IOSR Journal of Humanities And Social Science (IOSR-JHSS)
Volume 26, Issue 9, Series 6 (September. 2021) 08-14
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

The Nature of Restrictions on State Administration Law on Corruption Crimes of Public Officials Due to Abuse of Authority

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ABSTRACT
The purpose of analyzing Limitation of Administrative Law Against Abuse of Authority in *Corruption.* The type of research used in this research is normative legal research or doctrinal legal research. The results of the study, *First, the* nature of the element of abuse of authority has similarities with the element "against the law" in the Corruption Eradication Act, which is both formally and materially against the law. The research recommendation is, the presence of Law Number 30 of 2014 should be able to become a benchmark for KPK investigators not to arrest the investigation of the defendant before the decision from the State Administrative Court, it is also necessary for the Supreme Court to issue a PERMA which contains provisions regarding the necessity of law enforcement officers comply with the decision of the Administrative Court which states that a Government Official has no abuse of authority not to proceed to criminal proceedings**.**

KEYWORDS: Corruption Crime; Abuse; Authority

Date of Submission: 08-09-2021 Date of Acceptance: 23-09-2021

I. INTRODUCTION

Discusses state policy (staatsblad), abuse of authority *(détournement de pouvoir)* which is a discussion of State Administrative Law, which is then used by Criminal Law, for example, contained in the element of "abusing authority" (Article 1 paragraph (1) b of Law Number 3 the Year 1971 in conjunction with Article 3 of Law Number 31 of 1999), the element of "against the law" (Article 1 paragraph (1) letter an of Law Number 3 of 1971 in conjunction with Article 2 paragraph (1) of Law Number 31 of 1999), the element of "may harm the state finances or the state economy" Article 2 paragraph (1) of Law Number 31 of 1999 jo. Law No. 20 of 2001. If you look at the characteristics and modus operandi of a criminal act of corruption, it can be explained that the tendency of a public official to be exposed to a corruption case may occur because of a criminal act of corruption, one of the characteristics is subterfuge, concealment of reality, misleading and on the dimension of crime that always uses power and on the scope of office and work [1].

Internationally, corruption is recognized as a global phenomenon that is *an extraordinary crime* [2]. Therefore, the handling of criminal acts of corruption requires special handling *(extraordinary measure).* In the context of tackling criminal acts of corruption that permeate all aspects of Indonesian people's lives, law enforcers more often use criminal law as the *primum remedium* to solve these problems. This is certainly contrary to the nature of criminal law itself, which is the *ultimumremedium* or as a last resort / last resort in tackling crime [3].

Lord Acton once said *that "power tends to corrupt, and absolute power corrupts absolutely"* [4]. The relationship between the opportunity to commit a criminal act of corruption and the level of position or power possessed by a person is very closely related. For people who have a high position or rank, the opportunity to commit a criminal act of corruption will be more flexible. This is reflected in the rampant corruption cases committed by public officials recently. However, not all government actions *(bestuurshandelingen)* committed by public officials that harm state finances are criminal acts of corruption. The rampant criminalization of policies carried out by government officials is due to the wrong implementation of material unlawful acts [5].

The rise of criminalization of policies carried out by government officials is due to the passive implementation of material unlawful acts. Based on this, on October 17, 2014, the issuance of Law Number 30 of 2014 concerning Government Administration, which is expected to solve the problem of criminalization of policies that result in disruption of government administration and stagnation of government administration.

The enactment of Law Number 30 of 2014 concerning Government Administration has changed the legal perspective of eradicating corruption, which initially only used a criminal law approach to an administrative approach. Law Number 30 of 2014 concerning Government Administration confirms that administrative errors that result in state losses that have been subject to criminal acts of corruption due to unlawful acts and state losses must be reviewed. The enactment of Law no. 30 of 2014 concerning Government Administration, has changed the legal view of eradicating corruption, which initially only used a criminal law approach to an administrative approach.

Law No. 30 of 2014 concerning Government Administration confirms that administrative errors that result in state losses that have been subject to criminal acts of corruption due to unlawful acts and state losses must be reviewed. One form of maladministration related to corruption is "abuse of authority".

The element of "abuse of authority" is contained in Article 3 of Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the Crime of Corruption. In its development, the element of "abuse of authority" is not only contained in Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the Crime of Corruption, but it is also contained in Article 17 of Law no. 30 of 2014 concerning Government Administration [6].

Doctrinally, here there are aa *blurred lines vague* or interpretation regarding the element of "abuse of authority" which is a legal act that belongs to the realm of criminal law *(wederrechtelijkheid)*, or only an act of maladministration which is the domain of administrative law, the settlement of which is using administrative procedures following the provisions of the Law. Law Number 30 of 2014 concerning Government Administration.

In several cases involving regional heads or other officials, there are many cases where the legal sanctions for state administration have been fulfilled, but the criminal law then based on its authority considers that the legal sanctions for state administration do not have permanent legal force when faced with a crime. Therefore, what happens to officials or government administrators in the regions then places the position of state administrative law sanctions having no consequences even though they have been or have not been implemented.

In addition, several incidents in Indonesia, some things are done by regional heads who are faced with decisions or sanctions such as returning positions that were born by PT TUN and then not being carried out or followed up by the regional head who has been given the sanction. It then gives the view that sanctions from state administrative law have no legal force or do not have sanctions that have an impact on whether or not a State Administration decision is implemented or not.

II. RESEARCH METHODS

This research is legal. The type of research used in this dissertation is normative law research. Normative legal research examines the law that is conceptualized as an applicable norm. The applicable legal norms are in the form of written positive legal norms or rules formed by statutory institutions, codification, laws, government regulations and so on. This type of research is commonly referred to as dogmatic studies or what is known as *doctrinal research* [7]. The doctrinal type of research is similar to the Normative Law research type. According to SoetandyoWignjosoebroto, doctrinal research consists of Research that seeks to inventory positive law, research in the form of an effort to discover the principles and philosophical foundations (dogma or doctrine) of positive law, and research in the form of an effort to find law in concreto that is feasible to be applied to resolve a problem. certain things.

III. DISCUSSION

Authority or authority *(bevoegdheid)* is the power to carry out certain legal actions. Authority has a very important role in the study of constitutional law and administrative law. According to Abdul Rokhim, authority is an understanding that comes from the law of government organizations, which can be explained as the overall rules relating to the acquisition and use of government authority by public legal subjects in public legal relations [8].

Abuse of authority and abuse of authority are terms born from the doctrine of State Administrative Law and are commonly used in the realm of law. Etymologically, the terms "abuse" and "abuse" come from two syllables "misuse".

Misuse in the form of a noun means the process, method, act of abusing; misappropriation, while "abusing" in the form of a verb is interpreted as doing something inappropriately; pervert. The term abuse/abuse in Dutch terms is known as misbruik which has similarities to the term *missbrauch* in German or *misuse* and *abuse* in English terms whose meaning is always associated with negative things, namely diversion. So between the terms "abuse" and "abuse" there is no difference, "abuse" refers to the process, method, action, while "abusing" refers to the action or implementation [9].

Every government authority or power, according to the teachings of state administrative law is limited by the existence of the principle of speciality*(specialiteitsbeginsel)*, the principle of legality (*wetmatigheid van*

bestuur) and the General Principles of Good Governance. So if the government or state apparatus commits an act that is contrary to these principles, then the act is a form of abuse of authority *(détournement de pouvoir)* [10]. In the same context, criminal law also has normative instruments that limit the free use of power by the holder of authority, by formulating elements of abuse of authority. Furthermore, the act of abusing the criminal law put authority as a form of corruption that has exceptional properties *(extraordinary crime) [11]*.

The problem is that the two concepts are currently entering a dimension that is difficult to distinguish. Furthermore, these two concepts that apply in different legal domains create difficulties in their application. Regarding this issue, Indrianto Seno Aji argues that "with all the technical difficulties in the sentencing process, the concept of abuse of authority enters the *grey area*" [12]. That is, which one is intended to be used as a tool to determine and assess deviations committed by the government/state apparatus, whether by using or at least prioritizing administrative law instruments or otherwise using or at least prioritizing criminal law instruments.

In the development of criminal law (policy) politics in Indonesia, it appears that the legislators have taken steps to prioritize criminal law instruments as a tool to test deviations committed by the government [13]. This can be understood from the formulation of the offence of abuse of authority as a criminal act of corruption, as formulated in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

The formulation of abuse of authority as a criminal act of corruption by legislators is certainly not without logical considerations and reasons. In the Elucidation of the Law on the Eradication of Criminal Acts of Corruption, it is stated that "…the existence of acts of corruption has caused enormous losses to the state which in turn can have an impact on the emergence of crises in various fields…". Furthermore, the explanation of this law also states as follows.

To reach various modus operandi of irregularities in state finances or the state economy which are increasingly sophisticated and complicated, the criminal acts regulated in this law are formulated in such a way as to include acts of enriching oneself. or another person or a corporation is "unlawfully" in the formal and material sense. With this formulation, the notion of violating the law in corruption can also include despicable acts which, according to the feeling of justice of the community, must be prosecuted and punished.

From this explanation, it can be seen that the existence of "unlawful" acts in both informal and material terms is the focus of emphasis on the formulation of corruption offences "so that they can reach various modus operandi of irregularities in state finances or the state economy". However, this explanation does not provide complete information regarding the unlawful nature of the element of the offence of abuse of authority regulated in this law. The explanation only provides information that according to criminal law, abuse of authority is an act against the law. Whether it is an unlawful act in a formal sense or a material sense, there is no further explanation.

On the other hand, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 formulates the element of "against the law" in a separate article, namely in Article 2, this provides an understanding that it is as if the abuse of authority referred to in a criminal act of corruption not or at least different from the unlawful act as regulated in Article 2 [14].

Such a view according to the author is not correct, because as stated above, that the abuse of authority according to the concept of state administrative law is essentially an act against the law. In connection with the scope of the nature of the unlawful act is even very broad, Indrianto Seno Adji stated that "the scope of the concept of *"onrechtmatigedaad"* in the realm of civil law has the same meaning as the concept of *"materiëlewederrechtelijkheid"* or the nature of against material law in criminal law.

In essence, acts against the law in the two teachings occur not only against written laws but also against unwritten laws. Thus, an abuse of authority, whether viewed from the point of view of state administrative law or according to the teachings of unlawful nature in criminal law, is a form of unlawful act both formally and materially [15]. Specifically viewed as a criminal act, "against the law" is an act of a parenting nature *(genus delicti)* while "abuse of authority" is a derivative of the parent act *(species delicti).*

This conclusion is also in line with what was stated by Barda Nawawi Arief as follows:

Judging from the historical, sociological, substantial background and basic ideas contained in the "explanation of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Acts of Corruption crime, the meaning of being against material law in the Act is not only focused on the criminal act of corruption in Article 2 (ie "enriching oneself, another person, or a corporation"), but also against criminal acts in Article 3 (namely " abuses the authority, opportunity or means available to him because of a position or position).

From the above opinion, it can be understood that Barda Nawawi Arief does not only view the abuse of authority as an act that is against the formal law alone, but also views that the nature of the abuse of authority is an act that is materially against the law. However, this doctrine is not easy to accept, especially when it is associated with the formulation of offences "against the law" and "abuse of authority" regulated in the Law on

the Eradication of Criminal Acts of Corruption. Regarding "against the law", the Elucidation of Article 2 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 determines as follows:

What is meant by "unlawfully" in this Article includes acts against the law in the formal sense as well as in the legal sense? material, that is, even though the act is not regulated in-laws and regulations, but if the act is considered disgraceful because it is not following the sense of justice or the norms of social life in society, then the act can be punished. In this provision, the word "can" before the phrase "harm the state's finances or economy" indicates that a criminal act of corruption is a formal offence, namely that the existence of a criminal act of corruption is sufficient if the elements of an act that have been formulated are fulfilled, not with the consequences.

From this explanation, it can be seen that the offence "against the law" in the criminal act of corruption has a material and formal nature against the law. While for the offence of "abuse of authority" there is no explanation at all. So that there is no definite measure in criminal law, especially the law on eradicating corruption that can be used to determine and assess an abuse of authority by state apparatus/state administrative officials.

This void of norms ultimately returns the assessment of abuse of authority to the doctrines and teachings in state administrative law. In the perspective of state administrative law, to determine and assess the abuse of authority is grouped into 2 (two) criteria [16]. First, the legality principle is used against the bound authority, which also contains the speciality principle, namely determining and assessing an act of abusing authority based on the provisions of the laws and regulations which are the source and purpose of the authority itself. Second, the free authority is used by AUPB because the principle of legality *(wetmatigheid van bestuur) is* no longer sufficient to be used as the only legality in government actions in Indonesia.

The use of measurement tools for abuse of authority according to administrative law is also still causing debate, whether these two measures can be used in determining abuse of authority as a criminal act of corruption [17]. In addition, the use of these two measures also affects the type of offence of abuse of authority. If the two measuring tools in administrative law are used, then it is clear that the abuse of authority is a form of a criminal act that is formal and material. This is because the abuse of authority does not only occur as a result of a conflict with the principle of legality as written law but also with the AAUPB as an unwritten legal method [18].

This is because the principle of legality *(wetmatigheid van bestuur)* and testing of government actions based on laws and regulations cannot be applied to discretionary government actions *(discretionary power)* or *freiesermessen* and also to policy regulations *(beleidsvrijheid)* [19]. In other words, every free authority of the government cannot be tested *wetmatigheid*, because in essence, it will not find its legal basis in written laws and regulations.

This teaching in turn is indeed used as the main guideline for judges in conducting legal considerations and deciding a case of alleged abuse of authority in a criminal act of corruption. Even further, these considerations include the principles used as a test tool for abuse of authority in the practice of the State Administrative Court, namely: 1. The principle of accuracy; 2. The principle of equality; 3. The principle of prohibition of abuse of authority, and; 4. The principle of arbitrary prohibition.

With such considerations in mind, Nur Basuki Minarno revealed that "there are problems with the interpretation of abuse of authority and the measures used to test it in various court decisions" [20]. The tendency of judges to decide a case of abuse of authority based on the "principle of propriety", "principle of accuracy", and "AAUPB". Thus, very few decisions tend to consider and base on the principle of legality *(wetmatigheid van bestuur).*

From this description, it can be understood that by linking the nature of the offence of "abuse of authority" with the offence of "against the law" in the Law on the Eradication of Criminal Acts of Corruption, as well as the teachings in assessing abuse of authority in the concept of state administrative law the abuse of authority is against the law. the law both formally and materially.

Both after and before the abolition of material lawlessness in criminal law, including in criminal acts of corruption, the offence of abuse of authority as a criminal act of corruption has always invited debate. There are still many problems in the formulation of the element of the offence of abuse of authority as regulated in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The problems as described in the previous discussion should be immediately found a solution to achieve the establishment of the criminal law of corruption itself [21].

The first issue that needs to be addressed immediately is the meaning of the term "abuse of authority" in the criminal act of corruption itself. So from the definition of this definition, it will be easy to determine what size, limit and assessment can be used against alleged abuse of authority.

The form of abuse of authority when referring to the teachings of state administrative law can be classified into 3 (three) forms, namely:

1. Abuse of authority to carry out actions that are contrary to the public interest or to benefit personally group or class interests.
2. Abuse of authority in the sense that the official's actions are properly intended for the public interest, but deviate from the purpose for which the authority is granted by law or other regulations.
3. Abuse of authority in the sense of abusing procedures that should be used to achieve certain goals, but have used other procedures to make it happen.

So far, the definition that has become the reference for the term "abuse of authority" in Article 2 of the Law on the Eradication of Criminal Acts of Corruption is the formulation of the meaning in point 2 as above. Abuse of authority is judged to exist or not based on the achievement or non-achievement of certain goals and objectives that have been determined by a statutory regulation which becomes the legality of that authority. Thus, the abuse of authority in criminal acts of corruption is only limited to government actions that are bound. Meanwhile, discretion is not an abuse of authority as a criminal act of corruption. Because discretionary power is included in the free power that cannot be measured using the principle of legality.

The configuration of the formulation of the offence of abuse of authority as above, in turn, occupies a formal nature. Especially with the abolition of the nature of against material law in criminal law as previously stated. Abuse of new authority is said to occur if there is a violation of the principle of legality. This according to the author is wrong.

As previously stated, the legality principle in state administrative law *(wetmatigheid van bestuur) is* not sufficient to cover all government actions according to the concept of the power-sharing system in Indonesia. That the government does not only have binding/passive power (implementing laws) but also has free power, which means that the actions in exercising that power cannot be measured using mere legality principle institutions.

In this case, the principle applies, namely, if a basic regulation (legality principle) is not following the development of society and the state to determine the existence of an abuse of authority, then the principle of propriety is one of the measures that need to be prioritized in this regard [22]. However, in terms of the use of free power, administrative law also justifies discretionary actions that deviate from the principle of propriety, as long as the act is carried out in a state of necessity, urgency, and has a high urgency.

To avoid the existence of a deviant act that is not covered by the offence of abuse of authority in a criminal act of corruption, it is necessary to determine the criteria and reasons that can underlie the re-enactment of the heaviest and clearest material unlawful nature in acts of corruption, especially abuse of authority. In the author's opinion, to anticipate the weakness of the legality principle *(wetmatigheid van bestuur)* in assessing the abuse of authority, the form of the formulation and the size of the consequences of the perpetrator's actions can be formulated as follows:

1. formal abuse of authority, but if viewed from the point of view of legal interests (which are material in nature) it turns out that the act results in unequal losses or very large losses to society and the state, compared to the profits caused by unlawful acts committed by a person. state apparatus/officials.
2. If there is a material loss that is greater and not balanced with the benefits received by the community or the state, as a result of receiving excessive facilities and other benefits by an official or state apparatus. Even if the official or state apparatus does not commit an act that fulfils the formulation of the element of a formiel offence, the purpose of the award is for him to use the power or authority inherent in his position excessively.

The limitation of the scope of the unlawful nature of the material mentioned above, in the opinion of the author, can be the basis for improving the formulation of the offence of abuse of authority in the current criminal act of corruption. Bearing in mind the two formulations above, they do not completely rule out the principle of legality, but rather as an effort to balance the principles of formal and material legality and to create a balance between elements against formal law and elements against material law.

This pattern of the balance of formal and material legality would be in line with the direction of criminal law development in the future. This, as the 2008 RKUHP adheres to the same principle, is that an act that is contrary to the law is not only seen as contrary to formal law but also contrary to material law.

Furthermore, the meaning of “acts that are against the law” in the explanation of the 2008 RKUHP is explained as follows:

What is meant by “acts against the law” is an act that is judged by the community as an act that cannot be done. The determination of conditions contrary to the law is based on the consideration that imposing a sentence on someone who commits an act that is not against the law is considered unfair. Therefore, to be able to impose a sentence, the judge must determine in addition to whether the act committed is formally prohibited by laws and regulations and whether the act is materially also contrary to the law, in the sense of public legal awareness. This must be considered in the decision.

Furthermore, this law requires that legislators in determining actions that can be punished must pay attention to harmony with legal feelings that live in society. This the actions that are prohibited and threatened with punishment will not only be against the laws and regulations but will also always be against the law. This is

based on the fact that generally every criminal act is considered contrary to the law, but in special circumstances according to concrete events, it is possible that the act is not contrary to the law which is only written.

Based on the explanation above, as well as based on the consideration that the principle of legality in criminal law is easily left behind by the dynamics of actions in society, the formulation of actions that are contrary to the law is interpreted as contradicting the law which is both formal and material. This formal and material legality must be balanced and its boundaries clearly defined as described above. Because if not, then later in the implementation level is not as easy as stated in the concept.

Indeed, the approach used in the development of criminal law reform prioritizes a sense of justice in society, even though this orientation will always contradict the principle of legality which always prioritizes legal certainty. In the context of the offence of abuse of authority as a criminal act of corruption, the nature of violating material law only gets theoretical and juridical justification as an unlawful nature which must be functioned negatively. In the sense of continuing to use the principle of legality, which seeks to approach formal justice.

Closing

The essence of the abuse of authority is similar to the element "against the law" in the Law on the Eradication of Criminal Acts of Corruption, namely that they both have anature against the law *formal* and *material*. In terms of the limits of abuse between acts of maladministration and criminal acts of corruption, several parameters can be used, namely in measuring the abuse of authority due to binding authority using the principle *wetmatigheid* (laws and regulations), and if due to the existence of a discretion or free authority, in addition to using the principle of speciality *(specialiteitsbeginsel)* is also used as the general principles of good(*governance algemenebeginselen van behoorlijkbestuur)* based on its effectiveness *(doelmatigheid*) a decision of a public official that has been issued.

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Abdul Ukas Marzuki, et. al. "The Nature of Restrictions on State Administration Law on Corruption Crimes of Public Officials Due to Abuse of Authority."*IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(09), 2021, pp. 08-14.