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RESEARCH ARTICLE

THE CONNECTION BETWEEN ADMINISTRATIVE LAW AND CRIMINAL ACTS OF CORRUPTION: INDONESIAN LAW PERSPECTIVE

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ABSTRACT

Administrative law cannot be separated from the use of state finance; therefore, it is possible for state administrators and the government to take actions that may violate legal norms and cause deviation in the use of state finances. In Indonesia, if the state and government officials violate administrative legal norms and cause state financial losses, they will be categorized as committing criminal acts of corruption. The occurrence of corruption is not only contrary to the criminal law norms, but it is also possible that it is contrary to the administrative law norms. This article discussed the legal issue on the parameters of criminal acts of corruption under the Administrative Law from Indonesian law perspective. This is a normative legal research which employs statute and conceptual approaches. It is noted that there are connections between the administrative law regime and the corruption criminal law regime in: (a) the use of the term "abuse of authority"; (b) the scoop of the concept of "abuse of authority"; (c) the address addressed by a norm or norm subject (*normadressat*) in "abuse of authority"; and (d) the use of authority for purposes other than the initial purposes.

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INTRODUCTION

Law has so called legal norms (*rechtsnorm*) which can be divided into written and unwritten norms. The form of such legal norms is called as legal rule (B. Arief Sidartha, 2011, p.1). Legal norms are provisions containing necessity to conduct certain actions or prohibition to certain things which applicability can be legally enforced as the demand of justice requires that to be regulated (*Ibid*). The main requirement for a law to be considered as a good law is that such law must be based on utility principle (maximizing happiness and minimizing pain) (Jeremy Bentham as translated by Nurhadi, 2010, p.17). Other than utility principle, the law itself must be known by the society, consistent, clearly implemented, simple and strictly enforced (*Ibid*). In contrary, laws in Indonesia are currently more often reaping criticism rather than praise. Various criticism are addressed to, for example, the poor quality of law, uncertainty of certain legal instruments related to legislation process as well as the weak implementation of various legal instruments (Moh. Mahfud MD, 2010, p.1). The concept of administrative action under administrative law is related to government authority. Authority of government is the authority outside of legislation and judicial insofar as it concerns the responsibility relating to administrative action. Such responsibility can be divided into responsibility based on the position (job responsibility) and personal responsibility.

In relation to that, it is noted that corruption is classified as personal responsibility. Job responsibility relates to the legality (validity) of government action. Under administrative law, the issue of the legality of government action is related to governmental power approach. Meanwhile under administrative law, personal responsibility relates to functionary approach or behavioral approach. Personal responsibility also relates to maladministration in the use of authority and public service. The distinction between job responsibility and personal responsibility in terms of government action brings consequences relating to criminal responsibility, civil liability and state administrative liability.

State administrative liability is basically job responsibility. The scope of the legality of government action includes: (1) authority; (2) procedure; and (3) substance. Authority and substance are the basis for formal legality. This formal legality has given birth to the *praesumptio iustae causa* principle which can be found in Article 67 paragraph (1) of Indonesian Law No. 5 of 1986 on the State Administrative Judiciary (State Administrative Judiciary Law). Such article states that the lawsuit does not delay or hinder the implementation of a sued Institution Decision or Administrative Officer. The non-fulfillment of the above mentioned three legality components resulted in juridical defects of a government action. Every government action shall be based on legitimate authority.

Such authority is obtained through three sources, namely: attribution, delegation and mandate. The attribution authority is usually outlined through the distribution of state power by the Constitution or stipulated by Law. Meanwhile the delegation and mandate authorities are the authorities that come from delegation. The general principle of procedure rests on the three main foundations of administrative law, namely: (1) the rule of law principle, (2) the democracy principle, and (3) the instrumental principle. As an example, the rule of law principle relates to the protection of basic rights, e.g. the right not to submit documents of a privacy in nature, the right not to mention name or other identities in connection with objections raised against a request from another party or a draft of government action. One of the main points behind the establishment of the Indonesian Law No. 30 of 2014 on Government Administrative (Government Administrative Law) is directing the use of authority by agencies and/or government officials to always refers to the general principles of good governance or *Algemene Beginselen van Behoorlijk Bestuur* and the legislations. In addition to that, the establishment of such Law is also intended to provide legal protection for parties involved in the process of administering the government, both protection of citizens as affected parties and the government itself as the government administrator (Consideration part of the Government Administrative Law). Based on the above explanation, this article discussed the legal issue on the parameters of criminal acts of corruption under the Administrative Law from Indonesian law perspective by using normative legal research which employs statute and conceptual approaches.

RESULT AND ANALYSIS

Administration of government affairs is carried out by government organs (*bestuursorgaan*) on the basis of authority derived from Laws or legislations. Administrative law contains legal norms about how the government organs carry out their functions, duties, and authorities. These administrative legal norms are contained in the Constitution, Laws and other Laws and Regulations or written laws (*geschreven recht*). In addition, there are also unwritten laws (*ongeschreven recht*) in the form of general principles of good governance (*algemene beginselen van behoorlijk bestuur*). These administrative legal norms can be in the form of government norms (bestuursnorm) and norms of official's behavior (*gedragsnorm*). Unlawful act in the perspective of administrative law include actions that are contrary to the Laws and Regulations. First, the action is contrary to the provisions in formal procedural legislation. Second, the action is contrary to the provisions in the Laws and Regulations that are material or substantial in nature. Third, the legal action is carried out by an unauthorized government organ (*onbevoegd*), whether unauthorized from the regional perspective (*onbevoegdheid ratione loci*), time perspective (*onbevoegdheid ratione temporis*) or from material perspective (*onbevoegdheid ratione materie*). In addition to that, any action of government organs that contradicts what in the consciousness of general law and valid principles of good governance is also considered as unlawful act. Actions that are in conflict with administrative legal norms are abuse of authority (*detournement de pouvoir*) and arbitrary action (*willekeur*). Every action of government organ in carrying out government affairs is inseparable from the use of state finances. In the use of state finances, there are legal norms that regulate it, namely state finance law. This state financial law will not be stated in this article since it is not the focus of this research. What needs to be stated in this article is that state administrators and government must comply with legal norms governing the use of state finances along with the responsibilities. Administrative law cannot be separated from the use of state finance; therefore, it is possible for state administrators and the government to take actions that may violate legal norms and cause deviation in the use of state finances. In the event the state and government officials violate administrative legal norms and cause state financial losses, they will be categorized as committing criminal acts of corruption. Based on this explanation, it can be stated that the parameter of criminal acts of corruption in administrative law is the actions of state administrators and the government that violate Laws and Regulations, either in the form of violating procedure, violating the content or substance of legislation, taking actions without authority, committing abuse of authority (*detournement de pouvoir*) or arbitrary action (*willekeur*) which results in detrimental state finances. In addition to the previous parameter, the actions of state administrators and the government violate the general principles of good governance and cause state financial losses. In another way, action that is contrary to the Laws and Regulations is measured by the legality principle (*legaliteitsbeginse*l), abuse of authority is measured by the specialty principle (*specialiteitsbeginsel*), meanwhile committing arbitrary action is measured by the rationality principle (*retionaliteitsbeginsel*). As for the actions of public officials that are not in accordance with appropriateness and propriety values are measured by the living or valid principles of good governance which commonly known as general principles of good governance (*algemene beginselen van behoorlijk bestuur*).

The Responsibility of Corruption Perpetrator: Legal subjects, in the context of exercising their rights and obligations, will: (1) carry out legal actions (*rechtshandelingen*) which defined as actions that can cause certain legal consequences by its nature, and (2) conduct legal relations (*rechtsbetrekking*) in a legal association (*rechtsverkeer*). Actions, relationships and associations that are not related to the rights and obligations of legal subjects are not regulated by law. Laws that regulate such things exist in various fields such as civil law, administrative law, criminal law, environmental law, and so on. Legal actions, relationships, and associations carried out by legal subjects that turn out to be contrary to legal norms will cause such legal subjects to be responsible. Criminal acts of corruption is classified as an action that is contrary to legal norms. As stated above, the occurrence of corruption is not only contrary to the criminal law norms, but it is also possible that it is contrary to the administrative law norms. In this article, such term of corruption is limited to corruption which detrimental to state finances or regional finances where the perpetrators are mainly public officials, namely legal subjects who in carrying out legal actions are subject to and governed by administrative legal norms. Losses to state finances of regional finances bring legal consequence in the form of having to replace the loss. In other words, the corruption perpetrator will be imposed with civil liability, namely compensation *(schadevergoeding*) in the form of returning state money or regional money that has been used contrary to the law. In accordance to that, Article 35 paragraph (1) of Indonesian Law No. 17 of 2003 on State Finance (State Finance Law) regulates that every state official and civil servant who is not a treasurer and violates the law or neglects his/her obligation, directly or indirectly, which is detrimental to the state finances, is obliged to compensate the

said loss. Furthermore Article 59 paragraph (2) of Indonesian Law No. 1 of 2004 on State Treasury (State Treasury Law) determines that treasurer, civil servant who is not a treasurer or other official is obliged to compensate for the loss due to his/her action that violates law or neglects the obligation imposed on him/her that directly harms state finances. When the state money or regional money is returned, the element of loss is deemed disappear. It is just that the disappearance of the element of state or regional financial losses does not mean that the corruption perpetrator in question is fully free from legal responsibility. This depends on the motive or the cause of the corruption. Based on Article 35 paragraph (1) of State Finance Law and Article 59 paragraph (2) of State Treasury Law mentioned above, two different terms are used, namely "violating the law" and "neglecting his/her obligation". Each term has different legal consequences. According to Nur Basuki, if a state official or civil servant: (1) commits an unlawful action which results in loss of state finances, then the person in concerned is obliged to return the loss to the state and he/she is still possible to be prosecuted; while (2) neglects his/her obligation then the person in concerned must return the loss to state and the person in concerned is not prosecuted if such loss has been returned (Nur Basuki Winarno, p. 53).

Public officials who are proven to be factually committing criminal acts of corruption actually they are not only violating the criminal law norms but also administrative law norms, specifically violating the norms of apparatus behavior (*gedragsnorm*) or committing despicable action (maladministration). On that basis, in addition to being subject to criminal sanctions, officials who commit corruption can also be subject to administrative sanctions. Article 80 paragraph (4) of Government Administrative Law states that government officials who violate the provisions referred to in paragraph (1) or paragraph (2) which cause losses to state finances, national economy, and/or damage to the environment are subject to severe administrative sanctions. Based on the above explanation, it can be concluded that officials who commit criminal acts of corruption will be imposed with criminal, administrative and civil liabilities. However, as stated, criminal sanctions can be abolished if the state is not harmed, the public interest is served and the defendant does not obtain profit from such action.

Court Decision in the Settlement of Corruption Cases: This part briefly elaborates several court decisions with cases related to perpetrators from public official and/or civil servant background whose jobs and duties governed under administrative law in order to find connection between criminal law norms and administrative law norms in settling corruption cases. Generally, it is assumed that corruption does not occur when public officials and/or civil servants carry out their duties in accordance with administrative law norms. However, when public officials and/or civil servants are proven legally and convincingly committing criminal acts of corruption, obviously they also violate administrative law norm, especially the norm of apparatus behavior (*gedragsnorm*).

Court Decision No. 25/G /2015/PTUN-MDN: This case was examined by the Medan State Administrative Court. The applicant was Ahmad Fuad Lubis as the Head of Regional General Treasurer of North Sumatra Province and the respondent was the Head of the North Sumatra Chief Prosecutor's Office. Object of application was the respondent's Decision No. B-473/N.2.5/Fd.1/03/2015 dated 31 March 2015 on Summon for Statement to the applicant as the Head of Finance Bureau of North Sumatra Province (Decision Dated 31 March 2015). The Decision Dated 31 March 2015 basically stated that there was an alleged of criminal acts of corruption of the following funds: Social Aid (*Dana Bantuan Sosial* or *Bansos*), Inbred Aid (*Bantuan Daerah Bawaan* or BDB), School Operational Aid (*Bantuan Operasional Sekolah* or BOS), arrears in Revenue Sharing Fund (*tunggakan Dana Bagi Hasil* (DBH)) and equity participation in Regional Government-Owned Enterprise in government of North Sumatra Province based on Warrant for Investigation of the Head of the North Sumatra Chief Prosecutor's Office No. Print-31/N.2/Fd.1/03/2015 dated 16 March 2015 (Warrant for Investigation). The respondent's action was allegedly carried out by abusing authority that was contrary to the Laws and Regulations. Such action is included in Article 17 of the Government Administrative Law as action that is prohibited. the prohibition of abuse of authority stipulated in the provision of Article 17 of the Government Administrative Law.

Basically, the reasons behind applicant's application were as follow

- the applicant felt that his interest was harmed by the action taken by the respondent in relation to the existence of such Decision Dated 31 March 2015. According to the applicant, such summon of statement is considered as abuse of authority due to: (1) it did not mention the time when the criminal acts of corruption was occurred; (2) the absence of a State Financial Loss Report issued by the State Audit Board for the North Sumatra Province government as a basis for indication of corruption; and (3) the absence of discussion on internal supervision carried out by internal control officials (in this case from the Ministry of Home Affairs) as stipulated in Article 20 of the Government Administrative Law. The consequence borne by the applicant with such object of applicant is that his reputation, dignity and constitutional rights have been defiled. Not only that, the institution where the applicant is located has also been defiled by the respondent's action. Such action by the respondent constitutes abuse of authority. Based on the description above, the applicant has capacity and quality to submit an application for Authority Testing before the State Administrative Court to examine the existence of abuse of authority element in the decision and/or action by the respondent under Article 21 paragraph (2) of the Government Administrative Law;
- The respondent has committed action that exceed the authority by carrying out investigative action that was not in accordance with Article 1 point 2 of the Criminal Procedure Code, Government Administrative Law, Memorandum of Understanding (MoU) between the Ministry of Home Affairs of the Republic of Indonesia and the Public Prosecutor's Office of the Republic of Indonesia, and MoU between the State Audit Board and the ublic Prosecutor's Office of the Republic of Indonesia;
- Respondent's action in issuing object of application in contrary to the principles of legality, protection of Human Rights and general principles of good governance.

Based on the above reasons, the applicant wished to be granted with the following decisions:

1. Receive and grant the applicant's application for all;
2. Declare that the respondent's action in issuing Warrant for Investigation is invalid and has no binding legal force;
3. Declare that the respondent's action in issuing Decision Dated 31 March 2015 based on Warrant for Investigation as an abuse of authority action;
4. Declare that the respondent's action in issuing Decision Dated 31 March 2015 based on Warrant for Investigation is invalid and has no binding legal force.

The Respondent filed an absolute exception as response to the above application by applicant, namely: Medan State Administrative Court was not authorized to administer the *aquo* application due to:

- The elucidation of Government Administration Law states that this law is a material law of the State Administrative Judiciary System;
- Article 2 of Indonesian Law No. 9 of 2004 jo. Indonesian Law No. 5 of 1986 jo. Indonesian Law No. 51 of 2009 stipulates that decisions that are not included in the definition of State Administrative Decision under these laws are State Administrative Decisions based on the provisions of the Criminal Code or other criminal laws;
- Under Government Administration Law, which constitutes as material law for the State Administrative Court, the article has not been deleted; therefore, the provision is still valid;
- Thus, the Medan State Administrative Court is not authorized to administer the *aquo* application.

The other exception from respondent was that applicant's application had legal defect (*Obscuur Libel*). According to the respondent, applicant's arguments under the application were not based on law. Therefore, the respondent expressly rejected all applicant's arguments under the application except those that were explicitly recognized by reasons. The respondent did not commit abuse of authority by such Decision Dated 31 March 2015 in concerned. Such Decision Dated 31 March 2015 was in accordance with respondent's authority based on Criminal Procedure Code, Law No. 16 of 2004 on Prosecutor and Regulation of the Attorney General of the Republic of Indonesia No. PERJA-039/A/JA/2010 dated 29 October 2010 on Administrative Governance and Technical Handling of Special Crimes.· That the respondent's action in issuing the object of application was in accordance with the principles of legality, protection of Human Rights and general principles of good governance. Thus, the applicant did not have any loss upon such Decision Dated 31 March 2015.

In relation to the above explanations from the applicant's side and respondent's side, the Council of Judges' considerations in this case were basically as follows:

Considerations in Exception:

- Whereas with respect to the respondent's exception, the Council of Judges argued that what was tested in the aquo dispute process was regarding the respondent's decision/action in issuing the Decision as the object of dispute whether or not there was an element of abuse of authority as stipulated in Article 21 of the Government Administrative Law;
- Whereas Article 21 paragraph (1) of the Government Administrative Law stipulates that the State Administrative Court has the authority to accept, examine and decide whether or not there is an element of abuse of authority carried out by government officials;
- Whereas whether the issuance of the object of application (Proof of P-1=T-6) by the respondent could be included as carrying out the function of the government;
- Whereas Article 1 number 2 of the Government Administrative Law determines that the Government Function is a function in implementing Government Administration which includes the regulation, service, development, empowerment and protection functions;
- Whereas Article 4 paragraph (1) letter (b) of the Government Administrative Law states that the scope of Government Administration arrangement is all activities of the agencies and/or government officials who carry out government functions within the scope of judicial institution;
- Whereas based on the above provisions, in the opinion of the Council of Judges, the respondent could be included as carrying out the function of the government when issuing the object of application;
- Whereas Article 1 number 18 of the Government Administrative Law stipulates that the Court is a State Administrative Court;
- Whereas the object of application in this dispute was Decision Dated 31 March 2015 (Vide Proof of P-1=T-6) to be tested whether or not there was abuse of authority element in the issuance of said Decision as referred to in Article 21 of the Government Administrative Law; therefore, not as a claim as stipulated in Article 87 of the Government Administrative Law;
- Therefore, based on the above considerations, the Council of Judges must declare that the respondent's exceptions on the State Administrative Court was not authorized to examine, decide and resolve the dispute because it was related to the arrangement of the material law of the State Administrative Judiciary System, namely Article 2 letter (d) of Indonesian Law No. 9 of 2004 related to absolute competence were rejected.
- Furthermore, the Council of Judges considered the application was essentially on: whether or not there was an element of abuse of authority as referred to in Article 21 paragraph (2) of the Government Administrative Law in the issuance of the Decision Dated 31 March 2015.
- Whereas by the observance of Article 21 paragraph (2) of the Government Administrative Law, the first thing needed to be considered was that whether the applicant was an official who could submit an application related to such object of dispute aquo against the North Sumatra Chief Prosecutor's Office (the respondent);
- Whereas Article 1 number (3) of the Government Administration Law stipulates that the Government

Agencies and/or Officials are elements that carry out government functions both within the government's and other state administrator's environment;

- Whereas based on Proof P-16 in the form of Excerpt from North Sumatra Governor's Decision No. 821.23/1612/2014 Appendix I dated 2 May 2014 the applicant was a government official who carried out the government's functions within the North Sumatra Province;
- Whereas the Council of Judges would examine whether the respondent's Decision/action in issuing the object of aquo dispute and the abuse of authority element were existed;
- Whereas the North Sumatra Chief Prosecutor's Office issued Warrant for Investigation based on public complaint;
- Whereas Chapter XX Article 385 of the Indonesian Law No. 23 of 2014 on Regional Government (Regional Government Law) stipulates that: (1) the public can submit complaint on alleged deviation committed by the State Civil Apparatus in Regional Institution to the Government's Internal Supervisory Apparatus and/or law enforcement officers; (2) the Government's Internal Supervisory Apparatus is obliged to carry out an examination of the alleged deviation complained by the public as referred to in paragraph (1); (3) law enforcement officers shall conduct an examination of complaint submitted by the public as referred to in paragraph (1) after first coordinating with the Government's Internal Supervisory Apparatus or non-Ministry Government Agencies in charge of supervision; (4) further process is submitted to the Government's Internal Supervisory Apparatus if evidence of administrative deviation is found based on the result of the examination as referred to in paragraph (3); (5) further process is submitted to law enforcement officers if evidence of criminal deviation is found based on the result of the examination as referred to in paragraph (3).
- Whereas from the evidence submitted in court, there was no evidence that indicated that there was coordination by the respondent; therefore, the Council of Judges concluded that the respondent, in issuing the aquo dispute object, apparently did not first coordinate with the Government's Internal Supervisory Apparatus. Thus, this was contradicted with the provisions of Article 20 of the Government Administrative Law jo. Article 385 of the Regional Government Law;
- Whereas due to Decision Dated 31 March 2015 (Vide Proof of P-1=T-6) issued by the respondent contradicted with the applicable Laws, namely Article 20 of the Government Administrative Law jo. Article 385 of the Regional Government Law, the Council of Judges argued that the issuance of Decision Dated 31 March 2015 by the respondent has proven to contain abuse of authority element which was categorized as exceeding the authority referred to in Article 17 paragraph (2) letter (a) and Article 18 paragraph (1) letter (c) of the Government Administrative Law. As consequence, the object of the dispute must be declared invalid as referred to in Article 19 paragraph (1) of the Government Administration Law; thus, petitum of the applicant's application number 3 and number 4 must be granted;
- Regarding the petitum number 2 of the applicant's application, the Council of Judges argued that because the dispute object was Decision Dated 31 March 2015 (Vide Proof of P-1=T-6) meanwhile Warrant for Investigation was not the dispute object; therefore, the Council of Judges was in the perspective that the Warrant for Investigation was not relevant to be considered and must be rejected;
- Based on the above considerations, in principle, the Council of Judges decided as follows:

In exception:

Refuse the respondent's exception in its entirety.

In main application:

- Grant the applicant's application in part;
- Declare the Decision Dated 31 March 2015 has abuse of authority element;
- Declare invalid Decision Dated 31 March 2015;
- Sentence the respondent to pay the costs incurred in this case in the amount of IDR 269,000 (two hundred and sixty-nine thousand Indonesian Rupiah).

What happened next was that the respondent submitted an appeal to the State Administrative High Court of Medan upon the Decision No. 25/G/2015/PTUN-MDN issued by the Council of Judges of the State Administrative Court of Medan (State Administrative Court of Medan's Decision).

The Decision No.176/B/2015/PT TUN-MDN issued by the Council of Judges of the State Administrative High Court of Medan was in contrary to the State Administrative Court of Medan's Decision with the following considerations:

In the Exception

- Whereas true that the substance of Article 2 of the State Administrative Judiciary Law are not regulated, let alone revoked by the Government Administrative Law; therefore, the substance in the Article is still part of a positive law that is applied and guided by Judges in prosecuting cases including aquo cases;
- Whereas true that the object of the dispute in the aquo case was Decision Dated 31 March 2015;
- Whereas true that object of the dispute was issued based on the Warrant for Investigation;
- Whereas by observance to the object of the dispute mentioned above that was issued on the provisions of the Criminal Code as well as Criminal Procedure Code, the Council of Judges of Appeal argued that the case with the object of the dispute mentioned above was included in the category of letter or decision that is excluded in and the validity cannot be tested before the State Administrative Judiciary as determined in Article 2 letter (d) of the State Administrative Judiciary Law;
- Whereas moreover, the Council of Judges of Appeal considered that implementing the provisions contained under the Government Administrative Law which had just been ratified and entered into

force since 17 October 2014 as violated the prohibition on retroactive principle;

- Based on the above considerations, the Council of Judges of Appeal concluded that the first exception submitted by the respondent, legally, can be justified and accepted; therefore, the State Administrative High Court of Medan stated that the State Administrative Court of Medan was not absolutely authorized to administer *aquo* cases;
- With the receipt of the respondent's/appellant's exception on the Court (State Administrative Court) not having absolute authority in the *aquo* case, then the petitum did not need to be further considered and therefore the applicant's/appellee's applicantion was declared unacceptable. Hence, the Council of Judges of Appeal decided to revoke the State Administrative Court of Medan's Decision.

Based on the above explanation, it is noted that the State Administrative Court of Medan's Council of Judges had different perspective from the State Administrative High Court of Medan's Council of Judges of Appeal. On the one hand, it can be interpreted that, with the existence of the Government Administrative Law, the State Administrative Court has the authority to adjudicate the testing of authority carried out in the criminal law enforcement processes (decision based on the provisions of the Criminal Code and Criminal Procedure Code) specifically related to criminal acts of corruption. While on the other hand, it can be interpreted that the letter or decision (in the context of implementing criminal law and criminal procedural law) is excluded and the validity cannot be tested in the State Administrative Court as determined in Article 2 letter (d) of the State Administrative Judiciary Law, which in fact is not revoked by the Government Administrative Law – therefore, still serves as *ius constitutum*. The Decision Dated 31 March 2015 which was preceded by the Warrant for Investigation constitutes as part that cannot be separated in a series of criminal processes stipulated in Indonesian Law No. 8 of 1981 concerning the Criminal Procedure Code. Article 1 number (7) jo. Article 52 up to Article 74 jo. Article 87 of the Government Administrative Law, which govern decision of Government Administration, do not determine "exception" that is not included in the definition of a Decision. While other judges interpreted that other way as explained above.

Regulation on Government Administrative Decision/State Administrative Decision/Decision is as stipulated in Article 1 number 7 jo. Article 52 up to Article 74 jo. Article 87 of the Government Administrative Law. There is no presence of "exception" - on what is not included as Decision, even though in the 11th paragraph of its general elucidation is explained that this law constitutes the overall effort to reorganize the Decision and/or Action of the agencies and/or government officials based on the provisions of Laws and Regulations as well as general principles of good governance. On the other hand, Article 2 letter (a) to letter (g) of Indonesian Law No. 9 of 2004 on the Amendment to State Administrative Judiciary Law governs exception – on what is not included as State Administrative Decision even though if it fulfill the elements of Decision. Both are material laws of the State Administrative Judiciary system. Therefore, the above explanations allow for different views among State Administrative Court Judges. The transitional provision in Article 87 of the Government Administrative Law only regulates the meaning of State Administrative Decision, as referred to in the State Administrative Judiciary Law as amended by Indonesian Law No. 9 of 2004 and Indonesian Law No. 51 of 2009, which must be interpreted as:

- Written determination which also includes factual action;
- Decision of the Agency and/or State Administration Officer in the executive, legislative, judicial and other state administrators environment;
- Based on the provisions of Law and Regulations as well as general principles of good governance;
- Final in nature - in the broadest sense;
- Decision that has the potential to cause legal consequence; and/or
- Decision that apply to society.

Therefore, the provision as stated in Article 2 of Indonesian Law No. 9 of 2004 on the Amendment to State Administrative Judiciary Law still has its validity and efficacy, including the provision of Article 2 letter (d). Meanwhile, with the existence of Article 87 of Government Administrative Law, the provision as stated in Article 1 number (9) of Indonesian Law No. 51 of 2009 on the Second Amendment to State Administrative Judiciary Law still has its validity with no efficacy.

Conclusion

Based from the above elaboration, there are connections between the administrative law regime and the corruption criminal law regime in: (a) the use of the term "abuse of authority"; (b) the scoop of the concept of "abuse of authority"; (c) the address addressed by a norm or norm subject (*normadressat*) in "abuse of authority"; and (d) the use of authority for purposes other than the initial purposes. Furthermore, in Indonesia, the assessment of whether or not there is any abuse of authority element is a concurrent authority of the State Administrative Court and the Criminal Acts of Corruption Court.

REFERENCES

Achmad Ali, *Keterpurukan Hukum di Indonesia*, (Penyebab dan Solusinya), Jakarta: Ghalia Indonesia, 2005.

Arief Sidharta, B. 2011. "Pembentukan Hukum di Indonesia", Makalah disampaikan dalam Rapat Kerja Panitia Khusus DPR RI Rancangan Undang-Undang Tentang Pembentukan Peraturan Perundang-undangan, Rapat Dengar Pendapat Umum dengan para Pakar, Rabu, 26 Januari 2011

Arief Sidharta, B. 2011. *Pembentukan Hukum di Indonesia*, Paper was delivered in the Working Meeting of Special Committee of the House of Representatives of the Republic of Indonesia on Bill concerning the Establishment of Laws and Regulations, Hearing Public Arguments Meeting with the Experts

Artidjo Alkostar, *Korupsi Politik di Negara Merdeka*, Yogyakarta: FH. UII Press, 2008.

Eva Achjani Zulfa, 2010. Gu*gurnya Hak Menunutut Dasar Penghapusan, Peringanan, dan Pemberatan Pidana*, Jakarta: Ghalia Indonesia.

Head of the North Sumatra Chief Prosecutor's Office's Decision No. B-473/N.2.5/Fd.1/03/2015 dated 31 March 2015

Indonesian Criminal Code

Indonesian Criminal Procedure Code

Indonesian Law No. 1 of 2004 on State Treasury

Indonesian Law No. 17 of 2003 on State Finance

Indonesian Law No. 23 of 2014 on Regional Government

Indonesian Law No. 30 of 2014 on Government Administrative

Indonesian Law No. 5 of 1986 on the State Administrative Judiciary

Indonesian Law No. 51 of 2009 on the Second Amendment to Indonesian Law No. 5 of 1986 on the State Administrative Judiciary

Indonesian Law No. 9 of 2004 on the Amendment to Indonesian Law No. 5 of 1986 on the State Administrative Judiciary

Indriyanto Seno Adji, *Korupsi dan Pembalikan bukan Pembuktian*, Jakarta: Kantor Pengacara dan Konsultan Hukum, Prof. Oemar Seno Adji, SH & Rekan, 2006.

Jeremy Bentham, 2010. *Teori Perundang-undangan, Prinsip-Prinsip Hukum Perdata dan Hukum Pidana, (The Theory of Legislation),* Translated by Nurhadi, MA, Nusamedia, Bandung

Jeremy Bentham,2010. *Teori Perundang-undangan, Prinsip-Prinsip Hukum Perdata dan Hukum Pidana, (The Theory of Legislation),* Diterjemahkan oleh Nurhadi, MA, Bandung: Nusamedia

Warrant for Investigation of the Head of the North Sumatra Chief Prosecutor's Office No. Print-31/N.2/Fd.1/03/2015 dated 16 March 2015

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