

## **THE CONCEPT OF AUTHORITY ABUSE IN CORRUPTION IN INDONESIA AFTER THE IMPLEMENTATION OF LAW NUMBER 30 OF 2014 CONCERNING GOVERNMENT ADMINISTRATION**

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### **Abstract**

The term "abuse of authority" is used by 2 legal regimes, namely by the administrative law regime and by the corruption criminal law regime, both legal regimes are both public law. This has resulted in concurrent jurisdiction (joint authority) between the State Administrative Court and the Corruption Crime Court. The abuse of power committed by Government Officials is a form of corruption as stipulated in Law Number 20 of 2001 concerning Eradication of Corruption Crimes. So it is not explicitly regulated or not further regulated by the criminal law, especially the criminal corruption concerning the definition of the element of "abusing authority" as an element of offense (bestandle delict) in the practice of the Corruption Crime Court when considering the definition of "abusing the authority" of Corruption Criminal Judges referring to Article 53 paragraph (2) sub b of Law Number 5 Year 1986 concerning State Administrative Courts, namely, State Administrative Bodies or Officials at the time of issuing the decision as referred to in paragraph (1) have used their authority for other purposes than the purpose of granting said authority. which incidentally is an administrative legal regime. Abusing the authority as the core of the bestandle delict in the formulation of the norms of Article 3 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the meaning should be explicitly regulated further in law, this is in accordance with the principles in criminal law the formulation of norms must be *lex certa* (clear and firm), and the norms of criminal law must be written (*lex scripta*), because criminal law can reduce, rob people of freedom of freedom, and even eliminate and take away people's right to life

**Keywords: Abuse of authority, Corruption, Law, Government Administration**

### **Introduction**

Abuse of authority has become a prohibited norm in Law Number 30 of 2014 concerning Government Administration as stated in Article 8 paragraph (3) stipulating that Government Administration Officials are prohibited from abusing their Authority in determining and or making decisions and or actions. The Prohibition of Abuse of Authority has also been explicitly respected previously in Law Number 5 of 1986 concerning State Administrative Courts, namely in Article 53 paragraph (2) sub b which determines the following:

The reasons that can be used in the lawsuit as referred to in paragraph (1) are:

- a. The State Administration Decision being challenged contradicts the prevailing laws and regulations;
- b. At the time of issuing the Decree as referred to in paragraph (1), the State Administration Agency or Official has used its authority for another purpose than the purpose for which it was granted;
- c. At the time of issuing or not issuing a decision as meant in paragraph (1), the State Administration Agency or Official, after considering all the interests involved in the decision, should not arrive at the decision making or not.

The use of authority by State Administrative Bodies or Officials for other purposes than the purpose of granting authority according to the Elucidation of Article 53 paragraph (2) sub b of Law Number 5 of 1986 concerning State Administrative Courts is often referred to as abuse of authority (*detournement de pouvoir*), more further regarding the Abuse of Authority is clarified in the Elucidation of Article 53 paragraph (2) sub b as follows;

Every determination of legal norms in each of these regulations is of course with certain objectives and purposes. Therefore, the application of these provisions must always be in accordance with the specific purpose and purpose of the issuance of the regulations concerned. Thus, the regulations concerned are not allowed to be applied in order to achieve things that are outside of that purpose. Thus the material authority of the State Administrative Agency or Official concerned in issuing a State Administration Decree is also limited to the scope of the purpose of the special field that has been determined in its basic regulations.

Starting from the Elucidation of Article 53 paragraph (2) sub b of Law Number 5 of 1986 concerning State Administrative Courts, the State Administrative Bodies or Officials have the obligation to know and understand the purpose of establishing a statutory regulation in order to avoid it or not. there is a deviation from the aims and objectives of the establishment and

enforcement of statutory regulations. Knowing and understanding the purpose of establishing a statutory regulation is not solely an obligation of a State Administration Agency or Official, but also an obligation of legislators so that in forming a statutory regulation it must be based on the principles of establishing statutory regulations. -Good legislation, among others, is the principle of clarity of objectives, every formation of legislation must have clear objectives to be achieved as referred to in Article 5 letter a of Law Number 12 of 2011 concerning the Formation of Prevailing Laws.

In the context of carrying out the mission to create a just and prosperous society, Government Officials carry out functions in the form of regulation, service, development, empowerment and protection which can also be an inhibiting factor, in which corruption acts are very detrimental to state finances and / or the country's economy. and injuring the dignity of the State Civil Apparatus.

The abuse of power committed by Government Officials is a form of corruption as stipulated in Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 Regarding the Eradication of Corruption in determining:

“Anyone who, with the aim of benefiting himself or another person or a corporation, misuses his / her authority, opportunity or means because of his position or position which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment of at least 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).”

There is no explicit regulation or no further regulation by criminal law, especially corruption, regarding the definition of the element "abuse of authority" as an element of delict (bestandle delict) in the practice of the Corruption Crime Court when considering the meaning of "abusing authority" Corruption Crime Judges refer to Article 53 paragraph (2) sub b of Law Number 5 Year 1986 concerning State Administrative Courts which states that State Administrative Bodies or Officials at the time of issuing the decision as referred to in paragraph (1) have used their authority for other purposes than the purpose for which the authority was granted, which nota bene is an administrative legal regime.

Abusing authority as the core of the offense (bestandle delict) in the formulation of the norms of Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999

concerning Eradication of Criminal Acts The meaning of corruption should be explicitly regulated further in the law. This is in accordance with the principles in criminal law, the formulation of norms must be *lex certa* (clear and firm), and criminal law norms must be written (*lex scripta*), because criminal law can reduce, rob people of freedom of freedom, and even eliminate and take away the right to life person.

### Literature Review

One of the subjects or perpetrators of criminal acts of corruption are Government Officials and / or State Administrators in the form of acts of abuse of authority. According to Sutherland, every corruption case must involve an official who occupies a certain position in an agency. Alkotsar (2014) states that certain positions are related to position, in which there is inherent power. Lord Acton argued that power tends to be corrupt and absolute power corrupts absolutely, which means that power tends to corruption and absolute power tends to absolute corruption (Djaja, 2010).

According to Artijo Alkotsar, Government Officials or State Administrators who commit corruption are a manifestation of the spiritual pain of individuals and groups who are never satisfied and become the social sin of the nation. Corruption cancer always eats away at the body of the state which gradually causes the country to lose its dignity and capabilities. protect (its citizens). In relation to corruption committed by officials or authorities, the Latina Proverb (Latin proverb) says *corruptio optima pessima*, which means that corruption committed by high-ranking officials is the worst, or the worst corruption is corruption committed by high-ranking officials or optimistic corruption *pessima* which means corruption of the leaders is the most despicable crime (Marwoto, 2006).

M. Hatta Ali stated that in relation to law enforcement related to the abuse of power committed by Government Officials, there are 2 (two) law enforcement perspectives, because in law Number 31 of 1999 concerning the Eradication of Corruption Crimes, interpret one form of corruption. is an abuse of authority, while from the perspective of administrative law enforcement in Law Number 30 of 2014 concerning Government Administration, officials who abuse their authority must be held accountable according to administrative legal procedures (Indonesian Judge Association, 2015).

The essence of every granting of governmental authority to State Administrative Officials or Government Officials is always accompanied by the "purpose and purpose" of

granting said authority, whether obtained by attribution or obtained by delegation. Thus, the exercise of the said authority must be in accordance with and in line with the "goals and objectives" of the granting of the authority. On a contrario basis, if the use of authority by a State Administration Officer or a Government Official is not in accordance with the "purpose and purpose" of giving authority, the State Administration Officer or Government Official has abused the authority (*deteournement de pouvoir*) of the state apparatus using the authority assigned to it for the purpose other than the intended goal.

Indriyanto Senoaji (2019) states that "The notion of abuse" abuse of authority "in the criminal law of corruption does not have an explicit meaning, explicit meaning, clear meaning or meaning, what was stated by Indriyanto Senoaji is in line with the opinion expressed by Adam Chazawi (2016) who argues; "Regarding what is meant by abusing authority, there is no further information in the law. According to Dani Elpah (2016), the condition of not regulating a material content of the law is referred to as a law in a state of silence (*silentio of de wet*). The failure to further explicitly regulate the meaning of abuse of authority in the criminal act of corruption is inconsistent with the impact caused and classified as an extraordinary crime.

## Methods

This type of research is normative legal research, according to the opinion expressed by Soerjono Soekanto (1983) as quoted by Mukti Fajar ND (2010) that normative legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative law research.

Legal research is a distinctive character of legal science (jurisprudence), in order to answer legal problems or issues to be studied in research (Marzuki, 2008). In legal research, we need an approach method that is tailored to the problem to be studied (J.J. Brugink, 1995)

The approach method used in this research is as follows:

1. Conceptual Approach, which is an approach by studying the views and doctrines in legal science, concepts, legal principles, which are relevant to the subject matter of the research.
2. Statue Approach, which is research by means of reviewing and examining laws and regulations and regulations related to the subject matter of the research.

3. Case Approach, namely an approach by reviewing court decisions that already have binding legal force (Inkrach Van Gewijsde), which in this study will focus on the Supreme Court's decision regarding the concept of abuse of power in criminal acts of corruption after the enactment of Law No.30 2014 concerning Government Administration.

## Results and Discussion

Law Number 30 of 2014 concerning Government Administration has shifted the paradigm of the concept of Abuse of Authority which was originally based on Law Number 5 of 1986 concerning State Administrative Courts, the concept of Authority Abuse is a concept that has no scope (non-extension / denotation) or a single concept to become a concept that has scope (extension / denotation) or a plural concept. The expansion of the scope of Authority Abuse by Dani Elpah is described in the following table form: (Dani Elpah, 2010)

Table 1

Expansion of the Scope of the Concept of Authority Abuse

Genus	Species	Sub Species
Prohibition of Abuse of Authority	Prohibition Exceeds Authority	a. Exceeds the term of office or time limit for the validity of the Authority. b. Exceeding the validity area of the authority. c. Contrary to the provisions of laws and regulations.
	Prohibition of Mixing Authorities	a. Outside the scope of the field or material of the Authority. b. Contrary to the purpose of the Authority given
	Prohibition of Arbitrary Actions.	a. Without a basis of authority b. Contrary to the Court's decision which has permanent legal force.

Expansion (expansion) of the scope of the concept of abuse of authority is a more detailed explanation of the meaning of the term "abuse of authority", as stated in Article 3 of the 1999/2001 Corruption Act, is not limited to a more detailed explanation. Law Number 30 of 2014 concerning Government Administration is complementary (le complementarite) in the

application of Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes.

As a concept, the term "abuse of authority" is used by 2 (two) legal regimes, namely by the administrative law regime and by the criminal law regime for corruption, both legal regimes are public law. The impact of the use of the concept of abuse of power by 2 (two) different legal regimes on the same concept / term when there is a case of abuse of power is the creation of concurrent jurisdiction (joint authority) between the State Administrative Court and the Corruption Criminal Court. Concurrent jurisdiction (joint authority) on the same material by 2 (two) different judicial institutions.

In relation to cases of abuse of authority, there are not only points of reference for the authority to judge, according to Dani Elpah there are 4 (four) kinds of points of reference in them, namely:

1. Intersection of terms / concepts.
2. Conferences / connotations / Intentions (content) Intention of Authority.
3. Intersection of the customary norm of power abuse.
4. Intersection normgedrag Abuse of authority.

The effect caused by the existence of two dichotomies in the legal domain in solving cases of scientific abuse of authority can have two consequences: first on the same case, but carried out by two different domains of law which can produce different decisions, secondly it creates difficulties in reaching a truth (the objectivity) which is comprehensive. These problems also create legal uncertainty in law enforcement in cases of abuse of power by officials.

The description above shows a correlation between 2 (two) legal regimes, namely the criminal law regime and the administrative law regime in corruption cases, especially in cases of abuse of power, so that Robert Klitgard formulated corruption using symbolic propositions in modern logic as follows:

$C = M + D - A$		
explanation :	C ( <i>corruption</i> ) -----	concepts in criminal law
	M ( <i>monopoly power</i> ) -----	administrative law concepts
	D ( <i>disceration by official</i> )-----	administrative law concepts



A (*accountability*) ----- administrative law concepts

If translated into sentence propositions, corruption can occur if there is a monopoly of power and there is a discretion of authority from officials where in the exercise of power and discretion there is no accountability.

Avoiding conflicts of authority to try the Supreme Court to issue Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Procedures in the Assessment of Elements of Abuse of Authority which determines in Article 2 paragraph (1) The court has the authority to accept, examine and decide on the appraisal application whether or not there is an abuse of power in Decisions and / or Actions of Government Officials prior to criminal proceedings. Paragraph (2) The new court has the authority to accept, examine and decide upon the appraisal of the application as referred to in paragraph (1) after the results of the supervision by the government internal supervisory apparatus.

Supreme Court Circular Letter Number 03 of 2015 concerning Enforcement of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting as Guidelines for Implementation of Duties, in letter A the Legal Formulation of the Criminal Chamber number 2 Point of Contact between State Administrative Cases and Corruption Crimes determines:

In Article 21 of Law Number 31 of 2014 concerning Government Administration, the State Administrative Court has the authority to examine and decide whether or not there is an element of abuse of power by government officials. When the corruption case process goes on and a request is also submitted regarding the presence or absence of an element of abuse of power to the State Administrative Court, the process of examining corruption cases continues, while the request must refer to PERMA Number 4 of 2015 concerning Guidelines for Judicial Procedures Elements of Abuse of Authority."

The provisions of Article 2 paragraph (1) and paragraph (2) of the Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Procedures in the Assessment of Elements of Abuse of Authority have narrowed the applicability of the norms of Article 21 paragraph (1) of Law Number 30 of 2014 concerning Government Administration. In terms of the hierarchy of norms of the provisions of Article 2 paragraph (1) and paragraph (2) of the Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Procedures in Judging Elements of Abuse of Authority the level is lower (inferior) when compared to the



norms of Article 21 paragraph (1) of the Law. Number 30 of 2014 concerning Government Administration (superior). In considering and considering the Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Procedures in the Assessment of Elements of Abuse of Authority, it clearly points out the provisions of Article 21 of Law Number 30 of 2014 concerning Government Administration as its basis. Judging from the theory of the level of legal norms (stufentheori) as put forward by Hans Kelsen and the two-face theory (das doppelte rechtsantlitz) from Adolf Merkl, then the lower (inferior) norms must not conflict with the higher (superior) norm, the higher norms. inferior (inferior) should not expand (expansion) the norm l The higher (superior) and lower (inferior) norms should not narrow (retriiction) limit the higher (superior) norms. The principle in statutory regulations states that *lex superior derogate legi inferiori*, which means that laws with a higher degree defeat those with lower degrees.

Positive law has abandoned the concept of Authority Abuse as referred to in Article 53 paragraph (2) letter b of Law Number 5 of 1986 concerning State Administrative Courts, namely by revoking this provision based on Law Number 9 of 2004 concerning Amendments to Law Law Number 5 of 1986 concerning State Administrative Courts, the concept of Abuse of Authority as referred to in Article 53 paragraph (2) sub-Law Number 5 of 1986 concerning State Administrative Courts has now become a legal history (wet historic), and has returned to a principle, namely the principle of prohibiting abuse of authority (*detournement de pouvoir*). As a principle, its working power is indirect werking (indirect).

After 9 (nine) years since the revocation of the norms of abuse of authority from the provisions of Article 53 paragraph (2) sub Law Number 30 of 2015 concerning Government Administration based on Law Number 30 of 2014 concerning Amendments to Law Number 5 of 1986 concerning Judiciary State Administration through law rearrangements (reconstruction) regarding the concept of Abuse of Authority, namely by enacting Law Number 30 of 2014 concerning Government Administration on October 17, 2014.

The rearrangement (reconstruction) of the concept of abuse of authority in Law Number 30 of 2014 concerning Government Administration is carried out by:

1. Include the principle of not abusing authority as part of the General Principles of Good Governance (AUPB) as referred to in Article 10

- paragraph (1) letter e of Law Number 30 of 2014 concerning Government Administration.
2. Not abusing authority is one of the principles in the administration of Government Administration as referred to in Article 5 letter c of Law Number 30 of 2014 concerning Government Administration.
  3. The use of authority by Government Agencies and / or Officials shall be based on statutory regulations and the prohibition of abusing authority in stipulating and / or making decisions and / or actions as referred to in Article 8 paragraph (2) letter b, Article 9 paragraph (1). ), and Article 17 paragraph (1) of Law Number 30 of 2014 concerning Government Administration.
  4. The scope of abuse of authority as referred to in Article 17 paragraph (2) and Article 18) of Law Number 30 of 2014 concerning Government Administration.
  5. Legal consequences for decisions and / or actions taken by abusing authority as regulated in Article 19 of Law Number 30 of 2014 concerning Government Administration.
  6. Oversight of the prohibition of abuse of power as stipulated in article 20 of Law Number 30 of 2014 concerning Government Administration.
  7. The authority of the State Administrative Court to examine and decide whether there is no element of abuse of authority carried out by Government Officials as regulated in Article 21 of Law Number 30 of 2014 concerning Government Administration

Regarding the provisions of Article 21 of Law Number 30 of 2014 concerning Government Administration which stipulates the authority of the State Administrative Court in receiving, examining and deciding whether or not there is an abuse of power by Government Officials.

After the enactment of Law Number 30 of 2014 concerning Government Administration, especially Article 21, according to the author's experience as a Corruption Judge at the Mataram District Court, the Pontianak District Court have never had cases of corruption filed by a special public prosecutor relating to the charges against Article 3 Law 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption Eradication has

been tested beforehand regarding whether or not there is an element of abuse of power by the State Administrative Court. This situation shows that in the application of statutory regulations two things are faced, namely "validity" and efficacy, the power of action is associated with validity if the norm is formed by a higher norm or by an authorized institution, meanwhile, effectiveness is related to whether the norm is obeyed or not.

After discussing the various dimensions of the Abuse of Authority from various points of view, then by holding on to the meaning of the essence itself, namely the essence or basis, or the actual reality, the real or true core of the concept of the prohibition of Authority Abuse is;

First; maintain the purity of the purpose of granting authority so that the authority is exercised by Government Officials in accordance with and in accordance with the purpose of granting authority itself.

Second; the scope of the use of authority is materially limited to the scope of the specified field of interest.

Third; as a guiding norm or guiding star for Government Officials in exercising authority so that they exist and remain in accordance with the purpose of granting authority

## Conclusion

The term "abuse of authority" is used by 2 legal regimes, namely by the administrative law regime and by the corruption criminal law regime, both legal regimes are both public law. This has resulted in concurrent jurisdiction (joint authority) between the State Administrative Court and the Corruption Crime Court. The abuse of power committed by Government Officials is a form of corruption as stipulated in Law Number 20 of 2001 concerning Eradication of Corruption Crimes.

There is no explicit regulation or no further regulation by criminal law, especially corruption, regarding the definition of the element "abuse of authority" as an element of delict (bestanddelict) in the practice of the Corruption Crime Court when considering the meaning of "abusing authority" Corruption Crime Judges refer to Article 53 paragraph (2) sub b of Law Number 5 Year 1986 concerning State Administrative Courts, namely, State Administrative Bodies or Officials at the time of issuing the decision as referred to in

paragraph (1) have used their authority for other purposes than the purpose for which the authority was granted, which in fact it is an administrative legal regime.

Abusing the authority as the core of the bestandle delict in the formulation of the norms of Article 3 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the meaning should be explicitly regulated further in law, this is in accordance with the principles in criminal law the formulation of norms must be *lex certa* (clear and firm), and the norms of criminal law must be written (*lex scripta*), because criminal law can reduce, rob people of freedom of liberty, and even eliminate and take away people's right to life.

The essence of the concept of the prohibition of Abuse of Authority is to maintain the purity of the purpose of granting authority, so that the use of authority by Government Officials is appropriate for the purpose and purpose of granting authority. The norms that exist in the prohibition of Abuse of Authority are the guiding norms or guiding stars so that Government Officials in the use of Authority remain on the goal and purpose of granting Authority.

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