

Abuse of Authority Corruption Under the Government Administration Act



Putri Sukmiani¹, Handoyo Prasetyo²

^{1,2}Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta

ABSTRACT: Based on the Law Number 30 of 2014 concerning Government Administration, and the Supreme Court regulation have extended the absolute competence of the Administrative Court to examine elements of abuse of authority committed by state officials in carrying out their positions. However, this authority is not the only option given by law in Indonesia, which in addition there is also the authority of the general court to resolve the topic of abuse of authority that causes harm to the country. therefore, there is still ambiguity and overlap in laws related to abuse of authority which causes losses to state finances which ultimately has an impact on legal certainty and justice for related parties. This type of thesis research used normative juridical research that is descriptive. The Data used to answer the problems in this study were secondary data and primary data derived from library research. The results of the study found that the District Administrative Court was authorized to decide related elements of abuse of authority committed by the agency and/or government officials. The analysis of the state administration Case Number: 2/P/PW/2017/PTUN.JBI. not compatible with Perma No. 4 of 2015 because it did not meet the requirements, the new court is authorized to accept, examine, and decide the assessment of the application, after the results of the supervision of the government Internal Audit apparatus (APIP) and the court is authorized to accept, examine, and decide the assessment of the application for assessment of whether or not there was abuse of authority in the decisions and/or actions of government officials before the criminal process. The conclusion obtained was the analysis of the consideration of judges and the decision of the PTUN Jambi was wrong and not in accordance with what was mandated in Regulation No. 4 of 2015 (Perma No. 4 of 2015) on guidelines in the assessment of judicial elements of abuse of authority. It is recommended to the government to harmonize laws and regulations related to abuse of authority both in terms of criminal and administrative aspects of the government in order to achieve regulatory harmony.

KEYWORDS: buse of authority, state losses, optimization of elements of abuse of authority.

INTRODUCTION

Abuse of authority is a topic in administrative law that has many misconceptions about it. In fact, abuse of power is often understood as abuse of resources and opportunities, violation of the law or even a broad definition that includes any activity that violates any law or regulation in any area. Abuse of authority (detournement de pouvoir) is the improper use of power. In this case, the official abuses his power by using it for reasons other than those that have been assigned to him.

Concerns are often overlooked in providing public services to the community when choices and activities that are suspected of harming the state and classified as criminal offenses, limit the inventiveness and innovation of government employees in governance. As has happened in the past, many state officials are involved in illegal acts of corruption as a result of their choices and actions in making decisions that lead to acts of abuse of power.

The amount of authority in taking a decision of the state administration (freies ermessen) often makes state officials faced allegations of abuse of authority that can refer to actions that cause harm to the country. "Detrimental to state finances " factor is often used as the first presumption to accuse a state organizer does a corruption.

Acts of abuse of authority by state officials, as stated in Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 on the eradication of corruption (corruption law), forcing criminal judges to interpret the term "abuse of authority" in his own way. To this day, criminal law has not imposed restrictions on the element of "abuse of power", giving rise to discrepancies in assessing and assessing the existence of abuse of authority. In addition, the Administrative Court (PTUN) is authorized under the UUAP to receive, analyze, and determine whether there is an element of abuse of authority in the decisions and/or actions of State administrators.

Law Number 30 of 2014 concerning Government Administration, and the Supreme Court regulation have extended the absolute authority (absolute competence) of the State Administrative Court to examine elements of abuse of authority committed by state officials

Abuse of authority is a topic in administrative law that has many misunderstandings due to misinterpretation in practice, so it often has an impact on errors in carrying out the position so that it exceeds the authority possessed and decisions and/or actions taken

Abuse of Authority Corruption Under the Government Administration Act

beyond the position. In addition, the difference in interpretation of the elements of abuse of authority between criminal law and state administration has an impact on the overlap of the rule of law and how to interpret which leads to the non-achievement of legal objectives, namely benefit and justice for the parties concerned.

As for this thesis research would examine the related elements of abuse of authority corruption under the law on government administration in Jambi Administrative Court decision Number 2/P/PW/2017 / PTUN.JBI. Therefore, this thesis research needed to be done by referring to the Supreme Court Regulation No. 4 of 2015 on guidelines for proceedings in the assessment of elements of abuse of authority, with the title of thesis research "abuse of authority corruption based on Government Administration Law."

The formulations of the problem in this study are:

1. How is the consideration of judges related to elements of abusing authority in imposing sentences in state administration cases Number : 2/P/PW/2017/PTUN.JBI?
2. How to optimize the harmonization of the notion of abusing the authority used by Criminal Law with State / Government Administrative Law?

In this study, researchers used the following research methods:

1. Nature and types of research

This type of legal research is a type of normative legal research or doctrinal legal research. Doctrinal research is a legal research that is prescriptive.

The nature of the research carried out is prescriptive research, which is a study that aims to get suggestions on what to do to overcome certain problems.

The method of this research approach was to use the legal approach, conceptual approach, and case approach.

Data Source

The Data used are primary law, secondary law materials, and tertiary law materials.

a. Primary Legal Materials

- 1) Law Number 31 of 1999 Jo Law No. 20 of 2001 on corruption.
- 2) Law Number 30 of 2014 on Government Administration (UUAP)
- 3) Law Number 28 of 1999 on State administrators who are clean and free from corruption, collusion, and nepotism.
- 4) PERMA Number 4 of 2015 on procedural guidelines in the assessment of elements of abuse of authority.
- 5) Supreme Court Regulation (PERMA) Number 4 of 2015 on guidelines in the assessment of procedural elements of abuse of authority

b. Secondary Legal Materials

Are legal materials that explain primary legal materials such as books, magazine and newspaper articles, internet articles, and papers related to the topic of this writing.

c. Tertiary Legal Materials

Are materials that can clarify an issue or a term found in primary and secondary legal materials such as legal dictionaries and other language dictionaries. Legal publications include textbooks, legal dictionaries, legal journals, and commentaries on court rulings.

1. Legal Materials Analysis Techniques

This research is a data analysis technique with deductive logic. According to Jhony Ibrahim, quoting Bernard Arief Sidharta, deductive logic is a technique to draw conclusions from general things into individual cases. In this study, the sources of law obtained by inventory as well as reviewing research from library studies, legislation and documents that can help interpret the norms to answer the problems studied. The last stage is to draw conclusions from the processed sources of law.

DISCUSSION

A. Abuse Of Authority As A Competence Of Administrative Justice

Abuse of authority is when an authority by the official concerned is used for a purpose that is contrary to or deviates from what is meant or intended by the authority as established or determined by the law (in the broadest sense, in a material sense) in question. If a government agency is given the power to give a decision on a matter then this power should not be used for other purposes, unless the purpose/purpose of the power is given. The institution that is authorized to conduct the assessment process of elements of abuse of authority is the State Administrative Court.

1. Absolute competence of the Administrative Court in resolving acts of abuse of government authority

The absolute competence of the State Administrative Court is regulated in Article 47 of Law Number 5 of 1986 concerning the State Administrative Court (PTUN law) which reads:

"The court has the duty and authority to examine, decide and resolve administrative disputes".

the dispute or subject matter examined and tried by the State Administrative Court is a matter concerning the administrative process of a determination between a government legal entity or state administrative official and an individual or legal entity. A person who feels that his interests are harmed by an administrative decision may file a written claim with the competent court demanding that the disputed administrative decision be declared null and void, with or without a claim for gati loss and/or rehabilitation

Abuse of Authority Corruption Under the Government Administration Act

One of the grounds for the lawsuit is the abuse of authority carried out by the TUN agency/official. Thus, since the beginning of the establishment of the Administrative Court, the principle of Prohibition of abuse of authority has been used as a test tool (toetsingrecht) for judges in assessing the legal validity of an administrative decision

Now since the enactment of Law Number 30 of 2014 concerning Government Administration, the absolute competence of the Administrative Court has expanded from what was originally limited to administrative decisions (called KTUN) or (beschikking), to increase with the abuse of authority and its testing in the Administrative Court

2. The concept of testing elements of abuse of authority in Government Administration Law

Abuse of authority in the Government Administration Act is also regulated as a ban on abuse of authority. In essence, with this new competence, it is regulated materially the Prohibition of abuse of authority or the normativization (principle) of the Prohibition of abuse of authority. This regulation is contained in Article 17 and then detailed in Article 18 and in Article 10 paragraph 1 letter e, namely:

1. Prohibition of exceeding authority, including: exceeding the term of office or the time limit of validity of authority; exceeding the limits of the territory of validity of authority; and/or contrary to the provisions of laws and regulations.
2. Prohibition of mixing authority, including: outside the scope of the field or material authority granted; and/or contrary to the purpose of the authority granted.
3. Prohibition of acting arbitrarily, namely: doing actions without the basis of authority; and / or contrary to court decisions that have permanent legal force.
4. The principle of not abusing authority is a principle that requires every body and/or government official not to use its authority for personal or other interests and not in accordance with the purpose of granting such authority, not to exceed, not to abuse, and / or not to mix up Authority.

Related to the regulation on the expansion of the competence of testing the elements of abuse of authority, the Supreme Court Regulation Number 4 of 2015 on procedural guidelines in the assessment of elements of abuse of authority.

State financial losses in acts of abuse of authority

State financial loss is any loss of all state property in any form, whether separated or not separated, including all parts of state property and all rights and obligations arising from being in the control, management, and accountability of state institution officials, both at the central and regional levels, BUMN/BUMD, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the state.

Every agency and / or government official who has been given the authority to manage state finances, certainly has obligations and responsibilities for the tasks that have been given to him. Legal responsibility in management. state finances can be interpreted if there is a loss in the financial management of the country.

In the Government Administration Law, it is more specifically distinguished, which is the responsibility of the individual and which is the responsibility of the agency. The return of losses is the responsibility of government bodies if there is no element of abuse of authority. If there is an element of abuse of authority, it will be the responsibility of government officials to refund the state losses for acts of abuse of authority as described above, if there is an administrative error that causes state financial losses, government agencies or government officials are required to refund state financial losses no later than 10 (ten) working days starting from the decision and publication of the supervision results

B. Analysis of the decision of the Jambi State Administrative Court Number 2/P/PW/2017/PTUN.JBI.

1. Consideration of judges related to elements of abuse of authority in imposing sentences in state administration cases Number: 2/P/PW/2017/PTUN.JBI.

The applicant in the state administration Case Number: 2/P/PW/2017/PTUN.JBI. is S, as head of the Department of Food Crops, Horticulture and food security Tebo regency, Jambi province. The object of the request is :

1. Addendum I Letter of agreement for additional contract time to carry out the construction work package for the construction of a reservoir in Sungai Abang Village, District VII, Tebo regency.
2. Official memorandum number 521.21/247/ IV/DPTP / 2016 dated May 16, 2016 regarding the application for examination of the construction of a reservoir in Sungai Abang village for Fiscal Year 2015.

The applicant submitted an application to the chairman of the Jambi State Administrative Court or the panel of judges who examine and adjudicate the application to declare that the act of extending the contract time by making an Addendum I Letter of agreement on the additional contract time to carry out the construction work package Embung Sungai Abang Kec. VII, Koto Kabupaten Tebo number: 521/263/SP/IV/DPT / 2015, dated December 21, 2015 including the payment method that had been made by the applicant S is a policy (discretion) and was not an act of abuse of authority.

Before the passage of the examination at the administrative court, previously there has been a pre-trial decision Number: 1 / Pid. Pre/2017/PN.Mrt, dated November 27, 2017 issued by the Tebo District Court. That based on all considerations regarding the object of the application 1 (one) and 2 (Two), the panel of judges concluded and believed that the applicant a quo did not do abuse of authority as referred to Article 17 and Article 18 UUAP, so that the applicant's application must be declared legally justified and must be fully granted

Abuse of Authority Corruption Under the Government Administration Act

In the decision, there was a problem in testing the elements of abuse of authority against the decision of the Jambi administrative court, namely whether it was in accordance with the principles and norms in administrative law. As described in Perma No. 4 of 2015, there are several application requirements so that a dispute of abuse of authority can be tried and examined by the Administrative Court, namely :

1) the new court is authorized to receive, examine, and decide the assessment of the application, after the results of the supervision of the government Internal Audit apparatus (APIP).

2) The Court is authorized to accept, examine, and decide on the assessment of the application for assessment of the presence or absence of abuse of authority in the decisions and/or actions of government officials prior to criminal proceedings.

That according to the author's analysis, the consideration of judges and decisions of the PTUN Jambi was erroneous and not in accordance with what was mandated in Regulation Number 4 of 2015 (Perma Number 4 of 2015) on guidelines in the assessment of judicial elements of abuse of authority. That was because the application for abuse of authority testing was submitted on November 17, 2017, and at the time the application was submitted there was already a criminal process, namely the existence of an investigation warrant number Sprin.Sindik/58a/VII/2016 / Reskrim dated July 12, 2016 and Decree Number S.Tap/41/XI/2017 / Criminal Investigation on the determination of suspects. So if it referred to Article 2 Paragraph (1) Perma number 4 of 2015 which states that the new court is authorized to accept, examine, and decide on the application for assessment of whether or not there is abuse of authority in the decisions and/or actions of government officials before the criminal process.

The process that had been running in the general court can no longer be tested in the realm of administrative law, so the Administrative Court judge was not authorized to declare that the criminal process has been stopped based on the General Court decision, because related to the pre-trial decision, it still opens up opportunities for the issuance of New Sprindik or determination of new suspects. In addition, if viewed in terms of time, the application was submitted on November 17, 2017, while the pre-trial decision was dated November 27, 2017. So, Jambi Administrative Court judges should not need to do a different interpretation (*argumentum a contrario*) or make legal discoveries (*rechtsvinding*) , because the normative provisions are clear and concrete as referred to in the Government Administration Act and Perma No. 4 of 2015

2. Optimization of the notion of abusing the authority used by Criminal Law with State / Government Administrative Law

As for the optimization of the elements of abuse of authority used, it should be harmonized with the legislation related to the assessment of elements of abuse of authority both in terms of criminal and government administration. As one of the purposes and purposes of the promulgation of UUAP. In order to follow up the legal policy as contained in the UUAP, several concrete steps were recorded by the government, including the issuance of Presidential Instruction No. 1/2016 which basically the president instructed the prosecutor (Attorney General) and the Police (Chief of police) to "give priority to the government administration process" in examining and resolving reports of abuse of authority in the implementation of National Strategic Projects before conducting the investigation process.

The provisions of Article 21 of the Government Administration Law can be used to help provide certainty from the beginning to not reach the crime of corruption. The parameters used in the test by the TUN Court were very clear and somewhat different from those used in corruption cases. For this reason, the test was more helpful for solving administrative problems. Testing whether there is abuse of authority decisions of government officials carried out by the administrative court based on Article 21 of the Government Administration Law with a simpler process, a clear size and a limited period of time, so as to help provide certainty whether there was abuse of authority both from the material and the time of settlement at the Administrative Court.

CLOSING

A. Conclusion

That according to the author's analysis, the consideration of judges and the decision of the PTUN Jambi was less precise with what was mandated in Regulation No. 4 of 2015 (Perma No. 4 of 2015) on guidelines in assessing the elements of judicial abuse of authority in which case the criminal process had been running in advance so that it violated the requirements as contained in the Supreme Court regulation.

B. Suggestions

It is recommended to the government to harmonize laws and regulations related to abuse of authority both in terms of criminal and in terms of government administration in order to achieve regulatory harmony

REFERENCES

A. Books

- 1) Adji, Indriyanto Seno. (2009). Corruption, State Apparatus Policies and Criminal Law. Jakarta: Edited Media.
- 2) Amiruddin and H. Zainal Asikin. (2004). Introduction to Legal Research Methods, PT. RajaGrafindo Persada, Jakarta.
- 3) Atmosudirjo, Prajudi. (2008). State Administrative Law. Indonesian Ghalia. Jakarta
- 4) Budiardjo, Miriam. Fundamentals of Political Science, (1998), Gramedia Main Library, p. 35-36. Jakarta

Abuse of Authority Corruption Under the Government Administration Act

- 5) Hadjon Philipus M. et.al. (2011). Administrative Law and Corruption, Yogyakarta: Gadjah Mada University Press.
- 6) Hadjon Philipus M. et.al. (2012). Administrative Law and Good Governance. Jakarta: Trisakti University Publisher.
- 7) Please, Yahya. (2006). Civil Procedure Law Concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions, Fourth Printing, Jakarta: Sinar Graphic.
- 8) HR, Ridwan. (2006). State Administrative Law. Jakarta: RajaGrafindo Persada.
- 9) Johnny Ibrahim. (2013). Normative Law Research Theory and Methodology, Banyumedia Publishing, Malang.
- 10) Marbun. S.F., Law, (2013). State Administrative Law II, First Printing, Yogyakarta: FH UII Press.
- 11) Minarno, Nur Basuki. (2011). Abuse of Authority in the Management of Regional Finances with Implications for Criminal Acts of Corruption. Surabaya: Laksbang Mediatama.
- 12) Mukti Fajar and Yulianto Achmad. (2010). Dualism of Normative & Empirical Legal Research, Yogyakarta: Pustaka Pelajar.
- 13) Permana, Tri Cahya Indra. (2016). A Critical Note on the Expansion of Authority to Adjudicate State Administrative Courts. Yogyakarta: Genta Press.
- 14) Peter Mahmud Marzuki. (2019). Legal Research, Prenadamedia Group, Jakarta.
- 15) Saputra, M. Nata. (1988). State Administrative Law. Jakarta: Rajawali Press
- 16) Soemitro, Rochmat. (1976). Administrative Justice Issues in Tax Law in Indonesia. Bandung. PT Eresco.
- 17) Supandi. (2016). State Administrative Court Law. Bandung: Alumni.

B. Journals

- 1) Antoro, Bibianus Hengky Widhi. 2020. Testing on Abuse of Authority in PUTN. Judicial Journal. Volume 13 No.2 (August 2020)
- 2) Yulius, "Thoughts and Regulations on Abuse of Authority in Indonesia", Journal of Law and Justice, Volume 4, Number 3, 2015,
- 3) Aman Susanto, Testing on Abuse of Authority in the Administrative Court after the enactment of Law no. 30 of 2014 concerning Government Administration, Thesis, Islamic University of Indonesia, 2017
- 4) Lizamul Umam, Absolute Competence of State Administrative Courts in the Assessment of Elements of Abuse of Authority, Thesis, Andalas University, 2017
- 5) Arma Devi, "Abuse of authority in the perspective of Corruption Crimes", Jurna Recthen, Vol 1, Number 1, 2019

C. Internet

- 1) Online Law, "The Meaning of Abusing authority in a criminal act of corruption", <https://www.Hukumonline.com/klinik/detail/ulasan/lt54fbbf142fc22/arti-mesalahgunakan-wetangan-dalam-tindak-pidana-korupsi/>, accessed on 18 November 2021.
- 2) Jakarta State Administrative Court, "History of the Court", https://ptun-jakarta.go.id/?page_id=14, accessed on 24 May 2022.

D. Dictionary

- 1) Arifin, Winarsih. and Farida Soemargono. (2001). Indonesian French Dictionary, Dictionnaire francais indonesie. Printing 4, Jakarta: P.T Gramedia Pustaka Utama.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.