Legal Protection of Indonesia Budget User Authority in Using the State Budget

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***Abstract*: the research stems from the recent prevalence of corruption cases in budgeting that is revealed by the Corruption Eradication Commission (KPK). Many institutions are afraid and reluctant to absorb budget, primarily in the procurement of goods and services. It makes the budget absorption lower because many budget user authorities are afraid to execute the policy. It is not surprising since the consequences of the policy are often biased and mistargeted. The related officials then are frequently dragged to a legal case and even go to jail. The research is a descriptive analysis that used a normative juridical method. The object was approached using a stature approach. The research found that searching for legal protection is searching for regularity in the basic legal values, e.g., usefulness, justice, and certainty of law. The law mission to protect human right and interest have a high authority to define human right that should be regulated and protected**

Keywords: **Authority, budget, budget user authorities .**

I. INTRODUCTION

A recent topical social issue in society is corruption as a result of abuse of power and authority. Authority is a power had by individuals or groups to manage other individuals or groups for prevailing justice preventing violations [1]. However, more often than not, the authority is abused to benefit certain parties. Consequently, many rulers compete over that source to enrich themselves by exercising any means, including authority delegated to them by the people.

An example of abuse of authority done by public officials or institutions is the procurement of goods and services. The execution of the activity often triggers problems, despite in the planning or the program handover. The abuse of authority is a combination between the concept and norm of administrative and criminal laws, meaning that despite administrative, the rule also contains criminal sanctions. This is what is generally called administrative penal law or *verwaltungs strafrecht* [1].

A reason for Indonesian Law Number 30 of 2014 concerning Government Administration published on October 17, 2014, is to enhance the quality of the government, including institutions and/or public officials. In using their authorities, they should refer to general principles of good governance and be based on valid laws and regulations [2]. This law is the legal foundation for the government to realize good governance and as an effort to prevent the practice of corruption, collusion, and nepotism. Therefore, this law should be capable of creating a more effective, transparent, and efficient bureaucracy [3].

However, after Indonesian Law Number 30 of 2014 concerning Government Administration concerning Government Administration took effect, a debate emerges among academicians and practitioners regarding the meeting point between the administrative court and anti-corruption court concerning the authority of testing the abuse of authority performed by an institution or public official. The debate originates from the statement in Article 21, Paragraph 1, in Law Number 30 of 2014 that gave authority to Administrative court to "accept, investigate, and decide an abuse of power done by a public official."

The concept of authority in administrative law and corruption is highly related [4]. Regarding a tradition in legal science, "administrative law" lies between laws of government and criminal laws. This is why it is often called "the between law." Criminal law is composed of essential norms for a social life so that the criminal sanctions can be enforced to establish the norms. Most norm of laws of the government is based on Administrative law that is ended by "*in cauda venenum*" with some criminal provision. Etymologically, *in cauda venenum* means there is a poison on the tail in each policy-related act [5].

Law Number 30 of 2014 concerning Government Administration (hereafter: UU AP) regulates many elements, ranging from authority delegation to the public official and/or institution of the government, prohibition of abuse of authority, administrative sanction, to the type of sanction given. Article 21 of UU AP is the legal foundation for the Administrative Court to investigate and assess the sign of abuse of authority. This is actually new in terms of competence.

At some point, compared to *Algemene wet Bestuursrecht* (AwB), the Administrative Court in the context of UU AP is relatively different. While AwB started from state administrative law, UU AP is based on government administrative law [6].

The competence of Administrative Court which is based on Law Number 5 of 1986 regarding Administrative Court Number 51 of 2009 has experienced several limitations, making the existence of Administrative Court particular, like *Wet Algemene Rechtspraak Overhieds beschikkingen* (AROB) in Netherland, and not general. This can also be identified as

super particular because the verdict of the Administrative Court, according to the law, is more particular than *beschikking* and *AwB* in Netherland. As a result, the conflict that involves government administration becomes the competence of the general court. This induced a legal problem in the resolution [7].

The first perspective stated that the testing of an abuse of authority done by institutions and or public officials is concurrent authority between the Administrative Court and Anti-Corruption Court. This perspective states that there is no conflict in terms of norm between administrative and criminal law because the Administrative Court and Anti-Corruption Court have a different competence and do not need to be debated because the context of abuse of authority as the object of each court is different.

Although there may be a legal problem solved in those two courts, they have different and independent aspects of testing, so that they do not interfere or test each verdict. The absolute competence of PTUN towards abuse of authority is the liability and responsibility of the institution and/or public official of administrative error that cause a loss in the state budget. On the other hand, the authority of the Anti-Corruption Court deals with abuse of authority that is established on *actus reus* (Action that breaks the law) and *mens rea* (inner act) in corruption [8].

Regulation regarding the authority to test the abuse of authority done by an institution or public official has triggered a conflict of norm between the regime of administrative law and criminal law. This problem impacts the debate on the "meeting point of authority" of judging between the Administrative Court and Criminal Court. On the one hand, the Administrative Court is authorized to accept, investigate, and judge an abuse of authority done by a public official (Article 21, Paragraph 1, Administrative Court). On the other hand, Anti-Corruption Court also has the authority to investigate abuse of authority as one of the essential element of corruption (Article 3 of Law of Anti-Corruption)

Administrative law indeed can easily mix up with other regimes, thus requiring circumspection. For example, an abuse of authority according to administrative law can easily mingle with criminal law because an action that exceeds the fixed authority that is abusive towards authority given can be a criminal act [9]. However, issues regarding whether a policy produced by an institution and or public official can be sentenced as criminal law lead to an impasse. Parties that agree with the mixing up will not question this. However, this is a problem for parties that disagree.

For them, the policymaker may not predict that the policy may break the rules. If each policy can be qualified as a criminal act, it would be problematic. This is because a policy is a part of a system, and if a public official is reluctant to make a policy, the government will be challenging to run as intended [10].

II. METHODS

The research is a descriptive analysis or a study that aims to describe an issue regarding the resolution of the problem between the regime of administrative law and criminal laws in Indonesia regarding abuse of authority conducted by an institution and/or administrative public official. The object was analyzed using the normative juridical method. In this research, the researchers used a statue approach.

III. RESULTS AND DISCUSSION

The legal protection, which is wanted by people, is the regularity of basic legal values, ranging from usefulness, justice, to the certainty of law. The interest of law that aims to protect human rights should have the highest authority to define human rights, and it should be regulated and protected.

Legal protection is a reduction of the protection's aim, in this case, only legal protection. The protection provided by law also is related to the right and the obligation. People own it as a legal entity in their interaction with other people and their environment. As humans with rights, they possess the right and obligation to take legal action [11].

Law can be used to provide protection, which is not only adaptive and flexible but also proactive. Therefore, it is a necessity to provide law for the weak who has not socially, economically, and politically strong to achieve social justice.

On the issue of legal protection for the budget officials that us budget, according to criminal acts of corruption, the Constitutional Court (MK) issued Decision Number 25/PUU-XIV/2016 on January 25, 2017. This decision stated that the word "dapat" ('can') in the Article 2 Section (1) and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 about Corruption Eradication (UU Tipikor) contradicts the constitution and is not legally mandatory.

Although MK has eliminated the word "dapat" in the Article 2 Section (1) and Article 3 of UU Tipikor, it would not resolve the problem of criminalizing the policy because the factors of criminalization are not caused by the word "dapat" but by confusion in seeing which acts that can be punished. According to the Article 2 Section (1) and Article 3 of UU Tipikor, those are the malicious intentions to enrich oneself, other people, or corporations by the abuse of authority. Ideally, MK merely needs to straighten out this view so that the practice of criminalization will be adequately resolved. There will be no more criminalized policies as long as there is no malicious intent to enrich themselves during the making process of the policy.

This MK's decision, by contrast, has caused a new problem that can bring criminalization practices toward abuse of authority in the decision process of making policy. This is because, with that judgment, the definition of abuse of authority that can harm national budget and typically be criminally punished with the Article 2 Section (1) and Article 3 of UU Tipikor and administratively with the Article 20

Section (2), (4), and (6) of the Government Administration Law make no difference at all. Consequently, those acts can be prosecuted, both criminally and administratively, and it is unclear when to prosecute criminally and administratively. This is, then, make the abuse of authority, which is supposed to be prosecuted administratively, become prosecuted criminally. Furthermore, the abuse of authority, which is supposed to be either prosecuted criminally or administratively, can get both. The new problem caused by this decision is the new corruption culture. The different nature of the prosecution and the indicator of prosecution is delegated to the perpetrator without clear rules. Therefore, this will open a room for people to abuse the authority with any means to avoid the heavier prosecution, in which this act brings about a new corruption act.

The juridical condition that has been described above impacts on the Indonesian low budget absorption, which becomes an annual phenomenon that happened in the Ministry/Institution or in the Regional Level, even though the regulations concerning the state finances or State Expenditure Budget (APBN) is arranged based on real necessity.

The implementation of the state budget always causes juridical problems, particularly in the context of the disharmony between laws and regulations. In the process of making laws and regulations, lawmakers often do not consider the effectiveness and efficiency of the implementation. The formulation tends to be a result of political elites' compromise. The philosophical, economic, and sociological foundations do not become the main consideration.

This fear is driven by the high number of corruption cases in the sector of budget use that are revealed by the Corruption Eradication Commission (KPK). Many institutions are then afraid of implementing budget absorption, primarily in the term of procurement of goods and services. In ministries/institutions, what causes the low absorption of the budget is afraid policymakers in making policies. The consequences of these policies are often biased and mistargeted. Thus, frequently, the relevant officials are exposed to legal cases and even go to jail.

Considering the law issues that are caused by the fear of budget users officials in running their authority, it is necessary to establish law protection for the officials. Satjipto Rahardjo contends that law presents in society is to integrate and coordinate contradicted interests. Coordinating those interests is realized by limiting and protecting those interests. In light of that, it is essential to make a law that specially regulates the budget user authorities in exercising their authority and development. This law is needed because the budget user authorities need law protection.

In the process of making the law mentioned, the most crucial issues that must be mainly concerned are (a) there should be clear rules regarding the procedures for handling criminal offenses, administrative law, and criminal law. This is useful to establish certainty concerning the steps that must be taken by the parties involved if a violation related to the three parts of the law (civil, administrative, and criminal) takes place. b) there should be clear rules regarding which party that is authorized to do inquiries and/or investigations if there are indications of violations by budget user authorities in carrying out their authority in developing their fields. c) there should be clear rules regarding the steps that are allowed by the law to conduct inquiries and/or investigations toward the budget user authorities in carrying out their authority in developing their fields. d) Lastly, there is a clear regulation about coordination and separation of authority among related ministries/institutions that aim to handle violations or supervision on the budget user authorities in carrying out their authority.

IV. CONCLUSIONS

Law protection for budget user authorities that execute their policies aims to resolve the intersection between Government Administration Law and Law of Anti-Corruption towards abuse of authority. Hence, in prosecuting the state officials who are suspected of committing corruption must first be considered in a law that is used by the officials when they are practicing their activity, which is administrative law. If there is a violation of administrative law by the officials, both in the category of government norms (*bestuursnorm*) and official behavior norms (*gedragsnorm*), and there are a maladministration and state losses, the officials must be then suspected of committing corruption. This action is significant to make the implementation and enforcement of the law in corruption case does not only focus on the aspect of the punishment, but proportion, effectiveness, and efficiency. To achieve these goals, it is necessary to harmonize the laws and regulations in Indonesia so that the law can have certainty, primarily in the case of authority abuse practiced by the budget user authorities.

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