



THE NEW PHENOMENA OF PUBLIC ADMINISTRATION IN ASIAN COUNTRIES

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For the 3rd International Conference
on Public Organization

Editor:

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REALIZING PUBLIC POLICY BASED ON HUMAN RIGHTS IN THE ERA OF AUTONOMY

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Abstract

The paradigm of public service policies in the era of autonomy under the Law 32 of 2004 on Regional Government is the framework to create good governance. Public services included the public good and public regulation issue. Public Good, related to the provision of infrastructure, goods and services, including core public services as the main tasks and functions of local government. Public regulation is related to the establishment of rules and policies within the framework of creating peace and order.

The principle of autonomy is related to the duties, functions, responsibilities and obligations in the implementation of autonomy. Local Government must be accountable to the people's rights. The responsibilities should be reflected and evidenced by improved services and better public welfare based on the principles of public service, the development of democracy, justice, human rights and equality for the region. The problem studied is how to realize the policy-based public service of human rights in the era of autonomy? The research objective was to examine the paradigm of government rule and good governance in determining public service policies based the human rights. The development of public services by local governments is based on the paradigm of government (legal approach). In formulating, preparing and setting policy is always based on the approach procedure and output, and in the process, resting or shelter or regulatory approach based on legality, and also involving stakeholders.

Increasing the quality of public services is strongly influenced by the concern and commitment of the government officials. The good quality of public services will affect an increasing human rights's protection and fulfillment and public confidence in local government.

Keyword:

Good Government, Public Services, Human Rights.

A. INTRODUCTION

The enactment of Law No. 32 of 2004 replaces Law No. 22 tahun 1999, cause paradigm changes in local government, initially oriented more centralized to decentralized and apply a broad autonomy. One important aspect of regional autonomy and decentralization is increasing the

public services in order to realize the welfare of the community, and enhance the competitiveness of regions.

Based on the experience of governance in many countries, one of the important factors that affect the success of regional autonomy is the capacity or ability of the region in various relevant fields. Thus, in the framework of the provision of services to the community and increase the competitiveness of the region required the ability or capacity of local governments adequate.

Global influences on civilizations thoughts, attitudes, governance, democracy, rule of law, law enforcement and other underlying notions of good governance, in which the interaction is remarkable in many areas across the country.

The development of ideas about the principles of good governance change perspective and respect the protection of human rights; healthy market economy; democracy, rule of law, are environmentally conscious and others, its the form of government based on the synergy between the public sector, the community and private, its held accountable and lead to the civil society.

The important aspect is the ability the region to finance and development funding in the region. In this globalization era balancing local financial revenue to its attention particularly on taxation and other forms of self-financing for the business community il line with the capacity building of Community Resources.

The result of a change to any decisions, government policies, organizations, enterprises and others, should be based on law. Legal certainty and a sense of justice against any public policy should be pursued. Changes in the paradigme of public officials should be directed to the better service trough the good service, transparent and ccountability with the application of good information.

B. THE PROBLEM STATEMENT

Based on the explanation above, the issues to be examined in this study, the problem studied is how to realize the policy-based public service of human rights in the era of autonomy?

C. THE RESEARCH METHOD

This is a doctrinal research, the aims of the research is seeking the law in the text of legislation. This study did not use the data to answer the problems that were examined, but with the use of the material of law, in the form of primary legal materials, legal materials and secondary and tertiary legal materials, to find the truth in the normative view. This research is normative, which start with the analysis of the legislation containing civil service norms.

The approach used in the study of law is the approach statute. Its did by reviewing all laws and regulations which relevant to the legal issues. The result of the study is an argument to solve the issue. Statute approach taken to investigate the laws that aim to protect and fulfill human rights.

Technique to collect the legal materials carried by a review of the existing rules, using the study of positive law. The review carried out by the literature search juridical documents relevant to government policy in the field of public service. Legal materials arranged in a systematic and logical. Legal materials were analyzed by qualitative juridical analysis, analysis of existing legal materials using normative juridical approach.

1. THE RESULT AND ANALYSIS

The Paradigm of Government Rule And Good Governance in Determining Public Service Policies Based The Human Rights.

In the era before the nineties strategy and policy development and the social economy is still dominated by the government through the state planning. Strategies and policies to promote economic and social are developed by the government. Then, the condition progresses to the development efforts through the community, especially the role of the private sector. The shift occurs, the use of economic and market mechanisms as a basis for policy making by the government in the other hand the making (transactions) submitted to the economy itself.

This development also coincided with the development of the policy import substitution toward export to world markets in an attempt to take advantage of external economies. The construction of foreign relations not only by government but also by the private sector and civil society organizations. This fact also encourages the development of governance on the basis of good governance.

The shift towards good governance requires some sort of re-inventing government in which the government serves as a director, no longer as executor¹.

The development of the state and social life principles has implications for the award:

Human rights, with implications for the protection of human rights.

The market economy, with implications for a healthy market, there is the use of market mechanisms in the management and economic transactions, arguing that in a democracy there is need for intervention by social justice and equity.

Democracy, with implications for the policy is determined more by the people through a system of representation in a free and fair election.

Law enforcement, the implications of the rule of law on the basis of justice.

Environmentally conscious, with implications for policies that pay more attention to environmental sustainability.

Good Governance, with implications for the implementation of governance based on the synergy and coordination between the public and private sector accountable².

All of this leads to the formation of civil society, in which the development of good governance is a part. The future is the development of an advanced civilization, including in Asia, where the clash is no longer prominent, but how civilizations can interact with one another, to walk in harmony, although it may still be a gradual shift.

In the field of public service into the mouth of all the duties and functions of public service, the change also resulted in a paradigm shift in the process. For example, in diagrammatic form can be illustrated in the table below.

Table 1.
A Paradigm Shift In The Process Of Public Service³

No.	Basic Aspect Theoretical	Rule by old Administration system (Political Theory)	Rule by New Administrative System (Economic Theory)	The latest version of the Public Service (Democracy Theory)
1	The concept of public interest	The public interest is something that Politically defined and listed in the rules	Public interest through the aggregation of individual interests	The public interest is the result of dialogue various values
2	Accountability Bureaucracy	Clients (Clients) and Voters	Customer	Citizens
3	Role of Government	Rowing	Steering	Negotiating and elaborating the interests of citizens and various groups community
4	Accountability	According to the administrative	The will of the market is the result of customer desires	Multi aspect: Accountable to the law, the value of community, political norms, professional standards, interests of citizens

Source: Agus Dwiyanto, *Mewujudkan Good Governance melalui Pelayanan Publik*, 2006

From the table above can be explained that the center of the public service is the need of the community. Public services organized to meet the public interest, starting from planning, implementation, to accountability. The concept of public interest here interpreted as the result of the dialogue of various values, meaning that the plurality of values in the society considered. Public interest conceptualized by using theoretical analysis and focused on the conscious of plurality and global context. The values that live in the tradition of the community are the good things embraced by members of the public. The value in a global perspective, not a naive commitment to universalism, but rather emphasizes issues of interdependence, cultural relativism and ethnic⁴.

The role of government is to negotiate and elaborate the various interests of citizens and community groups. The policy adopted by the government (legislation), must be aligned with what is considered right or wrong by society. The government must ensure that the interests conceived of these values, embodied in the policy containing equality for every citizen. Rousseau states that equality before the law (and the government) is very important, and Immanuel Kant build the thought that the only rules that apply are normal in humanitarian situations deemed equivalent may apply⁵. Multi aspect of any government accountability: Accountable to the law, community value, political norms, professional standards, the interests of citizens.

The paradigm of good governance is relevant and animate public service policies in the regional autonomy era, which aimed to improve the management performance of government, change the mental attitude, the behavior of officers and service providers to build awareness and commitment of local leaders and officials to improve and enhance the quality of public services.

The Development of Public Services by Local Governments, Is Based on the Paradigm of Government (Legal Approach)

In such case, an important aspect of autonomy is logical that the ability of financing and funding areas need to be given enough power. Likewise, forms of self-financing for the business community in line with capacity building is required level, regional / local.

In the legal aspect overview that all the result of changes to any decisions, government policies, organizations, enterprises must by law (legal rules). Legal certainty and a sense of justice against any public policy should be pursued. One of the means to the realization of good governance characterized by developed a good legal institution.

In Indonesia, the change has been anticipated with a variety of legislation, especially the changes in the management of public services.

Regional government basically has two roles: as an institution and as a service provider of political institutions, the implementation of the two roles should be integrated. In providing public services, Local Government must know and understand the needs and aspirations of the electorate.

Provision of services adjusted the public policy which established by the local government or the central government, meaning that the provision of services should be based on the rule and regulations set by the Region or the Government.

In the context of Indonesia, setting a public service provided for in the 1945 Constitution of the Indonesia Republic, the implementation is set in a range of sectoral legislations, such as by Law No. 32 of 2004.

Public service policies, the current set up and scattered in various laws and regulations include:

- a. Undang-Undang Dasar Negara Republik Indonesia 1945.
- b. Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah.
- c. Undang-Undang Nomor 25 Tahun 2009 tentang Pelayanan Publik.
- d. Undang-Undang Nomor 28 Tahun 1999 tentang Penyelenggaraan Negara yang Bersih dan Bebas dari Korupsi, Kolusi dan Nepotisme;
- e. Some legislation and guidelines issued by the Government (the period 1993-1998) and policy-related public services, among others;
 1. Instruksi Presiden Nomor 1 Tahun 1995 tentang Perbaikan dan Peningkatan Mutu Pelayanan Aparatur Pemerintah kepada Masyarakat;
 2. Peraturan Menteri Dalam Negeri Nomor 7 Tahun 1993 Tentang Izin Mendirikan Bangunan dan Izin Undang-undang Gangguan Bagi Perusahaan Industri;
 3. Instruksi Menteri Dalam Negeri Nomor 32 Tahun 1994 tentang Pelaksanaan Pemberian Izin Mendirikan Bangunan dan Izin Undang-Undang Gangguan Bagi Perusahaan Industri;
 4. Instruksi Menteri Dalam Negeri Nomor 20 Tahun 1996 tentang Penyusunan Buku Petunjuk Pelayanan Perizinan Terpadu;
 5. Instruksi Menteri Dalam Negeri Nomor 25 Tahun 1998 tentang Pelayanan Satu Atap di Daerah;
 6. Keputusan Menteri Negara Pemberdayaan Apartur Negara Nomor 81 Tahun 1993 tentang Pedoman Tatalaksana Pelayanan Umum;
 7. Surat Edaran Menteri Dalam Negeri Nomor 503/2931/PUOD perihal Petunjuk Teknis Pelaksanaan Instruksi Menteri Dalam Negeri Nomor 20 Tahun 1996 tentang Penyusunan Buku Petunjuk Pelayanan Perizinan Terpadu;
 8. Surat Edaran Menteri Dalam Negeri Nomor 503/125/PUOD perihal Pembentukan Unit Pelayanan Terpadu Perizinan di Daerah.

Taking into account the legislation and policies of the government, indicating the direction of public service policy is to achieve good governance. Hopefully with good service performance management, can improve and enhance the service quality of service. Besides, it can improve the image of poor public services, strengthening regional competitiveness, promote investment

and development of the regional economy, as well as create the efficiencies and effectiveness of public service.

Realizing The Policy-Based Public Service of Human Rights in The Era of Autonomy.

Regulating of the citizens rights in the 1945 Constitution, shows the level of importance that the issue of human rights is a very important and integral element of a constitutional state. The meaning of human rights is considered to have fundamental significance for the 1945 constitution is no less important to the state philosophy, because human rights are more practical and realistic constitutional concern focused on the values that are prone protection for the weak and the need to hold a sufficient guarantee for prevent abuse of power. The fact of a relationship between the right to freedom of citizens and the authority of the government apparatus, based on a principle or paradigm always taught constitutional law in the life of the country, namely the principle of legality: *nullum nulla poena sine praevia delictum poenali lege*. The paradigm of the laws as a guarantor of freedom and rights that is by limiting firmly and clearly that is where the power of authority, is that in the concept of moral and meta juridical called constitutionalism 6.

In the subsequent enforcement of human rights, Article 28J of the 1945 Constitution states as binding on the parties responsible for the protection, promotion, enforcement and fulfillment of human rights. It can be explained that the state was established as a place for the welfare of his people, so it should facilitate the people to be able to honor and respect for human rights. Every individual has rights that are non-derogable rights and derogable rights, which should be guaranteed by the state realization. In the context of human rights, citizens as rights holders, while the State as a stakeholder obligations. The only obligation that must be carried out by the citizens is the obligation to respect rights of citizens to another. Obligations of the state in this case there are three, namely the obligation to respect, to fulfill and to promote rights. If the state does not perform its obligations, then the state is deemed to have committed human rights violations either in the form by omission or by commission. Human rights violations by omission is an act of omission to state a violation of human rights of its citizens, while the human rights violations by commission is repressive measures taken by the state that gave rise to human rights violations of citizens. Essence of human rights is the inherent right of individual human beings and can be prosecuted fulfillment (the claim) to the state, and if the state can't meet these demands, the state should be held accountable by law, the judicial accountability.

One change in the management of local government pursuant to Act 32 of 2004 and Act 33 of 2004 is the area required to improve the quality of life in the region in a fair, transparent, and accountable quality, conducted by local capacities (Article 22 of Law Act 32 of 2004 and Article 67 paragraph (5) of Law 33 of 2004). One measure of the performance of local governments to see this is to look at the quality of public services, because the mouth of all the activities and programs of the local government is reflected in how well the quality of service rendered to the community and involvement. The ability to increase good public services based on the principles of good governance to be one measure of the performance of local government.

Public service is an activity or series of activities in order to meet the needs of the service in accordance with the laws for all citizens and residents of goods, services, and/or administrative services provided by public service providers. Meeting of service needs to be based on the fulfillment of the rights of every citizen who has established the 1945 Constitution, among others:

Table 2.
Human Rights Policies Relating to Public Service in 1945 Constitution

Article ...	The rights set
17 (2)	The right to decent work and livelihood
28B (1)	The right to have offspring
28B (2)	The rights of the Child
28C (1)	Fulfillment of basic needs and education
28C (2)	The right to promote themselves collectively
28D (1)	The right to recognition, security, protection, and fair legal certainty and equal treatment before the law.
28D (2)	The right to work and receive remuneration and equal treatment in employment
28D (3)	The equal opportunity right in government
28H (1)	Rights physically and spiritually prosperous life, living, and getting a good environment and healthy
28H (1)	Right to health care
28H (2)	The right to have the convenience and special treatment to obtain the same opportunities and benefits
28H (3)	Right to social security
28H (4)	Protection of rights have
28I (2)	The right to not be treated discriminatory
34 (1)	The right to receive care for the poor and children
34 (2)	Right to social security
34 (3)	The right to health care and public service facilities

Provisions of the articles of the 1945 Constitution, more technically described in Law No. 25 of 2009 on Public Service. Article 20 of Law No. 25 of 2009 states that the organizers (government) is obliged to prepare and establish standards of care with respect to the ability of the organizers, community needs, and environmental conditions. The definition of service standards are the benchmarks used to guide service delivery and service quality as the assessment reference obligation and the organizers promise to the community in order to provide a quality service, fast, easy, affordable, and scalable.

To fit the needs of the community, in preparing and setting service standards shall involve the public and stakeholders. Community participation and stakeholders in setting minimum standards intended to observe the principle of non-discrimination, directly related to the type of service, competence and prioritize deliberation, and with regard to diversity.

While the scope of services specified in the community needs to get service, can basically be divided into two terms:

- a. Basic needs such as health, education, water, environment, security, transportation infrastructure, and so on, and
- b. The need for the development of leading sectors (core competence) communities such as agriculture, plantations, trade, industry and so on, in accordance with the potential and character of the area respectively.

Policy-making community service is a process that integrates the norms set by the state and the values embraced by the community. The conception of the ideal of community service is the mainchild of the government and the public in equal discussion. In order for this to be the basis of real and concrete terms, it is necessary to set minimum service standards, which are intended as a guide in establishing the concept of public service considering the conditions, diversity and capabilities of each region. Minimum Service Standard should be tailored to the authority and locality. Based on the measures set by the government, in the implementation

of Minimum Service Standards in the area, should ensure people's access to basic services from the government.

The government has set the Government Regulation Number 65 Year 2005 on Guidelines for the Preparation and Implementation of Minimum Service Standards, which set the principles of drafting Minimum Service Standards, which is simple, concrete, easy to measure, open, affordable and reliable, and has a time limit achievement.

Conception of Minimum Service Standards provide a framework or reference for the area to have standards of basic services that must be implemented, so the area has a clear benchmark programs to be compiled and should be achieved, certainty and allocation of funding source, stages of implementation and progress. On the other hand the minimum service standards to bring transparency, accountability, and provide certainty for the fulfillment of the needs and hopes of getting basic services.

E. CONCLUSION

Increasing the quality of public services is strongly influenced by the concern and commitment of the government officials. The good quality of public services will affect an increasing human rights's protection and fulfillment and public confidence in local government.

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Endnotes

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