

Policy Rules Existence in the Implementation of One Door Integrated Service Policy in Indonesia

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Abstract- In performing its function as public service, the government always tried to publish the best service policy in the field of investment permit. One of them was one-door integrated service policy. In order to realize this policy, legislation was required to accommodate the policy. However, in fact, until now there hasn't been any legislation that can be used as a basis for enforcing the policy, so it can be assumed that the one-door integrated policy arrangement that has used other legal instruments other than legislation. Therefore, this study was conducted by the normative juridical method, and it aims to obtain a detailed picture of legal instruments in the implementation of one-door integrated policy. The results of the research indicated that the policy regulation had a very important role in implementing the policy, because the policy regulation regulated the procedures of one-door integrated services in practical life, even though they were not rules but they were obeyed like laws and regulations, so that they had legal relevance.

Keywords- *Policy Rules, Realizing Policy, One Door Integrated Service*

I. INTRODUCTION

In the context of a legal state, such as the unitary state of the Indonesian Republic, to realize the state's goal for a fair and prosperous society, as referred to in the concept of "welfare state", the existence of law has a vital urgency. Implementation of state government in realizing its objectives must be based on the principle of legality, meaning that all actions must be based on the law, not on the basis of power alone. In the concept of the welfare state, the state is responsible for the welfare of the citizens, consequently the tasks of the government are "public service" (*bezuurzorg*). Therefore, all efforts made by the government for the realization of investment licensing services, which can provide convenience, fast, cheap and competitive service, so that welfare of the people will be well facilitated.

In line with the law state implementation in the material definition, the government is given the authority to regulate government affairs. On the other hand, however, the existence of legislation as a representation of the legality principle is not always able to accommodate the government's need to perform administrative actions or acts in running the government affairs, which has now grown to become widespread and dynamic. Among them is the need of legislation that regulate the one-door integrated service. Limitations of legislation in meeting the needs of the government, does not become the reason

for the government not to perform services to the community, but it must be implemented without having to reduce its duties. The government's refusal to abstain from providing public services is the same as alienating its people, and is perceived as failing to carry out its duties.

Meanwhile, in line with global inevitability [1], resulting in tight competition in the effort for the countries, has given consequences for the government to run a program to increase competitiveness, in order to provide an attraction for investors to invest in Indonesia. This program must be done immediately to face free trade, which cannot be delayed because there is no legislation. The postponement may increase the difficulties in facing global challenges, sometimes it is marked by economic turbulence that disrupts the investment climate. Therefore, in urgent circumstances, it should be immediately solved, so that efforts to realize one-door integrated services in the field of investment licensing can be implemented in order to improve competitiveness, without being stuck and obstructed by the absence of legislation.

In overcoming the weakness of legislation that is not always able to accommodate the government's need to act, the government's solution should be using the authority derived from "*freiss ermesen*" [2], by issuing policy rules (*beleidsregel*), which do not rely on legislation. This policy regulation is expected to be a solution for the government in realizing its policy, in the form of one-door integrated services in the field of investment licensing. In a study aimed at finding legal instruments that support the implementation of a one-stop integrated service policy, it was found that policy rules has become a very significant legal instrument [3]. It was able to complete the disharmonization of arrangements on one-stop integrated services, as well as overcoming barriers to realize the objectives in establishing legislation governing one-stop integrated services, using other alternatives in the form of policy issuance.

On the basis of the results of these studies, it was understood that the policy rules have legal relevance. Although it did not have binding power for the community, it had been implemented consistently by the government apparatus and the community followed it, because it had a great value for the administration of the government function and for the people who need the permit. Here it was revealed that its existence did not rest

on its legal basis (*rechtmatigheid*), but rather its usefulness (*doelmatigheid*). In technically administrative, the policy regulation provides direction or guidance for implementing one-stop unified service policy. Therefore, the policy rules not only provides the implementation of the policy, but it also provides guidance on how to implement the policy.

The will of the Government to issue a policy rules without a legal basis of statutory law is not an offense but it shows its responsibility to the welfare of the citizen, as positioned by the concept of "welfare state". In realizing these responsibilities, the government not only relies on legislation alone, but it can also rely on discretionary authority, by issuing policy rules or "*beleidsregels*". It often referred as "*pseudowetgeving*" or "*spiegelrecht*" (shadow law) in Netherlands, because its form does not resemble the law, but its enforcement is like a law.

The use of discretionary authorities, recognized by an understanding that legislation will not be able to accommodate all the needs of the government in carrying out its duties, which are always growing and very dynamic. Any business or activity has not yet governed by these laws, especially those of a public service nature, cannot be delayed by waiting the completeness of the laws and regulations. Therefore, other means are needed to meet the urgent need, namely the form of policy regulation. This legal instrument formation can be instantaneous to meet the needs that cannot be postponed, formulated in writing in various forms, such as: rules, guidelines, circulars (handbill), decisions and others.

In practice, however, the use of discretionary authority embodied in the issuance of regulatory policies often faces obstacles. The government seems giddy to use legal instruments in the form of policy rules, for fear of being a criminal offense or as an act of arbitrary (Dutch: *willkeur*). Academically, the use of the discretionary principle is very often confronted with the principle of legality, so there is a theoretical problem. In fact, the principle of discretion is intended to fill the weakness of the principle of legality. The discretionary principle exists as a result of inadequate legislation and does not meet all government needs, so that if the government continues to rely solely on the principle of legality, there will be stagnation of services. The government's hesitation to use discretionary authority does not really need to happen, as seen from its benefits strongly supports the implementation of good governance.

As in the study of legal instruments in the implementation of a one-stop integrated service policy, it was shown that policy rules has become a means to resolve legal or regulatory issues that are unable to realize one-stop unified services [4]. This provides an understanding that policy rules, eventhough it is not a rule, however in an urgent interest, it becomes the solution option to accommodate regulatory interests. Although it is not legislation but it has legal relevance, so

it should be recognized as a means owned by the government in carrying out its duties to provide public services in order to realize good governance (good governance).

II. RESEARCH METHOD

The research method used for this research is normative juridical, by emphasizing the norms in legislation, theories and doctrine. The research specifications are descriptive. The data used in this study is secondary data with the main material in the form of primary legal material (statutory regulations).

III. FINDINGS AND DISCUSSION

1. Policy Rules Governing the Implementation of One Stop Service Integrated Policy

It is often argued that the government has many weaknesses in providing public services in the field of licensing, such as the phenomenon of corruption that still plague the bureaucracy, as well as its ability marked by the rigidity of the bureaucratic apparatus to initiate and innovate services, so that the principle of simple, transparent, quick, easy service, and low cost, have not been achieved. This condition is in contrast to the "discretionary power" licensing service or free authority based on the initiative itself, so that when it was handled under good governance, the licensing service can provide satisfaction. J Mannoury said that if the administrative body is granted the freedom of handling the execution by law, it will create rules and sometimes announce them, which describes the use of such freedom [5]. These rules are known as policy rules, which can be used by state administrators with discretion authority to serve as an instrument to make improvements in providing public services. Here is the inauguration of initiatives in the form of policies that must be implemented. In this study, it was shown that the use of policy rules could overcome the disharmony of legislation that did not support the implementation of one-stop integrated services.

Legislation that provides one-door integrated service arrangement, including: a) Law Number 25 Year 2007 regarding Capital Investment; b) Government Regulation Number 96 Year 2012 on Implementation of Law Number 25 Year 2009 on Public Service. Before the issuance of the legislation, there has been issued a policy regulation on integrated one-stop service, which is based on: a) Presidential Decree Number 29 Year 2004 concerning the Implementation of Capital Investment in the Framework of Foreign Investment and Domestic Investment Through One Roof Service System; b) Regulation of the Minister of Home Affairs Number 24 of 2006 concerning Guidelines for the Implementation of One Door Integrated Services.

These two rules are not based on higher legislation, they are not legislation, but they are categorized as policy

rules, because their publications do not base the order of the above-mentioned statutory laws. Although the capacity is not legal, it has legal relevance, because it is implemented by the relevant agencies as well as the community following it. Consideration of the policy is issued based on policy in order to encourage economic growth through increased investment, by giving greater attention to the role of micro, small and medium enterprises, it is necessary to simplify the implementation of integrated services. Here shows that the policy rules has been carried out for the implementation of a one-door unified service policy. This policy regulation has proved to have positive effect, proven to have encouraged the birth of legislation in the form of Law Number 25 Year 2007 regarding Investment, which regulate one-door integrated service, and ordered the preparation of presidential regulations to regulate the procedures and Its implementation, which until now has not been published.

It is apparent that the policy regulation on the implementation of integrated one-door service policy has not been replaced by legislation in the form of laws, government regulations or in the form of presidential regulations. Presidential Decree Number 29 Year 2004 regarding the Implementation of Investment in Foreign Capital Investment and Domestic Investment through One Roof Service System, as a policy rules has been used to establish a one-door integrated service policy. This provides an understanding that the policy rules has a very important role in the implementation of one-door integrated services, even from the results of this study it can be concluded that the policy rules has become an option to replace the role that must be assumed by the legislation. This is evident, even though the policy of implementing integrated services has been regulated in legislation, namely through Law Number 25 Year 2007 regarding Investment and Government Regulation No. 96 Year 2012 on Implementation of Law Number 25 Year 2009 on Public Service, but was not used as a guide for the implementation of a one-stop integrated service policy in the region. Rather it still uses the policy regulation as the legal basis for the implementation of one-door integrated service policy

2. Policy Regulation Overcoming Disharmonization of Laws for Achieving Good Governance

In addition to the Presidential Decree Number 29 Year 2004 has become the legal basis for the implementation of one-door integrated service policy, but in practice it also provides resolutions to the existence of legal disharmonization between Law Number 25 Year 2007 on Investment and Government Regulation No. 96 Year 2012 on Implementation Law Number 25 Year 2007, with the issuance of Presidential Regulation stipulating one-way integrated service procedure. Here the presidential decree is played as "*pseudowetgeving*", which is not legislation but enacted like a law, so there is no need for another legal instrument to overcome disharmonization

The issuance of legislation in the form of presidential regulation as mandated by Law Number 25 Year 2007 regarding Investment, does not mean legal disharmonization is left alone, but there has been a solution before it, namely by Presidential Decree No. 29 of 2004, which has given Legal certainty over:

- a. The existence of legal certainty of service procedures, so that there is a guarantee of fairplay principle can be implemented;
- b. The existence of legal certainty about the requirements, the timing of settlement, and the tariff, so that the guarantee of implementation of the principle of prohibition of abuse of authority;
- c. The existence of legal certainty about the decisions taken by the team formed, indicating the existence of the guarantee of the implementation of the principle of acts carefully;
- d. The existence of legal certainty about services that are open and easily accessible by the community, so that the guarantee of implementation of the principle of transparency;
- e. The existence of legal certainty about the fulfillment of conditions, supporting the principle of legality and principle of reasonable expectation;
- f. The existence of legal certainty about the stages of the announced settlement process, so that it meets the principle of transparency and acutability.

One-door integrated service policy, providing legal certainty in terms of procedures, due to the published service announcement, avoid the discrimination of service, thus giving consequences for the bureaucratic apparatus to work in accordance with standard operating procedures. Implementation of standard operational procedures will prevent the occurrence of abuse of authority (French: *detournement de pouvoir*) to obtain personal benefits and prevent service discrimination, so that the applicant community is not mocked in the stages of service. This of course can eliminate the impression of a convoluted service that can motivate investors to invest.

The existence of legal certainty about requirements, timing of completion and tariffs, is a significant progress. Given that the phenomenon of public services in Indonesia has always faced the problem of changing requirements and it is too difficult, uncertain settlement time that creates shortcuts to collude. Such conditions of course make no encouragement for investors to be interested in investing. The length of completion time and no certainty of time had become a classic reality that was always complained by the applicant public service, because it did not support the implementation of the schedule set by the investor to start its activities. The unclear tariff has been utilized by unscrupulous service providers to obtain personal benefits. As a result, it is difficult to distinguish which are the official rates and which are unofficial or stealth rates. This has created an obstacle for investors to ensure their investment license fees. Against this fact all, then the investment climate becomes unattractive. The existence of legal certainty

about the requirements, time, and tariffs, indicates that the principle of accountability becomes a principle that must be realized by one-door integrated services.

The existence of legal certainty that to decide on the proposed service request, discussed by a team formed, indicates that its settlement is always based on careful action, so there is no need for excessive concern over the decision given. This shows that public service in the field of investment licensing is well managed, in the sense that it does not provide opportunities for utilization to perform services that are not good, such as: unprofessional, not open, and not effective. Implementation of the principle of careful acting in one-door integrated service, giving hope to the public, especially the investor, that his service is not complicated and has been considered in accordance with the prevailing provisions, so there will be no shortcut procedures.

The existence of one-door integrated services, has changed the paradigm that was a closed service to be open and transparent. The ease given to the community to access the services has also proven that the government has optimized the implementation of government functions that are public service. Especially with the "on line" service system that has been used in one-door integrated service, has facilitated the access of people who live far from the service center. Compared to the previous time when the service is closed, so the role of the middleman is so important, with the cost drawn it will be served the request. In such conditions bureaucracy can play its role as a holder of power to act corrupt. But now with the changing phenomenon of service is open, the process becomes transparent, making the bureaucracy must run the process fairly and correctly. In this case, the principle of transparency should still be realized in a one-stop integrated service.

Against the fulfillment of the conditions which have been prescribed openly, there is a legal certainty that a decision on approval or rejection will be granted. Herein lies the fulfillment of the principle of legality and reasonable expectation. Fulfillment of consent is not possible without compliance. Similarly, that requirement to be met is always proportional and not difficult. Therefore, in the policy of one-door integrated services, provide assurance of the implementation of the principle of legality and reasonable expectation. This legal certainty exists because it is supported by efficient and open service management, which gives people access to supervise the state administration in processing permit applications.

The existence of legal certainty on the accountability of services provided, because it is supported by the process of completion phases which are announced in a transparent manner, so that it can be known by the public about the running process that has been in accordance with operational standard procedures. This Accountability Principle becomes one of the relevant conditions for good governance. Through a policy rules on integrated one-

door service policy, it provides an understanding that the government has demonstrated its political will to perform its functions optimally. In this case, the policy rules has been used as an instrument for the implementation of government policy in the administration of government duties, since the laws and regulations do not accommodate the implementation of one-door integrated service. At the same time, this policy rules has filled the shortage of regulatory legislation and fill the weakness of the legality principle. In the implementation of government duties, this policy rules can be played to solve the law problem *in concreto*, as a result of the legislation underdevelopment.

3. Policy Regulation Meeting the Legal Needs for the Implementation of One Door Integrated Service Policy

Presidential Decree No. 29 of 2004, which is a policy regulation, although it is not based on legislation, however its existence is not independent, but it has a reason for the fulfillment of legal needs in its written form. Its publication is based on the discretionary authority held by the president as the head of government. In its role as a public policy, it accomplish the background of the public needs to get effective, fast, on time, and cheap public services. Previously, there were problems that arose and immediately resolved without waiting for the left-behind legislation, such as following:

- a. The procedure is convoluted, involves many agencies resulting in long completion time;
- b. Unestablishment of an integral arrangement of licensing systems, each of which sets procedures differently so that they do not provide procedural clarity and confusion to the applicant;
- c. non-standard licensing fees as a result of the incoordination of the agencies involved, so that their application often leads to illegal and discriminatory charges;
- d. The absence of gold standards, thus becoming a venue for service providers to corrupt, collude and nepotism;
- e. The disproportionate attitude of the licensing service providers, causing dissatisfaction of the applicant;
- f. Non-transparent providers are at risk of inclining licensing services that are not accountable.

That issue by the state administration is formulated into a public agenda, to find a solution from various alternatives that have been available. Furthermore, the choice of the solution becomes public policy, which must be legalized by law, in order to have force power and legal certainty. Likewise, the law will not reflect justice if it is not accompanied by public policy. Therefore Talcott Parson argues that law as a social sub-system, does not live in a vacuum world, but it is always interdependent with other aspects, such as: education, economics, culture, economics, politics and others [6]. This policy rule as a result of legalization public policy, is a product of justice. Although it is not a law, but its role has legal relevance,

because it is obeyed by society to obtain a fair service. Here gives evidence that policy rule has become the solution to the problem of public service delivery in the field of unsatisfactory licensing. Although it is not a legislation, it adhered to as regulated by legislation.

The beginning of policy rule in the form of public policy, as an effort to overcome the problems that are classified as a public agenda. Public policy in its implementation requires a coercive instrument to be implemented, so it should be legalized. Therefore, a legal instrument that can accommodate the public policy is required. In the interests of a very urgent and easy embodiment, then the policy rule become an option. Policy rules are usually used because there will be too long to wait for the issuance of legislation. In short, this policy rule is used in the absence of legislation and in very urgent circumstances, it is necessary to regulate it so that people can be well served. Its usefulness will be obtained by the existence of policy rule, because the society becomes immediately served. Losses will be suffered if there is a policy setting immediately, which makes the service stagnated, so that the realization of increased competitiveness becomes hampered.

Due to public policy become the content of the policy rule, then in formulating the policy rules must follow the process of forming public policy. Initially, a public policy agenda was originally derived from public issues, which fulfills the purpose of law, namely benefits, justice and certainty, [7] so that the law will actually have a role in society. Thus the policy regulation was published in response to the needs of the community. In this case the policy rule has the character as responsive law [8], not the law that elitist or not reflect democratic values, but it is more likely to be populist. This policy rule did not come suddenly, but it had previously gone through a process involving the community. Therefore it is more widely accepted by society as law, it is no wonder sometimes the policy rule becomes embryo formation of legislation. Nevertheless, public participation is still a constraint in the formulation of public policy needs.

Public policy in the form of one-door integrated services, obtained the benefit from the empowerment of government function in administration for public service maximally. In the absence of such policy regulation, state administrators in carrying out their duties are constantly facing obstacles in obtaining benchmarks to determine their decisions. If we consider the period of validity is very long and do not recognize the deadline of its enforcement and the obedience of the community, it can be submitted proposition as follows: a) the application of non-intended policy rules is temporary; b) the value of the benefits should not be doubted, because it has been felt by the community.

Although the publication is based on urgent circumstances, but in its implementation is enforced as legislation, therefore it has legal relevance, it is not meant

to be temporary, so there is no need to be regulated later in the legislation. If in the future it is confirmed in the legislation, then the existence of policy rule has acted as embryo of formulation of legislation.

The benefit of policy rule can be felt by society, not only because it is adhered to but it is also because the process of formulating the policy rule involves the community. The content of the regulatory content is a solution to a public problem, which has been fulfilled to be formulated as a public agenda. Although the benefits can be felt by the community, but in reality not all state administrations have the ability to issue policy rules, so there are obstacles in their use. In the case of one-door integrated services, the opportunity to issue regulatory policies tends to be used more by state administrations at the central government, whereas state administration in local government does not have the initiative to use its discretionary authority to issue regulatory policies, due to:

- a. formal-legalistic patterns of thinking, making fear of being disobedient to the central government, so it is better to wait for the central government's guidance;
- b. there is still some confusion in its use, as there is no regulatory arrangement of policy regulations;
- c. does not have the ability to make policy rules.

In terms of legal certainty, the policy rule provides legal certainty, because its role fills the legal vacuum (*rechtsvacuum*), which has become the basic rule for the government in the implementation of licensing services, especially in providing one-door integrated services. The issuance of the policy regulation stops doubts for state administrations to take administrative legal action to provide licensing services more simply, in the form of one-door integrated services. Like-wise for the applicant community, they participate in implementing the policy because there is a certainty of the existence of more simple licensing services in the form of one-door integrated service. In this case the public interest becomes served by the policy rule.

From the side of justice, the policy rule has been played as a guideline for state administration officials in formulating concrete policies, proved that the state administration officials have obtained the same basic and measurable consideration. In this case, policy rules have become the basis for testing state administration in making decisions on permit applications. The realization of the test basis means that the state administration should consider on the same reasons for all permission requests, then the policy rules containing the basis for testing for state administration in making decisions play a role in bringing about justice for the applicant community. Based on the same criteria and standarization in the policy rules, the state administration cannot decide on its own discretion upon a permit application according to its importance, but shall be guided by the policy rules.

In fact, the practice use of policy rules in implementing one-door integrated services, can realize good governance, because:

- a. Able to fill the legal void (*rechtsvacuum*), in order to complete the role of complement the principle of legality;
- b. Able to provide legal certainty in its written form embodied in the form of policy rules (*beleidsregel*);
- c. Able to provide benefits (*doelmatigheid*);
- d. Realizing transparency in the investment licensing service;

Able to be justified according to law, so there is no chance for state administrators to use their authority uncontrollably.

IV. CONCLUSION

In order to carry out "public service" tasks, in the field of investment licensing services, state administration in the central and regional governments use a one-door unified service policy. To implement the policy, legal instruments derived from discretionary authority of the state administration is used, namely the policy rule (Dutch: *beleidsregel*). Nevertheless, its use can realize good governance in practice. Despite its efficacy, the use of legal instruments in the form of policy rules governing the implementation of a one-door integrated service policy, faces structural, substantial and cultural obstacles.

Structural obstacles occur due to state administration formalistic legalistic thinking, thus it inhibits the desire to act responsively to the needs of the law, so that it tends to wait more orders or the provision of guidance given by the superior officers. In fact, bureaucratic apparatus or state administration tends to try to act in accordance with predetermined guidelines, and avoid discretion, even if it is clearly necessary. Subordinates are fear that they will be reprimanded by supervisor if doing any innovations, because it is considered that they don't obey the order of their supervisors. These obstacles occur in local governments, which are always awaiting the publication of guidelines from the central government, although it is in urgent cases.

There are substantial barriers to the issuance of a policy regulation, i.e. there is no legislation governing the issuance of regulatory policy, so it is often considered prohibited to be used. This is supported by a narrow understanding of the principle of legality, as if all published regulations must be sourced in the prevailing laws and regulations, so that the regulations derived from the discretionary authority are deemed to be contrary to law, and are perceived to be at risk of being called "ultra vires". The absence of regulatory policy, making state administration has no guidance in its use, thereby giving a better choice of silence than acting but it is at risk of being blamed.

Cultural barriers occur, because the legal needs of the community are usually not accomplished in well and complete condition, due to the low level of community participation in the law formation, so that the public hearing or community stakeholder space that has been provided is not used effectively. Likewise, the unresponsive pattern of bureaucratic work becomes a barrier to act on the basis of its own initiative

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