International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 06-03-2019; Accepted: 09-04-2019
www.lawjournals.org
Volume 5; Issue 3; May 2019; Page No. 81-86

Abuse of power in the perspective of administrative law in Indonesia

Chatarina Muliana
Student of Legal Science Doctor Program, Faculty of Law of Airlangga University, Indonesia

Abstract
The State Administrative Court in examining the elements of abuse of power and analyzing the implications of eamining the elements of abuse of power by the Administrative Court on handling the corruption cases of abuse of power in order to determine whether the corruption and abuse of power and the examination of the elements of abuse of power by the Administrative Court can provide the legal certainty in handling corruption cases and legal protection for the government officials in the implementation of their authorities. In the various court decisions the concept of abuse of power is always related to misuse of authority in administrative concepts so that the Public Prosecutor and Judge do not prove the link of the purpose of abusing authority in their own favor. The differences in administrative law, abuse of power is associated with contradicting the General Principles of Good Governance (AAUPB) but not to self-benefiting. Likewise, the formulation of the offense element of self-enriching or self-benefiting is an alternative, that is oneself or another person or a corporation that aims to facilitate the disclosure of criminal acts of corruption as the extraordinary crimes which in fact create a legal uncertainty.The philosophy of authority of the State Administrative Court in examining the elements of abuse of power under the Government Administration Act is to prevent any attempts to criminalize the handling of corruption cases of abuse of power by the officials of law enforcement. The authority to examine the elements of abuse of power by the State Administrative Court in the Government Administration Act creates a legal uncertainty, and the regulatory provisions have not been able to provide the legal protection to the government officials in carrying out their duties, especially when conducting the discretion.

Keywords: power, authority, corruption, policy, public

Introduction

Indonesia is a state of law, and in realizing such a prosperous state, the implementation is done by the state administrators who are able to fully and responsibly carry out their duties and functions based on the principles of state administration such as the general principles of good government. Article 1 number 6 of Act No. 28 of 1999, concerning the Implementation of the State that is Free from Corruption, Collusion and Nepotism, describes that the General Principle of Good Governance is a principle that upholds the decency, propriety and legal norms to realize the clean State Administration and free from corruption, collusion and nepotism. Article 3 of Act Number 28 of 1999 states that the General principles of the state administration include: the Principles of Legal Certainty, of Orderly Organized State; of Public Interests, of Openness, of Proportionality, of Professionalism; and the Accountability.

The Government Administration based on the Academic Draft Bill Number 30 of 2014 describes that the purpose of establishing Act Number 30 of 2014 concerning State Administration is to regulate the protection of the people and the state administrators in carrying out their duties and authorities. The enactment of Act Number 30 of 2014 concerning the Government Administration was ratified in October 2014. It, however, has the potential to cause such polemics in the law enforcement processes, especially in handling the corruption cases, investigation, and prosecution related to the authority or power abuse as referred to Article 3 of the Act Number 31 of 1999 concerning the Act of Eradication of Corruption Crime. According to the provisions of Articles 17 up to 21 of the Act of State Administration, the abuse of power by the government officials results in the provisions of Article 3 of the Act of Eradication of Corruption Crime allegedly against government/state administrators/the civil servant.

In the practice of handling some cases, the application of Article 3 of the Law of Eradication of Corruption Crime is almost always referred to Article 2 paragraph (1) of the Act of Eradication of Corruption Crime and the indictment letters of the two articles are always indicted in the form of subsidiary charges. In proving the corruption cases by the Public Prosecutors, the definition of the "against the law" element in Article 2 paragraph (1) of the Act of Eradication of Corruption Crime related to the element of violating the law is an act against the law, while the notion of "abuse of power, position or means attached" in Article 3 of the Act of Eradication of Corruption Crime is defined as an act that contradicts the authority possessed by the defendant holding a public office/position. So far, it is understood that Article 3 of the Act of Eradication of Corruption Crime is applied to Defendants who hold public positions namely both Civil Servants and State Administrators while Article 2 paragraph (1) of the Act of Eradication of Corruption Crime is applied to defendants who do not have any public offices or positions. Based on the rationale above, it is necessary to carry out such a study about how the abuse of power in the perspective of administrative law and criminal law is. The examination of the presence or absence of an element of abuse of power resulting in the state financial losses as referred to Article 3 of the Act of Eradication of Corruption Crime is the authority of the Judge in the Corruption Court. On the other hand, based on the provisions of Article 21 paragraphs (1) and (2) of the Act of State Administration, it is also carried out by the State Administrative Court. The examination of abuse of

power carried out by the State Administrative Court based on the Act of Government Administration has the potential to cause such conflicts and can hinder the processes of handling corruption cases. It is because, as the author has already explained above, the law enforcement of corruption crime cannot be separated from the Act of State Administration, and it is the object of corruption related to the implementation of authority carried out by the state civil servants/administrators in the implementation of the duties of their positions.

Literature Review

Abuse of Power

According to (Prajudi Atmosudirdjo, 1983) [3], the government decisions and actions are not aimed at certain individuals, but they are always in the form of general rules, policies or principles. Article 1 number 5 of Act Number 30 of 2014 concerning the Act of Government Administration explains that what is meant by Authority is the rights owned by the Agencies and/or Government Officials or other state administrators to make decisions and / or actions in the administration of government. In any given authority to certain government officials it is implied some responsibilities of the officials concerned (geen bevoegdheis zonder verantwoordelikjkheid or there is no authority without any responbility) (Nur Basuki Minarno, 2009:75-76) [9] In the concept of Administrative Law, abuse of power includes, (Anoname, Pusat Penerangan Hukum/Legal Information Center) a). *Detournement de pouvoir* / *Exes de pouvoir* or exceed/beyond the limits of power; this principle provides a clue that government officials or state administrative tools cannot act on something that is not their authority or is the authority of another official or body. b) Abuse de droit or arbitrary.

Actions that are categorized as abuse of power are the actions that are done exceed the limits of their power or arbitrarily. Sjachran Basah defines the abuse of power or *"detournement de pouvoir"* as an act of an official not in accordance with but still within the environment of statutory provisions. (Sjachran Basah, 1985: 223) [4] In the Decision of the Supreme Court of the Republic of Indonesia. No.1340 K / Pid / 1992, dated February 17, 1992 ("Decision of the Supreme Court"), (Decision of the Supreme Court of the Republic of Indonesia, 1992) the abuse of power was discussed regarding the definition of *Detournement de pouvoir*. According to Prof. Jean Rivero and Prof. Waline, the notion of abuse of power in the State Administrative Act can be interpreted in 3 forms, and they are: (the Decision of the Supreme Court of the Republic of Indonesia, 1992) a) Abuse of power is to take such actions that are contrary to the public interests or for the personal or group benefits, or interests; b) Abuse of power in the sense that the actions of the officials are aimed at the public interests but deviate from the objectives of what the authority is; c) Abuse of power in the sense of misusing such procedures that should be used to achieve the certain goals but other procedures have been used to be implemented.

Based on the provisions of Article 53 of Act Number 9 of 2004 concerning Amendments to Act Number 5 of 1986 concerning State Administrative Courts stated in Act Number 9 of 2004 article 53 describe that (1) Persons or bodies of civil law who feel their interests are harmed by a State Administrative Decision may file a written claim to the competent court that demands that the disputed State Administrative Decision be declared null and void, with or without claims for compensation and / or rehabilitation. (2) (2) Reasons that can be used in the claim as referred to paragraph (1) are: a. State Administrative Decisions sued is contrary to the laws and regulations; b. State Administrative Decisions sued is contrary to the general principles of good governance.

The provision of Article 53 paragraph (2) of Act Number 9 of 2004 states that, in addition to the laws and regulations, the General Principles of Good Governance are the guidelines for state administrators or government officials in implementing their authorities. Crince Le Roy stated about the General Principles of Good Governance by carrying out the eleven principles (Patuan Sinaga, 2001: 86) [15], and they are: the Principle of legal certainty (*rechzekerheid beginsel*); the Principle of parity (*evenredigheid beginsel*); the Principle of equality in decision makers (*gelijheids beginsel*); the Principle of meticulous or thorough acts (*Zorgvuldigheids beginsel*); the Principle of Motivation (*motivering beginsel*); the Principle of not doing abuse of power; the Principle of fair play (*fair play beginsel*); the Principle of fulfillment of caused expectations (*principle van opgewekte verwachtingen*); the Principle of justice (*redelijkeheids beginsel*); the Principle of Nullifying the consequences of the canceled decisons; and the Principle of protection of the personal way of life (*Principle van beskerning van de persoonlijke levensfeer*). Furthermore, the eleven principles were modified by Koentjoro Purbopranoto in accordance with the Pancasila values and the spirit of the 1945 Constitution, and added two more principles: the Principle of Wisdom/Expediency (*sapientia*) and the Principle of organizing public services.

The task of State Administration, according to Lemaire, in a country with the aim to reach the people's welfare, Welfare State, (Bachsan Mustafa, 1990: 42) [10] the Government apparatus are strongly forbidden to act arbitrarily (Amrah Muslimin, 1985: 144) [11] Abuse of Power in the Concept of Provision of Corruption Crime based on Article 3 of Act Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Act Number 20 of 2001. The full statement of article 3 is as follows: that anyone who aims to benefit himself/ herself or another person or a corporation, misuse the authority, the opportunity or means available to him because of a position that can result in the detriments to the state finances or economy is punished.

Research Methods

This is such a type of normative research, and the normative approach was implemented for the theoretical things such as: principles, concepts, legal doctrine and the contents of the rule of law. While the empirical one was used for the application of legislation that occured in the judicial practice. The following approaches were used to answer the problems: a. Statute approach, b. conceptual approach, theories in books related to Corruption and Government Administration. The Legal Materials used in this study were: a. Primary materials. They were the data directly obtained from the sources which, in this case, were several court decisions on corruption crimes in the cases of corruption of abuse of power. b. Secondary materials. They were data in the form of the legal materials obtained from certain sources, such as documents and other literature/reading that are closely related to the discussion of this research.

The analysis was carried out by conducting a series of stages starting with an inventory and identification of the sources relevant to the legal materials (primary and secondary). The

next step was to systematize all the existing legal materials. The process of systematization was also applied to the principles of legal principles, theories, concepts, doctrines, and other reference materials. The series of stages were intended to facilitate the study of the research problems. These steps were expected to be able to provide some recommendations supporting the reconstruction of pretrial institutions in accordance with the principles of legal certainty and parity.

Results and Discussion

Abuse of Power Implicates Corruption

The term "breaking the law" (*onrechtmatigedaad*) is usually used in the realm of civil law, while "against the law" (*wederrechtelijkheid*) is used in the realm of criminal law. In criminal law, the element of "against the law" (*wederrechtelijkheid*) is limited by the principle of legality while "breaking the law" (*onrechtmatigedaad*) has a broader scope, limited to not only the "written law" but also "the unwritten law" or "the living law". In the Act of Eradication of Corruption Crime, the understanding of elements “against the law” include the formal laws and material laws. The delict core of Article 3 of Law of Eradication of Corruption Crime is "abuse of power". An indictment of crime that is associated with an element of "authority" or "position” cannot be separated from the legal aspects of the state administration that imposes the principle of position liability which must be separated from the principle of personal responsibility in criminal law.

The notion of "abuse of power" in criminal law (especially in criminal acts of corruption) does not have any explicit concept. Therefore, an extensive approach is highly needed to question whether there is harmony and disharmony between the same understanding in the criminal law, especially related to the civil and state administrative laws as other branches of law. The basis for examining the presence or absence of this abuse is the basic law (legality) as a written positive law underlying the presence or absence of the authority when issuing a decision. It means that the size or criterion of whether or not the element of "abuse of power" must rest on the legality regarding the tasks, positions, functions, organizational structure and work procedures.

The definition of abuse of power is also mentioned in the Decision of the Supreme Court Number 977 K/PID/2004. In this decision it is stated that the notion of "abuse of power" is not found explicily in the Criminal Law so that the Criminal Law can use the same notion or uderstanding and words contained or originating from other legal branches. The criminal law has the autonomy to provide such an understanding which is different from the one contained in other branches of law, but, if the Criminal Law does not determine, then the definition contained in other branches of law is used (*De Autonomie van bet Materiele Strafrecbt*). The teaching was accepted by the District Court of North Jakarta which was later confirmed by the Decision of the Supreme Court. It could be seen when there was a case of corruption that was known as the "Export Certificate" case. The Supreme Court of the Republic of Indonesia took over the notion of "abuse of pwer" stated in Article 53 paragraph (2) letter b of Act Number 5 of 1986 concerning the State Administrative Court that was having used the authority for other purposes rather than the intention of giving such authority or known as "*Detournement de pouvoir*".

The Decision of the Supreme Court of the Republic of Indonesia Number 572K/ PID/2003 states that if an indictment has been linked to a matter of authority or power and position as charged to the defendant, according to the Supreme Court, it is inseparable from the considerations of State Administrative Law, where basically the principle of position responsibility applies, which must be distinguished and separated from the principle of individual or personal responsibility as applicable as a principle that applies in criminal law.

Abuse of Power in the Perspective of Administrative Law

The Authority in the Black’S Law Dictionary is interpreted as Legal power; a right to command or to act; the right and power of the public to require lawfully issued orders in their scope of their public duties. (Henry Campbell Black, 1990, 133) [6] Mohammad Sahlan (2016, 271–293) [13] suggested that the term of authority was always associated with the "right and power to act or do something. This opinion is in accordance with the provisions of Article 1 number 5 of Act Number 30 of 2014 stating that: "Authority is the right held by the Agency and/ or Government Officials or other state administrators to make decisions and/or actions in the administration of government." Abuse of power was born by the doctrine of the State Administrative Law. The original term of abuse of power used by many national legal literatures and *dournournement de pouvoir* in English-language legal literature is absorbed and interpreted as a misuse of power abuse of power. In France, the government officials are declared to violate the principle of *détournement de pouvoir*, if in issuing a decision or carrying out an action, it is aimed at the personal interests of the official (including his family or colleagues), it is not for public interest or order. (John Bell, 1998 184) [5]

According to Ten Berge, the implication of the authority or power of government from the abuse of power is not only a binding authority (*gebonden bestuur*) but also a free authority (*vrij bestuur*, Freies Ermessen, discretionary power). Thus, free authority or power includes freedoms of policy and of judgment by the government agencies and/ or officials in acting and/or issuing such decisions. The extensive authority or power can have a negative impact so that a balancing institution is strongly needed to control, and it is a consequence of the separation of powers in the state institutions. Thus, there are checks and balances on government actions and/or decisions. The intended institution is a judicial institution. The concept of abuse of power is then used as a tool to examine in the judiciary.

Woordenboek's Verklarend Openbaar Bestuur formulates "abuse of power" as the use of authority not as it should be. In this case, the official is considered to violate the principle of speciality (principle of purpose) because the person concerned uses his authority for the purpose that deviates from the purpose given to that authority. (Philipus H Hadjon, 2012, 21-22) [7] This principle of speciality was once applied in Indonesian positive law, namely in Article 53 paragraph (2) letter b of Act Number 5 of 1986 concerning the Administrative Court with regard to the reasons for filing a lawsuit to the Administrative Court. In the explanation section, this provision is firmly stated as "abuse of power" although then it was deleted and replaced with the General Principles of Good Governance when changes were made to the intended law.

Juridically, abuse of power in the Government Administration Law is stated to occur when the "government

bodies and/or officials make decisions and/or take actions beyond the power, confuse the authority, and/or act arbitrarily." Government Agencies and/or Officials exceed the authority when decisions and/or actions are taken with a). beyond the term of office or the expiration date of authority; b). beyond the territory of the entry into force of authority; and/ or c). contrary to the statutory provisions.

Whereas the decisions and/or actions of the Government Agency and/or Officials are categorized as confusing authority if it is carried out outside the scope of the field or material authority given and/or contrary to the objectives of the authority granted. As a legal principle, abuse of power is part of the principle of public law (specifically State Administrative Law). In the State Administrative Law it is known as the principle of prohibition of abuse of power, which is one of the General Principles of Good Governance. Act Number 9 of 2004 about Amendment to Act Number 5 of 1986 concerning the State Administrative Courts has become the legal basis that the General Principles of Good Governance is a means of examining the government decisions and/or actions.

The development of the General Principles of Good Governance in the area of science was found through scientific discourse in an antagonistic view between Struycken and Krabbe which were both motivated by their hatred of the principle of legalism although there were differences in finding the basis for the importance of the presence of the General Principles of Good Governance. (SF. Marbun, 2001, 146) [8] Authority is power (rights) granted to public officials or the government to govern or act. In carrying out this authority, there is an obligation for public officials to comply with the rule of law. As stated (Artidjo Alkostar, 2009: 155 - 179) [2] that the emergence of corruption is inseparable from the uncontrolled power or abuse of power and, for that reason, there are limitations that the authority holder must adhere to.

According to Article 15 of Act Number 30 of 2014 the authority is limited by the period or grace period, the prevailing regional territory, and the scope of the field or authority material. Government Agencies and/or Officials who have already expired or the period of authority are not allowed to make any decisions and/or actions. Therefore, based on Article 17 of Act Number 30 of 2014, it is stated that the Government Agencies and/or Officials are prohibited from abusing their power. The prohibitions of abuse of power include: a) prohibition of exceeding authority; b) prohibition on confusing authority; and/or c) prohibition of acting arbitrarily.

In overseeing the officials of state administration in carrying out their authorities, the Apparatus of the Internal Government Supervisory was formed or estabblished. In this case, the Apparatus of the Internal Government Supervisory is given the authority to resolve the abuse of power. In addition to the settlement through the Internal Government Supervisory, the mechanism of it can be carried out by submitting an application to the State Administrative Court (Article 21 of Act No. 30 of 2014). If the occurance of abuse of power leads to a state loss, the state administrative officer must return the state's loss within 10 (ten) working days from the date of the decision and the issuance of the supervision results. Juridically, the existence of the decision of the Apparatus of the Internal Government Supervisory is legal and binding because it is made by the officials of the state administration. Likewise with the decision of the State Administrative Court, it is also legal and binding. Therefore, both the decisions of the Apparatus of the Internal Government Supervisory and of the State Administrative Court must be respected and obeyed. (Marojahan JS Panjaitan, 2-17: 165-166) [12]

Act Number 1 of 2004 concerning the State Treasury has also regulated the settlements of abuse of power which has resulted in the financial losses to the state. In Article 1 number 22 Act No. 1 of 2004 states that: State/Regional Losses are lack of money, securities, and goods that are real and certain in number as a result of acts against the law both intentionally and negligently. Furthermore, the settlement related to the state losses has been stipulated in the provisions of Article 59 of Act No. 1 of 2004 which states that any loss of state/region caused by an act of violating the law or negligence of a person must be immediately resolved in accordance with the applicable legislation. Article 62 also states that the imposition of state/regional compensation on the treasurers is determined by the Supreme Audit Agency / Audit Board of the Republic of Indonesia. Whereas in article 64 of Act No. 1 of 2004 it is also stated that: Treasurers, civil servants not treasurers, and other officials who have been determined to compensate the state/region can be subject to the administrative and/or criminal sanctions. The criminal decisions do not exempt from the demand for compensation. Regarding the deadline for the compensation payment in Article 65, it is stated that: "The obligation of the treasurer, civil servants not treasurers, or other officials to pay the compensation, and it expires if within 5 years of the loss known or within 8 years of the occurance of the loss, the prosecution for the compensation paymanet against the person concerned is not carried out."

The settlemen of the State loss is based on Act No. 1 of 2004 but it is different with Act No. 30 of 2014. According to Act No. 30 of 2014, a body is formed/established to resolve the loss of the state, and it is: the Apparatus of the Internal Government Supervisory. It has the task to investigate or examine the government officials who violate the provisions of Article 17 of Act No. 30 of 2014. If the results of the supervision of the Apparatus of the Internal Government Supervisory have some administrative errors as referred to in paragraph (2) letter b, the follow-up will be carried out in the form of some administrative improvements in accordance with the provisions of the legislation. Likewise, if the results of the Apparatus of the Internal Government Supervisory are in the form of administrative errors resulting in the state financial losses as referred to paragraph (2) letter c, a refund of state financial losses shall be carried out no later than 10 working days from the decision and issuance of the results of the supervision. The return/refund of the state losses as referred to paragraph (4) shall be borne by the Government Agency, if the administrative error as referred to paragraph (2) letter c occurs not because of an element of abuse of power. The refund of the state loss as referred to paragraph (4) shall be borne by the Government Official, if the administrative error as referred to in paragraph (2) letter c occurs due to an element of abuse of power.

The process of refunding the state losses according to Act No. 30 of 2014 as mentioned above becomes contrary to the provisions of Article 4 of Act No. 31 of 1999 concerning the Eradication of Corruption Crime. Article 4 of Act No. 30 of 1999 states that: The refund of the state financial losses or the economy of the country does not abolish the involvement of criminal offenders as referred to Articles 2 and 3. Based on

that, Mohammad Sahlan (2016: 168) [14] stated that Act Number 30 of 2014 regarding the Government Administration (Government Administration Act) was promulgated on October 17, 2014 and intended to regulate the bureaucratic reform as a means of tackling or preventing corruption through a preventative approach. The Government Administration Act is an example of legislation related to the eradication of Corruption which is one of the norms that is in conflict (conflict of norm) with one of the norms in Act Number 31 of 1999 concerning the Eradication of Corruption as amended by Act Number 20 of 2001 (Act of Eradication of Corruption Crime/Corruption Eradication Act) and Act Number 46 of 2009 concerning the Corruption Court of Justice (the Corruption Crime Court Act), the second the act is a legal instrument in combating corruption through a repressive act. The Conflict of norms occur between Articles 5 and 6 of the Jo Corruption Court Act jo Article 3 Law of Eradication of Corruption Crime with the provisions of Article 21 paragraph (1) jo. Article 1 number 188 jo. Article 17 of the State Administrative Act is regard to the absolute competence to examine and decide upon the element of "abuse of power" because the position in Corruption Crime, in which its concept by several legal experts, is considered the same as the one of "abuse of authority" in the State Administrative Act, which has the authority to examine and decide State Administrative Court). The problem is that in the case of abuse of power carried out by the agency and/or government officials that has resulted in the state financial losses has already been resolved by the Apparatus of Internal Government Supervisory and even the decisions of the State Administrative Court already have the permanent legal force to settle the refund of state losses, whether the Attorney, as the law enforcement agency, the Commission of Corruption Eradication, and Police can still carry out some investigations into the same case. Regarding the above problems, it is appropriate to see the provisions of Article 62 paragraph (2) Act No. 1 of 2004 which states that:"If in the examination of state/regional losses as referred to paragraph (1) a criminal element is found, the Supreme Audit Board/Audit Board of the Republic of Indonesia shall follow up in accordance with the existing rules and regulations".

It is stated in the provisions of Article 62 paragraph (2) of Act No. 1 of 2004 concerning State Treasury that reimbursement of compensation does not cover the criminal charges. It means that the reimbursement or repayment of the state losses does not cover the criminal charges. It is in accordance with the provisions of Act No. 1 of 2004 and Article 4 of Act No. 31 of 1999 which states that the reimbursement of losses to the state finances or the economy of the country does not abolish the criminal conviction of the offenders. Therefore, the reimbursement of the state losses as mandated by the Government Administration Act does not eliminate the criminal charges. The Apparatus of Internal Government Supervisory must report the state officials who have been proven to have misused the authority resulting in the losses of the state finances to the other law enforcers to be resolved criminally as done by the Supreme Audit Agency /Audit Board of the Republic of Indonesia. In this case, it could be with the Attorney, Comission of Corruption Eradication and Police. The results of the examination of the Apparatus of Internal Government Supervisory and the Decision of the State Administrative Court are used as evidences that do not need to be tested anymore by the Panel of Judges in the trial held for it. This is indeed not regulated in the Government Administration Act. On the other hand, if it is based on the provisions of Article 62 paragraph (2) of Act No. 1 of 2004 concerning the State Treasury whether the Apparatus of Internal Government Supervisory is able to report the government official to the officers of law enforcement while there has been a court decision stating that the element of abuse has been proven. There is a question whether the decision of the State Administrative Court stating proven towards the element of abuse of power will be used as evidence by the Investigator and must be agreed upon by the Judge of Corruption Crime Court. The regulation in the Government Administration Act can actually hinder the process of eradicating corruption through prosecution.

Conclusion

The implication of examining the element of abuse of power by the State Administrative Court on the handling of corruption cases of abuse of power is the potential for some legal problems to arise whether the verdict of the Administrative Court which states whether or not the abuse of power carried out by government officials is binding so that it can be used by the investigator, public prosecutor, and judge in handling the corruption cases of abuse of power, when the submission is submitted whether before the investigation process or during the prosecution process.

The capacity of the Apparatus of Internal Government Supervisory to assess the occurrence of abuse of power in the element of offense Article 3 of the Act of the Corruption Crime Court as a basis for submitting the requests for government officials and the time of the examination of the Apparatus of Internal Government Supervisory is conducted also still creates polemic in its implementation. The authority to examine the elements of abuse of power by the State Administrative Court in the the Government Administration Act leads to some legal uncertainties and the regulatory provisions have not been able to provide the legal protection to government officials in carrying out their duties, especially when conducting the discretion. The examination done by the Judges of the State Administrative Court is merely to see the occurance of abuse of power, and does not associate with the purpose of self-benefiting..As a result, the judicial process of the Corruption Court is no longer simple, fast, and low-cost judicial principles, and it will hamper any efforts to eradicate corruption.

References

1. Anoname. Pusat Penerangan Hukum Kejaksaan Agung RI, “Peran Pegawai Pemerintah sebagai Partisipan dalam Membangun Budaya Hukum Bangsa”, diakses dari laman resmi Kejaksaan Republik Indonesia.
2. Alkostar Artidjo. Korelasi Korupsi Politik Dengan Hukum dan Pemerintahan di Negara Modern (Telaah tentang Praktik Korupsi Politik dan Penanggulangannya)”, Jurnal Hukum Ius Quia Instum, No. Edisi Khusus, 2009, 16.
3. Atmosudirdjo Prajudi. *Hukum Administrasi Negara*, Gahalia Indonesia, Jakarta, 1983.
4. Basah Sjachran. *Eksistensi dan Tolak Ukur Peradilan Administrasi di Indonesia*, Alumni, Bandung, 1985.
5. Bell John dkk. *Principles of French Law*, Oxford University Press, Oxford, 1998.
6. Black Henry Campbell. *Black’s Law Dictionary*, West Publishing, 1990.
7. Hadjon Philipus M. *Hukum Administrasi dan Tindak*

Pidana Korupsi Cetakan Kedua, Gajahmada University Press, Yogyakarta, 2012.
8. Marbun SF. Eksistensi Asas-Asas Umum Penyelenggaraan Pemerintahan Yang Layak Dalam Menjelmakan Pemerintahan Yang Baik dan Bersih di Indonesia, Disertasi Unpad, Bandung, 2001.
9. Minarno Nur Basuki. *Penyalahgunaan Wewenang Dan Tindak Pidana Korupsi Dalam Pengelolaan Keuangan Daerah*, Laksbang Mediatama, Palangkaraya, 2009.
10. Mustafa Bachsan. *Pokok-Pokok Administrasi Negara*, Citra Aditya Bakti, Bandung, 1990.
11. Muslimin Amrah. *Beberapa Asas dan Pengertian Pokok tentang Administrasi dan Hukum Administrasi*, Alumni, Bandung, 1985.
12. Panjaitan Marojahan JS. *Pertanggungjawaban Kerugian Negara dalam Perspektif Hukum Administrasi Negara, dalam Prosiding Seminar Nasional Pertanggungjawaban Hukum Terhadap Pengelolaan Keuangan Negara*, Fakultas Hukum Universitas Jenderal Soedirman, Purwokerto, 2017.
13. Sahlan Mohammad. Unsur Menyalahgunakan Kewenangan dalam Tindak Pidana Korupsi sebagai Kompetensi Absolut Peradilan Administrasi, Jurnal Ius Quia Iustum, 2016, 2.
14. Sahlan Mohammad. Kewenangan Peradilan Tipikor Pasca Berlakunya Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan", Jurnal Arena Hukum, Universitas Brawijaya, 2016, 9(2).
15. Sinaga Patuan. *Dimensi-dimensi Hukum Administrasi Negara, Hubungan Antara kekuasaan Dengan Povoir Diskretionnare Dalam Penyelenggaraan Pemerintahan*, UII Press, Yogyakarta, 2001.
16. Undang-Undang Nomor 28 Tahun. Tentang Penyelenggaraan Negara Yang Bebas Dari Korupsi, Kolusi dan Nepotisme, 1999.
17. Undang-Undang Nomor 20 Tahun. (UU Pemberantassan Tipikor), 2001.
18. Undang-Undang Nomor 1 Tahun. Tentang Perbendaharaan Negara, 2004.
19. Undang-Undang Nomor 9 Tahun. Tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, 2004.
20. Undang-Undang Nomor 30 Tahun. Tentang Administrasi Negara, 2014.
21. Undang-undang Nomor 31 Tahun. Tentang Pemberantasan Tindak Pidana Korupsi (UU PTPK), 1999.
22. Undang-Undang Nomor 46 Tahun. Tentang Pengadilan Tindak Pidana Korupsi, 2009.
23. Putusan Mahkamah Agung RI. No.1340 K / Pid / 1992, tangga, 1992.
24. Putusan Mahkamah Agung Nomor 977 K/PID/2004. Da
25. Putusan Mahkamah Agung RI Nomor 572K/PID/2003