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Legal Politics of Corruption Crimes Viewed From the Perspective of Administrative Law

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Abstract

This study aims to analyze the legal politics of corruption crimes from the perspective of administrative law. It employs a normative approach to examine relevant legal texts and the changes occurring over time. A deductive analytical method is used by applying legal principles and doctrines related to corruption crimes, utilizing the lens of administrative law, and incorporating minor premises in the form of existing legal facts or events. The main findings of this study reveal that the legal politics of corruption crimes, viewed from the perspective of administrative law, encompass three aspects: philosophical, juridical, and sociological. Philosophically, corruption must be combated to uphold justice, public interest, and morality in public administration. Sociologically, corruption arises from social interactions and disparities within society and power structures. Legal politics should establish systems that minimize opportunities for corruption. Juridically, in the context of administrative law, corruption is regulated under positive law, and law enforcement must include criminal sanctions as well as efforts to recover state losses.

Keywords: *Legal Politics; Corruption; Administrative Law*

Introduction

According to the Indonesian Anti-Corruption Encyclopedia, “Corruption” (from the Latin: *corruption* = bribery; *corruptore* = to destroy) refers to a phenomenon where officials and state institutions abuse their authority through bribery, forgery, and other irregularities. Corruption involves the misappropriation or embezzlement of state or corporate funds by individuals for personal or others' gain.[1]

According to Lubis and Scott, corruption is behavior that benefits personal interests at the expense of others, particularly by government officials, which directly violates legal boundaries. Literally, corruption signifies something rotten, evil, and destructive. Discussions about corruption often reveal such realities because it involves moral issues, poor conduct, misuse of positions in government institutions, abuse of power due to bribery, economic and political factors, and nepotism in staffing under one’s authority.[2]

[1] Sudarsono, 2009, Kamus Hukum, Jakarta: Rineka Cipta, pg. 231.
[2] Evi Hartanti, 2005, Tindak Pidana Korupsi, Jakarta: Sinar Garfika, pg. 76

Thus, corruption can be defined as an act that harms state finances or the national economy, committed by state apparatus, public officials, or other individuals through the abuse of authority for personal or group interests. Corruption manifests in various forms, such as bribery, extortion, gratuities, embezzlement, or budget manipulation. Corruption not only results in financial losses for the state but also erodes public trust in government institutions, hinders economic development, and exacerbates social inequalities. Therefore, combating corruption must be carried out firmly through robust law enforcement, transparency, and effective oversight systems. Prevention is equally important by fostering an anti-corruption culture and enhancing the integrity of state officials.

Corruption in Indonesia continues to rise year after year, with an increasing number of cases, significant financial losses for the state, and systematic approaches that permeate various aspects of society. Considering the complexity and tangible threats of corruption, it can be viewed as a national issue that must be addressed seriously through decisive actions involving all stakeholders, especially the government and law enforcement agencies.

Legal politics can be defined as a tool or instrument used by the government to shape the desired national legal system with the hope of realizing the nation's aspirations and the goals of the Indonesian state as outlined in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia.

In brief, legal politics can be understood as the goals of law aimed at achieving strategic objectives to fulfill the aspirations of the nation and state. To establish Indonesia as a state governed by law, the government is responsible for implementing national legal development. According to the 1945 Constitution of the Republic of Indonesia, this development must be carried out systematically, integratively, and sustainably within a national legal system that protects the rights and obligations of all Indonesian people. One such effort includes eradicating corruption to achieve the welfare of the people by enacting asset confiscation laws, which are expected to serve as a legal framework for addressing the increasingly prevalent corruption cases each year.

In 2022, Indonesia Corruption Watch (ICW) recorded 579 corruption cases that were prosecuted in Indonesia. This figure represents an increase of 8.63% compared to the previous year, which saw 533 cases. Furthermore, ICW data indicates that state losses due to corruption cases amounted to IDR 238.14 trillion over the past decade. This data was compiled based on corruption verdicts issued by courts at the first instance through to the cassation stage.

In Administrative Law, the execution of government actions must be based on authority. If such actions result in harm to society, there is an opportunity to review these government actions in court, based on the General Principles of Good Governance (AUPB) and relevant laws, through the Administrative Court.[3]

In general, administration can be defined as guidance, government action, implementation of activities, development of public policy principles, activity analysis, decision-making, policy considerations, individual and group work to provide public goods and services, as well as an academic and theoretical field of study. The tasks of administration include various activities, such as identifying and prioritizing needs, redefining organizational goals, securing financial resources and facilities, developing programs and services, creating organizational structures, evaluating programs, planning, conducting research, and implementing necessary organizational changes in public services.

This study employs a literature review method, meaning that the research is based on examining written sources. The specific characteristics underlying the development of knowledge in this research

[3] Philipus M. Hadjon, Pemerintah Menurut Hukum, (Surabaya: Yuridika, 1993), pg. 13

include the fact that it focuses on existing data or texts, without involving field data collection or information from eyewitnesses. The researcher interacts solely with pre-existing sources in libraries, including secondary data.

The process of library research involves reviewing literature and analyzing relevant topics derived from various sources, such as journals, books, dictionaries, documents, magazines, and other materials, without the need for fieldwork.

Discussion

a. Philosophical, Sociological, and Juridical Perspectives in the Legal Politics of Corruption Crimes Within the Framework of Administrative Law

Initially, legal politics was understood as a legal policy applied in a specific jurisdiction. In this context, legal politics implies a sense of locality, meaning its implementation is limited to the area where the legal policy is enforced. Over time, legal politics has also come to be understood as a framework for determining and comprehending legal policies, allowing for the identification of the direction of legal development and the legal reforms intended by such policies.

Legal politics is described as an interplay process in the social and political spheres among various pressure groups within society that influence the shape and character of national law.[4] This interplay occurs because laws are formed through political processes conducted by state institutions, such as the People's Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representative Council (DPD), and the President. These institutions derive their legitimacy from the people through elections. Therefore, it is not inaccurate to suggest that pressure groups contribute to the formation of laws (in the sense of statutes).

Understanding legal politics can be achieved by examining its three aspects: philosophical, sociological, and juridical.

A philosophical, sociological, and juridical review of the legal politics of corruption crimes, especially from the perspective of administrative law, provides a profound understanding of how law regulates and responds to corrupt behavior within governmental structures. Each of these perspectives offers a distinct approach and focus on addressing the issue of corruption.

Philosophy of law pertains to the fundamental values underlying the formation of laws. In the context of corruption and administrative law, it emphasizes justice, truth, and morality in state administration:[5]

a. Justice: The law must balance individual rights and public interests. Corruption, which harms the state and society, threatens social and economic justice. From a philosophical perspective, corruption must be punished to uphold the principles of justice in society.
b. Public Interest: Administrative law prioritizes effective and transparent public service. Corruption violates administrative responsibilities aimed at serving the public. Philosophically, the state has a moral obligation to manage resources and public policies for the common welfare. Corruption obstructs these goals and must be strictly regulated within legal politics.
c. Ethics and Morality: Corruption is a breach of ethical governance. Philosophically, it is not just a legal issue but also a moral one. Thus, embedding ethical values in law enforcement against corruption is essential.

[4] Sunaryati Hartono, 1991, Politik Hukum Menuju Satu Sistem Hukum Nasional, Bandung : Alumni, pg 65.
[5] Acton, H.B.-Muhammad Hardani (penterjemah), 2003, *Dasar-dasar Filsafat Moral*: Elaborasi Terhadap Pemikiran Etika Immanuel Kant, Pustaka Eureka, Surabaya.

The sociological review of legal politics on corruption crimes views corruption as a social product influenced by cultural, social, and power dynamics. This perspective focuses on the interaction between society, social systems, and power in fostering corrupt practices:[6]

a. Culture of Corruption: In many countries, including Indonesia, a culture of tolerance toward corruption persists across societal layers. This tolerance often stems from traditions, nepotism, or opaque interactions between public officials and society. The sociological perspective highlights that corruption can become ingrained if preventive measures are ineffective.
b. Social and Economic Structures: Social and economic disparities often drive high levels of corruption. Inequities in wealth distribution and access to legitimate opportunities can lead individuals to seek illicit gains. Administrative law plays a role in creating mechanisms to address these inequalities.
c. Political and Economic Power: Corruption often arises from imbalances in political and economic power. Officials in positions of authority may exploit their roles for personal gain. From a sociological perspective, administrative law must aim to establish governance systems that are transparent, accountable, and free from undue political or economic influence.

Juridical Review refers to the aspect of positive law, encompassing existing legislation and how it is applied in practice. In this context, administrative law functions to regulate the actions of public officials, their relationships with the public, and to ensure that state administration is conducted lawfully and in accordance with applicable legal principles.

a. Regulation of Corruption in Positive Law

In administrative law, corruption crimes are governed by anti-corruption laws, such as Law No. 31 of 1999 on the Eradication of Corruption Crimes, as amended by Law No. 20 of 2001. These laws define, investigate, and penalize corruption crimes. The administrative law system includes administrative controls over the use of power by public officials and ensures that their actions comply with prevailing legal provisions.

b. Abuse of Power by State Officials

In the context of state administration, corruption often arises from the abuse of authority by public officials. Administrative law establishes mechanisms for monitoring and accountability regarding administrative actions taken by officials. This includes both internal and external oversight systems over policies and decisions made by the government.

c. Sanctions and Recovery of State Losses

The juridical aspect also encompasses legal processes related to imposing sanctions on perpetrators of corruption and recovering state losses resulting from these crimes. In administrative law, apart from criminal sanctions, efforts are made to recover assets acquired unlawfully through administrative or civil channels.

b. Violations of General Principles of Good Governance and Their Relation to Corruption Crimes

In Administrative Law, government actions must be based on proper authority. If government actions are perceived to harm society, there is an opportunity to challenge these actions in court, guided by the General Principles of Good Governance (AUPB) and relevant laws, through the State Administrative Court.

[6] Joko Sriwidodo, 2020, HUKUM DALAM PERSPEKTIF SOSIOLOGI DAN POLITIK DI INDONESIA. Kepel Press :Ypgyakarta, pg 34.

AUPB has diverse definitions and is regulated in various laws, one of which is Law No. 5 of 1986 on State Administrative Courts (PTUN Law) and its amendments, which also address AUPB. Article 53, paragraph (2)(a) of the PTUN Law states that AUPB is one of the bases for filing lawsuits against state administrative decisions. The explanation of this article mentions several principles of AUPB, including the principle of legal certainty, orderly state administration, transparency,proportionality, professionalism, and accountability.[7] These principles are derived from Law No. 28 of 1999 on State Administration that is Clean and Free from Corruption, Collusion, and Nepotism.

Law No. 30 of 2014 on Government Administration (UU AP) defines AUPB as principles that guide government officials in exercising authority to issue decisions and/or actions in governance.[8] Article 10, paragraph (1) of the UU AP lists the AUPB principles as legal certainty, utility, impartiality, accuracy, non-abuse of power, transparency, public interest, and good service. Beyond these legal definitions, scholars have also provided interpretations of AUPB. For example, Philipus M. Hadjon explained that governments do not merely enforce laws but, under the principle of *fries ermessen*, may take actions not explicitly regulated in laws.

Philipus M. Hadjon also noted that in the Netherlands, binding decisions (*gebonden beschikking*) are evaluated based on written laws, while discretionary decisions (*vrije beschikking*) may be assessed against unwritten laws, formulated as the "algemene beginselen van behoorlijk bestuur" (ABBB) or the general principles of good governance. Over time, both in Indonesia and the Netherlands, laws and AUPB have become essential references for government administrators in performing their functions and issuing decisions.

The validity of a government decision depends on compliance with both statutory laws and AUPB. This requirement is explicitly stated in Article 52, paragraph (2) of the UU AP 2014, which stipulates that: *"A state administrative decision is valid if it is made in accordance with statutory regulations and based on AUPB."*

Indroharto defines the General Principles of Good Governance (AUPB) as principles specifically applicable in the field of government administration, forming part of general legal principles that are significant in guiding administrative legal actions. Initially, the General Principles of Proper Governance (AAUPL), another term for AUPB, were considered unwritten legal principles. F.H. Van Der Burg and G.J.M Cartigny further elaborated that AAUPL are unwritten legal principles that administrative bodies or officials must adhere to when taking legal actions, which will later be evaluated by administrative judges.[9]

Wirda Van der Burg described AUPB as ethical tendencies forming the basis of administrative law, encompassing both written and unwritten laws, including government practices. She noted that these principles could partially derive from laws and practices, while a significant portion stems from direct, evident, and urgent proof. Wirda presented this view at a conference of the Dutch Administrative Law Association in 1952.[10]

From the above expert definitions of AUPB, the following conclusions can be drawn:[11]

[7] Indonesia, Undang-undang Perubahan Atas Undang-undang No. 5 Tahun 1986 Tentang Peradilan Tata Usaha, UU No. 9 Tahun 2004, LN No. 35 Tahun 2004, TLN No. 4380.

[8] Indonesia, Undang-undang Administrasi Pemerintahan, UU No. 30 Tahun 2014, LN No. 292 Tahun 2014, TLN No. 5601, Ps 1 butir 17.

[9] Olden Bidara, "Asas-asas Umum Pemerintahan Yang Baik Dalam Teori dan Praktek Pemerintahan", dimuat dalam Paulus Effeni Lotulang, Himpunan Makalah Asas-Asas Umum Pemerintahan yang Baik, (Bandung: Cita Aditya Bakti, 1994), pg. 80.

[10] Ateng Syarifudin, Kepala Daerah, (Bandung: Citra Aditya Bhakti, 1994), hlm. 53.

[11] Cekli Setya Pratiwi, et.al., Penjelasan Hukum Asas-Asas Umum Pemerintahan yang Baik (AUPB) Hukum Administrasi Negara, pg. 38.

1. AUPB serves as a legal norm (written) and/or an ethical norm (unwritten) specifically applicable within the scope of state administration.
2. AUPB is essential as a guideline for administrative officials (Pejabat TUN) in exercising their authority.
3. AUPB acts as critical principles that judges must adhere to, functioning as a tool for administrative judges to evaluate the legality of administrative decisions (KTUN).
4. AUPB provides the basis for lawsuits filed by plaintiffs.
5. Unwritten AUPB principles are binding when judges use them as a basis for rulings in administrative courts.
6. AUPB serves as a guide for administrative officials, determining the boundaries they must observe when exercising authority.
7. AUPB functions as a benchmark for administrative judges to assess the legality of administrative decisions (KTUN).

Perspectives on Corruption:

a. Philosophical: Corruption must be combated to uphold justice, public interest, and morality in state administration.
b. Sociological: Corruption arises from social interactions and inequalities within society and power structures. Legal policies should create systems to reduce opportunities for corruption.
c. Legal (Yuridis): In administrative law, corruption is regulated by positive law, and law enforcement must include criminal sanctions as well as efforts to recover state losses.

Conclusion

It can be concluded that the legal policy of corruption crimes viewed from the perspective of state administrative law has three aspects, namely Philosophical, Juridical and Sociological. Philosophically, corruption must be fought to maintain justice, public interest, and morality in state administration. Sociological: Corruption is the result of social interaction and inequality that exist in society and power structures. Legal politics must create a system that can reduce the opportunity for corruption. Juridical: From the perspective of state administrative law, corruption is regulated in positive law and law enforcement must include criminal sanctions and efforts to recover state losses.

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