

## Settlement of abuse of authority that caused state losses according to Indonesian government administration law

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### Abstrak

*State Financial Losses are the result of acts of misuse of the authority of the state apparatus which have an impact on not maximising national development. This problem is also experienced by many countries and seeks to eradicate and minimise such events. Indonesia has a national regulation, namely Law Number 30 of 2014, there is a growing assumption that in the abuse of authority that causes state losses and the losses are returned the problem is over. In fact, according to Article 4 of Law Number 31 Year 1999, the return of state losses does not eliminate criminal liability. This research examines how to resolve abuse of authority that harms state finances in the perspective of government administration law and corruption offences. This research is a normative research that uses normative and philosophical juridical analysis methods. The results of the study found that the return of state losses does not erase the criminal penalty. The perpetrator must still be held criminally responsible for his actions. Administrative examination files are used as evidence in criminal cases. In addition, the internal supervisory institution formed from the Government Administration Law which has the function of supervising abuse of authority must coordinate with law enforcement agencies to enforce the law in eradicating acts that result in state financial losses.*

*Keywords: Abuse of Authority; State Loss; State Finance*

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### A. Introduction

State losses are the result of irregularities or misappropriations committed by state apparatus on strategic positions held in the administration of the state. This problem is certainly a concentration of various countries to try to form policies to minimise this event because it will have implications for national development, especially the welfare of the people of a country. Based on the provisions of the 1945 Constitution, the constitutional system of the Unitary State of the Republic of Indonesia is based on the principles of popular sovereignty and the rule of law, commonly referred to as constitutional democracy. (Panjaitan & Marojahan JS, 2017) One of the pillars of state administration is the government bureaucracy. The government bureaucracy should be able to provide good public services to the community without discrimination. (Respationo & H.M. Soerya, 2013) Good governance is an issue that arises in public administration. This is reflected, among others, in the demands of the public on state managers, both in the executive, legislative and judicial branches, to organise good governance. (Rasul & Sjahrudin, 2009)

Based on the above principle, all forms of government administrative decisions and/or actions must be based on constitutional democracy that reflects Pancasila as the basic value and ideology of the state. State decisions or actions against citizens must be in accordance with laws and regulations and general principles of good governance. Supervision of government decisions and/or actions is a test of the treatment of citizens whether in accordance with law enforcement or not by taking into account the principles of effective legal protection carried out by state institutions and the free and independent State Administrative Court (PTUN). (Tjandra & Riawan, 2010) Therefore, the procedures for

carrying out government and development tasks must be regulated in law. The Indonesian state already has a national regulation, namely Law Number 30 of 2014 concerning Government Administration as a guide in carrying out government administration. Article 3 letter c of Law Number 30 of 2014 concerning Government Administration explains that the purpose of this law is to prevent abuse of authority.

Regarding the abuse of authority, Law Number 30 Year 2014 regulates the settlement mechanism by establishing the Government Internal Supervisory Apparatus (APIP). Based on Article 20 paragraph 2 letter c, if APIP finds that there is an administrative error that causes state losses, the state losses must be returned no later than 10 working days from the decision and issuance of the supervision results (Article 20 paragraph (4)). Then the return of state losses is charged to government officials, if the administrative error is due to abuse of authority (Article 20 paragraph (6)). In this regard, according to Article 21 of Law Number 30 of 2014, the State Administrative Court also has the authority to examine and decide whether or not there is an element of abuse of authority committed by government officials.

## **B. Research Methods**

This type of research is normative legal research. In accordance with the purpose of this research, the nature of the research is descriptive analysis, including providing an overview of the problems in this study. In addition, the research method used is also in line with the formulation of this research problem, namely how to deal with abuse of power that is detrimental to state finances such as Corruption from the perspective of government administration law. The normative legal approach is taken because it addresses the abuse of power that harms state finances and corruption from the perspective of government administration law as norms, standards. Legal standards are normative legal issues but cannot be separated from political, economic and political issues. Therefore, a legal analytical approach remains at the core of this study. The philosophical approach used concerns the application of Law No. 30 of 2014 in the eradication of corruption in Indonesia, whether the application of Law No. 30 of 2014 does not conflict with the principles of criminal law in countering criminal acts of corruption and certainly reflects the values of justice in society.

## **C. Results and Discussion**

### **1. Definition of Abuse of Authority**

The term authority in English is called authority, and in Dutch it is called *bevoegdheid*. In the Big Indonesian Dictionary, authority is defined as: first, the right and power to act; authority; second, the power to make decisions, command, and delegate responsibilities. (Kamus Besar Bahasa Indonesia, 2005) The terms authority and authorisation are always associated with "the right and power to act or do something." (Sahlan & Mohammad, 2016) This opinion is in accordance with the provisions of Article 1 point 5 of Law Number 30 Year 2014 which states that: "Authority is the right possessed by the Agency and/or Government Officials or other state administrators to make decisions and/or take actions in the administration of government." Furthermore, Article 1 point 6 states, that "Government Authority, hereinafter Authority, is the power of the Agency and/or Government Officials or other state administrators to act in the public domain."

In accordance with the above description, authority is the power (right) given to government officials to rule or act. Constitutionally, the legal basis for the actions of government officials in Indonesia is the 1945 Constitution and its implementing regulations in accordance with the order according to Article 7 of Law Number 12/2011 on the Establishment of Legislation. This is referred to as the principle of legality, which is the concept of the rule of law. Thus, government power cannot be separated from the development of the principle of the rule of law, which began with the emergence of classical and modern concepts of the rule of law. However, along with the development of the concept of the rule of law, state officials in addition to acting based on applicable legal provisions must also act based on general principles of good governance. These general principles of good governance (AAUPB) have been applied in a state that claims to be a welfare law state.

If observed, the conception of a welfare law state is actually a development of the conception of a material law state. In an effort to create people's welfare, the conception of the welfare law state according to Otto Bar emerged: The modern legal state becomes a state that is a State of Culture (Cultuurstaat) or Welfare State (Welvaarstaat, the state is considered as a company that brings benefits to the people, because it organises the public interest. (Muslimin & Amrah, 1982) According to this opinion, it can be said that the state is likened to a company that brings benefits to its members. Then Bagir Manan also said that the concept of a welfare law state is: The state or government is not merely the guardian of security or public order, but the main bearer of responsibility for realising social justice, general welfare and the greatest prosperity of the people. (Manan & Bagir, 1996) Not forgetting Jean Jacques Rousseau who is famous for his theory, namely: Social contract theory (contract social) or community agreement. JJ. Rousseau argues that the holder of supreme power is the people, the state authorities are only representatives of the people, the sovereignty of the people is outlined in the constitution. (Yamin, Muhamat, 1951) Based on the 1945 Constitution, Indonesia adheres to the notion of a welfare state. Therefore, in addition to acting based on legal provisions (laws and regulations), government officials must also act based on general principles of good governance. If these two things are violated, the decision of a government official or commonly referred to as a state administrative decision is void and/or must be cancelled. Article 1 point 1 of Law Number 30 of 2014 concerning Government Administration explains that Government Administration is the procedure for making decisions and/or actions by government agencies and/or officials. In connection with that, State Administrative Law is the basis and/or guiding rules for government officials in running the government (government administration). The action is usually outlined in a decision, which is called a government administration decision (state administrative decision).

## **2. Resolving Abuse of Authority**

It has been mentioned in the previous discussion that authority is the power (right) given to public or government officials to order or act but must comply with the rule of law. According to Article 15 of Law Number 30 of 2014, the authority is limited by the period or grace period, the applicable area, and the scope of the field or material of authority. Government agencies and/or officials that have expired the period or grace period of authority are not allowed to take decisions and/or actions. Then, according to Article 17 of Law Number 30 of 2014, it is stated that Government Agencies and/or Officials are prohibited from abusing authority. The prohibition of abuse of authority includes: a) prohibition of exceeding authority; b) prohibition of mixing authority; and/or c) prohibition of acting arbitrarily. Furthermore, Article 18 states that:

(1) Government Bodies and/or Officials are categorised as exceeding the authority as referred to in Article 17 paragraph (2) letter a if the Decision and/or Action taken: a. exceeds the

term of office or time limit for the validity of the authority; b. exceeds the area of the validity of the authority; and/or c. is contrary to the provisions of laws and regulations.

- (2) Government Bodies and/or Officials are categorised as conflicting authority as referred to in Article 17 paragraph (2) letter b if the Decision and/or Action taken: a. is outside the scope of the field or material of the authority granted; and/or b. is contrary to the purpose of the authority granted.
- (3) Government Bodies and/or Officials are categorised 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. contrary to a Court Decision with permanent legal force.

If there is a decision issued in excess of its authority, Article 19 states that:

- (1) Decisions and/or Actions stipulated and/or performed 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 stipulated and/or performed arbitrarily as referred to in Article 17 paragraph (2) letter c and Article 18 paragraph (3) shall not be valid if they have been tested and there is a Court Decision with permanent legal force.
- (2) Decisions and/or actions stipulated and/or carried out by interfering with authority as referred to in Article 17 paragraph (2) letter b and Article 18 paragraph (2) may be cancelled if it has been tested and there is a Court Decision in permanent legal force.

To supervise government agencies and/or officials in exercising their authority, APIP is formed. This is in accordance with the provisions of Article 20, which states that:

- (1) Supervision of the prohibition of abuse of authority as referred to in Article 17 and Article 18 is carried out by the government internal supervisory apparatus.
- (2) The results of the supervision of the government internal supervisory apparatus as referred to in paragraph (1) are: a. there is no error; 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 results of the supervision of the government internal apparatus are in the form of administrative errors that cause state financial losses as referred to in paragraph (2) letter c, a refund of state financial losses shall be made no later than 10 (ten) working days as of the decision and issuance of the supervision results.
- (5) Refund of state losses as referred to in paragraph (4) shall be charged to the Government Agency, if the administrative error as referred to in paragraph (2) letter c occurs not because of an element of abuse of Authority.
- (6) Refund of state losses as referred to in paragraph (4) shall be borne by the Government Official, if the administrative error as referred to in paragraph (2) letter c occurred due to an element of abuse of Authority.

Based on the explanation above, APIP has a function to oversee the abuse of authority of government officials in carrying out their duties. APIP is given the authority to resolve abuse of authority. Apart from through APIP, there is another alternative solution in resolving abuse of authority, namely by submitting an application to the State Administrative Court in accordance with Article 21 of Law No. 30 of 2014. if in the abuse of authority there is a state loss, government officials must return the state loss no later than 10 working days from the decision and issuance of the supervision results.

Juridically, the existence of APIP decisions is valid and binding, because it is made by government officials. Likewise, the decision of the PTUN is also valid and binding. Therefore,

both APIP decisions and PTUN decisions that are mandated by law in the context of supervising abuse of authority committed by government officials must be obeyed.

In resolving abuse of authority that causes state financial losses is also regulated in Law No. 1 of 2004 concerning State Treasury. Article 1 point 22 of Law No. 1 Year 2004 says, that: State / Regional losses are shortages of money, securities, and goods that are real and certain in amount as a result of unlawful acts either intentionally or negligently. Regarding the settlement of state losses, Article 59 of Law No. 1 Year 2004 states that:

- (1) Any loss to the state/region caused by an unlawful act or negligence of a person shall be settled immediately in accordance with the applicable statutory provisions.
- (2) Treasurer, non-treasurer civil servant, or other official who due to unlawful act or negligence of the obligation imposed on him directly causes losses to the state finances, shall be obliged to compensate for such losses.
- (3) Any head of a state ministry/institution/head of a regional apparatus work unit may immediately make a claim for compensation, upon learning that a loss has occurred in the state ministry/institution/regional apparatus work unit concerned as a result of the actions of any party.

Article 60 then states that:

- (1) Every state loss shall be reported by the immediate superior or head of office to the minister/head of institution and notified to the Supreme Audit Agency no later than 7 (seven) working days after the state loss becomes known.
- (2) Immediately after the state loss is known, the treasurer, non-treasurer civil servant, or other official who obviously violates the law or neglects his/her obligations as referred to in Article 52 paragraph (2) shall immediately request a statement letter of capability and/or acknowledgement that the loss is his/her responsibility and is willing to compensate the state loss.
- (3) If it is not possible to obtain a certificate of absolute responsibility or cannot guarantee the recovery of state losses, the minister/head of the institution concerned shall immediately issue a decree to impose temporary compensation on the person concerned.

Furthermore, Article 61 states that:

- (1) Every regional loss must be reported by the immediate superior or head of the regional apparatus work unit to the governor/regent/mayor and notified to the Supreme Audit Agency no later than 7 (seven) working days after the regional loss is known.
- (2) Immediately after the regional loss is known, the treasurer, non-treasurer civil servant, or other official who obviously violates the law or neglects his/her obligations as referred to in Article 59 paragraph (2) may immediately be requested for a statement of ability and/or acknowledgement that the loss is his/her responsibility and is willing to compensate the regional loss.
- (3) If it is not possible to obtain a certificate of absolute responsibility or cannot guarantee the recovery of regional losses, the governor/regent/mayor/ concerned shall immediately issue a decree to impose temporary compensation on the person concerned.

Article 62 also states that:

- (1) The imposition of state/regional compensation against the treasurer is determined by the Supreme Audit Agency.
- (2) If in the examination of state/regional losses as referred to in paragraph (1) a criminal element is found, the Supreme Audit Agency shall follow up in accordance with existing laws and regulations.
- (3) Further provisions regarding the imposition of state compensation against the treasurer shall be regulated in the law regarding the audit of state financial management and responsibility.

Article 63 states that: The imposition of state/local compensation on non-treasurer public servants is determined by the minister/head of institution/governor/regent/mayor. The procedure for claiming state/regional compensation is regulated by laws and regulations. Only as stated in Article 64, that: Treasurers, non-treasurer civil servants, and other officials who have been determined to reimburse the state/region may be subject to administrative sanctions and/or criminal sanctions.

Regarding the time limit for compensation in Article 65, it is stated that: "The obligation of the treasurer, non-treasurer civil servant, or other official to pay compensation shall expire if within 5 years from the knowledge of the loss or within 8 years from the occurrence of the loss no compensation is prosecuted against the person concerned."

Based on the provisions of Article 65 above, the time limit for compensation is determined as 5 years from the knowledge of the loss and 8 years from the occurrence of the loss. So, there are two events in determining the time limit, namely: a. Since it is known; and b. Since the loss occurred. If the government body and/or official is unable to recover the state loss, Article 66 states that:

- (1) In the event that the treasurer, non-treasurer civil servant, or other official subject to a claim for state/regional compensation is under guardianship, absconds, or dies, the prosecution and collection against him/her shall be transferred to the guardian/heirs, limited to the assets managed or acquired by him/her, originating from the treasurer, non-treasurer civil servant, or other official concerned.
- (2) The responsibility of the guardian/who acquires the rights/heirs to pay compensation for state/regional losses as referred to in paragraph (1) shall be extinguished if within 3 (three) years after the court decision establishing guardianship of the treasurer, non-treasurer public servant, or other official concerned, or after the treasurer, non-treasurer public servant, or other official concerned is known to have absconded or died, the guardian/who acquires the rights/heirs is not notified by the competent official of the existence of state/regional losses.

Furthermore, Article 67 states that:

- (1) Provisions for the settlement of state/regional losses as stipulated in this Law shall also apply to money and/or goods not belonging to the state/region, which are in the control of the treasurer, non-treasurer civil servant, or other official used in the performance of government duties.
- (2) Provisions for the settlement of state/regional losses and other bodies that organise state financial management, to the extent not regulated in a separate law.

According to Law No. 30 of 2014 in resolving state losses, a body was formed, namely: APIP which is tasked with examining government officials who violate the provisions of Article 17 of Law No. 30 of 2014. If the results of APIP supervision contain 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. Likewise, if the results of APIP are in the form of administrative errors that cause state financial losses as referred to in paragraph (2) letter c, a refund of state financial losses shall be made no later than 10 working days from the date of the decision and issuance of the supervision results.

The 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 c does not occur due to an element of abuse of authority. Meanwhile, according to Law No. 1 Year 2004, the one who determines the state loss is BPK. If in the examination of state / regional losses a criminal element is found, the Supreme Audit Agency (BPK) follows up in accordance with existing laws and regulations (Article 62 paragraph (2) of Law No. 1 Year 2004.

In relation to the process of recovering state losses according to Law No. 30/2014 on Government Administration as described above, this is controversial with Article 4 of Law No. 31/1999 on the Eradication of Corruption. It is stated in Article 4 of Law No. 30 of 1999, that: The return of losses to state finances or the state economy does not eliminate the punishment of the perpetrators of criminal offences as referred to in Article 2 and Article 3. Law No. 30/2014 on Government Administration was enacted on 17 October 2014 and is intended to regulate bureaucratic reform, as a means of overcoming tipikor through a preventive approach.<sup>1</sup> This is an example of legislation related to the eradication of Financial Losses, one of whose norms conflicts with one of the norms in Law No. 31/1999 on the Eradication of Corruption, as amended by Law No. 20/2001 (Corruption Eradication Law) and Law No. 46/2009 on the Corruption Court (Corruption Court Law), which is a legal instrument in efforts to tackle corruption through a repressive approach. The conflict of norms that occurs between Article 5 and Article 6 of the Anti-Corruption Court Law Jo. Article 3 of the Anti-Corruption Eradication Law with the provisions of Article 21 paragraph (1) jo. Article 1 point 188 jo. Article 17 of the Government Administration Law, with regard to the absolute competence to examine and decide on the element of "abuse of authority" due to position in the Anti-Corruption Court, whose concept is considered by some legal experts to be the same as the concept of "abuse of authority" in the Government Administration Law, where the authority to examine and decide on the matter is given to the State Administrative Court (PTUN).

The problem that arises is that if the abuse of authority committed by government agencies and / or officials that is detrimental to state finances has been resolved by APIP and there is even a State Administrative Court decision that already has permanent legal force to resolve the return of state losses, whether the Law Enforcement Agency in Criminal Law Enforcement, especially the Corruption Eradication Commission, the Prosecutor's Office, and the National Police can investigate it again.

Regarding the above problems, it is worth looking at the provisions of Article 62 paragraph (2) of Law No. 1 Year 2004 which states, that: "If in the examination of state / regional losses as referred to in paragraph (1) a criminal element is found, the Supreme Audit Agency follows up in accordance with existing laws and regulations". When referring to the provisions of Article 62 paragraph (2) of Law No. 1 Year 2004 on State Treasury above, the reimbursement of compensation does not close criminal charges. This means that the return of state losses does not erase the criminalisation of the perpetrators of criminal offences. Examining the provisions of Law No. 1 Year 2004 and Article 4 of Law No. 31 Year 1999 which states that the return of state financial or economic losses does not eliminate the criminal conviction of the perpetrator of a criminal act is better than the regulation in Law No. 30 Year 2014 where the behaviour that causes state losses is considered a mistake that can be corrected and given a period of time to return the money, but removes the criminal action. APIP must report state officials who are proven to have committed abuse of authority that harms state finances to other law enforcers to be resolved criminally, as done by BPK. In this case, it can be to the National Police, the Attorney General's Office, and the KPK. The results of the APIP examination and the State Administrative Decision of the examination are used as evidence that does not need to be tested again by the Panel of Judges in the court organised for that. This is not regulated in Law No. 30 Year 2014. However, by adopting the provisions of Article 62 paragraph (2) of Law No. 1 Year 2004 on State Treasury, APIP can report the

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<sup>1</sup> Mohammad Sahlan, "The Authority of the Corruption Court After the Enactment of Law No. 30/2014 on Government Administration", *Arena Hukum Journal*, Brawidjaya University, Volume 9, Number 2, August 2016, p. 168.

government officials to law enforcement agencies. This method makes it even easier to tackle criminal acts of corruption.

In connection with the presence of APIP functions that are so strategic in dealing with abuse of authority that harms state finances, it is expected to work actively and effectively. APIP in preventing and overcoming criminal acts of corruption can cooperate with other law enforcers, so that there is no overlap in resolving it. Therefore, APIP institutions must be realised immediately and APIP must be independent and work objectively and professionally.

#### **D. Conclusion**

The settlement of abuse of authority committed by Government Agencies and / or Officials that cause state losses based on Law. No. 30 of 2014 is carried out by the Government Internal Supervisory Apparatus (APIP) and the State Administrative Court. If the examination finds state losses, the official who committed the abuse of authority returns the state losses. The decision of the Government Internal Supervisory Apparatus (APIP) and the decision of the State Administrative Court in resolving abuse of authority committed by Government Agencies and / or Officials that harm state finances as stipulated in Law No. 30 of 2014 has binding force and must be obeyed and implemented. However, according to Article 4 of Law No. 31 Year 1999, the recovery of state losses does not eliminate the criminal act. The examination file of the Government Internal Supervisory Apparatus (APIP) and the State Administrative Court Decision can be used as evidence to resolve criminal liability. The Government Internal Supervisory Apparatus (APIP) can be more proactive in supervising Government Agencies and/or Officials in making policies so that state losses do not occur. When the Government Internal Supervisory Apparatus (APIP) finds that there is an abuse of authority that is detrimental to state finances committed by the Agency and / or Government Officials, it should take the initiative to report the Agency and / or Government Officials to law enforcement, so that their actions are criminally investigated.

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