

Legal Principles for Public Service of Indonesia Based on the Act of Number of 25 of 2009

H. Muhammad Jufri

Senior Professor at Faculty of Law, Halu Oleo University, Kendari, Southeast Province of Indonesia
Kampus Hijau Bumi Tridharma, Jl. H.E.A Mokodompit, Kota Kendari, Sulawesi Tenggara, Indonesia 93232

Abstract

The Government of Indonesia has enacted the Act of Number of 25 of 2009 on the Public Service. This act, in principle, as a legal guidance for Indonesia's government administration in duty of governance by 1945 constitution's preambul that the Indonesia State goal is to promote the general welfare. This goal can be only achieved if Indonesia government does performance duty of public service well. This research aims to study legal principles for public service of Indonesia based on the Act of Number of 25 of 2009. This research is a normative legal research, so method of research in using as part of its analysis, it applies legal conceptual approach and approach statutory law. The result of research shows that implementation for public service of Indonesia based on Act of Number of 25 of 2009, in perspective of legal principle, should be based on two principles. They are principle of simplicity and principle of clarity. Principle of simplicity means that public service should be a mechanism which is not convoluted. While, principle of clarity of intention is all the public service model in Indonesia, should be held in a transparent and accountable so as to provide comfort and satisfaction for Indonesian people who enjoy the public services.

Keywords: Legal Principle, Public Service, and Indonesian People

1. Introduction

Enactment of the Act of Number of 25 of 2009 on the Public Service by Indonesia government, in principle, it is a legal basis as standard of performance for public service in Indonesia. Presence of this act is very important which in frame work of community needs for improvement of their welfafare (Jufri, 2011). The essence of public service, philosophically, it is performance of government apparatus to fullfil community needs as part of Indonesia state responsibility in framework of promoting for general welfafare. This is stated explicitly in 1945 Indonesia Constitution's Preamble. Based on that opinion, then it required a change mindset on public service in Indonesia legal sense which puts on its actual function. I mean that its function which based on Indonesia constitution. Public service in Indonesia, in fact, abused by government officials. They assume that public service in obiligation only. In philosophy Indonesia Costitution, however, public service not only obligation but also mandate must be run by government officials. Public service is the responsibility of the state to fullfil people's needs. However, government officials are assigned to serve people's interest. It is necessary to encourage a strong commitment for performance of public service, in order to government officials will be responsive to community needs.

The Act of Number of 25 of 2009 is enacted Indonesia Government, basically, to encourage legal perspective frame on state responsibility as public servant. In the fact, according to Syukri's research that Indonesia people sometimes is charged illegal fees if it will get public service well. Getting public service in well with charged illegal fees, is a common sight, for example health service in high cost (In Indonesia, people who will get better better health care, it must pay health insurance collected by the Institution for Social Security). There is high cost by Indonesian people in better health care. It is very stifling by poor. Also Syukri's¹ research, there are illegal fees in some services, among others service for resident identity card, driving license, public transport route permits, trade license, passport, land certificate, etcetera.

Those illegal fees in extortion take place with the modus operandi of the various. This fact shows that public service has been undermined by a mental defective of government officials. It is very sad. Since illegal fees can impact the public service itself. People will receive service which is convoluted, bureauracratc, non-transparent. Moreover, there is limited public service facilities.

Public service in Indonesia legal context, does not neglect noble value of Indonesia based on humanity and kinship. It also does not ignore religious principle. It is necessary to be introduced the concept of public service which is not co-opted by individualistic thinking.

This research tries to study legal principles containing in the Act of Number of 25of 2009 with regard to the concept of welfare state. The result of this research will become original fundamental idea for perfection of legal doctrine with regard to Indonesia governance. However, fundamental idea of this research, is to introduce

¹ Syukri Hidayatullah, "The Economic High Cost in Public Service and A dilemma of governmental discretion", *Journal of Risalah Hukum*, Faculty of Law, Mulawarman University, Volume of 6 of Number of 2, December 2010, ISSN 021-969X, p. 162-170.

legal principles for public service accomodating Indonesia people's interest of its need. Legal principles of public service based on Indonesia's soul of nation in cooperativeness. This formulation of legal principles of public service, can be a scientific thought to build personality character for a good Indonesia.

2. Research Method

This type of research is a normative legal research to recite legal principles in the Act of Number of 25 of 2009 on the Public Service. It provides statute and conceptual approach. The statute approach is done by examining the Act of Number of 25 of 2009 concerning to the legal issues at hand, while the conceptual approach is resulted from the views and doctrines that developed in the jurisprudence (legal science)¹ particular the issue of legal on public service. Sources of legal materials used in this research are the primary and secondary legal materials. The primary legal materials are authoritative in the form of legislation. The secondary legal materials further are materials either published or unpublished such as some literature (books), legal journals, the law scientific papers and articles. Research's analysis is qualitative analysis. It means that content of the used materials in the reserach will interpret the law based on the theories and principles of law and then presented in a descriptive form that provides an overview of the Act of Number of 25 of 2009.

3. Discussion

3.1. Concept of Public Service In Indonesia Legal Theory

Human, essentially, needs for service in everyday life. Since, it is concerned with the necessities of life. Every citizen always requires service public provided by government. It means that citizen always will demand the government's best service. In Indonesia context, it sometimes does not meet people's expectation. In the fact, public service of Indonesia, still displas its characteristics which are convoluted, sluggish, and tiring. This tendency of public service does still place Indonesia people as it who serve, not as it to be served². Based on that, for Indonesia, needs to make change of responsive public service. It is creative and efficient³.

Term of service in Indonesia language, namely "*pelayanan*" which means helping to set up something or take care of what is required someone. According to Indonesian Dictionary⁴, "*pelayanan*" in Indonesia language, can be defined as an activity provided by a person or the state apparatus in kindness of preparation for goods and services. In the same meaning, term of service in Thoha's view, is part of aegis and dedication of the state apparatus. It should reflect service for the people, especially the poor (Thoha, 1991: 176-177). Based on Decision of the Minister for Utilization of State Apparatus of Indonesia of Number of 63 /KEP.M.PAN/7/2003 on the General Guidance of Public Service in Performance, that public service is activity of service implemented by officials of public service in order to fulfillment the needs of citizens. While according to Chapter I Article 1 Paragraph 1 the Act of Number of 25 of 2009, public service is activity or a series of activities in frame work of fulfillment for Indonesia people towards goods, service, including administrative service by apparatus. The apparatus are the institution of state officials, enterprise for public service, and independent institution for public service, etc. This meaning in Indonesia legal perspective, public service is activity carried out by government officials (bureaucracy) to meet public demand for service of goods, service, and administrative service⁵.

Based on those meanings of public service in Indonesia Normative Legal, there are three components in public service. First, institution/organization of public service containing government. Second, recipients of public service containing citizens (Indonesia people) or interested organizations. Third, satisfaction level who is acceptable by service recipient. The public service of government apparatus is a manifestation of state function. This is meant to achieve welfare of Indonesia people. Thus, the public service by Indonesian government at both central and local government, also enterprise for public service in central and local, Can be interpreted as providing services to meet the community in accordance with the rule and procedure which has been stated⁶.

The enterprise for public service of Indonesia usually is performed by the Institution for Public Service which in Indonesia language known as *Badan Layanan Umum (BLU)*. This provides service in goods and merit without profits based on principle for efficiency and productivity. *BLU* in Indonesia, performances public service in frame work of empowerment human resources which can develop economic independence for a better economic future.

¹ Peter Mahmud Marzuki, 2007, *The Legal Research*, Kencana Predana, Media Group, Jakarta, p. 30.

² Muhammad Jufri, 2011, *The Indonesia's Law of State Adminstration In Public Service Perspective*, Halu Oleo Universiy Press, Kendari, Indonesia, p. 98-99.

³ Juniarso and Achmad Sodik Sudrajat, 2010, *The Indonesia's Law of State Adminstration In Public Service*, Nuansa, Bandung, Indonesia, p. 18.

⁴ Ministry of National Education of Indonesia, 2002, *The Big Dictionary for Indonesian Language*, ed. 3, Balai Pustaka, Jakarta, Indonesia, p. 571.

⁵ *Ibid.*, p. 97.

⁶ Erland Mouw, 2013, "The quality of Public Service in the Indonesia Region (A Theoretical Review)", *Journal Uniera*, Volume of 2 of Number of 2, August 2013, ISSN 2086-0404, p. 92.

It is the most important that Indonesian Government can manage function of public service in order to produce goods and services which are economical, effective, efficient and accountable to all Indonesian people. In public service, Indonesian Government requires for function of public service in equity principle. It means that public service without discrimination. Service is given regardless of status, rank, class of society and all citizens have equal rights over such services in accordance with applicable regulations.

Government, even though, can perform service functions. But, government should not be monopolist. However, function of service can be held by privat enterprise or partnership model in government and private. This model in such public service, is in line with view's Osborne and Gaebler¹ (1992: 203-205), it is Reinventing Government.

3.2. Legal Principles for Public Service of Indonesia Based On the Act of Number of 25 of 2009

Legal principle, according to Jordan² that legal principles, legal values, and legal norms are essentially part of the same notion. Often in legal literature, legal principles are considered to be legal norms, general legal norms, legal values etc. In fact, legal principles are just legal norms that different from the latter are legal norms of general application that ignore specific legal facts. They can be considered as basic norms that represent the general consensus on basic society understandings. As such they are also kinds of default rules of behavior. From this perspective, the legal principles are rules of human behavior that used to be considered as just, before the law started being written. Thus, legal values would be considered a more general legal norms *vis-à-vis* legal principles and legal norms. Nonetheless, the coexistence of these three notions shows the complexity of their correlation and gives us an initial idea on what we will go through in our attempt to perform of comparative analysis between them.

Based on that argument, according to my point that legal principle is a basic rule which underlies the establishment of a rule of law to be applied in a practical reality. Thus, a rule of law would not be applicable without any legal principles on it. Legal principle is an abstract norm.

In this context, legal principles which are characteristics of public service in Indonesia, in my analysis, in the Act of Number of 25 of 2009, it should be legal principle, as follows:

- 1) Principle for simplicity. This principle shows meaning for public service which is not convoluted, and easy to implement.
- 2) Principle of clarity. This principle asserts there should be clarity on the administrative technical requirements of the public service, work unit or authorized official responsible for providing services and settlement of complaints or problems in service delivery, as well as clarity of details of service fees and payment procedures.

Public service in professional, it reflects accountability and responsibility of government apparatus as a public service provider. Characteristics of public service in Indonesia Government's policy, among others:

- 1) It should be effective, which is more priority to the achievement of goal and objective;
- 2) It is simple. It means that public service which in easy procedure, fast, proper, not convoluted, easy to understand by people in service.
- 3) Clarity and certainty. It means that public service in Indonesia have characteristics as follows:
 - a. Service procedures
 - b. Terms of service
 - c. Service units, both technical and administrative requirements.
 - d. Details for service charge and payment procedure
 - e. Service schedule
- 4) Transparency, it means that procedure requirement, work unit, the officer providing service, completion time for service, detail of tariff for service, and others matters related to the service process, it should be informed publicly in order to people, whether requested or not.
- 5) Efficiency has meaning:
 - a. Terms of service are limited to matters directly related to the achievement of service targets while maintaining the cohesiveness of the requirements with related service products.
 - b. It should be prevented in repeating the fulfillment of requirements, in the case of the service process concerned requires the completeness of the requirements of the work unit or other government agencies concerned.
- 6) Punctuality, it means that service must be completed in a timely manner.
- 7) Responsive, quick responsiveness to what is the problem facing the community to be served.
- 8) Adaptive, it means that adjust quickly to what need to be served.

¹ David Osborne and Ted Gaebler, 1992, *Reinventing Government*, Addison-Wesley Publishing Company.

² Jordan, "Legal Principles, Legal Values and Legal Norms: Are they the Same or Different?", *Journal of Akademikus*, Volume 2, 2010, p. 109.

In addition, the reality of responsive Indonesian society, public bureaucracy is required to be able to change the position and role in providing public services, which prioritizes flexible, collaborative, and dialogical services. The way of service is realistic. Better public services and professional in carrying out the duties and authorities of the Indonesian government as public servants.

4. Closing

The Act of Number of 25 of 2009, today is still the legal basis for the implementation of public services in Indonesia. Based on this Act, in my analysis, legal principles for public service in Indonesia rely on two principles, among others: Principle for simplicity and principle of clarity. These principles are philosophical for an important basis in performance of public service of Indonesia where government is obliged to serve the Indonesian people in fulfillment of their needs and basic rights. It is the mandate of the 1945 Constitution of the State of the Republic of Indonesia. Also, these principles become a legal principle to create public trust in public service by apparatus (government). The ideal public service according to the mandate of law number 25 of 2009, is the hope and demand of the Indonesian people about the improvement of public services.

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