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EXAMINATION OF THE ELEMENTS OF ABUSE OF AUTHORITY IN THE STATE ADMINISTRATIVE COURT ABOUT THE CRIME OF CORRUPTION

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ABSTRACT

The problems discussed in this paper are (1) How is the Testing of the Elements of Abuse of Authority in the Administrative Court about the Crime of Corruption? (2) How is the Evidentiary Power of the Elements of Abuse of Authority in the State Administrative Court as Proof of the Elements of Abuse of Authority in the Crime of Corruption? Purpose and Benefits of Research a To find out the testing of the elements of abuse of authority in the state administrative court about the crime of corruption. b, To find out the evidentiary power of the elements of abuse of authority in the state administrative court as proof of the elements of abuse of authority in the crime of corruption. Testing Abuse of authority is an absolute matter in determining the crime of corruption and results in State Financial or State Economic Losses. The crime of corruption referred to in this case is Article 3 of the Corruption Eradication Law, which is related to Public or Government Officials or State Administrators, especially in terms of the use of state finances. The enactment of Law No. 30 of 2014 concerning Government Administration has brought fundamental changes in government administration both substantially and procedurally in the use of authority by government officials, where every policy made by public officials if there are indications of abuse of authority and harm to state finances or the state economy, does not have to be brought directly into the realm of corruption through the corruption court, but must first be tested for aspects of abuse of authority and state losses, even if the element of state losses is carried out by the Supreme Audit Agency (BPK). This research is descriptive, analytical, or normative with a statutory approach and a conceptual approach. Testing the elements of abuse of authority through the State Administrative Court is an absolute thing to determine whether or not there is an abuse of authority committed by a state administrative body or official in the event of an alleged Corruption

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Crime for the use of such authority, by the provisions in Supreme Court Regulation No. 4 of 2015 concerning Procedural Guidelines in the Assessment of the Elements of Abuse of Authority, testing the Assessment of the Elements of Abuse of Authority is carried out before the commencement of the criminal process. The strength of testing the elements of abuse of authority is an evidentiary power for investigators to suspect that there has indeed been an act of corruption if it is proven that there has been an abuse of authority and inversely proportional if the abuse of authority does not exist, then it becomes a defense for state administrative officials suspected of committing the crime of corruption in exercising their authority even though the state loss is real, it could be caused by technical matters or studies that are lacking in the context of the procurement of goods and services by the government.

Keywords: Abuse of Authority, State Administrative Court, Corruption Crime

1. INTRODUCTION

In judicial practice, abuse of authority and procedural defects are often interchanged/mixed, as if procedural defects are inherent in abuse of authority. Even though Judges are considered to know the law Ius Curia Novit and are also the mouthpiece of the law, determining the abuse of authority is not the domain of the Corruption Court Judges (Tipikor), but rather the domain of the State Administrative Court, as stipulated in Article 21 of Law No. 30 of 2014 on Government Administration, namely:

1) The court has the authority to receive, examine, and decide whether or not there is an element of abuse of authority by a government official.
2) Government bodies and/or officials may apply to the Court to assess whether or not there is an element of abuse of authority in the decision and/or action.
3) The Court shall decide the petition as referred to in paragraph (2) at the latest 21 (twenty-one) working days since the petition is filed.
4) Against the decision of the Court as referred to in paragraph (3), an appeal may be filed to the State Administrative High Court.
5) The High Administrative Court shall decide on the appeal as referred to in paragraph (4) at the latest 21 (twenty-one) working days since the appeal is filed.

The development of administrative law in the practice of corruption crimes, especially the element of abuse of authority both in public office and private office in the domain of civil law as long as it can be proven that the act of abuse of authority is not due

to acts committed in his position as a public official or private official, but because of his actions as an act of abuse of authority which is also referred to as an unlawful act both in the perspective of public law and in civil law (Hadjon, 1997).

Law No. 30 of 2014 concerning Government Administration does not provide an explicit explanation of abuse of authority, but provides a form of prohibition of abuse of authority as stated in Article 17 of Law No. 30 of 2014 concerning Government Administration, stating:

1) Government agencies and/or officials are prohibited from abusing their authority.
2) Prohibition of abuse of Authority as referred to in paragraph (1) includes:
   a. Prohibition on exceeding authority;
   b. Prohibition of interfering with authority; and
   c. Prohibition of acting arbitrarily.

Furthermore, Article 18 of Law No. 30 of 2014 concerning Government Administration states that:

1) Government Agencies and/or Officials are categorized as exceeding the Authority as referred to in Article 17 paragraph (2) letter a if the Decisions and/or Actions taken are:
   a. Exceeding the term of office or the time limit for the validity of the Authority;
   b. Exceeding the boundaries of the area of validity of the Authority; and/or
   c. Contrary to the provisions of laws and regulations.
2) Government Bodies/Officials are categorized as conflicting Authority as referred to in Article 17 paragraph (2) letter b if the Decisions and/or Actions taken are:
   a. Outside the scope of the field or material of the Authority granted; and/or
   b. Contrary to the purpose of the Authority granted.
3) Government Agencies and/or Officials are categorized as acting arbitrarily as referred to in Article 17 paragraph (2) letter c if the Decisions and/or Actions made are:
   a. Without Authority; and/or
   b. Contrary to a Court Decision with permanent legal force.

Furthermore, Article 19 of Law No. 30 of 2014 concerning Government Administration states that:

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1) Decisions and/or Actions stipulated and/or carried out by exceeding Authority as referred to in Article 17 paragraph (2) letter a and Article 18 paragraph (1) as well as Decisions and/or Actions stipulated and/or carried out arbitrarily as referred to in Article 17 paragraph (2) letter c and Article 18 paragraph (3) are invalid if they have been tested and there is a Court Decision with permanent legal force.
2) Decisions and/or actions stipulated and/or carried out by conflating the Authority as referred to in Article 17 paragraph (2) letter b and Article 18 paragraph (2) can be canceled if it has been tested and there is a Court Decision with permanent legal force.

Indeed, authority or authority has a very important position and role in the study of constitutional law and administrative law, so it can be interpreted that authority is the core concept of constitutional law and administrative law, and the determination of an act of maladministration that leads to state losses (Putra et al., 2024).

Therefore, it is clear and clear that the element of abuse of authority or abuse of authority is the spearhead of the crime of corruption. Before determining the element of harm to state finances, it must first be tested whether a suspect or defendant charged with the crime of corruption has committed an abuse of authority.

Thus, the element of "abuse of authority" as mentioned in Article 3 of Law No. 31/1999 on the Eradication of Corruption is interpreted to have a different meaning from "abuse of authority" as referred to in Article 21 paragraph (1) of Law No. 30/2014 on Government Administration, or furthermore that the provisions in Article 21 paragraph (1) are considered to have revoked the authority possessed by investigators in conducting investigations to determine whether there has been an abuse of authority committed by a suspect as a government official which should be the object to be tested first in the State Administrative Court (Varia Peradilan, 2015).

In every grant of authority to certain government officials, the responsibility of the officials concerned is implied, so that it does not necessarily have to go through criminal law to resolve it, or it can be said that criminal law is the ultimum remedium. Juridically, responsibility for abuse of authority that violates the law must be seen in terms of the

source or birth of authority. This must be by the legal concept of "geen bevoegdheid zonder verantwoordelijkheid or there is no authority without responsibility, which means there is no authority without responsibility.

In addition, criminal law adheres to the principle of "personal responsibility," which means that criminal responsibility is personal responsibility. In this case, it is necessary to distinguish responsibility according to administrative law from criminal law. In administrative law, the principle of liability responsibility applies, while in criminal law, the principle of personal responsibility applies.

One example of a major and horrendous event at the State Administrative Court (PTUN) in the public domain in mid-2015 was the revelation of an alleged bribery case against the judges of the Medan State Administrative Court by senior lawyer, Oc. Kaligis. As usual, bribery cases involving state officials became the public spotlight, especially since this case involved a senior lawyer, Otto Cornelis Kaligis, who also holds the academic title of Professor. The alleged bribery of the three judges of the Medan Administrative Court is related to the lawsuit of the Head of the Bureau of Finance of the North Sumatra Provincial Government, Ahmad Fuad Lubis, to the Medan Administrative Court. Ahmad Fuad, who authorized Gary and a number of Advocates at the OC Kaligis Law Office, challenged the Investigation Warrant issued by the North Sumatra High Prosecutor's Office (Kejati).

In this case, it is not intended to review the bribery case, but it becomes an entry point for the case that was heard and decided by the Panel of Judges of the Medan State Administrative Court to review the extent of testing for abuse of authority by state administrative officials. The core of the case was a lawsuit to the Medan State Administrative Court regarding the issuance of an Investigation Order issued by the North Sumatra High Prosecutor's Office, with the Defendant Head of the North Sumatra High Prosecutor's Office. The lawsuit originated from the new authority granted by Law Number 30 of 2014 concerning Government Administration to the State Administrative Court to examine and adjudicate allegations of abuse of authority from the perspective of

criminal law and administrative law, and its implications for efforts to eradicate corruption.

Article 21 of the Government Administration Law authorizes the State Administrative Court to test, adjudicate, and provide legal certainty against allegations of abuse of authority by government officials. The abuse of authority referred to in the Act is an abuse of authority that has the potential to cause state losses (Mawardi, 2016).

From the above explanation, in administrative law, every use of authority contains responsibility; however, it must also be separated regarding the procedure for obtaining and exercising authority because not all officials who exercise authority by attribution and delegation are parties who carry out tasks and or work based on a mandate, not parties who bear legal responsibility.

2. RESEARCH METHODS

This type of article research is a normative legal research, which is legal research conducted by examining library materials or secondary legal materials, namely books, laws and regulations, legal theories, teachings of law, and opinions of leading scholars (Soekanto & Mamudji, 2003). This is in line with what Soetandyo Wignjoesoebroto stated: That doctrinal legal research is legal research that is carried out (the activity is not only in the form of tracing the extent of noma-norma (positive law/legislation) only, but also continues until the discovery of basic teachings (Doctrine/Opinions of jurists) (Wignjosoebroto, 2013).

Based on the legal doctrine above, the construction of this legal research uses normative legal methods in answering the legal issues studied. The nature of the research is prescriptive explanatory, which is trying to provide and explain the researcher's research on the legal issues under study. So that with such a research construction, it is hoped that it can provide systematic answers related to testing the elements of abuse of authority by the state administrative court about criminal acts of corruption, and based on Law No. 30 of 2014 concerning government administration.

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3. DISCUSSION

The legal basis of the State Administrative Court (PTUN) in examining the elements of abuse of authority

The State Administrative Court has the authority to examine the elements of abuse of authority against applications submitted by government agencies and/or officials *(ambstdrager).* Based on Article 21 of Law Number 30 of 2014 concerning Government Administration in conjunction with Supreme Court Regulation Number 4 of 2015 concerning Procedural Guidelines, in assessing the elements of abuse of authority.

Here, the PTUN can assess whether there are elements of abuse of authority in decisions and/or actions taken by government agencies and/or officials. This authority is attributed by the Government Administration Law (UUAP). There is a paradigm difference regarding the authority of the PTUN in the PTUN Law and the UUAP, where initially the PTUN only decided disputes between persons or civil legal entities as plaintiffs against government officials as defendants through legal remedies in the form of lawsuits, then through the UUAP, the authority of the PTUN was expanded to be able to go through legal remedies in the form of applications submitted by government agencies or officials.

The legal effort to request testing of the elements of abuse of authority is itself a manifestation of legal protection (rechtsbescherming) given to government agencies and/or officials who are declared to have abused their authority by the results of the supervision of the Government Internal Supervisory Apparatus (APIP). Based on Article 20 of UUAP, APIP is indeed authorized to carry out supervisory functions (toezicht functie) against the prohibition of abuse of authority. APIP supervision here is also a means of control over the running of the government. However, the results of APIP supervision also have the potential for error. Therefore, government officials who are declared to have abused their authority by APIP are given the right to submit a petition for review. Here, the judge will test whether the decision and/or action of the applicant has elements of abuse of authority or not. It should be underlined that what is tested or

assessed by the PTUN judge is not the results of APIP supervision, but the decision or action of the applicant, which is declared an abuse of authority by APIP.

Unlike the lawsuit mechanism in the PTUN Law, the mechanism for requesting a review in the UUAP has its procedural guidelines, which are regulated through Perma 4/2015. The regulation has provided several provisions regarding procedural guidelines for testing the elements of abuse of authority (Ihfan, 2024).

Time Limit and Authority of the State Administrative Court to Examine the Elements of Abuse of Authority in the State Administrative Court

Based on the provisions of Supreme Court Regulation No. 4 of 2015 concerning Procedural Guidelines in Assessing the Elements of Abuse of Authority, Article 2 states that:

a. Courts are authorized to receive, examine, and decide on requests for assessments of whether or not there is abuse of authority in the decisions and/or actions of Government Officials before criminal proceedings.
b. The court is only authorized to receive, examine, and decide on the petition as referred to in paragraph (1) after the results of the supervision of the government's internal control apparatus.

So that to test for abuse of authority or assessment of elements of abuse of authority, it must be carried out in the State Administrative Court, as stated in Article 1, point 18 of Law No. 30 of 2014 concerning Government Administration Jo. Article 1 point 8 of Supreme Court Regulation No. 4 of 2015, so it is clear and clear that the domain to test for abuse of authority is in the State Administrative Court, and testing for abuse of authority or assessing the elements of abuse of authority is carried out before the criminal process.

Criminal Context in this case is defined as all provisions of laws and regulations that regulate criminal offenses or criminal content (Rampadio et al., 2022). To find out who should be juridically responsible for the use of unlawful authority (abuse of

authority) must be seen in terms of the source or birth of authority (Abidah et al., 2025). This is by the legal concept of *"geen bevoegdheid zonder verantwoordelijkheid"* or there is no authority without responsibility (there is no authority without responsibility).

In every grant of authority to certain government officials, the accountability of the officials concerned is implied (Ramadhan, 2025). The mandate stems from the issue of authority, because the authority remains with the mandans (mandate givers) while the mandataries (recipients of authority) are only delegated the authority to act for and on behalf of the mandans. In mandans, there is no transfer of authority, meaning that mandans can still act on their behalf. There is no transfer of authority in the mandate, so the juridical responsibility remains with the mandans (authorizer). In the attribution of authority, juridical responsibility by the recipient of the authority depends on the recipient of the authority carrying out a mandate or delegation. If what is done is the provision of a mandate, then the mandans (authorizer/recipient of authority in attribution) remain responsible. It is different if by way of delegation, then the authorizer is not responsible; the responsibility has passed to the delegator. In delegation, the delegated work is partially or fully authorized to the delegatee (delegator) to act to carry out the work on his own behalf. The delegation is accompanied by a transfer of authority; therefore, if there is an abuse of authority by the delegator, the delegator is responsible.

In regional financial management (PP No. 58 of 2005), the Regional Head, as the Regional Financial Management Power Holder, delegates part or all of it to the Regional Secretary and or regional financial management devices. Determination of the delegation of authority to the regional financial management apparatus is by Decree of the Regional Head. The stipulation is one of the requirements for budget implementation.

Delegation of authority from the Regional Head to the Regional Secretary or Regional Financial Management Device is not a delegation because, in the concept of delegation of authority by way of delegation is not intended for delegation from superiors to subordinates. Regional Secretaries and Regional Financial Management Devices are hierarchically subordinate to the Regional Head. Not in the concept of delegation of

authority of the Regional Head to the Regional Financial Management Device, the question that arises relates to who is legally responsible in the event of an unlawful act ("against the law and abuse of authority") which results in losses to regional finances or the regional economy (in the case of corruption).

An example case that can be put forward is as follows: The Budget User (Head of Service) at the cleaning service will purchase waste processing equipment. The Head of Service appoints one of the Section Heads as the Budget User Authority. Based on the delegation of authority, the Head of Section then forms an Auction Committee (Tender Committee), the Auction Committee and the appointed Head of Section do not carry out the auction according to the authority that has been delegated to them but by making a direct appointment (PL) to win a certain partner, in such a way as to result in harm to state finances, In casu who can be held accountable. The delegation of authority from the head of the Region to the Head of Service, Head of Service to the Head of Section, Head of Section to the Auction Committee is not a delegation of authority in the concept of delegation, more like deconcentration (delegation of central authority to the region).

Related to the case of the position, to answer who can be held accountable according to criminal law is the delegator (recipient of the delegation of authority), although the concept of delegation in the legislation is wrong. This opinion is based on a formal legalistic argument, as stated in Article 5 of PP No. 58 of 2005, with the term "delegation," and it is also no less important to examine carefully the Regional Head Decree as the source of the delegation of authority.

In addition, criminal law adheres to the principle of "personal responsibility"; criminal responsibility is personal responsibility. In this case, it is necessary to distinguish responsibility according to administrative law from criminal law. In administrative law, the principle of official liability applies, while in criminal law, the principle of personal responsibility applies. From the above explanation, in administrative law, every use of authority contains responsibility; however, it must also be separated regarding the procedure for obtaining and exercising authority; therefore, not all officials who exercise

government authority automatically bear legal responsibility. Officials who obtain and exercise authority by attribution and delegation are parties who carry out tasks and/or work based on a mandate are not parties who bear legal responsibility.

In addition, it is equally important in determining the juridical responsibility obligations based on the way of obtaining authority; there also needs to be clarity about who the "official" is, and secondly, how someone is called and categorized as an official. From the perspective of public law, the legal subject is an office *(ambt),* namely an institution with its scope of work that is established for a long time and to which it is given duties and authority. The party appointed and acting as a representative is someone who is, on the one hand, a human being *(natuurlijke persoon)* and, on the other hand, an official. An official is someone who acts as an official representative *(ambtshalve).* Furthermore, the answer to our second question, a person is called or categorized as an official when he exercises authority for and on behalf of the office *(ambtshalve).* About the responsibility of the office, if the act is still in the "beleid" stage, the judge cannot make an assessment.

It is different if, in the making of the "regulation," there are indications of abuse of authority, for example, accepting bribes, then the actions of these officials can be punished. As an illustration, the following example can be presented: "Members of the Regional People's Representative Council of West Nusa Tenggara Province (DPRD NTB) in ratifying the Regional Regulation on Spatial Planning". *"Beleid,"* which in this case is outlined in the form of a Regional Regulation (Perda), the judge cannot make a judgment. However, if it is proven that the ratification carried out by the council members was due to the acceptance of bribes, then the acceptance of bribes is the object of examination.

4. CLOSING

Testing for abuse of authority through the State Administrative Court regarding corruption is a crucial matter to determine whether an abuse of authority has been

committed by a state administrative body or official in the event of an alleged act of abuse of authority. The construction of testing the elements of abuse of authority against decisions and/or actions of Government Officials by the State Administrative Court includes the authority of the State Administrative Court based on the UUAP and PERMA No. 4 of 2015. The substance of the test relates to the subject of the application, namely the Agency or Government Official, and the object of the application, namely the Decision and/or Action of the Government Official. The testing procedure is given a limitation, namely, after the results of the supervision of the Government Internal Supervisory Apparatus (APIP) and before the criminal process. The legal implications of the PTUN Decision stating that the decision and/or action of a Government Official has elements of abuse of authority can continue in the criminal process (criminal process) as long as there is proven malicious intent (mens rea). Furthermore, the legal implications of the PTUN Decision stating that the Decision and/or Action of a Government Official does not contain elements of abuse of authority, basically cannot be continued in the criminal process, because the bestand delict (core offense) of Article 3 of the Anti-Corruption Law is not fulfilled.

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