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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Policy Online Single Submission (OSS) System as a Public Service Innovation in the Field of Environmental Licensing

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Abstract

In granting environmental permits, the government has launched the latest innovations in terms of public services in the field of licensing, one of which is in environmental permits, namely the use of the Online Single Submission (OSS) system. One of the regulations is about environmental permits. An environmental permit is a prerequisite for obtaining a business license. Those who wish to apply for a business license through OSS must ensure whether their business activities are required to have Amdal or UKL-UPL.

Key words: Policy; Online Single Submission System; Public service; Environmental Permit

A. INTRODUCTION

Indonesia is a country of law. This is as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that: "The State of Indonesia is a constitutional state". The highest source of law or basic norms in the Unitary Republic of Indonesia is Pancasila, and from this Pancasila was born the 1945 Constitution of the Republic of Indonesia which is the highest source of written law. All established statutory regulations must not conflict with Pancasila and the 1945 Constitution of the Republic of Indonesia.

As a consequence of Indonesia as a rule of law, state administrators are required to be actively involved in the life of the state or governance to create social welfare, considering that our country can be classified as a welfare state. The provisions of laws and regulations that are made are not sufficient only to absorb the cultural values of society but also must pay attention to the general principles of proper governance (*Algemene Begin-selen van Behoorlijk Bestuur*). These principles will be used by the state apparatus as measures in using their authority to create a constitutional state.¹

As a legal state that realizes social welfare, the Unitary State of the Republic of Indonesia has the task of realizing the ideals of the nation as stated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, which states that:

... Then from that to form a State Government of Indonesia that protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice

In realizing the goals and ideals of the Indonesian nation, as set forth in the Fourth Paragraph of the Preamble to the Constitution of the Republic of Indonesia, all actions and actions of state administrators, represented by the government, must be based on the statutory regulations applies. Without exception, community activities also may not conflict with the laws in force in the Unitary State of the Republic of Indonesia.

The understanding of a rule of law cannot be separated from populist understanding. Because in the end, laws that regulate and limit the power of the state (government), which are defined as laws made on the basis of people's power or sovereignty. In relation to the rule of law, people's sovereignty is a material element of

¹Suteki, *Masa Depan Hukum Progresif*, Cetakan Pertama, Thafa Media, Yogyakarta, 2015, p. 104.

the rule of law, in addition to the issue of people's welfare.²

The Unitary State of the Republic of Indonesia in implementing the principles of a welfare law state, the state is demanded to be able to provide various means and necessities of life for its people, so that the government has a very large role by intervening in every aspect of people's lives in realizing people's welfare through national development, which results the results can be enjoyed fairly and equitably, both at the national and regional levels.

Service to the community is the main task for the government as state servant and public servant in order to provide various means and necessities of life for its people, as outlined in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which is the ideal and the goals of the Indonesian nation, and is included in the main task of the government towards society.

Public service from the government bureaucracy is to provide the best service for the people, not for officials, families, or groups. The government bureaucracy must be oriented towards the interests of the people and social justice, which is carried out in a non-discriminatory, transparent, objective and firm manner.

The role of government in providing services to the community must provide services in accordance with what they should be, and the government must also provide the best service to the community. The government as a service provider to the community is very much determined by the performance of the services provided, namely the service must be affordable, easy, fast, and efficient both in terms of time and funding.

One form of public service is the granting of permits or permits, namely environmental permits. An environmental permit is a requirement for obtaining a business and / or activity permit as regulated

in Article 40 of Law Number 32 of 2009 concerning Environmental Protection and Management.

Environmental sector licensing is a permit in the framework of environmental protection and management based on a law on environmental protection and management. In environmental management, licensing is aimed at preserving environmental functions and preventing and overcoming environmental pollution and destruction.³

Business and / or activity permits are obtained after the company obtains environmental permits. Environmental permits are obtained after the company meets the requirements and takes administrative procedures. Environmental permits are obtained after the applicant, namely the company must have an environmental impact analysis (Amdal) or Environmental Management Efforts (UKL) and Environmental Monitoring Efforts (UPL).

The issuance of regional regulations, such as regulations regarding licensing, which result in official levies, is very counterproductive to the business and investment climate in the regions. The rise of regional regulations that have resulted in levies has added to a heavy burden on the business world, thus threatening the continuity of business in various sectors. These costs will ultimately increase the selling price of the commodity, thereby reducing its competitiveness. In addition, an increase in official levies can also be used as an excuse to impose backward charges in the commodity distribution chain, namely on producers (farmers, fishermen, etc.) by reducing the purchase price. This means that besides being borne by consumers, the burden of taxes and levies will also be borne by producers. Therefore,⁴

In an effort to make public services more effective by the government in the

²Juniarso Ridwan dan Ahmad Sodik Sudrajat, *Hukum Administrasi Negara dan Kebijakan Pelayanan Publik*, Cetakan Kesatu, Nuansa, Bandung, 2009, p. 11.

³Helmi, *Hukum Perizinan Lingkungan Hidup*, Edisi Pertama, Cetakan Kedua, Sinar Grafika, Jakarta, 2013, p. 29.

⁴Adrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik*, Edisi Kesatu, Cetakan Ketiga, Sinar Grafika, Jakarta, 2015, p. 63 and 64.

future, the provision of public services must implement the principles of good governance and utilize internet technology, such as the Electronic Integrated Licensing System in granting environmental permits.

From the background description of the problem above, in writing this paper, the authors formulate the problem: How is the online single submission system policy as a form of public service innovation in granting environmental permits to implement the principles of good governance?

B. DISCUSSION

One of the main duties and functions of government is to provide services as a manifestation of certain public policies. The definition of service according to Gronroos as quoted by Daryanto and Ismanto Setyobudi is:⁵

An activity or a series of activities that are invisible (cannot be felt) that occur as a result of interactions between consumers and employees or other things provided by service providers that are intended to solve consumer / customer problems.

The term public according to Sinambela comes from English, namely public which means general, society, country. The term public according to Inu Kencana is a number of people who have the right and good thinking, feelings, hopes, attitudes and actions based on the values that feel they have. The public is a human being or a society who has togetherness in thinking based on rules-by-rules.⁶

According to Article 1 paragraph (1) of Law Number 25 of 2009 concerning Public Services, public services are: "Activities or series of activities in the context of meeting service needs in accordance with statutory

regulations for every citizen and resident of goods, services, and services. / or administrative services provided by public service providers".

Public service providers according to Article 1 paragraph (2) of Law Number 25 of 2009 are: "Every state administering institution, corporation, independent institution established under the law for public service activities, and other legal entities established solely for the purpose of public service activities".

Agung Kurniawan defines public service as providing services (serving) the needs of people or communities who have an interest in the organization in accordance with predetermined basic rules and procedures.⁷

Article 1 of Government Regulation Number 96 of 2012 concerning Implementation of Law Number 25 of 2009 concerning Public Services, provides the definition of public service as an activity or a series of activities in order to meet service needs in accordance with statutory regulations for every citizen and occupants of the goods, services and / or administrative services provided by public service providers.

Public services that must be provided by the government can be classified into 2 (two) main categories, namely services for basic needs and public services.

1. Basic needs services; and⁸

Basic needs services that must be provided by the government include:

a. Health;

Health is one of the basic needs of society, so health is a right for every member of society that is protected by the Constitution. Every country recognizes that health is the biggest asset to achieve prosperity. Therefore, improving health services is basically an investment in human resources to achieve a prosperous society (welfare society).

b. basic education

⁵Daryanto and Ismanto Setyobudi, *Konsumen dan Pelayanan Prima*, Cetakan Kesatu, Gava Media, Yogyakarta, 2014, p. 135.

⁶Lijan Poltak Sinambela, *Reformasi Pelayanan Publik, Teori, Kebijakan, dan Implementasi*, Cetakan Keempat, Bumi Aksara, Jakarta, 2008, p. 3.

⁷Agung Kurniawan, *Transformasi Pelayanan Publik*, Pembaharuan, Yogyakarta, 2005, p. 4.

⁸Daryanto and Ismanto Setyobudi, op.cit., P. 137-140.

Another form of basic service is basic education. As with health, education is a form of investment in human resources. The future of a nation will be very much determined by how much the government pays attention to the education of its people. The level of education also affects the level of poverty because education is one of the main components in the vicious cycle of poverty. Therefore, one way to cut the vicious cycle of poverty is through improving the quality of education.

c. Basic necessities.

Apart from health and education, the government must also provide services for other basic needs, namely basic necessities. The basic necessities of the community include rice, cooking oil, kerosene, sugar, meat, chicken eggs, milk, iodized salt, wheat flour, vegetables, cement, and so on.

In terms of the supply of basic necessities, the government needs to guarantee price stability of basic necessities of the community and maintain its availability in the market and in warehouses in the form of reserves or supplies.

A hike in the price of people's basic needs that is too high will have a negative impact on the macro economy, for example, triggering high inflation (hyperinflation). In addition, the uncontrolled instability of the prices of basic necessities can also lead to political instability. Apart from maintaining the stability of general prices, the government also needs to ensure that the stockpile reserves in government warehouses are sufficient to meet community needs for a certain period of time. This is to avoid public panic over the scarcity of basic necessities, so that there are no long queues to get certain necessities.

2. Public service.⁹

In addition to basic needs services, the government as a public service provider institution must also provide public services to the community. Public services that the government must provide are divided into 3 (three) groups, namely:

- a. Administrative services, namely services that produce various forms of official documents required by the public, for example the making of Identity Cards (KTP), land certificates, birth certificates, death certificates, Motor Vehicle Ownership Book (BPKB), Motor Vehicle Registration Certificate (STNK), Building Permits (IMB), passports, and so on;
- b. Goods services, namely services that produce various forms / types of goods used by the public, for example telephone networks, electricity supply, clean water supply, and the like;
- c. Services, namely services that produce various services required by the public, for example higher and secondary education, health care, transportation, postal services, environmental sanitation, solid waste, drainage, roads and sidewalks, disaster management such as floods, earthquakes, volcanoes, and burns, social services (insurance or social security / social security);
- d. Regulative services, namely services through community law enforcement related to the provision of facilities and infrastructure to facilitate the community in carrying out their activities as citizens. This service includes the provision of roads, bridges, ports, and others.

One form of public service is licensing services. This licensing instrument has a very important meaning for activity actors (holders) in carrying out legal relations with the government and other parties.

⁹ *Ibid.*, p. 140-141.

Asep Warlan Yusuf said that the permit is a government instrument which is preventive juridical in nature, which is used as a means of administrative law to control public behavior.¹⁰

The definition of licensing is a form of implementing the regulatory function and is controlling the government over activities carried out by the community. Licensing can take the form of registration, recommendation, certification, determination of quotas and permits to carry out a business which normally must be owned or obtained by a corporate organization or a person before the person concerned can carry out an activity or action.¹¹

By giving permission, the authorities allow the person asking him to take certain actions which are actually prohibited for the sake of paying attention to the public interest which requires supervision.¹²

Permits are intended as things that can make a positive contribution to economic activity, especially in an effort to explore Regional Original Income (PAD) and encourage investment. A permit granted by the government has the intention of creating safe and orderly conditions so that every activity is in accordance with its purpose. On the other hand, the purpose of licensing for the government is often associated with PAD, because income is important in the framework of realizing regional autonomy. Without adequate income, it is impossible for regional autonomy to be realized.¹³

The granting of this license is that the activity for which a permit application is requested is an act which is prohibited, but is permitted by fulfilling all the requirements and carried out in certain ways.

License denial occurs when the criteria set by the authorities are not met. One of them is an environmental permit that is given to every person conducting a business

and / or activity. The definition of an environmental permit according to the provisions of Article 1 number 1 of Government Regulation Number 27 of 2012 concerning Environmental Permits is: "Permission is given to anyone who carries out a business and / or activity that is obliged to Amdal or UKL-UPL in the framework of environmental protection and management. as a prerequisite for obtaining a business and / or activity license".

In this permit, people who carry out a business and / or activity are required to carry out an Environmental Impact Analysis (Amdal) or Environmental Management Efforts and Environmental Monitoring Efforts (UKL / PL) in the framework of environmental protection and management as a prerequisite for obtaining a business and / or activity license. . The task of conducting Environmental Impact Analysis assessments and providing recommendations for Environmental Management Efforts and Environmental Monitoring Efforts is carried out by the Environmental Agency.

Requests for permits to related agencies are still not effective. Bureaucratic processes that are convoluted and not transparent can reduce investment levels in the regions. Not to mention the regional regulations that open up opportunities for levies on permits which add to the burden on entrepreneurs, thus reducing investors' interest in investing in the regions.

For the implementation of good public services by the central and local governments, the parties, namely the government and the community must support each other together, the aspirations of the community must take precedence.

Efforts to make public services more effective in the future will require a change in the field of public services. In this case by restoring the position between the government and the people as parties who serve and are served in a true sense. Therefore, the implementation of government relies on the principles of good governance.

¹⁰ Juniarto Ridwan and Achmad Sodik Sudrajat, op.cit., P. 91.

¹¹ *Ibid.*, p. 168.

¹² *Ibid.*

¹³ *Ibid.*

Meutia formulates the elements of good governance, namely:¹⁴

1. *Accountability* which consists of political accountability, namely the existence of a mechanism to replace ruling officials, there is no attempt to build monoloyalty systematically, and there is a clear definition and handling of violations of power under the rule of law;
2. There is a legal framework in development. From the point of view of the bureaucracy, this element means clarity and education from the servants of the state to the private sector. From the perspective of civil society, this element means that there is a legal framework needed to guarantee citizens' rights in upholding government accountability;
3. Information, namely that information about every aspect of government policy can be reached by politics. It is hoped that information disclosure will result in fair, tolerant political competition, and policies are made based on public preferences;
4. Transparency, namely the existence of an open policy for supervision.

Sedarmayanti argued that good governance requires accountability, transparency, openness and rule of law. The implementation of clean government demands freedom from maladministration practices from state administrative ethics.¹⁵

A power-oriented bureaucracy will produce bad governance. So far, the Indonesian bureaucracy has reflected what the World Bank has identified as an attribute of bad governance as illustrated below:¹⁶

¹⁴Sadjijono, *Memahami Beberapa Bab Pokok Hukum Administrasi*, Laksbang Pressindo, Yogyakarta, 2008, p. 156.

¹⁵Sedarmayanti, *Good Governance (Kepemerintahan Yang Baik), Bagian Kedua, Membangun Sistem Manajemen Kinerja Guna Meningkatkan Produktivitas Menuju Good Governance (Kepemerintahan Yang Baik)*, Mandar Maju, Bandung, 2004, p. 17.

¹⁶Moeljarto Tjokrowinoto, dkk., *Birokrasi Dalam Polemik*, Cetakan III, Pustaka Pelajar dan Pusat Studi Kewilayahan Universitas Muhammadiyah Malang, Yogyakarta, 2011, p. 7.

1. *Failure to make a clear separation between what is public and what is private, and hence a tendency to divert public resources for private gain;*
2. *Failure to establish a predictable framework of law and government behavior conducive to development, or arbitrariness in the application of rules and laws;*
3. *Excessive rules, regulations, licensing requirements and so forth which impede the functioning of markets and encourage rent-seeking;*
4. *Priorities inconsistent with development, resulting in misallocation of resources;*
5. *Excessively narrowly based or non-transparent decision making.*

Therefore, the public service bureaucracy in Indonesia really needs to implement the principles of good governance contained in Article 3 of Law Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion, and Nepotism, namely:¹⁷

1. The principle of legal certainty is the principle in a rule of law that prioritizes the basis of statutory regulations, propriety and justice in every state administrator's policy;
2. The principle of order for state administrators is the principle that forms the basis of order, harmony and balance in the control of state administrators;
3. The principle of public interest is the principle that prioritizes the general welfare in an aspirational, accommodating and selective manner;
4. The principle of openness is the principle that opens oneself to the rights of the people to obtain true, honest, and non-discriminatory information about state administration while still paying attention to the protection of personal, class and state secrets human rights;
5. The principle of proportionality is a principle that prioritizes the balance

¹⁷Ridwan HR, *Hukum Administrasi Negara*, Edisi Pertama, Cetakan Kesatu, Raja Grafindo Persada, Jakarta, 2006, p. 189 and 190.

between the rights and obligations of state administrators;

6. The principle of professionalism is the principle that prioritizes expertise based on the code of ethics and the provisions of the prevailing laws and regulations;
7. The principle of accountability is the principle that determines that each activity and the final results of the activities of state administrators must be accountable to the public or the people as the holder of the highest state sovereignty in accordance with the provisions of the prevailing laws and regulations.

Public services in the context of implementing the principles of good governance, it is necessary to innovate by utilizing technological advances such as the internet, which so far have made it easier for the community to communicate and interact.

Currently, the government has launched the latest innovations in terms of public services in the field of licensing, one of which is in environmental permits, namely the use of the Online Single Submission (OSS) system. This system already has a legal umbrella in the form of Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services. Government Regulation Number 24 of 2018 was signed by President Joko Widodo and promulgated on June 21, 2018. There are 107 articles and 145 attachments in the regulation aimed at accelerating and increasing investment and doing business in Indonesia. One of the regulations is about environmental permits.

An environmental permit is a prerequisite for obtaining a business license. Those who wish to apply for a business license through OSS must ensure whether their business activities are required to have Amdal or UKL-UPL. If their business activities are subject to an EIA or UKL-UPL, the entrepreneur must have one of these documents. Not all business activities are required to have an AMDAL or UKL-UPL as a prerequisite for obtaining a business license.

Based on Article 35 of Government Regulation Number 24 of 2018, there are 2

(two) exceptions to the requirements for environmental permits to obtain business permits, namely:

1. Environmental permits are not required for business locations located in special economic zones, industrial areas, free trade areas and free ports;
2. For business activities that are classified as micro and small businesses, activities that are not required to have UKL-UPL, and activities that are not required to have Amdal.

C. CLOSING

1. Conclusion

In an effort to make public services effective by the government, the provision of public services must implement the principles of good governance. Good governance requires accountability, transparency, openness and rule of law. Clean governance demands freedom from mal administration of ethics of state administration. In granting environmental permits, the government has launched the latest innovations in terms of public services in the field of licensing, one of which is in environmental permits, namely the use of the Online Single Submission (OSS) system. This system already has a legal umbrella in the form of Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services. Government Regulation Number 24 of 2018 was signed by President Joko Widodo and enacted on June 21, 2018. There are 107 articles and 145 attachments in the regulation aimed at accelerating and increasing investment and doing business in Indonesia. One of the regulations is about environmental permits. An environmental permit is a prerequisite for obtaining a business license. Those who wish to apply for a business license through OSS must ensure whether their business activities are required to have Amdal or UKL-UPL. An environmental permit is a prerequisite for obtaining a business license. Those who wish to apply for a business license through OSS

must ensure whether their business activities are required to have Amdal or UKL-UPL. An environmental permit is a prerequisite for obtaining a business license. Those who wish to apply for a business license through OSS must ensure whether their business activities are required to have Amdal or UKL-UPL.

2. Suggestion

Training assistance is required for access to licensing for prospective business actors who can apply or practice ways of obtaining permits through OSS themselves wherever and whenever.

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