



LEGAL STUDY OF ABUSE OF OFFICE LEADING TO CRIMINAL ACT OF CORRUPTION IN INDONESIA

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Abstract

One of the things that hinders the country's economic growth is corruption. Any illegal activity directed at the country's economy or finances needs to be stopped and handled fairly. Abuse of authority, trust, or public or state office for personal gain is the reason that causes corruption. Corruption is classified as an extraordinary crime in order to hinder prosecution because it is difficult to prove the reason for the crime during the trial. those involved in corruption, and those who comply with it. The discussion in this study How is the Legal Study of Abuse of Office So That Corruption Occurs? And How is the Regulation of Abuse of Office in Corruption?, then the research method used is the normative legal research method, and the discussion of this study is, as regulated in Law Number 31 of 1999 and Law Number 20 of 2001 concerning the Eradication of Corruption, a legal study of the regulation of abuse of office so that corruption occurs is caused by abuse of authority in office.

Keywords: *Legal Study, Abuse of Office, Criminal Act of Corruption*

A. INTRODUCTION

Every year, social phenomena often emerge from the leadership generation, which consistently faces increasing corruption-related violations. Corruption has severe negative effects on the state, business, society, and individuals. The definition of corruption crimes will vary depending on whether they are approached from a legal, social, criminological, or political perspective. Those perspectives will produce interpretations that contradict the definition of corruption. Public officials are responsible for acts of corruption that arise from the abuse of their authority. Despite laws prohibiting it and imposing penalties, corrupt behavior remains widespread in Indonesia. The corruption eradication plan in three Indonesian provinces is designed in a way that takes into account the political factors that exist in each setting.

Officials in positions of political or administrative authority who act in a legitimate and reasonable manner to gain benefits for themselves. The purpose of the denial is that misunderstanding often leads to abuse of power. On closer inspection, public officials who have or maintain positions are especially subject to abuse of authority. so that they can take over power with this position.

"Any person who, with the intention of benefiting himself or another person or corporation, abuses the authority, opportunity, or means available to him because of his position or position that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a maximum of one year and a maximum of twenty years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah)" is how the Corruption Crime Law Number 20 of 2001 formulates its provisions. Analyzing the legal rules will reveal ambiguities.

The problem of corruption can be said to be a very universal problem. Not only in Indonesia, but also in other parts of the world. However, in Indonesia, this practice of corruption is a problem that is "cultured and rooted" in most officials, society and the

Indonesian nation. One of the things that hinders the country's economic growth is this practice of corruption.

Therefore, in the current era of government, eradicating corruption is a priority that must be achieved by law enforcement officers in Indonesia. Factors that contribute to corruption are the lack of moral integrity, which also erodes government authority. In addition, one of the reasons why investors and other countries have less confidence in Indonesia is the weakness of the system and the weak condition of the current law enforcement and bureaucratic mechanisms. The regulation that regulates the eradication of corruption is Law Number 20 of 2001 concerning the Eradication of Corruption. It is anticipated that this regulation will be able to overcome the evolution of public demands and legal reform. Any illegal activity directed at the economy or state finances needs to be stopped and handled as objectively as possible. This is the result of their tendency to prioritize damaging state finances rather than proving it. Article 3 should not be interpreted according to the text of the article; Such actions are prohibited. If the definition of the article on violation of the law is correct, such actions must be found before determining whether it is illegal or not. The ambiguity of the law is the result of the ambiguity of the rules of Article 3 is the result of the tendency of law enforcement officers to highlight state losses in proving the article rather than the element of self-enrichment.

The proof process should be reversed, with the element of self-enrichment proven first, followed by the element of state loss. This implies that authority belongs to every aspect of every individual. Therefore, even if someone has violated the law, they have not abused their position of authority. Therefore, in order to be covered by Article 3, a person must first have authority. This means that having a position of authority allows a person to abuse it to benefit themselves, corporations, and others.

B. FORMULATION OF THE PROBLEM

1. How is the Legal Study of Abuse of Office Leading to Criminal Acts of Corruption?
2. How is Abuse of Office Regulated in Corruption Crimes?

C. RESEARCH METHODS

Qualitative research methods, in addition to quantitative research methods that are made, also need qualitative research methods that require populations and samples. Research on legal norms contained in laws, regulations, and court decisions as well as norms that exist and develop in society is known as qualitative normative legal research. To explain this method, there are several things that need to be described as follows:

1. Research Type

In general, legal research has a normative juridical type. The term "normative juridical approach" refers to socially accepted legal norms and legal norms found in laws, rules, and court decisions. Furthermore, the empirical juridical approach, also known as the sociology of law, examines the hierarchical synchronization of other norms, while the sociology of law looks at the actuality of law in society. To clarify and strengthen the conclusions of non-legal material for legal research or writers, the sociological approach to law examines the legal dimensions of social interaction in society.

2. Data source

- a. Primary data is information collected directly from the source through observation, interviews, or reports in the form of unofficial papers, which are then processed by the researcher.

- b. Secondary Data is information collected from government records, literature on the subject of research, research findings published in reports, theses, dissertations, and laws and regulations. For now, secondary data is separated into:

1) Primary Legal Materials

Primary legal materials related to the subject of the researcher's investigation form the main legal material that is binding from the laws and regulations. Laws such as the Criminal Procedure Code and the Criminal Code are examples. In addition, important legal materials are laws that have been enforced in society and have legal authority.

2) Secondary Legal Materials

The secondary legal materials used are legal articles or scientific papers and books related to the object of this research.

3) Tertiary Legal Materials

Tertiary Legal Materials used in this research come from newspapers, dictionaries, magazines, encyclopedias, journals and so on as explanatory guidance regarding secondary and primary legal materials.

3. Method of collecting data

Research Methods Literature data from publications, books, official documents, laws and regulations, and research findings collected through literature research.

4. Data Analysis Methods

This study uses a qualitative approach for primary and secondary data, in line with normative legal research techniques.

D. DISCUSSION

1. Legal Study on Abuse of Office Leading to Criminal Acts of Corruption

a. Understanding the Criminal Act of Corruption

Literally, the terms "corruption crime" and "criminal act" are combined. The term "criminal act" comes from the Dutch word "stafbaar geit," which means "crime." It refers to an act that is prohibited by law and, as such, carries a criminal penalty for those who violate it. On the other hand, the Latin word *corruptio*, or *corrupus*, from which the English word corruption is derived, has been borrowed into many other languages. For example, it becomes corruption or corruption in English, corruption (*korruptie*) in Dutch, and corruption in French. For example. The Dutch word for corruption most likely comes from Dutch. The act of corruption or bribery is what is meant by corruption, which is also spelled corruption in Dutch.

One of the most important components of a criminal organization is wealth. Therefore, there is a motivation for criminal groups to launder money to make it difficult or impossible for law enforcement to trace the source of wealth. Money laundering is not only very dangerous for the state but also for society because it has the potential to damage state finances and the stability of the national economy.

According to Andi Hamzah, this term literally refers to various negative behaviors, including bribery, tactlessness, rottenness, ugliness, offensive or slanderous words or comments, immorality, deviation from purity, and dishonesty. Corruption is defined as an act taken against the law to benefit oneself or a group of people while harming the state and the country. From a legal perspective, the following components form the crime of corruption:

- 1) Abuse of authority, opportunity and means

- 2) Enriching oneself, others, or a corporation
- 3) Harming state finances or the state economy.

A person who unlawfully commits an act of enriching himself, another person, or a corporation that can harm the state finances or the state economy is guilty of committing a criminal act of corruption and is subject to a minimum sentence of four years in prison and a maximum sentence of twenty years in prison, as well as a fine of at least two hundred million rupiah and a maximum fine of one billion rupiah. This is clearly stated in Law Number 20 of 2001 Chapter II Article 2.

b. Abuse of Authority

Understanding what exactly constitutes abuse of power is often problematic in cases of abuse of power or authority and corruption. A closer look reveals that the idea of abuse of power arises from things that are misinterpreted or exploited when the person in charge holds a position. Abuse of power must be motivated by a desire to advance one's own interests or serve personal gain. The field of criminal law does not cover authority relating to public officials, whether it is discretionary or binding authority.

If there is an abuse of power that is not administrative in nature but results in losses for a large number of people, corruption is often involved and therefore covered by the Criminal Code. A number of factors indicate that there has been an abuse of authority, such as: deviating from the purpose or intention in relation to the overall principles of good governance, the purpose or intention in relation to the principle of legality, and the purpose or intention of the person who has the authority.

A public authority who abuses his power must do so intentionally. This shows that he was aware of what he was doing, which is necessary to show *mens rea*, or purpose, in the conduct. One aspect of this procedure involves assigning the purpose of the authority to another person. Therefore, the act needs to be carried out by someone who has been appointed by an official appointed to a position. So, rather than a private official, it must be a public official who establishes the element of illegality. Public authorities have a duty to uphold the law when using their authority. This is due to the fact that corruption always results from the abuse of power or an uncontrolled amount of authority.

As a result, the person in charge has certain restrictions to follow. Given that there are prohibitions that must not be followed—prohibitions on acting arbitrarily, prohibitions on abusing authority, and prohibitions on exceeding authority—it is essential to address the problem of abuse of authority. Thus, many approaches are used to make efforts, including:

- 1) In the event of abuse of power by government officials, it must first be shown that the individuals committing the crime of corruption are those who hold positions of authority or the ability to use such authority, according to the government's truth test. Law Number 30 of 2004 concerning Government Administration must be consulted when conducting the test because it adds bureaucratic channels to combat corruption.
- 2) The next procedure will comply with the regulations on criminal acts of corruption if this has been done, which is determined by the government as abuse of authority, and is linked to the elements in article 3 of abuse of authority that can endanger state finances or the state economy.

Solutions that can be offered in an effort to resolve crime problems including corruption caused by abuse of power.

2. Regulation of Abuse of Office in Criminal Acts of Corruption

Authority, also known as authority, is formal power over a certain group of individuals as well as over a certain area of government as a whole. Authority only relates to certain components or areas of reserves, while power can come from the legislative or executive branches. Therefore, authority is a group of authorities. Prajudi Atmosudirdjo claims that in this case, it is referred to as delegation of authority.

Authority or power is defined in Black's Law Dictionary as legal power, the capacity to order or take action, and the capacity of a civil servant to enforce the law while performing his or her duties. Government authority can be classified as implied, optional, or free depending on its nature. Government authority that is bound by certain temporal limitations, has a well-defined purpose, and is subject to written and unwritten legal restrictions is known as expressly implied government authority. However, such information can be individual-concrete and generic (abstract). Authority that has basic rules that determine when and under what circumstances it can be exercised is known as optional government authority. Discretionary authority refers to the type of authority when the basic rules give broad or unlimited scope to administrative bodies and State officials to exercise their authority, including the ability to accept or reject applications.

Many rules and regulations, which are mainly focused on eliminating corruption by public officials, regulate the abuse of authority in corruption crimes in Indonesia. Here are some important factors related to the regulation to keep in mind:

a. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Corruption Law):

- 1) According to Article 3, a person who abuses the power, opportunities or resources he has because of his position or position which can endanger state finances faces a prison sentence of at least one year and a maximum of twenty years in prison, as well as a fine of at least IDR 50 million and a maximum of IDR 1 billion..
- 2) The abuse of office referred to is when a public official uses the power or authority given to him for personal gain or that of another party which may be detrimental to the interests of the state or society.

b. Criminal Code (KUHP):

The Criminal Code also has provisions related to abuse of authority, although the main focus in the context of corruption is on the Corruption Law. Several articles in the Criminal Code that are related include Articles 415 and 417 which regulate abuse of office in the context of accepting gratification or bribes.

c. Law Number 30 of 2014 concerning Government Administration:

This law provides a framework for how public officials must carry out their duties and authorities in accordance with the law. Abuse of authority here can also be the basis for categorizing certain actions as corruption if there is an element of state loss.

d. The role of the Corruption Eradication Commission (KPK):

The KPK has special authority in handling corruption cases involving public officials, especially those who abuse their authority. The KPK can conduct investigations, inquiries, and prosecutions against corruption crimes, including those related to abuse of office.

Abuse of office in corruption crimes usually involves elements of "against the law" or deviation from applicable rules, as well as the intention to gain personal gain or gain for a particular party to the detriment of the public or state interest. This regulation is important in efforts to prevent and eradicate corruption in Indonesia, where public officials are expected to carry out their duties with integrity and not abuse the authority given to them.

According to the theory of State Administrative Law or Constitutional Law, abuse of power or authority in government activities is always associated with the idea of *de'tornement de pouvoir*. It is stated in the *Verklared Woordenboek Openbar Bestuur* that using authority for purposes other than those given is inappropriate. Officials are so beyond the concept of expertise. Forgetting is not the reason why abuse of power occurs. Consciously changing the reasons for which authority has been given is an act of abusing authority. Personal interests are served by diverting goals, either for the benefit of individuals or others.

The definition of abuse of authority in Law No. 20 of 2001 concerning the Eradication of Corruption (PTPK) and Article 3 of Law No. 31 of 1999 concerning Corruption states that there is an element of abuse of authority, opportunity, or existing means, because of the position or position. The authority that accompanies the position or position of the person committing corruption is a set of rights or powers that allow the person to take appropriate steps to fulfill his responsibilities and carry out his work efficiently and legally.

Naturally, the authority mentioned in Article 3 of the PTPK Law refers to the authority held by civil servants in their positions as a result of statutory regulations. If one interprets the words of Article 3 of the PTPK, it would say that there is a phrase "opportunity", which refers to an opportunity that can be exploited by criminals. This opportunity is mentioned in the section on work procedures relevant to the position held or occupied by the criminal. Usually, this opportunity arises from the provisions of the work procedures or from a deliberate misreading of the provisions.

"Misusing means in the position or position of the perpetrator of corruption" is the next sentence. Conditions, media, or means can all be considered as forms of means. According to Utrecht, a position is defined as a permanent work environment that is held and implemented for the public interest or in connection with the State, the highest social organization, in connection with provisions on corruption. Meanwhile, Soedarto claims that the term "position" which is close to the word "position" is very speculative. A director of a private bank also has a role, if this position is understood as having a generic function. As a result, the definition of corruption in Article 3 is applied to those who commit corruption, including civil servants and non-civil servants, especially for those who commit corruption without holding a certain position, including structural and functional positions.

E. CLOSING

1. Legal Study on Abuse of Office Resulting in Criminal Acts of Corruption.

a. Understanding the Criminal Act of Corruption

The terms "crime" and "corruption" are literally combined to form "corruption crime." The term "criminal act" comes from the Dutch word "stafbaar geit," which means "crime." It refers to an act that is prohibited by law and, as such, carries a criminal penalty for those who violate it. On the other hand, the Latin word

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b. Abuse of Authority

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2. The idea of *de'tornement de pouvoir* is always in line with the regulation of abuse of office in corruption and abuse of authority/authority in government activities within the framework of the Constitution or the State Administration Law. It is stated in the *Verklared Woordenboek Openbar Bestuur* that using authority for purposes other than those given is inappropriate. Officials so go beyond the concept of expertise. Forgetting is not the reason why abuse of power occurs. When authority is abused, it is done intentionally, by taking it away from the purpose of its use. Personal interests are served by diverting goals, either for the benefit of the individual or others. The definition of abuse of authority in Law No. 20 of 2001 concerning the Eradication of Corruption (PTPK) and Article 3 of Law No. 31 of 1999 concerning Corruption states that there is an element of abuse of authority, opportunity, or existing means, because of the position or position. The authority that accompanies the position or position of the person committing corruption is a set of rights or powers that allow the person to take appropriate steps to fulfill his responsibilities and carry out his work efficiently and legally.

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