

THE AUTHORITY OF THE POLICE IN HANDLING CRIMINAL ACTS OF CORRUPTION BY CIVIL SERVANTS WHO ARE SUSPECTED OF COMMITTING ABUSE OF AUTHORITY BASED ON LAW NUMBER 30 OF 2014 CONCERNING GOVERNMENT ADMINISTRATION

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ABSTRACT

To actualize the implementation of governance and development based on the principles of good governance dan clean good government, Law Number 30 of 2014 concerning government administration is the legal basis needed to base the decisions and/or actions of government officials to meet the legal needs of the public in governance. However, it is highly risky for corruption or abuse of authority possessed by government officials. The enactment of Law Number 30 of 2014 concerning Government Administration has changed the perspective of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, which has been carried out by the Police from an enforcement approach to an administrative approach by the Government Internal Supervisory Apparatus (henceforth APIP - *Aparat Pengawas Internal Pemerintah*). The addition of bureaucratic systems in eradicating criminal acts of corruption occurred due to the existence of this APIP. This research discusses the authority of police in handling criminal acts of corruption by civil servants (henceforth PNS – *Pegawai Negeri Sipil*) who are suspected of abuse of authority based on Law Number 30 of 2014 concerning government administration. The method used in this research was normative juridical law research with a statutory approach. The results of the research showed that police, in handling complaints or reports of the handling criminal acts of corruption by PNS who are suspected of committing acts of abuse of authority, must be submitted to the APIP first. The involvement of APIP makes the Police unable to act immediately and it is feared that this procedure will prolong the investigation process. Efforts are being made so that the handling of criminal acts of corruption can be effective in preventing state financial losses, namely by coordinating with APIP, the Financial and Development Supervisory Agency, (henceforth BPKP - *Badan Pengawas Keuangan dan Pembangunan* -), and other external institutions.

Keywords: Police, Abuse of Authority, Criminal Acts of Corruption

A. INTRODUCTION

1. Research Background

Indonesia, in its development in the context of actualizing good governance and clean governance, has a commitment that is in line with the dynamics of community development. The commitment is to run and run the government based on applicable law. It is in line with the regulations stated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia (known as UUD 1945), which states explicitly and clearly, the State of Indonesia is a state of law. The concept of Indonesia as a state of law is aligned with the concept of a welfare state, as stated in the fourth paragraph of the Preamble to the 1945 Constitution, the aim of a state is to promote the general welfare. However, this concept has several consequences for the administration of government, including adhering to the principles of good governance and clean good government in which there is the concept of a welfare state which places the government as the responsible party for the

general welfare of citizens.¹ Therefore, the government is required to be consistent and firm in dealing with corruption in Indonesia.

Although there have been many corruptors who have been sentenced, the number of corruption cases has not decreased yet. Corruption is now committed by people who are from various work backgrounds and it is mostly committed by PNS who have positions and authority. The criminal acts of corruption can affect various fields of life, therefore corruption is an extraordinary crime that can touch, undermine, and endanger the finances and economy of the state.² Other factors that cause corruption are the abuse of authority owned by governments. It means that abuse of authority comes from the authority given attributively and delegatively, and it is a mandate to government agencies or officials who organize a government in actualizing

¹ Ridwan, HR, *Hukum Administrasi Negara*, Rajawali Pers, Jakarta, 2008, p.243

² Marwan Effendi, *Strategi Action Plan Dalam Upaya Merespon Kebijakan Jaksa Agung R.I. tentang Peningkatan Penanganan Perkara Tindak Pidana Korupsi*, Jakarta: Media Hukum Vol 2 No. 8, November 22nd, 2003.

public welfare. However, not all officials who undertake the authority automatically have a responsibility because they must be assessed whether the officials concerned who hold the position viewed from the ways of obtaining and undertaking the authority have been suitable with the specialty principle (*specialiteitsbeginssel*) or not. The specialty principle is a principle that determines the authority given to the organs of the government with a certain purpose. If it deviates from the purpose for which this authority is given, it is considered an abuse of authority.³

The law on government administration becomes the legal basis needed to base the decisions and/or actions of government officials to meet the legal needs of the community in the administration of government. In law Number 30 of 2014 concerning the government administration, the decisions and/or government official actions related to the abuse of authority,

the supervision, and the investigation of the alleged abuse of authority shall first be carried out by the APIP. The abuse of authority is also one of the bases in Article 3 of Law Number 30 of 2001 concerning the Amendment to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Thus, the police in handling the criminal acts of corruption based on Law Number 30 of 2014 concerning Government Administration is constrained at times so that they seem slow because the Police must first coordinate with the APIP. If the results of the inspection are found maladministration evidence, further process is submitted to the APIP. In contrast, if the results of the investigation are found criminal deviation evidence, the cases are then submitted to the Police by the provisions of laws and regulations and if there is an administrative error that causes state financial losses, further repairs to state losses will be carried out. Thus, PNS who have positions in government that are indicated to have abuse of authority (corruption) cannot be

³ Nur Basuki Minarno, *Penyalahgunaan Wewenang dan Tindak Pidana Korupsi Dalam Pengelolaan Keuangan Daerah*. Palangkaraya: Laksbang Mediatama, 2009, pp.75-76.

punished. Based on this background, this research investigated the issue entitled “The authority of the police in handling criminal acts of corruption by PNS who are suspected of abuse of authority based on Law Number 30 of 2014 concerning Government Administration”.

2. Identification of the Problems

Based on the research background, the authors formulated the problems as follows;

1. What is the authority of the Police in handling criminal acts of corruption by PNS who are suspected of committing criminal acts of abuse of authority based on Law Number 30 of 2014 concerning Government Administration?
2. What are the Police’s constraints in handling criminal acts of corruption by PNS who are suspected of committing criminal acts of abuse of authority based on Law Number 30 of 2014 concerning Government Administration?

3. What efforts have been made by the Police in the handling of criminal acts of corruption to be effective in preventing state financial losses?

B. RESEARCH METHODOLOGY

1. Type of Research

This research employed a normative juridical research type. This research type is library legal research carried out based on the library and secondary data. The approach used in this research was a statutory approach which was carried out by reviewing all laws and regulations related to the legal issues being studied⁴.

2. Research Approach

This research used a statutory approach in which Law Number 30 of 2014 concerning government administration in its hierarchical perspective was used in this research. It aimed to uncover the reality to what extent the laws and implementing regulations were compatible. As a result, it is hoped that the results of this research can make recommendations to complement weaknesses, deface overlapping strengths, and rectify existing deviations.

⁴ Peter Mahmud Marzuki, *penelitian hukum*, Kencana, Jakarta, 2005, p. 93

3. Legal Material Processing Techniques

In this research, legal material processing was carried out by re-examining the legal materials that had been collected based on the completeness, suitability, clarity of meaning, and relevance to the problems of the research. Then, the data classification was done logically in terms of the relationship between one legal material and another. The last, the data that had been classified were arranged systematically based on the formulation of the problems to make them easy to understand to analyze.

4. Legal Material Analysis Techniques

Legal materials were analyzed by using the qualitative juridical method. It was carried out by describing legal materials that were processed in detail into sentence form (descriptive). The qualitative juridical analysis was carried out starting from the analysis of primary, secondary, and tertiary legal materials by interpreting statutory provisions and documents based on legal norms, legal theories, and expert opinions (doctrine). The results of

the analysis were then described qualitatively as answers to the problems studied in the form of scientific works (thesis).

C. RESULTS AND DISCUSSION

1. THE AUTHORITY OF THE POLICE IN HANDLING CRIMINAL ACTS OF CORRUPTION BY PNS WHO ARE SUSPECTED OF COMMITTING ABUSE OF AUTHORITY

The Constabulary (National Police) was one of the state law enforcement Apparatuses formed based on the mandate of the 1945 Constitution of the Republic of Indonesia as stipulated in Law Number 2 of 2002 concerning the Indonesian National Police. The duties and authorities of the Police are also regulated in Article 13 to Article 16 of Law Number 2 of 2002 concerning the Indonesian National Police. Moreover, the duties and authorities of the police are regulated in the Cooperation Agreement between the Ministry of Home Affairs and the Attorney General's Office of the Republic of Indonesia, and the Indonesian National Police Number: 119- 49 of 2018, Number: B-

369/F/Fjp/02/2018, Number
B/9/II/2018 concerning
Coordination of APIP with law
enforcement apparatus in handling
indicated public reports or
complaints corruption in the
implementation of government,
which in Article 7 of the
Cooperation Agreement states that
each party such as the Ministry of
Home Affairs, the Attorney, and
the Police, in terms of receiving or
following up on reports or
complaints from the public under
the authority and Service
Standards/Standard Operating
Procedures of each party. The
administrative errors referred to in
paragraphs 2 and 4 have the
following criteria:

- a. There is no state/regional
financial loss
- b. There is a state/regional
financial loss and has been
processed through a claim for
compensation or a treasury
claim no later than 60 (sixty)
working days since the APIP
or the Supreme Audit Agency
(henceforth BPK - *Badan
Pemeriksa Keuangan*) audit
report is received by the
official or has been followed
up and declared completed by
the APIP or the BPK;
- c. Part of the discretion, if the
purpose and conditions for
the use of discretion are met;
or

- d. It is the administration of the
government if it is under the
general principles of good
governance. (Paragraph 5)

The explanation above can be
concluded that the purpose of this
Cooperation Agreement is to
serve as an operational guideline
for the Police, the Prosecutor's
Office, and the Ministry of Home
Affairs in coordinating the
handling of reports or public
complaints indicating criminal
acts of corruption in the
administration of local
government. This cooperation
aims to strengthen the synergy of
cooperation between the parties in
coordinating the handling of
public reports or complaints
indicating criminal acts of
corruption in the administration of
regional government to actualize
effective, efficient, and
accountable regional governance
and the objectives of regional
autonomy. Thus, the authority of
the Police in handling complaints
or reports on the handling
criminal acts of corruption by
PNS suspected of committing acts
of abuse of authority must be
submitted to APIP first as the
First Party of the Cooperation
Agreement acts as the State Civil

Apparatus (ASN – *Aparatur Sipil Negara*) internal supervisor. The first party, APIP, follows up on reports or public complaints that are received directly through an investigative examination to determine whether the report or complaint indicates an administrative or criminal error. On the other hand, if the APIP investigation states that there are no administrative errors, or indications of corruption are found, the APIP must immediately submit to the Police as the agency that carries out its function in law enforcement of corruption cases to conduct an investigation.

The results of the APIP investigation are used by the police to guide in handling reports of alleged abuse of authority as regulated in Article 20 of Law Number 30 of 2014 concerning government administration. With the issuance of Law Number 30 of 2014 concerning Government Administration, related allegations of abuse of authority by government agencies and/or officials should be resolved first administratively by the provisions in Law Number 30 of 2014

concerning government administration.

However, in line with the current development, the handling of criminal acts of corruption is currently changing. The awareness of the prevention aspect is starting to grow and it is to be prioritized by not forgetting to take action as the *ultimum remedium* in efforts to eradicate corruption. PNS who is suspected of committing abuse of authority should be solved administratively. Then, if there are three elements in the criminal realm such as threats, bribes, and deception to obtain an illegal advantage found based on the court decision, the case will be solved through the criminal process. Return of state losses is preferred in the process of investigation. However, if the investigation has reached the stage, the process will be continued. The collaboration between the National Police and the APIP is focused on the form of coordination that is synergistic between the national police investigators and the supervisory inspectorate.

2. THE POLICE'S CONSTRAINTS IN HANDLING CRIMINAL ACTS OF CORRUPTION BY PNS WHO ARE SUSPECTED OF COMMITTING CRIMINAL ACTS OF ABUSE OF AUTHORITY BASED ON LAW NUMBER 30 OF 2014 CONCERNING GOVERNMENT ADMINISTRATION

The police's constraints in handling criminal acts of corruption by PNS who were suspected of committing criminal acts of corruption based on Law Number 30 of 2014 concerning government administration was the coordination between the police and the APIP appeared when there were complaints or reports from the public regarding the alleged corruption by a PNS who committed an abuse of authority as a government official. In handling cases of alleged corruption, the police need the APIP that is assigned to count the state's financial losses. The police, in receiving information and/or knowing directly about a case of alleged corruption, firstly ask the APIP to conduct the investigative

audit or a case that is being investigated to investigate whether the state's financial losses or the state's economic losses are done by the PNS concerned. Also, if the result of the investigative audit finds that there are the state's financial losses by providing the number of the state's financial losses, the police will raise the preliminary investigation phase into the full investigation phase to conduct a series of investigative actions.

1. Coordination Constraints between the Police and the APIP

The coordination between the police and APIP is conducted when the public report a complaint regarding the alleged corruption by a PNS. The subjects that are reported by the public including local government administrators who are still active are the regional leader and vice regional leader, the chairperson, or the member of the Regional Representative Council (known as DPRD – *Dewan Perwakilan Rakyat Daerah*), ASN of the regional government, head of the village, and village apparatus. The constraint faced by the police was the process of

following up on the report or complaints from the public will coordinate previously with the APIP, then the APIP investigates the PNS. After the investigation, if the allegation turns out to be an administrative violation, it will be followed up internally by the institution. However, If the allegation is a criminal act, the APIP will hand it over to the Police. The position of the APIP under the regional leader can make coordination ineffective because of the independence factor from the APIP.

2. Juridical Constraints Faced by the Police

The overlapping authority for investigating criminal acts of corruption among several institutions (the Police, the Prosecutors, and the Corruption Eradication Commission (known as KPK – *Komisi Pemberantasan Korupsi*), authorized to conduct investigations into criminal acts of corruption are a constraint for the police in conducting investigations due to differences in regulations. Each of these institutions has its regulations for conducting the investigation. There is an intersection of article elements

“act against the law” and “abuse of authority” in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption with Law Number 30 of 2014 concerning Government Administration which causes the preliminary investigation and the full investigation process to take a long time.

3. EFFORTS HAVE BEEN MADE IN THE HANDLING OF CRIMINAL ACTS OF CORRUPTION TO BE EFFECTIVE IN PREVENTING THE STATE’S FINANCIAL LOSSES

The efforts have been made by the police to prevent and eradicate corruption that occurs in the field of government, especially abuse of authority by government officials, is done by implementing strategic steps in law enforcement and improving coordination in the framework of reporting mechanisms for the implementation of corruption eradication efforts. The efforts made by the APIP are to carry out coordination and synergize between the law enforcement institutions and the financial supervisory institutions to

actualize efficient and effective law enforcement.

Moreover, efforts of External Supervisory Agencies in handling criminal acts of corruption include 1) improving audit quality and strengthening the role of the Calculation Result Report (known as LHP - *Laporan Hasil Penghitungan*), and 2) KPK conducts monitoring the implementation of the regional government and providing encouragement and protection to the inspectorate to be strong and courageous in preventing corruption within the scope of the regional government.

D. CLOSING

1. Conclusion

The authority of the police in handling criminal acts of corruption by PNS who are suspected of committing abuse of authority based on Law Number 30 of 2014 concerning government administration in handling complaints and reports regarding alleged corruption by PNS is the police must submit the case to the APIP which acts as the internal supervisor of PNS. On the other hand, if the investigation conducted by the APIP finds that

there is no administrative error but there are indications of a crime, the APIP must immediately submit it to the police as the agency that carries out its function in law enforcement in corruption cases.

The police's constraint in handling criminal acts of corruption is the existence of a cooperation agreement among the APIP, the Prosecutor's Office, and the Police, making the Police unable to act directly in investigating complaints which are feared to prolong the investigation process. Efforts made by the Police in the handling of criminal acts of corruption can be effective in preventing the state's financial losses are implementing prevention efforts, implementing strategic steps in the field of law enforcement, increasing education and counseling efforts on anti-corruption culture, and improving coordination in the framework of reporting mechanisms for implementing the efforts of corruption eradication.

2. Suggestion

Based on the results of the research, the Police and the APIP are suggested to coordinate, communicate, and collaborate in

handling complaints or reports of alleged abuse of authority by PNS holding positions in government. For example, these institutions work together with local governments to prepare SOPs/technical instructions related to patterns of coordination and periodic evaluations between the Police and the APIP.

In addition, the boundaries of authority between the Police and the APIP must be clear in terms of calculating state financial losses because the strong nuances of criminal law in the practice of alleged abuse of authority can hinder the innovation and creativity of government officials. The APIP, in the Provincial, Regency/City Inspectorate, is suggested to

coordinate with the BPKP to prove the element of state financial loss so that the results of the investigative audit report do not vary and raise doubts.

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