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

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Abstract

This study aims to analyze the concept of authority abuse in corruption in indonesia after the implementation of law number 30 of 2014 concerning government administration. 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 concurent jurisdiction 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 there is no explicit regulation or no further regulation 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 Court when considering the meaning of "abusing authority"

Keywords: Authority Abuse, Corruption Crime, Law, Government Administration.

A. INTRODUCTION

Thesignificance of any grant of governmental authority to a State Administrative Officer or Government Official is always accompanied by the "purpose and intent" of granting such authority, whether obtained by attribution or obtained by delegation. Thus the exercise of such authority shall be appropriate and in line with the "purpose and intent" of the granting of such authority. In *contrario* if the use of authority by a State Administrative Officer or Government Official is inconsistent with the "purpose and intent" of the granting of authority then the Administrative Officer or Government Official has committed an abuse of authority (*deteournement de pouvoir*) of the state instrument using the authority handed over to him for purposes other than the purpose for which it has been determined. Thus, the test of whether or not there is an element of abuse of authority carried out by a State Administrative Officer or Government Official is to seek the appropriateness or harmony of the use of the authority of a State Administrative Officer or Government Official with the "purpose and purpose" of granting authority by a law. [1]

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The essence of any grant of governmental authority to a State Administrative Officer or Government Official is always accompanied by the "purpose and intent" of granting such authority, whether obtained by attribution or obtained by delegation. Thus the exercise of such authority shall be appropriate and in line with the "purpose and intent" of the granting of such authority. In contrario if the use of authority by a State Administrative Officer or Government Official is inconsistent with the "purpose and intent" of the granting of authority then the Administrative Officer or Government Official has committed an abuse of authority (*deteournement de pouvoir*) of the state instrument using the authority handed over to him for purposes other than the purpose for which it has been determined. Thus, the test of whether or not there is an element of abuse of authority carried out by a State Administrative Officer or Government Official is to seek the appropriateness or harmony of the use of the authority of a State Administrative Officer or Government Official with the "purpose and purpose" of granting authority by a law.

Abuse of authority has become a prohibition norm in Law Number 30 of 2014 concerning Government Administration as stated in Article 8 paragraph (3) specifying that Government Administration Officials are prohibited from abusing authority in determining and or carrying out Decisions and or Actions. The prohibition of explicit abuse of authority has also been previously normalized in Law Number 5 of 1986 concerning the State Administrative Court, namely in Article 53 paragraph (2) sub b which specifies as follows:

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

a. The decision of the sued State Administration is in accordance with the applicable laws and regulations;
b. The State Administrative Agency or Officer at the time of issuing the Decree as referred to in paragraph (1) has used its authority for other purposes than the purpose of granting such authority;
c. The State Administrative Agency or Officer at the time of issuing or not issuing a decision as referred to in paragraph (1) after considering all the interests implicated by the decision should not have reached the making or not of the decision.

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

Every determination of legal norms in each regulation is certainly with a specific purpose and purpose. Therefore, the application of such provisions must always be in accordance with the specific purpose and purpose of holding the regulation in question. Thus the regulations concerned are not justified to be applied in order to achieve things that are beyond that intention. That way the materiel authority of the Agency or State Administrative Officer concerned in issuing State Administrative Decrees is also limited to the scope of the purpose of the special field that has been determined in the basic regulations.

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Dotted with the explanation of Article 53 paragraph (2) sub b of Law Number 5 of 1986 concerning the State Administrative Court, the State Administrative Agency or Official has the obligation to know and understand the purpose of holding a law in order to avoid or not deviate from the purpose and objectives of being formed and enacted laws and regulations. Knowing and understanding the purpose of holding a law is not only an obligation of the State Administrative Agency or Officer, but also an obligation of the shaper of the law so that in forming a law must be based on the principles of forming good laws and regulations, including the principle of clarity of purpose, every formation of laws and regulations must have clear goals to be achieved as referred to in Article 5 letter a of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

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

Abuse of authority committed by Government Officials is a form of corruption crime as specified in Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in determining:

"Any person who for the purpose of benefiting himself or others or a corporation, abuses the authority, opportunity or means available to him because of his position or position that can harm the state finances or the country's economy, shall be punished with imprisonment for life or imprisonment for a minimum of 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)."

The non-explicit or unregulated further regulation by the criminal law khsusunya criminal corruption regarding the meaning of the element of "abuse of authority" as a *bestandle delict* element in the practice of the Corruption Crimes Court when considering the definition of "abuse of authority" of Corruption Judges refers to Article 53 paragraph (2) sub b of Law Number 5 of 1986 concerning State Administrative Courts which states administrative agencies or officials The State's efforts at the time of issuing the decree referred to in subsection (1) have exercised its authority for other purposes than the purpose for which such authority was granted, which nota bene constitutes an administrative law regime.

Abusing Authority as the core of *delik (bestandle delict*) in the formulation of the norms of Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes should explicitly have its meaning further regulated in the Law. This is in accordance with the principle in criminal law the formulation of norms must be lex *certa* (clear and unequivocal), and the norms of criminal law must be written (*lex scripta*), because criminal law can reduce, deprive people of their freedom of freedom, and even deprive people of their right to life.

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B. DISCUSSION

1. The Concept of Abuse of Authority in Government

One of the subjects or perpetrators of corruption crimes is Government Officials and/or State Administrators in the form of abuse of authority. According to Sutherland, every corruption case must involve officials who occupy certain positions within an agency. Certain positions are related to the position, in the position is attached the presence of power. Lord Acton posited that power tends to corrupt and absolute power [2]corrupts *absolutely* which means, power tends to corruption and absolute power tends to absolute corruption. Government officials and/or State Administrators who commit corruption according to Artijo Alkotsar are manifestations of the sick spirituality of individuals and groups who are insatiable and become the social sin of the nation. The cancer of corruption has always eaten away at the body of the state which gradually results in the state losing its marwah (self-esteem) and ability to protect (its citizens).[3, 4]

In relation to corruption committed by officials or rulers The Latina Proverbia (Latin proverb) says corruptio optima pessima which means that corruption committed by high-ranking officials is the ugliest, or the ugliest depravity is depravity committed by the higher-ups, or *optimi corruption pessima* [5]which means that corruption of the leaders is the most costly crime. [6]

The absence of the notion of abusing authority in criminal law khsusunya in the law of corruption is a legal reality, it is recognized and supported by koruspi criminal law experts such as Indriyanto Senoaji said; "The notion of abuse of "abuse of authority" in the criminal law of corruption does not have an explicit sense of its nature, explicit meaning clearly meaning or meaning, what is put forward by Indriyanto Senoaji is in line with the opinion expressed by Adam Chazawi who put forward; " As to what is meant by abusing authority there is no further detail in the statute. The condition of non-regulation of a material content of the law further according to Dani Elpah is referred to as the Law in a state of silence ([7,8]*silentio of de wet*). The non-regulation of further explicit definition of abuse of authority in corruption laws is not in line with the impact and classification of corruption crimes as [9]*extra ordinary crimes*.

Government officials or State Administrators who commit corruption according to Artijo Alkotsar are manifestations of the sick spirituality of individuals and groups who are insatiable and become the social sin of the nation. The cancer of corruption has always eaten away at the body of the state which gradually results in the state losing its marwah (self-esteem) and ability to protect (its citizens). In relation to corruption committed by officials or rulers *The Latina Proverbia* (Latin proverb) says corruptio optima pessima which means that corruption committed by high-ranking officials is the ugliest, or the ugliest depravity is depravity committed by the higher-ups or *optimi corruption pessima* which means that corruption of the leaders is the most nista crime (Marwoto, 2006).

M. Hatta Ali stated that in relation to law enforcement related to abuse of authority committed by Government Officials there are 2 (two) perspectives of law enforcement, because in law Number 31 of 1999 concerning the Eradication of Corruption Acts,

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interpreting one form of corruption crime is abuse of authority, while from the perspective of administrative law enforcement in Law Number 30 of 2014 concerning Government Administration, officials who abuse authority must be held legally accountable according to administrative law procedures (Ikatan Hakim Indonesia, 2015).

The essence of any grant of governmental authority to a State Administrative Officer or Government Official is always accompanied by the "purpose and intent" of granting such authority, whether obtained by attribution or obtained by delegation. Thus the exercise of such authority shall be appropriate and in line with the "purpose and intent" of the granting of such authority. In *contrario* if the use of authority by a State Administrative Officer or Government Official is inconsistent with the "purpose and intent" of the granting of authority then the Administrative Officer or Government Official has committed an abuse of authority (*deteournement de pouvoir*) of the state instrument using the authority handed over to him for purposes other than the purpose for which it has been determined.

Indriyanto Senoaji (2019) stated that "The definition of abuse of "abuse of authority" in corruption criminal law does not have an explicit meaning of its nature, explicit meaning clear meaning or meaning, what is stated by Indriyanto Senoaji is in line with the opinion expressed by Adam Chazawi (2016) who put forward; "As to what is meant by abusing authority there is no further information in the statute. The condition of non-regulation of a material content of the law further according to Dani Elpah (2016) is referred to as the Law in a state of silence (*silentio of de wet*). The non-regulation of further explicit definition of abuse of authority in corruption laws is not in line with the impact and classification of corruption crimes as *extra ordinary crimes*.

2. The Development of the Concept of Abuse of Authority

Law Number30 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 Abuse of Authority is a concept that has no scope (non-extension / denotation) or a single concept into a concept that has a scope (extension / denotation) or a plural concept. The expansion of the scope of abuse of authority is described in tabular form as follows: [10]

Table 1: Expansion of the Scope of the Concept of Abuse of Authority

Genus	Species	Sub Species
Prohibition of Abuse of Authority	Prohibition of Exceeding Authority	**a.** Exceeding the term of office or time limit for the enactment of the Authority. **b.** Exceeding the boundaries of the territory of the enactment of authority. **c.** Contrary to the provisions of laws and regulations.
	Prohibition of Mixing Up Authority	**a.** Beyond the scope of the field or material of the Authority. **b.** Contrary to the purpose of the Authority granted
	Prohibition of arbitrary acts.	**a.** No basis of authority **b.** Contrary to the Judgment of the Court which has fixed legal force.

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The expansion (*expantion*) 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 Law of Tyranny 1999/2001, not limited only to a more detailed explanationi. Law Number 30 of 2014 concerning Government Administration is complementary (*le complementarite*) in the application of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning the 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 corruption criminal law regime, both legal regimes are both public laws. The impact of using the concept of abuse of authority by 2 (two) different legal regimes on the same concept/term in the event of a case of abuse of authority is to create a *concurent jurisdiction* between the State Administrative Court and the Corruption Court. *Concurent jurisdiction* over the same material by 2 (two) different judicial institutions.

In relation to cases of abuse of authority, there are not only allusions to the authority to adjudicate, according to Dani Elpah there are 4 (four) kinds of tangents in it, namely:

1. Intersecting of terms/concepts.
2. Intersection of conprehension/ connotation/ Intention (content) of Abuse of Authority.
3. Intersection of *the norm adressat* Abuse of Authority.
4. *Normgedrag*Allusion of Abuse of Authority.

The influence caused by the existence of two legal dichotomies in the settlement of cases of scientific abuse of authority can have two consequences: *first* on the same case, but being carried out by two different legal domains can produce different verdicts, *secondly* it creates difficulties in achieving a truth (*the objectivity*) which is comprehensive. The issue also creates legal uncertainty in law enforcement against cases of abuse of authority by officials.

The description above shows that there is 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 authority, so Robert Klitgard formulated corruption using the propositions in modern logic as follows:

$$C = M + D - A$$

Description: C (*corruption*) ---------------concept in criminal law

M (*monopoly power*) ------the concept of administrative law

D (*disceration by official*) ----------- the concept of administrative law

A (*accountability*) ---------- the concept of administrative law

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The propositions of the symbol if translated in the propositions of the sentence into corruption can occur if there is a monopoly of power and there is discretionary authority of officials in the exercise of power and discretion there is no accountability.

Avoiding a conflict of authority to adjudicate the Supreme Court issued Supreme Court Regulation No. 4 of 2015 concerning Guidelines for The Assessment of Elements of Abuse of Authority which determines in Article 2 paragraph (1) The court has the authority to receive, examine, and decide applications for judgment whether or not there is abuse of authority in the Decisions and/or Actions of Government Officials before criminal proceedings. Subsection (2) the new court shall be authorized to receive, examine, and decide the assessment of the application referred to in subsection (1) after the supervision of the government's internal supervisory officer.

Circular Letter of the Supreme Court of the Republic of Indonesia Number 03 of 2015 concerning the Implementation of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties, in letter A of the Criminal Chamber Law Formulation number 2 Tangent Points 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 authority by government officials. When the corruption case process is running and an application is also submitted about the presence or absence of an element of abuse of authority to the State Administrative Court, the process of examining corruption criminal cases continues, while the application must refer to PERMA Number 4 of 2015 concerning Guidelines for The Assessment of Elements of Abuse of Authority.

The provisions of Article 2 paragraphs (1) and (2) of Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Beracara 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 (20 of Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Beracara in the Assessment of Elements of Abuse of Authority, the level is lower (*inferior*) when compared to the norms of Article 21 paragraph (1) of Law Number 30 of 2014 concerning Government Administration (*superior*). In consideration of considering and remembering Supreme Court Regulation No. 4 of 2015 concerning Guidelines for Beracara in the Assessment of Elements of Abuse of Authority, it expressly points to Article 21 of Law Number 30 of 2014 concerning Government Administration as the basis.

Judging from the theory of the level of legal norms (*stufentheori*) as proposed by Hans Kelsen and the two-face theory (*das doppelte rechtsantlitz*) of Adolf Merkl, then the lower (*inferior*) norm should not conflict with the higher norm (superior), the lower norm (*inferioir*) should not expand (*expantion*) the higher norm (*superior)* and lower (*inferior*) norms should not narrow (*retriction*) limiting higher (superior) norms. The principle in the statute says *lex superior derogate legi inferiori* which means that the law of a higher degree trumps the law of a lower degree.

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After the enactment of Law Number 30 of 2014 concerning Government Administration, especially Article 21, there have never been corruption cases filed by a special Public Prosecutor concerning charges against Article 3 of Law 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption has been tested first regarding the presence or absence of an element of abuse of authority by the State Administrative Court. This situation shows that in the application of laws and regulations are faced with two things, namely "*practicality" (validity*) and usefulness (*efficacy*), the power of practice is associated with a validity if the norm is formed by a higher norm or by an authorized institution, while the usefulness is related to whether the norm is obeyed or not.[11]

2. Reconstruction of the Concept of Abuse of Authority in Law Number 30 of 2014 concerning Government Administration

Positive law has abandoned the concept of Abuse of Authority as referred to in Article 53 paragraph (2) letter b of Law Number 5 of 1986 concerning the State Administrative Court, namely by repealing these provisions based on Law Number 9 of 2004 concerning Amendments to 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 The Administrative Court is now a history of laws (*historical wet*), and has again become a principle, namely the principle of prohibition of abuse of authority (*detournement de pouvoir*). As a principle, the working power is *indirect werking* .

After 9 (nine) years since the repeal of the norm 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 State Administrative Courts through law, a reconstruction of the concept of Abuse of Authority was carried out, namely with the enactment of Law Number 30 of 2014 concerning Government Administration on October 17, 2014.

Reorganization (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 Government (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 implementation 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 must be based on laws and regulations and prohibitions on abusing authority in determining and/or carrying out Decisions and/or Actions as referred to in Article 8 paragraph (2) point b, Article 9 paragraph (1), and Article 17 paragraph (1) of Law Number 30 of 2014 concerning Government Administration.

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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 on Decisions and/or Actions carried out in an abuse of authority as stipulated in Article 19 of Law Number 30 of 2014 concerning Government Administration.
6. Supervision of the prohibition of abuse of authority 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 there is no element of abuse of authority committed by Government Officials as stipulated in Article 21 of Law Number 30 of 2014 concerning Government Administration

Against 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 any abuse of authority committed 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 Tipikor Judge at the Mataram District Court, the Pontianak District Court has never had corruption cases filed by a special Public Prosecutor concerning charges against Article 3 of Law 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption have been tested, especially formerly regarding the presence or absence of an element of abuse of authority by the Administrative Court. This situation shows that in the application of laws and regulations are faced with two things, namely "*practicality" (validity*) and usefulness (*efficacy*), the power of practice is associated with a validity if the norm is formed by a higher norm or by an authorized institution, while the usefulness is related to whether the norm is obeyed or not.

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

First; maintain the purity of the purpose for which the authority is exercised by the Government Officer in accordance with and in line with the purpose of the grant of authority itself.

Secondly; the scope of the use of authority is materially limited to the scope of the specific field intent that has been determined.

Third; as a guiding norm or guiding star for Government Officials in exercising authority to be and remain in accordance with the purpose for which the authority is granted

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C. CONCLUSION

The term "abuse of authority" is used by 2 legal regimes, namely by the administrative law regime and by the criminal law regime of corruption, both legal regimes are both public laws. This led to concurent jurisdiction between the Administrative Court and the Corruption Court. Abuse of authority by Government Officials is a form of corruption as specified in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

The non-regulation of explicit or unregulated further by the criminal law, especially the corruption crime regarding the meaning of the element of "abuse of authority" as a bestandle delict element in the practice of the Corruption Crimes Court when considering the definition of "abusing authority" of Corruption Judges refers to Article 53 paragraph (2) sub b of Law Number 5 of 1986 concerning State Administrative Courts, namely, The State Administrative Agency or Officer at the time of issuing the decision referred to in paragraph (1) has used its authority for other purposes of the purpose of granting such authority, which in fact constitutes an administrative law regime.

Abusing Authority as the core of delik (bestandle delict) in the formulation of norms Article 3 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes should explicitly have the meaning further regulated in the law, this is in accordance with the principles in criminal law the formulation of norms must be lex certa (clear and unequivocal), and criminal law norms must be written (lex scripta), Because criminal law can reduce, deprive people of their freedom of freedom, and even deprive people of their right to life.

The essence of the concept of 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 in accordance with the purpose and intention of granting authority. The norms contained in the prohibition of Abuse of Authority are the guiding norms or guiding stars so that Government Officials in the use of Authority remain in the purpose and intention of granting authority.

Notes

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