



Investigative Audit and Forensic Accounting from the Perspective of Criminal Procedural Law

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Abstract. Formulation of the problem in this study is what is the difference between Investigative Audit and Forensic Accounting? And what is the position of Investigative Audit in criminal procedural law? And what is the position of Forensic Accounting in Criminal Procedure Law? While the purpose of the research is to find out the legal position of Investigative Audit and Forensic Accounting, and to describe how the mechanisms in Criminal Procedural Law, especially the evidentiary aspect in placing Investigative Audit and Forensic Accounting, in uncovering Corporate Crimes. The benefit of this research is to add to the body of knowledge in the field of Criminal Procedure Law and to provide input for lecture material related to Criminal Procedural Law, Special Criminal Procedural Law, and Practice of Criminal Procedural Law. The research method used is doctrinal with the approach taken in this research is the Statute Approach and the Conceptual Approach. The statutory approach is aimed at examining statutory rules that establish norms that are considered included in the category of open-character laws that have been subject to constitutional review. The conceptual method differs from the theories and doctrines that have emerged in the field of law. Researchers will discover theories that give birth to legal conceptions, legal concepts, and legal principles pertinent to the subject at hand by examining the viewpoints and doctrines in the science of law. Researcher's ability to construct a legal argument to address the current difficulties depends on their understanding of these ideas and theories. As a result, this study is categorized as normative research, which is described as scientific activity based on methodologies, systems, and ideas that aims to understand one or more legal symptoms via analysis. Additionally, a thorough analysis of these legal facts was conducted, which was then followed by measures to address the issues caused by these symptoms.

Keywords: Criminal Procedural Law, Investigative Audit, Forensic Accounting.

1 Introduction

In disclosing a crime, especially white-collar crimes, in addition to the tools already provided by the Indonesian Criminal Procedure Code, it turns out that in its development, other tools outside the legal system are also needed, one of which is the tool that

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is actually provided from the realm of economics practice, namely “forensic accounting” and “investigative auditing”.

White-collar crime, especially corporate crime, can occur in both private companies and government agencies. Corporate crimes often involve engineering financial statements, tax reports, price mark-ups, and unlawful bidding arrangements. Which can only be uncovered if a review, examination and investigation is carried out using a financial approach, in particular an analysis of the fairness of the financial statements is carried out, which can then be followed up with an Investigative Audit and/or Forensic Accounting.

2 Method

The strategy utilized in this research, the Statute strategy and the Conceptual Approach, is a doctrinal research method. The objective of the statutory method is to examine statutory regulations that create standards and are regarded as belonging to the group of open-character laws that have undergone constitutional scrutiny. The conceptual method differs from the theories and doctrines that have emerged in the field of law. Researchers will discover theories that give birth to legal conceptions, legal concepts, and legal principles pertinent to the subject at hand by examining the viewpoints and doctrines in the science of law. A researcher's ability to construct a legal argument to address the current difficulties depends on their understanding of these ideas and theories.

As a result, this study is categorized as normative research, which is described as scientific activity based on methodologies, systems, and ideas that aims to understand one or more legal symptoms via analysis. Additionally, a thorough analysis of these legal facts was conducted, which was then followed by measures to address the issues caused by these symptoms.

3 Result and Discussion

3.1 Forensic Accounting

The meaning of Forensic accounting is the application of accounting discipline to legal matters. In the practice of investigating and disclosing white-collar crime cases, especially corporate crimes, we will see that what is applied to legal matters is not only accounting, but also auditing. Therefore, the term “accounting” in the definition of accounting is used in the broadest sense, namely the accounting discipline which includes auditing.

Legal cases can be resolved inside or outside the court. Settlements in court are carried out through litigation or proceedings in court, while settlements outside the court are carried out in non-litigation. Forensic Accounting is the application of the discipline of accounting in its broadest sense, including auditing, to legal matters for legal settlements in or out of court. Forensic Accounting is practiced in a wide range of fields, such as:

- a. in resolving disputes between individuals;
- b. in private companies with various legal forms, private companies or those that trade their shares or bonds on the stock exchange, joint ventures, special purpose companies;
- c. companies whose shares are partially or entirely owned by the State, both at the central and regional levels;
- d. departments/ministries, central and regional government, legislative bodies.

By adding various parties, forensic accounting may be defined in both the public and private sectors (including people, private businesses, private foundations, etc.). The definition of forensic accounting provided above can be enlarged as follows: In both the public and commercial sectors, forensic accounting refers to the application of accounting discipline in the sense area, including auditing, to legal matters for legal settlements made in or out of court.

Meanwhile, the forensic accounting profession, in its recent developments, is not infrequently asked to act as an expert in court, especially in corruption courts. As previously described, forensic accounting can be used in both the public and private sectors. While specifically in Indonesia the use of forensic accountants in the public sector is more prominent than the private sector due to the greater number of cases in the public sector, there is also another reason, namely the tendency to resolve disputes in the private sector outside of court.

In the public sector, specialists from the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), and the inspectorate general from the respective ministries were utilized by the public prosecutors (from the prosecutor's office and the corruption eradication commission). On the other hand, the defendant and his defense team used experts from public accounting firms, mostly experts who previously practiced at the Financial and Development Supervisory Agency (Table 1) [1].

3.2 Audit investigative

An investigative audit verifies that the work being done is an audit, a general audit, or a financial audit (general audit or independent audit) with the objective of delivering an independent auditor's opinion regarding the fairness of the presentation of financial statements; for this reason, the audit is also known as an opinion audit. Investigative audits are intended to demonstrate the existence or absence of fraud (including corruption) and other illegal activities (such as money laundering offences). They are more thorough and frequently extend to audits of subjects not covered by audit views.

Although the objective of an opinion audit is different from that of an investigative audit, the audit technique is the same. The only difference is that the application is more intense in investigative auditing, the application of techniques that are more in-depth, sometimes widened with a focus on gathering legal evidence to determine whether or not someone has committed fraud [1].

Table 1. The difference between personal and institutional expert

No	Item	Personal Expert	Institutional Expert
1	Expert Competency	The expert gives the information requested by the competent authority, in accordance with the expert's competence inherent in his person	The expert provides information about State losses which are the competence of the BPK and not personal competence so that they are not attached to the person of the position holder, BPK members or BPK examiners
2	Substance of Expert Statement	The expert provides information about the substance that makes his expertise, mastery and knowledge of the opinion given an opinion	The expert provides information about state losses / regional losses due to BPK's constitutional duties, the opinion given is the opinion of BPK
3	Information Processor	The information presented by the expert before investigators and court proceedings is processed personally with the knowledge and experience, he has personally	Information about state losses presented before investigators and court hearings is processed institutionally, this information was not previously owned, so it was obtained through investigative examinations
4	Ownership of expert testimony	The information provided by the expert is his personal property	The information provided belongs to the BPK as a state institution
5	Freedom of opinion	Experts have personal freedom in giving opinions, what is explained is the result of their thoughts	The expert is the personification of the BPK, he does not have personal freedom in giving his statement, he always has to coordinate with the leadership because what he explains is the results of BPK audits
6	Limitation	The expert gives information according to the expertise he has, he is only limited by the depth of his knowledge and experience	The expert provides information in accordance with the BPK Examination Results

The Forensic Accountant conducts preliminary meetings with prospective clients (company leaders in the private sector) he can meet with and interview the audit committee (or other company officials) and ask questions as follows:

- a. Why do leaders suspect or suspect fraud?
- b. In what business units (branches, departments, sections) or transactions is fraud suspected so that an investigative audit is required?
- c. What is the nature of the fraud?
- d. When was fraud suspected or suspected to have occurred?
- e. How was the problem found?

- f. Who found the problem?
- g. How was the fraud committed (modus operandi)?
- h. How much was looted?
- i. Who is suspected of being the perpetrator of the fraud?
- j. Has any preliminary work been done in preparation for the investigative audit?

The Forensic Accountant then formulates the scope and objectives of the investigative audit that meet the client's expectations, for example as follows:

- a. Dismissal of perpetrators of fraud;
- b. Collection of sufficient evidence and evidence for prosecution in court;
- c. Determination of whether there is a material misstatement in the financial statements and follow-up (for example reporting to Financial Services Authority / OJK)
- d. Preparation for potential class action by shareholders, consumers (users of products produced by clients) and others and investigative by law enforcement (Attorney of the Republic of Indonesia, Corruption Eradication Commission [KPK], Financial Services Authority [OJK], investigators from the Directorate General of Taxes) related to investigative audits of forensic accountants.
- e. Preparation for dealing with negotiations with government agencies regarding investigative audit cases.

The forensic accountant will first create a "Prediction" before beginning his investigation audit. What is foresight? The basis for an investigation is prediction, which is the entire event, the circumstances at the time of the event, and all related or related matters that lead a person who is sufficiently trained and experienced with adequate caution to the conclusion that fraud has occurred, is occurring, or will occur. Without sufficient planning, fraud investigations or exams should not be conducted.

Every investigation starts with the hope or wish that this case will go to court. However, even though we've begun looking into the matter, we currently only have conjectures based on the prediction described above; in this regard, we are no different from the scientist who made the initial "allegation." Fraud examiners develop a theory of how the fraud occurred, often known as the theory of fraud; this theory is nothing more than speculation that needs to be supported, much like a scientific hypothesis.

- a. Investigation with a fraud theory approach, includes the following steps [1].
- b. Available data analysis
- c. Create (or develop) a hypothesis based on the analysis
- d. Test or test the hypothesis
- e. Refine or modify hypo tests based on previous test results.

4 Conclusion

Investigative auditing is the methodical process of looking for, locating, and gathering evidence with the goal of determining whether or not an act happened and identifying

the perpetrator for additional legal action. A set of procedures for gathering and analyzing data pertaining to instances of irregularities that point to losses to the state's finances and/or the nation's economy can also be referred to as an investigative audit in order to reach findings that support legal proceedings and/or management remedial measures. A good investigative audit process will help efforts to eradicate corruption in related agencies and institutions. Forensic Accounting is an area-specific practice of accounting that describes engagements that result from actual or anticipated disputes or litigation. "Forensic" means "fit for use in a court of law", and it is to that standard and potential outcome that forensic accountants generally have to work. Forensic accountants, also referred to as forensic auditors or investigative auditors, often have to provide expert evidence at their eventual trial. The term forensic accounting is used to describe and discover activities carried out relating to the prevention and detection of fraud and white-collar crime. Forensic accounting will emphasize three main areas namely: litigation support, investigation and dispute resolution.

The position of the Investigative Audit in Indonesian Criminal Procedural Law is to be in a series of investigations into whether or not there are allegations of fraud in private companies. So that it is included in the Pre-Adjudication stage in the flow of Indonesian Criminal Procedural Law, especially at the Investigation stage.

The position of Forensic Accounting in the Indonesian Criminal Procedural Law can refer to the profession of an expert or expert testimony as stipulated in Article 1 Paragraph 28 juncto Article 184 of the Indonesian Criminal Procedure Code (KUHAP), which is one of the legal means of evidence at the stage of proof at trial, in the flow of the Indonesian Criminal Procedural Law.

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