

## CRIMINAL LIABILITY OF ABUSE OF AUTHORITY IN USING OF FUNDS VILLAGE

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The spirit mandated in the Law Number 6 of 2014 about Village states that Village is the subject of development. For that reason, village government is given so broad authority. One of it is to manage village fund. The negative effect is fund abuse, so that many Village Heads commit corruption crime. It indicates that they do not implement obligation and even infringe their authority as governed in Village Law. The Article 26 clause (4) of Village Law philosophically gives the society a role as included in the participation principle, and through decentralization principle gives new expectation that the government will be managed with good governance, but will result in new actor in corruption crime. For that reason, a study should be conducted on: 1) the limitation of Village Head's authority as State Organizing Apparatuses in undertaking its authority of managing Village Fund, 2) Criminal responsibility for the abuse of fund village use authority by Village Head. This study was a normative law with statute and conceptual approaches. The law materials used were primary and secondary ones. The result of research showed that 1) the foundation of Village Head's authority as State Organizing Apparatuses in undertaking its authority and in managing village fund is governed in some regulation, the authority is delegating in nature, and to prevent the authority abuse from occurring, the law has imposed different limitation and overseeing regulation; 2) regarding the criminal responsibility, the form of *mens rea* in Article 3 of Corruption Crime Law (thereafter called UU Tipikor) is *opzet als oogmerk* or deliberateness as intended. Therefore, to prove the deliberateness with intention in Article 3 of UU Tipikor, the causality relation should be proved about the abuse of authority or the opportunity or the medium due to the position or job intended to personal or others' or corporate benefit.

**Keywords:** criminal responsibility, authority abuse, village fund, village head, corruption.

### RESEARCH BACKGROUND

The spirit mandated in the Law Number 6 of 2014 about Village states that Village is the subject of development. For that reason, the spirit is explicitly stated in the General Explanation of Village Law no.10 about Village and Rural Area Development:

“Village Development aims to improve the villager welfare and the human life quality and to deal with poverty through fulfilling basic need, developing infrastructure, developing local economic potency, and utilizing natural and environment resource sustainably. Therefore, this law uses 2 (two) approaches: “The village develops” and “Developing the Village” integrated into Village Development plan.

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The policies of village governance as formulated in Village Law are the ones bringing a new hope as the attempt of improving the villager welfare. They are, among others, the large budget allocation to village intended to increase the budget for development, service, building, and village community empowerment, and, the administration of fixed income and benefit to village heads as well as their apparatuses.

To realize the village as the subject of development, the village heads as the village government executive is given so broad authority. One of it is to manage the village fund as intended in Article 72 (1) letter b stating that “the allocation of State income and Expense Budget (thereafter called APBN); then in clause (2) the allocation of budget as mentioned in clause (1) letter b derives from Central Expense by effecting the Village-Based program evenly and justly. In addition, Village Law also explains that village will receive fund about 10% of APBN and the fund is realized without intermediary. The fund disbursement is done directly to the village. Meanwhile the nominal amount given to individual villages is different dependent on the village’s geography, population number, and mortality rate. The APBN allocation of 10% when received by village will increase the village revenue. The increased village revenue of course requires responsibility report from the village. Responsibility report refers to Permen (Minister’s Regulation) No. 113 of 2014.<sup>1</sup> For the first time, in 2015 the government has disbursed village fund of IDR 20.76 trillions, and then in 2016, the fund was increased to IDR 46.98 trillions and in 2017, it was increased to IDR 60 trillions,<sup>2</sup> the fund was distributed to 74,910 villages: 90% is distributed evenly to all villages, and 10% is distributed based on four indicators: territorial width, population number, poor people number, and geographic difficulty index.<sup>3</sup>

In the attempt realizing village as the subject of development, Village Head as the organizer of village government is given so broad authority. On the other hand, there is a worry that it will facilitate the fund abuse so that corruption crime will move from the local officials to village apparatuses including village head as the culmination of power in village. This worry in the relatively new enactment of Village Law has been proved. The Village Fund Taskforce receives the society’s grievance about putative village fund abuse from throughout homeland. Until today, there have been 932 reports coming into Village Fund Taskforce.<sup>4</sup> In 2015, six village heads in eastern part of Seram Regency, Maluku, were determined as the suspect of putative village fund abuse corruption.<sup>5</sup> The suspicion is getting stronger when Pamekasan Regency and a number of other officials are caught red-handed in an operation conducted by Corruption Eradication Commission (thereafter called KPK) over a number of government officials in Pamekasan Regency on August 2, 2017.<sup>6</sup> Considering Indonesia Corruption Watch (ICW)’s note in 2016 to 2017, there are 110 village budget corruption cases that have been processed by law enforces and putatively involved 139 perpetrators. The state’s total loss resulting

is at least IDR 30 billions. From the actor aspect, 107 of 139 actors (perpetrators) are Village Head. The rest of 30 are village apparatuses and 2 Village Head wives.<sup>7</sup>

The large number of Village Head becoming the suspects of corruption crime indicates that the obligation is not implemented and there is an infringement of authority as governed in Article 26 clause (4) of Village Law stating that Village Head obligatorily implements the accountable, transparent, professional, effective and efficient village governance that is clean and collusion-, corruption-, and nepotism-free. Village Law philosophically giving the society a role as included in participative principle, and through decentralization system giving a new hope that government will be managed by good governance principles instead results in new actor in corruption crime. For that reason, a study should be conducted on:

1. Limitation of Village Head's authority as State Organizing Apparatuses in undertaking its authority of managing Village Fund,
2. Criminal responsibility for the abuse of fund village use authority by Village Head.

## RESEARCH METHOD

This study was a normative law research intended to explore written law from some aspects like theory, history, philosophy, comparison, structure, and composition, scope and material, consistency, general explanation, and explanation of individual articles, formality and power binding legislation.

The approaches employed were statute and conceptual approaches. The law material used consisted of primary and secondary law materials. The primary law material in this research included Law No.8 of 2014 about Village and Law No.31 of 1999 about Corruption Crime Eradication jo Law No. 20 of 2001 about the amendment to Law No.31 of 1999 about Corruption Crime Eradication.

Then, the analysis was conducted qualitatively on the law materials obtained and presented descriptively.

## RESEARCH FINDING AND DISCUSSION

### 1. Village Head's authority as the State Organizing Apparatus in Undertaking Its Authority of Managing the Village Fund

#### (a) *Theoretical Review*

The Government Administration Law (*Undang-Undang Administrasi Pemerintahan*) defines *wewenang* (authority) and *kewenangan* (competency) slightly differently. *Wewenang* is defined as the right the Government Agency and/or Official or other state organizer has to make decision and/or to take action in government organization.<sup>8</sup> Meanwhile, *kewenangan pemerintah* (government competency, thereafter called competency) is the Government Agency and/or

Official or other state organizer's power to take action in public law domain.<sup>9</sup> Considering the definition above, competency has more concrete characteristics to be able to take action based on the power it has.

Other definitions are given to competency by the practitioners. There are some definitions of authority equated with competency. Bagir Manan said that authority in legal language is not as same as rule (power). Power only represents the right to do and not to do. Authority is defined as right and obligation all at once.<sup>10</sup> H.D. Stout said that authority is a definition deriving from governmental organization law that can be explained as any rules concerning the acquisition and the use of government authorities by the subject of public law in relation to public law.<sup>11</sup>

Competency is the right to use authority an official or an institution has according to the enacted stipulation; thus, competency also pertains to the legal action competency that can be done according to formal norms, so competency is the formal power the officials or institutions. Competency has an important position in the state administration law study. This position of competency is so important that F.A.M. Stroink and J.G. Steenbeek call it as the core concept in state administration law.<sup>12</sup>

***(b) The source of Village Head's Competency in Village Fund Management***

Generally, the source of authority can be divided into 3 (three) groups: attribution, delegation, and mandate competencies, elaborated as follows:

1. **Attributive competency**

The attribution of competency is the delegation of authority to new government by a provision in legislation. Attribution competency in legislation is the competency given to develop legislation that in its culmination is given by the 1945's Constitution and Law to a state's or government's institution. The authority is inherent continuously and can be conducted for their own initiative as necessary. A new authority is created here.<sup>13</sup> This regulation is included in Article 12 clause 1 of Law Number 30 of 2014 about Public Administration.

(1) Government Agency and/or Official acquire Authority from Attribution when:

- a) It is governed in the 1945 Constitution and/or law;
- b) It is a new authority never present previously; and
- c) Attribution is given to Government Agency and/or Official.

From the definition above, it can be concluded that attributive competency is the one mentioned firmly in Republic of Indonesia's 1945 Constitution, like the authority belonging to President, Constitution Court, Supreme Court, mentioned clearly within it, and it results in a new competency.

## 2. Delegated Competency

Delegated competency is the delegation of a preexisting authority by state administrative agency or position that has acquired government authority attributively to other state administration agency or position. So a delegation is always preceded by an authority attribution.<sup>14</sup> In Article 13, Law Number 30 of 2014, delegation is mentioned as follows:

- (1) The delegation of competency is determined based on the provision of legislation.
- (2) Government agency and/or official acquire authority through delegation when:
  - a) It is given by Government Agency/Official to other Agency and/or other government official;
  - b) Is stipulated in Government Regulation, President Regulation, and/or Local Regulation; and
  - c) It is the authority of delegation or has not been present previously.
- (3) The competency delegated to Government Agency and/or Official for those who have received delegation as mentioned in Article 13 clause 7 mentions that Government Agency and/or Official obtaining authority through Delegation, the responsibility of Competency lies on the receiver of Delegation.

## 3. Mandatory Competency

The definition of mandate in State Administration Law is different from that in the mandatory construction according to the 1945 constitution before amendment. In State Administration Law, mandate is defined as the superior's instruction to do what he/she wants, the competency can be done by mandate giver, and there is no transfer of responsibility. Considering the elaboration above, when the competency acquired by government organ attributively derives originally from legislation, the redaction of certain articles in legislation. The receiver can create a new authority or expand the preexisting authority with internal and external responsibility for authority implementation attributed completely in the authority recipient (attributarist).<sup>15</sup> Regarding mandate, Article 14 of Law Number 30 of 2014 govern as follows:

- (1) Government agency and/or officials obtain mandate when: a. it is assigned by upper government agency and/or official; and b. it is the implementation of routine assignment.
- (2) For Government agency and/or officials obtaining Authority through mandate, the Competency responsibility remains to be on the mandate giver.

***(c) Competency Limitation***

Competency the government has is not infinite, the infinite competency has ever occurred in old order. At that time, President is hired long life by People Consultative Council (thereafter called MPR) as the holder of supreme power. President can be hired in infinite tenure. Such condition opens the opportunity of authority abuse because of the infinite authority giving the agency/official the room to use authority/power inappropriately.

The fact occurring, many officials, from whether executive, legislative, and judicative, at central and local level, commit authority abuse or exceed the authority given, often called as maladministration action. Even sometimes they enter into criminal domain, by committing corruption crime.

Therefore, the government's competency should be limited, in this case through law/legislation, as included in Article 8 of Law Number 30 of 2014.

- (1) Every decision and/or Action should be determined and/or done by the authorized Government agency and/or officials
- (2) The Government agency and/or officials should use authority obligatorily based on:
  - a) Law and ordinance; and
  - b) AUPB (General Principle of Good Governance).
- (3) Public Administration Officials are prohibited from abusing competency in determining and/or making decision and/or Action.

Regarding the prohibition for the government as governed in Article 17,

- (1) Government agency and/or official is prohibited from abusing authority
- (2) The prohibition of authority abuse as intended in clause (1)
  - a) The prohibition of exceeding Authority;
  - b) The prohibition of mixing Authority; and/or
  - c) The prohibition of taking arbitrary action.

Those prohibitions have not been governed yet previously, but in the presence of Government Administration Law, every Public agency and/or official's action is more controlled, thereby will strengthen and increase the attempt of eradicating corruption as putative authority abuse can be detected earlier as the preventive measure.

The village government authority as governed specifically in Village Law, originates from the delegated competency. The preexisting competency owned by central government that is then delegated to provincial, local government of regency and municipal and village government. The foundation of village government's competency in organizing village government is governed in Article 18 and 19 of Village Law.

Article 18 states that Village Competency includes the competency of organizing Village Government, implementing Village Development, building Village Society, and Empowering Village Community based on the society's initiative, origin right, and village custom. Furthermore, Article 19 mentions that Village Competency includes: a. the competency based on origin right; b. village-scale local competency; c. competency assigned by government, Provincial or Regency/Municipal Local government; and d. other competency assigned by Government, Provincial Local Government, or Regency/Municipal Local Government corresponding to the provision of legislation.

The competency regarding village's financial source and management is governed in Article 71 of Village Law stating that:

- (1) Village finance is all of Village Rights and Obligations that can be characterized with money and everything constituting money and goods relating to the implementation of Village Right and Obligation.
- (2) Right and Obligation as mentioned in article (1) generates Village income, expense, funding and financial management.

Regarding the Village's financial source, Article 72 (1) mentions that Village Income, as included in Article 71 clause (2) letter b, is the allocation of State Income and Expense Budget; then clause (2) mentions that Income and Expense Budget Allocation, as included in clause (1) letter b, derives from Central Expense by effecting the Village-based program evenly and justly.

In undertaking duty, authority, right, and obligation, in Article 29 the Village Head is prohibited from: a. harming the public interest; b. making decision favorable to self, member of family, other party, and/or certain group; c. abusing authority, duty, right, and/or obligation; then in Article 30 (1), the Village head breaking the prohibition as mentioned in Article 29 can be imposed with administrative sanction in the form of either spoken or written reprimand. (2) In the case of administrative sanction, as mentioned in clause (1), is not implemented, the temporary termination can be done and continued with termination.

Article 55 letter c of Village Law gives the Village Consultative Agency to oversee the performance of village heads in undertaking their duty, competency, right and obligation.

If in implementing duty, competency, right and obligation there is competency abuse in using state finance, criminal law enforcement will be done corresponding to the enacted law.

## **2. Criminal Responsibility in abusing the Village Fund Use Competency by Village Head**

The corruption problem occurring today and entrenched into Indonesian government system represents the poor governance in this country. The phenomenon has yielded poverty, low education and health level, and bad public service. Any corruption

derives from delegated power, derived power. The corruption perpetrators are those deriving power or authority from company or state and utilizing it for other purposes; Corruption means what to be changed or deviated is other decision, personal decision pertaining to corporate or state affairs. So the problem is that the negative consequences of corruption are assumed by society, corporate or state, rather than by the corruption perpetrator.<sup>16</sup>

Corruption may occur when there is a chance and wish concomitantly and can begin from many sides. Corruption has occurred in any areas of governance, whether legislative, executive, or judicative, called bureaucratic corruption widely, the corruption committed by those who hold the power of state institutions, whether executive, legislative, or judicative.<sup>17</sup>

In corruption action, personal interest and or group interest transcend the people interest. As a result, they take some ways to rationalize and to do their intention. Therefore, the law enforcement against corruption crime should be done continuously to ask the corruption crime perpetrator for being responsible for their action that has resulted in the state's financial loss and deprived the rights all people should obtain.

**(a) *Crime in Competency Abuse of State Financial Use by Village Head***

The qualification of crime in competency abuse of state financial use by village heads is corruption crime as mentioned in Article 3 of *UU Tipikor*. Historically, article 3 of *UU Tipikor* derives from the legal norm included in Article 1 clause (1) letters a and b of Law Number 3 of 1971. The article is adopted into *UU Tipikor* with a little modification in some phrases. The formulation of article 3 states that:

Everyone intentionally aiming to benefit him/herself or others or a corporate, abusing competency, opportunity or infrastructure existing due to position or medium existing in it due to such the position that can harm the state finance or state economy, is punished with long life imprisonment or at least 1 (one) year and maximally 20 (twenty) years and fine at least IDR 50,000,000 (fifty millions rupiah) and maximally IDR 1,000,000,000 (one billion rupiah).

Article 3 is formulated as *formeel delict* (formal delict) emphasizing on the prohibited action. The intended action is the action of civil servant or those occupying as the public officials benefiting him/her self or others or corporate unreasonably with all of legal consequence. Meanwhile, the elements are (a) with the intention to benefit him/her self or others, or a corporate; (b) abuse authority, chance or media existing in him/her due to position; (c) resulting the state financial or economic loss. From the delict formulation, this article is intended to civil servant or public officials with certain competency. The application of elements includes:

1. Subjective Element is everybody

Everybody or everyone intended in Article 3 is Civil Servant, so that it should be proved first that civil servants or public officials has competency to prove



that there is competency deviated as the media and the objective of benefiting him/her self or others. In relation to competency abuse in village fund use by village head, in this context, the village head can be qualified as civil servant as intended to be "Everybody" (Article 1 number 3) letter c point 3 is the civil servant as intended in Article 92 clause (1) of KUHP (Penal Code). Officials here includes those elected in the election conducted based on general rules and those becoming the members of government legislature not due to election or people representative council, established by government or on behalf of government; and every member of waterschap council, and all original Indonesian people's leaders and foreign East group's head undertaking the legitimate rule (power).

2. The element of abusing competency, chance or media existing within him/her due to position.

In applying the Article 3 clause (1) and Article 2 of *UU Tipikor*, the elements of deliberateness and causality between crime subject, unlawful deed, and enriching him/herself or others should be taken into account. There should be real causality showing that the deed a civil servant or public official does unlawfully or abusing the competency, chance or media existing within it due to position making him or others obtaining unreasonable rich. When it is not proved, the deed cannot be qualified as the corruption crime.

3. The elements of **can** result in the state's financial or economic loss

The general explanation of *UU Tipikor* has given a long definition about state finance and state economy. Post-decision of Constitution Court No. 31/PUU-X/2012, the calculation of state's loss becomes the Financial Auditing Board (thereafter called *BPK*) and Financial and Development Auditing Board (thereafter called *BPKP*) as the state auditor. Post-decision of Constitution Court No. 25/PUU-XIV/2016 related to Article 2 and 3, *UU Tipikor* decides that the word "can" as mentioned in Articles 2 and 3 of *UU Tipikor* is removed, thus, the corruption crime according to the article should fulfill the element of financial or economic loss really. Regarding the application of "result in state's financial or economic loss" element, there is a shift from formal to material delict, emphasizing on the presence of consequence (material delict). Obviously, the element "resulting in the state's financial loss" is no longer conceived as potential loss, but actual loss in corruption crime.

**(b) Criminal Responsibility in Competency abuse in Village Fund Use by Village Head**

In relation to criminal responsibility over the corruption crime perpetrators as the consequence of authority abuse in using village fund by village heads, basically the criminal law does not recognize what is called "authority abuse" as governed

in Article 3 of UU Tipikor. To deal with it, *autonomie van het materiele strafrecht* (material criminal law autonomy right) is applied, the principle stating that criminal law has autonomy in looking for a definition. As Huda suggests: "... In the case of different meaning, the criminal law has an autonomic right to determine the meaning itself, but if the criminal law does not determine a distinctive meaning, the definition given by other law can be used in criminal Law".<sup>18</sup>

It can be understood that criminal law is like the complement to qualify what deed can be categorized into crime. The deed can derive from civil law or administration law. In this framework, "the authority abuse" included in Article 3 of UU Tipikor can use definition mentioned in Administration law, as defined by Prof. J. Rivero and Prof. Waline below:<sup>19</sup>

1. Competency abuse for the actions in contradiction with public interest or to benefit personal, group or class interest;
2. Competency abuse in the sense that the official's deed is actually intended for general interest, but deviating from the competency objective given by law or other regulation;
3. Competency abuse in the sense of misusing the procedure that should be used to achieve certain objective, but has used other procedure in order to achieve it.

From close observation, it can be found that out of the 3 (three) forms of authority abuse seeming to be most appropriate to be qualified as the crime is the first one and should be added with the element of evil intention or *mens rea*.

As the special crime, the definition of "authority abuse" conducted by an official should pass through "entrance" of authority abuse as mentioned in Administration Law. It is included in the Criminal Procedural Law particularly in Article 112 clauses (1) and (2) about "being caught red-handed" as one of compulsive action. The next judicature process up to the examination in the court session can determine the defendant's guilt. Thus, the word 'can' in Article 3 of UU Tipikor should not be removed because the interpretation of element "result in the state's financial and economic loss" should not occur actually. Moreover, in reality the element "state's loss" is often calculated after the determination of corruption suspect.

The existence of crime and criminal responsibility is inseparable from the guilty or *geen straf zonder schuld* principle stating that there is no crime without guilt. The guilt can be deliberateness and oversight. Guilt constituting the fundamental element in criminal law, the guilt is not only crime element, but also criminal responsibility. It is the consequence of monistic theory held on in Penal Code (KUHP), so that speaking of guilt element will speak of the criminal responsibility element. The guilt as blameworthy can be seen from two aspects: blameworthy against deed or behavior during committing the crime; it is used to determine whether or not the deed of perpetrator can be blamed against him/her.

On other hand, seeing or considering the perpetrator's deed or behavior in committing crime; it determines the severity of punishment to be imposed.

Rosemary Lowry defines responsibility due to blameworthy, the responsibility based on blameworthy against the perpetrator. This perpetrator is blamed for the wrong deed, so that he/she should be blamed.<sup>20</sup>

Simon suggests that "guilt" is the basis of a criminal responsibility for a crime perpetrator existing in the perpetrator's soul and its relation to his/her punishable deed. Considering this mentality, the perpetrator can be blamed for his/her conduct. Guilt is the subjective element of crime.<sup>21</sup>

From some theories about guilt and criminal responsibility can be used in some definitions, one of which is in social-ethical definition, a mental relationship existing between an individual and the deed as well as its consequence in such a way that the deed can be responsible for.<sup>22</sup> Thus, the criminal responsibility exists due to the psychological relation between the perpetrator and the unlawful deed (action).

Didik endro Purwoleksono<sup>23</sup> suggests that the error in determining criminal responsibility in related to the guilt having the following elements: a) committing crime, b) above certain age and can be responsible, c) with deliberateness or oversight, d) no reason of forgiving.

"Evil intention (*mens rea*) in crime belongs to "criminal responsibility" study. In line with Didik Endro, when there is a putative crime, what should be proved first is whether or not there is unlawful deed. After it can be proved as unlawful deed, it should be known whether or not the defendant can be asked for responsibility for his/her crime. So this "evil intention (*mens rea*)" can be proved after it has been proved that there is crime only. It is the logical consequence of dualistic principle we hold on, separating crime from criminal responsibility. The criminal responsibility is intended to determine whether or not a suspect/defendant can be asked for responsibility for a crime occurring.<sup>24</sup> The guilt as the criminal responsibility element is assessed after the fulfillment of all criminal elements or the authentication of crime.

*Mens rea* can be seen not only from the relation of mental condition, but also from the behavior when the perpetrator commits the crime. The authentication of *mens rea* by public prosecutor is intended to prove whether or not the perpetrator has deliberateness element. What should be considered or proved is whether or not there is a perpetrator's behavior in committing a crime based on all the evidence.<sup>25</sup> Thus, *mens rea* should be considered not as a fact but as the assessment on the perpetrator's behavior when he/she commits crime. The way of determining the guilt using the basis of all the evidence can be done to distinguish a crime from the form of guilt, whether it is committed in deliberateness or in oversight. In this context, the Village Head's behavior in abusing authority of using village fund for personal or group interest shows the presence of guilt.

To look for the element of guilt in criminal responsibility in the authority abuse by the village head, the Article 3 of UU PTPK should be studied, including the word “with purpose of” benefiting the self or others or a corporate, obviously and explicitly. The subjective element inherent to the mentality of perpetrator (in this case Village Head), according to Article 3, is the perpetrator’s purpose in committing the authority abuse and etc intended to benefit him self or others or corporate. The element of objective (*doel*) is synonymous with purpose or guilt as intended (*opzet als oogmerk*) or deliberateness in narrow sense such as exploitation, threatening, and fraud (368, 369,378 of penal code/KUHP).

The guilt as criminal responsibility element related to *means rea* can also be defined as choice, the choice to commit certain behavior or deed. The essence of *mens rea* principle is a criminal responsibility that should be applied not only to an individual who is conscious of what he/she has done, but also to the one doing certain deed option. It is the choice of doing certain deed out of some alternative becoming the basis of a human being’s autonomy (the freedom of choosing deed).<sup>26</sup>

The form of *mens rea* in Article 3 of UU Tipikor is *opzet als oogmerk* or deliberateness as intended. Therefore, to prove the deliberateness as intended in Article 3 of UU Tipikor, the causality relation should be proved about the abuse of authority or the opportunity or the medium due to the position or job intended to personal or others’ or corporate benefit. It is in line with Moeljatno suggesting that to determine whether or not the deed is expected by the defendant, consequently: (1) it should be proved whether or not this deed is consistent with the motive to do and the objective to be achieved; (2) there should be causal relation between motive, deed and objective in the defendant’s heart.<sup>27</sup> Thus, the authority abuse by the village head in using the village fund is the crime as intended in Article 3 of UU Tipikor and to him (village head) criminal responsibility can be asked. Meanwhile the form of Village Head guilt is deliberateness as intended.

## I. Conclusion

1. The foundation of Village Head’s competency as the State Organizing Apparatus in performing his/her competency is governed in “managing the village fund” governed in some different Articles and rules as follows:
  - a) The type of village government’s authority is the delegated authority, the delegation of a preexisting authority by state administration body or position that has acquired government authority attributively to other state administration body or position. So a delegation is always preceded by an authority attribution. It is stated in Article 13, Law Number 30 of 2014 about Government Administration.
  - b) To prevent the abuse of authority or power, the government’s competency is limited as governed in Article 8 of Law Number 30 of 2014.

- c) Considering the foundation of village government's competency in organizing village government is governed specifically in Articles 18 and 19 of Village Law.
  - d) The competency of village financial source and management is governed in Article 71, related to the Village Financial Source, in Article 72 (1) Village Income as included in Article 71 clause (2) letter b, is the allocation of State Income and Expense Budget; then clause (2) mentions that Income and Expense Budget Allocation, as included in clause (1) letter b, derives from Central Expense by effecting the Village-based program evenly and justly.
  - e) Article 55 letter c of Village Law gives the Village Consultative Agency to oversee the performance of village heads in undertaking their duty, competency, right and obligation.
2. In relation to criminal responsibility over the corruption crime perpetrators as the consequence of authority abuse in using village fund by village heads, basically the criminal law does not recognize what is called "authority abuse" as governed in Article 3 of UU Tipikor. To deal with it, *autonomie van het materiele strafrecht* (material criminal law autonomy right) is applied. In the term of authority abuse mentioned in Article 3 of UU Tipikor, the definition of "authority abuse: committed by an official should pass through "entrance" of authority abuse as mentioned in Administration Law. Regarding the criminal responsibility, particularly *means rea*, the subjective element inherent to the mentality of perpetrator (in this case Village Head), according to Article 3, is the perpetrator's purpose in committing the authority abuse and etc intended to benefit him self or others or corporate. The form of *mens rea* in Article 3 of Corruption Crime Law (thereafter called UU Tipikor) is *opzet als oogmerk* or deliberateness as intended. Therefore, to prove the deliberateness with intention in Article 3 of UU Tipikor, the causality relation should be proved about the abuse of authority or the opportunity or the medium due to the position or job intended to personal or others' or corporate benefit.

### *Notes*

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