

## RESPONSIBILITY FOR COMPENSATION RESULTING FROM ABUSE OF AUTHORITY BY STATE CIVIL APPARATUS

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### ABSTRACT

Abuse of authority by State Civil Apparatus is often carried out on the grounds that they are focused on personal interests. This research aims to determine the responsibility of the State Civil Apparatus for abuse of authority or misuse of power which causes state financial losses based on statutory provisions. The research method used is a normative research method by dissecting, exploring legal sources and exploring literature that is appropriate to the research object. From the research results, it can be seen that state civil servants can be subject to demands for compensation if there are elements of abuse of authority that are not in accordance with their main duties and functions as State Civil Apparatuses. In addition, forms of accountability for State Civil Apparatus who are declared to have misused their authority can be given disciplinary sanctions as a form of accountability for the abuse of authority that has been carried out. Settlement of state losses in the form of claims for compensation is an attempt to resolve through administrative law which does not go through the trial system in court. Accountability for state losses can also be achieved through state administrative courts.

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## INTRODUCTION

The National Goals as stated in the fourth paragraph (4) of the Preamble to the 1945 Constitution of the Republic of Indonesia require competent State Civil Apparatus, free from political obstacles, free from corrupt practices or defamation, collusion and nepotism, and capable of providing assistance in terms of public services for the interests of the state. Moreover, the State Civil Apparatus must be able to carry out its role as a glue for unity and community solidarity in the state in view of the spirit of Pancasila and the 1945 Constitution.

In essence, the government carries out government for the sake of realizing prosperity through improving services and empowerment by taking into account the characteristics of the Indonesian state itself, namely democracy, equality and justice in the Republic of Indonesia system. It is hoped that synergy between state administrators in various aspects can create a competitive system that is effective and efficient.

The purpose of government is to protect a person's personality, property and freedom. In essence, a Civil Servant (PNS) must be submissive, respectful and obliged to carry out the arrangements contained in Law Number 20 of 2023 concerning State Civil Apparatus. The State Civil Servants are PNS and PPPK.

Based on In this case, ASN can become a "calling" for PNS and PPPK. The ASN Law explicitly states that ASN policies and administration use an achievement framework (merit system) based on qualifications, competencies and performance in a fair and reasonable manner without distinguishing political grounds, race, skin color, religion, origin, gender, marital status, age, or disability.

It is hoped that State Civil Apparatus in their actions must always adhere to principles when carrying out their main duties and functions. Article 2 of Law Number 20 of 2023 concerning State Civil Apparatus, the implementation of ASN policies and management must be based on

several principles, namely unity and unity, justice, professionalism, competitiveness, proportionality, neutrality and accountability to be open and non-discriminatory.

Said to be a "profession", ASN in the case of this research is a civil servant who must have a foundation or arrangement based on principles, values, code of ethics and behavior, commitment, moral integrity, and accountability for public services, insight in accordance with duties, guarantee to get legal protection when carrying out duties and must be professional.

Article 1 number 5 Law no. 20 of 2023, which regulates the management of governance in the State Civil Apparatus, is something that has very high urgency regarding the continuity of public services in the government sector, for this reason has existed regulations regarding ASN management which is normed in regulations regarding personnel.

Many people think that by joining as a State Civil Apparatus they have the security to guarantee the future through advantages and to guarantee what is obtained from the government for the State Civil Apparatus. Working as a State Civil Apparatus is clearly closely related to the authority ordered by the government, in this case for ASN with one state administrator or concerns the main areas that are important for government. The task of the Government itself is, in particular, to be the supervisor of the state to carry out state obligations in its proper capacity.

The opening of the fourth paragraph (4) and Article 33 of the 1945 Constitution of the Republic of Indonesia mandates obligations for state administrators to create people's welfare with the authority to regulate state finances so that the duties of government administrators can be immediately realized. The authority as a government administrator was obtained by the government based on Article 23 paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution of the Republic of Indonesia as a constitutional basis.

State administration carried out by government officials is too directed by Law no. 30 of 2014. This often results in no development of the power/authority held for the public interest. In reality, cases authorized by the authorities still occur, which often hamper administrative transparency and can even cause state financial losses.

Article 1 Paragraph (22) of Law No. 1 of 2004 stipulates that State/Regional losses are a shortage of money, securities and goods, which are real and definite in amount as a result of unlawful acts. Therefore, there are demands for compensation resulting from abuse of authority by State Civil Apparatus, namely by anticipating incidents of compensation claims, increasing openness and accountability in managing financial administration, and fostering accountability in financial administration.

This research aims to analyze accountability due to abuse of authority by State Civil Apparatus and to analyze the compensation process in managing state finances if state financial losses occur.

## RESEARCH METHODS

This research is normative research which is described descriptively analytically with characteristics that describe and examine existing phenomena in an orderly, careful and objective manner. Normative legal research emphasizes the use of primary legal materials which are secondary data, secondary legal materials and tertiary legal materials.

## RESULTS AND DISCUSSION

The concept of good governance (*Good Governance*) is called by different terms which, although diverse, are planned to have the same meaning, such as reliable administration, great administration, great and reliable government administration, great administration, or government clean (*clean government*).

Good governance is carried out by ensuring the achievement of apparatus resources that effectively and efficiently carry out planning, budgeting, supervision and implementation. This is in order to carry out the government's mission, namely clean, effective, reliable government management as well as transformation of public services and mental revolution, with this it is hoped that bureaucratic reform will be realized.

The aim is to achieve state goals through participation between all components that make up the state, especially government officials, private divisions and society in general. In completely different words, it can be said that in general, governance incorporates an understanding of how controls and/or specialists work and are deployed, or how choices are made by government organs authorized to do so, and whether openness includes a part in making choices with appropriate .

The activities of the State Civil Apparatus in carrying out their main duties, functions and responsibilities can be as appropriate according to the provisions of applicable laws and regulations and/or according to the applicable professional code of ethics, this makes it possible to realize *good governance* in the implementation of government activities.

To carry out their obligations, the State Civil Apparatus is equipped with a multitude of rights and obligations. In general, what is meant by rights here is everything that the State Civil Apparatus must obtain, while obligations are everything that the State Civil Apparatus must do in carrying out the functions of the State Civil Apparatus in the government. In the end, it is always interesting when it becomes an intriguing "question", do you get the rights first and then complete the obligations, or do you carry out the obligations first before getting the rights? In order not to become a debate, the author positions the rights and obligations of State Civil Servants as something that must be recognized and carried out jointly so that State Civil Servant workers can fulfill their abilities, duties and responsibilities successfully and productively. To achieve this, a series of satisfactory personnel actions are needed in public services to the community.

As state servants and public servants, state servants are required and obliged to work (serve) as well as possible, so that serious efforts emerge to obtain the best possible work results. One effort to achieve this is that in carrying out their obligations, ASNs are required to do so by maintaining their morals and oath/promise of office. Government officials in carrying out their obligations and duties are bound by position. Therefore, it can be seen that state government administrators consist of positions that carry certain capacities. A position "is an institution with its own scope of work which is established for a long period of time and to which certain tasks and authority are given."

In the practice of daily government administration, in reality state officials are at the same time likely to carry out actions that are not in accordance with their main tasks, functions and obligations or in other words abuse of authority . So from the author's view there are many consequences or implications of this abuse of authority , one of which can be detrimental to state finances /state financial losses. State finances in a broad sense include the APBN, APBD, state finances in Perjan, Perum, PN-PN, and so on, while the definition of state finances in a narrow sense only includes every legal entity that has the authority to manage and account for them.

### **Accountability Due to Abuse of Authority by State Civil Apparatus**

In organizing to realize good governance, it is very important for government authorities or government workers to be competitive, proficient, clean and lawful, maintaining honorable benefit morals. So a friendly state apparatus must be open so that mistakes in making policies and errors in authority can be avoided. Laws or Laws are a source of authority and rationale for determining policies taken by the government.

Authority that originates from the delegation process is authority that was initially owned by a vertical government organ (in a higher hierarchy) which for some reason was delegated to a vertical government organ below it. Thus, this authority is originally the authority of a higher structural organ. A mandate is the authority possessed by a government organ (government official) which is then, for certain reasons, permitted to be used by other government organs, both vertical and horizontal, which with this authority can act for and on behalf of the actual owner of the authority .

Authority is closely related to the privileges of state power for the public interest. Not all government employees have authority, only government employees who have certain structural positions or functional positions can have authority.

This authority can be delegated to government employees to carry out their authority based on the provisions of the Law. An official is someone who carries out rights and responsibilities within the scope of their position. These positions must be filled by Civil Servants in accordance

with their main duties and functions as well as their abilities in accordance with the provisions of the Law.

Regulations in the running of government as and/or guidelines for State Civil Apparatus have been previously regulated. This is to ensure that there is no abuse of policy or authority, so Government Regulation Number 94 of 2021 concerning Civil Servant Discipline has been established. Article 4 paragraph (1) reads "Regional civil servants comply with obligations and avoid prohibitions", in other words, this norm means controlling prohibitions for civil servants to act subjectively or misuse their authority. If the apparatus is proven to have made a mistake in policy decisions and authority, they will be given light, medium and heavy disciplinary punishments based on Article 8. The severity of the disciplinary punishment is determined based on the level of violation listed in Articles 9 to Article 11.

Another regulation that regulates the obligation to carry out the obligations of a State Civil Servant is Law Number 30 of 2014 concerning Government Administration. In the event that in implementing the policy there is an element of misappropriation of authority as intended in Article 17 and Article 18 of Law Number 30 of 2014 concerning Government Administration, there is an administrative error which results in state financial losses, then at that time the return of state financial losses is borne by the government agency. In the event that regulatory errors that result in state financial losses are not caused by elements of mishandling by government administrators, then government agencies are charged with returning state financial losses.

Liability if civil servant officials misuse their authority and incur losses to state finances, they can be subject to heavy administrative sanctions. This is normed in Article 80 paragraph (3) which reads "Government officials who violate the provisions as intended in Article 17 and Article 42 are subject to heavy administrative sanctions". Article 17 clearly states the prohibition on abuse of authority, while Article 42 regulates conflicts of interest.

The administrative responsibility of civil servants for their actions against the law in the implementation of policies or abuse of authority, is generally the benchmark in determining it, determined by at least two things, namely whether the civil servant has the right to implement his authority and policies in accordance with the Law and whether the civil servant It has been implemented in accordance with AAUPB rules (general principles of good governance).

Responding to the accountability of civil servants when carrying out their duties and obligations within the government, there are three forms of civil servant accountability, the first is criminal accountability, the second is civil financial accountability and the third is disciplinary or administrative accountability.

Abuse of power or authority is one form of violation committed by "unscrupulous" State Civil Apparatus. State Civil Apparatus should be aware of their responsibilities and obligations. "Unscrupulous" State Civil Apparatus who violate their responsibilities and obligations will be subject to sanctions in the form of disciplinary penalties.

Disciplinary punishment according to Article 1 point 7 of Government Regulation Number 94 of 2021 concerning Civil Servant Discipline, disciplinary punishment is a punishment imposed by an official who has the authority to punish civil servants for violating civil servant disciplinary regulations. The authorized official in this case is explained in Article 1 number 3 of Government Regulation Number 94 of 2021 concerning Civil Servant Discipline, which is normed by the official who has the authority to punish is the official who is given the authority to impose disciplinary penalties on civil servants who commit disciplinary violations.

Article 8 paragraph (1) of Government Regulation Number 94 of 2021 concerning Civil Servant Discipline states that the level of disciplinary punishment consists of light disciplinary punishment, medium disciplinary punishment, or heavy disciplinary punishment. With the promulgation and enactment of Government Regulation Number 94 of 2021 concerning Civil Servant Discipline, it is hoped that it will serve as a reminder and supervisor for civil servants in carrying out their main duties and functions. Management of the State Civil Apparatus must be further improved so that its performance parameters determined by the government will be more effective and efficient. The implementation of disciplinary enforcement must be appropriate and on target according to the level of violations committed and supervision of the performance of state civil servants must also be increased.

### **Compensation Process in State Financial Management.**

Settlement of compensation for state financial losses is basically a legal order that must be implemented by every head of government administration or state leadership, especially as a use of the internal supervisory framework that exists within each leader or even all levels of state apparatus.

Several regulations regarding compensation and state financial losses include:

a. UU no. 17 of 2003 concerning State Finances

This law was enacted with the aim of supporting the realization of good governance, so that in state administration, financial administration and management of state finances need to be carried out in a very professional manner, with openness or transparency, as well as accountability in accordance with applicable regulations. This law regulates the procedures for audits by the Supreme Audit Agency so that it will be easy to regulate the audit process by covering all elements of state finances. This Law regulates sanctions in the event of misuse or abuse of policy or authority by state officials, and it regulates administrative sanctions, criminal sanctions and the process of compensation or claims for compensation as provided for in Article 34 and Article 35.

b. UU no. Number 1 of 2004 concerning State Treasury

The arrangements stipulated in the State Treasury Law are too comprehensive to strengthen the realization of decentralization and regional independence. Furthermore, the State Treasury Law was expanded to become the legal basis for implementing changes to state monetary administration at the level of the central government, as well as the capacity to strengthen efforts to realize decentralization and regional independence in the system of the Unitary State of the Republic of Indonesia. In terms of state or regional financial settlement, there are regulations in Articles 59 to Article 67.

c. UU no. 15 of 2004 concerning Examination of State Financial Management and Responsibility

This law was enacted with the aim of supporting the successful administration of state government, state finances must be managed in an orderly manner, in compliance with statutory regulations, efficiently, economically, effectively, transparently and responsibly by paying attention to a sense of justice and propriety. This is a follow-up to what is mandated in Article 62 paragraph (3) of Law no. 1 of 2004, this Law also regulates the imposition of compensation or claims for compensation for state financial losses. The imposition of state compensation is regulated in Article 22 and Article 23 as below:

Apart from the regulations above, Law no. 30 of 2014 Government Administration regulates several settlements for state financial compensation. This regulation provides the basis or legal basis for administering government in an effort to improve good governance and as an effort to minimize the occurrence of KKN (corruption, collusion and nepotism). Thus, it is hoped that good regulation of norms in this regulation will be able to create a bureaucracy that is increasingly superior, trustworthy and transparent. The government administration arrangements in this regulation guarantee that state officials must not be arbitrary in making or implementing policies or their authority. Apart from that, an administration mechanism is also regulated in financial management so as to minimize actions that result in costly mistakes and even cause state financial losses which can be resolved through claims for compensation.

Settlement of state losses in the form of claims for compensation is an attempt to resolve through Administrative Law which does not go through a trial system in court. In this law, APIP is known as the Government Internal Supervisory Apparatus, one of whose tasks is to resolve state financial losses. APIP is tasked with examining government officials who violate the provisions of Article 17 of Law Number 30 of 2014. If the results of APIP's supervision are administrative errors, follow-up action is carried out in the context of improving administration in relation to applicable regulations. In addition, if as a result of the government's internal supervision there is an administrative error that causes state financial losses, then the return of state financial losses is made no later than 10 (ten) working days from that date. Refunds of state losses will be borne by Government Officials.

This law also regulates other mechanisms apart from APIP. Article 21 stipulates that settlement of claims for compensation for state financial losses can be carried out by submitting an application to the State Administrative Court.

### CONCLUSION

In the process of taking responsibility for claims for compensation by state officials who have misused or misappropriated policies and authority, disciplinary sanctions can be applied to employees to take responsibility through government administrative mechanisms.

The mechanism for claiming compensation for state finances has been regulated in many regulations in Indonesia. These regulations include Law no. 17 of 2003, Law no. 1 of 2004, Law no. 15 of 2004 and Law no. 30 of 2014. According to Law no. 30 of 2014 stipulates that there are two ways of settlement, namely through APIP and settlement through the State Administrative Court whose decision is binding and final.

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