

# *Effectiveness of Legal Construction: General Principles of Good Governance in Indonesia*

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**Abstract-** The aim of this literature study is to see how effective the general principles of good governance in Indonesia are. By using a normative juridical approach, the search for primary law materials proved that prior to the issuance of Law Number 28 of 1998 concerning Clean and Corruption Free State Administrators, Collusion and Nepotism, the position of general principles of good governance is still an unwritten norm/law, which only has moral strength not legal force. Law No. 28/1998 became the initial igniter for general principles of good governance as a written law, reinforced by the issuance of Law No. 9/2004, there was an acknowledgment that the general principles of good governance as stated in Law No. 28/1998 could used as a basis for filing a lawsuit to the State Administrative Court, when there are people who feel disadvantaged due to the issuance of state administrative decisions issued by officials or administrative bodies. This position is further emphasized by the issuance of Law No. 30/2014 about Government Administration.

**Keywords-** *Effectiveness, Construction, General Principle of Good Governance*

## I. INTRODUCTION

The Indonesian Constitution firmly states that the Indonesian state is based on law. According to Sri Sumantri, 3 characteristics or elements of the law rule are:

- a. There are restrictions on state power over individuals, meaning that the state cannot act arbitrarily. State actions are limited by law, individuals have rights to the state or the people have rights to the authorities.
- b. Principle of Legality. Every state action must be based on a law that has been held beforehand which must also be obeyed by the government or its apparatus.
- c. Separation of Power. For human rights to be truly protected is the separation of powers, that is, the institution that makes the laws and regulations, executes and adjudicates must be separated each other. [1]

The nation of law basically regulates the relationship between the state represented by the government and its people. The government and the people are two interrelated sides. The government is given the task to carry out the state founders agreement referred in the fourth paragraph of the 1945 Constitution Preamble, and the people are the parties being the subject as well as the

object of the realization of the purpose of the formation of the state.

The government in realizing the purpose of forming a state, of course, takes actions or actions, without which of course the objectives will not be achieved, so that a basis or basis is needed so that in the process of realizing the purpose of forming the state.

This paper tries to discuss the basic or foundation of government in running the affairs that are often referred to by the general principles of good governance, which initially as an unwritten basic law but later become written law. The construction of general principles of good governance from unwritten law to written law is interesting to study, in terms of the effectiveness of unwritten norms being written norms.?

## II. RESEARCH METHOD

This conceptual writing uses the normative juridical approach method, because this research is only aimed to written regulations so that this research is very closely related to the library because it will require secondary data in the library, both in the form of primary and secondary legal material.

In normative legal research, written law is examined from various aspects such as aspects of theory, philosophy, comparison, structure/composition, consistency, general explanation and explanation of each article, formality and binding power of a law and the language used is legal language. So we can conclude that normative legal research has broad scope. [2]

## III. FINDINGS AND DISCUSSION

The state of law (*rechts staat*) adopted by Indonesia is no stranger to science, but in practice there is still doubt whether the concept is fully implemented. This mistrust can be understood, because in practice many factors affect the net understanding in real life that lives in the community, both according to time and place. It is not surprising, therefore, that universal ideals are often violated in practice. If this situation continues, the rule of law is only formal, whereas the reality of life has gone far beyond what is written in the constitution as if this rule of law is only a myth that has never been proven in the history of state administration. [3]

The situation where the rule of law as a mere formality was also experienced by Indonesia, until finally a reform movement was born that was able to subvert the new administrative government under the leadership of President Suharto for 32 years.

After the reformation, one of the agenda of the implementation of government in Indonesia which has the wrong task is to realize public welfare by creating clean and authoritative governance. The agenda is an effort to realize good governance, including openness, accountability, effectiveness and efficiency, upholding the rule of law and opening public participation that can guarantee the smooth, harmonious and integrated tasks and functions of governance and development. This means that the principle of good governance is implemented as the concept definition given by the World Bank "governance as the manner in which power is exercised in management of a country's economic and social resources for development, atau rumusan UNDP: Governance is defined as the exercise of political, economic and administrative authority to manage a nation's affairs." [4]

In administrative law, the birth of general principles of good governance since the adoption of the conception of welfare state and lead to the power of *Ermessen freies*, arises a concern of citizens over the occurrence of arbitrariness by the government. Therefore in 1946 the Dutch government made a commission chaired by De Monchy, this Commission hereinafter referred to as the de Monchy commission. The Commission aims to think about and examine alternatives to improve legal protection from deviant governmental actions. In 1950 the De Monchy commission then reported the results of its research on "verhoogde rechtsbescherming" in the form of *Algemene Beginselenvan Behorlijk Bestuur (ABBB)* or it could also called as *AAUPB* [5]. This Commission has succeeded in developing general principles for the implementation of a good government which is named the "General Principles of Good Government", which consists of: The Principle of Legal Certainty; Principle of Balance; Principle of Similarity; The principle of being careless; Principle of Motivation; Principle of Fair Play; Principle of Fairness and Fairness; Principle Responds to Fair Awards; Principle of Eliminating the Effects of a Canceled Decision; Principle of Legal Protection [6].

General principles of good governance as a concept become an unwritten law for governmental departments in carrying out their duties and functions or as a basis for administrative justice judges to assess the actions or actions of the government which is sued by the people. As an unwritten law, it certainly does not have legal force that can force it, it only has moral or ethical strength.

Awareness of the lack of legal power of general principles of good governance for government officials in Indonesia, then in 1998 Indonesian legislators made efforts to make the general principles of good governance

a written law, as stipulated in Law Number 28 of 1998 concerning State Organizers that are clean and free of Corruption, Collusion and Nepotism. In the law mentioned general principles of state administration include: The Principle of Legal Certainty; The Principle of Order of State Administration; Principle of Public Interest; Principle of Openness; Principle of Proportionality; Principle of Professionalism; and the Principle of Accountability. The purpose of this law is declared as stated in the general explanation for the rescue and normalization of national life in accordance with the demands for reformation. It requires the common vision, perception, and mission of all State Administrators and the public. The common vision, perception and mission must be in line with the demands of the conscience of the people who want the realization of a State Operator capable of carrying out their duties and functions, which are carried out effectively, efficiently, free from corruption, collusion and nepotism, as mandated by the Decree of the People's Consultative Assembly of the Republic Indonesia No. XI/MPR/1998 concerning State Administrators that are Clean and Free from Corruption, Collusion and Nepotism. To realize a state administration that is clean and free of corruption, collusion and nepotism, in this law the general principles of state administration include the principles legal certainty, the orderly principle of organizing the state, the principle of public interest, the principle of openness, the principle of proportionality, the principle of professionalism, and the principle of accountability. Regulated Regulations on *peren* and society in this law are intended to empower the public in order to realize a clean and free state organization corruption, collusion, and nepotism. With the rights and obligations of the community it is expected to be more passionate about implementing social control optimally towards the administration of the state while still obeying the applicable legal signs [7].

Law No. 28/1998 becomes the trigger for the birth of other laws which always prioritize the formulation of general principles of good governance as a basis for governance. These laws and regulations include:

*Firt*, Law Number 31 of 1999 concerning Eradication of Corruption. The explanation of this Law is intended to replace Law NO. 3/1971 concerning Eradication of Corruption, which is expected to be able to meet and anticipate the development of the legal needs of the community in order to prevent and eradicate more effectively any form of criminal acts of corruption which is very detrimental to the country's finances or the country's economy in particular and society in general. The focus in this law is related to the management of state finances in question: All state assets in any form, separated or not separated, including all parts of state assets and all rights and obligations arising from:

- a. Being in control, management, and accountability of State officials, both at the central and regional levels;

b. is in the possession, management and accountability of State-Owned Enterprises / Regional-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the State. Whereas what is meant by the State Economy is economic life compiled as a joint venture based on the principle of kinship or community business independently based on Government policies, both at the central and regional levels in accordance with the provisions of applicable laws and regulations aimed at providing benefits, prosperity, and welfare to the entire life of the community.

*Second*, Law No. 32/2004 about Regional Government. As a substitute for Law Number 22 Year 1999, this Law regulates government affairs according to the principle of autonomy and assistance tasks, to realize community welfare and service, empowerment, and community participation, increase regional competitiveness by paying attention to the principles of democracy, equity, justice, idiosyncrasy and specificity of a region in the system of the Unitary Republic of Indonesia. The manifestation of democratic processes in the election of Governors, Regents and Mayors as Heads of Provincial, Regency and City Regional Governments as mandated by Article 18 paragraph (4) of the 1945 Constitution since 2005 has been directly elected by the people. Direct involvement of the people in the process of electing the Head of Regional Government, this shows the direct participation of the people, and the people have the same opportunity and right to become the regional head. Construction of legislation in the administration of regional government It seems clear and tangible related to the granting of regional autonomy, which in the new order was only a stamp.

*Third*, Law Number 9/2004 is the Amendment of Law Number 6/1986 about State Administrative Court. Recognition of general principles of good governance in positive law in Indonesia is expressly recognized in Article 53 paragraph (2) letter B of Law Number 9/2004 which states that the general principles of good governance can be used as a basis for filing claims, whereas the principle -General principles of good governance are referred to in Law Number 28 of 1998 concerning State Administrators that are clean and free of corruption, collusion and nepotism. Recognition that the principles of good governance as a basis for filing a lawsuit in court on a State Administration Decree which is considered detrimental to a civil legal entity, will provide a strong foundation in the process of seeking justice and to provide legal certainty.

*Fourth*, Law Number 14/2008 concerning Openness of Public Information. The principle of openness, as stated in Law No. 28 of 1998, is actualized in more detail in Law No. 14 of 2008 concerning Openness of Public Information. The right to communicate and obtain

information as mandated by Article 28 letter f of the 1945 Constitution, becomes the basis for consideration issued Law No. 14 of 2008. So that the people will get information that is their right both periodically, at all times and necessarily. However, Law Number 14/2008 also limits the rights of every citizen, meaning that there is information that cannot be accessed, that is, information that is excluded as regulated in Article 17 of Law Number 14/2008. The principle used in Law Number 14/2008 is that every public information is open and can be accessed by every user of information. In the process of getting information it must be in a fast and timely manner, low cost and simple method. Although it is a public right for all information stored by public bodies, it also regulates information that is excluded as regulated in Article 17 which states that there are 10 (ten) types of information that are excluded. For information that is excluded, it is necessary to have a test of the consequences that arise if an information is given. This consequence test involves various parties, including the Information Commission. The existence of Law No. 14/2008 gives meaning to transparency in the administration of both central and regional government. Throughout the matter it comes from part or all of ABPN/APBD, community contributions or foreign aid, the people have the right to know.

*Fifth*, Law Number 30/2014 concerning Government Administration. One of the legal considerations of the issuance of Law Number 30/2014 is to realize good governance, especially for government officials, the law on government administration is the legal basis needed to base the decisions and/or actions of government officials to meet the legal needs of the community in the administration of government. Article 5 of Law Number 30 Year 2014 recounts the principles that are applied covering the principle of legality; the principle of protection of human rights; and General Principles of Good Governance.

The principle of legality is intended that every action or act of taking care of government affairs must be based on law, not based on power, while the principle of protection of human rights is meant that every action and act of taking care of government affairs must provide protection of human rights as stipulated in the Indonesian constitution.

The assertion of the General Principles of Good Governance in Law Number 30 Year 2014 certainly clarifies and reinforces the position of general principles of government that are in positive law in Indonesia. While the general principles of good governance as regulated in Law Number 30 Year 2014 include the principle of legal certainty; expediency; impartiality; accuracy; not abuse authority; openness; public interest; and good service. If there are still general principles of good governance that can be applied, as long as they are the basis of judges' judgment contained in the decision of a court with permanent legal force.

Like the building position of the general principles of good governance in Indonesian law before the existence of Law Number 28 of 1998 is still at the level of ideas / plans, but after the existence of Law Number 28 of 1998, the idea / plan has been built as a building and can be used according to its designation . This means that the position of general principles of good governance since the issuance of Law Number 28 of 1998 became a written legal structure that can be used as a basis in the process of seeking justice for the people when dealing with the Government.

If construction is interpreted as an arrangement of buildings, then the general principles of good governance are constructed from being unwritten law to written law. The effectiveness of the law especially the written law in action or legal reality can be known if someone states that a rule of law is successful or fails to achieve its objectives, then it is usually known whether the effect is successful in regulating certain attitudes or behaviors so that it is in line with its objectives or not. Legal effectiveness means the effectiveness of the law will be highlighted from the objectives to be achieved, namely legal effectiveness. One effort that is usually done so that people adhere to the rule of law is to include sanctions. These sanctions can be in the form of negative sanctions or positive sanctions, the purpose of which is to create a stimulus so that people do not take despicable actions or take commendable actions.

The effectiveness of the construction of general principles of good governance as a written law, its validity has binding and coercive power, which is different if it is still an unwritten law that only has moral or ethical strength. The enforcement is also different, as written law certainly has sanctions as a forced force, whereas if it is still an unwritten law it only has moral strength and sanctions are only moral sanctions

#### IV. CONCLUSION

Based on the description above, it can be concluded that the general principles of good governance are more effective after becoming a positive law in Indonesia, namely since the issuance of Law Number 28 Year 1998 which is more emphasized by Law Number 30 Year 2014, because as written law is more clear and firm to be used as a legal basis both in the administration of government affairs, and as a basis for people who seek justice as a result of government actions or actions that harm them. The formulation of general principles of good governance in positive law, is certainly a courage of the legislators, to provide clear and certain legal protection to the people.

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