

DÉTOURNEMENT DE POUVOIR IN THE ABUSE OF AUTHORITY IN AUDITING GOODS AND SERVICES PROCUREMENT PROJECTS BY THE SUPREME AUDIT INSTITUTION (BPK)

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ABSTRACT

The Supreme Audit Institution (BPK) holds a crucial mandate in goods and services procurement, yet indications of *détournement de pouvoir* (abuse of authority) by BPK auditors have created a misalignment between audit norms and implementation reality, potentially damaging the public business ecosystem. This study aims to critically analyze the BPK's *détournement de pouvoir* through a Business Law framework and construct a new argument regarding its impact on governance and contractual certainty. The methodology employs juridical-normative research with conceptual and statute approaches. Secondary data were collected through library research and analyzed qualitatively-deductively, focusing on the principles of Good Corporate Governance (GCG), Fiduciary Duty, and Contractual Certainty. The findings indicate that the BPK's *détournement de pouvoir* is constructed as a fundamental breach of the public auditor's Fiduciary Duty, which analytically creates a serious disruption to Good Government Governance (GGG) and increases transactional risk. The main implication is the necessity for internal BPK reform through the reaffirmation of fiduciary responsibility and the standardization of business risk-based audits to restore market confidence and economic efficiency in public procurement. The limitation of this study is its juridical-normative nature, where the analysis is not supported by quantitative empirical data of specific BPK cases. The novelty and originality lie in the construction of a new argument that explicitly shifts the analysis of *détournement de pouvoir* from the Administrative Law domain to the Business Law domain, framing it as a governance failure and a threat to Contractual Certainty, which has not been undertaken by previous research.

Keywords: *Détournement de Pouvoir*, Abuse of Authority, BPK, Good Corporate Governance, Fiduciary Duty.

1. INTRODUCTION

Introduction to an Interesting Topic

The Supreme Audit Institution (BPK) is an external supervisory institution that plays a central role in maintaining the accountability of state finances. The BPK's authority to audit government goods and services procurement projects is a key mechanism to ensure efficiency and compliance. However, indications of *détournement de pouvoir*—the use of audit authority for purposes outside the institutional mandate, such as political interests or personal negotiation—have been identified [1]. This phenomenon creates a misalignment between the normative goal of the audit (accountability) and its implementation reality, which potentially causes serious disruption to public procurement governance.

Problem Statement (based on Gap Identification)

The problem formulation in this research is to critically identify and analyze how the BPK's *détournement de pouvoir* in goods and services procurement audits can be constructed as a governance failure from a Business Law perspective.

Research Questions:

- 1 How can the BPK's *détournement de pouvoir* be interpreted as a violation of the principles of Good Government Governance (GGG) and the public auditor's Fiduciary Duty?
- 2 How does the BPK's abuse of authority analytically contribute to contractual legal uncertainty and increased transactional risk in public procurement projects?

Specific Objectives

The objectives of this research are:

- 1 To analyze the BPK's *détournement de pouvoir* through the lens of Business Law, specifically the principles of GCG and Fiduciary Duty.
- 2 To construct a new argument regarding the impact of the BPK's abuse of authority on Contractual Certainty in public procurement

Author's Position or Argument (Thesis Statement)

The BPK's *détournement de pouvoir* in auditing goods and services procurement constitutes a fundamental breach of the public auditor's Fiduciary Duty, which is theoretically and analytically constructed as a disruption of Good Corporate Governance (GCG) and a serious threat to Contractual Certainty, ultimately hindering economic efficiency in the public sector

Specific Focus of the Problem

The focus of this research is on the BPK's abuse of authority related to the interpretation of state losses and non-procedural audit recommendations, which directly affect the continuity and validity of goods and services procurement contracts.

Scope and Limitation of the Study

This study is limited to the juridical-normative analysis of the *détournement de pouvoir* doctrine and its connection with Business Law principles (GCG, Fiduciary Duty, Contractual Certainty) in the context of public procurement in Indonesia. This study does not include the analysis of specific empirical data from BPK cases.

Novelty Plan

The novelty of this article lies in the effort to construct a new argument that frames the BPK's abuse of authority as a transactional risk and a governance failure, measured by its impact on the principles of GCG and Contractual Certainty, rather than merely a violation of administrative procedure.

Chapter Content Map

This article is systematically structured, starting from the introduction, theoretical review of Business Law, research methodology, findings, critical discussion, and concluding with conclusions and recommendations.

2. LITERATURE REVIEW

Mapping Theory and Key Concepts

Key Concept	Operational Definition	Theoretical Framework
Détournement de Pouvoir	The use of authority by a public official for purposes outside those established by law [2].	Administrative Law
Good Government Governance (GGG)	The application of GCG principles (transparency, accountability, independence) in public sector management [3].	Business Law/Governance
Fiduciary Duty	The legal obligation of the BPK auditor to act in the best interest of the public/state with objectivity and independence [4].	Business Law/Corporate Law
Contractual Certainty	The condition of predictability and clarity in the enforcement of business agreements, essential for market efficiency [5].	Contract Law/Business Law

Synthesis and Comparison of Previous Research

Previous research generally analyzes *détournement de pouvoir* in the context of Administrative Law and Criminal Corruption Law, focusing on procedural aspects and sanctions [2]. Some studies also highlight the ethics of BPK auditors [6]. However, no research has explicitly constructed the argument that the BPK's abuse of authority constitutes a GCG disruption and a threat to Contractual Certainty from a Business Law perspective.

Identification of Knowledge Gaps

The identified knowledge gap is the lack of critical analysis that directly links the abuse of authority by public oversight institutions (BPK) with economic-business consequences, particularly in terms of increased transactional risk and contractual uncertainty.

Presentation of Theoretical Framework

The theoretical framework used is Business Law, focusing on three pillars: GCG, Fiduciary Duty, and Contractual Certainty. This framework allows for critical analysis that transcends the boundaries of positive administrative law, leading to the construction of arguments oriented towards economic efficiency and market integrity

3. METHODS

Type of Research/Study Design

This research uses the type of juridical-normative research (*normative legal research*). The approaches used are the conceptual approach and the statute approach

Data Sources and Selection Criteria

The main data source is secondary data, which includes:

- 1 **Primary Legal Materials:** Laws related to the BPK, Goods and Services Procurement, and State Administrative Law.
- 2 **Secondary Legal Materials:** Literature, scientific journals, and textbooks on Business Law, GCG, Fiduciary Duty, and *détournement de pouvoir*.
- 3 **Tertiary Legal Materials:** Legal dictionaries and encyclopedias

The data selection criteria are the theoretical relevance and authority of the sources in the domain of Business Law and Administrative Law

Data Collection Techniques

The data collection technique is carried out through library research (*studi kepustakaan*), which involves collecting, identifying, and classifying relevant legal materials

Data Analysis Techniques

The data analysis technique used is qualitative-deductive analysis. Data is analyzed by interpreting legal concepts (such as *détournement de pouvoir*) and logically linking them to Business Law principles (GCG, Fiduciary Duty, Contractual Certainty) to construct a new argument that answers the research questions

4. FINDINGS (35%) – Results/Findings

Initial findings indicate that the BPK's abuse of authority occurs at two main levels: the level of norm interpretation and the level of technical implementation. The preliminary findings reveal that the abuse of authority within the Audit Board of Indonesia (BPK) occurs on two principal levels: normative interpretation and technical implementation. These levels reflect distinct yet interrelated manifestations of *détournement de pouvoir*, indicating that the problem is not confined to administrative discretion but extends into the operational and epistemic dimensions of public auditing.

Level of Abuse of Authority	Description of Initial Findings	Normative Implication
Norm Interpretation	Disharmony between audit legal norms and implementation reality in the field [1].	The existence of excessive discretion in determining "state losses" and "deviations."
Technical Implementation	Implementative constraints due to differences in technical standards, auditor experience, and non-uniform interpretation of audit norms [1].	Audit results (LHP) are vulnerable to subjectivity and non-audit motives.

Initial Answers to Research Questions (Problem Statement in the Introduction)

The initial answer shows that *détournement de pouvoir* emerges when the auditor uses the examination authority not to achieve the established legal objective (accountability), but for other interests outside the institutional mandate. Implicitly, this is a violation of the principles of independence and objectivity of the audit, which are the core of GGG

At the normative level, the tension between statutory audit provisions and practical enforcement highlights a gap in Indonesia's administrative law enforcement system. The overextension of discretionary authority enables auditors to interpret "state losses" and "irregularities" without clear legal benchmarks, resulting in potential arbitrariness in audit judgment (Power, 1997) [GGG]. Such flexibility, while intended to enhance audit responsiveness, paradoxically opens the door to political instrumentalization of audit outcomes.

At the technical level, the absence of consistent audit methodologies and professional standardization among BPK auditors leads to interpretive inconsistency. Discrepancies in technical expertise and subjective application of audit standards create opportunities for selective evaluation—where similar cases may yield divergent conclusions depending on the assigned auditor (Mardiasmo, 2018) [ECO].

This structural inconsistency not only undermines the reliability of audit findings but also generates systemic risk for the predictability of public procurement and contracting processes. Consequently, audit outcomes lose their role as a neutral accountability mechanism and instead evolve into potential instruments of negotiation or coercion (Denhardt & Catlaw, 2015) [ADM]

5. DISCUSSION

5.1. Breach of Fiduciary Duty and the Ethical Crisis of Public Auditors

The findings indicate that the emergence of *non-audit motives* within the audit practices of the Audit Board of Indonesia (BPK) constitutes a direct **breach of fiduciary duty** inherent to public auditors. Within the framework of *Business Law and Public Ethics*, an auditor acts as a fiduciary entrusted by the public—the principal—to serve the best interests of the state (Rahman, 2021).

When auditors employ their authority for personal, political, or extra-institutional purposes, they violate two fundamental fiduciary principles: the **Duty of Loyalty** and the **Duty of Care**. Such conduct is not merely a procedural error but a moral collapse that undermines institutional accountability (Power, 1997).

From the perspective of *Public Administration*, trust represents the foundational currency of legitimacy in oversight institutions (Denhardt & Catlaw, 2015). The erosion of this trust transforms the audit function into a political instrument, stripping the Audit Report (*Laporan Hasil Pemeriksaan / LHP*) of its informational integrity. This dynamic exemplifies a **public moral market failure**, wherein the institution entrusted to ensure accountability becomes a contributor to systemic inefficiency (Mardiasmo, 2018).

Consequently, the fiduciary breach by auditors disrupts the very architecture of public trust and distorts information reliability in state finance. The ripple effect manifests as *agency problems* within the oversight institution itself, deteriorating fiscal efficiency and increasing the costs of governance (Romzek & Dubnick, 1987).

5.2. **Détournement de Pouvoir and the Crisis of Good Government Governance (GGG)**

The phenomenon of *détournement de pouvoir*—the misuse of public authority for purposes beyond its legal mandate—represents a **systemic disruption of Good Government Governance (GGG)**. The GGG framework emphasizes transparency, accountability, and institutional independence, yet these pillars are weakened when audit authority is politicized (Siregar, 2020) [GGG].

In the context of *Administrative Law*, misuse of power occurs when an official exercises discretion inconsistent with statutory objectives (Ridwan, 2016) [ADM]. However, in *Public Economics*, such behavior introduces severe **information asymmetry**, as audit outcomes no longer correspond to factual audit findings but to concealed motives (Power, 1997; Mulgan, 2000) [ECO].

This asymmetry generates unpredictable governance risks: audited entities—government bodies, SOEs, and private contractors—can no longer rationally anticipate the objectivity of audit outcomes. The uncertainty escalates *transaction costs* and undermines allocative efficiency in public procurement (Hadjon, 2019) [BUSLAW]. Thus, *détournement de pouvoir* is not only an administrative violation but an **economic governance failure**, distorting resource allocation and trust in public oversight systems.

5.3. **Threats to Legal Certainty in Contracts**

A core implication of *détournement de pouvoir* is its detrimental effect on **contractual legal certainty**—a cornerstone of market efficiency (Hadjon, 2019) [BUSLAW]. When BPK's audit interventions exceed their legal mandate, they can delay or invalidate legitimate procurement contracts that otherwise comply with the *pacta sunt servanda* principle.

This phenomenon produces a *regulatory chill effect*: private contractors and investors become reluctant to engage in public projects due to unpredictable audit risks. Consequently, risk premiums increase, leading to inflated contract values and higher fiscal burdens for the state (Andriani, 2022) [ECO].

In the broader context of *Rule of Law*, politically motivated audits represent a deviation from legal predictability, undermining both market confidence and contractual justice (Mulgan, 2000) [GGG].

Restoring legal certainty therefore requires **reform of public audit standards**—they must be uniform, transparent, and explicitly tethered to legally defined audit objectives (Rahman, 2021) [BUSLAW].

5.4. Expanding *Détournement de Pouvoir* into Business Law

Theoretically, this study calls for the **expansion of the doctrine of *détournement de pouvoir*** beyond its traditional home in *Administrative Law* into the realms of *Business Law* and *Public Economic Regulation*. Historically, the doctrine was designed to control administrative discretion. Yet, the findings demonstrate that the misuse of public authority has **direct market consequences**, impacting both contractual integrity and economic efficiency (Ridwan, 2016; Mardiasmo, 2018) [BUSLAW–ECO].

This conceptual expansion redefines *détournement de pouvoir* as a **cross-domain legal mechanism**—one that safeguards not only administrative legality but also market integrity. In this sense, *Good Government Governance* becomes the nexus linking administrative accountability and economic rationality (Power, 1997) [GGG].

Such a shift reframes the doctrine from a *state-centered control mechanism* to a *market-integrity protection framework*. Preventing the misuse of authority by BPK, therefore, is not solely a matter of ethical governance—it is an essential precondition for **contractual fairness, allocative efficiency, and sustainable economic governance**. The BPK's *détournement de pouvoir* is comprehensively analyzed as a serious threat to Contractual Certainty.

The BPK's unlawful actions can cancel or delay the execution of procurement contracts, even though the contract meets the *Pacta Sunt Servanda* requirements between the contracting parties. The legal uncertainty caused by non-audit-motivated audits causes contractors to be reluctant to invest or demand higher risk compensation. Economically, this is a form of **negative** externality imposed on state finances and damages the investment climate. To restore legal certainty, audit standards must be uniform, transparent, and legally bound to explicit audit objectives, limiting the scope for auditor discretion that is vulnerable to abuse

Acknowledgment of Study Limitations

The limitation of this study is its juridical-normative nature. The analysis is not supported by quantitative data of BPK *détournement de pouvoir* cases, so the argument construction is based on theoretical synthesis and qualitative initial findings

6. CONCLUSION (one or two paragraphs)

The BPK's *détournement de pouvoir* in auditing goods and services procurement is constructed as a Business Law issue that violates the principles of Good Government Governance and the public auditor's Fiduciary Duty. Analytically, this abuse of authority creates contractual legal uncertainty and increases transactional risk in public procurement. This governance failure impedes economic efficiency and damages the investment climate

The practical implication is the need for internal BPK reform. The recommendations proposed include: (1) Reaffirmation of Fiduciary Responsibility through stricter regulations regarding civil and criminal sanctions for auditors who violate this duty. (2) Business Risk-Based Audit Standardization that aligns audit standards with international GCG practices, focusing on economic efficiency. (3) Increased LHP Transparency and robust *due process* mechanisms for the audited parties. Future research is recommended to conduct quantitative empirical studies on the

correlation between audit abuse of authority and the increase in *risk premium* in public procurement contracts

7. Copyright & Patents

This section is not mandatory, but may be added if there are patents resulting from the work reported in this manuscript.

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