



Original Article

The Legal Consequences of Abuse of Power in the Implementation of Development Projects

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Abstract:

Legally, the issue of abuse of authority in development is an act that can be prosecuted under two legal frameworks, namely State Administrative Law and Criminal Law. This article analyzes the legal framework and implications of abuse of authority by government officials, with a focus on national strategic projects and the procurement of goods and services. Through normative legal research methods, this study concludes that the Government Administration Law brings a new paradigm by establishing administrative sanctions as the first resort, while criminal sanctions are placed as the last resort. Based on the *lex posterior* principle, the primary authority to examine the existence of abuse of authority lies with the Administrative Court. Furthermore, the findings prove that officials who unlawfully abuse their authority, causing financial losses to the state, are required to take personal responsibility for the payment of compensation. Although this legal framework aims to provide certainty and prevent the criminalization of policies, its implementation in national strategic projects has drawn criticism for potentially weakening efforts to eradicate corruption. As an implementative measure, this study recommends harmonizing perceptions, developing clear technical guidelines, and improving coordination between APIP, PTUN, and law enforcement agencies. This synergy is expected to ensure the realization of accountability.

Keywords: Abuse of Authority; National Strategic Projects; State Administrative Law; Administrative Sanctions; State Financial Losses.

Introduction

National strategic projects for infrastructure development serve as a vital government instrument to drive economic growth and improve the welfare of the people (Nasional, 2019). In their implementation, government officials are granted authority to make discretionary decisions and take actions aimed at accelerating the achievement of



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development goals. However, this authority presents a dilemma. On one hand, it is a prerequisite for achieving development efficiency and effectiveness; on the other hand, it carries a high risk of abuse, which can ultimately lead to financial losses for the state ([Juliani, 2019](#)). In this context, the phenomenon of abuse of power creates a complex grey area, where Administrative Law and Criminal Law related to Corruption intersect, giving rise to tensions between the need for accelerated development and the principle of accountability ([Martanti, 2022](#)).

Before the enactment of Law No. 30 of 2014 on Government Administration, the legal approach to cases of abuse of power was still dominated by the perspective of criminal law. Early studies generally discussed the element of "abusing authority" in a limited context, focusing solely on it as a criminal act regulated under the Corruption Eradication Law (UUPTPK), with an emphasis on proof and criminal sanctions ([Sayogaramasatya et al., 2021](#)). These studies often overlooked the administrative dimensions of a policy or action taken by officials. Other research, such as that conducted by Maya & W, began to identify the conflict of authority between administrative courts and criminal courts in adjudicating elements of abuse of power, but did not offer a comprehensive legal solution ([MAYA, 2021](#)). Meanwhile, previous studies on government procurement of goods and services have mostly focused on corruption schemes and weak internal oversight ([Asmarani, 2023](#)), without thoroughly analyzing the mechanism of administrative law enforcement as the primary means of resolution. Thus, it can be concluded that the state of the art in previous studies remains fragmented and has yet to form a comprehensive understanding that fully accommodates the paradigm shift brought about by the Government Administration Law (UU AP).

This article aims to fill that scholarly gap by offering an integrated and up-to-date perspective. The novelty of this article lies in its comprehensive analysis of the legal implications of the UU AP as a game changer in addressing abuse of power, particularly in the context of strategic development projects. This article critically examines how the UU AP, through administrative sanctions and the authority of the State Administrative Court (PTUN), reconfigures the hierarchy of law enforcement from a *primum remedium* approach to an *ultimum remedium* approach. This novelty is further supported by an analysis of the potential dilemmas it presents, balancing the protection of officials from policy criminalization on one side, and the threat of weakening anti-corruption efforts on the other—a dialectic not widely explored in previous literature.

Based on the background and novelty outlined, the research questions of this study are as follows: "How does Law No. 30 of 2014 on Government Administration reconfigure the law enforcement paradigm regarding abuse of power in the implementation of development projects, and what are the legal implications for the accountability of officials and the effectiveness of corruption eradication?"

This study aims to analyze the reconfiguration of the law enforcement paradigm regarding abuse of power post-enactment of Law No. 30 of 2014, to examine the legal implications of the mechanisms of administrative sanctions and the authority of PTUN on the accountability of officials in development projects, and to identify and propose solutions to the dilemmas and challenges in implementing this new legal framework.

Methods

1. Approach and Type of Research

This study applies a qualitative approach with normative legal research. The choice

of this method is motivated by the research focus on analyzing legal principles, legal norms, and the harmonization of legislation regarding the abuse of power ([Marzuki, 2017](#)). The research process involves the analysis of primary and secondary legal materials to address the issues that have been formulated.

2. Data Sources

The type of data used in this research is secondary data, sourced from primary, secondary, and tertiary legal materials:

- a. Primary Legal Materials: The Constitution of the Republic of Indonesia 1945; Law No. 30 of 2014 on Government Administration; Law No. 31 of 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption; Government Regulations; Presidential Regulation No. 3 of 2016 on the Acceleration of National Strategic Projects; and Supreme Court Regulation No. 4 of 2015 on Guidelines for Legal Proceedings in Assessing the Elements of Abuse of Power.
- b. Secondary Legal Materials: Sources used include textbooks on law, academic journals, and articles that discuss the theory of abuse of power, administrative sanctions, and Administrative Law.
- c. Tertiary Legal Materials: Legal dictionaries and encyclopedias used to understand specific legal terminology.

3. Data Collection Techniques

Data collection is conducted through documentary study. The researcher collects and selects relevant legal materials related to the research focus. The selection process involves choosing documents that directly pertain to regulations and the practice of abuse of power in development projects.

4. Data Analysis Techniques

Data analysis in this study is carried out using content analysis combined with legal reasoning. The analysis method follows the model proposed by Soekanto and Mamudji, which includes several stages: ([Soekanto, 2007](#))

- a. Legal Inventory: Inventorying all relevant regulations related to the scope of the research issue.
- b. Vertical and Horizontal Synchronization: Ensuring the hierarchical alignment of regulations (vertical synchronization) and alignment among regulations at the same level (horizontal synchronization).
- c. Legal Interpretation: Interpreting relevant legal provisions using grammatical, historical, and systematic interpretive methods.
- d. Legal Construction: Building a comprehensive legal understanding through legal arguments and the application of legal principles.

5. Research Instruments

The primary research instrument in this study is the researcher themselves (human instrument). To support this role, document analysis guides and a legal analysis matrix are used, specifically designed to map the relationships between regulations and identify legal gaps.

Results

Sub 1 Reconfiguration of the Law Enforcement Paradigm: From Primum to Ultimum Remedium

The results of the research indicate a fundamental shift in the paradigm of law enforcement regarding abuse of power following the enactment of Law No. 30 of 2014. Previously, criminal law approaches often served as the *primum remedium* or primary instrument relied upon by law enforcement officers to address allegations of abuse of power by public officials ([Maya, 2021](#)). However, the Government Administration Law (UU AP) has clearly reconfigured this law enforcement hierarchy by placing administrative sanctions as the first step, while criminal sanctions are seen as the *ultimum remedium* or last resort.

This mechanism is implemented through Article 21 of the UU AP, which grants the State Administrative Court (PTUN) the authority to review and decide on the elements of abuse of power as a prerequisite before criminal proceedings can proceed. This finding aligns with Martanti's research, which asserts that Presidential Regulation No. 3 of 2016 on the Acceleration of National Strategic Projects is a concrete implementation of this new paradigm, where administrative resolution must be prioritized first ([Martanti, 2022](#)).

Why does this shift occur? Scientifically, this paradigm shift can be explained through the theory of optimal enforcement in law and economics. Becker argued that optimal law enforcement must consider the social costs of each enforcement action ([Becker, 1968](#)). The direct application of criminal law incurs high social costs, including the hindrance of development due to officials becoming excessively risk-averse in decision-making (a phenomenon known as risk aversion and policy paralysis). By placing administrative mechanisms as the first filter, UU AP aims to minimize these social costs by filtering out cases that are administrative errors rather than criminal corruption. Data from Simatupang (as quoted in [Martanti, 2022](#)) supports this argument, showing that 70% of cases reported as abuse of power were actually misunderstandings, while only 30% involved criminal elements.

Sub 2 Legal Implications for Official Accountability: Personal Responsibility and Graduated Sanctions

The second scientific finding is that the UU AP not only shifts the law enforcement paradigm but also strengthens personal accountability for officials. This study identifies that the UU AP explicitly creates a clear distinction between the responsibilities inherent in a position and those that are personal in nature. Article 20, paragraph (6) of the UU AP asserts that the recovery of financial losses becomes the personal responsibility of a government official if the loss results from actions that involve elements of abuse of power.

Why is this distinction important? Theoretically, this distinction aligns with the doctrine of fault-based liability in administrative law. Juliani explains that the responsibility associated with a position relates to the fulfillment of the formal and procedural requirements of an action, while personal responsibility concerns the substance and ethics of using that authority, which arises when there is willful malfeasance or gross negligence (*culpa lata*) ([Juliani, 2019](#)). Thus, officials can no longer "hide" behind the legitimacy of their position to protect personal assets when found

guilty of abuse of power.

This finding is further reinforced through the application of a graduated system of administrative sanctions, as mandated in Article 81 of the UU AP, ranging from verbal warnings to permanent dismissal. This proportional system allows for the application of sanctions that correspond to the severity of the violation, a more restorative justice approach than the retributive nature of criminal law. The relevance of this finding is further emphasized by Pontororing's research, which highlights the importance of certainty in administrative sanctions as an inseparable part of fair administrative law enforcement ([Pontororing, 2018](#)).

Sub 3 Dilemmas in Implementation: Policy Protection vs. Weakening of Corruption Eradication

The third finding of this research is the identification of a dilemma inherent in the implementation of the UU AP. On one hand, the UU AP has successfully created a safe harbor for officials to make risky but necessary discretionary decisions for the acceleration of development. This prevents policy criminalization, which has long been a concern for bureaucrats.

But why does this dilemma arise? On the other hand, findings by Asmarani in the context of procurement show that this protective approach can create moral hazard and potentially weaken the efforts to eradicate corruption ([Asmarani, 2023](#)). The convoluted administrative mechanisms and ineffective coordination between the Internal Supervisory Apparatus (APIP), PTUN, and law enforcement agencies (such as the Prosecutor's Office and Police) can be exploited to delay proceedings and avoid criminal processes. This finding aligns with criticism raised by Romli Atmasasmita (quoted in Maya & W, 2021), who highlights the potential weakening of anti-corruption efforts if law enforcement officers no longer have proactive authority.

Sub 4 Implications for National Strategic Projects and Government Procurement

Findings from Martanti and Asmarani highlight the practical implications of Law No. 30 of 2014. In the context of national strategic projects, Presidential Regulation No. 3 of 2016 emphasizes that any issues must first be resolved through administrative mechanisms before other legal options are pursued ([Asmarani, 2023](#); [Martanti, 2022](#)). This aims to protect officials from policy criminalization, which could hinder development, while also providing legal certainty. However, on the other hand, this approach has the potential to create a false "safe zone" for officials and can be seen as weakening anti-corruption efforts. In government procurement, Asmarani's findings show that this protective approach can open opportunities for corruption if not balanced by effective oversight mechanisms ([Asmarani, 2023](#)). Therefore, strong, non-discriminatory law enforcement remains an essential prerequisite in maintaining the integrity of the government procurement process.

Sub 5 Implications and Contributions of the Findings to Administrative Law Theory and Corruption Eradication Strategies

This study makes significant scientific contributions to the development of administrative law theory and corruption eradication through three main contributions. First, this research successfully maps the boundaries and hierarchy of law enforcement by clarifying the grey area that has long existed at the intersection of Administrative Law

and Criminal Law. The designation of PTUN as the first resort provides a more orderly and systematic law enforcement roadmap that aligns with the principle of ultimum remedium.

Second, the findings identify the UU AP as a procedural anti-corruption instrument. This regulation serves a dual function, not only as a repressive instrument but also as a preventive mechanism operationalized through APIP oversight and administrative sanctions, creating an internal checks and balances system within the bureaucracy.

Third, this study strengthens the principle of accountability and personal responsibility in good governance. The finding regarding personal responsibility for officials in reimbursing state losses emphasizes the principle that the authority granted must be personally accountable, not just institutionally.

Thus, the three scientific findings comprehensively answer the research objectives. The UU AP has successfully reconfigured the law enforcement paradigm, strengthened official accountability through personal responsibility, while also generating substantive dilemmas that require further refinement and harmonization of its implementation within the framework of Indonesian administrative law.

Conclusion

Based on the comprehensive examination conducted, this study concludes four main scientific findings. First, there has been a fundamental reconfiguration of the law enforcement paradigm concerning abuse of power after the enactment of Law No. 30 of 2014 on Government Administration. The paradigm has shifted from a criminal law approach as *primum remedium* to a law enforcement hierarchy that places administrative mechanisms as the first resort and criminal law as *ultimum remedium*.

Second, this new legal framework brings significant legal implications for official accountability. The UU AP reinforces the differentiation between responsibility in an official capacity and personal responsibility, with the burden of reimbursing financial losses due to abuse of power being placed personally on the responsible official. This is further strengthened by a proportional and graduated system of administrative sanctions.

Third, the implementation of this new paradigm has led to substantive dilemmas. On the one hand, the UU AP successfully creates legal protection for officials from policy criminalization, but on the other hand, it has the potential to create moral hazard and weaken the intensity of anti-corruption efforts if inter-agency coordination mechanisms are not effective.

Fourth, the policy to accelerate national strategic projects prioritizes administrative resolution, balancing the acceleration of development and accountability, though it may attract criticism as a form of weakening anti-corruption efforts.

Suggestion

Based on the research findings, the following recommendations are offered for improvement and future research:

Policy and Implementation Recommendations:

1. The development of clear technical guidelines that distinguish between maladministration and criminal corruption.
2. Strengthening capacity and coordination between the Internal Supervisory Apparatus (APIP), the State Administrative Court (PTUN), and law enforcement

agencies.

3. Developing a risk-based oversight system for strategic projects.
4. Increasing transparency in decision-making processes and involving the public in oversight.

Recommendations for Further Studies:

1. Conducting empirical-legal research to examine the effectiveness of the trilateral coordination between APIP, PTUN, and criminal law enforcement in practice.
2. Developing operational guideline models or indicators to clearly distinguish between pure administrative errors and abuse of power that has crossed into the realm of criminal corruption.
3. Conducting comparative studies on the application of the ultimum remedium principle in handling abuse of power in specific development sectors.
4. Researching the effectiveness of risk-based oversight mechanisms in preventing abuse of power in national strategic projects.

The implementation of these recommendations is expected to optimize the function of UU AP as an instrument for preventing and addressing abuse of power, while maintaining a balance between accelerating development and upholding accountability principles in public administration.

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