STATE ADMINISTRATION AND ITS PRINCIPLES IN THE PERSPECTIVE OF GOOD GOVERNANCE ON PUBLIC SERVICES

I Dewa Gede Atmadja, Universitas Warmadewa Denpasar
I Nyoman Putu Budiartha, Universitas Warmadewa Denpasar

ABSTRACT

This study reveals the principle state of Indonesian based on good governance and implementation of public services. The result shows that the principle of good governance is several regulated in regulation including in the 1945 Constitution of the Republic of Indonesia on the principle of democracy, the rule of law, and social right. That principle implemented in regulation; Act of 28 of 1998 on state implementation of clean and free from corruption and in public service implementation of welfare state and free from maladministration based on principle of proper administration, especially free from prohibition of power abuse and arbitrariness. It can be concluded that principle of democracy and rule of law was unrealized because the decrease of index of Indonesia democracy and was not free from corruption. The prosperity has been lower in public services.

Keywords: Good Governance, Clean and Free from Corruption, Public Services

INTRODUCTION

Seeing from the constitution paradigm, the 1945 Constitution of the Republic of Indonesia (hereinafter written the UUD 1945) puts the understanding of "The Principles of State Administration are interpreted as "basic thoughts which become national direction "rests on" a strong and clean presidential government system "(strong and clean government is the core of good governance). In the context of law, it is construed that the rule of law is to develop transparency encourages openness to prevent coups, collusion and nepotism. In line with Act No. 28 of 1999 concerning Clean Government Free of Corruption, Collusion, Nepotism, Principles of State Administration, especially the principles of openness, the principle of legal assurance, the principle of public interest, and the principle of accountability must not negate the principle of democracy (sovereignty is in the hands of the people carried out according to the Constitution) and the principle of a rule of law. Article 1 Section (1) and (2) of the 1945 Constitution.

Quoting the opinion from Indonesian Transparency Society (ITS) (Hardjasoemantri, 2003), the benchmarks of good governance include (1) community participation in decision making, including through a legitimate representative body (2) upholding the rule of law; (3) accountability in decision making; and (5) the government provides effective and accountable public services.

In examining the benchmarks of good governance, it is necessary to discuss the outcomes of public/government policies, according to the basic idea of the direction of the state in the field of public service. Because the final result of public policy that can be experienced by the public, whether expected or not when the government acts or does not act. In summary, this paper focuses on two things: 1 theory of good governance as a basis for analyzing the legal principles

Citation Information: Atmadja I. D. G., & Budiartha I. N. P. (2022). State administration and its principles in the perspective of good governance on public services. *International Journal of Entrepreneurship, 26*(1), 1-6.

of good governance in its birth from the political ideas of international institutions in the field of development and finance which influence the principles of checks and balances between government, businessmen and non-governmental organizations in maintaining democracy based on rule of law principles; 2. Implementation of public services as an embodiment of public policy in the perspective of good governance legal principles.

RESULT AND DISCUSSION

Analysis of Good Governance Theory

The emergence of legal principles is based on two constitutional principles in constitutional law, namely: a rule of law and democratic principles. Addink (1999) stated: "the combination of the classic rule of law and democratic, can be seen as the main sources of creating of the principles of good governance". But in the international discourse, the character of good governance initiated by international institutions, such as UNDP, UNCHR, OECD, and WORLD BANK, is more political than juridical. Therefore the norms are also more than one institution, not only on legal institutions, but the norms of good governance are also obtained in the outcome of political discussions. In Netherlands, the political norms of the principle of good governance are detailed as follows:

Firstly:
Principle of Democratic Administration includes:

a) Principle of participation;
b) Principle of transparency of decision and order;
c) Principle of transparency of meetings; ,
d) Principle of transparency of information (Act public access to government information = Act on access to government information).

Secondly:

Principle of Human Right Administration, consist of a. classical human right (in civil rights and more specific the due process right to fair trial, equality before the courts, nulla poene sine lege) and political rights, especially take part in government, equal access to public service; b. in relation to the social rights the economic rights (right to food, health, housing, and education) and cultural rights (to take part in cultural rights) are important for the administration.

Thirdly:

Principle of Proper Administration Addink (1999), consist of:
a) Prohibition of abuse of power;
b) Prohibition of arbitrariness;
c) Principle of legal certainty;
d) Principle of carefulness;
e) Principle of legitimate expectations;
f) Principle of equality; and
g) Principle of motivation.

Citation Information: Atmadja I. D. G., & Budiartha I. N. P. (2022). State administration and its principles in the perspective of good governance on public services. *International Journal of Entrepreneurship, 26*(1), 1-6.

The norms of the principles above the criteria of their legal binding forces are determined by the character of the principles. This means that if the principles are characterized by general principles of law, they have legally binding forces, on the other side, if the principles are only general in nature, they do not have legal binding force. Regarding the principles of good governance, they can be legally binding; from a historical point of view their legality is determined in various legislative systems.

Theoretically it seems that the norms of good governance from political discussions lead to norms regulating the synergy between the private sector state and civil society as a counterweight to state power outside the legal representative bodies.

In the framework of the theory of good governance, the political dimension as proposed, stated that "civil society is an area of organized social life with the characteristics of volunteerism, self-sufficiency, self-sufficiency and independence in dealing with the state, and entrepreneurs in compliance with the law that has been mutually agreed upon. Thus the growth and development of civil society (NGOs) prevents state and market intervention to maintain a democratic rule of law.

In line with the establishment of a democratic rule of law, the implementation of public service in the perspective of good governance embodies the state's obligation to provide for the welfare of the people, the essence of social justice for all the core Indonesian people of the paradigm of the ideals of Pancasila law.

From the dimension of the power of law of the principles of good governance in the paradigm of the constitution, MPR (Consultative Assembly) Decree No. XI/MPR/1998 concerning Clean Governance Free of Corruption, Collusion and Nepotism; The Act on Clean Government Free of Corruption, Collusion and Nepotism (Act No.28 of 1999), that the principles of Clean State Service Free of Corruption, Collusion and Nepotism are identical to AAUPB might be used as an excuse to file a lawsuit to the State Administrative Court in a state administration dispute, which develops through doctrine and jurisprudence, clear good governance principles normatively has legally binding forces.

Implementation of Public Service in Good Governance Perspective

The concept of implementation is defined as an implementation of policies which contain activities for the fulfillment of services, the scope of which includes: the fields of goods, services and administration for citizens and residents, which are related to the principles of good governance. The said principles of good governance include the principle of openness, the principle of equality, the principle of accountability, the principle of not abusing authority, and the principle of arbitrariness.

The legal principles of good governance are the basis in providing direction to build public trust in public services carried out by public service providers. Of course, it is the hopes and demands of citizens and residents for the quality outcome of government policies in the form of accountability in the principles of state administration.

Moreover, from a constitutional point of view, the rank of public service is put as a "social right" which must be fulfilled by the state. The provisions of Article 18A paragraph (2) in the framework of the widest possible autonomy, stipulate "Financial relations, public service between the central government and regional governments are regulated by law. Article 34 section (3) in the context of social welfare states: "The state is responsible for the provision of proper health facilities and public facilities". Public support in relation to the basic social rights of citizens is the right to receive, the rights to receive from the government such as the right to:

Citation Information: Atmadja I. D. G., & Budiartha I. N. P. (2022). State administration and its principles in the perspective of good governance on public services. *International Journal of Entrepreneurship, 26*(1), 1-6.

receive education and teaching, the right to get decent work for humanity, fair legal guarantees, equal treatment before the law, as well as social security (Tatiek Sri Djatmiati, 2012).

Organizing public services consists of three pillars, namely: (1) Public Service Providers: state administrators, corporations, other legal entities that have special functions for public services; (2) Public Service Implementers: government, employees, people working for the organizers who are in charge of carrying out actions or a series of public service actions (Article 1 point 5 of Act No. 25 of 2009 on Public Services); (3) Supervisory Agency: Ombudsman (Act No.13 of 2008 concerning Ombudsman according to Article 4 letter d, especially in the prevention of maladministration, discrimination, collusion, corruption and nepotism.

This is relevant to the preamble, letter d. Act No. 25 of 2009 concerning public services, considering that as an effort to improve quality and ensure the provision of public services in accordance with the general principles of good governance and corporations and to provide protection for every citizen and population from abuse of authority".

Benchmarks for quality, effective and efficient public servants, in simple terms, are grouped as follows:

First: The ease of getting adequate services and facilities;
Second: Timeliness of services related to waiting times and processes that are not bureaucratic.
Third: Convenience in obtaining services, relating to location, space for services, availability of information including detailed service fees, and availability of parking spaces.
Fourth: Service accuracy, error-free, including no maladministration.

According to Zeithaml, there are ten dimensions to determine the benchmarks of good or bad public services provided by the government, as providers of public services, namely:

a. Tangible, consisting of physical facilities, personnel equipment, and communications.
b. Reliable, consisting of service units in creating promised services.
c. Responsiveness, willingness to shape consumers and be responsible for the quality of services provided.
d. Competence, the demands it has, good knowledge and skills.
e. Courtesy, crumb, friendly attitude or behavior.
f. Credibility, an honest attitude in every effort to intersect public trust.
g. Security, the services provided must be free from various dangers and risks.
h. Access, there is closeness to making contacts and approaches.
i. Communication, the willingness to provide services to receive the aspirations of the community/customers.
j. Understanding the customer, making every effort to find out the customer's needs.
k. In the matter of accuracy of public servants, from a functional approach related to competence, maladministration, a sign of a bad service or bad government, there has been a shift from the legal principle of good governance i.e. prohibition of abuse power, and prohibition of reasonableness such as bribery, gratification, prejudice, protracted delays in issuing state administrative decisions, for example in granting licenses or bribe with the nuances of political corruption, bribes to General Election Commissioners, synergized corruption between politicians and businessmen, and bureaucrats.

Tatiek Sri Djatmiati (2012) gave an example of maladministration, characterized by:

(1) Fail to take the relevant considerations. (2) Fail to carry out existing legal regulations. (3) Fail to put down or test existing government procedures. (4) Fail to make a good rule of law or a good policy.

Regarding what is described about the benchmarks of public service and maladministration, it is not an exaggeration that in the Covid 19 period, the outcome of the implementation of public services can be said to be far from what is expected by the community. The example that hurt the people the most, namely the Social Aid Corruption by the former

Citation Information: Atmadja I. D. G., & Budiartha I. N. P. (2022). State administration and its principles in the perspective of good governance on public services. *International Journal of Entrepreneurship, 26*(1), 1-6.

Minister of Social Affairs due to abuse of authority; cases of Covid 19 sufferers are increasing. The coping policy faces a dilemma between economic relaxations and Large-scale of social restrictions (Lock Down) regulation, causing inconsistencies in government policies, and both central and regional as well as are not in line, e.g. communication, mis-coordination. The hope that the Covid-19 pandemic can be overcome through vaccination.

Regardless of the outcome, the implementation of public services cannot be separated from the analysis of government responsibility or liability as an evaluation of the conception of good governance, namely checks and balances of the Government, Entrepreneurs and Civil Society, strengthening democracy and rule of law. According to Chang-Hsiu Chen (1999), there are three theories of government accountability, namely:

a. The Theory of Sovereign Immunity. This theory suggests that a state shall enjoy absolute and shall exist for the welfare of the public. Only government employee shall be responsible for making the compensation to be aggrieved party. The state cannot be liable at all. (The State Immunity Theory recommends that the state is absolutely pleasing and will bring about public welfare. Only government employees are interested in providing compensation to the injured party. The state is absolutely not liable).
b. The Theory of a State with Substitute Liability. The theory holds that the government employee shall be liable to pay the aggrieved party for the damage resulting from intentional or illegal tort, in the Civil Code. Therefore, the concept that the government replaces the government employee in taking responsibility for compensation is called the theory of state with substitute liability. (State substitution Liability theory. This theory maintains that government employees are responsible for paying the injured party for damages incurred from acts of obstruction or acts that violate the law according to the Civil Code). Because of the concept, the state which takes over the responsibility of replacing government employees, this theory is called the state substitution liability theory).
c. The Theory of a State with its Own Liability. The theory supposes that when a state engages in providing public services to fulfill government duties, the risk of infringing the right and benefit of the people is unavoidable. Therefore, the state shall be responsible the risk associated with its own conduct, and regardless of whether the individual government employee acts willfully or grossly negligently or whether he or she is liable. This State compensation liability theory is also called the theory of strict liability. (State Own Liability Theory. This theory is intended that when the state participates in providing public services in fulfilling government obligations, the risk of violating the rights and benefits of society must be borne by the costs. Therefore, the state is responsible for the risks associated with its own actions, and regardless of whether it is an individual act of a government employee committed on purpose or negligence, he is liable. The theory of state liability to pay compensation is also called the theory of absolute liability).

From the theoretical quotation above, Indonesia in terms of public services adheres to a theory of substitute liability if public services are carried out by the government, while public services carried out by corporations or other legal entities apply a theory of strict liability). In the case of maladministration, if there is abuse of authority (detournemant de pouvoir) or arbitrariness (wilkeur), such as bribery, gratification or corruption, it is called criminal liability (Liability or criminal responsibility is a person or an official (mean rea). In legal development, corporations, whether they are legal entities or non-legal entities, can be prosecuted for corporate criminal responsibility or both, either the management or the people who execute it, In fact, it could be both the management and the corporation, so the sentence can be passed cumulatively, namely imprisonment for the person / manager who is responsible, while the corporation is subject to fines (Armia et al.,, 2003).

The government's liability fulfills the legal principle of good governance (the principles of democratic administration, principle human right administration, and principle of proper administration). Especially principle of transparency making decisions, fair of trial, equality before the court principle of certainty. These principles are prerequisites to embody the checks and balances of "State, Corporate and Civil Society" to realize "strong and clean government."

Citation Information: Atmadja I. D. G., & Budiartha I. N. P. (2022). State administration and its principles in the perspective of good governance on public services. *International Journal of Entrepreneurship, 26*(1), 1-6.

Furthermore, the existence of government liability can be said, including balancing the position of government and society, both citizens and residents in implementing public services with a good government perspective. Because if the benchmarks that have been set on prime public services are not fulfilled or are violated by the government implementing public services, it should be in accordance with the principles of democracy and constitutional paradigm rule of law, the government is obliged to fulfill its responsibilities. Thus the community will increasingly trust the government to fulfill basic social rights through public services.

CONCLUSION AND RECOMMENDATION

Referring to the description above, two conclusions can be drawn, namely: First, based on the main principles of the 1945 Indonesia Constitution, Democracy and the rule of law, MPR Decree No. XI/MPR/1998, Commitment of State Administrators (Executive, Legislative and Judiciary to carry out the Principles of State Administration to create a clean and authoritative government that is linked to the legal principles of good government, has not been maximally realized. Civil Society freedom as a counterweight to State power and the strength of Entrepreneurs/Conglomerates, "not empowered." Marked by a decline in the democratic index and the public's perception of corruption are still high.

Second, referring to the benchmarks that must be met in prime public services that are not yet in accordance with the expectations of citizens and residents, especially in the fields of health, education, employment, and administrative services, such as ID cards, family cards, driver's licenses, administrative malls, complaints to the Oombudsman, it is increasing.

Recommendation

It is necessary to have a political superstructure synergy that has formal powers, be it the Executive, Legislative, Judiciary, and independent institutions as the auxiliary state, which should be energized by political infrastructure, especially political parties, interest groups, presser groups, and civil society to return to the spirit of reform, making democracy and rule of law are substantive. The goal is to fulfill the commitment to realizing a clean and authoritative government (good governance) that leads to a just and prosperous material-spiritual society.

Public service which is a basic social right, the right to receive, the organizer is obliged in this case the State is obliged to realize from the perspective of good governance, not only in the law in book, but that is, the benchmarks are only displayed in the form of laws, but are realized in law in action. In accordance with the expectations of the community, services and protection of "goods, services and administration" are effective, efficient and accountable, and no longer maladministration, clean corruption, and minimize malpractice in health services.

REFERENCES

Addink, G.H. (1999). *Algemeine beginsellen van berhorliijk bestuur*. Deventer. Kluwer. Dienstverlening. Uitgebreide beschrijving. Meer van.

Armia, Mhd., Shidiq, Tgk, (2003), Development of Thought in Law Science, Pradnya Paramita, Jakarta.

Chang-Hsiu Chen. (1999). Gavernmental Liability in Taiwan. IIAS. Kluwer Law International. The Hgue/London/Boston.

Hardjasoemantri, Koesnardi, "Good Governance in Sustainable Development", The 8Th National Law Seminar, Bali 14-18 of July 2003, Book 3 BPHN, Department of Justice and Human Right Republic Of Indonesia.

Tatiek Sri Djatmiati. (2012). "Public Service and Corruption", in Philipus M. Hadjon, et. Al. Administration Law and Corruption, Gajah Mada University Press.

Citation Information: Atmadja I. D. G., & Budiartha I. N. P. (2022). State administration and its principles in the perspective of good governance on public services. *International Journal of Entrepreneurship, 26*(1), 1-6.