Scientia pro virtute

SCIENTIUM LAW REVIEW
P-ISSN: 2829-5811
E-ISSN: 2829-7644
pp. 41-49

REORIENTATION OF PUBLIC SERVICES IN INDONESIA: A STUDY OF TRANSCENDENTAL DIMENSIONS OF LAW

Mochamad Nuruz Zaman[1] dan Ryan Saputra Alam[2]
[1]*Politeknik Negeri Jakarta, Depok, Indonesia. E-mail: mzaman@bispro.pnj.ac.id*
[2]*Universitas Indonesia, Jakarta, Indonesia. E-mail: rysalamilmi@gmail.com*

Article

Keywords:

a priori, aposteriori, public services, transcendental.

History of Article:
Received: April 04, 2022;
Reviewed: April 07, 2022;
Accepted: April 16, 2022;
Published: April 30, 2022.

DOI:

https://doi.org/10.56282/slr.v1i1.56

Abstract

Public service is one of the means to build public trust to realize national development goals. However, the report received by the Ombudsman of the Republic of Indonesia shows the implementation of public services has not been to the needs and changes in various community, national, and state life. Concerns about the inefficiency of public services and many rules and standard operating procedures indicate the need to reorientate public services in Indonesia. Based on normative juridical studies, two conclusions were produced. First, so far, public services in Indonesia are only for the fulfillment of certainty of laws and regulations, which seem to be just fulfilling formal justice. Second, it is necessary to reorient public services, namely public services that explore transcendental dimension laws, so that the general knowledge offered by the state to its people can exceed the limitations of written rules by giving the meaning of every existing law by not going out of laws born of ideal nature, which is true. This can be conducted by synthesizing a priori knowledge with apository knowledge. Inside a priori of public service, the implementation must show on the condition of a good experience while remaining based on rational thinking.

1. INTRODUCTION

There are still many reports received by the Ombudsman of the Republic of Indonesia (RI) related to the implementation of public services that are still not by the needs and changes in various fields of public, national, and state life, as affirmed in the second paragraph of the general explanation of Law No. 25 of 2009 concerning Public Services (Public Service Law). One of the facts is the increase in reports received by the Indonesian Ombudsman, wherein in 2015, the reports received reached 6,859, then increased in 2016 to 9,069 reports[1].

[1] Kompas.com, http://bisniskeuangan.kompas.com/read/2017/01/27/195726626/ombudsman.pelayanan.publik.belum.baik, 2 December 2019, accessed on 20 March 2022.

There are still many reports related to public services, whether they realize it or not, show that certain parties who are suspected of being guilty, both the reporting party and or the reported party, have ignored the intention of the Public Service Law as to provide legal certainty in the relationship between the public and the organizers in the public service[2]. It is known that public services cannot be separated from various rules, bureaucracies, and standard operating procedures (*SOP*s). However, this does not guarantee the implementation of excellent service. Of course, this rule dominated by writing can negatively impact, as Rahardjo has asserted that too many written rules can cause people to become fixated on reading regulations that are very risky to marginalize justice and make sense[3].

Concerns about the inefficiency of public services and the variety of rules, provisions, and SOPs in implementing shared services must be addressed immediately, considering the essence of public services as a means to build public trust to realize national development goals[4]. So, this study seeks to answer 2 (two) existing problems. First, why reorientation of public services in Indonesia? Second, how is the reorientation of ideal public services in the context of Indonesia in the future?.

2. METHODS

This study uses normative juridical methods or also known as doctrinal methods. As the use of doctrinal methods aims to describe existing laws, having a prescription based on the prescription can legitimize the proposed new solution. Then this method is in line with the purpose of this study to produce an ideal reorientation of public services in the Indonesian context. This is in line with Irianto's thinking that asserting that efforts to find the law in doctrinal research are carried out by studying the main ingredients in the form of legislation, jurisprudence, legal cases, and the opinions of legal experts so that by parsing the legal documents, it is hoped that practical goals can be produced in solving related legal problems[5].

This juridical study uses a qualitative approach with data sources in secondary da-ta or library research[6], whose legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials are binding legal materials comprised of laws and regulations related to public services and other related laws and regulations. In contrast, secondary legal materials consist of textbooks, opinions of jurists, scientific journals, national and international proceedings, previous research results, and tertiary legal materials in the form of legal dictionaries, encyclopedias, and other tertiary legal materials.

[2] Pasal 2 UU Pelayanan Publik (*Article 2 of the Public Service Law*)
[3] Rahardjo, Satjipto, Biarkan Hukum Mengalir: Catatan Kritis tentang Pergulatan Manusia dan Hukum, Penerbit Buku Kompas, Jakarta. 2008.
[4] Alinea Ketiga UU Pelayanan Publik (*Third paragraph of the Public Service Law*).
[5] Irianto, Sulistyowati, Metode Penelitian Kualitatif dalam Metodologi Penelitian Hukum, *Jurnal Hukum dan Pembangunan*, Vol. 32, No. 2, 2002, p. 159.
[6] Neuman, W. Lawrence, Understanding Research, Boston: Pearson Education, Inc., , 2017.

3. ANALYSIS AND DISCUSSION

a. Orientation and Reorientation of Public Services in Indonesia

Article 1 number (1) of the Public Service Law affirms that public services are activities or series of activities to meet the service needs of every citizen and resident for goods, services, and/or administrative services provided by public service providers. The existence of the firmness of the general word after the word service (not public service, but public service) cannot be separated from the opinions of Hogwood and Gunn, who have identified its scope as indicating an area of activity, expression of general-purpose, specific proposals, government decisions, programs, outputs, outcomes, theories or models, and processes[7]. Then in, Article 3 of the Law affirmed 4 (four) purposes of the Public Service Law. First, the realization of clear boundaries and relationships about the rights, responsibilities, obligations, and authorities of all parties related to implementing public services. The second is realizing a proper public service implementation system according to the general principles of good government and corporations. The third is the fulfillment of the performance of public services by the laws and regulations. And fourth is the realization of legal protection and certainty for the community in implementing public services.

As stipulated in Article 3 of the Public Service Law, the four objectives show that public services in Indonesia are always oriented towards laws and regulations, as affirmed in Article 5 paragraph (1) of the Public Service Law[8]. The orientation of public services that are only for the fulfillment of the certainty of laws and regulations will obviously only fulfill formal justice, which only attaches importance to the judge as long as it has fulfilled the laws and regulations but can marginalize substantive justice. This has clearly ignored some expert opinions, such as Lubis who stated that although the rule of law has been enacted, without the "moral" application of the regulation will not be perfectly practicable because its application will be influenced by interests that are contrary to the original legal objectives in the form of achieving justice, legal certainty, and legal benefits[9]. Then Rahardjo asserted that the core of the law in Indonesia still fulfills the capacity of conscience attached to honesty, empathy, and dedication in carrying out the law, which has become increasingly rare and supreme[10].

Indeed, the way of punishment written in public service, whose manifestation is the rule of law and SOP, is inevitable because the law, which indeed the rules are explicitly formulated in the form of regulations, is made to be implemented in close relation to the

[7] Hamdi, Muchlis, Kebijakan Publik: Proses, Analisis, dan Partisipasi, Bogor, Ghalia Indonesia. 2015. hlm 36.
[8] Pasal 5 ayat (1) UU Pelayanan Publik menegaskan bahwa ruang lingkup pelayanan publik meliputi pelayanan barang publik dan jasa publik serta pelayanan administratif yang diatur dalam peraturan perundang-undangan.
[9] Lubis, M. Solly, "Tinjauan Sekitar Penegakan Hukum di Tengah Kegoncangan Paradigma dan Sistem Hukum", dalam Susi Dwi Harijanti et al (Eds.), Negara Hukum Yang Berkeadilan: Kumpulan Tulisan Dalam Rangka Purnabakti Prof. Dr. H. Bagir Manan, SH, M.CL, Bandung, Pusat Studi Kebijakan Negara Fakultas Hukum Universitas Padjajaran. 2011.
[10] Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia, Yogyakarta, Genta Publishing. 2009, hlm 4.

tendencies that exist in a society[11] which requires action for the state apparatus. However, it should be in the act of public service that the risk of substantive marginalization of justice must be assimilated. Because it is through public service that the State can show its loyalty to its people, who are human beings who are in a state of independent nature, have been willing to abandon their freedom[12] by binding themselves to the State, even voluntary participation to make tax payments for the survival of the State. Thus, the existence of regulations and SOPs is not just to fulfill formal justice but not to marginalize the judge of substance in one way of attaching accountability to implementing public services. The need for accountability is due to the context of agency relations that asserts that the efficiency of a business (public service) can occur if the principal (in this case, the state) as "one who authorizes another to act on his or her behalf as an agent" who oversees the behavior of his agent[13] (in this case the state apparatus that provides public services) and at the same time as a means[14] to increase the level of state concern for the state apparatus that provides public services and its citizens.

Thus, the existence of rules and SOPs that regulate the relationship between state-apparatus implementing public services can be maximized to provide substantive justice for the community. The relationship between the public service-acting states cannot be separated from agency theory, where the Black's Law Dictionary affirms agency as "a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions.[15]" This opinion is in line with Ross's belief that an agency relationship is a relationship arising between two (or more) parties in which one party is referred to as an agent acting against, on behalf of, or a representative of the other party called the principal[16]. Prior to this agency theory, law through agency law had studied the legal consequences of the phenomenon of choice to act through others as a substitute for someone[17]. This law emphasizes that those who are more responsible for violations committed by employees or agents are principals because the existence of supervision or the right to supervise agents' actions is in principle[18]. Then agency law evolved into agency theory, emphasizing the contractual relationship between the principal and the agent that should reflect the agent's organization[19].

---

[11] Satjipto Rahardjo, Penegakan Hukum: Suatu Tinjauan Sosiologis, Yogyakarta, Genta Publishing, 2009, hlm 100.
[12] Locke, John, Kuasa Itu Milik Rakyat, terjemahan A. Widyamartaya, Yogyakarta, Penerbit Kanisius. 2002.
[13] Kornhauser, Lewis A., "An Economic Analysis of the Choice Between Enterprise and Personal Liability for Accidents", California Law Review, Vol. 70, Issue 6, December. 1982, hlm 1345.
[14] Chu, C. Y. Cyrus, dan Yingyi Qian, "Vicarious Liability under a Negligence Rule", International Review of Law and Economics, Vol. 15, 1995, hlm 205.
[15] Bryan A. Garner, Op.cit, hlm 67.
[16] Ross, Stephen A., "The Economic Theory of Agency: The Principal's Problem", The American Economic Review, Vol. 63, No. 2, Mei. 1973, hlm 134.
[17] Shapiro, Susan P., "Agency Theory", *Annual Review Sociology*, Vol. 31, 2005. Hlm 272,273
[18] Sykes, Alan O., "An Efficiency of Vicarious Liability under the Law of Agency", *The Yale Law Journal,* Vol. 91, No. 1, Nopember. 1981, hlm 168.
[19] Eisenhardt, Kathleen M., "Agency Theory: An Assessment and Review", Academy of Management Review, Vol. 14, No. 1, 1989, hlm 57-59.

b. Reorientation of Public Services based on Transcendental Perspectives in The Indonesian Context

There is a shift in the orientation of public services, which is only for the fulfillment of the certainty of laws and regulations, towards moral public servants for the achievement of justice, legal certainty, and legal benefits, in which honesty, empathy, and dedication are attached to carrying out public service law. The existence of rules and SOPs in public services must be maximized in the form of state agency relations to the accountability of their apparatus so that excellent public services to the community can be fulfilled, even without the fear of criminalization efforts from specific individuals who want to abuse a public service.

Reorientation of public services that refers to the overall capacity of the conscience of the state apparatus as an executor of public services must be in line with the spiritual quotient, which according to Zohar and Marshall (in), has the nature of meaningful intelligence (meaning-giving), thinking in context and jumping out of bonds (transformative), creative, insightful, and intuitive[20].

The desire to reorient public services to the capacity of conscience and spiritual intelligence of the State apparatus implementing public services indicates the exploration of Indonesian transcendental laws. The investigation of the transcendental dimension of the law firm focuses on the pure conditions in the subject of knowledge[21] (in this case, it is the apparatus of the State executing public services) which leads to substantive justice given by the state to its people through the granting of the meaning of every existing law by not being out of the law born of the ideal realm, which is absolutely true[22]. Furthermore, Imannuel Kant explained that transcendental thinking could not be separated from the synthesis between a priori knowledge and aposteriori knowledge[23].

The existence of a priori knowledge in transcendental thinking suggests that the ratio of man must be related to the objects of the outside world in the form of possible conditions of human knowledge[24]. Furthermore, F.X. Adji Samekto explained that knowledge of a priori nature is rationalism based on deductive logic based on values that contain restrictive teachings, which are received not through proof but beliefs based on human will[25]. The knowledge that is a posteriori is empiricism based on inductive logic

[20] Rahardjo, Satjipto, Biarkan Hukum Mengalir: Catatan Kritis tentang Pergulatan Manusia dan Hukum, Penerbit Buku Kompas, Jakarta. 2008, p. 93.
[21] Hardiman, F. Budi, Pemikiran-Pemikiran Yang Membentuk Dunia Modern, Jakarta, Penerbit Erlangga. 2011, p. 114.
[22] Sinaga, Henry Dianto Pardamean, dan Fatma Ayu Jati Putri, "Sintesis A Priori dan Aposteriori dalam Mereorientasi Penegakan Hukum di Indonesia: Suatu Penjelajahan Hukum Transendental", dalam Absori et.al. (Ed.), Hukum Transendental: Pengembangan dan Penegakan Hukum di Indonesia, Yogyakarta Genta Publishing. 2018.
[23] F. Budi Hardiman, Ibid.
[24] Loc.cit.
[25] Samekto, F. X. Adji, Pergeseran Pemikiran Hukum dari Era Yunani Menuju Postmodernisme, Jakarta, Konstitusi Press. 2015, pp.. 71-72.

based only on reality, experience, and evidence and does not want to be bound by values[26].

The necessity that transcendental dimension laws not only rely on knowledge a priori is also affirmed by some opinions. Fantl argues that a priori and a posteriori have a strong relationship, as his statement is quoted as follows "... there are strong arguments that the posteriori faculties need guarantees from other faculties and because the a priori faculties are the ones that are supposed to provide those guarantees". Meyers suggests related to 3 (three) things that are still burdensome in a priori knowledge[27]. The first objection concerns the error of believing in conclusions that prove through the intuition of each premise. The second objection concerns mathematicians who sometimes ask that a priori to support contradictory opinions and as if there is no practical solution, as Ewing (in Meyers) argues according to the following quote: "arguments may well be available which without strictly proving either side to be wrong put a disputant into a position in which he can see better for himself whether he is right or wrong or cast doubt on the truth of his view." And the third objection concerns the clarity of insight a priori which perceives "seeing (seeing)" with thought so that there is a dependence on perceptions such as insight and understanding, an example of which is the impossibility if two plus one instead of three, but the addition never has any theory to know why so three because knowing it is only based on an insight.

Then, Jegalus argues that problems can also arise if only a pure priority and if understanding a priori only reflects age prejudices[28]. The issue of pure priori lies in how the a priori is related to empirical man, but there are many observed characteristics, so there are no clear criteria for practical characteristics that are essential or axial. In contrast, the danger of the justification of a priori understandings that are considered by natural law in age can be seen from facts such as the Church, which was seen as superior to the State in the Middle Ages, the justification of absolute monarchy in hobbes' time, and the justification of constitutional monarchy in the days of Locke and Montesque.

Furthermore, Bruggink argues that law is still weak if it is based solely on a priori, as Bruggink has asserted that there is often a combination of various meanings of the enforceability of legal rules whose calcification is contained in two groups of theories. The first group is theories built on empirical materials, but there is a problem that questions whether the law rules are sufficient to be studied empirically. The second group puts normative or material behavior in an important position. However, there is a problem that questions that cannot still empirically determine a specific rule to be more adhered to by society when compared to the difficulty of reconciling acceptance based on the values embodied in the direction of law[29].

---

[26] Ibid., pp. 71-73.
[27] Meyers, Robert G., Understanding Empiricism, Chesham, UK, Acumen Publishing Limited. 200, pp.110-111.
[28] Jegalus, Nobertus, Hukum Kata Kerja: Diskursus Filsafat tentang Hukum Progresif, Jakarta, Penerbit Obor. 2011, pp. 86-87.
[29] Bruggink, JJ. H., Refleksi tentang Hukum: Pengertian-Pengertian Dasar Dalam Teori Hukum, Bandung, PT. Citra Aditya Bakti. 2015, pp. 155-156.

The need for a combination of empiricism and rationalism in public service in Indonesia demonstrates a reorientation transformed into contemporary public services oriented towards transcendental-dimensional laws. Transcendental-dimensional law in public service in Indonesia must be able to be expressed as a system of basic principles of knowledge that apply absolutely and generally, and metaphysically where the field of theoretical knowledge is the existing (Sein), namely nature, which is then captured by sensory observation, then by understanding, and finally through science[30]. Later, Samekto corroborated that idealistic transcendental thinking, when combined with Plato's philosophy of naturalism with Aristotle, would result in the thought that the universe contains the ideal life (the spirit life containing indisputable truths) and the realm of facts, or in other words, the synthesis of rationalism with empiricism, so that in it there is a firmness to humans who are in the realm of facts, to not be out of the teachings of a priori nature, born of the ideal domain (ideos)[31]. Thus, with the exploration of this transcendental dimension, the law will also dismiss concerns about the insecurity of public services in Indonesia because it has been able to work the public service system systematically, there is no overlap of services and even expected to build public trust, so that it is helpful to realize national development goals.

4. CONCLUSION

The study yielded two conclusions. First, public services in Indonesia are urgent to be reoriented from public services that are only for the fulfillment of laws and regula-tions to public services that uphold moral responsibility that refers to the overall capaci-ty of conscience and spiritual intelligence of state officials implementers of public ser-vices. Thus, public services that have been synonymous with the ideology of legal cer-tainty that only leads to the confidence of regulations or laws that seem only to fulfill formal justice can shift into public services that uphold substantive justice and public benefit because it should be realized that excellent public service can be created from the side of humanity between those who serve and those served as human beings who have moral intelligence, intellectual intelligence, and spiritual intelligence that attaches to the humanism side. Even though laws and regulations and SOPs in public services can be maximized in the framework of agency relations where the State must provide opportu-nities for its apparatus to show responsibility in presenting excellent public services. Give must still discipline the form of state agency relations against the accountability of its device so that excellent public service to the community can be fulfilled, even without the fear of criminalization efforts from specific individuals who want to abuse a public service.

Second, the reorientation of public services based on a transcendental perspective in an Indonesian context lies in exploring transcendental dimension laws that firmly fo-cus on pure conditions in the state apparatus implementing public services. So that the

[30] Huijbers, Theo, Filsafat Hukum dalam Lintasan Sejarah, Yogyakarta, Penerbit Kanisius. 1982, pp. 94-95.
[31] F. X. Adji Samekto, Op.cit., p. 69.

general application offered by the state to its people can exceed the limitations of written rules by giving the meaning of every existing law by not coming out of the law born of the ideal realm, which is absolute truth, which is a synthesis between a priori knowledge and aposteriori knowledge. Inside a priori of public service, implementers must show the condition of a good experience while remaining based on rational thinking.

REFERENCES

Bruggink, JJ. H., *Refleksi tentang Hukum: Pengertian-Pengertian Dasar Dalam Teori Hukum,* Bandung, PT. Citra Aditya Bakti. 2015.

Chu, C. Y. Cyrus, dan Yingyi Qian, "Vicarious Liability under a Negligence Rule", *International Review of Law and Economics,* Vol. 15, 1995.

Eisenhardt, Kathleen M., "Agency Theory: An Assessment and Review", *Academy of Management Review,* Vol. 14, No. 1, 1989.

Gardner, Bryan A., (Ed), *Black's Law Dictionary*, St. Paul, West Publishing Co. 2004,

Hamdi, Muchlis, *Kebijakan Publik: Proses, Analisis, dan Partisipasi,* Bogor, Ghalia Indonesia. 2015.

Hardiman, F. Budi, *Pemikiran-Pemikiran Yang Membentuk Dunia Modern*, Jakarta, Penerbit Erlangga. 2011.

Jegalus, Nobertus, *Hukum Kata Kerja: Diskursus Filsafat tentang Hukum Progresif,* Jakarta, Penerbit Obor. 2011.

Huijbers, Theo, *Filsafat Hukum dalam Lintasan Sejarah,* Yogyakarta, Penerbit Kanisius. 1982.

Irianto, Sulistyowati, Metode Penelitian Kualitatif dalam Metodologi Penelitian Hukum, *Jurnal Hukum dan Pembangunan,* Vol. 32, No. 2, 2002.

Kompas.com, http://bisniskeuangan.kompas.com/read/2017/01/27/195726626/ombudsman.pelayanan.publik.belum.baik, 2 December 2019, accessed on 20 March 2022

Kornhauser, Lewis A., "An Economic Analysis of the Choice Between Enterprise and Personal Liability for Accidents", *California Law Review*, Vol. 70, Issue 6, December. 1982.

Locke, John, *Kuasa Itu Milik Rakyat, terjemahan A. Widyamartaya,* Yogyakarta, Penerbit Kanisius. 2002.

Lubis, M. Solly, "Tinjauan Sekitar Penegakan Hukum di Tengah Kegoncangan Paradigma dan Sistem Hukum", dalam Susi Dwi Harijanti et al (Eds.), Negara Hukum Yang Berkeadilan: Kumpulan Tulisan Dalam Rangka Purnabakti Prof. Dr. H. Bagir Manan, SH, M.CL, Bandung, *Pusat Studi Kebijakan Negara Fakultas Hukum Universitas Padjajaran.* 2011.

Meyers, Robert G., *Understanding Empiricism*, Chesham, UK, Acumen Publishing Limited. 2006.

Neuman, W. Lawrence, Understanding Research, *Boston: Pearson Education, Inc.,* , 2017.

Rahardjo, Satjipto, Biarkan Hukum Mengalir: Catatan Kritis tentang Pergulatan Manusia dan Hukum, *Penerbit Buku Kompas,* Jakarta. 2008.

Republik Indonesia, Undang-Undang Nomor 25 Tahun 2009 tentang Pelayanan Publik. 2009.

Ross, Stephen A., "The Economic Theory of Agency: The Principal's Problem", *The American Economic Review*, Vol. 63, No. 2, Mei. 1973.

Samekto, F. X. Adji, *Pergeseran Pemikiran Hukum dari Era Yunani Menuju Postmodernisme,* Jakarta, Konstitusi Press. 2015.

Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia, Yogyakarta, Genta Publishing. 2009.

Satjipto Rahardjo, Penegakan Hukum: Suatu Tinjauan Sosiologis, Yogyakarta, Genta Publishing, 2009.

Shapiro, Susan P., "Agency Theory", *Annual Review Sociology*, Vol. 31, 2005.

Smits, Jan M., What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research, dalam Rob van Gestel, Hans-W. Micklitz, dan Edward L. Rubin (eds.), Rethinking Legal Scholarship: A Translantic Dialogue, N*ew York: Cambridge University Press,* 2017.

Sinaga, Henry Dianto Pardamean, dan Fatma Ayu Jati Putri, "Sintesis A Priori dan Aposteriori dalam Mereorientasi Penegakan Hukum di Indonesia: Suatu Penjelajahan Hukum Transendental", dalam Absori et.al. (Ed.), Hukum Transendental: Pengembangan dan Penegakan Hukum di Indonesia, *Yogyakarta Genta Publishing.* 2018.

Sykes, Alan O., "An Efficiency of Vicarious Liability under the Law of Agency", *The Yale Law Journal,* Vol. 91, No. 1, Nopember. 1981.