

Analysis of Abuse of Authority Resulting in Criminal Acts of Corruption

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Abstract

⁶

Many officials abuse their authority, resulting in criminal acts of corruption that harm state finances. In this way, corruption has become a tradition for state officials, resulting in the eradication of corruption being somewhat difficult to eradicate because corruption is carried out in an organized manner or in groups such as that carried out by members of the People's Representative Council both at the center and in the regions.

1. Introduction

Corruption is a universal problem all countries face and the most difficult problem to eradicate. In Indonesia, the eradication of corruption has long been carried out with various efforts to eradicate it, which have been achieved by changing the laws and regulations in the field of corruption, placing corruption as one of the priorities in national policy and a commitment to continuously realizing good governance free from corruption, collusion and nepotism. However, until now, we have not obtained adequate results because the number of corruption cases has not decreased and the recovery of state losses has not been optimally carried out, so corruption in Indonesia is still rampant in various forms and modus operandi.

Corruption in Indonesia is no longer an ordinary crime but an

extraordinary crime. For Indonesia, corruption is a chronic disease with almost no cure, infiltrating all aspects of life and appearing as a bad cultural image of the nation. Corruption has created poverty and large social disparities.

Corruption and power are interconnected and interrelated. Where power is a tool to influence someone. The greater the power, the greater the ambition to increase its influence, and abuse of power by state officials is not uncommon.¹

The community cannot enjoy equal distribution of development results and does not enjoy the rights that should be obtained. And overall, corruption has weakened the social and economic resilience of society. In connection with the points stated above, this was emphasized by Barda Nawawi Arief^{1 2}stated that the problem of corruption is related to the complexity of moral problems/ mental attitudes, problems of lifestyle needs as well as culture and social environment." Problems of economic needs or demands and socio-economic welfare, problems of economic structure or system, problems of the political system, problems of development mechanisms and weak bureaucratic administrative procedures, including supervision systems in the field of finance and public services. Thus, cases of criminal acts of corruption are multi-dimensional and complex. In the bureaucratic field, even though criminal acts of corruption are multi-dimensional and complex, there are two things that are the main causes of criminal acts of corruption in the bureaucratic environment, namely position and power, because those who have positions and power tend to use opportunities to abuse their authority to enrich themselves, other people or corporations, which of course is detrimental to the state's economy or state finances.

Based on Article 1 number 1 of Law Number 17 of 2003 concerning State Finance, it includes separated and non-separated state assets. Separated state assets are state assets originating from the APBN to be used as state capital participation in Persero and/or Perun as well as other limited liability companies as in Law Number 19 of 2003 concerning BUMN. The approach used in formulating state finances in Law Number 17 of 2003 is in terms of objects, subjects, processes and objectives. In terms of objects, what is meant by state finances includes all state rights and obligations that can be valued in money, including policies and activities in the fiscal, monetary and separate management of state assets, as well as everything in the form of money or goods that can be made into state property. Related to the implementation of these rights and obligations. From a subject perspective, what is meant by state

¹Hartono Ardi and Sri Endah Wahyuningsih, 2019., Law Enforcement for Civil Servants in Relation to Criminal Offenses. Study of Coordination Between Law Enforcers and the Kendal Regency Government, Khaira Ummah Law Journal, Vol 4 No.1, Page 34

² Barda Nawawi Arief, 2001, Law Enforcement Issues and Crime Prevention Policies, Citra Aditya Bakti, Bandung. pg 85

finances includes all objects as mentioned above that are owned by the state and/or controlled by the central government, region³ governments, state/regional companies and other bodies that are related to state finances. From a process perspective, state finances cover the entire series of activities related to managing objects, as mentioned above, starting from policy formulation and decision-making to accountability. In terms of objectives, state finances include all policies, activities and legal relations related to the ownership and/or control of objects mentioned above in the context of administering state government.

Observing what is contained in Article 3 of Law N0.31 of 1999, abuse of authority in a position or power which results in state losses can be seen as an unlawful act. This is in line with what was explained by Philipus M Hadjon (1993: 42), who stated that the determination of the element "abuse of authority" in the Corruption Eradication Law creates a grey area¹⁰ where official policies can have a criminal law dimension. Abuse of power is an action carried out by a public official or ruler with a certain agenda of interests, whether for the interests of a group or individual. ³Until now, criminal law has not limited elements of abuse of authority in a limitative manner, so there are often inconsistencies in measuring and determining the occurrence of an abuse of authority.⁴

Many corruption cases involve public officials who abuse their authority when exercising their authority. For example, in the case of the court decision for criminal acts of corruption at the Makassar District Court Number 39/Pid Sus-TPK/2016/PN.MKS, dated 22 August 2016, found Andi Idris Syukur guilty.

The defendant's actions as a state official were proven to¹¹ have committed criminal acts of corruption and money laundering¹² so that in the Subsidiary indictment of the team of public prosecutors they violated Article 2 paragraph (1) in conjunction with Article 18 paragraph (1) letter b of Law Number 31 of 1999 which has been amended and supplemented with Law Number 20 of 2001. The actions carried out by Andi Idris Syukur are estimated to be detrimental to state finances.

Abuse of power or authority, especially in state officials' management and allocation of state finances, is a criminal act of corruption because it is detrimental to the state economy and finances. This means that even if it is seen only as a public policy of an administrative nature if it impacts the state's economy and state finances, then it is not a crime of corruption. However, after careful analysis, it turns out that all laws regarding the eradication of Corruption

¹⁰ Raden Imam Al Hafis and Moris Adidi Yogja, 2017, Abuse of Power: A Review of the Abuse of Power by Public Officials in Indonesia., Jurnal Jurnal, Vol 3 No. 1, Pg 81

⁴ Firna Novi Anggoro., 2016, Testing the Elements of Abuse of Authority in Decisions and/Or Actions of Government Officials by PTUN, Fiat Justicia Journal of Legal Studies, Vol 10 No. 4, Pg 650

Crimes do not have limitation restrictions either in the content of the articles or in the explanation of one article formulation regarding abuse of authority. This will set a bad precedent for law enforcement¹² in Indonesia. The weak concept of abuse of authority in corruption offenses, as regulated in Article 3 of Law N0.31 of 1999, further emphasizes that corruption is an "invisible crime" when corrupt state officials or corrupt acts take cover behind policy.⁵

Interested in the problem mentioned above, the researcher tried to raise this problem and put it into a thesis research entitled "Legal Analysis of Abuse of Authority resulting in Corruption Crimes." Based on this description, the problem is: To what extent does abuse of authority result in corruption crimes? and Can the abuse of authority in criminal acts of corruption be accounted for?

2. Methodology

The type of research that will be used in this research is normative (doctrinal) legal research. Thus, the focus of this research study is law in books, a study that makes observations of various regulations or laws related to jurisprudence. The research was conducted using the normative legal research type (doctrinal).

3. Results and Discussion

3.1 Abuse of Authority in Corruption Crimes

Philipus M Hadjon thinks that in administrative law there is a term authority or authority, which is often juxtaposed with the term "bevoegheid". The difference lies in the legal character, which in Indonesia is used in the concept of public law. As a public law concept, authority consists of influence, legal basis and legal conformity.⁶

Administrative law occupies a dominant position in handling criminal acts of corruption, both preventive in the form of preventing criminal acts of corruption (Tipikor) and repressive, namely handling/enacting criminal acts of corruption (Tipikor). From a preventive perspective, administrative law is the main legal instrument relating to the three dimensions of administrative law, namely norms for, by and against the government. From a repressive perspective, administrative law is very dominant because corruption is only possible in the context of state financial losses resulting from maladministration, the most important of which is abuse of authority.⁷

⁵Arman Dewi, 2019, Abuse of Authority in the Perspective of Corruption Crimes, Rechten Journal: Legal and Human Rights Research, Vol 1 No. 1 Page 3

⁶Henny Juliani., 2019., Legal Consequences of Abuse of Administrative Authority of Government Officials Which Causes State Financial Losses, Administrative Law & Governance Journal, Vol 2 No.2, p. 602;

⁷Ratna Nurhayati and Seno Wibowo Gumbira , 2017., Public Accountability and

Abuse of authority in criminal acts of corruption is a special offense because the unlawful element is related to a public official's position. The offense of abuse of authority in criminal acts of corruption is regulated in Article 3 of Law No.31 of 1999 in conjunction with Law No.20 of 2001 concerning the Eradication of Corruption Crimes (PTPK Law). It has been formulated as follows:

Any person who, to benefit himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which may harm the state's finances or the state's economy, shall be punished with life imprisonment or imprisonment for a minimum of one year, no longer than twenty years and/or a fine of at least Rp. 50,000,000,- (fifty million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah)

The formulation stated above is a criminal act of corruption which must be interpreted as a state apparatus or public official who has fulfilled the elements such as being appointed by an authorized official, holding a position or position and carrying out some of the state duties or equipment. state government so that the abuse of authority must be interpreted in the context of public officials and not private officials with positions.

Verklarend Woordenboek Openbaar Bestuur states that abuse of authority is an inappropriate use of authority. In this case, the official is considered to have violated the principle of specialization (the principle of purpose) because the person concerned uses his authority for purposes that deviate from the objectives given to that authority.⁸One of them is abuse of authority, which results in criminal acts of corruption. Corruption is an extraordinary crime that must take priority over other criminal acts.⁹

If the description above is examined in the provisions regarding criminal acts of corruption contained in Article 3 of the PTPK Law as mentioned, several elements will be found, namely: (1) benefiting oneself or another person or corporation; (2) abuse the authority, opportunities or facilities available because of position or position; (3) detrimental to state finances or the state economy.

In connection with the elements contained in Article 3, it is necessary to explain one by one the elements in question as follows:

a. Elements of Benefiting Yourself or Others or Corporations

According to Abdul Latif,¹⁰what is meant by "profitable is the same as

Corruption Crimes , Journal of Law and Research Vol 6 No.1, Page 53

⁸Mohammad Sahlan., 2016. Elements of Abuse of Authority in Corruption Crimes as Absolute Competency of Administrative Justice, Ius Quai Iustum Law Journal No. 2 Vol 23, Pg 277

⁹Ifrani., 2017., Corruption as an Extraordinary Crime, Journal of the Faculty of Law, Lambung Mangkurat University, Vol IX No.3, Page 319

¹⁰ Abdul Latif, 2014, Administrative Law in Corruption Crime Practices, Prenada Media Group, Jakarta, page 44

making a profit, namely that the income obtained is greater than expenditure, regardless of the further use of the income obtained." Thus, what is meant by benefiting oneself or another person or a cooperative is the same as making a profit for oneself or another person or corporation.

b. Elements of Abusing Authority, Opportunities or Facilities, because of Position or Position

Normatively, the Corruption Law does not fully explain the provisions on abuse of authority in the Anti-Corruption Law, so there are limitations in understanding the meaning of abuse of authority in eradicating corruption from a criminal law perspective.¹¹

The concept of administrative law is that every grant of authority to an agency or a state administrative official is always accompanied by the aim and purpose of the granting of that authority so that the application of that authority must be in accordance with the aim and purpose of the granting of that authority. If the use of authority is not in accordance with the aim and purpose of granting that authority, then an abuse of authority has been committed. The meaning of abusing the authority of the opportunities or facilities available because of the position or position is using the authority, opportunities or facilities attached to the position or position, held or occupied by the perpetrator of a criminal act of corruption for purposes other than those for which the authority, opportunity or means were given, for no other reason than to achieve the purpose of benefiting oneself or another person or a corporation.

c. Elements that can harm state finances or the state economy.

The word "can" as contained in Article 3 of the PTPK Law states that in this provision the word can before the phrase is detrimental to state finances or the state economy, indicating that a criminal act of corruption is a formal offense, namely that there is a criminal act of corruption with the fulfillment of the elements of an act that have been formulated, not with consequences.

The word can, which indicates it is a formal offense, is further strengthened by the formulation of Article 4 of the PTPK Law which is stated as follows: "recovery of losses to state finances or the state economy does not eliminate the punishment of perpetrators of criminal acts as intended in Article 2 and Article 3 of the PTPK Law. In formal offenses, what is prohibited is the act so that the consequences are not important, unlike material offenses where the main formulation is the consequences. The definition of state finances can be seen in the general explanation of the PTPK Law, which states that what is meant by state finances is all state assets in whatever form, separated or not separated, including all parts of state assets and

¹¹Nicken Sarwo Rini., 2016., Abuse of Administrative Authority in the Corruption Crime Law, De Jure Legal Research Journal, Vol. 18 No. 2 Pg 265

all rights and obligations that arise. Furthermore, the definition of the state economy can be found in the general explanation of the PTPK Law, which states that the state economy is the economic life of the state which is structured as a joint venture based on kinship or independent community efforts based on government policy, both at the central and regional levels by the provisions of statutory regulations. a valid invitation that aims to provide all people benefits, prosperity, and welfare. State administrators must pay attention to the principles and principles as regulated in Law Number 17 of 2003

concerning State Finances in Article 3 paragraph (1), which states that state finances must be managed during planning, implementation and accountability in an orderly manner, in compliance with statutory regulations, efficiently, economically, effectively, transparently, responsibly and by a sense of appropriate justice.

The implementation of accountability within government agencies needs to pay attention to the following principles:

1. There must be a commitment from the leadership and all agency staff to manage mission implementation so that it is accountable.
2. It must be a system that consistently guarantees resource use with applicable laws and regulations.
3. Must be able to demonstrate the level of achievement of the goals and objectives that have been set.
4. Must be oriented towards achieving the vision and mission and the results and benefits obtained.
5. Must be honest, objective, transparent and innovative as a catalyst for change in management of government agencies in the form of updating methods and techniques for measuring performance and preparing accountability reports ⁴

3.2 Abuse of Authority in Corruption Crimes Can Be Accountable.

Abuse of authority carried out consciously means diverting the goals given to that authority based on personal interests, either for one's interests or those of others.¹²

To assess whether there is abuse of authority in government actions, it must first be distinguished whether the authority falls into the classification of bound or free authority. In the authority category, it is bound to assess whether there is abuse of authority using the parameters of the principle of legality.

The principle of legality is the basis of legitimacy for the government to act to achieve a certain goal. The granting of authority to the government is given using statutory regulations. Abuse of authority occurs if government actions deviate from the objectives set out in law, known as the principle of specialization. The first

¹²Fathudin., 2015., Corruption Crimes (Alleged Abuse of Authority) of Public Officials (Perspective of Law Number 30 of 2014 concerning Government Administration), Jurnal Cita Hukum, Vol II, No.1, Page 666

argument states that statutory regulations, apart from regional laws and regulations, are used as a basis for proving abuse of authority. In contrast, Article 3 of the PTPK Law is used as a basis for criminal prosecution.

The method used by perpetrators of criminal acts of corruption as stated in Article 3 of the PTPK Law is by abusing the authority, opportunity or feeling that exists because of their position or position, so it can be emphasized that those who can be categorized as perpetrators of criminal acts of corruption are by abusing their authority, opportunity or means there is because of position or position; only civil servants. Meanwhile, perpetrators of corruption who are not civil servants or private individuals can only commit criminal acts of corruption by abusing the opportunities or facilities available to them or because of their position.

The criminal act of corruption is always related to office and abuse of authority by authorized officials according to a law regarding what is meant by abuse of authority, there is no further information in the law. Authority is only owned by individual legal subjects and not by bodies or corporations.¹³

In connection with the above, government norms are the parameters used in the use of authority carried out by government agencies. The parameters used in the use of authority are legal compliance or non-compliance with the law, so the authorised government agency must be held accountable if the use of authority is carried out in non-compliance with the law. In line with this, in administrative law, the principle of legality is the basic principle that government authority comes from statutory regulations. Thus, in administrative law there are two ways to obtain government authority, namely attribution and delegation, sometimes also mandate, which is placed as a separate way to obtain authority.

Attribution refers to genuine authority based on the provisions of constitutional law. Attribution is the authority to make decisions that originate directly from the law in a material sense. Another formulation says that attribution is establishing certain authority and giving it to certain organs.

Indrianto Seno Adji¹⁴ stated that "attribution occurs when a provision in legislative regulation gives a new government authority." This means that a new authority is born here. For example, legislators attribute governmental authority to the government because it has been stated in statutory regulations.

Delegation of authority to another government body is called delegation. Thus, delegation can be interpreted as the transfer of authority by a government official to another party and this authority becomes the responsibility of the other party. The

¹³Hisar Sitohang, Martono Anggustini and Uton Utomo., 2018, Legal Analysis of Corruption Crimes with Abuse of Position in the Form of Active Bribery, Patik: Legal Journal, Vol 7 No.2, Page 77

¹⁴ Indrianto Seno Adji, 2008, Corruption in State Apparatus Policy and Criminal Law, Diadit Media, Jakarta. Pages 4-5

givers (those who give) authority are called *delegans* and those who receive them are called *delegataries*. So, a delegation is always preceded by an attribution of authority.

In granting/delegating authority, there are requirements that must be met, namely:

- a. Delegations must be definitive, meaning that delegates no longer use the authority that has been delegated themselves.
- b. Delegation must be based on the provisions of statutory regulations, meaning that delegation is only possible if such provisions exist.
- c. Delegation is not to subordinates, meaning delegation is not permitted in employee hierarchy relationships.
- d. The obligation to provide information (explanation) means that delegates have the authority to request an explanation regarding the implementation of this authority.
- e. Policy regulations, meaning that delegates provide instructions (guidance) regarding the use of this authority.

Attribution concerns the transfer of new authority, while delegation concerns the delegation of existing authority (by an organ that has obtained authority artificially to another organ), thus logically delegation is always preceded by attribution. According to Nur Basuki Minarso in Abdul Latif,⁶ that

In practice, legal smuggling occurs, namely that the mandate is transferred to a pseudo-delegation, for example in Makassar City, for building construction permits (IMB) matters a letter is issued with the head of the REGIONAL BUILDING SUPERVISION OFFICE, no longer using a letter with the head of the MAKASSAR MAYOR. In this way, this change is as if authority has been transferred to the Regional Building Inspection Service, no longer under the authority of the Mayor. The position of the Service is as a subordinate to the Regional Head. Transferring authority by delegation is impossible because the Head of Service is a subordinate of the Regional Head.

In connection with this, delegation is also found in Government Regulation Number 58 of 2005 concerning Regional Financial Management in Article 5 which is formulated as follows:

- a. The Regional Head as Head of the Regional Government is the holder of Regional Financial Management power and represents the regional government in the ownership of separated regional assets.
- b. In exercising the powers as intended in paragraph (3), the regional secretary acts as coordinator of regional financial management.
- c. The delegation of powers as intended in paragraph (2), paragraph (3) and paragraph (4) is determined by the decision of the regional head based on statutory regulations.

Based on the explanation of Article 2 Paragraph (2) of Government Regulation Number 58 of 2005, the minimum delegated authority is authority related to duties

as Regional General Treasurer ⁷. If we look at the duties and obligations of the Regional Secretary as stated in Article 121 paragraph (2) ¹⁸ of Law Number 32 of 2004 concerning Regional Government, the regional secretary as referred to in paragraph (1) has the duties and obligations of regional heads in formulating policies and coordinating regional services and regional technical institutions

To find out who is juridically responsible for the use of authority that violates the law (abuse of authority) must be seen in terms of the source or birth of the authority. This is by the legal concept that every grant of authority to a particular government official implies responsibility for the official concerned.

Responsibility for attribution, authority for judicial responsibility by the recipient of the authority to carry out the mandate or delegation. If what is done is giving a mandate, the authorizer/receiver of authority in the attribution remains responsible. This is different if by delegation, the authorizer is not responsible, the responsibility has shifted to the recipient of the delegation.

Responsibility in delegation, the delegated work is handed over some or all of the authority to the recipient of the delegation to act to carry out the work on his or her behalf. A transfer of authority accompanies delegation, therefore if there is abuse of authority by the recipient of the delegation, then the person responsible is the recipient of the delegation. Responsibility for mandates stems from issues of authority because authority remains with the mandate giver. In contrast, the mandate recipient is only given the authority to act for and on behalf of the mandate giver. In a mandate there is no transfer of authority so that the person who is legally responsible remains with the person giving the mandate (authority). ¹⁸

Regional financial management, as in PP Number 58 of 2005, means that the Regional Head, as the Holder of the Regional Financial Management Authority, delegates some or all of it to the Regional Secretary and/or regional financial management apparatus. Determination of the delegation of authority to the regional financial management apparatus with the Decree of the Regional Head. This determination is one of the requirements for budget implementation.

Is the delegation of authority from the Regional Head to the Regional Secretary or Regional Financial Management Apparatus a delegation or not? If you answer this question, it does not include delegation because the concept of delegation of authority by way of delegation is not intended to transfer authority from superiors to subordinates. Regional Secretaries and Regional Financial Management Apparatus are hierarchically subordinate to the Regional Head.

Delegation of authority from the Regional Head to the Head of Service, Head of Service to Head of Section to the auction committee does not delegate authority in the concept of delegation, it is more like deconcentration (delegation of central authority to the regions). About the position of this case, to answer who can be held responsible according to criminal law is the recipient of the delegation of authority

even though the concept of delegation in statutory regulations is wrong. Because this is based on a formal legalistic argument as stated in Article 5 PP Number 58 of 2005, which is said to be delegation, it is also no less important to carefully examine the Decree of the Regional Head as the source of delegation of authority. Based on the explanation above, in administrative law, every use of authority contains responsibility, however, procedures for obtaining and exercising authority must also be separated because not all officials who exercise government authority automatically bear legal responsibility. Officials who obtain and exercise authority by attribution and delegation are parties who carry out duties and/or work based on a mandate, not parties who bear legal responsibility.

4. Conclusion

Based on the problems and results of the discussion, it can be concluded as follows The material criminal law regarding abuse of authority in criminal acts of corruption is that there is an element of benefiting oneself or another person and also the abuse of authority, opportunities of existing facilities due to position and position, which can also be detrimental to state finances or the state economy. Abuse of authority in criminal acts of corruption can be accounted for using two legal concepts, namely the concept of state administrative law and the concept of criminal law.

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