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 Kaligawe Rd KM 4, Central java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



Our Speaker



Prof. Henning Glasser
 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



Melissa Crouch
 UNSW Australia



Prof. Henk Adding
 Utrecht University



Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
 Kaligawe Rd KM 4 Semarang, Central Java

THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



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Melissa Crouch
UNSW Australia



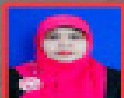
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TECHNICAL MEETING

1. Seminars will be conducted using the Zoom application
2. The Committee will provide a Zoom ID 1 day before the seminar

OBJECTIVE

This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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- **Abstract Submission** August 10th- Sept 05th 2020
- **Announcement** September, 06th 2020
- **Full Paper Submission and Transfer** September, 07-22 2020
- **Conference and Presentations** September 24th 2020

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September **23th** 2020

The 2nd

International Conference and Call Paper

"Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch"

IMAM AS' SYAFEI BUILDING

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :
UNISSULA PRESS

ISBN. 978-623-7097-75-4

COMITTE OF THE 1th PROCEEDING INTERNATIONAL CONFERENCE AND CALL PAPER

*"Omnibus Law Opportunities And Challenges Towards Entrepreneurs And Labor
: Comparative Review"*

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Hal I-V, 1-127

Cetakan Pertama Tahun 2020

Penerbit UNISSULA PRESS

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

ISBN. 978-623-7097-75-4

Editor :

M. Ngazis, SH.,MH
Erna Sunarti, S.Pd.,M.Hum.
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Desain Cover :

Muh. Arifin, S.Kom

Desain Lay Out :

Suryo Atmojo, SH

ISBN :

978-623-7097-74-7

Penerbit :

UNISSULA PRESS

Alamat :

Jl. Raya Kaligawe KM. 4 PO. Box. 1054/SM

Semarang 50112 – Indonesia

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KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

Sesungguhnya keberhasilan dalam mencapai tujuan pendidikan yang dicita-citakan sangat tergantung pada sikap mental, partisipasi serta disiplin setiap unsur yang terlibat dalam proses belajar mengajar. Mudah-mudahan seminar Internasional yang sederhana ini dapat memberi sumbangsih dalam mencerdaskan bangsa Indonesia serta semoga Allah SWT selalu menyertakan ridho-Nya. Amin. Akhir kata, kami mengucapkan terima kasih kepada pimpinan Universitas Islam Sultan Agung, pimpinan fakultas Hukum Unissuala, pemakalah, editor dan serta pihak-pihak yang telah membantu terselenggaranya seminar ini dengan lancar tanpa hambatan suatu apapun.

Wassalamu'alaikum Wr.Wb.

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Accountability of Public Officials for Corrupt Public Actions or Policies

Nur indah setyoningrum

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A. Introduction

Public policy in a modern government is a must, both in its form as a correlation / interaction between governmental institutions and as a form of interaction between the government and its citizens.

HD. Van Wijk and Willem Konijnnebet stated that the need for the government to act actively in the community life of its citizens is based on 4 factors, perama, growth or population that continues to increase, demanding that the government be able to provide adequate food, clothing and housing for its citizens. Second, advances in science and technology that affect the dynamics and development of society, which must be anticipated by the government. Third, the existence of disasters and critical situations that are often faced by every country makes the state must be able to protect its citizens. Fourth, the growth and development of increasingly varied social rights so that the government is required to be involved in them.¹⁰

W. Freidmann classifies government functions into 4 functions, namely: as a guarantor of welfare (The State as Provider), Regulator (regulator) Entrepreneurs (entrepreneur) and function as a referee (The State of Umpire).¹¹

There are some groups in the opinion that the progress and resilience of a region is largely determined by the government's ability to formulate and implement its public policies properly, while the potential and availability of natural resources is one of the sources of regional revenue and a supporting factor for regional development financing.

Whereas often what happens in an area with abundant natural potential and natural resources but is unable to alleviate poverty and improve the welfare of its people, the phenomenon of "corruption by design" where what happens is that many regional heads are trapped in corrupt practices related to resource exploration and exploitation. In nature, corrupt practices are sometimes packaged in such a way in a public policy instrument and the implementation of the policies it has carried out.

It is very ironic that state administrators, who should carry out the mandate of the people, participate in and compete to find profit and have fun over the suffering of the people who have to bear all the burdens and debts of the state.

The widespread practice of corruption in various aspects of government has disrupted the wheels of government and created enormous losses to the country's finances and economy. Seeing the losses incurred, then corruption can be categorized as regulatory offenses or offenses that hinder or even take away the results of government efforts in the welfare of its people.¹²

¹². Ibid., P. 10.

As a result of corruption, public trust in the government has diminished. There is no government agency that is not corrupt. Not only in Indonesia, but no other country in the world is free from corruption, so the prevention of corruption should indeed be carried out by countries in the world together and continuously, and especially for the Indonesian nation the problem is not only preventing but also eradicating. , considering that the number of cases, state losses, and the modus operandi of corruption continues to increase from year to year.¹³

In addition to being entrenched in society, corruption has also occurred in all areas of governance, be it the executive, legislative and judiciary. The corruption label is not reserved solely for civil servants. TNI, Polri, BUMN / BUMD employees or members of central and regional parliaments, or officials and judicial function actors, or conglomerates and members of the public with certain jobs that are directly or indirectly related to the public interest, for example lawyers, public accountants, notaries, and etc.¹⁴

The number of regional officials who have been dragged into corruption cases put on the green table by both the Attorney General's Office and National Police Investigators in various regions is very interesting to observe, whether this phenomenon is due to their corrupt behavior after taking office or is it due to the discretionary actions they take in the form of public policy which has been formulated and implemented.

II. Problem.

From the background description of the problem above, in this paper the authors formulate the following problems:

1. What is the form of accountability of Public Officials for actions or corruptive Public policies after the enactment of Law No. 30 of 2014 concerning Government Administration ?.
2. How can actions or policies of public officials that are corrupt in nature of data be classified as criminal acts of corruption and not administrative violations?

III. Discussion:

According to Subekti and Tjitrosoedibio, what is meant by corruptie is corruption, fraudulent acts, criminal acts that are detrimental to state finances.¹⁵ Baharuddin Lopa, quoting the opinion of David M. Chalmers, describes the meaning of the term corruption in various fields, namely concerning the issue of bribery, which is related to manipulation in the economic sector and in the public interest.¹⁶

The characteristics of corruption are explained by Syed Husein Alatas as follows: ¹⁷

1. Corruption always involves more than one person. This is not the same as a case of theft or fraud. An operator who is corrupt in fact does not have a case that is usually included in the definition of fraud (fraud). Examples are statements about per-street shopping or hotel bills. However, there is often a tacit understanding among officials who are practicing various frauds in order for this situation to occur. One way of fraud is excessive demand for pocket money, this is usually done by increasing the frequency of trips during the course of tasks. Cases like these are being carried out by the current political elites which then cause polemics

13. Rohim, *Modus Operandi Tindak Pidana Korupsi*, Pena Multi Media, Depok, 2008 p. 3.

14. Jeremy Pope, *Strategi Memberantas Korupsi, Elemen Sistem Integritas Nasional, Buku Panduan Transparency Interbational 2002*, Edisi Pertama, Yayasan Obor Indonesia, Jakarta, 2003, p. xxi.

15. Subekti dan Tjitrosoedibio, *Kamus Hukum*, Pradnya Paramita, Jakarta, 1973, hlm p. 10.

16. Baharuddin Lopa, *Kejahatan Korupsi dan Pengadilan Hukum*, Rineka Cipta, Jakarta, 1992, p. 42.

17. Syed Hussein Alatas, *Sosiologi Korupsi*, Rineka Cipta, Jakarta, 1986 p. 46.

in society;

2. Corruption is generally carried out in secret, unless it is rampant and so deep, that powerful individuals and those in their environment are not tempted to hide their actions. However, even so the motive for corruption is kept secret;
3. Corruption involves an element of obligation and mutual benefit. Liabilities and benefits are not always in the form of money;
4. Those who practice corrupt ways usually try to cover up their actions by taking cover behind legal justifications;
5. Those involved in corruption want firm decisions and are able to influence those decisions;
6. Every act of corruption contains fraud, usually committed by a public or public body (society);
7. Any form of corruption is a betrayal of trust.

Andi Hamzah stated that the causes of corruption are: ¹⁸

1. The insufficient salary of civil servants compared to the needs which are increasing day by day;
2. Indonesian cultural or cultural background which is the source or cause of the spread of corruption;
3. Poor management and less effective and efficient control that will give people opportunities for corruption;
4. Modernization breeds corruption.

According to David Bayle, the “costs” that occur as a result of corrupt behavior, namely: ¹⁹

1. Corruption reflects failure to achieve government-set goals (for example, corruption in the appointment of officials or misallocation of resources creates inefficiency and waste);
2. Corruption will soon spread to the private sector in the form of pursuing profits quickly (and excessively) in difficult-to-predict situations, or undermining domestic investment and excluding new entrants, thereby reducing private sector participation and growth;
3. Corruption reflects an increase in administrative prices (taxpayers must join in bribing by paying multiple times for the same service);
4. If corruption is an illegal form of payment, it will reduce the amount of funds made available to the public;
5. Corruption corrupts the mentality of government officials, undermining the courage needed to adhere to high ethical standards;
6. Corruption in government decreases respect for power, and ultimately decreases government legitimacy;
7. If the political elite and high-ranking government officials are widely perceived as corrupt, the public will conclude that there is no reason for the public not to be corrupt either;
8. A corrupt official or politician is a person who only thinks about himself and does not want to sacrifice for the common prosperity in the future;

18. Andi Hamzah, *Perkembangan Hukum Pidana Khusus*, Rineka Cipta, Jakarta, 1991. p. 18.

19. Rohim, *op.cit.*, P. 15-17.

9. Corruption inflicts enormous productivity losses, as time and energy is spent on relationships to circumvent or defeat the system, rather than to increase trust and provide objective reasons for the demand for services needed;
10. Corruption, because it is an institutionalized injustice, will inevitably lead to cases that must be brought to court and false accusations used against honest officials for the purpose of extortion;
11. The most prominent form of corruption in several countries, namely “facilitation payments” or “cigarette money” causes decisions to be weighed on the basis of money, not on human needs.

Choesnon distinguishes the types or types of corruption as follows: ²⁰

1. Corruption of the subtle kind;
This type of corruption is commonly referred to as stealth money, illegal fees, illegal commissions, various kinds of illegal fees, and so on. Such crimes are arguably not classified as positive legal sanctions.
2. Crude kind of corruption;
Sometimes this type of corruption can still be ensnared by law if you happen to be caught or caught in the act. Some examples are, for example, embezzling state funds entrusted to a treasurer, personalizing state property, perpetuating property belonging to the heirs (who are innocent in fact) from persons caught up in the law due to politics and others. This kind of crude corruption is often still free from the bondage of the law because of the various “play” factors (mutually beneficial tofu and knowledge relations) and so on.
3. Corruption that is administrative manipulative in nature.
This kind of corruption is somewhat more difficult to research, even if it does do research by the authorities. For example, official travel costs that have never been partially or completely fulfilled, maintenance costs of state-owned vehicles that break down quickly because they are too often used for personal purposes, costs for repairing government buildings at costs that are intentionally exaggerated (over begroot), costs for restoration private homes, and so on.

In the lexical Islamic concept, corruption has many terms. Among the most popular terms to describe corruption are *al rishwah*, *al suht*, and *al ghul*. However, these three terms are technical terms to describe the kinds of abuses that humans commonly practice. This term itself is basically a tool for Muslims to stay focused on the philosophical mandate of justice. That Islam is a religion of justice, on the other hand, fights against injustice. Corruption is a fraud that directly challenges justice.

Al 'isis is the key word in Islam. This is why the purpose of the law of *tashri* ‘(maqasid al-ahkam al-shar’iyah) is *rahmat li al’alamin* (mercy for all nature). This grace is explained through *tahzib al-fard* (educating and correcting individuals) for the sake of human dignity, *iqamat al ‘adl fi al jama’ah* (upholding social justice) and *tahqiq al masalih* (creation of benefit-benefit).²¹

The concept of *rahmat li al ‘alamin* is a big and majestic concept. This concept is one sign of how Islam is expected to become a teaching that is needed by all mankind and the entire universe, not only for those who have become believers. Prophet Muhammad brought Islam in a package of happiness. The

20. Artidjo Alkostar, *Korupsi Politik Di Negara Modern*, FH UII Press, Yogyakarta, 2008, p. 74 and 75.

21. Kasno, *Pandangan Islam Tentang Korupsi, Teosofi : Jurnal Tasawuf dan Pemikiran Islam*, Vol. 3 No. 2, Fakultas Ushuluddin IAIN Sunan Ampel, Surabaya, Desember 2013, p. 465.

language of happiness is broader and more universal than truth. According to al Sabuni, the Prophet's message is a gift of happiness.²²

Corruption is ignorant behavior that must be resolved. Islam teaches that oppression, arbitrariness and abuse are attitudes that can hurt other human beings. Islam does not like irresponsible attitudes like this, so that Islam focuses almost all of its teachings on eradicating these attitudes. The goal is that all human beings can live in a good, dignified and happy life. Islam is a way out of oppression, injustice and feelings of unhappiness.

Forms of corruption according to Islam include bribery or gratification (al rishwah or al suht), and hiding something that is not their right (al ghul).²³ Among the most popular is the concept of rishwah or bribing. Bribing is giving something to an authorized party so that they can use their authority in accordance with the interests of the party giving the gift. Between the giver and receiver get attention and threats in Islamic teachings Below is one of the authentic hadiths on gratification.

حَدَّثَنَا أَبُو مُوسَى مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنَا أَبُو عَامِرٍ الْعَقَدِيُّ حَدَّثَنَا ابْنُ أَبِي ذُئْبٍ عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الرَّاشِيَّ وَالْمُرْتَشِيَّ قَالَ أَبُو عِيْسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ

Abu Musa Muhammad b. al Muthanna has told us, Abu Amir al Aqadi has told us, Ibn Abu Dhi'b has told us from his uncle al Harith b. bd al Rahman from Abu Salamah from bd Allah b. Umar he said: Rasulullah SAW curses bribers and those who are bribed. Abu Isa said this Hadith Hasan Sahih's Hadith.

Gratification is the giving of gifts that can affect the work of public workers.²⁴ This means that it is not the giving of a gift that is prohibited, but the effect that results from the gift. Gratuities are bad consequences that can be generated by giving gifts for a policy. If a policy produced by public workers has a bad effect and it is forced to benefit one of the parties, then that is what gratification means. Bribing has a strong warning in Islam, because it has a holistic impact on society at large. How evil is the giving of gifts that lead to suffering for other humans. This is how Islam sees gratification as a behavior that should be cursed.

Likewise, al rishwah, al suht, and al ghul are types of deviations in the Koran that have the same place to be shunned. Muslims are strictly prevented from falling into the activity of eating and exploiting something bad (al suht) and are not concerned with the budget for their work than for the benefit of the public (al ghul). Staying away from al suht is a religious postulation, that evil is absolutely not necessary to lead a dignified life. Badness means material or food in a dark area whose origin cannot be accounted for. However much this material will be utilized, its obscure history cannot make it fit for consumption. Allah SWT said in QS. al Maidah verse 62:

وَتَرَى كَثِيرًا مِنْهُمْ يُسَارِعُونَ فِي الْإِثْمِ وَالْعُدْوَانِ وَأَكْلِهِمُ السُّخْتِ لَبِئْسَ مَا كَانُوا يَفْعَلُونَ

And you will see most of them (the Jews) hasten to sin, enmity and eat the unclean. Truly terrible what they have done it.

22. Al Shabuni in Solihin, Yes! I am Muslim, Gema Insani Press, Jakarta, 2007, p. 68.

23. Kasno, op.cit., P. 468.

24. Diana Ria Winanti Napitupulu, KPK In Action, Niaga Swadaya, Jakarta, 2010, p. 25.

Al suhtis a mental situation in the way of working and in a way of earning a living carelessly and carelessly. Jobs that focus only on results and do not care about the cleanliness of sources of income is also corruption. Islam educates its adherents to always keep their work clean and its results.²⁵

Furthermore, *al ghul* is the focus of inappropriate budgeting. *Al Ghul* is a structural egoism that robs others of their rights by exploiting their position by politicizing the budget. The allocation of the budget is exploited, so that it benefits the position of the perpetrator even if it has to sacrifice the interests of the life of others.

In a common case in Indonesia, the budget authority will easily approve budget items for the operational costs of public officials rather than public spending for the wider community. The money spent to cover official travel expenses is greater than that spent on social welfare and the like. *Al ghul* is a corrupt activity that is structurally justified by the ceiling. Basically, this type of corruption is more dangerous, because it is not easily visible and vague. However, Islam gives the same treatment to stay away from everything immediately, absolutely without conditions. Islam completely negates the practice of the three and curses any Muslim who deliberately does so.

In *jinnayah fiqh*, indeed there is no text that specifically records the sanctions for corruption. Islam relates that corruption is identified with its various forms, such as *ghulul* (embezzlement), *risywah* (bribery), *ghasab* (taking rights by force), *khiyanat* (betrayal), and *sariqah* (theft). The provisions of these actions, except *sariqah*, are not included in the *hudud* punishment, so that the punishment will be replaced with *ta'zir* punishment.

Types of *ta'zir* laws that can be applied to perpetrators of corruption are imprisonment, beatings that do not cause injury, slapping, humiliation (with words or by shaving one's head), exile, and flogging under forty times. Particularly for prison terms, Qulyubi argues that it is permissible to impose a prison sentence on immoral offenders who condemn many others with imprisonment to death (life).

The sanctions applied to *ghulul* actions during the time of the Prophet Muhammad were more emphasized on moral sanctions.²⁶ Doers of *ghulul* will be humiliated before Allah on the Day of Resurrection. In other words, that this act is not criminalized, but only through moral sanctions with the threat of hell as a spiritual sanction. This was because at that time, *ghulul* cases were only detrimental to a very small nominal, less than three dirhams. Maybe it would be different if the *ghulul* case cost millions to billions of rupiah, there would definitely be a stricter physical punishment to overcome it.

Risywah sanctions are not much different from those for *ghulul* actors. Abdullah Muhsin al-Thariqi argued that the legal sanctions for perpetrators of *risywah* (bribery) were not clearly explained by the Qur'an and hadith, given that *risywah* sanctions were included in the category of *ta'zir* sanctions whose power was in the hands of the judge. To determine the type of sanction that is in accordance with the principles of Islamic law and in line with the principle of maintaining the stability of social life, so that the weight and lightness of legal sanctions must be adjusted to the type of criminal act committed.

In any of the arguments there is no clear sanction for *ghasab* perpetrators. However, Imam al-Nawawi classified the types of sanctions for *ghasab* actors associated with the condition of the goods as *ghasab* objects into three categories, namely goods that were grabbed still intact as before, *ghasab* items had disappeared, and *ghasab* items were reduced. Each sentence states that the perpetrator must return the *ghasab* items in full to the original owner, otherwise the officer has the authority to take over by giving *ta'zir*

25. Kasno, op.cit., P. 470.

26. M. Nurul Irfan, *Korupsi Dalam Hukum Pidana Islam*, Amzah, Jakarta, 2011, p. 87.

/ ta'dib punishment to the perpetrator.

For the latter, essence, that corruption cannot be fully equated with acts of corruption because the elements of essence are not fulfilled in the fingers of corruption. When there is syubhat in an act, the hudud punishment that has been determined cannot be carried out. If hudud is not obtained, then the punishment will be transferred to ta'zir punishment.

Islamic Shari'ah imposes sanctions on criminal acts (Jarimah) that are not explained in the Qur'an or the hadiths with ta'zir. Corruption in Islamic criminal law includes ta'zir in which ta'zir is the authority of Ulil al Amri (government), in this case the judge determines the sanctions against the perpetrator regardless of whether the perpetrator is either an official or an ordinary citizen.²⁷

In its development, the efforts to deal with corruption in Indonesia by the Attorney General's Office and the National Police became very interesting after the promulgation of Law no. 30 of 2014 concerning Government Administration, where the Attorney General and the Chief of Police cannot participate in taking legal action either at the level of investigation or investigation of reports from the public, to be forwarded or submitted to the leadership of ministries / agencies or regional governments for examination and follow-up including examinations. The Government Internal Supervisory Apparatus (APIP), the prosecutor's office and the National Police can only work if an audit conducted by APIP finds indications of a non-administrative crime.

Provisions in Law No. 30/2014 concerning Government Administration places APIP as the front guard in determining whether there is any abuse of authority and its follow-up, in Article 20 paragraph 2 of the Government Administration Law there are 3 forms of recommendations for the results of supervision carried out by APIP, namely; 1. There are no errors; 2. There is an administrative error; 3. There are administrative errors that cause losses to the State.

Still based on article 20 of the Government Administration Law, giving such a big role to APIP is not only for findings in the form of administrative errors, but also on findings of administrative errors that cause losses to the State, follow-up to the return of State finances for a maximum of 10 (ten) days work since it is decided to issue the results of the supervision. Reimbursement of state losses is intended to be borne by the Government Agency, if the administrative error does not occur due to an element of abuse of authority.

Talking about criminal law, a criminal act is not only based on the intention of the maker but also because of negligence or negligence. If we discuss the actions or decisions of Public Officials, not all forms of negligence or negligence of public officials in taking action or decisions can qualify as a criminal act.

However, any form of negligence or negligence of public officials in carrying out actions or decisions can have 2 legal consequences²⁸. First, it is negligence or negligence due to inexperience or unprofessionalism (malpractice) or default (Failure to perform on obligation) which is essentially an act against law in the realm of civilization or an abuse of authority in the realm of administration (abuse of power, *detournement de provoir*).

Actions by public officials in the form of neglect as a result of a lack of knowledge or skills can only lead to criminal charges if the negligence is defined as an element of action or "Dolus eventualis"²⁹. If it is not listed as an element of offense then it is included in the realm of administration, ethics or civil sanctions.

Second, if the above benchmarks have been met, the actions of the public official have met the

27. Mawardi Noor et.al., *Garis-Garis Besar Syari'at Islam*, Khairul Bayyan, Jakarta, 2002. p. 23.

28. Muladi, "Hukum Pidana dan Profesi Jabatan Notaris", Makalah, Bincang-bincang Hukum Kenotariatan, Ikatan Notaris Indonesia (ini), Jakarta, 28 Februari 2010 p. 13-14.

29. D.Scaffmeister et.al, *Hukum Pidana*, Bandung, Citra Aditiya Bakti, Cetakan kedua, 2007, p. 82.

qualifications of a criminal act, because all negative parameters have nuances of malicious intent (*dolus malus*) and cause / strengthen elements of legal (*wederrechtelijkheid*) formal and material in criminal law.

However, apart from the elements against the law and abuse of authority, opportunity or means related to position or position, an element that is no less important is to pay attention to the element of state financial loss, so there must be such a strong correlation between elements of unlawful nature (*wederrechtelijkheid*) or abuse of authority. with the incurred financial losses to the State.

To distinguish a public official's policy which is considered corrupt which causes losses to the State from administrative violations lies in the deliberate actions of the public officials concerned in abusing their authority.

In criminal law adheres to the principle of personal responsibility, while in administrative law the principle of occupational responsibility applies (the state of fact being responsibility)³⁰. Jabata jn accountability is a consequence of the existence of authority possessed by public officials, in accordance with the principles of public officials, in accordance with the principle of no power without accountability "Geen bevoegheid zonder verantwoordelijkheid"³¹.

It will be the responsibility of the office, if the act is still in the "Beleid" stage so that the criminal judge cannot make an assessment. However, when the "Beleid" was drafted, there were indications of abuse of authority in the criminal realm such as through bribery or gratuities, public officials could be processed and prosecuted.³².

B. Closing

1. Conclusion

- a. With the birth of Law No. 30 of 2014 concerning Government Administration, where the Attorney General and the Chief of Police cannot immediately take legal action either at the level of investigation or investigation of reports from the public, to be forwarded or submitted to the leadership of ministries / agencies or regional governments for examination and follow-up including therein an examination by the Government Internal Supervisory Apparatus (APIP), the prosecutor's office and the National Police can only work if an audit conducted by APIP finds indications of a non-administrative crime.

Provisions in Law No. 30/2014 concerning Government Administration places APIP as the front guard in determining whether there is any abuse of authority and its follow-up, in Article 20 paragraph 2 of the Government Administration Law there are 3 forms of recommendations for the results of supervision carried out by APIP, namely; 1. There are no errors; 2. There is an administrative error; 3. There are administrative errors that cause losses to the State.

- b. To distinguish a public official's policy which is considered a criminal act of corruption that causes losses to the State with administrative violations lies in the deliberate actions of the public

30. Ridwan Halim, *Diskresi dan tanggung jawab Pemerintah*, Yogyakarta: FH UII Press, 2014, p. 345.

31. Nur Basuki minarno, *Penyalagunaan Wewenang dan tindakan pidana korupsi dalam pengelolaan keuangan daerah*; LaksbangMediatama, 2009, p. 75-76.

32. Asep N. Mulyana, *Dimensi Koruptif Kebijakan (pejabat) Publik*, Penerbit Madju, Medan, 2016, p. 206.

officials concerned in abusing their authority, criminal law adheres to the principle of personal responsibility while in administrative law the principle of accountability applies. (the state of fact being responsibility). Position accountability is a consequence of the authority possessed by public officials, in accordance with the principle of no power without accountability “Geen bevoegheid zonder verantwoordelijkheid”, it will become the responsibility of the office, if the act is still in the “Beleid” stage so that a criminal judge cannot make an assessment. .

II. Suggestion:

After the enactment of Law No. 30 of 2014 concerning Government Administration, in its implementation, it is necessary to have clear and limitative parameters and time limits until when the APIP is authorized to follow up on reports and complaints from the public, there are measurable parameters and time limits for examinations by APIP, intended to prevent overlapping tasks Principles and functions with law enforcement officials, in accordance with the principles of Separation of functions or separation of organism. These parameters are important and must be able to eliminate the presumption of immunity against public officials who abuse authority.

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