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Implications of Ptun Authority in Testing the Elements of Abuse Authority of Corruption Criminal Enforcement Activities

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Abstract

This research is based on the reality of low absorption of government agencies / institutions by government officials. Government Officials feel afraid if the decisions and / or actions issued lead to abuse of authority which has implications for corruption. The passing of Law No. 30 of 2014 concerning Administration Government has opened a new way of testing the abuse of authority which is typical of the concept of administrative law in the State Administrative Court. This law is also a means of legal protection for Government Officials. However, since this law was passed government officials are still afraid of using the budget in their institutions and there are still many government officials affected by corruption cases because of abuse of authority. This research includes normative legal research which is also often referred to as doctrinal research with the object or target of research in the form of legislation and other legal materials. Based on this research, it is known that the authority of PTUN in testing the abuse of authority has implications in the process of law enforcement for criminal acts of corruption. In enforcement of corruption, superiors of Government Officials, APIP, and Law Enforcement Officials (APH) must coordinate with each other in carrying out supervisory and enforcement tasks. law to government officials so that no case "race" occurs. If the decision of the PTUN states that there is no element of abuse of authority, the Government Official cannot be prosecuted either administratively, civilly or criminally. Conversely, if the PTUN ruling states that there is an element of abuse of authority, then the Government Official must recover the state financial losses, and the normative refund of the state financial loss cannot guarantee that the Government Official will avoid the process of enforcing criminal acts of corruption.

K*eywords:* *Abuse of Authority; Testing; PTUN*

Introduction

Latar Belakang

Since the existence of the Corruption Crimes Act from 1999 to the present, corruption cases still often occur. recorded based on data obtained by the Financial and Development Supervisory Agency (BPKP) that since 2012-2015 as many as 188 cases of criminal acts of corruption contained provincial

andlevel government agencies district. Of these, those concerning the corruption case of the regional head whether governor, mayor / regent and or his deputy from 2004 to 2015 are as follows: corruption carried out by the governor of 16 people, while corruption cases that ensnared the Regent / Mayor as much 51 people.

These cases, if observed, are ensnared by regional officials, both governors and regents / mayors, namely in connection with criminal offenses related to the procurement of goods and services and abuse of authority. By Karen aitu, it makes sense that officials these days are afraid to use the budget so that the budget settles only in the state treasury and development is not carried out properly. The weak understanding of government officials about the bureaucracy is the reason why regional officials are so prone to tripping over corruption. The implementation of government work is closely related to state administrative law. At least by understanding administrative law, a government official can prevent himself from abuse of authority that can harm the country's finances or the country's economy.

Actually, the government has made every effort so that officials are not afraid to use the budget as long as they are careful and in accordance with their purpose. The passing of Law No. 30 of 2014 concerning Government Administration (hereinafter referred to as the AP Law) does not necessarily make government officials free to use their authority, even though the Act has explained in detail the various scope of authority and its limitations. The AP Law gives new hope in the implementation of bureaucratic reforms that are able to realize*good governance*. The presence of the AP Law is expected to be a legal basis for recognizing a decision and / or action by a government official whether or not there is an element of abuse of authority.

The competence of the State Administrative Court (PTUN) in assessing whether or not there is an element of abuse of authority is related to the abuse of authority carried out by true government officials has been regulated in Article 21 of the AP Law. Authority that can be tested based on the Supreme Court Regulation No. 4 of 2015, covering authority based on legality and authority based on government discretion. The existence of state financial losses is a condition that can be forwarded to the test of abuse of authority. Without a loss of state finances, there is no legal interest in the Government Agency to demand an element of abuse of authority, because the examination of the abuse of authority by the Government Agency is the ultimate goal for Government Officials to recover state financial losses.

Therefore, Government Agencies who feel they have a legal interest can file a request for abuse of authority by the Government Official to PTUN. So far, state financial losses have always been perceived as having an element of crime (corruption), or conversely, any abuse of authority can always be criminally processed as long as it is carried out by state officials. Even though the state financial loss is not always included in the criminal act of corruption or vice versa, any abuse of authority by the state administrator is always a state financial loss. To distinguish between corruption and non-corruption, it can be seen again about the principle of systematic specificity in the previous chapter in CHAPTER III Sub C.

This perception arises because the abuse of authority is always associated with Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning Eradication of Corruption (hereinafter referred to as the Corruption Act). The offense used by the Anti-Corruption Law regarding violating the law and abusing authority is formal offense. This formal offense can be seen from the word "can" contained in the Corruption Act. The existence of formal offense means that state financial losses need not be proven as long as the act has been proven. According to Nur Basuki Minarno, based on the Corruption Law the existence of potential *loss* alone is enough to declare the element can be detrimental to the country's finances or the country's economy. These provisions are based on the Constitutional Court Decision Number 25 / PUU-XIV / 2016 which states that the word can be erased so that it implies that there must be State losses are real and certain in number so that there is a shift in Article 3 of the Corruption Act from formal offenses to material offenses.

Article 2 paragraph (1) and Article 3 of Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning Eradication of Corruption, reads:

Article 2 Paragraph (1):

> "Any person who unlawfully commits acts of enriching himself or others or a corporation that can harm the country's finances or the economy of the country, shall be sentenced to imprisonment with imprisonment for life imprisonment life sentence or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"

Article 3:

> " Any person who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him because of his position or position that can harm the country's finances or the economy state, shall be liable to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and a fine of no less than Rp.50,000,000.00 (fifty million rupiah) and a maximum of Rp.1,000 .000.000,00 (one billion rupiah) "

Related to the theme of this writing is testing the abuse of authority, then only those who are deemed to have authority, then that authority is used in the form of decisions and / or actions that can be requested for testing whether or not there is abuse of authority . Therefore, through this paper the author will explain the implications of the authority of PTUN in testing the abuse of authority against the enforcement of corruption.

Research Methods

This research includes normative legal research which is also often referred to as doctrinal research with the object or target of research in the form of legislation and other legal materials. Results from legal research, even if they are not new legal theories, are at least new arguments. The legal materials obtained were examined to obtain relevance to the research topic, both in the form of ideas, proposals and arguments from the legal provisions studied.

Research Results & Discussion

1.Differences in Elements Against Law and Abuse of Authority

As the author explained at the outset that before the birth of the AP Act the element of abuse of authority carried out by government officials is always associated with Article 2 Paragraph (1) Jo Article 3 of the Anti-Corruption Law, Second The article that the author mentioned earlier has a difference, the difference between breaking the law and abusing the authority in the Corruption Act brings consequences of the legal subject of the law. In the Corruption Law, the legal subject of each person is 'people and corporations'. According to Nur Basuki Winarno, Article 3 subjects are public officials or employees, while Article 2 subjects are people and corporations minus public officials or employees. Similar opinion was expressed by Ridwan, which is:

> "Abuse can only be done by people who are given or have authority. Conversely, there may be no abuse of authority by people who are not given or have authority. Therefore, the actual editorial "every person" listed in Article 3 of the Corruption Eradication Law is not

> quite right. Another case with acts against the law, which can be done by anyone, so that it is appropriate to use the editorial "everyone" listed in Article 2 of the Law on the Eradication of Corruption.".

Meanwhile, according to SF Marbun, when explaining the element "everyone" in Article 3 has the same meaning as contained in Article 2, this means that each person is not required to have certain traits that must be owned by an actor, so that the perpetrator can be anyone as a subject law supporting rights and obligations. Therefore, it is known that the presence or absence of authority can only be known after an examination in a corruption criminal court. Therefore, when following Nur Basuki Minarno and Ridwan's opinion, an indictment that is actually imposed on a public official or employee is used Article 3, whereas if it is generally used by Article 2 paragraph (1) for individuals. The indictment is not appropriate if it is used in the form of alternative indictment with the word or and subsidair indictment with the word subsidair. Nur Basuki Minarno said:

> "Indictment of officials formulated alternatively or subsidair between elements against the law with abuse of authority is not appropriate. This means that the use of elements against the law or abuse of authority as an indictment of officials or public servants must choose Article 3 of the PTPK Law because both (against the law and abuse of authority) are in principle the same or in haeren, only different on the subject of the offense. If the subject of the offense is not an official or a civil servant can use Article 2 of the PTPK Law or other articles other than Article 3 of the PTPK Law, but specifically for officials or civil servants the charge uses Article 3 of the PTPK Law"

The opinions of Nur Basuki Minarno and Ridwan can be applied if in practice, the consistent use of Article 3 which is seen the first time is the subject of the offense, namely the official or civil servant. Whereas according to the opinion of SF Marbun, without distinguishing the subject of the offense, the officials or civil servants can be applied with Article 2 or Article 3 because what is seen is the first offense (against the law or abuse of authority) then the alternative charges are still relevant to be used because they are still must find out whether or not the authority owned by the defendant. If the defendant has the authority, it is called an official or civil servant so Article 3 can be applied, but if he does not have the authority, then it remains as an individual in general so Article 2 paragraph (1) applies. As for Nur Basuki Minarno in his research it was stated that the formulation of the subsidair indictment was mostly carried out by the public prosecutor. The primair indictment violates Article 2 paragraph (1) and the subsidair violates Article 3. The formulation of the subsidair indictment is used if each element in one article must be proved individually without linking to the subject of the offense or the offense of the article. If an element in the primair article is not proven then the examination continued in the subsidair article, and so on until it reaches more subsidair or more subsidair.

The parameter of abuse of authority used in the AP Law, in the concept of administrative law, there is a mixing of 3 (three) things, which is against the law / contrary to statutory regulations, confusing authority, and arbitrary acts. These three things are in principle as expressed by Philipus M. Hadjon regarding the legality of government actions including: authority; procedure; and substance. Then the legality requirements for this government action are included in Article 52 of the AP Law.

Legality of authority includes three components, namely influence, legal basis, and legal conformity. The legality of the procedure rests on three main foundations of administrative law, namely the principle of the rule of law, the principle of democracy, and the principle of instrumental (effectiveness and effectiveness). The legality of the substance concerns what and for what. What defects are for arbitrary actions; flawed for what constitutes an act of abuse of authority. To simplify the formulation of parameters of abuse of authority between the norms in the AP Law and in the concept of administrative law, can be seen below:

1. Prohibition beyond authority (HAN: contrary to statutory regulations, ie not authorized).
   a. beyond the term of office (HAN: contrary to statutory regulations, i.e. not authorized in terms of time)
   b. beyond the territorial limits of the enactment of authority (HAN: contrary to statutory regulations, i.e. that is not authorized in terms of territory)
   c. contrary to statutory provisions (HAN: includes conflicting with procedural, substance and unauthorized laws)

2. Prohibition of confusing authority (HAN: principle of specialty)
   a. Outside the scope of the field or material of the authority granted (HAN: contrary to statutory regulations, that is, not authorized in terms of substance)
   b. Contradicting the purpose of the authority given (HAN: abuse of authority / principle of specialty).

3. Prohibition of acting arbitrarily (HAN: the principle of rationality)
   a. Perform actions without a basis of authority (HAN: contrary to statutory regulations, ie not authorized)
   b. Contrary to court decisions that have permanent legal force (HAN: contrary to statutory regulations).

4. Discretion (HAN: the principle of abuse of authority and the principle of arbitrary)
   a. Prohibition goes beyond authority
   b. Prohibition of confusing authority.
   c. Prohibition of acting arbitrarily

Although there is a difference between the abuse of authority in the Norms of the Government Administration Act and the concept of administrative law, it does not mean that in testing the abuse of authority used is the norm in law alone, without regard to the concept of administrative law. In administrative law, the concept of abuse of authority in this law only includes "the prohibition of confusing authority (point number 2)" and "contrary to the purpose of the authority granted (point number 2 letter b)", then both have the same meaning in the concept administrative law.

However, in the practice of testing the abuse of authority, these elements must be taken as a whole to assess which elements of abuse of authority have been committed by Government Officials. As for the abuse of authority in the concept of administrative law must also be considered, namely the existence of motivation / other purpose of the purpose of giving authority. That is, the occurrence of abuse of authority is not due to negligence, is done consciously, and there is a *interest* personalfor yourself or for others. Therefore, conscious diversion must be proven. Based on this, Yulius stated:

> "in examining the abuse of authority at the practical level (the application of the AP Law), there is no need to conflict between theoretical concepts and" abuse of authority "with the provisions of Articles 17 and 18 of the AP Law. Utilization of authority is a definition that is always debated in the realm of theory (scientific work), so that in expanding the meaning of the abuse of authority in the norms of the AP Law that have become the norm must be implemented, because the law according to the principle of legality is as a written regulation formed by an authorized state institution (President and DPR) are generally binding (without exception). Thus, norms in law cannot be distorted before being revoked or canceled by the competent state institution".

Therefore, if in the Corruption Act the element of unlawfulness in Article 2 paragraph (1) and the element of abusing authority in Article 3 is said to be *in haeren*, meaning that the abuse of authority as a

species and acts against the law as its genus, is the abuse of authority in the AP Law can be said to intersect with the Corruption Act especially Article 3? Intersection between these two laws is needed to see whether or not the Government Administration Act if applied in the Corruption Act. To see the intersection between the two does require carefulness, at least in 2 (two) things, namely the composition of grammatical texts of the law and the legal objectives or politics of the birth of the law.

As mentioned earlier, both authority and authority are both intended for a position. The AP Law uses the terms authority and authority, while the Anti-Corruption Law uses the term authority. In the AP Law, the terms authority and authority are both addressed to positions attached to Government Agencies and / or Officials. In the Anti-Corruption Law, the term authority if followed by the following sentence "opportunity or means available to him due to his position or position" is also due to his position. Before the word position, there is the word opportunity or means. To understand this series of words, interpretation of the principle ofcan be used *contextualism* as stated by Ian Mc. Leod, namely:

1. The principle of *Noscituur a sociis*, meaning that something is known from *association* its This means that a word must be interpreted in the sequence.
2. The principle of *ejusdem generis*, meaning that a word is restricted by the specific meaning in the group. As the concept of HAN is not necessarily the same as the concept of civil or criminal law.
3. The principle of *expression unius exxlusio alterius*, that is, if the concept is used for one thing, it does not apply to other things. As if the concept of *rechtmatigheid* has been used in state administrative law, then the same concept does not necessarily apply to civil or criminal circles.

If the element of abusing authority is interpreted separately from the sentence afterwards, then there will not only be an element of abusing authority, but there is also an element of abusing opportunity and an element of abusing means. In this case Ridwan argues:

> "in Article 3 of the Anti-Corruption Law the element of" abuse of authority "followed by" the opportunity or means available to him because of his position or position "will be relevant if interpreted by using the method of interpretation of Nositur a sociis from Mc. Leod, which is an editor or sentence must be interpreted in its context, so that the editorial implies that the opportunity, means, position or position cannot be separated from the concept of authority, so that it cannot be interpreted separately or separately".

An almost similar opinion was also conveyed by Nur Basuki Minarno, in Article 3 this Corruption Law must be interpreted as a single unit, namely by submitting:

1. By giving a position / position to an administrative official, the authority, opportunity, or means automatically follows. Giving a position / position will give birth to authority. Authority, opportunity or facility is an accessory of a position or position. So, authority, opportunity, or means is an entity that is owned by the officials.
2. Abuse of authority is a "best and best case", in the event that the element is not proven then the defendant must be declared free or free from all legal claims, there is no need to prove the existence of an abuse of opportunity or the misuse of facilities.
3. If the element is interpreted to stand alone, then the subject of criminal offense in corruption in Article 3 of the PTPK Law (ex Article 1 paragraph (1) sub b of Law No. 3 of 1971) is not only limited to positions or civil servants, which should be subject to offense at Position Article 3 of the PTPK Law (ex Article 1 paragraph (1) sub b of Law No. 3 of 1971) is a public official or employee.

Then different opinions were expressed by Andhi Nirwanto, according to him there were differences in authority and authority in Law No. 30 of 2014 has different legal implications. Authority is

the domain of administrative law or state administration, if the authority is not exercised as it should, the legal implications of the use of that authority can be canceled or deemed invalid. While authority is the domain of public law which not only has administrative legal implications but also results in criminal law. In practice, the notion of abusing authority in the Corruption Act is explicitly not found in theLaw *a quo* or in other criminal laws. According to Indriyanto Seno Adji:

> "If the criminal law does not explicitly include an understanding of criminal law provisions, then an extensive approach based on doctrine can be used. The doctrine in question is as stated by HA Demeersemen on the study of "de autonomy van het materiele strafrecht" (autonomy from the metariil criminal law). The essence of this doctrine is to question the existence of harmony and disharmony between the same understanding, between criminal law, especially with civil law and state administrative law, as another branch of law. Here an effort is made to link the same understanding between the branches of criminal law and other branches of law".

The definition of disharmony is to provide an understanding in criminal law with other contents concerning the same meaning that it sounds in other legal fields. The conclusion that can be drawn is that regarding the same words, criminal law has the autonomy to provide a different meaning from the understanding contained in other branches of legal science. Therefore, if the notion of abuse of authority is not found in criminal law, criminal law can use the meaning of the same word contained or derived in other branches of law. Previously, the teaching on *van het materiele strafrecht's autonomy* was received by the North Jakarta District Court, which was subsequently corroborated by Decree of the Supreme Court of Republic of Indonesia No. 1340. K / Pid / 1992 dated February 17, 1992 when there was a criminal act of corruption known as the export certificate case where Drs. Menyok Wijono was charged with violating Article 1 (1) Sub b of Law No. 3 of 1971 as Head of Export for Regional Office IV, Director General of Customs and Excise, Tanjung Priok, Jakarta.

The definition of abusing authority in the case by the Supreme Court of the Republic of Indonesia has been carried out by *refinancing*. Definition of abusing authority as contained in Article 1 paragraph (1) Sub b of Law No. 3 of 1971 by means of beingin*executed* accordance with the meaning of abusing authority in Article 52 paragraph 2 letter b of Law No. 5 of 1986 concerning State Administrative Court, which has used authority for other purposes than the purpose of granting such authority or better known as *detournament de Pouvoir*. Based on this doctrine, the author agrees more with the first opinion that the authority and authority in the Government Administration Law are both intended for a position, as well as for the "authority" in the Anti-Corruption Law intended for office, so that the writer concludes that grammatically there is an intersection between AP Law and Corruption Law.

2. Political of Law Number 30 of 2014 concerning Administration Government

The second way to find the intersection between the two laws is to look for the purpose or legal politics of a law. According to Moh. Mahfud MD., Legal politics is the official *legal policy* or line (policy) about the law that will be enforced either by making new laws or by replacing old laws, in order to achieve the goals of the country. AP Law since the beginning has been a fairly long discussion. This Draft Law began to be drafted in 2004. Then during the State Minister for Administrative Reform (Menpan), Taufik Effendi, the bill was targeted to be completed in 2009. At least according to the Minister at the time, the bill was one of the legal instruments for bureaucratic reform and closing opportunities for corruption, collusion, and nepotism. Meanwhile, according to Eko Prasojo (Vice Minister of PAN during the United Indonesia Cabinet II), the presence of this law is expected to be a legal basis for recognizing a decision and action as an administrative error or abuse of authority that results in a criminal offense, so that decision makers are not easily criminalized, which weakens them in doing government innovation.

The idea of the birth of the Government Administration Law is inseparable from the thoughts of the two drafters of the Act, namely Zudan Arif Fakrullah and Guntur Hamzah. According to Zudan Arif Fakrullah, the AP Law contains the basic desires and political direction of state law to:

a. The quality of governance must be improved so that government bodies and / or officials in exercising authority must refer to the general principles of good governance and based on statutory provisions.
b. Arrangements regarding government administration are expected to be a solution in providing legal protection, both for citizens and government officials to solve problems in the administration of government;
c. The law on government administration becomes the legal basis needed to base the decisions and / or actions of government officials to meet the legal needs of the community in the administration of government.

Meanwhile, according to Guntur Hamzah, there are several needs that can be said to be the urgency of the birth of the AP Law, namely:

a. The need to guarantee the decision making process and / or actions and to establish a system of reciprocal communication between citizens and government officials in the context of bureaucratic reform.
b. The need to develop an administrative system that serves, effectively, and efficiently and prevents KKN practices as an effort to improve*good governance*.
c. The need to ensure the partisanship of the state to citizens as subjects in government administration and provide equal legal protection to citizens and government officials within the framework of a democratic rule of law.

After the Government Administration Law was passed, among the objectives of this law that can be said to be in contact with the Corruption Act is to create legal certainty, prevent abuse of authority, and provide legal protection to citizens and government officials. Whereas in the General Explanation it is mentioned, this law becomes the legal basis for the administration of government in an effort to improve*good governance*and as an effort to prevent the practice of corruption, collusion, and nepotism.

Intersection between the Corruption Act and the Government Administration Act also occurred in the application of the principle of *lex posteriori derogate legi priori*, namely in the decision of the Constitutional Court of the Republic of Indonesia No. 25 / PUU-XIV / 2016 which states that the element of words can be in the Anti-Corruption Act contrary to the 1945 Constitution, one of the test stones used is the AP Law. In consideration of the decision stated:

> "With the birth of the Government Administration Act, the state loss due to administrative errors is not an element of corruption. The state loss becomes an element of corruption if there is a state loss (except for bribery, gratuity, or extortion), the offender benefits unlawfully, the community is not served, and the act is a despicable act. Therefore, if it is related to Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, the application of the element of detrimental to the country's finances has shifted by emphasizing the consequences, not just acts. In other words, state loss is the implication of: 1) illegal acts that benefit oneself or others or a corporation as referred to in Article 2 paragraph (1) of the Anti-Corruption Law and 2) abuse of authority with the aim of benefiting oneself or others or a corporation as referred to in Article 3 of the Anti-Corruption Law".

Thus, after seeing the description of the intersection between the Corruption Act and the AP Law, it can be seen that the birth of the AP Law is a tangible manifestation of the government's role in providing legal protection, not only to individuals as in the PTUN Law but also to Government Officials. Administrative errors that cause state financial losses do not necessarily mean leading to criminal acts of corruption. It could be that state financial losses are a factor of administrative error, then with the testing of the abuse of authority by PTUN, it does not need to be directly brought to the court of corruption.

The government is clinging to an active / sturen power. Then to guarantee the authority of this government, the Government Officials are bound by their rights and obligations. The obligation of Government Officials to obey the laws, policies and AAUPB is mandatory, the consequences if not done are sanctions, both administrative, criminal and civil. Likewise with the existence of rights, Government Officials are given space to use their authority in making decisions and / or actions. If a Government Official believes in the authority he has exercised, that authority cannot just be blamed without going through a determined legal process.

According to Supandi, based on the principle of legal presumption (*prae sumptio iustae causa*) a state administrative decision (author: and / or action) must be considered legally valid until a court decision states otherwise. The application of this principle is intended so that the tasks of government, especially in the context of providing protection (*protection*), public services (*public service*), and realize welfare (*welfar*e) for the community can run well. This principle also means that Government Agencies and / or Officers must be considered correct before a court decision has permanent legal force. This implication can be traced from the series of supervision by APIP to the state administration court decision. Zudan Arif Fakrullah revealed, that the norms in the AP Law must be read together with Law No. 5 of 2014 concerning State Civil Apparatus (hereinafter referred to as the ASN Law) and Law No. 23 of 2014 concerning Regional Government (hereinafter referred to as the Local Government Law) in order to obtain a proper understanding of fair legal certainty and protection to government administrators.

Such legal protection can be seen in Article 3 letter f of the ASN Law that "guarantees legal protection in the performance of duties" as one of the principles of the ASN profession. The ASN Law only regulates government administrators in the form of civil servants and Government Employees with Work Agreements (PPPK), not yet providing legal protection to the President, Ministers, Governors, Regents, DPRD members. Then in the Regional Government Law it is mentioned about the form of coordination between APIP and law enforcers, namely in Article 384 and Article 385.

Article 384 Paragraph (1)

“Investigators notify the regional head before conducting an investigation of the state civil apparatus in the Regional agency suspected of violating the law in carrying out their duties”.

Article 385 Paragraph:

(1) The public may submit complaints regarding alleged irregularities committed by the state civil apparatus in regional institutions to the Government Internal Supervisory Apparatus and / or law enforcement officers.
(2) The Government's Internal Oversight Apparatus is required to conduct an examination of alleged irregularities complained of by the public as referred to in paragraph (1).
(3) Law enforcement officers conduct an examination of complaints submitted by the public as referred to in paragraph (1), after prior coordination with the Government Internal Supervisory Apparatus or non-ministerial government agencies in charge of supervision.
(4) If based on the results of the inspection referred to in paragraph (3) evidence of administrative irregularities is found, further proceedings are submitted to the Government Internal Supervisory Apparatus.

(5) If based on the results of the examination referred to in paragraph (3) evidence of a deviation that is criminal in nature is found, the further process is left to law enforcement officials in accordance with the provisions of the legislation.

Legal protection to ASN in the Regional Government Law is related to the coordination of examination of ASN conducted by Law Enforcement Officials / APH and APIP on complaints submitted by the public. Unlike the Government Administration Law which was born later than the two previous laws, this Government Administration Law covers all Government Agencies and / or Offices that carry out government functions within the scope of the executive, legislative, judiciary, and other institutions in accordance with the 1945 Constitution and / or Law. In addition, this AP Act also regulates the results of supervision by APIP and the authority of the Administrative Court in examining the abuse of authority by the Government Official.

As mentioned earlier, the concept of abuse of authority is often confused with the concept of arbitrary, illegal or policy. The same norm is also contained in the AP Law, the abuse of authority found with norms contrary to statutory regulations, arbitrary, and discretion. That is, if the Government Agency and / or Government submits an application for testing the abuse of authority it will not only have an impact in Article 3, but also Article 2 paragraph (1) of the Corruption Act. Therefore, if the Government Official's actions are known as in the essence of Article 2 paragraph (1) and Article 3 of the Corruption Act, then as stated by Nur Basuki Minarno and Ridwan, the indictments prepared by the Public Prosecutor can only be in the form of a single, namely Article 3.

According to Supandi, that Article 20 paragraph (1) of the AP Law has revoked the authority of the investigator in conducting an investigation in order to find out whether there was an abuse of authority carried out by a suspect as a government official which according to this matter should have been the object to be tested beforehand in the state administration court. In this case, the opinion can be right, but also can be incorrect. The inaccuracy can be seen from the basis of the request for testing the facultative abuse of authority granted to Government Agencies and / or Officials, [in] accordance with Article 21 paragraph (2) of the Government Administration Law which uses the element of words can not be mandatory or must. If the authority of an investigator is revoked, there will be no more investigative processes in the process of law enforcement on criminal acts of corruption related to Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law.

Therefore, it is more appropriate if law enforcement first respects the legal process undertaken by the Agency and / or Government Official to find out whether or not there is an abuse of authority through a state administrative court until a decision has permanent legal force. This is in addition to being in accordance with the principle of legal protection for government officials and ASNs embraced in the ASN Law, Regional Government Law, and Government Administration Law, also in line with the principle of *prae sumptio iustae causa*, in which a decision and / or action of a Government Official is protected by this principle the consequence of which is that a decision and / or action must be considered correct before being stated otherwise by a court decision with permanent legal force.

After the PTUN decision was in the form of abuse of authority, law enforcement officials had no difficulty in finding and formulating the abuse of authority by government officials. In this case, Guntur Hamzah's opinion can be seen, namely:

> "The role of PTUN in examining the presence / absence of abuse of authority is intended to facilitate the determination of elements of authority abuse as intended in Article 3 of Law No. 31 of 1999 concerning eradicating criminal acts of corruption. Thus, the panel of judges examining corruption in turn is more focused on the elements of corruption itself. In other words, after the enactment of the Law AP, investigating or prosecuting

> corruption will not be difficult to translate understanding of the term misuse of authority related to the prosecution and evidence of corruption by state officials, other civil servants, or law enforcement"

Soimportant guarantee of legal protection regulated in the Government Administrative Law, does not mean that government officials can use the Government Administration Act as a shield in dealing with criminal proceedings or pro justitia as the cases mentioned earlier. In addition, there are also those who use the a quo Law as the basis for conducting pretrial, namely RH Ilham Arief Sirajuddin (former Mayor of Makassar) as the Petitioner and the KPK as the Respondent in the South Jakarta District Court in accordance with Case No.32 / Pid.Prap / 2015 / PN. Jkt. Cell May 12, 2015. The petition was accepted by the case examiner judge, but by the KPK the decision was not followed up so that a further pretrial was conducted with Case No. 55 / Pid.Pra / 2015 / PN.Jkt.Sel dated 9 July 2015, the results of the second pretrial ruling were rejected by the case review judge.

After the enactment of the AP Law it can be said that this law is a legal umbrella for Government Officials in carrying out government actions, both decisions and actions. But for law enforcement officials this law is actually considered the opposite because to realize the testing of abuse of authority requires a series of administrative steps that can be said to require time and hinder the process of law enforcement. Therefore, the right step is to return to the purpose of the birth of the law itself. The Government Administration Law includes the ASN Law and the Regional Government Law, one of the objectives is to provide protection to ASN and Government Officials to avoid corrupt acts. This Government Administration Act not only regulates the protection from the abuse of authority resulting from authority based on applicable laws but also abuse of authority due to the discretion.

Many officials are afraid to spend the budget because of fears of a criminal act (corruption), even though there is not necessarily an intention to commit a criminal act of corruption, especially not to a discretion that imposes a budget. Like the research conducted by Dian Puji N. Simatupang, that as many as 70% (seventy percent) of legal cases that occur concerning public policy are actually dwaling. Mistaken, this could be: wrong about the intention of the regulators; wrong about the rights of other persons or legal entities; wrong about the meaning of a provision; and mistaken on your own authority. Therefore, based on theprinciple, *ultimum remidium* a criminal should be put as a last resort or as a principle of subsidiarity. Thisprinciple *ultimum remidium* in criminal law has become a universal principle. Eddy OS Hiariej mentions criminal law as the ultimate weapon or last resort used to resolve legal issues, while Frank Von Lizt calls criminal law a substitute for other legal domains.

Criminal law can be applied as *primum remidium* with several conditions. According to HG de Bunt as quoted by Romli Atmasasmita, the criminal law requirements as *primum remidium* are: very large victims; the recidivist defendant; and losses cannot be recovered. In this case Muladi added that placing criminal sanctions as primum remedium must be done carefully and selectively taking into account the objective conditions relating to the offender, the public impression of the offenses and sentencing destination device you want to target. The application of the AP Law facilities as *primum remidum is* also contained in Presidential Instruction No. RI. 1 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects. In the sixth instruction addressed to the Indonesian Attorney General's Office and the Indonesian National Police, it contains:

a. Prioritize the government administration process in accordance with Law No. 30 of 2014 concerning Government Administration before investigating public reports relating to the abuse of authority in the implementation of national strategic projects;
b. Forwarding / submitting community reports received by the Indonesian Attorney General's Office or the Indonesian National Police regarding abuse of authority in the implementation of the National Strategic Project to the heads of ministries / institutions or Regional Governments for

examination and follow-up to the completion of community reports, including in the event that an examination is needed by the Apparatus Government Internal Oversight.

Conclusion

The authority of the Administrative Court in testing the abuse of authority has implications in the process of law enforcement on criminal acts of corruption. In enforcing criminal acts of corruption, superiors of Government Officials, APIP, and Law Enforcement Officials (APH) must coordinate with each other in carrying out supervisory and law enforcement tasks to government officials so that no case "race" occurs. If the decision of the PTUN states that there is no element of abuse of authority, the Government Official cannot be prosecuted either administratively, civilly or criminally. Conversely, if the PTUN ruling states that there is an element of abuse of authority, then the Government Official must recover the state financial losses, and the normative refund of the state financial loss cannot guarantee that the Government Official will avoid the process of enforcing criminal acts of corruption.

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