

## Legal Review of Administrative Law Related to the Examination of Abuse of Authority by Government Officials in Corruption Cases in Indonesia



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**ABSTRACT:** The conflict that arises is related to the abuse of authority by government officials in Indonesia. The problem that can be analyzed is to analyze it from a criminal law perspective related to examining the abuse of authority by government officials in corruption cases. This research uses a normative juridical research approach. The decisions and/or actions of government officials as objects of examination for abuse of authority in the Administrative Court (PTUN) are decisions and/or actions that involve administrative errors and result in state losses, as well as deviations in the criminal process. Therefore, in conclusion, the provisions in Article 21 of the Administrative Law can provide certainty regarding whether or not there is an abuse of authority by government officials in making decisions from an administrative perspective without necessarily involving corruption cases.

**KEYWORDS:** Administrative Law, Abuse of Authority, Corruption

### INTRODUCTION

The preamble of the 1945 Constitution of the Republic of Indonesia states, among other things, that the purpose of the state is to achieve the welfare of the people. The state's administration must be carried out by a sovereign government in order to realize the state's objectives (Khaelan, 2013). One of the elements of the state is administered by a sovereign government in the Indonesian concept of a legal state. This means that in exercising its authority, the government in managing the administration is based on the foundation of binding laws and regulations (Abu Daud, 2001)

General welfare can be achieved when it is realized through the government's authority when viewed from the perspective of administrative law in achieving the state's objectives. Therefore, in the broad sense, government authority encompasses the function of ensuring general welfare (*Bestuurszorg*). In legalism, the law is the law that cannot be contested. The modern legal state is formed because of the government's intervention in various sectors not accommodated in the law. The modern legal state, also commonly referred to as a welfare state, is characterized by its focus on promoting the welfare of its citizens. As a result, the function of advancing general welfare inherent in the state has fundamental consequences for the administration of government. The government is obligated to pay attention to and maximize efforts for social security in the broadest sense. The government must enhance the overall welfare of society, which means it must actively intervene in the socio-economic sphere of society (Krishna, 2012).

Every government official, in carrying out their duties, is required always to base their decisions and actions on existing laws and regulations. The increasing role of the government in intervening in all aspects of community life within the framework of public services (*bestuurszorg*) to achieve general welfare often places government officials in situations where they are confronted with urgent issues and concrete situations that compel them to make decisions or take actions that have not been regulated by legislation as a form of situational authority. These conditions make it difficult for a government official to refuse to take action with the excuse that there are no regulations or waiting for new regulations (*rechtvacuum*) (Firma Novi, 2016). It is in these gray administrative areas that the criminalization of policies with allegations of abuse of authority can lead to. Decisions and/or actions by government officials that are inherently protected by the principle of freedom to act in providing public services to the community are often overshadowed by concerns when these decisions or actions are suspected to result in state losses and are classified as criminal acts, thus limiting the creativity and innovation of government officials in the administration of government (Saputra, 1998).

Over time, Law Number 30 of 2014 concerning Administrative Governance (*Undang-Undang Administrasi Pemerintahan*) was enacted, serving as the legal foundation for the administration of the government as a means to enhance good governance and prevent practices of corruption, collusion, and nepotism. The regulation of administrative governance in

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this law ensures that decisions and/or actions of government bodies and/or officials towards citizens cannot be arbitrary. According to Philipus M. Hadjon, to determine whether there has been an abuse of authority, it must be proven factually that an official has used their authority for purposes other than those it was granted. The abuse of authority is not due to negligence but is done consciously, meaning diverting the given authority for personal interests, either for one's own benefit or for someone else's (Hadjon, 2011).

The enactment of Administrative Governance (*Undang-Undang Administrasi Pemerintahan*) grants authority to the Administrative Court (*Pengadilan Tata Usaha Negara*) to receive, examine, and decide on whether there is an abuse of authority in the decisions and/or actions of government officials. The delegation of this authority to the Administrative Court in examining the elements of abuse of authority arises due to the absence of a defense forum for government officials who are suspected of abusing their authority other than in the criminal justice system. Government officials may feel like victims of the criminalization of policies they have implemented. Furthermore, the concept of abuse of authority is a concept in administrative law that has been absorbed into criminal law, so it is more appropriate to bring the issue of whether there is an abuse of authority to the administrative court (Permana, 2016).

Judicial review of government actions by the judiciary can only be conducted based on legality (control illegality or *rechtmaessigkeit*), not on the appropriateness of the objectives (*zweckmaessigkeit*). Post the enactment of the Administrative Governance Law, a new paradigm has emerged regarding the review of abuse of authority by administrative government bodies/officers who feel their interests have been harmed by the results of Internal Government Supervisory Apparatus (*Aparat Pengawasan Intern Pemerintah*). In this context, they are given the opportunity to seek legal protection. The concept of review, as intended in the Administrative Governance Law, is still incomplete and challenging to implement (Yasin, 2017). The provisions regarding the review of abuse of authority can be seen as a response to various issues and practices that have occurred in the past. The criminal approach is often used by law enforcement when investigating allegations of abuse of authority. This, of course, raises concerns for government officials when making decisions or taking action. The expansion of this competence, on the other hand, has the potential to weaken anti-corruption efforts as it attributes authority to the Administrative Court. In practice, implementing such reviews still poses various challenges, given that legal norms that are not explicitly stated cannot be enforced by judges (Rini, 2018).

### PROBLEM

How is the legal review of administrative law examining actions involving the abuse of authority by government officials related to criminal acts of corruption in Indonesia?

### RESEARCH METHODOLOGY

The research method employed is a normative juridical approach, which consists of the following:

1. The primary legal material extensively studied in this research is the Criminal Code
2. The Republic of Indonesia Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning Administrative Court Justice, Law Number 30 of 2014 concerning Administrative Governance. Secondary legal materials refer to materials that provide explanations regarding primary legal matters. Secondary legal materials encompass all aspects of law that are not official documents. Legal publications include books related to issues under study, research findings, and the results of legal analysis. Legal terminology, which includes legal dictionaries or major Indonesian language dictionaries, is used to explain the meaning or definition of terms that are difficult to interpret. In this research, a juridical normative research method is employed, with the research nature being descriptive and utilizing secondary data sources. Data is collected through library studies summarized in qualitative analysis (Soerjono Soekanto, 2010).

### DISCUSSION

The Administrative Court is part of the judicial authority. As one of the branches of the judicial authority, administrative court proceedings have their own uniqueness compared to other forms of legal proceedings. This uniqueness is not detached from the concept of a legal state. At least two concepts of a legal state represent how administrative court proceedings emerge in the realm of legal knowledge, namely the concept of a legal state (*Rechtsstaat*) and the concept of a legal state ruled by law (Rule of Law). The concept of a legal state, referred to as *Rechtsstaat*, was used by Immanuel Kant (1724-1804) and Friedrich Julius Stahl, mainly in continental European countries with a civil law legal system. According to Stahl, the *Rechtsstaat* consists of four elements, as follows:

1. Protection of Human Rights
2. Separation or Division of State Powers to Ensure Those Rights (commonly referred to as "trias politica" in continental European countries)

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3. Governance Based on Rules (*Wetmatigheid van Bestuur*)
4. Administrative Justice in Disputes (Oemar Seno, 2008)

The concept of the *Rechtsstaat* originated from a revolutionary struggle against absolutism, while the concept of the Rule of Law developed evolutionarily. The characteristics of civil law are administrative, while the characteristics of common law are judicial. This difference is rooted in the historical background of monarchical power. In the Roman era, the predominant power of the king was to create laws through decrees. This power was then delegated to administrative officials who provided written instructions to judges on adjudicating disputes. The significant role of state administration led to the emergence of a new branch of law called administrative law. The essence of administrative law lies in the relationship between state administration and the citizens, with a focus on limiting the power of state administration (Philipus, 1987)

At least two significant issues arise due to the expansion of the role of state administration. First, with the rapid increase in the number of personnel involved in public service functions, it is assumed that there will be an escalation in the number of victims due to government pressure. This assumption is reflected in the trend of increasing misconduct in the form of actions that harm people's well-being while aiming to achieve it. Second, a more concerning issue is the possibility of power centralization within state administration. This possibility becomes more evident as discretionary powers are granted, allowing officials to act on their own initiative to resolve pressing issues that need immediate attention (*freis ermissen/pouvoir de discretion*) (Parlin, 2001).

In theory, administrative law comprises two aspects: First, it includes various regulations that determine how the state's instruments (apparatus) carry out their duties. Second, it encompasses legal regulations that define the legal relationship between the state's instruments of administration and the citizenry. Administrative law, which is operationally implemented by state administrative bodies/officers, serves as a tool given by lawmakers to optimize the level of public service in the administration of the state, guided by principles of efficiency and effectiveness. Consequently, the administration of government affairs will, to some extent, be dominated by government actions, whether in the form of decisions, regulations, policies, or planning (Ridwan, 2014).

Indonesia, as a former Dutch colony, adopted a different model of administrative justice compared to the Netherlands. In Indonesia, administrative justice culminates in the Supreme Court, while in the Netherlands, it culminates in the Council of State. From the time of independence until 1970, with the enactment of Law No. 14 of 1970 on the Basic Provisions of the Judiciary, Article 10 of Law No. 14 of 1970 stated that administrative justice is considered equal to general jurisdiction, religious jurisdiction, and military jurisdiction. Then, in 1986, Law No. 5 of 1986 concerning Administrative Court Proceedings (after that, it was referred to as the Administrative Court Law or *UU PTUN*) was enacted. This law became effective upon the issuance of Government Regulation No. 7 of 1991 concerning the Implementation of Law No. 5 of 1986 on Administrative Court Proceedings. Until now, Law No. 5 of 1986 has undergone two amendments, namely Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 on Administrative Court Proceedings and Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 on Administrative Court Proceedings.

According to Article 47 of the Administrative Court Law (*UU PTUN*), the administrative court has the authority to adjudicate administrative disputes. Administrative disputes are conflicts arising in the field of administrative governance between individuals or legal entities of civil law with state administrative agencies or officials, both at the central and regional levels, resulting from the issuance of Administrative Decisions, including employment disputes based on applicable regulations. According to the Administrative Court Law, the initiation of administrative disputes in the administrative court occurs when there is a dispute in the field of administrative governance and employment disputes due to the issuance of Administrative Decisions. According to Article 1, paragraph 7 of Law No. 30 of 2014 on Administrative Governance, an Administrative Decision is a written determination issued by government agencies and/or officials in government administration. This article indicates that administrative decisions in the Law on Administrative Governance have a broader scope than the definition in Administrative Court Law, which only uses three elements, which are as follows:

- a. In the form of a written determination,
- b. Issued by government agencies or officials, and
- c. Such determination is within the framework of government administration (Wiryo, 2007).

The competence of the administrative court in the Law on Administrative Governance pertains to decisions and/or actions by government officials, as previously mentioned. It is derived from the authority based on legality and the authority of the government based on written regulations (*wetmatigheid van bestuur*). Additionally, the government is also bound by the principle of *rechtmatigheid van bestuur*, which means that when regulations demand the exact use of authority, it is called a *gebonden bevoegdheid* (bound authority). Conversely, if regulation provide alternatives or grant discretion to the government in using its authority, it is called a *vrijebevoegdheid* (free authority) (Johannes Usfunan, 2002).

According to Philipus M. Hadjon, in the literature of Dutch administrative law, the issue of authority always plays a

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vital role and is an essential component of Administrative Law. This is because authority, or power, holds a significant position in the study of Constitutional and Administrative Law. In the context of making decisions within Administrative Governance, authority becomes a critical aspect, as outlined in Article 52(1) of the Law on Administrative Governance. The abuse of authority is a concept frequently found in administrative law, often leading to misunderstandings in its interpretation (Philipus, 2012).

In practice, the abuse of authority is often interpreted as the inappropriate use of means and opportunities carried out unlawfully (*werrechtelijkheid or onrechtmatige daad*) or even expanded to include any action that violates rules or policies in any field. By using this broad and unrestricted concept, it can easily become a weapon for the unlawful use of authority by others and can render the government's freedom to act in specific situations (*freies Ermessen*) meaningless (Supandi, 2016). Drawing from the *Verklarend Woordenboek Openbaar Bestuur*, the misuse of authority (*detournement de pouvoir*) refers to the use of authority not as it should be. In this context, officials use their authority for purposes other than those for which it was granted. To determine whether there has been an inappropriate use of authority, it must be proven factually that the official has used their authority for a different purpose. The abuse of authority is not due to negligence; it is a deliberate act that diverts the given authority for personal interests, whether for oneself or others (Philipus, 2012).

Law No. 30 of 2014 regarding Administrative Governance has regulated the prohibition of abuse of authority in Article 17, paragraph (2), which includes:

- (a) The prohibition of exceeding authority.
- (b) The prohibition of mixing authorities.
- (c) The prohibition of acting arbitrarily.

For handling requests for the examination of abuse of authority submitted to the Administrative Court, the Supreme Court has issued Supreme Court Regulation (Perma) Number 4 of 2015. Article 1, paragraph 5 of this Perma stipulates that a Petition is a written request submitted to the Court to assess whether or not there is an element of misuse of authority committed by a State Institution and/or Government Official in a decision and/or action. This provision indicates that, according to the Supreme Court, the examination to determine the presence or absence of misuse of authority based on Article 21 of the Administrative Governance Law should only be conducted as a subsequent action following the examination results and not as an initiative taken by the official who made the decision before being questioned by other parties. This provision also reinforces the second point, namely:

- a. The results of supervision by internal supervisory authorities can constitute a decision that declares the abuse of authority by a government official, but this is not the subject matter that can be questioned in the Administrative Court (PTUN) based on Article 21 of the Administrative Governance Law.
- b. Petitions based on Article 21 of the Administrative Governance Law are not considered lawsuits. According to Article 53, paragraph 1 of the Administrative Court Law, lawsuits in the Administrative Court can only be filed by individuals or legal entities for non-employment disputes. Therefore, those who file petitions are government agencies or officials who have issued decisions suspected of containing elements of abuse of authority (Sri Pudyatmoko, 2021). Administrative Court's decisions related to examining abuse of authority are legally binding and final, meaning that all parties must respect them. If the Administrative Court decision states that there was no abuse of authority, the government official cannot be further examined through criminal, civil, or administrative proceedings.

Conversely, if an Administrative Court decision finds abuse of authority, law enforcement agencies can proceed to the next stage.

Often, the abuse of authority is associated with corruption, which includes the element of criminal intent as one of its crucial components, among others. Criminal intent is related to the subjective state of mind (*mens rea*), which essentially intertwines with the purpose of using authority. Both are inherent in the decision-maker (subjective). In decision-making, the decision-maker has an objective that aligns with the purpose of the delegated authority, or the opposite, with the criminal intent of the official, essentially residing in the thoughts and intentions of that official. The elements of abuse of authority in Article 3 of the Anti-Corruption Law are alternative because, besides the misuse of authority, opportunities and means exist due to the official's position, which are elements of criminal corruption. The abuse of authority is fundamentally an unlawful act (in the sense of criminality) and must be accompanied by criminal intent (*mens rea*). Concrete forms of criminal intent include fraud, conflict of interest, and illegality, making it a criminal offense. Meanwhile, the consequences of the abuse of authority and arbitrariness in the field of state administrative law (HAN) result in the cancellation of the official's decision (Sri Pudyatmoko, 2021).

In handling corruption cases, the Supreme Court has previously adopted an administrative law concept. In Decision Number 977 K/Pid/2004, in a case involving the defendant HHS, the Supreme Court utilized an administrative law framework to interpret the concept of abuse of authority in deciding corruption cases. This was done by giving the term "abuse of



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authority" the meaning it holds in administrative law. In the deliberations of that decision, spanning from page 196 to page 199, the Supreme Court stated the following conclusion: It is said that concerning identical terms, criminal law has the autonomy to provide a different interpretation from the meaning found in other branches of legal science. However, if criminal law does not specify otherwise, it may use the same meaning and terminology found in other branches of law. Thus, if the definition of "abuse of authority" is not explicitly defined in criminal law, then criminal law can adopt the meaning and terminology from other branches of law. At that time, the Administrative Governance Law had not yet been enacted.

Additionally, in other cases, the Supreme Court of the Republic of Indonesia, through CaseNo. 81/K/Kr/1973 dated May 30, 1977, in the case of Ir. Moch. Otjo Danaatmidja stated that a person accused of a corruption offense could be acquitted if "the financial loss to the state or the national economy is not proven because the public interest is served, and the defendant does not get the benefit." Then, in 2010, in Case No. 591K/Pid.Sus/2010, in the case of Prof. Dr. Romli Atmasasmita, SH., LL.M., it was stated that the defendant "did not materially benefit, there was no state loss, and public services ran smoothly and well. Therefore, if a government official has returned the state's financial losses, even if there is subsequent 'criminalization' of their actions, the temporary isolation that can be applied is the return of the state's financial losses as evidence that the element of loss is no longer fulfilled, then considering whether public service/public interest was served, and the official did not benefit from the wrongdoing committed (Marbun, 2013).

The Administrative Court (PTUN) examination based on Article 21 of the Administrative Governance Law regarding allegations of abuse of authority by government officials emphasizes its administrative aspects. The parameters used here are somewhat different from those used in corruption cases. Therefore, this examination is more helpful in resolving issues related to the administrative legal aspects. One of the important aspects of this examination is the question of the perpetrator's intentions, namely the government official who made the decision. Therefore, it should also be examined thoroughly regarding the subject's intentions because if it is used in handling corruption cases, the aspect of criminal intent becomes crucial. If this aspect is examined, it can assist in handling corruption cases, especially in cases involving allegations of abuse of authority. Other elements of corruption offenses can still be examined by the court, for example, by an anti-corruption court (Tipikor court).

### CONCLUSION

1. The procedure for testing the abuse of authority at the Administrative Court is closely related to the results of oversight conducted by the Internal Government Supervisory Apparatus (*Aparat Pengawasan Intern Pemerintah*) over the decisions and/or actions of government officials. The decisions and/or actions of government officials that serve as the objects of the abuse of authority examination at the Administrative Court involve administrative errors that lead to state losses and have not undergone criminal proceedings. These decisions and/or actions are taken by subjects who file the abuse of authority application in accordance with Articles 17, 18, 19, and/or 24 of the Administrative Governance Law. The subjects of these applications are government bodies or officials who feel aggrieved by the Internal Government Supervisory Apparatus's oversight. Government officials are the ones who issue the decisions and/or actions, while government bodies are the specific authorities empowered to demand compensation for state losses from government officials.
2. The provisions in Article 21 of the Administrative Governance Law provide clarity regarding whether government officials have abused authority by making administrative decisions, but this does not pertain to corruption cases. If judges are allowed to consider aspects of administrative law related to the abuse of authority when handling corruption cases, it would undoubtedly assist them in managing such cases, especially when the examination is based on Article 21 of the Administrative Governance Law and is conducted before criminal proceedings are initiated.

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