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# THE SYNERGY OF THE REGULATION OF ABUSE OF AUTHORITY OF GOVERNMENT OFFICIALS IN THE CORRUPTION LAW AND THE GOVERNMENT ADMINISTRATION LAW

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**Abstract**

This research aims to analyze the synergy of the regulation of abuse of authority of government officials in government administration laws and corruption laws and analyze the ideal form in assessing abuse of authority of government officials' actions. The type of research used is normative legal research. The author conducts research using a statutory approach, namely by examining the regulation of abuse of authority of government officials in government administration laws and corruption laws. The type of data used is secondary data. The results obtained through literature studies are directly arranged systematically and analyzed in accordance with normative research methods. The results of this study are: 1). The provisions of abuse of authority regulated in the Government Administration Law clarify the meaning of abuse of authority in Article 3 of the Corruption Crime Law so that previously there was no understanding or definition of abuse of authority in the Corruption Crime Law with the presence of the Government Administration Law, making clear the meaning of abuse of authority in the Corruption Crime Law. 2). The assessment of whether or not there is an abuse of authority in the actions of government officials must be proven by a State Administrative Court Decision which will prove two things, the first related to the existence of authority and the second related to the procedure for using authority.

**Keywords:** Synergy, Abuse of Authority, Government Officials

## 1. INTRODUCTION

The crime of corruption in Indonesia (Firman Halawa, 2020: 41) has spread widely in society. Its development also continues to increase every year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of the quality of criminal acts committed, which are increasingly systematic and have entered all aspects of people's lives. Therefore, corruption has been considered a case of "*seriousness crime*", a serious crime that greatly disrupts the economic and social rights of society and the state on a large scale, so that its handling must be carried out by means of *extra ordinary treatment*.

Recently, criminal acts of corruption by government officials have often become a trending topic of news in various media. Based on research conducted by Dian Puji N Simatupang, (Moh Alfatah Alti Putra, 2021: 136) as many as 70 percent of corruption cases that occur involving "abuse of authority", especially related topublic policy, are actually *dwaling* (mistaken), while only 30 percent contain purely criminal

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elements.

In order to overcome the rampant corruption of abuse of authority, the government established a policy through Law Number 30 of 2014 concerning Government Administration. This policy is a legal umbrella or material law for the administration of government administration. Law Number 30 of 2014 concerning Government Administration regulates the legal relationship between government agencies and individuals or communities within the jurisdiction of state administration. (Firman Halawa, 2020: 42)

With the birth of Law No. 30 of 2014 concerning Government Administration, the competence of the State Administrative Court is to conduct tests on whether or not there is an abuse of authority in the issuance of State Administrative Decisions. Article 21 of the Government Administration Law states: 1). The court is authorized to receive, examine, and decide whether or not there is an element of abuse of authority committed by a Government Official; 2). Government Agencies and/or Officials may submit a request to the Court to assess whether or not there is an element of abuse of authority in the Decision and/or Action.

In his book, General Theory of law and State, Hans Kelsen states that a political situation that gives rise to a new government and law can be valid as a new government and constitution to the extent that the government is politically able to maintain and enforce it. To be precise, Kelsen says the following:

> *If the government is able to maintain the new constitution in an efficacious manner, this government and this constitution are, according to international law, the legitimate government and the valid constitutions of the state.* (Hans Kelsen,1945: 368).

Likewise, in a book entitled Law and Society in Transition: Toward Responsive Law, Nonet and Selznick explain the relationship between law and oppression (Philippe Nonet & Philip Selznick, 1978). It is said that the government's entry into oppressive patterns of power, through law, is closely related to the problem of resource poverty of the government elite.

This is a response to the practice that has been implemented so far, where there is a tendency for law enforcement officials to be very positivistic in carrying out their supervisory and law enforcement functions so that allegations of abuse of authority often lead directly to criminal proceedings. (Eddy Con Sinulingga, 2021: 1)

So that this situation has an impact on legal uncertainty in state administrative actions, which can interfere with the performance of state administrative officials.

In the practical level of criminal law enforcement, if law enforcement officials (hereinafter referred to as APH), both Investigators, Public Prosecutors, and Judges are incorrect in applying the proof of corruption related to the element of "abuse of authority" as stipulated in Article 3 of Law Number 31 of 1999 concerning Eradication

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of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter referred to as the Anti-Corruption Law) because it will lead to legal uncertainty and potentially injure the public's sense of justice due to the unclear juridical arguments built to interpret abuse of authority and its liability, is it liability in the crime of corruption or liability in administrative law?

The Constitutional Court in Decision Number: 25/PUUXIV/2016 dated January 25, 2017 argued "that the inclusion of the word "may" in Article 2 paragraph and Article 3 of the Anti-Corruption Law makes the offense in both articles a formal offense. According to the Constitutional Court, in practice it is often misused to reach many acts that are suspected of harming state finances, including against discretionary policies or decisions or the implementation of the principle of freies ermessen which are taken urgently and have not found a legal basis, so that criminalization often occurs with allegations of abuse of authority. Likewise, policies that are related to business but are deemed to be detrimental to state finances are often subject to corruption. These conditions can certainly cause public officials to be afraid to take a policy or worry that the policy taken will be subject to corruption, so that among other things it will have an impact on the stagnation of the state administration process, low budget absorption and disruption of investment growth ".

Regarding the act of abusing authority in corruption cases, it is contained as one of the main elements of Article 3 of the Anti-Corruption Law, the formulation of the article in full is as follows. "*Every person who with the aim of benefiting himself or herself or another person or a corporation, abuses the authority, opportunity or means available to him or her because of his or her position or position that may harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah)*".

Some criminal law experts. (M. Irsan Arief, 2022: 3) argues that the core offense (*bestanddeel delict*) of Article 3 of the Anti-Corruption Law, namely abuse of authority, is the main concern in proving the elements in the article. Article 3 of the Anti-Corruption Law is most often applied in handling corruption cases in conjunction with Article 2 paragraph (1) of the Anti-Corruption Law which reads *"Every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that can harm state finances or the state economy shall be punished with a minimum imprisonment of 4 years and a maximum of 20 years and a fine of at least 200 million rupiah and a maximum of 1 billion rupiah".* The formulation of the criminal act article has similar characteristics but emphasizes the element of unlawful acts. In the construction of the form of indictment, it is usually used in the form of subsidiarity charges, namely Primair Article 2 paragraph (1) of the Anti-Corruption Law, subsidiarity Article 3 of the

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Anti-Corruption Law.

The Anti-Corruption Law does not provide clear and explicit information, definition or understanding of the elements of abuse of authority.(Shinta Agustina Dkk, 2018: 35) This condition according to Nun Basuki Minarno by quoting *the* termBarda Nawawi Arief, states *"makes the concept and parameters of abuse of authority unclear, in judicial practice the "principle of propriety" drawn from "materiele wederrechtelijk" is used as a parameter for abuse of authority"*, (Hernold Ferry, 2014: 45) in contrast to the unlawful element in Article 2 paragraph (1) of the Anti- Corruption Law which the Law provides an adequate explanation in the explanationof the article, namely "*what is meant by "unlawfully" in this Article includes unlawful acts in the formal sense as well as in the material sense, namely even though the actis not regulated in the laws and regulations, but if the act is considered reprehensible because it is not in accordance with the sense of justice or the norms of social life in society, then the act can be punished*". The absence of a description that explains the limitations or scope of the meaning of abuse of authority in academic and practical terms has led to various opinions and interpretations.

Therefore, to assess the fulfillment of the elements of Article 2 Paragraph (1) of the Anti-Corruption Law, in addition to having to prove the existence of an act of enriching oneself or others and the existence of state financial losses, an important element that must be fulfilled so that it can be considered a criminal act of corruption is the unlawful act committed, Meanwhile, in Article 3 of the Anti-Corruption Law, in addition to having to prove the existence of an act of enriching oneself or others and the existence of state financial losses, an important element that must be proven is the existence of an abuse of authority, while the abuse of authority is also regulated in the Government Administration Law, even in the Government Administration Law provides authority to the State Administrative Court to receive, examine, and decide whether or not there is an element of abuse of authority committed by a Government Official.

## 2. RESEARCH METHODS

The type of research used by the author is normative research (doctrinal). It is said to be normative research because this research is aimed at written regulations, so this research is closely related to library research. (Irwansyah, 2020: 98) The research approach is a plan of research concepts and procedures that includes steps, ranging from broad assumptions to detailed methods of data collection, analysis, and interpretation. The overall decision involves which approach should be used to study a topic. The research approach will make it easier to get information from various aspects regarding the issue being studied.

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## 3. DISCUSSION

### A. The Synergy of the Regulation of Abuse of Authority of Government Officials in the Law on Corruption and the Law on Government Administration

#### 1) Regulation of Abuse of Authority Prior to the Enactment of Law Number 30 of2014 on Government Administration

The concept of abuse of authority before the enactment of the Government Administration Law refers to Law No. 5 of 1986 in conjunction with Law No. 9 of 2009 concerning State Administrative Courts (TUN), where the TUN court regulates two types of irregularities in the use of authority, namely abuse of authority and arbitrary, which are mentioned in Article 53 paragraph (2) letters b and c with the sound:

*The grounds that may be used in the lawsuit referred to in paragraph (1) are:*

a) *The challenged State Administrative Decision is contrary to the prevailing lawsand regulations;*

b) *The State Administrative Body or Official at the time of issuing the decision as referred to in paragraph (1) has used its authority for a purpose other than thatfor which the authority was granted;*

c) *The State Administrative Body or Official at the time of issuing or not issuing the decision as referred to in paragraph (1) after considering all the interests involved in the decision should not have reached the making or not making of the decision.*

This is a continuation of the General Principles of Good Governance (AAUPB) where AAUPB regulates the basic principles that must be adhered to by the government in running the wheels of government.

The author concludes that the concept of abuse of authority before the enactment of the AP Law was:

1) Referring to the concept known in administrative law as Detournemen de pouvoir, which means abuse of authority, is a public official who has used his authority for other purposes than the purpose of granting authority which is carried out by means of 3 (three) things as described earlier.

2) As well as abuse of authority is a decision or action taken by a public official that is contrary to the principle of legal certainty as contained in the General Principles of Good Governance (AUPB) According to Indonesian Law Number 28 of 1999 specifically in the sub-chapter of article 1 number 6 states that the General Principles of Good State Government are principles that uphold the norms of decency, propriety, and legal norms, to realize a State Organizer that is clean and free from corruption, collusion and nepotism.

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Related to this criminal act of abuse of authority which is in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Crimes "*That every person with the aim of benefiting himself or another person or a corporation, abusing the authority, opportunity or means available to him because of his position or position can harm state finances or the state economy is punished with life imprisonment or imprisonment for a minimum of one year and a maximum of twenty years and or a fine of at least Rp 50,000,000.00 and a maximum of Rp 1,000,000,000.00*". Basically, abuse of authority has the following characteristics:

a) Deviating from the purpose or intent of a grant of authority.

   Every grant of authority to an agency or to a state administrative official is always accompanied by the "purpose and intention" of granting the authority, so that the application of the authority must be in accordance with the "purpose and intention" of granting the authority.

b) Deviating from the purpose or intent in relation to the principle of legality.

   The principle of legality is one of the main principles used as the basis for every government administration, especially in the continental legal system. In a democratic country, government actions must be legitimized by the people, which is formally stated in the law.

c) Deviating from the purpose or intent in relation to general principles of good governance.

   Abuse of authority is closely related to the existence of invalidity (legal defects) of a decision and or action of the government / state administrator. Legal defects in decisions and / or actions of the government / state administrators generally involve three main elements, namely elements of authority, elements of procedure and elements of substance, thus legal defects in the actions of state administrators can be classified into three types, namely: defects in authority, defects in procedure and defects in substance. These three things are the essence of the emergence of abuse of authority. (Sutrisno and Ibnu Artadi, 2019:385)

This emphasizes the authority of the Corruption Law which threatens the perpetrators with a maximum of 20 years in prison. When viewed from the perspective of criminal law, the explanation of Article 3 of the Anti-Corruption Law, both Law Number 31 of 1999 and Law Number 20 of 2001, does not paradigmatically regulate the background of the element of abuse of authority as part of the crime of corruption. In the author's view, this is because the study of authority or authority along with topics related to authority such as abuse of authority, arbitrary and exceeding authority is actually a study of state administrative law. Indeed, the emphasis of criminal law authority in terms of abuse of authority lies in the consequences of such abuse, namely; the existence of state losses that give birth to unlawful acts (wederrechtelijkheid).

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The main topic of Article 3 of the Anti-Corruption Law is the abuse of authority, which in the day-to-day study is related to certain positions and positions in the government bureaucracy. This means that there is a correlation between position and potential criminal offense. A criminal charge that is associated with the element/element of "authority" or "position" or "position", then in considering it cannot be separated from the aspect of state administrative law that applies the principle of official liability, which must be separated from the principle of personal liability in criminal law. The element of being able to harm state finances or the state economy is what distinguishes the regulation of abuse of authority in the Anti- Corruption Law. Whereas before the birth of the AP Law, the regulation of the element of being able to harm state finances or the state economy caused by Abuse of Authority was purely a criminal law approach.

**2) Regulation of Abuse of Authority After the Enactment of Law Number 30 of 2014concerning Government Administration**

Law Number 30 of 2014 concerning Government Administration related to the use of authority by government agencies and/or officials always refers to the general principles of good governance (hereinafter referred to as AUPB) (Article 1 point 12 of Law Number 30 of 2014 concerning Government Administration) or *Algemene Beginselen van Behoorlijk Bestuur* and based on laws and regulations.

The stipulation of the Law is intended so that there is legal protection for the parties involved in the process of governance, both the protection of citizens as affected parties and the government itself as the government organizer. (Firman Halawa, 2020: 42) Based on this Law, the use of state power in the context of governance requires certain prerequisites. Government actions must always be based on the law and always pay attention to the rights of the community. On the other hand, the public is also not necessarily able to blame the government but must be based on valid arguments and through predetermined legal mechanisms and procedures.

The regulation of abuse of authority by government officials after the enactment of the AP Law also refers to the content material of the AP Law where the AP Law has regulated concretely and is binding as a whole on government officials to comply with and understand what abuse of authority is.

The categories of abuse of authority by government officials as regulated in *Article 17 paragraph (2) of Law Number 30 of 2014 concerning Government Administration, include* (BPK Central JDIH Team, 2017: 7)*:*

a) *prohibition of exceeding Authority;*
b) *prohibition of conflicting Authority; and/or*
c) *prohibition of arbitrary action.*

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According to *Article 18 paragraph (1) Government Agencies and/or Officials are categorized as exceeding the Authority as referred to in Article 17 paragraph (2) letter a if the Decision and/or Action taken:*

a) *Exceeding the term of office or the time limit for the validity of the Authority;*
b) *Exceeding the boundaries of the area of validity of the Authority; and/or*
c) *Contrary to the provisions of laws and regulations.*

In *paragraph (2) Government Agencies and/or Officials are categorized as conflicting Authority as referred to in Article 17 paragraph (2) letter b if the Decision and/or Action taken:*

a) *outside the scope of the field or material of the Authority granted; and/or*
b) *contrary to the purpose of the Authority granted.*

*Government Agencies and/or Officials are categorized as acting arbitrarily as referred to in Article 17 paragraph (2) letter c if the Decision and/or Action taken:*

a) *without the basis of Authority; and/or*
b) *contradicts a Court Decision with permanent legal force.*

Law Number 30 of 2014 concerning Government Administration Article 19 paragraph (1) reads "*Decisions and/or Actions that are determined and/or carried out by exceeding the Authority as referred to in Article 17 paragraph (2) letter a and Article 18 paragraph (1) as well as Decisions and/or Actions that are determined and/or carried out arbitrarily as referred to in Article 17 paragraph (2) letter c and Article 18paragraph (3) are invalid if they have been tested and there is a Court Decision that has permanent legal force. Paragraph (2) Decisions and/or Actions stipulated and/or carried out by confusing the Authority as referred to in Article 17 paragraph (2) letterb and Article 18 paragraph (2) may be invalidated if it has been tested and there is a Court Decision with permanent legal force.*"

A government official is categorized as having exceeded his/her authority, if his/her actions are carried out beyond the term of office or the time limit for the validity of the authority; beyond the limits of the area of validity of the authority; and/or contrary to the provisions of laws and regulations. The action of a government official is categorized as conflicting authority, if the decision and/or action is carriedout outside the scope of the field or material of the authority granted; and/or contrary to the purpose of the authority granted. While acting arbitrarily, if the decision and/or action is carried out without the basis of authority; and/or contrary to a Court Decision that has permanent legal force.

The provisions of the above article explicitly show that the examination of the presence or absence of abuse of authority by government officials is the absolute competence of the PTUN. The assessment of whether discretionary freedom is in line

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with the intent of the authority or is in accordance with the ultimate goal, is the domain of administrative or state administrative judges, so that government policies cannot be assessed by criminal judges who focus on the issue of *rechtmatigheid* and not on *doelmatigheid*.

Article 20 of the AP Law reads:

1) *Supervision of the prohibition of abuse of Authority as referred to in Article 17 and Article 18 shall be carried out by the government internal supervisory apparatus.*
2) *Paragraph (2) The results of the supervision of the government internal supervisory apparatus as referred to in paragraph (1) are in the form of:*
   a) *there are no errors;*
   b) *there is an administrative error; or*
   c) *there is an administrative error that causes state financial losses.*
3) *If the results of the supervision of the government internal apparatus are in the form of administrative errors as referred to in paragraph (2) letter b, follow-up is carried out in the form of administrative improvements in accordance with the provisions of laws and regulations.*
4) *If the result of the supervision of the government internal apparatus is that there is an administrative error that causes a state financial loss as referred to in paragraph (2) letter c, a refund of the state financial loss shall be made no later than 10 (ten) working days as of the decision and issuance of the supervision result.*
5) *Return of state losses as referred to in paragraph (4) shall be borne by the Government Agency, if the administrative error as referred to in paragraph (2) letter cdoes not occur due to an element of abuse of authority.*

Meanwhile, Article 21 of the AP Law reads:

1) *Paragraph (1) The court is authorized to receive, examine, and decide whetheror not there is an element of abuse of authority committed by a Government Official.*
2) *Paragraph (2) Government Bodies and/or Officials may apply to the Court to assess whether or not there is an element of abuse of Authority in the Decision and/or Action.*
3) *Paragraph (3) The court shall decide the petition as referred to in paragraph (2)at the latest 21 (twenty-one) working days after the petition is filed.*
4) *An appeal may be lodged against the decision of the Court as referred to inparagraph (3) to the High Administrative Court.*

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5) *The High Administrative Court shall decide the appeal as referred to in paragraph (4) at the latest 21 (twenty-one) working days after the appeal is filed.*
6) *The decision of the High Administrative Court as referred to in paragraph (5)shall be final and binding.*

If examined further, the consequences of these rules are:

1) Article 19 of UUAP explains that any action of a public official (which violates Article 19) is invalid if it has been tested and can be canceled by the court with a permanent legal force decision.
2) A body called the government internal supervisory apparatus (APIP) is formed as a body that oversees and assesses whether a government or public agency/official has committed an act of abuse or not by issuing a decision with the qualifications described in article 20 of the AP Law.
3) The court that conducts proceedings against acts of abuse of authority and has the right to decide on these matters is the State Administrative Court (TUN). And appeals must be filed through the PTUN.

Seeing the description above, several legal experts also differ in their opinions about testing the element of abuse of authority in Article 3 of the TIPIKOR Law whether it must go through the Administrative Court first to prove the element of "abuse of authority", so that a criminal sentence can be imposed or the Corruption Court is also entitled to try and assess separately the elements of abuse of authorityby government officials considering that both the Corruption Law and the AP Law are special laws with rules governing special and different matters.

The absorption of the notion of "abuse of authority" into the notion of "misuseof authority" can also be seen in the conclusion of dissertation research conducted by Budi Parmono with the title "Abuse of Authority in the Crime of Corruption in Indonesia" (Muhammad Sahlan, 2016: 15), where in the first conclusion section letter c it is stated: "... actually the criteria for abuse of authority that developed in State Administrative Law were adopted by the criteria for the core part of the offense of abuse of authority in the criminal act of corruption through the doctrine of criminal law autonomy which includes:

1) The official's actions are in the public interest, but have deviated from the purpose for which the authority was granted by law or other regulation;
2) accuracy; and
3) appropriateness.

Even in his dissertation, Budi Darmono did not use the term “abuse of authority" to refer to the element of Corruption Crime, but used the term "abuse of authority". Based on the description above, it can be concluded that theoretically and practically, the

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concept of "abuse of authority" and the concept of "abuse of authority" are the same thing, so that the element of "abuse of authority" in Tipikoris not only within the absolute authority of the Tipikor Court, but also within the absolute authority of the Administrative Court. The absolute authority of the Anti-Corruption Court is attributively granted by the Anti-Corruption Court Law which was enacted earlier (on October 29, 2009) as stated in Article 5 and Article 6 of the law in conjunction with Article 3 of the Anti- Corruption Eradication Law and has been running in criminal justice practice, especially Anti-Corruption. (Muhammad Sahlan, 2016: 16)

Meanwhile, the absolute authority of the Administrative Court is attributively granted by the Government Administration Law with reference to the provisions of Article 21 paragraph (1) jo. Article 1 point 18 jo Article 17 of the law. The Government Administration Law which was enacted later (on October 17, 2014), hierarchically has an equal position with the Anti-Corruption Court Law and substantially regulates the same aspects, but the Government Administration Law does not mention let alone revoke the absolute authority of the Anti-Corruption Court in examining the elements of abuse of authority in Anti-Corruption. (Muhammad Sahlan, 2016: 16) In fact, the two laws were formed in the context of eradicating Corruption.

In its development, the presence of Article 3 of the Anti-Corruption Law provides a prerequisite for the unlawful element when there is an abuse of authority,namely, if there is an element that can harm state finances or the state economy. According to Wiryono, what is meant by "detrimental" is the same as being a loss orbeing reduced, so that thus what is meant by the element "detrimental to state finances" is the same as being a loss to state finances or a reduction in state finances." (Wiyono R, 2005: 33)

By sticking to the meaning of the word "detrimental" which is the same as being a loss or being reduced, then what is meant by the element "detrimental to the state economy" is the same as the state economy being a loss or the state economy being less running. (Wiyono R, 2005: 33)

Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law are normatively a formal offense which is indicated by the presence of the word "may" in the formulation of the elements of the article, namely the element "may harm state finances or the state economy, the formulation of the formal offense of this article has been materially tested at the Constitutional Court and based on the Constitutional Court Decision Number: 003 / PUU-IV / 2006 states that the formulation of the article is a formal offense. The Constitutional Court's stance has changed with the enactment of the Government Administration Law in Constitutional Court Decision Number: 25/PUU-XIV/2016, the Constitutional Court stated that Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law are material offenses.

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**B. The ideal form of assessing abuse of authority of government officials' actions**

1. Mechanism for Resolving Elements of Abuse of Authority

With the existence of Article 20 and Article 21 of Law Number 30 of 2014 concerning Government Administration, the supervision of the prohibition of abuseof authority as referred to in Article 17 and Article 18 is carried out by the Government Internal Supervisory Apparatus (APIP). In the event that a PTUN decision that has permanent legal force states that there is no abuse of authority, the official cannot be examined in the context of criminal, civil or administrative law.(Wahyu Agam, 2022: 79) Meanwhile, if the PTUN judge in his decision states that theOfficial is proven to have abused the Authority, the door is open for law enforcementofficials to bring it into the criminal realm or other legal realms.

In the case of proof regarding the element of abuse of authority due to position or position, both the Public Prosecutor and the Defendant can submit a request to the PTUN Court to determine whether or not there is an alleged abuse of authority. This is to prevent conflicts of judicial competence between the Administrative Court and the Corruption Court. (Dani Elpah, 2016: 6)

To answer the opinion that administrative law and criminal law will always be contradictory due to the conflict of norms between the two, it can be answered that in fact the context of the absolute competence of the PTUN towards the assessment of cases of abuse of authority, only in the form of *liability and responsibility of* Government Agencies and / or Officials for administrative errors that result in state financial losses. There are similarities with Kranenburg and Vegtig's theory of *fautes personalles* and *fautes de service*. (Yulius, 2015: 377) The determination of whether or not there is an administrative error has the consequence of personal responsibility.

Andi Nirwanto stated that the domain of PTUN in order to examine and decide whether or not there is an element of abuse of authority by Government Officials must be interpreted as a legal act in the context of state administration.(Andi Nirwanto, 2015: 13) Therefore, the attribution of PTUN as mandated by Article 21 ofLaw Number 30 of 2014 concerning Government Administration does not need to be contradicted with the authority of Corruption Court judges, let alone considered as an effort to weaken corruption eradication. If examined carefully, the element of abuse of authority in Law Number 20 of 2001 concerning Corruption Eradication has a different meaning from the abuse of authority which is the competence of the PTUN.

Furthermore, to be able to qualify the decisions and/or actions of Government Officials as Corruption if there has been an act against criminal law, which was preceded and followed by the evil inner attitude (*mens rea*) of the public official concerned. (Andi Nirwanto, 2015: 19) The evil inner attitude of Government Officials that colors the discretionary policies they issue and results in state financial losses, is an indicator

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that the elements of Corruption as formulated in Article 3 of Law Number 20 of 2001 concerning the Eradication of Corruption have been fulfilled.

When referring to Law Number 5 of 1986 as last amended by Law Number 51 of 2009 concerning State Administrative Courts, the absolute competence of the State Administrative Court is to hear State Administrative disputes between persons or Civil Law Bodies against State Administrative Bodies / Officials, due to the issuance of State Administrative decisions. According to the State Administrative Court Law, the authority or absolute competence is limited to adjudicating and deciding State Administrative disputes due to the issuance of State Administrative decisions, namely written determinations that are concrete individual and final in nature that have legal consequences for a person or civil legal entity. (Imam Soebandi et al, 2014: 5)

The reason why Law No. 30 of 2014 on Government Administration should not be seen without understanding the previous laws is because the enactment of Law No. 30 of 2014 on Government Administration has brought major changes to the absolute competence of the State Administrative Court. The changes that occurred with the enactment of the Law on Government Administration concern the following matters:

1) Expansion of the meaning of Administrative Decisions (Article 1 point 7 of the AP Law);
2) The competence of the State Administrative Court over government administrative actions of factual actions of State Administrative Officials (Article 1 point 8 of UUAP);
3) The competence of the State Administrative Court to examine whether or not there has been an abuse of authority in the issuance of a State Administrative Decree. (Article 21 of UU AP);
4) Competence of Peratun to hear/grant claims for damages. without limiting the amount;
5) The competence of the First Level Administrative Court to hear post-Administrative Action lawsuits;
6) The competence of the State Administrative Court to decide on positive fictitious dispute objects. (Article 53 of the AP Law). (Wahyu Agam, 2022: 82)

In relation to abuse of authority, point number 3 becomes an important discussion because with the enactment of Law No. 30 of 2014 concerning Government Administration, the competence of the State Administrative Court is to conduct tests on whether or not there is an abuse of authority in the issuance of State Administrative Decisions.

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Article 21 of the Government Administration Law states:

1. The Court is authorized to receive, examine, and decide whether or not there is an element of abuse of authority committed by a Government Official.
2. Government Agencies and/or Officials may apply to the Court to assess whether or not there is an element of abuse of Authority in the Decision and/or Action.

Regarding the procedure for testing abuse of authority at the State Administrative Court and to fill the void of procedural law related to the expansion of the absolute competence of testing for abuse of authority at the State Administrative Court, the Supreme Court issued Supreme Court Regulation No. 4 of 2015 related to Procedural Guidelines in Assessing Elements of Abuse of Authority (Perma No. 4 of 2015). Because Perma No. 4 of 2015 is in the form of a regulation, the author will only include several points that are considered necessary to know in a procedure for testing abuse of authority at the State Administrative Court, namely:

- The object of the request is the decision and/or action of the government official to declare whether or not there is an element of abuse of authority.
- Application Materials consisting of (i) the identity of the applicant; (ii) a description of the object of the application (iii) a description of the basis of the application (the authority of the court, the legal position of the applicant and the reasons for the application).
- The content of the petition or petitum in an application for assessment of abuse of authority is essentially:
  a) Applicant Governing body:
     1. Declare that the Decision and/or Action of a Government Official has elements of abuse of authority.
     2. Declare void or invalid the Decision and/or Action of a Government Official.
  b) Government Official Applicant:
     1. Declare that the Decision and/or Action of a Government Official has no elements of abuse of authority.
     2. Ordering the state to return the money paid, in the event that the applicant has returned the state losses as follows.
- Application registration. This is done by filing a petition with the court whose jurisdiction covers the seat of the government official who issued the relevant decision and/or action.

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- Time of Hearing. The examination period in this proceeding is:
    a) The examination in court goes through a series of examinations, namely: Examination of the subject matter of the application; Examination of evidence of letters or writings; Listening to witness testimony; Listening to expert testimony; Examination of other evidence.
    b) The maximum length of such examination is 21 (twenty-one) working days from the time the application is submitted.
    c) Against the decision of this petition, an appeal may be filed to the High Administrative Court.
    d) The Court of Appeal shall hear the petition within 21 (twenty-one) days at the latest.
    e) The decision of the High Administrative Court is final and binding.

The flow of examination of whether there is an abuse of power in the Administrative Court.

1) The first court summons is accompanied by :
    a. Determination of the Presiding Judge who makes the trial schedule;
    b. An order for the Applicant to furnish other evidence;
    c. An order to prepare witnesses and/or experts to be presented in the trial according to the established trial schedule, in the event that the applicant intends to present witnesses and/or experts.
2) Trial hearings are conducted without the dismissal and preparatory hearings.
3) The hearing examination consists of:
    a. Examination of the merits of the petition;
    b. Examination of evidence of letters or writings;
    c. Hear witness testimony;
    d. Hear expert testimony;
    e. Examination of other evidence in the form of electronic information or electronic documents.
4) The decision of the State Administrative Court can be in the form of the application is not granted, the application is granted (partially or wholly) the application is inadmissible, and the application is void. In assessing whether or not there is an abuse of authority issued by a government agency/official, it is based on 2 things, namely whether or not the authority possessed by the government agency/official and/or the use of authority procedures is appropriate or not. Against the Decision of the State Administrative Court, an appeal may be filed

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to the State Administrative High Court within 14 (fourteen) working days after the decision is legally read or notified.

5) The decision of the High Administrative Court is final and binding.

Thus, according to the author, the provisions in Law No. 30 of 2014 can be considered to have revoked the authority of Law Enforcement Officials in conductingdirect investigations in order to determine whether there has been an abuse of authority committed by a suspect as a government official, which according to this should be an object to be tested first in the State Administrative Court.

The enactment of the Government Administration Law should be a breath of fresh air for public officials. But unfortunately, abuse of authority is often interpreted as abuse of means and opportunities, against the law (*werrechtelijkheid, onrechtmatige daad)* or even expand it with any action that violates any rules or policies and in any field. With the use of this broad and free concept, it will easily become another weapon of abuse of authority and precisely the government's freedom of action in dealing with concrete situations becomes meaningless. (Supandi, 2016: 423). This arises because until now the criminal law does not also provide limitations on the elements of "abuse of authority" in a limitative manner so that inconsistencies often occur in measuring and determining the occurrence of an abuse of authority. (Fima Novi Anggoro, 2016: 4)

Returning to the absolute competence of the State Administrative Court to test whether or not there is an abuse of authority in the issuance of a State Administrative Decision as outlined in Article 21 of the Government Administration Law. It is said to be the absolute competence of the State Administrative Court because what is meant by Court in Article 21 is explained in the provisions of Article 1 number 18 ofthe same Law, namely the State Administrative Court.

This is in line with the provisions in Article 21 Paragraph (1) of Law Number 30 Year 2014, which is considered to have revoked the authority of investigators in conducting investigations in order to find out whether there has been an abuse of authority committed by a suspect as a government official, which according to this should be an object to be tested first in the State Administrative Court.

The testing mechanism through the administrative court is also inherent withthe *ultimum remedium* principle in the application of criminal law, where the existence of criminal sanctions arrangements must be placed and positioned as the last sanction after civil sanctions and administrative sanctions are powerless. The government administration law is also expected to be a legal basis for recognizing and examining whether a decision and or action as an administrative error or abuse of authority committed by a public official can be qualified or lead to a criminal offense.

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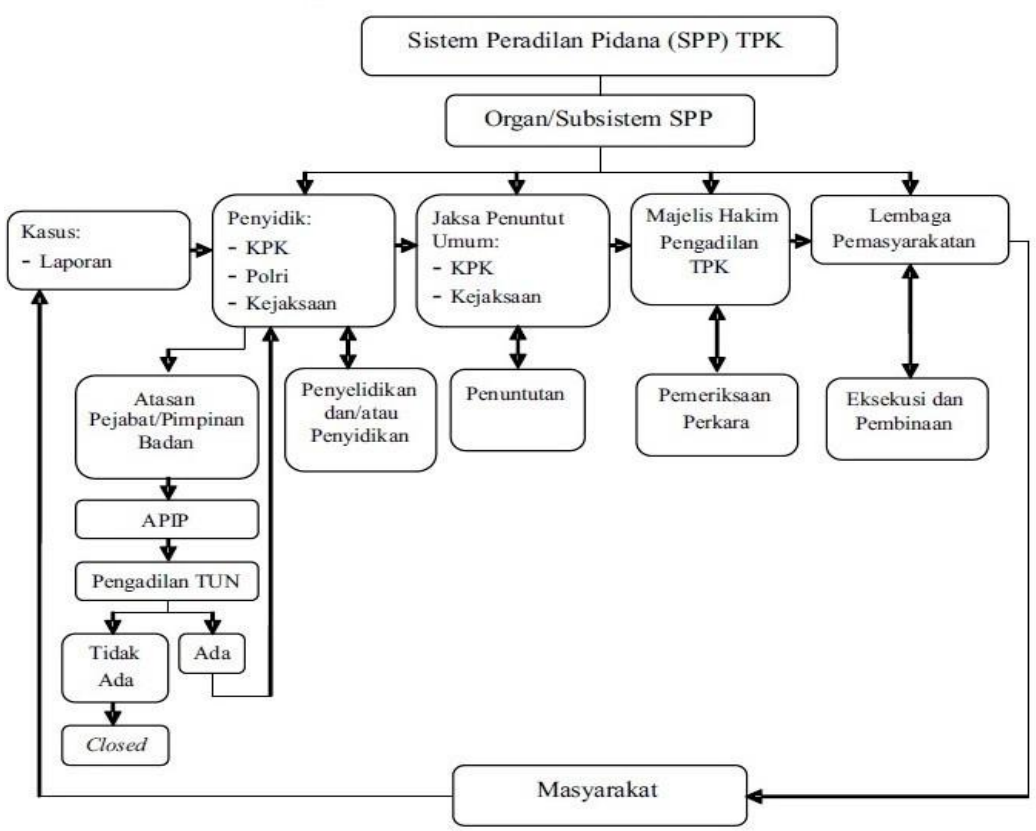
In summary, the flow of handling acts of abuse of authority due to position in Tipikor after the enactment of the Government Administration Law can be described in the following table:




When there is a report on the alleged abuse of authority/power due to position addressed to the Investigators (KPK, Police, and Attorney), the first thing that must be done by the Investigator before conducting an investigation and/or investigation is to submit the report to the superior/leader of the official/agency to be assessed by APIP and then tested by the Administrative Court. After that, if it is stated that there is an abuse of authority, then the Investigator can carry out his duties to assess the criminal aspects, namely by looking at the malicious intent or *means rea* and malicious acts or *actus reus* of the decision / action which is the main concept of abuse of authority in Corruption Crime, then proceed to the next stage according to the criminal justice system. Conversely, when the decision of the Administrative Court states that there is no abuse of authority, the investigator can use the basis of the Administrative Court's decision to stop the investigation and/or investigation of the case.

In relation to the examination of abuse of authority, based on the AP Law, the State Administrative Court (Peratun) is a judicial institution that has absolute competence to examine whether there is an alleged abuse of authority. The existence of this legal

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tool provides legal protection for government officials for the decisions oractions they make. If previously, an official suspected of abuse of authority (especially related to corruption) was determined as a suspect and immediatelyexamined in the general court, then through this means, the official concerned cansubmit a request to Peratun first to examine and ascertain whether or not there is an element of abuse of authority in the decision and/or action that has been taken. This provision provides protection for government administration in accordance with the principle of pre sumptio iustae causa (vermoeden van rechtmatigheid), meaning that every government decision must always be considered valid (rechmatig) until otherwise stated by administrative officials, superiors of administrative officials or courts.

2. Ideal Arrangement for Abuse of Authority

From several cases and problems that have been described that attempt to explore the discourse (discourse) of abuse of authority as part of the crime of corruption, it raises a lot of homework for the government in a broad sense, especially stakeholders in the law-making process to provide a clear concept of the meaning ofabuse of authority both in the Law on eradicating criminal acts of corruption and theLaw on government administration. In addition to a clear understanding of the concept, no less important is the existence of clear procedural standards for law enforcement of the offense of abuse of authority so that there is no overlap of interests in the law enforcement process.

Presidential Regulation No. 3/2016 on Accelerating the Implementation of National Strategic Projects in Article 31 Paragraph (1) reads:

> *In the event that there are reports and/or complaints from the public to the heads of ministries/institutions, governors, or regents/mayors as implementers of National Strategic Projects or to the Attorney General's Office or the IndonesianNational Police regarding irregularities or abuse of authority in the implementation ofNational Strategic Projects, the settlement is carried out by prioritizing theadministrative process in accordance with the provisions of laws and regulations in the field of government administration.*

Then Presidential Instruction Number 1 of 2016 concerning the Accelerationof the Implementation of National Strategic Projects which instructs the Attorney General's Office and the police to prioritize the *"government administration process"*before investigating public reports concerning abuse of authority in the implementation of National Strategic Projects. Then, forward/deliver public reportsreceived by the Attorney General's Office of the Republic of Indonesia or the Indonesian National Police regarding abuse of authority in the implementation of National Strategic Projects to the heads of ministries/institutions or local governments for examination and follow-up settlement of public reports.

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Based on research conducted by Dian Puji N Simatupang, (Moh Alfatah Alti Putra, 2021: 136) as many as 70 percent of legal cases that occur involving "abuse of authority", especially related to public policy, are actually *dwaling* (mistaken), while only 30 percent of them purely contain criminal elements.

After the enactment of Law No. 30 of 2014, the determination of abuse of authority is included in the realm of PTUN. Officials suspected of committing corruption crimes must first be tried at the PTUN. The PTUN judge will then assess whether or not there is an element of abuse of authority in every decision and/or action made by the relevant government agency and/or official. In the event that a legally binding PTUN decision states that there is no abuse of authority, the official can no longer be examined in the context of criminal, civil or administrative law. Meanwhile, if the PTUN judge in his decision states that the Official is proven to have abused the Authority, then the door is open for law enforcement officials to bring itinto the criminal realm or other legal realms. (Zudan Arif Fakhrullah, 26)

However, Presidential Regulation No. 3/2016 on Accelerating the Implementation of National Strategic Projects and Presidential Instruction No. 1/2016 are not without problems. Presidential Regulation No. 3/2016 on the Acceleration of the Implementation of National Strategic Projects and Presidential Instruction No. 1/2016 only apply to the Attorney General's Office and the National Police as government organs that are under and responsible to the President and are directly mentioned in the regulation, but with no mention of the KPK, it does not apply to the KPK which also has the attributive authority to conduct investigations and/or inquiries into these matters.

In addition, Presidential Instruction No. 1/2016, which is a "*policy rules*" or "*beleidsregels*" or "*quasi legislation"* or "*pseudowetgeving" is* formally not a statutory regulation, so it cannot make exceptions to the applicability of the Government Administration Law only to national strategic projects. The Government Administration Law is a general rule and applies to all citizens and all circumstancesas regulated in the law.

The next problem is that in the Government Administration Law there is no limitation of time for APIP as part of the Administrative Court in carrying out its duties, the time limit is usually regulated in the APIP implementation guidelines for each State agency / institution which of course differs from one another. This will certainly have an impact on the length of time for handling the case. In contrast to the testing of whether or not there is an abuse of authority carried out by the Administrative Court which is limited by a time limitation (approximately 42 working days from the time the application is submitted).

Moreover, in the context of Administrative Law, the existence of criminal sanctions, according to Barda Nawawi Arief, is essentially a manifestation of the policy of using criminal law as a means to enforce/implement administrative law so that it is at the

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last stage. This is as stated by W.F Prins quoted by Philipus M. Hadjon, that almost every regulation based on administrative law ends with criminal provisions as "*incauda venenum*" (literally means: there is poison in the tail). (Hadjon, P. M., & Djatmayati, T. S., 2002: 55)

After there is a common perspective on the applicability of the Government Administration Law, associated with the Anti-Corruption Eradication Law, the legislature can organize the mechanism for handling issues of abuse of authority in Anti-Corruption, which can be done through the following steps:

1. Affirming the absolute competence of the Administrative Court as stipulated in Article 21 paragraph (1) of the Government Administration Law to assess the elements of abuse of authority in Article 3 of the Anti-Corruption Eradication Law. This can be done by designation through sub-articles or through explanations of related articles.
2. Harmonize and synchronize the Anti-Corruption Procedure Law, by structuring the flow of handling Tipikor "abuse of authority" due to position contained in the Anti-Corruption Eradication Law and the Anti-Corruption Court Law and other related laws, so that there is certainty in the mechanism for handling these issues. This can be done by designation through sub-sub articles or through explanations of related articles.
3. Harmonizing the handling of the issue of abuse of authority due to position in Tipikor, then the results of different decisions between the Administrative Court and Tipikor Court as a consequence of the dichotomy of the two domains of law that handle can be avoided and comprehensive truth (*objectivity*) can be achieved. The certainty of the flow of mechanisms for handling issues of abuse of authority due to position in Tipikor will make the handling effective and efficient as a prerequisite for "simple" examination and settlement of cases. The certainty of the mechanism will close the way for corruptors to conduct various legal experiments to find loopholes in order to escape the legal snares, so that unnecessary costs can be avoided and the case settlement time becomes more certain. Most importantly, the potential for a clash of judicial authority between the Anti-Corruption Court and the Corruption Court can be avoided.

The expansion of the right to sue Government Officials/Agencies in the Administrative Court, in this context, can not only be used by Officials who have been determined as Defendants, but it is also possible for Officials who are "giddy" before taking an administrative law action but are worried that it could result in criminal sanctions and it is also possible for Agencies, especially law enforcers who want to know whether or not there is an element of abuse in the Officials they will investigate. The implication of this expansion is that there are 3 (three) types of requests that can be submitted by Officials/Agencies. First, Officials who have been named as Defendants for allegedly abusing their authority. Second, Officials

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who are giddy if their actions can result in criminal sanctions, and Third, Agencies, especially Law Enforcement / Investigators who want to know whether or not there is an element of abuse of authority in the actions of the Officials they will investigate. It does not rule out the possibility, in the same case, the Officials and the Agency both apply for the presence or absence of elements of abuse of authority of the Administrative Court.

## 4. CLOSING

The provision of abuse of authority regulated in the Government Administration Law clarifies the meaning of abuse of authority in Article 3 of the Corruption Crime Law so that previously there was no understanding or definition of abuse of authority in the Corruption Crime Law with the presence of the Government Administration Law, making clear the meaning of abuse of authority in the Corruption Crime Law. The assessment of whether or not there is an abuse of authority in the actions of government officials must be proven by a State Administrative Court Decision, which will prove two things, the first related to the existence of authority and the second related to the procedure for using authority.

**Literature**

1) Agam, Wahyu. *Discourse on Abuse of Authority as Part of Corruption,* Thesis, Legal Studies Program, Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta.

2) Agustina, Shinta, et al, *Legal Explanation of the Interpretation of the Unlawful Element in Article 2 of the Corruption Eradication Law,* LeIP, Jakarta, 2018.

3) Alti Putra, Moh Alfatah, "*Forms of Abuse of Authority of Government Officials that Cannot be Punished"*. Journal of Justisi Vol *7* No 2, 2021.

4) Arief, M. Irsan, *Red Thread of Abuse of Authority and Discretion Between Administrative Law and Criminal Law / Corruption*, Jakarta: Merka Cipta Lestari, 2022.

5) Arif Fakhrullah, Zudan. *Legal Action for Government Officials*, *62nd IKAHI Anniversary National Seminar, Supreme Court, Jakarta*.

6) Elpah, Dani. 2016. *Assessment of the Intersection of Authority Between the State Administrative Court and the TIPIKOR Court in Assessing the Occurrence of Abuse of Authority*. Jakarta: Center for Research and Development of Law and Justice Balitbang Diklat Kumdil Supreme Court of the Republic of Indonesia.

7) Ferry, Hernold. *State Financial Losses*, Thafa Media: Yogyakarta, 2014.

8) Hadjon, P. M., & Djatmayati, T. S., *Introduction to Indonesian Administrative Law, Yogyakarta*: Gadjah Mada University Press, 2002.

9) Halawa, Firman. "*Criminal Law Policy Against Corruption Crime of Abuse of Authority in Government Position According to Law Number 30 of 2014*". Journal of Socialand Economics. Volume 1 Issue 1. 2020.

10) https://pdfcoffee.com/hukum-administrasi-negara-uu-administrasi-pemerintahan-pdf-free.html, accessed on July 22, 2023.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.8296784

11) https://www.hukumonline.com/berita/a/penyebab-hakim-tipikor-kesampingkan-putusan-mk-lt5708540e0e639/, accessed on July 22, 2023.

12) https://www.hukumonline.com/berita/a/uu-administrasi-pemerintahan-trigger-berantas-korupsi-lt5514fdcf7f91b/, accessed on July 22, 2023.

13) https://www.ptun-denpasar.go.id/page/read/93, accessed on August 13, 2023. Irwansyah, *Legal Research Choice of Methods & Practice of Article Writing.*

14) Yogyakarta: Mirra Buana Media, 2020.

15) Kelsen, Hans. *General Theory of law and State,* Cambrige: Harvard University Press, 1945.

16) Nirwanto, Andi. The *Future Direction of Corruption Eradication (Post Government Administration Law)*, **J**akarta IKAHI 62nd Anniversary Paper, 2015.

17) Novi Anggoro, Fima. *Testing the Elements of Abuse of Authority Against Decisions and/or Actions of Government Officials by the PTUN*, Lampung Fiat Justisia, 2016.

18) R, Wiyono. *Discussion of the Corruption Eradication Law*, Jakarta: Sinar Grafika, 2005.

19) Sahlan, Muhammad. The *Authority of Corruption Courts After the Enactment of Law No. 30 of 2014 concerning Government Administration, Arena Hukum Journal,* Volume 9 No. 2 August 2016, pp. 15 cited in Budi Parmono, *Abuse of Authority in Corruption Crime in Indonesia*: Dissertation, UB Faculty of Law, Malang, 2011.

20) Selznick, Philippe Nonet, Philip. *Law and Society in Transition: Toward Responsive Law,* New York: Harper and Row, 1978.

21) Sinulingga, Eddy Con, *Juridical Review of Corruption Crime of Abuse of Authority in Government Position (Study of Decision Number: 79/PID. SUS. TPK/2017/PN. MDN)*, Raja Grafindo Persada, **J**akarta, 2021.

22) Soebandi, Imam, et al, *Bunga Rampai Peradilan Administrasi Kontemporer*, Yogyakarta: Genta Press, 2014.

23) Supandi, *State Administrative Court Law*, Bandung Alumni, 2016.

24) Sutrisno and Ibnu Artadi, *Implementation of Corruption Law Enforcement After the Enactment of Law No. 30/2014 on Government Administration,* Hermeneutics Journal Vol. 3, No. 2 August 2019.

25) BPK Central JDIH Team, Authority and Abuse of Authority in Administrative Law Associated with Law Number 30 Year 2014, Jakarta, BPK RI, 2017.

26) Yulius, The *Development of Thought and Regulation of Abuse of Authority in Indonesia (A Brief Review from the Perspective of State Administrative Law after the Enactment of Law Number 30 of 2014*, Journal of Law and Justice Volume IV No 3, November 2015.