THE IMPLEMENTATION OF ULTIMUM REMEDIUM PRINCIPLE IN HANDLING ABUSE OF AUTHORITY FOR OPTIMIZING RETURNS OF FINANCIAL STATE LOSSES

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Abstract

State financial losses (assets) are an important component or element of abuse of power. Legal practice shows that elements of state losses tend to be attached to criminal acts of corruption in the context of law enforcement or law enforcement accompanied by sanctions for recovering state financial losses. The execution stage of decisions on criminal cases with additional sanctions for recovering state financial losses, often encounters several obstacles, so that the return of state assets is not optimal. In the functionalization between fields of law, the standard principle applies that criminal law is used as the last alternative in solving cases (ultimum remedium). In fact, there are other areas of law, apart from criminal law, that can be used in resolving cases of abuse of authority, namely state administrative law. The latest developments in state administrative law in Indonesia are marked by the issuance of Law Number 30 of 2014 concerning Government Administration. A legal reform that gives birth to new norms that can assist in better legal settlement. The main question is how the legal aspects of state administration can be an option for settling cases of abuse of authority, before the use of criminal law, in optimizing the return of state assets or losses. The discussion was carried out on secondary data in the form of legal materials, therefore methodologically including normative legal research with a statutory approach and descriptive-qualitative in nature. There is an alternative pattern of recovering state losses as a result of the abuse of authority through state administrative law. There has been a development in resolving the abuse of power that has shifted from criminal law to state administrative law. In the context of preventing the crime of corruption, priority should be pushed to be more in the realm of state administrative law.

Key Words: a*buse of authority, asset recovery state losses, state administrative law, ultimum remedium.*

A. Introduction

State assets are one of the important capital elements in the conduct of state life to achieve a just and prosperous society. Every state asset, especially state finances, which is illegally obtained by other parties outside the state, must be returned to the state as optimally as possible. In terminology, the "return" of state losses is the opposite of the "losses" of state finances, because state assets, in general state finances, are transferred to private control and become private gains.[2] State financial losses arise as a result of acts of abuse of authority, that

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[2] Achmad Ali, *Keterpurukan Hukum di Indonesia*: *Penyebab dan Solusinya*, (Jakarta: Ghalia Indonesia, 2005) 12.

is, governmental authority as public authority is incorrectly implemented for private purposes and interests resulting in the misuse of the direction of the use of state finances.

In a general perspective, thoughts and understanding of the law, the act of abuse of power is one of the focuses in the study of corruption. In fact, the discourse on abuse of power tends to be considered identical with the discussion of criminal acts of corruption. Even so, in historical trajectories, the phases in which the crime of corruption emerged were actually not the same as other crimes against humanity, such as murder or theft. In a modern context, the criminal act of corruption is more of a derivative from other crimes with a distinct derivative element, namely the abuse of power.[3] It can be said that acts of abuse of authority as an element in a criminal act of corruption are secondary, even though they are the starting point and cause of state losses.

In general, corruption crimes were initially thought to be related to government administration activities in developing countries which were generally carrying out their country's development. Corruption, defined as the misuse of public office for private gain, has attracted a great deal of attention in recent years. In particular, several empirical studies on corruption have shown that it is a big impediment to develop for certain developing countries.[4] Therefore, in fact the definition of corruption is always placed in the context of the wrong use of government public authority. Even if the abuse of authority is seen in the context of criminal law, it cannot be denied that it also has another dimension, namely the dimension of state administrative law, especially in massive government activities in developing and developing countries.

In the structure of the Indonesian criminal law system, so far there is still a strong tendency to place acts of abuse of authority as an element of offenses for criminal acts of corruption. Dogmatically, based on the statutory approach, abuse of authority in the perspective of the criminal law of corruption, since 1971 was renewed from 2001 to the present. Indonesia's positive legal advocates emphasize that abuse of power is an element of the offense of corruption. "Anyone who, with the aim of benefiting himself or another person or an Agency, misuses the powers, opportunities or means available to him because of his position or position, which can directly or indirectly harm the state finances or the state

[3]Rony Saputra, *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi (*Jurnal Cita Hukum, Vol 3 No 2, 2015) 270.

[4] Jinyoung Hwang, *A Note on The Relationship Between Corruption and Government Revenue* (Journal of Economic Development, Volume 27, Number 2, 2002) 161.

economy"[5]. "Anyone who, with the aim of benefiting himself or another person or a corporation, misuses his / her authority, opportunity or means because of his position or position which may harm the state finances or the state economy"[6]. It is almost indisputable, in a long period of time, followed by a strong view that abuse of power is a major element in the criminal act of corruption.

Arrangements for the handling and eradication of criminal acts of corruption in Indonesia in the last decade have experienced significant developments. Particularly in the institutional and process aspects, there has been development and strengthening through amendments and renewals of Law Number 30 of 2002 concerning the Corruption Eradication Commission, most recently by Law Number 19 of 2019. Legally, the handling of corruption eradication is carried out with two approaches, namely approaches or ways of prevention (preventive) and methods of repression (repressive). Through prevention, the maximum return or even safeguarding of state financial assets can be carried out. However, eradicating criminal acts of corruption by means of repressive measures, recovering losses of state financial assets faces difficulties at the execution stage, so it is considered not optimal.

The development of policies and regulations on the eradication of corruption in Indonesia is very urgent, because in addition to criminal acts of corruption, including extraordinary crimes (extra ordinary crimes)[7], corruption is also very dangerous as a pathology or bureaucratic virus. This bureaucratic disease has spread, no longer just a massive public environment of government administration, but has entered and is associated with the private domain of citizens. Corruption in Indonesia has reached a chronic condition and is multi-dimensional in nature, related to and having a negative impact on other sectors or sectors of life. Corruption in Indonesia is a chronic and widespread phenomenon that derogates good governance, erodes the rule of law, hampers economic growth effort, increases social inequality, and distorts the nation's competitiveness in the global economy[8]. Apart from being against the law, corruption is an attitude that socially can reduce or reduce social stability, and economically can hinder economic growth and weaken the competitiveness of the national economy in the global economy.

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[5] Undang-Undang Nomor 3 Tahun 1971 tentang Pemberantasan Tindak Pidana Korupsi, Pasal 1 ayat (1) huruf b.

[6] Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, Pasal 3.

[7] Mansyur Semma, *Negara dan Korupsi, Pemikiran Direktur Publik atas Negara, Manusia Indonesia dan Perilaku Politik*, (Jakarta: Yayasan Obor Indonesia, 2008) 26.

[8] Artidjo Alkostar, *Korupsi Politik di Negara Merdeka*, (Yogyakarta: FH. UII Press, 2008) 32.

One thing that is no less important, corruption is a phenomenon that can gnaw good governance into serious illness. In this connection, it is very important to change the direction of legal thinking on the issue of abuse of authority, to shift from the perspective and paradigm of criminal law to become the object of state administrative law. In line with that, there has been a collective collective awareness of governance in the form of a bureaucratic reform movement in the new government era with a government paradigm that is clean and free of corruption, collusion and nepotism. The Govenrment of Indonesia has launched bureaucratic reform that aims to develop clean, efficient, effective, and productive bureaucracies. The reform designed to creat transparent bureaucracy which serves the people and accountable to the public[9]. Theoretically, bureaucratic reform has a strong foundation, which is based on the principles of good governance (good governance). The principle of good governance comes from the principles applicable in developed countries in the bureaucratic field, then normatively increases and is adopted as a principle in international legal instruments. Public demand for good state administration has given birth to the principle of good governance as the main theme in the management of public administration.[10] It contains the values of the people's desire for the position and role of state administration, in the principles of good governance. The hope of the community is that it can realize social justice, therefore the government must be carried out effectively, efficiently, functionally and professionally.

Thus, bureaucratic reform is a strategy, policy, and steps that have the objectives of empowering, obtaining greater and better results and benefits for the benefit of public services.[11] The optimal return of losses on state financial assets is one form of bureaucratic results for the administration of government that can be carried out by implementing the ultimum remedium principle of criminal law and prioritizing state administrative law.

B. Problem Formulation

Basically, this article examines the relationship between two different branches of law, namely the field of criminal law and the field of state administrative law. Criminal law and state administrative law have a point of contact with the aspects of abuse of governmental authority, but differ in their handling, both in terms of institutions, processes, and outcomes.

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[9] Azhar Kasim, *Bureaucratic Reform and Dynamic Governance for Combating Corruption : The Challenge for Indonesia* (International Journal of Administrative Science & Organization, Volume 20, Number 1, 2013) 18.

[10] Sjahruddin Rasul, *Penerapan Good Governance di Indonesia Dalam Upaya Pencegahan Tindak Pidana Korupsi* (Jurnal MIMBAR HUKUM, Volume 21, Nomor 3, 2009) 539.

[11] Disiplin F. Manao, *Penyelesaian Penyalahgunaan Wewenang oleh Aparatur Pemerintah Dari Segi Hukum Administrasi Dihubungkan dengan Tindak Pidana Korupsi* (Jurnal Wawasan Yuridika, Vol. 2, No. 1, 2018) 4.

The main problem in this article is how to handle acts of abuse of authority in order to optimize the return of state financial losses, through state administrative law as an alternative to the placement of criminal law in accordance with the ultimum remedium principle?

C. Methodology

The objects of study for the material of this article are various positive legal documents related to themes and issues. In accordance with the typology of legal research, legal materials, both primary and secondary, are secondary data in the form, therefore the methodology of juridical-normative-doctrinal legal research applies.

D. Discussion

The discussion begins with examining the concept of authority in the context of the relationship between criminal law and state administrative law. In fact, the term authority as a scientific concept of law is closer to and inherent in state administrative law.[12] However, the abuse of power is a dualistic element for state administrative law (government administration law) and criminal law (corruption). Abuse of authority is a legal element that causes state administrative law to be twisted with criminal law. In other words, the abuse of authority is a point of contact or a point of connection between the norms of government law and the norms of criminal law.

In the perspective of general legal science, criminal law is law that consists of norms that are very important to maintain the uneasiness of people's lives.[13] The structure of criminal law norms includes norms of prohibition and norms of criminal sanctions, so that criminal law can be enforced. A number of criminal sanctions norms are also possible to follow and complement every government law norm or state administrative law, at the end of state administrative law. It is often said that the criminal law is the final part, tail, or tail that is poison or nest (*in cauda venenum*) of any government policy setting.[14]

This discussion is basically a development of legal thinking that follows the developments and advances in the field of criminal law and the field of state administrative law, especially with regard to the topic of abuse of authority, state loss and return of state losses. In line with general legal theory, both in the field of criminal law and in the field of

[12] Ridwan HR., *Hukum Administrasi Negara* (Rajagrafindo Persada, Jakarta, 2006) 105.

[13] Bambang Purnomo, *Asas-asas Hukum Pidana*, (Jakarta: Ghalia Indonesia, 1993) 12.

[14] Bram Mohammad Yasser, *Pengujian Unsur Penyalahgunaan Wewenang Pada Pengadilan Tata Usaha Negara Dalam Kaitan Dengan Tindak Pidana Korupsi* (Jurnal SOUMATRA REVIEW, Volume 2, Nomor 1, 2019) 1.

state administrative law, it always covers aspects or dimensions of law in a material sense and in a formal sense. Currently, dogmatically, norms relating to acts of abuse of authority that apply in Indonesian law are scattered both in the field of criminal law and in the field of state administrative law.

In a material perspective, at the beginning of the development and development of state administrative law in Indonesia, abuse of authority has been confirmed as an aspect or element in the perspective of state administrative law. Abuse of authority in the version of government action that violates the law (*onrechtmatige overheidsdaad*) can only be proven in the realm of general justice in civil terms. Since 1986, the abuse of authority by State Administrative Bodies / Officials in issuing State Administrative Decrees (*beschikking*) has become a competency test within the State Administrative Court.[15]

For state administrative law, abuse of authority occurs when the State Administration Agency or Official at the time of issuing a decision has used their authority for other purposes than the purpose for which the authority was granted.[16] The use of authority for purposes other than those for which the state administrators and the government in public services are used are also known as deviant administrative behavior (*maladminsitrasi*).[17] Supervision and examination of suspected maladministration is the authority of the Ombudsman Commission of the Republic of Indonesia. Essentially, the element of abuse of authority has 3 (three) functions, namely first, as a reason that provides the basis for the plaintiff to compile a lawsuit (*beroepsgronden*). Second, for the State Administrative Court as a test tool (*toetsingrechts*) which is included in the consideration of the decision and the basis for the cancellation stated in the verdict. Third, Government Agencies / Officials act as general norms of government (*bestuurnorm*) which contains the prohibition of abuse of authority.[18]

In order to further support the administration of government in the reform era, in the realm of state administrative law, there has been a transformation or normatization of the general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*) which

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[15] Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara pada tanggal 29 Desember 1986 (Lembaran Negara RI Tahun 1986 Nomor 77), yang penerapannya secara efektif didasarkan atas Peraturan Pemerintah Nomor 7 Tahun 1991 tentang Penerapan Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara pada tanggal 14 Januari 1991 (Lembaran Negara Tahun 1991 Nomor 8) dan terakhir dengan Undang-Undang Nomor 51 Tahun 2009 tentang Peradilan Tata Usaha Negara (Lembaran Negara Republik Indonesia Tahun 1986 Nomor 77 Tambahan Lembaran Negara Republik Indonesia Nomor 3344)

[16] Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, Pasal dan penjelasan Pasal 53 ayat 2 huruf b.

[17] Undang-Undang Nomor 37 tahun 2008 tentang Ombudsman Republik Indonesia, Pasal 1 angka 3.

[18] W. Riawan Tjandra, *Hukum Acara Peradilan Tata Usaha Negara*, (Penerbitan Universitas Atma Jaya, Yogyakarta, edisi revisi, 2015) 73.

was originally abstract and was seen as an unwritten rule of law (*het ongeschreven*),[19] which later became formulation of concrete norms as legal rules written in law. The general principles of good governance have been detailed including the principles of legal certainty, orderly state administration, openness, proportionality, professionalism and accountability.[20] The transformation of these principles into norms has resulted in a modification of the concept of abuse of authority as a basis for lawsuits and as a means of testing as well as a basis for the cancellation of an act of state administration. However, this does not prevent the plaintiff from using the basis of an abuse of authority as a reason for the lawsuit (*beroepsgronden*), and the State Administrative Court can still use the reason for the abuse of power as a basis for testing and the basis for the cancellation of the State Administrative Decree.

In the latest developments in 2014, it shows the determination of state administrative law on criminal law, especially corruption, related to aspects of abuse of power. Philosophically and in legal policy, state administrative law is encouraged to improve the function of law as a preventive measure in eradicating criminal acts of corruption. The regulation of abuse of power is framed in the title "government authority" with the sub-title "prohibition of abuse of power".[21] In this way, the state administrative law regime is intended more as a legal basis for governance in an effort to improve good governance, building a more transparent and efficient bureaucracy. The dimension of criminal law is part of it, in the sense that the regulation of abuse of authority in the new format is also intended as an effort to prevent bureaucratic pathologies.

Concretely, the development of Indonesian law dogmatically shows a shift in the regulation of abuse of authority as an element from the field of criminal law to the field of state administrative law, marked by the issuance of Law Number 30 of 2014 concerning Government Administration. The Government Administration Law is based on the assumption that acts of abuse of authority carried out by government officials or administrative officials are one of the factors that have a major contribution to criminal acts of corruption in Indonesia. Criminal law is repressive or curative, while state administrative law is preventive in relation to the abuse of government administrative authority. Therefore, state

[19] Philipus M. Hadjon, dkk., *Pengantar Hukum Administrasi Indonesia* (Gadjah Mada University Press, Yogyakarta, 2005) 127.

[20] Undang-Undang Nomor 9 Tahun 2004 tentang Perubahan Atas Undang-undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara, Penjelasan Pasal 53 ayat (2) huruf b.

[21] Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, BAB V "Kewenangan Pemerintahan", Bagian Ketujuh BAB V, "Larangan Penyalahgunaan Wewenang".

administrative law norms must contain the spirit and preventive efforts through regulating the use of authority of Government Agencies and / or Officials. State administrative law becomes the legal basis for government administration in an effort to improve good governance and as an effort to prevent corruption, collusion and nepotism.[22]

The perspective of formal law, at the level of law enforcement to deal with, prove, and test abuse of authority, shows a very strong dualism between criminal law and state administrative law, and the possibility of using state administrative law or criminal law is possible. Although, so far, the conceptualization and practice of law in the field of criminal law seem to be the main route in which the settlement of abuse of power is resolved first. The awareness of placing state administrative law as a way to approach the handling of abuse of authority has developed behind following criminal law.[23]

In the past few years, in Indonesia there has been a phenomenon of strong fear from the bureaucracy in taking action on the use of the budget, because concerns have implications for the abuse of power.[24] It is feared that the bureaucratic doubts will have a further negative impact on the fundamental problem, namely stagnating government activities and the possibility of stagnation in the implementation of development.[25] Resolving abuse of authority in the framework of eradicating corruption has a negative impact on the governance of government administration. This condition will affect the performance of the legal system in general, so that new legal thinking and regulations within a systemic framework are needed.

Placing state administrative law in the first position in order to resolve abuse of power is an alternative that can be offered. On an a contrario basis, encouraging the use of criminal law in handling abuse of authority, in line with the ultimum principle of criminal law remedium. The approach through state administrative law is one of the important ways in handling cases of criminal acts of corruption, in terms of proving the element of abuse of authority, which is about the consideration of returning state losses. Thus, the implementation of the ultimum remedium principle for the proving process of abuse of power can have a positive impact on the return of state losses.

Attaching the judicial authority to whether there is an element of abuse of power to the

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[22] UndangUndang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, Penjelasan Umum.

[23] Eva Achjani Zulfa, *Gugurnya Hak Menunutut Dasar Penghapusan, Peringanan, dan Pemberatan Pidana*, (Jakarta: Ghalia Indonesia, 2010) 54.

[24] Ratna Nurhayati dan Seno Wibowo Gumbira, *Pertanggungjawaban Publik dan Tindak Pidana Korupsi* (Jurnal Hukum dan Peradilan, Volume 6, Nomor 1, 2017) 43.

[25] Nicken Sarwo Rini, *Penyalahgunaan Kewenangan Admiistrasi Dalam Undang-undang Tindak Pidana Korupsi* (Jurnal Penelitian Hukum De Jure, Volume 18, Nomor 2, 2018) 258.

state administrative court does not mean negating the authority of the court for criminal acts of corruption. In law enforcement practice, it can be interpreted that the examination of the elements of abuse of power by the state administrative court can be deemed to temporarily delay the authority of the court for criminal acts of corruption to accept, examine and adjudicate not criminal corruption, until waiting for a state administrative court decision which has permanent legal force (*incracht*). There may be public concern that the shift in evidence of abuse of power seems to weaken the eradication of criminal acts of corruption, because it is seen that the state administrative court will be a hiding place for corruptors.[26] However, in concept and in the spirit of law, testing to prove the elements of abuse of authority in the state administrative court forum can actually strengthen efforts to eradicate corruption.

Assessed based on the norm of sanctions, against abuse of authority proven in court as an element of corruption, for criminal law it will lead to criminal sanctions in the form of imprisonment accompanied by the return of state financial losses. Recovering state financial losses is the ultimate goal in criminal law enforcement as the eradication of criminal acts of corruption, basically determined as the results of considerations in the criminal law council which may be less than optimal. The return on state financial losses is not necessarily equal or proportional to the state assets lost due to acts of abuse of power.

Contrary to the aims and objectives of the formation of government administration laws, testing and proving acts of abuse of authority in the behavior of positions that carry out government functions in state administrative court forums, whether executive, legislative or judiciary, can be held accountable for administratively and result in administrative sanctions, not criminal or civil liability. Administrative sanctions in the form of replacing or recovering state financial losses will be more implemented and in value will be more optimal.

The handling and testing of acts of abuse of authority by elements of state administration or government administration, in the context of strengthening the eradication of corruption, must be understood in an innovative political and legal direction. The politics of law faces the realm of criminal law and the realm of state administrative law, with a tendency to make legal choices on administrative law instruments considering the optimization of the return of state losses. Theoretically, the development of the shift in the choice of law is in line with and based on the principles of restorative justice that develop in resto-tariff justice theory and responsive law theory.

[26] Pimpinan Pusat IKAHI, *Seminar Undnag-Undag Administrasi Pemerintahan* :Meguatkan atau Melemahkan Upaya Pemberantasan Korupsi (Sinar Grafika, Jakarta, 2016) 3.

The Government Administration Law authorizes State Administrative Courts to accept, examine, and decide whether or not there is an element of "abuse of power" committed by Government Officials.[27] In the same context, the authority to receive, examine and adjudicate acts of abuse,[28] of power falls to the Corruption Court.[29] The issuance of a Government Administration law can cause problems if there is an abuse of authority by the State Administration Agency / Official. The determination of jurisdictional boundaries in judicial practice or in judicial life is still very unclear and clear.[30] In this regard, the question arises, which one will be the legal basis for testing the abuse of power, is it the realm of state administrative law or is it the realm of criminal law?

In practical terms, the development of dualism normativisation structures of abuse of authority in the framework of the Government Administration law and normativisation in the Corruption Crime Law, at least has 2 (two) consequences. First, for a case that contains elements of abuse of authority, it is possible for the settlement to be carried out in 2 (two) different domains of public law. As a result, it can produce a different verdict. Second, the dichotomy creates difficulties in reaching a comprehensive truth (*the objectivity*).[31]

Academically, the relationship between the two domains of the judiciary to resolve the same case, namely abuse of power, is the point of contact of the judicial authority between the State Administrative Court and the Corruption Crime Court. Testing whether or not there is an element of abuse of authority becomes a joint authority (*concurrent authority*). Each judicial environment, both the State Administrative Court and the Corruption Court are equally authorized. Testing whether there is an element of abuse of authority can be tested first by the State Administrative Court. On the basis of the decision of the State Administrative Court which has obtained permanent legal force and it is proven that there is an element of abuse of power, then the Corruption Court has the authority to examine criminal acts of corruption. The priority and point of orientation for the formula for handling the resolution of abuse of power are at the optimal return on state financial losses (assets).

E. Conclusion

[27] Undang-undang Nomor 30 Tahun 2015 tentang Administrasi Pemerintahan, Pasal 21 ayat (1), (6).

[28] Undang-Undang Nomor Nomor 20 Tahun 2001tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, Pasal 3.

[29] Undang-Undang Nomor 46 Tahun 2009 tentang Pengadilan Tindak Pidana Korupsi, Pasal 5.

[30] Indrianto Seno Adji, *Korupsi dan Pembalikan bukan Pembuktian*, (Jakarta: Kantor Pengacara dan Konsultan Hukum, Prof. Oemar Seno Adji, SH & Rekan, 2006) 3.

[31] M. Hatta Ali, *Sambutan Seminar Nasional IKAHI Dalam Rangka HUT IKAHI Ke- 62 Tahun 2015* (Sinar Grafika, Jakarta, 2016) 12.

The perspective of legal studies on the abuse of authority which is dualistic between criminal law and administrative law has created a formulation that develops in the cross-shift between criminal law and state administrative law. Materially, abuse of authority is one of the important elements in the criminal act of corruption, as well as an element of state administration law in the form of deviant attitudes from state administrative bodies / officials. In this connection, several points can be underlined, namely (1) in the development of law in Indonesia there has been a change in the direction of legal politics related to law enforcement in eradicating corruption; (2) the paradigm of preventing corruption is as important as the prosecution of corruption, because corruption prevention is a (*condition sine qua non*) in prosecuting corruption; and (3) Basically, both prevention and prosecution of corruption will always lead to the performance of state administrators with integrity, professionalism and accountability based on the principles of good governance.

From a formal legal perspective, handling the settlement of abuse of authority provides a double tract pattern through the criminal procedure law for corruption and the state administration law mechanism. The two pathways for resolving abuse of power should be put in place as a middle way between preventing and prosecuting corruption crimes. Testing and proving the element of abuse of authority is primarily a guarantee of law enforcement in the eradication of criminal acts of corruption, and evidence of abuse of power by government administrations is not mutatis mutandis a criminal act of corruption. Recovering state financial losses should be prioritized based on responsive and restorative legal principles and approaches by shifting the role of a repressive legal approach to a preventive one. The implementation of the ultimum remedium principle which prioritizes the use of state administrative law rather than criminal law in handling abuse of authority, will have an impact on optimizing the return of state financial losses (assets).

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