WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

Efforts to Prevent Abuse of Authority That Causes Damage to the State's Finances Through Government Internal Surveillance Apparatus

Bagus Teguh Santoso[a], Ahmad Munir[b]
[a] Fakultas Hukum, Universitas Bhayangkara Surabaya, Surabaya, Email: bagusteguhsantoso@rocketmail.com
[b] Fakultas Hukum, Universitas Islam Darul 'Ulum, Lamongan, Email: ahmadmunir@unisda.ac.id

Abstract

Law enforcers are trapped in the legal mechanism along with the punishment criteria determined by the legislators, for that reason our positive law has been regulated which is far from and contrary to the objective of a just law. The presence of excessive criminalization/criminalization with various kinds and types of negative law enforcement behavior in determining the criminal process, makes criminalization ultimately have a negative meaning and has the potential to hinder the development process. The research method used in this research is normative legal research with a statutory approach and a conceptual approach to the abuse of authority by internal government apparatus which is detrimental to state finances. The results of this study indicate that the assessment of the Government's Internal Supervisory Apparatus on administrative errors that cause state losses needs to be revised again. Because the assessment of the Government Internal Supervisory Apparatus will be followed up at the State Administrative Court. This is very risky because it is related to the element of causing harm to state finances, in fact it is the authority of the Corruption Court to decide it.

Keywords: *Government Internal Monitoring Apparatus; State finances; Abuse of Authority.*

A. Introduction

Basically, administrative misconduct cannot be claimed a criminal liability. This does not mean that any government agency can make a decision and/or act arbitrarily. It is the deliberate and consciousness of government agencies that causes financial losses to the state that can fall within the domain of criminal law. (mala in se). The criminalization of public officials' policy against the public official's policy sector, in fact, is a denial of the dogma and doctrine of criminal law itself, as the ultimate weapon (ultimum remidium), not as the primary weapon/first weapon. (primum remidium). In the concept of the rule of law (rechtstaat), Indonesia has enshrined in the Constitution the Basic Law of the Republic of Indonesia of 1945 (hereinafter abbreviated as UUD NRI 1945) which stipulates that law enforcement must be guiding human rights in the process of enforcing criminal law, applying the principle of due process of law. As affirmed by Phillipus M.Hadjon, as follows:[1]

> "...the central idea of the rechtstaat is the recognition and protection of human rights based on the principles of freedom and equality. There is a division of power in one hand that is very prone to abuse of power, which means violation of freedom and equality..."

[1] Philipus M.Hadjon, 2007, *Perlindungan Hukum Bagi Rakyat di Indonesia, Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi*, Edisi Khusus, Cet-I, Peradaban: Surabaya, h.71-72.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

Public office policy is an inherent authority acquired either through attribution, delegation, or mandate. According to its form, the authority is divided into two (binding authority and free authority). Binding power is based on the acquisition of legitimate authority on the basis of the rules of the law applicable (rechtmatigeheid), while free power is founded on the general foundations of good governance of the purpose given authority. (doelmatigeheid).[2] Thus, to test the validity of the authority held by public officials, carried out through the mechanism of the State Enterprise Justice as has been regulated in Article 21 of the Act No. 30 of 2014 on the Administration of Government of Perma No. 4 of 2015 on the Legal Guidelines in the Elements of Abuse of Authority No. 1 of 2016 on Accelerating the Implementation of National Strategy Projects.

There is basically criminal law does not give its own understanding of abuse of authority, therefore the notion related to authority is already a matter must be the domain of Administrative Law. Although, ultimately, under article 103 of the Covenant, criminal law guarantees the right to self-determination of such meaning, if criminal law does not specify its own meaning, then the meaning given by other law may be used in criminal law. The application of the right to the autonomy of criminal law is not justified insofar as it affects the basic principles of administrative law or other law reflected in the relevant foundations of law. Because it is concerned that there is a legal collision leading to the dysfunctionalization of the law, for example in administrative law known 4 (four) kinds of authority. Assignment, Delegation, Mandate and Discretionary Authority.[3] Each source of such authority has different characteristics and responsibilities.

Discretionary authority does not arise because it is prescribed by law, nor is it derived from higher officials.[4] Therefore, its assessment is based on the general principles of good governance as a benchmark for good government in carrying out its duties and functions based on public interests. (public good).[5]

As has been mentioned, authority has different characteristics between binding authority and free authority. (discretion).[6] However, in criminal law enforcement practice,

[2] M.Hadjon, Philipus dkk, 2012, Hukum Administrasi dan Good Governance, Cet-II, Universitas Trisakti: Jakarta, hal. 21.

[3] Ridwan HR., *Hukum Administrasi Negara*, Cet-I, UII Press: Yogyakarta, 2002, hal. 15.

[4] Krishna Djaya Darumurti, 2015, *Konsep dan Asas Hukum Kekuasaan Diskresi Pemerintah*, Disertasi Universitas Airlangga: Surabaya, hal. 28.

[5] Ibid.

[6] ekalipun dalam perkembangannya sebagaimana diatur dalam Pasal 24 UU AP diskresi telah menjadi ketentuan yang harus tunduk pada syarat-syarat tertentu yakni:

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

there is a phenomenon of equalizing these types of powers so that a public official who is actually exercising his discretionary powers is judged as a "abuse of authority" as referred to in Article 3 of the CCP Act because it is not based on the rules of the laws in force.

Corruption criminal proceedings by law enforcement agencies often violate the fundamental principles of criminal law, namely presumption of innocence becomes presumptions of guilty, as if excluding the criminal law based on the principle of due process of law into a crime control model,[7] so that for public officials and/or anyone who is suspected or suspected of committing a corruption crime often ends up in the process of financing as an offender,[8] even if it was initially the implementation of what he did independent authority (discretion).

The law enforcement is trapped in the legal mechanism of the law (wetmatigeheid), along with the punishment criteria determined by the legislature, for which reason our positive law has regulated it (lex dura sed tamen scripta), which is far from true and contrary to the purpose of fair law.[9] The neglect of the basis of criminalization[10] has brought about over-criminalization in its concrete existence. Forced suspect detection, fulfillment of criminal elements sought, deliberate misrepresentation of officials (public) to be targeted as criminals, as well as various kinds of negative law enforcement behaviour

. "Sesuai dengan tujuan diskresi sebagaimana dimaksud dalam Pasal 22 ayat (2);
. Tidak bertentangan dengan ketentuan peraturan perundang-undangan;
. Sesuai dengan AAUPB;
. Nerdasarkan alasan-alasan yang objektif;
. Tidak menimbulkan konflik kepentingan; dan
. Dilakukan dengan itikad baik".

Bahkan menurut Pasal 25 UU AP, diskresi yang berpotensi mengubah alokasi anggaran **wajib** memperoleh persetujuan dari Atasan Pejabat sesuai dengan peraturan perundang-undangan yang berlaku.

[7] Merujuk pada pendapat Damaska, dan pendapat Nico Jorg cs, "bagi sistem peradilan pidana di Indonesia sampai saat ini penilaian para ahli hukum Indonesia, bahwa sistem peradilan pidana Indonesia menggunakan "*mixed system*" yaitu pada tahap investigasi merujuk pada sistem inkuisitor tetapi pada tahap persidangan digunakan sistem akusator". Dalam Romli Atmasasmita, 2010, *Sistem Peradilan Pidana Kontemporer*, Kencana Prenada Media Grup: Jakarta, hal. 57.

[8] Tersangka sebagai objek (*inquisitor*) bukan sebagai subjek (*accusatoir*) dalam proses penegakan hukum di Indonesia merupakan pola pikir yang inkonstitusional dan melanggar hak asasi manusia.

[9] Bahwa perundang-undangan senantiasa tertinggal dalam mengantisipasi perkembangan zaman (*het recht hinkt achter de feiten aan*), sehingga hukum (hakim) yang mencerminkan keadilan tidak hanya berfungsi sebagai corong undang-undangn *ansich* (*bouche de lalois*). Peter Mahmud Marzuki, 2009, *Pengantar Ilmu Hukum*, Cet-II, Kencana Prenada Media Group: Jakarta, hal. 217.

[10] "Terdapat 3 (tiga) asas kriminalisasi yang perlu diperhatikan pembentuk undang-undang dalam menetapkan suatu perbuatan sebagai tindak pidana beserta ancaman sanksi pidananya, yakni: (1) Asas Legalitas; (2) Asas Subsidiaritas, dan (3) Asas Persamaan/Kesamaan".

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

in determining criminal processes, make criminalization[11] ultimately negative and potentially impede the development process in developing countries such as Indonesia that is counterproductive with Inpres No. 1 of 2016 on Accelerating Implementation of National Strategy Projects, so that the existing budgets of both APBN and APBD are not absorbed optimally because officials are haunted by the shadows of financing in their use.

B. Research Method

The Blacks Law Dictionary defines legal research as "The finding and assembling of authorities that bear on a question of law, The field of study concerned with the effective marshaling of authority that bears on a issue of law".[12] The research methods carried out in this study are normative legal research. Basically the research method as an attempt to discover the rule of law, legal principles, as well as the opinion of legal experts as answers to the legal issues faced.[13] The research approaches used are: The Statute Approach and the Conceptual Approaching in PERMA No. 4 Year 2015 against the arrangement of the government administration on the abuse of the authority of the internal apparatus of government to the detriment of the state finances. The study aims to analyze abuses of authority that have resulted in damage to the state's finances through the internal surveillance apparatus of the government.

C. Results and Discussion

1. Discretion Is Associated With Abuse Of Authority In Corruption Crimes

Government has two (two) meanings,[14] "the first in the broad sense (regering or government) is the execution of the duties of all the bodies, institutions and officials entrusted with the authority to the purpose of the state. Then the second, in the narrow sense (government or Government) is to include the organization of functions that perform the functions of government (bestuurfunctie)".[15] The important principles in organizing the administration of government according to Philipus Hadjon, are as follows:[16]

---

[11] "Asas-asas kriminalisasi tersebut ini adalah asas-asas yang bersifat kritis normatif, karena dia dikemukakan sebagai ukuran untuk menilai tentang sifat adilnya hukum pidana, dan karena mempunyai fungsi mengatur terhadap kebijaksanaan pemerintah dalam bidang hukum pidana.Secara gradual dan konkret, kebijakan dalam penggunaan hukum pidana berkolerasi erat dengan aspek kriminalisasi" dalam Lilik Mulyadi, 2012, *Bunga Rampai Hukum Pidana Umum dan Khusus*, PT. Alumni: Bandung, hal. 509.

[12] Bryan A. Garner, *Op. Cit.*, p. 979.

[13] Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, h. 35.

[14] Kuntjoro Purbopranoto, *Perkembangan Hukum Administrasi Indonesia*, 1981, Proyek Penulisan Karya Ilmiah Badan Pembinaan Hukum Nasional Departemen Kehakiman RI, Cet I, Angkasa Offset: Bandung, hal. 1.

[15] *Ibid.*

[16] Lihat Naskah Akademik Undang-Undang No 30 Tahun 2014 tentang Administrasi Pemerintahan, hal. 7.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

1. Based on the sovereignty of the people, where there is room for the people to participate in decision-making and public policy;
2. Formation of institutions that are appropriate to the needs, objective potential and the character of the social and economic and cultural people;
3. Balance of power in relations between institutions which can be a check and balance;
4. Clear distribution of authority between the spheres of government according to their duties and functions that have synergies with each other;
5. Functions of government management based on rationality, objectivity, efficiency and transparency;
6. Legislative body that is to improve its ability in carrying out the functions of control, legislation and formulation of government policy;
7. Application of the principle of accountability in the maintenance of government;
8. Principles of setting up, vision and objectives in establishing policy strategies responsive to the people's needs.

The government in carrying out its duties and functions is inherent in its authority. The definition and understanding of authority is regulated in Article 1 paragraph (5) of the AP Act that "a authority shall be the authority of the Agency and/or the Government Officer or other State organizer to take decisions and / or actions in the maintenance of government".

It is different from the authority of government officials to act in the sphere of public law which not only has implications for the administration and business of the state but can also result in criminal law. The concept of criminal law takes into account two (two) important things, namely the actus reus and the liability of the perpetrator. (mens rea). It is not sufficient for a person to see the fulfillment of a hole in the law, but there are other elements that must also be assessed, which are the elements of guilt that can be held accountable by the perpetrator himself. (there is no liability without fault).

Article 3 of the PTPK states that the term "abuse of authority" is categorized as a "bestandeel delict" and relates to public officials who, because of their position, may potentially harm the state's finances or the economy of the country aimed at the benefit of themselves, others or a corporation. It is clear that there is a theoretical difference between an act against the law as the bestanddeeldelict of article 2 of the CCP Act in the

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

concept of criminal law and an act of abuse of authority as a bestanddeel delict of Article 3 of the CPP Law in the notion of administrative law. To prove the existence of acts of the government (public officials) who have committed a corrupt crime of abuse of authority as an act of maladministration, whose authority formula is not explicitly found in the concept of criminal law.

Opinion on abuse of authority, Indriyanto Seno Aji, citing the opinion of Jean Rivero and Waline gives an understanding of the concept of abuse in administrative law is understood in 3 (three) forms, namely:[17]

1. "Abuse of authority to carry out acts contrary to the general interest or to the benefit of individuals, groups, or groups;
2. Abuse of the authority in the sense that the action of the official is properly aimed at the public interest, but deviates from the purpose for which such authority is granted by law or other regulations;
3. Abuse of authority in the sense of abusing a procedure that is supposed to be used to a certain purpose, but has used another procedure to implement it".

It is also explained in the Verklarend Woordenboek OPENBAAR BESTUUR formulated that the abuse of authority as "het oneigenlijk gebruik maken van haar bevoegheid door de overhead. Hiervan is spake indien een overheidsorgaan zijn bevoegheid kennelijk tot een ander doel heft used and tot doeleinden waartoe die bevoogheid is given. De overhead schendt Aldus het specialitiet beginsel. In this case, the apparatus of the government uses its authority for other purposes which differ from those which have been conferred on it. Thus the apparatus of the government violates the basis of speciality).[18]

The existence of abuse of authority as a crime of corruption indicates an act that deviates from the purpose for which such authority is granted by law or other regulations. The matter is in accordance with the jurisprudence in Indonesia based on the decision of the Supreme Court of the Republic of Indonesia No. 1340/Pid/1992 where the notion of abuse of authority is used to take over the meaning in Article 53 paragraph (2) letter b of Law No. 5 of 1986 No. 9 of 2004 No. 51 of the Law of 2009 on the Court of State of Enterprises stipulates that "...use its authority for purposes other than those for which it

[17] Indriyanto Seno Aji, "Prespektif Ajaran Perbuatan Melawan Hukum Terhadap Tindak Pidana Korupsi", *Jurnal Hukum Pro Justitia*, Vol. 25 No. 4, Oktober 2007, hal. 294.
[18] Philipus M.Hadjon, 2011, *Kisi-Kisi Hukum Administrasi Dalam Konteks Tindak Pidana Korupsi* dalam Philipus M.Hadjon, et.al, *Hukum Administrasi dan Tindak Pidana Korupsi*, Gadjah Mada University Press, hal. 21-22.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

has given such authority". It is also contained in the judgment of the High Court of India No. 572 K/ Pid/2003 in the case of Akbar Tanjung, referring to the meaning of the misuse of the authority by taking over the sense in the Article 53 (2) letter of the UU PTUN.

In order to prove the existence of a criminal offence of corruption committed by abuse of authority is the use of the authority for purposes other than the purpose of giving such authority as regulated in Article 53 paragraph (2) letter b of the PTUN Act, according to Indriyanto Seno Adji makes the presence of a "grey area" in the criminal offences of korruption as a territory between criminal law and administrative law, so to prove that there is an element of arbitrariness against the power that has been abused must start with the burden of responsibility of the said authority. In administrative law, power (bevoegheid) means the power based on the law (rechtsmacht or legal power), because the power is the basis for the government apparatus to act on the basis of the rule of law.

In the case of criminal liability, the guilt consists of several elements, namely:

1. "The ability to be responsible to the creator (schuldfahigkeit or zurechnungsfahigkeit); that is, the state of the soul of the maker must be normal;
2. the inner relationship between the creature and his deeds, which is deliberate (dolus) or blameless (culpa); this is called the forms of guilt;
3. there is no reason to eliminate the wrong or no reason for forgiveness".[19]

When all the elements are met, then the person concerned can be found guilty or have criminal responsibility, so that it can be settled.

As the philosophy of the AP Act is in an effort to promote good governance and to prevent practices of corruption, collusion, and nepotism. Prevention is meant to be a preventive effort rather than a repressive effort, as stipulated in the Act. In the paper Restorative Justice and Responsive Regulation, **John Braithwaite** has the concept of responsive regulation that assesses how far a person's fault for his deeds can still be corrected without having to go through prosecution and punishment, as long as there is good faith to admit his fault and be willing to make corrections.[20]

This means that the instrument of funding is used as the last efforts as the tools of curative measure by guiding on the basis of restitution in integrum, not as a mere gift of

[19] Sudarto, 1990, *Hukum Pidana I*, Fakultas Hukum Universitas Diponegoro, Semarang, hal. 91.
[20] John Braithwaite, 2022, *Restorative Justice and Responsive Regulation*, Oxford University Press: New York, hal. 29-30.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

trauma syndrome to government officials in carrying out public service functions. (bestuurzorg).

Discretion is the authority of the Government which does not originate from a positive rule of law which is in force as a form of free authority, but discretion can not only be exercised as freely as the Government wishes. Decisions and/or actions of public authorities against citizens must be in accordance with the provisions of the regulations of the laws and the General Bases of Good Governance (AAUPB) as well as the Speciality Bases. (Asas Manfaat). In administrative law there is the principle "dat het bestuur aan de wet is underwopen; and "het legalitybeginsel houdt in dat alle de burgers bindende bepalingen op de wet moeten berusten".[21]

Any decision and/or action of a public authority which is not based on the provisions of the applicable positive law, or its provision deviates from the duties and authority of public authorities as referred to, may cause damage to both the State and the citizens in order to initiate the maintenance of government, fill the void of law, provide legal certainty, and overcome the stagnation of government in certain circumstances for the benefit and public interest. (menyimpang dari tujuan diskresi). Besides, the mechanisms and arrangements for determining whether or not abuse of authority is being carried out should be in the domain of administrative law, not criminal law.

2. Methods and Procedures for Testing Abuse of Authority Based on the Government Administration and Perma Act No. 4 Year 2015.

The Government Administration Act is enacted as a solution to the chaos and criminalitation/overcriminalitation of the law enforcement apparatus against State organizers/public officials in the executive, legislative and judicial spheres. In addition, the AP Act is also present to resolve the sectoral egos of authority disputes vertically (between one agency and the other) or horizontally (Between the central government and the region / authorities and subordinates). A good law enforcement endeavour begins with a comprehensive understanding of the law-enforcement apparatus in various legislative regulations[22] and legal science concepts consisting of several layers and territories/domains of law itself.

[21] Hal. D.Stout, 1994, *De Betekenissen Van De Wet*, W.E.J. Tjeenk Willink, Zwolle, hal. 28 dalam Sadjijono, 2011, *Bab-Bab Pokok Hukum Administrasi*, Cet-II, Laksbang: Surabaya, hal. 107.

[22] Berbagai UU terkait Tindak Pidana Korupsi diantaranya adalah UU No 28 Tahun 1999, UU No 31 Tahun 1999 jo UU No 20 Tahun 2001, UU No 30 Tahun 2002, UU No 46 Tahun 2009, UU No 23 Tahun 2014 jo UU No 9 Tahun 2015, UU No 5 Tahun 2014, UU No 17 Tahun 2014, UU No 30 Tahun 2014.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

The Government Administration Act was formed in order to strengthen the prevention of corruption in terms of prevention (preventive), so that decisions and/or actions of the government administration suspected of maladministration should be resolved first through the mechanism of administrative law that is carried out by the internal oversight apparatus of government (see:Article 20 paragraph 1 of the Act AP) and or through the testing mechanism in the Court of State Enterprises. (vide:Pasal 21 ayat 2 UU AP). It is intended to establish certain enforcement of criminal law and to uphold the principles of legality, proportionality, subsidiarity and presumption of innocence in accordance with the principle of due process of law as a rule of law. (rechstaat). Since this time there are difficulties related to the material law contained in the Law No. 51 of 2009 on the AP. The AP Act provides an extension of the absolute competence of the PTUN, one of which is the competence for the PUT to carry out the examination of the elements of abuse of authority against decisions and/or actions of Government Officers as affirmed in Article 21 of the AP Act.[23] The Mechanisms relating to the testing of abuses of autority in the AP Law as the domain of the POUN have regulations related to Legal Guidelines in court in accordance with the PERMA No. 4 of 2015 on Legal Guidance in the Assessment of Elements of Abuse of Authority. PERMA No. 4 Year 2015 provides the term "Application" which differs from the AP Act that previously used the term "claims" against the entry of matters related to Abuse of Authority by public bodies / officials.

The jurisdictional consequences relating to the existence of differences in terms are that in PTUN disputes related to abuse of authority that entered is a dispute of a nature between an individual or a private legal entity as a petitioner and a public legal body or the TUN Office as a Petitioner, then such competence was extended with the publication of PERMA No. 4 Year 2015 where the State Entrepreneurship Dispute was expanded in the form of an application that can also be filed by a public body / official so that the mechanism of judicial supervision carried out by PTUN became more and more extensive.

Article 21 of the Act states that "A body and/or government officials may submit an application to the court to assess whether or not there are elements of abuse of authority

[23] Firna Novi Anggoro, "Pengujian Unsur Penyalahgunaan Wewenang Terhadap Keputusan Dan/Atau Tindakan Pejabat Pemerintahan Oleh PTUN", *Jurnal Fiat Justitia*, Vol. 10 Issue 4, Oktober-Desember 2016, hal. 635.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

in decisions and / or actions". Article 3 of the Perma No. 4 of 2015 states: "A government official who feels that his interests are prejudiced by the results of the supervision of the internal surveillance apparatus of the government may apply to the competent court containing an application for the Decision and/ or action of the Government officials to declare the existence or absence of elements of Abuse of Authority".

The jurisdictional consequences of the Applicant whose object of dispute is filed in the State Business Court pursuant to Article 4 PERMA No. 4 Year 2015 where the applicant is "The Government agency to be applied is to declare the decision and/or action of the Government Office there is a statement of abuse of authority as well as the annulment or invalidation of decisions and / or actions of Government Office. Instead, if the applicant is a Government Office, then the object of the appeal is to declare the Decision and/or action of the Government Office there are no elements of abuse of authority". When referring to Article 20 paragraph (5) and paragraph (6) of the AP Act stating differences in the charge of reimbursement of State losses, then in accordance with Article 4 paragraph (1) letter d PERMA No. 4 Year 2015 on the matter of the application submitted by the Government Body or Government Office. If the Government Agency as the Applicant, then the thing requested is to declare the decision and/or action of the Government Office there are elements of abuse of authority so that according to Article 20 paragraph (6) of the AP Act the repayment of the loss of the State is charged to the Government Department, the reverse understanding is that when the Government Administration Office as the applicant then the matter requested was to declarate the decisions and/ or actions of the government there are no elements of misuse of the power so that in accordance with Article 20(6) of the Ap Act the reimbursement of the financial loss the State was charged the Government Body.

According to Article 3 of PERMA No. 4 of 2015, which states that Government agencies/officials who feel that their interests are detrimental to the results of surveillance of the Government Internal Oversight Apparatus (APIP) may submit a request for examination of the elements of abuse of authority to the competent court containing a claim that the Decision and/or action of Government Offices is found to have elements of abusive authority, so that the agencies and / or Government officials who find their interest to be deteriorated by the outcome of the oversight of the Internal oversight apparatus of the government (APIP) can submit an application to the PTUN increasingly reaffirming that the object of the application that can be submitted to the PTUN is the

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

result of oversight by the Government's internal oversight apparatus (PTOU), therefore it is not possible to file a request to the PTUN without the previous results of the inspection of the internal overseeing apparatus of government (APIP).

Pursuant to Article 2 of the Perma No. 4 of the Government Internal Oversight Appliance (APIP) and Article 49 of Government Regulations No. 60 of the Year 2008 on the System of Internal Control of Government, it is stated that the Government's Internal Surveillance Appliances (APIIP) are composed of the Agency for Financial Oversight and Development (BPKP), the General Inspectorate or other nomenclatures that carry out the internal oversight of the Provincial Inspectorates, district/city inspectors. The Financial oversight and development agency (PPK) as part of the APIP has strategic functions and authority. By Presidential Decree No. 31 of 1983 dated 30 May 1983. DJPKN is transformed into BPKP, a non-departmental government agency (LPND) that is under and directly accountable to the President. One of the considerations drawn out by the Presidential Decree No. 31 of 1983 on the BPKP is the need for a supervisory body or agency that can perform its functions in an independent manner without encountering the possibility of obstacles from the governmental organizational units that are the subject of its inspection. In carrying out its duties, the BPKP organizes the following functions:

1. "Audition and formulation of national policies in the area of financial supervision and development. Formulation of policy implementation in the field of financial oversight and development."
2. Coordination of functional activities in the implementation of BPKP tasks. Monitoring, guidance, and construction of financial supervision and development activities.
3. Maintenance, cultivation, and public administration services in the fields of general planning, entrepreneurship, organization and administration, staffing, finance, archival, assembly, equipment, and household".
4. In organizing these functions BPKP has the authority to: "Development and financial supervision in the field of macro-national plans. Formulation of policies in the area of financial oversight and development to support development in the macro. Establishment of information systems in the areas of financial surveillance and development.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

5. Building and supervising the maintenance of regional autonomy which includes the provision of guidance, direction, training, direction and supervision in the field of financial supervision and development.
6. Other powers which are inherent and have been exercised in accordance with the provisions of the applicable laws".

Regarding the supervision of the APBN, Article 70 of Keppres No. 42 of 2002 states that "The Inspector of the Department/Unity of Supervision of LPND oversees the implementation of the state budget carried out by the office/unity of work/project/part of the project in the environment of the department/agency concerned in accordance with the provisions in force". The results of the inspection of the Itjen/UP. The LPND is submitted to the Minister/leader of the agency that manages the project concerned with a notice submitting to the Chief of the BPKP. The results are divided into 3 (three things) namely: No administrative errors; No legal consequences against the Agency/Agency of Government who has issued the Decision/Action.

1. There was an administrative error; pursued with administrative improvement in accordance with the provisions of the regulations of the legislation.
2. There were administrative errors that resulted in financial losses to the state.
3. Then the reimbursement of the state's financial losses was charged to the Government Agency. (on condition that the results of the inspection of the Internal Surveillance Equipment of the Government do not indicate any abuse of authority).

However, if the Internal Surveillance Equipment of the Government (APIP) finds abuse of authority, it is charged to the Government Office. (individu).

With regard to the time limit under the provisions of Article 20 of the AP Act, after the results of the surveillance of the Internal Monitoring Apparatus of the Government (APIP) declared that there had been an administrative error (maaladministratie) that caused the financial loss of the State, then granted a period of reimbursement as referred to not more than 10 (ten) days from the decision and the publication of the assessment of the oversight carried out by the Government's internal monitoring apparatus. (APIP). Article 2 paragraph (1) PERMA No.4 Year 2015 also gives a

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

limitation on the competence of the PTUN in determining whether or not there are elements of abuse of authority, i.e. before criminal proceedings. (and investigation, and prosecution, and examination of matters before the judgment).[24]

Based on the explanation, then what is referred to in article 2 paragraph (1) PERMA No. 4 Year 2015 that explains about before the existence of criminal proceedings is before there is an investigation or investigation process. There is a misunderstanding in the phrase "before criminal proceedings" as regulated in PERMA No. 4 of 2015, that the Internal Oversight Apparatus of the Government (APIP) in the Financial and Development Supervisory Authority (BPKP) can not make a judgement that can be used by the Government agency/officials that the Government Agency/Officials can use to submit a dispute application that becomes the absolute competence of the State Business Court (PTUN), because what usually happens is that the Financial Oversight Authority and Development (BPCP) makes an assessment on the basis of a request from the law enforcement authority (Police, or Prosecutor's Office), thus an evaluation carried out by the internal oversight authority of the government (PIP) within the Financial Surveillance and Development Agency (BCPP) has already entered into criminal proceeding. (Investigation, prosecution)

Therefore, the surveillance referred to in PERMA No. 4 Year 2015 is the oversight carried out by the Internal Surveillance Apparatus of the Government (APIP) not in the form of BPKP, but other APIP agencies (provincial inspectors, or inspectorates cab/city). It should be further understood that in addition to the assessment there is no abuse of authority referred to in Article 17 of the AP Act by the Internal Surveillance Apparatus of the Government (APIP) against the decisions and/or actions of the government administration that have been carried out, in order to ensure legal certainty as a form of law enforcement mechanism that takes into account human rights based on the basis of due process of law, positioning the suspect / suspect as a subject (accusatoir) by upholding the presumption of innocence. (presumption of innocence). Based on PERMA Act No. 4 of 2015 on Legal Guidelines in the Assessment of Elements of Abuse of Authority.

[24] Proses pidana dalam hal ini mengutip pendapat Frans Hagan yang menyatakan "*Criminal Justice Proces is the series of procedure by which society identifies, accuses, tries, convicts, and punishes offender*" yakni setiap tahapan dari suatu putusan yang menghadapkan seorang tersangka kedalam proses yang membawanya kepada penentuan pidana bagi dirinya, dalam Romli Atmasasmita, 2013, *Sistem Peradilan Pidana Kontemporer*, Prenada Media: Jakarta, hal. 2.

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

The State Business Court (PTUN) is authorized to accept, examine, and terminate the assessment of the application whether or not there is an abuse of authority after the outcome of the supervision of the Government Internal Oversight Apparatus. The State Trade Court is obliged to terminate an aquo application no later than 21 (twenty-one) working days since the application was filed and the legal effort that can be made is an appeal to the High Court of State Business Administration and terminates no later as 21 (twentieth one) days from the appeal is filed, against the result of the decision is final and binding. (final and binding). This is also affirmed in PERMA No. 4 Year 2015 which states that "on the examination of the elements of abuse of authority examination trial not through the dismissal process nor preparatory examination as examination in the ordinary PTUN, as well as PERMA no. 4 year 2015 slightly changed the PTUN examination by still accommodating the existence of legal efforts appeal to the High Court of TUN on the decision of PTUN". The decision of the Supreme Court of State Industry (PT TUN) was then final and binding. (final and binding).

The problem that arises in the world of practice is that there are no parameters that can qualify a prohibition of abuse of authority, since the provisions in Article 17 jo Article 18 jo Article 19 of the AP Act are prohibitions in abuse. Thus it appears to be affirmed that the jurisdiction of the courts examining abuse of authority is the general court and/or the criminal court for corruption as regulated in Article 3 of the PTPK Act, whereas the court that examines abuse in the state corporate justice is competent. (PTUN). However, given the role of APIP is under the head of the district who has top-down authority, and often the intervention of the superiors against the subordinates, then the APIP would indirectly relax some of its oversight. Furthermore, PERMA No. 4 Year 2015 stated that the request was made before the existence of criminal proceedings which in this case could not be done by BPKP as APIP. Referring to the problem here, in fact, there is an agency that functions to carry out supervision related to the performance of government bodies / officers that can be described as the Internal Surveillance Apparatus of Government (APIP) besides the BPCP, the Provincial Inspectorate, the Cabinet/City inspectorate namely the Ombudsman. The Ombudsman is the authority of the State to oversee the maintenance of public services, whether organized by the State and government organizers, including those organized of the BUMN, BUMD, or individuals charged with the organization of certain public services whose funds are partly or entirely from the APBN. The authority the

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

Ombudsmans as mentioned in Article 7 letter a of the Act No. 37 of 2008 is to receive reports on alleged maladministration in the management of public service to then make a recommendation on the occurrence of Maladministration carried out by the governmental agency / officials and to give advice to the President (see: Article 8 paragraph (2) letter a Act No.37, 2008), give attention to the Council of People's Representatives (DPR), Council of Regional People' s Representative (DDPD) or the Head of the District (See: Paragraph 8 (2) letter b of the Law No.37 of 2008). On the basis of the recommendations issued by the Ombudsman in accordance with Article 38 (1) of the Act No. 37 of 2008, the and the superiors shall be obliged to implement the recommendation of the омбудсман which, if these provisions are violated, the or the superior may be subject to administrative sanctions in conformity with the provisions of the applicable laws. (Vide: Pasal 39 UU No. 37 Tahun 2008). Thus, the Ombudsman can also be an alternative to APIP in its efforts to prevent (preventive) maladministrative actions by government agencies/officials in public service functions.

D. Conclusion

There is a misunderstanding about the abuse of authority, or authority that ultimately implies arbitrary actions by the Government apparatus in the framework of the administration (arrangement) related to its tasks, substance, and functions. It is true that the Internal Surveillance Apparatus of the Government (APIP) is judged in accordance with its authority under Article 20 of the Act No. 30 of 2014 on Government Administration, where one of the results of the APIP assessment is that there are administrative errors that cause damage to the state needs to be revised. Because the APIP's assessment will be forwarded to the National Business Court. (Pengadilan TUN). This is very risky because the damaging elements of the state's finances are actually the competence of the Corruption Criminal Tribunal (TIPIKOR) in deciding it. If the discretion exercised by any Government office is a source of free will, it cannot immediately be used as a basis for an act of abuse of authority, it is necessary to have an administrative mechanism which should be carried out first through the Court of State Affairs. (PTUN).

Article 21 of the AP and PERMA Act No. 4 of 2015 has defined the procedures for the execution of the settlement of alleged abuse of authority by government agencies. PERMA No. 4 Year 2015 further expanded the absolute competence of the PTUN in examining administrative disputes by adding the applicant, the Government Office in the case of a request not occurred mismanagement made by him. PERMA no. 4 year 2015 supported the

WIDYA PRANATA HUKUM
JURNAL KAJIAN DAN PENELITIAN HUKUM
P-ISSN : 2654-5195 | E-ISSN : 2686-2417

efficiency of the settlement of the application as contained in Article 21 of the AP Act stating that PTUN has only 21 (twenty-one) time to terminate the existing application, likewise for the High Court of State Administration (PT TUN) also only has 21 (twentieth one) days in the termination of the appeal.

BIBLIOGRAPHY

Aji, Indriyanto Seno, "Prespektif Ajaran Perbuatan Melawan Hukum Terhadap Tindak Pidana Korupsi", *Jurnal Hukum Pro Justitia*, Vol. 25 No. 4, Oktober 2007.

Atmasasmita, Romli, 2010. *Sistem Peradilan Pidana Kontemporer*, Kencana Prenada Media Grup: Jakarta.

Atmasasmita, Romli, 2013. *Sistem Peradilan Pidana Kontemporer*, Prenada Media: Jakarta.

Braithwaite, John, 2022. *Restorative Justice and Responsive Regulation*, Oxford University Press: New York.

Darumurti, Krishna Djaya, 2015. *Konsep dan Asas Hukum Kekuasaan Diskresi Pemerintah*, Disertasi Universitas Airlangga: Surabaya.

Firna Novi Anggoro, "Pengujian Unsur Penyalahgunaan Wewenang Terhadap Keputusan Dan/Atau Tindakan Pejabat Pemerintahan Oleh PTUN", *Jurnal Fiat Justitia*, Vol. 10 Issue 4, Oktober-Desember 2016.

Hadjon, Philipus M., 2007. *Perlindungan Hukum Bagi Rakyat di Indonesia, Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi*, Edisi Khusus, Cet-I, Peradaban: Surabaya.

Hadjon, Philipus M., 2011. *Kisi-Kisi Hukum Administrasi Dalam Konteks Tindak Pidana Korupsi* dalam Philipus M.Hadjon, et.al, *Hukum Administrasi dan Tindak Pidana Korupsi*, Gadjah Mada University Press.

M. Hadjon, Philipus, dkk, 2012. *Hukum Administrasi dan Good Governance*, Cet-II, Universitas Trisakti: Jakarta.

Marzuki, Peter Mahmud, 2009. *Pengantar Ilmu Hukum*, Cet-II, Kencana Prenada Media Group: Jakarta.

Mulyadi, Lilik, 2012. *Bunga Rampai Hukum Pidana Umum dan Khusus*, PT. Alumni: Bandung.

Purbopranoto, Kuntjoro, *Perkembangan Hukum Administrasi Indonesia*, 1981, Proyek Penulisan Karya Ilmiah Badan Pembinaan Hukum Nasional Departemen Kehakiman RI, Cet I, Angkasa Offset: Bandung.

Ridwan HR., *Hukum Administrasi Negara*, Cet-I, UII Press: Yogyakarta, 2002.

Sadjijono, 2011. *Bab-Bab Pokok Hukum Administrasi*, Cet-II, Laksbang: Surabaya.

Stout, Hal. D., 1994. *De Betekenissen Van De Wet*, W.E.J. Tjeenk Willink, Zwolle.

Sudarto, 1990, *Hukum Pidana I*, Fakultas Hukum Universitas Diponegoro, Semarang.