



THE ANALYSIS OF AUTHORITY ABUSE THAT RESULTS IN STATE FINANCIAL LOSS IN THE STATE ADMINISTRATIVE LAW & ISLAMIC LAW FRAMEWORK

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ABSTRACT

Implementation of duties and functions for the Government is a constitutional obligation. So that every task carried out must be based on the norms stated in the constitution. Holding a position as a leader means there is a mandate that must be held accountable. The aim of this research to analyze state financial losses resulting from authority abuse within the legal framework of state administration from a positive legal perspective in Indonesia and an Islamic legal perspective. The type of research used was normative juridical. Authority abuse is basically an act against the law (the concept of a criminal act) accompanied by mens rea (malicious intent). The emergence of losses to state finances in the legal aspect of state administration requires the restoration of state finances and redressing the causes of state financial losses. so in state administrative law, the aspect of improving the system is a very important thing to do. In Islam, position means power which has implications for the lives of society as a whole, office holders are God's representatives in the human world because the only one who has true power is God. In Islamic criminal law, authority abuse is an act that approaches the crime of corruption.

1. Introduction

Indonesia adheres to a new, more dynamic concept of a legal state, namely what is known as the welfare state or material legal state. In this modern legal state, the welfare state's job is no longer as a night watchman and must not be passive but must actively participate in community activities so that the welfare of everyone remains guaranteed. so in the welfare state the government is entrusted with *bestuurzorg*, namely the administration of general welfare.¹

Paragraph IV and Article 33 of the 1945 Constitution of the Republic of Indonesia give duties and responsibilities to the Government to realize people's welfare through the authority to manage state finances so that these state tasks can be realized immediately. The government obtained this state

1 SF Marbun & Moh. Mahfud MD., *Pokok-pokok Hukum Administrasi Negara*, Yogyakarta, Liberty, 1987, page.45

authority based on Article 23 paragraphs (1), (2), and (3) of the 1945 Constitution of the Republic of Indonesia as a constitutional basis.

The authority to manage state finances as an instrument in realizing people's welfare is attributively given to the President based on Article 6 paragraph (1) of Law No. 17 of 2013 concerning State Finances. The management of state finances carried out by the President and other government officials in carrying out government functions which include regulatory,² service, development, empowerment and protection functions must be based on the principles of legality, general principles of good government (AUPB) and good governance which have been stated in various laws and regulations in Indonesia. One of them is Law No. 30 of 2014 concerning Government Administration.

Implementation of duties and functions for the Government is a constitutional obligation. So that every task carried out must be based on the norms stated in the constitution. Without compliance with the constitution in carrying out its duties and functions, the government is very vulnerable to being run with tyranny or the iron fist of uncontrolled power. Including when talking in the context of financial or state management, the spirit of advancing general welfare is the main motivation that must be carried out in advancing the nation and state. Then, to ensure that this is in accordance with the direction and guidance of the constitution, apart from obedience to the law, moral awareness is also needed in running the government.³ Violations of duties and authority from the perspective of HAN and punishment actually have different sector regulations and do not mix. However, both of them will strengthen each other in their respective fields. On the one hand, the Government Administration Law has provided certainty regarding the legal status of authorities or government officials who carry out government administration functions.

One of the advantages of a government system that applies the principles of good governance is that the government will avoid disgraceful acts, especially those committed by government insiders. Indeed, by implementing the principles of good governance with the support of good regulations, the government can avoid reprehensible actions, such as preventing various forms of over-statement of state activities or finances, dishonesty in carrying out activities relating to financial matters, and various other disgraceful actions that related to state finances.⁴

2 Heri Sandi, Nur Afni Yunita., Relationship Between Budget Participation, Job Characteristics, Emotional Intelligence and Work Motivation As Mediator Variables To Strengthening User Power Performance: An Emperical Evidence From Indonesia Government, *Morfai Journal*, Vol.1 No.1, October 2021, page.36-48

3 Elviandri, Khuzdaifah Dimiyati, and Absori., Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Walfare State Negara Hukum Kesejahteraan Indonesia, *Jurnal Mimbar Hukum*, Vol.31 No.2, 2019, page.254–255.

4 Munir Fuady., *Teori Negara Hukum Modern (Rechtstaat)*, Bandung, Refika Aditama, 2009. page.79

Viewed from a repressive aspect, Philipus Hadjon stated that in fact administrative law is very dominant because criminal acts⁵ of corruption are only possible in the context of state financial losses caused by maladministration in the use of authority, the most important form of maladministration is authority abuse.⁶

A good society is of course determined by a good Government, including the focus of the budget in implementing the Government's work agenda, of course it must be supported by a Government that encourages the advancement of economic development nationally and regionally. Why not, society will be almost helpless if the Government is unable to build openness and accountability in implementing its work agenda to advance public welfare. In essence, the existence of the Government is ideally intended to create good spatial planning in society, in terms of carrying out public services, including regarding how to carry out the mandate of the Laws and Regulations.⁷

If we refer to the general principles of good governance (AAUPB), the basic guidelines that serve as a benchmark for using power for stakeholders, at the practical level, decisions should not be taken outside the AAUPB.⁸ The main guideline that is the main direction for realizing an ideal government is realizing an ideal government.⁹

Holding a position as a leader means that there is a mandate that must be held accountable. In essence, in Islam leadership is a mandate, trust from Allah given to His servants to bring goodness, prosperous life and blessings. However, what is happening frequently in Indonesia at the moment is that every year there is never a lack of news about state officials who have been caught on charges and charges labeled abuse of office or unauthorized authority.

Leadership in the view of the *Qur'an* is not just a social contract, between the leader and his people, but is an agreement with Allah SWT. Swear an oath in the name of God Almighty Allah SWT. The responsibility of a leader is much greater than others, because the leader's responsibility is in the afterlife.

Research conducted by Ingrid Kaloh with the title Authority abuse of State Civil Servants Holding Administrator Positions in Government states that the accountability of civil servant officials who are proven to abuse their authority will be given disciplinary sanctions as a form of accountability for the authority abuse that they carry out is legally accountable, meaning that civil servant

5 Chuasanga A., Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol. 2, No. 1, 2019

6 Philipus M. Hadjon dkk., *Hukum Administrasi & Tindak Pidana Korupsi*, Yogyakarta, Gadjah Mada University Press, 2011, page.2

7 Ridho Mubarak and Wessy Trisna., Penentuan Kerugian Keuangan Negara Akibat Penyalahgunaan Kewenangan Pejabat Pemerintah, *Jurnal Ilmiah Penegakan Hukum*, Vol.8 No.2, 2021, page.175.

8 Law No. 30 of 2014 Government Administrative article 1, No. 17.

9 Richo Andi Wibowo, Mencegah Korupsi Pengadaan Barang Jasa (Apa Yang Sudah & Yang Masih Harus Dilakukan?), *Integritas: Jurnal Antikorupsi*, Vol.1 No.1, 2015, page.41.

officials The person concerned may be prosecuted for serious administration as stated in Article 80 paragraph (3).¹⁰

Research conducted by Alya Maya with the title Administrative Legal Authority Regarding Authority abuse in Corruption Crimes in Indonesia shows that the relationship between criminal law and administrative procedural law is not only related to criminal acts of corruption but also related to State Finance, the state treasury and regarding financial audit bodies (CPC). The results of this research also show that the authority to examine and decide on elements of authority abuse in criminal acts of corruption is the absolute competence of administrative justice on the Eradication of Crimes.¹¹

The purpose of this research is to analyze state financial losses resulting from authority abuse within the legal framework of state administration from a positive legal perspective in Indonesia and an Islamic legal perspective.

2. Research Methods

The type of research used was normative juridical, namely examining legal rules (legislation, jurisprudence, or other unwritten law) and legal principles.¹² Meanwhile, the approach used is a statutory approach which is used to examine the legal aspects of state administration in the authority abuse.¹³

3. Results and Discussion

3.1. The Analysis of State Financial Losses Resulting from Authority Abuse in the Legal Framework of State Administration from a Positive Legal Perspective

The legal basis for state finance is contained in the 1945 Constitution of the Republic of Indonesia, Chapter III regarding Finance, Article 23. The provisions in the 1945 Constitution, which are the source of state finance law, require further elaboration in the form of law. This means that the drafters of the 1945 Constitution gave attribution to legislators to regulate substances related to state finances in the form of laws.¹⁴

The parameters that limit the authority of state officials (discretionary power) in the perspective of state administrative law are *détournement de pouvoir* (authority abuse) and abuse de droit (arbitrariness). Meanwhile, from a criminal law perspective that limits the free movement of authority of state apparatus in the form of elements of *wederrechtelijkheid* and "authority abuse". Problems in criminal law are not as difficult as if a distinction is made as a gray area

10 Ingrid Kaloh., Abuse of Authority of State Civil Servants Holding Administrator Positions in Government, *Lex Privatum*, Vol.11 No.2, 2023, page. 1-11

11 Alya Maya., Administrative Legal Authority Regarding Abuse of Authority in Corruption Crimes in Indonesia, *Jurnal Komunitas Yustisia*, Vol.4 No.3, 2021, page. 990-997

12 Bagir Manan., Penelitian Bidang Hukum, *Jurnal Hukum, Puslitbangkum Unpad, Perdana*, January 2009, page. 4

13 Maroni., *Kriminalisasi Di Luar KUHP & Implikasinya Terhadap Hukum Acara Pidana, Dalam Buku Studi Penegakan & Pengembangan Hukum*, Penerbit Unila, Bandar Lampung, 2013, page. 104.

14 Sahya Anggara., *Administrasi Keuangan Negara*, Bandung, Pustaka Setia, 2016, page. 18

between state administrative law and criminal law, especially criminal acts of corruption.

The relationship between criminal law and administrative procedural law is not only summarized in Law No. 20 of 2001 concerning the Eradication of Corruption Crimes but is also related to Law No. 17 of 2003 concerning State Finances, Law No. 1 of 2004 concerning the Treasury State and Law No. 15 of 2006 concerning the Financial Audit Agency (BPK).¹⁵ Administrative Law cannot be excluded from its connection with criminal acts of corruption, because Administrative Law has an important role and strategy in determining the realization of good and clean government, free from corruption, collusion and nepotism.

The scope of the State Administrative Court is authority abuse, while the scope of criminal acts of corruption is authority abuse. The element of authority abuse in this article is alternative, because apart from authority abuse it is also related to the opportunities and facilities that exist therein because position is an element of a criminal act of corruption. Authority abuse is basically an act against the law (the concept of a criminal act) accompanied by *mens rea* (malicious intent). The concrete form of *mens rea* is *actus reus* in the form of fraud, conflict of interest, and illegality, so that it is a criminal act. Meanwhile, the result of authority abuse and arbitrariness in the realm of administrative law is that official decisions are invalid and can be cancelled.¹⁶

The emergence of losses to state finances in the legal aspect of state administration requires the restoration of state finances and redressing the causes of state financial losses. So in state administrative law, the aspect of improving the system is a very important thing to do. As stated in the Law, Articles 34-35 of Law No. 17/2003 concerning State finances, Articles 59-67 of Law No. 1/2004 regarding the State treasury and Article 20 of Law No. 30/2014 concerning Government Administration. Then, more technical implementation is also regulated in Article 10, Article 22 and Article 23 of Law No. 15/2004 concerning Examination of State Financial Management and Responsibility, which is then further regulated in BPK Regulation No. 3/2017 regarding the mechanism for Settlement of State Compensation against the Treasurer.

Legal instruments will be useful in ensuring that perpetrators of financial misappropriation can be prosecuted if a criminal act occurs, and can be prevented if there has not been any misappropriation of state finances. The basic principle attached is that preventive and repressive actions will be carried out in such a way, in order to ensure that the government runs on the ethics of honesty, truth and propriety. It's just that from an administrative law perspective, prevention is the main thing, by building a system that does not

15 Andi Nirwanto, *Arah Pemberantasan Korupsi Ke Depan (Pasca Undang-Undang Administrasi Pemerintahan)*, Paper presented on Seminar Nasional HUT IKAHI Ke 62 di Hotel Mercure Ancol Jakarta on 26 March 2015.

16 Wasis Susetio, *Disharmoni Peraturan Perundang-Undangan di Bidang Agraria*, Artikel dalam *Jurnal Lex Jurnalica*, Vol 10 No 3, December 2015, p. 145.

allow legal smuggling to occur, such as tricking corruption from occurring, so the approach is by system not by people.

The option to prevent state financial losses is to use a state administrative law approach. Why is that, because scientific focus prioritizes system improvement. No matter how great a criminal act is in its enforcement, if it is not accompanied by improvements to the system, it will be the same as pouring water in a leaky container. So it seems like there is no long-term improvement.

Law No. 30 of 2004 concerning Government Administration has provided a mechanism regarding the prohibition of abusing authority, namely Article 17 paragraph (2) confirms that it is not permissible to abuse authority to exceed the limits of authority, collaborate interests and authority and carry out other actions that violate the Law. Furthermore, Article 17 paragraph (2) Law No. 30 of 2014 concerning Government Administration, explains that the existence of authority abuse truly cannot be tolerated from the perspective of legal certainty.

Maladministration will bring the following legal consequences: a. The birth, change or disappearance of a legal situation; b. The birth, change or disappearance of a legal relationship between two or more legal subjects, where the rights and obligations of one party conflict with the rights and obligations of another party, and c. The imposition of sanctions if an unlawful act is carried out.

Returning the state's financial condition to recovery based on legal facts shows that this will not eliminate the imposition of criminal sanctions. Likewise, if an element of offense appears but there is material loss to the state, civil legal action can automatically be taken.¹⁷

3.2. The State Losses Resulting from Authority Abuse from an Islamic Perspective

The State carries out the function of safeguarding and protecting the interests of society, therefore the State has the responsibility to impose and implement sanctions. The imposition of sanctions in criminal acts has differences between one criminal act and another, in serious crimes and the death penalty in the history of criminal law are two components of problems that are closely related.¹⁸

Holding a position as a leader means that there is a mandate that must be held accountable. In essence, in Islam leadership is a mandate, trust from Allah given to His servants to bring goodness, prosperous life and blessings.¹⁹ One of the violations commonly committed is mental defilement. Authority abuse

17 Zainal Arifin Mochtar and Eddy O S Hiariej., *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas & Filsafat Hukum*, Jakarta, Red & White Publishing, 2021, page. 176

18 Muhammad Helmi., *Konsep Keadilan Dalam Filsafat Hukum & Filsafat Hukum Islam, Mazahib Jurnal Pemikiran Hukum Islam*, Vol.XIV No.2, 2015, page. 133-144

19 Santri, *Hukum Penyalahgunaan Wewenang dalam Islam*, <https://www.kompasiana.com/santri97209/62bcdb97d69ab362bf148772/hukum-penyalahgunaan-ewenang-dalam-islam> diakses pada 15 Mei 2024

results in public distrust of the government. In this case, acts of authority abuse and position, such as bribery, gratification, and various corrupt practices carried out by government bureaucrats in the name of public policy.²⁰

Position means power which has implications for the life of society as a whole, office holders are God's representatives in the human world because the only one who has true power is God. The basic principles in holding office are sincerity and sincerity and always being alert to all signs that could lead to abuse of office. Allah says in the Qur'an:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ
النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا
بَصِيرًا﴾

Meaning: Indeed, Allah commands you to convey a message to those who are entitled to receive it, and when you establish a law between people, you must determine it fairly. Indeed, Allah is the best who teaches you. Indeed, Allah is All-Hearing, All-Seeing. (QS. *An-Nisa'* verse 58)

The essence of Surah *an-Nisa'* verse 58 above is to encourage people not to abuse or misappropriate the mandate and command to do justice. It is so important to carry out the mandate and do justice that Allah SWT said in a verse of the Qur'an, with this word, humans are expected to be able to understand the meaning and content of the verse.

In another verse, it is stated that:

﴿يَأَيُّهَا الَّذِينَ ءَامَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ
وَأَنْتُمْ تَعْلَمُونَ﴾

Meaning: O you who believe! Do not betray Allah and the Messenger and (also) do not betray the trust entrusted to you, while you know. (QS. *Al-Anfal* verse 27)

The verse above explains that this trust had previously been offered to the heavens, earth and mountains but they were all reluctant to accept it and were worried that they would not be able to carry it out, then humans felt they were able to carry it, so humans carried the trust. Whoever carries out this trust, he has the right to receive a great reward from Allah. Whoever does not carry it out, then he is entitled to a harsh punishment and becomes a person who betrays Allah and His Messenger and betrays his trust.

In Islamic criminal law, authority abuse is an act that approaches the crime of corruption. Such as, *Risywah* (Bribery), *Ghulul* (Embezzlement), *Sariqah* (Theft), Betrayal, *Ghasab* (taking other people's rights), *Hirabah* (Robbery). So

20 Neng Nurcahyati Sinulingga (et. al)., Pendidikan Agama Islam Sebagai Sarana Internalisasi Nilai-Nilai Pendidikan Anti Korupsi, *Paedagoria : Jurnal Kajian, Penelitiandan Pengembangan Kependidikan*, Vol.14 No.3, 2023, page. 334-344

that corruption itself is still not formally recognized and understood as a form of *jarimah* both in the Al-Quran and Hadith.²¹

Sanctions or punishment for authority abuse or position can even take the form of the death penalty. Al-Sayyid Abdurrahman bin Muhammad bin Husain who quoted the opinion of al-Muhib al-Thabary from his book Al-Tafqih stated that the death sentence may be imposed on a state official who abuses his duties to oppress the people, and this is equated with five kinds of wickedness (killing, adultery, stealing, breaking brotherhood and leaving Islam), because the losses (victims) resulting from these crimes are much greater. Ibn Taymiyyah stated that anyone whose crime can only be stopped by a death sentence, then he must be sentenced to death, even though that is still part of the *takzir*.²²

Disputes between the government (in this context state administration) and citizens, and the resolution is by referring to the *Qur'an* and Sunnah.

In QS. *Al-Baqarah* verse 188 explains that Allah SWT prohibits someone from taking other people's property in a false way, namely in a way that causes one of the parties to feel forced. Corruption can cause damage and injustice in society. Based on the hadith of al-Bukhariy 1997:6618, misappropriation of humanitarian aid is also an act of deceiving the people so that the impact of this act is that Allah SWT forbids them from entering heaven.

The spirit of the emergence of State Administrative Law and the spirit of Islamic law have something in common, namely realizing justice and eliminating tyranny.²³ In other languages, it creates public benefit (*maslahah mursalah*). In the context of State Administrative Law, it is the benefit of the administrator (government) of state administration and the benefit of the citizens (who are governed). Public benefit (*maslahah mursalah*) in Islam is the main goal in Islamic law, which is popularly called the Five Goals of Islamic Law (*Maqashid Syariah* or *Mashlahat Dharuriyyah*), which includes the protection of religion, soul, property, lineage and honor. In Islam, what is revealed to the world is for *rahmatan lil 'alamin* which means the general benefit, not only of humans but also of the universe. Islam's concern for the problem has made the majority of *ulama* (*jumhur ulama*) agree on it as the basis for the method for establishing it. a law that has not been established and is dynamic in nature according to developments in human conditions and environmental developments.

4. Conclusion

State financial losses caused by errors in carrying out their authority mean that administrative implementers have the obligation to return state financial losses within ten days from the time the supervisory decision appears. Restoring losses to state finances in essence does not eliminate the reason for holding

21 Maulida, A. (e.t. a.l), Tindak Pidana Korupsi Dalam Perspektif Hukum Indonesia & Pidana Islam, *Al-Mashlahah Jurnal Hukum Islam & Pranata Sosial*, Vol.8 No.01, 2020, page. 43–67.

22 Sumarwoto., Tinjauan Hukum Islam terhadap Tindak Pidana Korupsi, *Journal: Rechstaat Ilmu Hukum Fakultas Hukum UNSA*, Vol. 8 No 1, 2014, page. 8.

23 Haris Maiza Putra, Hisam Ahyani., Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia, *Al Syiriah*, Vol.20 No.1, 2022, page. 15

someone criminally responsible as long as the law determines that a criminal act has indeed occurred. In Islamic criminal law, authority abuse is an act that approaches the crime of corruption. Such as, *Risywah* (Bribery), *Ghulul* (Embezzlement), *Sariqah* (Theft), Betrayal, *Ghasab* (taking other people's rights), *Hirabah* (Robbery). Disputes between the government (in this context state administration) and citizens, and the resolution is by referring to the *Qur'an* and *as-Sunnah*.

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