Efforts to Prevent Acts of Abuse Authority That Result in Harm State Finances
Using the Government’s Internal Supervision Apparatus

Bagus Teguh Santoso\textsuperscript{a}, Ahmad Munir\textsuperscript{b}
\textsuperscript{a} Fakultas Hukum, Universitas Bhayangkara Surabaya, Surabaya, Email: bagusteguhsantoso@rocketmail.com
\textsuperscript{b} Fakultas Hukum, Universitas Islam Darul ‘Ulum, Lamongan, Email: ahmadmunir@unisda.ac.id

\textbf{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.

\textit{Keywords}: Government Internal Monitoring Apparatus; State finances; Abuse of Authority.
A. Pendahuluan

In general, administrative errors (maladministrasi) cannot be prosecuted criminally. This does not imply that any government agency or official has the authority to make decisions and/or act arbitrarily. The willfulness and awareness of the government body/official what causes state financial losses that can enter the domain of criminal law (mala in se). Criminalization of public official policies that occur in the public official policy sector is essentially a denial of the dogma and doctrine of criminal law itself, as the ultimate weapon/last weapon (ultimum remedium), rather than the main weapon/first weapon (primum remedium). In the concept of state of law (rechtstaat), Indonesia has mandated in its Constitution of Republic of Indonesia 1945 (hereinafter abbreviated as UUD NRI 1945) that law enforcement must be guided by human rights in the process of enforcing criminal law, using the principle of due process of law. As Philipus M. Hadjon emphasized the following:

“…the central concept of rechtstaat is the recognition and protection of human rights based on freedom and equality. The existence of the 1945 Constitution will provide constitutional guarantees to the freedom and equality principles. The concentration of power in one hand, which is prone to abuse, is a violation of freedom and equality…”

A Public Official’s policy is an inherent authority obtained by attribution, delegation, or mandate. According to its form, authority is classified into two types, namely bound authority and free authority (doelmatigeheid). In the concept of state of law (rechtstaat), Indonesia has mandated in its Constitution of Republic of Indonesia 1945 (hereinafter abbreviated as UUD NRI 1945) that law enforcement must be guided by human rights in the process of enforcing criminal law, using the principle of due process of law. As Philipus M. Hadjon emphasized the following:

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A Public Official’s policy is an inherent authority obtained by attribution, delegation, or mandate. According to its form, authority is classified into two types, namely bound authority and free authority (doelmatigeheid). To test the validity of the authority possessed by public officials, the State Administrative Court mechanism is used, as outlined in Article 21 of Law No. 30 of 2014 concerning Government Administration, Perma No. 4 of 2015 concerning Guidelines for Procedures in Elements of Abuse of Authority, and Presidential Instruction No. 1 of 2016 concerning Acceleration of National Strategy Project Implementation.

Essentially, because criminal law lacks its own definition of abuse authority, therefore the definition related to authority is unquestionably the domain of Administrative Law. Although, according to Article 103 of the Criminal Code, criminal law has the right to determine its own meaning, if criminal law does not determine its own meaning, the meaning provided by other laws may be used in criminal law. When the application of the right of autonomy of criminal law touches the basic principles of administrative law or other laws that are reflected in the principles of the law in question, the application of the right is not justified. Because it is feared that clash of laws will result in legal dysfunction, for example, in administrative law, there are four types of authority. Attribution Authority, Delegation Authority, Mandate Authority, and Discretionary Authority are all examples of authority. Each of these authorities has distinct characteristics and responsibilities.

Discretionary authority does not arise as a result of legislation or delegation from higher-ranking officials. As a result, the assessment is based on general good governance principles as a reference for good governance in carrying out its duties and responsibilities.

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functions in the public interest (public good). As previously stated, authority has different characteristics between bound authority and free authority (discretion). However, in the practice of criminal law enforcement, there is a phenomenon of generalizing these types of authority, resulting in a public official who is actually using his discretionary authority being considered "abuse of authority" as defined in Article 3 of the PTPK (Non-taxable Income) Law because it is not based on applicable laws and regulations.

Criminalization of corruption cases by law enforcement officials frequently violates a fundamental principle in criminal law enforcement, namely the transformation of the presumption of innocence into a presumption of guilt, as if overriding criminal law enforcement based on the principle of due process of law into a crime control model, so that for public officials and/or anyone suspected or presumed of committing corruption crimes, it frequently leads to the criminalization process as a convict, despite the fact that it was initially the implementation of the exercise of free authority (discretion).

Law enforcers are trapped in the law’s mechanism (wetmatigheid), along with the criteria for punishment defined by the legislature, on the grounds that our positive law has regulated so (lex dura sed tamen scripta), which is actually far from and contradictory to the purposes of a just law. Ignoring the premise of criminalization has resulted in criminalization in its concrete manifestation. There is a forced determination of suspects, the fulfillment of desired criminal elements, and a deliberate search for mistakes by (public) officials to be targeted as convicts, as well as various types and types of negative law enforcement behavior in determining the criminal process, making criminalization ultimately negative and potentially hindering the development process in developing countries such as Indonesia, which is counterproductive to Presidential Instruction No. 1 of 2016 concerning the Acceleration of National Strategy Project Implementation, as

5 Ibid.

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

9 Bahwa perundang-undang senantiasa tertinggal dalam mengantisipasi perkembangan zaman (het recht hinkt achter de feiten aan), sehingga hukum (hakim) yang mencerminkan keadaan tidak hanya berfungsi sebagai corong undang-undang ansih (bouche de laitou), 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”.

a result, the existing budgets, both APBN (State Budget) and APBD (State Budget), are not being utilized optimally because officials are haunted by the shadow of criminalization in their use.

B. Metode Penelitian

Legal research is defined by Black's Law Dictionary as “the finding and assembling of authorities bearing on a question of law; the field of study concerned with the effective marshaling of authorities bearing on a question of law.”\textsuperscript{12} The normative legal research method was employed in this study. Essentially, the research approach is an attempt to discover legal rules, legal principles, and legal expert opinions as solutions to the legal difficulties at hand.\textsuperscript{13} The statute approach and the conceptual approach were used in PERMA No. 4 of 2015 against government administration arrangements for abuse of authority by internal government apparatus that harms state finances. The purpose of this study is to examine acts of abuse of authority that cause harm to state finances via the government's internal control apparatus.

C. Discussion

1. Discretion is related with actions of abuse of authority in corruption offenses.

Government has two meanings\textsuperscript{14}: “the first in a broad sense (regering or government) is the implementation of the duties of all bodies, institutions, and officers entrusted with the authority to achieve state goals. The second, in a restricted meaning (bestuur or government), includes the structure of functions that carry out government obligations (bestuurfunctie).”\textsuperscript{15} Important principles in arranging government administration according to Philipus Hadjon, are as follows\textsuperscript{16}:

1. “Based on popular sovereignty, with opportunities for people to engage in decision-making and public policy;
2. The construction of institutions that are in conformity with the needs, objective potential, and socioeconomic and cultural features of the people;
3. Power balance in the connection between institutions that can function as a check and balance;
4. A clear separation of authority amongst government sectors based on their roles and functions that have synergies with each other;
5. Government management functions based on logic, objectivity, efficiency, and transparency;
6. Legislative institutions that can improve their ability to carry out control functions, legislation, and formulation of government policy;
7. The application of the principle of accountability in government administration;
8. The principles of establishing a clear vision, mission, and goals in developing policy strategies that are responsive to people's needs.”

In carrying out its obligations and functions, the government delegated authority to itself. The definition and understanding of authority are governed in Article 1 paragraph (5) of the AP (Government Administration) Law, which states that “authority is the right possessed by the Agency and/or Government Officials or other state administrators to make decision

\textsuperscript{13} Peter Mahmud Marzuki, Penelitian Hukum, Kencana Prenada Media Group, Jakarta, 2011, h. 35.
\textsuperscript{14} Kuntjoro Purbopranoto, Perkembangan Hukum Administrasi Indonesia, 1981, Proyek Penulisan Naskah Akademik UndangUndang No 30 Tahun 2014 tentang Administrasi Pemerintahan, hal. 7.
\textsuperscript{15} Ibid
\textsuperscript{16} Ibid
and/or actions in the administration of government.” In terms of **authority**, it is regulated in Article 1 paragraph (6) of the AP (Government Administration) Law states that “authority is the power of the Agency and/or Government Officials of other state administrators to act in the realm of public law.” Given that authority falls under the purview of administrative law and state administration, it is the judges of the PTUN (State Administrative Court) who decide whether a government official’s authority is legal or invalid.

Unlike the case of authority, which is defined as the power of government officials to act in the area in the public law, which not only has administrative and administrative ramifications, but can also result in criminal law. The notion in criminal law focuses on 2 (two) key things, namely the illegal conduct (**actus reus**) and the perpetrator’s responsibility (**mens rea**). This emphasizes that, in order to be criminalized, it is not enough to see the fulfillment of the elements of the offense in the law, but there are other elements that must also be assessed, namely the element of fault that can be accounted for by the perpetrator **keine strafe ohne** (there is no liability without fault).

According to Article 3 of the GCPL Law, the phrase abuse of authority, which is classified as a core offense (**bestandeel delict**), is closely related to public officials who, due to their position, have the potential to harm state finance or the state economy in order to benefit themselves, others, or a corporation. There are significant theoretical distinctions between **unlawful activities** as **bestandeel delict** Article 2 of the PTPK Law in terms of criminal law and **acts of abuse of authority** as **bestandeel delict** Article 3 of the PTPK Law in terms of administrative law. To prove the existence of acts of government officials (public officials) who committed the crime of corruption in the form of abuse of authority as an act of maladministration, the formulation of authority is explicitly not contained in the notion of criminal law.

Opinions on abuse of authority, **Indriyanto Seno Aji** presents an understanding of the idea of Jean Rivero and Waline provides an understanding of the concept of abuse of authority in administrative law described in 3 (three) types, namely: 17

1. “Use of authority to perform activities that are opposed to the public good or to benefit personal, group, or group interests;
2. Abuse of authority in the sense that the official’s activities are lawfully targeted at the public interest but diverge from the goal for which the authority is granted by law or other rules;
3. Abuse of authority in the sense that it misapplies the processes that should be employed to achieve a specific purpose in favor of other procedures.”

Abuse of authority is also defined in the **Verklarend Woordenboek OPENBAAR BESTUUR** as “het oneigenlijk gebruik maken van haar bevoegdheid door de overhead. Hiervan is sprake indien een overheidsorgaan zijn bevoegdheid kennelijk tot een ander doel heeft gebruikt dan tot doeleinden waartoe die bevoegdheid is gegeven. De overhead schendt Aldus het specialiteits beginsel” (“The use of authority is not as it should be. In this situation, the government apparatus exploits its authority for reasons other than those for which it was granted. As a result, the government apparatus violates the concept of specialization.”).

The corruption crime of abuse of authority denotes an activity that deviates from the reason for which the authority is granted by law or other laws. This is consistent with Indonesian jurisprudence based on the

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decision of the Supreme Court of the Republic of Indonesia Number 1340/Pid/1992, which uses the definition of abuse of authority to replace the definition in Article 53 paragraph (2) letter b of Law No. 5 of 1986 in conjunction with Law No. 9 of 2004 in conjunction with Law No. 51 of 2009 concerning State Administrative Courts, states that "...using his authority for purposes other than those for which the authority was granted." This is also found in the Decision of the Supreme Court of the Republic of Indonesia Number 572 K/Pid/2003 in the case of Akbar Tanjung, which refers to the definition of abuse of authority by reinterpreting Article 53 paragraph (2) letter b of the UU PTUN (State Administrative Court Law).

To establish the existence of a criminal act of corruption perpetrated by abusing authority in the form of utilizing authority for objectives other than those for which it was provided, as specified in State Administrative Court Law Article 53 paragraph (2) letter b, according to Indriyanto Seno Adji, it creates “gray area” between criminal law and administrative law in the criminal act of corruption, as a result, in order to establish the element of willful abuse of authority, one must first bear the weight of responsibility for the authority in question. In administrative law, authority (bevoegdheid) refers to power based on law (rechtsmacht or legal power), because authority is the foundation for government officials to act in accordance with laws and regulations. In terms of criminal culpability, fault is comprised of multiple aspects, namely:

a. “The existence of the maker's capacity for responsibility (schuldfähigkeit or zurechtmäßigsfähigkeit); this implies that the maker's mental condition must be normal;

b. A mental link between the maker and the act, manifested as intent (dolus) or neglect (culpa); these are referred to as types of blame.

c. There is no excuse that removes the guilt, or there is no excuse at all.”

If all of the criteria are present, the individual can be judged guilty or has criminal culpability, and they can be punished. As the rationale behind the creation of the Law on Government Administration in an effort to strengthen good governance and prohibit the practice of corruption, collusion, and nepotism. Prevention is viewed as a preventive endeavor (prevention) rather than repressive (punishment) as defined by the PTPK Law. In the paper Restorative Justice and Responsive Regulation, John Braithwaite introduces the concept of responsive regulation, which assesses how far a person's mistake for his actions can still be corrected without having to go through prosecution and punishment (punishment), as long as there is good faith to admit his mistake and be willing to make improvements.

This means that the instrument of punishment is used as a last resort as a curative measure guided by the principle of restitution in integrum, rather than as a mere provision of pain that has negative consequences (trauma syndrome) for government officials performing the function of public servants (bestuurszorg).

As a form of free authority, discretion is an authority possessed by the government that is not sourced in the applicable positive legal laws. However, discretion is not simply something that can be exercised freely at the discretion of the government. Decisions and/or acts taken by public entities or officials in relation to citizens must be in conformity with the provisions of laws and regulations, the General Principles of Good Government (AAUPB), and the Principle of Specialty (Principle of Benefit). The concepts “dat het bestuur aan de wet is onderworpen” and “het legaliteitbeginsel houdt in dat alle de burgers bindende

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19 Sudarto, 1990, Hukum Pidana I, Fakultas Hukum Universitas Diponegoro, Semarang, hal. 91.

beapalingen op de wet moeten berusten are acknowledged in administrative law.

In fact, every decision and/or action taken by a public entity or authority can be criminalized which is done not only in accordance with applicable positive legal requirements, but also deviates from the duties and authority of the public body or official as intended, which might do harm to both the state and citizens in the context of launching government administration, filling legal gaps, giving legal certainty, and overcoming government stagnation in specific circumstances for the benefit and public interest (deviating from the purpose of discretion). Furthermore, the techniques and procedures for establishing the presence or absence of abuse of authority should fall within administrative law rather than criminal law.


The Government Administration Law was enacted to strengthen the prevention (preventive) eradication of corruption. As a result, decisions and/or actions of government administration suspected of maladministration should first be resolved through an administrative law mechanism, namely by the government's internal supervisory apparatus (see Article 20 paragraph 1 of the AP Law) and/or through a testing mechanism at the State Administrative Court (see Article 21 paragraph 2 of the AP Law). This is intended to ensure the certainty of criminal law enforcement 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 State of law (rechtsstaat). Because there have been issues with the material legislation included in legislation No. 51 of 2009 respecting PTUN.

The AP Law expands the State Administrative Court’s absolute jurisdiction, one of which is the ability for the State Administrative Court to test the components of abuse of authority against decisions and/or actions of Government Officials, as confirmed in Article 21 of the AP Law. Mechanisms for testing for abuse of authority in the AP Law, which is the competence of the PTUN, have trial procedures in accordance with PERMA No. 4 of 2015 concerning Procedural procedures in Assessing Elements of Abuse of Authority. The term "Application" is used in PERMA No. 4 of 2015, as opposed to the phrase "lawsuit" in the AP Law for the entry of cases.


involving Abuse of Authority by public bodies/officials.

The distinction in terminology has the legal consequence that disputes involving misuse of authority in the State Administrative Court are between persons or private legal entities as Plaintiffs and public legal entities or State Administrative Officials as Defendants, then the competence is expanded with the issuance of PERMA No. 4 of 2015, as state administrative disputes are expanded in the form of applications that can also be submitted by public bodies or officials, thereby broadening the judiciary supervision mechanism carried out by the State Administrative Court becomes broader. In the case of state administrative disputes that can be presented to the State Administrative Court under PERMA No. 4 of 2015, it is stated that the Applicant is the Applicant as referred to in Article 21 paragraph (2) of the AP Law and Article 3 of PERMA No. 4 of 2015, as follows:

According to Article 21 of the AP Law, “Agencies and/or Government Officials may apply to the court to determine whether or not there is an element of abuse of authority in the decision and/or action.”

According to Article 3 of PERMA No. 4 of 2015, “Government agencies and/or officials who believe that the results of the supervision of the government internal control apparatus have harmed their interests may file an application with the competent court for testing the elements of abuse of authority, claiming that the Government Official's decision and/or action are declared to have or not have elements of abuse of authority.”

The legal consequence of the Applicant whose object of dispute is filed in the State Administrative Court is based on Article 4 of PERMA No. 4 of 2015, where the applicant is "the Government Body whose petition is to declare the decision and/or action of a Government Official to be an abuse of authority and to declare the decision and/or action of a Government Official void or invalid." If, on the other hand, the applicant is a Government Official, the petition's goal is to declare that the Government Official's decision and/or action does not constitute abuse of authority.”

Referring to Article 20 paragraphs (5) and (6) of the AP Law, which state the difference in the burden of restitution of state losses, it is consistent with Article 4 paragraph (1) letter d of PERMA No. 4 of 2015 regarding the petition requested by the Government Body or Government Official. If the Government Body is the Applicant, the matter requested is to declare that the Government Official's decision and/or action contains an element of abuse of authority, so that the state financial recovery is borne by the Government Official under Article 20 paragraph (6) of the AP Law. If a government official is the applicant, the matter desired is a declaration that the government decision and/or action do not contain an element of abuse of authority, such that the state financial recovery is borne by the government body under Article 20 paragraph (6) of the AP Law.

According to Article 3 of PERMA No. 4 of 2015, any agency or government official who believes that the results of the Government Internal Supervisory Apparatus (APIP) supervision have harmed his interests may file an application with the competent court for testing the elements of abuse of authority, claiming that the Government Official's decision and/or action are declared to have elements of abuse of authority. Thus, a Government Agency and/or official who believes that the results of the Government Internal Supervisory Apparatus (APIP) supervision have harmed their interests may file an application with the State Administrative Court, which reaffirms that the object of the application that can be filed with the State Administrative Court is the results of the Government Internal Supervisory Apparatus (APIP). As a result, an application to the State Administrative Court cannot be filed without the results of the preceding examination of the Government Internal Supervisory Apparatus (APIP).
According to Article 2 of PERMA No. 4 of 2015, the submission of applications to the State Administrative Court (PTUN) is restricted after the results of Government Internal Supervisory Apparatus (APIP) supervision and before the investigation in the realm of criminal law. The results of supervision from the Government Internal Supervisory Apparatus (APIP) become crucial when agencies or government officials file an application with the State Administrative Court (PTUN). According to article 49 of Government Regulation Number 60 of 2008 pertaining to the Government Internal Control System. According to the APIP, the Financial and Development Supervisory Agency (BPKP), Inspectorate General, or other nomenclature that undertakes internal oversight, including the Provincial Inspectorate and Regency/City Inspectorate, comprise the APIP.

As part of APIP, the Financial and Development Supervisory Agency (BPKP) has strategic functions and authorities. On May 30, 1983, Presidential Decree Number 31 of 1983 was issued. DJPKN was renamed BPKP, a non-departmental government agency (LPND) reporting directly to the President. One of the factors that led to the issuance of Presidential Decree No. 31 of 1983 concerning the BPKP was the need for a supervisory body or institution that can carry out its functions freely and without interference from the government organization unit that is the subject of its inspection.

In order to carry out its responsibilities, BPKP organizes functions:

1. “Assessment and formulation of national policy in the field of financial and development oversight.
2. Policy formulation and execution in the realm of financial and development supervision.
3. Coordination of functional activities in the execution of BPKP responsibilities.
4. Monitoring, providing guidance, and coaching on financial and development supervision activities.
5. Implementation, coaching, and general administrative services in the fields of general planning, administration, organization and management, staffing, finance, archives, comparisons, equipment, and households.”

To carry out those functions, BPKP has the following authority:

1. “Preparation of a macro-national plan for financial and development oversight.
2. Policy formulation in the areas of financial and development supervision to support macro-development.
3. Installation of information systems for financial and development oversight.
4. Guidance and supervision over the implementation of regional autonomy, including providing guidelines, guidance, training, direction, and supervision in the field of financial and development oversight.
5. Determining requirements for accreditation of educational institutions and certification of professionals and experts, as well as job requirements in the field of financial and development oversight.
6. Other inherent authorities that have been exercised in accordance with applicable laws and regulations.”

In terms of State Budget supervision, Article 70 of Presidential Decree No. 42 of 2002 states that “the Department’s Itjen/LLPND Supervisory Unit supervises the implementation of the state budget carried out by the office, work unit, project, or project section within the department or institution concerned in accordance with applicable regulations.” The results of the Itjen/UP. LLPND examination are submitted to the minister or head of the institution in charge of the project concerned, with a copy sent to the Head of BPKP.

The findings of the assessment conducted by the Government Internal Supervisory Apparatus in accordance with
Article 20 of the AP Law are divided into three (three) categories, namely:

a. There has been no administrative error; there are no legal ramifications for the Agency/Government Officials who issued the Decision/action.

b. There is an administrative error; administrative improvements have been implemented in accordance with the provisions of laws and regulations.

c. There is an administrative error that results in financial losses to the state.

The Government Agency then bears the cost of recouping state financial losses (provided that the results of the examination of the Government Internal Supervisory Apparatus do not reveal abuse of authority).

If the results of the examination of the Government Internal Supervisory Apparatus (APIP) show abuse of authority, the Government Official (individual) is charged.

Regarding the time limit set out in Article 20 of the AP Law, it begins once the results of the APIP’s supervision show that there has been an administrative error (maaladministratie) has occurred, resulting in state financial losses, the return period is limited to 10 (ten) days from the decision and issuance of the results of the APIP’s assessment of the supervision. Article 2 paragraph (1) of PERMA No. 4 of 2015 also limits the PTUN’s ability to determine the presence or absence of elements of abuse of authority, namely prior to the criminal process (investigation, prosecution, as well as case examination before the court).

According to this definition, what is meant in Article 2 paragraph (1) of PERMA No. 4 of 2015, which states that before the criminal process, is before the investigation or investigation process. The phrase "before the criminal process," as specified in PERMA No. 4 of 2015, contains an error, namely that the Government Internal Audit Apparatus (APIP) in the Financial and Development Supervisory Agency (BPKP) cannot, under any circumstances, make an assessment that can be used by the agency or government officials to file a dispute application, which is solely the province of the State Administrative Court (PTUN).

Because the Financial and Development Supervisory Agency (BPKP) typically makes an assessment based on requests from Law Enforcement Officials (police or prosecutors), an assessment made by the Government Internal Audit Apparatus (APIP) in the Financial and Development Supervisory Agency (BPKP) has entered the criminal process (investigation, prosecution).

As a result, the supervision referred to in PERMA No. 4 of 2015 is carried out by the Government Internal Supervisory Apparatus (APIP) in the form of other APIP institutions (provincial inspectorates, district or city inspectorates) rather than the BPKP.

What needs to be understood further is that, in addition to the assessment of whether or not there has been an abuse of authority, as defined in Article 17 of the AP Law, that have been carried out in the context of legal certainty as a type of law enforcement mechanism that takes human rights into account based on the principle of due process of law, it positions the suspect as a subject (acusator) by upholding the principle of presumption of innocence. According to the legal instrument PERMA No. 4 of 2015 on Procedural Guidelines for Assessing the Elements of Authority Abuse.

The State Administrative Court (PTUN) is authorized to receive, investigate,
and rule on whether or not there has been an abuse of authority based on the results of the Government Internal Supervisory Apparatus's supervision. The State Administrative Court is required to make a decision on the aquo application within 21 (twenty-one) working days of its submission, and the legal remedy available is an appeal to the State Administrative High Court, which must make a decision within 21 (twenty-one) working days of its submission. The outcome of the appeal is final and binding. This is emphasized further in PERMA No. 4 of 2015, which states that in "testing the elements of abuse of authority, the trial examination does not go through the dismissal process or preparatory examination as in the ordinary State Administrative Court examination, and PERMA No. 4 of 2015 slightly changes the State Administrative Court examination by still accommodating an appeal to the State Administrative High Court against the State Administrative Court Decision." The State Administrative High Court's (PT TUN) decision becomes final and binding.

The issue in practice is that there are no parameters that can qualify a prohibition on acts of abuse of authority because the provisions in Articles 17-18-19 of the AP Law are prohibitions on acts of abuse of authority. Thus, it appears to emphasize that the competence of the court that investigates abuse of authority is the general court and/or corruption court, as stipulated in Article 3 of the PTPK Law, whereas the competence of the court that investigates abuse of authority is the state administrative court. There appears to be a distinction between the concepts of criminal law in the PTPK Law and administrative law in the AP Law.

Regarding corruption crimes involving abuse of authority (see Article 3 of the PTPK Law), according to the AP Law, APIP should be the first line of defense in determining whether or not there is an abuse of authority via a trial mechanism at the State Administrative Court (PTUN). However, because APIP reports to the Regional Head, who has Top-Down authority, and because superiors frequently intervene against subordinates, APIP will indirectly relax its supervision a little. Furthermore, PERMA No. 4 Year 2015 states that the request is made prior to the criminal process, which is not possible for BPKP as APIP in this case.

Referring to the problem here, there is an institution that functions to supervise the performance of government agencies/officials, which can also be interpreted as the Government Internal Supervisory Apparatus (APIP) in addition to the BPKP, the Provincial Inspectorate, and the District or City Inspectorate, namely the Ombudsman. According to Article 1 point 1 of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, the Ombudsman is a state institution with the authority to oversee the implementation of public services organized by state and government administrators, including those organized by BUMN, BUMD, or individuals tasked with organizing specific public services, some or all of which are sourced from the APBN.

The authority of the Ombudsman, according to Article 7 letter a of Law No. 37 of 2008, is to receive reports on allegations of maladministration in the implementation of public services and then make a recommendation on the occurrence of maladministration committed by government agencies or officials and provide advice to the President (see Article 8 paragraph (2) letter a of Law No. 37 of 2008), the House of Representatives (DPR), the Regional Representatives Council (DPRD), or the Regional Head (see Article 8 paragraph (2) letter b of Law No. 37 of 2008). On the basis of the recommendations issued by the Ombudsman in accordance with Article 38 paragraph (1) of Law No. 37 of 2008, the reported party and the reported party's superior are obliged to implement the Ombudsman's recommendations and if this provision is broken, the reported party and the reported party's superior may face administrative sanctions under the applicable
laws and regulations (see Article 39 of Law No. 37 of 2008). As a result, the Ombudsman can also serve as an alternative to APIP in preventing (preventive) acts of maladministration committed by government agencies or public-sector employees.

D. Closing

1. Conclusion

There is a misunderstanding about abuse of authority as well as authority, which has ramifications for arbitrary actions taken by Government Apparatus in the context of bestuur (regulation) related to their duties, principals, and functions. It is true that it is assessed by the Government Internal Supervisory Apparatus (APIP) in accordance with its authority under Article 20 of Law Number 30 of 2014 concerning Government Administration, with one of the results of the APIP assessment being that there are administrative errors causing state losses that need to be revised. This APIP assessment will be heard at the State Administrative Court (TUN Court). Because the Financial and Development Supervisory Agency (BPKP) typically makes an assessment based on requests from Law Enforcement Officials (police or prosecutors) an assessment conducted by the Government Internal Audit Apparatus (APIP) in the Financial and Development Supervisory Agency (BPKP) has been referred to the criminal process (investigation and prosecution).

Article 21 of the AP Law and PERMA No. 4 of 2015 have been determined the procedures for implementing the settlement of requests for alleged abuse of authority committed by government agencies/official. PERMA No. 4 of 2015 broadens the PTUN's absolute competence in examining administrative disputes by including applicants, namely Government Officials, in cases where there is no evidence of maladministration. PERMA No. 4 of 2015 supports the efficiency of application settlement as stated in Article 21 of the AP Law, which states that the State Administrative Court (PT TUN) has only 21 (twenty-one) days to decide on existing applications and the State Administrative High Court (PT TUN) has only 21 (twenty-one) days to decide on appeals.

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