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The Futuristic Concept of Abuse of Authority in Criminal Acts of Corruption

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ABSTRACT: As a concept, the term "abuse of authority" is used by 2 (two) legal regimes, namely by the administrative law regime and by the criminal law regime of corruption, both legal regimes are public law. The impact of using the concept of abuse of authority by 2 (two) different legal regimes on the same concept/term in case of abuse of authority is the birth of concurrent jurisdiction between the State Administrative Court and the Corruption Court. Concurrent jurisdiction over the same material by 2 different judicial institutions. After the enactment of Law Number 30 of 2014 concerning Government Administration, especially Article 21 according to the author's observation, there have never been cases of corruption cases filed by the special Public Prosecutor concerning the indictment of Article 3 of Law 20 of 2001 concerning Amendments to Laws -Law Number 31 of 1999 concerning the Eradication of Corruption has been tested beforehand regarding whether or not there is an element of abuse of authority by the State Administrative Court. This situation shows that the application of laws and regulations is faced with two things, namely "performance" (validity) and usability (efficacy). While usability is related to whether the norm is adhered to or not.

KEYWORDS: Futuristic, Concepts, Abuse of Authority, Corruption Crimes and Government Administration Laws.

1. INTRODUCTION

Ontologically or the essence of every grant of government authority to a State Administrative Officer or a Government Official is always accompanied by the "purpose and intent" of the granting of such authority, whether obtained by attribution or obtained by delegation. Thus, the implementation of the authority must be in accordance with and in line with the "purpose and purpose" for which the authority is given. On a contrario basis, if the use of authority by a State Administrative Officer or Government Official is not in accordance with the "purpose and intent" for which the authority is given, the State Administrative Officer or Government Official has abused his authority ((*detournement de pouvoir)* that is, the state's instrument uses the authority delegated to it for purposes other than those that have been determined. Abuse of authority has become the prohibition norm in Law Number 30 of 2014 concerning Government Administration as referred to in Article 8 paragraph (3), which stipulates that Government Administration Officials are prohibited from abusing their authority in determining and/or carrying out decisions and or actions. An explicit prohibition on abuse of authority has also been regulated as a legal norm in Law Number 5 of 1986 concerning State Administrative Courts, namely in Article 53 paragraph (2) sub b which stipulates as follows: The reasons that can be used in the lawsuit as referred to in paragraph (1) are; The State Administrative Decision being sued is contrary to the applicable laws and regulations, the State Administration Agency or Official at the time of issuing the Decision as referred to in paragraph (1) has used its authority for other purposes than the purpose for which the authority was given and the Agency or Administrative Officer The State at the time of issuing or not issuing the decision as referred to in paragraph (1) after considering all the interests involved in the decision should not arrive at making or not making the decision. In order to carry out the mission to realize a just and prosperous society, Government Officials carry out functions in the form of regulation, service, development, empowerment, and protection can also be an inhibiting factor, namely in which acts of corruption are detrimental to state finances and/or the economy. the state and injure the dignity of the State Civil Apparatus. One of the subjects or perpetrators of criminal acts of corruption is Government Officials and/or State Administrators in the form of acts of abuse of authority. According to Sutherland, every corruption case must involve an official who occupies a certain position in an agency. Certain positions are related to the position, in the position there is inherent power. Similarly, Lord Acton stated "power tends to corrupt and absolute power corrupts absolutely" which means, power tends to corrupt and absolute power tends to absolute corruption. According to Artidjo Alkotsar, Government Officials and/or State Organizers who commit corruption are a manifestation of the sick spirituality of individuals and groups who are never satisfied and become the nation's social sin. The cancer of corruption always gnaws at the body of the state which gradually causes the state to lose its dignity (self-esteem) and its ability to protect its citizens. In relation to corruption committed by officials or authorities,

proverbia latina (Latin proverb) says corruptio optima pessima which means that corruption committed by high officials is the worst, or the worst depravity is the depravity committed

by high-ranking officials, or optima corruption pessima, which means that corruption of the leaders is the most despicable crime. Legal instruments in the form of the laws mentioned above are both preventive and repressive, including Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended based on Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, is a criminal law instrument that does not clearly and clearly (expressis verbis) regulate the definition of acts of abuse of authority, and therefore contradicts the principle of lex certa in criminal law, that the formulation of norms in criminal law must be clear and concrete. According to Dani Elpah, the condition of a law being not clearly regulated is referred to as a silent law (silentio op de wet). No further explicit regulation regarding the definition of abuse of authority in the law on corruption is not in line with the impact and classifies corruption as an extraordinary crime (extra ordinary crimes). The concept of abuse of authority as referred to in Article 53 paragraph (2) letter b of Law Number 5 of 1986 concerning State Administrative Courts has been abandoned after the enactment of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Court. The concept of Abuse of Authority as referred to in Article 53 paragraph (2) of Law Number 5 of 1986 concerning State Administrative Courts has now become legal history (wet historical), and has returned to become a legal principle, namely the principle of prohibition of abuse of authority (detournement). depouvoir). As a principle, its working power is indirect working (indirect). Based on the background as described above, the problems in this study are formulated as follows: "How futuristic is the concept of abuse of authority in corruption after the enactment of Law no. 30 of 2014 concerning Government Administration

2. METHODOLOGY

The methodology in this paper is normative juridical research or library research method, namely by examining existing library materials using primary legal materials in the form of norms or rules, basic regulations, statutory regulations and secondary legal materials in the form of research results, as well as tertiary legal materials in the form of dictionaries., encyclopedias, cumulative indexes and so on.

3. DISCUSSION

Futuristic is defined in the future, the law always develops following the development of society, and therefore it is necessary to improve the material law so that it is not left behind and can meet the demands of justice. Thoughts that develop in the formation of laws and regulations need to be heard and accommodated as input in formulating the elements of criminal acts, especially the element of "abusing authority" in corruption. Futuristic Formulation of Abuse of Authority Norms in Article 3 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption So far, law enforcement policies against corruption have been carried out using a criminal law approach. After the enactment of Law Number 30 of 2014 concerning Government Administration, the eradication of criminal acts of corruption which emphasizes the criminal law approach, especially in determining the element of "abuse of authority" as a species of element of "unlawful acts" in criminal acts of corruption, prioritizing the approach to corruption. Administrative law, which stipulates that an administrative error that is suspected to be in the form of an abuse of authority and results in state financial losses, must first be determined through an administrative settlement with a decision of the State Administrative Court. This shows that there is a political shift in law enforcement towards corruption, especially in relation to the certainty of whether or not there is abuse of authority from Government Agencies and/or Officials as elements of unlawful acts in corruption. Abuse of authority in administrative law is always associated with the concept of detournement de pouvoir in French or abuse of power in English. Historically, the concept of detournement de pouvoir was first introduced in France as a basis for testing the State Administrative Court against government actions. In this case, a government official is declared to have violated the principle of detournement de pouvoir, if the purpose of the decision issued or the action taken is not in the public interest or public order in the context of public services duty, but rather for personal or group interests. Therefore, the provisions of Article 20 paragraph (6) of Law Number 30 of 2014 concerning Government Administration confirms that if the administrative error as referred to in paragraph (2) letter c occurs due to an element of abuse of authority, then the refund of state losses as referred to in paragraph (4) charged to the government official concerned. In administrative law the element of abuse of authority is known as "maladministration", so it can be said that the act of abusing authority by government officials has a dual character, namely (1) on the one hand it is categorized as maladministration according to administrative law, and (2) on the other hand it is categorized as maladministration. acts that qualify as criminal acts, especially corruption. Thus, criminal acts of corruption basically have 2 (two) main characters, namely one with an administrative character with acts of abusing authority that is detrimental to state finances, and the second with a pure criminal character with acts against criminal law, gratuities, or bribes, and so on. The administrative law approach and the criminal law approach can never be separated in the study of law enforcement against corruption with the element of abuse of authority. Therefore, eradication of criminal acts of corruption must be carried out in an integrated and sustainable manner, because the approach to criminal law and administrative law is a unity that is interrelated and influences each other so that efforts to prevent and eradicate corruption must be carried out in an integrated manner. In addition, in the context of implementing

the prevention and law enforcement of criminal acts of corruption, it is necessary to pay attention to the legal considerations in the Decision of the Constitutional Court of the Republic of Indonesia Number 25/PUU-XIV/2016, which emphasizes the optimization of the function of the Government Internal Supervisory Apparatus (APIP), which is the frontline to determine the presence or absence of abuse of authority that results in state losses in criminal acts of corruption. Administrative errors in making policies are administrative errors. However, administrative errors which then cause state financial losses due to an element of abuse of authority are related to the provisions of the Republic of Indonesia Law Number 30 of 2014 concerning Government Administration, in particular Article 20 paragraph (2) which states: is in the form of (a) there is no error; (b) there was an administrative error; and (c) there is an administrative error that results in financial losses.

Therefore, it is regulated later in paragraph (5) that "Refund of state losses as referred to in paragraph (4) is charged to the Government Agency, if the administrative error as referred to in paragraph (2) letter c occurs not because of an element of abuse of authority. However, it is continued in paragraph (6) which states: "Refund of state losses as referred to in paragraph (4) is charged to Government Officials if the administrative error as referred to in paragraph (2) letter c occurs due to an element of abuse of authority". Administrative errors that cause state financial losses due to the element of abuse of authority are a consequence of the adoption of the concept of abuse of authority in the realm of administrative law to shift to the realm of criminal law. Therefore, in the provisions of Article 36 of Law Number 30 of 2014 concerning Government Administration it is expressly stated: "In the event that state financial losses occur not to protect the public interest, carried out in bad faith, to enrich oneself or another person or entity and evidence of criminal irregularities is found, in addition to refunds to the state/regional treasury, the internal control apparatus the government reports and submits further proceedings to law enforcement officers". When an administrative error causes state financial losses due to an element of abuse of authority, then it becomes a criminal act of corruption as referred to in Article 3 of Law Number 31 of 1999 as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law No. Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, which states: "Every person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of a position or position that can harm the state's finances or the state's economy, is sentenced to life imprisonment or a minimum sentence of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000, - (one billion rupiah)". Thus, to ensure whether there is an element of abuse of authority in corruption, then in Law Number 30 of 2014 concerning Government Administration in conjunction with Government Regulation of the Republic of Indonesia Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions to Government Officials, provisions concerning logical parameters or clear boundaries to determine which actions can qualify as abuse of authority that is detrimental to state finances in a criminal act of corruption, or which actions can be regarded as administrative errors (maladministration) that harm state finances due to an element of abuse of authority. In principle, the Law on the Eradication of Criminal Acts of Corruption and the Law on Government Administration are in line and in harmony with the spirit to exercise legal control over the administration of government. However, each is different in the translation of the concept and the meaning of the element of abuse of authority that is detrimental to state finances, especially in law enforcement of criminal acts of corruption. One is in the realm of administrative law enforcement and is in the realm of criminal law enforcement. Therefore, according to the author, this is closely related to the substance of the regulation of state administration as referred to in Law Number 28 of 1999 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism, which is loaded with the content of regulating legal and administrative relations. criminal. After the enactment of Law Number 30 of 2014 concerning Government Administration, there was a shift in legal politics in the field of eradicating corruption, which initially prioritized the criminal law approach to an administrative law approach, which prioritized returning state financial losses rather than for the purpose of punishing criminals. corruption. This is because administrative errors in administrative law cannot always be qualified as acts against the law according to criminal acts of corruption. Administrative errors are errors caused by violations of administrative law as a form of elaboration of the General Principles of Good Governance. To assess whether there is an act of abusing authority, it is tested at the State Administrative Court as an administrative law approach, while the settlement method through criminal law is used as a last resort (ultimum remedium).

Therefore, abusing authority as an element of a criminal act of corruption must be interpreted as an act of a public official or government administration official who deviates from what should be or has been regulated by laws and regulations, with the intention or intentionally (mens rea) to benefit oneself or others. another person or a corporation, resulting in state financial losses. Thus, the benchmark for fulfilling the element of abuse of authority in a criminal act of corruption must be preceded by proof that the government official consciously or intentionally (dolus) uses his authority for purposes other than the purpose of granting authority, the decision of the State Administrative Court. Abuse of authority in administrative law which is "maladministration" can be interpreted as: (1) abuse of authority to carry out actions that are contrary to the public interest, to benefit personal, group, or corporate interests, and because of that what is called a "disability". authority" (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 given by the laws and regulations, and because of that what is called a "rule defect" and (3) abuse authority in the sense of abusing procedures that should

be used to achieve certain goals, but using other procedures to be carried out, and because of that, what is called a "procedural defect".

Government officials are very likely to make mistakes in using their authority (misuse of authority) or they can also abuse their authority (abuse the power). In this case, misuse of authority arises due to inaccuracies, not being careful in making decisions with no specific purpose other than to carry out their obligations as government officials. This is what in administrative law is referred to as "administrative error", but administrative errors like this can be corrected to return to the proper procedure. However, the government official uses his authority that fulfills the principle of accuracy as one of the principles in the General Principles of Good Governance, so that due to carelessness is interpreted as an abuse of authority. Meanwhile, abuse of power is carried out intentionally by manipulating as if the procedure has been fulfilled and the perpetrator has a specific purpose that is not in accordance with his obligations as an official, to gain personal gain, enrich himself or even cause state financial losses. The principle of accuracy is one of the important principles in the implementation of government functions, namely a Decision and/or Action of a Government Agency and/or Official must be based on complete information and documents to support the legality of the determination and/or implementation of decisions and/or actions, so that decisions and / or the action in question is carefully prepared before the decision and / or action is determined and / or carried out. This means that if a Government Official uses his authority, he is obliged to base on the General Principles of Good Governance. Therefore, the Elucidation of Article 10 paragraph (1) letter e of the Government Administration Law clearly obliges Government Agencies and/or Officials not to use their authority for personal interests or for interests that are not in accordance with the purpose of granting such authority, not exceeding, do not abuse and/or do not mix authority. Therefore, if there is inaccuracy, it is not necessarily an act of abusing authority. The existence of Law Number 30 of 2014 concerning Government Administration is intended to carry out government functions, so that if there is a violation of government functions including abuse of authority, it needs to be tested first to the State Administrative Court because in the Law in question the parameters of abuse of authority are clearly defined. . However, on the contrary, Law Number 31 of 1999 as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption does not clearly regulate the parameters of abuse of authority. Therefore, in the practice of criminal justice, the element of "abusing the authority, opportunities or facilities available to him because of his position or position" is seen as a unit owned by officials. In addition, the concept of abuse of authority in question is not accompanied by a more detailed explanation, giving rise to various interpretations.

However, most importantly, it must be examined whether the legal norms that are violated as a consequence of the adoption of the principle of legality and the implementation of freies ermessen or the area of freedom to carry out policies are limited by the General Principles of Good Governance. The meaning of abuse of authority in Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption is implicitly the same as an act against the law, because abuse of authority is the spricies of an unlawful act. In this case, the causal relationship between "abusing authority, opportunity or means with the position or position of the perpetrator" with the aim of benefiting oneself or another person or a corporation shows the nature of intentionality as the intention between the intentions, actions, and consequences that occur, namely financial loss. state or the country's economy, which is qualified as a criminal act of corruption. From the description above, it can be concluded that the norms in the provisions of Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, by the legislators are formulated in the form of sentences containing details of cumulative elements and several details of elements containing alternatives. Therefore, futuristically (in the future) so that abuse of authority in criminal law has an explicit meaning (expressis verbis), which is free from borrowing concepts in administrative law, and has a clearer and firmer meaning, the phrase "abuses authority" as one of the elements of the provisions of Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it needs to be replaced by including the content/intense/understanding of the concept of “abuse of authority” itself. As a comparison, namely in the provisions of Article 362 of the Criminal Code (KUHP) it adheres to a formulation that the content/intention/understanding of the concept of "theft" is taking goods, belonging to others, in part or in whole, with the intention of being owned. , unlawfully. Thus, the futuristic formulation of the provisions of Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is as referred to in Table 14 as follows

Article 3 UU No. 31 of 1999	**Futuristic formulas (forward)**
Any person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of a position or position that can harm state finances or the state economy, shall be sentenced to life imprisonment or at least 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 1,000,000,000.00 (one billion)	Any person who with the aim of benefiting himself or another person or a corporation, uses his authority for other purposes than the purpose of granting the authority, opportunity or means available to him because of a position or position that is detrimental to state finances or the state economy, shall be sentenced to life imprisonment or at least 1 (one) year and a maximum of 20 (twenty) years and/or a minimum fine of Rp. 50,000,000.00 (fifty million) and a maximum of 1,000,000,000.00 (one billion)

4. CONCLUSION

Based on the explanation in the discussion, it can be concluded that the parameter of abuse of authority is stated as a doctrine and in the provisions of Article 53 paragraph (2) sub b of Law Number 5 of 1986 concerning the State Administrative Court, as well as Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2018, incomplete and intact as a measuring tool to determine the element of abuse of authority, so as to provide an understanding that is not in line with the intent of the criminal law which is lex certa (regulates clearly and completely) and is lex stricta (regulates expressly so that it is not allowed by analogy). . After the enactment of Law Number 3 of 2014 concerning Government Administration, the element of abuse of authority is regulated more clearly and completely by reinforcing the meaning and expanding the parameters to assess whether there is abuse of authority in corruption. In addition, the regulation of norms for abuse of authority in corruption is not consistent with the principle of unity in the regulation of norms for criminal acts of corruption. The futuristic setting is adjusted to the content/sense/understanding of the concept of abuse of authority which contains complete parameters to assess whether there is an element of abuse of authority in corruption.

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