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Legal Values for Improved Good Governance through National Legal Reform

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Abstract
The core principles of efficient governance form the fundamental basis guiding governmental endeavors aimed at meeting societal requirements. These endeavors are outlined following Law No. 30 of 2014 on Government Administration. This piece explores the crucial aspect of formulating legal frameworks that align with the overarching fundamental of good governance, thus propelling national legal reforms to achieve effective governance. By employing a normative legal research approach that encompasses statutory regulations and conceptual analyses, this research emphasizes the importance of incorporating adaptable legal principles into Law Number 30 of 2014 to comprehensively address the varied needs of the population in governmental services. Moreover, enhancing the foundational principles of good governance with adaptable legal principles underscores the country's dedication to legal revitalization, necessitating governmental improvements in meeting community needs through service delivery.

I. Introduction

As society advances and issues become more complex, and the evolution of government becomes unavoidable. Yet, this progress also brings about increasingly intricate administrative challenges over time, adding to the burden on the state. The era of globalization further exacerbates this complexity, significantly intensifying competition among nations. Globalization introduces obstacles that must be resolved to protect societal interests while capitalizing on opportunities for progress. However, it's essential to recognize that addressing these challenges cannot rest solely on the government's shoulders.

The idea of "Good Governance" emerged in the mid-1990s as a new viewpoint on the administration of states. Numerous scholars within the field of state organization have embraced the term "governance" to replace "state organization." They compare the structures of states in the 20th century with the concept of "governance," describing it as a comprehensive method for decision-making and execution. As a result, Good

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Governance can be interpreted as an inclusive strategy for efficiently handling governmental matters.[1]

Good Governance can be achieved through synergy among governmental entities, the private sector, and the public. This is reflected in:[2]

a. Participation: Each citizen possesses an active role in governance, either directly or via elected representatives.
b. Rule of Law: A legal system that is fair and implemented without discrimination, especially to maintain mutual freedom.
c. Transparency: Information can be accessed and checked by individuals who need it.
d. Responsiveness: The organization and methods must be responsive to the needs of each stakeholder.
e. Consensus Orientation: Seeks to reach an agreement that benefits all parties.
f. Equality: All citizens have the same opportunities to improve their quality of life.
g. Effectiveness and Efficiency: Utilize resources effectively and efficiently.

The Fundamental Ideals of Good Governance can be maintained in accordance with public or governmental institutions through careful consideration of the authority they possess. This authority, derived from relevant legal provisions, is crucial. However, within the context of a legal state like Indonesia, governmental actions are not solely restricted to the powers outlined by law; they also encompass a realm of discretionary action known as free authority *(freies ermessen).* This concept signifies the ability of a public institution to act independently while still adhering to the principles of good governance. It emphasizes that governmental actions must be grounded in legal frameworks, but in situations where no explicit legal guidelines exist, public institutions or the government cannot delay or refuse to promptly provide assistance required by the community. Thus, free authority (freies ermessen) is granted to public or governmental entities to navigate situations where no legal provisions dictate the course of action to be taken. [3]

Article 9 of the Government Administration Law of the Republic of Indonesia No. 30 of 2014 highlights several significant points, including:

1. All decisions and actions must adhere to both statutory regulations and the Fundamental Ideals of Good Government (AUPB).
2. The statutory regulations encompass:
   a. Legal provisions serving as the foundation of authority.
   b. Legal regulations serving as the primary reference for decision-making and implementation.

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[1] Remaja, I.N.G. (2017). *Hukum Administrasi Negara*. Singaraja: Fakultas Hukum Universitas Panji Sakti, p. 19

[2] *Ibid,* p. 20

[3] (Bisri, I. (2004). Sistem Hukum Indonesia. Jakarta: PT. Raja Grafindo Persada, p. 78-79(Bisri, I. (2004). Sistem Hukum Indonesia. Jakarta: PT. Raja Grafindo Persada, p. 78-79(Bisri, I. (2004). Sistem Hukum Indonesia. Jakarta: PT. Raja Grafindo Persada, p. 78-79(Bisri, I. (2004). Sistem Hukum Indonesia. Jakarta: PT. Raja Grafindo Persada, p. 78-79(Bisri, I. (2004). Sistem Hukum Indonesia. Jakarta: PT. Raja Grafindo Persada, p. 78-79(Bisri, I. (2004). Sistem Hukum Indonesia. Jakarta: PT. Raja Grafindo Persada, p. 78-79(Bisri, I. (2004). Sistem Hukum Indonesia. Jakarta: PT. Raja Grafindo Persada, p. 78-79 9

3. Government entities or officials responsible for issuing or executing decisions and actions are obligated to incorporate or refer to the legal provisions that establish authority and guide decision-making and implementation.
4. In cases where statutory regulations, as mentioned in point 2(b), exhibit legal gaps, authorized government entities or officials retain the prerogative to make decisions and carry out actions, provided they serve the public interest and align with the Fundamental Ideals of Good Government.

The mentioned articles provide guidance for public or governmental institutions, highlighting the importance of using statutory regulations serving as the foundation for decision-making and executing actions. However, in situations where these regulations are lacking or unclear, the government has more leeway in decision-making or action-taking, with a priority on benefiting society. This flexibility is governed by the principle of freedom of action outlined in the Fundamental Ideals of Good Government (AUPB), as explained in Article 9, paragraph (4) of Law No.30 of 2014 regarding Government Administration.[4]

The Fundamental Ideals of good governance, referred to as AUPB, do not arise from traditional establishments like laws or regulations; instead, they emerge from the practices of the state and governmental organizations. A strong AUPB can be envisioned as a comprehensive framework that supports and directs governmental actions. Thus, the aim of implementing AUPB is to promote effective governance that prioritizes societal interests, fairness, and excellence, while also working to prevent oppression, norm violations, arbitrary actions, and the misuse of power by public authorities or the government.[5]Footnote?

Reflecting on Jazim Hamidi's perspective on AUPB, it can be summarized as follows: Firstly, AUPB is regarded as a moral attribute that develops within the framework of a country's legal system. It functions as a foundational support for the government in fulfilling its obligations and as a mechanism for evaluating the performance of public authorities or designated governmental entities tasked with supervising and executing governmental functions. Moreover, AUPB serves as a basis for documenting grievances that may arise from actions harmful to specific parties. Secondly, while many AUPB remain unwritten and dynamic norms inherent in people's daily lives, certain standards have been formalized into written laws and integrated into various legal regulations. [6]

Prince Le Roy outlines several key principles essential to the development of AUPB. These principles include legal certainty, balance, cautiousness, the rationale behind government decisions, respect for authority, equality in decision-making, fair play, justice or reasonableness, responsiveness to legitimate expectations, addressing the impacts of illegal decisions, and protecting individual philosophical views on life. In his

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[4] Remaja, I.N.G. (2017). Hukum Administrasi Negara...............*Op. Cit.* p. 21

[5] Widjiastuti, A. (2017). Peran AAUPB Dalam Mewujudkan Penyelenggaraan Pemerintahan Yang Bersih Dan Bebas Dari KKN, Perspektif, 22(2), 115-129. DOI: https://doi.org/10.30742/perspektif.v22i2.614

[6] Widjiastuti, A. (2017). *Peran AAUPB Dalam Mewujudkan Penyelenggaraan Pemerintahan Yang Bersih Dan Bebas Dari KKN*. Jurnal Perspektif,22(2), 115-129. DOI: https://doi.org/10.30742/perspektif.v22i2.614, p. 116

research, Koentjoro introduces two additional principles: the policy principle and the principle of serving public interests.[7]

Repressive law enforcement can severely undermine legal authority and erode public confidence in the legal system as a set of binding norms. Additionally, when the government does not fully adhere to AUPB principles, achieving the intended legal goals becomes more challenging. Confusion frequently occurs between the roles of government and state implementation, leading to actions that do not properly align with the fundamental principles of AUPB, which should ideally guide all actions.

It is important to acknowledge that although AUPB derives from various statutory regulations, questions about their consistency and objectives remain. Hence, this paper aims to elucidate the concept of Responsive Law put forward by Philippe Nonet and Philip Selznick. This concept emphasizes that law should prioritize principles that enable responsive application through various administrative mechanisms, thereby providing the best possible legal services to the community.

In a previous study, Ridwan examined the Fundamental Ideals of Good Governance in his article "Advancing the Progressive Legal Characteristics of Good Governance Principles to Address and Achieve Substantive Justice." The significant difference lies in the methodology used by the earlier author, who applies the concept of Progressive Law to analyze governmental actions, referred to as "Rechtsvinding." This approach demands actions that embody substantial integrity according to the Progressive Law principles advocated by Satjipto Rahardjo. In contrast, this article focuses on integrating elements of Responsive Law with the Fundamental Ideals of Good Governance, resulting in a concept of Good Governance as a reflection of national legal reform.

2. Research Methodolgy

This study follows a normative juridical approach proposed by Jhony Ibrahim, focusing on legal scientific logic and normative elements. [8] The research relies on secondary information from statutory regulations, published literature, and official documents. Soerjono and Sri Mamudji classify secondary information into primary, secondary, and tertiary legal sources. [9]

The legislative approach involves scrutinizing regulations related to concurrent regional elections, notably Law No. 30 of 2014 regarding Government Administration. On the other hand, the conceptual approach entails delving into the Fundamental Ideals of Good Governance and the notion of Responsive Law advocated by Philippe Nonet and Philip Selznick.

[7] Prawiranegara, K. (2021). *Implementasi Asas-Asas Umum Pemerintahan Yang Baik Pada Pemerintahan Kabupaten Dompu*, Lex Rennaisan,6(3), 591-604. DOI: 10.20885/JLR.vol6.iss3.art11, p. 594

[8] Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Banyumedia Publishing, p. 57

[9] Soekanto, S & Mamudji, S. (2011). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: PT Raja Grafindo Persada, p. 14

By combining both statutory and conceptual approaches, the author intends to perform a legal examination of the incorporation of Responsive Law principles into the structure of the Fundamental Ideals of Good Governance. This endeavor is expected to stimulate nationwide legal reforms geared towards realizing Good Governance.

The outcomes of this research, considered cutting-edge, are expected to serve as a benchmark for the government in integrating the principles of Responsive Law into the implementation of the Fundamental Ideals of Good Governance outlined in Law No. 30 of 2014. This initiative aims to ensure that every governmental decision adds value to the promotion of Good Governance within the administrative framework, thereby enabling the efficient delivery of public services to fulfill the requirements of the citizens.

3. Results and Discussion

3.1 Understanding the Fundamental Ideals of Good Government

In Dutch, the overarching fundamental concepts of effective governance are referred to as "Algemene Beginselen van Behoorlijk Bestuur," commonly abbreviated as ABBB. Similarly, in French, they are termed "Les Principaux Generaux du Droit Coutumier Publique." Meanwhile, in English, these principles are known as either "The Principle of Natural Justice" or "The Fundamental Ideals of Good Administration." In Germany, they are frequently denoted as "Allgemeine Grundsätze der Ordnungsgemäßen Verwaltung".[12] The term "Fundamental Ideals of Good Government" (AUPB) is often used interchangeably with the Fundamental Ideals of good governance. These principles function as guidelines in public law that legal entities must follow when applying positive law. AUPB constitutes a unique set of general legal principles and is acknowledged as an authoritative legal reference in administrative law, despite originating from unwritten law. State institutions are obligated to adhere to AUPB when executing their responsibilities and exercising authority within the domain of state administration, alongside upholding the principle of legality, which is fundamental to the rule of law.[13]

Understanding the interpretation and clarification of the Fundamental Ideals of Good Governance (AUPB) in Indonesia cannot be separated from the historical development of AUPB. This development is evident through the integration of AUPB principles into various statutory regulations, their application in judicial decisions or case law, and legal doctrine. The transition of AUPB from unwritten principles to codified legal norms has been a gradual process. Since the enactment of the 1986 PTUN Law, there has been no explicit regulation addressing AUPB. Article 53, paragraph (2) of the 1986 PTUN Law does not explicitly mention AUPB as the basis for filing a lawsuit against a TUN Decision. During the drafting of the 1986 PTUN Law, the meeting minutes The ABRI faction put forward the AUPB concept. Nevertheless, Minister of Justice Ismail Saleh rejected this proposal. Due to the absence of clear criteria similar to the "algemene beginselen van behoorlijk bestuur" (Fundamental Ideals of Good Governance) observed

[12] Hamidi, J. (1999). *Penerapan Asas-Asas Umum Penyelenggaraan Pemerintahan yang Layak di Lingkungan Peradilan Administrasi Indonesia*. Bandung: Citra Aditya Bakti, p. 17-21 Lihat juga Brown, L.N. & Bell, J.S. (2003). *French Administratif Law*. Oxford: Clarendon Press, p. 5

[13] Kusdarini, E. (2019). *Asas-Asas Umum Pemerintahan Yang Baik Dalam Hukum Administrasi Negara*. Yogyakarta: UNY Press, p. 7

in the Netherlands and other continental European countries within the constitutional and State Administrative Law context in Indonesia.[14]

In the 1990s, UNDP played a leading role in introducing principles of good governance. Law No. 28 of 1999, regarding the Establishment of a Clean and Corruption-Free State, originated from an initial Draft Law (RUU) proposed by the government. Since its inception, this legislation has embraced the Fundamental Ideals of Good Governance (AUPB) as its primary foundation. Although the terminology used in crafting the Law differs from AUPB, referring to Fundamental Ideals of State Administration (AUPN) and Fundamental Ideals of Good State Governance (AUPNB), Article 3 of the aforementioned Law outlines seven principles.

These principles include Legal Certainty, Orderly State Administration, Public Interest, Transparency, Proportionality, Professionalism, and Accountability. The essence of the 1999 Anti-Corruption Law reflects a reformist spirit and aims to eradicate corrupt practices (KKN), aligning with MPR RI Decree No. One of the key requirements outlined in the MPR RI Decree is the imperative to promote good governance, as stated in point c: "In carrying out their functions and duties, officials must demonstrate honesty, fairness, transparency, and integrity, while avoiding corruption, collusion, and nepotism".[15]

Before the enactment of Law No. 30 of 2014 regarding Government Administration, the terminology surrounding the Fundamental Ideals of Good Governance (AUPB) in Indonesia varied. Scholars used different terms such as Fundamental Ideals of proper government, Fundamental Ideals of appropriate government, principles of clean and normal government, as well as general legal principles for the proper administration of the state. The term "Fundamental Ideals of Good Governance" has been widely adopted by legal experts in Indonesia, including Indriharto, SF Marbun, Kuntjoro Purbopranoto, Meter Solly Lubis, Moh. Mahfud MD, Amrah Muslimin, and Paulus Effendie Lotulung. Rochmat Soemitro proposed the term "Fundamental Ideals of healthy government" in his draft concept for the Administrative Justice Law. A. Baramuli favored the term "Fundamental Ideals of clean and normal government." Meanwhile, Laica Marzuki, Philipus Meter. Ateng Syafrudin, Hadjon, and Sjachran Basah utilized the term "Fundamental Ideals of proper government" in several of their writings. Some scholars chose the term "Fundamental Ideals of proper state administration," such as A. Hamid S. Attamimi and Bagir Manan.[16]

After the implementation of Law No. 30 of 2014 regarding Government Administration, the term "Fundamental Ideals of government" has officially been equated with "Fundamental Ideals of Good Government." This change is apparent in Article 1 number 17 of the aforementioned law, which specifies:

> "The Fundamental Ideals of Good Governance, hereinafter abbreviated as AUPB, are principles used as guidelines for government officials to exercise authority in decision-making and actions in governance."

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[14] Risalah rapat pembahasan RUU PTUN, Pembicaraan Tingkat II/Jawaban Pemerintah atas Pemandangan Umum Fraksi ABRI atas RUU PTUN, Selasa, 20 Mei 1986, p. 148

[15] Pratiwi, C.S. (2016). *Penjelasan Hukum Asas–Asas Umum Pemerintahan yang Baik*. Jakarta: Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP), p. 35

[16] *Loc. Cit.*

Etymologically, in Indonesian, the term "asas," which is translated into English as "principle," reflects this connotation."[17] interpreted as "basic", "foundation".[18]Thus, this principle should serve as the foundational cornerstone that every element of state administration must follow and utilize as a guiding principle in their participation and conduct. The term "general" in this context carries a broad and universal significance, indicating that all facets of state administration, governmental bodies, or individuals involved in governance must adhere to or be obligated to abide by these overarching principles. The concept of "government," as elucidated by SF Marbun, can be understood through two interpretations: government in the functional sense, which pertains to governing activities, and government in the organizational sense, which encompasses the entirety of the governmental structure or entity.[19]

The term "government" as used here includes all governmental structures or entities within a country, including Indonesia, and they are all obligated to follow the principles set forth by such governance. Moreover, the term "good" is defined etymologically as "beautiful," "proper," and "orderly," indicating a lack of flaws or deficiencies.[20] Therefore, it can be inferred that the etymological understanding of the fundamental principles of governance acts as the guiding principles that all state administration and governmental entities must follow in executing their duties correctly, appropriately, systematically, and flawlessly.

Officially, the acknowledgment of the Fundamental Ideals of Good Governance in Indonesia occurred with the passing of Law No. 30 of 2014 regarding Government Administration. The establishment of the AUPB within this legislation is outlined in Article 10, paragraphs (1) and (2), which specify:

1. The AUPB referred to in this legislation embodies the following principles:
   a. Legal certainty;
   b. Efficiency;
   c. Impartiality;
   d. Thoroughness;
   e. Non-abuse of authority;
   f. Transparency;
   g. Public interest; and
   h. Good service.
2. Additional fundamental ideals beyond the AUPB, as defined in paragraph (1), can be utilized as long as they serve as the foundation for assessment by the judge in a court ruling with lasting legal validity.

The concept of Fundamental Ideals of good governance, as delineated in the Government Administration Law, is applicable to all state institutions and bodies in Indonesia. This aligns with the functions and objectives of the Indonesian state, which

[17] Echols, J.M. & Shadily, H. (2003). *Kamus Indonesia Inggris*. Jakarta: PT Gramedia Pustaka Utama, p. 31

[18] Indonesia, P.B.D.P.N.R. (2015). *Kamus Besar Bahasa Indonesia*. Jakarta : PT Gramedia Pustaka Utama, p. 91

[19] Marbun, S.F. (2001). *Eksistensi Asas-asas Umum Penyelenggaraan Pemerintahan yang Layak Dalam Menjelmakan yang Baik dan Bersih di Indonesia* (Disertasi). Bandung: Program Pasca Sarjana Universitas Padjadjaran, p. 46

[20] Indonesia, P.B.D.P.N.R. (2015). *Kamus Besar Bahasa Indonesia,........Op.Cit*, p. 118

are geared towards achieving prosperity, as articulated in the Preamble of the 1945 Constitution of the Republic of Indonesia, particularly in its fourth paragraph.

In accordance with Nonet and Selznick's publication "Law and Society in Transition, Toward Responsive Law," they emphasize the substantial connection between a nation's governmental structure and the legal doctrines practiced within it.[21] In an autocratic regime, legal mechanisms function as tools under the sway of political authority. This suggests that laws are employed primarily to reinforce the political goals of those in power. In contrast, within a democratic framework, there is a distinct separation between law and politics. This indicates that law operates autonomously from political considerations, serving as the bedrock for governance in a nation.

The concept of responsive law encapsulates a framework deeply grounded in sociological jurisprudence, which adopts a philosophical stance emphasizing the importance of crafting laws that are tailored to meet societal needs.[22] In simple terms, Sociological jurisprudence is a field of legal studies that adopts a sociological perspective. This field concentrates on the real-world societal effects of institutions, doctrines, and legal enforcement. A legal framework is considered responsive when it functions as a mechanism to address social conditions and communal desires.

This legal approach, with its broad inclusivity, highlights the importance of adapting to accommodate changes in society, with the aim of achieving justice and societal progress. According to Nonet and Selznick, responsive law arises from the integration of sociological jurisprudence and realist jurisprudence.[23] These two doctrines demonstrate a move towards more empirically-driven legal research, seeking to reduce formalism while expanding legal comprehension and recognizing the role of policy in legal decision-making.

Philippe Nonet and Philip Selznick categorize law within society into three fundamental classifications:

1. Laws utilized as instruments of repressive authority (Repressive Law).
2. Law as an independent institution capable of alleviating repression and preserving its integrity (Autonomous Law).
3. Law acting as a facilitator for addressing various social needs and aspirations (Responsive Law).

Among the three types of law, in their work, Nonet and Selznick contend that only responsive law provides sustainable and normative institutional stability. Nonet challenges the notion of absolute and unassailable legal autonomy, advocating instead for a form of responsive law that integrates critical thinking, viewing law as a means to achieve objectives. The primary characteristic of responsive law lies in its shift from a focus on rules to principles and objectives, along with the recognition of popular sovereignty as both an objective and a method for its attainment. Responsive law is oriented towards outcomes, specifically the achievement of goals beyond the confines of legal provisions.

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[21] Nonet, P & Selznick, P. (2003). *Hukum Responsif, Pilihan di Masa Transisi*. Penerjemah Rafael Edy Bosco. Jakarta : Ford Foundation-HuMa, p. 58

[22] Bosco, R.D. (2003). *Hukum Responsif : Pilihan Di Masa Transisi*. Jakarta: Huma, p. 43

[23] Nonet, P & Selznick, P. (2003). Hukum Responsif, Pilihan di Masa Transisi.......... *Op. Cit,* p. 60

In addressing critiques regarding the crisis of legal authority, Nonet and Selznick introduced a responsive legal model. They argued that social change and justice require the existence of a responsive legal framework, which has become a central concern for advocates of a functional, pragmatic, and goal-oriented approach, including Roscoe Pound, legal realists, and contemporary critics. Dworkin's regulatory model is considered insufficient for addressing the dynamics of societal needs in the current era of uncertainty and change.[24]

The reaction to the normative legal concept entails selectively adjusting to evolving demands and pressures. The key factor guiding this selection process is the rule of law, which is currently seen not just as a formal procedural guideline, but also as a forward-looking effort to address abuses of power across political, social, and economic domains. As a result, adaptive law goes beyond procedural fairness to embrace the concept of substantive justice.

Departing from autonomous law, responsive law emphasizes the importance of intentionality in legal affairs. The creation and application of laws are no longer isolated objectives but reflections of broader societal aims. Consequently, there's a slight loosening in the strictness of legal frameworks, which are now seen as targeted tools for realizing overarching objectives. These frameworks might be expanded or even revoked if they are deemed more conducive to achieving desired goals.

The critical aspect is to ascertain the underlying intent behind regulations, which prompts inquiries into their objectives, the values they promote, and the interests they represent. A specialized examination is necessary to pinpoint these interests, elucidate the core values, and clarify the aims of the law.[25]

Nonet and Selznick illustrate this method regarding due process law. In an autonomous legal structure, this approach might only involve maintaining procedural uniformity in decision-making based on established legal statutes. Nonetheless, the envisioned model of responsive law necessitates a more adaptable interpretation that takes into account legal provisions across various contexts and situations.[26]

A responsive institution maintains its core integrity while remaining sensitive to and accommodating of new influences within its environment. To accomplish this objective, responsive law reinforces the relationship between transparency and integrity, even when potential conflicts arise between the two. Such responsive institutions recognize social pressures as sources of insight and opportunities for self-correction. To accomplish this, institutions need clear objectives to provide guidance. These objectives set standards for assessing established practices, thereby promoting opportunities for adjustment. At the same time, well-defined objectives help regulate administrative discretion, thereby reducing the risk of institutional drift. Conversely, a lack of clear

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[24] Tanya, B.L. (2010). *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta: Genta Publishing, p. 205

[25] Sodiq, N. (2016). *Membangun Politik Hukum Indonesia Bercorak Responsif Perspektif Ius Constituendum*, Jurnal Magister Hukum Udayana,5(2), 233-251. DOI: https://doi.org/10.24843/JMHU.2016.v05.i02.p02, p. 238

[26] Fadjar, A. M. (2013). *Teori-Teori Hukum Kontemporer*. Malang: Setara Press, p. 54

objectives may result in rigidity and opportunism, with these negative conditions often existing and reinforcing each other.[27]

A formalistic institution, operating strictly according to rules, tends to be rigid when faced with conflicts from its environment. Such institutions often make opportunistic adjustments because they struggle to rationalize outdated or irrelevant policies. Only when an institution adheres to clear goals can it achieve a balanced combination of integrity and openness, regulation and discretion. Therefore, responsive law emphasizes that objectives must have sufficient objectivity and authority to effectively guide adaptive rulemaking.[28]

3.2 Formulation of Responsive Legal Values in Fundamental Ideals of Good Governance as National Legal Reform Towards Good Governance

Within the context of legal reform within a state-centric legal system and in alignment with a centralized governmental structure, a hierarchical structure of laws and regulations has been established, with Pancasila designated as the fundamental basis for all legal principles. This hierarchical arrangement establishes Pancasila and the 1945 Constitution as benchmarks for assessing the consistency of legal provisions across various levels, spanning from fundamental to more sophisticated regulations. Essentially, this underscores the imperative in Indonesia for a national legal framework firmly grounded in a core set of state values.[29]

Conceptually, the emergence of AUPB (Anti-Unlawful Practices Bill) is intricately tied to efforts aimed at realizing transparent, accountable, and corruption-free governance. This trend is observable in numerous nations that have previously embraced and reinforced AUPB measures.[30] In In the Indonesian context, the importance of AUPB in governmental administration became more pronounced with the enactment of the 1945 Constitution, which advocated for the principles of a modern or substantive legal state, often linked with the ideals of a welfare state. The emergence of this governance concept in the 20th century has significantly transformed the dynamics of the state-people relationship. Whereas in earlier formal legal state frameworks, the state's role primarily focused on ensuring basic safety, order, and freedom from disturbance, contemporary expectations on the state have expanded considerably to include broader societal welfare objectives.[31]

The pivotal role of AUPB in governmental execution necessitates a clear articulation to ensure its application and function within the realm of government administration adheres to relevant laws and upholds justice for citizens. According to Philipus Meter Hadjon, AUPB should be considered an implicit legal norm that the government must

[27] Friedmann, L.M. (2013). *Sistem Hukum Perspektif Ilmu Sosial, Penerjemah M. Khozim*. Bandung : Nusa Media, p. 44

[28] Nonet, P & Selznick, P. (2003). Hukum Responsif, Pilihan di Masa Transisi..........*Op.Cit*., p. 62

[29] Adiyanta, F.C.S. (2019). *Pembaruan Hukum Nasional: Pruralisme, Unifikasi Hukum, dan Hubungan Kewenangan antara Pemerintah Pusat dengan Pemerintah Daerah*. Adminitrative Law & Governance Journal,2(1), 93-105. DOI: 10.14710/alj.v2i1.93-105, p. 99

[30] Ridwan. (2013). *Hukum Administrasi Negara*. Jakarta: PT RajaGrafindo Persada, p. 230-231

[31] Sufriadi. (2019). *Peneapan Asas-Asas Umum Pemerintahan yang Baik (AUPB) di Pengadilan Tata Usaha Negara (PTUN) Tahun 1991 Sampai Dengan Tahun 2000*. JURNAL ILMU HUKUM: Fakultas Hukum Universitas Riau,8(1), 145-174. DOI: http://dx.doi.org/10.30652/jih.v8i1.6843, p. 147

uphold, even if the precise interpretation of AUPB in every specific circumstance cannot always be precisely elucidated. Therefore, AUPB can be seen as implicit legal principles that serve as the foundation for the formulation of legal regulations applicable in particular situations.[32]

In practice, although AUPB is conceptualized as a principle, not all of these concepts exhibit universal and abstract characteristics. Some principles may materialize as concrete legal provisions explicitly detailed in statutory articles, accompanied by clear sanctions. When the universal principles of good governance are construed as the foundation or basis of law, they can be seen as legal principles derived from prevailing morals, ethics, norms of propriety, and principles of decency. In this context, certain AUPBs are still acknowledged as legal principles, while others have developed into legal norms or regulations.[33]

AUPB extends its applicability beyond executive institutions, encompassing public servants in countries embracing the welfare state paradigm; it also includes judicial institutions in evaluating the adherence of government actions to universal principles of good governance. Moreover, in the evolution of good governance, these principles transcend executive power wielded by state administrative apparatuses, extending to other branches of power such as legislative and judicial bodies, as well as all other state entities. AUPB is intricately linked to the concept of good governance.

Safri Nugroho dkk[34], Interpreting good governance as "good governance," as noted by Safri Nugroho, can be seen as both a broad term and a specific concept associated with the Universal Principles of Good Governance (AUPB) and effective governance practices. As it evolves, the principles of good governance expand or become enriched through the implementation of various best management practices. This illustrates the ongoing development of State Administrative Law as a framework for guiding governmental administration.

According to Safri Nugroho, the evolution of the concept of good governance represents a dynamic aspect of state administration perpetually confronted with challenges necessitating changes in government operations. This concept encompasses the idea of reducing government dominance in state affairs, emphasizing the importance of "partnerships" or collaborations between the public sector, represented by the government, and either the private sector or civil society. Consequently, the concept of good governance underscores the need for a synergistic relationship among the government, the private sector, and society in the administration of the state. This synergistic relationship, in turn, fosters the principles of good governance and must adhere to prerequisites such as the supremacy of law, transparency, participation, professionalism, sensitivity, and accountability.

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[32] Hadjon, P.M. Et.al. (1993). *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gadjah Mada University Press, p. 151

[33] Marbun, S.F. (2001). *Pembentukan, Pemberlakuan, Dan Peranan Asas-Asas Umum Pemerintahan Yang Layak Dalam Menjelmakan Pemerintahan Yang Baik Dan Bersih Di Indonesia*. Bandung: Padjajaran University Press, p. 39

[34] Nugroho, S. (2007). *Hukum Administrasi Negara, Edisi Revisi*. Jakarta : Badan Penerbit Center For Law and Good Governance Studies FH UI, p. 7-8

Furthermore, there are conditional values tailored to the characteristics and culture of each country's populace. In the Indonesian context, the amalgamation of universal and conditional characteristics is referred to as the principles of state administration, comprising elements such as legal certainty, universal interests, openness, proportionality, professionalism, and accountability.[35]

Through an examination of regulations related to the Universal Principles of Good Governance (AUPB), the author highlights the ambiguity in formulating AUPB within Law No. 30 of 2014 regarding Government Administration. This ambiguity is evident in the explanation provided in Articles 9 and 10 regarding AUPB. To address this issue, the author advocates for the incorporation or reformulation of AUPB to encompass the values of Responsive Law. This is motivated by the perceived imperfect implementation of the Law, leading to public perception of government inefficiency and sluggishness in delivering quality legal services.

The author underscores two fundamental principles of Responsive Law that should be incorporated into AUPB: the focus on principles and objectives, and the importance of community participation as both a goal and a method to attain it. However, the current explanation of the Law continues to be dominated by Repressive Law and Autonomous Law, which are typified by normativity and rigidity.

This highlights the urgent need for the revitalization of national laws regarding government, requiring a fresh approach to government administration rooted in AUPB to promote good governance. Firstly, the focus on principles and objectives emphasizes the need for laws to be purpose-driven, aiming to benefit society while complying with relevant regulations. Secondly, the significance of community participation underscores the importance of active involvement of the community in governance, guided by principles endorsed by the government.

As a comparative example, the author references the application of AUPB in Yogyakarta, particularly in the context of the one-stop licensing service system. Research conducted in 2012 suggests that Yogyakarta has successfully integrated AUPB through its one-stop service system, which is supported by principles of legal certainty, transparency, and proportionality.[36]

While the need for bureaucratic streamlining remains, residents of Yogyakarta have enjoyed improved public services thanks to the Yogyakarta Government's implementation of the Universal Principles of Good Governance (AUPB). As early as 2012, before The implementation of the Government Administration Law, Yogyakarta demonstrated a commitment to upholding the principles of Responsive Law by establishing a one-stop licensing service system. This highlights the pressing need to revise Law No. 30 of 2014 regarding Government Administration, as advocated by the author. The author contends that AUPB must be harmonized with the principles of Responsive Law. Such alignment would facilitate the achievement of societal goals across all levels while ensuring adherence to relevant legislation.

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[35] *Ibid,* p. 10-11

[36] Haryati, D. dkk. (2012). *Penerapan Asas Umum Yang Baik Dalam Sistem Pelayanan Perizinan Satu Pintu*. MIMBAR HUKUM,24(2), 289-298. DOI: 10.22146/jmh.16134, p. 298

4. Conclusion

In summary, the discussion highlights several key points: The Fundamental Ideals of Good Governance in Indonesia were formalized through Law No. 30 of 2014, emphasizing principles like legal certainty, transparency, and public interest. Responsive legal theory views law as a tool to meet societal needs, prioritizing community participation and adaptable principles over rigid rules. The analysis suggests revising Law No. 30 of 2014 to align AUPB with Responsive Law values, ensuring the achievement of societal objectives while abiding by regulations.

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Law and Regulations

Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism

Law Number 30 of 2014 regarding Government Administration