

CRIMINAL LIABILITY OF STATE ACTORS ON ABUSE OF FACILITY BASED ON PERSONAL INTEREST LAW OF CORRUPTION

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ABSTRACT

Use of government facilities, in principle, intended for the benefit of services to the public (citizens). The problems studied in this thesis are: (1) Is the misuse of state facilities for private purposes can be justified sebagai tindak korupsi; (2) How significant misuse of state facilities to private interests could harm the state finance or economy of the country; The results of this study show that misuse of state property for personal purposes can be justified as an act of corruption because they meet certain elements of Corruption. The impact of the misuse of state facilities to private interests is very detrimental in terms of state finances the cost of care.

Keywords: abuse of state facilities, corruption

INTRODUCTION

1. Background

The management of state property has been stipulated in Government Regulation No. 6 of 2006, as amended by Government Regulation No. 38 Year 2008 on the Management of State / Regional, regulates the management of state property that includes demand planning and budgeting, procurement, use, utilization, security and maintenance, assessment, removal, transfer, administration, supervision, monitoring, and control. Article 2 of Government Regulation No. 38 Year 2008 on the Management of State / Regional states that:

(1) Goods state / region includes:

- a. Goods purchased or obtained at the expense of APBN / APBD; or
- b. Goods originating from other legitimate acquisition.

(2) Goods referred to in paragraph (1) letter b shall include: a. Goods acquired from the grants / donations or similar;

- a. Goods acquired in the implementation of the agreement / contract;
- b. Goods acquired in accordance with the provisions of the legislation; or

c. Goods acquired under a court decision that has obtained permanent legal force.

With reference to the principle of equality before the law (*Equality before the law*), that anyone be it among the elite government or officials accountable for mistakes, because in criminal law a person is responsible for his actions if such actions have an error, in accordance with the principle of criminal law (green straf zonder Schuld), there is no crime without error, and the error they are governed by the Act, that the act was declared wrong and have a positive legal sanctions or other words existing in the Act.

2. Formulation of the problem

Based on the above background that the problem in this research are:

1. Are misuse state property for personal gain can be accounted as corruption?
2. How significant the misuse of state facilities to private interests could harm the state finance and economy of the country?

3. Purpose and benefits of research

The purpose of this study is the target to be achieved in research, both as a solution to problems (referred to as the objective purpose) as well as the fulfillment of the expectation (referred to as a subjective purpose). Therefore, the objective of this study is as follows:

- 1) The aim objective of this research is:
 - a) To know abuse of position for personal gain state facilities can be justified as an act of corruption or not.
 - b) To know how significant misuse of state facilities to private interests could harm the state finance and economy of the country.
- 2) Subjective purpose is to find answers to problems studied.

The benefits of this research can be investigated theoretically and practically, which is as follows:

a) Theoretical benefits

The theoretical benefits, research is expected to contribute ideas for the development of legal science in criminal law, specifically to broaden the law on this aspect of criminal responsibility in misuse of state property for personal gain as corruption.

b) Practical benefits

1. For the government, the research is expected to provide input in particular in the development and application of *untuk pertanggungjawaban* criminal misuse of state facilities to private interests.
2. For the public, namely as a reference to determine whether the misuse of state facilities for the benefit of *pribadi* is accounted as corruption or not.
3. Academicians, namely as a reference for other researchers who wish to study more broadly about responsibility of the abuse of use of state facilities for private purposes in terms of corruption.

LITERATURE REVIEW

1. Criminal Liability

Criminal liability is the responsibility of the offenses. Criminal responsibility occurs because there has been a criminal offense committed criminal by someone. Responsibility is essentially a mechanism established by the criminal law to react to violations of "reject the deal" a certain action.

Criminal liability is a requirement or mechanism for determining a person can be convicted or not. People who commit criminal acts will be in a criminal if he has a fault, for any errors that resulted in his defendant shall:

- a. Commit a criminal act
- b. Able bertanggungjawab

- c. Intentionally or negligent
- d. The absence of an excuse or justification.¹⁶

Criminal liability in a foreign language in the call, responsibility criminal and criminal liability, criminal liability here are intended to determine whether a person can be accountable it criminal or not to act in lakukanya it.

2. Abuse of State Facilities For Crime

The term "abuse" is derived from the word "misuse", which means doing something is not as it should be. In Kamus Besar Bahasa Indonesian (KBBI), abuse is defined as follows:

"Process, the way, the act of abusing"

While Salim and Salim formulate:

"It is a process, method, perverted deeds to do something which is improper or use something is not as it should be"¹⁷

3. An Overview of Corruption

Understanding Corruption

According Fockema Andreae, said corruption begins latincorruptio or corruptus. Corruptio language comes from the word corrumpere, an older Latin word. From the Latin that fell into many European languages such as English, namely corruption, corrupt; France is corruption; and the Netherlands are corruptie, korrupcie. From Dutch this is the word that comes down to Indonesian namely corruption.¹⁸

METHODS

1. Research sites

¹⁶Ruslan pious op.cit, Criminal Acts and Criminal Liability, p. 11

¹⁷Salim, Peter, and Yenny Salim..Kamus Indonesian Contemporary., Jakarta, 1991, pp: 93

¹⁸Andi Hamzah, 2006, the Corruption Eradication Through National and International Criminal Law, PT. King Grafindo Persada, Jakarta p 4

This study was conducted at three institutions in Rote Ndao Regency namely BAPELITBANG, AGENCY FINANCIAL AND PROPERTY, and INSPECTORATE of Rote Ndao.

2. Types and time of research

This study uses the approach of juridical normative and empirical. Normative juridical approach is done by examining and interpreting the things that are theoretically related to legislation and other literary documents related to this research. The juridical empirical approach carried out by research data were taken from the field. This study will take place effectively for 2 months

3. Aspects of Research

Aspects of the studies reviewed and answered in this research are the scope of the misuse of state facilities; the concept of misuse of state facilities under the criminal law; Misuse of state property as misconduct; Calculation (calculations) budget for state facilities; The impact of abuse state facility for the personal benefit of the losses to the state or state economy

4. Sources of Data

The data used in this research is primary data and secondary data. Primary data, ie data sources obtained directly field. Secondary data, ie substances which are binding law (rules and regulations).

5. Data Collection Techniques

The technique used in this research is through interviews with staff at the three institutions and data collection in the form of Draft Budget Work on the three institutions.

6. Mechanical Processing, Analysis and Interpretation of Data

Once the data is collected, the data is processed, analyzed and interpreted as follows:

(1) Processing and Data Analysis

- a. Editing
 - b. Coding
 - c. Tabulation
 - d. Verification
- (2) Interpretation of data

RESULTS AND DISCUSSION

1. Performers Facility State For Personal Interests Can Accounted For Corruption

To answer this, we must first know the action position of use of state facilities to private interests which categorized as elements of Corruption, which consists of:

- a) Act against the law
- b) Abuse of power, opportunity, or means
- c) To enrich themselves, other people, or corporation, and
- d) Financial harm state or state economy.

Description deed use of state facilities to private interests on the above elements as follows:

a) Act against the law :

Deeds use of state facilities to private interests had violated Article 3 Paragraph (1) of Government Regulation No. 27 Year 2014 concerning Management of State / Regional which requires the use of state property / area only to support the implementation of the duties and functions of government. So act using state facilities to private interests in the elements against the law have been met.

b. Abuse of power, opportunity, or means.

As already described the background, in Article 3 Paragraph (1) of Government Regulation No. 27 Year 2014 concerning the implementation of the management of state property / regions should consider the following principles:

- a. Functional Principles
- b. The principle of Rule of Law
- c. The principle of transparency and openness and the principle of efficiency
- e. principle of Accountability
- f. Certainty Principle Value

Of those principles, measures the use of state facilities to private interests has violated the principle of the principles described efisiensi. Dimana on management of state property / area directed to use in order to support the implementation of the duties and functions of optimal government. So, the use of state facilities intended only for service to the public interest and not personal.

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

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

From the above explanation we can conclude works use state facilities for private purposes had violated Article 3 Paragraph (1) of Government Regulation No. 27 Year 2014 concerning Management of State / Regional and the actions included in the abuse of power. So act using state facilities to private interests in the element of abuse of authority, opportunities or facilities have been met.

- b) To enrich themselves, other people, or corporation

The element of "enriching himself or another person or a corporation" (Article 2 (1) Law No. 31 of 1999 jo Law No. 20 of 2001) and the element of "enriching himself or another person or a corporation" (Article 3 law No. 31 of 1999 jo law No. 20 of 2001), is an element that is an alternative that does not need to be perpetrators of corruption must enjoy themselves money to corruption because it is quite offender enriches others or benefit others. The element of "enriching himself or another person or a corporation" is more difficult to prove because it must be proven on the increasing wealth of the perpetrators of corruption before and after acts of corruption do.

From the above explanation we can conclude the act using state facilities for private purposes has the objective to benefit themselves outside in the elements of authority that may enrich themselves, others, or the corporation has been fulfilled.

c) Financial harm state or state economy.

Losses Country / Region as stipulated in article 1 paragraph 22 of Law No. 1 of 2004 is the lack of money, securities, and goods, real and definite amount as a result of an unlawful act, either intentionally or negligent. Then, in article 59, paragraph (1) of Law No. 1 of 2004 determined that any harm countries / regions caused by the unlawful act or omission of a person should be resolved in accordance with the provisions of applicable law. Unlawful acts committed by the offender may be subject to sanctions to restore the damages and also do not rule out the possibility of criminal prosecuted.

On acts of use of state facilities for personal gain, loss of state can be found on the official car maintenance budget where the budget can be increased due to the abuse of power, excessive wear such as shopping service fees, budgets of fuel, engine oil, and tire.

Refer to Article 46 paragraph (3) of Government Regulation No. 27 Year 2014 concerning Management of State / Region, stated that the State Property Maintenance Cost / Regional charged to the Budget of the State / Region.

From the above explanation we can conclude the act using state facilities to private interests could harm the country's finances. So that the elements of financial harm state or state economy is found.

From the overall description of the above results the researchers believe that the perpetrators of abuse of state facilities for private purposes can be justified as an act of corruption because they meet certain elements of Corruption.

2. How Significant Misuse Of Facility State For Finance Personal Interests Can Harm State or the State Economy

The use of official vehicles owned operations are often used instead of the hours of work and for the sake of duty, even it can be seen in tourist places used by non-officials who get the facility operational service vehicles. Though the existence of official vehicles must be used in order to facilitate the implementation of the official interest of the exercise of official functions in Rote Ndao district. Supposedly official vehicles are only used on weekdays are Monday to Friday, and another day when in the framework of the implementation of the duty office, ironically even official vehicles are also often seen used by others who do not have the right to use official vehicles, either family or relatives, here is yng researched aspects:

a. Budget Car Care Department

Planning an early stage of the process of four-wheeled vehicle management department. Planning or planning is to determine the objectives to be achieved during a future and what should be done in order to achieve the goal - the goal.

a. Procurement Planning Considerations Four-wheel Vehicle Department. Based on the research results of the planning considerations four-wheel vehicle procurement agency, the Regional Secretariat of Rote Ndao refer to Regulation No. 17 Year 2007 on Technical Guidelines for Management of Regions, which is a basic consideration of procurement planning department four-wheel vehicles in Rote Ndao District Secretariat are as follows:

1. Filling Needs Four-wheeled vehicles at the District Secretariat Rote Ndao in order to smooth the implementation of the basic tasks and functions of the organization and coverage of duty officer at the District Secretariat Rote Ndao and the Regional Secretariat is SKPD great Governments Rote Ndao (Perbup No. 7 of 2016).
2. Rote Ndao regency spacious with an area of 7,679 km² and Conditions Rote Ndao district wide enough so that the sub-district consists of 10 four-wheel vehicle is a tool that is needed for the task - a task that is field.
3. The state of the vehicle is available, the vehicles are old, no longer economical when used or worn and there are several vehicles damaged and fail production so difficult to repair. Both vehicles echelon echelon II and III with the Secretariat of Rote Ndao regency.
4. Besides, in the planning department of four-wheeled vehicles at the District Secretariat Rote Ndao also consider the ability of the budget available

CONCLUSION

Based on the research above, it can be concluded that:

1. Officials who misuse state property for personal gain that could result in losses to the state / region is given in the form of administrative sanctions and criminal sanctions, the administrative sanction, the target application is aimed at action, whereas in criminal aimed at the perpetrators. Based on Government Regulation No. 53 of 2010 Concerning the Discipline of Civil Servants Article 7 states that civil servants who do not comply with the provisions which commit such abuses discipline or sentenced to discipline. The disciplinary sanctions consist of mild disciplinary punishment, disciplinary moderate and severe disciplinary penalties.
2. The use of state facilities to private interests could harm

the country's finances. This is evident from the cost incurred greater care due to abuse of authority for personal gain.

SUGGESTION

1. To prohibit the use of official vehicles need to be confirmed in terms of strengthening the regulations. Where the prohibition of the use of state facilities for private purposes only in [Law No. 10 Year 2008](#) about legislative elections, therefore, according to the researchers should rule banning use of official cars for private purposes need to be regulated under the Corruption Law because such measures have fulfilled the elements of Corruption.
2. To control the use of official vehicles that need to be made the rule and empowerment of personnel supervision over again. So that control of the use can be done well.

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