

Administrative Accountability of Public Officials for Criminal Acts of Corruption from the Perspective of State Administrative Law

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Abstract

Corruption is a social ill that undermines the people's welfare and hinders the implementation of national development. It also damages the image of a clean and dignified state apparatus, disregards morals, and damages the image and quality of people and the environment. Corruption in Indonesia has become widespread in all aspects of society. Corruption is considered to be widespread and is carried out by officials at various levels, including all levels of local government. Regulations related to corruption in Indonesia are contained in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In addition, the Criminal Code also outlines regulations related to corruption. Administrative sanctions for corrupt public officials include dishonorable dismissal from office, revocation of pension and allowance rights, and a ban on holding public office for a certain period. These sanctions can be supplemented by other sanctions such as fines, compensation, or publication in the mass media if the sanctions are severe.

Keywords: *Accountability, Administrative, Public Officials, Corruption.*

INTRODUCTION

Corruption is currently considered one of the most disturbing crimes affecting society. Many officials in authority, who should be representatives of the people, commit corruption, and these acts undoubtedly harm the state. Eradicating corruption should be a primary focus or priority on the government's agenda to prevent and address it seriously, thereby gaining public trust and ultimately restoring or recovering lost state funds. Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that Indonesia is a state based on law, not mere power. Indonesia is a democratic state governed by the Pancasila and the 1945 Constitution, which upholds human rights and guarantees equality before the law and government for all citizens, without exception.

The unity of the state is threatened by the latent danger of corruption. However, generally, the perpetrators of corruption who are suspects, defendants, or convicts today are citizens who lack anti-corruption education or are not educated in anti-corruption morals and ideology. Anti-

corruption ideology and anti-corruption behavior need to be socialized as an initial effort to eradicate corruption through education (Mansar, 2020).

Corruption is a social ill that undermines the welfare of the people and hinders the implementation of national development. It also damages the image of a clean and authoritative state apparatus, disregards morals, and damages the image and quality of people and the environment. Corruption in Indonesia has become widespread in all aspects of society. Corruption is considered to be widespread among officials at all levels, including all levels of local government.

The eradication of corruption is linked to the trend of corruption crimes in Indonesia, which continues to rise, ranking second in Asia and sixth in the world. There are institutions that regulate law enforcement and handle corruption, such as the Prosecutor's Office, which has the authority to investigate criminal acts in accordance with the laws that serve as the legal basis (Gultom & Sahari, 2023).

The administration of state governance gives rise to state rights and obligations that can be measured in monetary terms. These rights and obligations must be managed within a professional, transparent, and accountable state financial management system to ensure the prosperity of the people is realized through the State Budget (APBN) and the Regional Budget (APBD).

Article 6 paragraph (1) of Law Number 30 of 2014 concerning Government Administration states that Government Officials have the right to exercise their authority in making decisions and/or taking actions. Furthermore, as stipulated in Article 7 paragraph (1), Government Officials are obligated to administer government in accordance with statutory provisions, government policies, and the Regional Budgets (AUPB). In exercising these governmental authorities, Government Administrative Officials are prohibited from abusing their authority in establishing and/or implementing decisions and/or actions. This is affirmed in Article 8 paragraph (3).

The provisions of laws and regulations have regulated the authority of Government Officials in carrying out the function of managing state finances along with their rights and obligations as well as the prohibition on the abuse of authority in carrying out these functions, however, if abuse of authority that results in state financial losses still occurs, it is necessary to know to what extent the Government Official must be held responsible.

METHOD RESEARCH

The research method applied in this study is a normative research approach that emphasizes norms, regulations, or principles that should be followed. This research is prescriptive in nature, examining the relationship between legal principles, legal norms, legal rules, and individual behavior in the context of legal science. The approach used is library research. This library research was conducted by reviewing various relevant literature sources, both theoretical and practical, to analyze legal aspects, policies.

DISCUSSION

1. Regulations Related to Criminal Acts of Corruption

In general, corruption is a problem in almost every country in the world. In almost all countries, the word "corruption" itself essentially carries a negative connotation and is detrimental to the state and society. Corruption is the misappropriation or embezzlement (of state or company funds, etc.) for personal gain. Corruption is carried out systematically with a highly sophisticated modus operandi, making it difficult for law enforcement officials to detect. Corruption cases are difficult to uncover because the perpetrators use sophisticated equipment and are usually carried out by more than one person in a covert and organized manner. Therefore, this crime is often referred to as white-collar crime. Generally, perpetrators of corruption are educated and well-educated individuals, therefore, they can be held accountable for their actions before the criminal law (Siagian, Sahari, Nadirah, 2022).

The judiciary, as the spearhead in processing unlawful acts, in this case corruption, has a significant responsibility and mandate to provide a sense of justice to the public. Regarding corruption, a separate judicial institution, known as the Corruption Court, has been established, considering that corruption is an extraordinary crime. The Corruption Court is within the general judiciary. This Corruption Court is located in every provincial capital. The establishment of the Corruption Court is a clear demonstration of the government's commitment to eradicating corruption. However, in practice, the Corruption Court's performance in eradicating corruption has not met public expectations.

Corruption in Indonesia remains a trending topic and even a hot topic of discussion. The discussion of corruption is never-ending. The public is constantly bombarded with various news reports. Corruption, as a deviant phenomenon in social, cultural, societal, and state life, has been critically studied and analyzed by many scientists and philosophers..

From a legal perspective, the definition of corruption is clearly outlined in 13 articles of Law No. 31 of 1999, most recently amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (the Corruption Law). According to the Corruption Law, corruption is defined as follows:

"Any person who unlawfully commits an act of enriching themselves or another person or a corporation, thereby harming state finances or the national economy."

Article 3 of the Corruption Law further clarifies the definition of corruption, including preventing the abuse of authority that could harm state finances. This is stated in Article 3 of the Corruption Law: "Any person who, with the intention of benefiting themselves or another person or a corporation, abuses the authority, opportunity, or means available to them due to their position or position, thereby harming state finances or the national economy."

The term corruption is derived from the Latin word "corruptio." Nurdjana stated that the term corruption originates from the Latin word *corruptie* or *curruptus*. The word "corruptio" then derives from the Latin word *corrumpere* (an old Latin word). It was from this Latin that the term was adopted in European languages such as English corruption, French corruption, and Dutch *corruptie* (Nurdjana, 2010).

According to Lilik Mulyadi, corruption is literally defined as a criminal act such as embezzlement, accepting bribes, and so on. These acts give rise to negative conditions such as moral crimes based on dishonesty, the corrupted object, and other corrupt influences (Mulyadi,

2000). Former United States President Al. Gore, as quoted by Romli Atmasasmita, stated that corruption, collusion, and nepotism are the sources of disaster for a regime (Atmasasmita, 1999).

The Criminal Code itself does not limit these additional penalties to the three forms mentioned above. For example, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption ("Law 31/1999"), as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, also regulates additional penalties in addition to the three forms mentioned above, such as:

1. Confiscation of tangible or intangible movable property or immovable property used for or obtained from the criminal act of corruption, including the company owned by the convict where the criminal act of corruption was committed, as well as any replacement property;
2. Payment of compensation equal to the amount of the stolen assets;
3. Closure of all or part of the company for a maximum period of one year; and
4. Revocation of all or part of certain rights or the elimination of all or part of certain benefits that have been or may be granted by the Government to the convict.

There are new provisions in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption (the Corruption Law), namely:

1. Expanding the scope of corruption crimes to include not only individuals but also corporations;
2. Determining higher criminal penalties and introducing new policies regarding minimum and maximum criminal penalties;
3. To expedite the investigation, prosecution, and examination of corruption crimes, law enforcement officers, depending on the level of case handling, can directly request information about the financial situation of a suspect or defendant from the bank through the Governor of Bank Indonesia;
4. Implementing a system of reversal of the burden of proof (better known as the reverse burden of proof system) that is limited or balanced for certain acts. This is said to be limited or balanced because although the defendant is burdened with proving his innocence, the prosecutor must still prove the charges.
5. Provide opportunities for the public to participate in efforts to prevent and eradicate corruption;
6. Regulations are also made regarding the prevention and eradication of transnational or cross-border corruption, so that all forms of financial transfers or assets resulting from corruption between countries can be prevented optimally and effectively.

This law was amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was promulgated on November 21, 2001. The issue of corruption in Indonesia continues to require oversight in its enforcement to ensure that additional criminal sanctions are always imposed to recover state losses. The existence (function/existence) of criminal law in corruption crimes aims to protect the interests of society and the state from crimes/arbitrariness by authorities in

the use of power and potential state losses, thus hopefully achieving public welfare (Sumardiana, 2017).

Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (the Corruption Law) divides corruption crimes into two types: pure corruption crimes and impure corruption crimes, also known as other crimes related to corruption. Pure corruption is divided into seven types: state financial loss, bribery, embezzlement, extortion, fraud, conflict of interest in procurement, and gratuities (Rosikah & Listianingsih, 2016).

Article 241 of the Criminal Code regulates officials or civil servants who intentionally abuse their power by forcing someone to do, not do, or allow something in a corruption case. Abusing power or using power improperly means using power beyond the intent for which it was granted or held. As is known, power is the right and/or ability to determine the attitudes and actions of others based on statutory provisions. Abusing power occurs when the holder of power acts beyond their authority as granted by statutory regulations. Article 422 of the Criminal Code regulates officials or civil servants in corruption cases who use coercion to extort confessions or to obtain information. Article 429 paragraph (1) regulates officials or civil servants who exceed their authority or without heeding the methods determined in general regulations, force entry into a house or room or closed yard used by another person, or if they are there unlawfully, do not immediately leave at the request of the authorized person or on behalf of that person. Then in paragraph (2) the same legal subject is also threatened with the same criminal threat for carrying out the act of searching a house to examine or seize letters, books or other papers. Article 430 of the Criminal Code paragraph (1) concerns officials or civil servants who, by exceeding their authority, order to show them to them or seize letters, postcards, goods or packages, which are handed over to a public transportation agency or telegrams in the hands of telegram officials for public purposes. In Article 430 paragraph (2) the legal subject is the same but the act is to order a telephone employee or another person who is assigned to work on the telephone for public purposes, to provide information to him about a conversation carried out through that institution.

Law Number 1 of 2023 concerning the Criminal Code (the new Criminal Code) is likely to weaken the Indonesian police, particularly in prosecuting corrupt individuals. This is because the risk of criminal prosecution for corruption is lower in the Criminal Code compared to the PTPK Law. The addition of corruption crimes to the 2023 Criminal Code also raises concerns that corruption will no longer be considered an extraordinary crime. According to Article 2 (1) of the Corruption Law, perpetrators of the same crime are subject to a minimum of four years' imprisonment and a maximum of 20 years' imprisonment, with a minimum fine of IDR 200 million. Furthermore, Article 606 (2) states that civil servants or civil servants who accept gifts or promises deemed related to their position or position are subject to a maximum of four years' imprisonment.

Meanwhile, Articles 603-606 of the 2023 Criminal Code regulate corruption. The threat of the crime is actually lighter than that regulated in the Corruption Eradication Law Number 20 of 2001. For example, according to Article 603, perpetrators of corruption are threatened with life imprisonment or imprisonment for a minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and a maximum of category VI. According to

Article 11 of the Corruption Law, civil servants or civil servants who commit the same crime are threatened with a maximum imprisonment of five years. In the last article of Article 622 paragraph 4, it is written that the provisions of the articles of the Corruption Law that refer to it will be replaced with new articles of criminal law. The provisions include Article 2 (1), the reference is replaced with Article 603; The reference in Article 3 is replaced with Article 604. The reference in Article 5 is replaced with Article 605. The reference in Article 11 is replaced with Article 606 (2); and in Article 13 the mention of Article 606 (1) was replaced. Recording the crime of corruption in the Criminal Code, in addition to reducing the punishment, makes corruption a general crime, not a special crime. This is worrying, corruption is no longer an extraordinary crime.

2. Administrative Sanctions for Public Officials Who Commit Corruption

According to Philipus M. Hadjon, in administrative law, the term "authority" or "authority," which is often equated with the term "bevoegdheid," is used interchangeably. There is a slight difference between the terms "authority" or "authority" and "bevoegdheid." The difference lies in their legal character. The Dutch term "bevoegdheid" is used in both public and private law, while in Indonesia it is always used in public law. The influence component implies that the use of authority is intended to control the behavior of legal subjects. The legal basis component, which states that authority must have a demonstrable legal basis, and the legal conformity component, imply the existence of standards of authority, namely general standards (for all types of authority) and specific standards (for certain types of authority) (Hadjon, 2011).

According to Philipus M. Hadjon, the responsibility of officials in carrying out their functions is distinguished between official responsibility and personal responsibility. Official responsibility concerns the legality (legitimacy) of government actions. In administrative law, the issue of the legality of government actions relates to the approach to government power. Personal responsibility relates to the functionalist or behavioral approach in administrative law. Personal liability relates to maladministration in the use of authority and public service. The distinction between official and personal liability for governmental actions carries consequences related to criminal liability, civil liability, and state administrative liability (TUN). Criminal liability is personal liability. In relation to governmental actions, an official's personal liability relates to maladministration. Civil liability can become official liability related to unlawful acts by the authorities. Civil liability becomes personal liability when there is an element of maladministration. State administrative liability is essentially official liability.

Article 1, number 5 of Law Number 30 of 2014 concerning Government Administration states that authority is the right held by Government Agencies and/or Officials or other state administrators to make decisions and/or take actions in the administration of government. Furthermore, Article 1, number 6 states that governmental authority, hereinafter referred to as authority, is the power of Government Agencies and/or Officials or other state administrators to act within the realm of public law.

Supervision of the prohibition on abuse of authority by Government Officials is carried out by the government internal supervisory apparatus (APIP), which is regulated in Article 48 paragraph (2) of Government Regulation Number 60 of 2008 concerning the Government Internal Control System (SPIP), which states that APIP carries out internal supervision through: a. audit, b. review, c. evaluation, d. monitoring, and e. other supervisory activities. Furthermore,

Article 49 paragraph (1) states that the government internal supervisory apparatus as referred to in Article 48 paragraph (1) consists of: a. BPK; b. Inspectorate General or other names that functionally carry out internal supervision; c. Provincial Inspectorate; and d. Regency/City Inspectorate. Government Regulation Number 12 of 2017 concerning Guidance and Supervision of Regional Government Implementation states that APIP is the ministry's inspectorate general, non-ministerial government agency supervisory unit, provincial inspectorate, and regency/city inspectorate. It is further emphasized that the supervision of regional government administration carried out by the APIP is carried out based on the following principles: a. professionalism; b. independence; c. objectivity; d. non-overlapping between APIPs; and e. oriented towards improvement and early warning. Therefore, the follow-up to the results of guidance and supervision based on Article 25 paragraph (7), requires coordination between the APIP and law enforcement officials, carried out in accordance with their respective functions and authorities between: a. the Inspectorate General of the Ministry, the Inspectorate General of the relevant Ministry, the supervisory unit of non-ministerial government institutions, provincial inspectorates, and/or district/city inspectorates; and b. the police and/or prosecutors.

Furthermore, Article 25 paragraph (9) states that: If, based on the results of the coordination as referred to in paragraph (7), evidence of administrative irregularities is found, further processing is handed over to the APIP for follow-up in accordance with the provisions of this Government Regulation and the provisions of laws and regulations governing government administration. Meanwhile, the provisions of paragraph (10) state that if based on the results of coordination as referred to in paragraph (7) initial evidence is found of criminal irregularities, further processing will be handed over to law enforcement officials for follow-up in accordance with the provisions of statutory regulations.

Administrative sanctions for corrupt public officials include dishonorable dismissal from office, revocation of pension and allowance rights, and a ban on holding public office for a specified period. These sanctions may be supplemented by other sanctions such as fines, compensation, or publication in the mass media if the sanctions are severe. The following are some administrative sanctions for public officials who commit corruption:

1. Dismissal: Dishonorable dismissal from office.
2. Revocation of rights: Revocation of pension and allowance rights.
3. Prohibition: Prohibition from holding public office for a specified period.
4. Fines and compensation: Compulsory payment of money and/or compensation for state losses.
5. Publication: Permanent dismissal may be accompanied by publication in the mass media, especially if it is a severe sanction.

Imposition of sanctions: Administrative sanctions are imposed by authorized officials, such as a governor to a regent/mayor, a minister to a governor, or a president to a minister. If the authorized official does not impose sanctions, the official may be subject to sanctions by his/her superior.

Conclusion

Regulations related to corruption in Indonesia are contained in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption. In addition, the Criminal Code also outlines provisions related to corruption. Administrative sanctions for corrupt public officials include dishonorable dismissal from office, revocation of pension and allowance rights, and a ban on holding public office for a specified period. These sanctions may be supplemented by other sanctions such as fines, compensation, or publication in the mass media if the sanctions are severe.

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