




Competence of The Court In Adjudicating Corruption Cases Committed By Officials Based On Discretionary Authority

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Abstract

Introduction: Discretion As freedom of acting or making decisions from authorized and authorized state administration officials in their own opinion in government practices, the use of discretion should not be worried about by government officials. Aside from being a principle in carrying out government functions, discretion also has a strong legal basis based on the Government Administration Law that concerns the policy not a few that are processed and charged with the Corruption Criminal Act, so that officials are trapped as corruptors because of their duties attached to positions That. But that does not mean that the judge is free to make a decision. Ethics and morals are the commonly known judges. In Indonesia, maybe what is meant is the code of ethics and guidelines for judges produced by the Supreme Court and the Judicial Commission. So as to minimize the use of wrong discretion authority which results in the problem of criminal acts of corruption.

Purposes of the Research: This writing aims to find out the legitimacy of establishing a new high court in the islands.

Methods of the Research: The research used by the author is a normative juridical research type. The procedure for collecting legal materials is carried out by conducting library research on legal materials, namely primary, secondary and tertiary legal materials. Then the legal material that has been obtained is analyzed qualitatively.

Results of the Research: The results obtained are the Legitimacy of the Formation of a New High Prosecutor's Office in the Islands, to minimize the obstacles faced by the islands in fighting for people's rights.

Keywords: Competence of The Court; Trying Corruption Cases; Discretionary Authority.

1. PENDAHULUAN

Article 24 of the present 1945 Constitution (as amended) states, that: "1) Judicial power is an independent power to administer justice in order to uphold law and justice; 2) Judicial power shall be exercised by a Supreme Court and subordinate judicial bodies within the general court, religious court, military court, administrative court and by a Constitutional Court". What regulates judicial power is carried out by a Supreme Court and judicial bodies in the general court, religious court, military court, and state administrative court. Our current judicial power is not only exercised by the Supreme Court (MA) and the judicial bodies below it in the four judicial environments also by the Constitutional Court (MK). For the environment of the state administrative court based on Law number 5 of 1986 concerning the State Administrative Court as amended by Law number 9 of 2004 concerning Amendments to Law number 5 of 1986 concerning the State Administrative Court in Article 47 regulates the competence of the State Administrative Court in the judicial system in Indonesia, namely the duty and authority to examine, decide, and resolve administrative disputes.

The authority of the Court to receive, examine, decide to settle cases submitted to it is known as the competence or authority to adjudicate. The strict regulation of the position of the State

Administrative Court (PTUN) in the constitution is influenced by the idea of the need to improve the quality of supervision of the government.¹ Because the potential for abuse of authority from government officials is getting bigger which clearly harms the general public. The provisions regarding material law and formal law of the State Administrative Court are then regulated in Law Number 5 of 1986 concerning the State Administrative Court.²

One form of abuse of authority is the authority of Discretion which is a fundamental principle possessed by the government apparatus in managing government. S. Prajudi Atmosudirjo who defines discretion, discretion (English), discretionair (French), freies ermessen (German) as freedom of action or decision from authorized State administration officials and authorities in their own opinions.³ Discretion is needed as a complement to the principle of legality, namely the legal principle that states that every legal act or act of State administration must be based on the provisions of the Law. This principle gives legitimacy to policies taken by governments in the public interest. Under this principle, an official cannot be convicted as long as he follows the signs of discretionary use.

Discretion is free power and can be used to overcome certain problems. However, nowadays the discretionary space is getting narrower. Almost all government affairs have been governed by rigid regulations and technical rules. In fact, the use of discretion has also been regulated in writing in the Government Administration Law. The use of discretion also has a procedure, something that actually violates the concept of discretion itself. The existence of this discretionary authority means that some of the power held by the law-forming body is transferred into the hands of the government/administration of the State as an executive body.

In government practice, the use of discretion should not be for government officials to worry about. Apart from being a principle in carrying out government functions, discretion also has a strong legal foundation based on the Government Administration Law. At issue is discretionary corruption. Abuse occurs because of a mistaken understanding of discretion or malicious intent to obtain certain benefits.⁴

Discretionary power lies in the power to exercise positions held by public officials. Discretionary power is a type of power to exercise authority based on the initiative of officials. This power is granted by law with the intention that officials can perform their duties properly. This condition is prone to misappropriation, because along with carrying out policies for the public, there is easily an intention to attract private or group benefits.⁵

The use of discretion has special conditions, so that in exercising their authority, officials do not act arbitrarily. Many issues involving policies are processed and entangled with the Corruption Law, causing polemics.⁶ Officials are trapped to be corrupt because of their

1 W. Riawan Tjandra, *Peradilan Tata Usaha Negara; Mendorong Terwujudnya Pemerintahan Yang Bersih Dan Berwibawa*, Yogyakarta, Universitas Atma Jaya, 2009, p. 1.

2 Atmosudirjo, Prajudi. 1982. *Administrasi Dan Manajemen Umum*. Jakarta: Ghalia Indonesia, p. 82.

3 Julista Mustamu, *Diskresi Dan Tanggungjawab Administrasi Pemerintahan*1 Jurnal Sasi Vol. 17 No. 2 Bulan April-Juni 2011, Diakses Tanggal 20 Oktober 2022

4 Indriyanto Seno Adji, *Korupsi: Kriminalisasi Kebijakan Aparatur Negara?* (Jakarta: 2010), Halaman1-2. Makalah Disampaikan Dalam Diskusi Panel Dengan Topik "Kebijakan Aparatur Negara Dan Pertanggungjawaban Pidana", Pada Rakernas Asosiasi Pemerintah Provinsi Seluruh Indonesia (Apspi) Dengan Tema "Revitalisasi Peran Gubernur Guna Menciptakan Sinergitas & Harmonisasi Hubungan Pemerintah Pusat Dan Daerah" Pada Hari Kamis, Di Hotel Grand Preanger, Bandung, 2 Desember 2010

5 Marwan Effendy, *Apakah Suatu Kebijakan Dapat Di Kriminalisasi?*, Halaman 1-2. Makalah Disampaikan Dalam Seminar "Pertanggungjawaban Kebijakan Ditinjau Dari Hukum", Yang Diselenggarakan Oleh Lembaga Pengembangan Fraud Auditing (Lpfa), Di Hotel Bumi Karsa Bidakara - Jakarta, Selasa, 11 Mei 2010

6 Benny Irawan, *Diskresi Sebagai Tindak Pidana Korupsi: Kajian Kriminologi Dan Hukum Terhadap Fenomena Pejabat Otoritas*, (Mimbar, Vol. Xxvii, No.2, 2011) p. 143-144

duties attached to the post. The official's signature must be in the policy, so that they are responsible if it turns out to cause state losses that are ultimately considered a criminal act of corruption, even though the funds generated are not enjoyed by the official.⁷

Policies that can be qualified as criminal acts of corruption, of course, are dilemmatic, even though policies are part of a system. Government officials who are afraid to take policies, then the wheels of government will not run as expected. It is not uncommon for government officials to experience doubts in carrying out their functions and authorities, especially in carrying out their authority policies which are perceived by law enforcement as acts of corruption that take refuge behind policies.⁸

2. METODE PENELITIAN

The research used by the author is a normative juridical type of research. The procedure for collecting legal materials is carried out by conducting literature research on legal materials, namely primary, secondary and tertiary legal materials. Then the legal material that has been obtained is analyzed qualitatively.

3. HASIL DAN PEMBAHASAN

The competence of the authority in adjudicating a corruption case is very unusual anymore is the Tipikor court, in this case the authority of the Tipikor court, namely Examining, trying and deciding cases of criminal acts of corruption; money laundering whose original crime is corruption; and/or criminal acts expressly determined in other laws as criminal acts of corruption. So we need to know what is meant by a corruption court, which is a special court within the general court and the only court that has the authority to try corruption criminal cases whose prosecution is carried out by the public prosecutor. In this case, the judge as a judge is assisted by a clerk or someone assigned to do the clerk's work. The court examines, tries, and decides criminal cases in the presence of the defendant unless the law specifies otherwise, then in article 5 of Law Number 46 of 2009 concerning Corruption Courts states the Corruption Court is the only court authorized to examine, prosecute, and decide cases of corruption.

To further strengthen the competence of the Court in examining and making decisions related to discretion exercised by Government Officials, it can be narrated in the Decision of the Court Not Criminal of Corruption at the Ambon District Court Number: 304 / K / Pid.Sus / 2022 Jo Ambon High Court Decision number 9 / PID. SUS-TPK/2021/PT AMB dated July 29, 2021 Jo Supreme Court Decision number 304 K/Pid.Sus/2022 dated January 25, 2022 against the defendant Izaac Balthazar Thenu, S.E., as a case study with the case of the Defendant's position as Compliance Director of PT. Bank Pembangunan Daerah Maluku based on the Resolution of the General Meeting of Shareholders (GMS) Number: 11 / GMS / PT. BPDM/2010 dated April 26, 2010 concerning the Appointment of the General Director of PT. Regional Development Bank of Maluku and North Maluku duties and responsibilities as a Compliance Director in Decree No.DIR/02/KPTS dated January 10, 2007, Book I BPP Director who subordinates the Compliance function. (Company Manual) pages 8 to page 29 of the Company Manual Duties and Responsibilities of Direksi, among others: 1) Establish the necessary measures to ensure that the Bank complies with all Bank Indonesia regulations and other applicable laws and regulations within the framework of prudential principles; 2) Monitor and maintain that the Bank's business activities do not deviate from

⁷ Marwan Effendy..., *Loc.Cit.*

⁸ Indriyanto Seno Adji..., *Loc.Cit.*

applicable regulations; 3) Monitor and maintain the Bank's compliance with all agreements and commitments made by the Bank to Bank Indonesia.

Ensure that all draft decisions within the scope of their duties are known and tested, as long as they are publicly submitted to the Director in charge of the compliance function, That the process of Bond Repo transactions between PT. Regional Development Bank of Maluku and North Maluku with PT. Andalan Artha Advisindo Sekuritas September 2014 (Macet) are as follows: 1) PT. Andalan Artha Advisindo Sekuritas submitted Trade Confirmation and offer letter to PT. The Regional Development Bank of Maluku and North Maluku in the Trade Confirmation there are 2 (two) proof of transactions, namely Selling transactions and Buying transactions. Selling transactions are transactions carried out when placing funds from PT. Regional Development Bank of Maluku and North Maluku To PT. Andalan Artha Advisindo Securitas and Buying Transactions are transactions at maturity, namely funds sent from PT. Andalan Artha Advisindo Securitas to PT. Regional Development Bank of Maluku and North Maluku; 2) Then on Trade Confirmation and offer letter from PT. The mainstay of Artha Advisindo Securitas, then witness Yanthi Kharie, SE as Head of the Fund Collection Sub-Division at the Treasury Division of PT. The Regional Development Bank of Maluku and North Maluku drafted a memorandum which was then signed by Joko Sutrisno as Head of the Treasury Division of PT. Bank Regional Development of Maluku and North Maluku because witness Idris Rolobessy was not in the next place paraf and approval was made by the defendant Izaak Baltazaar Thenu as Compliance Director of PT. The Regional Development Bank of Maluku and North Maluku after that the memorandum was handed over to the General Director of PT. The Regional Development Bank of Maluku and North Maluku, namely the defendant Izaak Baltazaar Thenu to obtain consideration or approval and all dispositions agreed to carry out repo transactions; 3) After the defendant Izaak Baltazaar Thenu as Compliance Director of PT. The Regional Development Bank of Maluku and North Maluku has approved the Treasury Division Memorandum, so the steps taken in the Treasury Division are to carry out the process of sending funds to PT. Andalan Artha Advisindo Securitas through the BI-RTGS System by conducting the fund transfer process; 4) The process of disbursing funds is carried out in several stages, namely: a) BI-RTGS System Operator inputs the system based on Trade Confirmation data from PT. Artha Advisindo Securitas' mainstay; b) After the BI-RTGS System Operator has finished inputting transaction data in the BI-RTGS system, the next step of the transaction data is carried out (Pre Approve) by Treasury officials, namely the Head of Subdiv / Head of Division, namely Joko Sutrisno; c) After the data verification results are correct, the next step is to carry out the Final Approve / disbursement process by Treasury Officers / Directors according to limitations. the magnitude of each limitation": (1) up to 10 billion can be processed Final Approve by the Head of Treasury Subdiv; (2) up to 15 billion can be processed Final Approval by the Head of Treasury Division; (3) up to 50 billion can be processed by the Board of Directors, i.e. may be the Director of Marketing or General Director; (4) above 50 billion processed by Dirut. That after all delivery processes have been carried out, then the next process is the administration / bookkeeping process. Because in 2014 witness Idris Rolobessy was not present, the disposition and final approval was carried out by the defendant's Director of Compliance Isac Thenu, as follows:

No.	Instrument Name	Transaction Date	Base	Flower	Sum
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1	Obligasi III Bank Lampung Th,2012	29 September 2014	8,995,500,000	87,144,300	9,082,644,300
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That the defendant's conduct violated: Treasury Company Manual PT. Bank Maluku which explains about Reverse Repo Bond transactions, namely:

- a. Book I on Treasury Policy is regulated in Chapter II:
 - 1) External Provisions Namely the provisions of Bank Indonesia, the Ministry of Finance and/or other Departments.
 - 2) Internal Provisions item I e page 14.
 - 3) About the purchase of securities on page 16 among others:
 - a) The type of securities purchased is the type of securities that are included in the list of securities instrument guidelines that have received approval from the latest Alco.
 - b) Securities that can be considered for purchase are types of securities that have investment grade categories based on Alco's decisions, for example a rating of "BBB" and above or above issued by a rating agency recognized by Bank Indonesia or other rating agencies that are considered reputable
 - c) Securities that can be considered for purchase must be pursued that have a fairly prospective price trend based on analysis and actual market information.
- b. Book IV on the capital market in Chapter III of the Provisions for Transaction Implementation in point C, namely the provisions for the implementation of repo and reverse repo.
 - 1) is the provision for the implementation of repo and reverse repo.
 - 2) General Provisions
 - 3) For securities whose issuance does not require a rating, they must meet the collectibility of lancer securities in accordance with Bank Indonesia regulations.
 - 4) Repo Agreement, Repo Transaction buy - sell (reverse repo) by the Bank can be carried out if there is a repo agreement between the Bank and Conterparkwhere Conterpark has signed a repro agreement submitted by the bank.
 - 5) The authority to conduct reverse repro transactions refers to the guidebook for the function of managing and carrying out activities and purchases of securities in the country.
 - 6) The period of reverse repo transaction is 3 (three) months.
- c. Reverse repo transakisi procedures.
 - 1) Coordination with fund managers to find out the position of existing funds.
 - 2) Gather market information on the interbank interest rate to find out how much a reasonable repo ret is.
 - 3) Confirmation Letter if there is a reverse repro transaction agreement, the follow-up is made a confirmation letter which is a written notification of the transaction made. The confirmation letter must contain in detail and clearly about the transaction carried out so as not to cause doubts.
- d. Book VI on standard operating procedures in point B on money market work steps and article C on capital market work steps.
 - 1) Book VI on scarce money market work and scarce capital market work reverse bond transactions are guided by scarce money market work based on the placement of money market funds where the procedure is:
 - 2) Money market analyst officers collect market interest rate information then make advice and then submit it to the Head of Sub Division.

- 3) The head of the subdivision receives, examines and perfects the advice then drafts and submits the advice to the head of advice.
- 4) The Head of Devici receives and differentiates the advice then makes corrections and adds information if needed then signs the advice and forwards it to the marketing director.

Related to the board of directors, its duties are:

- (1) In general, the duties and responsibilities of the board of directors are regulated in Part Two of the Duties and Responsibilities of PBI No. 8/4/PBI/2006 concerning the Implementation of Good Corporate Government for Commercial Banks.
- (2) In particular, the duties and responsibilities of the board of directors are regulated in the AD/ART of each company.
- (3) OJK does not regulate in detail related to the formation of a goods/services procurement committee That related to determining the guarantor of issuers who will conduct reverse repo transactions with PT Bank Maluku, must go through a written internal bank analysis process and still see the 5 C's regulated in the provisions of Article 20 paragraphs (1), (2) and (3) of Bank Indonesia Regulation (PBI) number 11/25/PBI/2009 concerning the application of risk management for commercial banks.

That as a result of the actions of the defendant Izzac Balthazar Thenu, SE., as Acting Compliance Director of PT. The Maluku Regional Development Bank has abused its authority as per the Compliance function (Company Guidebook) matters. 8 to p. 29 Company Manual Duties and Responsibilities of the Board of Directors because the defendant:

- 1) Does not stipulate the necessary measures to ensure that the Bank complies with all Bank Indonesia regulations and other applicable laws and regulations within the framework of prudential principles
- 2) Not monitoring and maintaining that the Bank's business activities do not deviate from applicable regulations;
- 3) Not monitoring and maintaining the Bank's compliance with all agreements and commitments made by the Bank to Bank Indonesia;
- 4) Not ensure that all draft decisions within the scope of their duties are known and tested, as long as they are publicly communicated to the Director in charge of the compliance function.

As a person who commits or participates in doing with Idris Rolobessy, resulting in State Financial losses to PT. Bank Maluku Maluku as the Audit Report on the Calculation of State Financial Losses in the Case of Alleged Corruption in the Sale and Purchase (Reverse Repo) of Debt Securities / Bonds at the Head Office of PT. Regional Development Bank of Maluku Year 2011 to Year 2014 Number: SR-373/PW25/5/2020 dated December 14, 2020 amounting to Rp. 9,082,644,300 which is the entire part of state financial losses amounting to Rp. 238,500,703,330.00 (two hundred thirty-eight billion five hundred million seven hundred three thousand three hundred thirty rupiah).

Based on the case of this position, Defendant Izzac Balthazar Thenu, SE as the director of Compliance does not have the authority to take operational actions by making a disposition note to pay Trade Confirmation besides that all procedures that should have been passed in the reverse repo payment were not carried out in accordance with the applicable rules at Bank BPD Maluku Maluku which certainly resulted in losses to PT. Bank BPD Maluku Maluku.

Let's see how a judge or the guidelines used by judges in trying or rather convicting a convicted corruption convict, in Supreme Court Regulation Number 1 of 2020 concerning Article 2 and Article 3 of the Law on Combating Corruption in Permana explain the purpose of punishment aims to:

- a. Make it easier for judges to try criminal cases Article 2 & 3 of Law number 31 of 1999 concerning the eradication of criminal acts of corruption. (Article 2 paragraph 1: Every person unlawfully enriches himself or another person or a corporation that can harm state finances or the country's economy, punishable by life imprisonment or criminal imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000,00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). Article 3 reads every person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of his position or position that can harm state finances or the country's economy, punishable with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and a fine of at least Rp. 50,000,000,00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
- b. Prevent differences in the range of criminal convictions for criminal cases under articles 2 & 3 of the criminal law that have similar characteristics without sufficient consideration without reducing the authority and independence of judges;
- c. Require judges to consider reasons in determining the severity of the crime in articles 2 & 3 of the Criminal Law
- d. Require legal certainty, justice, and proportional expediency in imposing crimes against criminal cases under articles 2 & 3 of the Tipikor Law.

However, from the above, it should be noted that the sentencing guidelines in PERMA 1/2020 only apply to defendants who are legal subjects of people. Referring to PERMA 1/2020, in determining the severity of the crime, judges must consider sequentially the following stages:

- 1) the category of state financial losses or the country's economy;
- 2) error rate, impact, and profitability;
- 3) the range of criminal convictions;
- 4) aggravating and mitigating circumstances;
- 5) criminal conviction; and
- 6) other provisions relating to criminal convictions

As for what the Judge considers in describing the facts revealed in the trial regarding these stages in narrative form in the consideration of his decision.⁹

- a) Categorization of State Losses
- b) Offender guilt rate
- c) Range of criminal convictions

In legislation, the term discretion is a term contained in Law 30/2014 and its amendments. Based on information reported from the website of the Cabinet Secretariat of the Republic of Indonesia, the presence of Law 30/2014 is intended to create orderly administration of government, create legal certainty, prevent abuse of authority, ensure accountability of government agencies and/or officials, provide legal protection to citizens and government

⁹ Penjelasan undang-undang nomor 31 tahun 1999 tentang pemberantasan tindak pidana korupsi

officials, implement the provisions of laws and regulations and apply the general principles of good governance (AUPB), as well as providing the best service to community members. Based on Article 175 point 1 of the Job Creation Law which amends Article 1 point 9 of Law 30/2014, discretion is a decision and/or action determined and/or carried out by government officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and / or there is government stagnation. The conditions that must be met by government officials to be able to exercise discretion are as follows:¹⁰

- a) in accordance with the purpose of discretion;
- b) in accordance with the general principles of good governance (AUPB);
- c) based on objective reasons;
- d) does not create a conflict of interest; and
- e) done in good faith

Then, there are additional provisions or conditions that must be met regarding the use of discretion, namely the use of discretion that has the potential to change budget allocations must obtain approval from superior officials in accordance with statutory provisions. The approval is carried out if the use of discretion has legal consequences that have the potential to burden state finances.

- a) Launch the administration of government;
- b) Fill legal vacancies;
- c) Provide legal certainty;
- d) Overcoming government stagnation in certain circumstances for the benefit and public interest. What is meant by government stagnation is the inability to carry out government activities as a result of deadlock or dysfunction in government administration, for example such as natural disasters or political turmoil.¹¹

So it is also important to look at the types of discretion. According to its nature in the field of state administrative law, discretion is divided into two, including bound discretion and free discretion. The distinction between the two types of discretion is solely determined based on criteria or benchmarks of freedom given by law to the government or officials authorized to solve a problem.

4. KESIMPULAN

The competence of the authority in adjudicating a corruption case is very unusual anymore is the Tipikor court, in this case the authority of the Tipikor court, namely Examining, trying and deciding cases of criminal acts of corruption; money laundering whose original crime is corruption; and/or criminal acts expressly determined in other laws as criminal acts of corruption. In legislation, the term discretion is a term contained in Law 30/2014 and its amendments. Based on information reported from the website of the Cabinet Secretariat of the Republic of Indonesia, the presence of Law 30/2014 is intended to create orderly administration of government, create legal certainty, prevent abuse of authority, ensure accountability of government bodies and / or officials. Provide legal protection to citizens and government officials, implement the provisions of laws and regulations and apply the general principles of good governance (AUPB), as well as provide

¹⁰ Peraturan Mahkamah Agung Nomor 1 Tahun 2020 tentang Pedoman Pemidanaan Pasal 2 dan Pasal 3 Undang-Undang Pemberantasan Tindak Pidana Korupsi

¹¹ <https://www.hukumonline.com/klinik/a/kewenangan-diskresi-pejabat-pemerintahan-dan-sejumlah-aturannya>.

the best service to citizens. So even though it has discretion, it does not mean that judges are free to make decisions. Ethics and morals are the binds of judges that are commonly known. In Indonesia, perhaps what is meant is the Code of Ethics and Code of Conduct for Judges produced by the Supreme Court and the Judicial Commission.

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