SUPERVISI HUKUM TERHADAP PEJABAT PEMBUAT KOMITMEN (PPK) DALAM PELAKSANAAN PEKERJAAN KONSTRUKSI

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Abstract

Legal supervision of the Commitment Making Officer (PPK) in the implementation of construction work is an important aspect in effective, efficient project management, and in accordance with applicable regulations. In the context of construction projects that use government funds, the PPK has a strategic role as the party responsible for the planning, implementation, and control of work contracts. However, this role is often faced with complex legal challenges, such as contract deviations, delays in implementation, and potential corruption. This study aims to analyze the legal supervision mechanism for the PPK in order to improve accountability and compliance with laws and regulations. The research method used is a normative legal approach, with data obtained through literature studies of relevant regulations, such as Law Number 2 of 2017 concerning Construction Services, Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services, and related court decisions. In addition, this study also examines the principles of good governance that are relevant in the implementation of construction work. The results of the study indicate that legal supervision of PPK can be carried out through several mechanisms, including internal supervision by the Government Internal Supervisory Apparatus (APIP), external audits by the Audit Board of Indonesia (BPK), and supervision by the community through public transparency mechanisms. Effective legal supervision requires a clear and firm regulatory framework, an information technology-based supervision system to increase transparency, and increased capacity of PPK through ongoing training related to aspects of contract law and risk management. In addition, it is important to build strong coordination between PPK, construction service providers, and related agencies to prevent legal disputes in project implementation. This study concludes that optimal legal supervision of PPK is not only aimed at minimizing the risk of legal deviations, but also to ensure the achievement of construction work results that are in accordance with the established quality, time, and cost standards. Therefore, strengthening regulations, increasing PPK capacity, and implementing transparent supervision technology are strategic steps in encouraging the effectiveness of legal supervision in the construction sector. This study is expected to contribute to the development of legal supervision policies for PPK, especially in the context of implementing government construction projects.

Keywords : *Legal supervision, Commitment Making Officer, construction work, supervision, accountability*

Abstrak

Pemantauan hukum terhadap Pejabat Pembuat Komitmen (PPK) dalam pelaksanaan pekerjaan konstruksi merupakan aspek penting dalam manajemen proyek yang efektif, efisien, dan sesuai dengan peraturan yang berlaku. Dalam konteks proyek konstruksi yang menggunakan dana pemerintah, PPK memiliki peran strategis sebagai pihak yang bertanggung jawab atas perencanaan, pelaksanaan, dan pengendalian kontrak kerja. Namun, peran ini seringkali dihadapkan pada tantangan hukum yang kompleks, seperti penyimpangan kontrak, keterlambatan pelaksanaan, dan potensi korupsi. Penelitian ini bertujuan untuk menganalisis mekanisme pengawasan hukum terhadap PPK untuk meningkatkan akuntabilitas dan kepatuhan terhadap hukum dan peraturan. Metode

penelitian yang digunakan adalah pendekatan yuridis normatif, dengan data diperoleh melalui studi literatur peraturan perundang-undangan yang relevan, seperti Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi, Peraturan Presiden Nomor 16 Tahun 2018 tentang Pengadaan Barang/Jasa Pemerintah, 1 dan putusan pengadilan terkait. Selain itu, penelitian ini juga menelaah prinsip-prinsip good governance yang relevan dalam pelaksanaan pekerjaan konstruksi. Hasil penelitian menunjukkan bahwa pengawasan hukum terhadap PPK dapat dilakukan melalui beberapa mekanisme, termasuk pengawasan internal oleh Aparat Pengawasan Internal Pemerintah (APIP), audit eksternal oleh Badan Pemeriksa Keuangan (BPK), dan pengawasan oleh masyarakat melalui mekanisme transparansi publik. Pengawasan hukum yang efektif membutuhkan kerangka peraturan yang jelas dan tegas, sistem pengawasan berbasis teknologi informasi untuk meningkatkan transparansi, dan peningkatan kapasitas PPK melalui pelatihan berkelanjutan terkait aspek hukum kontrak dan manajemen risiko. Selain itu, penting untuk membangun koordinasi yang kuat antara PPK, penyedia jasa konstruksi, dan instansi terkait untuk mencegah sengketa hukum dalam pelaksanaan proyek. Penelitian ini menyimpulkan bahwa pengawasan hukum optimal terhadap PPK tidak hanya bertujuan untuk meminimalkan risiko penyimpangan hukum, tetapi juga untuk memastikan tercapainya hasil pekerjaan konstruksi yang sesuai dengan standar mutu, waktu, dan biaya yang ditetapkan. Oleh karena itu, penguatan peraturan, peningkatan kapasitas PPK, dan penerapan teknologi pengawasan yang transparan merupakan langkah strategis dalam mendorong efektivitas pengawasan hukum di sektor konstruksi. Penelitian ini diharapkan dapat memberikan kontribusi terhadap pengembangan kebijakan pengawasan hukum terhadap PPK, khususnya dalam konteks pelaksanaan proyek konstruksi pemerintah.

Kata Kunci : *Pengawasan hukum, Pejabat Pembuat Komitmen, pekerjaan konstruksi, pengawasan, akuntabilitas*

BACKGROUND

National Development aims to create a just, prosperous, prosperous and orderly Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia).

State administrators have an important role in realizing the ideals of the nation's struggle. It is explicitly stated in the explanation of the 1945 Constitution which states that what is very important in government and in terms of the life of the country is the spirit of state administrators and government leaders.

The provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), states that "The Indonesian state is a state of law", in the constitutional law/state administrative law approach, the meaning of the concept of the rule of law requires that every action of the government (state administrator) must always be based on applicable law. In such a concept, the essence of the aims and objectives of implementing the principle of the rule of law is in line with the concept of a welfare state as formulated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which has consequences for the administration of

government, namely relating to accountability and responsibility. one of them is abuse of authority. The concept of responsibility for government authority itself rests on the principle of specialization, namely the principle that determines that authority is givento government organs for a specific purpose. Deviations from this principle can give rise to abuse of authority.

This concentration of power, authority and responsibility not only has a negative impact in the political field, but also in the economic and monetary fields, including the emergence of state administration practices that are more profitable for certain groups and provide opportunities for the growth of corruption, collusion and nepotism.

These criminal acts of corruption, collusion and nepotism are not only carried out by state administrators, among state administrators but also by state administrators and other parties such as family, cronies and businessmen, thereby destroying the foundations of social, national and state life, and endangering state existence.

Corruption Crime Law no. 31 of 1999 which has been amended by Law no. 20 of 2001 concerning criminal acts of corruption, the formation of this Law has determineda philosophical, sociological and juridical basis. The philosophical basis is a consideration or reason that illustrates that the regulations formed take into account legal awareness and ideals which include the spiritual atmosphere and philosophy of the Indonesian nation which originates from Pancasila and the 1945 Constitution of the Republic of Indonesia. The philosophical basis of Law no. 31 of 1999 which has been amended by Law no. 20 of 2001 concerning criminal acts of corruption in legal considerations letter a which reads as follows

"That criminal acts of corruption are very detrimental to state finances or the state economy and hinder national development, so they must be eradicated in order to create a just and prosperous society based on Pancasila and the 1945 Constitution"

If these legal considerations are examined, the philosophical basis for drafting the criminal law on corruption in Indonesia is that in order to save and normalize national life in accordance with the demands of reform, a unified vision, perception and mission of all state administrators and society is required. The same vision, perception and mission must be in line with the demands of the people's conscience who want the realization of state administrators who are able to carry out their duties and functions seriously, with a sense of responsibility, which are carried out effectively, efficiently,

free from corruption, collusion and nepotism. , as mandated by the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 concerning State Administrators who are Clean and Free from Corruption, collusion and Nepotism.

The sociological basis is a consideration or reason that illustrates that regulations are formed to meet society in various aspects. The sociological basis actually concerns empirical facts regarding the development of problems and needs of society and the state. The sociological basis for the preparation of Law no. 31 of 1999 concerning criminal acts of corruption is stated in legal considerations in letter b which reads

"That as a result of criminal acts of corruption that have occurred so far, apart from being detrimental to state finances or the state economy, it has also hampered the growth and continuity of national development which demands high efficiency."

The sociological basis for the preparation of Law no. 31 of 1999 concerning criminal acts of corruption is to fulfill legal needs in society, for this reason it is necessary to replace Law no. 3 of 1971 concerning the Eradication of Corruption Crimes with the new Corruption Crime Law so that it hopes to be more effective in preventing corruption crimes.

The juridical basis is a consideration or reason that illustrates that regulations are formed to overcome legal problems by taking into account existing regulations, those that will be changed or those that will be revoked in order to guarantee legal certainty and the community's sense of justice.

The juridical basis concerns legal issues related to the substance or material being regulated so that new legislation needs to be formed. Some of these legal issues include:

1. Outdated regulations
2. Disharmonious regulations
3. Existing regulations are inadequate

Juridical basis of Law no. 31 of 1999 is stated in the legal considerations in letter c as follows "That law number 3 of 1971 concerning criminal acts of eradicating corruption is no longer in accordance with the development of legal needs in society, therefore it needs to be replaced with a new law on eradicating criminal acts of corruption so that it is expected to be more effective in preventing and eradicating criminal acts of corruption."

The considerations above can be stated that the juridical basis of Law no. 31 of 1999. Because of Law no. 3 of 1971 concerning Corruption Eradication Crimes, there are:

1. Deficiencies regarding legal subjects;
2. Determine the threat of special drinking, a higher fine, and the threat of the death penalty which constitute criminal aggravation;
3. This law does not yet contain a prison sentence for perpetrators of criminal acts of corruption who cannot pay additional penalties in the form of compensation for state losses;
4. Not yet able to accommodate the development of community needs.

Explanation of Law no. 31 of 1999 concerning the eradication of criminal acts of corruption states the deficiencies or weaknesses of Law no. 3 of 1971 concerning criminal acts of corruption so it needs to be replaced, in this law, criminal acts of corruption are formulated expressly as formal criminal acts. It is very important to prove the formal formulation adopted in this law, even though the proceeds of corruption have been returned to the state, perpetrators of criminal acts of corruption are still brought to court and remain punished.

Abuse of authority in criminal acts of corruption is regulated in the Anti-Corruption Law. Article 3 states that "any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or advice available to him because of his position or because of a position that can harm state finances. or the state economy, be sentenced to life imprisonment, or imprisonment for a minimum of 1 year and a maximum of 20 years and/or a fine of at least 50 million rupiah and a maximumof 1 billion." Based on the contents of this article, the formulation of the criminal act is:

1. Each person;
2. Benefit yourself or another person or a corporation;
3. Abusing the authority, opportunities or facilities available to him because of his position or position; And
4. It can be detrimental to state finances or the country's economy Based on the principle of legality, every government action must be based on legitimate authority, appropriate procedures and appropriate substance.

Failure to fulfill these three components of the principle of legality results in

defects in a government action. However, because of the limitations of this principle, the government is given freedom of choice, or discretion. This means that the basis for the government or state administration in carrying out actions or deeds to provide services to the community in order to improve their welfare, the first is statutory regulations.

Law Number 30 of 2014 concerning Government Administration which has been amended by Law Number 6 of 2023 is an effort to re-regulate decisions and/or actions of Government Agencies and/or Officials based on the provisions of statutory regulations, in addition to being the legal basis for administration of government in an effort to improve good governance, and be able to create a better, more transparent and efficient bureaucracy that is expected by the public.

Abuse of authority is the use of authority by Government Agencies and/or Officials in taking decisions and/or actions in administering government which is carried out by exceeding authority, mixing authority, and/or acting arbitrarily as intended in Article 17 and Article 18 of Law Number 30 of 2014 concerning Government Administration which has been amended by Law Number 6 of 2023.

Based on Article 20 of Law Number 30 of 2014 which has been amended by Law Number 6 of 2023, supervision and investigation of alleged abuse of authority is first carried out by the Government Internal Supervisory Apparatus (APIP). The results of APIP's supervision of alleged abuse of authority are in the form of no errors, administrative errors, or administrative errors that cause state financial losses.

The most vulnerable point for irregularities in the Goods and Services Procurement sector has been starting from the procurement planning stage. Vulnerability to irregularities also occurs at the tender formation stage, company pre-qualification, tender document preparation, auction document announcement stage, and the stage of preparing the estimated price itself.

The modus operandi of involvement of Public Officials and Private Companies in Procurement of Goods and Services (PBJ) corruption, generally the modus used includes: (1) bribery by private parties to public officials; (2) public officials use puppet companies/certain companies to collaborate with in carrying out corruption; and (3) collusion between bidders, price fixing, cartels, and uncompetitive practices.

Corruption in the government goods and/or services procurement sector will

result in at least 3 (three) things, namely the low quality of government goods and services, state financial losses, and the low value of the benefits obtained, therefore corruption in this sector, according to the researcher, must be joint attention. Not only by the Corruption Eradication Commission (KPK), the Prosecutor's Office, the Police and the Judiciary as the main stakeholders in preventing and eradicating corruption, but by all parties, both in government (ministries/institutions/Local Government), as well as civil society.

Procurement actors must be responsible for their duties and authority as per the stages in the procurement of government goods/services. Accountability in the process of procuring government goods and services must be carried out by the procurement actors involved in the process of procuring government goods/services. The legal aspect of the process of procuring government goods and services, apart from criminal law and civil law, is also state administrative law. Responsibility is an obligation for someone to carry out what is required of them.

If the theory of responsibility is related to criminal law, the perpetrator's actions that must be held accountable must first be regulated in the provisions of criminal law. Criminal law is divided into two theories, namely absolute theory and relative theory. According to the absolute theory, legal sanctions are imposed as retaliation against the perpetrators for committing crimes which have resulted in misery to other people or members of society. The relative theory (doeltheori) is based on the following objectives (doel):

1. Terrifying

   By imposing a sentence, the perpetrator or convict is expected to become a deterrent and not repeat his or her actions again (special preventie) and the general public knows that if they commit an act as the convict did, they willreceive a similar punishment (generale preventie).

2. Improving the Convict's Personality

   Based on the treatment and education provided while serving the sentence, the convict will feel remorse, so that the convict will not repeat the act and return to society as a good and useful person.

3. Destroying or rendering the convict helpless

   Destruction means giving the death penalty, while rendering the convict

helpless is done by giving a life sentence. Currently, many groups do not agree with the death penalty. Their opinion is that only God has the right to take people's lives, these groups demand that the death penalty be abolished.

Administrative Aspects

In finding a good understanding of state administrative law, it must first be established that state administrative law is part of public law, namely the law that regulates government actions and regulates relations between the government and citizens or relations between government organs. HAN contains all regulations relating to how government organs carry out their duties. So state administrative law contains rules regarding the functions of government organs. With regard to the above, in general state administrative law includes: 1) actions of the government (central and regional) in the public sector; 2) Government authority (in carrying out actions in the public sector); 3) Legal consequences arising from actions or use of government authority; and 4) Law enforcement and implementation of sanctions in the government sector. The decision of the user of goods is the decision of a state/regional official. If a state administrative dispute occurs, the party who suffers losses (goods and service providersor the public) as a result of the issuance of a TUN Decree, if no resolution is found, can submit an objection to the agency that issued the decision..

Civil Aspect

Civil law can be defined as the law that regulates the relationship between legal subjects and other legal subjects in the civil sector. Civil law means legal traffic relating between individuals and other individuals, such as legal relations with family, agreements between legal subjects, including legal relations in the field of inheritance. Regarding the procurement of goods and services, civil law regulates the legal relationship between Users and Providers of Goods and services from the signing of the contract until the end/completion of the contract in accordance with the contents of the contract. The legal relationship between users and providers occurs during the process of signing a contract for the procurement of goods and services until the process of completing the contract is a civil legal relationship, especially a contractual/agreement relationship. In the process of procuring goods and services, based on the delegation of authority, they are represented by procurement officials, namely: (1) PA/KPA, (2) Commitment Making Officer (PPK), (3) Procurement Service Unit Working

Group/Procurement Officer (PPK/ PP), and Committee/Officials Receiving Work Results (PPPHP). Meanwhile, providers of goods and services can be individuals or legal entities (private). Procurement officials in carrying out legal relations in the field of agreements act individually/personally.

Criminal Aspect

Criminal law regulates the legal relationship between providers and users from the preparation stage to the completion of the contract for the procurement of goods and services (handover). Starting from the preparation stage until the handover of work/goods, a legal relationship has occurred, namely a criminal law relationship. Criminal law is commonly referred to as criminal law, because the issues it regulates are actions against crime and matters related to crime in society. In connection with the procurement of goods and services, the scope of actions/deeds carried out by both users of goods and services and providers are all acts or actions that are against the law. This means that actions/deeds in the procurement of goods and services are not in accordance with statutory regulations starting from the preparation stage until completion/end of the contract. Because criminal law is public law, there is a direct state obligation to protect all rights and interests of users and providers of goods and services. An overview of criminal law in the process of procuring goods and services is that criminal law is applied if there is a criminal violation committed by the parties, both users and providers of goods and services in the process of procuring goods and services. This is in accordance with the principle of criminal law "green straf zonder schuld", no punishment without guilt. Criminal acts in government procurement of goods and services are prone to irregularities occurring at the procurement planning stage, such as indications of budget inflation or mark-up, implementation of directed procurement, engineering of unification and/or division with the intention of Collusion, Corruption or Nepotism which is detrimental to the state Apart from this, other vulnerable points for criminal acts can also occur at the company qualification stage, procurement evaluation stage, contract signing stage, and delivery stage of goods that do not meet the requirements and are of low quality which can cause state losses. In addition, providers of goods and services are prone to criminal acts, including forgery of documents, breaking promises to carry out work (default) so that there are elements ofunlawful acts that result in losses for the state.

Whereas apart from that, in cases of criminal acts of corruption there are elements of loss to the State, then this must refer to the Constitutional Court Decision Number 25 of 2016 which explains the phrase "can" in Article 2 and Article 3 of Law Number 20 of 2001 concerning Eradication Corruption Crimes, Paying attention to the Law andthe Decision of the Constitutional Court, it can be concluded that not all acts of abuse of authority committed by Commitment Making Officials (PPK) fall within the realm of criminal acts of corruption, because to determine whether there is a State financial loss, it must be real or not. may be assumptions or estimates. Based on this background, researchers are interested in conducting research on criminal responsibility for abuse of authority as regulated in Article 3 of Law Number 20 of 2001 concerning Corruption Crimes committed by Commitment Making Officials (PPK).

Significant changes to the assessment of abuse of authority which causes State financial losses, so that the Responsibility of Commitment Making Officials (PPK) in the procurement of government goods and services which contain elements of state loss and abuse of authority after the issuance of Law Number 30 of 2014 concerning Government Administration, It should be tested first through the State Administrative Court as regulated in Perma RI Number 4 of 2015 concerning Procedure Guidelines in assessing elements of Abuse of Authority.

RESEARCH METHODS

In this research, the empirical normative juridical approach includes: Statute Approach, Case Approach, Comparative Approach and Conceptual Approach.

The paradigm used in this research is Postpositivism. Postpositivism is a movement that wants to correct the weaknesses of Positivism. Postpositivism agrees with Positivism that reality is real, existing according to natural laws. But on the other hand, Postpositivism believes that it is impossible for humans to get the truth from reality if researchers distance themselves from reality or are not directly involved with reality. The relationship between researchers and reality must be interactive, for this reason it is necessary to use the principle of triangulation, namely the use of various methods, data sources, data, etc. This paradigm is a flow that wants to improve the weaknesses of positivism, which only relies on the ability to directly observe the object being studied.

The approach method used in this research is the empirical normative juridical method. Empirical normative juridical research is legal research regarding the application or implementation of normative legal provisions directly to each specific legal event that occurs in society. This research uses secondary data in the form of regulations as main data and primary data in the form of interviews with related parties as supporting data.

The secondary data collection method used in this research is literature study or documentation techniques consisting of a literature study. This was obtained from data collection through library research by studying books/literature related to the titles and problems discussed in this research. It can also be done by document study, namely in the form of data obtained through legal materials in the form of laws or regulations related to this research.

This data collection method using library research uses catalog searches, whereas what is meant by catalog is a list that provides information about the collections held in a library.

Data analysis is also called data processing and interpretation. According to Nasution, data analysis is "the process of compiling data so that it can be interpreted; compiling data means classifying it into patterns, themes or categories.

In an effort to answer or solve the problems raised in this research, a qualitative data analysis method was used, because the data obtained is of quality and not quantity. After data collection, analysis is then carried out, so that conclusions can be drawn that can be scientifically justified.

RESULTS AND DISCUSSION

Criminal liability by the PPK in the event of state financial losses can be seen from the actions/deeds or decisions taken by the PPK at each stage of the goods/services procurement process. An act or act that is formulated as a criminal act/offence must fulfill several requirements. According to Moeljatno, a criminal act is an act that is prohibited by a prohibitive legal regulation which is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition. It can also be said that a criminal act is an act which is prohibited by a legal rule and is punishable by a criminal offense, as long as it is remembered that the

prohibition is directed at an act (i.e. a condition or event caused by a person's behavior) while the criminal threat is aimed at the person causing the incident. .

Fulfilling PPK responsibilities gives rise to different legal responsibility boundaries, namely responsibilities in the fields of criminal law, civil law and administrative law. In terms of criminal liability, this arises because there is a legal relationship between the PPK and third parties or providers of goods/services starting from the preparation stage to handing over the results of the work and then carrying out the performance by the PPK. Because the concept of criminal responsibility is the existence of a criminal act or "actus reus" and a mistake or "mens rea" which is manifested in the form of intention and negligence, so that the parameter for the PPK's criminal responsibility is the existence of an element of unlawful action with abuse of authority based on a mistake. whether intentional or negligent, resulting in losses to state finances and the state economy.

Civil liability arises from the existence of a legal relationship between PPK and third parties or providers of goods/services from the signing of the contract until the end of the contract. In terms of administrative legal responsibility, where there is a legal relationship between the PPK and third parties or providers of goods/services regarding the decisions of authorized officials, for example in the preparation of HPS, technical specifications, the issuance of Letters of Appointment as Providers of Government Goods/Services (SPPBJ). If the PPK is proven to have violated the applicable provisions, administrative sanctions will be imposed on the PPK in the form of light, medium or heavy disciplinary penalties by the Personnel Management Officer or an authorized official in accordance with the law.

There are concerns for Government Administration officials that in carrying out these duties there will be mistakes and mistakes. For decisions and/or actions that contain administrative errors, corrections and improvements need to be made. However, regarding a decision and/or action determined and/or carried out by a Government Agency and/or Official that abuses its authority because it was made byan Agency and/or Government Official that has no authority or was made by an Agency and/or Government Official that exceeded its authority, and/or made by Government Agencies and/or Officials acting arbitrarily constitutes an invalid decision and/or action. The legal consequences of an invalid decision become non- binding from the

moment the decision and/or action is determined and any resulting legal consequences are deemed to have never existed.

In the case of a decision and/or action of a government official there is an error in terms of the procedure for making the decision which is not in accordance with the requirements and procedures stipulated in the provisions of statutory regulations and/or standard operating procedures (procedural error) or an error in the case of non-compliance with the material provided. desired by the formulation in the decision made, for example there is a conflict of interest, juridical defects. The cancellation decision is made by a Government Official and/or Superior Officer by determining and/or carrying out a new decision and/or action by a government official or based on a court order, stipulating a new decision as intended in Article 71 paragraph (3) of Law number 30 of 2014 concerning Government Administration is the obligation of government officials.

Losses arising from canceled decisions and/or actions are the responsibility of the Agency and/or Government Officials. UU No. 30 of 2014 found a conflict in the meaning of abuse of authority with the Corruption Crime Law. Based on Article 3 of the Corruption Law, namely Law Number 31 of 1999 in conjunction with Law Number 20 of 1999 which reads

"Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position which can harm the state's finances or the state's economy, shall be punished by life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"

The point of abusing the authority contained in this article is part of the corruption offense which is the competence of the Corruption Court. However, this concept is not explained further in the Corruption Law.

UUAP Article 21 is a rule that protects government officials as well as a basis for recognizing actions by government officials that are illegal or contain administrative errors so that they can be punished. The principle of specialization can be used to demonstrate the protection of power (a principle that determines the authority given to government organs for certain purposes). According to state administrative law, government officials who commit acts of corruption in accordance with Article 3 of the

Corruption Law have violated the rules regarding appropriate official behavior because they have committed acts that are disgraceful or inappropriate. One of the rules that was violated was the Government Administration Law. To ensure that the system of low-level discrimination does not preclude the use of criminal sanctions, administrative sanctions are introduced. On the other hand, if the Administrative Court decides that the abuse of power is not motivated by malicious intent, additional law enforcement officers are prohibited from escalating the conflict into a criminal act.

The Government Administration Law aims to provide legal guarantees and certainty in the administration of government in Indonesia, the Government Administration Law provides space for Government Agencies and/or Officials or other state administrators to provide quality services to the community in the administration of government, apart from that The Government Administration Law provides legal protection for Government Agencies and/or Officials or other state administrators in carrying out government functions, in this case the use of authority.It is hoped that with the enactment of the Government Administration Law, Government Agencies and/or Officials or other state administrators will feel protected. from criminalization related to abuse of authority, because so far what hashappened if the slightest administrative error in the administration of government even though in its implementation there is not the slightest malicious intention to abuse authority has been directly charged under Article 3 of Law No. 20 of 2001 concerning Amendments to the Law No. 31 of 1999 concerning Eradication of Corruption Crimes (UU PTPK). Legal protection in the Government Administration Law for Government Agencies and/or Officials or other state administrators related to abuse of authority is very important for the smooth running of government aimed at development, as is known, officials or authority holders have not been able to freely use their authority because they are always haunted by feelings of fear. caught in criminal acts of corruption so that government budget absorption becomes low and development becomes hampered.

The definition of abuse of authority from a criminal law perspective has no further explanation in the Corruption Law. This is understandable because terminology related to authority and officials (including abuse of authority by officials) is the domain of HAN.

Law enforcement has so far tended to place criminal acts of corruption as the

main effort (premium remedium), as if making criminal acts of corruption superior. The essence of premium remedium is only intended to return the burden of proof, notfor all corruption offenses, so that it views every act that causes state financial losses as corruption, even though the state financial losses that arise could occur because ofan unlawful act in a civil context (onrechtmatige daad) or because denial of achievement (default).

Determining that abuse of authority falls within the area of criminal law or is categorized as a criminal act must first be based on the results of supervision from the SPIP (Government Internal Supervisory Unit). The results of this supervision will produce findings in the form of, there are no errors or there are administrative errors or there are administrative errors that are detrimental to the state's finances oreconomy.

Government officials who abuse their authority can be subject to administrative sanctions, this is in line with the opinion of Dr. Muhammad Rullyanto. SH., MH whenthe author interviewed said that "In fact, the provisions of Article 3 of the CorruptionLaw which states: Every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunities or facilities available to him because of his position or position. can be detrimental to state finances or the state economy", regulates the prohibition of abuse of authority in state administration which is detrimental to state finances. The provisions of Article 3 of the Corruption Law have been improved by the Government Administration Law, especially Article 17, Article 18 and Article 20 which regulate abuse of authority which causes state financial losses as a result of APIP supervision which can be resolved by administrative returns. "This means that the provisions of Article 3 of the CorruptionLaw and Articles 17, 18, 20 of the Government Administration Law are open to administrative solutions that do not have to be withdrawn as a form of criminal law enforcement, as long as the returns can be completed administratively within a 10-daygrace period."

Based on Article 20 of the Government Administration Law, if there is an abuseof authority, APIP will first resolve it by assessing these three assessments.

This form of administrative error does not harm state finances, so this error only needs to be made to improve the administration in accordance with applicable regulations. This error is detrimental to state finances, so the state financial losses must be returned within the specified time.

The Government Internal Supervisory Apparatus (APIP) is a GovernmentAgency which has the main duties and functions of carrying out supervision, and consists of:

1. Financial and Development Supervisory Agency (BPKP) which is responsible to the President;
2. Inspectorate General (Itjen)/Main Inspectorate (Ittama)/Inspectorate which is under and responsible to the Minister/Head of Non- Departmental Government Institutions (LPND);
3. Provincial Government Inspectorate which is under and responsible tothe Governor, and;
4. Regency/City Government Inspectorate which is under and responsible to the Regent/Mayor.

Since the publication of the decision of the Constitutional Court of the Republicof Indonesia number: 25/PUU-XIV/2016 which revoked the phrase "can" in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Amendments to the Law -Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (Tipikor Law). This Constitutional Court decision interprets that the phrase "can harm state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Corruption Law must be proven by actual state financial losses, not potential or estimated state financial losses.loss).

Viewed from the perspective of the subject, law enforcement is nothing more than the efforts of law enforcement officials to guarantee and ensure that a rule has been obeyed and is running as it should. Law enforcement apparatus here includes law enforcement institutions and their implementing officers, functions and functionaries, the office and the official. In the 1945 Constitution, the existence of thelaw enforcement apparatus is explicitly a judicial authority that administers justice to uphold law and justice. Thus, the law enforcement apparatus involved in the process of upholding law and justice also involves the functions of investigators, public prosecutors, advocates, and judges and wardens in correctional institutions (catur wangsa).

In criminal liability, the burden of responsibility is borne by the perpetrator of a criminal offense in connection with the basis for imposing criminal sanctions. A person will have the nature of criminal responsibility if something or an action he or she commits is against the law, but a person can lose the nature of responsibility if an

element is found within him/herself which causes the loss of a person's ability to be responsible.

In imposing a sentence, judges, apart from being guided by the applicable laws and regulations, are given the freedom to determine a punishment that they feel is fair with a measure of justice according to their conscience, because the measurement of the size of the sentence is no longer the result of juridical analysis, because juridical analysis is in a consideration process. The law stops when determining someone is guilty or innocent, and whether they can be held responsible for their actions or not. If the defendant has been proven guilty, the sentence to be imposed will be carried out based on the judge's conscience in accordance with the values of justice that he believes in.

Criminal judges divide the special minimum criminal provisions into 2 (two) understandings, namely:

1. Judges who are of the opinion that the special minimum criminal provisions specified in the law are imperative provisions and cannot be deviated from at all.
2. Judges who are of the opinion that in certain cases it is not taboo for judgesto deviate from special minimum criminal provisions, because judges arenot mouthpieces of the law, so that if there is a very urgent interest in achieving justice, it is legal for judges to violate special minimum provisions in corruption law.

Law Enforcement Officials should pay close attention to the rights of a State official who is suspected of abusing authority to first confirm to APIP about the allegation so that APIP first examines whether the abuse of authority falls within the realm of State administration or civil law or even falls into the criminal realm. Of course, the government official has the right to defend himself in accordance with applicable legal procedures, so that it will be clearer that the unlawful acts committedby the official fall within the administrative or civil realm or the realm of criminal acts of corruption.

There is no further explanation regarding the meaning of abuse of authority froma criminal law perspective in the Corruption Law, this can be understood because the terminology related to authority and officials (including abuse of authority by officials) is within the scope of HAN. In understanding and measuring abuse of authority, you can use instruments in the HAN domain, this is possible in line with the thoughts of

H.A. Demeersement in the study "De Antonomie can het Materialele staffrecht" (autonomy of Material Criminal Law) which essentially gives the authorityto use other legal disciplines outside of criminal law when interpreting a term or concept that has not been regulated in criminal law but is regulated in other legal disciplines . However, it must be used carefully and should not be overdosed.

That from this research it is hoped that there will be legal provisions that clearly regulate the boundaries within the criminal realm of corruption and those within the administrative realm, moreover the issuance of Law No.30 of 2014 which has been amended by Law No.6 of 2023, and with the Constitutional Court decision No. 25 of 2016, it is appropriate for Law Enforcement Officials before carrying out the inquiry and inquiry process to first coordinate with APIP so that there is legal certainty and legal justice for public officials/PPK/KPA/PA and the public.

The focus of the law on corruption must be clearer and more specific, this can be seen from the legal regulations, the differences in the definition of criminal acts of corruption between the two countries. Indonesia has a broader definition that includes various actions that are detrimental to the state, while Singapore has a definition thatis more focused on corrupt behavior in economic transactions. Second, in terms of thetypes of criminal acts of corruption that are regulated, Singapore has a more detailedand clear classification, which includes bribery, bribery and extortion. On the other hand, Indonesia tends to have a wider and more complex variety of categorizations.

In an effort to achieve this balance, researchers found a formula for the additionof a paragraph in Article 3 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 concerning corruption, in addition to the addition of a paragraph in Article 17 of Law No. 30 of 2014 which has been amended by Law No. 6 of 2023 concerning Government Administration.

CONCLUSION

1. The role and responsibilities of the Commitment Making Officer (PPK) if there is abuse of authority in the implementation of procurement of government goods and services based on the analysis in this research always uses criminal law on corruption, without first using state administrative law, and the use of Government Administration Law Number 30 of 2014 is not used as a benchmark to determine

the extent of the abuse of authority committed by the PPK, whether administrative errors or criminal acts of corruption, this can be seen from the abuse of authority in the form of bribery, deception, extortion, or mark-ups if not for This matter canbe processed through the administrative realm by referring to the Government Administration Law. According to researchers, article 3 of the Corruption Crimes Law should be added to article 3 paragraph (2). Abuse of authority as referred to in paragraph (1) must be preceded by an examination by internal supervisory authorities government (APIP).

2. Based on the discussions that have been carried out in an effort to make APIP's role more effective, in order to provide protection to PPK when facing problems regarding abuse of authority, it is necessary to have an APIP role in accordance with its function as regulated in Article 20 of the Government Administration Law Number 30 of 2014 APIP which first carry out supervision of the PPK, to find outif the abuse of authority falls into the category as regulated in Article 17 paragraphs and (2) of the Government Administration Law Number 30 of 2014, in practice APH always carries out inquiries and investigations without first coordinate with APIP, so that the results obtained are only based on the provisions of Article 3 of Law No. 31 of 1999 which has been amended by Law No. 20 of 2001, which doesnot provide an explanation regarding abuse of authority, while Article 20 UUAP, if there is abuse of authority, is examined by APIP. The function and role of APIP is carried out so that PPK/KPA/PA and civil servants feel that they have legal certainty and justice in undergoing the examination process. In this case, there needs to be an addition to clarify and emphasize that if there is an abuse of authority, APH must first coordinate with APIP, the addition of article 17 paragraph (3) Law enforcement officials, before investigating abuse of authority as intended in paragraphs (1) and (2), must undergo an examination by the government's internal supervisory apparatus (APIP). Paragraph (4) The results of the APIP examination are used as legal evidence and have evidentiary value.
3. Based on a study conducted by the author regarding the legal responsibility of PPK who are suspected of abusing their authority, they always use criminal law on corruption, and there is no state administration approach, always prioritizing the realm of criminal acts of corruption. Accountability for legal acts carried out by the

PPK can be in the form of criminal or administrative or civil liability which is largely determined by the unlawful nature of the act and its legal consequences, so that in implementing it there is a need for the principle of balance between legal certainty and justice, so that the application of the law prioritizes a sense of justice for the PPK.

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