# Elements of the corruption crime (element analysis of authority abuse and self-enrich and corporations in Indonesia)

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**Abstract.** In effect the authority abuse very closely relates to the presence of invalidity (disability juridical) of a decision or government action/state officials. Sadjijono, by citing the opinion of M. Hadjon Phlipus suggests that defective judicial decision or government action/state officials generally involves three main elements, namely the element of authority, the element of the procedure and elements of substance, thus flawed judicial action state officials can be classified into three kinds , namely: disability authority, defective procedure and substance defects. The three of them are the essence of the onset authority abuse. Their acts that profitable and or self-enrich or another person or entity covering for the authority abuse or opportunity. These criteria have been expanded because there is a term for position and so on, including bribery, both among non-civil and public servants. Reciprocally with the given gifts and the promise of the new legislation, the criteria have been expanded.

**Keywords:** corruption, power abuse, self-enrich

## 1. Introduction

In the earth, corruptors are well-educated people and relatively has a position (bureaucracy), in principle any corruption in the bureaucracy which has the same characteristics, namely the use of power by government officials to benefit themselves or a group, in which case such actions deviate from oath of office and applicable law. In terms of financial harmed, this corruption divides into two; State financial harm and society financial harm in individual categories [1].[1]

Corruption charges against several high-ranking State have similar principle, namely that the offenses charged is closely related to positions that carried when it is done. Position *(occupation),*in which there are a number of *power and authority* (power and authority), became the main instrument was the possibility of the alleged crime can be executed offenders. Because, always closely related to

[1] Tb. Ronny Rahman Nitibaskara 2007, *Law Enforce Use Law*, PT Kompas Media Nusantara, Jakarta, page 26.

the position, then corruption are often classified as *occupational crime* (crime office), namely crimes requires a position or type of work that is protected by law.

The definition of corruption according to Law No. 31 of 1999 and Act No. 20 of 2001, it can be distinguished from two aspects, namely the active corruption and passive corruption. The active corruption are: (1) unlawfully self-enrich or another person or a corporation that could harm the financial or economic state, (2) the purpose, abusing authority, opportunity or means of their office or position, (3 ) to give a gift or a promise by considering the power or authority of the office or position, (4) attempt, abetment or conspiracy, (5) give or promise something with the intention that acts or omissions, (6) gives something contrary to responsibility, (7) gives a promise, (8) intentionally let the cheating, (9) deliberately defraud or securities.

While passive corruption, among others: (a) accept gifts or promises because of acts or omissions, (b) accept submission or needs to let the cheating, (c) receiving gifts or promises, (d) any gift or promise given to moving to do something, (e) receiving gratuities are related to the position.

Article 3 of Law No. 31 of 1999 on the Eradication of Corruption( "Law on Combating Corruption") as amended byAct No. 20 of2001:

"Any person who with the intention of enriching himself or another person or a corporation, authority abuse, opportunity or means available to him because of the occupation or positions that could harm the state finance or economy of the state, shall be punished with imprisonment for life or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine at least Rp50,000,000.00 (fifty million rupiah) and at most 1,000,000,000.00 (one billion rupiah).

"However the explanation of this article does not clarify the meaning of" authority abuse". There simply explained that the word "can" before the phrase "detrimental to the finances or the economy of the country" means the same as the explanation of Article 2 of Law on Combating Corruption, that corruption is a formal offense, namely the existence of corruption is quite the fulfillment of the elements of actions formulated, not by the occurrence of consequences.

Another theory about the power abuse is also mentioned in the Supreme Court Decision No. 977 K / PID /2004. In the decision, it is said that the definition of "authority abuse" was not found explicitness in the Criminal Law, the Criminal Law may use the same definition and the word contained in or derived from other legal branches. It departs from the criminal law having autonomy to provide a different understanding with the understanding contained in the branches of any other law, but if the Penal Code does not specify otherwise, then it is used the notion contained in the branches of other law*(De Autonomie vanBET materiele*Strafrecbt).

Still comes from the same judgment, this doctrine accepted by the North Jakarta District Court which subsequently confirmed by the Supreme Court ruling. No.1340 K / Pid / 1992 dated February 17, 1992 ( "SC Decision") as their corruption case known as the case "Export Certificate". Supreme Court takes over the definition of "authority abuse" that exist in Article 53 paragraph (2) both Law No. 5 of 1986 concerning the State Administrative Court( "Law on Administrative Court"), which has used its authority for any purpose other than the purpose given authority the otherwise known as*"Detournementde*pouvoir".

Decision that the SC is also discussed about understanding *Detournement de*pouvoir. According to Prof. Jean Rivero and Prof. Waline, the definition of authority abuse in the Administrative Law can be interpreted in three forms, namely:

1. Authority abuse to perform acts contrary to the public interest or for the profitable of personal interests or groups;
2. Authority abuse in the sense that the official action was devoted to the public interest, but deviated from the purpose of any such authority granted by law or other regulations;
3. Authority abuse in the sense of misusing the procedures that should be used to achieve certain goals, but have used other procedures to be implemented.

## 2. Evaluation

### *2.1 Indicators Elements of Corruption Authority Abuse*

The birth of state concept is not apart of a series efforts to fulfill the basic needs of human life. As a social creature, a human would never be able to fulfill their own needs without the help of others. On the basis of the effort to fulfill human needs, human beings require the same cooperation and interaction with other entities. The existence of basic human needs then encourage the formation of a social institution that can provide guidance, control and unify (integration) members of the public[2].[2]

At first the idea, the purpose and function of the state is such a state of law conceived as liberal (nachwachter staat/ state as a night guard). But along with the times and the increasingly complex human needs, the concept of constitutional state developed into the concept of a formal law state *(formele rechtsstaat),* country material law (materiele rechtsstaat) to the idea of the state of prosperity (welvarstaat) or countries that serve the public interest *(social service state or socialeverzorgingsstaat* [3].*[3]*

The criminal law is a public law, so that the ultimate goal of the criminal law is to protect the interests of society as a collectivity of acts that threaten or even harm whether it comes from individuals or groups of people (an organization).

An act can be said as a criminal act if such act has been set in legislation. This is in line with the principle of legality, which in principle contains three (3) basic principles [4]:[4]

a. There is no punishment without law;
b. There is no punishment without a crime;
c. There is no crime without prior criminal legislation.

Therefore, please note that, to find out their criminal acts it must first be defined in the legislation criminal acts that are prohibited and accompanied by sanctions. Sociologically, the nature of any corruption is a violation of the trust placed by the public. It can be said that the characteristics of the corruptor of corruption, including adequate education, have a high social status, rich and influential in society, as well as having the authority either in government or in private entities, but it should be remembered that not everyone who has these characteristics by itself to corruption, because corruption must be completed by the authority and opportunity to do so [5].[5]

According Soejono Soekanto corruption symptoms appear which is characterized by their use of power and public authorities, to specific personal or group interests, the nature of his actions violate the law so that it can cause loss to the state or the country's economy as well as the individual or society [6].[6]

In accordance with Article 3 of Law No. 20 of 2001 concerning amendments to the Act No. 31 Year 1999 on Eradication of corruption that: "Any person who with the intention of enriching himself or another person or corporation, authority abuse, opportunity or means available to him because of the potitions that could harm the state finance or economy of the state, shall be punished with life imprisonment or imprisonment of at least 1 (one) year and a maximum of 20 (twenty two) years and a fine of at least 50.000.000,00- (fifty million rupiah) and at most Rp 1.000.000.000.00- (one billion rupiah).

In Act No. 20 of 2001 on amendments to the Law No. 31 Year 1999 on Corruption Eradication, there are some chapters regulating the abuse of public office:

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[2]K. Malinowski was quoted Judistira Garna, *Social Sciences; Basic, Concept,*Positions,(Bandung: Graduate Padjadjaran University, 1996), page 55.

[3] Padmo Wahjono, *Cultivating*1945, *(Jakarta:* IND-Hill-*Co., 1991),* page 73.

[4]Ismu Gunadi & Jonaedi Efendi *Quickand easy understanding the criminal* law, Prenadamedia Kencana Group, 2014, page 11.

[5] Marwan *Mas, Eradication of*Corruption,Ghalia Indonesia, 2014, page 3.

[6] Marwan Efendy. *Corruption and the National Strategy for Prevention And*eradication,Pres GP Group, 2013, page 26.

a. Article 9 Contitution of Corruption Eradication [7]. [7]
b. Article 10 letter a Contitution on Corruption Eradication.
c. Article 10 letter b Contitution on Corruption Eradication.
d. Article 10 letter c Contituiton on Corruption Eradication.

Futhermore in Article 8 of the Law on Corruption Eradication explained that the definition of abuse in office is an act committed by government officials with authority to be fraud on the financial statements, destroy evidence and allow others to eliminate or destroy evidence with intention of enriching himself at the expense of the State finances [8].[8]

The decision and determination (beschikking) is a unilateral legal action in the field of government by means of the ruling by the special authority. In the decision making context of an administrative nature in the form of beschikking, decision bodies/officials of the state administration protected by the principle of prae sumptio iustae causa which is interpreted as the government's decision should always be considered correct and valid and be implemented before any legal decision that is legally binding which states that the decision does not apply. Based on the principle of the presumption of legitimate (rechtmatig / prae sumptio iustae causa) the decision of the State Administrative (KTUN) should be considered legally valid until the court decision to the contrary. The implementation of this principle intended for administration tasks, especially in order to provide protection, public service and the welfare for the public to walk [9]. [9]

In contrast to the government's actions in the form of public law beschikking born of their special authorities, government legal action in the form of regulatory policy can not be tested wetmatigheid, because it forms the government action is no statutory basis for making decisions that policy rules.

Tests on more policy rules delivered on doelmatigheid, where in the test stones are general principles of good governance. In practice, this form of government action is given the format in various forms such as decisions, instructions, circulars, announcement and others. Because there is no administrative standards or basic legislation in making regulatory policy, then in practice is often regarded as the administrative regions of gray. The decision making mechanism was used principle Freies ermessen (mechanism discretion). In this form of legal action often makes government officials/ state administrative bodies stuck and trapped in the potential criminalization, when a discretionary decision is taken allegedly causing losses to the state. According Supandi, one thing is for sure, the policy makers are not fortune-tellers who can wander into the future. Right or wrong policy can only be known after the policy making (post factum). Wrong policy is not duly sanctioned. When this happens, the policy makers would not date to take a decision unless the policy taken is not really certainly wrong.

In carrying out the activities of government, a government official / state administration bodies actually become the personification of the state because in theirselves pinned "potition" as a source of legitimate authority of the state representation. E. Utrecht revealed that the "potition" is a supporter of the rights and obligations, as a subject of law (persoon) authorized to perform legal acts (rechtshandelingen) either under public law or under the authority of law privat.13 In order that a authority can be executed, then the "potition" as the personification of rights and liabilities requires a representative who is called the "official" that "man" or "entity" in other words can be called also by the term "office holders". With the mediation officer, positions can do its rights and obligations. In this context Logemann views the importance of absolute separation between the person acting as the "official" and as human as prive. This separation is important whenever an officer named as a suspect of corruption, in order to maintain the glory of his position as the personification of the state, an official must abandon his post during the legal process.

The debate over which agency the authority to examine presence or absence of authority abuse committed by a public official is an old debate has not even reap consensus among legal experts.

[7] Article 9 of the Law on Corruption Eradication.

[8] Article 8 of the Law on Corruption Eradication.

[9] *Supervision of Government Actions Against the Administration of Justice,* (Bandung: Alumni, 2004), page 86.

However, the enactment of Law No. 30 of 2014 on Government Administration at least provide an answer to the debate. According Supandi, authority abuse (detournement de pouvoir) is a state administrative law concept that is much misunderstood in interpret. In practice detournement de pouvoir often confused with acts of arbitrary (willekeur / abus de droit), misuse of facilities and opportunities, unlawfully (wederrechtelijkheid, onrechmatige daad), or even expand it by any act that violates the rules or policies of any kind and in any field,

*2.2 Self-Enrich Concept or Corporate Causes Corruption in Indonesia.*

The understanding enrich and or beneficial, contained in Article 2 and Article 3 of Law No. 31 of 1999 jo. Law No. 20 of 2001, in particular is limited to the "elements enrich or benefit themselves or another person or a corporation", in the sense that the other elements contained in Article 2 and Article 3 of Law No. 31, 1999 jo. Law No. 20 of 2001 should have been first considered and declared legally and convincingly, so that the elements of the other corruption [10].[10]

In principle, there are two (2) formulation is important in understanding the issue of corruption, among others:

1. Against the law to self-enrich, or another person or corporation, and can harm the state finances is corruption.
2. Abusing authority to benefit themselves or any other person or corporation, and can harm the state finances is corruption.

Based on the formulation the above, it can be regarded as an act of corruption if it meets the overall elements as follows:

a. The act to enrich himself, others, or corporation that is done against the law.
b. The act of causing losses to the state finance and economy of the country.

For the formula above, then the understanding of the legal restrictions against corruption should be interpreted as already includes acts reprehensible by society's sense of justice should be prosecuted and convicted. While the definition of harm is synonymous with being a loss or be reduced [11] [11], and thus it is an element of state loss is synonymous with being the country's financial harm or reduction in state finances.

According to the law of corruption, the notion of enriching himself or another person or a corporation to be associated with the Article 37 paragraph (3) and (4) Law No. 31 of 1999 and Section 37A of paragraph (1) and (2) legislation No. 20 oF 2001:

1. the defendant is required to provide information about the entire possessions and property of spouses, children and property of any person or corporation who allegedly has links with the case in question.
2. In the event that the defendant can not prove the wealth, which is disproportionate to his income or source of additional wealth, such information can be used to strengthen existing evidence that the defendant has committed the crime of corruption.
3. This chapter is evidence of "clues" in a corruption case, every person charged with a criminal offense of corruption shall prove otherwise on his property that has not been indicted, but is also thought to have originated from corruption offenses (Article 38B paragraph (1) law number 20 in 2001 [12]. [12]

So that if the defendant can not prove that the property was obtained not because of corruption, then the property is considered to be derived from corruption. Provisions of this law is the burden of proof as referred to in Article 38 B (2) Law No. 20 of 2001.

[10] Robert Klitgaard,*"CombatingCorruption"*,Translation Hermoyo, Torch Foundation Jakarta, 1998, page 19.

[11] Ibnu Santoso,*"Huntmice*Autonomous",Gava media, Yogyakarta, 2011, page 7.

[12] PAF Lamintang and Theo Lamintang,*"Crimeand Crime Position Position Specific For*Corruption",Sinar Grafika, Jakarta, 2009, page 149.

Although according to legal provisions, not all corruption offense can be imposed for such compensation, except only offense formulation or core parts No loss to the state or the country's economy.

Bribery offense against no losses to the state, so there is no condemnation for such compensation. Additional criminal restitution applies only to offenses specifically mentioned in Article 2 and Article 3 of the law of corruption.

Similarly to the offense of embezzlement by a public servant of ex Article 415 of the Criminal Code, which is now listed in Article 8 of the corruption law can be applied for such compensation if the embezzled money is state money, another case where the embezzled money was private money saved ex officio by the civil servants, such as court clerks who embezzle private consignment [13]. [13]

The element of "self-enrich or another person or a corporation" (vide Article 2 (1) Law No. 31 of 1999 jo Law No. 20 of 2001) and the element of "self-enrich or another person or a corporation" (vide Article 3 of law No. 31 of 1999 jo law No. 20 of 2001), is an element that is an alternative that does not need to be perpetrators of corruption must enjoy themselves money to corruption because it is quite offender enriches others or benefit others.

This shows that the judge has the authority to conduct a discretion in determining the punishment of the corruptor on the element of "enriching" the minimum sentence of 4 (four) years and a maximum of life or death sentence. Likewise with the fines follow the maximum fines in accordance with the provisions above. Thus the application of criminal punishment with minimum and maximum threat, as they must have properties that are imperative when the review of Law No. 31 of 1999 on Corruption Eradication [14]. [14]

However, in practice it has limit, resulting in the achievement of goals more effective to prevent and combat corruption in trouble. Moreover, when looking at the editorial articles such as elements of "enriching" and or the element of "benefit" in the legislation in question, which has not been set clearly on the criteria/definitions/understanding, so that it may impact multiple interpretations. Until now very prevalent rulings criminal judge of corruption that does not contain a clear legal considerations, in particular regarding the element of differentiation criteria "enrich" and or the element of "beneficial"[15].[15]

## 3. Methods

In legal writing, the writer uses the type of normative law research that is conducted legal research methods to examine the library materials or secondary data. Methods of legal research was conducted using secondary data in the form of legal materials consisting of international treaties, as well as use of legal materials obtained from the opinions of legal experts and the authorities either orally or in writing and books other legal books that are relevant to this study.

## 4. Conclusions

The definition of powers abuse of explicitness is not found in the Criminal Code, the Criminal law may use the same definition and the word contained in or derived from other legal branches. It departs from the criminal law has autonomy to give a different meaning to the definition contained in the other branches of law. Then its is categorized as authority abuse, authority abuse to commit acts contrary to the public interest or for the benefit of personal interests or groups; authority abuse in the sense that the official action was devoted to the public interest, but deviated from the purpose of any such authority granted by law or other regulations; Abuse and misuse of authority within the meaning of the procedure should be used to achieve certain goals, but have used other procedures to be implemented.

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[13] Romli Atmasasmita,*"Lawand Human Rights and Enforcement*law,"Sembiring Safe Editor Meliala, Agus Takariawan, Mandar Maju, Bandung, 2001, page 96.

[14] Surachmin and Suhandi Light, *Strategies and Techniques*Corruption,Sinar Grafika, Jakarta, 2013, page 137.

[15] Barda Nawawi Arief and Muladi,"*Anthology Criminal law*", Alumni, Bandung, 1992, page 56.

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