Correlation Between Discretion That Is Detrimental to State Finances with the Principle of Systematic Lex Specialist

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Abstract

As a special system of accountability, Article 3 of the Law on the Eradication of Corruption has stipulated that abuse of authority that results in state financial losses is part of the crime of corruption. On the other hand, Law 30 of 2014 concerning Government Administration also regulates the accountability mechanism for discretion that falls into the category of abuse of authority which then causes state losses which in turn can lead to the application of administrative sanctions as regulated in Article 80 paragraph (4) of the Government Administration Law. Based on this issue, the researcher draws a theoretical problem regarding the Correlation Between Discretion that Harms State Finances with the Systematic Lex Specialist Principle using the legal research method with a focus on the discussion related to the application of the systematic specialist principle in cases of abuse of authority that cause state financial losses as a concept that is in line with what is regulated in the Corruption Eradication Law and the Government Administration Law. Where based on the research that has been conducted, it is known that with the development of existing legal instruments, the principle of systematic specificity can be applied through a case settlement mechanism that prioritizes settlement through administrative and civil law instruments rather than criminal law instruments, with the principle that does not override each other, meaning that if it can be completed with an administrative instrument, the criminal law instrument is no longer implemented, which in theory is called the Una-Via or ultra vires principle, which means that if a case has been resolved administratively, the opportunity to resolve the case with other legal means is closed.

Keywords: Discretion, Abuse of Authority, Systematic Specialist Principle.

As in criminal law, the principle of legality basically also applies to State Administrative Law in its form which is commonly referred to as wematigheid van bestuur which has long been felt to be inadequate. In this regard, as N.E. Algra argues, "Dutch literature rarely uses the term "uitvorende macht", but uses the popular term "bestuur" which is associated with "sturen" and "Sturing". "bestuur" is formulated as the sphere of state power outside the sphere of legislative power and judicial power". The concept of bestuur itself basically implies that government power is not merely a bound power, but also a free power (vrij bestuur, freies

ermessen, discretionary power) which, according to Ten Berge, includes freedom of policy and freedom of judgment.

Although discretion is seen as an exercise of active authority relating to the freedom of government action, juridically the exercise of discretion still has limits. One of the main ones is related to the purpose of exercising the discretion which must still be subject to the objectives of the public interest regulated in the legislation based on the principles of good governance, because the juridical consequences of the use of discretion that is not based on the objectives of the legislation and the general principles of good governance (AUPB) result in the discretion will encourage arbitrary actions and abuse of authority. The resulting consequences can also have an impact on the emergence of losses to state finances.

In connection with the exercise of discretion which then has an impact on the emergence of state financial losses due to abuse of authority, it ultimately raises a juridical dilemma because based on the structure of existing laws and regulations there are two legal regimes governing the accountability system for abuse of authority which then raises state finances, namely the criminal liability system based on the PTPK Law and the administrative liability system as stipulated in the Government Administration Law.

The regulation of the criminal liability system for discretion that causes state losses is carried out based on the construction of Article 3 of the Anti-Corruption Law which contains the element that "...abuses the authority, opportunity or means available to him because of his position or position that can harm state finances..." which then leads to punishment based on the threat of punishment as stipulated in the Article. On the other hand, the Government Administration Law also regulates the accountability mechanism for discretion that falls into the category of abuse of authority which then causes state losses which in turn can lead to the application of administrative sanctions as regulated in Article 80 paragraph (4) of the Government Administration Law which stipulates that:

"Government Officials who violate the provisions as referred to in paragraph (1) or paragraph (2) which cause losses to state finances, the national economy, and/or damage the environment are subject to severe administrative sanctions".

The existence of two arrangements regarding the system of responsibility for the exercise of discretion which then causes losses to state finances, in the view of the researcher has actually caused legal problems related to conflict of norms, because the two systems of responsibility have different regimes or legal politics. Because if we depart from the point of view of legal politics as the purpose of the formation of a legal policy, then at the level of legislation, the direction of legal politics can be seen from the purpose of the formation of a law, including those relating to the regulation of criminal liability for abuse of authority by state administrators which then causes state losses as regulated in Article 3 of the PTPK Law. As in the provisions of weighing points a and b of the PTPK Law which states that:

a. that the criminal acts of corruption are very detrimental to state finances or the state economy and hamper national development, so that they must be eradicated in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution; b. that the consequences of criminal acts of corruption that have occurred so far are not only detrimental to state finances or the state economy, but also hamper the growth and continuity of national development which demands high efficiency.

Furthermore, the General Elucidation of the Anti-Corruption Law states that:

In order to achieve a more effective goal of preventing and eradicating criminal acts of corruption, this Law contains criminal provisions that are different from previous laws, namely determining special minimum criminal penalties, higher fines, and the death penalty which is an aggravation of punishment. In

addition, this Law also contains imprisonment for perpetrators of corruption who are unable to pay additional punishment in the form of compensation for state losses.

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The existence of two arrangements regarding the system of responsibility for the exercise of discretion which then causes state financial losses, in the view of the researcher has actually caused legal problems related to conflict of norms, because the two systems of responsibility have different legal regimes or politics. As for the application, there is often a clash when there is a case whose substance there is an intersection between the legal politics of the PTPK Law which prioritizes the use of crime in solving the problem of state financial losses that arise due to abuse of authority, with the use of administrative efforts based on the Government Administration Law whose purpose is more on efforts to improve the orderly administration of government administration and prevent abuse of authority.

One of the most important principles in criminal law is the principle of lex specialis derogate legi generali as outlined in the provisions of Article 63 paragraph (2) of the Criminal Code. This legal principle becomes a legal instrument to overcome various problems, when there are two or more legal provisions that regulate the same thing or rule. As stipulated in Article 63 paragraph (2) of the Criminal Code, namely the provisions in Chapter I through Chapter VIII of this book also apply to acts that are punishable by other statutory provisions, unless otherwise provided by law.

In the development of legal science, including criminal law, the principle of lex specialis derogat legi generali cannot resolve juridical disputes when there is an act that is threatened by more than one Law which is qualified as bijzonder delic or special offense or special criminal offense or special criminal law. If this is the case, then what is used is lex specialist systematis as a derivative or derivative of the principle of lex specialis derogat legi generalis. According to Jan Remmelink, this principle is known in the Netherlands as juridical specialty or systematic specialty. Meanwhile, Enschede calls it logische specialiteit.

Based on this issue, the researcher draws a theoretical problem regarding the Correlation Between Discretion that Harms State Finances with the Systematic Lex Specialist Principle using the legal research method, which is one type of research in conducting research on law, in accordance with the position of legal science as sui generis so that the law which is one of them consists of legal norms, and what is studied is the norm.

The theme raised in this research is basically related to the implications of regulating abuse of authority in the Government Administration Law which conceptually has been regulated previously in the PTPK Law, which has implications for the dualism of the accountability system for abuse of authority that causes state financial losses. Some previous studies have discussed related themes such as the 2020

dissertation from Airlangga University with researcher Chatarina Muliana with the title Testing the Elements of Abuse of Authority by the State Administrative Court in the Context of Handling Corruption Crimes which examines the accountability system based on the mechanism for testing the elements of abuse of authority regulated in Law No. 30 of 2014 concerning Government Administration with its implications in the process of investigating corruption cases of abuse of authority. The focus of discussion in the study is different from this study, which focuses on the application of the principle of a systematic specialist in cases of abuse of authority that cause state financial losses as a concept that is contained between those regulated in the PTPK Law and the Government Administration Law.

Themes related to this research are also discussed in the research of Nathalina Naibaho, et al with the title Criministrative Law: Developments And Challenges In Indonesia, published in the Indonesian Law Review: Vol. 11: No. 1 in 2021, which in the study discussed the application of criminal law in administrative actions, which is different from this study which focuses on the application of the systematic specialist principle in abuse of authority that results in state financial losses.

Based on the background of the problem, the researcher then formulates several main problems that will be studied in this study, including how the accountability system for discretion that causes state losses if it is related to the principle of systematic specialists?

RESEARCH METHODS

In this paper, the researcher uses the legal research method where the prioritization of the type of legal research makes the legal material used in this research revolve around library sources. The approaches used in this legal research are statutory approaches, conceptual approaches, and case approaches.

RESULTS AND DISCUSSION

Accountability for Discretion that harms state finances

In the context of a welfare state, state institutions will carry out public service functions, for this reason the government has a special position compared to the people, so that government accountability is not the same as individual accountability. But in the case of state and government responsibility, the responsibility is attached to the position that is juridically attached to the authority. A.D. Belinfante stated that no one can exercise their authority without assuming the obligation of responsibility or without the implementation of supervision. According to Suwoto, there are internal and external responsibilities. What is internal is only in the form of a report on the exercise of power while what is external is accountability to third parties who in the exercise of power cause harm.

Regarding accountability in the exercise of discretion, Sjachran Basah as quoted by Ridwan HR, freies ermessen (discretion) given to the government or state administration is a logical consequence of the conception of the welfare state, but within the framework of the rule of law freies ermessen cannot be used without limits. On that basis, Sjachran Basah suggests the elements of freies ermessen in a state of law, namely:

a. Aimed at carrying out public service tasks.
b. It is the active behavior of public administration.
c. That attitude of action is made possible by the law.
d. The action was taken on his own initiative.
e. The attitude of action is intended to resolve important issues that arise suddenly.
f. The attitude of the act can be accounted for both morally to God Almighty and legally.

The accountability system for government administrators itself can be linked to the existence of two consequences of the implementation of the welfare state

(welfarestate), namely the first, which is quite extensive government intervention in aspects of people's lives and the second, the use of discretion which later turns out to pose a dilemma. If these two consequences are not implemented, the administrative function will be hampered, which means that it will hinder the realization of welfare in people's lives. However, on the contrary, if the two consequences are carried out, moreover uncontrolled, it is easy for despicable government actions to occur which tend to cause harm to certain parties. This despicable government action in State Administrative Law is often called arbitrary ruler action (willekeur) which has more frequency in the administration of free government (vrij bestuur) than in the administration of binding government (gebonden).

In making a decision, the government must basically consider all interests that are related or may be related to the decision it will make. In fact, it often happens that these interests are antagonistic between one another, for example the public interest and individual interests. The government must be observant and careful in considering all these interests, lest one will harm the other. This means that the government is required to be able to harmonize between these different interests in its decisions. A decision can then be said to be appropriate, if the interests regulated by the decision are the most beneficial interests, especially for the public interest. If the government in producing a decision is wrong in considering these interests so that the decision it makes is more detrimental to the public interest, there is an arbitrary act of the ruler (willekeur).

The administrative responsibility system in the exercise of authority is basically related to legal products produced based on government actions and the most congruous product is the determination or beschikking. As according to A.M. Donner that beshicking is:

De ambtelijke bestuurshandeling, waardoor eenzijdig en opzzettelijk in een bepaald geval een bestaande rechtsverhouding of rechtstoestand wordt vastesteld of een nieuwe rechtsverhouding of rechtstoestand in leven wordt geroepen and wel het een of ander wordt geweigerd ", as translated by Amrah Muslimin that a stipulation is a government action in office, which unilaterally and intentionally in a particular case, establishes an ongoing legal relationship or legal situation or creates a new legal relationship or legal situation, or rejects one of the aforementioned.

The stipulation itself has several requirements to be valid, which in the literature consists of 2 (two) types, namely formal and material requirements. Regarding the formal requirements, it consists of several elements, namely:

1) There is a procedure and/or method for making the determination.
2) Form of determination.
3) Notice of determination to the person concerned.

As for the material requirements, it consists of several elements, namely:

1) The agency making the determination must be authorized by position.
2) The stipulation must be made without any juridical deficiencies in the formation of the will at the time of making the stipulation to the official, namely, among others:
   a. Error of thought or mistake (dwaling).
   b. Fraud (bedrog).
   c. Coercion (dwang) or bribery (omkoping).
3) The stipulation must aim at the right target (doelmatig).

Theoretically, a determination that is made without going directly to the target can be categorized as an abuse or deviation (detournement de pouvoir). In the Netherlands, there is a precedent that whether or not a government action is appropriate in this regard depends on the answer to the question, whether or not the content and purpose of the action is in accordance with the objective purpose of the power given to the agency concerned in its position, namely a social purpose, organizing the public interest. If it is not in accordance with the

objective purpose, the action can be challenged on the grounds that it is contrary to the public interest.

The use of the principle of discretion is a means for government officials to make breakthroughs and solve problems that require quick resolution and there are no rules governing this matter. The juridical consequences of the use of discretion that is not based on objectives, laws and regulations, and general principles of good governance result in discretion that will encourage arbitrary actions and abuse of authority. Arbitrary actions can occur because the government does not have enough rationality as a parameter. Therefore, every government discretion must be based on the principle of legality, the principle of democracy, the principle of purpose, and the general principles of good governance as the metanorm that underlies government action.

Determinations that do not meet the formal and material requirements then have consequences, among others:

1) The stipulation becomes void.
2) The stipulation may be revoked or canceled by the agency that made the stipulation.
3) Stipulations that must first be authorized by a superior agency are not authorized.
4) It is possible that the deficiencies in the stipulation have no bearing on its validity, instead the correction/addition of the deficiencies strengthens its validity.

When examined in Law Number 30 of 2014 concerning Government Administration, related to government decisions or actions, it has been regulated regarding the burden of responsibility for every decision or action taken by government agencies or officials. As in Article 45 paragraph (1), it is stipulated that the Government Bodies and/or Officials as referred to in Article 42 and Article 43 guarantee and are responsible for every Decision and/or Action stipulated and/or carried out. (2) Decisions and/or actions that are determined and/or carried out due to a conflict of interest may be canceled. As for every decision that is later declared ineligible both formally and materially based on the Government Administration Law, the categorization has been regulated, namely that there is a procedural error or there is a substance error. Where the legal consequences of the canceled Decision and/or Action become non-binding from the time it is canceled or remain valid until the cancellation and end after the cancellation. Furthermore, when there is a loss arising from the canceled Decision and/or Action, it becomes the responsibility of the Government Agency and/or Official.

In addition to being related to the accountability system for decisions or actions of public bodies or government officials, the Government Administration Law has regulated administrative sanctions that can be imposed on government agencies or officials, including light administrative sanctions in the form of: a. verbal reprimand, b. written reprimand, or c. postponement of promotion, class, and/or position rights. Medium administrative sanctions in the form of: a. payment of forced money and/or compensation, b. temporary dismissal with the rights of office, or c. temporary dismissal without obtaining the rights of office. As well as severe administrative sanctions in the form of: a. permanent dismissal by obtaining financial rights and other facilities, b. permanent dismissal without obtaining financial rights and other facilities, c. permanent dismissal by obtaining financial rights and other facilities and published in the mass media, or permanent dismissal without obtaining financial rights and other facilities and published in the mass media.

Accountability System for Discretion that Incurs State Finances

As discussed in the background of the problem, related to the implementation of discretion which then has an impact on the emergence of state financial losses due to abuse of authority, ultimately raises a juridical dilemma because based on the structure of existing legislation there are two legal regimes governing the system of responsibility for abuse

of authority which then raises state finances, namely the criminal liability system based on the PTPK Law and the administrative liability system as regulated in the Government Administration Law.

The regulation of the criminal liability system for discretion that causes state losses is carried out based on the construction of Article 3 of the Anti-Corruption Law which contains the element that "...abuses the authority, opportunity or means available to him because of his position or position that can harm state finances..." which then leads to punishment based on the threat of punishment as stipulated in the Article. On the other hand, the Government Administration Law also regulates the accountability mechanism for discretion that falls into the category of abuse of authority which then causes state losses which in turn can lead to the application of administrative sanctions as regulated in Article 80 paragraph (4) of the Government Administration Law which stipulates that:

"Government Officials who violate the provisions as referred to in paragraph (1) or paragraph (2) which cause losses to state finances, the national economy, and/or damage the environment are subject to severe administrative sanctions".

Actually, if examined from the perspective of the politics of criminal law behind a penal policy, the prioritization of criminal efforts through the criminalization process, especially in the act of corruption as regulated in the PTPK Law, is part of the state's efforts to prevent corruption crimes that have a massive impact on society, but Hoefnagels, as quoted by Marwan Efendi, has reminded that it is important to consider various factors for criminalization in order to maintain the ultimum remedium postulate, and over criminalization does not occur. Based on this reasoning, it can be interpreted that punishment is intended as the last alternative to punish a criminal act. In other words, the ultimum remedium requires first efforts to provide other sanctions (non-penal), in the form of compensation, fines, warnings or other things before the use of criminal law tools in the form of imprisonment (body).

Crime prevention policy itself can be carried out by combining efforts to apply criminal law (criminal law application), prevention without using criminal law (prevention without punishment) and efforts to influence the views of society on crime and punishment through the mass media (influencing views of society on crime and punishment (Mass media).

In addition to this theory, in the development of criminal law itself there is a principle that is used when there is a conflict of norms that are special in nature, where according to a juridical or systematic view, a criminal provision, even though it does not contain all the elements of a general provision, it can still be considered as a special criminal provision, namely, if it can be clearly seen that the legislator intended to enforce the criminal provision as a special criminal provision.

In addition to its function as a dispute resolution of general and specific norms, the principle of systematic specificity also basically functions to understand in depth the politics of criminalization adopted by special laws. As it is known that in its development there has been a change in the function of criminal law considering the development in all fields of life in order to prosper the community, criminal law is used as a means by the government to increase the sense of responsibility of the state/government in order to manage the increasingly complex life of modern society. Criminal sanctions, among others, are maximally used to support administrative law norms in various matters. This is called administrative penal law (verwaltungs strafrecht) which is included in the framework of public welfare offenses (ordnungswidrigkeiten).

In line with that, according to Indriyanto Seno Adji, to determine the provisions (Articles) that apply to a special law, the principle of Logische Specialiteit or logical specificity applies, meaning that criminal provisions are said to be special, if this criminal provision in

addition to containing other elements also contains elements of general criminal provisions. Meanwhile, to determine which special law is applied, the principle of Systematische Specialiteit or systematic specificity applies, meaning that a criminal provision is special if the legislator intends to enact the criminal provision as a special criminal provision or it will be special from the existing special. The term "systematische specialiteit", for the first time used by Ch.J. ENSCHEDE in his article entitled "Lex Specialis Derogat Legi Generali" in Tijdschrift van het Strafrecht in 1963 at page 177, states the criminal provisions based on the view that considers a general provision as a special provision, namely if it can be clearly seen that the legislator intends to enact the criminal provision as a special criminal provision. This is referred to as systematische specialiteit or systematic specificity.

To apply the doctrine of "systematic specificity" A.Z. Abidin and Andi Hamzah gave an example of the criminal offense of smuggling as regulated in Law Number 10 of 1995 concerning Customs. If a person smuggles goods into Indonesia, it means that he does not pay duties, and that means being part of what can be called self-enrichment and certainly harm the State finances. Therefore, according to A.Z. Abidin and Andi Hamzah, the act has fulfilled all the core parts of the corruption offense listed in Article 2 of Law Number 31 of 1999 as amended by Law Number 20 of 2001, but the PTPK Law should not be applied because it is general, while the criminal act of smuggling in Article 102 of Law Number 10 of 1995 concerning Customs is special.

This provision is also as stated in Article 14 of the PTPK Law which stipulates that every person who violates the provisions of the Law which expressly states that violation of the provisions of the Law is a criminal act of corruption applies the provisions stipulated in this Law. Although in this provision it is not confirmed whether the use of administrative provisions stating that an act is an administrative offense can override the use of criminal law. When viewed from the development of existing legal instruments, one application of the principle of systematic specificity can be seen from the case settlement mechanism that prioritizes settlement through administrative and civil law instruments rather than criminal law instruments, with the principle that does not override each other, meaning that if it can be completed with an administrative instrument, the criminal law instrument is no longer implemented, which in theory is called the Una-Via or ultra vires principle, which means that if a case has been resolved administratively, the opportunity to resolve the case with other legal means is closed. This can be seen in the enforcement of environmental cases as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management.

The imposition of sanctions for violations of administrative law can be carried out through the mechanism of administrative adjudication or administrative dispute resolution (administrative sanctioning system). In the European Community (European Union) administrative dispute resolution is interpreted as a mechanism to provide a response from administrative bodies to violations of the law that occur over the use of unilateral and binding administrative decisions and impose sanctions on violators. The sanctions policy is clearly a public law enforcement approach built on criminal and administrative law. There are 3 (three) elements of sanctions in accordance with existing methods to support primary norms. The three inseparable elements are punishment, remedy, and regulation.

The link between the application of criminal law to the actions of administrative bodies is based on the principle of ultra vires where it is also regulated in the Government Administration Law which stipulates that every public official or administrative body is prohibited from abusing authority. State administration actions that abuse authority are often considered as part or cause of the crime of corruption. Although among administrative law experts there is still debate on

this matter, especially in relation to state losses, as one of the elements in the crime of corruption.55 Law Number 31 of 1999 concerning Corruption Crimes provides a broad definition and types of corruption crimes. Article 2, among others, constructs that the crime of corruption is an act committed by any person unlawfully with the intention of enriching himself or herself or another person or a corporation that can harm state finances or the state economy. In addition, Article 3 stipulates that the crime of corruption also relates to acts that benefit oneself or another person or a corporation by abusing the authority, opportunity or means available to him because of his position or position and can harm the state finances or the state economy. Article 2 is imposed on everyone, both administrative bodies and individuals and the private sector, while Article 3 specifically regulates corrupt behavior that may only be committed by administrative bodies.

When viewed from the current norms, the Government Administration Law itself has indeed regulated that an abuse of authority must first be examined by the Government Internal Supervisory Apparatus. Where the results of the examination can be:

a. there are no errors;
b. there is an administrative error; or
c. there is an administrative error that causes state financial losses.

Furthermore, Article 21 paragraph (2) of the Government Administration Law stipulates: "if the results of the supervision are declared to have been an abuse of authority, the Agency and/or Government Official 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."

The provisions of Article 21 of the Government Administration Law were then followed up by the issuance of Supreme Court Regulation of the Republic of Indonesia Number 4 of 2015 concerning Procedural Guidelines in Assessing the Elements of Abuse of Authority where it is stipulated in Article 2 paragraph (1) that, "The court is authorized to receive, examine, and decide on requests for assessments of whether or not there is an abuse of authority in the decisions and/or actions of government officials prior to criminal proceedings." It is further stipulated in Article 2 paragraph (2) that, "The court is only authorized to receive, examine, and decide on the assessment of the application as referred to in paragraph (1) after the results of the supervision of the Government Internal Supervisory Apparatus."

The provisions in Article 2 of the Supreme Court Regulation Number 4 of 2015 basically indicate that before the criminal process is carried out, there must first be an assessment of whether or not there is an abuse of authority based on the examination of the Government Internal Supervisory Apparatus or which can then be followed up in the State Administrative Court through a decision on the existence of an abuse of authority, so that the elements in Article 3 of the Anti-Corruption Law can be fulfilled. This provision is basically related to the legal politics of regulating the Government Administration Law which, when associated with acts of corruption, aims more at prevention efforts. . This goal is also the background for the issuance of various government policies that prioritize prevention efforts over eradication, such as Presidential Instruction of the Republic of Indonesia Number 10 of 2016 concerning Action for the Prevention and Eradication of Corruption in 2016 and 2017 or through Presidential Regulation of the Republic of Indonesia Number 54 of 2018 concerning the National Strategy for Corruption Prevention.

Based on this mechanism, which when combined with the concept of penal policy that prioritizes the ultimum remedium approach, it is appropriate for discretion by government officials that is detrimental to state finances, the responsibility system prioritizes a non-penal approach, in this case administrative law remedies first as regulated in the AP Law for the

purpose of prevention and orderly administration of state administration.

The argument that administrative sanctions are not enough to provide a deterrent effect for lawbreakers is also still a dominant understanding, especially when it comes to eradicating corruption. The imposition of punishment is seen as the most effective way out. Even if the administrative sanctions system is implemented together with the criminal process or combined , it should only be seen as a form of trade off in terms of prevention. Whereas as stated by Savona that criminal law alone is inefficient and ineffective in dealing with corruption, other instruments and preventive measures such as codes of conduct may be more effective.

Implications of the Application of the Systematic Specialist Principle in the Resolution of Discretion that results in state financial losses

As a follow-up to the rules regarding abuse of authority that causes state financial losses under the Government Administration Law, it has been regulated regarding the mechanism for returning state financial losses administratively based on Government Regulation Number 38 of 2016, basically also equipped with provisions regarding the imposition of administrative sanctions related to abuse of authority based on Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials which is a derivative of the Government Administration Law. But related to the examination if there are findings of abuse of authority, the reference that has been used to impose administrative sanctions still uses Government Regulation Number 53 of 2010 concerning Civil Servant Discipline. Because Government Regulation Number 53 of 2010 states that the prohibition of abuse of authority is one form of serious violation of employee discipline.

In the development of the application of administrative mechanisms in the settlement of criminal cases, several cases that have occurred in Indonesia illustrate that it turns out that administrative accountability mechanisms can influence the use of criminal instruments in cases of abuse of authority committed by government officials, such as in the Supreme Court case No. 572 K/Pid/2003 with the defendant Ir Akbar Tandjung where in that case, the Supreme Court decided to acquit the defendant from the main and subsidiary charges.

The interesting thing in the case, which is related to the consideration of the Panel of Judges, which distinguishes the perspective of state administrative law with aspects of criminal law, where the Panel of Judges is of the opinion that the release of funds amounting to Rp. 40,000,000,000.00 (forty billion rupiah) from Bulog non-budgetary funds to the stage of submission and receipt of several cheques by Ir. Akbar Tandjung must be reviewed from the aspect of state administrative law. Finally, in the view of the Panel of Judges, the act of abusing one's authority, opportunity or means is one of the manifestations of unlawful acts. The element of misuse as stated in the primary charge is not fulfilled, so automatically the element of unlawful act as stated in the subsidiary charge is also not fulfilled.

Based on these considerations, the Panel of Judges in Case No. 572 K/Pid/2003 held that Ir. Akbar Tandjung could not be convicted based on his actions, because it was the implementation of an official order given by the competent authority. Where an official order (ambtelijk bevel) requires that the order is given based on an office to subordinates, in a working relationship with public law (publiek rechtlijk). If the order is carried out and at the same time a criminal offense occurs, then the punishability of the action will be lost because it does not contain an unlawful element.

As for the case, it can be seen that in explaining cases involving abuse of authority, the rules of state administrative law should be used as a filter in applying Article 3 of the PTPK Law which also regulates the prohibition of abuse of authority, although researchers

basically also disagree if the verdict is free, which should be released because the defendant's actions are not criminal acts.

In addition to Case Number 572 K/Pid/2003, after the issuance of the Government Administration Law, in practice, it is not only related to the domain of administrative law that can release a government official in the settlement of corruption cases, the mechanism for assessing abuse of authority regulated in the Government Administration Law can also be used as a basis for applying Article 3 of the PTPK Law, as in Case Number 01/Pid.Prap/2016/PN.Bms which decided:

Stating that the investigation carried out by the respondent with regard to the criminal act of corruption as stated in the determination as a suspect against the applicant who is suspected of violating Article 2 paragraph (1) or Article 3 of Law Number 31 of 1999 concerning Eradication of criminal acts of corruption jo. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 2009 jo Article 55 paragraph (1) to 1 of the Criminal Code is invalid, therefore the investigation a quo has no binding legal force because it violates Law Number 23 of 2014 concerning Regional Government and Law Number 30 of 2014 concerning Government Administration.

Furthermore, in case Number 1/Pd.Pra/2022/PN.Kbu, the Respondent named the Petitioner as a suspect for alleged irregularities and misuse of the Kalibalangan-Cabang Empat Road Improvement Activity (Widening) for the 2019 Budget Year at the Public Works and Spatial Planning Office (PUPR) of North Lampung Regency, which is suspected of violating the First Primair: Article 2 paragraph (1) Jo Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning Eradication of Corruption as amended and supplemented by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption, Subsidiary: Article 3 Jo Article 18 paragraph (1) letter b of Law Number 31 of 1999 on the Eradication of the Crime of Corruption as amended and supplemented by Law Number 20 of 2001 on amendments to Law Number 31 of 1999 on the Eradication of the Crime of Corruption.

Based on these considerations, the judge in case No.1/Pid.Pra/2022/PN.Kbu then decided that setting aside the results of the BPK examination, and using the results of an independent audit in calculating the State's financial losses as the basis for an investigation which then resulted in the determination of a suspect either used as evidence of letters or experts is an act that violates the law in the formal structure of legal norms or rules as previously mentioned, namely in Law Number 1 of 2004 concerning State Treasury, Law Number 15 of 2004 concerning Audit of State Financial Management and Responsibility, Law Number 15 of 2006 concerning the Supreme Audit Agency and Law Number 30 of 2014 concerning Government Administration and violations of these legal norms and rules, according to the judge, are part of a formal violation in obtaining sufficient evidence in determining a person's status as a suspect.

Both based on case No. 01/Pid.Prap/2016/PN Bms, and case No.1/Pid.Pra/2022/PN.Kbu, it can be analyzed that in its current development, the Government Administration Law and the PTPK Law which regulate the mechanism for recovering state financial losses based on administrative instruments can be used as a law enforcement filter for law enforcement officials against government officials, meaning that if government officials are suspected of committing corruption crimes, they must first go through an APIP examination regarding the alleged abuse of authority by government officials. The essence of the inspection action as in Article 385 of Law Number 23 of 2014 concerning Regional Government is that it must first coordinate with APIP and APH. In case Number 01/Pid.Prap/2016/PN.Bms above, there has been no decision from the local district APIP, but APH has already named a suspect and in the

judge's consideration, one of the judge's considerations is that there is no determination of the results of the APIP examination.

CONCLUSIONS

On the other hand, the Government Administration Law also regulates the accountability mechanism for discretion that falls into the category of abuse of authority which then causes state losses which can then lead to the application of administrative sanctions as stipulated in Article 80 paragraph (4) of the Government Administration Law. When viewed from the current norms, the Government Administration Law itself has indeed regulated that the existence of an abuse of authority must first be examined by the Government Internal Supervisory Apparatus. Furthermore, based on the Supreme Court Regulation Number 4 of 2015, it basically indicates that before the criminal process is carried out, there must first be an assessment of whether or not there is an abuse of authority based on the examination of the Government Internal Supervisory Apparatus or which can then be followed up in the State Administrative Court through a decision on the existence of an abuse of authority, so that the elements in Article 3 of the Anti-Corruption Law can be fulfilled.

When viewed from the development of existing legal instruments, one application of the principle of systematic specificity can be seen from the case settlement mechanism that prioritizes settlement through administrative and civil law instruments rather than criminal law instruments, with the principle that does not override each other, meaning that if it can be completed with an administrative instrument, the criminal law instrument is no longer implemented, which is theoretically called the Una-Via or ultra vires principle, which means that if a case has been resolved administratively, the opportunity to resolve the case with other legal means is closed. This can be seen in the enforcement of environmental cases as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management.

Advice

In this paper, the researcher suggests several things related to the theme of discretion of government officials that are detrimental to state finances, especially regarding the issue of the intersection between against administrative law and against criminal law, where researchers suggest that when there is a case whose substance there is an intersection between the legal politics of the PRC Law and the Government Administration Law, What needs to take precedence is the use of administrative efforts based on the Government Administration Law, which aims more at efforts to improve the orderly administration of government administration and prevent abuse of authority. This can also be strengthened by the use of the Lex Specialist Systematic principle with the principle that does not override each other between the application of criminal and administrative law, meaning that if it can be completed with an administrative instrument, the criminal law instrument is no longer implemented, which is theoretically called the Una-Via or ultra vires principle, which means that if a case has been resolved administratively, the opportunity to resolve the case by other legal means is closed.

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