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Formulating Juridical Limits On Government Officials' Discretion Between Administrative Violations And Corruption Offenses

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ABSTRACT

This study examines the boundaries of government officials' discretion in distinguishing administrative violations from corruption offenses causing state financial losses. The issue arises from the blurred boundary between administrative errors and corruption, particularly when discretion results in state financial losses. This study aims to analyze the parameters used by judges in distinguishing discretion as an administrative violation from corruption offenses and to determine whether discretion exercised in accordance with the general principles of good governance (AUPB) may serve as a ground for justification in corruption offenses. This research employs normative legal research using statutory, case, and conceptual approaches. Materials were analyzed through nine court decisions, consisting of six corruption court decisions and three state administrative court decisions. The analysis employed an extraction matrix, discretion classification, AUPB compliance indicators, and four administrative penal law criteria. The findings indicate that judges have not applied uniform parameters in distinguishing administrative violations from corruption offenses and have not referred to Articles 17 to 24 of Law Number 30 of 2014 on Government Administration in examining abuse of authority. This study formulates a six-step examination comprising the legal basis of authority, circumstances under Article 23, purposes under Article 22 paragraph (2), requirements under Article 24, AUPB compliance, and determination of the sanction domain. The study concludes that discretion exercised in accordance with the AUPB may serve as a ground for justification when the act qualifies as discretion and compliance indicators are cumulatively fulfilled. Regulations are required to establish the boundary between administrative and criminal proceedings.

Keywords: Discretion, Government Officials, Abuse of Authority, Ground of Justification, General Principles of Good Governance.

1. INTRODUCTION

The transformation of the modern welfare state has expanded the role of government from merely maintaining legal order to actively promoting public welfare and social interests. This transformation has also increased the scope of governmental authority, including the ability of government officials to make decisions and take administrative actions in situations that cannot always be fully regulated by written law. Rapid social changes, complex public needs, emergency circumstances, and gaps or ambiguities in regulations may require government officials to act promptly and responsively. Within this context, discretion constitutes an important instrument of governmental administration, enabling officials to exercise limited freedom of action in order to ensure effective governance and the fulfillment of public interests. (Hadjon, 2011)

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Discretion, however, does not constitute unlimited freedom. It remains subject to legal boundaries, the purpose of the authority, and the general principles of good governance (AUPB). Ronald Dworkin illustrates the limited nature of discretion by comparing it to a hole in a doughnut, which exists only because it is surrounded by standards and rules. Accordingly, discretion must always be exercised within the boundaries established by the legal authority governing it. In Indonesia, the legal framework for discretion is primarily regulated under Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the Government Administration Law). Article 22 provides that discretion may be exercised to facilitate governmental administration, fill legal gaps, provide legal certainty, and overcome governmental stagnation for the benefit of the public. Furthermore, Article 21 grants the State Administrative Court authority to determine whether an abuse of authority has occurred. (HR, 2016)

The legal problem arises when the exercise of discretion is considered to have caused state financial losses. Such circumstances may lead administrative decisions or actions to be examined under criminal law, particularly under Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001. This study specifically focuses on corruption offenses involving state financial losses under Articles 2 and 3 of the Anti-Corruption Law and does not address other forms of corruption, such as bribery, gratification, or extortion. The intersection between administrative law and criminal law is particularly evident in cases involving alleged abuse of authority that results in state financial losses. (Atmasasmita, 2014)

The distinction between administrative violations and corruption offenses is significant because the two legal regimes serve different functions. Administrative law primarily regulates the exercise of governmental authority and seeks to restore administrative order, whereas criminal law imposes sanctions on conduct that constitutes a criminal offense and involves the requisite fault. Consequently, not every administrative error or procedural irregularity resulting in state financial losses should automatically be characterized as corruption. An administrative action must first be assessed in terms of authority, procedure, and substance, while criminal liability requires the fulfillment of the relevant elements of the corruption offense, including abuse of authority and the requisite criminal intent. (Adji, 2009)

The issue has become increasingly important following several developments in Indonesian law. Constitutional Court Decision Number 25/PUU-XIV/2016 removed the word “may” from Articles 2 paragraph (1) and 3 of the Anti-Corruption Law, thereby requiring an actual state financial loss rather than merely a potential loss. In addition, Article 21 of the Government Administration Law, together with Supreme Court Regulation Number 4 of 2015, establishes a mechanism for judicial assessment of abuse of authority by the State Administrative Court.

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Nevertheless, the application of this mechanism remains subject to temporal limitations, particularly where criminal proceedings have already commenced. This situation creates the possibility of overlapping administrative and criminal proceedings concerning the same governmental action. (Siahaan, 2012)

The complexity has further increased following the enactment of Law Number 1 of 2023 concerning the Criminal Code, which came into force on 2 January 2026 and relocated corruption offenses to Articles 603 to 606. Article 604 corresponds to the abuse-of-authority offense previously regulated under Article 3 of the Anti-Corruption Law. The development of this legal framework has renewed concerns regarding the boundary between administrative violations and corruption offenses, particularly because the formulation of the relevant provisions may still permit broad interpretation. (Arief, 2010)

A significant development occurred through Constitutional Court Decision Number 66/PUU-XXIV/2026, which was rendered on 29 April 2026. In its legal reasoning, the Constitutional Court emphasized that the resolution of abuse of authority under the Government Administration Law should prioritize administrative sanctions before criminal proceedings, including corruption proceedings. This reasoning provides stronger normative support for the principle of ultimum remedium in the relationship between administrative and criminal law. However, the decision does not establish operational parameters for determining when administrative sanctions are sufficient and when conduct should proceed to the criminal domain. (Sapardjaja, 2002)

Administrative penal law (administrative penal law) provides a relevant analytical framework for addressing this unresolved boundary. Drawing upon the distinction between the legal order and the administrative order, the classification of conduct may be assessed through several criteria, including whether the consequences remain recoverable, the magnitude of the loss, whether the conduct is isolated or repeated, and whether it was committed intentionally. These criteria provide an analytical basis for distinguishing conduct that primarily disrupts administrative order from conduct that warrants a criminal-law response. (Nurcholis, 2011)

The absence of clear parameters has significant implications for governmental administration. Fear of criminalization may cause government officials to become reluctant to exercise legitimate discretion and make necessary policy decisions. At the same time, not every case involving governmental discretion should be treated as an instance of criminalization, since genuine corruption may also be presented as an exercise of discretion. The central challenge is therefore to establish objective parameters capable of distinguishing legitimate administrative discretion, administrative error, abuse of authority, and corruption offenses.

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Judicial reasoning is particularly important in addressing this problem because judges determine, in concrete cases, whether governmental conduct remains within the administrative domain or satisfies the elements of a corruption offense. A systematic examination of decisions from both the State Administrative Court and corruption courts is therefore necessary to identify the parameters actually applied by judges and to assess their consistency with the legal requirements governing discretion under Articles 22 to 24 of the Government Administration Law.

Another unresolved issue concerns the legal position of discretion exercised in accordance with the AUPB in corruption proceedings. The question is whether such discretion may constitute a ground for justification by eliminating the unlawfulness of an otherwise offense-fulfilling act. This issue has become more significant following the enactment of the new Criminal Code, particularly its provisions concerning unlawfulness and grounds of justification. The distinction between the elimination of an element of the offense and the operation of a ground for justification also has procedural consequences concerning whether a defendant should be acquitted or released from all legal charges.

Accordingly, this research addresses two principal issues: first, the parameters used by judges to distinguish government officials' discretion as an administrative violation from corruption offenses causing state financial losses; and second, whether discretion exercised in accordance with the AUPB may constitute a ground for justification in corruption offenses. This study is expected to contribute to the formulation of clearer juridical boundaries between administrative and criminal law and to provide a more consistent framework for assessing the exercise of governmental discretion.

2. RESEARCH METHOD

This study employs a normative legal research method (juridical-normative research), which positions law as norms, principles, and doctrines established within the legal system, including legislation and judicial decisions. This method is employed to identify legal arguments, concepts, and normative formulations concerning the juridical boundary between administrative violations and corruption offenses involving government officials. The research is also prescriptive in nature, as it formulates what should be applied to the legal issues under examination. For the first research question, the analysis initially adopts an analytical-evaluative approach by examining the ratio decidendi of judicial decisions to identify the parameters actually applied by judges before formulating the juridical boundary. For the second research question, the analysis is conducted

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doctrinally to determine the legal position of discretion exercised in the public interest within the structure of corruption offenses. The research addresses an issue of incomplete norms accompanied by conceptual ambiguity, rather than a legal vacuum, and therefore seeks to develop a conceptual arrangement and supplementary rules for the existing legal framework. (Marzuki, 2017)

The study adopts three approaches, namely the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to examine the consistency, synchronization, and normative boundaries governing the exercise of discretion, including Law Number 30 of 2014 concerning Government Administration, legislation concerning villages, corruption legislation, the Criminal Code, the Criminal Procedure Law, legislation concerning the State Administrative Court, and relevant Supreme Court Regulations. The conceptual approach is employed to examine the doctrines and theories of discretion (freies ermessen), Ronald Dworkin's theory of discretion, abuse of authority and the General Principles of Good Governance (AUPB), sources of authority, maladministration, unlawfulness, grounds for excluding criminal liability, criminal liability, and the principle of ultimum remedium. The case approach is applied by examining judicial decisions through the analysis of ratio decidendi, the identification of consistency and disparity in judicial reasoning, and the assessment of judicial considerations against the legal framework governing discretion and administrative penal law. (Ibrahim, 2013)

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 30 of 2014 concerning Government Administration, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, Law Number 1 of 2023 concerning the Criminal Code as amended by Law Number 1 of 2026, Law Number 20 of 2025 concerning Criminal Procedure, legislation concerning villages and the State Administrative Court, relevant Supreme Court Regulations, Constitutional Court decisions, Supreme Court jurisprudence, and relevant corruption court and State Administrative Court decisions. Secondary legal materials comprise books, scholarly journals, research findings, theses, dissertations, and expert opinions concerning discretion, abuse of authority, maladministration, administrative penal

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law, unlawfulness, grounds for excluding criminal liability, criminal liability, and the criminalization of government policies. Tertiary legal materials include legal dictionaries, legal encyclopedias, the Indonesian Dictionary, and indexes of legislation. (Mamudji, 2015)

The case materials are operationalized into two clusters. Cluster A consists of corruption court decisions involving government officials charged under Article 2 and/or Article 3 of the Anti-Corruption Law or their corresponding provisions under Articles 603 and 604 of the Criminal Code. Cluster B consists of State Administrative Court decisions concerning the assessment of abuse of authority under Article 21 of the Government Administration Law and Supreme Court Regulation Number 4 of 2015, as well as administrative disputes involving government actions in which the court considers maladministration, administrative error, or abuse of authority. The cases are selected purposively based on predetermined inclusion and exclusion criteria, with priority given to cases involving the intersection of administrative and criminal proceedings.

The legal materials are collected through library research by inventorying, identifying, and examining relevant legal materials from university libraries, scholarly journal databases, thesis and dissertation repositories, official legislation databases, and the Supreme Court Decision Directory. Judicial decisions are systematically traced using relevant keywords and case-registration codes and are subsequently classified according to their type, substance, and relevance to the research questions. The legal materials are then analyzed qualitatively through legal interpretation and legal reasoning, involving the identification of norms, regulatory synchronization, legal interpretation, judicial decision analysis, and the construction of legal arguments. The interpretation methods employed include grammatical, systematic, teleological, and conceptual interpretation.

To ensure consistency and measurability in the analysis of judicial decisions, this research employs an analytical matrix as an instrument for extracting data from each decision. The matrix examines, among other matters, the source and scope of authority, procedural compliance and AUPB, the requirements for discretion under Articles 22 to 24 of the Government Administration Law, public interest, good faith, personal benefit, mens rea, actual state financial loss, relevant legal doctrines and jurisprudence, the prior use of administrative mechanisms, recovery of state financial losses, the State Administrative

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Court's classification of the conduct, and the final qualification and verdict. The results of the extraction are subsequently tested against four administrative penal law criteria, namely recoverability of the loss, magnitude of the loss, repetition of the conduct, and intentionality. These criteria are not applied mechanically or arithmetically but are assessed comprehensively before being compared with the verdict actually rendered by the court.

3. RESULTS AND DISCUSSION

Parameters Used by Judges to Distinguish Government Officials' Discretion as an Administrative Violation from Corruption Offenses Causing State Financial Losses

The examination of nine judicial decisions reveals that no uniform factual parameter has been consistently applied by judges in distinguishing governmental discretion from corruption offenses causing state financial losses. The parameters employed vary according to the characteristics of each case and include the source and scope of authority, the circumstances underlying the governmental action, compliance with administrative procedures, the purpose of the action, the existence of personal benefit, mens rea, the amount and nature of state financial losses, and the recovery of such losses. In several cases, the assessment was primarily conducted through criminal-law doctrines concerning abuse of authority, without first examining whether the disputed governmental action constituted discretion under the Government Administration Law. (Asshiddiqie, 2011)

The analysis further demonstrates that quantitative loss, recovery of state losses, and personal benefit have not operated consistently as boundary-setting parameters. In Putusan Mahkamah Agung Number 1769 K/Pid.Sus/2019, the Supreme Court relied on the increase in wealth and the Rp100,000,000 threshold under SEMA Number 7 of 2012 in distinguishing the application of Article 2 from Article 3 of the Anti-Corruption Law. By contrast, Putusan Pengadilan Negeri Palu Number 54/Pid.Sus-TPK/2022/PN Pal involved a loss of approximately Rp2.58 billion but remained within Article 3, without reference to the same quantitative threshold. Similarly, in Putusan Pengadilan Negeri Banda Aceh Number 74/Pid.Sus-TPK/2022/PN Bna, the full recovery of Rp298,820,669 did not prevent the imposition of criminal sanctions. These decisions demonstrate that neither the

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amount of loss nor its recovery has been applied as a uniform parameter for determining the administrative or criminal character of governmental conduct. (Utrecht, 1985)

A different pattern appears in Putusan Pengadilan Negeri Makassar Number 106/Pid.Sus-TPK/2023/PN Mks. The court considered the absence of personal benefit, the failure to establish mens rea, procedural compliance, and the uncertainty of the calculation of state financial losses, and subsequently declared that the proven conduct did not constitute a criminal offense, resulting in a verdict of release from all legal charges (ontslag van alle rechtsvervolging). These considerations correspond to several indicators used in the administrative penal law framework, although the court did not expressly formulate them as such. (Nurcholis, Pertumbuhan dan Penyelenggaraan Pemerintahan Desa, 2011)

The State Administrative Court decisions provide a contrasting perspective. Putusan PTUN Jambi Number 2/P/PW/2017/PTUN.JBI expressly qualified the governmental action as discretion because of incomplete regulation and its orientation toward the public interest. The assessment was directed toward the public interest, due care, and the absence of state financial loss. By contrast, Putusan PTUN Surabaya Number 9/P/PW/2018/PTUN.SBY and Putusan PTUN Medan Number 3/P/PW/2021/PTUN.MDN demonstrate that access to administrative review itself remains subject to differing interpretations. The classification of the entire sample therefore shows that only one case was expressly characterized as discretion, while the criminal cases examined were not, in substance, cases of legitimate discretion but involved either violations in the exercise of bound authority or transfers of public funds for personal interests. (Marbun, 2011)

On this basis, the juridical boundary is formulated through a tiered examination consisting of: (1) the legal basis of authority; (2) the circumstances permitting discretion under Article 23 of the Government Administration Law; (3) the purposes of discretion under Article 22 paragraph (2); (4) the cumulative requirements under Article 24; (5) compliance with the AUPB and the prohibition of abuse of authority under Articles 17 and 18; and (6) determination of the appropriate sanction domain through the administrative penal law criteria of recoverability, magnitude of loss, repetition, and intentionality. The first stages operate as a classification mechanism to determine whether the conduct can

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properly be characterized as discretion, while the final criteria function as supporting instruments for determining the appropriate sanction domain. (Dworkin, 1977)

Discretion Exercised in Compliance with the AUPB as a Ground of Justification in Corruption Offenses

The possibility of treating discretion exercised in compliance with the AUPB as a ground for justification is established normatively, provided that the governmental action is first qualified as genuine discretion and all requirements governing its lawful exercise are cumulatively fulfilled. The qualification of an act as discretion cannot be based solely on the official's assertion that the decision was taken for the public interest. The legality of the discretion must first be established through the source and scope of authority, the circumstances permitting discretion under Article 23, the purposes of discretion under Article 22 paragraph (2), and the cumulative requirements under Article 24 of the Government Administration Law. (Indriyanto Seno Adji, 2009)

The source and scope of authority constitute the initial basis for determining whether an act can be categorized as discretion. The authority exercised must be traceable to a valid legal basis, whether through attribution, delegation, or mandate. The circumstances underlying the governmental action must then be examined to determine whether they fall within the situations contemplated by Article 23. Accordingly, discretion cannot be separated from the legal authority possessed by the official or from the circumstances that justify the exercise of such discretion.

The purpose of the governmental action must subsequently be assessed based on Article 22 paragraph (2) of the Government Administration Law. Discretion may be exercised for the purposes provided by law, including facilitating governmental administration, filling legal gaps, providing legal certainty, and overcoming governmental stagnation in the public interest. The fulfillment of these purposes must be accompanied by compliance with the requirements under Article 24. Therefore, the existence of a public-interest objective alone is insufficient to establish the legality of discretion where the other statutory requirements have not been fulfilled. (Sapardjaja, Ajaran Sifat Melawan Hukum Materiel dalam Hukum Pidana Indonesia: Studi Kasus tentang Penerapan dan Perkembangannya dalam Yurisprudensi, Bandung)

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The AUPB further functions as a substantive standard for assessing whether discretion remains within the boundaries of lawful governmental action. Compliance with the AUPB, good faith, the absence of conflict of interest, objective justification, and the absence of personal benefit must be considered in determining whether the discretion constitutes an abuse of authority. Where these requirements are cumulatively fulfilled, the governmental action may be regarded as lawful discretion. Conversely, where the authority is exercised for an improper purpose or accompanied by circumstances indicating abuse, the governmental action cannot be justified merely by invoking the public interest.

The position of AUPB compliance in administrative law must nevertheless be distinguished from its position within criminal law. Compliance with the AUPB initially serves to determine whether the governmental action constitutes lawful discretion and whether an abuse of authority has occurred. The criminal-law question arises subsequently when the conduct has been brought within the structure of a corruption offense. At this stage, the issue is whether the legality of the governmental action may operate as a ground that excludes criminal unlawfulness.

At the criminal-law level, Article 31 of Law Number 1 of 2023 concerning the Criminal Code recognizes the implementation of statutory provisions as a ground for justification. Accordingly, administrative validity and criminal justification must be treated as related but distinct questions. Administrative examination determines whether the governmental action constitutes lawful discretion, whereas criminal examination determines whether the proven conduct remains punishable after the applicable ground for justification has been established. Compliance with the AUPB therefore does not automatically eliminate criminal liability merely because an official acted in the public interest. (Moeljatno, 2008)

The judicial sample does not demonstrate an explicit and systematic application of the AUPB framework as a ground for justification. In Putusan PTUN Jambi Number 2/P/PW/2017/PTUN.JBI, the governmental action was expressly qualified as discretion and was declared lawful at the administrative level, so that a separate criminal-law justification was not required. In Putusan Pengadilan Negeri Makassar Number 106/Pid.Sus-TPK/2023/PN Mks, a comparable result was reached through considerations concerning procedural compliance, the absence of personal benefit, the failure to establish

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criminal intent, and uncertainty concerning the calculation of state financial losses. Nevertheless, the AUPB and Article 31 of the Criminal Code were not expressly invoked. Thus, the result achieved in that case corresponds to several indicators of lawful discretion, but it cannot be regarded as an explicit judicial application of AUPB-compliant discretion as a statutory ground for justification. (Sudarto, 1990)

Accordingly, discretion exercised in accordance with the AUPB may be positioned as a ground for justification when the conduct has first been established as genuine discretion and all relevant legality requirements have been cumulatively satisfied. The appropriate procedural consequence is a verdict of release from all legal charges (ontslag van alle rechtsvervolging), rather than an acquittal, because the conduct is considered proven but is rendered non-punishable by the applicable ground for justification. This distinction is particularly significant under the new criminal procedural framework because the legal consequences and available remedies differ between an acquittal and a release from all legal charges. The research therefore places AUPB-compliant discretion within the structure of grounds of justification, rather than treating compliance with AUPB merely as a factor negating an element of the corruption offense. (Pratama, 2022)

4. CONCLUSION

Based on the findings of this research, it can be concluded that the parameters used by judges in distinguishing government officials' discretion as an administrative violation from corruption offenses causing state financial losses have not been applied uniformly. Judicial considerations have included the source and scope of authority, the circumstances underlying the governmental action, the purpose of the action, compliance with administrative procedures, the existence of personal benefit, mens rea, the amount and recovery of state financial losses, and the nature of the governmental conduct. However, these parameters have not consistently been examined through Articles 17 to 24 of Law Number 30 of 2014 concerning Government Administration. The juridical boundary between administrative and criminal domains therefore requires a systematic examination beginning with the legal basis of authority, the circumstances under Article 23, the purposes under Article 22 paragraph (2), the requirements under Article 24, compliance

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with the AUPB, and the determination of the appropriate sanction domain based on recoverability, magnitude of loss, repetition, and intentionality.

This research further concludes that discretion exercised by government officials in compliance with the AUPB may be recognized as a ground for justification in corruption offenses, provided that the governmental action is first established as genuine discretion and all requirements for its lawful exercise have been cumulatively fulfilled. Compliance with the AUPB, good faith, absence of conflict of interest, and fulfillment of the requirements under Articles 22 to 24 of the Government Administration Law constitute the basis for establishing the legality of the discretion before its position in criminal law is examined. The judicial decisions analyzed in this research, however, do not demonstrate an explicit and systematic application of the AUPB framework as a ground for justification, although several judicial considerations correspond to indicators of lawful discretion.

Therefore, a clearer juridical framework is needed to establish the boundary between administrative violations and corruption offenses involving state financial losses. The examination of governmental conduct should prioritize the administrative-law assessment of authority and discretion before determining the applicability of criminal sanctions, while the principle of ultimum remedium should be applied consistently. Discretion that has been proven to constitute lawful discretion and to satisfy all relevant AUPB requirements may be positioned as a ground for justification, with the appropriate procedural consequence being release from all legal charges (ontslag van alle rechtsvervolging), rather than an acquittal. Such a framework is expected to provide greater legal certainty for government officials while maintaining accountability for conduct that genuinely constitutes corruption.

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