ISSN: 0975-833X

Available online at http://www.journalcra.com

International Journal of Current Research
Vol. 12, Issue, 08, pp.13063-13067, August, 2020

DOI: https://doi.org/10.24941/ijcr.39449.08.2020

INTERNATIONAL JOURNAL OF CURRENT RESEARCH

RESEARCH ARTICLE

ABUSE OF AUTHORITY IN GOVERNMENT IMPLEMENTATION IN INDONESIA

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ARTICLE INFO

Article History:
Received 15th May, 2020
Received in revised form
21st June, 2020
Accepted 24th July, 2020
Published online 30th August, 2020

Key Words:
Authority Abuse,
Government Implementation.

ABSTRACT

This article is discussing abuse of the authority in government implementation in Indonesia. This article examines two legal problems as follows: (1) The essence of preventing abuse of authority in government implementation; and (2) forms of abuse of authority prevention in government implementation. In general, the objectives of this research are to theoretically carry out study and to analyzes philosophical thinking, legal theory, and legal dogmaticson proper Laws and Regulationsin preventing abuse of authority in government implementation in Indonesia. This research is normative legal research, which departs from the empty norm, with statutory, comparative, and conceptual approaches. The legal material of this research originated from primary, secondary, and tertiary legal materials which are analyzed descriptively. The result of this research shows that: (1) The essence of preventing abuse of authority in government implementation is realizing a good and clean government; and (2) forms of abuse of authority prevention in government implementation are political and government ethics, government bureaucratic behavior, dissemination on the abuse of authority prevention, supervision by authorized institutions of government administrators and their behavior, awareness enhancement on the ideology of *Pancasila* for government administrators, cooperation development with stakeholders (foundations, non-governmental organizations, community organizations, religious leaders, community leaders, and the press).

Citation: ***Filmon Mikson Polin.*** **2020.** "Abuse of authority in government implementation in Indonesia", *International Journal of Current Research*, 12, (07), 13063-13067.

INTRODUCTION

Based on legal dogmatic, the provision of Article 1 of Law of the Republic of Indonesia Number 30 of 2014 on Government Administration (Law No. 30/2014) does not explain the definition of abuse of authority. Furthermore, Article 17 to Article 21 of Law No. 30/2014 only describes the prohibition on, forms of, and supervision of the prohibition of abuse of authority. Therefore, there is no clear and certain regulation on the prevention of abuse of authority. Article 18 paragraph (3) of Law No. 30/2014 stipulates that government officials are categorized as acting arbitrarily if their decisions and/or actions are carried out without the basis of authority and/or contrary to court decisions that have binding legal force. Furthermore, Article 18 paragraph (1) of Law No. 30/2014 states that government officials are categorized as exceeding authority if they make decisions and/or actions that exceed the term of office or the time limit for the validity of authority, exceed the territorial limits of the validity of authority, and/or are contrary to Laws and Regulations. In addition, Article 18 paragraph (2) of Law No. 30/2014 governs that government officials are categorized as mixing up authority if they make decisions and/or actions outside the scope of the field or material of authority, and/or contrary to the purpose of the authority given. Law No. 30/2014 does not regulate the prevention of abuse of authority in government implementation, and the forms of such prevention, including supervision of state officials and their behavior in order to prevent abuse of authority. Therefore, this can be seen as an empty norm (*lemteen van normen*) which results in the absence of legal certainty regarding the prevention of abuse of authority and its legal consequences. Hence,a solution needs to be sought through scientific research. Starting from the thought of legal philosophy, legal theory and dogmatic legal science; therefore, the ontology issue raised in this article is, what is the essence of preventing abuse of authority in government implementation? Next, the axiology issue is, what is the real benefit of the prevention of abuse of authority?. Observing the substance of Law No. 30/2014, it turns out that no legal norms are regulating the prevention of abuse of authority, prevention of abuse of authority in government implementation, and forms of prevention of abuse of authority, including supervision of state officials and their behavior in order to prevent abuse of authority in government implementation that may cause corruption and state losses as well as, impedes development and violates human rights.

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Legal consequences arising from the absence of legal norms or empty norms are the absence of legal protection for the implementation and use of authority by state administrators, the absence of legal protection for the authority of the government and citizens, the absence of legal certainty regarding the prevention of abuse of authority and supervision of abuse of authority. Thus, the juridical problem in this study is an empty norm (*Lemteen van normen*). Based on the background above, therefore, two legal problems raised in this article are as follows: (1) What is the essence of preventing abuse of authority in government implementation?; and (2) What are the forms of abuse of authority prevention in government implementation?

METHODOLOGY

This research is normative legal research, specifically on Law No. 30/2014, which shows the absence of norm on the prevention of abuse of authority, forms of prevention of abuse of authority and supervision of abuse of authority. There are 3 (three) types of approaches used in this research, namely:

- The statute approach which aims to conduct normative research related to the absence of norms on the prevention of abuse of authority in state administration, and the essence of preventing abuse of authority and forms of prevention of abuse of authority.
- The comparative approach which aims to compare the regulatory concept of preventing abuse of authority in government implementation in Indonesia with New Zealand, the Netherlands, and Germany.
- The conceptual approach which aims to examine legal concepts related to the prevention of abuse of authority in government implementation.
- Legal materials are collected throughthe documentation study method, namely by recording matters related to theproblems being researched foundon the primary, secondary, and tertiary legal materials.
- This research also uses the card system as a technique to collect legal materials. The card system is a system that includes a summary card, quotation card, and analysis/review card. To easily facilitate discussion ofthe problems, the primary legal materials are systematically identified as follow:
- The collection is based on a hierarchy of Laws and Regulations by starting to look for norms at the level of the constitution, ratified international conventions, laws, and subordinate legislation ofthe laws;
- It should be noted whether the rules still apply as positive law;
- It is necessary to collect rules that do not have the force to apply in terms of research that uses a historical approach;
- It is necessary to differentiate between *lex specialist* and *lexgenerale* in terms of identification at the statutory level;
- It is necessary to collect Laws and Regulations that have a relationship with the main issue[1][2].

RESULTS AND DISCUSSION

The theoretical foundations used in this research consists ofthe justice theory, the legal purpose theory, the heartland theory, the law formation theory, the rule of law concept, the *rechtsstaat* concept, the supervision concept, and the local wisdom concept. Each of these theories and concepts will be explained in more detail in the sections below.

Theory of Justice: Michael Sandel argues that justice, it gives each person his or her due. Michael Sandel also states that justice as bound up with virtue and the good life.[3] Regarding the kindness expressed by Michael Sandel above, in Hinduism, the term of *AsthaBrata* or the Eight Traits of Leadership, is also known, namely:(a) *Indra Brata* means being an example for the people in terms of self-control;(b) *Yama Brata* means providing justice to the people; (c) *Surya Brata*means giving coolness to the people;(d) *Candra Brata* means love to give help to the people;(e) *BayuBrata*means having sensitivity to the wishes/will of the people;(f) *KuweraBrata*means being able to adapt to the situation and condition of society; (g) *BarunaBrata* means guiding the people;(h) *Agni Brata* means providing work innovation and motivation to the people.[4] The urgency ofMichael Sandel's opinion is usedto answer the first problem. It is because by properly assessing and analyzing justice, virtue, and the good life,the prevention of abuse of authority can be realized.

Theory of Legal Purpose: Rudolf Stammlerargues that the ideal oflaw is an abstract object that is the goal ofthe law.The ideal oflaw includes legal certainty and justice.[5] This research only uses legal certainty and justice as stated by Rudolf Stammler. It is because this research wants to achieve legal certainty on the prevention of abuse of authority and justice in using authority by state administrators so that it does not harm people's rights, namely the right to live in prosperity. This is in accordance with the goals ofthe modern state, namely the state intervenes in all aspects of community life for the welfare of society. Regarding legal certainty, E. Fernando M. Manullangmentions four principles that can be fulfilled in order to achieve legal certainty, namely: the law must not be vague; the legislature is prohibited from creating retroactive laws; the judiciary is prohibited from creating new offenses; the criminal code must be interpreted in a limited manner.[6] Regarding these four principles, E. Fernando M. Manullang, explaines that a law formulated vaguely or obscurely will lead to multiple interpretations and result in legal uncertainty on a legal event or legal uncertainty regarding an act, whether a criminal act, a civil act or an act ofstate administration. Norms must be formulated in a clear manner and it must guarantee the creation of legal certainty. The law that applies retroactively will cause harm to the perpetrator of the criminal act, the perpetrator of abuse of authority, and/or the perpetrator of an illegal act. The law that limits the judicial power in the making ofnew offenses must be followed by a separation ofpowers so that there is no intervention from other agencies that can cause

[1] I Made PasekDiantha, 2016,*MetodePenelitianHukumNormatifdenganJustifikasiTeorihukum, Prenada Media, Jakarta*, p. 149-150

[2] Dharmawan, NKS.,Kasih, DPD., Dewi, AAAA., Kurniawan, IGA, Pranajaya, MD., Resen, GMSK,Sutrisni, NKE., 2019, Protecting Balinese Culinary Innovation through Patent Law, *International Journal of Innovation, Creativity and Change*, IX (10), p. 116-126

[3] Michael Sandel, 1982, *Justice, what's Right thing to do,* Farrar, Straus and Giroux, New York, p. 24-25

[4] https://ngurahtirta.wordpress.com/2013/01/06/ajaran-kepemimpinan-asta-brata/accessed on 9 September 2019

[5] YohanesUsfunan, *Perancangan dan PenyususnanPeraturan Daerah*, UniversitasUdayana, Denpasar, 2016, p.1

[6] E. Fernando M. Manullang, 2016, *Legisme, Legalitas dan KepastianHukum,* Prenada Media, Jakarta, p. 153-154

the norm to blur. Norms in the criminal law book must be interpreted in a limited way, meaning that the norms governing a criminal act may not be applied to a criminal act that has similar or nearly the same criminal elements. Apart from legal certainty, justice is also very influential in law formation and law enforcement against state officials who abuse their authority. Justice according to Aristotle consisted of distributive justice and commutative justice.[7] L.J. Van Apeldoorn has a different opinion with Rudolf Stammler, who states that the purpose of the law is to regulate life in peace.[8] The law maintains peace because the law can only achieve its goals if there is a balance between the protected interests and everyone gets as much as his/her portion.[9] The urgency of this theory is used to answer the first problem. By correctly understanding the injustice, justice, and legal certainty, the essence of preventing the abuse of authority is obtained, namely to realize state administrators that are clean and with integrity.

Theory of *Heartland:* Halford John Mackinder mentions that stipulates three crucial conditions for rules the heartland commands the world island; who rules the world island commands the world.[10] This means that whoever controls Europe and Asia will be able to control the world's islands, and finally can rule the world. In Indonesia, the heartland theory is applied in the administration of government through the state intervening in all aspects of people's lives to achieve prosperity to society. State intervention is intended so that government administrators do not harm society's rights or interests. The urgency of the Heartland theory is used to answer the second problem. It is because by placing a proper understanding of state intervention in the fields of public life; therefore, the forms of prevention of abuse of power can be seen.

Theory of Law Formation: Lon L. Fuller argues that there are at least eight ways that must be considered in the formation of laws, namely: (1) Most obvious lies in a failure to achieve rules at all so that every issue must be decided on an ad hoc basis; (2) A failure to publicize, or at least to make available to the affected party, the rules he is expected to observe; (3) The abuse of retroactive legislation, which not only cannot itself guide action but undercuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change; (4) A failure to make rules understandable; (5) The enactment of contradictory rules; (6) Rules that require conduct beyond the powers of the affected party; (7) Introducing such frequent change in the rules that the subject cannot orient his action by them; (8) A failure of congruence between the rules as announced and their actual administration.[11] The urgency of sucha concept of legal morality is used to answer the second problem. It is because the eight ways mentioned above can correctly formulate the concept to prevent abuse of authority.

The Rule of Law Concept

There are two concepts of the rule of law used in this research, namely: the rule of law concept from Albert Venn Dicey and the *rechtsstaat* concept from Fredrich Julius Stahl. According to Albert Venn Dicey, the elements of the rule of law are the supremacy of law, equality before the law, and individual rights based on the constitution.[12] There is no state administration judicature because state administrative officials are required to work carefully and orderly in issuing decrees so as not to cause harm to private persons or legal entities. This rule of law concept was explained by Jimly Asshiddiqie, "the rule of law means that there is normative and empirical recognition of the law; equality before the law means the equal position of everyone before the law and government; protection of human rights means that there is constitutional protection of human rights with legal guarantees."[13] The rule of law concept, according to Moh. Mahfud MD, consisting of formal law state and material law state.[14] Fredrich Julius Stahl mentions that the characteristics of *rechtsstaat* are human rights protection, separation or distribution of power, governance based on law, and state administration judicature.[15] In the *rechtsstaat* concept, a state administration judicature is found because the government does not pay attention to the principles that apply in the implementation of state administration, including the issuance of state administrative decisions. The *rechtsstaat* concept is not embraced absolutely by the Republic of Indonesia because the ministers are appointed by and responsible to the President. Another reason is that the President is not accountable to parliament.

The difference between the rule of law and the *rechtsstaat* can be explained as follows:[16]

- Based on the historical background, the rule of law develops evolutionarily, while the *rechtsstaat* was born from a struggle against absolute, so that it is revolutionary;
- Based on the legal system being adopted, the rule of law adopts the anglosaxon legal system called as common law, while the *rechtsstaat* adopts the continental legal system called as civil law;
- Based on its characteristics, the rule of law has judicial characteristics, while the *rechtsstaat* has administrative characteristics.

Regarding the rule of law, Sudargo Gautama points out three characteristics or elements of a rule of law state, namely: (1) restrictions on state power; (2) legality principles; and (3) separation of powers.[17] There are three important elements of the rule of law and *rechtsstaat* concepts, namely the legality principle, supremacy of law, and human rights protection. In this case, the rule of law is equated with the legality principle, both of which have the aim of ensuring legal certainty related to the administration of the state so that it is expected to

[7] Sudikno Mertokusumo, 2002, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, p. 72 – 73.

[8] L.J. Van Apeldoorn, 2005, *Pengantar Ilmu Hukum*, Pradnya Paramita, Jakarta, p.10 - 11

[9] Ibid, p.11

[10] Halford John Mackinder, 1904, *The Geographical Pivot of History*. The Geographical Journal 23, No. 4, p.4

[11] Lon L. Fuller , 1971, The Morality of Law, New Haven, Conn: Yale University Press, p. 39-91

[12] Meriam Budiarjo, 1982, *Dasar-dasar Ilmu Politik*, Gramedia, Jakarta, h.58. lihat juga Ridwan HR, 2014, *Hukum Administrasi Negara*, Raja Grafindo Persada, Jakarta, p. 3

[13] Jimly Asshiddiqie, 2004, *Konstitusi dan Konstitusionalisme*, MK dan PSHTN-UI, Jakarta, h.124-128

[14] SF. Marbun dan Moh Mahfud MD, *Pokok-pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, p.42-46

[15] ibid, h. 57 - 58

[16] Ni Ketut Sri Utari, 2018, Bahan Kuliah *Kebijakan Pemerintah dan Negara Hukum*, Progam studi doktor Ilmu hukum, Universitas Udayana, Denpasar, p.4

[17] Didi Nazmi Yunas, 1992, *Konsepsi Negara Hukum,* Angkasaraya, Padang, p.18

prevent the possibility of abuse of authority in the administration of the state. The human rights protection means the protection of the rights of citizens, for example, the right to education, the right to obtain health services, the right to welfare and the right to enjoy the fruits of development, which are likely to be violated by state administrators due to abuse of authority which may result in criminal acts of corruption. The consequence is to cause losses to the state and hinder the acceleration of development in all its aspects. The urgency of this rule of law concept is used to answer the second problem. It is because by understanding correctly the principles of the rule of law in force, including the distribution of power and basic rights, it is possible to identify the substance that will regulate the prevention of abuse of authority in government implementation.

The Supervision Concept

The supervision concept can be explained as follows:

1. The supervision concept, in terms of state administrative law, is divided into four, namely:

- Indroharto divides supervision into two types, namely: preventive supervision and repressive supervision[18];
- Philipus M. Hadjon divides supervision into ten types, namely: repressive, preventive, positive supervision, obligation to inform, consultation and negotiation, administrative appeal, deconcentration, finance, planning, and appointments[19];
- Irawan Soejitodivides supervision into three types, namely: preventive, repressive supervision and general supervision;[20]
- Irfan Fachruddin divides supervision into two types, namely: repressive supervision and normative (legal) supervision.[21]

- The supervision concept, from a legal point of view, as put forward by Paulus Effendi Lotulung, consists of three, namely:(a) institutional supervision that is divided into two, namely: external control and internal control; (b) monitoring in terms of time is divided into two, namely:*a priori* control and *posteriori* control; and (c) supervision in terms of the aspects being supervised that is divided into two namely: legal control and benefit control.[22]
- The supervision concept, in terms of management, as put forward by M. Manullang, is classified into four groups, namely:
  - Judging from the time of supervision, supervision is divided into two types, namely: preventive supervision and repressive supervision;
  - Judging from the object of supervision, supervision is divided into four, namely: production supervision, time supervision, financial supervision, and supervision of people and their activities;
  - Judging from the subject of supervision, supervision is divided into two, namely: internal supervision and external supervision;
  - Judging from how to collect facts, supervision is divided into four, namely: a review on personal, report, written report, and special report, namely supervision is aimed at exceptions or special questions.[23]

The urgency of the supervision concept is used to answer the second problem. It is because by conducting supervision of people and their behavior as well as legal oversight which is preceded by identification of areas that have the potential to abuse authority and identification of organizers who have the opportunity to abuse authority, forms of prevention of abuse of authority can be carried out. Therefore, no abuse of authority in government implementation can be realized.

The Local Wisdom Concept: Ridwan Nurma Ali argues that the forms of local wisdom are tangible and intangible local wisdom. The examples of real-life local wisdom are values, norms, ethics, love of God and the universe, temples, *batik,* weaving, discipline, responsibility, honesty, justice, humility, creativity, and hard work. Meanwhile, the examples of intangible local wisdom are advice and prayer.[24] The urgency of the local wisdom concept is used to answer the second problem. It is because forms of prevention of abuse of authority can be formulated through properly understanding the forms of local wisdom.

Conclusion and Recommendation

Based on the above elaborations, there are 2 (two) conclusions as follow:

- The essence of preventing abuse of authority in government implementation is realizing a good and clean government.
- The forms of abuse of authority prevention in government implementation are political and government ethics, government bureaucratic behavior, dissemination on the abuse of authority prevention, supervision by authorized institutions of government administrators and their behavior, awareness enhancement on the ideology of *Pancasila* for government administrators, cooperation development with stakeholders (foundations, non-governmental organizations, community organizations, religious leaders, community leaders, and the press).

Based on the conclusions stated above, there are 2 (two) suggestions can be made as follow

- The government needs to apply clean and good governance principles effectively in government implementation. That should start from the government administrators of the village, sub-district, regency/city, and provincial. It includes government administrators, regional apparatus organizations in regency/city and provinces as well as central government administrators, including departmental and non-departmental institutions at the central.

[18] Indroharto, *Usaha Memahami Undang – Undang Peradilan Tata Usaha Negara*, Pustakasinarharapan, Jakarta, p.151-152

[19] Philipus M. Hadjon, 1999, *Pengantar Hukum Administrasi Indonesia*, Gajah mada press, Yogyakarta, h.75-77

[20] Irawan Soejito, 1983, *Pengawasanterhadap Peraturandaerah dan Keputusan Kepaladaerah*, PT. Bina Aksara, Jakarta, p.12, 51, 76

[21] Irfan Fachruddin, 2004, *Pengawasan Peradilan Administrasi Terhadap Tindakan Pemerintahan*, Alumni, Bandung, p.17

[22] Ibid, p. 17

[23] M.Manullang, 1996, *Dasar –dasarManajemen,* Ghalia Indonesia, Jakarta, p.129-136

[24] Ridwan Nurma Ali, 2007, Landasan Keilmuan Kearifan Lokal, jurnalstudiislam dan budaya, volume 5, nomor 1 januari-juni, p.27-38

- The forms of prevention of abuse of authority in government implementation need to be disseminated to all government administrators. Therefore, the possibility or opportunity for the occurrence of abuse of authority can be minimized, controlled, and prevented systematically; both by authorized officials and by society.

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