Elements Misusing Tipikor as Authority in Absolute Justice Administrative Competence

Mohammad Sahlan
Biro Hukum dan Organisasi, Kementerian Kelautan dan Perikanan
Gedung Mina Bahari IV Lt. 3B
Jl. Medan Merdeka Timur No. 16 Jakarta Pusat 10110,
Telp.021-3519070, Fax. 021-3520340, HP. 0821 2247 5789
Email: con9.sahlan@gmail.com / cong.sahlan@kkp.go.id

***Abstract*- The core problem in this research is the post of enactment of the Act on Government Administration, the element of "abusing the authority" in Corruption still an absolute competence of the Corruption Court or switch to the Administration Court. The research concluded, theoretical and practical concept of "abuse the authority" in the Act on Government Administration as same with the concept of "abusing the authority" in the Act on Eradication Corruption. Therefore, both of these court attributively same absolute competence to examine and decide the elements of abusing authority in Corruption. However, based on the principle of "lex posteriori derogate legi priori", the authority to examine and decide upon the element of "abusing the authority" in the Corruption Court becomes the absolute competence of Administration Court.**

***Index Terms*— Authority, Court, Abuse of Power**

I. PRELIMINARY

This study departs from the conflict norm after the enactment of Law No. 30 of 2014 on Government Administration (Law Administration), namely Article 17 through Article 21, which regulates the prohibition of abuse of authority by the Board and / or Government officials as well as the granting of authority to officials Government Internal oversight (APIP) and TUN Justice (Justice Administration) to conduct surveillance and testing on the presence or no element of abuse of authority committed by Government officials[1]. Meanwhile, the previously existing provisions of Article 3 of Law No. 31 of 1999 on the Eradication of Corruption Act, as amended by Act No. 20 of 2001 (Law on Combating Corruption)[2] jo. Article 5 and Article 6 of Law No. 46 of 2009 on the Corruption Court (Corruption Court Law), which is one of the elements set Corruption for abuse of authority[3], where the absolute competence to examine the issue given to the Corruption Court.

The provisions in the Law of Government Administration has caused the pros and cons among legal experts, especially experts Criminal Law and Administrative Law experts with respect to the enforceability of these provisions and their effects on the authority of the Corruption Court. Guntur Hamzah[4], Professor of Administrative Law, Hasanuddin University, said the existence of Government Administration Law will strengthen and add power smashed efforts to combat corruption because with the APIP, the alleged misuse of authority can be detected early as a preventive measure (prevention).

But the dissenting opinions delivered by Krisna Harahap, Chief Justice of the Supreme Court which expressly states Government Administration Law hamper efforts to combat Corruption because of provisions contained in the Law on Government Administration obviously not in tune with the Law on Combating Corruption, particularly Article 3[5]. Worse again, the provisions of the Law on Government Administration could even reduce the authority of the Corruption Court in assessing the element of "misuse of authority" in Corruption. This is apparent from the policies of President Jokowi instructing the Attorney General and the Chief of Police in order to put the process of public administration in accordance with the Law on Government Administration before conducting an investigation on the public reports regarding the alleged abuse of authority, especially in the implementation of the National Strategic Projects[6].

Problems arise because the concept of "abuse of power" in the Law on Government Administration by some legal experts regarded the same as the concept of "misuse of authority" because of the positions in the Law on Combating Corruption. The provision is potentially absolute authority dispute between Justice Corruption and Judicial Administration. To that end, the element of misuse of authority in the Corruption as absolute competence of Judicial Administration interesting to study.

II. FORMULATION OF THE PROBLEM

Based on the above, the issues raised in this paper is whether the element of "misuse of authority" in an absolute

[1] Government Administration Law was enacted on October 17, 2014 (LNRI Year 2014 Number 292, TLNRI No. 5601).

[2] Corruption Eradication Act was enacted on August 16, 1999 (LNRI 1999 No. 140, TLNRI No. 3874). While Law No. 20 of 2001 was enacted on 21 November 2001 (LNRI 2001 No. 134, TLNRI No. 4150).

[3] Corruption Court Law was enacted on October 29, 2009 (LNRI 2009 No. 155, TLNRI No. 5074).

[4] http://www.hukumonline.com/berita/baca/lt5514fdcf7f91b/uu-administrasi-pemerintahan-trigger-berantas-korupsi, Jumat, 27 Maret 2015, di unduh tanggal 28 Februari 2016, pukul 17:45 WIB.

[5] Lihat http://news.detik.com/berita/2873765/uu-administrasi-pemerintahan-dinilai-mengudeta-pem-berantasan-korupsi, Senin 30 Mar 2015, 16:51 WIB, di unduh tanggal 28 Februari 2016, pukul 17:25 WIB.

[6] See Part Six figure 1 Presidential Instruction No. 1 Year 2016 on Accelerating the Implementation of the National Strategic Projects.

competency Justice Corruption Corruption or absolute competence of Judicial Administration?

Research purposes

This study aims to assess and analyze who is authorized to to examine, hear and decide an element of misuse of authority in the Judicial Corruption Corruption and Judicial Administration after the enactment of Law Administration.

III. Research Methods

This study is an assessment of normative legal prescriptive analytical, through conceptual approach, approach statute and case approach. To determine who is authorized to examine and decide elements of misuse of authority in the Corruption, the first there needs to be clarity of the concept of the term "abuse of authority" as the terminology used in the Law on Government Administration and the term "misuse of authority" as the terminology used in the Law on Combating Corruption, Need to be assessed whether the term "abuse of authority" is the same concept as the term "misuse of authority" or vice versa. Conceptual approach used to compare and analyze the concept of abuse of authority and misuse of authority concept conveyed by language experts and legal scholars. Statute approach is needed to assess the problem setting abuse of authority and misuse of authority in Indonesian positive law. Then case approach to look at the use of the term abuse of authority and misuse of authority in law enforcement practices in Indonesia, especially criminal law enforcement.

IV. Results and Discussion

1. Concept of Abuse of Authority and Concepts Misusing Authority

"Abuse of authority" and "misuse of authority" is a term that is born of the doctrine of the State Administration Law and commonly used in the legal sphere. Etymologically, the term "misappropriation" and "misuse" is derived from the two words "one-use". Abuse shaped noun means the process, the way, the act of abusing; diversion, while "misusing" the verb form meant to do something is not as it should be; misappropriate[7]. The term abuse / misuse of the Dutch term known as misbruik which has similarities with the term missbrauch in German or misuse and abuse in the English term whose meaning is always associated with negative perceptions that penyelewenangan. So the term "misappropriation" and "misuse" there is no difference, "abuse" refers to the process, the way, his actions, while the "misuse" refers to the act or practice[8].

Meanwhile, the term "power" and "authority" comes from the word "liberty" are both shaped noun[9]. Rights interpreted the authority and power to act; authority. While the authority means 1. It authorized; 2. The rights and powers that belongs to do something. Which in known by the English term "authority" and there is no distinction between the two, as well as the terms in the Dutch language, which does not distinguish between them. The term is often used is b evoegdheid, although there is another term that translates authority or competence that is bekwaamheid[10]. So the terminology, the term "authority" with "authority" there is no substantial difference / principal[11]. The terms of authority and authority always in associate with "the right and the power to act or do something". So the distinction made to the conception of "misuse of authority" and "abuse of authority" by arguing their difference juridical meaning or definition between "authorized" and "authority" to be no longer relevant[12].

1.1 Concept of Abuse of Authority

Abuse of authority in the concept of State Administrative Law has always paralleled with the concept detournament de pouvoir in the French legal system or the abuse of power / misuse of power in English terms[13]. Historically, the concept of "detournament de pouvoir" first appeared in France and is the basis for the testing agency to the State Judicial Administration of government action and is considered a legal principle that is part of the "de principes GENERAUX du droit". Conseil d'Etat is the first to use the judiciary as a testing tool, which is then followed by other countries. A government official found to have violated the principle of détournement de pouvoir, when the purpose of the decision issued or action

which do not in the interests of public order, but for the private benefit of the officials (including family or colleagues)[14].

---

[7] Fostering Language Development Agency and the Ministry of Education and Culture (BP2B, Kemendikbud), Kamus Besar Bahasa Indonesia (KKBI), Version Online Dictionary / Online (Networking), kbbi.web.id/ one% 20guna.menyalahgunakan, downloadable on Wednesday, March 8, 2016, at 10:38 pm.

[8] Budi Parmono, *Penyalahgunaan Wewenang Dalam Tindak Pidana Korupsi di Indonesia: Disertasi,* Fakultas Hukum UB, Malang, 2011, hlm. 137. Lihat juga Victoria Bull, *Oxford Learner's Pocket Dictionary: Fourth Edition,* Oxford University Press, Oxford, 2012, hlm. 2 dan hlm. 282.

[9] BP2B, Kemendikbud, *KKBI, Daring, kbbi.web.id/wenang*, diunduh pada hari Minggu, 6 Desember 2015, pukul 20:30 WIB.

[10] Susi Moeimam dan Hein Steinhauer, *Kamus Belanda-Indonesia*, Gramedia Pustaka, Jakarta, 2005, hlm. 100.

[11] Pimpinan Pusat Ikatan Hakim Indonesia (PP IKAHI), *Undang-Undang Administrasi Pemerintahan Dalam Upaya Pemberantasan Korupsi,* Sinar Grafika, Jakarta Timur, 2016, p. 93.

[12] D. Andhi Nirwanto, "*Arah Pemberantasan Korupsi Ke Depan (Pasca Undang-Undang Administrasi Pemerintahan)*", The paper, presented at the National Seminar in order H.U.T. IKAHI All 62 theme "Undang-Undang Administrasi Pemerintahan, Menguatkan atau Melemahkan Upaya Pemberantasan Korupsi", Hotel Mercure, Jakarta, 26 Maret 2015, p. 16-19

[13] Philiphus M. Hadjon, dkk., *Hukum Administrasi dan Tindak Pidana Korupsi: Cetakan Kedua,* Gajahmada University Press, Yogyakarta, 2012, p. 21-22.

[14] Yulius, "*Perkembangan Pemikiran dan Pengaturan Penyalahgunaan Wewenang di Indonesia (Tinjauan Singkat Dari Perspektif Hukum Administrasi Negara Pasca Berlakunya Undang-Undang Nomor 30 Tahun 2014)"*, Article on Journal Hukum dan Peradilan, Badan Penelitian dan Pengembangan Hukum dan Peradilan Mahkamah Agung RI, Volume 04 Nomor 3 November 2015, p. 364.

The concept of "détournement de pouvoir" by the French Conseil d'Etat has developed into three categories[15], namely:

a. "When the administrative act is completely taken without the public interest in mind."
b. "When the administrative act is taken on the basis of the public interest but the the which the administration exercises discretion in doing so was not conferred by law for that purpose."
c. "In cases of détournement de procedure where the administration, concealing the real content of the act under a false appearance, follows a procedure reserved by law for other purposes."

The concept of "détournement de pouvoir" which was born and developed in France have subsequently had an impact on law enforcement in other countries such as the Netherlands as one of the colonial French and Dutch colony Indonesia as a country. Abuse of authority by the Hoge Raad serve as the basis of legal considerations in making the Decision. While in Indonesia, abuse of authority as a reason (basic) Claims for someone or civil legal entity who felt their interests harmed by a decision of TUN (the Plaintiff) [16].

Verklarend Woordenboek openbaar bestuur defines "abuse of authority" as the use of authority is not as it should be. In this case, officials violated the principle of specialty (principle of purpose), because he has used his authority for the purpose of deviating from the purpose that has been given to this authority[17].

Specialties principle was once applied in Indonesian positive law, namely in Article 53 paragraph (2) b of Law No. 5 of 1986 on Judicial Administration, with regard to the reasons to file a lawsuit to the Administrative Court. In the explanation, this provision explicitly stated as "abuse of authority", although later this provision is removed and replaced with AUPB at the time to amend the legislation in question[18]. This provision in the practice of criminal law, particularly on Judicial Corruption is often used to describe the element of "misuse of authority" contained in article 3 of Law on Combating Corruption through extensive interpretation of the criminal law approach to the doctrine of autonomy[19].

Abuses of authority needs to be measured to prove factually that an official has used his authority for any other purpose or not. Must be proven also that the abuse of authority made consciously by diverting the purpose that has been given to that authority (not due to negligence). And no less important transfer of these objectives is based on personal interest, either for himself or for others[20].

Legally, abuse of authority in the Law on Government Administration declared occurs when "the body and/or government officials in making decisions and/or actions beyond the authority, mixing authority, and/or act arbitrarily.[21]" Firm and/or Government Officials exceeds authority when the decisions and / or actions taken by a). beyond the term of office or authority into effect of time limits; b). beyond the borders of the entry into force of authority; and/or c). contrary to the provisions of the legislation[22]. "While the decision and/or action of the Agency and / or Government officials categorized confuse authority if it is done outside the scope of the field or material authority granted and / or contrary to the purpose authority given"[23]. Recently the Agency and/or Government officials expressed or arbitrary when decisions and /or actions performed without a basis of authority and/or contrary to the Court decision is final and binding[24].

"Government Administration Act does not explain the definition, understanding, as well as the concept of abuse of authority. Article 17 of Law Administration only regulates the prohibition of abuse of authority and three species of the prohibition of abuse of authority, which include the prohibition exceeds authority, prohibition of mixing up the authority and the prohibition of arbitrary action, which is conceptually and theoretically according to experts the State Administration Law and practitioners of Administrative Law (judge Administrative Court) is not appropriate and likely to mislead[25]. However, the expansion of the meaning of abuse of authority in the Law on Government Administration and debate that accompanies it should not preclude the applicability of the norms of abuse of

---

[15] Yulius, "*Perkembangan Pemikiran …, Ibid..,* p. 365. Look at Court Role MARI Number 977K/PID/2004, date 10 Juni 2005, p. 196-197. Look at Court Role MARI Number 979K/PID/2004, datel 10 Juni 2005, p. 86-88.

[16] Article 53 (2) huruf b Law Number 5 Year 1986 about Peradilan TUN. Look at Yulius, "*Perkembangan Pemikiran …, Ibid.*

[17] Philipus M. Hadjon, dkk., *Hukum Administrasi dan…, Op.Cit.,* hlm. 21-22. Lihat juga Arfan Faiz Muhlizi, "*Reformulasi Diskresi Dalam Penataan Hukum Administrasi*", Artikel dalam Jurnal RechtsVinding, Volume 1 Nomor 1 Januari-April 2012., hlm. 94.

[18] The term "abuse of power" in the Law Courts TUN after the change is no longer known, was not even included in the AUPB. The term resurfaced recently when the Government Administration Act was enacted as one AUPB, but with different terms that "no misuse of authority" with an expanded meaning. See Tri Indra Cahya Permana, Right to Request Manager/Agency Over Alleged Abuse of Authority: Anthology of Contemporary Judicial Administration, Editor Lush, et al., Genta Press, Yogyakarta, 2014, p. 51-52.

[19] See the Supreme Court of the Republic of Indonesia (MARI) Number: 14 / Pid.Sus /2012/PN.AB. the defendant Edi Tri Sukmono, SH. MARI alias Edi and Decision No. 03 / PID.SUS / TPK / 2013 / PN.PBR. with defendant David Emery.

[20] Philipus M. Hadjon, dkk., *Hukum Administrasi dan…, Op.Cit.,* p. 22. Look at Abdul Latif, *Hukum Administrasi Dalam Tindak Pidana Korupsi,* Prenada Media Group, Jakarta, 2014, p. 35.

[21] See the provisions of Article 17 of Law Administration.

[22] See the provisions of Article 18 (1) of Law Administration.

[23] See the provisions of Article 18 (2) of Law Administration.

[24] See the provisions of Article 18 (3) of Law Administration.

[25] See Tri Indra Cahya Permana, Right to Request ..., op.cit., P. 53. See also Philip M. Hadjon, "State Administration in the Context of Law No. 30 Th. 2014 of the Public Administration ", Pages in Jurrnal Law and Justice, the National Research and Development Law and Justice of the Supreme Court, Volume 04 Number 1 March 2015, p. 58-60. See also Philip M. Hadjon, "State Administration in the Context of Law Number 30 Th. 2014 ", paper, delivered in Colloqium Dissecting Act No. 30 of 2014 on Government Administration, June 5, 2015, Garden Palace Surabaya., P. 11 .

authority in the legislation in question, because as the law established by competent authorities, namely the legislature, then in accordance with the principle of legality legislation the generally binding and must be implemented and can not be criss before revoked or canceled by the competent State agencies[26].

1.2 Concept Misusing Authority

The term "misuse of authority" is the term used and popular in the criminal law, particularly in the practice of criminal justice when talking about Corruption related to public office or government positions. This is not surprising because of "misuse of authority"[27] is one of the important elements in the Corruption associated with the position even a bestanddeel delict. Misusing authority as one element in the Corruption according to Abdul Latif, a species of delict against the law as a genus element delict[28]. Misusing authority in this context will always be associated with the position of public officials and not in terms of positions and understanding in the realm of civil structures. However, the term "misuse of authority" as well as "abuse of authority" is actually a term that was born in a clump of State Administrative Law, even The term is one of the principles in AUPB, namely the principle of not abusing authority[29].

The element of "misuse of authority" in the Corruption can be found in the formulation of Article 3 of the Law on Combating Corruption, which has always been associated with the position of one's own public officials (abusing authority for positions), the formulation as follows:

"Anyone 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 could harm the state finance or economy of the state, shall be punished with ... rupiah)."

Legal subject of a criminal offense is any person who means the individual or corporation[30]. However, because the corporation as rechtsperson may not have a title or station such natuurlijke person, then the Corruption contained in the provisions of Article 3 can only be done by individuals, namely the State apparatus or public officials.[31]

The authority referred to in Article 3 of the Law on Combating Corruption under the authority of the servants referred to in Article 1 point 2 letters a, b, c, d, and e of Law on Combating Corruption, whose meaning is broader than the notion of authority under the concept Constitutional law or the law of State Administration restricted only to the provisions of Article 1 paragraph 2 letters a, b, c, and e law on Combating Corruption[32].

Legally, the authorities of abusing their office, the Corruption Eradication Act does not provide a definition or understanding of its own. The term "misuse of authority" may be found in the Law on Public Administration, such as part of the General Principles of Good Governance (AUPB), which is among the form "principle does not abuse of authority"[33].

Table 1. Forms of Abuse of Authority and Principles Not Misusing Authority

Government Administration Law	
Abuse of Power (Article 17 s.d. Article 18)	**Principle Not Misusing Authority (Article 10 paragraph (1) letter e)**
Prohibition goes beyond Privileges: a. Decision and / or action taken beyond the term of office or deadline for the enactment of Privileges b. Decision and / or action taken beyond the borders of the enactment of Privileges c. Decision and / or action taken contrary to the provisions of the legislation	Not exceeding authority
Prohibition confound Privileges: a. Decision and / or action taken outside the scope of the	Do not confuse authority Not using their authority for personal benefit or the benefit of others and not in

[26] Yulius, "*Perkembangan Pemikiran …*, *Ibid.*, p. 377.

[27] See the provisions of Article 3 of the Law on Combating Corruption. According to the jurisprudence of the Supreme Court, the element of "misuse of authority" in article 3 of Law on Combating Corruption is at the core of the offense of the article, so that in its application to criminal prosecution against the accused of corruption by the provisions of Section 3, the element of "misuse of authority" must be fulfilled. See Supreme Court Decision No. 1485K / Pid.Sus / 2013, dated October 2, 2013, p. 132.

[28] Abdul Latif, *Hukum Administrasi Dalam…, Op.Cit.,* p. 41.

[29] See the provisions of Article 10 paragraph (1) letter e of Law Administration.

[30] See Article 1 point 3 Law on Combating Corruption.

[31] R. Wiyono, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi, Edisi Kedua*, Sinar Grafika, Jakarta, 2012, hlm. 45. see Adami Chazawi, *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*, Bayumedia, Malang, 2005, hlm. 49. see Abdul Latif, *Hukum Administrasi Dalam…, Op.Cit.,* p. 41.

[32] Servants in accordance with the provisions of Article 1 paragraph 2 of Law on Combating Corruption are included: a) civil servants as stipulated in the Law on Civil Service; b) civil servants as defined in the Code of Criminal Law; c) persons who receive salary or wages from the end of the financial state or region; d) persons who receive salary or wages from a corporation that receives financial assistance from the state or region; or e) persons who receive salary or wages from the other corporations that use capital or facilities from the state or society. See R. Wiyono, discussion Eradication Act ..., op.cit., P. 35. See also Abdul Latif, Administrative Law In ..., op.cit., P. 45. See also Supreme Court Decision No. 2357K / Pid.Sus / 2015, dated November 4, 2015, p. 62-62.

[33] The principle does not abuse the authority is "principle that requires each agency and / or Government officials for not using their authority for personal benefit or the benefit of others and not in accordance with the purpose of granting authorization, not to exceed, not abuse, and / or confuse the authority." See the provisions of Article 10 paragraph (1) letter e of Law Administration along with an explanation.

field or the material Privileges granted b. Decision and / or action taken contrary to the purpose Privileges granted	accordance with the purpose of granting such authority
Prohibition act arbitrarily: Decisions and / or actions performed without foundation Authority b. Decision and / or action taken contrary to the Court decision is legally binding	-

Source: Legal Materials Primer, processed, 2016

When observed, the forms or types of conduct that are categorized as acts of abusing authority as mentioned in the explanation of the principle of "no misuse of authority", the forms or types of conduct are similar to the shape and type of decisions and / or actions which are categorized as the prohibition of abuse of authority even the details of the prohibition of abuse of authority is more complete and there are not covered in the explanation of the principle of "no misuse of authority". But certainly in the explanation of this principle, the element of deviation of interest (principle of specialty) that the State Administrative Law has always identified with the notion of "abuse of authority", also included in the explanation of the principle of "no misuse of authority".

The prohibition for Government Administration officials to "misuse of authority" in setting and / or make decisions and / or actions are also contained in Article 8 (3) of the Administration. Unfortunately, the law does not set penalties in case of violation of these provisions.

Adami Chazawi, define "misuse of authority" as an act committed by a person who is actually entitled to do so, but done incorrectly or directed at the wrong thing and contrary to law or custom. The act of "misuse of authority" is only possible if two conditions are met, namely: a) the maker who abuse their position or authority under a certain position does have authority intended; b) the position or positions that has the authority still (being) laps or possession[34]

Audit Board, define "misuse of authority" as acts committed by means contrary to the procedure of proper as stipulated in the regulations, manual work procedures, instruction services, and others, and opposing or deviating from the intent real purpose of granting authority, the opportunity or means[35].

While Indriyanto Seno Adji[36] stated "misuse of authority" in the criminal law, particularly in the Corruption eksplisitas not have the sense of nature. Therefore, the definition used and the same words contained in or derived from other legal branches (Administrative Law) through an extensive approach is based on the doctrine of "De Autonomie van het materiele Strafrecht" of H.A. Demeersemen to use the notion of "abuse of authority" in Article 52 paragraph (2) letter b TUN Judicature Act, which has used its authority for any purpose other than the purpose provision of the authority, known as "detournement de poivoir".

Definitions of "abusing authority" presented by the jurists (especially experts Criminal Law), including the meaning conveyed Audit Board, when the scrutiny was not much different from the notion of "abuse of authority" that exists in the concept of the State Administration Law. Definition of "misuse of authority" emphasized the irregularities purpose of granting such authority (deviation principle specialties), even though in some sense be added with other elements such as the abuse of procedures and actions undertaken without authority / authorities. But the deviation element of interest which is synonymous with the notion of "abuse of power" in the Law of State Administration always pinned to the notion of "misuse of authority".

Absorption definition of "abuse of authority" into the definition of "misuse of authority" in addition to the academic realm, also done in a practical level. The practice of criminal justice, particularly Justice Corruption through extensive approach using autonomous doctrine of criminal law have used the notion of "abuse of power" in the Law of State Administration to explain the elements of "misuse of authority" in the Corruption and has become jurisprudence.

The doctrine of the autonomy of the criminal law was first received by the North Jakarta District Court and upheld by the Supreme Court through Decision Number: 1340K / Pid / 1992, dated February 17, 1992, in the case of Corruption, known as the case "Export Certificate", where the Head of Export Regional Office IV , the Directorate General of Customs Tanjung Priok, Jakarta was charged with violating Article 1 (1) sub b of Law No. 3 of 1971 on Corruption Eradication[37]. Through the decision of the Supreme Court do the smoothing law (rechtsvervijning) of the definition of "misuse of authority" in that article, by taking over the definition of "abuse of authority" is in TUN Judicature Act (Article 53 paragraph (2) letter b)[38].

The verdict became jurisprudence and referenced by Judge Criminal Justice in the inspection and verification elements of "misuse of authority" in Corruption, even after Article 53 paragraph (2) letter b changed and are no longer included in the first change TUN Judicature Act[39]. For example, the Supreme Court of the Republic of Indonesia Number: 1485 K / Pid.Sus / 2013, dated October 2, 2013, the defendant M. Riza Kurniawan, S.E. Sutikno[40].

Extensive approach through Autonomy Doctrine of the Criminal Law in giving the sense element of "misuse of authority" in the proof of Corruption also still be used after the birth of the Law on Public Administration, which is in the

[34] Adami Chazawi, *Hukum Pidana …*, *Op.Cit.*, p. 66-68.
[35] Adami Chazawi, *Hukum Pidana …*, *Ibid.*, p. 66.
[36] See MARI Decision No. 977 K / PID / 2004, dated June 10, 2005, p. 196-197. See also Decision No. LET 979K / PID / 2004, dated June 10, 2005, p. 86-88.
[37] Article 1 (1) sub b of Law No. 3 of 1971, reads "Convicted of corruption is that anyone with the intention of enriching himself or another person or an agency, abusing authority, opportunity or means available to him because of the positions or position, which directly or indirectly impair the state finance or economy of the country "
[38] See MARI Decision No. 977 K / PID / 2004, dated June 10, 2005, p. 196-197. See also Decision No. LET 979K / PID / 2004, dated June 10, 2005, p. 86-88
[39] The first change TUN Judicature Act made by Law No. 9 of 2004, promulgated on March 29, 2004
[40] See Supreme Court Decision No. 1485 K / Pid.Sus / 2013, dated October 2, 2013, p. 129-132

Tanjung Pinang Court Judge Decision No. 3 / Pid.Sus-TPK / 2015 / PN.Tpg, dated June 11, 2015, when deciding accused of corruption Yusrizal, A.Ptnh. bin Muhammad Yusuf Bhawan[41].

Absorption definition of "abuse of authority" into the definition of "misuse of authority" can also be seen in the conclusion of the dissertation is done by Budi Parmono entitled "Misuse of powers in the Corruption in Indonesia", which at the conclusion of the first letter c stated:

"... The real criterion growing abuse of authority in the State Administrative Law adopted criteria for the core part of the offense of abuse of authority in corruption through criminal law doctrine of autonomy that includes (1)-action The official action was in the public interest, but has deviated from what purpose the authority granted by law or other regulations; (2) the accuracy; and (3) the propriety[42]

Even in his dissertation, Budi Darmono not use the term "misuse of authority" to refer to elements of Corruption, but uses the term "abuse of authority". Based on the above description can be concluded that both theoretical and practical, the concept of "misuse of authority" with the concept of "abuse of authority" is the same thing, so that the element of "misuse of authority" in Corruption in addition to being the absolute authority Judicial Corruption is also an absolute authority Justice Administration. Absolute authority granted attributive Justice Corruption Corruption Court Law which first promulgated (on October 29, 2009) as stated in Article 5 and Article 6 of the Law mentioned jo. Article 3 of the Law on Combating Corruption and has been running in the practice of criminal justice, particularly Corruption.

Meanwhile, the absolute authority of the Judicial Administration Act attributive given by the Administration with reference to the provisions of Article 21 paragraph (1) jo. Article 1 number 18 Jo. Article 17 of the law. Law on Government Administration promulgated later (on October 17, 2014), in the hierarchy have equal footing with the Law on the Corruption Court and substantially regulate the same aspect, but the Law on Government Administration did not mention let alone repeal the absolute authority Judicial Corruption in inspecting elements of misuse of authority in Corruption. In fact, both these laws established in order to eradicate Corruption[43]

2. Elements of Corruption As Abusing Authority In Absolute Competence Judicial Administration

In theory, when the law because of their conflict antinomy of norm, it can be solved with the principle of legal preferences, which consists of three (3) principles, namely: lex superior derogat legi inferiori; lex specialis derogat legi generalis; and the lex posteriori derogate legi priori[44]. The legal principle of lex superior derogat legi inferiori, can be applied when there is a contradiction between the legislation that is hierarchically lower level with legislation on it is higher.

According to this principle legislation to lower levels, enforceability ruled out by the legislation higher level, unless the substance is regulated by legislation higher by law established as the authority of legislation lesser extent.

Next, the legal principle of lex specialis derogat legi generalist, this principle can be applied when there is a conflict between the laws and regulations that are specific to the legislation of a general nature. Based on this principle, the rules of common law can be overridden by the legal rules that specifically when it meets several principles: a) the rules of the law should be in a legal environment (regime) the same, for example, Law on Combating Corruption in the Criminal Code that are equally included clumps of criminal law; b) the rules of the law must be equal level (legislation with legislation); and c) other provisions contained in the rules of the common law remains valid, unless specifically regulated in the special legal rules.

Lastly, the legal principle of "lex posteriori derogate legi priori", which can be implemented when there is a conflict between a law made earlier by the laws established later. The applicability of this principle should be based on the fulfillment of the following principles: a) the rules of the new law levels should be equal or higher than the old law; and b) the aspects set out in the new law and the old law equally.

If see an explanation of each of these principles, the principle of preference laws applicable to conflict of norm in the Law on the Corruption Court jo. Law on Combating Corruption with the provisions in the Law on Public Administration is the legal principle of "lex posteriori derogate legi priori", because of a conflict occurred between the norms contained in legislation that has been there before, with provisions in the legislation of the newly formed[45].

In addition, the legislation third position in the hierarchy of similar legislation that is my level of legislation and the substance of the disputed norms of the same aspect, namely regarding the handling of the problem of power abuse / misuse of authority.
When traced ratio legis third formation of the legislation, there is a very close relationship between the three, which is equally formed in order Corruption eradication efforts. Jo Corruption

[41] See Decision Tanjung Pinang Court Judge Number 3 / Pid.Sus-TPK / 2015 / PN.Tpg, dated June 11, 2015, p. 94-95. A similar substance can be found in Tanjung Pinang Court Judge Decision No. 2 / Pid.Sus-TPK / 2015 / PN.Tpg, dated June 11, 2015, p. 105-106, Decision No. 2 / Pid.Sus-TPK / 2015 / PN.Tpg by the Supreme Court also declared as jurisprudence, but do not have permanent legal force because they do remedy.

[42] Budi Parmono, *Penyalahgunaan Wewenang ..., Op.Cit.*, p. 382.

[43] Law on Corruption Court was formed in order to increase institutional capacity as well as increased law enforcement for prevention and eradication of corruption (See the first paragraph of explanation Corruption Court Law). While the Law on Public Administration is a legal basis in governance in order to strengthen good governance in an effort to prevent corruption, collusion and nepotism (See paragraph ten Explanation Administration Act. See also Academic Paper Administration Law, p. 26).

[44] Wasis Susetio, *"Disharmoni Peraturan Perundang-Undangan Di Bidang Agraria"*, Article on Journal Lex Jurnalica, Volume 10 Nomor 3, Desember 2013, p. 145

[45] Sidharta, *"Penemuan Hukum Melalui Putusan Hakim"*, Makalah, disampaikan dalam Seminar Nasional Pemerkuatan Pemahaman Hak Asasi Manusia Untuk Hakim Seluruh Indonesia, yang diselenggarakan oleh Komisi Yudisial RI, PUSHAM UII, dan *Norsk Senter For Menneskerettigheter Norwegian Centre For Human Rights*, Hotel Grand Angkasa Medan, tanggal 2-5 Mei 2011, hlm 10.

Court Law. Law on Combating Corruption which is in a clump of Criminal Law is intended to combat Corruption through means of repression (repression), while the Law on Public Administration, despite being in a clump of State Administrative Law is intended as a means of combating Corruption through preventive measures (preventive) approach to reform of the bureaucracy. Red thread can be seen also in the substance of the implementation arrangements of State by Law No. 28 of 1999 on State Organizer Yang Clean and Free from Corruption, Collusion and Nepotism, in which viscous governs the relationship between HAN and criminal law (corruption).[46]

Based on the legal principle of "lex posteriori derogate legi priori", then the authority to examine and decide abuse of authority in the Corruption is an absolute competence of Judicial Administration, because the absolute competence possessed Judicial Administration by Law Administration formed later (post) after the birth Eradication Act Corruption and Justice Corruption Act which has been there first (prior).[47]

Moreover, when referring to the government's legal political direction in efforts to combat corruption, the government's legal political shift in efforts to combat Corruption committed by State administrators. Currently, the government tends to do a balancing act between prevention (preventive) with prosecution efforts (repression). Romli Atmasasmita[48] stated political changes of direction related law enforcement in combating corruption in Indonesia, where corruption prevention efforts are seated as important as the prosecution of corruption. Therefore, the approach which has been used in the Law on Combating Corruption, which makes the repressive measures as "primum remedium" should be reviewed. The criminal law must be returned to khittahnya as the ultimate weapon or as a last resort to be used in law enforcement efforts in accordance with the principle of "ultimium remedium".[49]

Especially in the context of Administrative Law, the existence of criminal sanctions according to Barda Nawawi Arief[50] in essence is the embodiment of a policy of using the criminal law as a means to enforce / implement administrative law or in other words a form of "functionalization / operationalization / instrumentaliasi criminal law in the field of administrative law", which is in the final stages. It's the kind described by Prins cited W.F Philip M. Hadjon[51]that almost every regulation under administrative law ended with the criminal provisions as an "in cauda venenum" (literally: there is poison in the head / tail).

V. Conclusions and Suggestions

Based on the review of the above problems, it can be concluded that the authority to examine and decide upon the element of "misuse of authority" because of the position in the Corruption is an absolute competence of Judicial Administration, because the concept of "abuse of authority" in the Law on Government Administration and the concept of "misuse of authority" in the Law on Combating Corruption theoretically and practically the same concept. When there are two laws (legislation policy) to the level equal regulate the same aspect, it is based on the principle of "lex posteriori derogate legi priori", the laws established then prevailing.

The root causes of the emergence of a potential dispute between the prosecuting authority Judicial Corruption in Judicial Administration in the handling of abuse of authority in the Corruption for their differentiation concepts, theories, and his arrangement of "authority" and "authorities" in Indonesian law. Meanwhile, in terms of both words are derived from the same word that is "arbitrary" with the meaning that is not much different, because they are always connoted with "rights and powers" of public officials. To avoid confusion regarding the understanding and setting "power" and "authority", scholars of law, legislative and law enforcement would need to do affirmation and harmonization of the terms that will be used in Indonesian law by choosing one of these terms.

References

Legislation:

[1] Undang-Undang Republik Indonesia Nomor 3 Tahun 1971 tentang Pemberantasan Tindak Pidana Korupsi.

[2] Undang-Undang Republik Indonesia Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, sebagaimana telah beberapa kali diubah terakhir dengan Undang-Undang Republik Indonesia Nomor 51 Tahun 2009.

[3] Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, sebagaimana telah diubah dengan Undang-Undang Republik Indonesia Nomor 20 Tahun 2001.

[4] Undang-Undang Republik Indonesia Nomor 46 Tahun 2009 tentang Pengadilan Tindak Pidana Korupsi.

[5] Undang-Undang Republik Indonesia Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan.

[6] Instruksi Presiden RI Nomor 1 Tahun 2016 tentang Percepatan Pelaksanaan Proyek Strategis Nasional.

[7] Court ruling:

[8] Putusan Mahkamah Agung Republik Indonesia (MARI) Nomor 977K/PID/2004, tanggal 10 Juni 2005.

[9] Putusan MARI Nomor 979K/PID/2004, tanggal 10 Juni 2005.

[10] Putusan MARI Nomor 14/Pid.Sus /2012/PN.AB., tanggal 4 September 2012.

[46] Yulius, "*Perkembangan Pemikiran …*, *Op.Cit.*., p. 375.

[47] Corruption Court Law, promulgated on October 29, 2009, sidangkan Government Administration Law, promulgated on October 17, 2014.

[48] Romli Atmasasmita, "Abuse of Authority By State Officials: A Note critically to Law No. 30 of 2014 on Government Administration Associated With Law No. 20 of 2001 on the Amendment of Act No. 31 of 1999 on the Eradication of Corruption", Papers, delivered National Seminar in celebrating IKAHI All 62 with the theme "Law on Public Administration, Strengthening or Weakening Efforts to Fight Corruption", the Mercure Hotel, Jakarta, dated March 26, 2015, p. 6-7.

[49] Suhariyono AR, "*Perumusan Sanksi Pidana Dalam Pembentukan Peraturan Perundang-Undangan",* Artikel dalam Jurnal Perspektif, Volume XVII No. 1 Tahun 2012 Edisi Januari, hlm. 21.

[50] Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, PT. Citra Aditya, Bandung, 2005, hlm. 139.

[51] Philipus, M. Hadjon, dkk., *Pengantar Hukum Administrasi Indonesia*, Gadjah Mada University Press, Yogyakarta, 2005, hlm. 245.

[11] Putusan MARI Nomor 03/PID.SUS/TIPIKOR/2013/PN.PBR., tanggal 1 Mei 2013.

[12] Putusan Mahkamah Agung RI Nomor 1485K/Pid.Sus/2013, tanggal 2 Oktober 2013.

[13] Putusan Mahkamah Agung RI Nomor 2357K/Pid.Sus/2015, tanggal 4 November 2015.

[14] Putusan Hakim Pengadilan Tanjung Pinang Nomor 2/Pid.Sus-TPK/2015/PN.Tpg, tanggal 11 Juni 2015.

[15] Putusan Hakim Pengadilan Tanjung Pinang Nomor 3/Pid.Sus-TPK/2015/PN.Tpg, tanggal 11 Juni 2015.

[16] Book :

[17] Arief, Barda Nawawi, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana, PT. Citra Aditya, Bandung, 2005.

[18] Bull, Victoria, Oxford Learner's Pocket Dictionary: Fourth Edition, Oxford University Press, Oxford, 2012.

[19] Chazawi, Adami, Hukum Pidana Materiil dan Formil Korupsi di Indonesia, Bayumedia, Malang, 2005.

[20] Hadjon, Philipus M., dkk., Pengantar Hukum Administrasi Indonesia, Gadjah Mada University Press, Yogyakarta, 2005.

[21] Hadjon, Philiphus M., dkk., Hukum Administrasi dan Tindak Pidana Korupsi: Cetakan Kedua, Gajahmada University Press, Yogyakarta: 2012.

[22] Latif, Abdul, Hukum Administrasi Dalam Tindak Pidana Korupsi, Prenada Media Group, Jakarta, 2014.

[23] Moeimam, Susi dan Steinhauer, Hein, Kamus Belanda-Indonesia, Gramedia Pustaka, Jakarta, 2005.

[24] Parmono, Budi, Penyalahgunaan Wewenang Dalam Tindak Pidana Korupsi di Indonesia: Disertasi, Fakultas Hukum UB, Malang, 2011.

[25] Permana, Tri Cahya Indra, Hak Permohonan Pejabat/Badan Atas Dugaan Penyalahgunaan Wewenang: Bunga Rampai Peradilan Administrasi Kontemporer, Editor Subur, dkk., Genta Press, Yogyakarta, 2014.

[26] Pimpinan Pusat Ikatan Hakim Indonesia (PP IKAHI), Undang-Undang Administrasi Pemerintahan Dalam Upaya Pemberantasan Korupsi, Sinar Grafika, Jakarta Timur, 2016.

[27] Wiyono, R., Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi, Edisi Kedua, Sinar Grafika, Jakarta, 2012.

Journals and Papers :

[28] Atmasasmita, Romli, "Penyalahgunaan Wewenang Oleh Penyelenggara Negara: Suatu Catatan Kristis Atas UU RI Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan Dihubungkan Dengan UU RI Nomor 20 Tahun 2001 tentang Perubahan Atas UU RI Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi", Makalah, disampaikan dalam Seminar Nasional dalam rangka H.U.T. IKAHI Ke-62 dengan tema "Undang-Undang Administrasi Pemerintahan, Menguatkan atau Melemahkan Upaya Pemberantasan Korupsi", Hotel Mercure, Ancol Jakarta, 26 March 2015

[29] Hadjon, Philipus M., "Peradilan Tata Usaha Negara Dalam Konteks Undang-Undang Nomer 30 Th. 2014", Makalah, disampaikan dalam Colloqium Membedah Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, 5 June 2015, Garden Palace Surabaya.

[30] Hadjon, Philipus M., "Peradilan Tata Usaha Negara Dalam Konteks Undang-Undang No. 30 Th. 2014 tentang Administrasi Pemerintahan", Artikel dalam Jurrnal Hukum dan Peradilan, Badan Penelitian dan Pengembangan Hukum dan Peradilan Mahkamah Agung RI, Volume 04 Nomor 1 March 2015.

[31] Muhlizi, Arfan Faiz, "Reformulasi Diskresi Dalam Penataan Hukum Administrasi", Artikel dalam Jurnal RechtsVinding, Volume 1 Number, 1 January-April 2012

[32] Nirwanto, D. Andhi, "Arah Pemberantasan Korupsi Ke Depan (Pasca Undang-Undang Administrasi Pemerintahan)", Makalah, disampaikan dalam Seminar Nasional dalam rangka H.U.T. IKAHI Ke-62 dengan tema "Undang-Undang Administrasi Pemerintahan, Menguatkan atau Melemahkan Upaya Pemberantasan Korupsi", Hotel Mercure, Jakarta, 26 March 2015

[33] Sidharta, "Penemuan Hukum Melalui Putusan Hakim", Makalah, disampaikan dalam Seminar Nasional Pemerkuatan Pemahaman Hak Asasi Manusia Untuk Hakim Seluruh Indonesia, yang diselenggarakan oleh Komisi Yudisial RI, PUSHAM UII, dan Norsk Senter For Menneskerettigheter Norwegian Centre For Human Rights, Hotel Grand Angkasa Medan, 2-5 May 2011

[34] Suhariyono AR., "Perumusan Sanksi Pidana Dalam Pembentukan Peraturan Perundang-Undangan", Artikel dalam Jurnal Perspektif, Volume XVII No. 1 Tahun 2012 Edisi January

[35] Susetio, Wasis, "Disharmoni Peraturan Perundang-Undangan Di Bidang Agraria", Artikel dalam Jurnal Lex Jurnalica, Volume 10 Number 3, December 2013

[36] Yulius, "Perkembangan Pemikiran dan Pengaturan Penyalahgunaan Wewenang di Indonesia (Tinjauan Singkat Dari Perspektif Hukum Administrasi Negara Pasca Berlakunya Undang-Undang Nomor 30 Tahun 2014)", Artikel dalam Jurnal Hukum dan Peradilan, Badan Penelitian dan Pengembangan Hukum dan Peradilan Mahkamah Agung RI, Volume 04 Number 3 November 2015

Online media :

[37] Badan Pengembangan dan Pembinaan Bahasa Kementerian Pendidikan dan Kebudayaan (BP2B, Kemendikbud), Kamus Besar Bahasa Indonesia (KKBI), Kamus Versi Online/Daring (Dalam Jaringan), kbbi.web.id/salah%20guna. menyalahgunakan, 8 March 2016

[38] BP2B, Kemendikbud, KKBI, Daring, kbbi.web.id/wenang, diunduh pada hari Minggu, 6 Desember 2015, pukul 20:30 WIB.

[39] http://www.hukumonline.com/berita/baca/lt5514fdcf7f91b/uu-administrasi-pemerintahan-trigger-berantas-korupsi, 27 March 2015

[40] http://news.detik.com/berita/2873765/uu-administrasi-pemerintahan-dinilai-mengudeta-pem-berantasan-korupsi, 30 March 2015