administration, holds the same significance as an audit.<sup>1</sup>

Constitutionally, the Audit Board of Indonesia (*Badan Pemeriksa Keuangan* or "BPK") is a high-ranking state institution whose authority is governed by the 1945 Constitution of the Republic of Indonesia. BPK's primary duty is to examine the management and fiscal responsibility of the state. The responsibilities of BPK are further emphasized in Article 2 of Law Number 15 of 2006 on the Audit Board of Indonesia ("Law No. 15/2006"), which states that BPK is an independent state institution responsible for examining the management and fiscal responsibility of the state.<sup>2</sup> Independence here means that BPK can engage in activities related to state financial management and responsibility as long as they do not contravene the provisions of the applicable legislation. Moreover, independence

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<sup>1</sup> Theodorus M. Tuanakotta, *Menghitung Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi*, Salemba Empat, Jakarta: 2009, p. 197.

<sup>2</sup> Law Number 15 of 2006 regarding the Audit Board of Indonesia.

also signifies that BPK carries out examinations of state financial management and responsibility autonomously, free from external or internal influence, ensuring its impartiality in the process.<sup>3</sup>

The authority of BPK extends beyond the examination of the management and financial accountability of the central government. It also encompasses the finances of local governments, other state institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional-Owned Enterprises, as well as various other financial management entities. BPK's examinations encompass financial audits, performance audits, and special purpose audits, all conducted in accordance with the standards of state financial audits. The results of these audits are reported to the People's Consultative Assembly (*Dewan Perwakilan Rakyat* or DPR), the Regional Representative Council (*Dewan Perwakilan Daerah* or DPD), and Regional People's Representative Councils (*Dewan Perwakilan Rakyat Daerah* or DPRD), and are subject to follow-up actions as stipulated by their respective jurisdictions.

In the execution of its duties as a financial auditor, BPK is also empowered to issue assessments in the form of opinions to determine the level of appropriateness in financial management for an entity. These opinions are categorized into four levels, including Unqualified Opinion (*Wajar Tanpa Pengecualian* or "WTP"), Qualified Opinion (*Wajar Dengan Pengecualian* or "WDP"), Adverse Opinion (*Tidak Wajar* or "TW"), and Disclaimer of Opinion (*Tidak Memberikan Pendapat* or "TMP"). WTP is granted to entities whose financial management meets the high standards and criteria applied. Attaining a WTP opinion is a source of pride for any state institution, both at the central and regional levels, as it serves as evidence to the public of their credibility and accountability in managing state finances.

In practical terms, the issuance of an Unqualified Opinion (WTP) does not always prove that the financial management of an institution is indeed sound. Ironically, many instances have been observed where entities receiving a WTP opinion have been implicated in acts of corruption. As an example, the Provincial Government of Papua has consistently received WTP opinions from the BPK for eight consecutive years, from 2014 to 2021.<sup>4</sup> Despite the high level of appropriateness in the financial management of the Papua Provincial Government, Governor Lukas Enembe has faced allegations of corrupt practices. Since 2017, reports from the Financial Transaction Reports and Analysis Center (*Pusat Pelaporan dan Analisis Transaksi Keuangan* or "PPATK") have pointed to inappropriate financial transactions, and in the same year, the National Police's Criminal Investigation Bureau ("Bareskrim Polri") initiated an investigation into corruption cases related to the management of the Papua Provincial Government's budget from 2014 to 2017, particularly in connection with various projects funded by the Regional Budget (*Anggaran Pendapatan dan Belanja Daerah* or "APBD"). Additionally, in 2022, Governor Lukas Enembe was declared a suspect in a separate

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<sup>3</sup> *Ibid.*

<sup>4</sup> Admin Web Papua, "Predikat WTP Papua kembali Diganjar Penghargaan Kemenkeu RI", <<https://papua.go.id/view-detail-berita-8139/predikat-wtp-papua-kembali-diganjar-penghargaan-kemenkeu-ri.html>>, [accessed on 15 January 2023].

corruption case, involving alleged bribery and gratuities related to development projects in Papua Province.<sup>5</sup> Another example is the Supreme Court, which received a WTP opinion for its 2021 Financial Report on July 19, 2022, marking the 10th consecutive year of such achievement since 2012.<sup>6</sup> Paradoxically, during this period, the Secretary of the Supreme Court, Nurhadi, was proven to be involved in corruption, as evidenced by a final and binding of court decision (*inkrah*).<sup>7</sup> Similar cases have emerged in various other institutions, such as the Ministry of Religious Affairs, which received a WTP opinion despite allegations of corruption involving the Minister of Religious Affairs and several other local governments. These discrepancies raise questions about the effectiveness of the WTP opinion as an indicator of genuine financial integrity and accountability within these institutions.

The cases mentioned above underscore a recurring issue: a disparity between the Unqualified Opinion (WTP) issued by the BPK and the actual financial practices of government entities. While the WTP is meant to be awarded to institutions with sound financial management, numerous state institutions receiving WTP opinions from BPK have faced allegations of corruption. This raises questions about the credibility and efficacy of BPK's opinions, which serve both as an auditing and supervisory tool in the realm of state financial management, particularly in the context of anti-corruption efforts.

Prior research has also explored the correlation between BPK's WTP opinions and corruption cases. However, these studies have touched on the general relationship between BPK opinions and corruption, without delving into the specific types of corruption. This study aims to provide a more comprehensive analysis by delineating the correlation between BPK's opinions and various forms of corruption, supported by legal foundations and detailed explanations.

The significance of this issue warrants an in-depth investigation into the correlation between BPK's Unqualified Opinion (WTP) and the endeavors to combat corruption. Thus, the title of this study is chosen as "The Correlation between the Unqualified Opinion by the Audit Board of Indonesia and Anti-Corruption Act."

## METHODS

The research methodology employed in this study is normative legal research, which aims to seek coherence and identify the alignment between the subject under investigation and legal norms, as well as the correlation between legal norms and applicable laws and regulations.<sup>8</sup> To address the legal issues at hand, the study utilizes a statute approach, involving an examination and correlation of relevant laws and regulations with the legal issues being investigated, especially those governing the authority of the BPK to issue opinions and its correlation with corrupt activities. Additionally, a

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<sup>5</sup> Putri Indy Shafarina, "Inilah Perjalanan Kasus Korupsi Gubernur Papua Lukas Enembe hingga Ditangkap KPK", <<https://nasional.tempo.co/read/1678320/inilah-perjalanan-kasus-korupsi-gubernur-papua-lukas-enembe-hingga-ditangkap-kpk>>, [accessed on 15 January 2023].

<sup>6</sup> Humas Azizah, "Raih WTP Ke-10, Ketua MA Minta Capaian Ini Harus Dipertahankan", <<https://www.mahkamahagung.go.id/id/berita/5421/mahkamah-agung-raih-wtp-ke-10>>, [accessed on 16 January 2023].

<sup>7</sup> M. Rosseno Aji, "KPK Jebloskan Eks Sekretaris MA Nurhadi ke Penjara", <<https://nasional.tempo.co/read/1547679/kpk-jebloskan-eks-sekretaris-ma-nurhadi-ke-penjara>>, [accessed on 16 January 2023].

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Kencana Prenada Media Group, Jakarta: 2017, p. 33.

case approach is employed to analyze several cases involving entities that received WTP but were subsequently implicated in corrupt practices. Legal materials are gathered through literature review and document analysis, involving the exploration of books, laws and regulations, journals, articles, both in printed and online media. These legal materials are then processed and analyzed using a descriptive-analytical technique. This involves describing all legal materials and analyzing them to construct arguments in response to legal issues. Systematic analysis is also employed to correlate various laws and regulations pertaining to BPK's authority to issue opinions and corrupt practices.

## DISCUSSION

### BPK's Authority to Issue Opinions in Legal Regulations

From the legal perspective, authority is defined as the power that is governed by legislation. Authority is also commonly referred to as legitimate power or power that is legitimized. Authority can be obtained through attribution, delegation, and mandate.<sup>9</sup> According to Maarseven, as cited by Philipus M. Hadjon in Victor Immanuel W. Nalle, authority comprises at least three components: (1) Influence: This refers to the authority being directed towards controlling the behavior of legal subjects; (2) Legal Basis: Authority must have a legal foundation; and (3) Conformity: Authority must adhere to standards or limitations.<sup>10</sup> Every authority must have limitations to prevent those who possess it from acting arbitrarily and exceeding their jurisdiction. Therefore, authority can be understood as rights and obligations inherent to officials or government bodies that have a legal basis, specific limitations, and are utilized to carry out specific activities for the public interest.

In the constitutional structure of Indonesia, the BPK is one of the high state institutions with a status equivalent to that of the DPR, the President, the Supreme Court, and other high state institutions. BPK's authority through attribution is regulated in Articles 23E to 23G of the 1945 Constitution of the Republic of Indonesia, which is further elaborated upon in various laws, including Law Number 15 of 2004 concerning the Audit of the Management and Financial Responsibility of the State ("Law No. 15/2004") and Law No. 15/2006. These legal provisions establish and define BPK's authority to audit and assess the management and financial responsibility of the state.

According to Law Number 15 of 2004, the scope of the examination of state finances includes the audit of financial management and financial accountability of the state. The examination of the management and financial responsibility of the state can be conducted by the BPK itself or by public accountants, as regulated by legislation, encompassing all elements of state finances as defined in Article 2 of Law Number 17 of 2003 on State Finance ("Law No. 17/2003"). These elements include:<sup>11</sup> (i) The state's authority to collect taxes, issue and circulate currency, and provide loans; (ii) The state's obligation to carry out public service tasks of the government and pay third-party bills; (iii)

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<sup>9</sup> Sri Nur Hari Susanto, "Metode Perolehan Dan Batas-Batas Wewenang Pemerintahan", *Administrative Law & Governance Journal*, Vol. 3, No. 3, 2020, p. 440. <<https://doi.org/10.14710/alj.v3i3.430%20-%20%20441>>

<sup>10</sup>Victor Imanuel W.Nalle, *Konsep Uji Materiil*, Setara Press, Malang: 2013, p. 12.

<sup>11</sup>Law Number 17 of 2003 regarding State Finances.

State revenues; (iv) State expenditures; (v) Regional income; (vi) Regional expenditures; (vii) State/regional wealth managed either by the government or by other parties, including money, securities, receivables, goods, and other rights that can be assessed in monetary terms, including wealth separated within state/regional enterprises; (viii) Property of others controlled by the government in the course of governance and/or public interest; and (ix) Property of others acquired using government-provided facilities.

When these provisions are related to Maarseven's opinion mentioned above, it can be said that these provisions represent the conformity or limitations on BPK's authority in financial oversight. The term "scope" can be interpreted as a limitation that requires that BPK's oversight of state finances is confined to the scope of state finances as specified in Article 2 of UU Law No 17/2003. BPK is, therefore, not permitted to conduct audits or oversight beyond the realm of state finances. This is a manifestation of the principle of the separation of powers to prevent absolute authority within BPK. As the sole external auditor, BPK's authority should be delineated to prevent arbitrary actions or exceeding its powers.

When relating these provisions to Maarseven's opinion mentioned above, it can be said that these provisions represent the embodiment of conformity or the limitations on the authority of the BPK in financial oversight. The term "scope" can be interpreted as a limitation that dictates that BPK's oversight of state finances is confined to the scope of state finances as specified in Article 2 of Law No. 17/2003. BPK is not allowed to conduct audits or oversight beyond the realm of state finances. This is a manifestation of the principle of the separation of powers to prevent absolute authority within BPK. As the sole external auditor, BPK's authority should be delineated to prevent arbitrary actions or exceeding its powers.

BPK's audits are divided into three categories, each resulting in different outputs or results:<sup>12</sup> (i) Financial Audit: This audit involves an examination of financial statements and results in a report that includes an opinion; (2) Performance Audit: This audit assesses economic efficiency, efficiency, and effectiveness aspects, resulting in a report that includes findings, conclusions, and recommendations; and (3) Special Purpose Audit: This audit, conducted outside of financial and performance audits, leads to a report that includes conclusions. These different types of audits serve distinct purposes and provide varying forms of feedback and evaluation regarding the subject under scrutiny.

An opinion is a professional statement made by an auditor regarding the fairness of the financial information presented in the financial statements based on the following criteria. *First*, compliance with Government Accounting Standards ("**SAP**"), this criterion is based on Government Regulation No. 71 of 2010 on Government Accounting Standards. Government Accounting Standards are the accounting principles applied in the preparation and presentation of government financial statements.<sup>13</sup> SAP is applied to all government entities, including central and local governments, as

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<sup>12</sup> Law Number 15 of 2004 on the Examination of the Management and Responsibility of State Finances.

<sup>13</sup> Government Regulation Number 71 of 2010 on Government Accounting Standards.

well as organizational units within these government entities, as long as these organizational units are required to present financial statements in accordance with relevant legislation.<sup>14</sup>

Second, Adequate Disclosures: Adequate disclosures are based on Technical Bulletin on National Financial Audit Standards No. 1 of 2012, which states that adequate disclosures are representations of the financial statements and their accompanying notes that have provided information that can affect the sufficiency of users' understanding, comprehension, and interpretation, and that are in line with Government Accounting Standards (SAP). According to the International Standard on Auditing ("ISA") 705, if there is a discrepancy between the disclosures and the requirements in the accounting standards, it is categorized as a misstatement.<sup>15</sup>

Third, compliance with legislation. When providing an opinion on financial statements, the Supreme Audit Agency (Badan Pemeriksa Keuangan or BPK) aims to gain confidence that the financial statements comply with National Financial Audit Standards (*Standar Pemeriksaan Keuangan Negara* or "SPKN"). In this process, BPK also assesses the government's compliance with legal provisions, fraud, and material misstatements that directly and significantly affect the presentation of financial statements.<sup>16</sup> Non-compliance with legal regulations can result in potential losses for the government, administrative irregularities, revenue shortfalls, inefficiency, and ineffectiveness.

Fourth, the effectiveness of the internal control system (*Sistem Pengendalian Internal* or "SPI"). According to Government Regulation No. 60 of 2008 on the Internal Control System of the Government ("GR No. 60/2008"). SPI is an integral process of actions and activities continuously carried out by leaders and all employees to provide adequate assurance that organizational objectives are achieved through effective and efficient operations, reliable financial reporting, safeguarding government assets, and compliance with legal provisions.<sup>17</sup> The concept of the Government Internal Control System ("SPIP") encompasses the comprehensive internal control system implemented in the central and regional government environments.<sup>18</sup> The SPIP concept adopts several provisions from The Committee of Sponsoring Organizations of the Treadway Commissions ("COSO") Internal Control Framework.<sup>19</sup>

There are four types of opinions that can be provided by auditors or the BPK. These include:<sup>20</sup> (1) WTP (Unqualified Opinion), states that the audited entity's financial statements are fairly presented in all material respects, and the financial position, results of operations, and cash flows of

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<sup>14</sup> *Ibid.*

<sup>15</sup> Mohammad Iqbal, Gudono, dan Irwan Taufiq Ritonga, "Apakah Kecukupan Pengungkapan telah Dipertimbangkan oleh Badan Pemeriksa Keuangan dalam Perumusan Opini?", *Jurnal Akuntansi & Akuntabilitas Publik*, Vol. 1, No. 1, 2018, p. 18 <<https://doi.org/10.22146/jaap.35329>>.

<sup>16</sup> Ramya Atyanta, "Analisis Opini BPK atas Laporan Keuangan Pemerintah Daerah (Studi Kasus pada Kabupaten X di Jawa Timur)", *Jurnal Ilmiah Mahasiswa FEB*, Vol. 1, No. 1, 2013, p. 4.

<sup>17</sup> Government Regulation Number 60 of 2008 on the Government Internal Control System.

<sup>18</sup> *Ibid.*

<sup>19</sup> Marno Kastowo, "Membangun SPIP: Mencari Model Implementasi Komprehensif", <<https://pusdiklatwas.bpkp.go.id/konten/show/727>>, [accessed on 25 January 2023].

<sup>20</sup> L.I. 2020, "Ragam Opini BPK", <<https://www.bpk.go.id/news/ragam-opini-bpk>>, [accessed 28 January 2023].

the entity are in accordance with generally accepted accounting principles in Indonesia; (2) WDP (Qualified Opinion), indicates that the audited entity's financial statements are fairly presented, and the internal control system is adequate, but there are material misstatements in some items of the financial statements; (3) TW (Adverse Opinion), This opinion states that the overall audited financial statements are not fairly presented in accordance with generally accepted accounting principles, the internal control system is inadequate, and there are numerous material misstatements in the financial statements; and (4) TMP (Disclaimer Opinion), signifies that the auditor does not provide an opinion on the financial statements because the scope of the audit is not sufficient to form an opinion. The main basis for these four types of opinions is the fairness of financial statement presentation and compliance with SPKN.

Based on the description above, it can be concluded that BPK, in its audit process, can also detect instances of unfairness in the financial statements of the audited entity that may be related to corrupt practices. This can be supported by one of BPK's evaluation criteria for issuing an opinion, which is compliance with legal provisions. This criterion helps BPK determine the presence or absence of misappropriation or misuse of state finances related to corruption offenses.

### **The Role of BPK in Combating Corruption**

One of the primary objectives of establishing the BPK, as stated in the considerations of the BPK Law, is to achieve the nation's goals of creating a fair, prosperous, and prosperous society. The management and responsibility of state finances require an independent, professional auditing institution to realize clean and corruption-free governance, minimizing the risk of financial losses. The legal framework for the BPK was established to minimize financial mismanagement and to monitor state institutions, both at the central and regional levels, to ensure the proper use of public funds. The formation of BPK's legal framework serves the purpose of minimizing financial losses in the management of state finances and supports the ideals enshrined in the 1945 Constitution. Furthermore, it plays a pivotal role in the broader reform agenda, ensuring that government agencies, at both central and regional levels, manage their finances transparently and accountably. This, in turn, aims to prevent corruption, collusion, and nepotism by promoting transparency and accountability in public financial management.<sup>21</sup>

The Role of BPK in Combating Criminal Corruption can also be found in Article 13 and Article 14 of Law No. 15/2004, where BPK auditors are authorized to conduct investigations to uncover indications of criminal elements. If criminal elements are discovered during an audit, BPK must report this to the relevant authorities as stipulated by the prevailing laws and regulations, no later than one month after the discovery of these criminal elements. This report serves as the basis for further investigations conducted by authorized law enforcement officials in accordance with the applicable laws and regulations.

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<sup>21</sup>Dani Habibi dan Ian Aji Hermawan, "Perluasan Kewenangan Badan Pemeriksa Keuangan Dalam Mengawasi Keuangan Negara Di Lingkup Pemerintahan Daerah", *Veritas et Justitia: Jurnal Ilmu Hukum*, Vol. 6, No. 2, 2020, p. 339. <<https://doi.org/10.25123/vej.v6i2.3512>>

Under these provisions, BPK has the authority to coordinate with other agencies when criminal elements are identified during an audit. Inter-agency coordination is crucial for a country that follows a system of the separation of powers, such as Indonesia. The primary goal is to facilitate each agency or institution in performing its duties effectively. The coordination that can be carried out by BPK with law enforcement agencies falls under the category of inter-related coordination<sup>22</sup>, which involves several agencies of equal standing but with different functions that are mutually interconnected.

The implementation of this inter-related coordination can be observed in the establishment of the *Auditorat Investigasi Utama* (“**AUI**”) by BPK in November 2016<sup>23</sup>, aimed at optimizing investigative audit activities. AUI can coordinate with law enforcement agencies such as the Attorney General's Office, the Police, and the Corruption Eradication Commission (“**KPK**”) regarding the investigation of corruption cases. It is evident that BPK and law enforcement agencies have different roles and functions, but their shared goal is to create a corruption-free state. Therefore, coordination is essential to achieving this objective.

Based on the arguments presented above, it can be concluded that the establishment of BPK as a state institution is intended to contribute to the creation of a clean, corruption-free government environment. BPK's role as a government external auditor can be leveraged by state authorities to engage in anti-corruption efforts.

### **The Causes of Criminal Corruption in Recipients of WTP**

Based on the legal foundations mentioned above, it can be emphasized that BPK is an entity of great importance in the efforts to combat corruption. However, in recent times, many state institutions have received WTP from BPK, yet there are still cases of criminal corruption. There are many factors that can drive individuals to engage in corruption. One theory that effectively explains the factors leading to corruption is the GONE Theory, proposed by Jack Bologna in his book *The Accountant's Handbook of Fraud & Commercial Crime*.<sup>24</sup> This theory identifies four main factors contributing to the occurrence of corruption, which are: (1) Greed, related to individual behavior and character, this factor involves the greed or avarice of individuals; (2) Opportunities, linked to institutional conditions, systems, and situations that create opportunities for individuals to easily engage in fraudulent activities; (3) Needs, pertaining to the factors required by individuals to support their livelihood and well-being; and (4) Exposures, associated with the actions or consequences faced by wrongdoers if their fraudulent activities are exposed and proven. In the context of the legal events, where an institution or individual receives the WTP designation but is involved in corruption, the factors most relevant to explaining the legal event are “Opportunities” and “Exposures”. This is

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<sup>22</sup>Malayu S. P. Hasibuan, *Manajemen Sumber Daya Manusia Edisi Revisi*, Bumi Aksara, Jakarta: 2016, p. 87.

<sup>23</sup>BPK, “Peran BPK Dalam Pemberantasan Korupsi”, <<https://www.bpk.go.id/news/peran-bpk-dalam-pemberantasan-korupsi>>, [accessed on 30 January 2023].

<sup>24</sup>Jack Bologna, “The Accountant's Handbook of Fraud & Commercial Crime”, <<https://archive.org/details/accountantshandb0000bolo>>, [accessed on 20 September 2023].

because when there are opportunities or vulnerabilities in the BPK audit process, it can provide fertile ground for engaging in corrupt activities.

The factor of Opportunities can occur because of BPK's position as the external government auditor, which is indeed vulnerable to attacks or deviations in behavior between BPK officials or auditors and central or regional government officials.<sup>25</sup> Opportunities that have the potential to arise include collusion aimed at helping to eliminate and manipulate illegal actions against state or regional financial losses by abusing their power (abuse of power). The opportunity for abuse of power can occur because BPK is the only external financial auditor in Indonesia. BPK's extensive authority in providing opinions on the Management and Accountability Report of State or Regional Finances has the potential to lead to an abuse of power.

In line with the factor of Opportunities as explained, the potential for abuse of power is indeed possible and has occurred in practice several times. In the year 2022, the Regent of Bogor was declared a suspect for bribing auditors from BPK West Java Regional Office to obtain an WTP.<sup>26</sup> Similar cases have also occurred in the Ministry of Village which was suspected of involvement in bribing BPK auditors during the financial audit. Other institutions such as the Meranti Islands Regency were also found to have offered bribes to BPK auditors to obtain an WTP. Bribing auditors from BPK is in contradiction to the provisions of Article 5 paragraph 4 and paragraph 6 of Law Number 28 of 1999 concerning the Clean and Free from Corruption, Collusion, and Nepotism State Administration, which state that every state administrator must carry out their duties without expecting rewards, without engaging in corruption, and not practicing corruption, collusion, and nepotism. Meanwhile, the briber themselves violate Article 5 paragraph 1 letter a or Article 13 of the Law No. 31 of 1999 regarding the Corruption Eradication Law as amended by Law No. 20 of 2021 ("Corruption Eradication Law").

Based on these cases, it can be concluded that the factor causing corruption in institutions receiving Unqualified Opinions (WTP) is the presence of opportunities (opportunities). The existence of these opportunities also indicates a gap in disclosure (exposures) or audits conducted by BPK because the internal parties within BPK itself during the assessment of financial management's compliance are vulnerable to bribery practices, raising doubts about the credibility of the financial report's fairness assessment. The cause may be the disregarding of regulations during internal control audits.<sup>27</sup> Another cause is the agreement between auditors and the relevant officials to manipulate the audit results. It is evident that, besides systemic gaps, there is also the factor of a weak human resource as the implementer.

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<sup>25</sup>The meaning of "vulnerable to attack or the occurrence of deviant behavior" here is that the extensive authority held by BPK has the potential for the abuse of power. Additionally, BPK, as the sole auditing institution for state finances, can lead to the misuse of authority within it because there is no other institution in Indonesia overseeing the auditing activities of BPK itself. See: Arnold Nicodemus Musa, "Kajian Hukum Atas Opini BPK RI Terhadap Laporan Pengelolaan Dan Pertanggungjawaban Keuangan Pemerintah Daerah (Studi Kasus Pada Pemerintah Kabupaten Halmahera Barat)", *Lex et Societatis*, Vol. III, No. 2, 2015, p. 79. <<https://doi.org/10.35796/les.v3i2.7317>>

<sup>26</sup>Aryo Putranto Saptohutomo, "Suap Bupati Bogor Ade Yasin dan Deretan Kasus Jual Beli WTP BPK", <<https://nasional.kompas.com/read/2022/04/28/12263151/suap-bupati-bogor-ade-yasin-dan-deretan-kasus-jual-beli-wtp-bpk>>, [accessed on 5 February 2023].

<sup>27</sup>Yudi Avalon, Noer Azam Achsan, dan Arief Tri Hardiyanto, "The Relationship Between the Audit Board of the Republic of Indonesia's (BPK) Opinion With Regional Government Financial Report and Corruption", *Jurnal Tata Kelola & Akuntabilitas Keuangan Negara*, Vol. 4, No. 1, 2018, p. 32.

The human factor as the implementer does indeed have a significant impact on the quality of governance. The implementation of governance, both at the central and regional levels, can run smoothly and achieve the desired goals if humans, as subjects, are also of high quality. The quality of human resources (HR) is emphasized here. This can be reflected in individual behavior and the culture within the respective institution.<sup>28</sup> Regardless, HR is one of the most critical elements in a government institution. Competent and high-quality HR is required to contribute maximally to the institution's goals.<sup>29</sup> It can be said that even though one of the goals of establishing BPK is to minimize losses in state financial management, partly due to corrupt practices, this goal will not be achieved without well-supported, quality, and competent HR.

Therefore, both factors that cause corruption within BPK should be minimized. For example, to reduce the factor of opportunities, one can adhere to the audit procedures and techniques. Additionally, to minimize the factor of exposure-related corruption, rigorous supervision of BPK staff or auditors can be implemented to ensure a high level of integrity.

### **The Correlation Between BPK Opinions and Corruption Act**

Normatively, the eradication of corruption is regulated by Law No. 31 of 1999 concerning the Eradication of Corruption Crimes and its subsequent amendments. This law outlines 30 types of corruption offenses, ranging from minor to major corruption cases, including:<sup>30</sup> (i) bribing public officials, (ii) giving gifts to public officials due to their positions, (iii) civil servants accepting bribes, (iv) civil servants accepting gifts related to their positions, (v) bribing judges, (vi) bribing lawyers, (vii) judges and lawyers accepting bribes, (viii) judges accepting bribes, (ix) lawyers accepting bribes, (x) public servants embezzling money or condoning embezzlement, (xi) civil servants falsifying records for administrative reviews, (xii) civil servants damaging evidence, (xiii) civil servants allowing others to destroy evidence, (xiv) civil servants aiding others in eliminating evidence, (xv) extortion of public officials, (xvi) civil servants extorting fellow civil servants, (xvii) contractor fraud, (xviii) project supervisors endorsing fraudulent activities, (xix) misconduct involving the TNI/Polri (military/police) partners, (xx) misconduct of TNI/Polri partner supervisors, (xxi) beneficiaries of TNI/Polri allowing fraudulent activities, (xxii) public servants seizing state land to the detriment of others, (xxiii) public servants participating in procurements they manage, (xxiv) public servants accepting gratuities without reporting them to the KPK (Corruption Eradication Commission), (xxv) obstructing the examination process of corruption cases, (xxvi) suspects failing to disclose their wealth, (xxvii) banks

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<sup>28</sup>Yuswar Effendi, "Tinjauan Hubungan Opini WTP BPK Dengan Kasus Korupsi Pada Pemda di Indonesia Kajian Manajemen Keuangan Pemerintah, Hubungan Antara Masyarakat, Pemerintah Dan Pemeriksa (Auditor)", *Jurnal Ilmiah Manajemen dan Bisnis*, Vol. 13, No. 1, 2013, p. 52.

<sup>29</sup>Dadang Suwanda, "Factors Affecting Quality of Local Government Financial Statements to Get Unqualified Opinion (WTP) of Audit Board of the Republic of Indonesia (BPK)", *Research Journal of Finance and Accounting*, Vol. 6, No. 4, 2015, p. 149.

<sup>30</sup>KPK, "Ayo Kenali dan Hindari 30 Jenis Korupsi Ini!", <<https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20220524-ayo-kenali-dan-hindari-30-jenis-korupsi-ini>>, [accessed on 10 February 2023].

not reporting the accounts of suspects, (xxviii) witnesses or experts withholding information or providing false information, (xxix) someone holding an official secret but not disclosing it or providing false information, and (xxx) witnesses revealing the identity of a whistleblower. These types of corruption are categorized into seven groups, including corruption related to financial losses to the state, bribery, abuse of office, extortion, fraudulent conduct, conflicts of interest in procurement, and gratuities.<sup>31</sup>

To determine the correlation between corruption offenses and BPK's WTP opinions, it is necessary to analyze each of the seven groups of corruption offenses and their relevance to BPK's authority to issue opinions, as outlined below. First, corruption is related to financial losses to the state, which is defined as actions carried out by individuals, civil servants, and state officials who violate the law, abuse their authority, opportunities, or means available to them due to their position or status by engaging in corrupt practices.<sup>32</sup> Corruption offenses related to financial losses to the state are governed by Article 2 and Article 3 of Law No. 31/1999, as well as Constitutional Court Decision No. 25/PUU-XIV/2016. It's important to note that both Article 2 and Article 3 of Law No. 31/1999, in conjunction with Constitutional Court Decision No. 25/PUU-XIV/2016, share a common element: "causing financial harm to the state or the national economy".<sup>33</sup> Based on this element, corruption leading to financial losses to the state has a direct connection and results in state financial losses. As previously discussed, BPK's audit scope, as defined in Law No. 15/2004, covers financial audits specified in Article 2 of the Law No. 17/2003. Therefore, it can be emphasized that corruption causing financial losses to the state is directly related to BPK's authority to issue opinions because when an official commits corruption as regulated in Article 2 and 3 of Corruption Eradication Law, BPK can ascertain that the official's financial reports are not in accordance with standards and are indicative of corruption.

Second, bribery involves clients actively providing or promising something to a civil servant or state official with the intention of expediting a process, even though it violates the established procedures. Bribery is a means of influencing the due process of law and the conditions for a transaction, making it a Transactional Crime.<sup>34</sup> While bribery transactions involve money, the bribe money itself does not fall within the scope of state finances, and therefore, it does not have a direct connection to BPK's audits.

Third, embezzlement of office involves intentional acts of embezzling money or negotiable instruments, falsifying books or special records for administrative examination, tearing up and destroying bribery evidence to protect the bribe giver, and more. Embezzlement of office is regulated by several articles, namely Article 8, Article 9, and Article 10 subparagraphs a, b, and c of Law No. 20/2001. Based on these provisions, embezzlement of office that involves the element of money is

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<sup>31</sup> Wicipto Setiadi, "Korupsi di Indonesia (Penyebab, Bahaya, Hambatan dan Upaya Pemberantasan, Serta Regulasi)", *Jurnal Legislasi Indonesia*, Vol. 15, No. 3, 2018, p. 254 – 260.

<sup>32</sup> Ismail, "Kajian Yuridis Terhadap Tindak Pidana Korupsi", *Jurnal Legalite: Jurnal Perundang-Undangan dan Hukum Pidana Islam*, Vol. 2, No. II, 2017, p. 5.

<sup>33</sup> Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi *juncto* Putusan Mahkamah Konstitusi Nomor 25/PUU-XV/2016.

<sup>34</sup> Muhammad Mustofa, "Suap Menyuap dan Mafia Peradilan di Indonesia: Telaah Kriminologis", *Masalah-Masalah Hukum*, Vol. 42, No. 1, 2013, p. 2.

governed by Article 8 of Law No. 20/2001, which states<sup>35</sup>, “Money or negotiable instruments” and “kept by virtue of his/her position.” To determine whether embezzlement of office as defined in Article 8 of Law No. 20/2001 correlates with state finances, which are subject to BPK's examination, it is necessary to understand the meaning of the terms 'money' and 'kept by virtue of his/her position.' According to Adami Chazawi<sup>36</sup>, the term "money kept by virtue of his/her position" refers to money kept by an individual because of their position as a civil servant or a position for performing tasks of a public nature, including any work related to or serving the public interest, such as a parking attendant (not a civil servant) whose task is to collect parking fees for public vehicles and remit them to the city's revenue department.<sup>37</sup> Based on this explanation, it can be concluded that the meaning of “money kept by virtue of his/her position” falls within the public domain and is not personal money in private form. This interpretation is similar to the concept of state finances. Therefore, it can be emphasized that embezzlement within the scope of Article 8 of Law No. 20/2001 correlates with BPK's examination for issuing an Opinion.

Fourth, extortion is an act where civil servants or state officials offer services to expedite their duties unlawfully. Extortion involves an element of coercion.<sup>38</sup> Extortion is regulated by Article 12 subparagraphs (e), (g), and (h) of Law No. 20/2001. When examining the correlation with BPK's examination, the crime of extortion is indeed motivated by a desire to obtain compensation, whether in the form of money or goods. However, this does not fall within the scope of state finances, which are the subject of BPK's examination for issuing an Opinion.

Fifth, cheating is defined as an intentional act carried out to gain personal benefit that may harm others. Examples of cheating are regulated in Article 7 paragraph (1) of Law No. 20/2001. This can include contractors, builders, or material sellers who engage in fraudulent activities that may endanger the safety of people, property, or national security during times of war.<sup>39</sup> There is no transactional element in cheating, and it primarily focuses on dishonest or fraudulent behavior. As a result, it does not correlate with the examination of financial reports or BPK's Opinion.

Sixth, conflict of interest in procurement. Regulated under Article 12 subparagraph (i) of Law No. 20/2001, it is defined as a civil servant or state official, either directly or indirectly, intentionally participating in the making of contracts, procurement, or leasing, even though they are assigned to manage or supervise it.<sup>40</sup> For example, in the procurement of office supplies, a civil servant or state official intentionally involves their family or a relative's company and ensures its success in the tender

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<sup>35</sup> Law Number 20 of 2001 on Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption.

<sup>36</sup> Adami Chazawi, *Hukum Pidana Korupsi di Indonesia*, Rajawali Pers, Jakarta: 2016, p. 133 – 134.

<sup>37</sup> Muhamad Kurniawan, “Penggelapan Uang dan Surat Berharga Oleh Pegawai Negeri Sebagai Tindak Pidana Khusus Dalam Pasal 8 Undang-Undang Pemberantasan Tindak Pidana Korupsi”, *Lex Crimen*, Vol. 5, No. 5, 2016, p. 90.

<sup>38</sup> Ahmad Rukbil D. Sowikromo, “Pemerasan Oleh Pegawai Negeri Menurut Undang-Undang No. 31 Tahun 1999 Jo Undang-Undang No 20 Tahun 2001 Tentang Tindak Pidana Korupsi”, *Lex Privatum*, Vol. 5, No. 8, 2017, p. 154.

<sup>39</sup> Renata Christha Auli, “Bentuk-Bentuk Korupsi dan Aturannya di Indonesia”, <<https://www.hukumonline.com/klinik/a/bentuk-bentuk-korupsi-dan-aturannya-di-indonesia-lt5e6247a037c3a/>>, [accessed on 15 February 2023].

<sup>40</sup> *Ibid.*

process. Conflict of interest in procurement tends to lean more toward nepotism behavior, which does not have a direct connection with state finances, BPK's examination, or its Opinion.

Seventh, gratification. According to Article 12B paragraph (1) of Law No. 20/2001, any gratification to a civil servant or state official is considered a bribe if it relates to their position and contradicts their duties or obligations.<sup>41</sup> Based on this definition, gratification is almost synonymous with bribery, involving the receipt of compensation, whether in the form of money or goods. However, this compensation does not fall within the scope of state finances, which are the subject of BPK's examination for issuing an Opinion.

Based on the explanations of the seven groups of corruption crimes mentioned above, which have been analyzed for their correlation with state finances, it is found that the only types of corruption crimes related to state finances are corruption resulting in financial loss to the state, as stipulated in Article 2 and Article 3 of Law No. 31/1999 juncto Constitutional Court Decision No. 25/PUU-XIV/2016, and embezzlement in office as per the provisions of Article 8 of Law No. 20/2001. Consequently, it can be concluded that only types of corruption crimes directly related to state finances can be indicated by BPK, as BPK's authority for examining the management and financial responsibility of the state is limited to the scope of state finances under the provisions of Law No. 17/2003.

Regarding the legal cases frequently encountered today, where entities receiving an unqualified Opinion from BPK are later proven to have engaged in corruption, if correlated with the discussions presented above, the result is that corruption cases involving entities that received an unqualified Opinion are related as long as the corruption committed falls under the category directly related to state finances. For example, in the case mentioned in the introduction, involving Lukas Enembe, the Governor of Papua, who also received an unqualified Opinion from BPK, it cannot be said that there is a gap or weakness in BPK's examination because the type of corruption committed was bribery and gratification, which are not, notably, types of corruption directly related to state finances. Similarly, in the case of Nurhadi, the Secretary of the Supreme Court, there is no correlation between the unqualified Opinion received by the Supreme Court and the corruption case that occurred because the corruption committed is not related to state finances.

Based on the analysis presented above, it is evident that the BPK's Opinion remains relevant to the efforts to combat corruption, as the examination of the appropriateness of an entity's financial flows conducted by the BPK can also indicate whether there is any suspicion of the misuse of state finances or corruption. However, the BPK's ability to detect corruption committed by the entities it examines is limited to types of corruption directly related to the scope of state finances. Therefore, it can be concluded that the correlation between the BPK's assessment of the appropriateness of financial statements in the form of an Opinion and the corruption crimes committed should be understood as types of corruption directly related to the scope of state finances.

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<sup>41</sup> I Gusti Agung Satria Wedantha dan Anak Agung Ari Atu Dewi, "Penyuapan Sebagai Bentuk Gratifikasi dalam Tindak Pidana Korupsi", *Kertha Wicara*, Vol. 4, No. 3, 2015, p. 4.

## CLOSING

Based on the analysis and discussions presented, it can be concluded that the authority of the BPK to issue assessments in the form of opinions is governed by several legal provisions. However, this authority is limited to the scope of state finances. One of the criteria for the BPK to issue an opinion is compliance with legislation, which can help the BPK indicate whether or not there are criminal elements committed by the entities being examined. The BPK plays a crucial role in efforts to combat corruption. The BPK, as an external government auditor, can facilitate law enforcement agencies in conducting investigative examinations of entities suspected of engaging in corruption. The interrelated coordination between the BPK and law enforcement agencies can lead to the management of state finances that are free from corruption, collusion, and nepotism. Regarding some common issues where state institutions receive WTP from the BPK but are later convicted of corruption, several factors influence these problems, including the presence of opportunities and vulnerabilities in disclosures. This is evident from various cases involving the buying and selling of BPK's WTP Opinions.

The correlation between the BPK's authority to issue opinions and corruption crimes is limited to types of corruption directly related to the scope of state finances, as regulated by Article 2 of Law No. 17/2003 concerning State Finances. Therefore, the BPK's ability to detect whether an entity has committed corruption crimes or not is confined to the scope of the authority granted. As a recommendation, the BPK's role in efforts to combat corruption should be understood strictly within the context of corruption directly related to state finances, which includes corruption resulting in state financial loss, as specified in Article 2 and Article 3 of Law No. 31/1999, jo. Constitutional Court Decision No. 25/PUU-XIV/2016, and Embezzlement in Office regulated by Article 8 of Law No. 20/2001.

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