Audit Board Of Indonesia’s Supervision Duty Reviewed From Islamic Law Perspective For Acceleration Of Sustainable Development

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Abstract
State Financial Auditing Board, also known as the BPK, whose job is to look into the management and responsibility of state finances, shared the same principle with Mazhalim Region, an institution in Islamic state administration that looks into cases involving state property. In Islam, laws are typically made to safeguard wealth from those who are overly ambitious or greedy for things that a Muslim would consider to be enough to satisfy their needs. The principle is crystallized in Muslim life: Amar ma’ruf nahis mungkar became the leading guide in achieving a better life. The position of the BPK in the Indonesian and Mazhalim Region in Islamic State administration systems concerning accelerating sustainable development is attracting considerable interest in this paper to see the supervision of the BPK’s task from an Islamic perspective. Since the law is conceptualized as a social norm or rule that governs everyone’s behavior, it is the primary focus of this study. Thus, compiling positive law, principles, doctrines of law, legal discovery in concrete cases, systematic law, synchronization levels, legal comparisons, and legal history are concerns of normative legal research.

A. Introduction
The State Audit Board (Badan Pemeriksa Keuangan or BPK) is a state agency whose task is to examine the management and responsibilities of state finances. BPK is a free and independent state institution, related to the implementation or realization of the state budget, which has been approved by
the people through the House of Representatives (Dewan Perwakilan Rakyat or DPR). In carrying out its duties and authorities, BPK partner with DPR in the realization of operative function (control) of the government’s performance, as well as overseeing the implementation of the state revenue and expenditure budget, as the supervisory function is attached to the DPR. The results of the financial audit that have been carried out are then notified or submitted to the DPR to be followed up accordingly.¹

The existence of the BPK in the administration of the state is emphasized in the 1945 Constitution of the Republic of Indonesia (iUndang-Undang Dasar Negara Republik Indonesia 1945 or UUD NRI 1945), in Article 23 paragraph (1) stating that management and responsibility of the state finances audit is held by a free and independent State Audit Board (BPK).² In the Third Amendment of the 1945 Constitution of 2001, the organizational structure and authority of the BPK was reaffirmed, but the purpose of this part of the article changed very fundamentally. There are three basic functions of BPK in conducting supervision, which are operative functions, judicial function, and advisory function.³ In addition to the three main functions, the BPK has the duties stated in Law Number 15 of 2006 in Chapter III of the first part, meanwhile, the authority of BPK based on Law Number 15 Year 2006 Chapter III.

The BPK’s task of supervising is the same as the principle of Muslim’s life called amar ma’ruf nahi mungkar, because in Islam, this is the main principle in achieving a better life. In Islam, the regulation was generally made to protect wealth from those who are greedy for public property or those with too much desire which is enough for a Muslim. Cases related to the state property are examined by Mazhalim Region, an institution in Islamic state administration. Meanwhile, in the Modern constitutional system such as the Republic of Indonesia, the State Financial Auditing Board is called the BPK whose mission is to examine the management and responsibility of state finances.

In Islam, financial audit institutions have a duty, including handling the corrupt attitudes of government officials over the assets they collect from the people. To deal with this, the mazhalim officers need fair laws in the state accounting records and previous government provisions regarding the levies. They also examine the fraudulent employees assigned to collect zakat and State assets.⁴ The position of the BPK in the Indonesian and Islamic State

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administration systems concerning accelerating sustainable development, as well as the supervision of the BPK's task from an Islamic perspective, are examined in this paper. This research is normative law research using normative case studies in the form of legal behavior products, such as studying the law. The law is the topic of the study, which is conceptualized as a social norm or rule that guides everyone's behavior. Consequently, normative legal research is concerned with compiling positive law, principles, doctrines of law, legal discovery in concreto cases, systematic law, synchronization levels, legal comparisons, and legal history.

Based on the explanation above, the author decides to use the normative legal research method to examine and write the discussion of this research as a legal research method. The use of normative research methods in research and writing efforts is based on the suitability of the theory with the research methods needed by the author. With several approaches in legal research, researchers will get information from various aspects of the issue being tried to find the answer. In this research, the approach used is the statue approach. Since the focus in general research is a variety of law, a normative research certainly must use a legislative approach. Meanwhile, in this study, the data analysis was carried out with a qualitative approach namely to reveal as much data (legal material) as possible so that the issues raised were more transparent. A qualitative approach enables researchers to elaborate data obtained comprehensively and the results of the description become more accountable.

B. Discussion

1. BPK's Position in the Indonesian and Islamic Constitutional System in Accelerating Sustainable Development

BPK is a free and independent institution that do not stand above the government whose task is to examine the responsibilities regarding state finances. BPK is a high-ranking institution with the authority to oversee all state assets including the central and regional governments, BUMN, BUMD, and other state institutions. BPK is domiciled in Jakarta and has representatives in the provinces. In principle, BPK adopts and takes over the function of Algemeene Rekenkamer while refer to the Indische Comptabilietswet (ICW) and Indische Bedrijvenswet (IBW) as its work references until the issue of Law Number 17 of 2003 concerning State Finance and Law Number 1 of 2004 concerning State Treasury. Even Soepomo explicitly said that this institution ‘... was formerly called Rekenkamer’. 

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7 Ibid
As an independent institution, BPK is free from the influence and power of the Government but it does not stand above the Government. Also, BPK is not a subordinate of the DPR even when BPK is required to submit its audit results to DPR. This working relationship was also found between *Algemeene Rekenkamer* and *Volksraad*.

**a. BPK as the Holder of Power of Auditive**

Basically, the BPK is tasked with supervising the management of state finances. With supervision, it is expected that there will be no irregularities or even avoiding practices that result in the occurrence of a state or corruption. Hence, it is BPK's role to always report its audit results to competent institutions handling the eradication of corruption. For law enforcers to conduct an investigation from indications of reported corruption, the validity of BPK’s data can be used as preliminary data. An accurate BPK report will also be evidence in court. This shows that BPK's role is quite influential on the process of prosecuting corruption cases. If the BPK audit results are not finished, many legal processes will be hampered.

After having investigated responsibilities regarding state finances, results were to be submitted to DPR, DPD, and DPRD in accordance with their authority. BPK investigates all the implementation of the State Revenue and Expenditure Budget. Examination is carried out based on the provisions contained in the law.

Therefore, the position of BPK are:

1. BPK is a body that investigate the responsibility related to state finances, which in carrying out its duties, is independent of the influence of government power, but does not stand above the government.
2. BPK is the highest state institution in the performance of its duties independent of governmental influence and power but does not stand on the government.

In an Islamic perspective, the existence of BPK is more motivated by its functional basis in carrying out its supervisory duties on the management of state finances in an orderly manner, obeying the laws and regulations, efficient, economic, effective and transparent with due regard for a sense of justice. In Islam, a sense of justice is the main reason for the justification of all state institutions and instruments, and the principle of enactment of legislation, law and all provisions, as well as the goals of everything that moves in the state and society.

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As Allah says, "In all conscience, Allah tells you to deliver the mandate to those who are entitled to receive it and instructs you when setting laws among humans so that you determine them fairly. (Quran, An-Nisa: 58).

State assets belong to Allah while the government / state officials are people who have the mandate (trust) to manage and supervise the country's assets properly, correctly and fairly.

To maintain financial stability, the state is not only tasked with regulating the global economic and political system but also has an obligation to put in place a system of supervision, protection and management that is systematic and effective. In conducting financial supervision and inspection, the method can be divided into 2: internal and external supervision. Internal supervision come from personal faith and awareness of individuals who believe they would be held accountable for all things that they did in this life before God. This internal control creates an attitude to always guard against fraud, abuse and attitudes of corruption.

Whereas external supervision is carried out by a state institution given authority by the relevant country's constitution. According to Islam an institution in a country must meet the following criteria:

a. In accordance with and not against Islamic law.
b. Placing equality of human position before the law and government.
c. Creating a sense of justice in people's lives.
d. Creating benefits for the community.
e. Not burden the members who will implement it.

In Islam, they are familiar with the principle of separation of state power, namely the legislative (al-sulthah al-tasryi’iyah), executive (al-sulthah al-tanfidziyah) and the judiciary (al-sulthah al-qadha’iyah). Whereas in the history of Islam, the powers of the judiciary include the territory of al-Hisbah, al-qadha and al-Mazhalim.

Judicial power (judicial and legal assemblies) is beyond the full extent of the executive branch. Meanwhile, the task of justice is completely independent and free from submission to other state officials.

Judicial duties carried out by BPK are quasi-judicial, the decision contains concrete norms and have an individual character as the contents of the court's decision. Supervision carried out by the BPK is in line with the objective of achieving orderly administration of state finances including regulatory arrangements, methods of control, governance, distribution of authority,

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12 Muhammad Iqbal, *Fiqh Siyasah....Ibid....36p.*
administration, effective and efficient supervision and accountability for efforts to prevent corruption and manipulation of state finance.\(^{13}\)

2. BPK’s Task of Supervision in Islamic Perspectives in Accelerating Sustainable Development

In the constitutional mandate of Article 23 E paragraph (1) of the 1945 Constitution of Republic of Indonesia, BPK is an institution that is recognized as an official authority in charge of examining the management and responsibilities of state finances. BPK is the only authorized, competent, and legal-based institution in determining state losses.

This position is also strengthened by the Supreme Court of Indonesia (id: Fatwa Mahkamah Agung or MA), on July 27, 2012 which stated that BPK has the authority to assess and / or determine the amount of state losses caused by acts against the law. BPK also has authority to determine the amount of state losses that need to be considered in the judicial process.

With similar supervisory task as BPK, Financial and Development Supervisory Board (id: Badan Pengawas Keuangan dan Pembangunan or BPKP) could also counts state finance. However, if there is indeed an element of deviation, then BPKP should reports it to BPK as BPKP no longer has the authority to conduct special audits. This inability of BPKP is regulated in Presidential Decree Number 31 of 1983 concerning the Financial and Development Supervisory Agency. It is stated that BPKP does not produce products such as opinions, findings or conclusions in determining state financial losses but only reports on recommendations. All of the legal basis underlying BPKP explained that BPKP’s performance, according to its function and authority, is in the executive domain who coordinate with the Minister of State Apparatus or Minister of Finance in the matter of the State Treasury before reporting to the President, and must report to BPK to do further examination which can be determined the results of the inspection in the inspection report.

This result of the examination, in case there is a deviation, that should be a reference for law enforcers in taking action against the perpetrators, not without seeing the strong legal basis. According to Aswanto, BPKP’s audit is only internal and in the form of recommendations related to administrative. Even if there is a regulation that justifies it, then it automatically fails because the law only appoints BPK with the right to audit state losses related to the legal process, such as in the disclosure of corruption cases.

Nevertheless, in the actual practice of supervision, BPKP’s workloads are almost the same as those of BPK.\(^{14}\) This is, according to Baharudin Aritonang, caused ‘chaotic’ in the inspection system in Indonesia.

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For further explanation, it is clear that BPK is a direct mandate in the 1945 Constitution while the appearance of BPKP is due to the Presidential Decree (id: Keputusan Presiden or Keppres) No. 31 of 1983, which is legally some level lower than the constitutional provisions. This shows that BPKP is arguably an incident of government, in this case the new order government. Aside from the collision of workload between BPK and BPKP, BPKP which is directly under the President also took over all the duties and functions of the Directorate General of State Financial Supervision (id: Direktorat Jenderal Pengawasan Keuangan Negara or DJPKN) in the finance department. This authority places BPKP on the status of Non-Departmental Government Institutions (id: Lembaga Pemerintah Non-Departemen or LPND) which, after the disappearance of the New Order, was reaffirmed by Presidential Decree No. 9 of 2004.

The ambiguous position of BPKP is not only on the legal level but also on the managerial level. As regulated in Law No. 17 of 2003 concerning state finances, the President does not directly manage state finances because that authority has been given to the leaders of each state institution, department, non-departmental government institution, and regional government. Thus, the President does not need an internal monitoring body, such as BPKP. This managerial principle does not only apply in Indonesia, but is an international benchmark contained in the 'Declaration of Five'.

The managerial principle implies that improving the quality of an agency will not be achieved by the dualism of 'audit' authority. What needs to be done is to make 'internal supervision' able to work 'attached', so that it is integrated with all activities of each agency.

In real practice, the dualism of the examination and all its consequences between BPK and BPKP can be seen in efforts to eradicate corruption. As the evidence of the state's loss came from various parties, especially BPK and BPKP, it is not only confusing, but also contradictory. This should be solved carefully and proportionally since it could result in legal uncertainty in the community.

Besides, it is not surprising that the 2003 World Bank report stated that besides the weaknesses faced in public expenditure auditing, there was a partial duplication of functions between BPK and BPKP and between BPKP and Inspector General (2002) implying that the BPK must be the only external audit body over time which include BPKP’s workloads.\(^\text{15}\)

Regarding this overlapping authority, Farzana Ahmed (Head of ADB's Financial Management Unit) said that the most rational step taken was the merger of the BPK and BPKP. In line with that, Adnan Buyung Nasution (legal expert) also said that the existence of BPKP was very ambiguous and strongly demanded that the government immediately disband BPKP. Likewise, the author also holds the view that BPKP should not be needed.

\(^{15}\) 2003 World Bank report, “Fighting Corruption in Indonesia”.  

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anymore, because it will only hamper the one-way audit system conducted by BPK and in the end is very vulnerable and has the potential to disrupt the law enforcement process, especially in corruption cases.

Furthermore, how can BPK align its functions and authorities with institutions whose duties and functions are identical to BPK, such as BPKP, the Inspectorate General (IG), Deputy Supervisory, Internal Supervisory Unit (id: Satuan Pengawas Internal or SPI), and Regional Supervisory Board which now known as Regional Inspectorate.

This chaotic situation has led to a dualism of multi-layered management and financial accountability supervision, for example the day-to-day internal supervision by organizations such as mentioned previously who often behave like BPK in each organization. Which of these should not happen again in the future? Then, what is the solution to deal with it?

In this case, the polemic of dualism can be viewed from 2 (two) perspectives. First, the formal legal aspect - meaning there must be a regulatory regime that specifically and rigidly, regulates this polemic. Which arrangement will clearly provide limits on the duties and authority of each institution, so as not to overlap and cause dualism? The author considers that, ideally, BPKP must be tested for its effectiveness and urgency. Overlapping authority in the field will potentially lead to collision and friction between official institutions / authorities, which is potentially be used by the parties concerned.

Second, the informal aspects, which can be carried out with the step of realizing the duties and authority of each, so as not to overlap the authority of each institution. Here the author sees that BPK should play a role in terms of supervision of other similar organizations or institutions. In the audit context, BPK should be able to conduct a series of supervision of objects that cause legal uncertainty or those that have different audit results between institutions. Furthermore, BPK must be more active and proactive in supervising with horizontal and vertical agencies, in top down which means to make the presence of BPK in the future becomes a trigger that moves other supervisors, such as BPKP, Inspector General (Inspector General), Deputy Supervision, SPI (Internal Supervisory Unit), and / or regional Inspectorate.

In an Islamic perspective, supervision is a branch of *amar ma'ruf nahi munkar* both in political and general matters. "All authority in Islam is only the aim of *amar ma'ruf nahi munkar*, as said by Ibn Timiyah.²² *Amar ma'ruf nahi munkar* (ordering virtue and preventing illicit behavior) reminds each other of his will in treading the path of truth and patience.

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ma'ruf nahi munkar is fardlu kifayah which means compulsory. Likewise, all forms of power, such as the power of amir al-mu'minin and those under it structurally such as kings, ministers, offices, state treasury offices, and other authorities, are required to have a ma'ruf nahi munkar.19

Every person on this earth must obey the commands and prohibitions. Everyone must order the good and forbid the evil. In fact, until they are the only one who left in this world, everyone must order himself to the ma'ruf and forbid him from evil. Twenty Humans, in their nature, have a tendency to have a freedom in doing their deeds and forget the supervision of Allah.

In the Quran, many verses state clearly that God is always watching and knowing the actions of His servants, both visible and hidden. One of the statements is contained in the word of Allah: "Truthfully, your Lord truly watches" (QS Al-Fajr, 14)21

Shortly after his coronation, Abu Bakr's said "... if you see that I am above evil, then straighten me." Likewise, Umar bin Khatab also said, "if you look at me crooked, then straighten me." The Islamic leader establishes the principle of supervision of the caliphs and that is an Islamic obligation.22

Joint responsibility in changing renunciations in politics or in legislation carried out by Ulil Amri ensures the principle of supervision of government work. It is not enough to protect the people from the arbitrary actions of the authorities, the supervision of their work must be added. People need to be corrected or supervised by others to anticipate all their deeds since humans are creatures who are physically and mentally weak, especially in self-control. As such, humans are full of wrongdoing and sin. Therefore, supervision is very necessary in human’s life.23

Supervision, in the Islamic view, is in line with the activities of amar ma'ruf nahi munkar. It is known that there is an institution / work unit / body whose main task is to conduct supervision. This is the same as in amar ma'ruf nahi munkar, there needs to be a group of people who are capable to do it. Functional supervision institutions in their mission can be compared to the existence of a group of people who do the amar ma'ruf nahi munkar.24 As stated in the word of Allah in Surah Ali Imran 104: "And let there be among you a group of people who call for virtue, order to ma'ruf and prevent from evil, they are the lucky ones."

This statement is in accordance with BPK as an institution that has the authority to conduct audits of state finances. BPK partner closely with DPR,
particularly in examining the management of state finances carried out by the government.

After examination, functional supervision results are followed by recommendations / action recommendations. Thus, the effectiveness of the results of supervision is measured by the ability to carry out suggestions for improvement recommended by the supervisory board. As a Muslim, every form of good warning must be obeyed. Vice versa, only infidels who never want to follow the good warning and do not care about his mistakes. The Word of Allah in surah Al-baqarah verse 6: "Actually the disbelievers, are the same for them, you give warning or you give no warning, they will not believe." Finally, BPK’s supervision result must be reported to the DPR, and if there are findings or recommendations for the government, then it must be immediately implemented with an objective to improve the governance.

C. Conclusion
In the Indonesian constitutional system, the position of the BPK is as the holder of auditive powers and is a high state institution that examines state financial responsibilities. Whereas in the Islamic constitutional system, the position of the Supreme Audit Board is more motivated on the basis of its functional in carrying out its supervisory duties on the management of state finances in an orderly manner, abiding by the laws and regulations, efficient, economical, effective and transparent with due regard for a sense of justice.

Supervision carried out by the BPK is in line with the objective of achieving orderly administration of state finances, which includes regulatory procedures, methods of control, governance, distribution of authority, administration, effective and efficient supervision and accountability for efforts to prevent corruption and manipulation of corruption related to state finance. Meanwhile, supervision in the view of Islam is in line with the activities of amar ma’ruf nahi munkar. For both cases, an institution / work unit / body is needed to conduct supervision which is a common knowledge. Functional oversight institutions in the task of supervision in general can be compared to the existence of a group of people who do the amar ma’ruf nahi munkar.
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