

FUNCTION AND ROLE OF ADMINISTRATIVE LAW IN THE PREVENTION AND COMBATING OF CORRUPTION IN INDONESIA

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ABSTRACT

Corruption is defined as an act which was not good as embezzlement, receiving kickbacks and so forth. Corruption has penetrated in every layer of authority, whether in the executive, legislature and judiciary, in both of the layers at the central level to the village level. The quantity and quality is also increasing, along with the improvement of democracy in Indonesia. While the State Administration can be interpreted as directives, government, implementation activities, activity guidance, the creation of the principles of public policy implementation, activity analysis, balancing and presentation decisions, policy considerations, as the work of individuals and groups in producing public goods and services, and as an arena field of academic and theoretical work, in the state government. This study uses the methodology of normative juridical deduction, the judicial approach. At the end of the discussion will be found the answer from the legal issues that the law of the State Administrai important role in the prevention and eradication of corruption. With prescriptions for a legal solution.

Keywords: corruption, the state administration law, government

INTRODUCTION

In many parts of the world, corruption always get more attention than the other crimes. This is understandable considering the negative impacts. Nowadays corruption is a common enemy of all people of Indonesia who want to live in peace and independence of the nation. Corruption is a serious problem because may endanger the stability and security of societies, endanger the socio-economic development, and politics, as well as damage to democratic values and morality.

In Indonesia, corruption has become common knowledge and implicated widely in people's life there is no area of life that is not contaminated by corruption, collusion and nepotism, both in small and large scale from the central government down to the level of the urban/rural, covering government agencies or private.

Corruption in Indonesia continues to increase from year to year. Corruption is widespread in the community, both from the number of cases and the amount of loss to the state, and in terms of the quality of criminal offenses committed more systematic and scope that enters all aspects of society. Recognizing the complexity of the problem of corruption as well as real threats that will inevitably occur, then corruption can be categorized as a national problem that must be dealt with seriously through the balance of measures firmly and clearly involve all the potential that exists in the society, especially the government and law enforcement officials,

At present, the corruption occurs in all State administrators, both in the executive, legislative and judicial. In fact, in almost all official institutions such as state-owned enterprises, political and social strata such as NGOs, political parties, and so on. The situation today is very worrying, because democracy amid rampant, rampant corruption anyway.

Corruption itself can not be separated in humans as actors of corruption itself, every man plays a specific role and are involved in the interaction. But analytically these actors can be separated from the role played as well as actions. Two different people may play the same role and vice versa the same two people may also play different roles.

Trecker Affirming that the state administration is a dynamic and ongoing process, which is done in order to achieve the goals by harnessing together of people and material through coordination and cooperation. According to them, planning activities, pengorganisasiaan, and leadership explicitly included in the definition.

In general, administration can be interpreted as directives, government, implementation activities, activity guidance, the creation of the principles of public policy implementation, activity analysis, balancing and presentation decisions, policy considerations, as the work of individuals and groups in producing public goods and services, and as an arena field of academic and theoretical work.

The administration tasks include activities, identify, prioritize needs; identify and redefine

(and meninterpretasi and use) the purpose of the organization as a guide programs and services; securing financial resources, facilities, staff and various other forms of support; develop programs and services; develop organizational structures and procedures; using leadership in the manufacturing process of program evaluation and sustainable employment; and the planning and conduct research and use leadership in the process of change is needed in the human service organizations.

The definitions above are directly dismissed the notion has been that the administration is always defined as administrative activities related to the job or set of files, make a report to the superior administration, and so on. To be more convincing, see definition in administration *The Public Administration Dictionary* as a process when decisions and policies are implemented.

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DISCUSSION

Conceptions of Corruption

What is corruption? A question that seems easy to answer but it is not that simple. Definition of corruption can be viewed from different angles. According to the science of crime, as well as according to the legislation. Especially in the recent developments, the international community including Indonesia there is an agreement to cooperate in the eradication of corrupt practices. This is evidenced by the signing of a declaration of eradication of corruption in Lima, Peru, on 7-11 September 1997 in the anti-corruption conference attended by 93 countries.

In terms of terminology, the word 'corruption' is derived from the Latin *corruptio* or according to *Webster's Student Dictionary* is *corruptus*. It was also stated that *corruptio* it comes also from the original word *corrumpere*, an older Latin word. Of Latin that is down to many European languages such as English: corruption, *corrupt*; France; *corruption*; and Netherlands: *corruptie (korrupctie)*. Predictably term corruption comes from the Dutch which was later adopted into Indonesian: "corruption".

The literal meaning of the word is decay, ugliness, *depravity*, *dishonesty*, incorruptible, unscrupulous, deviation of holiness, words or speech insulting or defamatory. The Meaning of corruption that have been received in the Indonesian vocabulary, it was concluded by Poerwardarminta in Indonesian General Dictionary: "Corruption is bad deeds such as

wiping the money, receiving kickbacks and so forth".

In Malaysia, there are also anti-corruption regulations. But in Malaysia do not use the word 'corruption', but said the rules "anti-possessed by". Malaysia often use the term *resuah* that surely comes from Arabic (*riswah*) according to the Arabic-Indonesian dictionary, *riswah* means the same as corruption. With the understanding of corruption is literally that one can draw the conclusion, that the real corruption as a very broad term meaning. As concluded in *the Encyclopedia Americana*, corruption is a matter that the manifold means, varies according to time, place and nation.

Thus, the approach can be made to the various problems of corruption also means appropriate and also in terms of where we approach the problem. The sociological approach, for example, as done by Syed Hussein Alatas, in his book *The Sociology of Corruption*, will be another point if we do normative approach; so it is with politics or economics. For example Alatas, memmasukan nepotism as corruption in the classification group of family or friends put in the position of the government without fulfilling the requirements for it. Surely this kind of thing is very difficult to find the norm in criminal law in Indonesia.

Similarly Mubyarto highlight corruption and bribery in terms of political and economic menugutif Smith following the opinion that the overall corruption in Indonesia appears more often as a political issue of the ekonomi. He touched the (legitimate) government in which the younger generation, the educated elite and public servants in general. Corruption reduces support for the government of the elite at provincial and district levels.

From the point of political corruption is a disturbing factor and reduce the government's credibility, especially among the educated and the young generation. From the economic point of view, corruption is one of the economic factors with high costs which is very detrimental to the state and society. From the point of cultural, corruption undermines our nation's moral and character that actually have noble values.

In Act Number 31 of 1999 jo Act Number 20 of 2001, Article 2 corruption is defined as "acts unlawfully enrich themselves or another person or a corporation that can be detrimental to the finances and economy of the country" and in Article 3 defined corruption as: "the act with the intention of enriching himself or another person or corporation, abuse of authority, opportunity or means available to him because of the position or positions that can be detrimental to the finances and economy"., In practice, to determine the

presence unsur- elements of abuse of authority should be known in advance what the duties and authority as well as responsibility for the suspect/defendant did or not the tasks and responsibilities are, and whether there are procedures that are not performed as it should.

Function and Role of Administrative Law in the Prevention and Combating of Corruption in Indonesia

Efforts to enforce the law as one of the pillars of democracy, at least influenced by four factors. First, the law itself, both in terms of substantial than a legislation or formal law to enforce the law material. Second, the professionalism of law enforcement officers. Thirdly, facilities and pre means sufficient, the fourth, is the public perception of the law itself.

Administrative law relationship is a legal relationship between the government and citizens, who lives administration included in the legal action that does not exist in civil law, in contrast to civil law, administrative law relationship occurs indirectly from the legislation. This is in accordance with the definition of administrative law, which says that the law is only concerned with the administration of government functions. If the legislation ordered or forbid (you have to be honest, you can not kill) is that it is a command, but it is difficult to maintain that here was discussed about the legal relationship between the government (ruling) on the one hand, and citizens on the other , Anyway, this relationship is totally outside the body in charge to the authorities (government) and the run is not the function of government.

Administrative Law has a function and a role in preventing and combating corruption in Indonesia. The function and role of the State Administration Law are as follows:

Legal supervision of the administration of government

By law perspective, the supervision was carried out to assess whether the implementation of the tasks and the work it has in accordance with the applicable legal norms, and whether the achievement of set objectives are achieved without violating the legal norms in force. When supervision is associated with state finances, means surveillance was carried out in order to observe and assess whether the finance is obtained by legitimate means and sources are legitimate, how to use the finances without violating legal norms, and how its legal settlement in the event of misuse of state finances ,

In theory and practice, supervision exist that are *internal* oversight by a body which is organizationally included within the government

itself, while their *external* done by organs or institutions organizationally located outside the government. In addition, monitoring is also divided into two types, namely *a-priori* and *a-posteriori*.supervision *A-priori* is supervision conducted prior to the issuance of the government's decision, while the *a-posteriori* is supervision conducted prior to the issuance of the government's decision. Moreover, also known in terms of supervision law (*rechtmatigheid*) and in terms of expediency (*doelmatigheid*). Supervision of legal terms are intended to assess the nature of its legal considerations alone (in terms of legality) that terms *rechtmatigheid* of government action, whereas in terms of the benefit is intended to assess whether or not the government act in terms of its usefulness consideration.

Under the supervision division, it can be mentioned that the supervision by the judiciary in the Administrative Law has characteristics:

First, external, because it is done by a body Alau institutions outside of government.

Secondly, *a-posteriori*, because it is always done after the occurrence of a controlled act.

Third, in terms of the control law, because only assess from a legal perspective only.

Monitoring carried out by the judicial known as legal supervision. An oversight that is intended to assess whether the legal action taken by the government agree or disagree with the applicable legal norms (*rechtmatigheid* or *on rechtmatigheid*). In addition, there are also political oversight, the oversight conducted by the representative body of people against the government in the use of government power. In this case, surveillance was intended to assess whether the use of the governmental authority or not in accordance with the will of the people. In addition, monitoring can also be made by citizens against the administration in governance.

So, to prevent and eradicate corruption in Indonesia, one way is to increase regulatory oversight of the governance. Governance must always gets control, either directly, or indirectly. Direct supervision seen by the people's participation and involvement in overseeing the administration, especially in policy making, while supervision is not directly visible from the role of the House of Representatives in carrying out oversight functions (*controlling*) the executive branch. Thus, corruption can be prevented and eradicated.

Embodiment of Transparency and Accountability in Government Conduct

In historical concepts of this government's scope of responsibility is growing according to the causality of forms of a particular country. Sondra P. Siagian posited the existence of three forms of the

state are on the different roles and functions for the government, namely forms:

1. political State (all power was held by the King as government)
2. Legal State (government just as the executor of the rules)
3. Welfare State (the government's duty extended to cover general welfare) with discretionary power and *Freies ermesen*.

Under the draft law states that long ago stated characteristics by Friedrich Julius law states as follows:

1. The existence of the protection of human rights;
2. Separation or division of powers to guarantee the human rights that (*Trias Politica*);
3. Government by regulations;
4. Judicial state administration in the dispute.

To achieve a good governance in Indonesia can not be separated from the concept of democracy is patterned in the state governance in Indonesia. The concept of democracy as one of the main runway realize a good government, considering the government is said to be democratic when in governance continue to involve the people, as well as the network of making a decision involving many political units, and the process is transparent so that people can control or enter the initiative through the channels provided by the political system.

The process of organizing power and authority in question calls for accountability, transparency, open and accountable. This is in line with what is proposed by the Ford Foundation as one of the institutions that pioneered program, *governancethat* an effective government depends on the legitimacy derived from broad-based participation, fairness and accountability. Moving on from the notion of *governance* as "the way" or "usage" or "execution" at the top, thus *good governance* implies a way and the implementation of *government* is good, both in terms of the actions or behaviorthe *ofstakeholders* in running the government based on ethics or morals.

A good governance will be born from a government that is clean (*cleangovernment*), good governance can only be realized, when held by the government is good, and the government would be better if based on the principles of transparency and accountability.

According Taliziduhu Ndraha, accountability concept originated from the concept of accountability, the accountability concept itself can be explained by the authority. The authority here means the legitimate power. According to Weber, there are three ideal types of authority. first, traditional authority; second, charismatic authority and third, authority. *rational legal*Ketigalah which is the basis of government authority. In the process, emerging new concept of authority

developed by Chester I. Barnard, which boils down to the principle that the use of authority should be accountable.

Accountability as accountability is a term that was originally applied to measure whether public funds have been used appropriately for the purpose in which the funds the public was set and not used illegally. In the development of accountability is used also for the government to look accountability of economic efficiency programs. Efforts had been trying to search and find whether there are irregularities staff or not, no efficient or not the procedure is not necessary. Accountability refers the institution of "cheks and balances" in the system administration.

According Mardiasmo, transparency means openness government in providing information related to the activity of management of public resources to those who need the information. The government is obliged to provide financial information and More information will be used for decision-making by the parties concerned.

So, to prevent and eradicate corruption in Indonesia, one way is to realize the principle of accountability and transparency in governance.

Reforms

In recent years, in all aspects related to governance, the reform of bureaucracy become a very powerful issue to be realized. Moreover, the Indonesian government bureaucracy have contributed greatly to the deterioration of the condition of the Indonesian people in multidimensional crisis is prolonged. Bureaucracy has been built by the government before the reform era has built a bureaucratic culture steeped in corruption, collusion and nepotism. However, post-reform government would not guarantee the sustainability of bureaucratic reform realized well. The lack of post-reform government's commitment to reform the bureaucracy tends proportional to the lack of government commitment to the eradication of corruption which has become acute disease in the Indonesian government bureaucracy over the years. Most people give negative stamp on the post-reform government's commitment to reform the bureaucracy. Ironically, some communities in Indonesia today, just missed the New Order government, which was supposed to provide reliability to the public, although only establishment that is false.

According to R. Bintan Saragih that the role of the State Administration Law in the reform of the bureaucracy, among others:

1. All Act governing bureaucracy and that has to do with the bureaucracy must be synchronous or harmony with Acy Number 3 of 1999 on Principles of Human Resources. Likewise all laws and regulations that implement the Act

must be consistent or may not be contrary to the Act.

2. Hierarchical order in accordance with the provisions of Act Number 12 of 2011 concerning Regulation Legislation, namely:
 - a. the Constitution of the Republic of Indonesia of 1945;
 - b. People's Consultative Assembly Decree;
 - c. Law/Government Regulation in Lieu of Law;
 - d. Government regulations;
 - e. Presidential decree;
 - f. Provincial Regulation; and;
 - g. Regulation of the Regency/City.

Conditions like these are desired by *good governance* to the formula: "implement laws to protect the public interest, and not too much regulation". With the State Administration Law as it was, then the reform of the bureaucracy can be predicted by the availability of regulations with procedures laksanakanya clear.

Government employees determined freely by political parties or neutralization of civil servants from political parties and groups, and building a professional civil servants through Article 3 of Act Number 43 of 1999, the State Administration Law will be established to regulate the bureaucratic reform should clearly specify the neutral civil servants from political and group and they need to be professional. That is, civil servants appointed to political positions because of political choice (unless the Minister) such as: being a Supreme Court Justice, a member of House of Representatives, Parliament, the Commission, Human Rights Commission, Regional Head, and so on should be dismissed as civil servants during set appointment they occupy that office. Thus professional permanent civil servants.

When Act Number 43 of 1999 by Article 17 paragraph (2) have determined that the appointment of civil servants in a position implemented based on the principles of professionalism in accordance with competence, work performance, and levels of rank specified for the job and other objective requirements regardless of gender, ethnicity, religion, race, or class of the State Administration Law established for it to refer to such provisions. If the Administrative Law has been set up properly, it must be implemented in concrete terms in the selection bureaucratic officials. This is called *goodgovernance* as the "realization of human rights" and prevent "too much regulation on bureaucracy so that hinder the functioning of market mechanisms".

Reform of the bureaucracy can also be observed in the work of Max Weber's ideal bureaucracy concept which briefly mentioned by Miftah Toha in his book. Max Weber said that

bureaucracy ideal rational it in a nutshell is done in a manner as follows:

1. *First*, individual officials personally free, but limited by the position when he was performing the duties or the interests of the individual in his post for the purposes and private interests, including his family.
2. *theSecond*, positions are arranged in the hierarchical levels from top to bottom and side to side. Consequently there are superior and subordinate officials, and others who bear a greater power and a smaller one.
3. *Thirdly*, the duties and functions of each position in the hierarchy are specifically different from each other.
4. *Fourth*, every official has a contract position should be run. Description of duties (*jobdescription*) each domain is the official authority and responsibility that must be executed in accordance with the contract
5. *Fifth*, every officer selected on the basis from professional qualifications, which should ideally be done through competitive examinations.
6. *Sixth*, every officer has a salary including the right to receive a pension in accordance with the levels in the hierarchy of office bears. Each officer can decide to quit their jobs and positions in accordance with the wishes and the contract can be terminated in certain circumstances.
7. *Seventh*, there is a clear career development structure with promotion based on seniority and merit in accordance with objective considerations.
8. *Eighth*, every officer is not at all justified his position andto run *resources* the institution for personal interests and family ;.
9. *Ninth*, every official is under the control and supervision of a system that is run in a disciplined manner.

The necessity of enforcing the law of the State Administration for preventing and combating corruption in Indonesia. Many of legislation that formed that specifically regulates the eradication of corruption include:

- a. Act Number 28 of 1999 on State Implementation of Clean and Free from Corruption, Collusion and Nepotism;
- b. Act Number 30 of 1999 on Corruption Eradication;
- c. Act Number 20 of 2001 on the Amendment of the Act Number 30 of 1999 on Corruption Eradication;
- d. Act Number 30 of 2002 on the Corruption Eradication Commission;
- e. Act Number 15 of 2004 on Management and Responsibility of the State Treasury.

CONCLUSION

Thus, it can be concluded that in Indonesia corruption has become common knowledge and implicated widely in people's life there is no area of life that is not contaminated by corruption, collusion and nepotism, both in small and large scale from the central government down to village level/villages, covering government and private agencies.

Corruption in Indonesia continues to increase from year to year. Corruption is widespread in the community, both from the number of cases and the amount of loss to the state, and in terms of the quality of criminal offenses committed more systematic and scope that enters all aspects of society. Recognizing the complexity of the problem of corruption as well as real threats that will inevitably occur, then corruption can be categorized as a national problem that must be dealt with seriously through the balance of measures firmly and clearly involve all the potential that exists in the society, especially the government and law enforcement officials, Administrative Law has a function and a role in preventing and combating corruption in Indonesia. The function and role of the State Administration Law include: Supervision of the law against the government administration, the embodiment of the principles of transparency and accountability in governance, reform of the bureaucracy, and to uphold the State Administration Law through legislation.

SUGGESTIONS

1. Law enforcement, prosecutors and judges in particular need to map out which aspects of the settlement of corruption cases, especially those involving state officials with the legal instrument is to be used. Law enforcement, should not equalize that settlement of corruption cases can be resolved through the mechanism of criminal law.
2. The government needs to take immediate steps in realizing the existence of judicial competence in menyelesaikan corruption cases involving officials of the administration. Thus, it will be facilitated model solution to the law enforcement officials who are suspected of corruption.

REFERENCES

- Belinfante, A. D. (1983). *Pokok-pokok hukum tata usaha negara*. Binacipta.
- Dunsire, A., Hood, C., & Huby, M. (1989). *Cutback management in public bureaucracies: Popular theories and observed outcomes in Whitehall*. Cambridge University Press.
- Frederickson, H. G., & Usman, A.-G. (1984). *Administrasi Negara Baru*. LP3ES.
- Hamzah, A. (1986). *Korupsi di Indonesia: masalah dan pemecahannya*. Pb PT Gramedia.
- Krisnawati, D., & Hiariej, E. O. S. (2006). *Bunga Rampai Hukum Pidana Khusus. Pana Pundi Aksara Jakarta*.
- Marbun, S. F. (2000). Moh. Mahfud MD. *Pokok-Pokok Hukum Administrasi Negara*.
- Poerwadarminta, W. J. S. (1992). *Kamus Umum Bahasa Indonesia*, Penerbit PN. *Balai Putaka, Jakarta*.
- Putro, B. P. G. H. (1998). *Kedudukan Bank Indonesia Dalam Menjamin Pembayaran L/C Yang Diterbitkan Oleh Bank-Bank Devisa. Program Pascasarjana UBAYA*.
- Rodli, A. F. (2017). *Deradicalism Of Religious Through Hebat (Hypnotherapy, E-Learning, Guidance Of Religious Actualization And Information Technology)*. *ADRI International Journal Of Islamic Studies and Social Sciences*, 1(1).
- Senoadji, O. (1966). *Seminar Ketatanegaraan Undang-Undang Dasar 1945*. Jakarta.
- Soekanto, & Soekanto, S. (1996). *Meninjau hukum adat Indonesia: suatu pengantar untuk mempel ajari hukum adat*. RajaGrafindo Persada.
- Tangkilisan, H. N. S. (2003). *Teori dan Konsep Kebijakan Publik” dalam Kebijakan Publik yang Membumi, konsep, strategi dan kasus. Lukman Offset Dan YPAPI, Yogyakarta*.
- Zamroni, M., & Kunaifi, A. (2016). *Chief Election Law of Regional and Prevention of Corruption. In ADRI International Multidisciplinary Conference and Call for Paper (Vol. 1, p. 58)*.