



Qualitative Analysis Of The Legal-Procedural Processes From An Accounting Perspective

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Abstract

Corruption is a social phenomenon that affects today's society in a harmful way, since this crime leads to undue theft of money and public assets that hinder the economic and business development of any country. Forensic Auditing emerges as a specialty of auditing whose purpose is to detect illicit acts of a financial, corporate and/or accounting nature, such as fraud, misappropriation of financial statements, evasion, money laundering, among others, which can be heard every day in the news. The present research contains a general systematic analysis of all the qualitative accounting aspects involved in the legal-procedural processes, for this firstly a historical analysis of the research on the subject was proposed, in addition to identifying quantitative statistical aspects of the behavior of the area in recent years, by means of this it was possible to demonstrate that the forensic accounting science in the modes of operation of public accountants, demands a number of qualities and ideologies almost innate and different in each professional, which are directly related to the behaviors or trends of the area or regional zone where the professionals exercise their financial functions.

Keywords: *audit; behavior; finance; judicial; judicial; process*

1. Introduction

Fraud, embezzlement, money laundering, terrorist financing, white-collar crimes among other types of financial crimes are those that can be heard on a daily basis consolidating in a single word, corruption. Colombia is no stranger to this situation, since it is ranked 96th out of 180 countries in the Corruption Perception Index, having as first place with the lowest corruption index worldwide New Zealand, and at Latin American level Uruguay with the 23rd place (National Competitiveness Report, 2018). Comparing Colombia at Latin American level it is positioned on par with countries such as Brazil

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and Peru, barely surpassing Mexico, who presents the highest perception of corruption with a score of 29 out of 100, where 100 is an index of null perception. All these data are published in the National Competitiveness Report conducted by the private Competitiveness Council (Informe Nacional de Competitividad, 2018). So it is necessary to analyze what is the perception that public accountants in the city of Cúcuta have, about a specialty known as Forensic Auditing, a practice or competence that can be of great help to combat everything related to corruption. The following is a historical account of how forensic auditing has emerged over time, in order to know how important this tool is in the fight against criminal acts of a financial nature.

Firstly, to have control over what is owned is a need that man has had since the term "private property" arose, to know how many head of cattle he owned, how many slaves were under his orders, how much he produced what he sowed in his field; due to these needs, a technique called accounting arose, but it was very archaic and basic, to answer those first questions that ancient man asked himself. The solution to this question was the creation of the figure of the accountant or scribe; the first recorded appearance of this figure is the Hammurabi Code (Cano and Lugo, 2005), a compendium of laws, where several of its sections show the presence of accountants or persons in charge of the administration of the businesses that the merchants of that time had. This Code is a great antecedent since it was not just any writing, but by which the entire Babylonian empire was governed.

Starting from this point of view as an antecedent of Accounting, in the branch that will be focused now, is Auditing and as any field of study or object of research arises in response to a need or questioning that man makes himself or; circumstance of history that pushes such field to be founded and created. In this case, arriving at the thirties (30's), in the United States where a very dangerous mafia had been created around illegal activities such as the sale of liquor, a substance that at that time was prohibited by the government. Al Capone was the master head behind this organization, but, although it was an open secret, there was no legal evidence about these practices, but there was something that, if it could be refuted, his accounting, through auditing techniques and procedures it was possible to prove the frauds and embezzlement that he made to the national treasury (Galvis & Roa, 2008, pg. 16). Although from that moment on this practice did not develop much, it was demonstrated to accounting professionals that auditing techniques and procedures serve to support the authority.

Currently it is a duty to society as a whole, starting from the work as CPAs within public and private organizations, to ensure that they perform their activities within the framework of the law. Otherwise, these entities will go through investigations, interventions and imposition of fines, among other actions of the entities of control and surveillance of the State; but so that the law can proceed it needs proof and evidence, it is there, where the knowledge of the Public Accountants are put into practice to collaborate with the judicial processes, this does not determine the outcome of a case, however, they help to solve it in the fairest way for all parties involved, thus safeguarding the interest of the Colombian State.

According to Castillo, Figueredo & Méndez (2012), Forensic Auditing has the "main purpose of detecting and investigating cases of fraud, in its most common modalities of adulteration of financial statements, misappropriation of assets and corruption, against companies and public sector organizations". (Castillo, Figueredo & Méndez, 2012). In turn, a research conducted by Volmar Pacheco in 2012 reveals that "the... graduates who do not know this discipline stated that they wanted to deepen their knowledge of it" (Pacheco, 2012). However, in an interview that this same researcher obtained with prosecutors Juan Carlos Pacheco and José Rubén Rodríguez, who at that time were prosecutors in the Attorney General's Office in the municipality of Ocaña, they stated that "there is no professional

who can follow up on the process and present the relevant evidence for the prosecution of the crime and the perpetrators of the crime" (Pacheco, 2012).

Therefore, the professionals of Public Accounting cannot close their eyes to the circumstances that attack public institutions, in undue ways and penalized by the State, since they have the capacity and skills to be important experts in cases where public resources are flagellated. Therefore, it is necessary to know how aware are the professionals of Public Accounting in the city of Cúcuta about this branch of auditing and professional field of action; likewise, if local institutions offer this type of professionals the possibility of specializing in this emerging branch of auditing.

1.1 Research hypothesis

Is there a favorable or unfavorable perception of forensic auditing by public accounting professionals?

2. Documentary research

2.1 Emergence of forensic auditing

At the same time that nomads stopped moving from time to time from one territory to another to become sedentary, private property arose, since settling in a given land space created social and economic structures that had to be normalized in order to have a healthy coexistence.

Therefore, in 1780 B.C. in Mesopotamia (Oñate, 2017) one of the greatest ancient civilizations, created the Hammurabi Code, a compendium of both social and commercial rules that used the punishment or sanction modality, which regulated the commercial practices of the time but that posthumously would be the basis of the Forensic Audit.

From the Babylonian empire and posthumously to the days of the nobility and aristocracy, the social, political and economic structures framed the power and wealth in the land, however the eighteenth century or the well known era of the Enlightenment brought with it the concept that the power of an empire or kingdom did not lie in the kings, czars or emperors but in the people themselves and that they in turn could claim and acquire the land they worked, to leave aside the monarchy and make way for democracy and constitute a republic, The people themselves could reclaim and acquire the land they worked, in order to set aside the monarchy and make way for democracy, and thus constitute a republic. This led to the mercantile and commercial activity to grow exponentially both locally and internationally and to become an axis of importance for the world, due to this fact the need to guard and ensure the goods that were traded arose, this gave way to what would be the precedents of the audit, however in case of loss the insurance acquired would support the losses, but previously it had to enter a process to determine who was responsible.

By the 30's of the last century, Al Capone was the most feared mobster in the United States of America (USA), and the police had never been able to indict him for his illegal activities of liquor smuggling, gambling, among others. However, he is intervened for accounting matters. This is how the evidence obtained from the application of auditing procedures serves as evidence for the judge to sentence this criminal and be prosecuted for embezzling the accounting books. Nowadays, the *Forensic Audit is a* key tool to be a technical and professional answer to the judicial system being a support in any legal process of accounting and/or financial nature.

Forensic Auditing is the fusion of auditing practices and procedures with criminal law in order to determine within a judicial process of a financial and/or fiscal nature, the material and intellectual authors, the manner, time and causes surrounding the illegal act.

Different authors have delved into the subject and defined forensic auditing, therefore some concepts given by different sources will be mentioned below.

Oñate (2017) defines it as, the set of activities aimed at determining the occurrence of an event that is generally of an illicit nature, its perpetrators, the moment, time and manner in which the events were carried out, seeks through its application to establish the typology executed for money laundering and/or financing of terrorism namely... (pg.10)

Castillo, Figueredo and Méndez (2012), specify that forensic auditing is a type of audit that aims at a thorough and detailed review of public work, to achieve objectives that lead to a judicial determination, in the face of alleged fraudulent or fraudulent acts, through the application of techniques, specific or alternative procedures and audit standards that allow obtaining evidence to support the Judiciary. (pg. 29).

Ortiz & Gonzalez (2018), explain that it is responsible for investigating, analyzing, evaluating and interpreting a financial and economic information, allows the public accountant, to gather and present financial, accounting, legal, administrative and tax information, so that it can be accepted and analyzed by a judge, to make decisions to rule against or not, of those accused of an economic crime... (pg. 7)

There is agreement among the authors stating that the forensic audit is aimed at investigating irregularities that occur within a particular economic agent, but the particularity of this specialty of auditing is that the irregularities investigated are punishable under the laws of the country in which the economic agent operates, so the results obtained in the course of the audit, ie, the report or opinion and its annexed supports that gives the auditor, become a valuable resource for a judge to determine sentence on the accused(s).

The illicit acts of economic nature can be typified within the law and therefore be judged and thus find those who were involved in the facts, in order to help the judicial body and in the background to help society that any individual who scourges the law receives the punishment he deserves for such act.

The Forensic Audit is based on the techniques and audit procedures that are issued by the International Federation of Accountants (IFAC), and in turn incorporates the rules relating to criminal law, such as the Criminal Code, Code of Civil Procedure, Code of Criminal Procedure, among others that are accurate for the proper execution of a Forensic Audit work. All this knowledge is useful and relevant for the procedures and techniques to be applied by the Forensic Auditor to preserve the evidentiary material collected during the course of the audit.

2.2 Stages and criteria for the accounting analysis of legal proceedings

According to Márquez (2019), he mentions that the Forensic Audit has three approaches that are defined by those elements to be evaluated: and the time and moment in which it is going to be investigated:

1. **Liabilities:** focuses on determining whether adequate controls have been implemented and are being executed by the company's management.

2. **Reactive:** an investigation is opened in response to a fraud complaint. The development of the investigation is oriented on the details revealed in the complaint.

3. **Proactive:** an audit is performed for fraud, but without a complaint having been filed, even if there are no changes in the controls in place to detect fraud.

The process of the forensic audit is aimed at typifying the fact and providing an evidentiary element to the case, in order to reach a fair conclusion. Different authors have broken down this process into different phases or stages. According to Oñate (2017), he mentions that, within the execution of the Forensic Audit, there are five moments that any audit must go through:

Initially, in the *stage of knowledge*, an interview must be held with the affected party, who in turn is the applicant of the audit work, to know in a preliminary way the occurrence of the illicit act, those who were affected, the amount defrauded and even the priority in which the events took place; thus achieving to typify the fact within the norm.

The *investigation stage* is the period in which the necessary and relevant information found in any medium, whether physical, magnetic or digital, is collected to provide evidence to the process.

Subsequently, in the *Evaluation Stage*, the statements of the accounting and financial body that handles the operations of the affected party are incorporated in order to determine the way in which the crime was carried out and thus classify the evidentiary material that will be part of the preparation of the report.

Then, in the *Expert Determination Stage*, the typology of the punishable act, the manner, time, perpetrators and the actual amount that was stolen are definitively determined.

The *witness stage* concludes with the presentation of the report to the person who has previously requested it, constituting the forensic auditor as a witness in the process, with which the judge will determine the sentence.

However, two researchers from the University of Manizales, Ramírez & Reina (2013), published an article that enunciated the phases through which, in their opinion, every forensic audit should pass:

In the first instance, there is the *Planning Phase*, taking as a reference the ISA 300, which dictates that every audit must go through a period of Knowledge of the Business (ISA 315), such as its organizational structure, its external and internal factors, in order to generate a 'preliminary' file, in addition to identifying potential risks and fraud indicators (ISA 320) to which the business is exposed, whether exogenous or endogenous.

Then it moves to the *Phase of Preparation and Development of the Forensic Audit Program*, where the type of fraud is defined, for this the auditor is guided by ISA 240, which refers to the auditor's responsibility with respect to fraud in financial statements; In this way, evidence is gathered, preferably from a direct source, whether physical, testimonial or expert evidence, as assured by the Code of Criminal Procedure, in order to reach a reasonable conclusion; the chain of custody must be applied to the evidence obtained so that it does not lose its veracity and reliability. At the end of this process, a clear, precise and detailed opinion is issued, which may be called "Expert Opinion" or "Expert Report".

This is followed by the third stage, the *Results Communication Phase*, at which time the final and partial results of the process are communicated, and the authors suggest that caution, prudence and strategy be used to notify the relevant people without information leaks.

To conclude the Forensic Audit process, the *Follow-up and Case Monitoring Phase* must be carried out to ensure that the perpetrators do not go unpunished and to determine the real motives and pressures that led them to commit the fraud or financial crime.

Taking into account what was mentioned by the two previous authors, it can be concluded that any audit work must start from a preliminary vision in order to plan the execution and development of the audit and that any information obtained will be safeguarded in order to protect its integrity, without these elements it would not be possible to conclude the process and obtain a truthful and reliable report that will be of help to the judicial entities.

2.3 Profile of the legal-procedural accounting analyst

The forensic auditor must possess certain characteristics and qualities so that his performance in the execution of the work is efficient and optimal; therefore, professional ethics will be his major reference when performing his work, starting from the Mental Independence that provides impartiality in the development and conclusion of the audit work in question. (Oñate, 2017, Pg. 35-36).

However, it is appropriate for the auditor to master the psychological aspects of human behavior, to have an investigative, creative and analytical mind to think in the same way as the person who committed the crime he is investigating. It is also pertinent that he is discreet when performing his work, and that the way he communicates is clear and understandable, but above all he should not be intimidated or intimidated by third parties; but that everything is done in the light of the law without favoring any party.

As a whole, the forensic auditor not only possesses the virtues that any Certified Public Accountant in practice should possess, but also has incorporated to his skills the investigative and discernment skills of a lawyer, and/or the care and custody that a criminalist must maintain over the evidence collected in the course of the investigation; all this is ideal for the result to be reliable since with it judicial actions will be taken that will affect third parties.

3. Method

This research was conducted under the qualitative approach described, which according to Hernández Sampieri, Fernández Collado & Baptista (2010), the quantitative approach, "Uses data collection to test hypotheses, based on numerical measurement and statistical analysis, to establish patterns of behavior and test theories", in this same order of ideas, to establish this study two variables of analysis were identified as shown below.

The *independent variable* worked on in the present research is: The perception of public accountants about forensic auditing. As a *dependent variable* linked to the research will be the ability to carry out a correct forensic audit work.

3.1 Instruments of analysis

To carry out the information gathering process of this research, the survey will be used as an instrument, which was applied to 100 public accountants taken from the database of the Colombian Association of Public Accountants of the city of Cúcuta to know their perception of Forensic Auditing.

Table 1 below shows the respective participation percentages of the respondents according to the municipalities where they are located.

Table 1. Participation of accounting analysts surveyed

Commune	Participants	Participation
Commune 1	5	5,00%
Commune 2		7,00%
Commune 3		7,00%
Commune 4		10,00%
Commune 5		6,00%
Commune 6		8,00%
Commune 7		16,00%
Commune 8		17,00%
Commune 9		11,00%
Commune 10		13,00%
Total		1

Source: Own elaboration

As shown in Table 1, most of the respondents belonged to Commune 8, which includes neighborhoods such as Progreso, Antonia, Cerro Pico, Palmeras, Belisario, Talaya, I, II and II stage, Cúcuta 75, Los Almendros, Carlos Ramírez París, Doña Nidia, La Victoria, Kennedy, El Rodeo, and future settlements that will be located within the boundaries of the Commune, each of these neighborhoods has social, cultural and economic characteristics that govern the behavior and actions of professionals from this area, as is also evident with the commune 7 and 10 respectively.

4. Research results

Due to the technical capacities that the Public Accountant possesses, he can be of great contribution to the development and culmination of a judicial process that is initiated against a mercantile society or individual who has been accused of committing an illicit act either of alteration of financial statements, embezzlement of resources, tax evasion, among others that can be catalogued as corruption.

The functions that the forensic auditor can perform within the judicial process can be Procedural Support, helping in the collection, analysis or organization of the supports obtained in the collection of evidence; or Consulting, issuing an opinion in accordance with the legal and regulatory provisions about the evidence collected to determine the perpetrators of the facts to be charged sentence.

The forensic auditor is assigned so that through his skills he can gather information on the punishable act, the mode of operation and the people who participated in the facts, so that in this way a brief is presented to the judge, which in turn is presented to the defense and the prosecuting entity. Among the annexes included in this investigation, a table presented by Oñate (2017), which typifies the different punishable acts of a financial and/or accounting nature, may be contemplated.

Within any forensic audit, it is necessary to incorporate certain papers, documents and procedures for it to be adequate and relevant. The following are the elements that must be considered within the file collected in the development of a Forensic Audit:

1. **Audit Papers:** These papers are intended to allow the audit team to learn more about the company's operations, its history and size within the market in which it participates. Some of these papers may be

the company's incorporation papers, financial statements, financial indicators, among others. Márquez (2019), mentions those papers that must be collected so that the audit work can be executed properly.

2. **Evidence:** Fonseca (2015), assures that evidence is the proof of the existence or non-existence of some fact (pg. 29). It can be perceived by any of the senses possessed by the human being and must be related to the crime under investigation. This evidence, as mentioned by Márquez (2019), can be physical, analytical, testimonial or documentary (pg. 100-101). (*See annex 3*).

3. **Chain of custody:** this set of procedures allows that the evidence does not lose validity and veracity during the audit and the opinion or opinion is obtained for the case. It comprises the process of storing, marking, collecting and protecting the evidence collected in the audit work, all this in order to ensure the integrity, security and relevance of the evidence collected at the time of the execution of the audit. Therefore, the custodians who were responsible for safeguarding the evidence obtained should be recorded.

4. **Proof:** Corroborates the evidence obtained in the audit execution process and also helps the judge to understand the evidence presented in the trial. Similarly, Fonseca (2015) asserts that this procedure needs scientific and specific applications that affirm its veracity (pg. 30).

5. **Opinion:** this will be the base report from which the judge in charge of the case will start to understand the facts of the case and issue a sentence. Because of this, the opinion to be presented and supported must include those salient points found, the main cause for committing the crime, the manner in which it was executed, as well as those who perpetrated the illegal act. The report must also mention to whom it refers, written in a clear and understandable manner so that the technical applications that were made are understood.

Ramos (2019), commented on different cases around the world in which Forensic Auditing was applied through the relevant governmental control entities of the respective countries (pg. 15-16).

Firstly, it refers to the case in which three senior executives of German companies, Deutsche Bank, the telephone operator Mannesmann and the I.G. Metal trade union, committed fraud at the time of the sale of Mannesmann to the British Vodafone Group. The prosecution determined that in the process these companies benefited from indemnities and awards amounting to between 39 and 76 million euros. All this damaged the value of Deutsche Bank's shares.

Similarly, in this same continent, more precisely in Great Britain, the Financial Services Authority (FSA) detected that fifteen (15) banks in this country presented a deficiency in money laundering controls, which resulted in a sum close to one thousand three hundred (1,300) million US dollars being linked to a former military governor of Nigeria.

Finally, we cannot forget the Colombian case of the eighties (80's), where several banks in the country presented deficiencies in their financial and credit controls, as well as the lack of seriousness in the management of this situation. For this reason, the State had to intervene through a decree to rescue and recover the public's confidence in the banking entities.

5. Discussion

The Forensic Audit is a specialty of auditing, which is part of the accounting science which seeks to be of effective assistance to the judicial and procedural branch of any government entity operating in a given nation, because the objective of this audit is to detect fraud or embezzlement of financial statements within the economic operations of a company either public or private, the evidence obtained

will provide evidentiary material to typify those criminal acts that scoured the coffers of the State, and evaded the corresponding tax matters. The execution of this type of work requires a professional trained in different disciplines to respond adequately to the requirements demanded by a Forensic Audit.

The forensic audit has had great disclosure and application around the world, over the years has taken great importance and strength within the judicial cases of financial and corporate nature, in this way the Forensic Auditor has become relevant in being an efficient officer to detect financial crimes and provide opinions that serve as evidence to be able to pass sentence.

Through the research conducted, it was determined that 89% of those surveyed stated that they were interested in pursuing forensic auditing studies after their undergraduate studies, since this technique was determined as a profitable possibility for the degree of Public Accountant in the city of Cúcuta. With this in mind, universities, university foundations, among other educational entities should incorporate Forensic Auditing in a timely manner, either within the ordinary curriculum or as an elective subject for the Public Accounting programs.

This evokes the requirement that the current graduate of Public Accounting, in addition to being comprehensive and complete in their training, have an updated knowledge in the different areas that are emerging in the accounting science. In response, the professional graduated from the higher education institutions of the city should have an optimal training in response to the needs of the governmental entities that operate in the city of Cúcuta, due to this context that surrounds the practice of the Public Accountant, the respondents are aware that new topics such as the Forensic Audit.

6. Conclusions

higher education institutions that are currently instructing the present generations of professionals in Public Accounting in the city of Cúcuta, to incorporate into their curricula or study plans a subject focused on the study of Forensic Auditing, this subject can be added ordinally or as an elective course for students of Public Accounting programs. The purpose is that this specialty of auditing is better disseminated among professionals in training, and in the future this knowledge will serve the Public Accountant graduate to perform a work of Forensic Auditing to collaborate in a judicial process for its fair resolution.

Likewise, it is appropriate to open academic offers in postgraduate courses, being the modality of diploma or short course the preferred options for professionals of Public Accounting who currently practice the profession in the city of Cúcuta; and who are also ready to undertake studies that help them to understand and apply the Forensic Audit.

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Appendix A. An example appendix

Authors including an appendix section should do so after References section. Multiple appendices should all have headings in the style used above. They will automatically be ordered A, B, C etc.

A.1. Example of a sub-heading within an appendix

There is also the option to include a subheading within the Appendix if you wish.

Makalenin Türkçe başlığı buraya yazılır....

Özet

Türkçe özet.

Anahtar sözcükler: anahtar sözcükler1; anahtar sözcükler2; anahtar sözcükler3

AUTHOR BIODATA

Insert here author biodata.