

LEGAL PROTECTION FOR PUBLIC ACCOUNTANTS AGAINST FAILURE TO DETECT FINANCIAL REPORTING FRAUD

Anderson Subri*, Agus Surono, Adnan Hamid

Universitas Pancasila, Indonesia

*e-mail: andersonsubri3k@gmail.com * agussurono@univpancasila.ac.id
adnan_hamid@univpancasila.ac.id

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ABSTRACT

The purpose of this study is to explore the ideal concept of professional legal protection in protecting the public interest from financial reporting fraud. The research employed a normative juridical law method, focusing on doctrinal legal research, to gather comprehensive insights into the challenges and perceptions surrounding legal protections for public accountants. Thematic analysis categorized the findings to provide a coherent understanding of the gaps and challenges in the current legal system, ultimately striving to enhance the legal framework surrounding the Public Accountant profession. The evaluation of potential reforms based on principles of justice offers a pathway toward enhancing the legal system surrounding the public accounting profession.

INTRODUCTION

As one of the professions that has expertise in the field of auditing, accountants have an important role in supporting business activities and sustainable development goals (SDGs) (Firmansyah, 2019). In the era of globalization of trade in goods and services, the need for Public Accountant service users will increase, especially the need for the quality of financial information used as one of the considerations in decision-making. The Public Accountant profession is required to constantly improve competence, ethics and professionalism in order to meet the needs of service users and carry out public trust. Ethics is an important aspect of any profession, but it acquires a deeper meaning in the context of the accounting profession, where public accountants have the responsibility to manage accurate and transparent financial information that influences the economic and business decisions of individuals and organizations (Romero-Carazas et al., 2024).

The preparation of financial statements is the responsibility of the Board of Directors and includes the Board of Commissioners in accordance with Articles 66 to 69 of the Limited Liability Company Law (PT Law). Before the Public Accountant signs the Independent Auditor's Report Opinion, the Stakeholders represented by the Board of Directors submit the Statement of Directors (SPD) attached to the financial statements. A statement letter is essentially a unilateral confession letter made in writing so that it is only binding on the person who made it, and can be revoked or denied at any time. A statement letter only has the power of legal proof if it is recognized by the person who made it, according to Article 1875 of the Civil Code. If it is not recognized, then it is only classified as a deed under the hand that has no power as evidence in law because it has no evidentiary value. Article 1875 states: "An inscription under the hand of which is acknowledged to be true by the

person who is confronted with it or is legally considered to have been justified by it, gives rise to complete evidence such as an authentic deed for the people who signed it."

At this time, there is a tendency that company management does not present performance information or financial statements honestly, but rather manipulates the company's performance or profit achievement data. Performance information is very important for stakeholders in assessing management performance, so management often performs engineering in the presentation of financial statements (Wardani et al., 2024). There is a tendency to pay more attention to profits in income statements and this is known to management, especially managers whose performance is measured based on this information. The persistence of investors and shareholders in increasing their wealth encourages them to focus only on the profit information presented in the income statement, without paying attention to the procedures used to generate such information. This encourages managers to manage profits (Nyakarimi, 2022) or even manipulate profits. This practice can make the actual economic profit different from the profit presented by the management in the company's financial statements. This unethical practice is made possible through the application of accounting practices that are not allowed by applicable accounting standards or by the manipulation of recorded and reported financial transaction data. Often, accounting scandals are influenced by politics and business, which are characterized by the revelation of the crimes of public company executives. These crimes usually involve elaborate methods to misuse or mislead funds, exaggerate revenues, reduce costs, overvalue a company's assets or reduce the amount of liabilities, sometimes in collaboration with officials in other companies or their affiliates. By referring to the definition of accounting scandal above, accounting crimes tend to be in the form of incorrect statements (fraud related to the presentation of financial statements) (Fikri, 2018).

Practices Unsound practices carried out by implementing accounting policies that are not in accordance with financial standards that cause irregularities and misleading reporting for stakeholders. An example of the case of a large company with the name Enron that created an economic crisis in Uncle Syam's country even had an impact on some countries that did not have strong economic fundamentals experiencing an economic crisis. In this case, Enron's financial statements presented raise questions from shareholders and analysts. The company's unethical business model and practices include misinterpreting earnings and manipulating the balance sheet to obtain a positive financial performance rating. The combination of many of these problems then led to the bankruptcy of Enron. Additionally, Enron adopted an accounting practice known as mark-to-market accounting, where the recognition of assets is based on market value rather than book value. This accounting practice also allows Enron to report revenue based on business projections rather than Actual revenue (Karim, 2021).

Likewise, the case that was revealed in early 2017 where Britis Telcom as a multinational company with a global reputation was not spared from a fraud scandal, this big problem also involved the big four accounting firms. The accounting firm of Ernest & Young and Toshiba has been established for a long time, and the auditors should have had a good understanding of the business and financial conditions and were able to detect the circumstances that caused Toshiba's top executives to commit financial reporting fraud (Demetriades & Owusu-Agyei, 2022). Likewise, the British Telcom mega scandal which was affected by Price Water Cooper which caused the accounting firm to be polluted (Umar, 2020).

In recent years, many cases have occurred in Indonesia, disappointing stakeholders. The Company prepares financial statements in accordance with financial accounting standards and applicable regulations such as Law number 40 of 2007 concerning Limited Liability Companies and related laws or regulations. The company deliberately carried out financial engineering by inflating

financial performance by deceiving stakeholders, because stakeholders use these financial statements as decision-making materials. Various legal cases that occur in companies, such as the case of Efishery, MBZ Toll, PT Asuransi Jiwa Wanartha, PT Asuransi Jiwasraya, PT Asabri, PT PT SNP Finance, PT Garuda Indonesia and PT Tiga Pilar Sejahtera Food, Tbk, create a negative stigma against the public accounting profession in the country, because legally the financial statements of the company concerned must be audited by a Public Accountant (Christian et al., 2023). Issues related to the Public Accountant profession seem to be the culprit of the recent financial crisis. In fact, according to Sri Mulyani, the financial profession, especially Public Accountants as facilitators, needs to have competence so as not to cause great havoc for society, companies and even the state (Hawaroh, 2023). This is understandable because the public still thinks that the financial statements that have been audited by the Public Accountant are the responsibility of the Public Accountant.

Due to many problems caused by the Company, the Public Accountant profession was brought to the legal realm and sanctioned by regulators due to inaccuracy in providing opinions, especially in assessing the company's business sustainability (going concern) (Sundgren & Svanström, 2022). As can be understood that the tasks carried out by AP are not completely perfect. The Public Accountant does not obtain data, information and other documents related to the provision of services by AP in accordance with the provisions. Second, data and information have been obtained, but AP does not fully implement the specified standards. When AP's client does not fully provide correct information, especially if the client has the will to carry out fraudulent financial reporting, of course AP only provides an opinion limited to the information he obtains. Therefore, the working relationship between the client and AP arises from a contract that contains elements of fraud (*Fraus dans locum contractui*) (Umar, 2020). Thus, can AP be sanctioned if the opinion conveyed is only limited to information and data obtained from such malicious intent (*mensrea*)? Of course not. If the client's *Mens Rea* (Evil things) (Zacharski, 2018) conceals information, then AP cannot be sued for his or her mistaken opinion, because the objective conditions in the employment contract are not met. Criminal sanctions can be given in the event that a public accountant manipulates, assists in manipulating data, deliberately omitting records or papers, becomes an associated party in the aforementioned crimes, or provides false information or documents to extend the public accountant's license.

The formulation of the problem in this study is about the ideal concept of professional legal protection in protecting the public interest from financial reporting fraud. The purpose of the research consists of two aspects: first, to examine and analyze the problems of legal protection for Public Accountants from the perspective of laws and regulations; second, evaluate and find the concept of reforming the legal protection of the Public Accountant profession based on the principle of justice. This study contributes to the discourse on professional legal protection by exploring the ideal framework necessary to safeguard the public interest against financial reporting fraud. By examining the current legal protections available to public accountants through the lens of existing laws and regulations, the research highlights existing gaps and challenges in the current system. Furthermore, the evaluation of potential reforms based on principles of justice offers a pathway toward enhancing the legal framework surrounding the public accounting profession. This dual focus not only deepens the understanding of the intersection between legal protections and ethical accounting practices but also provides actionable insights for policymakers and regulatory bodies seeking to strengthen the integrity of financial reporting and protect public interests effectively.

METHODS

The research employed a normative juridical law method, focusing on doctrinal legal research to explore the legal protections available to public accountants. Data sources included relevant legal

documents, court decisions, scholarly articles, and professional standards that governed the accounting profession. The study utilized document and literature reviews, along with interviews with legal experts and practitioners, to gather comprehensive insights into the challenges and perceptions surrounding legal protections for public accountants.

Data analysis involved qualitative techniques, identifying patterns and themes related to legal frameworks and ethical standards. Comparative analysis was conducted to benchmark existing regulations against best practices from other professions, aiming to propose actionable reforms. Thematic analysis categorized the findings to provide a coherent understanding of the gaps and challenges in the current legal system, ultimately striving to enhance professional legal protection for public accountants.

RESULTS

Public accountant is one of the professions that provides services as professionals who have a license from the state to practice as a private accountant who works independently (Institut Akuntan Publik Indonesia, 2021). Public Accountant is a profession whose main service is financial audit services or insurance services and the results of his work are widely used by the public as one of the important considerations in decision-making. The Public Accountant profession has a big role in supporting a healthy and efficient national economy and improving transparency and quality of information in the financial sector. Accountants fulfill a crucial social role in enhancing the credibility of an entity's financial statements, which requires proper audit quality to be provided and auditors to be factually independent (Quick et al., 2024). Public accountants are tasked with carrying out public mandates by providing opinions on the financial statements of an entity. Thus, the responsibility of a Public Accountant lies in his opinion or statement on the financial information of an entity, while the presentation of financial reports or information is a managerial responsibility (Fikri, 2018).

The Public Accountant Law contains many things related to the regulation of the Indonesian Accountant Profession, especially the enforcement of articles related to criminal sanctions (articles 55 and 56 of the Public Accountant Law). Some Public Accountant practitioners consider that the articles related to the criminal provisions can trigger the criminalization of the Public Accountant profession. Although there was rejection from some Public Accountant practitioners against the provisions of the criminal sanction. If the regulation of criminal sanctions in the Public Accountant Law is aimed at reducing market crimes, it is organized, such as the characteristics of white-collar crimes involving the Public Accountant profession (Prayitno, 2022). So it is necessary to think about whether the sanctions against Public Accountants have been on target. Because Public Accountants should not be subject to severe sanctions related to the manipulation of financial statements, while the main perpetrators (usually corporate administrators) who have a greater interest in the manipulation of financial statements receive a much lighter punishment or even no sanctions at all (Purba, 2015). The heavy sanctions received by the Public Accountant profession are not guaranteed legal certainty. Accountants feel worried because what is done and done in the audit process and the opinions issued can have an impact on criminal or administrative sanctions. Legal protection regulated in article 24 paragraph b, Public Accountants obtain legal protection as long as they have provided services in accordance with SPAP (Public Accountant Professional Standards) (Sari, 2021).

For this reason, the public accounting profession needs legal protection from lawsuits or certain responsibilities as long as they carry out their duties in accordance with applicable professional standards. In the context of the public accountant profession, the right to immunity is one of the important aspects of professional protection, as public accountants are often faced with the risk of litigation and lawsuits that can affect their independence and integrity. The right to immunity of

Public Accountants, as well as the ethics commission as an internal institution that recommends whether violations are only limited to violations or crimes that are further processed by the law enforcement officials. This legal concept will provide protection to individuals or groups of professionals from certain lawsuits or liabilities as long as they carry out their duties in accordance with applicable professional standards. In the context of the public accountant profession, the right to immunity is one of the important aspects of professional protection, as public accountants are often faced with the risk of litigation and lawsuits that can affect their independence and integrity. The right to immunity is the right granted to professionals, such as public accountants, to be protected from lawsuits or civil liability as long as they act in their professional capacity and comply with applicable ethical standards and regulations. This immunity aims to ensure that public accountants can work independently and objectively without fear of disproportionate legal consequences. In this condition, there are several concepts of the scope of immunity rights that are needed by the public accountant profession to obtain ideal and fair legal protection and obtain legal certainty guarantees by reconstructing applicable norms. The concept and space of legal protection are as follows:

- 1) The Right to Immunity in Carrying Out the Profession: The right to immunity inherent in Public Accountants includes:
 - a) Right to Immunity from Lawsuits: Public accountants are protected from lawsuits as long as they carry out audit duties or other professional services in accordance with applicable standards. Example: In the event of irregularities or fraud in a client's financial statements, public accountants cannot be prosecuted as long as they can prove that they have worked in accordance with audit standards.
 - b) Municipal Rights from External Pressure: Public accountants have the right to resist pressure from auditees or other parties that may interfere with their independence and objectivity. Example: Refusing an auditee's request to engineer or manipulate financial statements.
 - c) Immunity in Professional Decision Making: Public accountants are protected when making professional decisions based on careful consideration and in accordance with professional standards. Example: The decision to give an opinion on the fairness of the auditee's financial statements without any pressure or coercion from certain parties that causes a sense of fear to give an unreasonable opinion.
- 2) The right to immunity is given for several purposes, including:
 - a) The right is granted to Maintain Independence and Objectivity and Immunity ensuring that public accountants can work without pressure or fear of lawsuits.
 - b) Can Improve the Audit Quality of Financial Statements. With protection, public accountants can focus on improving the quality of audits and other professional services.

The right to immunity is an important concept in the protection of the public accounting profession. By providing protection from lawsuits and external pressure, immunity allows public accountants to work independently and objectively. However, immunity also has limitations and challenges that need to be overcome through appropriate regulation, education, and effective supervision. Thus, the right to immunity can be an effective tool to maintain the integrity and credibility of the public accounting profession.

The Existence of the Ethics Commission

In practice, many public accountants who have conducted audits according to applicable audit methods and standards can still be subject to legal sanctions, both administrative and criminal. This condition is caused by the fact that it is not carried out by a committee or association under the

auspices of public accountants. Law enforcement officials, some of whom do not understand the professional standards of accountants, sometimes directly process every report submitted by entities that feel aggrieved. The Public Accountant Law which regulates legal protection is felt not to guarantee that if a public accountant has provided services in accordance with professional standards, he will not be subject to criminal sanctions, because the assessment of violations committed by public accountants is not clearly regulated that any violation by a public accountant must go through an internal audit process or ethics committee before entering because of the judiciary. The concept of an ethics commission before being delegated to the law enforcement authorities refers to a process or mechanism in which an organization or institution has an internal body tasked with handling ethical violations or codes of conduct before the case is handed over to the authorities or law enforcement authorities. This ethics commission usually serves to ensure that members or employees of the organization comply with the ethical standards that have been set. An ethics commission is needed before the violating Public Accountant is delegated to the prosecution process. There are several important things about the ethics commission:

- 1) Objectives of the Ethics Commission:
 - a) Maintain the integrity and reputation of the organization.
 - b) Prevent ethical violations by providing internal guidelines and sanctions.
 - c) Handle complaints or violations fairly and transparently.
- 2) Handling Process:
 - a) Initial Investigation: The ethics commission conducts a preliminary investigation into alleged violations.
 - b) Hearing: If necessary, the ethics commission may hold a hearing to hear information from the parties involved.
 - c) Recommendations or Sanctions: Based on the results of the investigation, the ethics commission may issue recommendations or internal sanctions, such as reprimands, suspensions, or dismissals.
- 3) Delegation to the Legal Apparatus:
 - a) If the ethical violation that occurred also involves a violation of the law, the ethics commission may decide to delegate the case to the law enforcement authorities.
 - b) This transfer is usually carried out after the ethics commission completes the internal process and finds strong indications of a criminal act.

CONCLUSION

Public accountants require legal protection from risks associated with demands from regulators, third parties, and law enforcement, particularly when fulfilling their duties according to professional standards. The right to immunity is crucial, as it allows public accountants to operate independently and objectively while shielding them from lawsuits and external pressures. However, this immunity has limitations that must be addressed through proper regulation, education, and supervision. Additionally, establishing a norm that empowers ethics commissions to conduct preliminary investigations into ethical violations can provide legal certainty and reduce the burden on law enforcement, allowing organizations to address issues internally. Future research should focus on developing a comprehensive framework for legal protection and immunity, improving existing regulations, and exploring training needs for public accountants. Comparative studies with other professions and an examination of regulatory bodies' roles will further enhance understanding of maintaining the integrity and credibility of the public accounting profession.

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