

## Criminal Liability for Abuse of Authority of Village Head that Resulted in Corruption Crime

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**Abstract:** The village head as the village government, especially in the percut village in the percut sei tuan sub-district, is required to provide sufficient, accurate, timely information to all stakeholders regarding the management of village funds. The purpose of this writing is to find out and analyze the rules of law governing criminal liability for abuse of the authority of the Village Head. The type of research is normative legal research, the research data uses secondary data and is supported by primary data. Data is collected using literature study and interviews. Data analysis was conducted using qualitative analysis method. The results of the study concluded that the legal rules governing criminal liability for abuse of the authority of the village head used in Law Number 6 of 2014 and Law No. 31 of 1999 Jo. Law No. 20 of 2001 and article 374 of the Criminal Code.

**Keyword:** Abuse of Authority, Criminal Liability, Village Head.

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### 1. Introduction

Corruption in Indonesia does not only occur at the central and regional government levels, corruption is now starting to enter the smallest lines of local government. The development project sector is one of the subscriptions of corruptors to erode state assets, even though the central government is very optimistic about development in various fields, especially development at the village level. The emergence of the Village Fund became an 'easy' material for rent-seekers to take state assets. With the lack of supervision carried out by the central government on the village, the flow of village funds is getting bigger to be misused by some unscrupulous village officials (Isman, 2019).

Several cases of abuse of authority of the Village Head who committed corruption in the Deli Serdang Region, among others: First, in Court Decision Number 125/Pid.Sus-

Tpk/2017/PN.Mdn, there is a village head with the initials CA, CA is the Village Head in Percut Village, Percut Sei Tuan Sub-district, who in this case abused the authority of village funds for the 2016 fiscal year, by making fictitious reports related to the construction of Percut Village Drainage. CA has been proven guilty of committing a criminal act of corruption with a prison sentence of 5 (five) years and a fine of Rp. 200,000,000, - (Two Hundred Million Rupiah). Second, contained in Decision No. 100/Pid.Sus-TPK/2018/PN Mdn, is a village head with the initials SA as the head of Sampali Village, Percut Sei Tuan Sub-district, Deli Serdang Regency, who has been found guilty of committing a criminal act of corruption with imprisonment for 4 (four) years and a fine of Rp. 500,000,000, - (five hundred million rupiah) provided that if the fine is not paid it is replaced by imprisonment for 6 (six) months. Third, contained in Decision No. 68/Pid.Sus-TPK/2020/PN.Mdn, is a village head with the initials HP as the Head of Tanjung Purba Village, Bangun Purba Subdistrict, Deli Serdang Regency, who has been found guilty of committing a criminal act of corruption with imprisonment for 1 (one) year and a fine of Rp. 50,000,000.00 (fifty million rupiah) provided that if the fine is not paid it must be replaced with imprisonment for 2 (two) months.

Based on these cases, the issue of fictitious reports is an act that is often carried out by unscrupulous village heads, which certainly violates the concept of good governance. Good governance in the management of village funds is important, such as the central and district governments, village officials and the community. In the context of village governance, the concept of good governance is used as an institutional framework to strengthen village autonomy by referring to transparency, participation, and accountability (Zaman & Nurdiwaty, 2020).

In the management of the Village Fund, the Village Head as the village government should be required to provide sufficient, accurate, timely information to all stakeholders, in this case the village government as the responsible party and the community. In Participation, the village government should also involve the community so that the programs carried out reflect the interests of the village community, but this is not what happened CA The village head in Percut village, Percut Sei Tuan sub-district, who in this case abused the authority of the village funds for the 2016 fiscal year, by making fictitious reports related to the Percut Village Drainage construction work, and without any community participation in it.

Based on the description above, this paper will try to discuss the abuse of authority in the use of Village Funds against the village head from a criminal law perspective, by knowing the aspects related to the actions of the village head that result in other specific acts such as corruption. So by knowing whether the criminal liability regulated by statutory provisions regarding the actions of the village head for abuse of authority in the use of village funds which results in corruption is effective in holding the village head responsible for his actions.

## 2. Research Method

This type of research is normative legal research. The research data uses secondary data and is supported by primary data. Data is collected using literature study and

interviews with documentation study techniques and field studies. The data that has been collected is then analyzed using qualitative analysis method.

### 3. Result and Discussion

The authority granted to a government body or official must be used for the purpose for which the authority was granted. A government body or official who uses its authority for purposes that deviate or differ from the purpose for which the authority was granted has committed an act of abuse of authority. Thus, in the case of abuse of authority, the government body or official does have the authority to take an action, but the purpose deviates from the purpose intended by the law that grants the authority. The village head as the lowest structural official in the government also has great potential for abuse of authority as a government official.

According to Philipus M. Hadjon (2015), there are three main elements of abuse of authority, namely *Met opzet* (intentionally); Diverting the purpose of authority; There is a negative personal interest. Based on this, abuse of authority occurs because of intentionality not negligence or negligence, namely by deliberately diverting the purpose of authority so that it deviates from the purpose of granting the authority. The act of diverting the purpose of the authority is based on negative personal interests, for example to obtain personal or other people's benefits.

Article 17 of Law Number 30 of 2014 concerning Government Administration regulates the prohibition of abuse of authority, stating that "Government agencies and / or officials are prohibited from abusing their authority; Prohibition of abuse of authority as referred to in paragraph (1) includes: prohibition of exceeding authority; prohibition of mixing authority; and / or prohibition of acting arbitrarily."

The duties of the village government according to Law No. 6/2014 on Villages are governance, development implementation, community development, and community empowerment. The duties and functions of the village head, the village head is the head of the village government who leads the administration of the village government. The village head is tasked with organizing the village government, carrying out development, community development, and community empowerment. In carrying out these duties, Law Number 6 of 2014 concerning Villages Article 9 paragraph (2) explains that the Village Head has the authority to "Lead the implementation of the Village Government; Appoint and dismiss Village Apparatus; Hold the power of financial management and Village assets; Establish Village Regulations; Establish APBDesa; Fostering Village community life; Fostering peace and order in the Village community; Fostering and improving the Village economy and integrating it in order to achieve a productive scale economy for the greatest prosperity of the Village People; Developing sources of Village income; Proposing and receiving the delegation of some of the State's wealth to improve the welfare of the Village community; Developing the socio-cultural life of the Village community; Utilizing appropriate technology; Coordinating participatory Village development; Representing the Village in and out of court or appointing a legal representative to represent it in accordance with statutory provisions; and Carrying out other powers in accordance with statutory provisions."

Based on the 3 (three decisions) as explained in the introduction, that all three are defendants who have positions as Village Heads and commit abuse of authority. Referring to the opinion of Philipus M. Hadjon, the authority to make decisions can only be obtained in two ways, namely by attribution or delegation. Attribution is the authority attached to an office. Therefore, authority as a Village Head Official in this case is the right to carry out one or more management functions, which include regulation (regulation and standardization), management (administration) and supervision (supervision) or a particular affair (Gadjong, 2007).

The three Corruption Cases in the decision were in the Deli Serdang Region and can be categorized that abusing authority by means of opportunities or means available to him because of position or position "is using the authority, opportunity or means attached to the position or position held or occupied by the perpetrator for other purposes than the purpose of giving the authority, opportunity or means.

Authority is closely related to the position or position that a person has, the position as the village head as the highest power holder in the village government and is authorized to manage village finances must always be ready to provide input in the form of accountability reports on village funding and finances, as in PP Number 43 of 2014 concerning villages (Implementing Regulations for Law Number 6 of 2014, concerning Villages).

Law No. 6 of 2014 concerning Villages does not require the village government officials, in this case the village head, to report the use of village funds to BPK, so this causally opens up opportunities and opportunities for misuse of village funds, while based on Law No. 17 of 2003 concerning State finances, Law No. 15 of 2004 concerning examination of management and responsibility of State finances, and Law No. 15 of 2006 concerning BPK, village funds are part of State finances, so their use must be audited by BPK. All use of budget funds derived from APBN and APBD must be audited by BPK. Between the Village Law and the BPK Law and the Law on Audit of State Financial Responsibility, there is a contradiction and a tug-of-war regarding the obligation to submit accountability for village funds by the village head.

The legal responsibility of the Village Head for abuse of Position as Village Head in this case can be subject to criminal liability if the administrative law is clearly illegal, and criminally causes losses to the State. Thus, criminal acts and criminal liability are, in principle, inseparable parts of the discussion of the criminal law system. Criminal acts only refer to acts that are prohibited and threatened with a sanction, while the person who commits the act is sanctioned or not, in this case of course, depending on whether there is guilt in the act. The dualistic view, regarding the existence of guilt and the ability to be responsible, is not an element of a criminal offense. Criminal responsibility, in foreign terms, is also called *Teorekenbaardheid* or criminal responsibility, which leads to the punishment of the perpetrator with the intention of determining whether or not a defendant or suspect is responsible for a criminal offense that has occurred. Criminal responsibility itself is the continuation of the objective reproach that exists in the criminal act to be held accountable (Moeljatno & Cipta, 1983).

The three Village Heads committed the act of abuse of authority with malicious intent (*Mens Rea*) in criminal law is included in the study of "criminal liability". When there is an alleged criminal offense, the first thing that needs to be proven is whether or not there is an illegal act. After the unlawful act is proven, it is then seen whether the defendant can be held criminally responsible. The term "*mens rea*" is a term used by common law countries to signify "fault" in a person's actions. We can also analyze further when the Village Head commits the crime of corruption there is no intention there, meaning that the Village Head may not know how to manage village funds and lead to criminal acts of corruption.

#### 4. Conclusion

Based on the discussion above, it is concluded the law governing criminal liability for abuse of authority of the village head is regulated in Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption, while the misuse of village funds is regulated in Law Number 6 of 2014 concerning Villages, PP No. 60 of 2008 concerning Government Internal Control Systems and article 374 of the Criminal Code. Although it is clearly regulated, it is necessary to strengthen supervision and regulation of public officials, in this case the village head, in his authority to make policies by minimizing the loopholes for committing criminal acts..

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