

CONSTITUTIONAL AND ADMINISTRATIVE LAW ASPECT ON PUBLIC SERVICE

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Abstract

State administration office as state agency has broad authority in executing government affairs. This widespread authority tending to be misused so could cause loss and injustice on the part of society, therefore there must be other institutions that control it. Based on some political theory, executive as state agency are politically controlled by legislative and are juridical controlled by a judiciary, so state administrative officials carry out executive functions so juridical control judiciary are state administrative courts. In addition, public service is the social rights of society (social rights). Social rights are the rights to receive and the rights to receive from the government, therefore the government organizer is obliged to provide the best service to the community. However, the implementation of public services has not been well received by the community. Governance And Decentralization Survey (GDS) 2012 found three important issues that occurred in the field of public service delivery, first, the magnitude of service discrimination, Second, there was no certainty of cost and time of service, third, low level of public satisfaction with public service. From this situation opens the opportunity for government organizers to perform maladministration actions in public service. The number of maladministration actions in public service can be evidenced by the data reported by the Ombudsman, every year its charts always rise. Due to the construction of legal accountability for maladministration actions undertaken by government organizers in public service must be immediately re-established.

Keywords: *Legal Aspect, Public Service, Maladministration*

INTRODUCTION

Public service is a constitutional obligation for government organizers. This is as stated in the Preamble of the 1945 Constitution of the State of the Republic of Indonesia of the fourth paragraph, namely: "Later than that to protect the whole Indonesian nation and the whole of Indonesia's blood sphere and to advance the general welfare, educate the life of the nation, and, The sentence affirms that the government of the State of Indonesia was formed to provide protection for the nation of Indonesia, for all the people of Indonesia, the government was also formed to ensure the fulfillment of human rights protection and inner welfare and intelligence for all the people of Indonesia. Public service is a fundamental right for citizens to be met by the state and government officials. This is done because the public service is an integral part of the state's obligation to prosper the people. Public service is not merely to prepare instruments for the run of bureaucracy to abort state obligations, but more than that public service is the basic essence for the realization of social justice."¹

The government is obliged to serve every citizen and the population to fulfill their basic rights and needs within the framework of public services constituting the mandate of the 1945 Constitution of the Republic of Indonesia. This is as already affirmed in Article 34 paragraph (3) namely; "The state is responsible for the provision of appropriate health care facilities and public service facilities". Building public trust in public services by public service providers is an activity that must be done in line with the expectations and demands of all citizens and citizens about improving public services, in

¹ Hesti Puspitosari dkk. *Filosofi Pelayanan Publik*, (Malang, setara Pers,2011), p 179

an effort to affirm the rights and obligations of every citizen and citizen and the realization of state responsibility in the implementation public service.²

Law No. 25 Year 2009 on Public Services was enacted on 18 July 2009 and officially published in the State Gazette of the Republic of Indonesia Year 2009 Number 112. It is interesting to note that the law was born on the basis of several considerations as follows: that the state is obliged to serve every citizen and citizen to fulfill his basic rights and needs within the framework of public services. Second, to build public confidence in public service providers. Thirdly, in an effort to reinforce the rights and obligations of every citizen and citizen and the realization of the responsibility of the State and the corporation in the administration of public services; and fourth, in an effort to improve the 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 citizen of abuse of authority in the provision of public services.³

Expectation of the formulation of the above law, it turns out in the implementation is still far from the expectations of the legislators, it can be seen that in the implementation there are still many actions conducted public service providers harm the community or commonly called maladministration. Aspects of government policy in terms of public services when viewed from the science of law can use the review of the Law of State Administration. Theoretically in State Administration Law, governmental action in running the government (*bestuurhandeling*) can be separated between real action (*feitelijke handelingen*) and legal action (*rechts handelingen*). Actions in the field of law can be divided into actions in the field of public law and in the field of private law. Actions in public law mean legal action taken under public law. While the act of private law means acts committed under private law.

Power of Authority and Legality Principles

In a legal state, one of the most important principles is the principle of legality. This principle implies that any government action should be based on legislation. Legislation should be the source of authority for any government action. For the government, the basis for public legal acts is the authority (*bevoegdheids*). Through the authority sourced from the legislation, the government takes legal action. The granting of such powers shall be expressly stated in the laws and regulations. In the Law of the State Administration, which is attached with the authority or person with the rights and obligations of public law is the position. While the basis for committing private legal acts is the existence of acting skills (*bekwaamheid*) of legal subjects. The subject of law in this case is anything that can obtain, or assume the rights and obligations and may be human and legal persons.

The definition of this position is fiction in law. Therefore, the position is carried out by the official, that is, the man who occupies the position to run in a real way. Position is a legal subject, namely the supporters of rights and obligations that are inseparable from the official who served the position. Positions are authorized to ensure the sustainability of rights and obligations. The liability in respect of an act of public law is the official. Thus the lawsuit in the state administration dispute is addressed to the decision making official. Associated with the understanding of office, need to be explained in advance about the subject of law. The legal subject in dispute in the perspective of the Law of State Administration is a person or legal entity with the Board or the State Administration Officer. Officials are acting for and on behalf of the office. This is because the position is an institution with its own scope of work formed for a long time and to him given the task and authority. Because the office is a fiction or abstraction which by law is lifted into a legal reality, which is the personification created by law.

The act of office is carried out by a representative, namely a person who on the one hand as a human being (*natuurlijke persoon*) is subject to private law, on the other hand is for and on behalf of the office as an official subject to public law. This official is also called state equipment. So if the Director General (*Dirjen*) at the time of signing the decision is as an official who has two positions namely as a human (*natuurlijke persoon*) and in quality as the director general who is the

² Sirojuddin dkk. *Hukum Pelayanan Publik berbasis partisipasi dan keterbukaan informasi*, (Malang, Setara Press, 2011), p 22

³ K. C. Wheare, *Maladministration and its Remedies*, First Edition London: Steven and Son, 1973, p 29

personification of the state equipment. An individual as an official is when he exercises his or her authority for and on behalf of the office. In the case of the director general of the technical policy stipulation in accordance with his / her authority based on the prevailing laws and regulations, the concerned shall exercise the policy of state apparatus (*overheidbeleids*) which is the scope of state administration law. In case of a dispute within the territory of the State Administration Law (HAN) by referring to Law Number 5 of 1986 concerning the State Administrative Court as amended by Act Number 9 of 2004, then all aspects of authority, dispute resolution, prosecution process, verification and decision in principle is governed by the laws and regulations. W.F.Prins says that the government's work is largely outwardly directed to the effort of fulfilling a real need which for some moves outside the field of law called material deeds (*feitelijke handeling*).⁴ Kuntjoro Purbopranoto calls *feitelijke handeling* with a fact-based governmental act.⁵ However, any government action to have legitimacy should be based on the authority granted by the law. This means that administrative officials in the administration of government and the use of authority power is bound to the laws and regulations that provide guarantees of the basic rights of the people.

In other words, every state administration and government must have legitimacy, ie the authority granted by law. This authority is the ability to perform certain legal actions. To assess the authority of an official in making a policy must be seen the source authority of officials who make policy. Authority may be derived from attribution, namely the occurrence of new authorization by a provision in a legislation. In this case was born or created a new governmental authority. Authority may also originate in a delegate or mandate. The competent legislators to attribute authority are distinguished between those who are the original legislators and the delegated legislators.⁶ What if the decision is issued by an unauthorized official (*onvoegdheid*)? In the case made by an unauthorized official it is referred to as a defective decision regarding authority (*bevoegdheidsgebreken*) which includes:

1. *Onbevoegdheid ratione materiae*, if a decision is not found in the legislation or issued by an unauthorized person;
2. *Onbevoegdheid ratione loci*, decisions taken by officials outside geographically;
3. *Onbevoegdheid ratione temporis*, if the decision is made by officials who have not authorized or no longer authorized to issue a decision.

Public Service and Good Governance

The shift of state conception from 'nachwachterstaat' to the welfare state conception, this has consequences on the role and activity of government where in this context the role of government is no longer just a night watchman but in accordance with the concept of welfare state, organizes *bestuurzorg* (public welfare) for which the government is given the authority to intervene (*moment of bemoeienis*) in all fields of community life. This means that the government is required to act actively amid the dynamics of society for justice and prosperity which one of them is through 'freies ermesen' or discretion.⁷ Along with the shift of state implementation through the concept of welfare state hence known the term good governance with the meaning of 'good governance'⁸ at a glance can be interpreted as good governance, or also can be linked with demands for governmental management that is profesional, accountable and free from corruption, and nepotism.⁹ On the other hand, the definition of governance is the mechanism of management of economic and social resources for development purposes, so that good governance can be interpreted as a mechanism of management of substantial economic and social resources and its application to support stable development with the

⁴ W.F. Prins, *Pengantar Hukum Administrasi Negara*, Yogyakarta, Gadjah Mada University, 1993, p 16

⁵ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, Surabaya, Bina Ilmu, 1987, p 9-11

⁶ Ridwan HR, *Hukum Administrasi Negara*, PT. Raja Grafindo Persada, Jakarta, 2006, p. 241

⁷ *Ibid*

⁸ B. Arief Sidharta states in terms of the nomenclature of meaning is a meaningful bridge to a term (object), and understanding is the content of the mind (*gedachteninhoud*) generated by a particular blessing if an object or a person obtains a name. So from our mind as the meaning of the word, given the appointment to a certain object or person.

⁹ A. Ubaedillah dan Abdul Razak, *Pendidikan Kewarganegaraan (Civic Education); Demokrasi Hak Asasi Manusia dan Masyarakat Madani*, UIN Syarif Hidayatullah Jakarta dan Prenada Media Group, Jakarta, 2010, p. 159;

main condition of efficient and (relatively) equitable.¹⁰ In general good governance can be interpreted as a balance between the state, market and society. Or the clean government is an important part of the development of democracy, human rights and civil society, but the form of how and how it can be achieved still requires a deeper understanding.

In general, the implementation of governance referred to in good governance is related to issues of transparency, public accountability, and so forth. To understand and realize an understanding of good governance is actually quite complicated and complex, not just about transparency and accountability. Conceptually it can be understood that good governance shows a process that positions people to manage their economy. Its institutions and social and political resources are not only used for development, but also to create integration for the welfare of the people. Good governance is also understood as a solid and responsible governance management that is consistent with the principles of democracy and markets, efficient governance, and free and clean governance of corruption, collusion and nepotism (KKN).

In connection with good governance Miftah Thoha, argues as an open, clean, authoritative, transparent and accountable governance. Furthermore, in the opinion of the World Bank in its report on 'Good Governance and Development' in 1992, said that 'good governance' is an efficient public service, a reliable court system, an accountable government to the public.¹¹ Meanwhile, the definition of good governance according to Anggito Abimanyu, cited by Mahfud MD, that 'good governance is "participatory, transparent and accountable, effective and equitable. And it promotes the rule of law" and "good governance will never credible as long as governance conditionality is imposed on a country without consulting civil society".¹²

Philipus M. Hadjon et al., In the administrative court of the Netherlands known the nomenclature of general principles of good governance (ABBB) which are the norms of the unwritten law, which always must be obeyed by the government or in other languages ABBB are unwritten legal principles, which for certain circumstances can be drawn legal rules that can be applied. include:

1. The principle of equality, the principle that the same things should be treated equally, is seen as one of the most fundamental principles of law and rooted in the consciousness of the law, especially regarding the understanding of wisdom is to demonstrate the embodiment of the principle of equal treatment or the principle of equality;
2. The principle of belief, the principle of trust is included in the most basic legal principles of public law and civil law, in administrative law adopted as the principle that the expectations generated should be fulfilled wherever possible. This principle is the juridical basis of promises, statements, rules of discretion and forms of plan (which are not regulated by law);
3. The principle of legal certainty, the principle of which has two aspects, one is more of a material law, the other is formal. Material legal asphyx is closely linked to the principle of trust, the principle of legal certainty precludes governmental bodies from withdrawing a provision or altering it for an interest loss.¹³
4. The principle of precision, this principle implies that a decision must be prepared and taken carefully. Or can be interpreted as a decision must mean, that a decision must be prepared and taken carefully.
5. The principle of reasoning (motivation), is a decision must be supported by the reasons used as the basis.
6. The prohibition of 'detournement de pouvoir' (abuse of authority), is an authority should not be used for purposes other than for a given purpose.

¹⁰ T. Subarsyah Sumadikara, *Kejahatan Politik (Kajian Dalam Perspektif Kejahatan Sempurna*, Kencana Utama, Bandung 2009, p 151 compare with UNDP's definition of governance which defines the use of political and administrative economic authority to manage state affairs at all levels.

¹¹ Miftah Thoha, *Birokrasi Pemerintahan Indonesia di Era Reformasi*, Kencana Prenada Madia Group, Jakarta, 2008, p. 1-2

¹² Nomensen Sinamo, *Hukum Administrasi Negara Suatu Kajian Keritis Tentang Birokrasi Negara*, Jala Permata Aksara, Jakarta, 2010, p 141

¹³ Surachmin, *255 Asas dan Prinsip Hukum Serta Penyelenggaraan Negara*, Edisi Ketiga 2010, Yayasan Gema Yustisia Indonesia, 2010, p. 40; the principle of trust is the principle that states the promise of a public official must be trustworthy or held to be realized or implemented, the principle of trust is also included in the most basic legal principles in public law and civil law.

7. Prohibition of acting arbitrarily.¹⁴

According to UNDP, good governance is a synergy relationship between state, private sector (market), and society based on nine characteristics: participation, rule of law, transparency, responsive attitude, consensus orientation, welfare, effective and efficient, accountability, and strategic vision. Meanwhile, according to Jazim Hamidi, the definition of the Good Governance Principles (AAUPL) or good governance is:

1. AAUPL is a living and developing ethical values within the legal environment of state administration;
2. AAUPL serves as a guide for state administrators in performing their functions related to *beschikking*;
3. Most of AAUPL are still unwritten, abstract and can be unearthed in the practice of life in society;
4. The role of AAUPL has become a written rule and splits up in various positive legal rules.¹⁵

Initially, the existence of AAUPL in Indonesia has not been recognized in formal juridical, so it does not yet have formal legal force. Although AAUPL is not included in the PTUN Law, it does not mean its existence is not acknowledged at all, based on the provisions mentioned above, these principles have the opportunity to be used in administrative court proceedings in Indonesia¹⁶, as it turns out that as in the Netherlands it is still applied in the judicial practice PTUN. Further according to SF. Marbun, the significance of AAUPL is among others:

1. For the administration of the state to be useful as a guide in the conduct of interpretation, the application of the rules of law is sumir or vague or unclear. In addition, AAUPL limits and avoids the possibility of state administration using 'freies ermessen' deviating from the law;
2. For citizens as seekers of justice, AAUPL may be used as the basis of the lawsuit as mentioned in article 53 of Law no. 5 of 1986;
3. For state administrative judges may be used as a tool to test and overturn decisions issued by the state administrative body or officer;
4. In addition AAUPL is also useful for the legislature in drafting a law.¹⁷

Thus it can be drawn an understanding that basically good governance or AAUPL is a clean, orderly, orderly, orderly, flawless and authoritative administration, therefore follow-up to realize good governance and clean governance) this is in line with the substance of Law no. 28 of 1999, Article 3 on the general principles of state administration.¹⁸ By effectively internalizing the general principles of good governance which are used as an unwritten law through the implementation of law and the application of law and the establishment of law.

In order to realize good governance, it is strongly influenced by the attitude and the desire of the holder of power or government agency (*ambt*) or state equipment to realize a good governance concept. Because the duties and authorities of such administrators are theoretically neutral, but in their potential use to be misused (*detournement du pouvoir*), used arbitrarily (*abus de droit*) and even used in opposition to the law (*onrechtmatige overheidsdaad*). the history of Good Governance can not be separated from the history of Corporate Governance, where in the early history of Corporate

¹⁴ Philipus M. Hadjon dkk, *Pengantar Hukum Administrasi Indonesia (intoduction to the Indonesian Administrative Law)*, Gajah Mada University Press, Yogyakarta, 1999,p. 270

¹⁵ *Ibid*, p. 142

¹⁶ The judiciary in Indonesia has the backs of Law no. 14 of 1970 Article 14 Paragraph (1) states "The court does not refuse to examine and adjudicate a matter brought by the pretext that the law is not or less clear, but obligatory to examine and prosecute". Article 27 Paragraph (1) states "judges as law enforcement and justice shall explore, follow, and understand the values of the living law in society".

¹⁷ SF. Marbun, *Dimensi-Dimensi Hukum Administrasi Negara*, UII Press, Yogyakarta, 2001, p. 210-211

¹⁸ Law no. No. 28 of 1999, Article 3 "1) The principle of legal certainty, namely the principle within a state law which prioritizes the basis of legislation, propriety and justice in every policy of the State administration; 2) The orderly principle of the implementation of the State, which is the basis on which orderliness, harmony, and balance in the control of the administration of the State; 3) The principle of public interest, ie, which prioritizes the general welfare in an aspirational, accommodative and selective manner; 4) The principle of openness, the principle that opens itself to the right of the people to obtain correct, honest, non-discriminatory information about the administration of the State with due regard to the protection of the personal, state and secret rights of the State; 5) The principle of proportionality, namely the principle that prioritizes the balance between the rights and obligations of the State administrator; 6) The principle of professionalism, the principle that prioritizes the skills based on the code of ethics and the provisions of applicable laws and regulations; 7) The principle of accountability, the principle that determines that every activity and the end result of the activities of the State administration, must be accountable to the public or the people, so that the highest sovereign of the State in accordance with the provisions of applicable legislation.

Governance began to be discussed by Berle and Menas in 1932, the institutionalization of Corporate Governance was started by Bank of England and London Stock Exchange in 1992 by forming Cadbury Committee), which is responsible for formulating the Corporate governance code that becomes the company's benchmark in many countries.¹⁹

In the context of Good Governance the Dutch state as a country that has a basis of continental European legal system began to conduct an investigation of good governance with the term *algemene beginselen van behorlijk bestuur* through consideration of concerns about the clash between the government and the citizens in the implementation of *freiesermessen* in realizing the common prosperity. In 1946 the Dutch government established a commission headed by 'de Monchy' who was tasked with thinking and examining alternatives about *Verhoogde Rechts Bescherming* or enhancing legal protection for the people from deviant state administration actions.

In 1950 the 'de Monchy' commission in his research succeeded in sparking the concept of *algemene beginselen van behorlijk bestuur* or general principles of good governance. Unfortunately, because the Dutch government was concerned that the appropriate general governance principles (AAUPL) would be used as a measure or basis for testing in assessing government policy, the 'de Monchy' commission was dissolved. However, although the commission was dissolved, the results of the 'de Monchy' commission research were still used in consideration of 'Raadvan staat' court decisions in the administrative case. This means that even though the general principles of decent governance do not easily enter the bureaucracy, it is also used as the norm for government action, except in the jurisdiction.²⁰

In the subsequent development of the emergence of the concept of good governance or decent governance is originated from the interests of donor agencies such as the UN, World Bank, ADB and IMF in providing capital loans to developing countries. In subsequent developments, good governance is defined as a requirement for countries requiring loan financing, so good governance is used as a regulatory standard to achieve sustainable and equitable development, and tends to be oriented towards poverty alleviation within a country. The concept of good governance²¹ is a paradigm not inseparable from the concept of governance which historically was first adapted by practitioners of international development institutions that contained effective performance connotations related to public management and corruption issues.

In Indonesia, the first understanding of Good governance or Good and clean governance is a new discourse in political science vocabulary.²² It appeared in the early 1990s, in general the term good and clean governance has an understanding of all matters relating to actions or behaviors that are directing, controlling, or influencing public affairs.²³ In this context, the notion of Good governance is not limited to the management of government institutions alone, but concerns all institutions both government, private (corporate sectors) and non government (non-governmental organizations) with good corporate terms.²⁴ Even the principles of ideal Good governance can also be applied in the management of social institutions from the simplest to the large scale, such as arisan, pengajian, sports association at neighborhood level (RT), class organizations, up to organizations on the essence of Good governance is to change the pattern of public service from the perspective of elitist

¹⁹Indra Surya dan Ivan Yustiavandana, *Penerapan Good Corporate Governance Mengesampingkan Hak-hak Istimewa demi Kelangsungan Usaha*, diterbitkan atas kerjasama dengan Lembaga Kajian Pasar Modal dan Keuangan (LKPMK) Fakultas Hukum Universitas Indonesia, Kencana, Jakarta, 2008, Hlm. 24; The Cadbury Committee defines corporate governance as a system that ensures and controls the company with a view to achieving a balance between the power of authority required by the company to ensure its continuity and accountability to stakeholders. This relates to the regulatory authority of the owner, Director, shareholder, and so on.

²⁰Ridwan HR, *Op Cit*, p. 244

²¹The principles of decent governance (AAUPL) / good governance include the following: 1) the principle of legal certainty; 2) the principle of equilibrium; 3) the principle of equality in making decisions; 4) the principle of acts carefully; 5) motivational principles for each decision; 6) the principle does not confuse authority; 7) fair play principle; 8) principles of fairness and fairness; 9) the principle of trust and responding to reasonable expectations; 10) negates the consequences of a null decision; 11) the principle of protection or personal way of life; 12) the principle of wisdom; 13) the principle of public interest.

²²T. Subarsyah Sumadikara, *Kejahatan Politik..... Op Cit*, p. 149; Good governance is 'matera' spoken by many people in Indonesia since 1993, says governance represents a new ethic that sounds rational, professional, and democratic.

²³A. Ubaedillah dan Abdul Razak, *Op Cit*, p. 160

²⁴*Ibid*, Hlm. 161; in this case the implementation of good and clean governance, the business world is obliged to have a corporate social responsibility (CSR), ie in the form of corporate social policy that is directly responsible with the improvement of the welfare of the community in which a company operates. This form of social responsibility (CSR) can be realized in community empowerment programs and environmental preservation.

bureaucracy to populist bureaucracy. Populist bureaucracy is a governance that is oriented to serve and side with the interests of society.

Characteristics of Good Service Governance

In the application of the principles of good governance because public officials or adaminsitrasi country has a tendency to abuse power, let alone not strictly limited by laws or regulations without functional supervision. Therefore, problems in a government remain a debate, because of the dynamics that demand changes, both on the side of government and citizens and the possibility of abusing power.

Furthermore, UNDP²⁵ formulates the characteristics of good governance as quoted by the State Administration Institute (LAN), which includes: participation, rule of law, transparency / transparency, responsiveness, consensus orientation, justice / equity, effectiveness and efficiency, accountability / accountability, strategic vision / strategicvision. These characteristics are in line with Robert Hass's opinion.²⁶ On the other hand Wibisono that the characteristics of good governance²⁷ include:

1. Quality management of natural resources;
2. The self-integrity of politicians, law enforcers and the intellectual elite;
3. Pluralism in the political system with effective opposition;
4. Independent media;
5. Independence of the judiciary;
6. Efficient public service processes with high professional standards and upholding integrity;
7. The existence of anti-corruption rules are clear and assertive.

While in Law no. 28 of 1999 Article 3 shall be declared the general principles of state administration consisting of: 1) legal certainty; 2) the orderly principle of state administration; 3) the principle of general disengagement; 4) principles of openness; 5) the principle of proportionality; 6) the principle of professionalism; 7) the principle of accountability. Furthermore, in Presidential Instruction No. Law No. 7 of 1999 on Government Performance Accountability, includes several related targets of good governance including: 1) making accountable government institutions, able to operate efficiently, effectively and responsively to the aspirations of the community and its environment. 2) the realization of transparency in government agencies; 3) realization of community participation in development; 4) the maintenance of public trust in the government.

While the World Bank revealed a number of characteristics of good governance is a strong and participatory civil society, open, predictable policy making, responsible executives, professional bureaucracy and rule of law. On the other hand, the Asian Development Bank itself emphasizes the general consensus that good governance is on the ground by four pillars:

1. Accountability;
2. Transparency;
3. Predictability;
4. Participation

It is clear that the number of components or principles underlying good governance varies greatly from one institution to another, from one expert to another. But at least there are a number of principles that are considered as principles that are considered as the main principles underlying good

²⁵ UNDP on the other hand recommends some governance characteristics, namely political legitimacy, cooperation with civil society institutions, freedom of socialization and appreciation, bureaucratic and financial accountability, efficient public sector management, freedom of information and expression, a just and credible judicial system .

²⁶ Robert Hass, provides an indicator of the characteristics of good governance among others: 1) implementing human rights; 2) the community participates in public decision making; 3) implement the law to protect the public interest; 4) develop a market economy based on responsibility to society; 5) the government's political orientation towards development.

²⁷ Elucidation of Article 53 Paragraph (2) Sub-Paragraph a of Law no. 9 of 2004 on the Administrative Court declared "the meaning of good general principles of government is the principles of legal certainty, orderly administration of the state, openness, proportionality, perofesionalitas, and accountability as referred to in Law no. 28 Year 1999 on the Implementation of a Clean Country and Free from Corruption, Collusion and Nepotism ". See also Law no. Law No. 32/2004 on Regional Government Article 20 Paragraph (1) states that "the administration of the government shall be guided by the general principle of state administration consisting of the principle of legal certainty, the orderly principle of state administration, the principle of public interest, the principle of transparency, the principle of proportionality, the principle of professionalism, accountability, the principle of efficiency and the principle of effectiveness ".

governance that is 1) accountability; 2) transparency; 3) community participation. Miriam Budiardjo, defines accountability as 'the responsibility of the party mandated to govern those mandated', accountability means responsibility by creating control over the distribution of power in various government institutions, thus reducing the accumulation of power while creating checks and balances system). On the other hand Guy Peter mentions three types of accountability: 1) Financial accountability; 2) Administrative accountability; 3) Public policy accountability.²⁸

Transparency is a principle that ensures access or freedom for everyone to obtain information on governance, ie information on policies, processes of manufacture and implementation, and the results achieved. Transparency is the existence of an open policy for supervision while the meaning of information is information about every aspect of government policy that can be reached by the public. Participation is needed in strengthening democracy, improving the quality and effectiveness of public services, in realizing a suitable framework for participation, it is necessary to consider several aspects of it:

1. Participation through constitutional institutions (referendum, voting) and civil society networks (association initiatives);
2. Partisipasi individual in decision-making process, civil society, as service provider;
3. Local culture government;
4. Other factors, such as transparency, open process substance and concentration on competence.

Participation is the principle that everyone has the right to be involved in decision-making in every governance activity. With such characteristics it is expected that the government and the role of the political elite become more democratic, efficient in the use of public resources, effective in carrying out public service functions, more responsive and able to formulate policies, programs and laws that can guarantee human rights and social justice.

On the other hand, citizens or communities are expected to have an awareness of their rights and responsibilities, be more aware, have solidarity with others, be willing to participate actively in public affairs, have the ability to deal with government and other public institutions, and critical and selfless.

EPILOGUE

Legal liability for maladministrasi actions in public services is a personal responsibility, this is by rationalizing that maladministrasi is a violation of the behavioral norms of government officials. There needs to be an extension of the absolute competence of state administrative courts in the case of prosecuting for discretionary and policy violations that have implications for maladministration actions by government officials that may result in administrative losses. His juridical argument that the action is based on within the scope of administrative law.

To achieve good governance, the government must be able to prevent and prevent maladministration actions in the administration of government, and maladministration actions are actions that are contrary to morals and laws. Therefore it takes the appearance, performance and lunge and courage of the Ombudsman in enforcing the law and justice, including helping to uphold the principles of decent governance or good governance. This is in accordance with the demands of reform which mandates the change of life in the state, nation and society that is life based on the implementation of democratic state and government in order to improve prosperity, create justice and legal certainty for all citizens as mentioned in the 1945 Constitution .

²⁸ T. Subarsyah Sumadikara, *Kejahatan Politik* *Op. Cit* p. 152-153

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