

PREVENTION OF CORRUPTION CRIME THROUGH MECHANISM ENFORCEMENT ADMINISTRATIVE TO ABUSE AUTHORITY IN FORM DISCRETION THAT RESULTS LOSS STATE FINANCES

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ABSTRACT

As system nature of responsibility specifically, Article 3 of the Eradication Law follow criminal corruption has arrange that abuse resulting authority loss state finances are part from follow criminal corruption. On the other hand, Law 30 of 2014 concerning Administration Government also regulates about mechanism accountability to exists incoming discretion in category abuse later authority give rise to where are the losses to the country ? Furthermore can boils down to implementation penalty administrative as regulated in Article 80 paragraph (4) of the Law Administration Governance. Based on issue the writer interesting problem in a way theoretical regarding with Prevention Act Criminal Corruption through Mechanism Enforcement Administrative to Abuse Authority In Form Discretion that results loss state finances with use method Study law (legal research) with a discussion focus related with application principle specialist systematic in case abuse generating authority loss state finances as containing concept among those regulated in the Eradication Law Act Criminal Corruption and Administrative Law Government. Where based research that has been done, known that with development of existing legal instruments moment this, mekasnime administrative enforcement against abuse authority in form discretion that gives rise loss state finances can used as a preventive instrument happen something follow criminal corruption with using, the principle is not each other setting aside, that is If can finished with administrative instruments then legal instruments criminal No held Again matter that is what theory called with principle Una-Via or ultra vires which means, if something case has resolved in a way administration so close it opportunity resolve the case with other law.

Keywords: Prevention, Corruption Crime, Administrative Enforcement Mechanism, Discretionary

INTRODUCTION

Background Problem

Since 1990's,¹ discussion about corruption has become theme popular with organizations big scale international, especially the IMF, World Bank, OECD, Council of Europe, United Nations(Tiihonen,2003), and the European Union. Corruption has lifted on the inside agenda paper institution ratings and agencies evaluation Power competitiveness by the World Economic Forum ²and has become the agenda of non- governmental organizations(World Economic Forum,1997). For example, Transparency International has

increase awareness public about problem This. This publishes index perception Corruption, Cpi, and Index Payer bribe, Mr. Expansion scope discussion traditional about administration has open perspective new about problem corruption.³

If concluded on the results discourse about problem corruption and development in the global world, corruption at its core is problem development economy with the presence of big money and taking big risk. According to institution finance international, corruption damage legitimacy system politics. Corruption limit quality service public. Something that is obviously very expensive to do growth economy and investment in a country, because increase cost in do business both in the sector public and private. Corruption also obscures it environment business with uncertainty(The,2023),⁴and distort framework proper regulations and laws can reliable in the business world.⁵

Act criminal corruption which Keep going experience improvement and no under control will bring disaster no just towards life economy national but too on life nation and patriotic on generally. Act criminal corruption which widespread and systematic too is violation towards rights social and rights economy society, so act criminal corruption classified no again as crime normal but have be one crime outside normal so its eradication sued with ways which outside normal(Supardi,2018).⁶

Constitution Number 31 of 1999 concerning Eradication Act Criminal Corruption as has changed (Constitution Number 31,1999)and added with Constitution Number 20 of 2001 (PTPK Law), (Constitution Number 20,2001)regulates that The' fight' element law' can found inside follow criminal corruption has expanded meaning as regulated in Article 2 paragraph (1), namely: " Every person who oppose law enrich self yourself, or someone else, or something corporations can harm finance or the country's economy is being punished (...)" Explanation general Constitution The statement, among other things, states: "(...) act regulated criminal law in Constitution This formulated like that appearance so that covers deeds enrich self Alone or someone else or something corporation in a " fighting" way law " in understanding formal and material. With formulation that, understanding oppose law in follow criminal corruption can also include deeds despicable who complied feeling justice public must prosecuted and sentenced." Next, inside explanation of Article 2 paragraph (1). Alone mentioned that: "(...) is what is meant with in a way oppose law in chapter this, covers deed oppose law in a formal sense nor in the material sense, ie although deed the No arranged in regulation legislation However if deed the considered despicable Because No in accordance with a sense of justice or norms of life social in society, then deed the can convicted."

If explored in perspective political law formation PTPK Law, birth The PTPK Law is basically expected can answer challenge need law in frame prevent and eradicate follow criminal corruption with objective main from political eradication corruption is For return state finances or the country's economy and punish perpetrator.⁷ Including to related actions with implementation something later authority harm state finances as regulated in Article 3 of the PTPK Law.

Although, that's the next thing need highlighted more carry on is that effort prevention to emergence loss state finances in particular in related actions with implementation something authority has arranged through various mechanism, no only through instrument law criminal but also through instrument law civil law which also leads to the return process state finances are good with objective prevention nor recovery. Because indeed If seen in the structure of norms in the PTPK Law, the return process state finances from results follow criminal corruption of course can achieved through two approaches i.e., i.e approach in a way civil law (carried out by the Prosecutor as State Attorney), and

mechanisms possible punishment taken through the process of confiscation and forfeiture on existing assets move hand or who have is at in mastery convict. Return the country's finances in one side own meaning preventive (prevention) is on the other hand This is also a manifestation from characteristic repressive (eradication) with Spirit for give effect deterrent to perpetrator(Wiyono,2012).

Apart from through mechanism criminal and civil, other mechanisms of that nature more about prevention resulting state losses exists something related actions with implementation authority i.e. through State Administrative Law mechanisms carried out by institutions supervisor maintenance government, among other things related with inspection management and responsibility answer state finances, meanwhile holding institution power highest in supervision state finance, namely the Financial Audit Agency (hereinafter called BPK) as authorized institution in a way attributive and constitutional For do counting and even declare exists loss state finances as stated in Article 10 paragraph (1) of the Law Number 15 of 2006 concerning the Financial Audit Agency (Audit Agency, 2022).

Inspections carried out by institutions that have given authority attributive For do inspection to not quite enough answer management State finances are also basically related with function maintenance administration government based on Article 20 paragraph (4) of the Law Number 30 of 2014 concerning Administration Government (Law Administration Government) that provides meaning implicit about exists difference abuse authority official government nature error administrative and abuse detrimental authority state finances as similar concept with abuse authority as in Article 3 of the PTPK Law(Constitution Number 30,2014).

Although has there is a number of regulated mechanism in frame prevention and recovery loss state financial consequences exists something abuse authority(Indriyanto,2016), in its development, as according to Indriyanto Seno Adji⁸ that related cases with maintenance detrimental authority more state finances prioritize use mechanism criminal (Adji,2009)Because implementation of Article 3 of the PTPK Law without exists inspection about There is or not something abuse authority based on Article 20 of the Law Administration Government, the real thing enforced For deed use nature of authority active ie form authority discretionary (“*discretionary power*”, “*vrijsbestuur*”, “*freies ermessen*”) for carry out its policies (“*regulations*”) in overcome immediately and as soon as possible with set something deed for interest task government that is not just power running government law (“*power bound*”). According to Philipus M. Hadjon, Power Government is active power that includes authority (Philipus,2012)For disconnect in a way independence and authority interpretation to hidden norms (“*vage norms*”). In relation with “*beleidsvrijheid*”, active power from government, according to Girindro Pringgodigdo, in the form of “*wijsheid*” can is actions instantly (“*instant decision*”) with see urgency as well as situations / conditions faced, in the form of taking possible decisions nature arrangements (written) and or decision written or oral based “*discretionary*” power / authority *that* is owned.⁹

Related with implementation later discretion impact on emergence loss state finances because exists abuse authority, ultimately bring up dilemma in a way juridical Because based on structure regulation existing legislation there are two regimes governing law about system accountability to abuse later authority give rise to state finances, namely system accountability criminal based on PTPK Law and system accountability administration as regulated in Constitution Administration Governance.

Arrangement system accountability criminal to discretion that gives rise loss state finances are implemented based on construction of Article 3 of the PTPK Law which

contains element namely "... abuse authority, opportunity or existing facilities to him Because position or possible position harm state finances ..." later culminates in punishment based on threat punishment as regulated in that article. As for the other side of the Law Administration Government also regulates about mechanism accountability to exists incoming discretion in category abuse later authority give rise to where are the losses to the country ? furthermore can boils down to implementation penalty administrative as regulated in Article 80 paragraph (4) of the Law Administration The government regulates that:

Official Violating government provision as referred to in paragraph (1) or paragraph (2) which gives rise to losses to state finances and the economy national, and/ or damage environment life charged penalty administrative heavy.

Although discretion seen as implementation authority related actives with freedom Act government, however in a way juridical implementation discretion still own limitations. One of the main ones ie related with objective held discretion that's what remains must subservient to the goal interest generally regulated in legislation with base principles good governance (Didik,2022), because consequence juridical with exists use discretion that is not based on goals regulation laws and principles general good governance (AUPB) results discretion the will push happen action arbitrary and abusive authority.¹⁰ There can be consequences impact on emergence loss to state finances.

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Arrangement system accountability criminal to discretion that gives rise state losses are carried out based on construction of Article 3 of the PTPK Law which contains element namely "... abuse authority, opportunity or existing facilities to him Because position or possible position harm state finances ..." later culminates in punishment based on threat punishment as regulated in that article. As for the other side of the Law Administration Government also regulates about mechanism accountability to exists incoming discretion in category abuse later authority give rise to where are the losses to the country ? furthermore can boils down to implementation penalty administrative as regulated in Article 80 paragraph (4) of the Law Administration The government regulates that:

" Official Violating government provision as referred to in paragraph (1) or paragraph (2) which gives rise to losses to state finances and the economy national, and/ or damage environment life charged penalty administrative heavy ".

In relation with base that, in context eradication corruption in Indonesia, Law Administration Government basically expected can become instrument important in prevent happen corruption, which was before approach eradication corruption, collusion and nepotism more directed at sanctions (sanctions *approach*) towards perpetrator corruption. In fact, detection to corruption can also be done through approach in a way *administrative procedural*.¹¹ Therefore Constitution Administration Government expected effective for push acceleration eradication follow criminal corruption with type / shape loss especially related state finances in sector public or maintenance government.

Based on issue the writer interesting problem in a way theoretical regarding with Prevention Act Criminal Corruption through Mechanism Enforcement Administrative to Abuse Authority In Form Discretion that results loss state finances with use method Study

law (*legal research*) which is one type study in do study to law, appropriate with position knowledge law as *sui generis* so that law is one of them consists from legal norms, and what is researched is the norm.

Theme raised in study this, basically related with implications arranged mechanism enforcement abuse authority in the Administrative Law Government that is conceptual has arranged previously in the PTPK Law, which p the has implications for the dualism of the accountability system to abuse generating authority loss state finances. a number of study previously has discuss about theme related like Dissertation in 2020 from Airlangga University with writer Chatarina Muliana with title Testing Element Abuse Authority by the State Administrative Court in Context Handling Act Criminal Examining corruption Review system accountability based on mechanism testing element abuse regulated authority in Law no. 30 of 2014 concerning Administration Government with the implications in the investigation process case corruption abuse authority. The focus of the discussion in study the different with study This is the focus of the discussion related with application principle specialist systematic in case abuse generating authority loss state finances as containing concept among those regulated in the PTPK Law and the Administration Law Governance.

Related themes with study this is also discussed in research by Nathalina Naibaho, et al with title *Criministrative Law: Developments And Challenges In Indonesia*, published Indonesian Law Review: Vol. 11: No. 1 of 2021, which is deep study the discussed about application law criminal in deed administration, which is different with study This one focuses on implementation administrative mechanisms as effort prevention follow criminal related corruption with abuse generating authority loss state finances.

Formulation Problem

Based on background behind problem the author Then formulate a number of problem the main thing will be studied in study this, among other things Mechanism Enforcement Administrative can made effort prevention exists follow criminal related corruption with Abuse Authority In Form Discretion that results loss finance country ?

RESEARCH METHODS

In this article writer use method Study law (*legal research*) where Prioritization to type study law (legal research), making material the law used in study This stick to the source bibliography. The approach used in study law this is approach legislation, approach conceptual, and approach case.

DISCUSSION

Developing the concept of *a* welfare state as an anti - thesis to concept of rule of law just classic role as guard night (*nachtwakerstaat*), had expand obligation government in arrange association life audience crowded (Adji,2010). In a welfare state, then tasks and roles government own field more work wide with objective main (Sudargo, 1983)For interest general.¹² Trend This has implications strong to stands out general prevention, where the state goes through various instrument his supporters follow involved as form protection public in a way more wide(Tuanakotta,2009). In terms of This is the law administration is instrument main from a state of law, which puts forward democracy and protection to rights basic man.¹³

Remember breadth room scope law administration as embodiment from function law in modern society, then product legislation in the field administration also experienced very significant development. Lots of it product legislation in the field administration has described by Administrative Law Professor Crince Le Roy, as something phenomena and influencing factors development law administration in the Netherlands, namely(Sri, 2014):¹⁴

- a. It happened expansion tasks government / rulers in a way gradually, which goes parallel with happen revolution industry ;
- b. With happen revolution industry, energy man replaced with power machine has give rise to problem social and demanding government /state for can overcome those that don't just limited as guard night (*nachtwakerstaat*) rather become a welfare state (*welvaarsstaat*).

See many product legislation in the field administration as effort government / internal state welfare its citizens, as Crince Le Roy called it as bullying law administration to field law civil, legal criminal and even constitutional ¹⁵law.

Connection causality change public the with the dependent variable specifically related with legislation in the field internal state administration level its implementation can look at the Law Administration The government within it load ideas thinking the new government came into being background behind preparation Constitution Administration Governance. In meetings Work with Commission II DPR RI for discussion Design Constitution Administration Government, on February 25, 2014.¹⁶Government in matter This is the Minister of Empowerment State Apparatus and Bureaucratic Reform in give information Government on Design Constitution Administration Government explained that's it basic and underlying reasons back desire give birth to Constitution Administration Government among them For strengthen concept and implementation of bureaucratic reform To use realize maintenance administration good government free from corruption, collusion and nepotism as well as serve public with Good.¹⁷

On context eradication corruption in Indonesia, Law Administration Government basically expected can become instrument important in prevent happen corruption, which was before approach eradication corruption, collusion and nepotism more directed at sanctions (sanctions *approach*) towards perpetrator corruption. In fact, detection to corruption can also be done through approach in a way *administrative procedural*(Eko,2011). ¹⁸Therefore Constitution Administration Government expected effective For push acceleration eradication follow criminal corruption with type / shape loss especially related state finances in sector public or maintenance government.

Until moment Here, do it criminal corruption in sector public especially related ones with element abuse authority as a later mode harm state finances are type follow criminal the most corruption happened, where recorded throughout in 2022, Apparatus Most Law Enforcers investigate corruption with type State Losses (Article 2 or Article 3 of the PTPK Law). ¹⁹That matter can seen in the picture under This: (Figure 1).

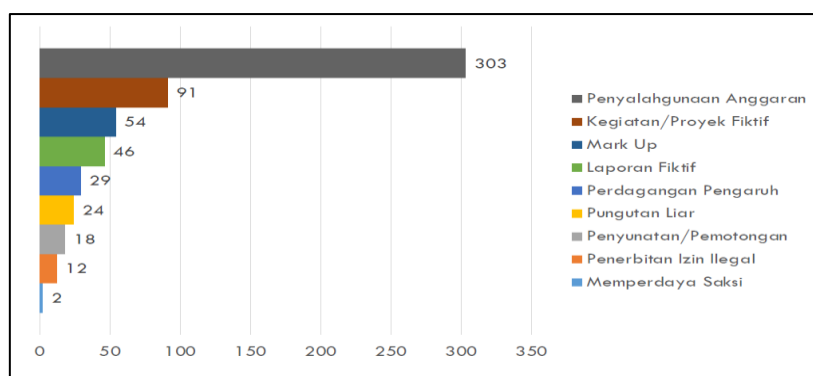


FIGURE 1
MAPPING CASE CORRUPTION BASED ON 2022 MODE²⁰

Based on this data is known that mode of abuse budget becomes the most dominant mode used by the perpetrator case corruption, which it already is clear are in the environment sector public. Mode of abuse budget the side by side with that data type follow criminal related corruption with loss state finances as type follow criminal the most corruption investigated. As data from ICW That in 2022 there will be not enough more than 522 (five hundred and twenty two) cases follow criminal related corruption with loss state finances with total losses Estimated year 2022 around Rp. 48.79 Trillion, which is then followed with follow criminal corruption type bribe bribe amounting to 37 (three tens seven) cases, 22 (twenty two) cases of extortion, and embezzlement in position a total of 4 (four) cases.²¹

Although type follow criminal detrimental corruption state finances are the largest happened, however it turns out tendency enforcement to loss the country's finances No correspond with effort return loss state finances. Like in Indonesia Corruption Watch or ICW notes(ICW,2022), in 2021 the number resulting state losses follow criminal corruption involving 1,404 defendants reached Rp. 62.9 Trillion. However, the amount return state losses imposed internal panel of judges payment of replacement money only around 2.2 (two point two) percent or equivalent with Rp. 1.4 Trillion.²²

Such conditions in view researcher Already is matter urgent For try did it effort prevention Because of course if explored in perspective political law formation PTPK Law as stated discussed in Chapter III, birth The PTPK Law is basically expected can answer challenge need law in frame prevent and eradicate follow criminal corruption with objective main from political eradication corruption is For return state finances or the country's economy and punish perpetrator.²³ Including to related actions with implementation something later authority harm state finances as regulated in Article 3 of the PTPK Law.

Related with effort prevention from side return loss state financial mechanism law state administration carried out by institutions supervisor maintenance government, among other things related with inspection management and responsibility answer state finances, up to moment This can said as mechanism effective administration in effort prevention loss state finances, meanwhile holding institution power highest in supervision state finance, namely the Financial Audit Agency (hereinafter called BPK) as authorized institution in a way attributive and constitutional For do counting and even declare exists loss state finances as stated in Article 10 paragraph (1) of the Law Number 15 of 2006 concerning the Financial Audit Agency.

Based on BPK report data, BPK has save state finances worth Rp. 229.29 Trillion from period 2005 -First Semester 2022. Total That originate including from submission assets / deposits to the state/ regional treasury worth Rp. 124.60 Trillion, correction subsidy

amounting to Rp. 66.08 Trillion, as well cost recovery correction worth IDR. 38.61 Trillion. Complete data report the can seen under This: (Figure 2)

Tahun	Nilai Penyerahan aset/ penyeteroran ke kas negara menindaklanjuti Rekomendasi BPK - Akumulasi dari periode 2005-Semester I 2022	Koreksi Subsidi berdasarkan tahun IHPS	Koreksi Cost Recovery	Total
Semester I 2022	2.677.269,02	1.621.323,20	1.335.487,19	5.634.079,41
2020-2021	12.756.507,24	6.635.844,43	6.311.974,49	25.704.326,16
2015-2019	29.756.630,90	22.507.364,48	22.133.575,42	74.397.570,80
2010-2014	31.872.775,10	21.219.546,42	7.874.756,11	60.967.077,63
2005-2009	47.537.993,05	14.099.923,22	953.717,43	62.591.633,70
Total 2005-Semester I 2022	124.601.175,32	66.084.001,75	38.609.510,63	229.294.687,71

FIGURE 2
RESCUE DATA STATE FINANCES BY BPK PERIOD 2005 -FIRST SEMESTER 2022²⁴

Rescue loss basically the country's finances of course intersect with authority evaluate exists deed detrimental state officials state finances are carried out in a way administrative by the BPK and authority enforcement law criminal, because of the BPK itself do his authority based on conditions in Article 10 paragraph (1) of the BPK Law states that the BPK assesses and/ or set amount state losses resulting from actions oppose law Good on purpose nor negligence committed by treasurers, BUMN/ BUMD managers, and institutions or other organizing body management state finances. In paragraph (2) it is regulated that Evaluation loss state finances and/ or determination obligated party pay change loss as referred to in paragraph (1) is stipulated with BPK decision. As for ensure implementation payment change losses, the BPK is authorized monitor:

- Completion change state/ regional losses determined by the Government to civil servants are not treasurer and other officials ;
- Implementation imposition change state/ regional losses to treasurers, BUMN/BUMD managers, and institutions or other governing body state finances that have determined by the BPK; And
- Implementation imposition change specified state / regional losses based on decision the court has have strength law still.

Which is the result monitoring as referred to in paragraph (3) is notified in a way written to the DPR, DPD and DPRD accordingly with his authority.

As for the provisions about follow-up from exists determination loss state finances by the BPK, has arranged the mechanism based on Constitution Number 15 of 2004 concerning Inspection Management and Responsibility of State Finances, which if subject established law For replace loss is Treasurer, provisions governing it there is in Article 22 of the Law Number 15 of 2004 meanwhile For subject law in the form of a Minister/ leader institutions /

governors / regents / mayors / directors state companies and other governing bodies state finances, then mechanism change loss arranged in Article 23 of the Law Number 15 of 2004.

In Article 13 of the Law Number 15 of 2004 itself has arranged that besides inspection on management and responsibility answer state finances (*general audit*) BPK as examiner is also given authority For do inspection investigative in frame reveal exists indication state/ regional losses and/ or element criminal. Which is related with with inspection *general audit* along with follow-up has arranged in Republic of Indonesia Financial Audit Agency Regulation Number 2 of 2017 concerning Monitoring Implementation Act Carry on Recommendations for Audit Results from the Financial Audit Agency, meanwhile provision about inspection investigation by the Indonesian Financial Audit Agency can seen in Republic of Indonesia Financial Audit Agency Regulation Number 1 of 2020 concerning Inspection Investigative, Calculation State/Regional Losses, and Gifts Expert Statement.

In its development besides through results BPK examination, efforts prevention recovery loss state finances can also seen based on regulated provisions in Constitution Administration Governance, which is a loss state finances emerged as part from inspection about There is or not abuse authority exercised by the Agency and/ or Official Governance, supervision the carried out by the unit specifically mentioned Apparatus Internal government oversight, elements from APIP itself among other things as regulated in the Regulations Government Number 60 of 2008 concerning System Government Internal Control, namely (BPKP), Inspectorate General (Itjen) / Main Inspectorate (Ittama)/ Inspectorate located under and responsible answer to the Minister/ Head of Non- Departmental Government Institutions (LPND), Inspectorate Government province in which it is located under and responsible answer to Governor, and; Inspectorate Government Regency /City located under and responsible answer to Regent / Mayor.

Things that become ratio legis in formation Constitution Administration Government especially related ones with regulation of norms in Article 21 of the Law Administration The government wants it mechanism administrative used as instrument supervision with nature and/ or function prevention (*preventative*) so as not to happen abuse authority in decision and/ or actions (discretion) carried out by officials administration government (administrative mal action).

As for inside operate task service public which results in action criminal corruption To use strengthen concept and implementation of bureaucratic reform for its realization maintenance administration good government free from corruption, collusion and nepotism as well as service good public that (Romli, 2015), then according to researcher arrangement the can bring change direction political law related enforcement law in eradication follow criminal corruption in this country form prevention (efforts *preventive*) the same importance with enforcement corruption, because prevention corruption is *condition sine qua non* in enforcement corruption.²⁵

Mechanism return loss state finances as part from results APIP inspection can seen in provisions of Article 20 paragraph (2) of the Law Administration The government regulates that results supervision apparatus government internal supervision as referred to in paragraph (1) in the form of: a. No there is error ; b. there is error administrative ; or c. there is error administrative cause loss state finances. If by APIP assess there is Abuse Harmful authority state finances by the Agency and/ or Official Governance, then as arranged in Article 20 paragraph (4) then, " carried out return loss state finances no later than 10 (ten) days Work counted since decided and published results supervision." If there is element abuse authority,

then as regulated in Article 20 paragraph (6), then Return state losses as referred to in paragraph (4) is charged to Official Governance.

Rating result to abuse authority Alone Then can done testing based on Article 21 of the Law Administration Government that contains understanding exists chance laws provided by law to official government (norm subject) is alleged do abuse authority (good in decisions, actions and/ or discretion) in operate task service public (administration government) departed from object to results APIP supervision takes the form of exists error administrative cause loss state finances, for can finish in a way administrative with submit application testing There is or No There is element abuse authority from decision and/ or the action (discretion) he performs referred to the State Administrative Court. So that in context Here, official government does it abuse authority, besides own obligation For return loss state finances, on the other hand will also worn penalty administration heavy as specified in Article 80 paragraphs (3) and (4) in conjunction with Article 81 paragraph (3) in conjunction with Article 86 of the Law Administration Governance.

There is a mechanism evaluation abuse authority by state officials indeed become problematic Because relate with follow criminal corruption with type / shape loss state finances in it specifically about problem point touch on two mechanisms ie administrative which leads to competence Justice between State Administrative Court and mechanisms enforcement the crime that has become competence Justice Act Criminal Corruption. And to above That The Supreme Court indeed has publish Regulation Supreme Court Number 4 of 2015 concerning Guidelines Proceedings in Assessment Element Abuse Other authority as complement lack procedural law, also becomes guidelines technical enforcement the law. In the norms, Article 2 of Perma Number 4 of 2015 determines that:

- (1) Court authorized receive, check, and disconnect application evaluation There is or No There is abuse authority in Official Decisions and/ or Actions Government before there is a criminal process.
- (2) Court new authorized receive, check, and disconnect evaluation application as referred to in paragraph (1) after exists results supervision apparatus government internal supervision

Based on provision in Article 2 and Article 3 of PERMA RI Number 4 of 2015, then handling testing abuse authority by Officials The government that gave rise to it loss related state finances with follow criminal corruption can depicted in a way schematic on the schematic(M. Ikbar,2020): (Figure 3)

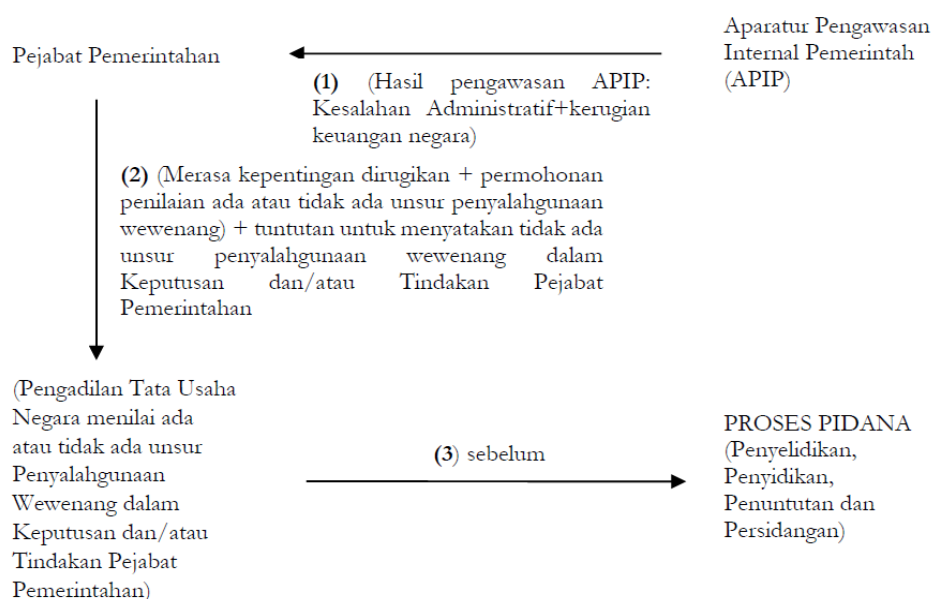


FIGURE 3
HANDLING AND SETTLEMENT SCHEME TESTING ABUSE AUTHORITY BY OFFICIALS
GOVERNMENT WITH SUBJECT THE NORM THAT IS OFFICIAL GOVERNMENT²⁶

There is a regulated scheme based on the norms of Article 21 of the Law Administration Governance and Regulation Supreme Court of the Republic of Indonesia Number 4 of 2015 it turns out precisely give rise to problematic the law that makes it Why mechanism the No can executed. That matter related with Problematic conflict intersection competence of the two courts consequence the phrase “ before the existence of criminal proceedings ” which is not determined in a way clear by the Regulations The Supreme Court of the Republic of Indonesia Number 4 of 2015 can just happen for example in illustration as as follows: by administration There is report or findings from public or NGO to competent authorities (police, prosecutor's office or KPK.RI), the competent authority the do excavation or follow carry on on report or findings the with call parties related For requested information including si Official A reported. Then Official A uses right the law as arranged in Constitution Administration Government For submit application evaluation element There is or No There is abuse authority based on results supervision from APIP at the State Administrative Court. Based on illustration that, then can seen possible problems appear ie *First*, what is the administrative and investigation process to Official A that is follow carry on on report or findings the with call parties related For requested information including si Official A has enter category of criminal proceedings ? *Second*, if Already categorized as criminal proceedings, then submission application official A will stated No accepted by the State Administrative Court (PTUN not authorized) with reason Already Are there criminal proceedings ?²⁷

In view researcher For finish problematic that is what is needed is exists more norming firm in regulation legislation in matter it's on the level Constitution. Namely with adding new related norms with preference evaluation abuse authority by APIP and its testing

at PTUN before run it mechanism punishment. The schematic special has arranged in article 385 Law 23 of 2014 concerning The regional government is responsible that:

- (1) Society can convey complaint on conjecture irregularities committed by officials state civil servants in regional agencies to Apparatus Government Internal Supervisor and/ or apparatus enforcer law.
- (2) Apparatus Internal Government Supervision must do inspection on conjecture irregularities reported by the public as referred to in paragraph (1).
- (3) Apparatus enforcer law do inspection on complaints submitted by the public as referred to in paragraph (1), after moreover formerly coordinate with Apparatus Internal Government Supervisor or institution government non-ministerial in charge supervision.
- (4) If based results inspection as referred to in paragraph (3) is found proof exists nature of deviation administrative, more processes carry on submitted to Apparatus Internal Government Monitoring.
- (5) If based results inspection as referred to in paragraph (3) is found proof exists nature of deviation criminal, more process carry on submitted to apparatus enforcer law in accordance provision regulation legislation.

Based on pattern coordination the, flow solution abuse detrimental authority state finances can started from report results inspection / complaint community / report to Apparatus Later Law Enforcement followed up with coordination against APIP for evaluate There is No abuse detrimental authority state finances, where when found adnaya element criminal then APIP can report matter the to APH for done investigation. Besides that related with results inspection loss state finances, an investigation was also carried out after exists evaluation from BPK based results inspection against adnaya loss state finances. With thereby second mechanism (APIP and BPK) can integrated with mechanism enforcement follow criminal corruption, an ingrained mechanism the can seen in schematic below This: (Figure 4)

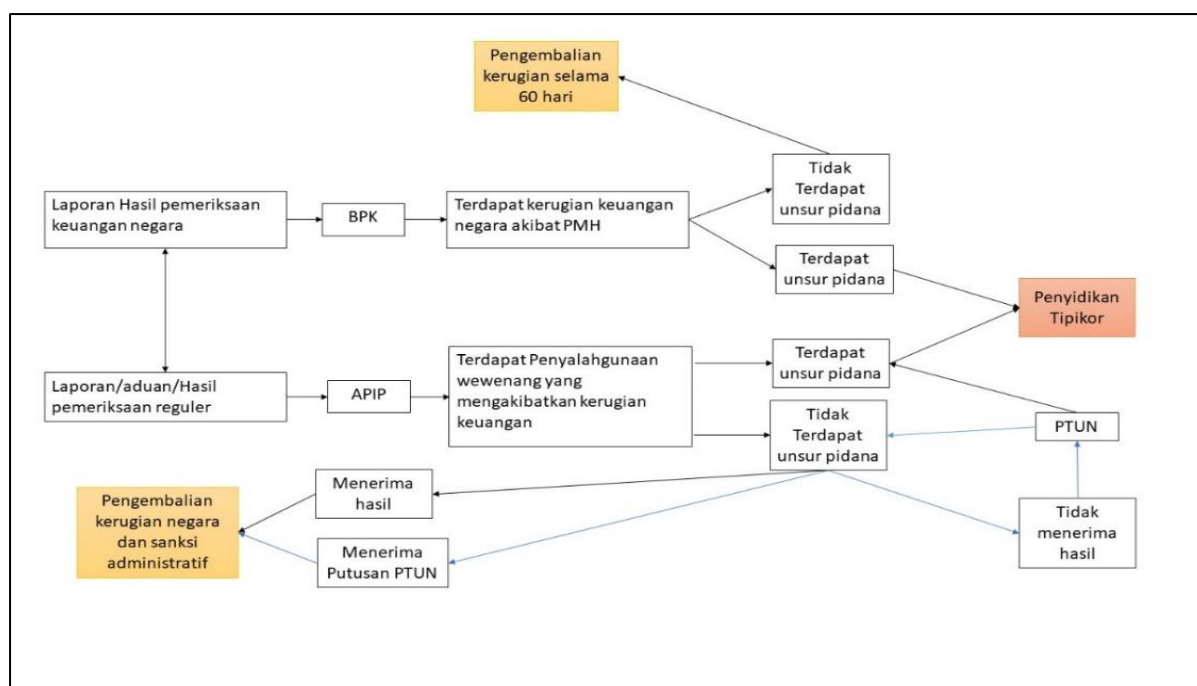


FIGURE 4
GRADING SCHEME ABUSE INTEGRATED AUTHORITY WITH ENFORCEMENT ACT CRIMINAL CORRUPTION

Based on scheme evaluation abuse authority as well as evaluation loss state finances by an integrated BPK with mechanism enforcement follow criminal corruption specifically in handling Article 2 and Article 3 of the PTPK Law, then effort prevention No only can done to abuse authority related to governance government but also prevent exists loss more state finances big Because No its effectiveness return loss state finances if done direct with approach repressive through criminal mechanism.

As for apply scheme the researcher opinion need there is a new norm in arrangement Constitution Administration Later government become bridge liaison with proposal addition of explanatory norms to Article 3 of the PTPK Law which reconceptualizes element abuse authority in the PTPK Law. Where are the necessary connecting norms arranged in Constitution Administration Government can arranged with add provision in Article 21 of the Law Administration Government for example becomes Article 21 A, with proposal arrangement as follows:

- (1) Based on results inspection by the authorities Internal Government Supervisor as referred to in Article 20 is found proof exists nature of deviation criminal, more process carry on submitted to apparatus enforcer law in accordance provision regulation legislation ;
- (2) In terms of Official Government submit application to Court For evaluate There is or No There is element abuse Authority in Decisions and/ or the action as intended in Article 21, More process continued to be carried out by the authorities Top Law Enforcement exists findings proof exists nature of deviation criminal done after exists testing by the Court.

As for what is meant scheme evaluation abuse integrated authority that, you can known enforcement process law the crime in question is an investigative process as regulated in Article 1 point 5 of the Criminal Procedure Code, because related with the process for seek

and find something alleged event as follow criminal To use determine can or or not done investigation.

Apart from that, determination There is or not proof nature of deviation criminal when did it inspection by APIP resulted need exists explanation about indicator characteristic deed official government that leads to violations law criminal, p the related with proof beginning about indicative action exists intention evil by someone official which government can in form *kickback* or *quid pro quo*, gratification, bribery or acquisition riches others who don't legitimate, deviation order publicity and morality.

Arrangement the in view writer can strengthen effort prevention happen follow criminal corruption Article 2 and Article 3 of the PTPK Law in the sector public with use instrument administrative. This is a true strategy currently developing in various countries. *United Nations Office on Drugs and Crime* (UNODC) itself has put forward about importance use of administrative instruments For prevent happen follow criminal corruption, which with instrument administrative can identified factors risk happen corruption in maintenance government(United Nations,2020), which is next can an effective strategy is formed For prevent happen follow criminal corruption the. ²⁸As for with use instrument administration a number of risk can identified like table under This (Benner and de Haan, 2022): (Table 1)

Table 1 VULNERABILITIES CORRUPTION GENERAL IN ORGANIZATION SECTOR PUBLIC²⁹		
<i>EXTERNAL Relations with the private sector or the public Undue influence, personal favoritism or bribery affect decisions</i>	<i>Reasons For Contact</i>	<i>Examples Of Vulnerabilities</i>
	<i>Collect money</i>	<i>Exemption/ undercollection of taxes, license fees, import duties, assessments</i>
	<i>Issue contracts/orders</i>	<i>Favoring one supplier in preparation of tender or contract award, unnecessary change orders</i>
	<i>Pay out money or benefits</i>	<i>Benefit conditioned on kickback or favor, overpayment</i>
	<i>Issue permit/ licence /approval</i>	<i>Passports, building permits and inspections, drivers' licenses</i>
	<i>Enforce law or rule</i>	<i>Violation not reported or false report threatened, investigation or prosecution dropped</i>
<i>INTERNAL Management of public</i>	<i>Type Of Assets</i>	<i>Examples Of</i>

<i>assets Embezzlement, fraud, loss due to corruption</i>	<i>Money</i>	<i>Vulnerabilities</i>
	<i>Equipment</i>	<i>Receipt of licenses and admission funds, expense reimbursement, salary/overtime</i>
	<i>information</i>	<i>Organization of equipment or stockpiles</i>
		<i>Theft/sale of confidential information regarding the tender or the organization's future acquisitions, national security data</i>

If studied based on principle existing laws moment this, implementation preference instrument administration before did it enforcement law criminal related tightly with what is called with Principle Related Una -Via with choice between penalty criminal and sanctions administrative. This is extension from principle *ne bus in idem* in matter Where there is prohibition somebody punished twice. According to opinion researcher, principle una via is the most important. Where are the provisions legislation must made For prevent possibility accumulation penalty criminal and sanctions administrative. Things that become vulnerability in matter happen abuse generating authority loss state finances.

Application principle una via inside deed abuse generating authority loss basically the state's own finances in line with principle ultimate the remedium becomes principle general in law criminal requirements moreover formerly effort giving other sanctions (non-penal), in the form of: change loss, fine, warning or matter other before it uses means law criminal in the form of prison (bodily), which is specific to actions abuse resulting authority loss state finances, instruments criminal can returned in essence that is For give rise to effect *psychologyschezwang* or coercion psychological, meaning exists the sentence imposed to Official The government does it abuse generating authority loss state finances will gives fear to Official another government.

CLOSING

Conclusion

As for if studied based on principle existing laws moment this, implementation preference instrument administration before did it enforcement law criminal related tightly with what is called with The related Una-Via principle with choice between penalty criminal and sanctions administrative. This is extension from principle *ne bis in idem* in matter Where there is ban somebody punished twice. According to opinion researcher, principle una via is the most important. Where are the provisions legislation must made For prevent possibility accumulation penalty criminal and sanctions administrative. Things that become vulnerability in matter happen abuse generating authority loss state finances.

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Suggestion

In this article writer recommend a number of related matters with theme discretion official detrimental government state finances in particular about issue exists slice between oppose law administration with melawah law criminal, where writer recommend need there is a new norm in arrangement Constitution Administration Later government become bridge liaison with proposal addition of explanatory norms to Article 3 of the PTPK Law which reconceptualizes element abuse authority in the PTPK Law. Where are the necessary connecting norms arranged in Constitution Administration Government can arranged with add provision in Article 21 of the Law Administration Government for example becomes Article 21 A, with proposal arrangement as follows:

- (1) Based on results inspection by the authorities Government Internal Inspector as referred to in Article 20 is found proof exists nature of deviation criminal, more process carry on submitted to Apparatus Law Enforcement is appropriate provision regulation legislation ;
- (2) In terms of Official Government submit application to Court For evaluate There is or No There is element abuse Authority in the Decision and/ or Action as intended in Article 21, More process continued to be carried out by the authorities Enforcement law on exists findings proof exists nature of deviation criminal done after exists testing by the Court ;

As for what is meant scheme evaluation abuse integrated authority that, you can known enforcement process law the crime in question is an investigative process as regulated in Article 1 point 5 of the Criminal Procedure Code, because related with the process for seek and find something alleged event as follow criminal To use determine can or or not done investigation.

END NOTE

¹Seppo Tiihonen, "Central Government Corruption in Historical Perspective", Seppo Tiihonen (ed.), *The History of Corruption In Central Government*, IOS Press, Amsterdam, 2003, p. 2.

²The Global Competitiveness Report, 1996 as quoted in Seppo Tiihonen, *Ibid*, p. 2.

³*Ibid*.

⁴Susanna Thede and Patrik Karpaty, "Effects of corruption on foreign direct investment: Evidence from Swedish multinational enterprises", *Journal of Comparative Economics*, accessed from <https://doi.org/10.1016/j.jce.2022.10.004> , p. 1.

⁵Anzi, 1998 and Rose-Ackerman, 1999, as quoted in Seppo Tiihonen, "Central Government Corruption in Historical Perspective", Seppo Tiihonen (ed.), *The History of Corruption In Central Government*, IOS Press, Amsterdam, 2003, p. 3.

⁶Supardi, *Plunder Treasure Results Corruption Yang Legal Perspective Fair*, (Depok, Prenada Media Group, 2018), p. 28.

⁷Article 4 of the PTPK Law.

⁸Indriyanto Seno Adji, Paper with Title " Corruption: *Criminalization Policy or Freedom Discretionary ?* " This was conveyed at the meeting Technical Work (Rakernis) Field Act Criminal 2016 Special, with Theme " *Actions Crime & Liability Crime* ", on Thursday, September 22 2016, 08.00-10.00 WIB in the Hall on the 6th Floor of the Jampidsus Building Indonesian Attorney General's Office, Jalan Sultan Hasanudin No. 1, Kebayoran Baru, South Jakarta.

⁹*Ibid.*

¹⁰Didik Hery Santosa, Use of the Principle of Discretion in Decision Making, e- Journal <http://www.bppk.kemenkeu.go.id/publikasi/article/418-article-soft-competency/23181-cepatan-asas-diskresi-dalam-pengampilan-kebangunan> , accessed on July 13 2022, at 22.49.

¹¹Eko Prasajo, (*Draft*) *Law Administration Government For the Development of State Administrative Law and the Creation of Good Governance*, Technical Guidance for PTUN Judges March 31-April 2 (Jakarta, 2011). March 31-April 2, p. 2.

¹²Sudargo Gautama, *Understanding the State of Law*, Alumni, Bandung, 1983. 1983:10).

¹³(Philipus M, Hadjon, et al, *Administrative Law and Good Governace*, Publisher Trisakti University, Jakarta: Print Second, 2012, p. 5 – 6.

¹⁴Sri, Soemantri, *Indonesian Constitutional Law*, Thoughts and Views, TeenRosdakarya, Bandung, Print First, 2014. Pg. 351.

¹⁵*Ibid.*, p. 354.

¹⁶Information Government on Design Constitution About Administration Government presented at the Meeting Work with Commission II DPR-RI For Discussion Design Constitution About Administration Governance, 25 February 2014, accessed from www.parlemen.net, on December 25, 2023.

¹⁷Idea thinking government the stated in provisions of Article 3 letters b and c of the Law Administration The government stated that objective Constitution Administration Government is For create certainty law and prevention happen abuse authority (preventive). Against two goals This of course very relevant with enforcement law eradication related corruption with element abuse authority and elements loss state finances as in provisions of Article 3 of the Eradication Law Act Criminal More corruption focuses on enforcement (repressive), in M. Ikbar Andi Endang, Legal Ratios and Legal Implications of Testing Abuse Authority According to Article 21 of the Law Administration Governance, *Journal of Legal Affairs Vol. 3 No. February 1, 2020*, p. 73.

¹⁸Eko Prasajo, (*Draft*) *Law Administration Government For the Development of State Administrative Law and the Creation of Good Governance*, Technical Guidance for PTUN Judges March 31-April 2 (Jakarta, 2011). March 31-April 2, p. 2.

¹⁹ICW, Enforcement Trend Monitoring Results Report Corruption In 2022, accessed from www.antikorruption.org on December 25, 2023.

²⁰*Ibid.*

²¹*Ibid.*

²²Data accessed from <https://www.kompas.id/baca/polhuk/2022/05/22/icw-buat-only-22-persen-kerugian-negara-berhasil-returned> on 25 December 2023.

²³Article 4 of the PTPK Law.

²⁴Financial Audit Agency, Report BPK RI Annual 2022, BPK, Jakarta, 2022, p. 21.

²⁵Romli Atmasasmita, *Abuse Authority By Providence Country: Something Notes Critical of Republic of Indonesia Law Number 30 of 2014 concerning Administration Government Connected With Republic of Indonesia Law Number 20 of 2001 concerning Amendments to Republic of Indonesia Law Number 31 of 1999 concerning Eradication*, 62nd IKAHI Anniversary National Seminar (Jakarta, 2015).

²⁶M. Ikbar Andi Endang, Op. Cit, p. 73.

²⁷*Ibid.*

²⁸United Nations Office On Drugs And Crime, *State of Integrity: A Guide On Conducting Corruption Risk Assessments In Public Organizations*, UNITED NATIONS, Vienna, 2020, p. 13.

²⁹Benner and de Haan, Netherlands Court of Audit, SAINT: A Tool to Assess the Integrity of Public Sector Organizations, in *Ibid.*

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