

## Review Juridical Element Abuse Power In Action Criminal Corruption By System Law Criminal In Indonesia

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**Abstract.** Research on the concept of abuse of authority in the Corruption Constitution in Indonesia, elaborating on this problem along with the concept of abuse of authority in decisions court. Elaboration with normative research methods, in the final results show that any inconsistency in the formulation of the offense in Article 3 of the PTPK Law. The location of the inconsistency is an element from violation First with Meaning enrich self Alone, person other, or corporation formulated in a way material, whereas element 2nd can harm finance country or economy. Formal Terms Which formulated on base thinking This, that is element violation to abuse authority, chance, or means Which he has because of his position/position. The solution is possible with certain characteristics among the concept of breaking law with draft abuse authority And in practice his, proof abuse authority is matter Which difficult, Because For evaluate abuse This authority is factually related authority, suggested in Article 3 of Law no. 31 of 1999 jo. Act No 20 Year 2001 deleted just. Reason others are: element deed oppose law in Article 2 Law no. 31 of 1999 jo. UU no. 20 of 2001 has been able to accommodate the elements abuse of authority, because abuse of authority is a species of the genus element violate law.

**Say Key :** Abuse, Corruption, Law Administration Country.

### INTRODUCTION

Draft about country law has appear And popular on century XIX as reaction to arbitrariness Which happen in period Then (Ni'matul Huda. 2005: 1) Constitution 1945 has reflects the concept of thinking that upholds human rights and guarantees rights all citizens are equal before the law and government, and have the obligation to uphold the law and government without exception. According to Sri Soemantri, a legal state must comply a number of elements, namely:

- a. Government in carry out task And not quite enough he answered must based on Constitution or Constitution;
- b. Guarantee right basic man (for inhabitant country);
- c. Distribution power in country
- d. Supervision institution Justice (Sri Soemantri. 1992:29).

The Unitary State of the Republic of Indonesia is basically a legal state, meaning Law Pancasila on in essence own elements Which contained in draft And rule rechtsstaat from draft law. With combination concepts That, Certain will There is the consequences that Country must ensure right And obligation as well as protection law to all part Indonesia. One of the most important elements of the rule of law is the government in implementing it duties and responsibilities must be based on laws or regulations (Sri Soemantri, 1995: 29).

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State apparatus throughout the world, including Indonesia, are running its functions, duties and its authority refers to the main legal instruments of positive law. This is to prevent action arbitrary and also so that movement bureaucracy in government can walk smoothly in accordance with the service standards set by the government, so that the interests general can be served with the best, so in matter this restrictions to power needed.

Restrictions on government (executive) power in the field of administrative law are not the only ones based on the principle of legality. Restrictions on the powers of government or state administrative officials as well done through method or mechanism other. That appear in form restrictions power government or state administration administrators who are bound or free (discretion) (Hotma P. Sibuea. 2010: 141). Free limitation of the power of government or state administrative officials carried out through several policy testing mechanisms determined for the government or official administration country.

Organizer country in operate function, specifically function country administration of course it is understood that administrative law provides discretionary power *vrijbestuur*, *Freies ermessen* to implement *regulations* to carry out the government's duties and responsibilities which relate with discretion. Now is organizer country from level minister until regent or all official public afraid take or make policy, matter this because worries that they will be hit problem or deal with law apparatus enforcer.

Criminal acts of corruption by government officials mostly begin with the accumulation of food administrative. Benchmark for see matter the which first is is there is *samenhang* between clauses that cause administrative irregularities and losses become the sequence.

As example PP No. 10 Year 2000 which drag DPRD member because it interprets the word and others to pay insurance premiums for DPRD members the. Where if there is a state financial loss then it can be qualified as follow criminal corruption. Second is about accountability to abuse authority which cause happen follow criminal corruption. Accountability the menu Administrative Law is a single responsibility, which means it is the top leader which become the main perpetrator.

Third, the word "can" in the phrase can cause financial losses to the state and economy country". Explanation above formulated as offense formal, that is exists follow criminal corruption happen because already fulfilled elements which already in formulate by offense, no based on emergence consequence.

Explanation This means, exists potential loss just Already own elementyang Enough For prove that a criminal act of corruption has occurred. Authority or authority to have position important in the study of constitutional law and administrative law. That's how important position is This authority is so that FAM Stroink and JG Steenbeek states: *Het begrip bevoegdheid is And ookeen kernbegrip in het staats en administratief recht* ” (FAM Stroink, 1985:26).

The term authority or authority is equated with *authority* in English and *bevoegdheid* in Dutch. Authority in Black 'S Law Dictionary defines as Legal power a right to command or to acts; the right and power of public officers to require obedience to their orders legally issued in scope of their public duties (Henry Campbell Black, 1990:133). Bevoegdheid in terms of Dutch law, Phillipus M. Hadjon provides notes related with use terms of authority and bevoegdheid.

Term bevoegdheid used in draft law private And law public, whereas authority is always used in the concept public law. Abuse of authority is considered the same as an element against the law. Like We know that Elements are against the law is the genus, whereas element abuse authority is the species. For abuse of authority, the subject of the offense is a civil servant or public official, which is different with element against Hu kum the subject of the offense each person.

In draft law administration, every giving authority to something body or to State administrative officials are always accompanied by “goals and objectives given that authority, so that the application of authority must be in accordance with the objectives and purposes for which the authority is given That. In matter use authority the No in accordance with objective And Meaning giving authority That so has do abuse authority *détournement de pouvoir*. Parameters of the buyer's goals and objectives rian authority in determine happen abuse authority known with principle specialty *specialiteits beginsel*.

This principle was developed by Mariette Kobussen in her book entitled *De Vrij heid Van De Overheid*. By substantial *speciali teits beginsel* contain meaning that every authority has a specific purpose. In legal literature administration has long been known principle *zuiverheid van oogmerk* (sharpness direction or objective). Digress from principle This will give birth to *détournement de pouvoir*.

Abuse authority in consists from:

### 1. Discretion

Philip m Hadjon state For makes it easier give understanding about free power or discretionary power by looking at its scope. Free power or power discretion includes: (a)

authority For disconnect Alone, (b) authority interpretation to norms disguised or vage norms (Philip M. Hadjon, 2004:6).

Indriyanto Seno Adji's opinion quoting W. Konijnenbelt states that for measure abuse of authority using the following parameters: (a) elements abuse handedness assessed There is or not violation to regulation base written or principle to appropriate Whichlive in this society and country. The criteria and parameters are alternative. (b) Principles propriety in order to implement a policy or zorgvuldigheid is applied if there are no basic regulations or the Principle of Propriety is applied if there are basic regulations, while the basic (written) regulations in fact cannot be applied to conditions and circumstances certain which is urgent in nature (Indri- Yanto Seno Adji, 2009:75-76).

The parameters for abuse of authority in this type of authority are tied to regulations legislation (written rules), or using the parameters of the principle of legality; while on free authority (discretion) parameter abuse authority use principles general government Which Good, Because principle "wetmatigheid" no adequate.

## **2. Disabled Procedure**

In in law administration principle legality/legitimacy (legaliteit beginsel/wetmatigheid vans bestuur) covers 3 (three) aspects namely: authority, procedure And substance. Meaning authority, procedure nor substance must based on regulation legislation (principle legality), Becauseon These statutory regulations have determined the purpose of granting authority to administrative officials, what are the procedures for achieving a goal and what is involved? its substance.

In in practice Justice often exchanged/mixed stir between abuseauthority with disabled procedure as if disabled procedure That in haerenwith abuse authority (Nur Basuki Minarno, 2009:82-85). It's proven abuse authority carries broader implications than the existence of procedural defects, namely in As well as resulting in the revocation of the decree (beschikking), it could have criminal implications if it does abuse authority causes harm country.

## **METHOD STUDY**

This research uses a normative method, namely exploratory-analytical. Data used is secondary data in the form of primary legal and secondary legal materials (Soerjono Soekanto and Sri Mamuji. 2007: 52). Methods are needed to conduct scientific research. Means method obtain information in a planned and systematic manner. The actions taken must be clear, and has strict boundaries to avoid misinterpretation. To assess existing problems, This research uses a doctrinal juridical approach, namely an approach that looks at the law as doctrine or as set

rule normative.

This approach is carried out through library legal studies or research efforts. In In this case the author analyzes comparative law, legal principles, legal norms positive, and the opinions of scholars or legal experts. The data used in this research are secondary data in the form of documents, books, scientific papers, works and papers, magazines and other journals. After secondary data is collected, it is analyzed qualitatively to analyze and answer problem

## **B. Discussion**

### **1. Culture Abuse Power in Indonesia**

Power in Indonesia is in the hands of politicians in the bureaucrats, executive and legislature and even the judiciary. They got that power through party channel politics. The founders and political party administrators as political brokers have a tendency to accept a certain amount of funds to be able to pass political candidates in the bureaucracy, executive and parliament through contestants election. Or else, they get a position in a strategic position in a state-owned company for can influence regulatory policies that tend to benefit political brokers, so that they can said to be entangled case corruption, collusion and nepotism.

Holder power in history man civilization is For hold power, determine situation And condition, And morality politician as public official determine control social. Morality from politician that holds power grows sake personal interests And group in something system, so will impact collision interest. Behavior culture abuse power For do program devotion public Which showed by official country And company in matter "daddy request share PT. Freeport Indonesia", No Can regardless from structure And social culture Which he has lowered from generation This For generation. Culture abuse power For do corruption in Indonesia grow And develop through 3 phases history, that is; era Kingdom, Dutch Era colonial And era modern Now. During era kingdom, culture corruption recorded in intrigue struggle power Which done on period Kingdom Singosari, Kingdom Demak, Kingdom Banten And etc. Era kingdom own big role in embed forerunner will opportunism nation. For for example, exists "manager palace" Which tend Good For interesting sympathy king or sultan. This circles Which allegedly as forerunner will race opportunist Which own character corrupt in order

We moment This government (Bambang Slamet Riyadi and Mohammed Mustofa. (2020)).

During the Dutch colonial period, the practice of abusing the culture of power for carry out devotion to public learning Already start enter socio-political culture system nation Indonesia. Culture abuse power built by invaders during 350 year. They on purpose choose figure local For made clown official public in control region administration strength they, like Village

headman, Tumenggung, And other official Which incidentally is invaders colonial Dutch For guard And supervise region territorial certain. That Which lifted And employed by Dutch For Harvest Tribute or tax from person - person used by invaders Dutch enrich self they Alone with exploit Right And life people Indonesia. By explicit, Culture abuse power in era colonial train hegemony And domination has educate Person Indonesia No hesitant For oppressive Alone person through behavior And practice abuse Strength. Furthermore, in era modern, the development of cultural practices of abuse of power began when Indonesians free from colonial shackles.

However, culture abuse power Which inherited since That Kingdom And era colonial No must disappear. Culture abuse power to corruption, collusion, And nepotism becomes increasingly clear in the era of democracy. This is reflected in the behavior of government officials starting from Order long Sukarno, Suharto's new order to era reform current president This.

The historical depiction of the culture of power abuse in Indonesia above explains How culture And behavior social community, in matter This, white- behavior crime collar Which is part from culture or Behavior social previously can influence And push Behavior Which The same in public afterwards. This means that behavior criminal moment This No can separated from the cultural influences and social behavior of previous communities. Culture and behavior Previous community become Study for culture And behavior community afterwards.

The culture of abuse of power behavior that occurs never escapes the motive and the aim of implementing the crimes of politicians as public officials. In cases of political corruption, making regulations in the form of laws and regulations, there are many conflicts of interest, right individual, group, interest company, party political And government. That Interest government itself has an inescapable relationship to individual interests, group and Parties political.

Abuse of power by politicians involving government officials would be political crimes if the government Officials involved play a major role laws to protect their interests. Conflicts of interest occur when responsibilities arise bureaucrat, executive and legislator as public

Officials clashed with their personal economy and party affairs. In a narrow sense, conflict interest refers on environment in where a politician use position ora position in government, either openly or secretly, to gain advantage financial personal. Conflict interest Between task public And interest personal become reason Lots scandal Which involve public Official with consequence Which very Serious.

Conflicts of interest contain three important elements. First, there is economics and finance interest individual And party they, And This Can happen on type interest other, for example, Guarantees benefits for family members. Basically, There is nothing wrong with pursuing personal interests. Problems arise when this personal interest conflicts with the second element, namely, "Public Duties/ Not quite enough answer ".

Politicians as public officials at the beginning of the election started from elevated ideas by the idealism of the interests of the prosperous Indonesian people. If they are elected, they will create social change, accepting authority, giving authority to make public policy, so they called change agent.

However, behavior these politicians tend not to do it carry out promise commitment -that promise and even to justify and rationalize a policy is detrimental country, For group personal, And interest party. And interest political Which each other conflicting power and moral corruption as a public official will also be corruption, collusion and nepotism, if they serve as officials assigned to abuse public policy power, to recover political costs or promotion of positions through brokers political. Abuse of power as an official public implies damage to interests everyone in the institution and even endanger the country, because Public officials have conflicts interest for individuals or groups.

Abuse of power as a public official to make public policy only seen as procedure And administration error, but If done with objective profitable self You or person other or company Which produce loss economy And finance country, so That is a behavior deviation social And crime collar white behavior, as arranged in law number 31 year 1999, Which has changed by law number 20 year 2001 concerning eradicating corruption.

## **2. Crime of Corruption through Abuse Authority in Legal Perspective Criminal in Indonesia**

Power tends to corruption, absolute power, absolute corruption (Lord Acton), Proverb that still relevant today are those with the greatest potential for corruption: officials, organizers countries, and other stakeholders. Corruption is defined, explained, and discussed through various approaches. This can be seen from the barometer of corruption elements which are not limited to aspects integrity, aspects of state loss, aspects of fraud, and aspects of moral ethics. Corruption is unlawful acts that clearly conflict with the mandate of the Constitution Country Republic Indonesia Year 1945 And give rise to various type loss, between other: 15 weaken investment and the country's economy, Give rise to inefficiency and nepotism, cause finance country paralysed, shake trust country donor And investors foreign, grow various type crime in public, and causes demoralization among society. Corruption by the Government can be

prevented through government administration (bureaucracy) that is clean and free from dangerous practices. This can be done through active involvement of state administrative law, through supervision and providing legal certainty over actions so as not to violate rules and guarantees of human rights human beings, and must be able to differentiate between the "state administration" interests of the state. charged to need and responsibility of every citizen country.

Soerjono Soekanto Also convey that ruler in meaning government is deciderfate millions people. So that evaluation Good the bad located on how much big benefit Whichgiven to people.<sup>18</sup> So Already it's time government love people like lovehis family. So that government take all step in process development, economy,social, And political For reach One objective that is public fair And prosperous, connection between corruption And government can seen from 3 stage, like Which stated by Syed Hussein Alatas.As following: (1) Stage in where corruption relatively limited without influence various life social. In condition This, government operate mandate as waiter public with very Good, based on procedure operation standard. On stage This corruption truly isdeed Which forbidden; (2) Stage second, corruption rampant And rampant. Condition Thisdescribe that almost all government, Good in level center nor area, corrupt.Almost No There is service public Which clean without Money lubricant For get his rightsas public; (3) Corruption stage third is Which most interesting, most challenge Fornoticed. On stage This, corruption has damage all aspect life, including ethics And moral.

Difficult trusted various institution in country, Because almost all element important, includingthe executive, judiciary and legislature are infected with this corruption virus. It needs to be emphasized here that followCorruption is not just an act that results in state losses but an act maladministration where state officials in their position abuse their authority by giving or promising something, doing or not doing something in his position which is contrary to his obligations.

In the author's opinion, this picture shows an abuse of authority carried out by state officials, so they must be subject to criminal sanctions. If you look at it from From an administrative law perspective, corruption cannot be seen through a criminal law approach alone because this perspective is too narrow. This a quo approach only makes criminal law a crime the main and only means of hitting, is just fighting without any preventive measures. Act criminal corruption Which normal done by official government tightly connection with law system businesscountry.



In operate his duties, official government submit on norm And rule law administration. Philippus M. Haddon Said, "the role of administrative law cannot be ignored in in relation to criminal acts of corruption, both from a preventive and repressive perspective." Action corruption Which done by government related with categorization maladministration by government can prevented through supervision. Concept This included in Perma

Abuse Authority, that is draft control internal. Model supervision Which introduced by Gorge R. Terry includes: a. Optimizing results which is a common goal For avoid action abuse authority; b. Effectiveness And efficiency in use fund, power, material, And time so that become efficient ;c. Accountability every implementation work evaluation can done through report (oral And written, And inspection directly; d. Comparison between supervision that has been carried out with results in the field, and corrected so that become materials for evaluation;

Follow up the results of the evaluation of actions to repair parts that need to be repaired immediately or Which Not yet need repaired from results supervision; corruption located on element abuse authority Which done by organizer country, Good in realm government nor body effort, which resulted loss. Material criminal act of abuse of authority element harm finance country And deed oppose law by government Which give rise to impression criminalization policy. Discourse abuse authority And Abuse of authority is bound by two fields of legal study, namely administrative law and law criminal.

The concept of abuse of authority is a concept that is known in the study of administrative law state effort. However, this concept has been adopted by the study of criminal law which has developed rapidly independent in his journey, although No fully independent. Intersection draft Abuse of authority between state administrative law and criminal law lies in the eyes chain administration of government itself.

Every norm government Which based on law system country followed with provision criminal or known with term in cauda vein Which It means "There is poison in part tail." Actions aim Which works as net Spider Which ensnare every follow criminal, However draft This only applies to perpetrators who come from the community, while state officials can worn penalty criminal direct if proven do deed. corruption through abuse authority.

Review return elements abuse power to decision government Paradigm enforcement law in PTUN experience change Which very significant post the issuance of the AP Law. Currently the PTUN is given the authority to "receive, examine and decide applications related to whether or not there is abuse of authority in a matter actions or decisions." In the PA Law, the object of dispute in the PTUN is "dispute that arising in the field of State Administration between a

person or civil legal entity and an Agency or Official System Business Country, Good in center nor in area, as consequence from he took it out something Administrative Decisions include employment disputes based on statutory regulations invitation applicable".

Authority PTUN obtained with attribution through Act P.A That Alone And through Regulation Supreme Court on Abuse of Authority. The PTUN's authority is expressly granted seen in Chapter 21 paragraph (1) Act GA "Court authorized accept, inspect, And disconnect There is or or not element abuse authority Which done by Official Government".

### **3. Abuse of authority as a Corruption Crime**

Delegation of abuse of authority in criminal acts of corruption as regulated in Article 3 of the PTPK Law with the following offense elements:

- a. A. With the aim of benefiting themselves or another person or company;
- b. abuse of authority, opportunity or means available to
- c. him because of his position or position;
- d. Which can be detrimental to state finances or the country's economy.

Indeed, the subjective element inherent in the minds of corruption perpetrators according to Article 3 of the Law on the Eradication of Corruption Crimes is the aim of committing an act of abusing the authority, opportunity or means available to him because of his position or standing to benefit himself or another person or corporation. Even though the form of the error is included in the category of deliberation (*dolus*) it is not in the form of coincidence (*culpa*) because in fact abusing authority must be done intentionally. Offense abuse authority in action criminal corruption arranged in Chapter 3UU PTPK, Which stated as as follows: Everyone who has a profitable aim self Alone or someone else ora corporation, abuses the authority, opportunities or means available to it because of its position or a position that could be detrimental finance country or economy country, convicted with criminal lifetime or criminal prison most short 1(one) year And most long 20(two twenty) years and/or 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).

Article 3 of the PTPK Law can describe the elements The elements of the offense are as follows: (a) with the aim of benefiting oneself or person other or something corporation; (b) abuse authority, opportunity, or the means is on him Because position or position; (c) which can cause financial harm country or economy country (K. Wantjik Saleh, 1983:51).

The typical elements of the criminal act of corruption compared to the Criminal Code are: "enriching or profitable self oneself or another person or an entity, abuse position or position

and detrimental to state finances.

In connection with the formulation "with the aim of benefiting..." specified in Article 3 of the PTPK Law, Andi Hamzah is of the opinion that the formulation is intended to make things easier in terms of proof, when compared with "enrich oneself,...as stated in Article 2 UUPTPKexArticle 1paragraph(1sub a ActNumber 3 of 1971 (Andi Ham-zah, 2006: 103-104).

The element "with the aim of benefiting oneself or another person or a corporation according to Andy Hamza is deliberately level I (on purpose as Meaning or *opzetmetoogmerk* ). This is different from Article 2 of the PTPK Law which contains the phrase "to enrich oneself yourself, another person, or a corporation" means intentionally in 3 (three) forms, namely intentional with intent, intentionality with certainty, and intentionality with possibility ( *dolus eventualis* ).

This is the cause of the ambiguous charges against Neloe and his friends (caseBank Mandiri) because the public prosecutor followed the BPK's opinion that there was a lack of prudence in banking is deed against the law in meaning material, whereas all actions corruption including Chapter 2 and Article 3 UUPTPK must be carried out deliberately.

The difficulty lies within Determining the intentional pattern as a possibility, Moeljatno proposes *the use of the incaufn theoryehmen* (what can be done theory). In this theory two conditions are needed:

- a. defendant know possibility There is result or circumstances that constitute an offense
- b. his attitude towards that possibility if-words truly arise, it is possible to do it, it can be agreed upon and it is brave to accept the risks (Frank and VonHippel, 1983:175-176).

From the explanation of the theory stated above, it can be seen a conclusion is drawn that with a profitable aim: is error ( *schuld* ) inform of intent ( *dolus/opzet* ). More specifically as an intentional act characterized as an intention of abuse of authority will not occur because negligence, because it is basically an abuse of authoritydone consciously or deliberately (Amir Syamsuddin, 2004).

In Article 3 UUPTPK does not explicitly formulate the words intentionally, by Because That prosecutor In general, there is no need to explicitly prove that the act with Profitable goals are intentional or due to negligence. The most important thing to prove is with abuse of authorityaims with the intention of benefiting oneself, person other or something corporation. The phrase with a profitable aim....implicitly contains an element of intention. Dolus *element* or on purpose placed in front then *dolus* or intentionality includes elements offense next, including abuse of authority.

What does profitable aim mean ? PAF Lamintang giving the meaning of gaining profit or Profitable is obtaining or adding to existing wealth (PAF Lamintang, 1991). Obtaining a profit or increasing the wealth of the actor (self), another person, or something materially the corporation must occur. What is meant by wealth is not merely in form object or just money, but all something which can assessed with money.

From this formulation, it means de-ngan act of abuse of authority, opportunity, or means available to him because position or position resulting in the perpetrator, other person or corporation gain profits or increase their wealth, in side other finance country or country's economy disadvantaged.

Furthermore, there is the element of abusing the authority, opportunity or means available to him Because position or position. Abuse authority including as a delict ( *bestanddeel delict* ) criminal acts of corruption since the Military Rule Regulation 1957 until now (Hermianti Hadiati Koeswadji, 2009). Only just in regulation or the law that has been in force does not even provide adequate explanation. There is no explanation regarding abuse of authority in the regulations or Constitution will bring implications interpretation Which diverse. That matter very different once with an explanation about fighting the law ( *weder-rechtelijkheid* ) which is felt to be sufficient, although thereby in implementation is still ongoing *debatable*.

In legal references it is often found use of the terms "against the law" ( *wederrechtelijkheid* ) and breaking the law ( *onrechtmatigedaad* ). Use These two terms are often interchanged. Terms "violate law common used in realm law civil, while "against law common used in the realm law criminal. In law criminal elements oppose law limited Power enactment of the Principle of Legality (Article 1 paragraph (1) of the Criminal Code), while it violates Law has a wider scope, not only limited to *written law* but also *unwritten law* *law the living law*.

Meanwhile, in UUPTPK, the definition of elements against the law includes formal and material, namely synonymous with understanding *onrechtmatigedaad*. Sapardjaja (2002) states *Onrechtmatigheid* or *wederrechtelijkheid* or *unlawfulness* can translated resistance law or nature oppose law. Furthermore said with quote opinion Rutten, change BW on year 1824 words *wederrechtelijk* changed to in words *Onrechtmatigheid* (Sapardjaja, 2006).

Barda Nawawi Arief identified the existence of an understanding of the nature of opposing material law. First view see meaning material from characteristic essence deed

forbidden in Constitution, For view second from corner source law. According to view second, The meaning or understanding of the nature of being against formal law and the nature of being against material law is as follows: (a) Nature of Against Formal Law: identical with oppose or contradictory with Act or legal interests (actions and consequences) mentioned in the law (written law or source formal law). So law mean the same with UU Hence SMH formal is identical to *onwetmatige daad* (b) The nature of going against material law: identical to going against/contrary to unwritten law or law kumyanglive ( *unwritten law the living law* ), contrary to the principles propriety or values (And norm) life social in public (including system be polite And law habits/customs). So in short, law no interpreted formally as *wet*, but interpreted meaningfully material *recht*. By Because That SMH Material is *identical to onrechtmatige daad* (Arief, 2004).

Abuse of authority is wrong One form from *onrechtmatige daad* ". Abuse of authority constitutes *species* of the genus "nya" *onrechtmatige daad*. Part intidelic ( *bestanddelen* ) with element offense ( *element delict* )

is a different thing. This was stated by Van Bemmelen *by meaning bestanddelen* as an element that is expressly in the formulation of the delict, while the element is as the seed ( *in haerent* ) in the formula of the delict. Meanwhile, Hazewinkel Suringa use term " *Samenstellende elementen* " is the same as *Bestanddelen*, whereas Same brand with *elements* (Hazewinkel-Suringa, 2006). Adj (2001) describes the elements of Article 3 as follows abuse authority as *bestanddeeldelict and with profitable purpose Bestanddeeldelict* is always in touch with an act that can be punished ( *strafbare handeling* ), while the element of the offense is not determine whether an act can be punished or not (Adj, 2009). Therefore, if abuse authority No proven so Other elements do not need to be proven.

Andi Hamzah disagrees with Indriyanto Seno Adj by stating that: abuse authority, chance, or means Which There is to him Because position or position and with the aim of benefiting oneself, another person, or a corporation, both this part of the core delict ( *best and deel delict* ) because it is written in the formulation of the offense, which therefore it becomes an element of crime, according to Schaffmeister, calling it "against the law." special (Schaffmeister, 2009).

Different case with element oppose law ( *wederrechtelijk* ), No in a way explicit determined as an element of the offense in Article 3 UUPTPK, according to Schaffmeister, is "against the law in general," (Schaffmeister, 2009) the prosecutor does not need to include it in the indictment and does not need to prove it. The accused/legal defendant proves that there

are *no* elements against the law in Art 3 Act PTPK And matter the can proven, so the verdict is free from all legal demands ( *ontslaag* ).

It's different with proof element against the law in Chapter 2 Act PTPK. If elements against the law in Chapter 2 PTPK Law no proven, so the verdict form liberation ( *vrijspreek* ), Because element against the law part core offense And matter That be included in indictment. From search reference Which has done, bachelor or expert Which grouped in law Criminal law does not provide a definition or limit the understanding of misuse of authority there is. Apart from that, there is not a single statement from the expert criminal law that is abuse of authority is realm law administration, however in in judicial practice of proving abuse of authority is linked to the concepts and parameters that applies in law administration.

Furthermore, Darwan Prist (2002) defines authority as power or rights resulting in abuse of authority is abuse power or abuse of rights. Furthermore It is said, abusing an opportunity means abusing the time available to him position or position. Meanwhile, abusing means means abusing tools. tool or equipment which exists to him Because position or that position (Darwan Prist, 2002).

The opinion of Darwan Prinst confuses authority with power, even though the concept of authority and power is a thing Which very different (bagir Manan, 2009). Children's authority will give birth to power, but No always For on the contrary. Furthermore, authority is interpreted as a right even though the two are different things because authority connote *public* (the concept of public law/administrative law or law system country) whereas right connotation *private* (legal concept private/legal civil).

Leden Marpaung gives the meaning of abuse authority, opportunity or means available to him because of his position or position is that concerned do deed Which contradictory with right And his obligations. Furthermore For describe What Which meant, Which concerned provide example: (1) A required carry out something work. It turns out work just completed 40% has been declared completed 100%; (2) B assigned buy 100 new machine. It turns out Which purchased 100 machine former (Leden Marpaung, 2004). Example Which has given by Leden Marpaung too summary Because A And B unclear capacity as an official or not. If the subject is an official then the act can be classified as abuse authority, on the contrary if the subject is not official enter in classification act of defiance law.

Giving authority to officials will give rise to rights and obligations to achieve objective

And purposes that have been determined in the laws and regulations. Deviations from predetermined aims and objectives are categorized as abuse of authority. Sudarto reminded him that the term "position" besides the word "position" is doubtful. If "position" is interpreted as function in general, then a director of a private bank also has a position (Sudarto, 1997).

## CONCLUSION

Formulation of offense in Chapter 3 Act PTPK happens inconsistently. In one there are *elements* of the offense which are formulated as offense material, for *elements* of offense others are formulated as formal offenses. *The elements* of the offense are formulated with the aim of making a profit for oneself, other people, or something for a corporation" so offense there are- deliberate offense (*dolus*), deliberate offense in form deliberate level I (intentional with Meaning), different his thing with enrich self Alone, others, or something for a corporation" in Chapter 2 UUPTPK is 3 (three) forms of intentionality, namely deliberate with Meaning, deliberate with certainty/necessity, And on purpose with possibility (*dolus eventualis*). On the basis of this stance, the offense in Article 3 of the PTPK Law does not constitute an offense committed related to negligence (*culpa*).

Say "can" in phrase "can harm Country or economy country" shows that the elements of the offense are formulated formally, it is stated that stated explicitly in the Explanation of Article 2 UUPTPK. Prohibited criminal offenses do not need to occur in, this is different from offenses which are formulated in mathematical terms. real. The word "can" has the meaning of "potential", the potential for loss to the State or the economy The State is sufficient to prove that the 3rd element of Article 3 of the PTPK Law is fulfilled.

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