

## **Application of Section 3 of the Corruption Crimes Act to Public Officials in Structural Positions (Study of Judgment No. 48/Pid.Sus-TPK/2025/PN MDN)**

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**ABSTRACT**

The legal issue examined in this study arises from the tendency to broaden the application of Article 3 of the Anti-Corruption Law to structural officials, which often relies on formal official status without always being accompanied by adequate proof regarding actual authority, personal fault, and the causal relationship with state financial losses. This condition raises concerns regarding the boundary between administrative error and abuse of authority constituting a criminal offense, as well as its implications for legal certainty for public officials. This research is a normative legal study employing statutory, conceptual, case, and comparative approaches. The primary legal materials consist of legislation and court decisions, while the secondary legal materials consist of doctrines, books, and legal journals. The analysis is conducted using a prescriptive-analytical method based on sentencing theory and Gustav Radbruch's theory of the purposes of law. The findings of this study indicate that the application of Article 3 of the Anti-Corruption Law still tends to place structural position as the dominant basis for criminal liability. In Decision Number 48/Pid.Sus-TPK/2025/PN Mdn, the judges interpreted the element of abuse of authority broadly, but did not clearly distinguish between formal, factual, and final authority. As a result, administrative errors potentially become conflated with criminal abuse of authority. This study concludes that the application of Article 3 should be carried out in a more restrictive, measurable, and evidence-based manner with clear proof of deviation of authority, personal fault, and a causal relationship with state financial losses, so that anti-corruption enforcement remains effective without disregarding justice, legal certainty, and legal expediency.

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### **INTRODUCTION**

Corruption is one of the main problems faced by the Indonesian nation from the colonial era to the reform era. Corrupt practices not only harm state finances but also hinder development, widen social gaps, and undermine public trust in the government. Therefore, the eradication of corruption is an important agenda in the Indonesian legal and political system.

Acts of corruption caused by abuse of authority are acts committed by public officials or civil servants, in which the acts are carried out deliberately and unlawfully to obtain unilateral benefits by utilizing the positions or authority they possess (Desta, 2019; Helmi & Iskandar, 2019; Latif & Halim, 2023; Navisa, 2025).

Abuse of authority is more commonly associated with public officials who hold structural positions, as such positions enable them to exercise power (Ahmad, 2025). Corruption is an extraordinary crime that has a very broad impact on state finances, the national economy, and public trust in government administration. One of the provisions frequently used to prosecute corrupt actors, especially public officials, is Article 3 of Law (*Undang-Undang/UU*) Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. This provision is often applied in cases involving the abuse of authority to pressure or extort individuals who require services from the government or state-owned enterprises (*SOEs*). Article 3 of the Corruption Law regulates acts committed by any person who, with the intention of benefiting themselves, another person, or a corporation, abuses the authority, opportunity, or means available to them because of their position, thereby causing losses to state finances or the national economy.

The formulation of the norm demonstrates that the principal legal subjects of Article 3 of the Corruption Law are public officials who possess structural authority in government administration. From a sociological perspective, corruption committed by public officials directly affects people's lives. Abuse of authority in the management of public budgets can reduce the quality of public services, slow development, and exacerbate social injustice. Society becomes the victim of corrupt practices carried out by officials who are supposed to serve the public.

From a political perspective, the implementation of Article 3 of the Anti-Corruption Law is also related to the state's commitment to building a clean and transparent system of government. Law enforcement agencies such as the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), the Prosecutor's Office, and the Corruption Courts play important roles in ensuring that public officials who abuse their authority can be held accountable. However, political dynamics often affect the effectiveness of law enforcement, for example through political intervention or weak political support for anti-corruption agencies.

In law enforcement practice, Article 3 of the Anti-Corruption Law is often applied to public officials occupying structural positions, such as heads of agencies, regional secretaries, subdistrict heads, and leaders of regional-owned enterprises. However, the application of this article raises various juridical problems, particularly regarding the interpretation of the element of abuse of authority. One of the main problems is the absence of a clear boundary between abuse of authority of an administrative nature and abuse of authority that may incur criminal liability. In practice, violations of administrative procedures, negligence, or policy errors are often brought into the realm of corruption crimes.

This case began with the implementation of the Construction of a Construction Physical Building in Progress (*Konstruksi Dalam Pengerjaan/KDP*) at the Occupational Safety and Health Center (*Balai K3*) Medan for the 2022 Fiscal Year, which was financed through the Budget Implementation List (*Daftar Isian Pelaksanaan Anggaran/DIPA*) of the Medan K3 Center with a budget ceiling of IDR 1,800,000,000.00 (one billion eight hundred million rupiah). In the procurement process, the defendant, Rizqi Syahrul Ramadhan, S.T., acted as a member of the Selection Working Group Team based on an assignment letter

issued by the Goods/Services Procurement Work Unit (*Unit Kerja Pengadaan Barang/Jasa/UKPBJ*) of the Ministry of Manpower to conduct the e-tendering process.

During the preparation and evaluation stages of procurement, it was revealed that there was a discrepancy in the requirements for the construction business subclassification in the Terms of Reference (*Kerangka Acuan Kerja/KAK*), namely the use of subclassification code BG009, which pertains to technical planning documents for the implementation of construction services for other buildings. According to the applicable technical provisions and the defendant's own knowledge, the construction work for the Occupational Health and Safety (*K3*) testing laboratory building should have used subclassification BG007. Although the defendant was aware of this discrepancy and had discussed it with fellow members of the Working Group, the auction process continued without official clarification to the Commitment-Making Officer (*Pejabat Pembuat Komitmen/PPK*), resulting in procurement documents that continued to use inappropriate requirements.

Based on the Minutes of the Selection Results dated August 15, 2022, CV. Mitra Persada Inti was declared the winner of the auction. This determination was subsequently followed by the issuance of a Letter of Appointment of Goods and Services Provider (*Surat Penunjukan Penyedia Barang/Jasa/SPPBJ*) dated August 24, 2022, the signing of an employment contract on August 29, 2022, and a Start Work Order (*Surat Perintah Mulai Kerja/SPMK*) dated September 1, 2022, with a contract value of IDR 1,751,616,577.00 (one billion seven hundred fifty-one million six hundred sixteen thousand five hundred seventy-seven rupiah) and an implementation period of 90 calendar days.

During the implementation of the work, the provider and related parties were suspected of failing to carry out the work in accordance with the contractual specifications. Based on the results of expert examinations and independent accountant reports, it was found that there were deficiencies in work volume, substandard quality of work, and damage to parts of the building, which collectively resulted in state financial losses amounting to IDR 281,158,680.00 (two hundred eighty-one million one hundred fifty-eight thousand six hundred eighty rupiah). The Panel of Judges of the Corruption Court in case Number 48/Pid.Sus-TPK/2025/PN Mdn determined that the losses arose as a result of the defendant's actions as a member of the Working Group (*Pokja*), acting together with the Commitment-Making Officer (*PPK*), providers, and supervisory consultants.

For these acts, the Public Prosecutor charged the defendant, Rizqi Syahrul Ramadhan, S.T., with subsidiary charges, namely the primary charge under Article 2 paragraph (1) of the Law on the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, and the subsidiary charge under Article 3 of the Law on the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. In its deliberations, the Panel of Judges stated that the element of "unlawfully" in the primary indictment was not proven, and therefore the defendant was acquitted of the Article 2 charge. However, the Panel considered that the defendant's actions were more appropriately classified as abuse of authority, opportunity, or means due to his position, as stipulated under Article 3 of the Corruption Law, because the defendant continued the auction process despite knowing that there were defects in the procurement requirements and despite disregarding applicable regulations.

Based on these considerations, the court ultimately declared that the defendant had been legally and convincingly proven guilty of jointly committing the crime of corruption as charged under the subsidiary indictment pursuant to Article 3 of the Corruption Law and sentenced him to imprisonment for 2 (two) years and a fine of IDR 250,000,000.00, with a subsidiary penalty of 6 (six) months' imprisonment. The Panel also emphasized that although the defendant did not directly enjoy the proceeds of the crime, his role nevertheless contributed to the occurrence of state losses.

This condition raises concerns regarding the criminalization of policy decisions, which may ultimately hinder the performance and willingness of public officials to make strategic decisions. In addition, there is also the problem of inconsistency in the application of Article 3 in judicial decisions. In some cases, judges consider that abuse of authority must be proven through a violation of administrative law norms, whereas in other decisions the element is deemed fulfilled merely on the basis of state losses and the defendant's position, thereby creating legal uncertainty.

Based on these conditions, research concerning the application of Article 3 of the Corruption Law to public officials in structural positions is important in order to examine more deeply how Article 3 is applied to public officials in structural positions, particularly through the analysis of court decisions. Thus, this research is expected to provide a clearer understanding of the limits of abuse of authority within the context of corruption crimes.

This research focuses on analyzing the application of Article 3 of the Corruption Law to public officials in structural positions, particularly regarding the elements of abuse of authority and their implications for legal certainty in judicial practice. In addition, this study also examines the judges' considerations in Judgment Number 48/Pid.Sus-TPK/2025/PN Mdn and identifies patterns of corrupt practices that occur. The primary objective is to provide a comprehensive understanding that supports the criminal justice system and clean governance. The results of this research are expected to contribute academically to the development of criminal law scholarship and to serve as a reference for academics and researchers in the field of corruption law.

## **METHOD**

This research used a normative legal research method, also referred to as doctrinal legal research. The study focused on legal norms governing the application of Article 3 of the Law on the Eradication of Corruption Crimes, particularly concerning public officials in structural positions, the element of abuse of authority, and its implications for legal certainty. Because the issues examined required the analysis of statutory regulations, legal principles, criminal law doctrines, and the relationship between criminal law and state administrative law, a normative approach was considered the most appropriate method.

This research employed several approaches, namely the statutory approach, case approach, and conceptual approach. The statutory approach was used to examine laws and regulations related to corruption crimes, while the case approach focused on analyzing court decisions concerning the application of Article 3 of the Corruption Law. The conceptual approach was applied to examine legal doctrines and concepts related to abuse of authority and criminal liability.

The study relied on secondary legal materials consisting of primary, secondary, and tertiary legal materials. Primary legal materials included laws and regulations concerning corruption crimes, the Criminal Code, regulations concerning the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), and relevant court decisions. Secondary legal materials consisted of books, scientific journals, and academic writings discussing corruption law and abuse of authority. Tertiary legal materials included legal dictionaries, the *Great Dictionary of the Indonesian Language (Kamus Besar Bahasa Indonesia/KBBI)*, and encyclopedias.

Data collection was conducted through library research and document study by tracing, identifying, classifying, and reviewing legal materials relevant to the research problem. The research also included a purposive review of court decisions concerning corruption cases related to the application of Article 3 of the Corruption Law to public officials, as court decisions represented the practical application of legal norms and formed an important part of juridical analysis.

The data were analyzed qualitatively through the interpretation, comparison, and systematization of legal materials to answer the legal issues examined in this study. The analysis emphasized legal reasoning and normative argumentation rather than statistical methods, with the aim of producing descriptive-analytical conclusions regarding the application of Article 3 of the Corruption Law in judicial practice.

## **RESULTS AND DISCUSSION**

### **The Application of Article 3 of the Law on Corruption Crimes against Public Officials in Structural Positions in Judicial Practice and Its Implications for Legal Certainty for Public Officials**

#### **1. Article 3 of the Corruption Law in Its Relevance to Public Officials**

Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes occupies a very important position in the law enforcement system of corruption crimes in Indonesia, especially for perpetrators who have the quality of public office.

The formulation of Article 3 states:

#### **Article 3**

Any person who, with the aim of benefiting himself or another person or a corporation, abuses his authority, opportunity or means available to him because of his position or position that may be detrimental to the state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp50,000,000, 00 (fifty million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

The formulation shows that the essence of Article 3 is not just the occurrence of state losses, but the existence of abuse of power originating from office. Therefore, the subjects that most often come into contact with Article 3 are public officials who in their structural capacity hold administrative authority, authority for managing state finances, procurement authority, approval authority, or authority to sign strategic government documents.

From the perspective of state administrative law, the authority of public officials is an authority that comes from law and can only be exercised within the limits determined by

laws and regulations. Philipus M. Hadjon emphasized that government authority is not born freely, but is obtained through attribution, delegation, or mandate, so that any use of authority must always be bound to the purpose of its grant and the general principles of good governance.

Thus, when a public official in a structural position uses the authority that exists in him for a purpose that deviates from the purpose of granting the authority, then doctrinally there has been an abuse of authority (*detournement de pouvoir*). In the administrative realm, such irregularities can initially be understood as defects in government actions, but in certain contexts, especially when they are accompanied by the purpose of benefiting oneself or others and causing state losses, the act transforms into a criminal act of corruption that can be charged with Article 3 of the Corruption Law.

However, it is important to emphasize that not every mistake in the implementation of structural positions can be immediately qualified as a criminal act of corruption. In state administrative law, Ridwan HR distinguishes between actions that exceed authority, confuse authority, and arbitrary actions, each of which is basically a form of defect in the use of authority that must first be tested within the framework of administrative legality. Therefore, Article 3 should not be read simplistic as an "official article", but must be understood as a criminal norm that requires more in-depth proof of the existence of irregularities in the use of authority accompanied by the purpose of benefiting oneself or others and resulting in state losses.

From the perspective of criminal theory, the normative construction of Article 3 shows that the state places the abuse of authority by public officials as a form of act that has a higher level of reproach than ordinary violations, because the perpetrator not only violates the law, but also betrays the mandate of public office. In the framework of absolute theory (retributive), abuse of authority by structural officials deserves punishment because criminality is seen as just retribution for moral and juridical mistakes committed by the perpetrator.

Officials who are mandated to manage the public interest but instead use their positions for personal gain are seen as having committed a betrayal of public trust, so that the crime becomes a retribution proportionate to the quality of their mistakes. However, if the retributive approach is applied rigidly without distinguishing between administrative errors and truly corrupt abuses of authority, then Article 3 has the potential to become an instrument of policy criminalization that undermines legal certainty.

## **2. Application of Article 3 in Judicial Practice**

In the practice of corruption crimes, Article 3 is often applied to public officials in structural positions on the basis that the element of "because of position or position" is considered to be automatically fulfilled when the defendant serves as the head of the agency, the power of attorney for the budget user, the commitment making official, the director of a regionally owned enterprise, or other structural official.

Such a pattern can be seen in many *judex facti* rulings that place the formal status of the position as the main entry point to prove delicacy. Empirically, this approach does make it easier to prove because structural positions are always related to administrative authority. However, dogmatically speaking, this approach is problematic if it is not followed by an

analysis of the limits of authority, the purpose of granting authority, the form of deviation, and the causal relationship between deviation and state losses.

An important development comes from Supreme Court jurisprudence which has gradually shifted the approach from "status of office" to "abuse of authority structure". In the Supreme Court Decision Number 2423 K/PID. SUS/2016, the Supreme Court emphasized that the difference between Article 2 and Article 3 of the Corruption Law is not solely determined by who the perpetrator is, but by the construction of the element of delicacy. This means that it is not true if Article 3 is automatically applicable just because the defendant is a public official. The Supreme Court emphasized that the main element of Article 3 lies in the abuse of authority born from the position, not solely the existence of the position itself.

This view is strengthened in the Supreme Court Decision Number 1988 K/Pid.Sus/2016, which basically shows that the Supreme Court began to build a boundary line between actus of office and abuse of office. In this context, office is only a source of potential, while a new criminal is appropriate when the authority attached to the position is used perversely for prohibited purposes. This approach is important because it puts proof at the heart of the act, not on the identity of the perpetrator.

Furthermore, Supreme Court Decision Number 1492 K/Pid.Sus/2017 affirms that the term "position" in Article 3 must be understood in the context of public positions related to government functions or public positions, not just ordinary social positions or factual relationships. This decision is important to emphasize that Article 3 does have a strong orientation towards the abuse of office functions, but it must still be limited to the quality of the relationship between positions, authority, and irregularities.

From the perspective of criminal theory, this shift in jurisprudence is very important. If the formal approach of the position is dominant, then the crime tends to be imposed based on liability status, namely a person is punished mainly because of his position as an official. This model is dangerous because it goes against the principle of error (*geen straf zonder schuld*). On the other hand, when the Supreme Court shifts its focus to the abuse of authority, the punishment moves towards a model that is more in line with modern criminal liability theory, namely that criminality can only be justified if there is a real individual fault and can be personally blamed.

Within the framework of relative theory (purpose theory), an approach that emphasizes proving abuse of authority is also more rational because crime is no longer just retaliation, but is directed to achieve social goals, namely preventing other officials from abusing their positions (general prevention) and preventing perpetrators from repeating their actions (special prevention). Criminal charges against structural officials who are proven to have abused authority have a very strong symbolic effect on the bureaucracy because it shows that public office is not a space for impunity. However, the effect of prevention will only be valid and effective if it is imposed on truly corrupt acts. If a criminal is imposed on a purely administrative error, then prevention turns into bureaucratic terror, not legal education.

### **3. Example of Analysis of Supreme Court Decisions in the Perspective of Criminal Theory**

#### **a. Supreme Court (MA) Decision No. 2423 K/Pid.Sus/2016 on Criminalization Should Not Rely on Official Status Alone**

The Supreme Court Decision Number 2423 K/Pid.Sus/2016 is one of the most important decisions in the development of the interpretation of Article 3 of the Corruption Law. The Supreme Court rejected a perspective that simplified the difference between Article 2 and Article 3 of the Corruption Law based on the status of the perpetrator's subject. This decision means that the quality of public officials does not automatically give birth to the conclusion that Article 3 of the Corruption Law is more appropriately applied. On the other hand, the judge must assess whether the defendant's actions really contain elements of abuse of authority due to office, as well as whether there is a purpose to benefit himself or others and potential state losses.

This verdict, in the perspective of absolute theory, shows that criminal retribution must be based on real wrongdoing, not on identity or symbols of office. Fair retribution is only possible if the condemned act is truly an abuse of power, not just an administrative failure. If not, then the criminal loses its moral legitimacy.

In a relative theoretical perspective, this ruling is also more functional. The state does need a criminal justice system to create a deterrent effect in the bureaucracy, but a healthy deterrent effect is only born from a verdict that can be understood as fair. Public officials will learn from the verdict that affirms that they are punished for intentional abuse of authority, not for simply occupying office when there is a state loss. Thus, this ruling strengthens prevention based on rationality, not prevention based on irrational fear.

#### **b. Supreme Court Decision No. 1988 K/Pid.Sus/2016 concerning the Separation between Acts of Position and Abuse of Position**

The Supreme Court Decision Number 1988 K/Pid.Sus/2016 shows the tendency of the Supreme Court to distinguish between actions carried out within the scope of office and actions that abuse office. This is a very important distinction because in a bureaucracy, almost all official decisions have budgetary or administrative consequences. Without this distinction, every decision that leads to state losses has the potential to be drawn into the criminal realm.

In the perspective of combined theory, this ruling can be understood as an attempt to balance the elements of retaliation and social goals. Penalties are still imposed for wrongful acts, but only to the extent that the punishment is necessary to protect the interests of the law and maintain the orderly administration of the state. This joint approach is important because corruption is indeed an extraordinary crime, but such extraordinary character should not be used as an excuse to ignore the basic principles of criminal law.

#### **c. Regarding Supreme Court Decision No. 1492 K/Pid.Sus/2017 concerning the Meaning of Position and Quality of Position as the Basis of Reproach**

The Supreme Court Decision Number 1492 K/Pid.Sus/2017 is important because it provides an explanation that the "position" in Article 3 must be understood as a public position related to the functions of the government. This affirmation shows that the quality of the position is indeed relevant, but the relevance lies in the relationship between the position and the source of authority, not in the social status alone.

In criminal theory, higher quality of office can be the basis for increasing the level of reproach for acts. A structural official who has great authority and wide access to state resources normatively bears a greater burden of responsibility than ordinary citizens. Therefore, when he abuses his authority, his offense has a heavier dimension: he not only violates criminal norms, but also undermines the integrity of public functions. Within the framework of modern retributive theory, this can justify heavier penalties because the perpetrator's blameworthiness rate is higher.

d. Supreme Court Decision No. 2421 K/Pid.Sus/2016 concerning State Losses Must Not Swallow Elements of Guilt

It is important to read the Supreme Court's Decision Number 2421 K/Pid.Sus/2016 to emphasize that state losses, although they are a very important consequence element in corruption cases, should not be the only focus of attention to drown out the elements of abuse of authority and personal error. In practice, it often happens that when a state loss is proven through an audit, then the proof of other elements is considered to automatically follow. In fact, in criminal law, the consequences are never enough to stand alone without mistakes.

In the perspective of the theory of proportionality of punishment, a verdict that puts individual guilt as the focus will result in a fairer and more measurable sentence. Proportionality requires that the severity of the crime be proportional to the level of the offense, the intensity of the abuse of authority, the amount of profit obtained, and the impact on state finances and public trust. If state losses are used as a single measure, then criminalization risks becoming mechanistic and ignoring individual justice.

#### **4. Application of Article 3 to Structural Officials in Relation to Criminal Theory**

The absolute theory views crime as a commensurate retribution for wrong acts. In the context of Article 3, this theory is very relevant because the abuse of authority by public officials has a distinctive moral dimension, namely the perpetrator not only violates the law, but also abuses the trust of the state and society. Sudarto explained that crime in the theory of retribution is understood as a consequence that must be imposed because the perpetrator has committed a crime, not primarily to achieve other goals outside of retribution itself.

If it is associated with structural officials, then retribution becomes morally stronger because public positions contain elements of trust. A head of an agency, a budget user, or a commitment-making official who uses his position for self-benefit has basically committed a double mistake, namely violated the criminal law and betraying the public mandate. Therefore, from a retributive point of view, the criminalization of this kind of official is not only legal, but also necessary to restore the sense of justice of the community.

However, the absolute theory also provides an important warning that a criminal offence should only be imposed if the offence is proven. If a structural official is convicted only because there is a state loss within the scope of his authority without proof of actual abuse, then the retaliation turns into injustice. It is in this context that absolute theory can be used to criticize criminal practices that are too broad.

Relative theory places crime to achieve social goals, especially prevention. Barda Nawawi Arief explained that crime in the theory of purpose must be judged by its benefits to protect the community, prevent crime, and correct the perpetrators. In the case of Article 3, the criminalization of structural officials has a very large general preventive function. The

court's decision against the abuse of office sends a message that public office is a mandate that is under the control of criminal law.

On the other hand, special prevention is also relevant because many corruption crimes in the bureaucracy are carried out repeatedly, systematically, and take advantage of weaknesses in internal supervision. Criminalization of perpetrators can prevent repetition, both by the same perpetrators and by the surrounding bureaucratic networks. However, from the point of view of goal theory, crime is only effective if the target is right, if the actual official only commits administrative errors or wrong discretion is punished as corrupt, then the social message that is born is actually wrong because the bureaucracy will learn not to make decisions, not learn to act honestly.

Of the three major theories of criminality, the most appropriate approach to reading Article 3 against structural officials is the combined theory. This theory recognizes that crime must have a moral basis in the form of guilt (retributive element), but at the same time must be directed to the goal of community protection and prevention (relative element). In the context of office corruption, this approach is most proportionate because corruption does have high moral reproach as well as a broad social impact on state finances, public services, and government legitimacy.

With the combined theory, structural officials who abuse their authority deserve to be punished for:

- a. it is morally and juridically guilty;
- b. criminal justice is needed to maintain the integrity of the bureaucracy;
- c. Criminal justice functions to prevent similar corruption; and
- d. Criminals affirm the boundary between legitimate discretion and abuse of office.

However, the combined theory also requires selectivity. Not all bureaucratic mistakes must be responded to criminally. If the violation is still at the level of maladministration or administrative error without the intention of self-benefit, then the administrative mechanism is more appropriate. Thus, the combined theory encourages effective but controlled criminalization.

Based on the normative, doctrinal, and jurisprudential analysis above, it can be affirmed that the application of Article 3 of the Anti-Corruption Law to public officials in structural positions is basically theoretically justifiable if there is really an abuse of authority that is born from office and used for unlawful purposes. In such a context, the criminalization of structural officials is not only in line with absolute theory because it is retaliation for betrayal of the public mandate, but also in line with relative theory because it serves to prevent bureaucratic corruption and maintain the integrity of state administration.

However, the theory of criminalization also provides normative limitations so that Article 3 is not overused. From a retributive perspective, a criminal offence is only valid if a real offence is proven; From a prevention perspective, criminal justice is only effective if it is directed at perpetrators who are truly corrupt; And from the perspective of combined theory, the crime must be proportional, selective, and not engulf the administrative jurisdiction. Therefore, the author argues that the combined theory is the most appropriate theory to assess the application of Article 3 to structural officials, because it can balance the need to eradicate corruption with the protection of legal certainty for public officials who carry out government functions legally.

Thus, the criminalization of public officials in structural positions based on Article 3 of the Corruption Law only gains full legitimacy if it is based on evidence of a concrete, personal, and profit-oriented abuse of authority that is prohibited, not solely on the occurrence of state losses or the attachment of formal positions to the defendant. It is in this context that the theory of punishment serves a dual function: as a justification for the imposition of criminal penalties for truly corrupt officials, as well as a barrier so that the criminal law does not turn into a tool of criminalization of administrative errors and government policies.

### **The judge's consideration in Decision Number 48/PID. SUS-TPK/2025/PN MDN in Interpreting the Elements of Abuse of Authority by Public Officials in Structural Positions**

#### **1. Case Position and Relation to Article 3 of the Corruption Law**

The decision of the Corruption Court at the Medan District Court Number 48/Pid.Sus-TPK/2025/PN Mdn is one of the interesting decisions to analyze because it shows how the judge distinguishes between the element of "unlawfully" in Article 2 paragraph (1) of the Corruption Law and the element of "abusing the authority, opportunity, or means available to him because of his position or position" in Article 3 of the Corruption Law. The chronology that occurred was:

The corruption case in Decision Number 48/Pid.Sus-TPK/2025/PN Mdn basically the defendant Rizqi Syahrul Ramadhan, S.T. is a Civil Servant who was identified by the panel of judges as a Member of the Election Working Group Team in the construction work of the KDP physical building of the Medan K3 Center for the 2022 Fiscal Year, based on a letter of assignment from the UKPBJ of the Ministry of Manpower. Starting from the implementation of an activity related to the use of office authority by the defendant as a public official in a structural position in a government agency. In his position, the defendant has roles, duties, and administrative responsibilities in the decision-making process and/or the implementation of policies related to budget management or the implementation of government activities.

In practice, the defendant is alleged to have used the authority inherent in his position improperly, either through active actions or through approval of an administrative process that deviates from the applicable legal provisions. This action was then considered to have opened space for irregularities in the implementation of activities, which ultimately caused state financial losses as postulated by the public prosecutor.

This position is a central point because the panel does not place the defendant's fault solely on the consequences of state losses, but on how the authority attached to these technical-institutional positions is used in the procurement process. This can be seen from the consideration of the panel which stated that the defendant's actions were more appropriately categorized as acts of violating Article 3 because they were related to the abuse of authority, opportunity or means available to him due to his position or position as the Election Working Group Team.

Doctrinally, such a construction is in line with the character of Article 3 of the Corruption Law which is intended for officials or subjects who have access to the authority of the position, in contrast to Article 2 which focuses more on unlawful acts in general. The element of "abuse of authority" in Article 3 is understood as a form of *speciale delict* which

requires the existence of a causal relationship between office and act. Therefore, the focus of the analysis does not only stop at the existence or absence of state losses, but also on whether the defendant's actions constitute a deviation from the purpose of granting authority.

In this context, Decision Number 48/Pid.Sus-TPK/2025/PN Mdn is relevant because the panel of judges explicitly stated that the elements of Article 2 are not appropriately applied, but the elements of Article 3 are more appropriate because the acts are carried out in the office space. Thus, this decision is not only a case of proving procurement corruption, but also a concrete example of judicial reasoning about the extent to which the court can interpret the boundary between maladministration, technical errors, and abuse of authority with a criminal dimension.

The Panel of Judges first confirmed the identity of the defendant as a civil servant and as a member of the Working Group Team in the e-tendering process for the construction of the physical building of the KDP K3 Medan Hall. In the decision document, the Working Group Team was formed based on Task Letter Number 1/1365/UM.02.04/VI/2022 from the IKPBJ of the Ministry of Manpower to carry out e-tendering activities, and Rizqi Syahrul Ramadhan, S.T., is one of the members who has an equal and independent position in conducting administrative, technical, and price evaluations. Thus, the defendant is not an ordinary private party, but part of the procurement implementing organ that carries out government functions.

From the point of view of authority theory, this is very important. In state administrative law, authority is not born from individuals, but is attached to positions. Philipus M. Hadjon emphasized that government authority must be understood as legal power granted by legal norms to carry out certain actions in the field of government.

Therefore, when a person sits on the Election Working Group Team, the authority to evaluate documents, clarify, determine election results, and recommend winners is not a personal act, but an act of office. It is at this point that Article 3 becomes relevant because the deviations that occur are not just individual misconduct, but deviations in the use of the instruments of office.

If it is related to this study regarding public officials in structural positions, then methodologically it can be affirmed that although the defendant in this case plays the role of a member of the Working Group which can technically be in the form of a position assignment, his status as a civil servant and the existence of evidence evidence for the first appointment in a structural position in the list of evidence strengthen the argument that the defendant is part of a public official who institutionally carries out the functions of the structural government. Thus, the judge's consideration in this case can be read as the application of Article 3 of the Corruption Law to public officials who act in their capacity of office, not just individuals.

## **2. Judge's Interpretation of the Element of Abuse of Authority in the Decision**

In his consideration, the judge stated that the element of "abusing the authority, opportunity or means available to him because of his position or position" means that there must be a causal relationship between the existence of authority, opportunity, and means with the position or position, so that it is because of holding the position that the perpetrator has the authority, opportunity, and means. Furthermore, the panel of judges in its consideration cited the doctrine of R. Wiyono which explained that authority is a series of

rights inherent in the position to take the necessary actions so that the duties can be carried out; Opportunity is an opportunity that arises from the work procedures related to the position while the means are the way of working or media related to the position.

From the point of view of interpretation methodology, this judge's construction shows three things. First, the panel uses a systematic interpretation, namely reading Article 3 not literally, but by relating it to the structure of the position and institutional functions. Second, the panel uses a doctrinal interpretation, because it fills the void in the meaning of the element of abuse of authority by referring to the doctrine of criminal law on corruption. Third, the panel implicitly adopts a function-based interpretation approach, namely assessing whether the defendant's actions deviate from the objectives and procedures of the given position.

Critically, however, there is a methodological issue where the panel states that the element of abuse of authority "has been considered in the unlawful element" and is therefore considered to have been proven beforehand. This means that the panel does not build a truly independent argument for the elements of Article 3, but rather takes over (incorporation by reference) the considerations of the primary indictment of Article 2. Academically, this is problematic, because "against the law" and "abuse of authority" are two dogmatically different elements. The first concerns the unlawful nature, while the second concerns the way of using the position. The combination of such considerations has the potential to weaken legal certainty, because the boundary between Article 2 and Article 3 of the Corruption Law becomes blurred.

This problem is also highlighted as a source of inconsistency in the decision. Studies on the determination of criteria for abuse of authority elements show that courts often do not explicitly distinguish between unlawfulness and abuse of authority, even though Article 3 requires proof that the authority is used for purposes other than the purpose for which it was granted. In fact, the study of modern interpretation of Article 3 emphasizes that the meaning of "abuse of authority" must be interpreted in the context of criminal law, not simply borrowed from administrative law, but still requires proof of concrete normative deviations.

In this case, the panel considered that the abuse of the defendant's authority was mainly since Rizqi Syahrul Ramadhan, S.T., as a member of the Working Group Team:

- a. In this case, the panel assessed that the defendant's abuse of authority was mainly based on the fact that the defendant as a member of the Working Group Team;
- b. knowing that the appropriate allocation of K3 laboratory building work is BG007, not BG009, but does not ensure that corrections are made firmly;
- c. continue to participate in the process of evaluating and determining election results;
- d. in the evaluation of the bid, the Working Group still determined CV Mitra Persada Inti as the winner even though the bid was the highest and there was a significant difference compared to other bidders;
- e. Implement the dual requirements that conflict between the election document and the Terms of Reference.

From these considerations, it can be understood that the tribunal constructs the abuse of authority not in the form of active actions that explicitly order violations, but in the form of omission within authority, namely not using corrective, clarifying, and evaluative authority as it should.

This is interesting, because theoretically the abuse of authority is not always an active order, it can also be a deliberate act of allowing irregularities to occur even though the office provides the capacity to prevent them. Within the framework of administrative law, such actions can be categorized as deviation of the purpose of authority or at least abuse by omission, when officials use or allow the process to run in such a way that the results deviate from the legal purpose of the procurement.

However, critically, this construction also shows that negligence or failure to make corrections in the procurement process cannot necessarily be equated with abuse of authority in the criminal realm. It is at this point that the problem of norm limitation becomes important. If every professional failure or administrative error is directly qualified as an abuse of authority, then Article 3 of the Corruption Law has the potential to turn into a sweeping article that can criminalize discretion, technical errors, and imperfections in bureaucratic coordination.

Therefore, dogmatically speaking, the panel of judges should clarify whether the defendant acted solely negligently, consciously allowed irregularities to occur, or deliberately directed the results of the procurement. This verdict has indeed linked the defendant's actions to the benefit to the provider and the incursion of state losses, but the argument regarding *mens rea* or the perpetrator's inner will as an element of abuse of authority has not been adequately described and has not reached the analytical acuity that should be present in the case charged under Article 3 of the Corruption Code.

If analyzed through Gustav Radbruch's theory of legal purpose, the judge's consideration in this decision must be tested based on three basic values of law, namely justice (*gerechtigkeit*), legal certainty (*rechtssicherheit*), and utility (*zweckmäßigkeit*).

In this case, the panel seeks to realize substantive justice by not imposing Article 2 of the Corruption Code when the unlawful element in the general sense is not appropriate, then shifts the construction to Article 3 which is considered more in accordance with the nature of the defendant's actions. From the point of view of justice, this step can be seen as a form of juridical individualization, because the judge seeks to place the act according to its normative character: not to enrich himself directly, but to abuse the office space in the procurement process.

However, in terms of legal certainty, these considerations still leave problems. Legal certainty requires that the elements of delicacy be formulated and applied clearly, consistently, and predictably. In this decision, the panel did define authority, opportunities, and means, but then stated that the element of abuse of authority had been considered previously in the element of unlawfulness. Argumentation techniques like this have the potential to create an unclear boundary between Article 2 and Article 3. In Radbruch's perspective, when legal certainty is weakened, the legitimacy of decisions is also affected, especially for public officials who require a firm boundary between administrative errors and corruption.

As for the benefits, this decision has a preventive function, namely to give a message that members of the Working Group (Pokja) or procurement officials cannot take refuge behind formal reasons only members if they factually know that there are fundamental defects in the process but still allow or participate in ratifying the process. In the context of

eradicating corruption, the social benefits of such a decision are quite large because it encourages the duty of vigilance for public officials in the procurement of goods/services.

However, benefits should not come at the expense of certainty. Radbruch places legal certainty as one of the foundations of order, so effective anti-corruption law enforcement must maintain predictability so that officials who act in good faith are not trapped in criminalization. Thus, if weighed according to the Radbruch formula, this decision is quite strong in terms of justice and utility, but it is not fully optimal in terms of legal certainty, especially in terms of separating the elements of delicacy and proving the intensity of the abuse of authority.

Although this case was decided based on the Corruption Law and the old Criminal Code due to *tempus delicti* and the construction of the indictment, academic analysis can still be attributed to Criminal Code 1/2023 as a framework for national criminal law reform. In the paradigm of the Criminal Code 1/2023, criminal imposition is no longer seen solely as retribution, but must consider the purpose of the penalty, the balance of interests, and the individualization of the crime.

In the context of national criminal law reform, one of the relevant issues to be analyzed is the relationship between Article 3 of the Corruption Law and Article 604 of Law 1/2023, especially if the two norms are understood to regulate the same substance or at least have a close construction of delinquency regarding acts of abuse of authority by public officials that cause state financial losses.

The issue becomes important when there is a difference in the minimum criminal threat, namely Article 3 of the Corruption Law stipulates a minimum prison sentence of 1 (one) year, while when referred to the construction of Article 604 of the Criminal Code 1/2023 as understood in this study, the criminal threat is a prison sentence of at least 2 (two) years. These differences raise fundamental questions about which norms should be applied, and whether in such circumstances the principle of *lex favor reo* can be applied as a principle that requires the application of provisions that are more favorable to the defendant.

Doctrinally, the principle of *lex favor reo* is a principle in criminal law that requires that if there is doubt, conflict, or change in criminal regulations that affect the position of the defendant, the judge should choose a lighter and more favorable norm or interpretation for the defendant.

This principle is rooted in the principle of protecting individuals from state arbitrariness, and is an embodiment of the principle of legality that not only requires a written legal basis for punishing, but also demands that the application of criminal law not be carried out retroactively. In Indonesian criminal law doctrine, this principle is often understood as part of the spirit of protecting the rights of suspects/defendants, especially in transitional situations between the old legal regime and the new legal regime.

If a comparison is made between Article 3 of the Corruption Law and Article 604 of the Criminal Code 1/2023 as constructed in this study, it can be seen that Article 3 of the Corruption Law is lighter in terms of the minimum criminal threat, because it stipulates a minimum prison sentence of 1 (one) year, while Article 604 of the Criminal Code 1/2023 stipulates a minimum prison sentence of 2 (two) years.

From the point of view of *lex favor reo*, such a situation theoretically leads to the conclusion that the provisions of Article 3 of the Corruption Law are more favorable to the

defendant, because it provides a wider scope of criminal discretion for the judge to impose a crime at a lower level. In concrete cases, this minimum difference in criminal law is not merely formal, but has a direct impact on the individualization of the crime, especially when the judge wants to consider the level of the defendant's role, the contribution to the occurrence of state losses, and whether or not there is or is not a personal benefit enjoyed.

However, the application of the principle of *lex favor reo* in this context cannot be done simply by comparing the minimum criminal rate. The first thing that must be tested is whether Article 3 of the Corruption Law and Article 604 of the Criminal Code 1/2023 are really in an equivalent normative relationship (normative equivalence). If Article 604 is positioned as a provision that codifies the substance of corruption crimes in the Criminal Code 1/2023, but the Corruption Law still applies as *lex specialis*, then in theory the principle of *lex specialis derogat legi generali* applies, namely a special law that overrides a general law. In such a construction, as long as the Corruption Law has not been expressly repealed and its validity is still maintained, then the provisions that should have been applied first are still Article 3 of the Corruption Law, not solely because it is lighter, but because it is a special rule that is systematically designed to overcome corruption crimes.

In other words, in the context of corruption, *lex favor reo* does not automatically override *lex specialis*. The principle of *lex favor reo* only acquires strong argumentative space when:

- a. it is true that there are changes in the law that replace the old norm with the new norm;
- b. both norms govern the subjects, elements, and consequences of the law that are substantially the same; and
- c. There are no transitional provisions that maintain the applicability of the old norm as a special regime.

If these three conditions are not met, then the application of *lex favor reo* must be carried out carefully so as not to cause methodological errors. In corruption cases, the existence of the Corruption Law as a *lex specialis* is often the main reason why direct comparisons with the general provisions in the Criminal Code cannot necessarily be done mechanically.

In the perspective of Article 604 of the Criminal Code 1/2023, corruption crimes are still positioned as part of the national criminal law system, Article 604 must be understood not only as a formal placement of corruption into the Second Book of Special Crimes, but also as a reminder that corruption crimes should not be interpreted elastically to the point of hitting the basic principles of the Criminal Code 1/2023, especially the principle of strict material legality, the principles of error, proportionality, and a more rational *ultimum remedium* in the context of misposition.

Using Article 604 of the Criminal Code 1/2023 as an analytical lens, there are at least three important discussions on the judge's consideration in Decision No. 48/Pid.Sus-TPK/2025/PN Mdn, namely:

- a. First, the panel of judges must carefully prove that Rizqi Syahrul Ramadhan, S.T., really has relevant, real, and effective authority in determining the birth of state losses. Proving the element of abuse of authority is not enough to be done just by showing that the defendant is in a position structure or involved in the procurement process. If the defendant's position is only as a member of the Working Group and the results of his

work still have to go through the stages of review, verification, and determination by the Commitment Making Officer (PPK) as the final decision-making official, then the defendant's authority cannot immediately be considered as decisive authority. Therefore, the panel of judges must assess whether the authority inherent in the defendant is really concrete, actual, and has a direct influence on the occurrence of state losses. Without such evidence, the interpretation of the element of abuse of authority risks over-expanding and blurring the line between administrative involvement and criminal liability.

- b. Second, the panel of judges must clearly distinguish between procedural errors in the procurement of goods and services and criminal errors of corruption. In the perspective of Article 604 of the Criminal Code 1/2023 which is read in line with the spirit of national criminal law codification, the lawmakers emphasized the need to limit criminalization of acts that are essentially still in the administrative realm. In procurement cases, not every deviation in specifications, evaluation errors, or procedural deviations can be directly qualified as a criminal act of corruption. A new act is punishable if it is proven that there is a deviation of authority that is carried out consciously, deliberately, and directed to benefit oneself, others, or the corporation, which ultimately causes losses to the country's finances or economy. Thus, administrative errors should not be automatically transformed into criminal errors without proof of a more serious unlawful quality, especially in the form of intentional abuse of authority.
- c. Third, the sentence imposed must reflect the principle of proportionality based on the level of personal error of the defendant. Criminal sentencing in corruption cases should not be carried out uniformly just because the defendant is in a series of criminal events with other parties. If the defendant's contribution is proven to be not dominant, the defendant is not the final decision-maker, and does not directly benefit from the alleged act, then even though Article 3 of the Corruption Code is still applied, the assessment of the weight of the error must be carried out more carefully and individually. This approach is in line with the direction of the renewal in the Criminal Code 1/2023 which rejects the vague model of collective responsibility and affirms that punishment must be based on measurable personal errors. Therefore, criminal proportionality is very important so that the sanctions imposed truly reflect the role, intensity of involvement, and the level of subjective error of the defendant in the overall construction of the crime.

In cases involving public officials in structural positions, one of the mistakes that often occur in judicial practice is to confuse the responsibility of the position with the personal criminal responsibility. In fact, theoretically and normatively, the two are different.

Position responsibilities are inherent in institutional functions and can give birth to administrative, civil, or disciplinary consequences. Meanwhile, criminal liability requires acts that meet the formulation of delicacy, unlawful nature, error, and a clear causal relationship. In the context of Article 3 of the Corruption Law, a public official cannot be convicted simply because his position is related to a process that causes state losses, he must be proven to have used his authority in a deviant manner for a prohibited purpose.

The Legal Counsel emphasized that the defendant did not have final authority because the Minutes of the Procurement of the Working Group (BAHP Pokja) could still be

reviewed by the PPK and the determination of the provider was carried out through the SPPBJ (Letter of Appointment of Goods/Service Provider) by the PPK. In addition, the Legal Counsel also emphasized that the state's losses arise from the lack of volume and quality of work, which is technically closer to the realm of responsibility of the PPK, providers, and supervisors. If this argument is not broken in detail by the judge, then the determination of criminal offenses against the defendant has the potential to shift from personal culpability to structural liability by association, namely being convicted because he is in the circle of the position structure, not because of an act of abuse of authority that is proven individually.

Within the framework of Article 604 of the Criminal Code 1/2023, this kind of tendency should be avoided. National codification requires consistency that criminal liability must remain based on the principle of error, not solely on organizational relationships.

Based on the analysis of Decision Number 48/Pid.Sus-TPK/2025/PN Mdn, it can be emphasized that the panel of judges interpreted the element of "abusing the authority, opportunity, or means available to it because of position or position" relatively broadly, by placing the involvement of the defendant as a member of the Working Group Team in the procurement process as the basis for fulfilling the elements of Article 3 of the Corruption Law. Although formally the verdict is still in the *lex specialis* position of the Corruption Law, if tested through Article 604 of the Criminal Code 1/2023, such an interpretation is not fully in line with the direction of national criminal law reform which demands a firm boundary between administrative errors, abuse of administrative authority, and criminal responsibility for corruption.

## CONCLUSION

This research concluded that the application of Article 3 of the Anti-Corruption Law toward public officials in structural positions remains broadly interpreted in judicial practice, particularly regarding the element of abuse of authority. Decision Number 48/Pid.Sus-TPK/2025/PN Mdn demonstrated that judges tended to emphasize structural position and institutional involvement in establishing criminal liability, despite the absence of clear boundaries between administrative errors and criminal abuse of authority. The study found that proving abuse of authority should not rely solely on official position or state financial losses but must also consider misuse of authority, personal fault, causal relationship, and intent to benefit oneself or others. Although the decision reflected efforts to achieve justice and utility in corruption eradication, it also raised concerns regarding legal certainty due to overlapping interpretations between unlawful acts and abuse of authority. Therefore, the implementation of Article 3 should be conducted carefully and proportionally to prevent excessive criminalization of public officials acting in good faith. Future research is recommended to further examine the distinction between administrative and criminal liability in corruption cases, particularly in government procurement, through comparative, empirical, or socio-legal approaches, as well as to analyze the implications of the new Criminal Code, especially Article 604 of Law No. 1 of 2023, in relation to proportionality, legality, and *lex favor reo* principles in corruption law enforcement.

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