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JURIDICAL STUDY OF THE CRIMINAL ACTION OF ABUSE OF AUTHORITY IN CORRUPTION (ANALYSIS OF LAW NO. 19 OF 2019 CONCERNING THE ERADICATION COMMISSION CORRUPTION CRIMINAL ACTS)

[1] Yasmirah Mandasari Saragih, [2] Wahyu Armanda, [3] Ahmad Novaisal, [4] Muhammad Amdi Karna
[1] Postgraduate Lecturer Master of Law, Universitas Pembangunan Panca Budi
[2,3,4] Master of Law Postgraduate Student, Universitas Pembangunan Panca Budi
Email - yasmirahmandasari@dosenpancabudi.ac.id, wahyu.armanda20@gmail.com, ical.lubis1981@gmail.com

Abstract: *Corruption crimes are all negative activities related to embezzlement of funds, bribery and all forms of gratuities that are contrary to law, norms and customs. Traditionally, people can say that Indonesia's identity is corruption. This image is not completely wrong. Because the reality of the complexity of corruption is felt to be not merely a legal issue, but actually a violation of economic and social rights that has an impact on the life of the nation. Talking about corruption will indeed find the fact that corruption involves moral aspects, bad character and circumstances, positions in government agencies or apparatus, abuse of power or authority in positions due to gifts, economic and political factors, and placement of families or groups into officialdom. under his authority. In this research, the formulation of the problem is how the juridical review of the criminal act of abuse of authority in the criminal act of corruption is viewed from Law no. 19 of 2019 and what is the mechanism for filling the positions of the supervisory board of the Corruption Eradication Commission according to Law no. 19 of 2019 also has normative and juridical research methods that are associated with laws and all opinions of legal experts.*

Key Words: *Corruption Crime, Law no. 19 of 2019.*

1. INTRODUCTION:

At this time, development in Indonesia is being improved, especially in the field of law. Law enforcement is one way to create order, security and peace, as an effort to prevent, eradicate or prosecute violations of the law. One of the criminal acts of the enemies of the entire nation is corruption so that the eradication of corruption is made a government priority to be tackled. Development in Indonesia is a national development that basically requires synergy between the community and the government. Community and government activities must support each other, complement each other, in advancing the community and the nation in general. Indonesia as a developing country has a reputation for bad levels of corruption in the world. The rise of every official who stumbles on corruption cases is not only a phenomenon that is quite concerning, but also creates problems for the government administration process. Apart from allegations of self-enrichment, acceptance of gratuities and bribes, the determination of corruption suspect cases is also pinned on those whose policies are suspected of causing losses to the state. In the eyes of the public, the number of officials named as corruption suspects can be interpreted as the result of the success of the anti-riswah institution (KPK) in fighting corruption. Meanwhile for government administration apparatus it can be interpreted as a scourge because there is no guarantee that in turn they will experience the same thing, becoming a KPK prisoner because they are included in the criminal law on corruption[1]. This problem certainly does not only have an impact on disrupting the government administration process but also has the potential for stagnation in government administration. The actions and decisions of an official who are actually protected by the principle of freedom of action in providing services to the community are often overshadowed by concern and fear when policy regulations or decisions are suspected of having an impact on state losses and being disqualified as a crime, so that the creativity and innovation of government officials in administering government is increasing limited [2]. In addition to dragging top ministerial-level officials, not a few regional heads have been caught up in the vortex of corruption cases because of policies issued. On the one hand

[1] Yasmirah Mandasari Saragih, *Kewenangan Penyadapan Dalam Pemberantasan Tindak Pidana Korupsi,* (Jakarta: Fakultas Hukum Trisakti, 2019)

[2] Evi Hartanti, *Tindak Pidana Korupsi,* (Jakarta: Sinar Grafika, 2012), hal. 228

government officials are representatives of the state whose every decision becomes part of the legal product that is protected, but on the other hand the lack or absence of administrative standardization in government actions or activities often makes them trapped when faced with policy areas that are still gray. The debate around the above issues has now been answered with the issuance of Law Number 30 of 2014 concerning Government Administration. This policy becomes an umbrella act or material law for the administration of government in which it regulates the legal relationship between government agencies and individuals or communities within the jurisdiction of state administration. This paper aims to describe the criminal act of corruption, alleged abuse of the authority of a government official in the perspective of Law Number 30 of 2014 concerning Government Administration, bearing in mind that after the regime of the law there has been a paradigm shift and fundamental changes related to efforts to examine whether or not there is an alleged abuse. authority exercised by a public official/government.

According to the Corruption Eradication Commission (KPK), which has the task of carrying out a series of actions in preventing and eradicating criminal acts of corruption through various efforts such as coordination, supervision, monitoring, investigations, investigations, prosecutions and examinations at court hearings based on applicable laws and regulations, corruption It has various forms, including [3]:

- Unlawful acts with the aim of enriching oneself
- Abusing authority because of position
- Embezzlement in office
- Extortion in a position
- Criminal acts related to contracting
- Crime of gratification

Currently abuse of authority often occurs and is in the public spotlight. According to the Indonesia Corruption Watch (ICW) which argued that the inauguration of several new officials within the scope of the Corruption Eradication Commission (KPK) was a form of abuse of authority by the leadership. The opinion of a researcher from ICW which became the basis for the inauguration had a problem, where the KPK structure should not have been changed because in the provisions of Article 26 of Law No. 19 of 2019 concerning the second amendment to Law no. 30 of 2002 concerning the Corruption Eradication Committee, there is no change regarding this matter. KPK deputy chairman Lili Pintauli Siregar has collected complaints from the people of East Nusa Tenggara (NTT) Province regarding the abuse of authority which has caused losses to state finances. From 2018 to 2021, there have been 392 complaints from the people of NTT Province against the Corruption Eradication Committee, one of these complaints regarding abuse of authority has the highest number per 392 complaints [4].

2. RESEARCH METHODOLOGY:

This research is normative legal research (juridical research), namely legal research regarding the enactment and implementation of normative legal provisions such as codification, laws and contracts in action in every particular legal event that occurs in society[5]. In this research method, researchers will study theories, principles and laws and regulations related to research. In this study one of the three Grand Methods was used, namely Library Research, which is scientific work based on literature or literature, Field Research, which is research based on field research and Bibliographic Research, namely research that focuses on the ideas contained in theory. The approach method used in this research is statutory approach (Statue Aproache) and conceptual approach (conceptual approach). The legal materials used consist of primary legal materials and secondary legal materials as well as legal materials and tertiary legal materials.

3. RESEARCH RESULTS AND DISCUSSION:

a. The mechanism for filling the positions of the supervisory board of the Corruption Eradication Commission according to Law no. 19 of 2019

The supervisory board for the commission for eradicating corruption is a new instrument that has been present within the KPK after the passage of Law no. 19 of 2019 concerning the commission for the eradication of corruption, the reason for its formation is because constitutionally, the Corruption Eradication Committee, which was previously considered not to be under the control of any government authority or institution, is thus very much in conflict with the government system in Indonesia.

[3] Yasmirah Mandasari Saragih, *Analisis Yuridis Kewenangan Komisi Pemberantasan Korupsi sebagai Penuntut Pelaku Tindak Pidana Korupsi*, 2018

[4] Andry Novelino, *ICW Sebut Pelantikan Pejabat Baru KPK Penyalahgunaan Wewenang NTT*, (05 Januari 2021)

[5] Soerjono Soekanto dan Sri Pamuji, *Penelitian Hukum Normatif*, (Jakarta: CV Rajawali, 2001), hal. 500

The establishment of a KPK supervisory board that was directly elected by the President through a selection committee, required the KPK to report all its activities to the supervisory board, particularly in wiretapping, confiscating and searching. This results in impurity of the independence of the KPK because its independence is only legal or dogmatic, namely written and regulated by law, but technically in carrying out its duties and authorities the KPK is not free because it must rely on special permits to carry out acts in eradicating corruption. So the mechanism for the change is regulated again in Law no. 19 of 2019 which came after the renewal of the old amendments which were regulated in 2002 but in reality, the mechanism for appointing the KPK Supervisory Board is not in accordance with the concept and theory of an independent state commission, because there is a monopoly of executive power in the appointment mechanism, this can be seen from the number of members of the selection committee which was formed where 5 people came from elements of the central government and 4 people from elements of society. Coupled with the composition of the selection committee which requires the chairman of the selection committee to come from among the central government with the inclusion of regulations in Article 5 paragraph (3) letter a in government regulation number 4 of 2020. This has resulted in the mechanism for appointing the KPK supervisory board still very vulnerable to party intervention. In particular, it is very different from other supervisory institutions that have already been born in the constitutional system in Indonesia which is transparent, accountable and contains good faith in the independence of the implementation of its supervision.

b. Juridical Study of the Crime of Abuse of Authority in Corruption Crimes (Analysis of Law NO. 19 of 2019 concerning the Commission on Aggravation of Corruption Crimes)

Based on Law no. 19 of 2019 abuse of authority in acts of corruption has two different perspectives, namely abuse of authority in criminal law and abuse of authority in state administrative law.

The term abuse of authority in criminal law has actually been contained in Article 421 of the Criminal Code which reads:

"A civil servant who abuses his power to force someone to do or not do or allow something, is punishable by a maximum imprisonment of two years and eight months"

In addition, in general corruption is regulated in Article 423 of the Criminal Code, which reads as follows:

"A civil servant with the intention of unlawfully benefiting himself or others, by abusing his power, forcing someone to give something, to pay or receive a discounted payment, or to do something for himself, is punishable by a maximum imprisonment of six years ".

Abuse of authority is very popular in the development of criminal law, especially in relation to cases of corruption committed by government officials. Along with its development, abuse of authority has become one of the most important elements in criminal acts of corruption, this is also reflected in the contents of Article 3 of the Law on the Eradication of Criminal Acts of Corruption.

Meanwhile, according to the authority contained in the formulation of the offense Article 3 of Law no. 31 of 1999 concerning Corruption Crimes in conjunction with Law No. 20 of 2001 concerning PTPK it is formulated that there is an element of abusing the authority of existing opportunities or facilities, because of position or position [6]. The authority that exists in the position or position of the perpetrators of corruption is a series of powers or rights attached to the position or position of the perpetrators of corruption to take the necessary actions so that their duties or work can be carried out properly. The authority referred to in Article 3 of the PTPK Law is of course the authority that exists in a position or position held by a civil servant based on statutory regulations. As for position, according to Soedarto, "the term position beside the word position is very doubtful. If this position is interpreted as a function in general, then a director of a private bank also has a position..[7] So the position in the formulation of the provisions on corruption in Article 3 is used for perpetrators of corruption for civil servants and not civil servants, namely civil servants as perpetrators of corruption who do not hold a particular position, both structural and functional positions. The abuse of authority/authority in acts of government according to the concept of Constitutional Law or State Administrative Law is always paralleled with the concept of de'tornement de pouvoir. In the Verklarend Woordenboek Openbar Bestuur it is formulated that the use of authority for other purposes deviates from the purpose given to that authority. Thus officials violate the specialist principle (principle of objective) [8]. The occurrence of abuse of authority is not due to negligence. Abuse of authority is done consciously, namely diverting the goals that have been given to that authority. The transfer

[6] Yasmirah Mandasari Saragih, *Rekonstruksi Hukum Penyalahgunaan Kewenangan Dalam Tindak Pidana Korupsi Berbasis Nilai Keadilan Bermartabat,* 2020

[7] Abdul Latif, *Hukum Administrasi Dalam Praktek TindakPidana Korupsi,* (Jakarta: Pranamedia Group, 2014), hal. 35

[8] Yasmirah Mandasari Saragih, *Kewenangan Penaydapan Dalam Pemberantasan Tindak Pidana Korupsi*, 2019

of goals is carried out in personal interest, either for the benefit of himself or for others [9]. The abuse of authority in the State Administrative Law (HAN) is actually legally regulated in Law no. 30 of 2014 concerning Government Administration. So that the abuse of authority referred to in the State Administrative Law which is contained in Article 17 is an excess of authority, mixing authority and acting arbitrarily. Everyone who commits a criminal act of corruption is obliged to carry out criminal responsibility for his behavior [10]. According to the law there is no mistake without breaking the law, this theory is then formulated as no crime without fault or green starf zonder schuld.

In Indonesia, criminal acts of corruption are increasing, so that this causes the economic system in Indonesia to get worse. Corruption related to state financial losses is contained in Articles 2 and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption [11].The debate about which institution has the authority to examine whether or not there was an abuse of authority by a public official is indeed an old debate and has not even reached agreement among legal experts. However, the issuance of Law Number 30 of 2014 concerning Government Administration at least provides an answer to this debate. According to Supandi, abuse of authority (detournement de pouvoir) is a concept of state administration law which indeed causes many misunderstandings in interpreting it [12]. In practice, detournement de pouvoir is often confused with acts of arbitrariness (willekeur/abus de droit), abuse of facilities and opportunities, against the law (wederrechtelijkheid, onrechmatige daad), or even expanding it with any action that violates any rules or policies and in any field. . The use of this broad and free concept will in the end easily become another weapon of abuse of authority and precisely the government's freedom of action in dealing with concrete situations (freies ermessen) is meaningless.

Abuse of authority can also occur both in the type of bound authority and in the type of free authority (discretion). The indicator or benchmark for abuse of authority in the type of bound authority is the principle of legality (objectives that have been set in laws and regulations), while in the type of free authority (discretion) the parameters of the general principles of good governance are used, because the "wetmatigheid" principle is inadequate . In judicial practice, abuse of authority and procedural defects are often interchanged/mixed up as if procedural defects are inherent in abuse of authority. The regime of Law Number 30 of 2014 concerning Government Administration emphasizes that the state administrative court is a judicial institution that has absolute competence to examine the presence or absence of allegations of abuse of power. If so far an official who has been named as a corruption suspect is directly examined in a general court, now with this legal regime, an official concerned can first submit an application to the State Administrative Court to examine and ensure whether or not there is an element of abuse of authority in decisions and and/or actions that have been taken. These provisions are contained in Article 21 of Law Number 30 of 204 concerning Government Administration:

- The court has the authority to receive, examine, and decide whether or not there is an element of abuse of authority committed by a government official.
- Government bodies and/or officials can submit requests to the court to assess whether or not there is an element of abuse of authority in decisions and/or actions.
- The court is obliged to decide on the application as referred to in paragraph (2) no later than 21 (twenty one) working days after the application is filed.
- Against the Court's decision as referred to in paragraph (3) an appeal can be submitted to the State Administrative High Court.
- The State Administrative High Court is obliged to decide on the appeal as referred to in paragraph (4) no later than 21 (twenty one) working days after the appeal was filed.
- The decision of the State Administrative High Court as referred to in paragraph (5) is final and binding.

The provisions of the article above can be referred to as a legal umbrella for State Administrative officials in carrying out government administrative actions. These provisions also provide protection for the TUN Agency/Official in making a decision. This is of course in accordance with the principle of pre sumptio iustae causa or the principle of legal presumption (rechmatig/vermoeden van rechtmatigheid praesumptio iustae causa), which in this principle implies that every action of the authorities must always be considered valid (rechmatig) until there is an annulment.[13].

[9] Abdul Latif, *Ibid,* hal. 50

[10] Bambang Wahluyo, *Pemberantasan Tindak Pidana Korupsi,* (Jakarta: Sinar Grafika, 2016), hal. 310

[11] Yasmirah Mandasari Saragih, *Peran Kejaksaan Dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia Pasca Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidan Korupsi,* Al-Adl: Jurnal Hukum, 2017.

[12] Supandi, Undang-Undang Nomor 30 Tahun 2014, *Tentang Administrasi Pemerintahan (Relevansinya Terhadap Disiplin Penegakan Hukum Administrasi Negara dan Penegakan Hukum Pidana).*

[13] Fathuddin, *Tindak Pidana Korupsi Dugaan Penyalahgunaan Wewenang Pejabat Perspektif Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan,* Jurnal Cita Hukum, Vol. 3 No. 1 Tahun 2015

4. CONCLUTION:

Juridically, Law no. 19 of 2019 related to abuse of authority for government officials has two perspectives in terms of abuse of authority as a crime and abuse of authority legally in state administration, from these two perspectives there are differences in the concept of abuse committed and the object that is the goal or encourage themselves to commit an abuse of authority and criminal acts of corruption. The mechanism for appointing the KPK Supervisory Board is not in accordance with the concept and theory of an independent state commission, because there is a monopoly on executive power in the appointment mechanism, this can be seen from the number of members of the selection committee formed where 5 people come from elements of the central government and 4 people from elements of society. Coupled with the composition of the selection committee which requires the chairman of the selection committee to come from among the central government with the inclusion of regulations in Article 5 paragraph (3) letter a in government regulation number 4 of 2020. This has resulted in the mechanism for appointing the KPK supervisory board still very vulnerable to party intervention. In particular, it is very different from other supervisory institutions that have already been born in the constitutional system in Indonesia which is transparent, accountable and contains good faith in the independence of the implementation of its supervision.

REFERENCES :

1. Abdul Latif, Hukum Administrasi Dalam Praktek Tindak Pidana Korupsi, Jakarta: Pranamedia Group. 2014.
2. Andry Novelino, ICW Sebut Pelantikan Pejabat Baru KPK Penyalahgunaan Wewenang NTT, 05 Januari 2021.
3. Bambang Wahluyo, Pemberantasan Tindak Pidana Korupsi, Jakarta: Sinar Grafika, 2016.
4. Evi Hartanti, Tindak Pidana Korupsi, Jakarta: Sinar Grafika, 2012.
5. Fathuddin, Tindak Pidana Korupsi Dugaan Penyalahgunaan Wewenang Pejabat Perspektif Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan, Jurnal Cita Hukum, Vol. 3 No. 1 Tahun 2015.
6. Soerjono Soekanto dan Sri Pamuji, Penelitian Hukum Normatif, Jakarta: CV Rajawali, 2001.
7. Supandi, Undang-Undang Nomor 30 Tahun 2014, Tentang Administrasi Pemerintahan (Relevansinya Terhadap Disiplin Penegakan Hukum Administrasi Negara dan Penegakan Hukum Pidana).
8. Yasmirah Mandasari Saragih, Analisis Yuridis Kewenangan Komisi Pemberantasan Korupsi sebagai Penuntut Pelaku Tindak Pidana Korupsi, 2018.
9. Yasmirah Mandasari Saragih, Kewenangan Penyadapan Dalam Pemberantasan Tindak Pidana Korupsi, 2019
10. Yasmirah Mandasari Saragih, Kewenangan Penyadapan Dalam Pemberantasan Tindak Pidana Korupsi, Jakarta: Fakultas Hukum Trisakti, 2019.
11. Yasmirah Mandasari Saragih, Peran Kejaksaan Dalam Pemberantasan Tindak Pidana Korupsi Di Indonesia Pasca Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidan Korupsi, Al-Adl: Jurnal Hukum, 2017.
12. Yasmirah Mandasari Saragih, Rekonstruksi Hukum Penyalahgunaan Kewenangan Dalam Tindak Pidana Korupsi Berbasis Nilai Keadilan Bermartabat, 2020.