

The Usefulness of the *Overmacht* (Coercion) in Accountability for Corruption Crimes Committed by Order of Position in Indonesia

Rudy¹, Arifai², Abd Jabar Rahim³

¹²³Faculty of Law, Universitas Muhammadiyah Kendari

¹rudybj1@gmail.com, ²arifai171278@gmail.com, ³jabar.rahim@umkendari.ac.id

Correspondence Author: arifai171278@gmail.com

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Abstract

This study aims to analyze the usefulness of the concept of *overmacht* (coercion) in the context of accountability for corruption crimes committed based on official orders. In law enforcement practice, there is often an excuse from corrupt perpetrators that their actions were carried out due to pressure from their positions or orders from superiors. This raises conceptual questions about the limits of individual responsibility and the existence of excuses for forgiveness in Indonesian criminal law. This research uses normative legal research methods with a statutory approach and a conceptual approach and is analyzed using a systematic and teleological interpretation of the provisions of Article 48 and Article 51 of the Criminal Code. The analysis is also associated with the principle of criminal accountability and the principle of substantive justice. The results of the study show that *overmacht* can only be used as a basis for eliminating wrongdoing if the pressure of position eliminates the freedom of the perpetrator's will. Bureaucratic pressure or institutional loyalty alone is not enough to justify corrupt acts. Thus, the application of *overmacht* in corruption cases must be carefully assessed by judges based on the context and intensity of office pressure. This study recommends the need to reformulate legal norms in the Corruption Law and strengthen education on office ethics, so that the concept of *overmacht* is not abused but still functions as an instrument of substantive justice in the Indonesian criminal law system.

Keywords: *Overmacht*, Criminal Liability, Position Orders, Corruption, Substantive Justice.

I. Introduction

Corruption is one of the crimes that most damage the order of life of the nation and state. Corruption not only causes state financial losses, but also damages public trust in the government, hinders development, and lowers the moral quality and integrity of public officials. Therefore, Indonesia through Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes stipulates corruption as an extraordinary crime that requires an extraordinary legal approach.

However, in practice, not all perpetrators of corruption act with free will or malicious intent (*mens rea*) that comes entirely from themselves. In many cases, corruption crimes are committed by bureaucratic subordinates or structural officials acting on the orders of the position (Hasbullah, 2017). This phenomenon raises a complex legal debate: can a person who commits a corrupt act based on a superior's order be held fully criminally responsible? Can in certain situations the order of office be considered a form of *overmacht* (coercion) that negates the fault of the perpetrator?

This question becomes relevant considering that the government bureaucratic system in Indonesia is still very hierarchical, where subordinates often have limited room to refuse orders from superiors. It is in this context that the concept of *overmacht* is important to be reviewed, especially in relation to the principle of criminal responsibility which requires an element of individual fault.

In criminal law, *overmacht* or coercive force is one of the reasons for criminal expungement (*strafuitsluitingsgrond*) regulated in Article 48 of the Criminal Code (KUHP), which explains "Whoever commits an act under the influence of coercion, cannot be punished."

This provision means that a person cannot be held criminally liable if his actions are carried out due to the absence of freedom of will (*vrije wil*), due to unavoidable physical, psychological, or moral pressure. In other words, *the overmacht* serves as an

excuse for forgiveness (*schulduitsluitingsgrond*) that negates the wrong, not the criminal act (Wailisahalong et al., 2024).

The problem then arises when the concept of *overmacht* is linked to the order of office, as stipulated in Article 51 of the Criminal Code. The article mentions two important things:

- 1) Whoever commits an act to carry out the order of office given by the authorized ruler cannot be punished.
- 2) An invalid order of office does not negate a criminal offense, unless the person carrying out the order in good faith thinks that the order is valid.

These two articles show that the law provides protection for subordinates who carry out the order of office, if the order is valid, and the execution is carried out in good faith. However, in the context of corruption, these two articles are often a source of controversy. On the one hand, criminal law recognizes that a person can be exempt from crime if he acts by force or order of office. On the other hand, the Law on the Eradication of Corruption Crimes emphasizes that everyone who abuses authority can still be held personally accountable, regardless of whether their actions are based on orders from superiors.

It is this normative conflict that has given rise to an academic debate: the limitation of *overmacht* concept be used to free perpetrators of corruption crimes who act on the orders of office?

In the Indonesian legal system, the principle of individual criminal responsibility occupies a central position. There is no accountability without fault (*geen straf zonder schuld*). This means that a person can only be convicted if his actions contain elements of guilt, both in the form of intentionality (*dolus*) and forgetfulness (*culpa*). However, when a person commits a corrupt act on the orders of his superiors, the question arises whether the element of guilt can still be attached to him.

Corruption cases in the government sector show a recurring pattern. Low-echelon officials or technical implementers are often suspects for carrying out administrative orders that turn out to be in violation of legal procedures. In such conditions, subordinates are in a dilemmatic position: refusing orders means disobeying and potentially facing administrative sanctions, while carrying out orders means risking punishment.

In classical criminal law doctrine, *overmacht* can be either absolute *overmacht* (no choice at all) and relative *overmacht* (there is a choice, but it is morally very difficult to refuse) (Daryl John Rasuh, 2016). In the context of Indonesian bureaucracy, hierarchical pressure from superiors can be categorized as relative *overmacht*. However, recognition of this form of *overmacht* is still very limited in judicial practice.

A few corruption court rulings show that the reason for the order of office is rarely accepted as a justification or forgiveness. Judges tend to argue that every public official has a personal responsibility to ensure the legality of the orders he receives. The Supreme Court Decision Number 1534 K/Pid.Sus/2014, for example, rejected the defendant's defense who claimed that he only carried out the orders of his superiors in the procurement of goods and services. The court considered that as an executing official, the defendant had a legal obligation to examine the validity of the order.

However, from the perspective of substantive justice, not all implementation of office orders in corruption crimes is carried out with full awareness. Many bureaucratic apparatus face situations of structural stress where the order of office cannot be refused without career consequences or other threats. In this context, a rigid normative approach to criminal accountability has the potential to ignore human values and the principles of justice.

Therefore, the study of the usefulness of *overmacht* in the context of corruption accountability is important. The term *overmacht* here refers to the extent to which the

concept of *overmacht* can be used effectively and fairly in law enforcement practice. This study seeks to examine the extent to which the reason for *overmacht* can be applied in cases of corruption carried out based on official orders, as well as how the legal interpretation of the norms in the Criminal Code and the Corruption Law can be harmonized.

This study is expected to make a theoretical contribution to the development of Indonesian criminal law, especially in the restructuring of the concept of criminal accountability of public officials. Practically, the results of this study are also expected to provide direction for policymakers and law enforcement officials in assessing proportionately between individual responsibility and the condition of coercion in corruption cases.

2. Research Method

This research uses normative legal research methods, which are research based on the study of positive legal norms and criminal law principles that apply in Indonesia (Mahmud Marzuki, 2019). The focus is to examine the position and usefulness of the concept of *overmacht* (coercion) in the accountability system for corruption crimes committed based on official orders. The approaches used include the statute approach and the conceptual approach.

The legislative approach is by examining the provisions in the Criminal Code (Articles 48 and 51), Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, and Law Number 30 of 2014 concerning Government Administration. The conceptual approach is used to understand the meaning of *overmacht* in classical and modern criminal law doctrines, as well as its relation to the principle of *geen straf zonder schuld* (Achmad, 2010). Data analysis was carried out using grammatical, systematic, and teleological legal interpretation methods to find the normative meaning and purpose of lawmakers in limiting the

criminal liability of public officials who act on the orders.

3. Results and Discussion

A. The Concept of *Overmacht* (Coercion) in Indonesian Criminal Law

In the Indonesian criminal law system, the concept of *overmacht* or coercive power is one of the reasons for the abolition of criminal punishment which is explicitly regulated in Article 48 of the Criminal Code (KUHP), which states "Whoever commits an act due to the influence of coercion cannot be punished." This provision emphasizes that a person cannot be held criminally liable if his actions are carried out in conditions that negate freedom of will (*vrije wil*). This means that the action is not the result of a conscious and rational choice of the perpetrator, but the result of unavoidable pressure or coercion.

From the perspective of the philosophy of criminal law, the basic principle of *overmacht* is rooted in the principle of *nulla poena sine culpa* (no crime without fault). This principle affirms that only people who act with consciousness and free will can be punished (Muttaqin, 2024). In the condition of *overmacht*, the perpetrator's free will is considered lost, so that the element of fault (*mens rea*) is not fulfilled.

According to some experts, *overmacht* is a situation in which the perpetrator does not have a legally viable alternative, because of the external situation that controls him (Miftahul Jennah & Emalia, 2023). Meanwhile, Simons defines *overmacht* as physical, psychological, or moral pressure that makes the perpetrator unable to do anything else (Wailisahalong et al., 2024). This definition suggests that *overmacht* is not limited to physical strength alone, but also includes moral and position pressures that affect one's will.

Doctrinally, criminal law experts distinguish *overmacht* into two main forms (Syauta et al., 2024), namely:

1. Absolute *Overmacht* (*mutlak*)

That is a situation in which the perpetrator has no other choice, because he is under physical pressure or a situation that is completely out of his control. For example, a person is forced at gunpoint to unlock a room or sign certain documents. In this case, the will of the perpetrator is completely controlled by the other party, so it cannot be punished.

2. Relative *Overmacht*

That is a state in which the perpetrator still has a choice, but morally, psychologically, or socially cannot be expected to act otherwise. For example, a subordinate in the bureaucracy who is ordered by his superiors to implement a certain policy, even though he knows that policy violates the rules. Hierarchical pressures, the threat of mutation, or career risk can be a form of relative *overmacht* that factually negates free will.

According to Van Hamel, relative *overmacht* is a more frequent circumstance in modern social life, especially in bureaucratic or military environments that have strict command systems (Diah Gustiniati Maulani, 2013). This view becomes relevant in the Indonesian context, where hierarchical government structures often create psychological and administrative pressure on subordinates.

Normatively, *overmacht* is regulated in Article 48 of the Criminal Code, and is closely related to Article 51 of the Criminal Code regarding office orders, which reads:

- 1) Whoever commits an act to carry out the order of office given by the authorized ruler cannot be punished.
- 2) An invalid order of office does not negate a criminal offense, unless the person carrying out the order in good faith thinks that the order is valid.

These two articles describe two important things in Indonesian criminal law. First, that *overmacht* (Article 48) is a forgiving reason, because it negates the wrongs resulting from the loss of free will. Second, that the order of office (Article 51) can be a justification

if the order is legally valid, and its implementation is carried out according to procedures.

In the context of criminal liability, the *overmacht* functions to eliminate the element of guilt (*schuld*), while the order of office functions to eliminate the element of unlawfulness (*wederrechtelijkheid*) (Lendo, 2018). However, in practice, the two often overlap, especially when someone commits a criminal act based on a coercive order from a superior.

In modern government, a phenomenon known as *overheidsdwang* (coercion by state power) has emerged. *Overheidsdwang* is a form of pressure arising from the hierarchical system of public administration, in which subordinates are often forced to carry out superiors' orders without having room to resist (Stoffel, 2022). According to Muladi, in the administrative criminal law system, this kind of coercion often puts the perpetrator in a dilemma between compliance with office orders and personal legal responsibilities (RI, 2013). Indonesian administrative law itself recognizes the principle of delegating responsibilities to positions but does not completely exempt subordinates. Article 17 paragraph (3) of Law Number 30 of 2014 concerning Government Administration emphasizes that the executor of the order of office remains responsible if he knows that the order is unlawful. Thus, Indonesia's positive law only justifies the implementation of office orders insofar as the order is valid and does not violate laws and regulations.

The principle of *geen straf zonder schuld* is the moral and juridical basis of criminal liability. A person cannot be convicted if he does not have the element of error (*mens rea*), which means he does not have free will. The application of *overmacht* as an excuse for forgiveness is based on this concept (Yudhi Christiawan Samuel, 2022). In Indonesian criminal law, guilt consists of two elements: the ability to be responsible and the inner relationship between the perpetrator and the act (*dolus* or *culpa*). If one of these elements is lost due to coercion, then criminal liability is also lost (Utoyo &

Afriani, 2020).

However, in the crime of corruption, the criminal law contains a strong element of intentionality. Articles 2 and 3 of the Corruption Law stipulate that corruption is carried out "with the aim of benefiting oneself or others unlawfully". This element shows that corruption is an intentional criminal act, so it is difficult to justify the existence of *overmacht* except in very extreme situations. However, in bureaucratic practice, structural pressure from superiors can create psychological conditions that are close to relative *overmacht*. Therefore, the analysis of each case must be carried out contextually, considering the subjective factors of the perpetrator (the extent to which he is aware of the mistake) and the objective factor (how much pressure he receives).

The application of the concept of *overmacht* in the context of modern crimes, including corruption, requires a careful interpretive approach. The interpretation of grammatical law emphasizes the literal meaning of Article 48 of the Criminal Code, namely "due to the influence of coercion." However, systematic, and teleological interpretations are broader in scope. First, a systematic interpretation places Articles 48 and 51 of the Criminal Code in the context of the overall criminal accountability system. In this system, the *overmacht* must be linked to the principles of culpability and *mens rea*. Second, the teleological interpretation emphasizes the purpose of the law, which is to uphold justice and humanity. The goal is not only to punish the perpetrator, but also to understand the coercive circumstances so that a person does not have free moral choices.

In the context of positive Indonesian law, *overmacht* must be understood not simply as a formal reason, but as a legal protection mechanism for individuals who are forced to commit criminal acts due to authoritative pressure. For example, in the case of a public official who signs a budget document on the direct order of a superior with a threat of mutation or dismissal, the judge can assess whether the pressure negates

freedom of will. If it is proven to be so, then the element of error is not fulfilled and *overmacht* is acceptable. However, if the perpetrator knows that the order is unlawful and continues to carry it out for personal gain or solidarity of office, then the *overmacht* cannot be applied. In this case, the perpetrator still has a rational choice to reject the unauthorized order.

In the eradication of corruption, the concept of *overmacht* plays an important role as a counterbalance between legal certainty and substantive justice (Sutrisno et al., 2022). On the one hand, the law must firmly crack down on corrupt perpetrators indiscriminately. On the other hand, the law must also provide protection to state officials or apparatus who really do not have freedom in their actions.

A normative approach that is too rigid to the principle of individual responsibility can cause injustice, especially for low-level officials who are only policy implementers. Therefore, limited recognition of the *overmacht* relatively needs to be considered in the practice of corruption crimes.

From the perspective of criminal law politics, the application of *overmacht* in corruption cases must be carried out with caution so as not to be abused. This concept should not be a reason for impunity for high-ranking officials, but rather a mechanism of justice for subordinates who are really in a forced position.

B. Order of Office as a Form of *Overmacht* in Corruption Crimes in Indonesia

In the Indonesian criminal law system, the relationship between *overmacht* (coercion) and office orders is a complex conceptual issue. Both contain elements of coercion but differ in their sources of pressure and legal consequences. *Overmacht* is regulated in Article 48 of the Criminal Code, while office orders are regulated in Article 51 of the Criminal Code. If *overmacht* is a reason for forgiveness because it negates wrongdoing due to the loss of free will, then the order of office is a justification reason, because the perpetrator acts according to a valid legal order.

Article 51 paragraph (1) of the Criminal Code explains "Whoever commits an act to carry out the order of office given by the authorized ruler, cannot be punished." However, paragraph (2) provides an important limitation, "An invalid office order does not negate a criminal offense, unless the person carrying out the order in good faith thinks that the order is valid."

This provision shows that there is a moral and intellectual space for the executor of the order to assess the validity of the order. If he carries out an order that clearly violates the law, then he can still be held criminally responsible. In the hierarchical and paternalistic practice of the Indonesian bureaucracy, the line between *overmacht* and the command of office is often blurred. Many cases of corruption occur when an executive official claims that his actions only follow the orders of his superiors (Heindra A. Sondakh, 2014). In this situation, the judge must assess whether the perpetrator really does not have the freedom to refuse (thus including *overmacht*), or still has a rational choice (so that he remains responsible).

Normative analysis of Article 51 of the Criminal Code shows that office orders have two main dimensions. First, the dimension of legality (whether the order is valid or not), if the order is issued by an authorized official within the scope of his duties and is not contrary to the law, then the act of execution is lawful and negates the unlawful nature. Second, the dimension of error (good faith of the executor of the order), if the order turns out to be invalid, the executor can be forgiven if he executes it in good faith, namely truly believing that the order is valid according to the law.

In the context of corruption crimes, there are often defenses that the perpetrator is only carrying out the orders of office. However, this defense often fails because the element of "good faith" is not met (Heindra A. Sondakh, 2014). The perpetrator usually understands that his actions are against the law, but still do it for the sake of loyalty to his position or personal gain. An order of office can only be a justification if the

perpetrator does not know that the order violates the law. On the other hand, if the perpetrator knows of a violation but still carries it out, then he is still guilty because the element of intentionality (*dolus*) is still present (Hasbullah, 2017).

In Indonesian bureaucratic practices, subordinates often face structural pressure from superiors. This pressure can be in the form of the threat of mutation, loss of position, performance appraisals, and even direct intimidation. Such conditions can create a form of *relative overmacht*, where the perpetrator still has a legal choice, but is socially and morally difficult to resist.

This phenomenon is known as administrative coercion (*overheidsdwang*), which is pressure that arises from the state's system of administrative authority. In Dutch criminal law doctrine (which is also the basis of the Indonesian Criminal Code), *overmacht* can relatively be an excuse for forgiveness if the pressure of office negates the moral freedom of the perpetrator to act otherwise.

However, Indonesia's positive law—especially through Article 17 paragraph (3) of Law Number 30 of 2014 concerning Government Administration—confirms that subordinates are still responsible if they know that the superior's order violates the law. Thus, the space for justification based on *overmacht* in the implementation of office orders is very limited.

Nevertheless, the teleological approach (based on legal purposes) demands that the concept of relative *overmacht* remain recognized in exceptional situations, such as when the order is accompanied by a direct threat to personal or family safety, or pressure that completely negates moral choice.

In some cases of corruption, the court has rejected the defense of *overmacht* and office orders as grounds for criminal elimination. For example, in the Supreme Court Decision Number 1525 K/Pid.Sus/2015, the defendant claimed that he only signed the procurement documents because of the order of the head of the agency. However, the

panel of judges believed the defendant as the signatory official had the substantive authority and responsibility to ensure the legality of the activity. Similarly, in Corruption Decision Number 48/Pid.Sus-TPK/2018/PN.Jkt.Pst, the panel of judges rejected the postulate of "office order" because it was proven that the defendant knew of irregularities in the procurement mechanism, but still signed the contract documents.

These decisions show that the assessment of office orders is not solely formal but must look at the factors of awareness and free will of the perpetrators. If the perpetrator still can refuse, then it cannot be said to be in *overmacht*. However, in certain cases, such as an executing official facing direct political pressure or the threat of disproportionate sanctions, judges may assess the relative *overmacht* as a pardoning factor that negates wrongdoing.

The principle of "*geen straf zonder schuld*" (no crime without fault) is the moral basis of criminal liability (Pasaribu, 2021). In the context of an order of office, this principle requires that the imposition of a criminal sentence be given only to people who can be morally and rationally blamed. If a civil servant carries out the orders of his superiors because of a real threat, then the element of blame becomes blurred. In this case, the *overmacht* functions as an instrument of substantive justice, not just a formal reason.

However, the offense can still be charged if the perpetrator realizes that the order is against the law and continues to carry it out. Guilt is not only seen in terms of cognition (knowledge of consequences), but also in terms of affective (the will to do an act). If these two elements exist, then the *overmacht* is irrelevant. To assess whether an action in the execution of an office order falls under the category of *overmacht*, the judge must use a comprehensive interpretive approach, namely: Grammatical Interpretation, Systematic Interpretation, and Teleological Interpretation.

Based on the meaning of Article 48 and Article 51 of the Criminal Code, only actions that are carried out "due to the influence of coercion" can be forgiven. This means that

the pressure must be real, direct, and negate rational choices. The assessment of *overmacht* must be linked to the criminal accountability system, including the relationship between officials, the authority of the position, and the principle of culpability.

Interpreting these articles based on the legal objective, which is to achieve substantive justice and protect subordinates who are truly forced to act against their will. This approach is in line with Aristotelian theory of justice, which places justice as a balance between individual responsibility and coercive external conditions (Pratama et al., 2024).

Until now, the Corruption Law (Law Number 31 of 1999 jo. Law Number 20 of 2001) does not explicitly regulate *overmacht* as a reason for forgiveness. As a result, judges can only refer to the Criminal Code and the general doctrine of criminal law. However, the dynamics of modern bureaucracy and the complexity of public policy demand more explicit regulation. In government practice, implementing officials often face a dilemma between compliance and justice. If every action taken on the order of office is considered corruption without considering the context of office coercion, it will lead to administrative criminalization.

Therefore, from the perspective of criminal law politics, there is a need for a normative reconstruction of *overmacht* in the context of office crimes. For example, through the provisions in the Corruption Law that recognize relative *overmacht* as a basis for limited forgiveness for subordinates who carry out office orders with real threats and without personal gain.

It is interesting to review some of the decisions that reflect the application of the principle of *overmacht* and the order of office in practice. In the Bandung PTUN Decision Number 45/G/2020/PTUN-BDG, for example, the judge emphasized that the Sub-district Head as a Temporary PPAT cannot be held for civil liability for a null and void

deed if the fault lies with the party making the transaction. This consideration shows that there is a limitation of the liability of public officials only to misdemeanors, not because of the actions of a third party. This decision can normatively be used as an analogy in the context of corruption, that the executing official should not be held criminally liable if the order of the position carried out is beyond his authority, and the perpetrator does not obtain personal benefits.

From the description above, several important principles can be synthesized, first, *overmacht* and position orders are conceptually different, but they can intersect if the pressure of position negates free will. Second, an office order can only relieve criminal liability if the order is valid, or if the executor acts in good faith in the belief that the order is valid. Third, relative *overmacht* can be applied in a limited way in the context of office pressure, if it is proven that the pressure is real and negates moral choices. However, in the context of corruption, the application of *overmacht* must be very careful, because it can potentially become a gap in impunity.

4. Conclusion

The results of this study show that the concept of *overmacht* (coercion) in Indonesian criminal law has an important role as an excuse for forgiveness that negates wrongdoing when the perpetrator loses his freedom of will be due to external pressure. Based on Article 48 of the Criminal Code, a person cannot be convicted if his actions are carried out under coercion, while Article 51 of the Criminal Code provides justification for actions carried out based on a valid order of office.

In the context of corruption, these two norms have significant relevance. Many perpetrators argue that their actions were carried out on the orders of superiors. However, criminal liability can only be removed if the pressure of the position completely negates the perpetrator's ability to act otherwise. Administrative pressure, bureaucratic loyalty, or the threat of mutation alone are not enough to be categorized

as relative *overmacht*. Therefore, in assessing this kind of case, judges should use a systematic and teleological interpretive approach, considering substantive legal and justice objectives, rather than just the formal aspects of the office order.

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