Law Enforcement Against Criminal Acts of Corruption in The Form of Abuse of Authority in Office Based on The Law on Eradication of Corruption Crimes

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Abstract

The concept of abuse of authority in the Government Administration law is seen by several legal experts as the same as the concept of abuse of authority because it is the absolute competence of the Administrative Court in the Corruption Eradication law. The research method used is Case Study Decision Number Case Study Decision Number 218 PK/PID.SUS/2019 and Decision Number 143 PK/PID.SUS/2019, where both decision cases involve criminal acts of corruption in the form of abuse of authority in office. Based on Law no. 31 of 1999 Jo Law no. 20 of 2021 concerning the Eradication of Corruption Crimes. The conclusion is that the application of sanctions against criminal acts of corruption in Decision Number 218 PK/Pid.Sus/2019 and Decision Number 143PK/Pid.Sus/2019, the panel of judges imposed imprisonment/imprisonment and fines, the imposition of fines as an implementation of the balance value can be applied as long as In certain circumstances, the perpetrator of a criminal act of corruption is not a recidivist, then as a balanced punishment, apart from imposing a fine, assets can also be confiscated, this is so that the imposition of the fine can be used as a lesson or legal perspective for the wider community, rather than just being sentenced to imprisonment/ prisons are indeed less effective, because in the implementation of confinement/imprisonment sentences there are still leniencies which do not actually have a deterrent effect on perpetrators of criminal acts.

Keywords: Corruption Crime, Abuse of Authority in Office, Law on Eradication

INTRODUCTION

Crime is an inseparable part of human life in the world. All human activities, whether political, social and economic, can cause crime. Current crime shows that economic progress has also given rise to new forms of crime that are no less dangerous and the number of victims they cause. Crime not only has a national dimension but is transnational. This is marked not only by large and widespread losses, but also by increasingly sophisticated criminal modus operandi and equipment. Crime is not only committed by individuals but is already in the nature of organized groups, or better known as organized crime.

Corruption cases are currently a very interesting thing to discuss. Especially if the criminal act of corruption is committed by a well-known government official who has a clean and populist image. Corruption crimes by government officials mostly begin with administrative irregularities. The first benchmark for looking at this is whether there is a difference between the clause that causes administrative irregularities and the losses that are the consequences. For example PP no. 10 of 2000 which dragged DPRD members for interpreting the words "and others" to pay insurance premiums for DPRD members. Where if there is a state financial loss then it can be qualified as a criminal act of corruption.

Corruption is an interesting legal issue to discuss at the moment, because corruption is not only detrimental to the country's economy, but is also a global issue that has hit all corners of the world, including Indonesia. Corruption crimes continue to grow and develop, both in quality and quantity, with various modus operandi. Along with the advances in science and technology achieved by mankind. Currently, it is indicated that criminal acts of corruption have entered all state administration institutions, both executive, legislative and judicial, and are at all levels, both at the central and regional levels.

Corruption crimes increase along with progress, prosperity and technological progress, the needs of life increase and one of the impacts can encourage people to commit crimes including criminal acts of corruption, criminal acts of corruption seem to have become a culture that is developing among upper class to lower class society, and can involve officials.

Public officials are people who are trusted to be appointed and given the task of occupying certain positions or offices in public bodies. Public officials are given power and trust because they are considered part of democracy and there can be no democratic government without responsibility to the people.

Officials are not only limited in authority and power but need each other and there must be cooperation. Sometimes the orderliness in exercising the authority and power regulated by law is disturbed if an official exceeds the limits of his or her authority or power. In such cases, there is a violation or abuse of power. Tolerance and indifference make it easier for violations and abuse of authority and power to occur. Officials who abuse their authority in their position can be called an official crime, government officials or private officials who abuse their authority to commit criminal acts of corruption can be subject to sanctions according to the provisions of Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 1999 concerning the Eradication of Corruption Crimes.

Authority or authority has an important position in the study of constitutional law and administrative law. So important is this position of authority that FAM Stroink and JG Steenbeek stated: "Het begrip bevoegdheid is and ook een kernbegrip in het staats en administratief rechat".

Realizing the negative impact that criminal acts of corruption have on the survival of the nation and state, countries throughout the world are determined to eradicate corruption, prevent corruption and tackle corruption. However, ironically, criminal acts of corruption continue to grow rampant in almost every country, including Indonesia. The criminal act of corruption is actually growing rapidly as if it is timeless, and in fact continues to thrive, especially in Indonesia.

Abuse of authority is considered the same as an element against the law. As we know, the element "against the law" is the "genus", while the element "abuse of authority" is the "species". "Abuse of authority" means the subject of the offense is a civil servant or public official, in contrast to the "unlawful" element where the subject of the offense is everyone.

In the concept of administrative law, every grant of authority to an agency or to a state administrative official is always accompanied by the "aims and purposes" of the granting of that authority, so that the application of that authority must be in accordance with the "aims and purposes" of the granting of that authority. In the event that the use of authority is not in accordance with the "purpose and purpose" of granting that authority, then there has been an abuse of authority ("détournement de pouvoir")

Regarding what is meant by abuse of authority, there is no further information in the law. Authority is only owned by individual legal subjects and does not exist for bodies or corporations. Authority is closely related to the position or position held by a person. Discretion, which is essentially the authority of government officials to issue decisions or take action on their own initiative without relying on applicable laws and regulations, is often considered an abuse of authority by law enforcement officials. The absence of clear regulations regarding usage procedures and limits on discretion is the root of the problem.

Meanwhile, in essence, discretionary authority is given to government officials as a complement to statutory regulations. Because in principle, laws and regulations cannot keep up with dynamic developments in society, so independence is needed for government officials to issue decisions quickly in accordance with the problems being faced. Because it is impossible for a government official not to do something for the reason of waiting until a regulation is made or waiting for a new regulation (Rechtsvacuum).

Issues regarding discretion have actually entered the gray area between state administrative law and criminal law with all the problems with the criminalization process, even now giving rise to debate among criminal law experts, practitioners and legal academics. In the realm of state administrative law, the policies of government officials in the form of (beleid vrijbestuur) and discretion (discretionary power) have become an arena for academic study to be used as a rejection or justification for punishment in the area of criminal law.

Discretion is often justified as a criminal act of corruption in the realm of criminal law, this is usually caused by several factors:

The first factor, in terms of statutory regulations, especially the Corruption Eradication Law, does not contain clear rules and even gives the impression of giving rise to very broad interpretations. For example, the definition of abuse of authority is not regulated, whereas abuse of authority or in Article 3 of the Corruption Eradication Law is called "abuse of authority" is the core offense (bestanddeel delict) in that article. The implication of not regulating the definition of abuse of authority explicitly in criminal law, especially criminal acts of corruption, is that it can result in actions by government officials that are very easy to justify as criminal acts, especially in relation to discretionary authority which is not bound by statutory regulations because acts of abuse of authority can give rise to multiple interpretations from law enforcers.

The second factor is the wrong understanding of the law from law enforcers, especially in interpreting the essence (best and deel delict) in Article 3 of the Corruption Eradication Law. Law enforcers rely too much on the element of "abusing authority" and forget that in criminal acts of corruption there must be someone who receives the benefits, whether it is the individual perpetrator or another person or corporation. Discretion is often seen as an abuse of authority because it is not based on applicable laws and regulations, even though to qualify discretion as an abuse of authority, especially as a criminal act of corruption, it must first be reviewed whether the perpetrator receives a benefit from the discretion they issue or whether someone else benefits. Or in other words, whether in using discretionary authority there is malicious

intent (mens rea) or not on the part of the perpetrator. For people who have certain positions or positions or people who have certain personal qualities.

An act of abusing authority occurs if a person has authority based on applicable general provisions or customs attached to a position/position he/she holds which is used incorrectly/deviantly/contrary to the aims and objectives of the authority given to that position or position.

Overlapping laws and regulations in the field of eradicating Corruption Crimes (Tipikor), is one of the main obstacles. In fact, the formation of laws and regulations is the first stage in efforts to prevent and control crime using "penal" means, whose role is no less important than the duties of law enforcement officers/law implementers. Legislative policy is the most strategic initial stage of the overall dimensions of the functionalization/operationalization/concretization stage of criminal law and is the foundation of the application and execution stages. Mistakes or weaknesses in making legislative policies are strategic mistakes that can hamper efforts to prevent and control crime at the application and execution stages.

The promulgation of Law Number 30 of 2014 concerning Government Administration (Government Administration Law), namely Articles 17 to Article 21 which regulate the prohibition of abuse of authority by Government Agencies and/or Officials as well as the granting of authority to Government Internal Supervisory Apparatus (APIP) and the Judiciary TUN (Administrative Justice) to carry out supervision and examination regarding whether or not there are elements of abuse of authority carried out by Government Officials. Meanwhile, previously there were provisions in Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by the Law Number 20 of 2001 (Corruption Eradication Law) jo. Article 5 and Article 6 of Law Number 46 of 2009 concerning Corruption Crime Courts (UU Tipikor Court), one of the elements of which regulates Corruption due to abuse of authority, where absolute competence to examine this matter is given to the Corruption Court.

The concept of "abuse of authority" in the Government Administration law is considered by several legal experts to be the same as the concept of "abuse of authority" because it is the absolute competence of the Administrative Court in the Corruption Eradication law. This provision has the potential to give rise to a dispute over absolute authority between the Corruption Court and the Administrative Court.

In this research, the author examines Decision Number 218 PK/Pid.Sus/2019 and Decision Number 143 PK/Pid.Sus/2019.

In Decision Number 218 PK/Pid.Sus/2019 with the defendant Drs. Binton Simorangkir, MM, who is a civil servant whose address is Jalan AMD Perum DL Sitorus Number 1, Kalangan Village, Pandan District, Tapteng Regency, Defendant Drs. Binton Simorangkir, MM, has not been legally and convincingly proven guilty of committing a criminal act of corruption "taking part in carrying out unlawful acts to enrich himself or another person or a corporation which could harm the State's finances or the State's economy where several of these acts are related in such a way so it must be viewed as a continuing act" as regulated in Article 2 Paragraph (1) in conjunction with Article 18 Paragraph (1) letter b, Paragraph (2), (3) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code (primary charge).

Then in Decision Number 143 PK/Pid.Sus/2019 with the defendant Paulus Dudung Kallungan, A.Ptnh who is a civil servant whose address is in Sawang Bandar Village, Tahuna District, Sangihe Islands Regency, the defendant Paulus Dudung Kallungan was guilty of

committing a crime "as an employee "The state or state administrator accepts a gift or promise even though it is known or reasonably suspected that the gift or promise was given because of power or authority related to his/her position, or which in the mind of the person giving the gift or promise is related to his/her position" as regulated and punishable by criminal in the second alternative indictment as intended in Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Article 55 Paragraph (1) 1st Criminal Code.

Based on the background of the problem above, the formulation in this research is how to apply sanctions for criminal acts of corruption in Decision Number 218 PK/Pid.Sus/2019 and Decision Number 143 PK/Pid.Sus/2019? And what is the formulation of the offense of abuse of authority in the law for eradicating criminal acts of corruption in the future?

RESEARCH METHODS

In this research, the type of research used is normative legal research/normative juridical legal research. This research was conducted to identify law enforcement against criminal acts of corruption in the form of abuse of authority in office based on Law Number 31 of 1999 in conjunction with Law Number 20 of 2021 concerning the Eradication of Corruption Crimes.

The data used in this research is secondary data. Secondary data is data used to answer the problems in this research through literature study. Secondary data is the main data used in this writing.

The legal materials used in this research are primary data and secondary data. Primary data is data obtained directly from the source using the interview method. The secondary data used in this research was obtained directly through searching the literature or official documents, namely books on legal theory, legal philosophy and books on legal discovery and legal interpretation. This is important for the author to sort out and then analyze the statutory regulations/provisions. This secondary data consists of three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials

a. Primary Legal Materials
   Primary Legal Materials are legal sources that become the binding/legal basis such as: criminal law books,Law number 31 of 1999 in conjunction with Law number 20 of 2021 and other laws containing provisions regarding law enforcement against criminal acts of corruption in the form of abuse of authority in office.
b. Secondary legal materials
   Secondary legal materials are materials that provide explanations of primary legal sources such as materials in the form of books, newspapers/magazines and scientific papers related to problems.
c. Tertiary legal materials
   Tertiary legal materials are materials that provide guidance on primary and secondary legal sources such as legal dictionaries, encyclopedias and bibliographies.

DISCUSSION

Application of Sanctions for Corruption Crimes in Decision Number 218 PK/Pid.Sus/2019 AND Decision Number 143 PK/Pid.Sus/2019

Law no. 31 of 1999 concerning Corruption Crimes, which took effect from 16 August 1999 which was later amended by Law no. 20 of 2001 concerning Amendments to Law no. 31 of 1999 concerning Eradication of Corruption Crimes.

Based on Law no. 20 of 2001 concerning the Eradication of criminal acts of corruption, several elements were found as follows:

1. Against the law.
2. Suing yourself or another person or a corporation.
3. Harmful to state finances or the country's economy.

Explanation of Law no. 20 of 2001, which is meant by unlawfully, includes unlawful acts in the formal sense as well as in the material sense, that is, even though the act is not regulated in statutory regulations, if the act is considered disgraceful, because it is not in accordance with the sense of justice or norms. social life in society, then this act can be punished.

Pay attention to the formulation of provisions regarding criminal acts of corruption as contained in Law no. 20 of 2001, it can be seen that the unlawful element of the provisions of the criminal act of corruption is a means to carry out acts of enriching oneself or another person or corporation. Meanwhile, what is meant by harm is the same as being at a loss or being reduced, so what is meant by the element of harming state finances is the same as meaning being a loss to state finances or a reduction in state finances.

As a result of the formulation of these provisions, even though an act has harmed state finances or the state economy, if it is not carried out against the law, the act of enriching oneself or another person or a corporation is not a criminal act of corruption as intended in Law no. 20 of 2001.

Referring to the positive law regarding Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, actions carried out by perpetrators of corruption crimes can be subject to imprisonment and/or fines as regulated in:

Article 3

Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him for the sake of the country's economy shall be punished by life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (two) years. twenty) years and a fine of at least IDR 50,000,000, 00 fifty million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah) for positions or positions that can harm state finances.

Article 5

1) Sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 250,000,000.00 (two hundred and five tens of millions of rupiah) every person who:
   a. giving or promising something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position, which is contrary to his obligations or;
   b. giving something to a Civil Servant or State Administrator because of or related to something that is contrary to their obligations, whether or not done in their position.

Article 6

1) Sentenced to a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least IDR 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of IDR 750,000,000.00 (seven hundred fifty million rupiah) every person who:
   a. giving or promising something to a judge with the intention of influencing the decision of a case submitted to him for trial; or:
   b. giving or promising something to someone who according to statutory provisions is determined to be an advocate to attend a court hearing with the intention of influencing the advice or opinion that will be given in connection with a case submitted to the court for trial.

Article 9

Every person who commits a criminal act as intended in Article 416 of the Criminal Code, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum

of 5 (five) years and a fine of at least IDR 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah) Article 18, states:

1) Apart from additional penalties as intended in the Criminal Code, additional penalties are:
   a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods that replace these goods;
   b. Payment of compensation money in an amount equal as much as possible to the property obtained from the criminal act of corruption.
   c. Closure of all or part of the company for a maximum period of 1 (one) year.
   d. Revocation of all or part of certain rights or elimination of all or part of certain benefits that have been or can be given by the government to the convict.
2) If the convict does not pay the replacement money as intended in paragraph (1) letter b within (one) month after the court decision, his property can be confiscated by the prosecutor and auctioned to cover the replacement money.
3) In the event that the convict does not have sufficient assets to pay replacement money as intended in paragraph (1) letter b, then he will be sentenced to imprisonment whose duration does not exceed the maximum threat of the main sentence in accordance with the provisions of this Law and the length of the sentence has been determined in the court decision.

Article 12

1) Any gratuity to a civil servant or state administrator is considered a bribe, if it is related to his or her position and is contrary to his or her obligations or duties, with the following conditions:
   a. whose value is IDR 10,000,000.00 (ten million rupiah) or more, proof that the gratuity is not a bribe is carried out by the recipient of the gratuity;
   b. whose value is less than IDR 10,000,000.00 (ten million rupiah), proof that the gratuity was a bribe was carried out by the public prosecutor.
2) The punishment for civil servants or state administrators as intended in paragraph (1) is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and a fine of at least IDR 200,000,000. 00 (two hundred million rupiah) and a maximum of IDR 1,000,000,000.00 (one billion rupiah).

The provisions for sanctions for perpetrators of criminal acts of corruption as stated in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes contain regulations regarding the maximum and minimum limits of punishment for perpetrators of criminal acts of corruption. The provisions for the distribution of penalties are also explained in the Criminal Code as follows:

The division of crimes in article 10 of the Criminal Code, namely:

a. Main penalty:
   1) Death penalty
   2) Prison sentence
   3) Criminal Cage: V
   4) Criminal fine
   5) Cover-up crime
b. Additional penalties:
   1) Revocation of certain rights
   2) Confiscation of certain items
   3) Announcement of the judge's decision

With regard to continuing acts of corruption. In its implementation, perpetrators of

criminal acts of corruption are not only committed alone but are usually carried out together, which is what criminal law experts call congregational corruption. Acts of corruption are not only carried out in congregation but are also often carried out continuously because almost all of the activities of corrupt perpetrators are suspected to have been carried out not just once but repeatedly or continuously.

In corruption cases, the perpetrators of corruption cases often apply Article 64 paragraph (1) of the Criminal Code by the Public Prosecutor regarding continuing actions (voortgezette handeling). The author conducted research on the decisions of Decision Number 218 PK/Pid.Sus/2019 and Decision Number 143 PK/Pid.Sus/2019 related to the application of sanctions for criminal acts of corruption in Decision Number 143 PK/Pid.Sus/2019, the panel of judges considered that the reason the review of the Applicant for Judicial Review regarding the presence of "judge errors or obvious mistakes" cannot be justified because the legal arguments of the Applicant for Judicial Review are in principle only a repetition of what has been expressed by the Applicant for Judicial Review in the judex facti trial process, thus The reason for the objection of the Petitioner for Judicial Review is not legally grounded, and there is also no new evidence (novum) and no conflict between decisions in the case of the Petitioner for Judicial Review.

Judex facti decision of the Corruption Crime Court at the Medan High Court dated March 22 2016 which canceled the decision of the Corruption Crime Court at the Medan District Court and stated that the Petitioner for Judicial Review was legally and convincingly proven guilty of committing the crime of "corruption which was carried out jointly and continuously" as stated in the subsidiary indictment is appropriate and true in its legal considerations.

Based on the considerations above, the reasons for review of the Applicant for Judicial Review cannot be justified, because they are not included in one of the reasons for review as intended in Article 263 Paragraph (2) letters a, b and c of the Criminal Procedure Code, therefore based on Article 266 Paragraph (2) letter a of the Criminal Procedure Code, then the request for review is declared rejected and the decision requested for review is declared to remain valid, because the convict is convicted, the court costs for the review examination are borne by the convict.

Remembering Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code juncto Article 64 Paragraph (1) of the Criminal Code, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 48 of 2009 concerning Judicial Power, and Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 2004 and the second amendment with Law Number 3 of 2009 and other relevant laws and regulations.

In Decision Number 218 PK/Pid.Sus/2019, the panel of judges considered that the reasons for the Petitioner's Judicial Review stated that in the a quo case the witness Masri Mangumpaus as the party who gave the gift to the Judicial Review Petitioner was not presented as a Convict. Regarding the reasons for the Petitioner's review, it is considered that the failure to present Masri Mangumpaus as a Defendant in the a quo case cannot be used as a reason to eliminate the criminal responsibility carried out by the Convict (former Defendant) and in addition whether or not a person is brought as a Convict before the trial is entirely up to him. authority of the Public Prosecutor.

The Petitioner for Judicial Review as a civil servant as Head of the Survey, Measurement and Mapping Section at the Sangihe Islands Regency Land Office in the 2014 Prona TA activities in Sangihe Islands Regency, has received a prize in the form of a sum of money/fees (levies) amounting to IDR 5,500,000.00 (five million five hundred thousand

rupiah) from Prona participants through the Village Head even though as the 2014 Prona Activity Implementation Task Force Team, they are prohibited from requesting, collecting and/or receiving any fees in order to carry out land registration in connection with Prona activities. The Petitioner for Judicial Review has essentially agreed to the Judex Facti decision because it did not use the legal remedies of appeal and cassation.

Based on the consideration of the decisions above, in the application of sanctions in cases of criminal acts of corruption, there are several things including imprisonment/imprisonment, fines, imposition of fines as implementation of the balance value which can be applied as long as the perpetrator of the criminal act of corruption in certain circumstances is not a recidivist, then as In addition to imposing a fine, a balanced punishment can also involve taking assets, this is so that the imposition of a fine can be used as a lesson or legal perspective for the wider community, rather than just being sentenced to imprisonment/imprisonment which is less effective, because in the implementation of imprisonment/imprisonment there are still leniency which does not actually have a deterrent effect on perpetrators of criminal acts.

Sanctions for criminal acts in a law are expected to achieve the goal of punishment if the formulation of these sanctions is applied to perpetrators of criminal acts, including perpetrators of criminal acts of corruption. Criminal sanctions are the best tool or means available to deal with criminal acts and to deal with threats from these dangers. Apart from the use of criminal sanctions as a means of dealing with crime and maintaining public order, the purpose of punishment is also no less important in seeking a justification for the use of punishment so that punishment becomes more functional.

As an effort to enforce the application of criminal sanctions against criminal acts of corruption in certain circumstances, it is necessary to reform the law in the interests of the nation and state as an embodiment of the objectives of a punishment, so that the law does not appear to be merely a tool but rather as an embodiment of community guidance and protection. If the heaviest punishment in the form of the death penalty is necessary to maintain national stability, then its implementation must also be implemented based on the reality of the applicable law. Not only does it seem like something to scare, but it is not implemented. If the death penalty cannot be applied, it would be more effective to impose fines or confiscation of assets, up to confiscation of assets in whole or in part as a severe punishment for perpetrators of criminal acts of corruption.

Of the several types of punishment, imprisonment is the most popular and continues to increase every year. Punishment is a universal response to crime and deviance in all societies. This response can be carried out in various forms, both formal and informal punishment, in the case of formal punishment, namely imprisonment, death penalty and fines, while informal punishment can take the form of social sanctions. Different types of punishment are used for different purposes.

In order to achieve a more effective goal of preventing and eradicating criminal acts of corruption, the Law contains criminal provisions that determine specific minimum criminal penalties, higher fines, and the threat of the death penalty which constitutes aggravated criminal penalties. Apart from that, the Law on the Eradication of Corruption Crimes also contains imprisonment for perpetrators of corruption crimes who cannot pay additional penalties in the form of compensation for state losses.

Formulation of the Offense of Abuse of Authority in the Law for Eradicating Corruption Crimes in the Future

Abuse of official authority may be as old as human civilization. In general, abuse of position authority is the use of opportunities by a person or group of people who are in office by taking opportunities because of their position. Abuse of position authority violates Article

3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, in essence..." if a person or group takes advantage of themselves or another person or a corporation, abuses the authority, opportunities or facilities available to them because of their position and detrimental to the state's finances or the state's economy shall be punished by life imprisonment or imprisonment for a minimum of one year and a maximum of twenty years and a fine..." State administrative officials in carrying out their duties must not only have professional technical skills, but must also have morals (ethics).) tall one. If he does not have this ability, then he can be subject to the penalty of dismissal as an administrative official from the perspective of HAN (state administrative law) and can be subject to criminal sanctions from the perspective of criminal law.

In a Pancasila legal state, like in Indonesia, the law is actually placed as the main rule in the administration of government, state and society. This aims to create clean, just, prosperous, peaceful and prosperous government, state and social activities.

State administration activities carried out by government officials are also covered by Law Number 30 of 2014 concerning State Administration, Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism and general principles of government. the good one. This is to prevent abuse of power/authority in the public interest.

Every authority or power of the government, as previously explained according to the teachings of state administrative law, is limited by the principle of specialization (specialiteitsbeginsel), the principle of legality (wetmategheid van bestuur) and the General Principles of Good Government. So if the government or state apparatus commits acts that are contrary to these principles, then that act is a form of abuse of authority (detournement de povouir).

In the same context, criminal law also has normative instruments that limit the free use of power by holders of authority, by defining the element of abuse of authority. Furthermore, criminal law places the act of abusing authority as a form of criminal act of corruption which has extraordinary characteristics (extra ordinary crime). In the development of criminal legal politics (policies) in Indonesia, it can be seen that legislators have taken steps to prioritize criminal law instruments as a tool to test irregularities committed by the government. This can be understood from the formulation of the offense of abuse of authority as a criminal act of corruption, as formulated in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

The formulation of abuse of authority as a criminal act of corruption by legislators is certainly not without logical considerations and reasons. In the Explanation to the Law on the Eradication of Corruption, it is stated that "... acts of corruption have caused enormous losses to the state which in turn can have an impact on the emergence of crises in various fields...". Furthermore, the explanation of this law also states the following:

In order to cover various modus operandi of irregularities in state finances or the state economy which are increasingly sophisticated and complicated, the criminal acts regulated in this Law are formulated in such a way that they include acts of enriching oneself or another person or a corporation in an "unlawful" manner. in formal and material terms. With this formulation, the definition of breaking the law in criminal acts of corruption can also include disgraceful acts which according to the public's sense of justice must be prosecuted and punished in both formal and material terms. state finances or state economy".

However, this explanation does not provide complete information regarding the unlawful nature of the elements of the offense of abuse of authority as regulated in this law. This explanation merely provides information that according to criminal law, abuse of authority is an unlawful act. Whether it is an unlawful act in a formal sense or in a material sense, there is no further explanation.

On the other hand, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 formulates the elements of "unlawful" acts in a separate article, namely in Article 2, this provides an understanding that it is as if the abuse of authority is referred to in the criminal act of corruption. not or at least different from unlawful acts as regulated in Article 2.

Both after and before the elimination of material unlawfulness in criminal law, including criminal acts of corruption, the offense of abuse of authority as a criminal act of corruption always invites debate. There are still many problems in the formulation of the elements of the offense of abuse of authority as regulated in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The problems as described in the previous discussion should immediately find solutions in order to achieve the establishment of the criminal law for corruption itself.

The first issue that needs to be addressed immediately is the meaning of the term abuse of authority in the criminal act of corruption itself. So from this definition it will be easy to determine what measures, limits and assessments can be used for an alleged abuse of authority.

The forms of abuse of authority when referring to the teachings of state administrative law can be classified into 3 (three) forms, namely:

1. Abuse of authority to carry out actions that are contrary to the public interest or to benefit personal, group or group interests.
2. Abuse of authority in the sense that the official's actions are truly aimed at the public interest, but deviate from the purpose for which the authority is granted by law or other regulations.
3. Abuse of authority means abusing procedures that should be used to achieve certain goals, but has used other procedures to achieve them.

So far, the meaning used as a reference for the term "abuse of authority" in Article 2 of the Corruption Eradication Law is the formulation of the meaning in point 2 as above. Abuse of authority is assessed as whether it exists or not based on the achievement or non-achievement of certain aims and objectives that have been determined by a statutory regulation which constitutes the legality of that authority. Thus, the abuse of authority in criminal acts of corruption is only limited to government actions that are binding. Meanwhile, discretion is not an abuse of authority as a criminal act of corruption. Because discretionary power is included in free power which cannot be measured using the principle of legality.

The configuration of the formulation of the offense of abuse of authority as above, in turn has a formal nature. Moreover, with the elimination of material unlawfulness in criminal law as previously stated. Abuse of authority is only said to occur if there is a violation of the principle of legality. According to the author, this is wrong.

In this case, the principle applies, namely, if a basic regulation (the principle of legality) is not in accordance with the development of society and the state to determine whether there is an abuse of authority, then the principle of propriety is one of the measures that needs to be prioritized in this case. However, in terms of the use of free power, administrative law also permits discretionary actions that deviate from the principles of propriety, as long as the actions are carried out in circumstances that are forced, urgent and have a high degree of urgency.

To avoid deviant acts that are not covered by the offense of abuse of authority in criminal acts of corruption, it is necessary to determine the criteria and reasons that can underlie the re-enactment of the nature of violating western and clear material law in acts of corruption, especially abuse of authority. According to the author, to anticipate the weakness of the principle of legality (wetmatigheid van bestuur) in assessing abuse of authority, the form of formulation and measurement of the consequences of the perpetrator's actions can be formulated as follows:

1. If an act of the perpetrator does not fall within the definition of an offense or does not meet the elements of formal abuse of authority, however, if viewed from the perspective of legal interests (which are material in nature) it turns out that the act results in disproportionate losses or very large losses for the community and state, compared with the profits caused by unlawful acts committed by a state apparatus/official.
2. If materially there is a loss that is greater and disproportionate to the benefits received by the community or the state, as a result of receiving excessive facilities and other benefits by an official or state apparatus. Even if the official or state apparatus does not commit an act that fulfills the formula for the elements of a formal offense, the purpose of the gift is to ensure that he or she uses the power or authority attached to his or her position excessively.

In the author's opinion, the limitation on the scope of material unlawfulness mentioned above can be a basis for improving the formulation of offenses of abuse of authority in current criminal acts of corruption. Bearing in mind the two formulations above, this does not exclude the principle of legality at all, but rather is an effort to balance the principles of formal and material legality and to create a balance between elements against formal law and elements against material law.

This pattern of balancing formal and material legality seems to be in line with the direction of criminal law development in the future. This is as the Criminal Code adheres to the same principle, where an act that is contrary to the law is not only seen as contrary to formal law, but also contrary to material law.

Furthermore, the meaning of "acts that are against the law" in the Explanation of the Criminal Code is explained as follows: What is meant by "acts against the law" are acts that are considered by society to be acts that cannot be carried out. The determination of the condition of being contrary to the law is based on the consideration that imposing a crime on someone who commits an act that is not against the law is considered unfair. Therefore, to be able to impose a crime, the judge must also determine whether the act committed is formally prohibited by statutory regulations and whether the act is also materially contrary to the law, in the sense of the public's legal awareness. This must be considered in the decision.

Furthermore, this law requires that legislators, in determining acts that can be punished, must pay attention to harmony with the legal feelings that exist in society. Thus, actions that are prohibited and threatened with criminal penalties will not only be in conflict with statutory regulations but will also always be in conflict with the law. This is based on the fact that generally every criminal act is seen as contrary to the law, but in special circumstances based on concrete events, it does not rule out the possibility that the act does not conflict with the law which is only written.

Based on the explanation above, as well as on the basis of the consideration that the principle of legality in criminal law is in fact easily left behind by the dynamics of actions in society, the formulation of actions that are contrary to the law is interpreted as being contrary to formal or material laws. The legality of the material and material must be balanced and the boundaries clearly formulated as stated above. Because if not, then the implementation level will not be as easy as stated in the concept.

Indeed, the approach used in the development of criminal law reform prioritizes a sense of justice in society, even though this orientation will always conflict with the principle of legality which always prioritizes legal certainty. In the context of the offense of abuse of authority as a criminal act of corruption, material unlawfulness only gets theoretical and juridical justification as an unlawful nature that must function negatively. In the sense of continuing to use the principle of legality, which seeks to approach formal justice.

The argument that abuse of authority in criminal law occurs is not due to negligence or negligence (culpa) but abuse of authority occurs because it is carried out consciously or

intentionally (dolus or opzet), namely diverting the goals that have been given under his authority. Diversion of goals is based on negative personal interests (met het oogmerk) either for one's own interests or for others. Thus, whether there is a diversion of purpose must be proven, otherwise (a contrario) as long as there is no evidence regarding a diversion of purpose, it means there is no abuse of authority.

If the abuse of authority is proven to mean that the official has used his authority for other purposes, it can result in a criminal decision, meaning that if the exercise of authority is not in accordance with the purpose for which the authority was established, then it falls within the scope of the Criminal Law. On the other hand, if the abuse of authority is proven to mean that the official has used his authority incorrectly but it is not a criminal act, then the type of decision handed down is in the form of release from all legal demands (onslag van alle rechts vervolging). The study of abuse of authority (acts against the law) in relation to criminal liability is very important because abuse of authority is the bestandeel delict (core offense) in proving the existence of a criminal act. What this means is that among the elements of an offense in one article there are elements that most determine whether a criminal act has occurred or not.

Therefore, the essence of the offense must first be proven by the judge and then prove the other elements or elements of the offense. Paying attention to the essence of the offense with the elements of the offense, the element with the aim of enriching oneself or another person or a corporation, is an element of the offense which also determines the act so that it can be punished (strafbarehandeling), because anyone can enrich or benefit themselves or another person or something. corporation without committing acts of abuse of authority. Likewise, in cases of criminal acts of corruption, in conducting an assessment of the element of "abuse of authority" as a bestandeel delict, testing or proof must be carried out first because it has implications for legal accountability, whether abuse of authority includes official responsibility or criminal liability.

In state administrative law, the principle of legality or validity (legaliteit beginssel/wetmatigheid van bestuur) covers three aspects, namely: authority, procedure and substance. This means that authority, procedures and substance must be based on statutory regulations (principle of legality) because the statutory regulations have determined the purpose of granting authority to administrative officials, what procedures are to achieve a goal and regarding the substance. Failure to fulfill these three components of legality results in a juridical defect in a government action. Juridical defects concern authority, procedure and substance. Every government action is required to be based on legitimate authority. This authority is obtained through three sources, namely attribution, delegation and mandate. Abuse of authority can also occur in the type of bound authority. The parameter for abuse of authority in the type of bound authority is the principle of legality (the objectives set out in statutory regulations).

In judicial practice, in several court decisions on corruption crimes, officials or administrative bodies in using "policy" (free, discretionary authority) often confuse or confuse abuse of authority with procedural defects as if the procedural defects are inseparable from abuse of authority. or it must be possible to differentiate between abuse of authority and wrong use of authority because not every error in the use of authority is an abuse of authority.

In a study of court decisions, in the criminal justice practice of corruption, it was found that there were procedural errors in the use of authority which resulted in acts of abuse of authority which had implications for office accountability. Criminal responsibility is intended to determine whether a suspect/defendant is responsible for a criminal act that occurred or not. In other words, will the defendant be convicted (veroordeling), acquitted (vrijs praak) or released from all legal charges (ontslaq van alle rechtsvervolging).

CONCLUSION

Application of Sanctions for Corruption Crimes In Decision Number 218 PK/Pid.Sus/2019 and Decision Number 143PK/Pid.Sus/2019, the panel of judges imposed imprisonment/imprisonment and a fine, the imposition of a fine as an implementation of the balance value can be applied as long as the perpetrator of the crime Corruption criminals in certain circumstances are not recidivists, then as a balanced punishment, apart from imposing a fine, assets can also be confiscated, this is so that the fine can be used as a lesson or legal perspective for the wider community, rather than just being sentenced to imprisonment/jail. It is indeed less effective, because in the implementation of confinement/imprisonment sentences there are still leniencies which do not actually have a deterrent effect on perpetrators of criminal acts.

To avoid deviant acts that are not covered by the offense of abuse of authority in criminal acts of corruption, it is necessary to determine the criteria and reasons that can underlie the re-enactment of the nature of violating western and clear material law in acts of corruption, especially abuse of authority. According to the author, to anticipate the weakness of the principle of legality (wetmatigheid van bestuur) in assessing abuse of authority, the form of formulation and measurement of the consequences of the perpetrator's actions can be formulated as follows:

a) If an act of the perpetrator does not fall within the definition of an offense or does not meet the elements of formal abuse of authority, however, if viewed from the perspective of legal interests (which are material in nature) it turns out that the act results in disproportionate losses or very large losses for the community and state, compared with the profits caused by unlawful acts committed by a state apparatus/official.
b) If materially there is a loss that is greater and disproportionate to the benefits received by the community or the state, as a result of receiving excessive facilities and other benefits by an official or state apparatus. Even if the official or state apparatus does not commit an act that fulfills the formula for the elements of a formal offense, the purpose of the gift is to ensure that he or she uses the power or authority attached to his or her position excessively.

REFERENCES

Adami Chazawi, (2016). Corruption Criminal Law in Indonesia (Revised Edition), Jakarta: Raja Grafindo Persada.

Arma Dewi, Abuse of Authority in the Perspective of Corruption Crimes, Rechten Journal: Legal and Human Rights Research, Vol. 1 N o. 1 2019.

Chaerudin, et al., (2009). Strategy for Prevention & Law Enforcement of Corruption Crimes, 2nd Edition, Bandung: Refika Aditama.

Criminal Code

Decision Number 143 PK/PID.SUS/2019

Decision Number 218 PK/PID.SUS/2019

Indrianto Seno Adji, "Perspective on the Teaching of Unlawful Acts on Corruption Crimes". Pro Justitia Law Journal, Volume 25, No. 4, October 2007.

Law Number 28 of 1999 concerning State Administrators

Law Number 30 of 2014 concerning State Administration

Law Number 31 of 1999 concerning Corruption Crimes jo. Law Number 20 of 2001 concerning Corruption Crimes

Lilik Mulyadi, 2010). Compilation of Criminal Law in Theoretical Perspective and Judicial Practice, Bandung, Mandar Maju.

Mahmud Mulyadi, Combating Corruption Crimes in a Criminal Policy Perspective (CorruptionReduction in Criminal Policy Perspective), Indonesian Legislation Journal Vol. 8, no. 2. 2012.

Mochtar Kusumaatmadja and B. Arief Sidharta, (2000). Introduction to Legal Studies, Bandung: Alumni.

Mustandard, Hambali Talib & Hamza Baharuddin, Abuse of Authority in Corruption Crimes According to Law Number 30 of 2014 concerning Government Administration, Journal of Lex Generalis (JLG), Vol.2, No. 2, February 2021.

Prayitno Iman Santosa, (2015). Accountability for Corruption Crimes, Bandung: Alumni.

R. Wiyono, (2005). Discussion of the Corruption Eradication Law, Jakarta.

Saparinah Sadli, in Barda Nawawi Arief, (2010). Legislative Policy in Combating Crime with Imprisonment, Yogyakarta: Genta Publishing.

Shobirin, Abuse of Position Authority by State/Government Officials: Perspective of State Administrative Law and Criminal Law, Republica Journal, Faculty of Law, Lancang Kuning University, Pekan Baru, Riau.

The 1945 Constitution of the Republic of Indonesia