



Analysis of Criminal Responsibility Misuse of Administration Authority Viewed from Corruption Criminal Enforcement Aspect in Indonesia

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Abstract

In carrying out the tasks of government carried out by the government apparatus is essentially an emphasis on the function of government that is carried out. Based on the nature of the function of government (governmental power) as an active function in the sense of driving or controlling the life of the people and the state to realize the welfare of the people (welfare staat), and directed to the function of fostering and protecting the community, is the real reason for the role of government intervention in each sector social life, or in other words if it involves public interests, then there is also the implementation of government affairs which become the affairs and responsibilities of the government.

Keywords: Analysis of Criminal Responsibility; Misuse of Administration Authority; Corruption Criminal Enforcement; Aspect; Indonesia; Law

A. Background

Deviations of power in public officials can be in the form of abuse of authority which is categorized as a criminal act of corruption as can be seen in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption. These two articles regulate the abuse of authority by someone who has an office or position where the consequences of his actions are detrimental to the country's finances. In full, the formulation of Article 2 paragraph (1) and Article 3 reads as follows:

Article 2 paragraph (1)

Any person who unlawfully commits acts of enriching oneself or another person or a corporation that can be detrimental to the country's finances or the country's economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Article 3

Any person who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him because of a position or position that could be detrimental to the country's finances or the country's economy, is liable to life imprisonment or imprisonment for 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 rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Grammatically, both articles adhere to formal offenses which bring the consequence that a person is considered a suspect if he has completed the series of acts intended in the formulation of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law. So that the word "can" mean that the effect of "detrimental to the country's finances or the country's economy" does not have to actually happen, the important thing (series) of the perpetrators' actions is in accordance with the formulation of the offense plus that the act has the opportunity to harm the country's finances or the country's economy¹.

In practice, the provisions of Article 2 paragraph (1) and Article 3 are often used by the Public Prosecutor in prosecuting corruption suspects. This can be seen from the 735 corruption cases that were examined and decided at the cassation level as data reported by the Independent Institute and Advocacy for the Independent Judiciary (LeIP) in 2013. Based on the number of cases, 503 cases or 68.43% used the provisions of Article 3 of the Corruption Law to ensnare perpetrators of corruption, the rest use the provisions of Article 2 or about 147 cases or 20%.²

Further developments, based on MK Decision Number 25 / PUU-XIV / 2016, revoke the phrase "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 *juncto* with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption (Corruption Act)³. This Constitutional Court ruling interprets that the phrase "may be detrimental to the country's finances or the country's economy" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Act must be proven by actual state financial losses rather than potential or estimated state financial losses (*potential loss*)⁴.

In his consideration, there are at least four benchmarks that constitute the *ratio legis* of the Constitutional Court shifting the meaning of substance to corruption offenses. The four benchmarks are (1) *nebis in idem* with the previous Constitutional Court Decision namely MK Decision Number 003 / PUU-IV / 2006; (2) the emergence of legal uncertainty in formal corruption offenses so that they are changed into material offenses; (3) the relationship / harmonization between the phrases "can harm the state finances or the economy of the country" in the criminal approach to the Corruption Act with the administrative approach to Law Number 30 of 2004 concerning Government Administration; and (4) the

¹ RB Budi Prastowo, "Delik Formiil/Materiil, Sifat Melawan Hukum Formiil/Materiil dan Pertanggungjawaban Pidana dalam Tindak Pidana Korupsi (Study of Criminal Law Theory on MK Verdict No. 003/PUU-IV/2006)", Jurnal Hukum Pro Justitia, Volume 24 No.3, July, 2006, p. 213.

² Emerson Yuntho, et.al, "Penerapan Unsur Merugikan Keuangan Negara dalam Delik Tindak Pidana Korupsi", (Research Report, Indonesian Corruption Watch, 2004), p. 19.

³ Objection of the Petitioners, especially towards the validity of the phrase "can" and the phrase "or another person or a corporation". The applicant argues that it is not possible as a state official, does not issue decisions that aim to carry out development projects in their respective regions, and it is also impossible for projects won by the project organizer (the tender winner) to not benefit from the project being implemented. So that the *a quo* norm can be applied at any time to the Petitioners, even in the position of carrying out their duties and functions as ASN as instructed by the legislation. (Amir Syamsudin, MK verdict in Penegakan Hukum Korupsi, Kompas, Kamis, Februari 2, 2017.)

⁴ Verdict on Case Number 25 / PUU-XIV / 2016 was pronounced in a public hearing on Wednesday, January 25, 2016. Since the pronouncement of the *a quo* decision, the offense in Article 2 paragraph (1) and Article 3 of Law Number 31 Year 1999 in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption (the Anti-Corruption Act) has shifted its meaning because it has been declared invalid and contradicts the 1945 Constitution.

alleged criminalization of the State Civil Apparatus (ASN) by using the phrase "may harm the country's finances or the country's economy" in the Corruption Law⁵.

Although it did not grant the entire petition of the Petitioners, the Constitutional Court finally gave an interpretation that one element of the offense of corruption was an "*actual loss*" and not a "*potential loss*" (potential for state financial losses or an estimated state financial loss) as long as it is regulated and practiced. This has made the shift in the meaning of offense in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law which was originally a formal and material offense to only material offense⁶.

One of the legal reasons used by the Petitioner to consider the phrase "able" in Article 2 paragraph (1) and Article 3 contrary to the 1945 Constitution is the emergence of Law Number 30 of 2004 concerning Government Administration (AP Law). The emergence of the AP Act brings an affirmation that the State Civil Apparatus (ASN) is erroneous or commits administrative errors in carrying out a state administration, so the approach taken is the administrative approach. The criminal approach is used as a "last weapon" (*ultimum remedium*). This refers to Article 20 paragraph (4) of the AP Law:

Article 20 paragraph (4);

"If the results of the supervision of the government apparatus are in the form of administrative errors that cause state losses as referred to in paragraph (2) letter c, the state money will be refunded no later than 10 (ten) working days from the date of deciding and publishing the results of the supervision."

Article 70 paragraph (3)

"In a decision that results in payment of state funds being declared invalid, the Agency and / or Government Official must return the money to the state treasury."

Based on the provisions in Article 2 paragraph (1) and Article 3 of the Corruption Act with Article 20 paragraph (4) and Article 70 paragraph (3) of the AP Law above, there is a fundamental difference between acts against the law and abuse of authority. First, aspects of intention or atmosphere of mysticism (*mens rea*) are different between the two. For acts against the law, it can be ascertained that there is an element of error in a person who does have the intention to enrich himself or another person or corporation to harm the country's finances. While in the abuse of authority, in general there tends to be an element of error or not. Even if there is a mistake, there is not necessarily an intention to enrich himself or someone else or a corporation to harm the country's finances. Second, the element of the consequences of action (*actus reus*). For acts against the law there is a tendency that there are losses due to other parties, in this context the occurrence of state financial losses. While the abuse of authority tends to lead to personal losses in the category of administrative violations. So that the phrase "can be" in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Act is really not appropriate if the material contained in its interpretation of the AP Law. The considerations that contain the philosophical, juridical and sociological elements of thought between the two are also different. So between the two, they don't have a relationship because they are built based on unequal legal principles⁷.

⁵ Verdict of the Constitutional Court Nomor 25/PUU-XIV/2016, p. 101-104

⁶ Fatkhurohman, *Pergeseran Delik Korupsi dalam Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016*, *Jurnal Konstitusi*, Volume 14, Number 1, March, 2017.

⁷ Fatkhurohman, *ibid*.

B. Problem Formulation

Based on the background of the diats problem, the following research problems can be formulated:

1. Are there different elements of "abuse of authority" in the legislation of Government Administration, Administrative Court and the Corruption Court?
2. How is the concept of "abusing authority" in legislation seen from the political perspective of legal development?

C. Analysis

1. Differences in the elements of "abusing authority" in the legislation of Government Administration, Administrative Court and the criminal act of corruption.

Law Number 30 of 2014 concerning Government Administration. The law is needed to provide a legal basis for all actions, behavior, authority, rights and obligations of each state administrator in carrying out his daily duties serving the community. Because so far these things have not been regulated in full in a Law specifically held for that. Whereas Law No. 5 of 1986 concerning State Administrative Court as amended by Law No. 9 of 2004 only regulates procedural law (formal law) in the event of a dispute between a person or a legal entity with a state administrative official. In practice in the State Administrative Court, it is often encountered by judges experiencing difficulties when dealing with cases where material law is not regulated in the PTUN Law, so the solution often taken is judges based on the opinions of experts (doctrine) or jurisprudence⁸.

Law Number 30 of 2014 concerning Government Administration is a material source of law for the administration of government. It is the responsibility of the state and government to guarantee the provision of fast, convenient and inexpensive Government Administration. The certainty of providing Government Administration must be regulated in the legal product of the Act. This can consist of one main law that regulates general provisions concerning Government Administration and other laws that regulate in detail the matters not regulated in the law. This law does not regulate managerial technical matters in the provision of Government Administration, but only contains general rules, among others, concerning procedures, legal assistance, deadlines, administrative deeds and administrative contracts in Government Administration. The Government Administration Act thus contains the rules of relations between government agencies as administrators of public administration and individuals or communities receiving public services⁹.

Law Number 30 Year 2014 Concerning Government Administration is urgently needed by Indonesia at the present time based on several reasons below. The enactment of Law Number 30 Year 2014 concerning Government Administration is intended to regulate and improve the bureaucratic reform system, as a means of overcoming Corruption through a preventive approach¹⁰. First, the tasks of

⁸ Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara (Buku I Beberapa Pengertian Dasar Hukum Tata Usaha Negara)*, Pustaka Sinar Harapan, 1993, p. 231.

⁹ Setiadi Wicipto., *Pokok-pokok Pikiran Terhadap Naskah Akademik Rancangan Undang-undang Administrasi Pemerintahan*, Academic Paper Seminar Paper RUU Administrasi Pemerintahan, Ministry Office PAN, Desember 16, 2004

¹⁰ Kementerian Pendayagunaan Aparatur Negara dan Reformasi Birokrasi, *Naskah Akademik Rancangan Undang-Undang tentang Administrasi Pemerintahan*, (Jakarta: Kemenpan RB, tanpa tahun), p. 8.

government today are becoming increasingly complex, both regarding the nature of the work, the type of work and the people who carry it out. Secondly, so far the administrators of the state carry out their duties and authorities with standards that are not yet the same, so that there are often disputes and overlaps of authority between them. Third, the legal relationship between the administrators of the state and the public needs to be strictly regulated so that each party knows the rights and obligations of each in interacting between themselves. Fourth, there is a need to set minimum service standards in the daily administration of the country and the need to provide legal protection to the public as users of services provided by the executors of the state administration. Fifth, advances in science and technology have influenced the way of thinking and working procedures of state administration providers in many countries, including Indonesia. Sixth, to create legal certainty for the implementation of the daily tasks of the state administration organizers¹¹.

Especially after the formation of Law Number 30 Year 2014 Regarding Government Administration¹² where Article 87 letter a states that factual actions of the government as part of the meaning of the state administration decision (KTUN) and Article 85 which states the transition of dispute resolution of government administration from general courts to administrative court. The provisions of Article 85 and Article 87 letter a above are in fact still obscure (*absure norm*) because there is no authentic explanation regarding the conceptual act conception as the new interpretation of KTUN in Article 87 letter a, even though the two types of government action in the concept of administrative law are different and regarding the transition settlement of government administrative disputes from general courts to PTUN is not clearly and clearly stated what types of disputes are transferred as referred to in the provisions of Article 85 of the AP Law.

The provisions in the Government Administration Act have led to pros and cons among legal experts, particularly Criminal Law experts and State Administrative Law experts regarding the enforcement of the intended provisions and their effect on the authority of the Corruption Court. Guntur Hamzah, stated that the existence of the Government Administration Act will strengthen and increase the power to eradicate corruption eradication efforts because with the existence of APIP, the alleged abuse of authority can be detected early as a preventive measure¹³. However, a different opinion was expressed by Krisna Harahap, the Supreme Court Judge at the Supreme Court who explicitly stated that the Government Administration Act impedes efforts to eradicate Corruption because the provisions contained in the Government Administration Act are clearly not in line with the Corruption Eradication Act,

¹¹ Muhamad Azhar, *Relevansi Asas-Asas Umum Pemerintahan Yang Baik Dalam Sistem Penyelenggaraan Administrasi Negara*, Jurnal NOTARIUS, Edition 08 Number 2, September, 2015.

¹² Substantially through the Republic of Indonesia's Presidential Letter Number R-4 / President / 01/2014, the government assigned four State ministries, namely the Ministry of Administrative Reform and Bureaucracy Reform, the Ministry of Law and Human Rights, the Ministry of Home Affairs and the Minister of Finance both individually and jointly, to submit the AP Bill to the Indonesian Parliament. In fact the government through the Ministry of Administrative Reform and Bureaucracy Reform (initiator) has been drafting the AP Bill since 2004 and only submitted to the Parliament for discussion 10 years later, namely in 2014 through the Republic of Indonesia's Presidential Letter Number R-4 / President / 01 / 2014. The House of Representatives of the Republic of Indonesia itself responded to the government's AP Bill, by holding a meeting of the Indonesian House of Representatives deliberation on February 20, 2014 and decided that the handling of the discussion was left to the House's Commission II. The trial for the discussion of the AP Draft Bill for the period 2013-2014, chaired by Arif Wibowo, deputy chairman of the House of Representatives commission II attended by 26 members (out of 50 members) of the House of Representatives commission II with details, Chairperson of the House of Representatives commission II, with Nine (9) in the House of Representatives including Democratic Fraction, Golkar, PDIP, PKS, PAN, PPP, PKB, Gerindra, Hanura, and the government represented by the Ministry of Administrative Reform, the Ministry of Law and Human Rights, the Ministry of Home Affairs and the Ministry of Finance.

¹³ Guntur Hamzah, papers "*Paradigma Baru Penyelenggaraan Pemerintahan Berdasarkan Undang-Undang Administrasi Pemerintahan (Kaitannya dengan Perkembangan Hukum Acara Peratun)*". Presented at the One Day Seminar in the framework of the Anniversary of the State Administrative Court to-26 by theme: *Paradigma Baru Penyelenggaraan Pemerintahan Berdasarkan Undang-Undang Administrasi Pemerintahan, kaitannya dengan Perkembangan Hukum Acara Peratun*, which was held at the Mercure Hotel, Jakarta, January 26, 2016.

particularly Article 3. More severe again, the provisions in the Government Administration Act could even reduce the authority of the Corruption Court in assessing the element of "abusing authority" in the Corruption. This is evident from the policies of President Jokowi who instructed the Attorney General and the National Police Chief to prioritize the government administration process in accordance with the provisions of the Government Administration Act before investigating public reports regarding alleged abuse of authority, particularly in the implementation of the National Strategic Project¹⁴.

Quoting Yulius' opinion, when the *legis ratio* is traced to the formation of several laws and regulations, there is a very close relationship between the three, which are both formed in the context of efforts to eradicate Corruption. The Corruption Court Act jo. The Corruption Eradication Law within the Criminal Law family is intended to eradicate Corruption through repressive measures (repressive measures), while the Government Administrative Law, even though within the Administrative Law group, is intended as a means of eradicating Corruption through preventive measures with a bureaucratic reform approach. The red thread can also be seen in the substance of the regulation of state administration by Law Number 28 of 1999 concerning State Administrators who are Clean and Free of Corruption, Collusion and Nepotism, in which thickly regulates the relationship between HAN and criminal law (corruption)¹⁵.

In theory, when there is a legal antinomy due to a *conflict of norm*, it can be resolved with the principle of legal preference, which consists of 3 (three) principles, namely: *lex superior derogat legi inferiori*; *lex specialis derogat legi generalis*; and *lex posteriori derogate legi priori*¹⁶. The principle of the law of *lex superior derogat legi inferiori*, can be applied when there is a conflict between the legislation which is hierarchically lower level with the higher laws and regulations above it. According to this principle lower level of statutory regulations, their validity is ruled out by higher level laws and regulations, except for the substance that is governed by higher laws and regulations as determined by lower level legislative authority.

2. The concept of "abusing authority" in legislation is seen from the political perspective of legal development

A law including law was created for three purposes, namely justice, certainty and expediency. In the criminal law environment, certainty is one of the important things considering the Indonesian state adheres to the Continental European legal system. The principle of legality becomes important so that an act cannot be convicted without prior regulations governing it (*nullum delictum nulla poena sineprevia legi poenale*), including in the enforcement of corruption¹⁷. Corruption is categorized as an act against the law because it does not only violate the law, but violates the rights of others, especially violations of the interests of society. Acts against the law (*onrechtmatige daad* or *tort law*) have developed in recent decades. Corruption is generally carried out by people who have power in a position, so that the characteristics of corruption crime are always related to the abuse of power in the perspective of organized crime¹⁸.

¹⁴ Mohammad Sahlan, *Unsur Menyalahgunakan Kewenangan dalam Tindak Pidana Korupsi sebagai Kompetensi Absolut Peradilan Administrasi*, Jurnal Hukum Ius Quia Iustum No. 2 Vol. 23 April, 2016.

¹⁵ Yulius, "Perkembangan Pemikiran dan Pengaturan Penyalahgunaan Wewenang di Indonesia (Tinjauan Singkat Dari Perspektif Hukum Administrasi Negara Pasca Berlakunya Undang-Undang Nomor 30 Tahun 2014)", article in *Jurnal Hukum dan Peradilan*, Badan Penelitian dan Pengembangan Hukum dan Peradilan Mahkamah Agung RI, Volume 04 Number 3 November, 2015, p. 364.

¹⁶ Wasis Susetio, "Disharmoni Peraturan Perundang-Undangan di Bidang Agraria", Artikel dalam *Jurnal Lex Jurnalica*, Volume 10 Number 3, December 2013, p. 145.

¹⁷ Andi Hamzah, *Bunga Rampai Hukum Pidana dan Acara Pidana* Jakarta, Gramedia, 2001, p. 22.

¹⁸ Indriyanto Seno Adji, *Korupsi Kebijakan Aparatur Negara dan Hukum Pidana*, Diadit Media, Jakarta, 2006, p. 585.

Laws made by state authorities must be able to regulate all aspects of national and state life including in the political aspects. Power is synonymous with politics or at least because politics always aims to achieve power. Citing the opinion of Moh. Mahfud M.D., Political law is basically the direction of law that will be enacted by the state to achieve state objectives in the form of new laws and the replacement of old laws. The urgency of legal politics in making laws and regulations, covers at least two things, namely as a reason why it is necessary to form a statutory regulation and to determine what is to be translated into legal sentences and to formulate articles. These two things are important because the existence of legislation and article formulation is a 'bridge' between the politics of law that is determined by the implementation of the law politics in the stage of implementation of laws and regulations¹⁹.

Kelsen stated that "the principle of government activity is a symptom of transformation from the rule of law to an administrative state (*administrative state*) which is essentially a *welfare state*", in the sense that a state whose government officials act directly reaches the country's goals by directly producing what is desired Public²⁰. This principle arrangement is not uncommon in Indonesian law (positive law) or government conventions, where the government is given the authority to act on its own initiative (*freies ermessen* (Germany), or *pouvoirdecretionnaire* (France), in order to do anything for the sake of people welfare²¹.

Different views on the role and legal consequences arising from the factual actions of the government (*feitelijke handelingen*), are possible because there is no attention in the form of a thorough and in-depth study of the roles and legal consequences of the use of government factual actions (*feitelijke handelingen*) in the administration of government as stated Indroharto before²².

Departing from this argument, two understandings will emerge, namely the abuse of authority (*detournement de pouvoir*) and acts against the law (*onrechmatige daad*). According to Supandi, the abuse of authority (*detournement de pouvoir*) is a concept of state administrative law which indeed causes many misunderstandings in interpreting it. In practice *detournement de pouvoir* is often confused with arbitrary acts (*willekeur / abus de droit*), abuse of facilities and opportunities, against the law (*wederrechtelijkheid, onrechmatige daad*), or even expand it with any actions that violate any rules or policies and in any field²³.

The term authority that is commonly used in State Administrative Law (HAN), is often interchangeable with the term authority. But there are also legal experts who distinguish them. Ateng Syafrudin and SF Marbun, including those that distinguish between the two, authority (*authority* or *gezag*) is referred to as formal power, power that comes from the power granted by the law, in which there are authorities, so that the authority (*competence* or *bevoegdheid*) only a certain part (*onderdeel*) of authority²⁴. If it is associated with abuse, there are differences in the use of the terms authority and authority. The term used in criminal law is "abuse of authority" which is always associated with one's position and is the best and *bestanddeel delict* in Corruption regulated by Article 3 of the Anti-Corruption Eradication Act, which is the absolute competence of the Corruption Court in accordance with the provisions of Article 5 and Article 6 of the Corruption Court Law. While the term "abuse of authority" is a prohibition for government bodies or officials and constitutes the absolute competence of the TUN Justice. Although the competency is limited only to decisions and / or actions of Government Officials

¹⁹ Moh. Mahfud M.D., *Membangun Politik Hukum, Menegakkan Konstitusi*, (PT Raja Grafindo Persada, Jakarta, 2010), p.5.

²⁰ Hans Kelsen, *Pengantar Teori Hukum* (Nusa Media 1996). p.153.

²¹ Jimly Asshidiqie dan M. Ali Safa"at, *Teori Hans Kelsen tentang Hukum*, Konstitusi Press (Konpress), Jakarta, July, 2011, p. 56

²² *Ibid.*

²³ Supandi, "Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan (Relevansinya Terhadap Disiplin Penegakan Hukum Administrasi Negara dan Penegakan Hukum Pidana)", Makalah tidak diterbitkan, p. 7

²⁴ Ateng Syafrudin, "Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggungjawab", Jurnal Pro Justitia IV, (Bandung: Universitas Parahyangan, 2000), p. 22.

that have not yet been criminally processed and there have been results of supervision by the Government Internal Supervisory Apparatus (APIP).

Juridically, abuse of authority in the Government Administration Act is stated to occur when "government bodies and / or officials in making decisions and / or taking actions beyond authority, confusing authority, and / or acting arbitrarily²⁵." Government agencies and / or officials exceed authority when decisions and / or actions taken with a). beyond the term of office or the time limit for the validity of authority; b). exceed the limits of the validity of authority; and / or c). contrary to the provisions of the legislation²⁶. "While the decisions and / or actions of the Agency and / or Government Officials are categorized as a confusion of authority if it is done outside the scope of the material or authority given and / or contrary to the purpose of the authority granted²⁷." Finally the Agency and / or Officer The government is declared arbitrary when its decisions and / or actions are carried out without a basis of authority and / or contrary to a court decision that has permanent legal force²⁸."

The problem now, when we talk about the domain of study (domain) is an abuse of authority (*detournement de pouvoir*) which will be used in an academic perspective not only to the extent of understanding above but also to criticize the legal products that have been formed. Thus legal politics adheres to the *Double Movement* principle, which is in addition to being a frame of thought in formulating policies in the field of law (legal policy) by the competent State institutions, it is also used to criticize legal products that have been enacted based on legal policies related to abuse of authority (*detournement de pouvoir*). The following is the scope or area of study of legal politics in relation to the formulation of the norm of abuse of authority (*detournement de pouvoir*)

1. The process of extracting the values and aspirations that develop in society by State officials who are authorized to formulate norms of abuse of authority;
2. The process of debate and formulation of the values and aspirations in the form of a draft legislation by the State authorities who are authorized to formulate legal politics related to the abuse of authority;
3. The State Organizer has the authority to formulate and determine the political law of abuse of authority;
4. Legislation and regulations containing legal politics;
5. Factors that influence and determine a political law, both to be, and have been determined;
6. Implementation and legislation which is an implementation of the legal politics of legislation related to abuse of authority

These six problems will continue to be the domain of legal politics in formulating elements "abuse of authority". In this case, legal politics in general is useful to find out how the processes covered in the six study areas can produce a legal policy that suits the needs and sense of justice of the community. Specifically in understanding the ideal norm of abuse of authority (*detournement de pouvoir*) in the future.

²⁵ Article 17 of Law Number 30 Year 2014 Concerning Government Administration.

²⁶ Article 18 paragraph (1) of Law Number 30 Year 2014 Concerning Government Administration

²⁷ Article 18 paragraph (2) of Law Number 30 Year 2014 Concerning Government Administration

²⁸ Article 18 paragraph (3) of Law Number 30 Year 2014 Concerning Government Administration

Conclusions

1. Differences in the elements of "abusing authority" in the legislation of Government Administration, Administrative Court and criminal act of corruption have resulted in *Conflict of norm* that occurs between Article 5 and Article 6 of the Corruption Court Law jo. Article 3 of the Corruption Eradication Law with the provisions of Article 21 paragraph (1) jo. Article 1 number 18 jo. Article 17 to Article 21 of the Government Administration Law, regarding absolute competence to examine and decide on the element of "abuse of authority" because of the position in Corruption, whose concept is considered by some legal experts to be the same as the concept of "abuse of authority" in the Government Administration Law which has the authority to examine and decide on the matter given to the State Administrative Court (TUN Court). Article 17 to Article 21 which regulates the prohibition of abuse of authority by Government Agencies and / or Officials as well as granting authority to the Government Internal Supervisory Apparatus (APIP) and TUN (Administrative Courts) to conduct supervision and testing regarding the presence or absence of elements of abuse of Authority conducted by Government Officials. Meanwhile, previously there were provisions in Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption, as amended by Law Number 20 of 2001 (Corruption Eradication Law) jo. Article 5 and Article 6 of Law Number 46 Year 2009 concerning Corruption Criminal Court (Corruption Court Law), which one of the elements regulates Corruption for abuse of authority, where absolute competence to examine the matter is given to the Corruption Court.
2. In relation to the politics of legal development, the implementation of governmental tasks carried out by the government apparatus is essentially an emphasis on the function of government carried out. Based on the nature of the function of government (governmental power) as an active function in the sense of driving or controlling the life of the people and the state to realize the welfare of the people (*welfare staat*), and directed to the function of fostering and protecting the community, is the real reason for the role of government intervention in each sector social life, or in other words if it involves public interests, then there is also the implementation of government affairs which become the affairs and responsibilities of the government. Law Number 30 of 2014 concerning Government Administration. The law is needed to provide a legal basis for all actions, behavior, authority, rights and obligations of each state administrator in carrying out his daily duties serving the community. Because so far these things have not been regulated in full in a Law specifically held for that. Whereas Law No. 5 of 1986 concerning Administrative Justice. For this reason, political law has an important role in harmonizing these three laws.

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