An Analysis of Law No. 17 of 2014 on National Parliamentary Assembly, House of Representative, Regional House Council, and Regional House Representative: Viewed From The Principles of Good Governance

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Abstract: Good governance becomes an important point on the post-reforms that willing to have a clean government, free from corruption, collusion and nepotism. Good governance is carried out in every level of government in Indonesia enhanced executive, legislative, and judiciary. The provision of Article 122 letter K and Article 245 of the revision of Law No. 17 of 2014 on National Parliamentary Assembly, House of Representatives, Regional House Council and Regional House Representatives are regarded as contradictory rule to the principle of good governance for the word “degrading” in the Article 122 letter K resulting multiple interpretation, consequently the Indonesian people who are essentially democracy citizens unwilling to put forward their aspirations to their representatives thus of this article is contrary to the principle of participation. Whereas in article 245 expresses the members of parliament who commits a criminal offense and will be examined by investigating agency shall received written approval from the president on the consideration of the Honorary Court Council. In other words this article gives the right of immunity which is contrary to the principle of rule of the law, so that the Democratic System can’t be applied and it difficult to achieve the goal of good governance Indonesia.

Keywords: good governance, participation, and rule of the law

1. Introduction

The Republic of Indonesia as a state of law (rechts staat), mainly prioritizes the people’s welfare and more than it. The State has carried out routine, conceptual and consistent governmental activities through development. The development essentially is the effort to realize the national goals of the Indonesian nation that is advanced, independent, prosperous, justice, based on faith and piety to The God Almighty. In fourth paragraph of the preamble of The Constitution of Republic Indonesian, Year 1945, stated that the purpose of national development is to educate the life of the people, to improve public welfare, to protect the all Indonesia’s people, and to participate toward the establishment of world order and perpetual peace. As a nation that binds itself in the united state of the Republic of Indonesia, the National goal needs to be realized by all layers of nations without exception. The government as the state officer is a mobilizer, acting as facilitator and dynamicator in order to realize the national goals. In the implementation of development, the government acts to represent the interests of all layers of the nation. Development carried out by the community itself, whether at the level of individual or private people. Indeed, Pancasila and The Constitution of Republic Indonesian, Year 1945 are the ideal foundation of development. Both have formulated wisely the concept of democracy in development in accordance with the social and cultural environment of Indonesian democracy. In number of democracy concepts, stated that there is a meeting point between democracy and development. Both are considered as a process of placing humans on their portions, or 'humanizing humans'. In a democratic country, development takes place based on willingness, necessary, and ability of the people, then done independently by the people, as well as then results and impacts self-utilized to the people. In points of national development it has been formulated that this stage and understanding namely:
(1) politically: democracy is underway;
(2) socially: active participation of the community;
(3) legally: goes according to law and order; and
(4) public administratively: development organized in good manner (good governed, good governance and good government).

Conceptually the term "good" in the term "good governance" contains two meanings: first, values that uphold the will / wishes of the people and values that can improve the ability of the people in achieving the goals (National), independence, sustainable development, and social justice. Second, the functional aspect of the government that is effective and efficient in executing its duty in achieving that goal. Starting from the central theme of total reform in all aspects of Indonesian life, there are demands that the government should realize civil society, the creation of Good Governance and develop a model of equitable development. Good Governance in Indonesia actually starting pioneered and applied when the eruption of the era of Reformation where in that era there has been overhaul system of government that demands a clean democratic process so good governance as one of reformation tools needs absolutely applied in the new government. Indonesia is one of the countries in the world who are struggling and craving the creation of good governance. However, the current situation shows that it is so long from expectation. Political interests, corruption, unfair trials, work out of authority, and lack of integrity and transparency are some of the issues that make good governance unachievable. Thus, the implementation in Indonesia cannot be said become fully successful like as the ideals of the previous reformation. The occurrence of economic crisis in Indonesia, among others, caused by the governance procedures that are not managed and organized properly. So its arises various problems such as corruption, collusion and nepotism (KKN) that are difficult to eradicate, difficult law enforcement problems, monopolies in economic activities, and quality of service to the deteriorated community. United Nations formulated that the Good Governance indicator includes:

1. Ability, that is sufficient capacity to implement the government policies and functions, including effective and responsive public administration systems;
2. Accountability in government activities and transparent in decision making,
3. Participation in the democratic process, by utilizing information of public and private sources;
4. Attention to equity and poverty;
5. Commitment to a market-oriented economic policy.

Good Governance system arises by the people's disbelief of existing government. Currently, in Indonesia there are several issues concerning about the revision of Indonesian Law No. 17 of 2014 on The National Parliamentary Assembly, The House of Representatives, The Regional Representatives Council, and the Regional House of Representatives known (hereinafter called MD3 Act). This legislation become hot issue among politicians and NGO’s in Indonesia. The revision process of MD3 Act by the The House of Representatives, there are some articles that are contrary to The Public Information Disclosure Act, which is its discussion at all not participatory, so The House of Representative gets four additional power, namely: forced involuntary in The House of Representative meetings; addition of leadership; The House of Representative's immunity; and anti-criticism.

Based on the phenomena, fact, and realities above, this paper will describing and analyzing about “An Analysis of The Revision of Indonesian Law No. 17 Of 2014 on National Parliamentary Assembly, House of Representative, Regional House Council, and Regional House Representative (Viewed form The Principles of Good Governance)”
2. The Using of Good Governance Principles in The Establishment of Legislation in Indonesia

The system of state governance is an important element in a country. Therefore, it is not excessive if one of the factors of the national crisis and the other various problems that plagued the Indonesian nation stem from the weaknesses in government management area, especially the bureaucracy which ignores the principles of good governance. Entering the era of reformation, it is recognized, so by The TAP MPR RI. XI.MPR / 1999 on the Clean and Corrupt Free Collusion and Nepotism State Government and Indonesian Law No. 28 of 1999 on the Clean and Corrupt Free Collusion and Nepotism State Government. Indonesian nation affirm the determination to realize the implementation of state government and build the nation which is appropriate with the principles of good governance.

According to the State Administration Institute in 2000 the "good" terminology in good governance essentially contain two meanings:

1) Values that uphold the willingness/hope of the people, and values that can enhance the capabilities of the people in national fostering, independence, sustainable development, and social justice.

2) Functional aspects of effective and efficient governance in the implementation of its tasks to achieve those goals.

The definition of "governance" as affirmed by the State Administration Institute in 2000, was the process of organizing state power in carrying out the provision of public goods and services, and its best practice was called "Good Governance".

Based on this meaning, the State Administration Institute then suggested that the Good Governance term is oriented to:

1) Ideal country directed at achieving the national goals

Referring to democratization in the life of the country with its constituent elements such as legitimacy (whether government is elected and gaining the trust of its people), accountability, securing of human rights, autonomy and devolution of power, and assurance of civilian control.

2) Governance that functions ideally, that is effectively, efficiently in the effort to reach the national goals

This orientation depends on how the government has competence, and how political structures and mechanisms, and also administration function effectively and efficiently.

According to the State Administration Institution, based on the above description, it can be concluded that the Good Governance is a solid and responsible state administration, and efficient and effective, by maintaining a "synergistic" constructive interaction among state domains, the private sector and society).

According to Hugnes in 1992 has affirmed that: "Government organization are created by the public and need to be accountable to it" (government organizations are made publicly, for public, so it’s should give responsibility to the public).

The principles of good governance according to the State Administration Institution in 2003 are as follows:

1) Accountability.
2) Transparency.
3) Equality.
4) Law Supremacy (rule og law).
5) Justice.
6) Participation.
7) Decentralization.
8) Unity.
9) Professionalism.
10) Quick Response.
11) Effective and efficient.
12) Competitive.

Sedarmayanti said that, the overall good governance principles are mutually reinforcing, related and interdependent, and it can be concluded that there are 4 (four) main elements/principles that can give a description of public administration characterized by good governance, namely: the principle of good governance can be realized, so it need commitment from all parties, namely government, private and community, by implement good governance, integrity, professionalism and ethos of work and high moral, thus building the nation to implement governance as an obligation.

According to UNDP (United National Development Planning), good governance is the practice of applying the authority of various management affairs. Organizing politically, economically and administratively at all levels. In the above concept, there are three important pillars of good governance, namely:

a. People's welfare (economic governance).
b. Decision-making process (political governance).
c. The procedure to policy implementation (administrative governance). (Prasetijo, 2009)

The concrete manifestation of the implementation of good governance in local government (widodo 2001: 30), namely:

a. The administration of public administration in local government can function well and not wasting public money.
b. Local government in carrying out its duties and functions based on the norms and ethics of morality of justice government.
c. The local government apparatus is able to respect the legitimacy of constitutional conventions that reflect the people's sovereignty.
d. Local government has responsiveness to various variations or problems that develop in society.

In the aspect of good governance becomes an important point in the post-reformation dawarsa who want a clean government that it is free from corruption, collusion and nepotism (KKN). This good governance then implemented in every level of government in Indonesia, including executive, legislative, and judicative. In the executive area marked by a bureaucratic reform, starting at the very top level, as well as the lowest level of government. In the legislative area is also marked by the organized and effective process of formation of legislation drafting in accordance with the people needs. And also in judicative area marked by the existence of free trial that there is no intervention from anyone. Various regulations on good governance have started to emerge from the fall of the “Orde Baru” regime in May 1998. The government issued Indonesian Law No. 28 of 1999 on The Clean and Free of Corruption, Collusion and Nepotism (KKN) State Government and Indonesian Government Regulation No. 68 of 1999 on The Procedures for Implementing Community Participation in State Government. Then followed by the issuance of Indonesian Law No. 22 of 1999 on Local Government and has been amended with Indonesian Law No. 23 of 2014 on Local Government. The enforcement of its regulation has brought a very fundamental change in the government authority system in Indonesia, namely the principle of decentralization and the change of government paradigm from government to governance. The principle of decentralization requires that the resources of its prior authority centre on the government as the highest institution representing the state, gradually transferring authority and responsibility to institutions outside the central authority. The government paradigm shift from government to governance views that government performance must be seen from interactions and relationships between various factors and actors outside the bureaucracy.
3. Does The Legislation Draft About Md3 Act’s Revision Appropriate With The Good Governance Principles

The implementation of good governance is main requirement to realize community aspirations in achieving objectives and idealism of the nation and the country. In order to this, required the development and the application of the responsibility system as correct, clear, and real, so that government administrations and development will place in effective, efficient, clean and responsible and also free of corruption, collusion and nepotism. The good governance principle having a series of administration law in its implementation. It is has been a problem, because in Indonesia has been first introduced the concept of general principle of good government (AAUPB) that also using administration law’s principles in its implementation. Its Principles in Netherland Literature and Judicial have known and develop algemene beginselen van behoorlijk bestuur (ABBB). It is used for regulating conduct of state apparatus in the Netherlands. In Indonesia, its principles are known as general principle of good government (AAUPB).

In the implementation of good governance it should be noted also the mechanisms to regulate accountability for each government agencies and strengthening the parliament’s role and capacity, and also the availability of equality’s access to information for the general public. The legal certainty’s Principle; the orderly state administration’s principle; the public interest principle, the disclosure principle; the proportionality principle; the professionalism principle; and the accountability principle. The explanation of Article 3 of Indonesian Law No. 28, 1999 define each over General Principle of Good Government, as follows:

1. The legal certainty’s Principle is the principle within the state law give priority to the legislation, propriety, and justice in any policy state administration;
2. The orderly state administration’s principle is the principle be the basis regularity, harmony, and balance in control state administration;
3. The public interest principle is the principle forward general welfare by means of an aspirational, accommodating, and selective;
4. The disclosure principle is the principle open to the rights of of the community to obtain the right information, honest, and not discriminating about state administration with must pay attention to the protection of human rights, and the secrets nation;
5. The proportional principle is the principle prefer a balance between rights and obligations of state administration.
6. The professionalism principle is the principle which prefer on a code of ethics and provisions laws and regulations;
7. The accountability principle is the principle determine that every activities and the end result of activities state administration must be able to be relied upon to the people or the people as holders sovereignty the highest state in accordance with the regulations .

In Indonesia, ABBB known as general principles of good governance (AUPB). The basic elements of administration Law in Indonesia who participated in the development of the law as described by Van Wijk-Konijnnebelt, namely:

1) an opinion set for government to control the citizens;
2) public participation ways;
3) preventive and repressive legal protection;
4) to make the general principle of good governance ( AAUPB ) as a norm.

If we listen to the research development of The United Development Programme (UNDP) in 2000, which has been quoted by The State Administration Institute, has formulate the characteristic of good governance, namely:
1) Participation

Every citizen has the right to make a decision, either directly or through legitimation institutional intermediation representing their interests. This participation is built based on freedom of association and give their opinion, and also participate in a constructive.

2) Rule of Law

Legal framework has to be fair and implement indiscriminate, especially regulations for human rights.

3) Transparency

Transparency are built on the freedom the flow of information’s principle. The Proces, Institutions and information directly be acceptable to those in need. Information should be understood and monitored.

4) Responsiveness

Institutions and the process should try to serve every stakeholders.

5) Consensus Orientation

Good governance be intermediate of different interests to obtain best options for greater interest in both the policies and procedures.

6) Equity

All citizens, both men and women, have the opportunity to raise or keep their welfare.

7) Effectiveness and Efficiency.

Processes and institutions as well as possible produced according to what plotted by available resources.

8) Accountability

The decision makers in government, the private sector and community (civil society) accountable to the public and stakeholder’s institutions. This Accountability has a responsibility to organizations and the nature of the decision made, do the decision to internal interests or external organization.

9) Strategic Vision

Leaders and the public should have perspective of good governance and good and futuristic human development which fore in line with what treated for this kind of the construction.

Entering two decades age of Indonesian democracy, who where supposed to disclosure and public access to information on the performance of the government open professionally and proportionally according to Art 2 paragraph (1) of Indonesian Law No 14 of 2008 “any public information is open and can be accessed by each user public information on freedom of information. In this act has been stipulated that people should have the right to obtain information as the developed, sharpened, and to achieve the community welfare that very important for the state security. Meanwhile, freedom of public information also means to optimize public supervision of the state’s administration and the others public institutions, also everything that affected to public interest. Of course, good governance could be implement according to the principles of transparency, participative and accountable.
The results of the revision, it’s against the good governance principle, because in starting process until the finishing of the revision is not involved the community. Of the whole process as well as the results it can be concluded, that The House of Representatives are doing efforts of impoverishment of the information to the community because the law should be made for the welfare of live together with the involvement of a society which is have more freedom and widely not only for the benefit of every section of them.

The House of Representatives should be the first trust institution to the public for providing welfare but in fact the revision has made The House Of Representatives become exclusive as if seeking to build a strong wall of separation between himself and public, which it is potentially to make possibility of corruptive behavior in their institution.

In the revision of MD3 Act are against to the good governance principles, its contained in article 122 letters k and article 245 paragraph (1). Article 122 the letters k of Indonesian Law of No. 17 of 2014 stated that “doing legal act and/or other act can be taken against an individual, the group of people, or a legal institution under who speak in a low of the honor of The House of Representatives and a member of The House of Representatives (DPR)”. It is against to the participation in good governance principle, because that article constraint the community to criticize a member of The House of Representatives (DPR). We can see that it is a seriously lack of the democracy system because in checks and balances perspective, it is potentially to criminalize the people who have different sight with the member of The House of Representatives (DPR) views. In this section, The House of Representatives (DPR) made MKD become instrument to The House of Representative (DPR) member to legally Prosecuted peoples who considered condescending The Houses of Representatives (DPR) and its members.

The purpose of this article is to keep honor of the parliament as the high institution of the state and its member. Its article to reborn the contempt article of Netherland legacy was called “Hatatzai Artikelen”. But, seen from history perspective, its goes to state’s symbol. It is important to know, that Indonesian Constitutional Court No. 013-022/PUU-IV/2016, cancelled the contempt article to the President and Vice President because it is against with democracy spirit. There is also, in article No. 245 who stated that examination of parliament member should be considered by MKD before bring up to the president to get President’s permission for Law Enforcement Officials. Is it also known that everyone is equal before the law? But why the parliament member law prosecution need MKD considerance? We can see that this legislation is made especially for political purpose. So it is strengthen tools of parliament member to protect them from any attempts to undermining their authority and it’s absolutely contrary to good governance principles.

4. Conclusion

The law number 17 0F 2014 ON NATIONAL PARLIAMENTARY ASSEMBLY, HOUSE OF REPRESENTATIVE, REGIONAL HOUSE COUNCIL, AND REGIONAL HOUSE REPRESENTATIVE, there are several articles being contrary with the characteristic and principle of good governance.

5. Suggestion

a) in the design of the act it should be made for the welfare, according with the characteristic of Good Governance with the involvement of citizen are more free and not only in the interests of a certain group of people.

b) if in the articles of rule was assumed are not in accordance with the principle of good governance, so people can propose the materil according to the third in amendment constitution arranged that the authority to test the law given to the Constitutional Court. In this system, people having an opportunity to propose the law who contrary with the human rigths and also the principle of good governance.
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