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The Concept of Obtaining and Using Government Authority by Government Agencies and/or Officials in the Implementation of Government

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Abstract: *Indonesia as a country based on law, namely a country that places law as a rule in the administration of state and governmental power, including the authority of government agencies or officials. The problem is regarding the concept of obtaining and using government authority by government agencies or officials in administering government. The research method used is normative juridical, namely research aimed at finding and formulating legal arguments through an analysis of the main issues in the form of the concept of obtaining and using government authority by government agencies or officials. The results of this study explain that the concept of obtaining and using government authority carried out by government agencies and/or officials in administering government cannot be separated from Indonesia as a state based on law, and law is placed as the basis or foundation in administering government, namely in the life of the state, nation, and society. In the practice of administering the state and/or government, the 1945 Constitution and/or Laws are sources of authority, and there are three sources of authority, namely attribution, delegation and mandate. The existence of abuse of authority in administrative law must also be distinguished from criminal law.*
Keywords*: Authority; State Law; Government.*

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I. INTRODUCTION

This article discusses the conceptual framework of obtaining and using government authority carried out by government agencies and/or officials in the government administration in Indonesia. The concept here can be interpreted as something general or an abstract intellectual representation of a situation, object, or event, a form of thought, or an idea (Wikipedia, 2023), that will also give birth to a theory. The meaning of the concept of obtaining and using government authority carried out by government agencies and/or officials in the administration of government cannot be separated from Indonesia as a country based on law. Law is placed as the basis or foundation of government administration, namely in the life of the state, nation, and society. This discussion will clarify the purpose of the law, which is to establish a peaceful, just, and meaningful society, including the processes of obtaining and using government authority. In a state governed by the rule of law, the aim is to create activities for the state, government, and community that are based on justice, peace, and meaningful benefits. Therefore, in such a state, the law serves as a tool to organize the lives of the state, government, and community (Ridwan, 2017). The duties of the state and government are carried out by state organs, and in a rule of law environment, there are established legal rules, both in the 1945 Constitution and in various regulations compiled within the framework of state constitutional law. To address technical issues, constitutional law cannot be fully implemented on its own; it requires supplementary laws that are more technical in nature, specifically state administrative law. In today's world, nearly all countries consider themselves states governed by the rule of law. This means that they place legal frameworks at the forefront of the exercise of state power and government authority, including the actions of government agencies and officials. Consequently, every government official is obligated to base their decisions and actions on applicable legislation while performing their duties. (Anggoro, 2016).

The implementation of government tasks is grounded in authority, which serves as the fundamental basis of state administrative law. This authority encompasses both rights and obligations in carrying out government duties. Therefore, authority can be understood as legal power (rechtstaat), indicating that actions taken are based on the legitimate authority granted and that these actions possess legal force (rechtstaat). Moreover, it can be asserted that a new government can fulfill its functions through the authority it holds, meaning that the legitimacy of the government's actions relies on the authority defined by laws and regulations (legaliteitsbeginsel) (Sharon, 2020). In the context of government organizations, authority refers to the power and rights of officials or leaders to use and allocate resources effectively and efficiently. This includes making decisions and issuing orders to achieve the goals of their organization. According to Tatiek Sri Djatmiati, administrative law encompasses

government legal norms, which serve as parameters or measuring tools for the exercise of authority by government agencies (Djatmiati, 2004). Philipus M. Hadjon (1994) observed that government institutions possess the authority to carry out actions, make arrangements, and issue decisions based on powers granted through the constitution, such as attribution, delegation, or mandate. Consequently, authority comprises various powers and rights assigned to a specific position. It is essential for authority to be clearly defined so that individuals in certain roles can understand the extent of their responsibilities and avoid misinterpretation, which could lead to the misuse of their authority. The definition of authority can be understood as the right to give orders, messages, or instructions to ensure that assigned tasks are completed. This authority typically flows from the top down. It is essential for a superior to clarify how subordinates should carry out the work they have been delegated and to outline what is expected from them. This clarity is necessary to achieve the desired results. Delegating authority does not absolve the superior of accountability; rather, authority must always come with responsibility. Ultimately, the individual at the top remains responsible for the outcomes, even after delegating tasks to others.

Government norms exist to provide guidelines for the use of authority by officials and government agencies. These norms establish standards for legal compliance and non-compliance. Therefore, if there is an improper or illegal use of authority, the responsible government agency or official must be held accountable (Djatmiati, 2004). The issue of abuse of authority by officials and government agencies has sparked significant debate among legal experts regarding the relationship between state administrative law and criminal law, particularly in the context of corruption. This relationship poses challenges in differentiating when a state apparatus engages in unlawful acts that fall under criminal law versus when it commits abuses of authority that are subject to state administrative law. Consequently, the category of abuse of authority is characterized by actions that deviate from the purpose and intent of the granted authority, violate the principle of legality, and contravene the general principles of good governance.

When discussing the specific purpose of an authority, it is important to connect it to the principle of specialization (*specialialiteit beginsel*) (Manggala, 2023), which means that each authority has a defined purpose. Straying from this principle can lead to abuse of authority, known as "détournement de pouvoir". The boundaries set by laws, regulations, and general principles of good governance help identify the mechanisms of such abuse. Abuse of authority can be classified as a crime when it results in losses for the state or impacts the state's economy (excluding crimes like corruption, bribery, gratuity, and extortion). Article 3 of the Corruption Eradication Law states that abusing authority is fundamental to the crime (bestanddeel delict) (Barhamudin, 2019). In these situations, the suspect benefits personally, the public interest is not served, and the act is considered despicable.

There is no conflict between the understandings of abuse of authority found in the Corruption Crime Law and the State Administration Law. However, the concept of abuse of authority primarily falls under state administrative law, so its resolution must follow the procedures established by that law. According to the principles of state administrative law, administrative bodies and officials are afforded protection based on the principle of "presumption juatae causa" (Suriadinata, 2018), meaning that the decisions made by these bodies and officials are assumed to be correct until a court issues a ruling that has binding legal force. Furthermore, this approach supports the principle of "ultimum remedium", which aims to limit the application of criminal law. Therefore, not all policy decisions may be subject to punishment without first exploring the applicable legal principles (Danil, 2020), namely those outlined in state administrative law.

II. RESEARCH METHOD

This research is qualitative in nature and relies on library resources, utilizing books and other literature relevant to the research theme as its primary sources (Hadi, 1995). The type of research conducted is qualitative, which generates information in the form of notes and descriptive data derived from the texts being studied (Mantra, 2008). To analyze this information, descriptive analysis is employed. This method provides a clear, objective, systematic, analytical, and critical description and explanation of the information systems related to public services. The qualitative approach begins with initial observations, followed by a detailed description of the findings.

III. RESULTS AND DISCUSSION

1. Source of Power and Authority According to Law

Authority arises from legitimate power, and legitimate power, in turn, creates law. This relationship is reciprocal: the law legitimizes power, allowing us to say that power is legitimate. Essentially, law and power influence one another; laws exist because they are made by a legitimate ruler, while a ruler's actions must also be governed by law (Safriani, 2017). In a state governed by the rule of law (rechtstaat), the principle of legality serves as a fundamental pillar. It is a key principle that underpins the governance and functioning of states, including Indonesia. This principle of legality acts as a safeguard against potential arbitrariness in government actions (Situngkir, 2018). Power possesses a unique nature as it often fuels the desire to attain it repeatedly. Whether power is seen as good or bad depends largely on how the person in power utilizes it. The benefits and drawbacks

of power are assessed based on its effectiveness in achieving specific objectives. Society must first recognize this reality, as it is a fundamental aspect of communal living and essential for any organized group or organization (Safriani, 2017).

Authority derives from the law, so it is essential to reference the law when discussing the source of authority in forming regulations. The 1945 Constitution of the Republic of Indonesia is the highest legal document in Indonesia, serving as the fundamental norm that governs the relationships between state institutions, both horizontally and vertically. It also guarantees the basic rights of citizens and defines the relationship between the state and its citizens. Given this context, the 1945 Constitution should be the foundation for understanding how state power is implemented through various state organs (institutions). Each state institution exercises its authority based on either attribution or delegation as defined by the 1945 Constitution. This reflects the principle that Indonesia is a rule of law state (rechtsstaat) rather than a state of power (machtstaat). As a rule of law state, all actions taken by state administrators, as well as those by citizens, must comply with the applicable legal regulations. The law is inherently hierarchical, creating a normative order that culminates in the Constitution (the 1945 Constitution) (Aswandi and Roisah, 2019). Therefore, the source of authority and the methods of acquiring and using that authority originate from the law, with the 1945 Constitution serving as the foundational norm.

According to Article 20, paragraph (1) of the 1945 Constitution, "The People's Representative Council holds the power to form laws." This indicates that the DPR has legislative authority. Maria Farida Indrati interprets the phrase "power to form" laws in Article 20, paragraph (1) as "holding authority" due to a notion of power (macht). This concept of having the power to create laws (wetgevendemacht) encompasses the understanding of legislative authority (Soeprapto, 2007). According to Maria, the formulation of Article 20, paragraph (1) of the 1945 Constitution should not be considered in isolation from the subsequent paragraphs (Soeprapto, 2007). This indicates that the DPR (People's Consultative Assembly) cannot independently pass laws without the approval of other branches of government. This is related to Article 20, paragraph (2), which states that every draft law must be discussed together by the DPR and the President to obtain joint approval. Furthermore, paragraph (3) specifies that if a draft law does not receive joint approval, it cannot be resubmitted in the DPR session during that time.

The authority to create laws by the President is regulated in Article 5, paragraph (1) of the 1945 Constitution, which states, "The President has the right to submit draft laws to the People's Representative Council." According to Maria Farida Indrati, the provisions in Article 5, paragraph (1) and Article 20 of the 1945 Constitution indicate that the power to formulate laws is held jointly by the President and the People's Representative Council (DPR) (Soeprapto, 2007). Additionally, other state institutions within the legislative framework, such as the Regional Representative Council, also have legislative functions. As stated in Article 22D, paragraph (1) of the 1945 Constitution, the Regional Representative Council is authorized to submit draft laws to the People's Representative Council concerning regional autonomy, central and regional relations, the formation, expansion, and merger of regions, the management of natural resources and other economic resources, as well as matters related to the balance of central and regional finances.

The theoretical framework related to the authority to form laws, Jimly Asshiddiqie (2007), explains that the legislative function by the legislative branch of power in its concrete form is the regulatory function (regaled function) which is manifested in the formation of laws (wetgevende functie or law making function). The formation of laws which is a legislative function, then this regulatory function (regelende functie) is related to the authority to determine regulations that are simultaneously binding on all citizens as regulated in the 1945 Constitution. Furthermore, according to Jimly Asshiddiqie (2007), that the more operational regulatory authority comes from the delegation of authority from the legislature, so that its operation must have an order or delegation of authority from the legislative institution (legislative delegation of rule-making power) to the executive institution to determine further regulations.

Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation establishes that legislation is recognized and has legal force as long as it is enacted in accordance with existing laws or based on appropriate authority. Indonesia, as a country governed by law, will continue to enforce its legislation as a means of ensuring legal certainty, while also applying the principle of justice in both the formation and implementation of these laws (Seta, 2020). The authority mentioned in Law Number 13 of 2022 refers to the powers granted to or held by specific institutions or officials. This authority can take three forms: attributive authority, delegative authority, and mandate authority. Attributive authority is the original authority granted by the constitution or conferred by law in the context of constitutional law. Delegative authority arises when one government organ is delegated powers to act on behalf of another. In contrast, mandate authority does not involve such delegation; instead, it involves the appointment of another official to act on behalf of the mandate giver, who grants the authority through a mandate.

In the author's view, the power to create laws (wetgevendemacht) rests with the legislative branch, which fulfills a regulatory function, as outlined in Article 20, paragraph (1) of the 1945 Constitution. In many countries, laws are established through a legislative process primarily aimed at creating regulations (Sihombing and Hadita, 2023). This authority is considered an attributive authority, meaning it is the original power granted by the 1945

Constitution. Government administrative authority can be categorized into two types: (i) attributive authority and (ii) non-attributive authority. Attributive authority is the inherent power that is directly bestowed by law, while non-attributive authority is granted by a superior to subordinates and is typically temporary. In theory, authority derived from statutory regulations is obtained in three ways, namely authority obtained through attribution, authority through delegation, and authority obtained through mandate (Gandara, 2020). Therefore, authority when viewed from its source has 3 (three) sources of authority, namely: first, the source of attribution, namely the granting of authority to certain state bodies or institutions/officials either by the makers of the Constitution or the makers of Laws, for example the attribution of the power of the President and the DPR to form laws. Second, the source of delegation is the transfer or delegation of authority from other state administrative bodies/institutions/officials with the consequence that responsibility is transferred to the recipient, for example, the implementation of the DPRD's approval regarding the approval of deputy regional head candidates. Third, the source of mandate is the delegation of authority and responsibility is still held by the mandate giver, for example, the responsibility for making decisions by the Minister is mandated to his subordinates.

2. Sources and Methods of Obtaining and Using Authority

Examining more deeply scientifically regarding the opinions of attribution, delegation and mandate, then the opinion of H.D. van Wijk/Willem Konijnenbelt as quoted by Ridwan HR (2017) defines it as follows, that first, attribution is the granting of government authority by the legislator to a government organ (Attribution: toekenning van een bestuursbevoegheid door een wetgever aan een bestuursorgaan). Second, delegation is the transfer of government authority from one government organ to another government organ (Delegatie: overdracht van een bevoegheid van het ene bestuursorgaan aan een ander). Third, a mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf (Mandaat: een berstuursorgaan laat zijn bevoegheid namens hem uitoefenen door een ander). F.A.M. Stroink and J.G. Steenbeek, as referenced by Ridwan HR (2017), present a different perspective on how government organs acquire authority. They argue that there are only two methods: attribution and delegation. Attribution involves the transfer of new authority, while delegation refers to the assignment of existing authority from one organ, which has obtained authority through attribution, to another organ. Consequently, delegation is always logically preceded by attribution. In the context of the mandate, the transfer of authority is not relevant because a mandate does not equate to a delegation of authority. A mandate does not alter any authority—at least not in a formal legal sense; it only establishes an internal relationship (Ridwan, 2017). For instance, consider a minister and an employee: the minister holds the authority and may delegate certain decision-making responsibilities to the employee. Legally, the authority and responsibility remain with the ministerial organ. Therefore, while the employee may make decisions in a practical sense, the ultimate legal responsibility lies with the minister.

Law Number 30 of 2014 concerning Government Administration regulates authority, specifically in Article 11, which states that "Authority is obtained through attribution, delegation, and/or mandate." The concepts of attribution, delegation, and mandate are further clarified in Article 1 of the same law. Attribution refers to the granting of authority to government agencies and/or officials by the 1945 Constitution of the Republic of Indonesia or by law. Delegation involves the transfer of authority from a higher government agency and/or official to a lower government agency and/or official, with the responsibility and accountability fully shifting to the recipient of the delegation. In contrast, a mandate is also a transfer of authority from a higher government agency and/or official to a lower government agency and/or official, but in this case, the responsibility and accountability remain with the original authority giver.

The authority granted to government agencies and officials by the 1945 Constitution of the Republic of Indonesia, or by law, is known as attribution. Government agencies and officials obtain this authority through attribution under the following conditions: a) it is outlined in the 1945 Constitution of the Republic of Indonesia and/or in the law; b) it represents a new authority that did not previously exist; and c) this authority is specifically granted to government agencies and/or officials. The source and method of obtaining government authority align with the core principle of the rule of law, known as the principle of legality (legaliteitsbeginsel or het beginsel van wetmatigheid van bestuur). According to this principle, it is understood that government authority derives from laws and regulations, meaning that the source of government authority is ultimately based on these legal frameworks. Authority, as defined by laws and regulations, can be obtained in three ways: attribution, delegation, and mandate (Ridwan, 2017). When government agencies or officials acquire authority through attribution, the responsibility for that authority rests with the respective agency or official. It is important to note that attribution authority cannot be delegated unless specifically allowed by the 1945 Constitution of the Republic of Indonesia or other relevant laws.

Delegation refers to the transfer of authority from a higher government agency or official to a lower government agency or official. This transfer comes with the responsibility and accountability being fully assigned to the recipient of the delegation. The delegation of authority is governed by laws and regulations. Government agencies or officials receive authority through delegation if: a) it is granted by one government agency or official

to another; b) it is outlined in governmental regulations, presidential decrees, or regional regulations; and c) it involves authority that has been delegated or existed previously.

Authority delegated to government agencies or officials cannot be further delegated unless the statutory regulations specify otherwise. If the regulations allow for further delegation, the agency or official receiving the delegated authority may sub-delegate actions to other agencies or officials under the following conditions: a) the delegation must be stated in the form of regulations before the authority is exercised; b) it must occur within the government context; and c) it can only be delegated to other government agencies or officials one level below. The agency or official granting the delegation retains the right to exercise the delegated authority themselves unless stated otherwise in the statutory regulations. If the delegation of authority leads to inefficiencies in government operations, the granting agency or official may withdraw the delegated authority. Ultimately, the responsibility for the delegated authority rests with the recipient.

Attributive authority is the authority that is directly granted by law. For example, Law Number 27 of 2009 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, it is regulated regarding the duties and authority of the DPR institution as in Article 71 letter (a) to form laws that are discussed with the President to obtain joint approval. Article 22 paragraph (1) of the 1945 Constitution gives the President the authority to form a Government Regulation in Lieu of Law if there is a compelling emergency (Asshiddiqie, 2013). In Articles 7 and 8 of Law Number 13 of 2022, the types and hierarchies of laws and regulations established by authorized institutions or officials are outlined. This is in line with the principle governing the formation of laws and regulations, which states that they must be created by the appropriate institution or official. If a law or regulation is enacted by an unauthorized institution or official, it can be declared invalid or null and void.

Responsibility is defined as the obligation to bear the consequences of one's actions. According to the comprehensive Indonesian dictionary, it encompasses the idea that a person can be sued, blamed, or prosecuted if something goes wrong. Responsibility refers to a person's duty to complete the tasks assigned to them. When someone is given a responsibility, they must ensure that they fulfill the assigned tasks. If they do not complete these tasks as expected, they are required to provide an explanation or justification for their failure. It's important to note that having responsibility without the necessary authority can lead to dissatisfaction and challenges in completing duties. A person is accountable for the work assigned to them; if they perform well, they may receive praise or recognition. Conversely, if they fail to meet expectations, they must accept full responsibility for the outcome.

The law exists due to legitimate power, and this legitimate power is what creates the law. Provisions that lack a basis in legitimate power cannot be considered law. Thus, it follows that law is grounded in legitimate power. Additionally, law itself is fundamentally a form of power. However, stating that "law is power" does not imply that all power equates to law; rather, the exercise of power must be derived from lawful authority. Theoretically, the sources of authority can be categorized as follows:

a. Formal Authority Theory: According to this theory, a person's authority arises from the resources they possess, which are governed by laws, regulations, and customary practices established by the relevant institution.
b. Formal Authority Theory. According to this theory, the authority that a person has comes from the goods that he/she owns, as regulated by the laws, laws, and customary laws of the institution.
c. Acceptance Authority Theory. According to this theory, a person's authority comes from the acceptance, obedience, and recognition of subordinates to the orders, and policies of the power he/she holds.
d. Authority of the Situation. According to this theory, a person's authority comes from the "situation", for example, an emergency or extraordinary event. d. Position Authority. According to this theory, the authority that a person obtains comes from the superior position (status) that he/she holds in the organization concerned.
e. Technical Authority (Computer authority). According to this theory, a person's authority (operator) comes from or originates from the computer that he/she uses to process data.
f. Juridical authority. According to this theory, a person's authority comes from the applicable law or statute (Hasibuan, 2001).

According to Miriam Budiardjo (2002), power is the core of state administration so that the state is in a state of motion (de staat in beweging), meaning that the state can work to serve its citizens, then the state must be given power. Power is the ability of a person or group of people to influence the behavior of another person or group in such a way that the behavior is by the wishes and goals of the person or state. The power given to the state (state organs) must have definite limits that are manifested in law so that the authority (rights and obligations) of state administrators can be ensured by the law that binds the state and citizens.

Authority based on legal provisions is called legal authority so this authority is legitimate. Thus, officials (organs) in issuing decisions, are sourced from this authority. Stroink as quoted by Ridwan HR (2017) explains that the source of authority can be obtained for officials or government organs (institutions) using attribution, delegation, and mandate. The authority of government organs (institutions) is an authority that is strengthened by positive law to regulate and maintain it. Re-understanding the intent put forward by F.A.M. Stroink and

J.G.Steenbeek as quoted by Ridwan HR, put forward a different view, that there are only two ways to obtain authority, namely attribution and delegation. Attribution concerns the transfer of new authority, while delegation concerns the transfer of existing authority (by an organ that has obtained authority attributively to another organ; so delegation is logically always preceded by attribution) (Ridwan, 2017). The purpose of this opinion is to provide an opinion on the authority obtained and how to use it. This will also be different regarding the mandate because it does not discuss the transfer of authority or the transfer of authority so in terms of the mandate there is no change.

The same thing was stated by Nomensen Sinamo (2010), that in the administrative law literature, there are only two main ways to obtain authority, namely attribution and delegation, while mandates are only occasionally placed separately. In theory, there are three ways to obtain authority, namely attribution (attributie), delegation (delegatie), and mandate (mandaat). This is in line with Law Number 30 of 2014 concerning Government Administration, because this is a development in the authority system in practice. In practice, attribution is the granting of authority to government agencies and/or officials according to the 1945 Constitution and the Law. Delegation also provides an understanding of the delegation of authority from a higher government agency and/or official to a lower government agency and/or official with responsibility and accountability fully transferred to the recipient of the delegation, which indicates the existence of authority that must be carried out by the official or agency receiving the authority. Likewise, the mandate which is the delegation of Authority from a higher government agency and/or official to a lower government agency and/or official with responsibility and accountability remains with the mandate giver.

The following is a detailed description of the sources of authority and their use in practice according to Law Number 30 of 2014 concerning Government Administration, which contains three sources of authority, namely attribution, delegation, and mandate. Attribution is the government authority obtained from laws and regulations, meaning that the government authority in question has been regulated in the applicable laws and regulations. This authority is then referred to as the principle of legality (legalitiebeginsel), and this authority can be delegated. The provisions of Article 12 of Law Number 30 of 2014 provide an explanation, namely: paragraph (1) Government agencies and/or officials obtain authority through attribution if: a. regulated in the 1945 Constitution of the Republic of Indonesia and/or laws; b. is a new authority or did not previously exist; and c. attribution is given to government agencies and/or officials. Paragraph (2) Government agencies and/or officials who obtain authority through attribution, responsibility for authority lies with the relevant government agencies and/or officials. Paragraph (3) Attribution authority cannot be delegated unless regulated in the 1945 Constitution of the Republic of Indonesia and/or laws.

Delegation is authority obtained based on the delegation of authority from another government agency/organ. The nature of delegated authority is delegation that originates from the authority of attribution due to law when the authority is exercised and becomes the responsibility of the recipient of the delegation (delegate). The provisions of Article 13 of Law Number 30 of 2014 concerning Government Administration state that paragraph (1) Delegation of authority is determined based on the provisions of laws and regulations. Paragraph (2) Government agencies and/or officials obtain authority through delegation if: a. given by government agencies/officials to other government agencies and/or officials; b. stipulated in government regulations, presidential regulations, and/or regional regulations; and c. is a delegation of authority or has previously existed. Article (3) The authority delegated to government agencies and/or officials cannot be delegated further unless otherwise specified in statutory regulations. Article (4) If statutory regulations stipulate otherwise as referred to in paragraph (3), government agencies and/or officials who obtain authority through delegation as referred to in paragraph (2) may sub-delegate actions to other government agencies and/or officials with the following provisions: a. stated in the form of regulations before the authority is exercised; b. carried out within the government environment itself, and c. given at most to government agencies and/or officials 1 (one) level below. Article (5) The government agency and/or official that grants the delegation may use the authority that has been granted through the delegation unless otherwise specified in the provisions of statutory regulations. Article (6) If the implementation of authority based on delegation results in ineffectiveness in the implementation of government, the government agency and/or official that grants the delegation of authority may withdraw the authority that has been delegated. Article (7) The government agency and/or official that obtains authority through delegation, responsibility for the authority lies with the recipient of the delegation.

Furthermore, regarding the mandate which is a delegation of authority which is generally in a routine relationship between superiors and subordinates, unless expressly prohibited by laws and regulations. Viewed from the aspect of responsibility, in the authority of the mandate (mandaat) the responsibility and accountability remain with the mandate giver (mandans), the mandate recipient (mandataris) is not burdened with responsibility and accountability for the authority exercised. The definition of mandate, can be exemplified as stated by S.F. Marbun as quoted by Nomensen Sinamo (2013) explains that the definition of mandate according to constitutional law and state administrative law has a principal difference. This difference is related to the explanation of the 1945 Constitution before it was amended which refers to the functional relationship between the MPR and the

President, namely the President as the MPR's mandatary. Here the existing functional relationship uses the term mandate (mandatory). A very principled difference, namely related to the responsibility and accountability of the mandate giver. According to state administrative law, responsibility and accountability lie with the mandate giver, while the President as MPR mandate is interpreted as the President is responsible to the MPR, and the MPR is responsible to the sovereign people, however, accountability remains with the President the authority in question tends to be the authority of delegation.

In addition to the sources of authority as explained in Article 11 of Law Number 30 of 2014 concerning Government Administration, other authorities also need to be explained in this study, and the authority in question is non-attributive authority. Non-attributive authority is the authority given by a superior to a temporary subordinate. Non-attributive authority is divided into two types based on accountability, namely, first, the mandate is the authority given by a superior to a subordinate, namely the responsibility remains attached to the mandate giver. This is intended so that subordinates can make decisions on behalf of the official who gave the mandate. In granting a mandate, the mandate giver can use the authority that has been given at any time. The recipient of the mandate or mandatary cannot give the mandate to someone else.

This is if the mandate recipient has carried out the mandate, then the mandate automatically ends without having to be given a letter of withdrawal of the mandate. For example, if the Governor is unable to attend because he has to go out of town, and at the same time has to approve something, then the Governor can give a mandate to the Deputy Governor or Regional Secretary to sign the approval. If there is a problem with the decision, then the Governor is responsible. In the case of a mandate, there is no transfer of authority, but the granting of a mandate gives authority to another organ to make a decision or take action on its behalf. For example, between the Minister and the Director General, the Minister as the mandate giver assigns the Director General to and on behalf of the Minister to take legal action and take and issue certain state administrative decisions. Legally, the Minister remains the authorized official because as the state administrative official he is responsible. In state administrative law, a mandate is defined as an order from a superior to carry out, the authority can be carried out at any time by the mandate giver, and there is no transfer of responsibility. Based on this description, if the authority obtained by a government organ through attribution is original and comes from laws and regulations, namely from the wording of certain articles in laws and regulations. The recipient can create new authority or expand existing authority with internal and external responsibility for the implementation of the attributed authority being entirely with the recipient of the authority (attributary).

Second, is delegation which according to Maria Farida Indrawati, that delegation is the authority in the formation of legislation, namely the delegation of authority to form higher regulations to lower regulations, whether stated explicitly or not stated explicitly (Indrawati, 2000). In delegation authority is not given, but is temporary, authority can be exercised as long as the delegation still exists. Delegation is the transfer of authority to make a decree by a government official to another party. This means that there is a transfer of responsibility from the one who gives the delegation to the one who receives the delegation. When the delegation is handed over, the apparatus receiving the delegation has the authority to create a legal product, for example when the central government delegates authority to the regional government to make regional regulations in their respective regions so that the regional government is fully responsible for the delegated authority it receives. Philipus M.Hadjon (1995) also explained that there is a difference between delegation and mandate. In terms of delegation, the delegation procedure, comes from one government organ to another government organ with laws and regulations, with the responsibility for liability transferred to the delegate/recipient of the delegation. The giver of the delegation cannot use that authority again, except after there is a revocation by adhering to the principle of contarius actus, meaning that every change, or revocation of a law and regulation is carried out by the official who stipulates the regulation in question, and is carried out with regulations of the same level or higher. It is different in terms of the mandate, the delegation procedure in the context of a routine superior-subordinate relationship, while the responsibility and liability remain with the mandate giver. At any time the mandate giver can use the delegated authority himself. The requirements for delegation include: a) delegation must be definitive, meaning that the delegate can no longer use the delegated authority himself; b) delegation must be based on provisions of laws and regulations, meaning that delegation is only possible if there are provisions for it in laws and regulations; c) delegation is not to subordinates, meaning that in the relationship of employee hierarchy, delegation is not permitted; d) obligation to provide information/explanation, meaning that the delegate/delegan has the authority to ask for an explanation regarding the implementation of the authority; e) policy regulations, meaning that the delegate provides instructions/guidelines regarding the use of the authority. For example, when the Regent goes on the hajj/umrah, the Regent delegates to the Deputy Regent all the authority possessed by the Regent (Hadjon, 1998).

Third, namely a valid decree (rechtgelidge beschiking), and the conditions that must be met so that the decree is valid, then according to Van der Pot is that the decree must be made by an authorized (bevoged) tool (organ) to make it. In the formation of the will of the state apparatus that issues a decree, there must be no legal deficiencies, legal deficiencies can be caused by misunderstanding (dwaling), coercion (dwang), and deception

(bedrog). The decree in question must be given a form that is by that stipulated in the regulations that are the basis and the making of the decision must also pay attention to the method/procedure for making the decision/decree in question. The content and purpose of the decree must be in accordance with the content and purpose of the basic regulations. In carrying out its duties, government authorities must always be guided by the validity or otherwise of the commitment to take legal action. When requesting to take such legal action, the results of the law (in the form of decision-making or legal products) remain valid to be implemented. On the other hand, if the authority to take such legal action is illegitimate, then the consequence arises that the action is void. This void can be published through the theory of nullity (nietig theorie) as follows: a) total void (absolute nietig); b) void by law (nietig van rechtwege); and c) can be cancelled (vernietig baar) (Kompasiana, 2016).

In its authority, law enforcement officers are not authorized to form a legal product. There are 3 reasons why officers are not authorized or called onbevoegheid, namely: first, ratione material, namely government officers are not authorized because of the content/material of the authority, for example: the Vice President makes a Vice Presidential Decree, in this case, it is invalid, because only the President can make a Decision. Second, ratione locus, namely government officials or officers are not authorized about the legal area, for example, the Decree of the Mayor of Yogyakarta is invalid if enforced in the Kulonprogo area. Third, ratione temporis, namely government officials or officers are not authorized because it has expired or has passed the time specified in the legislation, for example, the authority of the state administrative court (PTUN) has a period of 40 days. (Muchsan, 2000).

The granting of authority also recognizes the existence of cancellation, in constitutional law, there are three theories about the theory of cancellation, namely absolute cancellation, cancellation by law, and cancellation. First, the theory of absolute cancellation, the theory that results in all acts that have ever been done, being considered never having existed. In this context, the act that is declared never to have existed applies the principle that all people or legal subjects are considered to know the law. In the case of absolute cancellation, the only party entitled to declare absolute cancellation is the court in the Judicial Law. Second, the theory of null and void, namely that the legal consequences have two alternatives. The first alternative is that a legitimate act is considered non-existent or not legally valid, and the second alternative is that an act that is partly done is considered legitimate, and partly is considered invalid. In this case of null and void, the officials who have the right to declare it null and void are the judiciary and the executive. Third, the theory of null and void, namely that in the case of null and void, it has legal consequences where all of the legal acts that have been done previously are still considered valid. This means that all acts in the past remain a legal force that cannot be canceled or remain valid at that time, while the officials who have the right to cancel are the judiciary, executive, and legislative (Utrecht, 1986). The legal consequences of illegitimate authority are null and void, just as the legal consequences of legal acts of government officials that are declared null and void were initially based on illegitimate authority and did not meet the requirements that must be met so that an act of government officials is declared valid. The three theories as stated above have differences based on 2 (two) aspects, namely: a) based on the legal consequences that arise, namely the legal consequences that follow if a cancellation occurs, and this is a logical consequence that arises and cannot be avoided. b) the institution or official who has the right to declare null and void, namely regarding the authority to cancel in the sense of the official who has the right to carry out the cancellation process (Utrecht, 1986).

3. Abuse of Authority According to Administrative Law

Abuse of authority is a word that is often heard both in criminal law as a form of corruption and in administrative law as a form of abuse of office authority. This needs to be explained considering that abuse of authority by government agencies and/or officials is always associated with corruption, so it is necessary to distinguish between the two types of authority both in administrative law and in criminal law. In general, corruption that occurs is carried out by officials who have authority and are in a place that allows corruption to be carried out. Conceptually, abuse of office authority is the use of opportunities by a person or group of people who hold office by taking advantage of their position (Maya and Adhy, 2021). According to Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption, abuse of authority is when a person or group of people take advantage of themselves or others or a corporation, abuse the authority, opportunities or means available to them because of their position and harm state finances or the state economy, shall be punished with life imprisonment or imprisonment of at least one year and a maximum of twenty years and a fine.

According to Indriyanto Seno Adji (2011), some parameters limit the authority of state apparatus (discretionary power) in the perspective of state administrative law, namely the abuse of authority (detournament de povouir) and arbitrary (abus de droit), while in criminal law that limits the free movement of state apparatus authority, there are elements of wederrechtlijkheid and abuse of authority. It is also said that the problems in criminal law are not as difficult as if a distinction is made as a point of contact (grey area) between state administrative law and criminal law, especially the crime of corruption. When examining the relationship between

criminal law and administrative law, it is not only summarized in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption but is also related to other laws such as Law Number 17 of 2003 concerning State Finances, Law Number 1 of 2004 concerning State Treasury and also Law Number 15 of 2006 concerning the Audit Board of Indonesia (BPK) (Maya and Adhy, 2021).

The state administrative court as an administrative court assesses the abuse of authority committed by government agencies and/or officials, while the criminal court assesses the crime of corruption due to abuse of authority. The existence of a crime of corruption is related to the abuse of authority by government officials with the means in it because the position is an element of a crime. Therefore, abuse of authority in criminal law is a crime accompanied by mens rea (malicious intent). The concrete form of mens rea is the actus reus in the form of fraud, conflict of interest, and illegality, so it is a crime or criminal act. Abuse of authority in administrative law, namely taking arbitrary action, results in the official's decision being invalid and can be canceled (Nirwanto, 2015). This is even though there is a relationship between state administrative law and criminal law, there are also differences between state administrative law, especially in Law Number 30 of 2014 concerning Government Administration with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, especially regarding the meaning of abuse of authority contained in Law Number 30 of 2014 concerning Government Administration with abuse of authority contained in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Nirwanto, 2015).

This is where in administrative law the existence of policies or decisions after being taken can be evaluated. A policy can be considered correct if it contains substance about positive things and is accepted by the community, conversely, a policy is considered wrong if it produces unexpected results and tends to harm the community. For this reason, there must be a mechanism to test whether the actions that have been carried out by state administrative bodies/officials have resulted in abuse of authority or not. Thus, an authorized institution is needed to test whether a decision has resulted in abuse of authority or not. In this case, Article 21 paragraph (1) of Law Number 30 of 2014 concerning State Administration, is regulated regarding efforts to test whether a decision contains elements of abuse of authority or not. Of course, this must be appreciated considering that so far many policies have been directly subject to criminal law. As previously mentioned, state administrative bodies/officials are protected based on the principle of presumptio juatae causa, namely that decisions taken by state administrative bodies/officials must be considered correct before there is a court decision that has permanent legal force. In addition, it is also to maintain the principle of ultimum remedium against the enforcement of criminal law, so that not all policies can be punished, before being attempted according to the applicable legal principles in this case, namely state administrative law.

Re-clarifying the issue of abuse of authority, that abuse of authority in administrative law can be interpreted in 3 (three) forms, namely: a) abuse of authority to carry out actions that are contrary to the public interest or to benefit personal, group or class interests; b) abuse of authority in the sense that the actions of the official are indeed intended for the public interest, but deviate from the purpose of the authority granted by law or other regulations; c) abuse of authority in the sense of abusing procedures that should be used to achieve certain goals, but have used other procedures to be implemented. Abuse of authority in administrative law has the following characteristics or features, first, deviating from the purpose or intent of a grant of authority. Every grant of authority to an agency or a state administrative official is always accompanied by the "purpose and intent" of the granting of such authority so the application of such authority must be by the "purpose and intent" of the granting of such authority. If the use of authority by an agency or state administrative official is not by the "purpose and intent" of the granting of such authority, then the state administrative official has committed an abuse of authority. Second, deviating from the purpose or intent of the principle of legality. The principle of legality is one of the main principles that is used as a basis in every government administration, especially in the continental legal system. In a democratic country, government actions must obtain legitimacy from the people which is formally stated in the law. Third, deviating from the purpose or intent about the general principles of good governance.

Abuse of authority is closely related to the invalidity (legal defect) of a decision and/or action of the government/state administrator. Legal defects of decisions and/or actions of the government/state administrator generally involve three main elements, namely the element of authority, the element of procedure, and the element of substance. Thus, legal defects in the actions of state administrators can be classified into three types, namely: authority defects, procedural defects, and substance defects. These three things are the essence of the emergence of abuse of authority. All of these things often occur in the administration of government, both due to maladministration and due to conflicts of interest from government officials.

D. CONCLUSION

The results of the analysis or discussion can conclude that understanding the concept of obtaining and using government authority carried out by government agencies and/or officials in the administration of government cannot be separated from Indonesia as a country based on law. Law is placed as the basis or foundation of government administration, namely in the life of the state, nation, and society. In a country based on law, law has the goal of creating state, government, and social activities that are based on justice, peace, and benefits or meaning. As a country based on law, the source of authority including obtaining and using authority is based on law. Likewise, the existence of law is because of legitimate power, and legitimate power that creates law. Provisions that are not based on legitimate power are not law. On the contrary, law is based on legitimate power, so the implementation of a power must be based on law. The 1945 Constitution as a basic legal norm which is then implemented in legislation, one of which is Law Number 30 of 2014 concerning Government Administration, is a source of law in the administration of government carried out by government agencies and/or officials including obtaining and using the authority obtained. In the practice of organizing the state and/or government, the 1945 Constitution and/or Laws are sources of authority, and the sources of authority contained in the legislation include three sources of authority, namely attribution, delegation, and mandate. The three sources of authority are regulated in detail in Law Number 30 of 2014 concerning Government Administration.

Regarding the abuse of authority which is a concept that applies in state administrative law, the settlement procedure must apply and go through state administrative law procedures. This opinion takes into account the legal principles that apply in state administrative law, namely that state administrative bodies/officials are protected based on the principle of presumption juatae causa. This principle means that decisions taken by state administrative bodies/officials must be considered correct before there is a court decision that has permanent legal force. Abuse of authority in administrative law must also be distinguished from criminal law, so that not all policies that constitute the use of authority can be punished, before being attempted according to the applicable legal principles in this case state administrative law. This is also to maintain the principle of ultimum remedium against the enforcement of criminal law.

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