IJLR: International Journal of Law Recontruction
Volume 7, Number 1, April 2023
DOI: http://dx.doi.org/10.26532/ijlr.v7i1.30563

THE LAW ENFORCEMENT OF CORRUPTION CRIMES IN TERMS OF AUTHORITY ABUSE

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Abstract

The purpose of writing is to find out and analyze law enforcement in the abuse of authority as a source of corruption. To answer the writing questions that have been formulated above, the authors will use the normative research method. In the legislation regarding the crime of corruption, the element of "abuse of authority" has been regulated and is even part of the core of the corruption offense. In Article 3 of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning the Eradication of Corruption. Furthermore, the element of "abusing the authority, opportunity or means available to him because of his position or position". Abuse of authority is included as an offense of corruption since the Military Ruler Regulation of l957 until now.

Keywords*: Abuse of Authority, Corruption, Law*

A. INTRODUCTION

The authority has an important position in the study of constitutional law and administrative law. Abuse of Authority is an act in which a Government Official uses the authority he has to make or make decisions and/or actions in government management that are not in accordance with his authority, mix authority and/or act arbitrarily. To find out whether the actions of government officials include abuse of authority, one must look at where the source of this authority comes from. Every use of authority contains accountability which is identified through how to obtain and exercise authority.[1]

The term authority is aligned with "authority" in English and *"bevoegdheid*" in Dutch. Authority in Black`s Law Dictionary is defined as Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.

1 Amelia Putri Rizkyta, Bunga Restu Ningsih Penyalahgunaan Wewenang Berdasarkan Pengadilan Tata Usaha Negara dan Pengadilan Tindak Pidana Korupsi, *Jurnal Esensi Hukum*, Vol. 4, No. 2, 2022, page.131-138

This kind of abuse of authority is actually a type of corruption, namely transactive corruption and defensive corruption (*extortio*n). Talking about corruption is actually not a new problem in Indonesia. In fact, various groups consider that corruption has become a part of life, become a system and is integrated with the administration of state governance.[2] Transactive corruption is where there is a mutual agreement between the giver and the receiver for the benefit of both parties and both parties actively seek to achieve this benefit. For example, bribing a judge to get a favorable verdict. Whereas defensive corruption means that the perpetrator is a victim of extortion, in the sense that the (real) corruption suspect is not the perpetrator of corruption, or the fraud suspect is not the perpetrator of fraud, but is a victim to be extorted. A concrete example of defensive corruption is a person arrested on trumped-up charges, just to blackmail him. He pays a bribe for his release and for the charges against him to be dropped.[3]

In simple terms, abuse of authority occurs because of the existence of authority or in other terms the existence of power.[4] Abuse of authority means that there are actions taken by the authority holder outside the corridor of his authority and this results in state losses. When there is state loss due to abuse of authority, then in the context of criminal law it is included in the category of *wederrechtelijkheid*. Within a decade, the article on abuse of authority was attached and existed in the criminal law regime, namely as one of the elements of the crime of corruption. However, in fact, the discourse or study of authority or authority in a governance is the domain of state administrative law. However, in fact, since 1999, the formulators of laws in this country have placed one of the studies of state administrative law, namely the authority to carry out government, including when there is an abuse of authority, as part of a criminal offense, especially corruption.[5]

Conceptually, abuse of official authority is the use of opportunities by a person or group of people who are in office by taking advantage of their position. According to Article 3 of Act No. 31 of 1999 jo. Act No. 20 of 2001 concerning the Eradication of Corruption, abuse of authority is when a person or group takes advantage of themselves or others or a corporation, abuses the authority, opportunity or means available to them because of their position and harms state finances or the state economy. the state is punished with life imprisonment or imprisonment for a minimum of one year and a maximum of twenty years and a fine.[6]

2 Muhammad Ridwan Lubis, Panca Sarjana Putra, Yasmirah Mandasari Saragih, Corporate Criminal Liability for Criminal Acts of Corruption, *Jurnal Pembaharuan Hukum*, Vol. 8, No. 1, Januari-April 2021, page.48-59

3 Juniver Girsang, *Abuse of Power*, JG Publising, Jakarta 2012, page.187

4 Alya Maya, Kresnha Adhy W, Kewenangan Hukum Administrasi Terkait Penyalahgunaan Wewenang Dalam Tindak Pidana Korupsi Di Indonesia, *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha*, Vol. 4, No. 3, November 2021, page. 990-997

5 Nicken Sarwo Rini, Penyalahgunaan Kewenangan Administrasi Dalam Undang Undang Tindak Pidana Korupsi, *De Jure Jurnal Penelitian Hukum*, Vol. 18, No. 2, 2018, page.257-274

6 See Article 3 of Law Number 20 of 2001 Concerning the Eradication of Corruption

The law enforcement process has found many elements of "against the law" and "blaming the authority" coupled with mentioning the amount of "state losses" as a basis for charging an official with corruption solely based on the perspective of criminal law without considering that when an official conducts his activities.[7]

In the previous research, as a comparison of novelty, it was conveyed by Satria Nugraha that abuse of authority is a form of "onrechtmatige daad". Abuse of authority is a "species" of the "genus" of "onrechtmatige daad". The core part of the offense ("bestanddelen") and the elements of the offense are different things.[8]

The crime of corruption has been considered a "seriousness crime", a serious crime that seriously disrupts the economic and social rights of society and the state on a large scale, so that its handling must be carried out by means of "extra ordinary treatment" and its proof requires serious professional and independent steps.[9] State organizers in this case, must be interpreted as state apparatus or public officials who certainly meet the elements, namely: appointed by an authorized official, holding an office or position and performing part of the duties of the state or state equipment.[10]

B. RESEARCH METHODS

To answer the writing questions that have been formulated above, the authors will use the normative research method.[11] Normative legal research is intended as research conducted by examining library materials or secondary data only. The research specifications used in this study used descriptive analytical.[12] Soerjono Soekanto stated that descriptive research is intended to provide data that is as accurate as possible about humans, circumstances or other symptoms. The purpose is mainly to confirm hypotheses, so that they can help in addition to strengthening old theories, or in order to develop new theories.[13]

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7 Mustanir, A., Yasin, A., Irwan, & Rusdi, M. Potret Irisan Bumi Desa Tonrong Rijang Dalam Transect Pada Perencanaan Pembangunan Partisipatif. Jurnal Moderat, Vol. 4, No. 4, 2018, page.1–14.

8 Satriya Nugraha, Konsep Penyalahgunaan Wewenang Dalam Undang-Undangtindak Pidana Korupsi Di Indonesia, *Socioscientia*, Vol. 8, No. 1, 2016, page.15-22

9 Irwan, I., Latif, A., Sofyan, Mustanir, A., & Fatimah, Fa. Gaya Kepemimpinan, Kinerja Aparatur Sipil Negara dan Partisipasi Masyarakat Terhadap Pembangunan di Kecamatan Kulo Kabupaten Sidenreng Rappang, Jurnal Moderat, Vol. 5, No. 1, 2019, page.32–43.

10 Mustanir, A., & Jusman., Implementasi Kebijakan Dan Efektivitas Pengelolaan Terhadap Penerimaan Retribusi Di Pasar Lancirang Kecamatan Pitu Riawa Kabupaten Sidenreng Rappang. *Jurnal Ilmiah Akmen*, Vol. 13, No. 3, 2016, page.542–558

11 Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, *Law Development Journal*, Vol. 3, Issue. 2, June 2021, page.223-231

12 Julizar Bimo Perdana Suka , Bambang Tri Bawono , and Andri Winjaya Laksana, The Implementation of Code of Conduct for Members of Police as Accurators of Murder, *Law Development Journal*, Vol. 4, No. 2, June 2022, page.197-204

13 Manao, D. F. Penyelesaian Penyalahgunaan Wewenang oleh Aparatur Pemerintah Dari Segi Hukum Administrasi Dihubungkan Dengan Tindak Pidana Korupsi, *Jurnal Wawasan Yuridika*, Vol. 2, No. 1, 2018, Page 1-22

C. RESULTS AND DISCUSSION

1. Regulation of Abuse of Authority in the Crime of Corruption

Authority or often called authority, gezag is a formalized power both over a certain group of people and over a certain field of government as a whole. The power can come from legislative power or from executive power, while authority (competence, bevoegdheid) is only about a certain part or field. Thus authority means a collection of authority (rechtsbevoegdheden), for example the authority to sign a decree by an official on behalf of the minister, while the authority remains with the minister. In this case, according to Prajudi Atmosudirdjo, it is called delegation of authority.[14]

Abuse of authority in acts of government according to the concept of Constitutional Law or State Administrative Law is always paralleled with the concept of *de'tornement de pouvoir*. In *Verklarend Woordenboek Openbar Bestuur* it is formulated that the use of authority for other purposes that deviate from the objectives that have been given to that authority. Thus the official violates the principle of specialist (principle of purpose). The occurrence of abuse of authority is not due to an accident. Abuse of authority is done consciously, namely diverting the objectives that have been given to that authority. The diversion of goals is carried out for personal interest, either for his own interests or for other people.[15]

Some of the relevant regulations on corruption eradication crimes that have been issued by the Indonesian government are:[16]

a. MPR Decree No. XI/MPR 1998 on the administration of a state that is clean and free from corruption, collusion and nepotism. This provision mandates that state administrators in the executive, legislative and judiciary must carry out their duties and functions properly and be responsible to the community, nation and state. State administrators must be honest, fair, open and trustworthy and able to free themselves from KKN practices. This provision regulates for the first time the obligation of state administrators to announce and be willing to have their assets examined before and after taking office.
b. This law became the basis for the establishment of the Commission for the Examination of the Wealth of State Officials (KPKPN), both regarding its organizational structure and its duties and functions. This law also regulates the role of the community in the clean administration of the state. Even efforts to realize clean state administration according to this law are also the rights and responsibilities of the community.

14 Prajudi Atmosudirdjo, *Hukum Administrasi negara*, Jakarata, Ghalia Indonesia, 1981, page. 29

15 Abdul Latif, *Hukum Administrasi dalam Praktek Tindak Pidana Korupsi*, Jakarta, Prenada Media Group, 2014, page.35

16 Bambang Waluyo, *Pemberantasan Tindak Pidana Korupsi (Strategi dan Optimalisasi)*, Jakarta, Sinar Grafika, 2016, page.15

c. Act No. 20 of 2001 amending Act No. 31 of 1999 concerning the eradication of criminal acts of corruption. This law regulates criminal sanctions for anyone who obstructs corruption prosecution efforts, both during investigation, prosecution, and examination in court. In addition, this law also regulates criminal offenses whose substance is not included in corruption, but is related to corruption.
d. Act No. 30 of 2002 on the Commission for the Eradication of Corruption This law is the basis for the establishment of the KPK with special authority, because conventional methods used by the police and prosecutors are considered ineffective in eradicating corruption. The establishment of the KPK is expected to trigger existing institutions to be more active in eradicating corruption.
e. Act No. 46/2009 on Corruption Courts. This law was established because corruption has caused damage to various aspects of the life of the community, nation and state, so efforts to prevent and eradicate corruption need to be carried out continuously.[17]

The offense of abuse of authority in the crime of corruption is regulated in Article 3 of the Corruption Eradication Law, which is stated as follows: Every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity, or means available to him or her because of his or her position or position which may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least IDR 50,000,000.00 (fifty million rupiahs) and a maximum of IDR 1,000,000,000.00 (one billion rupiahs).

2. Law Enforcement of Corruption Crime in the Case of Abuse of Authority

In the legislation regarding the crime of corruption, the element of "abuse of authority" has been regulated and is even part of the core of corruption offenses. In Article 3 of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning the Eradication of Corruption. One of the efforts to save and normalize national life in accordance with the demands of reform is the need for a common vision, perception and mission of all state administrators and society.[18]

From the formulation of Article 3, it can be seen that the element of "abuse of authority" is a core part of the corruption offense. The problem is that the concept of abuse of authority in this offense is not further explained. Even when compared to the formulation in the offense

17 Chatrina Darul Rosikah, *Pendidikan Antikorupsi, Kajian Antikorupsi Teori dan Praktik*, Jakarta, Sinar Grafika, 2016, page.135

18 Yasmirah Mandasari Saragih, Problematika Gratifikasi Dalam Sistem Pembuktian Tindak Pidana Korupsi (Analisis Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi, *Jurnal Hukum Responsif*, Vol. 5, No. 5, October 2017, page.76-86

stipulated in Article 2 of this law, it can be understood as if "abusing authority" in the context of corruption is not an illegal act. It is said so, because it is clear in the formulation of Article 2 that the act of "against the law" is an essential part of the offense of corruption. Whereas as Nur Basuki Minarno states that "abuse of authority is one form of unlawful act".[19]

As a result of the weak concept of abuse of authority in the law on the eradication of corruption, the actions of a state administrative official often receive different interpretations. On the one hand, there is an opinion that explicitly states that the authority and unlawful acts of state administrative officials cannot be assessed using criminal law.

The paradigm error of the teaching of unlawful acts (*as a genuus delict*) is the criminalization of authority or policy against the state apparatus as is happening in Indonesia. From an academic juridical perspective, a policy (*beleid*), whether as a bound discretionary policy or an active discretionary policy, is not the domain of assessment of Criminal Law.[20]

The law enforcement system is essentially a system of enforcing the substance of law (in the field of criminal law including material criminal law, formal criminal law, and criminal execution law).[21] Meanwhile, Jimly Asshiddiqie stated that law enforcement is the process of making efforts to uphold or function legal norms in reality as behavior in traffic or legal relations in the life of society and the state.[22]

In the development of criminal law politics (policy) in Indonesia, it appears that the legislators have taken steps to prioritize the instrument of criminal law as a tool to examine irregularities committed by the government. This can be understood from the formulation of the offense of abuse of authority as a criminal act of corruption, as formulated in Article 3 of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning the Eradication of Corruption.

The formulation of abuse of authority as an act of corruption by the legislators is certainly not without consideration and logical reasons. In the Elucidation of the Law on the Eradication of the Crime of Corruption, it is stated that "... the existence of acts of corruption has caused enormous state losses which in turn can have an impact on the emergence of crises in various fields ...".

In order to be able to reach various modus operandi of irregularities in state finances or the state economy that are increasingly sophisticated and complicated, the criminal acts regulated in this Law are formulated in such a way that they include acts of enriching oneself or

19 Nur Basuki Minarno, *Penyalahgunaan Wewenang dan Tindak Pidana Korupsi dalam Pengelolaan Keuangan Daerah*, Palangkaraya, Laksbang Mediatama, 2009, page.2.

20 Arma Dewi, Penyalahgunaan Wewenang Dalam Perspektif Tindak Pidana Korupsi, *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, Vol. 1, No. 1, 2019, page.1-16

21 Siswanto, Heni. *Rekonstruksi Sistem Penegakan Hukum Pidana Menghadapi Kejahatan Perdagangan Orang*, Semarang, Pustaka Magister, 2013, page.77.

22 Asshiddiqie, Jimly., *Penegakan Hukum*, 2016, www.jimly.com, diakses 20 February 2023

another person or a corporation "against the law" in the formal and material sense. With this formulation, the notion of unlawfulness in the crime of corruption can also include reprehensible acts that according to the sense of justice of the community must be prosecuted and punished.

Furthermore, the element of "abusing the authority, opportunity or means available to him because of his position or position". Abuse of authority has been included as an offense (*bestanddeel delict*) of the crime of corruption since the Military Ruler Regulation of l957 until now. It's just that the regulations or laws that have been in force have not even provided adequate explanation. The absence of an explanation of abuse of authority in regulations or laws will have various interpretative implications. This is very different from the explanation of "against the law" (*wederrechtelijkheid*) which is felt to be quite adequate, although in its application it is still "*debateble".*

The punishment for corruptors listed in Article 3 of the Anti-Corruption Law is life imprisonment, or a prison sentence of at least 1 year or a maximum of 20 years. In fact, the provision of punishment in this article is questionable, considering that corruption has been recognized as an extraordinary crime that is very detrimental to the country's economy, and threatens the welfare of many people, but why is a light sentence imposed. The application of the formulation of the proof system must be guided by the principles applicable in the criminal justice process, such as the presumption of innocence, and the principle of equality before the law.[23]

D. CONCLUSION

In the legislation regarding the crime of corruption, the element of "abuse of authority" has been regulated and is even part of the core of corruption offenses. In Article 3 of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning the Eradication of Corruption. From the formulation of Article 3, it can be seen that the element of "abuse of authority" is a core part of the corruption offense. The problem is that the concept of abuse of authority in this offense is not further explained.

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