AUTHORITY OF THE STATE ADMINISTRATIVE JURISDICTION TO CONSIDER ELEMENTS OF AUTHORITY ABUSE RELATED TO THE CRIME OF CORRUPTION

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ABSTRACT

The objective of this study is to examine, understand, and analyze the logic of Article 21 paragraph (1) of Law No. 30 of 2014 concerning Government Administration, which empowers the State Administrative court to look into instances of abuse of power, as well as the ramifications of PTUN's authority to look into abuse of power in the prosecution of corrupt acts. This study used normative legal research, which involved using library research to conduct searches for legal sources.

Keywords: authority, State Administrative Court, Corruption

1. INTRODUCTION

Law No. 30 of 2014, does not provide an explicit explanation regarding abuse of authority, but provides a form of prohibition on abuse of authority as stated in Article 17, Article 18 and Article 19 of Law no. 30 of 2014 concerning government administration. Indeed authority or authority has a very important position and role in the study of constitutional law and administrative law, so that it can be interpreted that authority is the core concept of constitutional law and administrative law and determines an act of maladministration that results in state losses.Therefore, it is clear and clear that the element of abuse of authority or abuse of authority is the spearhead of a criminal act of corruption, before determining the element of causing harm to state finances, for this reason, it must be tested first whether a suspect or defendant who has been charged with committing a criminal act of corruption has committed an abuse of authority.

Thus the element of "abusing authority" as referred to in Article 3 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes is interpreted as having a different meaning from "abuse of authority" as referred to in Article 21 paragraph (1) of

Law No. 30 of 2014 concerning Government Administration, or furthermore that the provisions in Article 21 paragraph (1) are deemed to have revoked the investigator's authority to carry out investigations in order to find out whether there has been an abuse of authority committed by a suspect as a government official which should become an object to be tested first in the State Administrative Court.4

In every grant of authority to certain government officials, accountability is implied by the official concerned, so that it does not necessarily have to go through criminal law for settlement or it can be said that criminal law is an ultimum remedium. Juridically, responsibility for abuse of authority that violates the law must be seen from the perspective of the source or birth of authority. This must be in accordance with the legal concept "geen bevoegdheid zonder verant woordelijkheid or there is no authority without responsibility" which means there is no authority without responsibility.

2. DISCUSSION

2.1. Legislative Ratio Article 21 Law no. 30 of 2014 concerning Government Administration

The ratio legis is the thought that forms the philosophical basis or embodied behind a law, Black's Law Dictionary defines raiso legis as "The reason or purpose for making a law the reason or purpose for making a law or rule). Regarding the ratio of legis legislation, each country has a specificity in formulating a defense strategy that is adapted to geographical conditions, threats and ideology.

To find out the legis ratio of a law, we can examine / review the minutes of amendment of the draft law. The academic text of the draft law is then elaborated in the "general explanation" section as research that also uses a statutory approach.

The legal ratio as previously mentioned is the reason or purpose of making a law or rule. Law No. 30 of 2014 concerning Government Administration (State Gazette of 2014 Number 292) is one of the laws and regulations that supports bureaucratic reform and the implementation of good governance. This law becomes the legal basis for administering government, maintains the relationship between government officials and citizens, and creates a better, more transparent and efficient bureaucracy. Thus, this Law is not only a legal umbrella for administering government, but also as an instrument to

improve the quality of government services to the public.

The formal process of discussing the Draft Law on Government Administration (RUU AP) began after President Susilo Bambang Yudhoyono sent Presidential Letter (Supres) No. R.04/President/01/2014 dated 17 January 2014 to the House of Representatives. In his letter, the President appointed the Minister for Administrative Reform and Bureaucratic Reform (Ministry of State Apparatus Empowerment-RB, before 2009 it was called the Ministry of State Apparatus Empowerment (hereinafter referred to as the Ministry of PAN), the Minister of Home Affairs, the Minister of Law and Human Rights, and the Minister of Finance representing the Government in the process of discussion, both individually and together.

The main objective of the AP Draft Bill was to improve the quality of public services by improving decision-making procedures and preventing corruption by government officials. In the context of that objective, the idea of the AP Law actually preceded the Public Service Law (legalized as Law No. 25 of 2009 concerning Public Services). Some of the basic ideas of the AP Bill were then taken and included in the Public Service Bill.8

The idea of making the AP Bill was also strengthened by the results of a study by the National Legal Development Agency (BPHN) of the Ministry of Law and Human Rights. This study was carried out by a team chaired by Safri Nugraha, who is also a member of the drafting team for the AP Bill. The initial idea was that the AP Law would become a kind of parent of the Public Service Law and the State Administrative Court (PTUN) Act. In fact, the idea emerged that Law no. 9 of 2004, the results of the revision of Law no. 5 of 1986 regarding Administrative Court, corrected or amended again and adapted to the AP Law. In the drafting process, the idea of making the AP Law a material law for the Administrative Court continued to emerge and was then included in the AP Draft Academic Paper.

Then, the Government's Final Opinion represented by Azwar Abubakar as the Minister of State Apparatus Empowerment and Reform Bureaucracy in the Plenary Meeting of the DPR.RI in the Level II Discussion agenda for Making Decisions on the Bill on Government Administration, put forward matters which in essence were: *"...one of the main objectives of drafting this Government Administration Draft Law is to fill the legal void which is the basis for protecting decisions and/or actions from*

government agencies and/or officials. It is hoped that this draft law can become a legal basis for recognizing a decision and/or action as an administrative error or abuse of authority which results in a criminal act. In this way, decision makers are not easily criminalized and weaken them in innovating in government, while at the same time keeping agencies and/or government officials do not make arbitrary decisions and/or actions. The community is protected from the arbitrariness and malpractice of official administration";

"...from the legal aspect of state administration, this draft law will become a material legal basis as a complement to the formal law in the Administrative Court Law. Meanwhile, in the aspect of bureaucratic reform, this draft law is a complement to the previously stipulated laws, namely the Law on State Ministries, the Law on Public Services and the Law on State Civil Apparatuses. As with the goals of bureaucratic reform, (the draft government administration law) can accelerate the achievement of the goals of bureaucratic reform to create a bureaucracy that is clean, competent, free from corruption and collusion and nepotism and free from politicization."

Therefore, the reading of the ratio legis norm of Article 21 Number 30 of 2014 concerning Government Administration, according to the author, can be interpreted as a policy or background matters for the makers or drafters of the Government Administration Law, with the main objective being first, to fill the legal vacuum which forms the basis protection of decision-making and/or actions of government agencies and/or officials. It is hoped that the Government Administration Law can become a legal basis for recognizing a decision and/or action as an administrative error or abuse of authority which can lead to a criminal offence. Thus decision makers are not easily criminalized and weaken government agencies and/or officials in carrying out innovations in administering government, government agencies and/or officials do not make arbitrary decisions and/or actions. The community is protected from the arbitrariness and malpractice of official administration.

2.2. Implications of Administrative Court Authority in Examining the Abuse of Authority Against Enforcement of Corruption Crimes

Therefore, the right step is to return to the purpose of the birth of the law itself.

One of the objectives of the Government Administration Law, including the ASN Law and the Regional Government Law, is to provide protection to ASN and Government Officials to avoid corrupt acts. This Law on Government Administration not only regulates protection from abuse of authority due to authority based on applicable laws and regulations but also abuse of authority due to discretion exercised.

Many officials are afraid to spend the budget because of fears that criminal acts (corruption) will occur, even though there is not necessarily an intention to commit criminal acts of corruption, let alone a discretion that burdens a budget. Like the research conducted by Dian Puji N. Simatupang, that as many as 70% (seventy percent) of the legal cases that occurred related to public policy were in fact misunderstood. This misjudgment can take the form of: misjudging the intentions of the legislator; misrepresentation of the rights of other persons or legal entities; misinterpretation of the meaning of a provision; and misjudged on their own authority

Therefore, based on the principle of ultimum remedium, a sentence should be placed as a last resort or as a principle of subsidiarity. The principle of ultimum remidium in criminal law has become a universal principle. Eddy OS Hiariej referred to criminal law as the ultimate weapon or the last means used to resolve legal issues, while Frank Von Lizt referred to criminal law as a substitute for other legal domains.

The purpose of establishing the Corruption Law is related to losses to state finances that hinder national development. The normalization of articles that specifically regulate state losses are Article 2 and Article 3. Theoretically, the recovery of state financial losses can be done in civil, administrative, or criminal ways. Philipus M. Hadjon argues that in the context of state financial losses, criminal law should be a means of ultimum remidium.

Enforcement of criminal law against corruption has so far been the main option in recovering state financial losses,because from criminal law not only state finances can be returned, but perpetrators are also subject to direct sanctions.

After the enactment of the Government Administration Law, it can be said that enforcement of criminal acts of corruption by applying administrative law as primum remedium has begun to gain ground. Along with the primum remidium principle, in

addition to applying the prae sumptio iustae causa principle for decisions and/or actions of government officials, it also applies criminal law as a last resort or ultimum remidium so that not every policy taken by the government always ends in punishment.

The application of the means of the Government Administration Law as a primum remidum is also contained in the RI Presidential Instruction No. 1 of 2016 concerning the Acceleration of Implementation of National Strategic Projects. The PTUN's decision regarding the judicial review for abuse of authority remains final and binding, meaning that any PTUN decision must be respected by all parties. If the decision states that there is no abuse of authority, government officials cannot be examined criminally, civilly or administratively. On the other hand, if the Administrative Court's decision states that there has been an abuse of authority, law enforcement officers can only proceed to the next stage.

Then the problem is, is there a PTUN decision stating that there was an abuse of authority and that state financial losses have been returned, the Government Official will not be criminally prosecuted? When connected with Article 4 of the Corruption Law, that the recovery of state financial losses or the state economy does not necessarily eliminate the punishment of the perpetrator of the crime in question, because the return of state financial losses is only a mitigating factor for the crime itself.

Previously, the Supreme Court of the Republic of Indonesia in decision No. 1401K/Pid/1992 dated 29 June 1994, in one of its considerations stated that, the Kupang High Court in Decision No. 18/Pid/1992/PT.K dated 25 March 1992 was wrong in applying the law, because even though the money used by the defendant without rights and against the law had been returned, the unlawful nature of the defendant's actions remained and was not erased, and was not considered as a reason to justify or excuse the guilt of the accused. The accused can still be prosecuted in accordance with applicable law. The decision of the Supreme Court above will be relevant if against the law a criminal act of corruption is interpreted in a formal unlawful nature, namely the nature of being against the law which implies that all parts (elements/bestandeel) of an offense in the article must be fulfilled. 21 To be convicted of an act must be fulfilled. match the formulation of the offense in a written provision in the criminal law. Thus, it is no longer necessary to see whether the act is

against the law or not

Prior to the decision of the Constitutional Court of the Republic of Indonesia No. 25/PUU-XIV/2016, the offense used in Article 2 and Article 3 is a formal offense, namely by referring to the element of the word can, meaning that a crime which is said to be a crime does not need certain consequences, but it is enough that an act perpetrated by the perpetrator,23 but after the Constitutional Court's decision, these two articles became a material offense because words can be declared contrary to the 1945 Constitution, so that state financial losses cannot be just potential, but must be real and definite losses to state finances. In this decision it was also stated that in order to remain convicted of perpetrators who caused losses to state finances due to abuse of authority, three conditions had to be met, namely, the perpetrators benefited unlawfully, Because the Administrative Court's decision states that there has been an abuse of authority, government officials are automatically obliged to return state financial losses to the state treasury. Then by returning the state's financial losses, the state's financial losses have disappeared, so that only acts of abuse of authority remain. If a criminal process is carried out in the future, on the one hand the state financial losses have been lost because they have been returned, on the other hand the state financial losses are clear and certain in number and the defendant is the culprit.

If this case occurs, referring to Zudan Arif Fakrullah's opinion, that the officials concerned can still be prosecuted,24 meanwhile according to Guntur Hamzah, testing for abuse is one way to make it easier for law enforcement to determine abuse of authority. 25 These two opinions are understandable because abuse of authority is an act that is done intentionally, not negligence and the transfer of goals is based on negative personal interest, so that in a dualistic manner there is an actor's motive which clearly indicates a deviation of authority resulting in perpetrators can be held accountable for their mistakes.

However, the two opinions above must also be interpreted as in the consideration of the Constitutional Court decision, "administrative errors that result in state losses and abuse of authority by government officials are not always subject to criminal acts of corruption". Then in the next consideration, "state losses become criminal acts of corruption if there are elements against the law and abuse of authority". The existence of the "not always" element in these considerations indicates that the abuse

of authority is a factor that causes corruption to occur or not. If there is a criminal act of corruption, three things are required, namely the perpetrator is unlawfully benefiting, the public is not served, and the act is a disgraceful act (there is intentional negative personal interest).

Thus, the recovery of state financial or economic losses in corruption cases linked to the return of state losses contained in the Government Administration Law cannot guarantee the elimination of the nature of a criminal act of corruption. RI Supreme Court through Case No. 81/K/Kr/1973 dated 30 May 1977, in the case of Ir. Moch. Otjo Danaatmidja bin Danaatmadja, stated that a accused of corruption will be free from charges of corruption if "losses to state finances or the state's economy are not proven because the public interest is served and the defendant does not benefit". Then in 2010, Case No. 591K/Pid.Sus/2010 in the case of Prof. Dr. Romli Atmasasmita, SH., LLM., that "the defendant did not benefit materially,Therefore, if there is a government official who has returned losses to state finances, then even if there is "criminalization" of the actions he committed, then the temporary solution that can be done is proof of returning the state's financial losses as proof that the element of loss is no longer fulfilled, then by see whether the public service/public interest is being served and the official does not benefit from the mistakes he has made.

3. CONCLUSION

The logical ratio of Article 21 of Law Number 30 of 2014 concerning Government Administration which authorizes the State Administrative Court to examine elements of abuse of authority is Supervision by the State Administrative Court as a means of preventing abuse of authority in decisions and/or actions (discretion) by government administration officials carry out

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