

# General Principles of Good Governance (*ALGEMENE BEGINSELEN VAN BEHOORLIJK BESTUUR*) In State Civil Apparatus Law

( *A study of the general principles of good governance in law number 5 of 2014 on State Civil Apparatus.* )

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**Abstract:-** The development of the general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*) in Indonesia was largely influenced by various advances in legal doctrine and jurisprudence. However, unfortunately, in Indonesia the jurisprudence on general principles of good governance was not collected properly. In the book the collection of the Supreme Court of Jurisprudence, for example, no jurisprudence concerning general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*) Violations was found. In the Directory of Decisions of the Supreme Court there is no classification of decisions regarding violations of general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*), so it is not easy for legal practitioners, especially judges, to explore the Jurisprudence on general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*) Violations. Therefore, in various decisions of the judges, general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*) was only placed as additional legal considerations in deciding cases. It is a challenge for legal practitioners or academics to explore and review jurisprudence regarding violations of general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*). Thus, the development of general principles of good governance (*Algemene Beginselen van Behoorlijk Bestuur*) in its function as a tool for judges to test or assess the legitimacy of the actions of government administrators and as a means of control to prevent administrative actions that can cause harm, not as fast as happened in the Netherlands. In order to realize the national objectives, State Civil Apparatus are needed. State Civil Apparatus are assigned the duties to carry out the task of public service of the task of the government and certain development tasks. In order to achieve the national objectives, the government needs professional State Civil Apparatus that are free from political intervention, free from the practice of collusion, corruption and nepotism and capable of acting as the glue of unity and national unity based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, which is in line with the Good Governance Principles (*algemene beginselen van behorlijk bestuur*)

which is conceived as a legal rule contained in Law Number 5 Year 2014 on State Civil Apparatus.

**Keywords:-** State, Civil, Apparatus, Good, Governance.

## I. INTRODUCTION

*Bestuursorganen zijn – aangenomen dat ze bevoegd zijn een bepaald handeling te verrichten – bij hun handelen niet allen gebonden aan wettelijke regels, aan het geschreven recht; daarnaast moeten zij het ongeschreven recht in acht nemen. Het ongeschreven recht, dat wil zeggen vooral de algemene beginselen van behoorlijk bestuur* (H.D. van Wijk/Willem Konijnenbelt, 1977: 69) (The organs of government - which receive the authority to take certain actions - carry out their actions are not only bound by legislation; written law, besides that, the organs of government must pay attention to unwritten law, Good Governance Principles). The purpose of the Indonesian Nation as stipulated in the preamble of the 1945 Constitution is to establish an Indonesian state government that protects the entire nation of Indonesia and the entire blood of Indonesia, to promote the common prosperity, to educate the nation and to maintain the world order based on independence, peace, and social justice.

Protecting the whole Indonesian nation and the whole of Indonesia's blood spill means ensuring every nation of Indonesia to obtain its rights and obligations respectively. Promoting public welfare is the task of the Unitary State of the Republic of Indonesia to advance the standard of living of the people to achieve prosperity for the people as a whole. Educating the life of the nation. Keeping the world order based on the freedom of perpetual peace and social justice is the goal of world peace by involving all elements of the world's states to achieve an order and peace (Angger Sigit and Meylani 2016: 2)

To achieve these national goals based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, national development in Indonesia is implemented. In order for the planning stage until the implementation of the task of national development and governmental tasks can run as expected, the existence of

State Civil Apparatus as executor and control of government projects are needed.

The State of Indonesia is a welfare state that is an evolution from the country of the past which was just a night watchman. The consequence of the welfare state is that the state intervenes in all forms of community activity to ensure the implementation of the welfare of the community. In this case, the role of government is very broad in terms of interfering in community activities.

In order to achieve the national objectives as set forth in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia (UUD 1945), it is necessary that the State Civil Apparatus to be professional, free from intervention, politics, clean of corrupt, collusive and nepotism practices, capable of organizing public services for the community and able to perform the role as a glue of unity and entity of the nation based on Pancasila and the 1945 Constitution. National objectives as stated in the preamble of the 1945 Constitution, to realize the national objectives required Employees of State Civil Apparatus who in duty to carry out public services, and specific development tasks. The task of public service is done by providing services of the goods, services and administrative services provided by civil servants of the state apparatus. The task of government is done for the implementation of general functions of government, including the empowerment of institutional, personnel and management. While for the implementation of certain development tasks, it is carried out through the development of the nation (cultural and political development) and through economic and social development directed to improve the welfare and prosperity of the whole community.

To be able to perform public service tasks of government tasks and specific development tasks, State Civil Apparatus Officers must have a good profession and management based on the merit system or the comparison between the qualifications, competence and performance required by the position with the qualifications, competencies and performance of the candidates in the recruitment of appointments, placements and promotions in the positions held openly and competitively in line with good governance.

## II. RESEARCH METHOD

This research employed a normative juridical approach or library research with a statute approach, specifically using legislation as a starting point for an analysis of general principles of good governance (*algemene beginselen van behoorlijk bestuur*) in state civil apparatus law. To discuss the issues above, descriptive-analytic research was undertaken by describing and reporting in detail, systematically, and comprehensively everything related to state civil apparatus. The research design was implemented using the Normative Juridical approach, i.e. research referring to legal norms set out in the applicable laws and regulations as a normative basis.

## III. DISCUSSION

Government in the broader sense is charged with the maintenance of the peace and security of in a state therefore must have first, military power; second, the means of making laws; thirdly, financial, power or the ability to extract sufficient money from the community to defray the cost of defending the state and of enforcing the law it makes on the state behalf (CF.Strong,1960 : 6) .The shift of *nachwachtersstaat* (night watch country) conception to welfare state conception brought a shift in the role and activity of the government. In *nachwachtersstaat* conception, *staatsonthouding* principle applies, namely the state and government restrictions of social and economic life of society. The government is only a guardian of public order and security while in the welfare state concept, the government is given the obligation to realize *besstuurzorg* (public welfare), for which the government is given the authority to intervene (*statsbemoeienis*) in all fields of community life. This means that the government is required to act actively in the midst of the dynamics of community life.

Since the adoption of the welfare state concept, which places the government responsible to the general welfare of citizens and for the realization of this welfare, the government is empowered to intervene in all fields of community life, which in this intervention is not only based on legislation but in certain circumstances can act without relying on legislation but based on its own initiative through *Freies Ermessen*, it raises concerns among citizens. Due to *Freies Ermessen*, there is an opportunity for conflict of interest between the government and the people in the form of *onrechtmatig overheidsdaad*, *detournement de fouvoir*, and in the form of *willekeur*, which are forms of deviation from governmental actions which resulted in the deprivation of the rights of the citizens.

In the history of the emergence of Good Governance (*Algemene Beginselen van Behoorlijk Bestuur*) originated from a sense of fear of some people against freedom of action (*Freies Ermessen*) from the state administration in carrying out its duties to realize Welfare State, among authors of state administration law there are different translation of *Algemene beginselen* and *behoorlijk*. There are some who translate *beginselen* word with the basic foundations and principles while the word *behoorlijk* is translated with the best that is worthy and proper. With this translation, *algemene beginselen Van behoorlijk bestuur* becomes the principles or the basics or general principles of good governance. With reference to this word of origin of *behoorlijk*, all of which indicate adjectives and meaning that it is an agreed, that is *bestuur*, so the translation of *algemene beginselen van behoorlijk bestuur* becomes general principles of good governance and is more appropriate in terms of language.

No.	The principles	Explanation
1.	Principle of Legal Certainty	Principle of Legal Certainty, namely the principle in a state of law that prioritizes the basis of legislation, propriety and justice in every policy of the state administrator
2.	Principle of Orderly organization of State	Principle of Orderly Organization of State, namely the principle that becomes the basis of order, harmony and balance in the control of state administrators.
3.	Principles of Public Interest	Principles of Public Interest, namely principles that prioritize public welfare in an aspirational, accommodative, and selective manner.
4.	Principle of Openness	Principle of Openness, namely the principle that opens itself to the right of the community to obtain information that is true, honest and non-discriminatory about the administration of the state while paying attention to the protection of personal rights, groups and state secrets.
5.	Principle of Proportionality	Principles of Professionalism, principles that prioritize expertise based on a code of ethics and the provisions of applicable laws and regulations.
6.	Principles of Professionalism	Principles of Professionalism, principles that prioritize expertise based on a code of ethics and the provisions of applicable laws and regulations.
7.	Accountability Principle	Accountability Principle, which is the principle that determines that every activity and the final outcome of the activities of state administrators must be accountable to the public or the people as the highest holder of the state in accordance with the prevailing laws and regulations.

Table 1:- In Article 3 of Law number 28 of 1999, several general principles of state administration are stated

The principles listed in Law number. 28 of 1999 were originally intended for state administrators as a whole, different from the principles in the general principles of good governance which from the beginning were only aimed at the government in a narrow sense, in accordance with the term "Bestuur" in "Algemene beginselen van behoorlijk bestuur, not regering or overheid, which means government in a broad sense. Along with the passage of time, the principles in Law number. 28 of 1999 were recognized and applied in government administrators in the judicial process at PTUN, namely after the existence of Law number. 9 of 2004 concerning Amendments to Law number.5 of 1986 concerning Administrative Court. Based on Article 53 paragraph (2) point a is mentioned; "The administrative decisions of the State sued are contrary to the general principles of good governance which include legal certainty, orderly state administration, openness, proportionality, professionalism, and accountability, as referred to in Law number 28 of 1999 concerning the Implementation of a Clean Country and Free of Corruption, Collusion and Nepotism ". Besides that, in Law number 23 of 2014 concerning Regional Government, the general principles of good governance are used as a principle in the implementation of regional government, as stated in Article paragraph (1) which reads: "The administration of the government is guided by the

general principles of the State administration consists of: the principle of public interest, an orderly principle of state administration, principle of interest, principle of proportionality, principle of professionalism, principle of accountability, principle of efficiency, principle of effectiveness ". Based on the formulation of this article it appears that there are two additional principles in it, namely: the principle of efficiency and the principle of effectiveness. It's just that these two additional principles have no explanation in the law, so that it is not known or not what it means.

What is meant by good general principles of good governance (algemene beginselen van behorlijk bestuur) is including legal certainty, orderly state administration, openness, proportionality, professionalism, and accountability. In the law number 5 of 2014 on the State civil apparatus there are several articles regulating the State Civil Apparatus such as professional, proportionality, clean of corruption, collusion and nepotism practices can carry out public service in Indonesia. The provision of article 2 of the Act number 5 of 2014 on the State Civil Apparatus formulates the principle of organizing the State Civil Apparatus as follows:

➤ Article 2

a. Legal certainty	h. Effective and efficient
b. Professionalism	i. Openness
c. Proportionality	j. Non-discrimination
d. Integration	k. Unity
e. Delegation	l. Justice and equality
f. Neutrality	m. Welfare
g. Accountability	

Table 2:- Implementation of policy and management of State Civil Apparatus based on the principle

In the explanation of Law number 5 of 2014 on State Civil Apparatus article 2 letter:

- a. The meaning of "principle of legal certainty" is that in every implementation of policy and management, State Civil Apparatus prioritizing the basis of legislation, propriety and justice.
- b. The meaning of "professional principle" is to prioritize the expertise based on the code of ethics and the provisions of laws and regulations.
- c. The meaning of "principle of proportionality" is to give priority to equilibrium between the rights and obligations of employees of the State Civil Apparatus.
- d. The meaning of "the principle integrity" is the management of State Civil Servant Officers based on a nationally integrated management system.
- e. The meaning of "delegation principle" is that some of the authority of State Civil State Administration can be delegated to the ministry, non-ministerial government institution, and local government.
- f. The meaning of "principle of neutrality" is that every State Civil Service Officer does not take sides from any form of influence and does not favor any interest.
- g. The meaning of "the principle of accountability" is that any activities and outcomes of the activities of the State Civil Service Officer must be accountable to the public in accordance with the provisions of legislation.
- h. The meaning of "effective and efficient principle" is that in carrying out the management of state civil apparatus in accordance with the target or objectives in a timely manner in accordance with the established plan.
- i. The meaning of "principle of transparency" is that in the management of State Civil Apparatus is open to the public.
- j. The meaning of "non-discriminative principle" is that in the management of civil state apparatus, KASN does not distinguish the treatment of gender, tribe, race religion, and class.
- k. The meaning of "justice and equality" is that the administration of the State Civil Apparatus must reflect a

sense of justice and equality in order to gain an opportunity for the function and role of the State Civil Apparatus employees.

- l. The meaning of "principle of unity and entity" is that civil servants as the glue of the Unitary State of the Republic of Indonesia.
- m. The meaning of "welfare principle" is that the implementation of the State Civil Apparatus is directed to realize the improvement of the quality of life of the Civil Servants of State Apparatus.

Articles 11 and 12 of Law No. 5 of 2014 on the State Civil Apparatus regulate the duties and roles of the State Civil Servants in public service professionally and freely from practice of Collusion, Corruption and Nepotism.

➤ Article 11

Civil Servants of State Apparatus are on duty to:

- a. Carry out public policies made by officers of personnel development in accordance with the provisions of legislation.
- b. Provide a professional and quality public service; and
- c. Strengthen the unity and entity of the unitary state of the Indonesian Republic.

➤ Article 12

The State Civil Servant officer serves as an executive planner and supervisor of the implementation of general governmental tasks and national development through the implementation of professional public policies and services free from political and clean intervention from politics, corruption, collusion and nepotism.

Whereas from the formulation of articles 11 and 12 of Law No. 5 of 2014 it is well known that a Good Governance will be born from a clean government free from practice of corruption, collusion and nepotism. How to make it happen is presumably back to the state's official and/or civilian apparatus which is in charge of the tasks and responsibilities for carrying out public services of government duties and development tasks.

Thus, it is necessary to build a professional State Civil Apparatus free from clean political intervention from the practice of corruption, collusion and nepotism and able to organize public services for the community and able to perform the role as an adhesive element of unity and national unity based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

In fact, this general principle of good governance, although it is a principle but not all of it, is a general and abstract generalization, and in some cases emerges as a concrete legal rule or set forth in the articles of law and has certain sanctions (Ridwan HR 2016: 237)



No.	General principles of good governance	Law number 28 of 1999	Law number 23 of 2014	Law number 5 of 2014
1.	Principle of Legal Certainty	√	√	√
2.	Principles of Public Interest	√	√	√
3.	Accountability Principle	√	√	√
4.	Principle of Proportionality	√	√	√
5.	Principle of Professionalism	√	√	√
6.	Principle of Efficiency		√	√
7.	Principle of Effectiveness		√	√
8.	Principle of Justice		√	√
9.	Integrity Principle			√
10.	Delegation Principle			√
11.	Principle of Neutrality			√
12.	Principle of Unity			√
13.	Welfare Principle			√

Table 3:- The scope of the general principle of good governance in legislation

The general principle of good governance according to Kuncoro purbopranoto (1975: 29) is as follows:

- a. The principle of legal certainty
- b. The principle of balance
- c. The principle of equality in making decisions
- d. The principle of acting carefully
- e. The principle of motivation for every decision
- f. The principle of does not mix authorities
- g. The principle of decent game
- h. The principle of justice and fairness
- i. The principles of trust and responding to reasonable rewards
- j. The Principle negates the consequences of a null decision
- k. The principle of protection of personal views and ways of life
- l. The principle of wisdom
- m. The principles of public interest

To realize good governance, it is strongly influenced by the desire of power holders or governmental institutions to realize a good governmental idea by raising the general principles of good governance in the form of concrete legal rules.

#### IV. CONCLUSION

Based on the description in the discussion then the conclusion put forward is:

- The meaning of the principle of good general governance (algemene beginselen van behoorlijk bestuur) is including the principle of legal certainty of the administration of the state, openness, proportionality, professionalism and accountability.
- The State of Indonesia is a welfare state which is an evolution of the ancient state which was only as night watchman and the consequences of the welfare state is the state intervened in all forms of community activity

- In order to achieve the national objectives, it is required that the professional Civil State Apparatus free from free political intervention from the practice of collusion, corruption and nepotism, able to organize public services and also serve as a glue of unity and entity of the nation based on Pancasila and the 1945 Constitution.

#### V. ADVICE

- The implementation of State Civil Apparatus management should be based on the comparison between the competencies and qualifications required by the positions with the competencies and qualifications of the candidates in the recruitment, appointment, placement and promotion of the position, in line with good governance.
- The State Civil Apparatus should be professional, independent, clean, proportionate and accountable in line with good governance principles that are established to create good governance.

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