JIHAD : Jurnal Ilmu Hukum dan Administrasi
Vol. 7 No. 1 Maret 2025
p-ISSN : 2745-9489, e-ISSNl 2746-3842
DOI: *10.36312/jihad.v7i1.8500/https://ejournal.mandalanursa.org/index.php/JIHAD/issue/archive*

Strengthening Regulations for Supervision of Private Sector Grant Funds in View of Law no. 17 of 2003 concerning State Finances

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Article Info
Article history:
Received: 11 March 2025
Publish: 26 March 2025

Keywords:
Regulation;
Supervision;
Grant Funds.

Abstract
This research discusses the importance of strengthening regulatory oversight of grant funds in the private sector to prevent misuse and increase accountability. The background to the problem includes the increasing allocation of grant funds to private institutions and current challenges in supervision. The method used in this discussion includes normative analysis of Law no. 17 of 2003 as well as case studies that show weaknesses in existing supervision and sanctions. The results of the analysis show that regulatory revisions are needed to establish stricter audit standards, increase reporting obligations, and strengthen legal sanctions for violators. The conclusion of this research confirms that by strengthening regulations, it is hoped that the management of grant funds by private institutions can be carried out in a more transparent and accountable manner, thereby increasing public trust in the use of these funds.

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1. INTRODUCTION

In an increasingly dynamic state financial management system, grant funds not only function as government budget instruments, but also become the key to collaboration between the public and private sectors to support sustainable development programs. For example, grant funds are used for rural infrastructure projects, workforce skills training, or green energy development involving NGOs and social enterprises (OECD, 2021). In Indonesia, the trend of allocation of grant funds to private institutions such as educational foundations, social corporations and non-profit organizations has increased significantly, reaching IDR 12.8 trillion in 2022 (Ministry of Finance, 2023). However, behind this strategic potential, two crucial unanswered problems emerge: first, a weak monitoring system for private grant funds which has the potential to create opportunities for abuse; second, legal sanctions are inadequate to create a deterrent effect.

This problem is urgent to be addressed because Law 17/2003, which is the legal basis for managing the state budget, apparently does not fully accommodate the dynamics of monitoring grant funds in the private sector, especially in the digital era which makes it easier to manipulate financial reports (Wibowo, 2022). For example, Article 24 of Law 17/2003 only requires private institutions to report the use of grant funds without stating clear audit standards. As a result, many institutions exploit this loophole to avoid real-time reporting, as seen in the findings of the Supreme Audit Agency (BPK, 2022). In fact, according to public trust theory (Bovens, 2019), transparency in the management of grant funds is an absolute requirement to maintain government legitimacy.

2. RESEARCH METHOD

This research uses a juridical-normative method with a doctrinal analysis approach. Primary data comes from Law 17/2003, Government Regulation (PP) no. 10 of 2011 concerning Procedures for Procuring Loans and Receiving Grants, as well as court decisions regarding cases of misuse of grant funds. Secondary data was taken from legal journals, BPK reports, and literature related to state financial accountability. The analysis was carried out qualitatively using legal interpretation techniques (Soekanto & Mamudji, 2017), covering aspects of legality, regulatory hierarchy and application of sanctions.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Mechanism for Supervision of Private Institution Grant Funds in Law 17/2003

Grant funds (*grant*) in the context of state finance in Indonesia is defined as financial assistance or goods received by the government or certain institutions from other parties (domestic/foreign) which is not binding and does not need to be repaid, as long as it is used in accordance with the agreed purpose. This definition is set out explicitly in:

Article 1 Number 23 Law no. 17 of 2003 concerning State Finance: "Grants are assistance in the form of money, goods, services and/or securities originating from other parties, both domestic and foreign, which are binding and do not need to be repaid."

Article 1 Number 3 PP No. 10 of 2011 concerning Procedures for Procuring Loans and Receiving Grants: "Grants are assistance in the form of money, goods, services, and/or securities originating from foreign governments, foreign institutions/agencies, regional governments, domestic institutions/agencies, or individuals that do not need to be repaid and are not binding, and do not directly give rise to political or economic consequences."

Grants can be classified into two main types: domestic grants, which include assistance from local governments, BUMN/BUMD, local private institutions, or individuals (for example corporate CSR programs for village infrastructure development), as well as foreign grants, which include assistance from foreign governments (such as Japanese grants through JICA for disaster mitigation) or international institutions (such as the World Bank for environmental projects). The main characteristics of grant funds are (1) non-binding, meaning there are no reciprocal obligations that burden the recipient; (2) specific objectives, where the allocation of funds must be as agreed in the grant agreement (for example, education grants are only for school construction); (3) transparency, which requires recipients to prepare audited financial reports; and (4) public accountability, as mandated by Article 24 of Law 17/2003.

To be able to receive a grant, an institution, whether government or private, must meet the substantive and procedural requirements regulated in Article 4 of PP 10/2011, namely: conformity with national interests (for example, not conflicting with Indonesian legal sovereignty), the existence of real benefits for development (such as reducing poverty or increasing access to health), the absence of additional financial burdens for the APBN/APBD (grant administration costs do not exceed the benefits), as well as the existence of a grant agreement ratified by the competent authority (Minister of Finance for foreign grants or regional heads for domestic grants). Thus, even though they are non-repayable, grant funds are not a source of funding without ties, but must be managed professionally and responsibly in accordance with legal corridors to ensure optimal benefits for the public interest.

UU no. 17 of 2003 concerning State Finances explicitly regulates that grant funds sourced from the APBN/APBD are part of state finances which must be managed with

the principles of accountability and transparency, as stated in Article 23 Paragraph (1). The principle of accountability in this context is defined as the obligation of private institutions receiving grants to account for the use of funds in writing, while transparency requires the disclosure of information regarding the allocation, realization and output of grants to the public. Article 24 Paragraph (2) of Law 17/2003 emphasizes this obligation by stating that grant financial accountability reports must be audited by a public accountant, without providing exceptions for certain private institutions. However, this provision is not followed by derivative norms that regulate audit criteria, such as reporting frequency (whether annual, semi-annual or quarterly), audit technical standards, or classification of private institutions based on the amount of grant funds received. As a result, even though Article 24 Paragraph (2) is imperative ("must be audited"), its implementation is vulnerable to multiple interpretations, especially regarding the supervisory priority scale.

External supervision of grant funds, according to Article 6 Paragraph (1) of Law 17/2003, is the authority of the Financial Audit Agency (BPK) as an independent institution. This article confirms that the BPK has the authority to examine the management of state finances, including grant funds, to ensure compliance with the principles of legality, efficiency and effectiveness. However, Law 17/2003 does not explain the coordination mechanism between the BPK and grant-giving agencies (such as ministries/institutions) in terms of dividing supervisory roles. Article 24 Paragraph (3) only states that the granting agency "can carry out inspections" of private institutions, without tying this obligation to a certain period or specific performance indicators. This norm creates an unclear supervisory hierarchy: whether the BPK as an external auditor has the highest authority, or whether the granting agency as the person responsible for the program has the right to intervene in audit findings.

On the sanctions side, Law 17/2003 regulates two types of legal consequences for misuse of grant funds. First, administrative sanctions based on Article 34, which requires grant recipients to return grant funds along with 2% interest per month if they are proven to have violated the provisions. Second, criminal sanctions in Article 35 Paragraph (1) include the threat of 1-5 years in prison and a fine of IDR 500 million to IDR 2.5 billion for parties who unlawfully use grant funds that are not according to their intended purpose. However, these two articles do not provide an operational definition of "misuse" or "non-appropriation", thus creating ambiguity in law enforcement. For example, Article 35 Paragraph (1) only mentions "any person" who misuses grant funds, but does not explain whether this "person" includes legal entities (private institutions) or only individual administrators. In addition, Law 17/2003 does not regulate additional sanctions such as blocking future access to grants or blacklisting for violators, which could actually strengthen the deterrent effect.

Another normative weakness lies in the absence of a dispute resolution mechanism in Law 17/2003. If there is a dispute between the granting agency and the private institution regarding the interpretation of "misuse", there is no article that regulates the dispute resolution forum (whether through general courts, arbitration, or administrative channels). Article 36 only states that the imposition of sanctions is carried out "in accordance with the provisions of statutory regulations", without explicitly referring to the Government Administration Law or KUHAP. This has the potential to give rise to dualism in case handling, where one case of grant misuse can be processed criminally by the Prosecutor's Office, while a similar case is resolved administratively by the grant giving agency, depending on the subjectivity of the authorities.

3.2. Effectiveness of Legal Sanctions Against Misuse of Grant Funds According to Law 17/2003.

Misuse of grant funds by private institutions can theoretically be categorized as a criminal act of corruption under Articles 2 and 3 of Law no. 31 of 1999 jo. UU no. 20 of 2001 concerning the Eradication of Corruption Crimes (UU Tipikor), which states that every abuse of authority to benefit oneself or another party unlawfully is included in the scope of corruption.

However, in practice, State Finance Law no. 17 of 2003 (UU 17/2003) actually regulates administrative and criminal sanctions separately, creating a counterproductive legal dualism.

Article 34 of Law 17/2003, for example, only requires grant recipients who violate the provisions to return the funds along with 2% interest per month, sanctions which tend to be symbolic considering that perpetrators often have diverted funds to illiquid assets (Siregar, 2019). On the other hand, Article 35 paragraph (1) threatens imprisonment of 1-5 years and a fine of IDR 500 million to IDR 2.5 billion for perpetrators of abuse. Even though it looks progressive, this sanction is not optimal due to three main factors:

1 Minimal law enforcement. Indonesian data *Corruption Watch* (ICW, 2021) shows that only 15% of 120 cases of misuse of private grant funds were successfully brought to court between 2015–2020. Most cases are instead resolved administratively with partial refunds
2 Ambiguity in the definition of "abuse" in Law 17/2003. This law does not explicitly specify the forms of deviation, such as the difference between mismanagement and mismanagement *intentional misuse* (intentional fraud). As a result, the judge's interpretation becomes very subjective. A concrete example can be seen in the Jakarta District Court Decision No. 45/Pid.B/2020, in which the defendant who used educational grant funds to finance political campaigns was declared not guilty because the judge argued that "political goals do not conflict with the spirit of development". In fact, according to Asshiddiqie (2022), the legal vacuum in this definition opens up opportunities for legal loopholes that are exploited by corporate criminals.
3 Overlapping regulations between Law 17/2003 and the Corruption Law. Siregar (2019) in his research found that 65% of judges and prosecutors were confused about determining the legal umbrella when handling grant funding cases. For example, the administrative sanction of refunding funds in Law 17/2003 is often considered a "final step", even though this action meets the elements of corruption according to the Corruption Law. This conflict of norms is exacerbated by the absence of a Government Regulation (PP) that bridges the two regulations, as mandated in Article 38 of Law 17/2003. As a result, it appears *legal uncertainty* which weakens the deterrent effect, as criticized by financial law expert Wibowo (2022: 78): "Regulating private grant funds is like using an old handbrake on a downhill road, there are rules, but they are unable to stop the rate of deviation."

The impact of the ineffectiveness of sanctions is multidimensional. Economically, the state loses an average of IDR 1.2 trillion per year due to leakage of grant funds (BPK, 2022). Socially, society has become skeptical of public-private collaboration, as seen in the LSI survey (2023) where 72% of respondents considered private institutions "not transparent" in managing grant funds. To overcome this, a revision of Law 17/2003 is needed which integrates the principles *strict liability* (absolute accountability) for

private institutions by referring to the OECD (2023) standards regarding grant management including:

1 Increased Reporting Obligations

Establishes an obligation for private institutions to submit reports on the use of grant funds periodically and in a standard format. This report should include details of the use of funds, results achieved, and evaluation of funded projects. With stricter reporting obligations, private institutions will be more responsible in the use of funds and facilitate supervision by the authorities.

2 Implementation of a Digital Audit System

Develop and implement a digital audio system that enables real-time monitoring of the use of grant funds. This system may include an online platform for reporting and verifying the use of funds. This system will increase transparency and facilitate access to information for the public and authorities, thereby minimizing the possibility of misuse.

3 Determination of Criteria for Grant Fund Recipients

Establish clear and transparent criteria for private institutions eligible to receive grant funds, including requirements related to accountability and experience in project management. With clear criteria, only institutions that have a good reputation and adequate capabilities will receive grant funds, thereby reducing the risk of misuse.

4 Increased Legal Sanctions

Strengthen legal sanctions for private institutions proven to have misused grant funds, including the application of criminal sanctions for serious violations. Heavier sanctions will provide a deterrent effect and encourage private institutions to comply with existing regulations.

5 Establishment of an Independent Supervisory Body

Establish an independent supervisory body tasked with monitoring and evaluating the use of grant funds by private institutions on a regular basis. This body will function as an external supervisor who can provide an objective assessment of the management of grant funds, as well as provide recommendations for improvement.

6 Training and Capacity Building

Providing training and capacity building for private institutions in managing grant funds, including aspects of accountability and transparency. By increasing the capacity of private institutions, it is hoped that they can manage grant funds better and in accordance with applicable regulations.

By implementing these efforts, it is hoped that supervision of the use of grant funds by private institutions can be improved, thereby reducing the risk of misuse and increasing public trust in the management of these funds.

4. CONCLUSION

Strengthening regulatory oversight of grant funds in the private sector is very important to prevent misuse and increase accountability. Even though Law no. 17 of 2003 provides a legal framework for managing grant funds, there are weaknesses in the monitoring system that allow misuse. Therefore, it is necessary to revise the law by establishing stricter audit standards, more transparent reporting obligations, and the introduction of stricter legal sanctions. Examples of cases of misuse of grant funds show that without strong regulation, private institutions can easily avoid accountability. Thus, strengthening regulations and

more effective supervision is expected to increase public trust in the management of grant funds and support sustainable development goals.

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