

IMPLEMENTING THE PRINCIPLE OF ABUSE OF AUTHORITY PERSPECTIVE IN EXECUTING SUPERIOR ORDERS AGAINST LOCAL GOVERNMENTS

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Abstract

The application of the principle of abuse of authority in the execution of superior orders by local governments is a crucial aspect of good governance. In many countries, local governments are required to follow orders from higher authorities, such as central governments or regional administrations. However, there are instances where local officials abuse their power or exceed their authority while carrying out these orders. This paper aims to explore how the principle of abuse of authority can be implemented in the context of complying with superior orders. The article applies the juridical-normative approach method by reviewing the law on the general principles of good governance, as well as using various legal literature such as legal scientific articles, legal scientific papers, and theses and theses on AAUPB. The presentation of data in this paper uses qualitative techniques, where the data that has been obtained is described through narrative. The paper covers various aspects such as the definition and characteristics of abuse of authority, the relationship between abuse of authority and superior orders, and strategies that can be used to prevent abuse of authority. This study will provide readers with insights on the significance of understanding the concept of abuse of authority in the context of good governance. Additionally, the paper will suggest practical recommendations for local governments to reduce the risk of abuse of authority and promote good governance practices.

Keywords: Abuse of Authority, Good Government, Superior Orders

1. INTRODUCTION

The state is an entity consisting of a collection of people who have rights and goals aimed at fulfilling the needs of life. The rule of law is intended to create a government that provides public services to the community based on justice, expediency, and peace (Hutabarat et al., 2022). The Preamble of the 1945 Constitution describes the fulfillment of the state's goals of providing a just and prosperous country for its people. To achieve these goals, it is necessary to produce state administrators who can carry out their functions properly and responsibly. This requires adherence to the General Principles of Good Governance.

To achieve good governance, the government should adhere to “AAUPB (*Asas-asas umum pemerintahan yang baik*), the General Principles of Good Government, which should be interpreted as a legal basis containing elements of morality, ethics, decency, and compliance based on applicable norms. As some of the principles contained in AAUPB are also found in legal norms and rules, it must be placed as a legal principle (Marbun, 2015). The provision of goods/services by the government is intended to increase the prosperity of society (Firmansyah, 2017). The government's authority in providing goods/services is significant, as the highest institution in a country, and it can provide access to the public for an equitable supply of goods/services. Without the authority of government officials, the provision of goods/services will not run properly and may even backfire, harming the community.

To realize a just and prosperous country for the people, synergy between the community and the government is essential. The government should provide good and responsible services, and the community's role is to oversee the government, including the executive, legislative, and judicial branches. The existence of AAUPB in the government system will lead to a good governance system (Hakim, 2022). A government is deemed feasible if it can fulfill the community's needs, which is a requirement to protect, provide life, and optimally provide services in everyday life (Manengal, 2020).

Policies governing the provision of goods/services are regulated in Presidential Regulation (Perpres) No. 70 of 2012 concerning government procurement of goods and services, which outlines fundamental principles such as transparency, equal opportunity, and adherence to national procurement standards (Firmansyah, 2017). However, officials often abuse their power in the provision of goods/services, leading to fraud. This abuse of power harms the state by increasing public distrust of government authorities.

This paper aims to explore how the principle of abuse of authority can be implemented in the context of complying with superior orders. The findings of this study have important implications for local governments and their efforts towards achieving good governance. By understanding and implementing the principle of abuse of authority, local governments can prevent and minimize the occurrence of abusive practices within their institutions. This can lead to improved transparency, accountability, and fairness in the provision of public services, which in turn can enhance public trust and confidence in the government. Furthermore, this study can contribute to the development of legal and policy frameworks aimed at promoting good governance and preventing abuses of power within the government. Ultimately, this can help to strengthen democratic institutions and promote sustainable development in local communities.

2. RESEARCH METHODS

This article employs a juridical-normative approach to examine laws and regulations related to the general principles of good governance (Soekanto & Mamudji, 2013). In addition, various legal literature sources, such as legal scientific articles, legal works, theses, and dissertations related to the AAUPB, were also reviewed. The study used a qualitative research design to present the data, whereby the information obtained was analyzed through narrative descriptions.

To elaborate further, the juridical-normative approach is a methodology that is based on analyzing legal norms and principles to provide an interpretation of the law and identify its implications. In this study, we used this approach to analyze the laws and regulations that govern good governance in the AAUPB context.

We also conducted a comprehensive review of various legal literature sources to supplement our analysis of the laws and regulations. These sources include legal scientific articles, legal works, theses, and dissertations related to the AAUPB. We used this literature to provide a deeper understanding of the current legal and academic discourse on the topic.

To present the data, we used a qualitative technique, which involved analyzing and interpreting textual data through narrative descriptions. This allowed us to provide a rich and detailed account of the legal and academic discourse related to good governance in the AAUPB context.

3. RESULTS AND DISCUSSION

3.1. The Importance of AAUPB in Ensuring Good Governance

The goal of the rule of law is to establish a just and equitable government that prioritizes public services and promotes peace. The role of the state is not only to maintain order and ensure the welfare of the people, but also to intervene (*staatsbemoeienis*) in all fields or areas of life managed by the community. This implies that the government must play an important role in people's lives, providing services for the public good, and creating a foundation for the state's establishment and realization (Junaidi, 2021). As the highest state institution, the government has the responsibility and authority to provide services, protect the community, and promote the welfare of the people (Widjiastuti, 2017).

The welfare of the people can be achieved if all their needs are met properly and equitably. Therefore, as a provider of community needs, the government has the responsibility to meet the needs of the community and use its position and power in accordance with the law. To fulfill these responsibilities and authorities, the government needs a foundation or principle to support the achievement of good governance. The government should uphold the use of AAUPB in meeting the needs of goods and services for the community, as it promotes the distribution of public services and creates good synergy between the government and the community (Syamsuddin, 2020). AAUPB in state administration is seen as the foundation for good governance, creating a government that is fair, free from arbitrariness, and crimes of violation of the law and discrimination (Prawiranegara, 2021). Hadjon argues that AAUPB needs to be seen as an implied law that must be obeyed by the government and used in certain circumstances in accordance with the applicable legal rules (Hadjon et al., 1998). Every government agency must apply AAUPB in every activity.

However, in practice, not all AAUPB principles are abstract and general; some are born as legal rules and enshrined in written regulations. AAUPB can be traced to the elements contained in applicable norms, as not all AAUPB principles are included in legal principles, but some are still legal norms. Reflecting on the perception of the welfare state, the government holds the authority to provide state welfare (Sukmana, 2016). The provision of public welfare is under the scope of both the central government and local governments. However, in addition to the imposition of duties and responsibilities on the state administrative apparatus, there is also the granting of authority in the form of *Freies Ermessen* or Discretion, which refers to the flexibility in solving significant and urgent problems on the spot through actions taken on their own initiative outside the boundaries of the law, which can later be justified morally and legally (Sitorus, 2022).

3.2. The Role of AAUPB in Providing Public Services to the Community

At the beginning of the emergence of AAUPB, its role was only intended as a legal protection tool and was used as a tool to increase legal certainty against government actions for citizens. The function of AAUPB in government administration is as a foundation and guidance for government officials to run good governance. The general principles of proper government serve as benchmarks for government officials to fulfill their obligations, ensuring that every action aligns with the real purpose of the law (Fahmal, 2006).

In order to facilitate the relationship between the government apparatus and the community, guidance and a basis for judgment are needed to ensure proper government

implementation. The AAUPB serves important functions and has the following importance in its development (Ridwan, 2011):

1. It serves as a basis for analyzing and applying statutory provisions that are still abstract and unclear, which helps to avoid the possibility of using discretion in implementing policies that violate applicable regulatory provisions. Government officials can, therefore, avoid unlawful acts, abuse of power, arbitrary actions, and actions beyond their powers according to state administration.
2. The AAUPB is used by citizens to seek justice in the event of a clash with the government through a court lawsuit in accordance with Article 53 of Law No. 5 of 1986.
3. Judges can use AAUPB as an instrument in testing and canceling decisions issued by state administrative agencies or officials in administrative courts.
4. The legislative body uses AAUPB as an important initial foundation in the formation of draft laws to avoid mistakes in governance.

According to Indroharto in Solechan (2019), the existence of AAUPB has important meanings as follows:

- a. It is included in the applicable positive law.
- b. According to state administration, AAUPB is considered a norm of action, in addition to written and unwritten legal norms.
- c. AAUPB itself can be a reason for filing a lawsuit by the community, and by the State Administrative Judge, it is used as a testing tool for evaluating decisions about whether or not they are valid and canceling state administrative decisions.

The application of AAUPB in government has a positive impact on society because it ensures that Indonesian citizens' needs are met. Without AAUPB, people may develop a sense of distrust towards the government, which could lead to the country's destruction. Therefore, the application of AAUPB is crucial to creating good governance and reducing the abuse of power.

Creating good governance must be based on the principle of serving the welfare of Indonesian citizens, as stated in Paragraph IV of the 1945 Constitution of the Republic of Indonesia (Junaidi, 2021). AAUPB provides a direction for the government's implementation, ensuring that it is carried out according to these principles. As the highest state institution, the government has the responsibility to provide public services to the community to meet their needs, increase public trust, and avoid misunderstandings that may lead to chaos (Sari, 2022; Solechan, 2019).

The quality of public services produced by the government is an important indicator of its performance. The government's main goal is to meet the needs of its people through public service activities, which must be free from deficiencies and an attitude of power domination (Bangkara et al., 2022). To achieve a higher quality of public service, it is essential to evaluate the effectiveness of public service innovation and prioritize the level of service quality to build public trust in the government.

In order to realize and improve efficiency and effectiveness in improving public services, it is necessary to have a common direction and action to realize the wishes of the people, which should be implemented by the government. Therefore, the government is expected to improve employee discipline to enhance the quality of service to the community and development. This will help to create an image of a government that is disciplined, honest, and works wholeheartedly in their respective fields. To achieve these public service goals, it is necessary to apply AAUPB in public service performance.

AAUPB is considered as an abstract legal concept that outlines how the administration of government should be appropriate, fair, and honorable without resorting to authoritarianism, coercion, or the abuse of authority by the government (Widjiastuti, 2017). Originally proposed by Crince Le Roy, AAUPB contains eleven formulations. Koentjoro Purbopranoto in HR Ridwan (2011) added two more principles, bringing the total number of principles to thirteen, which are used in government administration. Additionally, AAUPB is also contained in Article 10 of Law Number 30 concerning Government Administration. It includes eight principles that serve as a legal basis, including legal certainty, benefit, impartiality, accuracy, non-abuse of authority, openness, public interest, and good service (Prawiranegara, 2021).

AAUPB has a significant role in providing guidance for analyzing provisions issued by previous government apparatuses. It serves as a reference for determining whether provisions must be reviewed to ensure proper application in society. Additionally, AAUPB serves as a preventive measure for the government to avoid using *freies ermesen* (discretion) inappropriately while exercising its authority. Thus, the government can execute its duties and authority appropriately. However, the government's provision of public services can be subject to abuse of power, as evidenced by its actions towards the community. Therefore, the principles in AAUPB are crucial in improving the implementation of public services and preserving public trust in the government (Prawiranegara, 2021).

To achieve good governance, the government must apply AAUPB in every activity, ensuring its uniform implementation across all components of the state, including the community and the apparatus. Abuse of power by the government can lead to conflicts between the interests of the government apparatus and the community, with the latter experiencing losses due to the abuse of obligations. To mitigate this issue, it is necessary to limit the government's authority to provide protection to individuals (Widjiastuti, 2017). The existence of laws prohibiting official arbitrariness ensures that officials do not overestimate their authority. According to State Administrative Court Law No. 9 of 2004 Article 53 paragraph (1), a person or entity can file a lawsuit with the State Administrative Court if they feel aggrieved by an administrative decision. The judge will then determine its validity and award compensation or correction to the relevant party. Failure to apply AAUPB usually stems from abuses of authority in goods and services.

Abuse of authority in goods and services is categorized into three parts: abuse against the public interest, abuse against deviations from laws and regulations, and abuse that violates procedural discrepancies in achieving a goal (Arijanta & Najicha, 2022). The three elements of abuse of authority are intent, transfer of goals, and negative desires of officials. Several factors contribute to abuse of authority, including a high sense of position leading to arbitrary behavior, lack of justice for law enforcement officials, low moral character, economic conditions of officials, and insufficient supervision in the procurement of goods and services.

During infrastructure development activities in a region, bureaucratic pathology can occur, as exemplified in the Madura area. In Banjar Village, Madura, abuse of authority occurred during the development of village infrastructure (Holifah et al., 2022). For instance, the Village Head acted as a local strongman who played a significant role in influencing the community. This individual had considerable power in mobilizing people's votes and ensuring the success of infrastructure development, such as road repairs, school building construction, and health center construction. The second role involved administrative support for decisions and policies made by the regent. Nepotism also played a role in development projects in Banjar Village, as bureaucrats, *klebun*, or village heads who were also local strongmen always won the development projects, giving them significant control over the existing infrastructure development.

4. CONCLUSION

The concept of the rule of law is to uphold a government that provides public services to the community based on justice, benefits, and peace. The state not only plays a role in maintaining order and security but also intervenes in all areas or aspects of life carried out by the community. The government, as the highest state institution, has the responsibility and authority to provide services and protection to the community and the welfare of the people. To fulfill this responsibility and authority, the government needs a basis or principle as support to achieve good governance. The government must comply with the use of AAUPB in meeting the needs of goods and services for the community as a form of public service that is evenly distributed and creates a good relationship between the government and the community. In practice, not all thoughts in AAUPB are abstract and general. Some principles appear as legal rules and are contained in written regulations.

The concept of a welfare state emphasizes that the government is responsible for the welfare of the country. However, with the great responsibility given to the government, they are also given the authority in the form of *freies ermessen* or discretionary, which is the freedom to solve problems that are important and must be resolved as soon as possible with initiative actions, outside the rule of law and can be legally and morally accountable. The implementation of the rule of law through the use of AAUPB as a principle is very important for good governance. The government must adhere to these principles in all its activities and decisions, and it is responsible for maintaining law and order, providing public services, and ensuring the welfare of its citizens. The concept of a welfare state emphasizes the government's responsibility for the welfare of the country, and the government has the authority to act proactively in urgent and important situations that are not regulated by law.

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