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The Abuse of Power Philosophy in Government Administration

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Abstract

Government authority and governance in Indonesia are governed by Law No. 30 of 2014, which is titled "Government Administration." Following the implementation of this law, however, a problem arose regarding the government's abuse of authority. The objective of this study is to examine specific instances in which the government has improperly exercised its authority subsequent to the implementation of Law No. 30 of 2014. This investigation employs a normative methodology. This study examines established legal norms or regulations in order to comprehend and evaluate a legal phenomenon. As evidenced by the research findings, instances of governmental authority abuse abound, encompassing the implementation of detrimental policies, human rights violations, and the manipulation of data to advance political objectives. This abuse of authority is exacerbated by transparent practices, inadequate government accountability, and ineffective oversight mechanisms.

Keywords: *abuse of power; Government Administration; government authority*

1. Introduction

Good governance requires that the development of state administration be preceded by the establishment of state administrative law. Administrative reform, as it pertains to state administration, encompasses the enhancement of various legal policies concerning structure, management, and processes in the following domains: finance, human resources, oversight, accountability, and transparency [1]. Additionally, it involves the formulation and execution of policies. Reforming state administration necessitates an overhaul of state administrative law as well.

According to Bagir Manan, administrative law is susceptible to cross-border influences from other legal systems, necessitating caution [2]. For instance, actions of exceeding authority in administrative law that involve the abuse of authority can easily cross the line into criminal law regulations. Regarding criminal law. For instance, in cases of corruption, the majority of instances to date have been perpetrated by officials in positions of authority who are susceptible to the commission of the heinous act of corruption. Theoretically, abuse of position authority refers to the utilization of favorable circumstances by an individual or group occupying a position of power by capitalizing on said favorable circumstances.

[1] S H Darda Syahrizal, *Hukum Administrasi Negara & Pengadilan Tata Usaha Negara* (MediaPressindo, 2013); Enrico Simanjuntak*, 'ESENSI SENGKETA ADMINISTRASI PERTANAHAN DI PERADILAN TATA USAHA NEGARA', *Bhumi: Jurnal Agraria Dan Pertanahan*, 3.November (2017), 171–88 <https://doi.org/https://doi.org/10.31292/jb.v3i2.123>; Barhamudin Barhamudin, 'Penyalahgunaan Kewenangan Pejabat Pemerintahan Dan Ruang Lingkupnya Menurut Undang-Undang Administrasi Pemerintahan', *Solusi*, 17.2 (2019), 175–92; Fathur Rauzi, 'THE CONCEPT OF AUTHORITY ABUSE IN CORRUPTION IN INDONESIA AFTER THE IMPLEMENTATION OF LAW NUMBER 30 OF 2014 CONCERNING GOVERNMENT ADMINISTRATION'.
[2] Bagir Manan, 'Varia Peradilan', *Hakim Dan Sengketa Tanah* (Jakarta, 2010), p. 17 <https://www.varia-peradilan.id/collection>.

Normative disputes (normatatief geschil) that may arise among administrative law, civil law, and criminal law may be enveloped in corruption. Investigating, inquiring, arraigning, or prosecuting such cases thus requires a comprehensive examination of the various legal regimes. When addressing normative conflicts (normativity geschil) among branches of law in the aforementioned regard for the eradication of corruption, it is crucial to follow the advice of Romli Atmasasmita, who stated that the direction of legal politics concerning law enforcement in eradicating corruption in Indonesia has shifted to the point where equal emphasis is placed on preventative measures. the significance of combating corruption [3]. Abusive of authority is a three-species genus within the realm of government administration law: (1) exceeding authority; (2) mingling authority; and (3) acting arbitrarily. The Government Administration Law provides no definition of abuse of authority; rather, it classifies the aforementioned three categories of abuse of authority [4]

As part of administrative law studies, there were some previous studies conducted by researcher related to this study. The first study was conducted by [5] entitled "The Absolut Competence of Administrative Court Based On Law Number 30 Of 2014 Concerning Government Administration". The objective of this research is to examine the extent of the State Administrative Court's absolute jurisdiction within the framework of the General Principles of Good Governance. According to the description and analysis provided, this study has determined that the Transitional Provisions of Law Number 30 of 2014 regarding Government Administration, as stated in Article 87, are inaccurate due to undisclosed alterations to the provisions of Article 1 number 9 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 regarding State Administrative Courts. Modifications to a regulation in the Legislative Regulations cannot be inserted into the Transitional Provisions. From a normative standpoint, modifications can be implemented by establishing new definition boundaries within the General Provisions of Legislation, or by modifying Legislative Regulations. The interpretation of Article 1, paragraph 9 of Law Number 51 of 2009, which pertains to the Second Amendment of Law Number 5 of 1986 about State Administrative Courts, as specified in Article 87 of Law Number 30 of 2014 regarding Government Administration.

The second previous study related to this study was conducted by [6] Entitled "Administrative Court According to Law No. 30 Year 2014 on Government Administration Law". The study concluded that the provisions of the Government Administration Law regarding the State Administrative Court lack a coherent conceptual framework. The Government Administration Law pertaining to State Administrative Courts poses significant challenges in its implementation within the court system. This is primarily due to its ambiguous nature and its inconsistency with other ideas of administrative law, as discussed above.

[3] Sri Wulandaria, 'The Role of Society in Law Enforcement Related to the Eradication of Corruption Crimes', *European Researcher. Series A*, 10, 2019, 187–95; Hulman Siregar, 'Juridical Analysis of the Amendment of Law of the Corruption Eradication Commission in Eradicating Corruption from Legal and Economic Perspective', *Journal of Morality and Legal Culture*, 1.2 (2020), 86–92; Muhammad Bagus Adi Wicaksono and Rian Saputra, 'Building the Eradication of Corruption in Indonesia Using Administrative Law', *J. Legal Ethical & Regul. Isses*, 24 (2021), 1.

[4] Raden Imam Al Hafis and Moris Adidi Yogia, 'Abuse of Power: Tinjauan Terhadap Penyalahgunaan Kekuasaan Oleh Pejabat Publik Di Indonesia', *Publika: Jurnal Ilmu Administrasi Publik*, 3.1 (2017), 80–88; Tri Hayati, 'Abuse of Authority by Government Officials: Controversy between Administrative and Criminal Sanctions', *J. Legal Ethical & Regul. Isses*, 22 (2019), 1; Achmad Muzammil, Basuki Rekso Wibowo, and Slamet Suhartono, 'Limitation of Use and Abuse of the Authority of the Discretion Which Create the State Financial Losses', *Technium Soc. Sci. J.*, 14 (2020), 250.

[5] Yodi Martono Wahyunadi, 'Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Konteks Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan', *Jurnal Hukum Dan Peradilan*, 5.1 (2016), 135–54.

[6] Philipus M Hadjon, 'Peradilan Tata Usaha Negara Dalam Konteks Undang-Undang No. 30 Th. 2014 Tentang Administrasi Pemerintahan', *Jurnal Hukum Dan Peradilan*, 4.1 (2015), 51–64.

The third previous study related to this topic was conducted by [7]. This research aims to identify and analyze the aspect of authority abuse in government administrative laws. This study employs normative research, combining legislative and conceptual approaches. Legal materials with Primary Legal, secondary, and tertiary materials. The results are used to determine administrative law abuse, specifically UUAP, which occurs when government officials act without following procedures and outside the scope of the Law of the Republic of Indonesia Number 30 of 2014 on Government Administration. The statute states: a. The statute goes b. d. Exceeding the Authority's term or validity period; e. Exceeding its territorial validity; or f. Violation of statutory prohibitions. g not within the Authority's scope; h not aligned with its declared mission. Abuse of authority falls under administrative or criminal law. Legal decisions and actions that transcend unlawful authority are valid if supported by a permanent court decision and permanent courts.

This present study examines the philosophical elements associated with power dynamics in government administration, specifically focusing on the misuse of power. It may examine the ethical, moral, and conceptual aspects of power misuse. Conversely, the prior research appears to focus on legal matters, such as the proficiency of administrative courts, the delineation of abuse of authority, and the operation of administrative courts according to specific legal rules (law number 30 of 2014). Furthermore, the examination of the philosophy of power abuse may adopt a more expansive and theoretical perspective, delving into the underlying abstract concepts and ideologies associated with the notion of power abuse. In contrast, the prior research seems to have a stronger focus on legal matters, potentially involving the interpretation and analysis of certain laws and regulations pertaining to government administration, abuse of power, and administrative court processes.

The objective of this article is to conduct an analysis of authority abuse in the context of corruption crimes subsequent to the implementation of Law No. 30 of 2014 on government administration.

2. Methods

The research employs a normative approach as its methodology. This study centers on examining and evaluating established legal norms or regulations in order to comprehend and evaluate a legal phenomenon. The study of normative research methods in the context of government abuse of authority following the implementation of Law No. 30 of 2014 on Government Administration would entail the examination and interpretation of legal standards pertaining to government administration. The study method involves identifying pertinent legal norms pertaining to government management, particularly those concerning governmental authority. Specify the articles of Law No. 30 of 2014 that govern government authority. Subsequently, the researcher conducted a thorough examination of the content of Law No. 30 of 2014 and other relevant legal regulations. Examine the essential terms, definitions, and provisions that regulate the utilization of governmental power. The subsequent phase involves the act of deciphering the identified standards. Specifically, this involves analyzing the significance of words and phrases within the framework of governmental management. Take into account the objectives of the legislation and the purpose of the regulations. By employing a normative methodology, this research aims to get a comprehensive comprehension of the legislative structure governing governmental

[7] Barhamudin.

administration and its effectiveness in preventing or facilitating government abuse of power following the implementation of Law No. 30 of 2014.

3. Results and Discussion

3.1. Abuse of Authority According to Administrative Law

The abuse of authority in the context of State Administrative Law is consistently associated with the idea of détournement de pouvoir in the French legal system, or the misuse of power in English terminology. The notion of "detournament depouvoir" originated in France and serves as a framework for evaluating the effectiveness of state administrative justice institutions in relation to government activities. It is regarded as a legal principle that falls under the category of "de principes generaux du droit". The Conseild'Etat was the pioneering judicial institution to use it as a weapon, followed subsequently by other nations like the Netherlands and Indonesia.

Government officials are said to have committed the offence of détournement de pouvoir when they make choices or take activities that are not in the public interest or for the purpose of maintaining order, but rather to serve their own personal interests or those of their family or colleagues. Indriyanto Seno Adji explains the abuse of authority by referencing the viewpoints of Jean Rivero and Waline regarding "detournement de pouvoir" and "Freis Ermessen". In administrative law, abuse of authority can be understood in three distinct forms: 1. The misuse of authority to perform actions that go against the public interest in order to benefit personal, group, or collective interests;

1) Abuse of authority refers to situations where an official's actions, although seemingly in the public good, go against the intended purpose for which their authority is legally provided or regulated.
2) Abuse of authority refers to the misuse of methods intended for achieving specific objectives, by employing alternative procedures instead.

According to the regulation number 30 of 2014, there are three specific prohibitions outlined in Article 17 paragraph (2) regarding the abuse of authority. These prohibitions include: (a) exceeding one's authority, (b) mixing up several authorities, and/or (c) acting in an arbitrary manner. Moreover, as stipulated in Article 18 paragraph (1) of Law No. 30 of 2014, the prohibition on exceeding authority is triggered when Government Agencies and/or Officials make decisions and/or take actions that: (a) surpass the designated term of office or the time limit for authority validity; (b) go beyond the territorial boundaries of their authority; and/or (c) contravene the provisions of laws and regulations. According to Article 18 paragraph (2) of Law No. 30 of 2014, the restriction on mixing authorities applies when a decision and/or action is made: (a) beyond the jurisdiction or subject matter of the given authority; and/or (b) in conflict with the objectives of the supplied power.

Authority in administrative law can be classified into two categories: bound authority and free discretionary authority. When evaluating potential abuse of authority in the context of bound authority (authority granted by statutory regulations), it is necessary to identify the specific legal provisions that have been violated. However, in the case of free authority (Discretionary Power, Freies Ermessen), the principle of "wetmatigheid" alone is not enough. Instead, the assessment relies on unwritten legal principles, commonly referred to as general principles of good government in administrative law. By examining the AUPB, it becomes evident that abuse of authority is interconnected with the concept of position, which is encompassed inside the AUPB as the principle of "not abusing authority". The principle of "not abusing authority" as defined in Law no. 30 of 2014 refers to the requirement that every Government Agency and/or Official refrain from utilising

their authority for personal or other interests that are not aligned with the intended purpose of granting said authority. This principle prohibits the excessive, abusive, or inappropriate use of authority. The elements discussed in the explanation of the principle of "not abusing authority" closely align with the three prohibitions on abuse of authority outlined in Article 17 of Law no. 30 of 2014. Additionally, a crucial aspect of this principle is the inclusion of the element of deviation from objectives, also known as the Speciality Principle. In the context of state administrative law, this principle is consistently associated with the concept of "abuse of authority" and is an integral part of the explanation of the principle of "not abusing authority".

3.2. Corruption Crimes After Law No. 30 of 2014 on Government Administration: Authority Abuse.

Law enforcement is the active pursuit of justice, legal clarity, and societal advantages. Law enforcement can be understood as the practical implementation of conceptual notions [8]. Law enforcement refers to the systematic efforts made to ensure compliance with legal norms and regulations by individuals involved in traffic or legal interactions within society and the state. Law enforcement is the implementation of legal principles and conceptions that society desires to be actualized.

Law number 30 of 2014 ensures that the government upholds the basic rights of its citizens and provides them with protection. It also guarantees that the government fulfils its duties as required by a constitutional state, as stated in article 27 paragraph (1), Article 28 B paragraph (3), article 28 F, and article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This law is further detailed in article 4 paragraph (2), which outlines the regulations governing government administration [9]. These regulations encompass the rights and obligations of government officials, government authority, government administration procedures, government decisions, administrative efforts, guidance and development of government administration, and administrative sanctions. By adopting this approach, citizens cease to be treated as mere objects and instead become active participants in the administration of government.

The purpose of Law number 30 of 2014 is to regulate and enhance the bureaucratic reform system in order to prevent corruption. However, there is a conflict between one of the norms in this law and one of the norms in Law Number 31 of 1999, which is about eradicating corruption. This conflict has been addressed in Law Number 20 of 2001, which focuses on corruption eradication, and Law Number 46 of 2009, which deals with trials for corruption. The Judicial Law serves as a legal tool to combat corruption by employing an enforcement strategy.

The presence of contradictory regulations arises from the inconsistencies between article 5 and article 6 of the Corruption Court law, article 3 of the Corruption Eradication Law, and the provisions stated in article 21 paragraph (1), Article 1 number 18, and article 17 of the government administration law. These regulations grant the Corruption Court absolute authority to investigate and make decisions regarding cases involving abuse of authority in Corruption Crimes. Certain legal scholars equate the notion of abuse with the field of administrative law.

[8] Fathur Rauzi, 'The Concept of Authority Abuse in Corruption Based on Government Administration', *Available at SSRN 3784999*, 2021; Jerome H Skolnick, *Justice without Trial: Law Enforcement in Democratic Society* (Quid pro books, 2011); FAUZIAH LUBIS, 'IMPLEMENTATION OF RESTORATIVE JUSTICE, THE INTENT OF PUNISHMENT, AND LEGAL CLARITY IN INDONESIA', *Russian Law Journal*, 11.3 (2023).

[9] Yudiswan Adex, Budi Santoso, and R B Sularto, 'The Concept Of Abuse Of Authority In Corruption In Indonesia After The Enactment Of Law Number 30 Of 2014 Concerning Government Administration', *Adam Chazawi*, 2016.

The use of authority in government administration law is considered equivalent to the act of exploiting one's position in the anti-corruption law. This similarity can lead to conflicts over jurisdiction between the Corruption Court and the TUN court. The establishment of the government administration law granted complete power to investigate and identify instances of misuse of authority in corruption.

The notion of misuse of power in the Corruption Eradication Law diverges from the notion of abuse of "authority" in the government administration law. The notion elucidated in the government administration law effectively distinguishes between the definitions of authority and competence, so eliminating the possibility of conflict between the two. Regarding authority, which is synonymous with rights, it will naturally have legal consequences when used in an unlawful manner. Development is closely associated with power, and it not only affects administration but also carries criminal legal repercussions.

4. Conclusion

As a result of the implementation of Law Number 30 of 2014 concerning Government Administration, there has been an increase in the number of instances of criminal acts of corruption that involve the misuse of authority. Article 17 of Law No. 30 of 2014 defines abuse of authority as the act of exceeding authority, combining authorities, and behaving arbitrarily. These three particular prohibitions are included in the definition of abuse of authority. Specifically, the avoidance of abuse of authority is the primary focus of UU no. 30 made in 2014. It is required to offer evidence that is based on administrative law in order to show the components of criminal conduct that involve corruption. If it is determined that there has been a case of authority abuse that meets the requirements established in the Corruption Law, then a criminal prosecution for corruption will be commenced. It is permissible to demonstrate that there has been an abuse of power, as stipulated by the provisions of Law no. 30 of 2014. Therefore, the investigation and prosecution of corruption crimes under the Corruption Law can only proceed once it has been shown that the PTUN (Public Administrative Court) has in fact participated in abuse of authority. This is because the Corruption Law prohibits the employment of corrupt practices. In light of this, there is a transition in the process of settlement that first depends on a solution that is founded on administrative law being implemented.

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