



Pattern of Accommodation of Administrative Law in Corruption Management

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Abstract

This study aims to describe the pattern of accommodating administrative law in dealing with corruption. This type of research is a juridical research with a qualitative doctrinal approach. Indonesia in Law Number 30 of 2014 concerning Government Administration regulates the legal basis and guidelines for every government administration official in making decisions, preventing abuse of authority and closing opportunities for corruption. However, at the level of implementation, it does not run optimally as evidenced by the trend of handling corruption in 2016 - 2018 by the Corruption Eradication Commission which has increased both at the level of investigation, investigation, prosecution, Inkracht and execution. Therefore, optimizing the accommodation of state administrative law in fighting corruption is part of preventive efforts to detect corruption early.

Keywords: *Administrative Law; Corruption Eradication*

Introduction

Indonesia is a state of law. As a state of law, it means that in our country the law has an important meaning, especially in all aspects of people's lives. All arrangements carried out by the state through the intermediary of its government must be in accordance with and according to channels that have been determined in advance by law. Indonesia in terms of realizing a legal state wants the formation of a state administrative court (PTUN) as adopted by continental European countries. The existence of state administrative courts (PTUN) in various modern countries, especially countries that adhere to the concept of the Welfare State (Welfare State) is a milestone on which people or citizens hope to maintain their rights which have been harmed by public legal actions by state administration officials because of their decisions. or policies issued (Salmon, H. 2010). For the State Administrative Court as a sub-system of the judicial system in Indonesia based on Law Number 5 of 1986 concerning State Administrative Courts as last amended by Law of the Republic of Indonesia Number 51 of 2009 concerning the Second Amendment to Law of the Republic of Indonesia Number 5 of 1986 concerning the State Administrative Court (UU Peratun) in Article 47 regulates the competence of the State Administrative Court (PTUN) in the judicial system in Indonesia, namely the duty and authority to examine, decide, and resolve state administrative disputes. The Court's authority to accept, examine, decide to settle cases submitted to him is known as competence or authority to adjudicate.

In its development, the authority or competence to adjudicate PTUN is not only a public legal act of state administration officials because of the decisions or policies issued but based on the latest provisions in Article 21 of Law Number 30 of 2014 concerning Government Administration which authorizes the State Administrative Court to examine whether there are whether or not there is an element of abuse of authority in decisions and/or actions taken by government agencies and/or officials (Wahyunadi, YM 2016).

Corruption is a form of abuse of authority so that it intersects with administrative law which has an important role to oversee the government in order to comply with AUPB and build good governance. The relationship between administrative law and corruption is contained in the concept of authority, which are two interrelated aspects of law. According to the tradition of legal science, the point of "administrative law" is between the norms of governmental law and criminal law, so it can be said as "intermediate law". Criminal law contains norms that are so important for people's lives that the enforcement of these norms can be enforced by criminal sanctions (Yasser, B. M. 2019).

In a rapidly changing world, there is no guarantee that Indonesia's current economic growth will be sustainable in the future. The situation will get worse if the current government bureaucracy is part of the problem (Kasim, A. 2013). The current reality shows that 20 years of reforms have been able to institutionalize democracy, but this capability has not been able to answer people's expectations. The performance of a number of democratic political institutions/institutions (political parties, DPR, and executive government) has not been satisfactory. This is further exacerbated by the welfare of the community which is the goal of the transformation of the political structure but is not immediately perceived/realized as the community expects. A concrete example is as of December 31, 2018, in 2018 the KPK handled corruption crimes with details: investigation of 164 cases, investigation of 199 cases, prosecution of 151 cases, inkracht 106 cases, and execution of 113 cases (Anti-Corruption Clearing House. 2018).

The most crucial is the corruption case involving the leadership of the representative democratic institution (General Election Commission) as stated by the Corruption Eradication Commission (KPK) that appointed the General Elections Commission commissioner Wahyu Setiawan as a suspect in bribery. Wahyu was exposed to the KPK's arrest operation on Wednesday, January 8, 2020 (Tempo, 2020). In fact, in accordance with what is required by Law no. 28 of 1999 Implementation of a Clean and Free State of Corruption, Collusion and Nepotism, namely; State Administrators are State Officials who carry out executive, legislative, or judicial functions, and other officials whose main functions and duties are related to the administration of the state in accordance with the provisions of laws and regulations, namely ensuring that the administration of the government must be oriented towards providing good, transparent public services. , giving rights and obligations to citizens, providing legal protection from government actions.

Based on the above, it is necessary to re-elaborate the pattern of accommodating administrative law in dealing with corruption to ensure that the administration of the government must be oriented towards providing good, transparent public services, giving rights and obligations to citizens, providing legal protection from government actions by reaffirming the form of prohibition of abuse of authority as stated in Article 17 of Law no. 30 of 2014 concerning government administration, mentions: 1) Government agencies and/or officials are prohibited from abusing their authority; and 2) The prohibition of abuse of authority as referred to in paragraph (1) includes: a) Prohibition beyond authority; b) Prohibition of mixing authority; and c) Prohibition of acting arbitrarily.

Theory Framework

Legal System

The legal system is a unit that operates within certain limits that moves the law as a social control which in its study has a special character and technique. Friedman in his book "American Law an introduction" states that the legal system includes: 1). components of legal substance, including all written and unwritten rules, both material law and formal law; 2). components of the legal structure, including legal institutions, legal apparatus and legal systems; 3). the cultural component, which is an emphasis on culture in general, habits, opinions, ways of thinking and acting that direct social forces in society (Friedman, L. M. 2009).

Korupsi

Corruption can be seen from a narrow and broad sense. Pavarala (1996) divides the understanding of corruption into two groups, namely a narrow legal understanding and an understanding that also pays attention to morals and ethics. In a narrow sense, corruption includes bribery, the use of public goods not in accordance with the commission's designation, misappropriation, and giving in excess of the permitted value. In a broad sense, corruption includes the things above plus nepotism/favoritism, dishonesty/crime, and intellectual crimes (Umar, H. 2012). In line with that, Ramirez Torrez's theory states that corruption is a crime of calculation, not just a passion. A person will commit corruption if the results obtained from corruption are higher and greater than the punishment obtained and the probability of being caught is relatively small (Waluyo, B. 2017).

Research Method

The research method in this writing can be detailed as follows:

a. **Types of Research**

This research is a normative legal research conducted by examining library materials or secondary data.

b. **Nature of Research**

This research is descriptive. Descriptive research is research which is a problem-solving procedure investigated by describing the current state of the subject or object of research based on visible facts.

c. **Scientific Approach**

In legal research, the research approach can be used a statutory approach. The statutory approach is an approach taken to various legal rules relating to administrative law and criminal law related to the object of research.

Results and Discussion

Pattern of Accommodating Administrative Law in Combating Corruption

The Indonesian national legal system is a legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia and consists of a number of laws and regulations, jurisprudence and customary law. From a legal perspective, Pancasila acts as a national legal development paradigm that aims to produce legal products that are in accordance with the principles of Pancasila values (Absori. 2016). The relationship between administrative law and corruption is closely related to the concept of abuse of authority. Abuse or abuse of authority in Dutch terms is known as *misbruik* which has similarities to the term *missbrauch* in German or *misuse* and *abuse* in English terms whose meaning is always associated with negative things, namely abuse. The concept of State Administrative Law is always paralleled with the concept of *détournement de pouvoir* in the French legal system or *abuse of*

power/misuse of power in English terms. Government officials are declared to have violated the principle of *détournement de pouvoir*, when the purpose of the decision issued or the action taken is not for the interest or public order but for the personal interest of the official (including his family or colleagues) (Sahlan, M. 2016).

In the context of administrative law, Law Number 30 of 2014 concerning Government Administration (UUAP) does not provide an explicit definition regarding abuse of authority. However, Article 17 of the UUAP only states that Government Officials are prohibited from abusing their authority and the provisions in Article 19 of the UUAP regulate the legal consequences of decisions and/or actions determined by the abuse of authority. The provisions in the UUAP provide attribution of authority to the State Administrative Court (PTUN) to receive, examine, and decide whether or not there is an element of abuse of authority in the decisions and/or actions of Government Officials. In addition, the concept of abuse of authority is a concept in administrative law that is absorbed into criminal law, so it is more appropriate to bring the issue of whether or not there is an element of abuse of authority into the realm of administrative justice. Meanwhile, the provisions on abuse of authority in Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (Corruption Law) is regulated in Article 3 which reads (Anggoro, F. N. 2016):

*“Any person who intentionally benefits himself or another person or a corporation, **abuses the authority**, opportunity 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 imprisonment of 1 (one)) years and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.0 (fifty million rupiah) and a maximum of Rp.1,000,000,000.00 (one billion rupiah)”*.

The current state administrative law which has been drafted into a law (Law Number 30 of 2014 concerning Government Administration) if it is observed that the law is a material law of state administrative law in Indonesia, it regulates the legal basis and guidelines for every government administration officials in making decisions, preventing abuse of authority and closing opportunities for KKN (Corruption, Collusion, and Nepotism). (Shaha, A. 2016). The act of corruption does not have one form but many forms, as explained (Chazawi Adami, 2003) which divides corruption into several types (Arifin, Z., & Irsan, I. 2019), namely :

- a. Petty Corruption and Grand Corruption.
Small-scale corruption usually tends to be carried out by officers who meet directly with the public, while large-scale corruption is carried out by high-level officials, because this type of corruption involves very large amounts of money.
- b. Bribery (Bribery)
The form of bribery is usually carried out in the government bureaucracy in Indonesia, especially in the field or agency that administers state revenues (revenue administration).
- c. Misappropriation / Misappropriation
Misappropriation / fraud can occur when administrative controls (checks and balances) and the examination and supervision of financial transactions do not work properly. Examples of this type of corruption are falsification of records, wrong classification of goods, and fraud.
- d. Embezzlement
This corruption is by embezzling or stealing the collected state money, leaving little or nothing.
- e. Extortion (extortion)
This extortion occurs when the public does not know about the applicable regulations, and it is from this loophole that the officers carry out extortion by scaring the public into paying more than they should.

f. Protection (patronage)

Protection is carried out including in the case of selection, transfer, or promotion of staff based on ethnicity, personal closeness, and other social relationships without considering the achievements and abilities of the person.

There is no doubt that corruption is a major cause of immeasurable losses. This happens because the relationship of losses due to corruption can be felt in four sides, namely political, economic, social and environmental. The loss of political corruption causes the main obstacle to democracy and the enforcement of human rights as one of the pillars in realizing a rule of law (Nobility, M. 2018). Sukawarsini in his research asserts that accountable political leadership cannot thrive in a corrupt climate (Djelantik, S. 2008). Economically, corruption leads to the erosion of national/state wealth as data from the Prosecutor's Office of the Republic of Indonesia in 2016 was only able to save state money at the investigation and prosecution stage of Rp. 331,048,686,281.07 and USD 263,929.12.

There is not enough loss of state money, there are also many programs that should be accepted by the community in order to alleviate poverty and improve people's welfare instead being sucked up by high-cost and uneconomical projects, this indicates that in some of our society there has been a moral crisis by justifying all kinds of ways to achieve goals, both individual goals to enrich themselves and group goals for the existence of group sustainability (Nobility, M., 2017). From a social perspective, corruption undermines public trust in the political system, making it easy to despotic. The last is the occurrence of environmental damage as a consequence of a corrupt system due to the preference for financing projects that damage the environment so that it is easy to channel public funds into private pockets. It is not surprising that the trend of handling corruption cases is increasing every year, as the data from the Attorney General's Office of the Republic of Indonesia shows below:

Table 1. Criminal case handling of corruption by prosecutors of the Republic of Indonesia, Prosecution 2011 – 2016.

Year	Investigation	Prosecution
2011	1.515	1.217
2012	1.401	1.511
2013	1.430	1.430
2014	1.380	1.380
2015	1.785	1.622
2016	1.600	2.434

In line with the Attorney General's Office, further data from the Corruption Eradication Commission shows that defendants in corruption cases who have fallen every year have an increasing trend as shown in the image below:

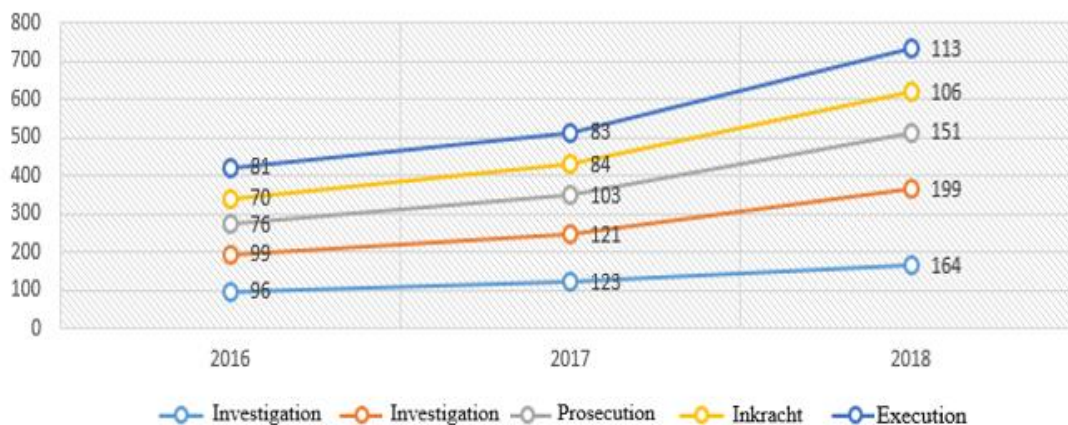


Figure 1. Recapitulation of Corruption Crimes 2016 to 2018.

Accommodating state administrative law in fighting corruption is part of preventive efforts to detect corruption early, in line with the opinion of Guntur Hamzah, Professor of Administrative Law at Hasanuddin University, stating that the existence of the Government Administration Law will strengthen and increase the breaking power of corruption eradication efforts because with the APIP, allegations of abuse of authority can be detected early as a preventive measure (Sahlan, M. 2016). This is in line with the purpose of the Government Administration Law being issued, there are 6 (six) problems as well as being the main factors behind the immediate stipulation of the Government Administration Law, namely first, the tasks of state government continue to develop and become increasingly complex, both regarding the nature of work, the type of task and the people who carry it out. Second, all this time, state administration administrators carry out their duties and authorities with different standards, so that disputes and overlapping authorities often occur between them. Third, the legal relationship between state administration administrators and the community needs to be strictly regulated so that each party knows their respective rights and obligations in interacting between them. Fourth, there is a need to set minimum service standards in the day-to-day administration of state administration and the need to provide legal protection to the public as users of services provided by state administration implementers. Fifth, advances in science and technology have influenced the way of thinking and working procedures of state administration administrators in many countries, including Indonesia. Finally, to create legal certainty for the implementation of the day-to-day tasks of state administration administrators.

Another challenge that is no less important in law enforcement against corruption is the legal culture which in our current state of reality in fighting corruption is likened to a person cutting down a tree, he chooses which tree he wants to cut. Not all trees can be cut down. This is why corruption is treated selectively. When this happens, the fight against corruption will never end (Butt, S., & Schütte, S. A. 2014). The profile of the previous government which was centralized to decentralized after the 1998 reform was expected to support good governance but in the end it turned out to create conditions for bad governance, which was characterized as one of them by increasing corruption (Kurniawan, T. 2011). For this reason, there is a need for government policies and also support from the community (Absori 2020). The pattern of accommodating administrative law is expected to be able to take on a role in supervising in order to assess whether the implementation of the duties and work of TUN officials is in accordance with applicable legal norms, and whether the achievement of the stated goals is achieved without violating applicable legal norms (Fanani, MZ, & Zamroni, M. 2018). So that the purpose of law as a value center to achieve universal general welfare for all beings can be realized (Nobility, M. I., & Budiono, A. 2021).

Conclusion

The existence of State Administrative Law is a milestone in the hope of citizens to defend their rights that have been harmed due to decisions or policies issued by state administration officials, in its development there are not only adverse decisions or policies but also abuse of authority in decisions and/or actions taken by the Agency and / or State Administration Officials as stipulated in Article 21 of Law Number 30 of 2014 concerning Government Administration. Corruption is a form of abuse of authority so that it intersects with administrative law which has an important role to oversee the government so that it is in accordance with the general principles of good governance (AUPB) and builds good governance. Reality shows that efforts to eradicate corruption are currently not running optimally both at the level of investigation, investigation, prosecution, Inkracht and execution in 2016 – 2018 and then continue to experience an increasing trend. Therefore, the accommodation of state administrative law in combating corruption is part of a preventive effort to detect corruption early by conducting supervision and assessing whether the implementation of the duties and work of government officials is in accordance with applicable legal norms, and whether the achievement of the goals set has been achieved. without violating applicable legal norms.

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