The Arrangement of the Abuse of Authority in Corruption Offence after the Enactment of the Law on Government Administration from Political Law Perspective in Indonesia

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Abstract: The Law Number 31 of 1999 concerning Corruption Eradication in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption in Article 3 formulates that Corruption Eradication is relating to abuse of authority. The definition of an element of abuse of authority in that Article is not contained in the explanation chapter. The meaning of the element of abuse of authority actually refers to the concept of abuse of competence in the realm of administrative law. After the promulgation of Law Number 30 the Year 2014 concerning Government Administration, there are provisions which regulate the abuse of competence which causes state financial losses. The perspective of corruption has also changed; the abuse of competence which is detrimental to the country's finances, is sufficiently resolved at the administrative stage. While the provisions in the Law on the Corruption Eradication, there are provisions that formulate restitution of state financial losses due to criminal acts of abuse of authority which do not eliminate the imprisonment of perpetrators. The difference concept between the abuse of competence and abuse of authority as well as changing the perspectives on the regulation of criminal law of corruption that intersects with the abuse of authority can be seen and examined from the political law perspective in Indonesia. It is aimed to see the direction of legal policy in Indonesia. There are at least three things that can be explained from the political law perspective in Indonesia. First, the regulation related to the abuse of competence regulated in the provisions of laws and regulations concerning government administration is considered not in line with the regulation of abuse of authority in corruption law. Second, it is necessary to establish regulation on the abuse of authority in criminal law which does not only have a good effect on the enforcement of suspected corruption but also have a good effect on the prevention of corruption through government administrative arrangements. Third, it is necessary to present regulations regarding the misuse of competence in the administration of the government law while still being able to ensure that the enforcement of suspected corruption can go in line according to the spirit of the provisions in the law on corruption eradication.

1 INTRODUCTION

The abuse of authority in corruption offense is regulated in Article 3 of Law Number 31 the Year 1999 concerning Corruption Eradication in conjunction with Law Number 20 the Year 2001 concerning Amendment to Law Number 31 the Year 1999 concerning Corruption Eradication which states that:

“Every person who aims to benefit himself or another person or a corporation, misusing the authority, opportunity, or means available to him because of a position or position in him because of a position or position that can harm state finances or the country's economy, be punished by imprisonment lifetime or imprisonment for at least 1 (one) year and no later than 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and at most Rp. 1,000,000,000.00 (one billion rupiah) .

The word "can" in the formulation of article 3 of Law Number 31 Year 1999 concerning Eradication of Corruption Offence jo Law Number 20 Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Offence stated to have no binding legal force after the decision of

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the Constitutional Court Number 25 / PUU-XIV / 2016.

The enactment of Law Number 30 of 2014 concerning Government Administration also changed the perspective of understanding the regulation of corruption in the Corruption Act. Changes in perceptions of understanding regarding the regulation of offenses for corruption in relation to abuse of authority after the enactment of law Number 30 the Year 2014 concerning Government Administration can be seen from the Constitutional Court Decision Number 25 / PUU-XIV / 2016.

The Constitutional Court's decision in one of its legal considerations stated that after the enactment of Law Number 30 Year 2014 concerning Government Administration which contained provisions including: Article 20 paragraph (4) concerning the return of state financial losses due to administrative errors that occurred due to an element of abuse of competence by officials government; Article 21 concerning the absolute competency of the state administrative court to examine and or not suspect the abuse of competence carried out by government officials; Article 70 paragraph (3) concerning the return of money to the state treasury because of a decision that results in payments from state funds declared invalid; and Article 80 paragraph (4) concerning the administration of administrative sanctions to government officials for violating provisions that cause state losses.

The problem of the perspective changes in the regulation of corruption in Law Number 31 of 1999 concerning the Corruption Eradication s in conjunction with Law Number 20 the Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Corruption Eradication can cause legal problems. For example, in terms of regulating abuse of competence that harms state finances and is included in corruption. By-Law Number 30 of 2014 concerning Government Administration, abuse of authority cannot be immediately investigated, but internal supervision must be carried out first by the Government Internal Apparatus.

The results of supervision of abuse of competence which shows that abuse of competence causes state losses, then a loss of state financial losses must be carried out no later than 10 (ten) days after the decision is made and the results of supervision are published. However, government administration law does not mention the strict consequences of not returning state financial losses or restoring state finances. So that it can be understood that if the state financial losses have been returned, there will be no loss of state finances.

The promulgation of Law Number 30 the Year 2014 concerning Government Administration increased the number of laws and regulations that contradicted with each other. This law stipulates that those who have the right to supervise the occurrence of abuse of competence consisting of exceeding authority, confusing competency, and acting arbitrarily are the Internal Oversight Offices of the agency concerned. After conducting the inspection, the internal supervisor will make a conclusion in the form of "no error" or "there are administrative errors or even" there are administrative errors that cause state financial losses." Especially within a maximum of 10 days, the state's losses are expected to be returned by government agencies or officials who do it (Krisna Harahap, 2005).

Meanwhile, Law Number 31 the Year 1999 concerning Corruption Eradication jo Law Number 20 the Year 2001 concerning Amendment to Law Number 31 the Year 1999 concerning Corruption Eradication states that the return of state financial loss does not eliminate the participation of the perpetrators as stipulated in Article 2 and Article 3 of the law on combating crime. If we look at Article 3 related to the regulation of Corruption Eradication because of the abuse of authority that causes state losses, it can still be convicted even though it has returned losses to state finances.

This provision is contrary to the provisions of Law Number 30 the Year 2014 concerning Government Administration. This is because the oversight of abuse of competence is on the internal supervisor, then if the results of the supervision show that there is an abuse of competence that causes state losses and the state losses are returned, there is no more state loss. Resolving the problem of abuse of competence is sufficiently resolved at the administrative level. Such provisions are feared to be a tool for officials who, misusing their authority to avoid violating corruption.

Regarding state financial losses, there are striking provisions between the two laws. In Article 4 of Law Number 31 of 1999 concerning Eradication of Corruption Offence in conjunction with Law Number 20 the Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Offence, the return of losses on state finances does not eliminate the punishment of perpetrators. That is, the perpetrators remain punished, both imprisonment, criminal penalties, and additional criminal penalties. Conversely, in Law No. 30 of 2014 concerning Government Administration, within a period of 10 days, the perpetrator can recover the country's

financial losses. From the beginning, his actions despite detrimental to the country's finances were considered not criminal acts. Therefore, the perpetrator does not need to be afraid of being punished for any amount of state financial losses arising from his actions because the only ones waiting are administrative penalties. This provision is further clarified by the absence of further provisions in Law No. 30 of 2014 in the event that the State's loss is not returned even though ten days have passed.

Provisions contained in the law on the Corruption Eradication formulate various qualifications for corruption that can be subject to criminal sanctions. These provisions have at least 8 (eight) groups of 30 (thirty) types/forms of criminal acts, ranging from state financial losses, bribery to bribes, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement and gratification.

2 DISCUSSION

2.1 The Regulation of Corruption Offence of Abuse of Authority after the Enactment of the Law on Government Administration

Regulations concerning corruption that mention the term corruption as a juridical term in the provisions of Indonesian laws and regulations can be traced for the first time in Military Regulations Number PRT / PM / 06/1957. This regulation applies to the Army's territory (Evi Hartanti, 2012). After experiencing various developments in legal issues, the regulation of corruption has continued to change until finally, we can look at Law Number 20 the Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption.

After the existence of Military Regulations Number PRT / PM / 06/1957, which contained the term corruption, the regulation of corruption acts continued to undergo renewal. We can arrange this starting with the establishment of Law Number 24 / Prp / Year 1960 concerning Investigation, Prosecution, and Corruption Criminal Investigation as Amendments to Government Regulations in Lieu of Law Number 24 of 1960 which was later replaced in 1971 due to the enactment of the Law Number 3 of 1971 concerning Eradication of Corruption Offence. During the two decades, the law was deemed no longer relevant and replaced with Law Number 31 of 1999 concerning Eradication of Corruption Offence which was later added and amended by Law Number 20 the Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Offence.

Provisions contained in the law on the Corruption Eradication formulate various qualifications for corruption that can be subject to criminal sanctions. These provisions have at least 8 (eight) groups of 30 (thirty) types/forms of criminal acts, ranging from state financial losses, bribery, bribes in office, extortion, fraudulent acts, conflicts of interest in procurement and gratification. In addition to the eight groups of types/forms of criminal acts, there are still other types of criminal acts related to the crime of corruption, namely: Obstructing the process of examining corruption cases; Not giving information or giving incorrect information; Banks that do not provide their suspect accounts; Witness or expert who does not provide false information or information; The person holding the secret of position does not provide information or give false information; and witnesses who opened the informant identity (Corruption Eradication Commission , 2006).

Legal arrangements regarding the corruption eradication law do not only regulate the matters relating to material criminal law, but also formal criminal law. We can see this from the establishment of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) and Law Number 46 of 2009 concerning the Corruption Court. The two laws that regulate formal criminal law efforts to eradicate Corruption Eradication can be observed as a form of serious efforts from the state to eradicate corruption that is also considered an extraordinary crime.

The establishment of Law Number 30 of 2002 concerning the Corruption Eradication Commission was established to increase efforts to eradicate professional, intensive, and sustainable corruption. Also, in response to the non-functioning of state institutions that deal with corruption cases effectively and efficiently. Besides that, it is also the implementation of the mandate of Article 43 of Law Number 31 the Year 1999 concerning Eradication of Corruption Offence in conjunction with Law Number 20 the Year 2001 concerning Amendment to Law Number 31 the Year 1999 concerning Eradication of Corruption Offence. This law is a formal provision that regulates the authorities of the Corruption Eradication Commission in carrying out its duties and functions in the prevention and

repression of the eradication of Corruption Eradication.

Considering the establishment of Law No. 46 of 2009 concerning the Corruption Criminal Court states that the establishment of this law is intended to strengthen efforts to eradicate corruption that are considered to have caused various kinds of problems in many areas of the life of the nation and state. Aside from being an embodiment of Article 53 of Law Number 30 of 2002 concerning the Corruption Eradication Commission. So it can be understood that the provisions set out in this law constitute formal provisions to try defendants for Corruption Eradication in front of the court who specifically examine and try cases of Corruption Eradication. As an example of the KPK in total in its efforts to prosecute in 2016 the KPK conducted 96 investigative activities, 99 investigations, and 77 prosecution activities, both new cases and the remainder of case handling in the previous year. In addition, the execution of 81 court decisions that have permanent legal force. More than 497.6 billion rupiahs have been included in the state treasury in the form of PNBP from handling cases of corruption (Corruption Eradication Commission, 2016).

The material and formal criminal law arrangements related to efforts to eradicate corruption have been established, but the Indonesian corruption perception index numbers cannot be categorized as good. The results of a study conducted by Transparency International (TI), an institution that concentrated on studies on corruption eradication released the results of corruption perception indexes in many countries. At least the corruption perception index data released by IT in the last three years can be the basis to confirm that efforts to prevent and eradicate corruption are not quite good. In 2016, TI released the score of Indonesia's corruption perceptions index around 37 and ranked 90th out of 176 countries. In 2017, the Indonesian corruption perception index score is still at 37, but the ranking has dropped to 96 out of 180 countries. Furthermore, in 2018, Indonesia's corruption perception index score rose by one point to 38 and put Indonesia in 89th position.

Indonesia's corruption perception index number has indeed gone up, but the increase can be categorized as not optimal because it only goes up by one number. The low score on Indonesia's corruption perception index is a general picture of efforts to prevent and control corruption that has not been maximized. Although law enforcement institutions have worked and tried their best, various cases of Corruption Eradication still occur, so the formulation of articles related to corruption must be regulated well.

The element of the abuse of authority in the article is not explained in detail in the explanation of the law. But if we trace it from one of the court decisions. In the Decision of the Supreme Court Number 977 K / Pid / 2004, it can be observed that the consideration of judges who argued that the notion of "abusing authority" was essentially not found in criminal law. Therefore criminal law can use the same meanings and words contained or originating from other legal branches.

While the Attorney General's Legal Information Center (Puspenkum of Attorney General's, 2018) suggested the definition of the element of abusing authority in Article 3 of Law Number 31 Year 1999 concerning Corruption Eradication s in conjunction with Law Number 20 Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication Corruption Offence, namely: violating written rules that form the basis of authority; has a purpose that deviates even though the deed is in accordance with the regulations; and potentially harm the country.

After the enactment of Law Number 30 the Year 2014 concerning Government Administration, the meaning of the regulation regarding abuse of authority has changed. This law distinguishes the definition of “authority” and “competence." Competence is defined as the rights owned by the Agency and/or Government Officials or other state administrators to make decisions and/or actions in the administration of government. Thus, abuse of competence can be interpreted as an abuse of the right to make decisions and / or actions in the administration of government by the Agency or government officials. The phrase government administration is not interpreted in detail in this law; therefore, the meaning will be very broad.

While authority is defined as a government authority, namely the authority of the Agency and/or Government Officials or other state administrators to act in the realm of public law, then the abuse of authority is the abuse of the authority of the Agency or government officials or state administrators in carrying out actions in the public sphere.

If we look at the phrases used in Law Number 31 of 1999 concerning Corruption Eradication in conjunction with Law Number 20 the Year 2001 concerning Amendment to Law Number 31 of 1999 concerning Corruption Eradication is the phrase "abuse of authority" not " abuse of competence." But in the implementation to show abuse of authority is also understood as an abuse of competence.

Absorption of the notion of "abuse of competence" into the notion of "abuse of authority" in addition to the academic domain, is also carried out at a practical level. The practice of criminal justice, especially the Corruption Court through an extensive approach (broadly reaching) using the doctrine of the autonomy of criminal law has used the notion of "abuse of competence" in State Administrative Law to explain the element of "abusing authority" in Corruption. Criminal law has the autonomy to provide a different understanding from the understanding contained in other branches of law, but if the criminal law does not determine otherwise, the definition contained in other branches of law is used. We can observe this from the Tanjung Pinang Court Judge Decision Number: 3 / Pid.Sus-TPK / 2015 / PN.Tpg, even though law Number 30 of 2014 concerning Government Administration has been enacted (Muhammad Sahlan, 2016). It was pointed out that the abuse of authority referred to the law on the corruption eradication had been abolished with the understanding of abuse of competence in state administrative law that inspired the notion of abuse of competence in the government administration law.

While the provisions regarding abuse of competence stipulated in the Government Administration Act regulate the abuse of competence which causes state losses to be resolved at the administrative stage. Whereas on the other hand, the provisions in the Law on the Corruption Eradication regulates the return of losses on state finances that do not abolish the perpetrators to be punished.

2.2 Relations between Law and Politics

Legal studies in the development of current problems will be very difficult to be released from other entities outside the law. One other entity that can be considered as an entity that is outside the legal entity is legal politics. Satjipto Rahardjo as quoted by Imam Syaukani and A. Ahsin Thohari explained,

(..) In the 19th century in Europe and America, individuals were the center of legal regulation, while the highly developed legal field was civil law (rights, contracts, illegal acts) Legal expertise is related to technical skills or craftsmanship (legal craftsmanship). People also feel that by treating the law as above, by considering the law as an institution and an independent force in society, then it is a complete attitude that considers everything can be fulfilled by itself. Law, scientific disciplines, legal analysis methods, all do not need help and cooperation with other scientific disciplines (Syaukani Imam & Thohari A. Ahsin, 2010).

However, the atmosphere immediately changes soon to be different, when the way of looking at and working on such a law is faced with changes that occur in society due to the success of modernization and industrialization. The individual position now begins to be rivaled by the appearance of other subjects, such as community, collectivity, and the state. The fields which later became more prominent were public law, administrative law, socio-economic law. A new understanding emerged which essentially sued the establishment from the technical capacity as mentioned above, and replaced it with "planning," "legal experts as social architects," and so on. Now the law is no longer seen as an autonomous and independent matter but is understood functionally and seen as always being in an independent relation with other fields in society(Syaukani Imam & Thohari A. Ahsin, 2010).

The idea conveyed by Satjipto Rahardjo above illustrates how entities outside the law will greatly influence the formation of the law even further affecting the law enforcement process. That thought can be used as one of the that studies such as legal politics, would be able to see the extent to which entities outside the law had an influence in making a norm or the rule of law.

The theoretical framework that constructs the notion of legal theory is a non-uniform construction, and this is based on differences in terms and interpretations of the terms used. Because of that many differences can be found from expert opinion. Therefore, firstly, it is important to see the construction of the various legal, political terms from the opinions of several experts both in etymological perspective and terminological perspective.

Sri Soemantri as quoted by Imam Syaukani and Ahsin Thohari in his book The Basics of Political Law explains;

(…) Etymologically, the term political law is an Indonesian translation of the Dutch legal term rechpolietiek, which is a form of two words Recht and politiek. This term should not be confused with a term that appears later, polietiekrecht or political law, which was stated by Hence van Maarseveen because both have different connotations. The latter term relates to another term offered by Hence van Maarseveen to replace the terms of constitutional law. For this purpose, he wrote an essay entitled "Politiekrecht, als Opvolger van het

Staatrecht"(Syaukani Imam & Thohari A. Ahsin, 2010).

Furthermore, Hans Wehr as quoted by Imam Syaukani and Ahsin Thohari in his book Basics of Political Law, also explains that ‘in Indonesian the word Recht means law. The law itself comes from the Arabic, hukm (plural words ahkam), which means a judgment (verdict, decision), provision, command, government, power (authority), punishment (sentence), and others'(Syaukani Imam & Thohari A. Ahsin, 2010).

As for the Dutch dictionary written by Van des Tas, the word politiek means beleid. The word beleid itself in Indonesian means policy. From that explanation, it can be said that legal politics, in short, means legal policy. While “policy” in the Big Indonesian Dictionary means a series of concepts and principles that form the outline and basis of the plan for implementing a job, leadership, and how to act. In other words, political law is a series of concepts and principles that form the outline and basis of plans in the implementation of a job, leadership, and ways of acting in the legal field(Syaukani Imam & Thohari A. Ahsin, 2010).

Opinions explain the notion of legal politics that is different from political law because both have different connotations of meaning, where political law is closer to the term constitutional law. While legal politics will tend to the concepts and principles on the outline or the basis of the plan to form a law.

Mahfud M.D. said that;

(...) By using the basic assumption that law as a political product, politics will determine the law so that it puts politics as an independent variable and the law as a variable is affected. With a more specific hypothesis statement, it can be stated that the political configuration of a country will give birth to certain legal product characteristics in that country. In countries where the political configuration is democratic, the legal products are responsive/populistic, whereas, in countries where the legal, political configuration is authoritarian, the legal products are orthodox/conservative/ elitist (Moh Mahfud MD,2018).

From a number of expert opinions it can be stated that legal politics is an attempt by the state to determine the law that will apply or improve the law that is in effect to answer changes or problems of society through state institutions to form laws, which are based on the state basis, and at a certain point will be influenced by the country's political configuration.

There are three things that can be raised related to the legal, political issue of the regulation of abuse of competence after the enactment of Law Number 30 the Year 2014 concerning Government Administration. First, regulations relating to abuse of competence stipulated in the provisions of Laws concerning Government Administration which are considered inconsistent with regulating abuse of authority in Corruption Eradication. Circumstances that illustrate the irregularities between government administration laws are considered to be able to hamper efforts to eradicate corruption, especially related to abuse of authority. While corruption is an extraordinary crime which has a wide impact on many sectors. So, that the existence of provisions that have not been mutually supportive in efforts to eradicate corruption will have an impact on the obstruction of the state's goals, according to Indonesia Corruption Watch (ICW) throughout 2015 the number of state losses due to corruption was Rp. 1.2 trillion in the first half of 2015. While in the second semester of 2015 it reached Rp. 1.8 trillion. So if accumulated, it is estimated that state losses due to corruption are 3 trillion. ICW, 2015 State Loss Due to Corruption of 3.1 Trillion (ICW, 2015).

The purpose of the country which has become the consensus of the people of Indonesia as outlined in a basic law certainly has strong moral foundations. For example, the purpose of presenting general welfare, this goal certainly must be supported by instruments that can bridge the effectiveness of achieving this goal. So that if the regulation regarding eradicating criminal offense is problematic, then it can also hamper efforts to achieve state goals.

Second, in order to realize the acceleration of achieving state goals through criminal law policy in the field of eradicating corruption offence, it is necessary to present the regulation of abuse of authority in criminal offences that not only have a good effect on the alleged acts of corruption but also have a good effect on the prevention of corruption through regulation government administration. Such efforts can certainly be made if the provisions in criminal law (the law to eradicate corruption and the provisions in administrative law (government administration law) are consistent.

Especially if we understand the basic values that are the basis of the existence of criminal law such as Security and order as the direct purpose of criminal law, which must absolutely be achieved; Community awareness of the meaning and general nature which can then be a source of justice, peace, spiritual and physical welfare, as the ultimate goal of criminal law; Harmony between physical (birth aspect) and spirituality (inner aspect) and novelty and

sustainability must be achieved in the application of criminal law (Purnadi Purbacaraka & A. Ridwan Halim, 1997).

The content of the basic values is spread in various aspects. Starting the content in the legislative ratio, the rules of criminal law are established to a measure of the effectiveness and efficiency of a rule of criminal law that has been formulated. The nature of the basic principles of thought for the formulation of criminal rules includes: To regulate harmony between personal interests and public interests. To achieve and realize the rule of law as far as possible as formulated in the life of the community, where the law applies through the application of the relevant criminal law. As the main test point for the community in general and legal experts or legislators in particular to measure the extent to which effectiveness and efficiency are in criminal law(Purnadi Purbacaraka & A. Ridwan Halim, 1997). Therefore, regulations that are deemed to degrade the effectiveness of eradicating Corruption Eradication can be read as something that is not in line with the nature of law based on moral values as well as explanations regarding natural law.

Third, in order to realize these things, it is necessary to present a regulation regarding the crime of abuse of competence in government administration, which can still ensure that the prosecution of alleged corruption is in accordance with the provisions in the law to eradicate corruption. The presence of such regulation is potential to save the values of the spirit of eradicating corruption and the values that support the achievement of state goals through related criminal law policies which regulate the abuse of competence in corruption offense.

3 CONCLUSION

The regulation of abuse of authority because of a position in the corruption eradication law after the promulgation of Law number 30 of 2014 concerning Government Administration in terms of political politics must be in line with the orientation of national legal objectives. The regulation shows that the change of perspective on the eradication of corruption is still not in line with the nature of the eradication of corruption. For example, this can be seen from the existence of conflicts in the norms between the two laws that make no mutual support in efforts to eradicate corruption that can have an impact on the obstruction of the country's goals.

Whereas the purpose of the state can be understood as a manifestation of the nature of achieving prosperity and justice based on moral values. So that Law number 30 of 2014 concerning Government Administration which formulates the provisions on the abuse of competence must be able to strengthen the regulation of abuse of authority in criminal acts of corruption in Law Number 31 of 1999 concerning Corruption Eradication in conjunction with Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Corruption Eradication. For example, the Law on Government Administration must contain a clear formulation of the strict consequences in the criminal sphere for perpetrators who have been declared to have abused the competence that caused state losses if they did not recover state financial losses or restore state finances within a specified time period.

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