

The limited scope of BPK audit and comparison with other supreme audit institutions

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ABSTRACT

The role of BPK is to audit state finance management and accountability in all entities that manage state finances freely and independently. However, the BPK's authority to conduct audits of state finances is debatable and limited when some laws and regulations are inconsistent. This study uses legal doctrinal and comparative legal research to explore improvements/harmonization of regulations and comparisons with SAI in other countries regarding the scope of audit that can be carried out to strengthen BPK's authority further. The results of this study indicate that there is still a conflict of norms regarding the scope of BPK's audit, as well as a conflict of interpretation of what it means to audit the management and accountability of state finances in Indonesia. Improving the legal instruments that regulate the scope of BPK audits can avoid conflicting norms and multiple interpretations of legal norms, allowing BPK's role to be more optimal in the future.

KEYWORDS:

Audit; authority; norm conflict; audit scope

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INTRODUCTION

A Statement of Basic Auditing Concepts defines auditing as a systematic method of gathering and assessing information about economic actions and events to find conformance between these statements and established criteria and disseminate the results to interested users (American Accounting Association, 1973). Arens and Loebbecke define auditing as the activity of gathering and analyzing evidence about information to assess and report the amount of conformance between the information and established criteria. Audits must be performed by qualified and impartial individuals (Arens & Loebbecke, 2000). Meanwhile, according to Messier (2006), an audit is a systematic process that evaluates evidence of economic actions and events to ensure conformity between assignments and predetermined criteria, and the assignment results are communicated to intended users.

The Audit Board of the Republic of Indonesia (BPK) is mandated by the Constitution as a free and independent external auditor to audit the management and accountability of state finances. BPK, as a member of the International Organization of Supreme Audit Institutions (INTOSAI), is guided by INTOSAI audit standards in carrying out its duty. The basics for audits and audit institutions, necessary for achieving independent and objective results, are laid out in the INTOSAI's Lima Declaration. The audit scope of the Supreme Audit Institution (SAI) of which is regulated by Section 23 point 1, which state:

The expansion of the economic activities of the government frequently results in the establishment of enterprises under private law. These enterprises shall also be subject to audit by the Supreme Audit Institution if the government has a substantial participation in them-particularly where this is majority participation-or exercises a dominating influence (INTOSAI, 2019).

Companies with capital participation from the government or State-Owned Enterprises (SOEs) are one of the entities that significantly influence a country's economy (OECD, 2019). SOEs growth and advancement emerge as critical determinants of national development's long-term sustainability to foster overall prosperity within the community (Saputra & Emovwodo, 2022). Mauludina et al. (2023) state that SOEs play a significant role in numerous economies, serving as key drivers of economic growth, employment, and industrial development. These governments created and managed corporations that operate within the industrial and commercial domains (Dachyar et al., 2020). SOEs are expected to assume responsibility for managing strategic business sectors to prevent specific entities from dominating them. Therefore, SAI is tasked with determining whether SOEs operate in the public interest, ensuring that SOE products and services are efficient and effective, also ensuring that their operations are fully transparent and accountable as well as comply with laws and regulations (Keulen, 2020).

Apart from that, Section 20 of INTOSAI P-1, The Lima Declaration, stipulates that SAIs shall be empowered to audit the collection of taxes as extensively as possible and, in doing so, to examine individual tax files. Tax audits are primarily legality and regularity audits; however, when auditing the application of tax laws, the SAIs shall also examine the system and efficiency of tax collection and the achievement of revenue targets also, if appropriate, propose improvements to the legislative body (INTOSAI, 2019). The audit of "individual tax files" and "efficiency of tax collection" is clearly stated in the Lima Declarations. Even in Section 10, paragraph 1 and Section 18, paragraph 3, and Section 20, it is stated that SAI has the right to access all data and documents related to financial management and is authorized to request any information either orally or in writing that is deemed necessary by an SAI.

According to a EUROSAI (European SAI Association) survey conducted in 2013, thirty-one SAIs stated that there were no restrictions on their access to the information needed to conduct their audits, and only two SAIs reported that they did not have access to full tax, customs, or statistical information (EUROSAI, 2020). In this regard, peer review reports on the BPK since 2004 by SAI New Zealand, SAI Netherlands, and SAI Poland all mention problems with access to tax data. The three peer reviewers suggested improvements to comply with the Lima Declaration. A detailed description of the results of the peer review can be seen in Appendix 1. One of the peer-review results from the Netherlands Court Audits (NCA) shows that the BPK does not yet have full authority to examine state financial management. This limitation lies mainly in its authority to examine state revenues from taxes and government projects financed by foreign debt (Prabhawa & Prasajo, 2021).

Access to tax data is one of the authorities that the BPK should have, especially concerning audits of state revenue. In essence, authority is the ability given to state officials to run government machinery (Abikusna, 2019). Authority refers to the right or power of public officials to comply with legal laws when carrying out public obligations (Hadjon, 1997). The BPK's authority stems directly from the 1945 Constitution of the Republic of Indonesia through attribution, making this institution one of the state institutions whose authority is constitutionally entrusted to power (Mulya & Rani, 2018). However, in practice, the BPK's authority in conducting state financial audits is limited by, among other things, Law Number 19 of 2003 concerning State-Owned Enterprises (SOEs Law), as amended by Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation, and Law Number 6 of 1983 concerning General Provisions and Tax Procedures, as amended by Law Number 7 of 2021 concerning Harmonization of Tax Regulations.

The issue of limiting the BPK's authority related to the separation of state assets and confidentiality of tax object data has long been debated. The BPK continues to carry out SOE audits (performance and compliance audits) despite inconsistencies between the State Finance Law and the SOE law. Meanwhile, regarding tax audits, the BPK cannot obtain overall tax data due to tax secrets, so access to audit data is limited. Due to this limited authority, the BPK obtains limited data/evidence coverage, resulting in less-than-optimal audit results. Taxation and SOEs are two essential critical audit goals in state finance management and accountability. Both are critical to a country's governance. Taxation is a country's primary source of revenue, and SOE is one of the state tools used to provide its residents with protection and welfare. Based on these considerations, the BPK should be given sufficient authority to conduct thorough audits to strengthen state governance and promote public welfare.

Several previous studies have been conducted regarding state finances and SOEs. Some argue that SOE finances are part of state finances, but some argue that SOE finances are not state finances. Using public finance theory, Simatupang (2011) discusses tax audits as part of state finances. Simatupang (2011) states that the BPK has gone too far in achieving good corporate governance and taxation when conducting tax audits. As a result, if the BPK audits tax management and tax responsibilities to increase the audit scope of state finances related to the self-assessment system, this will be very detrimental and risky. Meanwhile, several authors argue that SOE finance is still part of the state financial regime based on their research on state finance in SOEs. With differences of opinion still existing, this study aims to evaluate the outcomes of comparisons between Indonesia's Audit Board (BPK) and Supreme Audit Institutions (SAIs) from other countries. The selected countries have more advanced laws and regulations that align closely with international audit standards. In contrast, Indonesia's legal framework defining the BPK's scope and authority is less developed, leading to conflicts between the Tax Law and other legislation related to public

finances, such as the State Finance Law, State Financial Audit Law, and State Treasury Law.

RESEARCH METHOD

This study uses legal doctrinal research and comparative and statutory approaches. The statutory approach examines all laws and regulations related to the legal issues discussed in this study. The comparative approach is then used to compare the SAI authority regulations between Indonesia and other countries, which generally adhere to international audit standards. The analysis used in this study is a qualitative analysis method that interprets legal materials that have been processed. This interpretation aims to interpret the law whether, in legal material, especially primary legal material, there is a void of legal norms, the antinomy of legal norms, and blurred legal norms. Legal materials are gathered by looking up and researching laws and regulations about BPK, state finance, taxation, and SOEs.

The legal material is then analyzed using concepts and principles from state financial, administrative, and constitutional law, as well as opinions or research from legal experts. Various studies have articulated concepts and principles related to state finance and constitutional law from the perspective of the audit institution. The BPK should have complete independent jurisdiction to audit state finances since it is a supervisory body that operates outside of the executive institution's framework, according to several legal theories and notions. The conclusion will be derived from data analysis and interpretation of related rules/regulations.

RESULT AND DISCUSSION

BPK Authority in Auditing State Financial Management and Responsibility

Authority is the power over a particular area of government that is formalized. Authority refers to the ability to carry out a public legal action or, more precisely, the ability to act granted by applicable law to carry out legal relations (Hsb & Julianthy, 2018). According to Soekanto in Hakim (2011), power is the ability to influence others, while authority is the power of a person or group of people who have the support or gain recognition from the community. According to Al-Fatih et al. (2023), the authority derived from legislation can be obtained in three ways: attribution, delegation, and mandate. Attribution is the transfer of government authority derived directly from legislation from one governmental organ to another; delegation refers to the authority of administrative bodies/officials derived from the delegation of other administrative bodies/administrators, and juridical responsibilities shall be transferred to the delegate's recipients. The technical concept of constitutional and administrative law defines attribution authority as the authority inherent in a position (Al-Fatih et al., 2023). At the same time, the mandate occurs when one organ of government delegates its authority to another organ (Maulana & Umein, 2021). The mandate is not a transfer of authority but rather the execution of authority by the administration on behalf of the definitive official when the latter is unavailable (Sufriadi, 2014). The 1945 Amended Constitution of the Republic of Indonesia grants BPK the authority to conduct audits of state financial management and accountability. State financial management must be conducted in an orderly, and a financial audit by a free and independent auditing body is one of the efforts to realize such management's transparency and accountability. It is one of the principles of managing state finance (Anggoro, 2018).

BPK bases its responsibilities on four laws, namely Law Number 1 of 2004 concerning the State Treasury, Law Number 17 of 2003 concerning State Finance, Law Number 15 of 2004 concerning The State Financial Management and Accountability Audit, and Law Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia. BPK has freedom and independence in determining the object to be audited, including establishing procedures and standards for the implementation of the audit (Alfath, 2015). The definition of free and independent means that BPK is free from the influence of government power, even though its position is not above the government (Ramadhani et al., 2021). Within the BPK's authority, there are no exceptions to any documents that the BPK cannot obtain; in other words, there are no restrictions on what documents the BPK may or may not access or obtain in carrying out its duties and authorities in conducting state finance audits.

In the elucidation of Article 9 paragraph (1) of Law Number 15 of 2006, it is stated that the request for information and/or documents covers all areas related to the audit of state financial management and responsibility. However, BPK does not have complete authority to conduct state financial audits. BPK's authority is limited by two laws: Law Number 6 of 1983, as amended by Law Number 7 of 2021, concerning Harmonization of Tax Regulations, and Law Number 19 of 2003, concerning SOEs. This can be seen from the BPK's efforts by submitting a constitutional review of the Law on General Provisions and Tax Procedures in 2008. Against this review, the Constitutional Court decided through Decision number 3/PUU-VI/2008, whose ruling stated that the Petitioner's application could not be accepted (*niet ontvankelijk verklaard*). The basic legal considerations of the Constitutional Court included the following:

1. The disharmony between the Tax Law and several laws related to state finances (State Finance Law, State Financial Audit Law, and BPK Law) is the cause of the conflict between two legal interests that the Constitution equally protects. So, in cases of reviewing the status quo law, which are not cases of disputes over the constitutional authority of state institutions, it cannot be determined that BPK's constitutional authority is lost as a result of the effect of Article 34 paragraph (2a) letter b and the clarification of Article 34 paragraph (2a) Tax Law;
2. The confidentiality guarantee protected by law for all information provided to the state (*fiskus*) in accordance with the self-assessment principle adopted by the Tax Law and legal interests in the form of BPK's constitutional authority to conduct audits of state finances freely and independently. In carrying out their duties, they must examine all documents related to the management and accountability of state finances. Legislators must conduct legislative reviews to ensure that various laws governing state finances are consistent and
3. Even though the BPK meets the qualifications for a review of law against the 1945 Constitution because it cannot be determined that the BPK has lost constitutional authority, the legal standing requirements referred to in Article 51 paragraph (1) of the Constitutional Court Law are not met. The application must be declared unacceptable (*niet ontvankelijk verklaard*) (Mahkamah Konstitusi, 2008).

This decision demonstrates that the Constitutional Court does not believe that the existence of tax law norms impairs the constitutionality of BPK. Thus, the Constitutional Court does not consider the existence of international SAI provisions. However, a judge expressed a dissenting opinion for the following reasons. All of the elucidation of Article 34 paragraph (2a) letter b of the Tax Law, explained contrary to the Law on Formation of Legislation. It also limits BPK's access to documents and taxpayer information data disproportionately and rationally, which is not also a non-derogable

human right. It is also contrary to Article 23E paragraph (1) of the 1945 Constitution because it is seen as obstructing and hindering the free and independent task of auditing the management and accountability of state finances by BPK within the framework of good governance, transparency, and accountability fairly. Based on these reasons, the Court should decide to grant the application in part, declare that the elucidation of Article 34 paragraph (2a) letter b of Law Number 28 of 2007 concerning General Provisions and Tax Procedures is contrary to the 1945 Constitution and that the explanation of Article 34 paragraph (2a) letter b of Law Number 28 of 2007 concerning General Provisions and Tax Procedures does not have binding legal force (Mahkamah Konstitusi, 2008).

Furthermore, in the elucidation of Article 71, paragraph (1) of the SOEs Law, it states:

The financial audit is intended to obtain an auditor's opinion on the fairness of the company's financial statements and annual calculations. Auditors' opinions of the said financial reports and annual calculations are required by the shareholder/intermediate Minister or others in granting *acquiescent* for the company's Directors and Commissioners/Supervisory Board. In line with Law Number 1 of 1995 concerning Limited Liability Companies and Law Number 8 of 1995 concerning Capital Markets, audits of financial reports and annual calculations of Limited Liability Companies are conducted by public accountants.

Aside from that, several regulations govern data protection, including Personal Data Protection Law Number 27 of 2022. This regulation, however, does not address the taxation of personal data. Article 50, paragraph 1 points c and d stated that the obligations of the personal data controller were exempted for public interest within the framework of the state or the interests of monitoring the financial services sector, monetary, payment systems, and financial system stability carried out within the framework of state administration. Furthermore, this explanation describes the community's interests in the context of state administration, including the implementation of population administration, social service guarantees, taxation, customs, and licensing services, which seek to be integrated electronically. Meanwhile, the "financial services sector" includes banking, capital markets, insurance, financial institutions, pension funds, technology-based regulations, technology financial, and other existing technology-based under the supervision of Bank Indonesia, The Financial Services Authority, and Indonesia Deposit Insurance Corporation.

SOE's Arrangement in the State Financial System

The phrase of separated state assets in the SOE law has always been debated. The State Finance Law states that assets that are the capital of SOEs are included in the scope of state finances (Ambarwati et al., 2022). An SOE company, on the other hand, is considered a private legal entity under the SOE Law and thus subject to Law Number 40 of 2007 on Limited Liability Companies as stated clearly in Article 11 of the SOE Law. This disparity in classification and the overlapping nature of laws and regulations can result in legal ambiguity, particularly when managing state finances (Swardhana & Monteiro, 2023). The dualism in the view of the position of state assets, which is separated from SOEs as one of the scopes of state finances, also gives rise to differences in the interpretation of the meaning of state financial losses (Hartono et al., 2021).

Article 2 of Law Number 17 of 2003 concerning State Finance letter 'g' states that state/regional assets that are managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued in money, including assets that are separated into state/regional companies. According to this article, state assets separated into state/local owned enterprises constitute state finances, which are the scope of the BPK's audit. The expansion of the definition of state finances described in State Finance Law has an immediate impact on the BPK's function in that the scope of the BPK's audit of state finances is no longer limited to the

State Budget (Nasarudin, 2020). There should be no debate on the authority and the audit scope of BPK in SOEs. However, Law Number 19 of 2003 on SOEs was born and mentioned:

a. Article 1 point 1:

State-owned enterprises, hereinafter referred to as SOEs, are business entities whose capital is wholly or mostly owned by the state through direct participation from separated state assets.

b. Article 1 point 10:

Separated state assets are state assets from the State Revenue and Expenditure Budget (APBN) to be used as state capital participation in persero and/or perum and other Limited Liability Companies.

c. Article 4 paragraph (1)

SOE capital is and originates from separated state assets.

Until now, SOEs have been identified as a state-led effort to improve the Indonesian people's and the nation's welfare. SOEs are classified as Limited Liability Companies (Persero) because a company is what is meant by a business entity (Pratiwi & Priyanto, 2018). The SOE's assets come from the government's equity capital derived from separate state assets, separate from the state financial system, so its management is not controlled based on the state budget system (Bafelanna, 2020). Furthermore, in this case, SOEs under the theory of legal entities, their assets are separated from the state financial system. As a result of these provisions, all operations within SOEs are considered business operations operating based on different legal entities (Pratiwi & Priyanto, 2018). All state assets incorporated in SOE Persero no longer belong to the state but to legal entities or the SOE itself or are considered to be the activities of a company operating under the principle of a separate legal entity (Roza, 2022).

In this regard, the Minister of Finance once asked the Supreme Court for a legal fatwa on SOEs receivables via a letter from the Minister of Finance of the Republic of Indonesia Number S-324/MK.01/2006 dated July 26, 2006. The Supreme Court gave a fatwa on SOEs receivables from the letter, including (1) The capital of SOEs comes from State assets that have been separated from the APBN, and its development and management are not based on the APBN system but are based on sound corporate principles; (2) SOEs receivables are not state receivables; (3) The provisions regarding SOEs receivables in Law Number 49 Prp. 1960 is no longer legally binding with SOEs Law, a special law (*lex specialist*) newer than Law Number 49 Prp. 1960; and (4) Article 2 letter g of Law Number 17 of 2003, which reads: state finances as referred to in Article 1 number 1, which with the existence of Law Number 19 of 2003 concerning SOEs, the provisions in Article 2 letter g specifically regarding "assets that are separated into state companies/regional companies" also do not have legally binding force (Mahkamah Agung, 2006).

Based on the Supreme Court fatwa, it is understood that SOE receivables are no longer categorized as state receivables, rendering the provisions of Law Number 49/Prp/1960 on the State Receivables Affairs Committee inapplicable (Rahyani, 2014). This interpretation is bolstered by the Constitutional Court Decision Number 77/PUU-IX/2011, which concluded that the mentioned law violated the petitioner's constitutional rights. Consequently, the material review of Article 4, Article 8, Article 10, and Article 12 Paragraph (1) established that these articles infringed upon the petitioner's constitutional rights. In principle, the SOEs Law asserts that the assets of SOEs are distinct from state assets, thereby excluding SOEs receivables from state receivables (Pratiwi & Priyanto, 2018). In alignment with this perspective, Djalal (2021) affirms that a persero (SOEs)

holds a purely civil legal entity status, governed by civil law in its business relations, devoid of state privileges. The terminology employed by governmental bodies does not extend to persero, including the legal status of persero employees, who are considered ordinary private employees (Atmadja, 2013).

The formulation of state finance terminology in Law Number 17 of 2003 underwent a constitutional review by the Constitutional Court. Despite challenges, the Constitutional Court rejected the petitioner's request to review Article 2 letters g and i of Law Number 17 of 2003 on State Finance, along with other articles. The Court emphasized that SOEs, majority-owned by the state, act as state representatives to fulfill certain state functions and goals. While state assets are converted into SOE capital for business purposes, they remain inseparable from state assets, and there is no legal transformation of state/public finance into private finance for SOE asset management (Juliani, 2016). The financial realm of SOEs is defined by their pursuit of profit, with profits directed toward advancing the welfare state's objectives (Makawimbang, 2015). Additionally, the phrase "SOE shares owned and/or controlled by the state" derives from the translation of Article 33, paragraphs (2) and (3) of the 1945 Constitution.

In several Constitutional Court rulings, such as Decision Number 002/PUU-I/2003 on the Oil and Gas Law and Decision Number 001-021-022/PUU-I/2003 on the Electricity Law, the Court interpreted the phrase "controlled by the state" in a broader context, rooted in the concept of Indonesian people's sovereignty over natural resources (Dahoklory, 2020). This interpretation expands beyond mere ownership within private law frameworks. As entities extending the government's reach in delivering public services and driving development, SOEs play a pivotal role in advancing the welfare of the people, with the state participating in their equity (Juliani, 2016). Designated as "government agencies" (Ngadino & Rumesten, 2011), inefficient performance by SOEs can result in state losses (Smith & Trebilcock, 2001). Therefore, "state finances" encompass state revenues and budgets also local government budgets, SOEs, local-owned enterprises, and all state assets as a state financial system. SOE assets form an integral part of the state's financial system and control over state finances, and SOE management must be directed toward achieving people's welfare (Yudiastari, 2022). This underscores the imperative of directing financial control and SOE management toward enhancing people's welfare, aligning with the constitutional mandate for economic democracy (Juliani, 2018).

This is also consistent with the general explanation of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. The general explanation states that state finances in question are all state assets in whatever form, separated or not separated, including all parts of state assets and all rights and obligations that arise as a result of (a) being under the control, management, and accountability of officials of state institutions, both at the central and regional levels; (b) being under the control, management, and accountability of SOE, foundations, legal entities and companies that include state capital, or companies that include third party capital based on agreements with the state so that the financial status that is in SOEs Persero is absolute state finance. This is based on the State Finance Law, the Corruption Crime Eradication Law, the State Treasury Law, the BPK Law, MK Decision No. 48/PUUXI/2013, MK Decision No. 62/PUU-XI/2013, and the source theory, which states that anything comes from state finances, then this finance is state finance, regardless of who is the party that manages it.

The state finance status included in SOEs Persero is absolute state finance. This is due to several factors, the first being that the interpretation of state finances must be comprehensive.

Second, the formulation of state finances in the Law on State Finances, *lex specialis derogate legi generalis*, is a constitutional mandate based on Article 23C of the 1945 Constitution, which states that everything related to state finances is subject to the provisions of the Law on State Finances. Third, the purpose of establishing the SOEs Persero is related to improving the economy to achieve the objectives of the State of Indonesia, one of which is the welfare of the people, which cannot be achieved through private finance or private business treatment. Fourth, Article 1 number 10 of the SOE Law states that separated state assets are state assets originating from the State Budget and must be accountable to the people. Fifth, MK Decision No. 48 and 62/PUU-XI/2013 have confirmed the status of state assets sourced from state finances and separated from the State Budget to be included as equity participation in SOEs for them to remain part of the state financial regime (Roza, 2022).

SOEs in the Audit Scope SAI of Other Countries

Understanding the broad and comprehensive definition of state finances is crucial to maximizing savings and enhancing the welfare of the Indonesian people (Roza, 2022). Consequently, considering the social function of SOEs as "state instruments" aiding in realizing governmental goals, their integration with the government's influence in functions becomes inevitable (Dahoklory, 2020; Pratama, 2020). Moreover, to bolster financial transparency and efficacy, the BPK should examine the audit scope arrangements of SAIs in neighboring countries and other INTOSAI members. Acquiring insights into diverse audit practices fosters collaborative learning and benchmarking and ultimately ensures better financial management and responsible public fund utilization.

In Asia, the National Audit Office of the People's Republic of China (CNAO) is an example of an SAI actively auditing SOEs. Governed by constitutional mandates, the CNAO oversees various entities, including government departments, financial institutions, SOEs, and non-profit organizations, ensuring compliance with constitutional requirements. Its efforts extend to conducting accountability audits of top management in central SOEs and performance audits of their operations. Furthermore, CNAO audits encompass large and medium-sized SOEs, non-profit institutions, government ministries, departments, and significant public projects invested by the government (National Audit Office of the People's Republic of China, 2012). Meanwhile, 22 European SAIs have audited companies, particularly those with state control or influence over their shares. A list of audit scopes for the 22 SAIs can be seen in Appendix 2.

The Organisation for Economic Co-operation and Development (OECD) states that SAIs provide oversight, insight, and foresight on the policy cycle. SAI demonstrates reasonable assurance that public resources are used legally, for their intended purpose, economically, efficiently, and effectively. According to the OECD (2016), examples of good practices in providing oversight for accountability include assessing the internal audit function of SOEs (as done by Portugal SAI's review of internal audit functions), evaluating integrity management (as done by the NCA's review of ministries), and assessing conflict of interest management (as done by The European Court of Auditors) (ECA, 2019).

Internationally, SAI audits of SOEs generally encounter no significant issues, as SOEs are recognized as essential tools for governments to drive economic growth and conduct business operations. The state assumes a dual role in this context, functioning both as a governing entity under public law and engaging in business activities within the private sector under private law. Consequently, SOEs cannot be entirely separated from state oversight. This integrated approach

acknowledges the intertwined nature of SOEs with governmental functions and ensures that appropriate supervision is maintained to uphold accountability and transparency in their operations.

BPK Audit Scope of Tax Data Access Restrictions

The audit scope of the BPK encounters limitations when auditing tax data. Several schools of thought can be used as references in legal economic analysis to discuss the authority of state audit agencies to tax as part of state finance. A study in legal philosophy culture characterizes this debate as a discourse between post-pragmatism and neoconservatism (Freeman, 2001). Post-pragmatism views public audit institutions as state instruments authorized to examine public funds collected by the state, exemplified by the implementation of the State Budget (Suryadi & Santiago, 2021). On the other hand, neoconservatism perceives public audit institutions as entities mandated to audit levies, including taxes, classified as state finances. Koynja (2017) argues that neoconservatism emphasizes auditing processes throughout tax collection, treating it as a comprehensive system rather than solely examining the final level of tax collection, as post-pragmatism suggests. This ideological divergence underscores whether tax collection should be regarded as a sequential process or an integrated element of state finance. Simatupang (2011) asserts that neoconservatism rationalizes tax collection as an integral part of the state's financial system, raising substantive awareness about the complexity and interconnectedness of tax collection processes.

The scope of state finances is delineated in Article 2 of the State Finance Law, which defines the State Budget components comprising the annual income budget, expenditure budget, and financing. State revenues, integral to state finances, encompass tax revenues, non-tax state revenues, and grants. Thus, taxes indisputably form a crucial part of state finances, and tax audits represent external audits of state finances conducted by the BPK, an undeniable reality (Saufiah, 2016). Nevertheless, tax regulations impose certain restrictions or norms that the BPK must adhere to when conducting tax audits.

Law Number 6 of 1983, most recently amended by Law Number 7 of 2021, addresses the Harmonization of Tax Regulations. Article 34 paragraph (2a) and its elucidation introduce constraints on the BPK's authority. Under this law, tax officials and/or staff experts are only permitted to share information with the BPK upon receiving approval from the Minister of Finance. Consequently, the BPK encounters limitations in independently auditing state revenues from the taxation sector. The elucidation of Article 34 paragraph (2a) further specifies that not all data and/or information related to taxation can be disclosed to the BPK. Information sharing is confined to specific categories, including taxpayer identity and general taxation information. General taxation information encompasses national tax revenue, revenue per Regional Office of the Directorate General of Taxes and/or Tax Service Office, revenue per type of tax, revenue per business field classification, the number of registered taxpayers and/or taxable entrepreneurs, the taxpayer application register, national tax arrears, and/or arrears per Regional Office of the Directorate General of Taxes and/or Tax Service Office.

Tax Audit by SAI of Other Countries

Slemrod (2007) emphasizes that no government can rely solely on taxpayers' sense of duty to fulfill their tax obligations. In Indonesia, BPK audits tax officers overseeing taxpayers' obligations under self-assessment systems. This approach resonates with Section 20 of 'The Lima Declarations of Guidelines on Auditing Precepts,' which asserts that governments cannot expect taxpayers to comply with tax systems voluntarily. SAIs are tasked with scrutinizing tax receipts to individual

taxpayer files to the fullest extent possible. Even predating the "Lima Declaration of Guidelines on Auditing Precepts," an initial recommendation was made at "The International Congress of INTOSAI" in Rio de Janeiro, Brazil, in May 1959, advocating for broad access to tax information and data by audit institutions. The "Bali Declaration" further underscores the significance of accessing taxpayer data within an audit framework for assessing tax assessment systems and procedures. Appendix 3 provides further insights into the authority of SAIs in other countries regarding taxation audits.

Tax audit practices in several other countries provide valuable comparisons. For example, the SAI Australia (Auditor General) is empowered to scrutinize individual taxpayer files and report findings to Parliament under Section 14C of The Act of The Commonwealth of Australia 1901-1973, showcasing a comprehensive commitment to overseeing state finances. Similarly, SAI Malaysia is authorized to examine various taxes, including income tax, as per the Income Tax Act 1967 (Act 53) Section 138: certain material is to be treated as confidential. SAI Malaysia's annual tax audit encompasses monitoring daily tax revenues and addressing taxpayer delays through legal measures, demonstrating a holistic approach. SAI Thailand also enjoys unhindered access to tax documents. Moreover, auditors in Korea have complete access to taxpayer data for financial, compliance, and performance audits (Ramadanil, 2021). In contrast, the BPK faces challenges due to limited access to tax data for audits, which undermines its authority, particularly concerning audits related to state revenue.

The BPK faces challenges in accessing tax data for audits, limiting its ability to independently oversee state revenues from the taxation sector. This issue is underscored by various legal and ideological perspectives that highlight the complexity of tax collection processes and the role of public audit institutions in overseeing them. Despite these limitations, tax audits represent an essential component of state finances, so efforts to improve access to tax information and enhance the effectiveness of tax audits remain crucial for ensuring transparency, accountability, and the responsible management of state finances.

CONCLUSION

Based on the findings of this study and earlier studies, it is clear that the BPK suffers limited access to tax audits compared to tax audit authorities in other nations. The limitations on the BPK's authority in the Tax Law also conflict with several other provisions, including Law Number 17 of 2003, Law Number 1 of 2004, and Law Number 15 of 2004. Following the constitutional amendment, the existence of the BPK had to be adjusted because of the breadth of authority granted. This authority concerns the management of state finances. Based on this, it is hoped that the regulations governing the BPK's authority to conduct audits of the management and responsibility of state finances will be proposed to be harmonized with applicable international audit standards, guidelines established by the international SAI organization, and best practices implemented by SAI in other countries. As a result, BPK can make a greater contribution to the auditing profession on a global scale.

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APPENDICES

Appendix 1. Results of the Peer Review Report

SAI Conducting the Peer Review	Notes from SAI Conducting Peer Review
Office of the Auditor General of New Zealand (SAI New Zealand) in 2004	<p>The SAI is empowered to investigate the collection of revenues owed to the Government</p> <p>There is no explicit mention of auditing revenue collection. However, the State Finance Act states that the State Finance and State Budget include income (including tax revenues, nontax revenues, and grants) as well as expenditure and financing (articles 2 and 11). As noted above, Article 30 of the State Finance Act requires BPK to audit the financial report on implementing the State Budget.</p>
Algemene Rekenkamer (Dutch SAI) in 2009	<p>Limited access contrary to international rules and practices</p> <p>As noted in Section 2.1 BPK has encountered a serious obstacle to its mandate, namely its limited access to information on the Taxation Office's revenues.</p> <p>Furthermore, because the government and donors/creditors agreed to use an internal government agency, BPK has been barred from auditing foreign-funded projects (BPKP). BPK has already addressed these two issues of restricted access. BPK brought the issue of revenue access before the Constitutional Court. The Court has not granted BPK full access to the revenues of the Republic of Indonesia. However, there appears to be an opening at the Ministry of Finance, which has allowed BPK some access to its information for its audit. Regarding auditing foreign-funded projects, the lack of access to foreign-funded projects goes against the norm at many bilateral and multilateral donors. BPK has discussed access with the government and foreign donors, but without concrete results.</p> <p>We found that BPK does not have unrestricted access to all documents and information required to audit (1) State tax revenue and (2) Supreme Court administrative fees.</p>
Najwyższa Izba Control (SAI Poland) in 2014	<p>Access to Ministry of Tax Data Base</p> <p>The BPK presented the access as satisfactory. The only constraints remain in the area of individual tax payers' data and presumptions on tax prognosis (NIK Poland, 2019).</p>

Appendix 2. SAI Audited Entities in Other Countries

SAI	Audited Entities
Rechnungshof (SAI Austria)	Organizations in which the state, a province, or a municipality with at least 10,000 inhabitants has de facto control or holds at least 50 % of the share, stock, or equity capital or which are operated by the state, a province, or a municipality alone or together with other contracting parties.
СМЕТНА ПАЛАТА НА РЕПУБЛИКА БЪЛГАРИЯ– Bulgarian National Audit Office (SAI Bulgaria)	State enterprises that are not trading companies and trading companies in which the State and/or municipality own 50% or more of the capital.
DRŽAVNI URED ZA REVIZIJU – The State Audit Office of Croatia (SAI Croatia)	Legal entities funded by the State budget or by local and regional self-government units' budgets; Legal entities established by the Republic or by units of local and regional self-government; Companies and other legal entities in which the Republic or local and regional self-government units own a majority stake; Legal entities that use European Union and other international organizations or institutions to fund public needs.
ΕΛΕΓΚΤΙΚΗ ΥΠΗΡΕΣΙΑ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ - the Audit Office of the Republic of Cyprus (AORC) (SAI Cyprus)	Other organizations, enterprises, or funds in the wider public sector.
RIGSREVISIONEN - The Danish National Audit Office (SAI Denmark)	The accounts of partnerships and enterprises in which the State participates directly or indirectly as a partner or where it is a liable business associate.
RIIGIKONTROLL – National Audit Office of Estonia (SAI Estonia)	Companies where the state, legal persons in public law, or the above-mentioned foundations jointly or separately exercise dominant influence through a majority holding or otherwise, and the subsidiaries of such companies; Companies that have obtained loans from the State or whose loans or other contractual obligations are secured by the state; Companies where a local authority exercises dominant influence through a majority holding or otherwise and the subsidiaries of such companies.
VALTIONTALOUDEN TARKASTUSVIRASTO - The National Audit Office of Finland (SAI Finland)	State enterprises and state-owned companies.
Cour des comptes - The French National Court of Accounts (French SAI)	All State management and accounts - publicly owned enterprises; Public funds given to private entities.
BUNDESRECHNUNGSHOF – The German SAI	Public enterprises.
ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ - The Hellenic Court of Audit (SAI Greece)	Accounts for approximately 450 additional general government legal entities, public and private legal entities owned by local governments (755), and subsidized private entities.
ÁLLAMI SZÁMVEVŐSZÉK - The State Audit Office of Hungary (SAI Hungary)	Organizations (institutions) funded from the central budget; Economic organizations owned in full or in part by the State or local governments;
CORTE DEI CONTI – (Italian SAI)	Private companies in which the Italian state, the regions, or local bodies have a controlling interest.
VALSTS KONTROLĒ - The State Audit Office of the Republic of Latvia (SAI Latvia)	State or local State-owned enterprises or private companies involving State ownership.

SAI	Audited Entities
VALSTYBĖS KONTROLĖ - The National Audit Office of Lithuania (SAI Lithuania)	Incorporated companies of all types in which the State or municipality owns at least 50 % of the votes; All entities to which a State or municipal institution has allocated funds or transferred property.
Cour des comptes - The Luxembourg Court of Auditors (SAI Luxembourg)	Public grants finance parts of public and private entities.
National Audit Office of Malta (SAI Malta)	Companies or other entities in which the Government has a majority shareholding (not mandatory).
TRIBUNAL DE CONTAS DE PORTUGAL (SAI Portugal)	State-owned companies; Regional companies; Inter-municipal and municipal companies; Any entities with participation of public funds, whether they receive a grant or are partly State-owned; Companies with concessions to manage State-owned companies, or companies with a share of public capital or mixed private and public companies controlled by the public sector, companies with concessions or which manage public services, and companies with public works concessions; and Other entities benefiting from or managing public funds.
The Romanian Court of Accounts (SAI Romania)	Public enterprises; Commercial companies in which the State, administrative or territorial units, public institutions, or autonomous administrations own a majority stake, either individually or jointly;
NAJVYŠŠÍ KONTROLNÝ ÚRAD SLOVENSKEJ REPUBLIKY - The Supreme Audit Office of the Slovak Republic (SAI Slovakia)	State special-purpose units; and Private individuals and legal entities that receive national, public, European and other foreign funds.
RAČUNSKO SODIŠČE REPUBLIKE SLOVENIJE - The Court of Audit of the Republic of Slovenia (SAI Slovenia)	Any legal entity governed by private law that has received aid from the budget of the European Union, the State budget, or the budget of a local authority is a concession-holder or is a company, bank, or insurance company in which the State or a local authority has a majority stake.
RIKSREVISIONEN - The Swedish National Audit Office (SAI Sweden)	Limited liability companies under State ownership or influence; The Swedish Inheritance Trust Funds and Foundations created or managed partly or entirely by State authorities; and Companies with more than 50 % State ownership.
The Albanian Supreme Audit Institute (SAI Albania)	Municipal-owned companies, mainly water supplies, are the constant focus of the Albanian Supreme Audit Institution (ALSAI). ALSAI has a dedicated Audit Department that is responsible for audits of state-owned companies. (EUROSAI, 2020)

Appendix 3. Regulation of Tax Audit in Other Countries

SAI	Provisions Related to Tax Audit
National Audit Office - UK SAI	Article 18 paragraph (2) Chapter 11 of the Law on the Commissioner for Revenue and Customs. The procedure for disclosing taxpayers' taxation data to the National Audit Office, after receiving a request from the NAO, is that the officer must ask for an explanation of which information is related to the audit and the reasons why it is necessary to see the document. Requests for such audit topics are routed through the HMRC business coordinator, who ensures that such disclosure is communicated to the senior manager and oversight of the data directorate. Where possible, the NAO checks in the HMRC room [Information Disclosure Guide (IDG 65800)].
Government Accountability Office (GAO) – SAI USA	<i>IRC Section 6103</i> (i) arranges exceptions for inspection by written request from the Comptroller General of the United States; return and return information must be open to GAO inspection to the extent deemed necessary. The request can be refused if it is not approved by the Joint Committee on Taxation, whose disagreement is done by voting and given an answer within 30 (thirty) days of receipt of the written request.
The Office of the Auditor General of Canada – SAI Canada	The Income Tax Act includes provisions protecting taxpayer data from disclosure and criminal proceedings. These provisions align with the Auditor General Act, specifically Section 13, which grants the Auditor General free access to information related to fulfilling responsibilities. However, the exception mentioned in Section 13 indicates that access is subject to other Acts of Parliament, suggesting that there may be circumstances where the Auditor General's access could be restricted or regulated by specific laws. Overall, the paragraph underscores the confidentiality of taxpayer data and the Auditor General's right to access information for fulfilling responsibilities.
Australian National Audit Office (ANAO) – SAI Australia	According to the Income Tax Assessment Act, officials are not permitted to disclose other people's data to each person (any person); however, the Australian National Audit Office (ANAO) can request that the data be disclosed, though it is strongly emphasized that data/documents are examined within the tax office.
<i>Coru des Comptes</i> – French SAI	In connection with an audit by the La Cour des Comptes (Supreme Audit Institution), data can be accessed using specific procedures, namely upon prior request and with due regard for the position's confidentiality.
Jabatan Audit Negara (JAN) – SAI Malaysia	In Income Tax Act 1967 Section 138, it says: (4) (Disclosure to Auditor General' publication of offenders). "Nothing in this section shall prevent: The production or disclosure of classified material to the Auditor General (or to public officers under his direction and control) or the material used by the Auditor General, to such an extent as is necessary or expedient for the proper exercise of the functions of his office."
Algemene Rekenkamer – Dutch SAI	<i>The Netherlands Court of Audit is responsible for auditing and approving the annual financial accounts of the central government as a whole.</i> The NCA is entitled to conduct audits at this administration, both financial and performance audits. The NCA has access to the files of the individual tax payers in the tax administration. Although access is granted by request, each information is provided based on considerations in the context of carrying out the inspection task. (Article 87 Subsections 1-2 Comptabiliteitswet 2002).
<i>Rekenhof</i> (SAI Belgium)	Constitution of Belgium Section 180 This Court is responsible for examining and validating the general administration accounts and the accounts of all accounting officers accountable to the public treasury. It must be seen that no budget item is surpassed and that no transfers take place. The Court also has general oversight of operations relating to establishing and collecting entitlements owed to the State, including tax receipts. General accounts of the State are submitted to the House of Representatives with the Court of Audit's observations.

SAI	Provisions Related to Tax Audit
<p><i>Valstybes Controle</i> (SAI Lithuania)</p>	<p>Law On National Audit Office- May 30, 1995 No. I-907, Article 14 Point 2</p> <p>1. In order to perform its functions efficiently, State Control shall establish a scope of the public audit. The State Control shall annually establish the scope of the public audit in public audit programs. Upon assessing recommendations given by the Seimas Audit Committee, these programs shall be confirmed by the Auditor General.</p> <p>2. A public audit shall be performed at (1) the State, State institutions, and establishments; (2) municipalities, municipal establishments, and institutions, and their monetary funds; (3) State monetary and tax funds; (4) undertakings of all types in which the shares are owned by the State or municipal grant at least ½ of the votes; (5) undertakings and other legal entities to which a State or municipal institution has allocated funds or transferred property.</p>
<p>Najvyšší Kontakný Úrad Slovenskej Republiky – SAI Slovakia</p>	<p>Act of the National Council of the Slovak Republic No 39/1993 Coll. of Laws on the Supreme Audit Office of the Slovak Republic as amended by Act No 458/2000 Coll. of Laws, Act No 559/2001 Coll. of Laws, Act No 385/2004 Coll. of Laws, Act No 261/2006 Coll. of Laws, Act No 199/2007 Coll. of Laws, Act No 659/2007 Coll. of Laws and Act No 400/2009 Coll. of Laws</p> <p>Article 2</p> <p>The Office shall also audit within the scope of its competence: a) the methods of levying and recovering taxes, custom duties, contributions payments, charges, and fines forming revenues of the State budget, budgets of municipalities, and upper-tier territorial units.</p>