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Abuse of Authority in Dualism Perspective: Development of Corruption Crime Settlement Pattern

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Abstract--*Corruption is a criminal act that universally occurs in various countries in the world, including in Indonesia. Even if it cannot be said that Indonesia is more terrible than in other countries, corruption is a type of crime with a high degree of badness. So far the recipe for legal treatment of corruption in Indonesia is outlined through prevention and enforcement. This scientific work aims to explain the regulation of abuse of authority in relation to patterns of resolution of criminal acts of corruption. Conceptually this scientific work aims to provide thought suggestions in the context of the dimensions of preventing corruption. Basically this study is a normative legal research, because it methodologically uses a statutory approach with a descriptive-qualitative discussion approach. The results of the study found that the development of legal construction was related to the abuse of authority that shifted from the realm of criminal law to the state administrative law regime. The conclusion can be drawn that there is a development in legal politics in terms of solving corruption in accordance with the paradigm of progressive legal thinking. In the context of the dimensions of preventing criminal acts of corruption, it is necessary to strengthen broad regulations regarding areas prone to criminal acts of corruption and to be encouraged to prioritize the application of resolution to be more in the domain of state administrative law.*

Key words--*abuse of authority, criminal acts of corruption, state administrative law.*

I. INTRODUCTION

At the global and universal level, discourse on criminal acts or corruption crimes is raised related to government activities in the implementation of development, especially in developing countries. Referring to several empirical studies, the definition of corruption is always put in the context of the use of public authority that is done wrong. As a result, there is a loss of state finances that turn into personal gain. In line with that, Jinyoung Hwang argues: corruption, defined as the misuse of public office for private gain, has attracted a great deal of attention in recent years. In particular, several empirical studies on corruption have shown that it is a big impediment to develop for certain developing countries (Jinyoung Hwang, 2002).

In modern understanding, corruption is not as old as other crimes against humanity, such as murder or theft. However, according to various definitions and limitations of the formulation, corruption is a criminal act of derivation from more general crimes, such as robbery or embezzlement whose derivatives are in the form of abuse of power (Rony Saputra, 2015). Of course, there is a lot of focus in the study of corruption, one of which is dealing with acts of abuse of authority. The authority of government which should have been the authority of the public was used erroneously for personal gain by undermining financial, both potential and real.

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In the treasury of criminal law in Indonesia, so far "acts of abuse of authority" have become a standard as part of an offense for criminal acts of corruption. Dogmatic dynamics of law in its development show the regulation of abuse of authority touched by other legal fields outside the field of criminal law, namely the field of state administrative law, specifically with the birth of Law Number 30 Year 2014 concerning Government Administration.

The Government Administration Act is based on the assumption that acts of abuse of authority carried out by government officials are one of the major contributory factors to corruption in Indonesia. For this reason, preventive measures are needed through regulating the use of the authority of government agencies and/or officials. This regulation becomes the legal basis for the administration of government in an effort to improve good governance and as an effort to prevent corruption, collusion, and nepotism.

Another important content material in the Government Administration Act is to give authority to the State Administrative Court to receive, examine, and decide whether or not there is an element of "abuse of authority" by Government Officials.In the same context the authority to accept, examine and adjudicate acts of abuse of authority, becomes the authority of the Corruption Court. The development of the dualism of the normativisation structure of abuse of authority in the container of Government Administration law on the one hand, and normativisation in the Corruption Act, at least gave birth to 2 (two) consequences. First, for one case that contains an element of abuse of authority, the solution is possible to be carried out in 2 (two) domains of public law with different scientific branches. As a result, it can produce different decisions. Second, the dichotomy creates difficulties in achieving the objectivity (M. Hatta Ali, 2016).

In another sentence, it can be said that after the birth of the Government Administration Act, a problem arises in the event of abuse of authority by the State Administration Agency / Officer, which will be used as a test, is the realm of state administrative law or the realm of criminal law? This concerns understanding of the determination of jurisdiction which in judicial practice or in judicial life is still very limited (Indriyanto Seno Aji, 2009). Put simply, the main problem relates to the relationship between 2 (two) domains of justice over one abuse of the same authority. The point of contact of the authority for testing the abuse of authority between the State Administrative Court and the Corruption Court, is the subject of discussion.

Academically packaging the problem revolves around: first, testing the presence or absence of an element of abuse of authority to be a concurent authority. In this case, each court environment, both the State Administrative Court and the Corruption Court are equally authorized. Second, testing whether there is an element of abuse of authority must be tested in advance by the State Administrative Court. On the basis of the decision of the State Administrative Court that has obtained permanent legal force and is proven to have an element of abuse of authority, then the Corruption Court has the authority to examine corruption.

In that context, this article aims to discuss and determine the regulation of abuse of authority in the perspective of dualism between criminal law and administrative law as a study of patterns of resolution of corruption. Thus, this article can be placed substantially as a middle ground between the prevention and enforcement of criminal acts of corruption.

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II. METHODOLOGY

This paper is the result of a review or study of various positive legal documents relating to the themes discussed. The objective of the research is secondary data in the form of primary and secondary legal materials. Therefore, referring to the research methods that exist in the typology of legal research, the methodology in this study purely applies the juridical-normative-doctrinal legal research methods.

III. RESULT AND DISCUSSION

In the last decade, in Indonesia, the behavior and criminal act of corruption cannot be denied anymore, it has become an outbreak of bureaucratic pathology whose transmission is not only in the public sphere of government in a broad sense, but it has involved and penetrated the private sphere. In this connection, Azhar Kasim, on one asserted that corruption in Indonesia is a chronic and widespread phenomenon that derogates good governance, erods the rule of law, hampers economic growth efforts, increases social inequality, and distorts the nation's competitiveness in the global economy. On the other hand, it was alleged that the collective awareness of the nation represented by the government had driven the new era of government with the paradigm and bureaucratic reform movement. It was further emphasized that the government of Indonesia has launched bureaucratic reform that aims to develop clean, efficient, effective, and productive bureaucracies. The reforms are designed to create transparent bureaucracy which serves the people and is accountable to the public (Azhar Kasim, 2013).

Bureaucratic reform, among others, is to give birth to empowerment, which is a way or an effort to bring greater and better results and benefits (Manao, 2018). Conceptually, bureaucratic reform has a strong theoretical basis, which is based on the principles of good governance good governance derived from the principles adopted by countries with advanced bureaucracy, and has been adopted as principles in international legal instruments. Good governance is a central issue in the management of public administration, which is reflected in the demands of society on state administrators (Rasul, 2009). This principle embodies the values of the will of the community for the role of the state administration in realizing social justice, so that functional governance must be carried out effectively and efficiently.

The regulation of acts of abuse of authority currently in force at the level of Indonesian dogmatic law rests on both the criminal law regime and the administrative law regime of the state. In the context of thought, conceptualization, normativisation, and legal practice of the criminal law regime are in advance the lots where the problem of abuse of authority is resolved. Even quite familiar in a long period of time, followed strongly that the abuse of authority is the main element in corruption. Laying the aspect of abuse of authority in the administrative law regime of developing countries behind the criminal law regime.

Abuse of authority in the perspective of Corruption Crimes is assessed through a search for legislation. Positive legal support governing corruption, starting from Law Number 3 of 1971 concerning Eradication of Corruption, to Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption, emphasized that the abuse of authority was an element of criminal offense of corruption.

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Article 1 paragraph (1) letter b of Law Number 3 of 1971 concerning Eradication of Corruption Crimes reads: "Anyone with the purpose of benefiting himself or another person or an Agency, abuses his authority, opportunity or means because of his position or position, which can directly or indirectly harm the country's finances or the country's economy." In its development, Article 3 of Law Number 31 Year 1999 concerning Eradication of Corruption Crimes states: "Anyone who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him due to his position or position can be detrimental to the country's finances or the country's economy". Furthermore, although Law Number 31 Year 1999 has changed with the issuance of Law Number 20 Year 2001, the formulation of norms in Article 3 does not change.

The concept of authority in the context of the abuse of authority, the study of legal dualism between criminal law (criminal acts of corruption) and administrative law are 2 (two) twisted aspects. Abuse of authority marks the legal link between the norms of government law and criminal law. According to the deepening of jurisprudence, criminal law contains norms that are very important to maintain the life of the people who enforce them through criminal sanctions. In that connection, it is possible for every norm of government law or state administration law, in the end to be followed by a number of norms and criminal sanctions. Criminal law can be said to be the tail or tail of any government policy setting, which is poisonous or miserable (in cauda venenum) (Yasser, 2019). Therefore, testing the abuse of authority cannot be released in the perspective of the dualism of criminal law and state administrative law.

Efforts to prevent and eradicate corruption must consider the negative impact on the implementation of government administration, namely the emergence of extraordinary fear and courage from the bureaucracy in taking actions or decisions on the use of the budget, because it has implications for the abuse of authority. An unintended further and fundamental negative consequence of governance is the possibility of stagnation in development activities (Nurhayati & Gumbira, 2017).

In the approach through the perspective of state administration law, one of the important issues in handling corruption cases, in terms of proving the element of abuse of authority is the consideration of returning state losses, the formulations of which vary as scattered in positive Indonesian law (Rini, 2018).

Meanwhile, the abuse of authority in the perspective of State Administrative Law developed later. Abuse of authority by the State Administration Agency / Officer in issuing State Administration Decree (beschikking) since 1986 is included in the scope of the examination of the State Administrative Court. Abuse of authority occurs if the Agency or State Administration Officer at the time of issuing a decision has used his authority for other purposes than the purpose for which the authority was granted. The use of authority for other purposes than those intended by the state and government administrators in public services constitutes mal-administrative behavior. Supervision and examination of the alleged Maldives Administration is the authority of the Ombudsman Commission of the Republic of Indonesia.

Abuse of authority has 3 (three) functions, namely first, as a reason and provide a basis for the plaintiff to prepare a lawsuit (beroepsgronden). Secondly, the State Administrative Court as a testing tool (toetsingrechts) listed in the consideration of the decision and the basis for the cancellation stated in the decision order. Third, for Government Agencies / Officials it acts as a general norm of government (bestuurnorm) which consists of a prohibition on abuse of Authority.

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Furthermore, in the realm of State Administrative Law there was a transformation or normativisation of General Principles of Good Governance (Algemene Beginselen van Behoorlijk Bestuur) which were originally abstract and were seen as unwritten legal rules (het ongeschreven), then becomes the formulation of concrete norms as legal principles written in the law. This has led to a modification of the concept of abuse of authority as a basis in lawsuits and as a test tool and as a basis for canceling an act of state administration. Even so, it does not prevent the plaintiff from using the basis of abuse of authority as a reason for a lawsuit (beroepsgronden), and the State Administrative Court can still use the reason of abuse of authority as a basis for testing and the basis for canceling a State Administration Decree (Konijnenbelt, 2001).

In the latest development of the determination of state administration law on criminal law, specifically corruption, related to aspects of abuse of authority, up to date in 2014. In the spirit and philosophical, as well as legal politics, state administrative law is encouraged to improve the function of law as a preventive measure in eradicating corruption. Arrangements for abuse of authority are framed in the title "government authority" with the sub-heading "prohibition of abuse of authority". As a state administrative legal regime, the regulation is intended as a legal basis for the administration of government in an effort to improve good governance, build a more transparent and efficient bureaucracy. The dimension of criminal law becomes its part, in the sense of regulating the abuse of authority in the new format also intended as an effort to prevent bureaucratic pathology, namely corruption, collusion, and nepotism.

In the perspective of formal law (legal law) to enforce material law, the granting of authority to test whether there is an element of abuse of authority carried out by Government Officials to the State Administrative Court does not mean to negate (nullify). The possibility in law enforcement practices can be interpreted that testing the element of abuse of authority by the State Administrative Court can be seen as temporarily suspending the authority of the Corruption Court to receive, examine, and prosecute non-criminal corruption, until awaiting the decision of the Administrative Court with a permanent legal force (incracht). Indeed there are public concerns that consider shifting evidence of abuse of authority as if it would weaken the eradication of criminal acts of corruption, because it is seen that the State Administrative Court will be a place to hide corruptors (IKAHI, 2016). However, in concept and spirit of law, testing the evidence of the element of abuse of authority in the State Administrative Court forum can and will strengthen efforts to eradicate corruption.

Based on the norms of sanctions, based on the abuse of authority proven in court as an element of criminal acts of corruption, criminal law will result in criminal sanctions in the form of imprisonment accompanied by repayment of state financial losses. Restoring state financial losses is the ultimate goal in criminal law enforcement as eradicating criminal acts of corruption, basically determined as the results of considerations in criminal law assemblies that may be less than optimal. The recovery of state financial losses is not necessarily worth or equal to the state assets lost due to acts of abuse of authority.

Contrary to the intent and purpose of establishing government administrative laws, testing and proving acts of abuse of authority in the conduct of positions that carry out government functions in the State Administrative Court forum, whether executive, legislative, or judicial, administrative accountability and administrative sanctions, not criminal sanctions or civil liability. Administrative sanctions in the form of reimbursement or repayment of state financial losses will be more implemented and the value will be more

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optimal.

Thus, the handling and testing of acts of abuse of authority by elements of state administration or government administration, in the context of strengthening the eradication of criminal acts of corruption have shown the direction of innovative legal politics. Political law is facing between the realm of criminal law with the legal domain of state administration, with a tendency to impose legal choices on administrative legal instruments given the optimization of the state's loss returns. Theoretically, the development of the shift in the choice of law is in line with and is based on the restorative-justice principle that develops in the restorative justice legal theory and responsive legal theory. Therefore, can be said that the novelty in this discussion, that is administrative law can be used as settlemen pattern of abuse of authority, than criminal law.

IV. CONCLUSION

The discussion has found connection that has developed in the cross shifting between criminal law and state administrative law and several things can be concluded. First, there has been a change in the direction of legal politics related to law enforcement in combating corruption in Indonesia. Secondly, the paradigm of preventing corruption is as important as corruption enforcement, because corruption prevention is a condition sine qua non in the repression of corruption. Third, the fundamental problems both in the prevention and in the enforcement of corruption always lead to the performance of state administrators: integrity, professionalism, and accountability. Fourth, testing and proving the element of abuse of authority is primarily a guarantee of law enforcement in combating corruption. Fifth, the proven abuse of authority (mal-administration) by government administrations and state administrators is not mutatis mutandis is a criminal act of corruption. Sixth, the recovery of state financial losses is based more on principles and responsive and restorative legal approaches by shifting the role of the repressive legal approach.

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