

MALADMINISTRATION IN THE CONTEXT OF THE PUBLIC SERVICE

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ABSTRACT

Basically every human being needs a service, even in the extreme can be said that the Ministry cannot be separated with human life. Basically every human being needs a service, even in the extreme can be said that the Ministry cannot be separated with human life Based on the purpose of organizing the public service, it can be concluded that basically the purpose of the public service, the community is satisfactory, and the satisfaction, to achieve the required quality of service excellence public services is still less give satisfaction in the community, even the often very disappointing, so sometimes the fact happens to crappy service maladministration from the implementing authorities
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INTRODUCTION

Population growth in a country demanded his Government to be able to provide a variety of means and the fulfillment of his life for his people. Obligation of the State to meet those needs, especially in State after State welfare (Welfare state), as is the case with Indonesia, brings the consequences of State being required to play a role even further, and intervention with respect to various aspects of people's lives in order to manifest prosperity.

In modern legal State Government's task is not only to keep order and security (rust and order), but also maintains a general welfare (bestuurszorg). In order to carry out this task, the Government granted the authority in the field settings (regelen or besluiten van algemeen strekking). From this setting, the task appears some juridical instrument for dealing with individual events and concrete, namely in the form of statutes (beschikking). By their very nature, the Statute was the spearhead of the instrument of Government, in jurist or closing as the norm of a series of legal norms.

In reality the various emerging issues in governance, particularly in terms of the implementation of the public service. The fact remains that the communities

as users of public services still feel less effective, and the implementing agencies in providing service to expect community. This case, it appears from the number of people still experience disappointments, the Ministry received from the Government as a public service provider, such as the special region of Yogyakarta almost 70% (seventy percent) of the society was disappointed over the Government ministries, and in South Sulawesi reached 25.4% (twenty-five comma four percent).

In relation to the public service made by the Government of the city of Makassar, the results showed that the Government of the city of Makassar in the public service are less accountable (20%), lack of professional (34%), lack of responsiveness (14%), lack of transparent (34%), and less to protect the rights of society (20%).

Based on the above description, giving an indication that the issue of public services is still less give satisfaction in the community, even the often very disappointing, so sometimes the fact happens to crappy service (maladministration) from the implementing authorities. To that end, efforts are needed to give an understanding in order to improve professionalism and awareness in carrying out public service tasks. Moreover, the question of public service is a field that has to be managed properly, because it contains a basic human rights, and became one of the elements of the welfare of his part of the State that must be realized. Therefore, the public service is a concrete manifestation of the implementation of the obligations of the State in prosper his people.

Meaning and purpose of the public service

Basically every human being needs a service, even in the extreme can be said that the Ministry cannot be separated with human life. The community at any time will always insist on quality public services is realized from bureaucrats, despite demands that it sometimes does not correspond to what was expected, because the empirical basis of public service that occurred during this time, still display traits, i.e. convoluted, slow, expensive and tiresome. Such tendencies, occur because society is still positioned as a party that "serve" rather than "served". The service is supposed to be aimed at the general public, often turned into community service to the country.

In this regard, according to Osborne and Ted Gebler who the Government as Government belongs to the people, i.e. the Government turned control of its own authority to the community, so that the community is empowered to be able to do some control over the services provided by the Government. With the control of the public, then the public service would be better and creative in solving a problem. Services provided by the Government as an obligation, not a

right, since they are appointed to serve the community. Therefore, built a strong commitment to serve, so that services will be responsive to the needs of the community.

In article 1 point 1 Law number 25 of 2009 about public services, formulated the notion of public service, as an activity or series of activities in order to fulfill the needs of the service in accordance with the regulations for each citizen and resident of goods, services, and/or administrative services provided by the organizer of the public service. Thus public service is basically fulfilling the wishes and needs of the community by organizing the State.

As for the purpose of public service in Act No. 25 of 2009 set out in article 3, as follows:

- a. Make a clear connection and limitation on the rights, responsibilities, obligations and authorities of all parties concerned with the implementation of the public service;
- b. Realization of the system of organizing the public service in accordance with the General principles of good corporate governance and;
- c. Be conducting the public service in accordance with the regulations; and
- d. The realization of protection and legal certainty for the community in the implementation of the public service.

Based on the purpose of organizing the public service, it can be concluded that basically the purpose of the public service, the community is satisfactory, and the satisfaction, to achieve the required quality of service excellence which is reflected from the existence of:

1. Transparency, i.e., services that are open, easy and accessible to all those in need as well as adequately prepared and easy to understand.
2. Accountability, a service that can be accountable in accordance with the provisions of the regulation militate in the invitation;
3. Conditional, i.e. services that correspond to the conditions and the ability of giver and receiver service by sticking to the principles of efficiency and effectiveness;
4. Participatory, i.e., services that could encourage public participation in the conduct of public services with attention to the aspirations, needs and expectations of society;
5. Equality, i.e. services that do not discriminate any particular aspect of tribe, race, religion, class, social status and others;

6. The balance of rights and obligations, i.e. services that consider aspects of fairness between the giver and the recipient of service of the Republic;
7. Accountability, conditionally, participatory, equality rights, the balance of rights and obligations¹.

Maladministration in Health Services

The Term Maladministration

Examining the meaning of the word maladministration, Word Basic "Mall" in Latin "malum", meaning evil (bad). While the Administration said the origin of the word "administrare", in Latin it means to serve. If they were combined into the maladministration with a basic understanding of yesteryear, then maladministration is an ugly service.

With these basic notions, maladministration are always associated with the behavior in the service, in which case the service carried out by public officials. Associated with the administration of the legal norms, the norms of behavior categories entry maladministration apparatus (the attitude of serving and trusted).

The term maladministration is, according to Sir Edmun Compton looked at no one can define precisely by stating that:

*"Nobody can define maladministration in plan terms. It may be difficult to define, but most of us believe that we could recognize an example of it, if saw it. We can describe it by examples. We know what it is, but we are quite ready to admit that we might find ourselves in disagreement with, other people about whether or not a particular case was an example of maladministration. We would admit also that there might be a vague and uncertain boundary surrounding the areas of maladministration"*²

though the maladministration cannot be defined precisely, but according to Sykes argues that Maladministration as *"The most appropriate general description is that his work is directed at the correction of case of maladministration a term which has been described as including bias, neglect,*

¹ Juniarsa Ridwan dan Achmad Sodik, ***Hukum Administrasi Negara Dan Kebijakan Pelayanan Publik***, Nuansa, Bandung, 2010, hlm. 20

² KC. Wheare, ***Maladministration and its Remedies***, Stevens & Sons, London, 1973, hlm. 6, terpetik dalam Philipus M. Hadjon, et. al, ***Hukum Administrasi dan Good Governance***, Universitas Tri Sakti, Jakarta, hlm. 73

delay inattention, incompetence, eniptidute, perversity, turpitude, and arbitrariness”.

In the Netherlands the concept of maladministration is starting to get noticed in the oversight of the public service, more emphasis on the principle of *rechtmatigheid* devoted to the supervision of the use of the authority. Maladministration relating to supervision of conduct apparatus (*overhead gedrag*), or aimed at. To do the supervision authorities should heed the common norms of good behavior (*algemene normen van goed overheidsgedrag*). So there is the supervision of the authority based on the principle of *rechtmatigheid* and the supervision of the authorities is based on behavior by public norms of behavior.

As for the principles of the good behavior, according to Ten Berge, include:

1. *Dientsbaarheid* (*serving attitude*);
2. *Betrouwbaarheid* (*trusted*), consisting of :
 - *Openheid* (*openness*);
 - *Nauwgezetheid* (*prudence, incredible detail*);
 - *Integriteit* (*the integrity of the*);
 - *Soberheid* (*simplicity*); and
 - *Eerlijkheid* (*honor*).

The legal System in Indonesia have not been clearly set about maladministration, the legal practice of the concept has been widely used. Setting of limitation or other forms of maladministration are still diverse. The concept of maladministration is a measure of the actions or behavior of the apparatus has not been formulated in Administrative law, as a common law rule, but still the sectorial scattered.

Law No. 28 of 1999, even though it does not know the term maladministration, but the term used was a dishonorable deeds. Similarly, Law number 25 of 2009 about public service, do not use the term maladministration, but disallow about behavior that must be followed in carrying out public service tasks. On the contrary the Law Number 37 Year 2008 about the Ombudsman, know the term maladministration and formulate it as set forth in article 1 point 3 that:

"Maladministration is a behavior or tort, bypassing the authority, using the authority for the purpose other than which it was authorized, including negligence or neglect of legal obligations in implementing the public service performed by the organizers of the State, and Government that led

to losses of material and/or immaterial for the community and the individual"

Affirmation of ACT No. 27 of 2008 are essentially gives no clear definition of maladministration, but rather just give restrictions on forms of maladministration, in terms of the legal aspects of the Administration's formulation of maladministration as defined in article 1 point 3, will lead to difficulty in determining, which was to have become a personal responsibility or the responsibility of the Office, and in regard to the competence of the Court.

These Forms of Maladministration

Maladministration with regard to behavior (behavior) apparatus in carrying out the task of Government and public service tasks in connection, therefore the indicator actions associated with behavioral norms apparatus intended for actions which can be as an act of maladministration.

As for the form of acts of maladministration very diverse views of theoretical aspects as well as juridical aspects in accordance with the legal system of each State. Law Number 37 Year 2008 about the Ombudsman, determine the forms of maladministration is: behavior or tort, bypassing the authority, using the authority for any other purpose than the purposes of the authority including negligence or neglect of legal obligations in implementing the public service performed by the organizers of the State, and Government that led to losses of material and/or immaterial for the community and the individual.

According to Sykes that maladministration includes: biased or would have thought, waiver, delay, not paying attention, did not have the competence, the Act foolish, unnatural act, and indecency, arbitrary.

Hereinafter in article 34 of ACT No. 25 of 2009 about public services, determines that Implementation in the public service should behave, as follows:

- a. Fair and not discriminatory;
- b. Carefully;
- c. Polite and friendly;
- d. Firm, reliable and doesn't give a protracted decision;
- e. Professional;
- f. Not be difficult;
- g. Compliant valid at top order and proper;
- h. Upholding the values of accountability and institutional integrities the Organizer;

- i. Not to divulge information or documents that must be kept confidential in accordance with the regulations;
- j. Open and take appropriate measures to avoid conflict of interest;
- k. Do not abuse the infrastructure and public services;
- l. Don't give wrong or misleading information in response to requests for information as well as proactive in fulfilling the interests of the community;
- m. Do not abuse the information, title, and/or authority belongs;
- n. According to propriety; and
- o. Do not deviate from the procedure.

In the implementation of the public service, in case of an error or mistake the Office conducted by health workers, can carry legal consequences of personal responsibility or the responsibility of the Office.

Personal error occurs, if there is a private person who committed mistakes not related to public service, but it shows the person's weaknesses, desires or corruption, and lack of care or negligence-negligence. While the term error occurs, due to an error in the use of authority, and only with regard to public services. This error indicators, will be able to determine the presence of personal responsibility and the responsibility of the Office.

In regard to the responsibility to sue the State, because of the element of the personal mistake (*faute personnelle*), then the Executive or employee of the apparatus can be sued by someone who is aggrieved in general courts (Ordinary Court) as private and take over the plaintiff's own fault. While the error terms (*faute de service*) conducted a public officials, aggrieved parties if there is a lawsuit must be filed to the Judiciary's administration.

CONCLUSION

Based on the above description, it can be inferred that in implementing the public service does not cover the possibility of the occurrence of maladministration committed by the implementing agencies (bureaucrats). Therefore, managing authorities may make mistakes that are categorized as private or error fault position. In case of maladministration, and the consequences thereof, which may be yudisis is demanding the presence of personal responsibility and the responsibility of the Office.

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