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Legal Accountability of Public Officials for Abuse of Authority in Corruption Crimes

ABSTRACT

Abuse of authority by public officials is one of the legal problems that can be related to corruption. These acts need to be studied to distinguish administrative violations from corruption crimes. This study aims to analyze the abuse of authority and criminal law accountability against public officials. The method used is normative juridical with a statutory approach and a conceptual approach. The results of the study show that abuse of authority can be categorized as a criminal act of corruption if it meets the elements in Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001. In conclusion, criminal accountability must be based on proving the elements of criminal acts in order to create legal certainty and fair law enforcement.

Keywords: Corruption, Abuse of authority, legal accountability

INTRODUCTION

Corruption means embezzlement or embezzlement (state or company money) and so on for personal or other people's interests. Corruption itself comes from the Latin word corruption which comes from the verb corrumpere which means rotten, damaged, shaken, twisted or bribed. Acts of corruption always contain elements of "facilitation" or dishonesty. Corruption is also often associated with behavior carried out by government officials. Corruption is the behavior of public officials who store from norms accepted by the public, and this deviant behavior is aimed at fulfilling personal interests. Corruption is the action of public officials, both politicians and civil servants and other parties involved in the act who unnaturally and illegally abuse the public trust that is empowered to them to gain one-sided gains.

Law No. 20 of 2001 amending Law No. 31 of 1999 concerning the Eradication of Corruption is the basis of Indonesian law that regulates corruption crimes juridically. According to this law, the crime of corruption is defined as an unlawful act that harms the state finances or the economy of the state committed

by a person or a group of people using their authority, position, or power. Some of the main elements that include corruption crimes according to this law include the existence of unlawful acts, the existence of financial losses of the state or the state economy, and the use of authority, position, or power to commit these acts.

Corruption often includes various forms of crime, such as bribery, embezzlement, abuse of authority, unreported gratuities, and the practice of collusion and nepotism. In Indonesia, corruption is regulated in Law Number 31 of 1999 concerning the Eradication of Corruption, which was strengthened by Law Number 20 of 2001. Corruption not only has an impact on the loss of state money, but also weakens the government system, undermines public trust in institutions, and hinders public development and welfare.

One form of corruption that occurs is the abuse of authority in the management of state finances. Authority is a right given by laws and regulations to state officials or administrators to carry out their duties and functions. In its implementation, the use of authority must be carried out in accordance with the purpose of granting authority, the principle of legality, and the principles of good governance. However, in practice, various irregularities are still found carried out by public officials by utilizing their authority to obtain personal benefits and benefits for other parties.

Public officials are individuals who are appointed and given duties and responsibilities to fill certain positions in government institutions. The explanation of public bodies is explained in Law Number 14 of 2008 concerning public information disclosure, in addition to that public bodies include various government institutions, as well as other institutions that have a major role in managing the government order. Therefore, part or all of their funds come from the state revenue and expenditure budget, as well as the regional revenue and expenditure budget. In addition, public bodies can also include non-governmental organizations whose operational funds are obtained, from the state budget and regional budgets, donations, and support from local governments and foreign governments. Meanwhile, state administrators are defined in Article 2 of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from the crimes of corruption, collusion, and nepotism. State administrators can be formulated as follows.

a) State officials who are in the highest institutions;
b) State officials in higher education;

c) Minister;
d) Governor;
e) Judge;
f) Other state officials, such as civil servants regulated by laws and regulations; and
g) Other institutions that have strategic authority related to state administration in accordance with the provisions of applicable law.

A public official is someone who has the authority and responsibility given by the state or government to carry out government functions, set policies, and represent the interests of the community in general, and has an important position in the process of government or public service. Public officials are people who are given the trust to be appointed and given the task of occupying certain positions or positions in public bodies. Public officials are given power and trust because they are considered part of democracy which includes central government institutions and local governments, in the central government institutions the public officials in question such as state officials, namely the president and vice president, Ministers and their staff, members of the DPR, DPD, and DPRD. Meanwhile, in local government, the public officials in question are the heads of the regional regions and their ranks such as Governors, Regents, Mayors and their staff.

RESEARCH METHOD

This research uses a normative juridical method with a statute approach and a conceptual approach. The research is carried out through a study of laws and regulations that regulate corruption, abuse of authority, and state financial management, as well as various relevant legal doctrines and literature. The legal materials used consist of primary legal materials in the form of the Constitution of the Republic of Indonesia in 1945, Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, and Law Number 30 of 2014 concerning Government Administration. Secondary legal materials are obtained from books, scientific journals, and relevant previous research results. The collection of legal materials is carried out through literature studies.

RESULTS AND DISCUSSION

The Difference Between Administrative Errors and Corruption Crimes

Abuse of authority by public officials is a legal issue that is closely related to the implementation of good governance, the accountability of state officials, and efforts to eradicate corruption. In carrying out their duties, public officials are given authority based on laws and regulations to provide public services and realize the interests of the community. However, this authority should not be used arbitrarily, for personal interests, or to benefit certain parties that are contrary to the law. Abuse of authority is an act in which a person who has power uses his or her position for personal or group benefits, not for the proper public interest. This action not only violates the law, but also violates ethics and undermines public trust in institutions that are supposed to serve and protect their interests.

This action generally occurs when an official exceeds the limits of his authority, mixes up authority, or acts arbitrarily in carrying out his duties. Abuse of authority not only violates professional ethics, but also often leads to criminal acts, such as corruption, collusion, and nepotism, which results in financial losses, damages the organization's reputation, and lowers public trust in the relevant institution. In regulations in Indonesia, Law Number 30 of 2014 concerning Government Administration outlines that abuse of authority includes acts that go over, confuse, or abuse authority, so it is important for organizations to have strict supervision and law enforcement to prevent these harmful acts.

From the perspective of the State Administrative Law (HAN), abuse of authority can occur when officials use their authority inappropriately in accordance with the purpose of granting authority, exceed the limits of authority, or act arbitrarily. Meanwhile, from the perspective of criminal law, abuse of authority can be a criminal act of corruption if the act meets the elements of corruption crimes regulated in laws and regulations.

Authority is the power (right) given to public officials or the government to rule or act. In exercising that authority, there is an obligation for public officials to comply with the rule of law. Because, as stated by Artidjo Alkostar, the occurrence of corruption is inseparable from uncontrolled power or abuse of power. Therefore, there are limits that should be complied with by the holder of

the authority. According to article 15 of Law Number 30 of 2014, the authority is limited by the period or grace period, the applicable regional area, or the scope of the field or material of authority. Government Agencies and/or Officials whose authority has expired or the period of grace is not allowed to take decisions and/or actions.

Authority is closely related to the position or position held by a person, meaning that the subject of this person's law does not apply to everyone, but only applies to people who have a certain position or position or people who have certain personal qualities, also including people who have a position or position in private law, for example a school principal. While abuse of authority can be defined as an act done by a person who is actually entitled to do it, but it is done wrongly or directed in the wrong way and contrary to the law or custom.

In theory, the authority of state officials or administrators arises or is obtained through 3 (three) ways, namely: attribution, delegation and mandate, namely:

a. Attribution is the granting of authority over the government from the lawmaker to the government or government organs.
b. Delegation is the authority that comes from the delegation of authority from one organ of government to another organ of government.
c. Mandate is an authority that arises due to the permission of a government organ that is authorized to another organ or the authority of that organ is exercised by another organ.

The emergence of the authority of state officials or administrators can come from these three things. This provision is strengthened in Law No. 30 of 2014 in Article 12 paragraph (1) which regulates that government agencies and/or officials obtain authority through attributions if: a. regulated in the 1945 Constitution and/or laws, b. new authority is obtained for previously non-existent; and c, attribution is given to government agencies and/or officials. This makes it clear that authority in administrative law arises due to an order from the law. Therefore, the responsibility for authority lies with the relevant agency and/or official.

Abuse of authority in administrative law can be interpreted in three forms, namely: (a) abuse of authority to carry out actions contrary to the public interest or to benefit the interests of individuals, groups or groups; (b) abuse of authority in the sense that the actions of the official are properly intended for the public

interest, but deviate from the purpose of the authority granted by laws or other regulations; and (c) abuse of authority in the sense of abusing procedures that should be used to achieve certain goals, but have used other procedures to be carried out.

The parameters that limit the authority of the state apparatus (discretionary power) in the perspective of state administrative law are detournament de povouir (abuse of authority) and abus de droit (arbitrary). Meanwhile, in the perspective of criminal law that limits the free movement of the authority of the state apparatus in the form of elements of wederrechtlijkheid and "abuse of authority". Problems in criminal law are not as difficult as if a distinction is made as a tangent (grey area) between state administrative law and criminal law, especially corruption. The relationship between criminal law and administrative procedural law is not only summarized in Law Number 20 of 2001 concerning the Eradication of Corruption but also related to Law Number 17 of 2003 concerning State Finance, Law Number 1 of 2004 concerning the State Treasury and Law Number 15 of 2006 concerning the Financial Audit Board (BPK). In practice and theoretically, administrative law also includes the scope of criminal law and civil law.

The scope of the State Administrative Court is an abuse of authority, while the scope of corruption is an abuse of authority. The element of abuse of authority in the Article is alternative, because in addition to abuse of authority, it is also related to the opportunities and means that exist in it because the position is an element of the crime of corruption. Abuse of authority is basically an unlawful act (the concept of a criminal act) accompanied by the existence of mens rea (malicious intent). The concrete form of mens rea is the existence of actus reus in the form of fraud, confl ict of interest, and illegality, so it is a criminal act. Meanwhile, the result of abuse of authority and arbitrariness in the realm of administrative law is that the decision of the official is invalid and can be canceled.

Legal Accountability of Public Officials for Abuse of Authority in Corruption Crimes

The authority that exists in the position or position of the perpetrator of a corruption crime is a series of powers or rights attached to the position or position of the perpetrator of a corruption crime to take the necessary actions so that his

duties or work can be carried out properly. The authority referred to in Article 3 of the PTPK Law is of course the authority that exists in the position or position held by a civil servant based on laws and regulations.

In criminal law, the term liability is known, which in Dutch is called "toerekenbaarheid" and in English it is called "criminal responsibility" or "criminal liability". In general, criminal liability is a system built by criminal law to respond to a violation of an agreement prohibiting a particular act. Criminal liability is the imposition of punishment for criminal acts that are objectively wrong and subjectively eligible for punishment.

The theory of criminal liability states that the basis of criminal liability is guilt. Mistakes in criminal law are the basis for blaming a person for his actions, reflecting the state of the soul and the inner relationship of the perpetrator with his actions. If a person is guilty, then he can be reproached. Meanwhile, the theological theory and the combined theory of punishment consider punishment to have a dual purpose. Both combine the Utilitarian view, which emphasizes the real benefits of punishment, with the Retributivist view, which emphasizes justice. Justice is achieved if the purpose of punishment is carried out according to the principles of justice.

The Law on the Eradication of Corruption does not recognize the term crimes in office. The Law on the Eradication of Corruption only recognizes the existence of provisions regarding abuse of authority as mentioned in Article 3 paragraph (3). The provisions in the Law on the Eradication of Corruption require the existence of state financial losses (actual losses and potential losses). The existence of an element of state losses due to abuse of authority is a prominent offense in Article 3 of the Law on the Eradication of Non-Criminal Corruption. The existence of an element of state loss is the main provision that is often used as a tool by law enforcement officials to ensnare officials or state administration bodies who abuse their authority. Almost all offenses in the Law on the Eradication of Corruption are offenses that must meet the elements of state losses except bribes and gratuities.

The General Principles of State Administration in Article 3 of Law Number 28 of 1999 concerning the Administration of a State That is Clean and Free from Corruption, Collusion and Nepotism includes, a. The principle of legal certainty; b. The principle of order in the administration of the state; c. The principle of

public interest; d. The principle of openness; e. The principle of proportionality; f. The principle of professionalism; and g. The principle of accountability.

Abuse of authority in the crime of corruption is the act of a public official who uses the authority, opportunity, or means he has because of his position for deviant purposes, so that his actions meet the elements of the crime of corruption. Basically, public officials are given the authority to carry out government duties and serve the interests of the community. Basically, abuse of authority is a violation of the State Administrative Law, but it only becomes a criminal offense of Article 3 corruption if the abuse of authority is aimed at benefiting oneself, others, or corporations that can cause losses to state finances or the state economy.

a) The purpose of benefiting oneself, others, or the corporation. The official uses his authority with the aim of providing benefits to himself or a certain party.
b) Abuse of authority due to position or position. Officials use authority, opportunities, or means attached to their position in a deviant manner.
c) State financial losses or state economy. The act must meet the elements of loss as formulated in the article and proven in accordance with the provisions of applicable law.

Therefore, acts of corruption committed by government officials and/or bodies that originate from the consequences of abuse of authority, be it attribution, delegation or mandate, are unlawful acts because they cause state losses. Abuse of authority can be said to be an unlawful element in corruption cases. The element of abuse of authority that is against the law can only be said to be an act of corruption if it harms the state's finances. This element of abuse of authority cannot stand alone after the birth of Law No. 30 of 2014. The unlawful element must be proven first, based on the provisions of Article 21 of Law No. 30 of 2014 "the authority to receive, examine and decide whether or not there is an element of abuse of authority committed by a Government Official is the State Administrative Court.

The existence of Law No. 30 of 2014 makes the Law on the Eradication of Corruption Crimes Article 3 which contains elements of "abuse of authority" and "opportunity or means" cannot and directly ensnare state administrators. Article 3 is a species of delict of unlawful elements as a genus of delict that is always related to positions and abuse of authority. This delict must be interpreted in its

entirety, all elements of the article that have been mentioned in Article 3 must be fulfilled. In this case, there are two regulations that regulate the abuse of authority.

Acts of abuse of authority in corruption crimes are regulated in Article 3 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes which outlines the elements of these acts, namely having the purpose of benefiting oneself or others or a corporation, using authority, opportunities, and means obtained from their positions or positions so as to cause financial losses to the state or the state economy. 4 Article 3 of Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption is an article that is specifically used to ensnare officials who abuse authority. According to the Law on the Eradication of Corruption, the act of abusing authority in committing corruption crimes does not always have to be in the form of issuing decisions that contradict or violate a rule. As long as it meets certain points, then the act can be said to be abusing wewemamg. The point of the point is that the act violates written rules as the basis of its authority, has a deviant intention, and has the potential to harm the state.

Regarding the act of abusing authority in corruption cases, stated as one of the main elements of Article 3 of the Corruption Law, the full article formulation is as follows. "*Every person who, with the aim of benefiting himself or another person or a corporation, abuses his authority, opportunity or means available to him because of his position or position that can harm the state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah)*".

A public official who uses his authority in issuing decisions must have a clear source of legal authority because each source of authority has a clear pattern of accountability as well. A public official who is only given authority in the form of a mandate should not exercise this authority as if it were sourced by delegation so that the official does not provide accountability. In this context, it is categorized as having no basis for authority. It is even more extreme if a public official who does not have a source of authority, either attribution, delegation or mandate, but issues a mandate, then this is categorized as arbitrary.

The fundamental difference between administrative violations and corruption crimes lies in the nature of the act, the legal elements that form it, the intention or consequences of the act, and the evidentiary requirements as stipulated in the applicable provisions. Administrative violations occur when a public official makes mistakes in the procedure, management, or execution of official duties. Examples include delays in the issuance of official documents, procedural errors in the procurement of public goods and services, or non-compliance with administrative regulations of actions that do not by themselves meet the elements of a criminal act.

A person with weak morals tends to be more easily tempted to commit acts of corruption. These temptations can arise from superiors, colleagues, subordinates, or other parties who provide opportunities to commit corrupt practices. Thus, it can be concluded that in terms of morals, for example, weak faith, honesty, and shame; in terms of attitudes or behaviors, such as a consumptive lifestyle; and from a social perspective, such as family influence, all of this can encourage a person to behave corruptly.

On the other hand, abuse of authority can be categorized as a criminal act of corruption if it is proven to meet the elements of criminal acts as stipulated in the Law on the Eradication of Corruption. One of the relevant provisions is Article 3 of the Law on the Eradication of Corruption, which regulates the abuse of authority, opportunity, or means arising from a person's position or position with the aim of benefiting themselves, others, or a corporation, which can harm the state's finances or the country's economy. Thus, the criminal law liability of public officials is carried out by proving that the abuse of authority carried out meets the elements of the crime of corruption. If proven guilty, the official can be sentenced to imprisonment, fines, substitute money, or other additional penalties according to the provisions of the law. The basis for punishment is not just the existence of a position, administrative errors, or state losses, but the fulfillment of the elements of criminal acts and the responsibility of the perpetrator.

To be able to impose criminal sanctions on the perpetrator, an in-depth analysis of the criminal liability attached to him is needed. Criminal liability is a mechanism in criminal law that assesses whether a person can be imposed a criminal burden for an act he committed. In determining whether the perpetrator can be held criminally responsible. Further assessment of the aspects of guilt and the ability to take responsibility for the perpetrator is needed. In determining an act as a criminal act, the principle of legality is used. In the principle of legality, it

is emphasized that no act can be punished without the provisions of pre-existing laws and regulations. Based on this principle, the imposition of a criminal offense requires the existence of error as the main element in criminal liability. Mistakes include intentionality and forgetfulness that can be accounted for to the perpetrator. The ability to be responsible is another prerequisite in criminal imposition. The psychological condition of the perpetrator shows the ability to understand and control the act. Thus, if the mistake cannot be accounted for by the perpetrator, then punishment cannot be carried out.

CONCLUSION

Abuse of authority by public officials is an act that occurs when the authority of the position is used not in accordance with the purpose for which it is given or for the benefit of oneself, others, or the corporation. This act can be categorized as a criminal act of corruption if it meets the elements stipulated in Article 3 of the Law on the Eradication of Corruption, including elements of abuse of authority and financial losses to the state or the state economy. Therefore, not every administrative error can be immediately considered a criminal act of corruption.

Criminal law accountability for public officials can be applied if the elements of criminal acts are proven and the act can be held accountable to the perpetrators. Officials who are proven guilty can be subject to criminal sanctions in accordance with the provisions of applicable law. Thus, the distinction between administrative violations and corruption crimes is very important to provide legal certainty, prevent improper criminalization, and ensure that officials who abuse their authority to commit corruption can be held accountable fairly

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