

December 9th 2016



The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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UNISSULA PRESS

ISBN. 978-602-1145-41-8

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**ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW
ERADICATION OF CORRUPTION
(LAW NUMBER 31 OF 1999 JO. LAW NUMBER 20 OF 2001)
BASED ON VALUE OF JUSTICE**

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ABSTRACT

Tort has been established in Article 2, was misuse of authority by Article 3 of the Law on Corruption Eradication. Abuse of authority but also an act against the law, then Article 2 are also applicable in the case of the offense of abuse of authority.

In practice at the Corruption Court, normally the public prosecutor filed a defendant to trial on charges subsidiaritas, the primary charge Article 2 and Article 3 of the subsidiary charge.

Most judges decide the primary charge is proven, and some other judges decide the primary charges not proven and proven subsidiary charges. Objective: to analyze the weaknesses of the offense of abuse of authority, and the subsequent reconstruction of the formulation of the offense of abuse of authority, based on the values of justice.

Method : This is the paradigm of constructivism and sociological juridical approach, the analytical descriptive nature. Sources of primary data with field study to the Jakarta High Court Corruption, and secondary data in the form of decisions offense penyaahgunaan authority and literature in the form of legislation and literature books. The collected data were analyzed descriptively qualitative.

Result : There are weaknesses in the formulation of Article 3, giving rise to discrimination against the accused. Therefore be reconstructed based on the values of justice, to redraft Article 3 to a penalty equal to Article 2, plus one paragraph to a penalty under minimal.

Keywords: Reconstruction, Abuse of Power, Corruption, value of justice.

A. Background

In practice at the Corruption Court, the prosecutor filed a defendant's usually a case of abuse of authority to trial on charges subsidiaritas, the primary charge, and a subsidiary charge Article 2, Article 3.

In its decision the majority judges said primary charges are proven and some other judges declare subsidiary charges were proved. Thus there has been disparity sentence imposed by the judge to the defendant, because of the threat of punishment in Article 2 is heavier than Article 3.

Based on this background, the writer doing research and discussing it with the title: "Reconstruction Formulation offense Abuse of Authority In the Law on Corruption Eradication (Act No. 31 of 1999 jo. Law No. 20 of 2001) Value-Based Justice "

B. Problem Formulation

1. How weaknesses formulation offense of abuse of authority in the Law on Combating Corruption and the Corruption Court practice.
2. How formulation offense construction of power abuse in the Law on Corruption Eradication based on values of justice.

C. Framework Theory

The theory used by the author to address the problems mentioned above, consists of:

1. Grand Theory: Theory of Justice

According to John Rawls, for justice, the necessary balance between the interests of private (individual) and the common interest (social). Measured and balanced justice that is called justice. Justice is a value that can not be compromised because justice will guarantee the stability of human life. Regulations need to be made to prevent conflicts of interest. Therefore, the law would be observed if able to put the principles of justice. John Rawls principles of justice in accordance with the principles of justice in the five precepts of Pancasila, which upholds keseimbangan individual interests and the interests of society.

2. The Middle Theory: Theory of State Law

Indonesia is a constitutional state based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 who has undergone four amendments.

According to Mahfud MD, the concept of the State of Indonesia as a state of law can be seen in the opening and articles of the 1945 Constitution, which contains goals, basis, the ideals of law and basic norms that should be of interest and political footing Indonesian law. Preamble and articles of the 1945 Constitution contains typical values derived from the views and Indonesian culture heritage of the Indonesian nation.

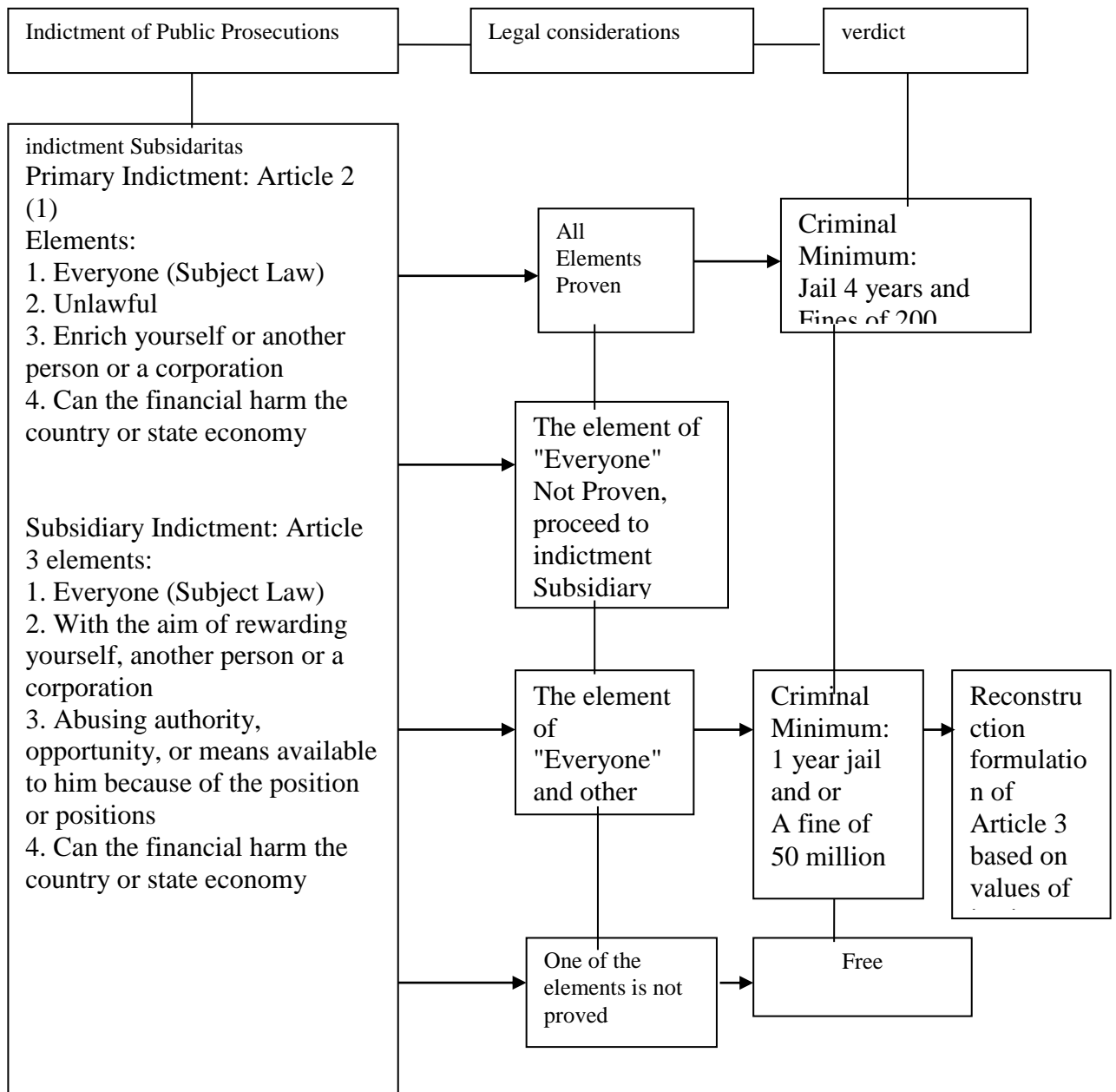
3. Applied Theory: Theory of Punishment

The purpose of punishment is to improve individual and social damage (individual and social damages) caused by a criminal act. Theory objective of sentencing integratif (humanity in Pancasila system) is associated with the concept of corrective justice according to Aristotle to restore a state of the equality condition that occurs due to violations of the law.

D. Framework dissertasi

Mindset dissertation can be described as follows:

**PLOT INVESTIGATION AUTHORITIES ABUSE CASE IN COURT OFFENSE
CORRUPTION**



E. Methods

1. Research Paradigm: constructivism

2. Method Approach: Juridical Sociological

3. Nature Research: descriptive

4. Sources of Data

a. Primary Data: Corruption Jakarta High Court

b. Secondary Data

1) Material Primary Laws: Laws and regulations regarding corruption and court decisions regarding the offense of abuse of authority.

2) Material Secondary Law: legal literature such as books, journals / magazines laws, and so on.

3) Legal Materials Tertiary: legal dictionary, the English dictionary, and the dictionary Indonesian.

5. Data Collection Methods

a. Research Library (Library Research)

To study the books, magazines, and legislation regarding corruption and abuse of power.

b. Research Field (Field Research)

Visiting Jakarta High Court to study the decision of the offense of abuse of authority, which was decided by the Court of first instance, appeal and appeal / reconsideration.

c. Interview

Conducting interviews with judges and court officials, to obtain information and opinions concerning the offense of abuse of authority.

6. Data Analysis

Qualitative data from the study will be presented and analyzed critically and explicitly (qualitative descriptive analysis).

F. Results and Discussion

1. Weakness Regulation

Abuse of authority referred to in Article 3 is also an act against the law as referred to Article 2 because of misuse of authority as a "species" of acts against the law as a "genus" her.

2. Weakness in Practice

Public Prosecutor in making indictments almost always made in the form subsidiaritas, the indictment Primary Subsidiary Indictment Article 2 and Article 3.

In the practice of the Court, there is a tendency of some judges to declare the primary charge is not proven, and proven is the subsidiary charge.

3. Reconstruction of Value Article 3

Reconstruct the value of abuse of authority should be done by reconstructing the formulation of Article 3 to ensure fairness and avoid discrimination between the criminal defendant the one with the other defendants.

4. Reconstruction Law Article 3

The formulation of Article 3 before reconstructed only consist of 1 (one) paragraph, then after reconstructed into three (3) paragraph, as follows:

The Old Formulation Pasal 3	Weakness	The New Formulation Pasal 3
<p>Any person who with the intention of enriching himself or another person or corporation, abuse of authority, opportunity or means available to him because of the position or the position, which may be detrimental to the State finances or the economy of the State, shall be punished with imprisonment for life or imprisonment of a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of Rp. 50,000,000.00 (fifty million rupiah) and Rp. 1,000,000,000.00 (one billion rupiah).</p>	<p>1. Threats minimum punishment is too low 2. No sentence of death 3. There is no criminal penalty under state minimum in case of loss is relatively small. Therefore it needs to make a new formulation.</p>	<p>(1) Any person who with the intention of enriching himself or another person or corporation, abuse of authority, opportunity or means available to him because of the position or the position, which may be detrimental to the State finances or the economy of the State, shall be punished with imprisonment for life or imprisonment minimum 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and Rp. 1,000,000,000.00 (one billion rupiah). 2) In the case of corruption as referred to in paragraph (1) shall be done in certain circumstances the death penalty can be imposed.</p>

		(3) For the perpetrators of corruption referred to in paragraph (1) and (2) causing the state losses of less than Rp. 100,000,000.00, (one hundred million rupiah) shall be punished with imprisonment under 4 (four) years and a fine of under Rp. 200,000,000.00 (two hundred million rupiah).
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RECONSTRUCTION OFFENSE ABUSE OF AUTHORITY

G. Conclusions

1. The offense of abuse of authority has been set out in Article 3, but the perpetrator can also be charged under Article 2, for abuse of authority as a "species" of acts against the law as a "genus";
2. In practice based charges subsidairitas, then some judge said primary charge is proven, and some other judge declared subsidiary charges were proved.
3. If the defendant subject to Article 2, the criminal threat is more severe, whereas if subject to Article 3, then a lighter criminal threat.
4. Need to reconstruct the value of the offense of abuse of authority in order to avoid discrimination against the perpetrators of the offense of abuse of authority. The reconstruction of the law is to create a new formulation of Article 3 which consists of three (3) clause, as described above. ,

H. Suggestions

1. The Government and Parliament should revise the formulation of Article 3, as reconstructed by the author.
2. The Corruption Court judges, should consider the jurisprudence and the Supreme Court Circular No. 07 of 2012 which apply Article 2 in the case of the offense of abuse of authority when the facts have fulfilled the elements of the article.

I. Implications of Study

1. Implications Tioritis

After Article 3 reconstructed, then the defendant guilty of abuse of authority, may be subject to the same criminal with Article 2 (1) and (2). Unless the State loss is less

than Rp. 100.000.000, - (one hundred million rupiah), the defendant is liable to punishment under the minimum.

2. Practical implications

Need for awareness of judges that Article 2 can be applied to the perpetrators of corruption with the status of civil servants / officials of the State, or a private person, as long as all elements of the article is proved.

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