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Nature of Accountability of Government Officials in the Act of Corruption Abuse of Authority

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Abstract: This study aims to provide a clear understanding of the Nature of the Responsibility of Government Officials in the Act of Criminal Acts of Abuse and to be able to find out Crimes according to the Limit of Errors in Acting Abuse of Government Officials' Authority, as well as to provide an understanding of the Application of Criminal Acts as a Last Penalty (Ultimum Remedium) Against Acts Abuse of Authority of Government Officials. The research method used is included in the type of normative or doctrinal research that uses secondary data obtained from library materials in the form of primary legal materials, secondary legal materials and tertiary legal materials, to further through the logical classification process in accordance with the themes drawn from the purpose of this study.

Keywords: Government Officials, Criminal Acts of Abuse, Last Penalty

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I. INTRODUCTION

One of the acts that can be considered as an act of Corruption is the Abuse of the Authority of Government Officials. Government Officials are prohibited from abusing authority, because this can lead to acts of corruption. Related to this, Government Officials must be extra careful in using authority in their positions, because the use of that authority might be judged as an act of abuse of authority.

As a state of law, law enforcement should not be influenced by opinions and reports, but must still refer to law enforcement in accordance with applicable laws and regulations, because it does not rule out someone who has been suspected, suspected or even convicted of a criminal act of corruption , apparently not doing that.

Each Government Official in carrying out his duties is required to always base his decisions and actions on an applicable law, because the purpose of using the authority of a Government Official is actually in the context of public service and fulfillment of community rights.

Criminalizing any use of authority deemed to be an abuse of the authority of a government official is very open to occur, especially in connection with the provisions in Article 3 of Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning Eradication of Corruption (Corruption Act) which seemed to place the criminal law as the only one authorized to provide an interpretation of the element of "abuse of authority", even though until now the criminal law does not limit the element of "abuse of authority", resulting in inconsistencies in measuring and determining whether or not an abuse of the authority of government officials occurs.

The Government Administration Act in Article 17 stipulates that Government Officials are prohibited from abusing authority. The Government Administration Act categorizes the forms of abuse of authority, namely a) Exceeding authority, if decisions and / or actions taken exceed the term of office or the time limit for the exercise of authority, exceed the limits of the area in which the authority applies and / or conflict with the provisions of the legislation b) Mixing the authority , if the decision and / or action taken outside the scope of the field or material of the authority granted and / or contrary to the purpose of the authority granted c) Acting arbitrarily, if the decision and / or action taken without a basis of authority is contrary to the decision of the court of competent permanent law.

II. STATEMENT OF THE PROBLEM

1. What Is the Nature of Accountability of Government Officials in the Act of Corruption Abuse of Authority?
2. How does Criminal Procedure Fit the Limits of Errors in the Abuse of the Authority of Government Officials Responsible as Corruption?

3. How is Criminal Law as the Last Penalty (Ultimum Remedium) Against the Abuse of the Authority of Government Officials?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Rule of Law Theory

State power (Dutch: machtslaat): a state that aims to preserve and maintain power solely. Gumplowics, among others, teaches that the country is none other than "Eine Organization der Herrsdifl ciner Minoritar uber eine Majotaritat (Organization of the power of small groups over large groups). In his opinion, the law is based on obedience of the weak to the strong.[1]

Mutiara in her book General Science, as quoted by Abdul Mukhie Fadjar. provide the following definition:

"The rule of law is a state whose structure is regulated properly in law so that all powers of the instruments of government are based on law. The people must not act individually according to all that is against the law. The rule of law is a country ruled not by people, but by law (state the not governed by men, but by laws). Therefore, in the rule of law, the rights of the people are fully guaranteed by the state and against the state, on the contrary by submitting and obeying all government regulations and state laws."[2]

The ideas, ideals, or ideas of the rule of law, aside from being related to the concept of rechtsstaat and the rule of law, also relate to the concept of nomocracy which comes from the words of nomos and cratos. The words of nomocracy can be compared with demos and cratos or cratients in democracy. Nomos means the norm, while cratos is power. What is imagined as a determining factor in the exercise of power is the norm or law.[3] Therefore, the term nomocracy is closely related to the idea of the rule of law or the principle of law as the highest authority.[4]

Utrecht distinguishes between formal rule of law or classical rule of law, and material rule of law or modern rule of law.[5]

Meanwhile, the ideals of the rule of law in Indonesia have become an inseparable part of the development of the idea of Indonesian statehood since independence. Although in the articles of the 1945 Constitution prior to the amendment, the idea of the rule of law was not explicitly formulated, but in the Explanation it was emphasized that Indonesia adheres to the idea of 'rechtsstaat', not 'machtsstaat'. In order to guarantee the rule of law, law enforcement, and legal objectives, the function of the judicial power or the judiciary plays an important role, especially the function of law enforcement and oversight functions. In law enforcement or law enforcement is often a legal discovery or legal formation.[6]

2. Theory of the Separation of Power

The theory of separation of powers was first scientifically popularized by John Locke, a British philosopher (1632-1704) in his book Two Treatises of Government, published in 1690. John Locke divides power in the State into three namely, power to form laws (legislative) , the power of implementing laws (executive), and the power of war and peace, making unions and alliances and all actions with all people and bodies abroad (federative).[7]

This thought was born as a form of reaction to absolutism by supporting the limitation of the king's political power. John Locke, argues that the reason why humans enter a "social contract" is to maintain life, freedom and the right to have. The three basic modes are seen as "property" (property). This property gives mankind political status.[8]

[1]Fadjar, Abdul Mukthie. (2016). *Sejarah, Elemen dan Tipe Negara Hukum*. Malang: Setara Press, pp.5 – 6.
[2]*Ibid.*, p. 6.
[3]Kansil, C. S. T. (2002). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka, p. 3.
[4]*Ibid*.
[5]Utrecht, Ernst. (1963). *Pengantar Hukum Administrasi Negara Indonesia*. Jakarta: Ichtiar Baru Van Hoeve.
[6]Mertokusumo, Sudikno, & Pitlo, Adriaan. (1993). *Bab-Bab tentang Penemuan Hukum*. Bandung: PT. Citra Aditya Bakti, p. 4.
[7]Suny, Ismail. (1982). *Pembagian Kekuasaan Negara*. Jakarta: Aksara Baru, pp. 1 – 2.
[8]Yusdiansyah, Efik. (2010). *Implikasi Keberadaan Mahkamah Konstitusi terhadap Pembentukan Hukum Nasional dalam Kerangka Negara Hukum*. Bandung: Lubuk Agung, p. 24.

3. Legal Liability Theory

Legal liability is legal liability for actions taken by a person or group that is against the law. According to Hans Kelsen, a concept related to the concept of legal obligation is the concept of legal responsibility.[9] That a person is legally responsible for certain actions or that he is responsible for a sanction if his actions contradict, usually, if sanctions are shown to the direct perpetrators, someone is responsible for their own actions.

In such cases the subject of legal liability is identical to the subject of legal liability. In general legal theory, it states that everyone, including the government, must be held accountable for each of his actions, either by mistake or without error.[10] From general legal theory, legal responsibilities arise in the form of criminal liability, civil liability, and administrative liability.[11]

4. Theory of Authority

Authority is the ability to take certain legal actions.[12] In the Law on Government Administration Article 1 General Provisions stated, Authority is the right owned by the Agency and / or Government Official or other state administrators to take decisions and / or actions in the administration of government.[13] Furthermore, in the same article, the Authority is referred to as the authority of the Agency and / or Government Official or other state administrator to act in the domain of public law.[14]

Related to this authority or authority is the principle of speciality (specialiteitsbeginsel), the principle that determines that the authority / authority is given to legal subjects for a specific purpose.[15] Deviating from the purpose of granting authority / authority is considered an abuse of authority / authority (detournement de pouvoir; het gebruiken van een bevoegdheid voor een ander doel).

5. Criminal Theory

Traditionally criminal theories can generally be divided as follows:

a. Absolute Theory or Retribution Theory.

According to this theory the crime was imposed solely because people committed a crime or a crime. Criminal is an absolute consequence that must exist as a retaliation or criminal offense committed by someone. There is criminal punishment because there is a violation of the law, this is a demand for justice. So the basis of justification of a crime lies in the existence or occurrence of the crime itself, regardless of the benefits that must be achieved.

b. Relative Theory or Purpose Theory.

According to the theory of relative a crime does not absolutely have to be followed by a crime. Penalty is not just for retaliation but has certain goals. Vengeance itself has no value but only as a means to protect the interests of society. Johan Andeneas as quoted by Muladi and Barda Nawawi Arief[16] This theory is also called the "theory of community protection" (the theory of social defense). Because this theory also promotes the existence of goals in punishment, it is often referred to as the goal theory (utilitarian theory).

c. Combined Theory

According to the combined theory that the criminal purpose in addition to repaying the wrongdoing of criminals is also intended to protect the public, by realizing order. This theory uses the two theories mentioned above (absolute theory and relative theory) as a basis for punishment, with the consideration that both theories have weaknesses, namely:

1) The weakness of absolute theory is that it creates injustice because in sentencing it is necessary to consider the available evidence and retaliation does not have to be the implementing state.

2) The weakness of relative theory is that it can lead to injustice because the perpetrators of minor crimes can be subject to severe law; community satisfaction is ignored if the aim is to improve society; and preventing crime by frightening is difficult to carry out.[17]

[9]Kelsen, Hans. (2006). *Teori Umum tentang Hukum dan Negara* (Raisul Muttaqien, Trans.). Bandung: Nusamedia & Nuansa, p. 95.

[10]Fuady, Munir. (2009). *Teori Negara Hukum Modern (Rechtstaat)*. Bandung: Refika Aditama.

[11]*Ibid*.

[12]Ilmar, Aminuddin. (2014). *Hukum Tata Pemerintahan*. Jakarta: Kencana Prenada Media Group, pp. 115 – 116.

[13]Pengertian Wewenang dalam Pasal 1 Undang-Undang Republik Indonesia Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan. Lembar Negara Republik Indonesia Tahun 2014 No. 292. Tambahan Lembar Negara No. 5601.

[14]*Ibid*.

[15]Ridwan, H. R. (2010). *Hukum Administrasi Negara*. Jakarta: PT. Raja Grafindo Persada, p. 382.

[16]Muladi, & Arief, Barda Nawawi. (2010). *Teori-Teori dan Kebijakan Pidana*. Bandung: PT. Alumni, p. 16.

[17]Koeswadji, Hermien Hadiati. (1995). *Perkembangan Macam-Macam Pidana dalam Rangka Pembangunan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti, pp. 11 – 12.

6. Criminal Liability Theory

Every modern legal system should, in various ways, make arrangements about how to account for those who have committed a crime. It is said in various ways because of different approaches regarding the way in which a legal system formulates criminal liability, having an influence both in its concept and its implementation. In both civil and common law countries, criminal liability is generally negatively formulated. This means, in Indonesian criminal law, like other civil law systems, the law actually formulates the conditions that can cause the maker not to be held accountable.[18]

Not all actions which the community considers to be despicable, are determined as criminal acts[19] is a logical consequence of that view. That is, there are actions that even though the community is considered despicable, but are not a criminal offense. According to Harkristuti harkrisnowo, "in this case, there may be a number of behaviors that are considered" not good "or" even bad "in the community, but because the level of threat to the community is considered not too large, then the behavior is not formulated as a criminal act."[20] On the contrary, once an act is determined as a criminal offense, the law views these acts as despicable. The law even expects the moral system to follow it. That is, the community is directed also to denounce the act. Thus, the reproach that exists in actual criminal acts is more on juridical reproach, it is hoped that someday it will get a place as a moral reproach.[21]

7. Theories of the Separation of Criminal Acts and Criminal Liability.

Theories that separate criminal offenses from criminal liability. This theory stems from the view that, the formation of criminal acts is only an act. Basically a criminal act is an act or series of actions to which criminal sanctions are attached. Thus, judging by the term, only the nature of the act includes a crime. Whereas the characteristics of the person who commits the crime become part of this problem, namely criminal liability.

The rule of law regarding criminal acts has a different structure to the rules regarding how they react to those who break them. That is, enforcement of these obligations requires an application program called the criminal liability system. Rules regarding criminal liability are not standards of conduct that must be obeyed by the community, but regulations on how to treat those who violate these obligations. In this connection, error is a determining factor for criminal liability. Criminal liability can only occur before a person has committed a crime. Moeljatnom said, "a person cannot be held accountable (convicted) if he does not commit a crime". [22]Thus, criminal liability depends first of all on the commission of a crime. Criminal liability will only occur if a person has previously committed a crime.

8. Legal Interpretation Theory

According to Achmad Ali, there are two theories of legal discovery that can be carried out by judges in judicial practice, namely through the method of interpretation or interpretation and through the method of construction.[23] The same thing was stated by J.J.H. Brugink as quoted by Acmad Rifai from a book by Philipus M. Hadjon and Tatiek Sri Djamiati, that the method of legal discovery adopted today includes the method of interpretation and methods of legal construction or reasoning.

The legal construction method then consists of a-contrario analogy and its spiegelbeeld, plus a third form of legal refinement (rechtsvrvijning).[24] Quoting Jazim Hamidi, Ahmad Rifai explained that the method of interpretation is carried out when in dealing with a legal problem, the regulations are already there but it is not clear because of the dual meaning factors, vague norms, conflicts between legal norms and other forms that cause uncertainty.[25]

Jimly Asshiddiqie outlines nine theories of legal interpretation, namely, 1). Letterlijk or literal interpretation theory, namely interpretation that emphasizes the meaning or meaning of the written words. 2). Grammatical interpretation theory or language interpretation, namely interpretation that emphasizes the meaning of the text in which the rule of law is stated. 3). Historical interpretation theory, namely interpretation which includes two meanings: (a) historical interpretation of the formulation of legislation; (b) interpretation which

[18]Farid, A. Zainal Abidin. (1983). *Hukum Pidana 1*. Jakarta: Sinar Grafika, p. 260.

[19]Saleh, Roeslan. (2003). *Perbuatan Pidana dan Pertanggungjawaban Pidana: Dua pengertian Dasar dalam Hukum Pidana*. Jakarta: Aksara Baru, p. 13.

[20]Harkrisnowo, Harkristuti. (2001). Tindak Pidana Kesusilaan dalam Perspektif Kitab Undang-Undang Hukum Pidana. In *Pidana Islam di Indonesia: Peluang, Prospek dan Tantangan*. Jakarta: Pustaka Firdaus, p. 180.

[21]Huda, Chairul. (2006). *Dari Tiada Pidana tanpa Kesalahan Menuju kepada Tiada Pertanggungjawaban Pidana tanpa Kesalahan: Tinjauan Kritis terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. Jakarta: Kencana Prenada Media Group, p. 67.

[22]Moeljatno. (2003). *Asas-Asas Hukum Pidana*. Jakarta: PT. Bina Aksara, p. 155.

[23]Ali, Achmad. (2008). *Menguak Tabir Hukum* (2 ed.). Bogor: Ghalia Indonesia, p. 121.

[24]Philipus M.Hadjon & Tatiek Sri Djatmiati inRivai, Ahmad. (2010). *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*. Jakarta: Sinar Grafika, p. 59.

[25]*Ibid*., p. 59 – 60.

focuses on the historical background of the formulation of the manuscript. 4). Sociological interpretation theory, that is interpretation based on social context when the text being interpreted is formulated. This is driven by the awareness that events that occur in society often have an influence on legislators when formulating laws. 5). Theory of interpretation of socio-historical law that is, interpretation that focuses on the historical context of society that influences the formulation of legal texts. 6). Philosophical interpretation theory, namely, interpretation with a focus on philosophical aspects. 7). Teleological interpretation theory, namely interpretation that focuses on decomposition or formulation of legal norms according to the purpose of its scope, so that the emphasis on interpretation lies in the fact that the legal norms contained in the purpose or principle of the law affect the interpretation. 8). Holistic interpretation theory, namely interpretation that connects a text with the overall context of the soul of the text. 9). Holistic thematic-systematic holistic interpretation theory (what is the theme of the formulated articles, or how to understand the articles systematically according to the grouping of the formulation).[26]

B. Abuse of Authority

According to Philipus M. Hadjon, in measuring whether there has been an abuse of authority, it must be proven factually that officials have used their authority for other purposes. The abuse of authority is not due to negligence. Abuse of authority is carried out consciously by diverting the purpose that has been given to that authority. Transfer of goals is based on personal interest, both for his own interests or for others.[27]

Abuse of authority is only possible by those who obtain authority on the basis of attribution and delegation. In the case of mandates, those who might abuse their authority are mandans (assigners) and not mandates (executors of tasks). Those who are given and those who abuse their authority are those who are burdened with legal responsibilities. This is in line with the legal principle "geen bevoegdheid zonder verantwoordelijkheid and geen verantwordelijkheid zonder verantwoording" (there is no authority without accountability and no liability without liability). The executor of the task (mandataris) is not clung to authority, because it is not burdened with legal responsibility.

C. Government Official

C.F.Strong defines government in the broadest sense as a whole state organization with all the state apparatus that has legislative, executive and judicial functions.[28] In other words, a country with all its tools is an understanding of government in the broadest sense. While the notion of governance in the narrow sense, only refers to one function, namely the executive function. Based on Strong's opinion, the understanding of state officials will refer to the notion of government in a broad sense. While the definition of government officials will refer to the definition of government in the narrow sense, or officials who are within the government environment, namely the executive branch of power.

Bagir Manan categorizes 3 (three) types of state institutions based on their functions, namely:[29]

1. State institutions that carry out state functions directly or act for and on behalf of the state, such as the Presidential Institution, the Parliament, and the Institution of Judicial Power. Institutions that carry out this function are called state equipment.
2. State institutions that carry out the functions of state administration and do not act for and on behalf of the state. This means that this institution only carries out administrative tasks that are not constitutional in nature. Institutions that carry out this function are called administrative institutions.
3. Supporting State Institutions or supporting bodies that function to support the functions of state equipment. This institution is called an auxiliary organ / agency.

D. Corruption Crime

According to Baharuddin Lopa, the general understanding of corruption is a crime related to bribery and manipulation as well as other acts that are detrimental or can harm the country's finances or economy, harm the people's welfare and interests. The law on corruption eradication (Law 31/1999), provides an understanding of the crime of corruption as "an act of enriching oneself or another person by violating the law which can harm the country's finances or the country's economy" or "the act of abusing authority, opportunity or means available to him because of his position or position with the aim of benefiting himself or others and can be

[26]Asshiddiqie, Jimly. (1998). *Teori dan Aliran Penafsiran Hukum Tata Negara*. Jakarta: Ind-Hill Co., pp. 17 – 18.

[27]Hadjon, P. M., Lotulung, P. E., Marzuki, M. L., Djatmiati, T. S., & Wairocana, I. G. N. (2010). *Hukum Administrasi dan Good Governance*. Jakarta: Penerbit Universitas Trisakti, p. 26.

[28]Strong, C. F. (2004). *Konstitusi-Konstitusi Politik Modern: Kajian Tentang Sejarah dan Bentuk-Bentuk Konstitusi Dunia* (SPA Teamwork, Trans.). Bandung: Nuansa dan Nusamedia, p.16.

[29]Manan, Bagir. (2004). *Teori dan Politik Konstitusi*. Yogyakarta: UII Press.

detrimental to the country's finances or the country's economy "[30] Included in the definition of acts of corruption is bribery of government officials or employees.

E. Legal Against Nature

According to Indrianto Seno Adji, the formal definition of the nature of violating the law is that if all core parts of the offense have been fulfilled or can be proven, the act itself is against the law. This formal view arises because it is based on the assumption that law is Law, as adopted by Simons.[31]Conversely, the meaning of violating material law, which is not an act that is contrary to the law, but also an act that is contrary to propriety, the norm in the community is seen as an act against the law. In this case, especially concerning the recognition of the negative function of materially unlawful acts was also raised by Vos and Hulsman, followed by Jonkers and Langemeyer and by Hazewinkel Suringa and Remmelink. Which states, not all actions that are in accordance with the prohibition of the law are illegal.

F. Legal Against Criminal Law

The nature of violating the law is one element of a criminal offense, in addition to the element of acts and consequences as well as the element of criminal threat. Every criminal act is always considered to have an unlawful nature unless there is a justification reason, that is, a reason that removes or eliminates the nature of opposing the legal action of an act. The unlawful nature which is also called rechtwidrig, unrecht, wederechtelijk or onrectmatige daad as one of the elements of a criminal act is an objective assessment of an act and not against the creator or perpetrator of the act.[32] The position of unlawful nature as an element of criminal act is so important, so that it says the main concern of criminal law is acts that are against the law only, because these actions are prohibited and threatened with crime. According to Langemeyer, to prohibit actions that are not against the law, which are not considered wrong, certainly does not make sense.[33] The problem that then arises regarding the measurement of erroneous or improper nature of the nature of unlawful or not an action.

G. Error Concepts

The basis for mistakes must be sought in the psychic of the person who is doing the act himself by investigating how his inner connection with what has been done.[34] Based on Bambang Poernomo's opinion, it can be seen that for a mistake there must be a certain psychic or mental state, and there must be a certain relationship between the mental state and the actions carried out so as to cause a reproach, which in turn will determine whether or not someone can be held responsible criminal.

H. Criminalization as the Last Sanction (Ultimum Remedium)

The difference between criminal law and other fields of law is the existence of criminal law sanctions which constitute the deliberate threat of suffering committed against crimes with victims and crimes without victims. The introduction of criminal sanctions in the form of suffering is what makes criminal law used as a last resort (ultimum remedium) to improve human behavior, especially perpetrators of crimes (criminals), as well as providing psychological pressure so that others do not commit crimes.[35] According to Sudikno Mertokusumo in his book Discovery of Law An introduction, ultimum remedium is one of the principles contained in Indonesian criminal law, which says criminal law should be used as the last tool in law enforcement.[36]

The punishment should be a last resort (ultimum remedium). Indeed, there are objections to every criminal threat. Every healthy-minded person will understand this without further explanation. This does not mean that criminal threats will be eliminated, but it must always consider the advantages and disadvantages of criminal threats really being an effort to heal and must take care not to make the disease worse.[37]

I. Enforcement of Government Administration Laws

The tasks of government are increasingly complex, both regarding the nature of the work, the type of work and the people who carry it out. The administrators of the state administration carry out their duties and authorities with unequal standards so that there are often disputes and overlapping authorities between them.

The legal relationship between the administrators of the state and the public needs to be strictly regulated so that each party knows the rights and obligations of each in interacting between themselves. There is a need to set

[30]Lopa, Baharuddin. (2002). *Kejahatan Korupsi dan Penegakan Hukum*. Jakarta: Kompas, p. 6.

[31]Adji, Indriyanto Seno. (2005). "Overheidsbeleid" dan Asas "Materiele Wederrechtelijkheid" dalam Perspektif Tindak Pidana Korupsi di Indonesia. *Indonesian Journal of International Law, Universitas Indonesia, 2*(3), p. 565. doi: http://dx.doi.org/10.17304/ijil.vol2.3.98

[32]Sudarto. (1983). *Hukum Pidana dan Perkembangan Masyarakat, Kajian terhadap Pembaharuan Hukum Pidana*. Bandung: Sinar Baru, p. 67.

[33]Moeljatno. (2003).*Op. Cit*., p.130.

[34]Poernomo, Bambang. (1985). *Asas-Asas Hukum Pidana*. Jakarta: Ghalia Indonesia, p. 145.

[35]Farid, A. Zainal Abidin. (1987). *Asas-Asas Hukum Pidana Bagian Pertama*. Bandung: PT. Alumni, p.16.

[36]Mertokusumo, Sudikno. (2006). *Penemuan Hukum Sebuah Pengantar*. Yogyakarta: Liberty, p. 7.

[37]Machmud, Syahrul. (2012). *Problematika Penerapan Delik Formal dalam Perspektif Penegakan Hukum Pidana Lingkungan di Indonesia: Fungsionalisasi Asas Ultimum Remedium sebagai Pengganti Asas Subsidiaritas*. Bandung: CV. Mandar Maju, p. 264.

minimum service standards in the daily administration of the country and the need to provide legal protection to the public as users of the services provided by the executors of the state administration.

IV. DISCUSSION

A. Nature of Accountability of Government Officials in the Act of Corruption Abuse of Authority

1. Accountability of Government Officials in the Act of Abuse of Authority

According to Indrianto Seno Adji, the issue of misuse of authority and corruption is not really about understanding policies, but rather about the relationship between authority and bribery. The authority of public officials relating to policies, both binding authority and free authority does not become the realm of criminal law so that recent corruption cases often occur in Indonesia relating to alleged abuse of authority and acts against the law give the impression of a "policy criminalization ".[38]

According to Indra Perwira, in his expert statement at the Constitutional Court, that in the teachings of Administrative Law or State Administrative Law the notion of "abuse of authority" is often distinguished from "acts against the law by the authorities" (onrechtsmatig overheidsdaat), but according to the development of teachings against the law, there are experts who include de pouvoir detournement as a form of onrechtmatig overheidsdaat. The difference between unlawful acts by the authorities and the abuse of authority is that the unlawful acts by the authorities have an element of error (deliberate or negligent) and there is an element of loss for the other party (person or legal entity). While the abuse of authority may contain an element of error or not, and may result in losses for other parties, there may also be no losses for other parties but losses for the administrative body itself or state losses.[39]

In connection with the issue of authority or position and position of an accused accused of committing an Act of Corruption of Abuse of Authority, according to the Decision of the Supreme Court Number: 572K / Pid / 2003, which in legal consideration states, it cannot be separated from legal considerations or legal aspects of the State Administration, which basically applies the principle of official responsibility which must be distinguished and separated from the principle of individual or individual or personal responsibility as applicable as a principle in criminal law.[40]

2. Criminal Acts Abusing the Authority of Government Officials in Article 3 of the Law on the Eradication of Corruption

The Acts of Corruption Abuse Authority of Government Officials that are the focus of this research are the Acts of Corruption Abuse of Authority, opportunities for office facilities or position as referred to in article 3 of the Corruption Eradication Act, the formulation of which is as follows:

"Anyone who aims to benefit himself or someone else or a corporation, misuses the authority, opportunity or means available to him because of a position or position that can be detrimental to the country's finances or the economy of the country, convicted with life imprisonment or with the shortest prison sentence. 1 (one) year and a maximum of 20 (twenty) years and or a fine of no less than Rp.50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000 (one billion rupiah)."

Criminal acts regulated in the provisions of this article constitute the main forms of corruption. The provisions of this article do not even mention the element "unlawfully", however, in principle, unlawfully in article 2 of the Law on the Eradication of Corruption Act sucked in the Elements of Article 3 of the Law on Eradication of Corruption, although it is not explicitly explained This can be seen from the conclusion of the criminal prosecution of corruption if it meets the elements in Article 2 and Article 3 of the Corruption Eradication Act, namely:

1) Against the law to enrich oneself, or others or corporations and can harm the country's finances is corruption.
2) Abusing authority to benefit oneself or another person or corporation and can harm the country's finances is corruption.

Based on this, an action can be said as corruption if it fulfills all the following elements:

[38]Adji, Indriyanto Seno. (2010). Tindak Pidana Korupsi – UNCAC 2003: Beberapa Catatan Perubahan dalam Perspektif. In *Pelatihan Hakim Angkatan IX* (25 April – 12 Mei ed.). Bogor: Pusdiklat Tekhnis Peradilan Badan Litbang Diklat Kumdil MA-RI, p. 5.

[39]Expert Statement from Indra Perwira in Putusan Mahkamah Konstitusi Republik Indonesia Nomor 25/PUU-XIV/2016 tentang Pengujian Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi sebagaimana diubah dengan Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

[40]Indroharto. (1993). *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara*. Jakarta: PT. Pustaka Sinar Harapan, pp.169 – 170.

a. Acts that enrich and / or benefit oneself, others or corporations that are carried out unlawfully.
b. These actions can cause losses to the country's finances or the country's economy.

For the formulation above, the understanding of unlawful boundaries in criminal acts of corruption must be interpreted as encompassing misconduct that must be prosecuted and convicted. While what is meant by harm is the same as being a loss or being reduced.

Accountability of position in a criminal act of corruption is carried out against acts of abuse of authority that intentionally or intentionally misuse the authority of the opportunity or means available to him because the position or position is detrimental to the country's finances or the country's economy solely to benefit oneself or another person or a corporation . Whereas negligence in using the authority of accountability for his position is sufficient by using state administrative law that can impose administrative sanctions and cancel the use of authority that has been wrongly committed by the position holder or the opportunity to make corrections to the authority that has been misused due to negligence.

3. Accountability of Government Officials in the Act of Abuse of Authority after the Issuance of the Government Administration Act

After the issuance of Law Number 30 Year 2014 concerning Government Administration, there is the granting of authority to the State Administrative Court to receive, examine, and decide whether or not there is an element of abuse of Authority performed by Government Officials. At first the competence of the State Administrative Court was limited to actions and / or concrete, individual and final decisions of administrative bodies and / or officials. The competence of the State Administrative Court for the abuse of new authority is given by the Government Administration Act. Between the two there are differences in the aspects of legal standing, events, and decisions. Therefore the Supreme Court issued Regulation No. 4 of 2015.

According to Indra Perwira, in his statement as an expert in the Constitutional Court, that the 10-day period in the Government Administration Act could be interpreted as the time period for the administration official to submit or not request a proof of an element of abuse of authority. This is important so as not to occur when 10 days have been exceeded and the administrative official has not returned the state financial losses, even though he has submitted an application to the administrative court, then he was investigated by investigators on the grounds of state losses.[41]

In the supervision of Government Officials, the Government Administration Act tries to make Government Internal Supervisory Apparatus (APIP) effective. In this case, APIP was given the authority to resolve abuse of authority. If it turns out that the results of this APIP supervision are considered detrimental to the Government Agency or Officer, then the next settlement can be done by submitting an application to the State Administrative Court as a court authorized to accept, examine, and decide whether or not there is an element of abuse of Authority performed by Government Officials, as regulated in Article 21 of Law No. 30. 2014 concerning Government Administration.

Then, if the State Administrative Court decides that there is an element of abuse of authority in the actions / decisions of Government Officials, the abuse of that authority has a legal certainty and can be followed up with a criminal process if later the abuse of the authority also meets the elements of the criminal. Whereas if the State Administrative Court decides that the actions / decisions of the Government Officials do not have an element of abuse of authority, then the use of the authority of the said Official also obtains legal certainty, so that they can no longer proceed criminally and / or be held criminally responsible, as long as it involves the use of authority that does not meet the element of abuse of authority in accordance with the ruling of the State Administrative Court.

B. Criminal According to the Limits of Errors in the Making of the Abuse of Authority of Government Officials that have been Responsible as a Criminal Act of Corruption

1. Mistakes as a Measure of Criminal Imposition

According to Chairul Huda, Errors as a measure of criminal imposition basically puts mistakes as the limits of criminal imposition. In this case, the maker's mistake is the limit by which appropriate punishment can be measured for him. Mistakes are thus placed as the most decisive measure (measure) in deciding the right form and length of criminal offense for a criminal offender.[42]

Determination of the form of a criminal is the choice of the severity of the crime to be imposed. As is known criminal forms are arranged hierarchically. Based on Article 10 and Article 69 of the Indonesian Criminal Code, crimes are arranged in the order of their severity. Crimes in the form of deprivation of life are more severe when compared to crimes in the form of deprivation of liberty. Criminal deprivation of independence is more severe than criminal fines. And so on. Not to mention the criminal deprivation of

[41]Expert Statement from Indra Perwira in Putusan Mahkamah Konstitusi Republik Indonesia Nomor 25/PUU-XIV/2016.

[42]Huda, Chairul. (2006).*Op. Cit*., pp.141 – 142.

independence is still divided into types that also show hierarchical. Prison is heavier than confinement for example. In addition, the criminal is more severe than the action.[43]

The choice of these possibilities is determined by how the judge views the mistakes of the maker. Therefore, if an offense is threatened with an alternative cumulative formulation of a criminal model, the upper limit is the cumulation of these crimes, while the lower limit is if only one form of criminal is handed down. That is, the judge chose to use the provisions of the law that allows using an alternative system. In addition, in the event that a crime is threatened with an alternative crime, the most severe form of crime is the upper limit, while the lower limit is the mildest form of crime. The cumulative criminal threat model is heavier than the alternative threat model.

The imposition of a crime cannot be done outside of the maximum and minimum limits, because it is contrary to the principle of legality. Even though the mistakes of the maker are always the main consideration when the judge uses his discretionary power to determine the length of the crime, it is not a single measure. Criminal imposition is a consequence of error. The judge's authority to determine crimes that are free to move between possible severity of penalties that can be imposed, is directed by the mistakes of the makers. When viewed from the theory of separation between criminal acts and criminal liability, criminal imposition can indeed only be done as far as the fault.[44]

2. Criminal Actions in Accordance with the Limits of Errors of Corruption Act Abuse of the Authority of Government Officials in Article 3 of the Law on Eradication of Corruption

Article 3 of the Law on the Eradication of Corruption Crimes regulates, every person with the purpose of self-benefit, another person or corporation, misusing the authority, opportunity or means available to him because of a position that can harm the state finances in life imprisonment or imprisonment for at least one years and a maximum of 20 years. The element of offense Article 3 of the Law on the Eradication of Corruption requires a "purpose" of the perpetrators.

In Article 3 of the Law on the Eradication of Corruption, the Element with the aim of benefiting oneself or another person or a corporation is an element of the mistakes of the criminal makers or in this case the perpetrators of the misuse of authority of government officials. Subjective elements are attached to the mind of the maker according to article this is the intention of the maker in carrying out the act of abusing authority that benefits oneself or another person or a corporation. The element of purpose (doel) does not differ in meaning from intent or error as intent (opzet als oogmerk) or intentionality in the narrow sense as in extortion, threats or fraud (368,369,378 of the Criminal Code).

Although the element of unlawfulness is not contained in the formulation of article 3 of the Law on the Eradication of Corruption. But in disguise / silence in the formulation there are actually elements against the law, both against objective law and against subjective law. against objective law lies and is attached to acts of abusing authority. The maker has no right to abuse the authority he has. While against subjective law, lies and adheres to the elements with the aim of benefiting oneself or another person or a corporation.

The discussion of mistakes as criminal liability can also be exemplified in the case of the Former President Director of PT. PLN, Sofyan Basir who was also acquitted by the Panel of Judges of the Corruption Crime (Tipikor) of the Central Jakarta District Court on 4 November 2019. The case of Sofyan Basir was begun in October 2015, the Director of PT. Samantaka Batubara sent a letter to PT. PLN to include the Riau PLTU 1 project in the General Plan for Electricity Supply (RUPTL) of PT. PLN. PT. Samantaka is a subsidiary of Black Gold Natural Resources Ltd. whose shares are owned by Johanes B Kotjo. Letters of PT. Samantaka to PT. PLN did not get a positive response. Furthermore Johanes Kotjo as a shareholder of Blackgold Natural Resources Ltd. seeking help so as to provide a way to coordinate with PT. PLN to get the Independent Power Producer (IPP) of the Riau Power Plant 1. Regarding this, several meetings took place between Kotjo, Eni (Chair of the House of Representatives Commission VII) and Sofyan Basir to discuss the project. In 2016, Sofyan Basir appointed Kotjo to work on the Riau PLTU project1. Sofyan Basir allegedly ordered one of the Directors of PT. PLN to connect with Eni and Kotjo and order one of the Directors of PT. PLN to monitor because there was a complaint from Kotjo about the length of the determination of the Riau 1 PLTU project (CNN Indonesia, 23 April 2019). In the case of PLTU Riau 1, Sofyan Basir was suspected of receiving a gift or a promise related to the project.[45]

The Corruption Judge Panel (Tipikor) of the Central Jakarta District Court stated Sofyan Basir was innocent in bribery cases related to the Riau PLTU project 1. In his decision, five members of the Panel of Judges agreed to acquitted Sofyan Basir of all charges and demands filed by the KPK Public Prosecutor. . The judges' basic considerations in deciding freely Sofyan Basir as explained in the legal considerations of the

[43]*Ibid*.
[44]*Ibid*.
[45]Novianti. (2019). Putusan Bebas Terkait Perkara Korupsi Sofyan Basir. *Majalah Info Singkat, Pusat Penelitian Badan Keahlian DPR RI, 11*(21), p. 2.

ruling namely, first, Sofyan Basir did not know about bribery in the Riau PLTU IPP project 1. The Panel of Judges also believes the testimony of convicted bribery IPP Riau 1 who mentioned Sofyan Basir, not as the organizer of the country who wants the Riau PLTU IPP 1. In addition, the conviction of convicted Johannes stated that Sofyan Basir was not on the list of state officials who received commitment fees from the project. Therefore, according to Judge Anwar, the suspicion of Sofyan Basir as someone who was considered to have known and facilitated the bribery of the Riau PLTU 1 IPP project was not proven. Secondly, Sofyan Basir was completely unaware of the plan for the distribution of fees carried out by Kotjo to Eni and other parties. According to the assembly, efforts to accelerate the Riau 1 PLTU project are purely in accordance with the rules and part of the national electricity program plan. Sofyan Basir is also believed to be moving without direction from Eni and Kotjo. Thus the defendant Sofyan Basir was not proven guilty of coercion as the first indictment. Based on this, Sofyan Basir was not proven to have committed a criminal act of assistance.[46]

From these cases, it is increasingly clear about the importance of proving mistakes in a criminal liability. No Crimes Without error is a fundamental principle in criminal law, which must be fulfilled so that a legal subject can be convicted of a crime. According to Sudarto, a person's conviction is not enough if that person has committed an act that is against the law or is against the law. So even though the makers meet the formulation of offenses in the law and are not justified (an objective breach of a penal provision), but it does not meet the requirements for imposing a criminal offense. (subjective guild). In other words, the person must be held accountable for his actions or if viewed from the point of view of the new action can be accountable to that person.[47]

Criminalization using Article 3 of the Corruption Eradication Act should be a punishment with the heaviest penalties and sanctions, it must even be more severe than criminalization using Article 2 of the Corruption Eradication Act, because Government Officials are entangled with Article 3 of the Eradication Act Criminal Act of Corruption, is a Government Official who intentionally and consequently is aware of committing the Corruption Act Abusing Authority, but unfortunately in the Corruption Eradication Act, the threat of a minimum sentence in article 3 of the Corruption Eradication Act (minimum sentence of one year and a fine of at least 50 million rupiah) is much lower than the minimum penalty of article 2 of the Corruption Eradication Act (a minimum sentence of 4 years and a minimum of 200 million rupiah).

C. Criminalization as the Last Penalty (Ultimum Remedium) Against the Abuse of the Authority of Government Officials.

Criminalization as the ultimate effort / sanction (ultimum remidium) is intended in addition to providing legal certainty, also so that the criminal legal process is quite long, in the end it can provide justice both to the victim and to the perpetrators themselves. In the development of the science of criminal law, placing efforts "ultimum remedium" as the final weapon if it must be used. The last weapon (ultimum remedium) here means, is the final effort from other efforts already taken. Both with administrative law, civil law and other efforts.

Criminal Law Not only can the deprivation of liberty, the confiscation of property, but it is also possible to carry out a deprivation of life as a legal sanction in the form of capital punishment, criminal law is the harshest law among other legal instruments that control people's behavior. In addition, it needs to be understood that the determination of criminal sanctions should be carried out in a measured and careful manner because it is related to the policy of eliminating independence from human rights legalized by law.

The Supreme Court also emphasized the obligation to prioritize administrative settlement prior to criminal settlement (ultimum remedium) and to respect the results of examinations of the Government Internal Supervisory Apparatus (APIP). This is referred to in article 2 of the Supreme Court Regulation number 4 of 2015 concerning guidelines for proceedings in evaluating the element of abuse of authority, which regulates:

"1) The State Administrative Court has the authority to accept, examine and decide upon an application for evaluation of whether or not there is an abuse of authority in the decisions and / or actions of government officials prior to the criminal process."[48]

With the enactment of Law Number 30 Year 2014 concerning Government Administration, law enforcement should not be arbitrary to give a label of corruption for acts that are clearly the domain of government administration. Where if there is an alleged abuse of authority by the government apparatus, then it must be tested first with Administrative Law before it can be tried as a Corruption Crime.

Since the enactment of the Government Administration Act, it has explicitly provided a limitation, that if an administrative act is based on bribery, threats, deception proven by illegal acquisition, then it will become the

[46]*Ibid*.,p. 3.

[47]Sudarto. (1983). *Op. Cit*., p. 85.

[48]Peraturan Mahkamah Agung Republik Indonesia Nomor 4 Tahun 2015 tentang Pedoman Beracara dalam Penilaian Unsur Penyalahgunaan Wewenang. Berita Negara Republik Indonesia No. 1267.

competence of general court or criminal court. But decision making that goes beyond the authority or abuse of authority on the basis of a misconception according to the Government Administration Act, then becomes the authority or competence of the State Administrative Court.

The birth of the Government Administration Act clearly and expressly wants to place the application of criminal sanctions against cases of abuse of the authority of government officials as a last resort (ultimum remedium), which is an effort that can be carried out after the entire assessment process regarding the misuse of authority of government officials using administrative law has been carried out, then when administrative sanctions are deemed insufficient and in fact there is a criminal element in the act of misusing the authority of government officials, then the case can be continued in the criminal process.

The affirmation of the Government Administrative Law which wants to place the application of criminal sanctions against cases of abuse of the authority of government officials as a last resort (ultimum remedium), also appears to be considered by the Constitutional Court Judges in the Constitutional Court ruling Number 25 / PUU-XIV / 2016, which states:

"[3.10.3] That after the Judgment of the Court Number 003 / PUU-IV / 2006, the legislators promulgated Law Number 30 of 2014 concerning Government Administration (Government Administration Law) which contains provisions including; Article 20 paragraph (4) concerning the return of state losses due to administrative errors that occur due to an element of abuse of authority by government officials; Article 21 concerning the absolute competence of the state administrative court to examine the presence or absence of alleged abuse of authority by a government official; Article 70 paragraph (3) concerning returning money to the state treasury because decisions that result in payment of state money are declared invalid; and Article 80 paragraph (4) regarding the granting of severe administrative sanctions to government officials for violating provisions that cause state losses. Thus based on these provisions, then with the Government Administration Law, administrative errors that result in state losses and the element of abuse of authority by government officials are not always subject to criminal acts of corruption. Likewise, the solution is not always by applying criminal law, it can even be said in the settlement of state losses, the Government Administration Act seems to want to emphasize that the application of criminal sanctions as a last resort (ultimum remedium)."[49]

V. INCLUSION

1. In essence, the Accountability of Government Officials in the Corruption Act Abuse of Authority is the Position Responsibility, but because the position cannot act on its own, so the position must be represented by the Official (Official), the office responsibility is the responsibility carried out by the office holder. The official is responsible for the use of his authority, which will be considered as an Act of Corruption Abuse of Authority if the use of that authority is carried out by exceeding the Authority and / or confusing authority and / or acting arbitrarily, with the aim of benefiting oneself or another person or a corporation at the expense of state finances or country registration.
2. Criminalization of Government Officials in Corruption Acts Abuse of Authority must be carried out in accordance with their mistakes, especially against the abuse of authority in violation of Article 3 of the Law on the Eradication of Corruption, the form of perpetrators' mistakes must be in the form of intent and not other forms of error, because the phrase " with the aim of "in Article 3 of the Law on the Eradication of Corruption Crimes is specifically to ensnare perpetrators with errors in the form of intent as intent.
3. After the issuance of Law Number 30 Year 2014 Regarding Government Administration, the Criminal Act of Government Officials suspected of abusing authority is placed as the Last Effort / Sanction (Ultimum Remedium), because they must prioritize the administrative legal settlement first, by granting authority to the State Administrative Court to receive, examine, and decide whether or not there is an element of abuse of Authority carried out by Government Officials.

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[49]Putusan Mahkamah Konstitusi Republik Indonesia Nomor 25/PUU-XIV/2016.

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