



## The Efforts to Build a Service-Oriented Licensing Legal System

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### ARTICLE INFO

#### Article history

Received: 04 July 2023

Revised: 08 July 2023

Accepted: 31 July 2023

#### Keywords

Licensing  
Maladministration  
Public service

### ABSTRACT

The service culture of the state civil apparatus often comes under scrutiny. Maladministration practices are the main cause. This research aims to analyse efforts to develop a service-oriented licensing legal system. To answer the issue, this research is conducted using normative legal research with two types of approaches, namely statutory approaches and conceptual approaches. Data was obtained through literature study and analysed using descriptive analysis technique. The results of the research show that efforts to develop a service-oriented licensing legal system requires a separate law that adopts the principles in providing services in the licensing sector. Thus, public services in the nature of goods are subject to the Public Service Act. Meanwhile, public services in the nature of licensing services are subject to separate laws relating to licensing.

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### 1. Introduction

Yos Johan Utama stated that, the failure of the state paradigm "*legal state*" principled "*state abstinence*" or limiting the role of the state and government in the political field, has caused a transition of the state paradigm, from the "night watchman" state paradigm (*night watchman state*) to the welfare state paradigm (*Welfare State*). The welfare state paradigm places citizens or individuals as legal subjects, who must be protected and prosperous in all aspects of their lives. The state in the welfare state paradigm places citizens as subjects, and no longer places citizens as objects. The state has an obligation to enter into the lives of its

citizens, in order to carry out its functions, serve and strive for welfare (*administrative care*).<sup>1</sup> The main characteristic of this country is the government's obligation to realize general welfare for its citizens.<sup>2</sup>

The occurrence of these changes has implications for the field of work of state administration. According to Faried Ali, it is generally understood that conventional government duties include the duties of protection, community participation and service duties. The services are intended as tasks related to activities to fulfill the needs of other people. In the context of fulfillment, a process occurs where one party provides what is needed to another person who needs an interest. In this process, it is possible for legal relations to occur, both in the form of regulations and in the form of actions that may occur unilaterally. The first form of legal relationship can be exemplified by the provision of various regulations that can be used by everyone as a guide to action and thinking. Meanwhile, the second form of legal relationship can be exemplified as the granting of permits, concessions or licenses, that in the process of occurrence and the contents of the regulations contain a government action carried out unilaterally. However, whatever form it takes, it always gives rise to rights and obligations in the legal relationship that occurs, and this is what is meant by the legal aspect in government actions, especially in terms of services to the community.<sup>3</sup> So, the existence of state administration in a modern welfare state functions to provide services to its people.

In Indonesia, the concept of government administration services is often used together or used as a synonym for the concepts of licensing services and public services, as well as public services. These four terms are used as meaning of *public service*.<sup>4</sup> Public services or general services can be defined as all forms of services, both in the form of public goods and also public services which in principle are the responsibility and implemented by government agencies at the center, in the regions and within the State-Owned Enterprises

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<sup>1</sup>. Yos Johan Utama, *Membangun Peradilan Tata Usaha Negara Yang Berwibawa*, Pidato Pengukuhan Disampaikan pada Upacara Penerimaan Jabatan Guru Besar Dalam Ilmu Hukum Pada Fakultas Hukum Universitas Diponegoro Semarang, 2010, hlm. 2-3.

<sup>2</sup>. Ridwan HR, *Hukum Administrasi Negara*, Jakarta, PT. Raja Grafindo Persada, 2006, hlm. 15.

<sup>3</sup>. Faried Ali, *Hukum Tata Pemerintahan Dan Proses Legislatif Indonesia*, Jakarta, PT. Raja Grafindo Persada, 1996, hlm. 15.

<sup>4</sup>. Ratminto dan Atik Septi Winarsih, *Manajemen Pelayanan Pengembangan Model Konseptual, Penerapan Citizen's Charter dan Standar Pelayanan Minimal*, Yogyakarta, Pustaka Pelajar (cetakan VIII), 2010, hlm. 4.



(BUMN) or Business Entities. Regionally Owned (BUMD), in the context of efforts to fulfill community needs and in the context of implementing statutory provisions.<sup>5</sup>

Meanwhile, government administration services or licensing services can be defined as all forms of services which are in principle the responsibility and implemented by agencies at the center, in the regions and within Regional Owned Enterprises (BUMD), both in the context of efforts to meet community needs and in the context of implementation of statutory provisions, where the form of service product is a permit or document.<sup>6</sup>

The definition above shows that what is included in the category of public services or public services is either in the form of goods or in the form of public services. Meanwhile, government administration services or licensing services can only be in the form of services. However, all forms of services provided by state administration are none other than in order to implement the provisions of laws and regulations, including the use of licensing instruments as an administrative means to control the behavior of citizens. According to Sjachran Basah, a permit is a one-sided state administrative legal act that applies regulations in concrete terms based on requirements and procedures as stipulated in statutory regulations.<sup>7</sup> As a one-sided legal act of state administration, that will to grant a permit lies only with the state administration so there is no agreement between the state administration and the community that requires a permit, the state administration only determines the conditions and procedures outlined in the basic licensing regulations which must be fulfilled by community members if they want a permit.

Problems that often arise in the practice of licensing services and which are often complained about by both the public and the business world are licensing service agencies, including complicated licensing procedures, the length of time processing permits, licensing fees, and various levies or facilitating payment (kickbacks) given to unscrupulous individuals administration of a particular country. Adrian Sutedi stated that, so far, society in general connotes that the services provided by government officials to the public tend to be less than satisfactory and even of poor quality. This can be seen from the number of

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<sup>5</sup> .Ibid., hlm. 5.

<sup>6</sup> .Ibid.

<sup>7</sup> .Ridwan HR, Op., cit, hlm. 207.

complaints submitted by the public to government officials who provide services to the community.<sup>8</sup> Data from the 2022 report released by the Ombudsman of the Republic of Indonesia stated that there were 8,292 reports of complaints regarding alleged acts of maladministration. Of this number, according to the Ombudsman, there are more than 10 types of maladministration. The most common practice is procrastination and not even providing services. There are also service providers who ask for "profit".<sup>9</sup> Based on reported agencies, regional governments are at the top (4,008 reports), followed by the National Land Agency (878), Police (683), BUMN/BUMD (628) and Government Agencies/Ministries (517). This reality requires concern from government officials, so that the public needs to receive excellent service. Excellence in service delivery will in turn gain recognition for the quality of service that satisfies the public as customers.<sup>10</sup>

These public complaints regarding the provision of services carried out by the state administration show that the state administration in carrying out its duties and authority as a public servant has not demonstrated quality services or can even be said to be bad administration or bad governance which in the treasury of administrative law is termed maladministration (*maladministration*). This is a problem in itself in the public service sector carried out by state administration, and if this kind of practice continues continuously it will have implications for a decrease in the level of public trust in state administration which in turn will increase various problems both in the state administration environment and in community environment. Therefore, it is necessary to study how to create a state administration system and/or build a state administration legal system that allows state administration to be far from maladministration practices. Starting from this problem gap, there are two main problems that will be answered in this study, *First* what forms of maladministration are carried out by state administration in providing licensing services and secondly how to build a service-oriented licensing legal system.

It cannot be denied that many studies have been carried out by both researchers and academics to find solutions to overcome maladministration in public services. For example,

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<sup>8</sup> . Adrian Sutedi, *Hukum Perizinan Dalam Sektor Pelayanan Publik*, Jkarta, Sinar Grafika, 2010, hlm. 10

<sup>9</sup> There were 8,292 allegations of maladministration, the types being failure to provide services (1,242), irregularities in procedures (780), inappropriateness (293), requests for compensation for money, goods and services (115), incompetence (100), abuse of authority (95), discrimination (66), taking sides (7), conflict of interest (5) and others (4,133). 2022 Annual Report of the Ombudsman of the Republic of Indonesia

<sup>10</sup> .Ibid, hlm. 10-11.



research conducted by Tyas Dian Anggraeni (2014)<sup>11</sup> whose study focuses on creating a public service system, bureaucratic reform strategies in eradicating corruption. Research conducted by Hariman Satria (2022) with the title criminal policy to prevent public service corruption<sup>12</sup>. This research shows that there are several policies that the government must take to prevent corruption in public services, one of which is establishing an integrated online-based licensing system. Then, research by Alveyn Sulthony Ananda and Reni Putri Anggraini (2022). In their research, the focus is more on the urgency of expanding the Ombudsman's authority in imposing the penalty on perpetrators of maladministration of regional permits.<sup>13</sup> From previous research, it focuses more on studying corruption in public services and expanding the authority of the Indonesian Ombudsman. Meanwhile, the study focuses more on efforts to build a service-oriented licensing legal system by identifying two main problems that want to be answered, namely how to model maladministration in providing public services in the licensing sector and how to build a service-oriented public service legal system in the licensing sector.

## 2. Legal Methods and Materials

This research is normative legal research using a statutory approach and a conceptual approach. Legal materials are obtained through literature studies. The data obtained was then processed and then analyzed using qualitative descriptive analysis techniques.

## 3. Results and Discussion

### 3.1. Maladministration in Providing Public Services in the Licensing Sector

In the concept of administrative law, every grant of authority to a state administrative agency or official is always accompanied by the aim and purpose of granting

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<sup>11</sup> Tyas Dian Anggraeni, "Menciptakan Sistem Pelayanan Publik yang Baik: Strategi Reformasi Birokrasi dalam Pemberantasan Korupsi," *Rechts Vinding* 3, no. 3 (2014): 417–433, [ejournal.radenintan.ac.id/](http://ejournal.radenintan.ac.id/).

<sup>12</sup> Hariman Satria, "Kebijakan Kriminal Pencegahan Korupsi Pelayanan Publik," *INTEGRITAS: Jurnal Antikorupsi* 6, no. 2 (2020): 169–186.

<sup>13</sup> Alveyn Sulthony Ananda dan Reni Putri Anggraini, "Urgensi Perluasan Kewenangan Ombudsman Dalam Pemberian Sanksi Terhadap Pelaku Maladministrasi Perizinan Daerah," *Jurnal Anti Korupsi* 4, no. 1 (2022): 1–20.

that authority so that its implementation must be in accordance with the aim and purpose. If the use of authority is not in accordance with the aim and purpose of granting authority, it means that there has been misappropriation of the authority.<sup>14</sup> Therefore, the authority given to state administration must be accounted for, therefore every use of authority must be used in accordance with the aim and purpose for which the authority was given. Abuse of authority, apart from being contrary to statutory regulations, is also an act of maladministration.

The term maladministration (*maladministration*) in *Black Law Dictionary* means "poor management or regulation", and in the popular scientific dictionary means bad administration or bad government.<sup>15</sup> Which by Sunaryati Hartono as quoted by Sadjijono stated that "maladministration" is generally defined as behavior that is unreasonable (including delays in providing services), impolite and indifferent to problems that befall someone caused by abuse of power, including arbitrary use of power or power that is used for wrongful actions. unreasonable, unfair, intimidating or discriminatory and should not be based in whole or in part on provisions of law or unreasonable facts, or based on actions *unreasonable, unjust, supreme* and discriminatory.<sup>16</sup>

Maladministration is an administrative action or behavior by state administration administrators (government officials) in the process of providing public services that deviates and contradicts applicable legal rules or norms or abuses authority (*misappropriation of power*) whose actions cause losses and injustice to the community, in other words making mistakes in administrative administration.<sup>17</sup>

According to the "Crossman Classification" as quoted by Nomensen Sinamo, the scope of maladministrative acts includes; prejudice, negligence, lack of care, delay, not in their authority, inappropriate, evil, cruel and arbitrary actions.<sup>18</sup> Based on reports *Public Commissioner for Administration (PCA)* in 1993, other acts of maladministration such as: rude attitude, unwillingness to treat the complainant as a person with rights, refusing to give answers to reasonable questions, neglecting the obligation to inform the complainant of his

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<sup>14</sup> . Satya Arinanto dan Ninuk Triyanti, (editor), *Memahami Hukum Dari Konstruksi Sampai Implementasi*, Jakarta, PT. Raja Grafindo Persada, 2009, hlm. 316.

<sup>15</sup> .Sadjijono, Op., cit, p. 112.

<sup>16</sup> .Ibid.

<sup>17</sup> .Ibid., hlm. 113.

<sup>18</sup> . Nomensen Sinamo, *Hukum Administrasi Negara*, Jakarta, Jala Permata Aksara, 2010, hlm. 146.



rights, deliberately giving misleading advice or incomplete, ignores valid advice or overriding considerations that may cause feelings of discomfort to the party giving the advice or consideration, offers no remedy or disproportionate remedies, shows prejudice based on skin color, sex or other reasons, management's failure to monitor compliance through adequate procedures; and partiality.<sup>19</sup>

Furthermore, the National Ombudsman also provides indicators of forms *maladministration* among others, perform awkward actions (*inappropriate*), deviated (*deviate*), arbitrary (*arbitrary*), violates the provisions (*irregular I illegitimate*), abuse of authority (*abuse of power*), or unnecessary delays (*undue delay*) and compliance violations (*equity*). Apart from that, Anton Sujata explained several types of maladministration, including: forgery/conspiracy/forgery (*conspiracy*), intervention (*intervention*), protracted handling/not handling (*undue delay*), incompetent (*incompetence*), abuse of authority/excessive (*abuse of power*); actually taking sides (*impartiality*), receive rewards (money, prizes, KKN facilities/practice).<sup>20</sup>

Paying attention to the various quotes mentioned above shows that maladministration is not only related to abuse of authority, violation of laws and regulations, partiality, racial discrimination and so on but also regarding the ethics of state administration. In fact, such practices of maladministration can currently be found in various forms of services carried out by state administration, especially in the provision of services in the licensing sector.

The variety of government agency that have the authority to grant permits can cause the objectives of activities that require certain permits to be hampered. This diversity causes the possibility of a large number of maladministrative practices in each agency providing licensing services carried out by the state administration, as is often complained by the public, including complicated procedures, lengthy processing of permits, protracted handling and the absence of a time period for processing permits. , including various requirements determined by statutory regulations that are not relevant to a permit.

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<sup>19</sup> .Ibid., hlm. 147.

<sup>20</sup> .Ibid.

Maladministration in the provision of licensing services, as stated by Adrian Sutedi, ironically, the high licensing costs are not offset by an increase in service quality. Many business actors complain because they are disappointed with the quality of services provided by the licensing bureaucracy, such as the lack of transparency in costs and procedures, complicated procedures, high costs, and even discrimination against certain groups.<sup>21</sup>

Juniarso Ridwan and Achmad Sodik Sudrajat also expressed the same thing that there are still several weaknesses in public services, including: *less responsive*. This condition occurs at almost all levels of service elements, starting from the officer level to the level of agency responsibility. *Less innovative*. Various kinds of information that should be conveyed to the public are late or even not delivered. *Less accessible*, various service implementing units are far from the reach of the community. *Lack of coordination*, the various service units that are related to each other have very little coordination. *Bureaucratic* (especially in licensing issues), Less willing to listen complaints, suggestions and aspirations of the community. And inefficient, the various requirements required are often irrelevant.<sup>22</sup>

Several other weaknesses that can also be identified are on the institutional side where the main weakness lies on the organizational side which is not specifically designed to provide public services, full of hierarchies which make the bureaucracy complicated and uncoordinated.<sup>23</sup> All of these things constitute maladministration carried out by providers providing licensing services. Thus, maladministration can also be caused by institutional factors in addition to legal factors, namely statutory regulations relating to the provision of licensing services by state administration.

Maladministration in the provision of licensing services can not only cause disappointment due to inadequate service, but can also be detrimental in terms of time, costs and energy, moreover it can cause major economic losses for users of licensing services. As one example, in the field of fisheries business permits, a fisherman who catches fish at sea according to the Fisheries Law is required to have a fisheries business permit, without a fisheries business permit they cannot fishing. If a fisherman applies for a fishing business permit within a period of a few days or in other words, within an undetermined period of time, they will

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<sup>21</sup> .Adrian Sutedi, Op., cit, p. 49.

<sup>22</sup> . Juniarso Ridwan dan Achmad Sodik Sudrajat, *Hukum Adminisrasi Negara Dan Kebijakan Pelayanan Publik*, Bandung, Nuansa, 2009. Hlm. 85..

<sup>23</sup> .Ibid.



automatically not go to sea. This means that within a certain period of time economically the fisherman concerned will not earn income for a certain period of time. Therefore, maladministration can hinder various citizen activities and can economically harm the business world, including individual citizens

### 3.2. Building a Service-Oriented Public Service Legal System in the Licensing Sector

Talk about Legal development found several terms that are often used by several legal experts. Usman P. Tampubolon stated that, other names that are often heard to replace the name "legal development" include, "law and development", "law development", and there are also those who mention "law reform", "law development", "change law" and "law politics".<sup>24</sup> This opinion shows that the substance of all the terms used is the same, because they lead to the desired legal objectives.

Barda Nawawi Arief stated that the legal reform efforts in Indonesia which had started since the birth of the 1945 Constitution could not be separated from the foundation and at the same time the objectives to be achieved as also formulated in the Preamble to the 1945 Constitution. The brief is "to protect the entire Indonesian nation and to promote general welfare based on Pancasila". This is the general policy line which is the basis and also the goal of legal politics in Indonesia.<sup>25</sup> Thus, the aim of carrying out legal development, legal reform and legal politics is none other than to realize the mandate of the fourth paragraph of the Preamble to the 1945 Constitution.

The goal of national development contained in the Preamble to the 1945 Constitution is solely for the sake of creating prosperity for the Indonesian nation and to achieve all of this, development is carried out. The development carried out is not only on one side of life but on all sides of national and state life, including legal development. Legal development in the era of globalization will have a special meaning for the development of the legal field,

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<sup>24</sup> . Artidjo Alkostar dan M. Sholeh Amin, (editor) *Pembangunan Hukum Dalam Perspektif Politik Hukum Nasional*, Jakarta, Rajawali, 1986, hlm. 113..

<sup>25</sup> . Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, Yogyakarta, Genta Publishing, 2010, hlm. 2.

because it means that Indonesian law will lead to greater openness to the values and norms that apply to international law (public and civil).<sup>26</sup>

The general pattern of strategic planning for legal development can be used as a basis for structuring national law which lays down the mindset that underlies the preparation of a national legal system which has legal material components as its core (*legal substance*), legal apparatus (*legal structure*) and legal culture (*legal culture*) as well as adequate facilities and infrastructure support.<sup>27</sup> Esmi Warassih explained these three components of the legal system by quoting Lawrence M Friedman's opinion that law is a combination of structural, substance and cultural components.

*First*, Structural components, namely institutions created by the legal system with various functions in order to support the functioning of the system. This component makes it possible to see how the legal system provides services for the regular processing of legal materials. *Second*, the substantive component is the output of the legal system, in the form of regulations, decisions used by the regulating party and the regulated party. And *third*, the cultural component consists of values and attitudes that influence the operation of the law, or what Lawrence M Friedman calls legal culture. This legal culture functions as a bridge that connects legal regulations with the legal behavior of all members of society.<sup>28</sup>

The same thing was stated by **Arief Hidayat** that, the scope of legal development includes legal structure, legal substance, legal culture, legal facilities and infrastructure, and human resources in the legal field (Higher Legal Education and Legal Apparatus).<sup>29</sup> According to Abdul Hakim Garuda Nusantara as quoted by Moh. Mahfud MD stated that legal development is at the core of updating of the laws and creating new laws.<sup>30</sup> Therefore, in order to carry out legal development, the three components of the legal system must also be reformed. Including renewal and/or development of a licensing legal system that is of a service nature. The question is why is it necessary to develop a legal licensing system that is about serving? As known, the provision of licensing services by state administration all this

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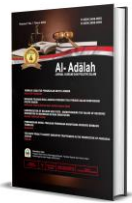
<sup>26</sup> . Satjipto Rahardjo, *Membangun Dan Merombak Hukum Indonesia Sebuah Pendekatan Lintas Disiplin*, Yogyakarta, Genta Publishing, 2009, hlm. Xiv.

<sup>27</sup> . Ibid.

<sup>28</sup> . Esmi warassih, *Pranata Hukum Sebuah Telaah Sosiologis*, Semarang, PT. Suryandaru Utama, 2005, hlm. 31-32.

<sup>29</sup> . Arief Hidayat, *Bahan Kuliah, Disampaikan dalam Mata Kuliah, Politik Hukum, Moral dan Demokrasi, Program Doktor Ilmu Hukum Universitas Diponegoro*, Semarang, 2011.

<sup>30</sup> . Moh. Mahfud MD, *Op.*, cit, p. 15.



time has various complaints and feelings of dissatisfaction among the public which are increasingly widespread, because they are caused by maladministrative acts carried out by state administration officials.

The occurrence of acts of maladministration by state administration can be caused by the behavior or ethics of state administration as well as the statutory regulations themselves which regulate and authorize state administration. Because all actions of state administration refer to statutory regulations, so if there are deviations and/or misuse of authority, not only must research about the behavioral or ethical aspect of state administration but also research about the statutory regulations which are used as the basis for state administration in carrying out various actions. and or actions.

Theoretically as stated above, legal development has at its core the renewal of existing laws and the creation of new laws. Therefore, in order to build a legal system for public services in the licensing sector, we must pay attention to the principles in providing licensing services. According to Juniarso Ridwan these principles are (i) Transparency, namely being transparent, easy and accessible to all parties who need it and provided adequately and easily understood. (ii) Accountability, namely being accountable in accordance with the provisions of laws and regulations. (iii) Conditional, namely in accordance with the conditions and capabilities of the service provider and recipient while adhering to the principles of efficiency and effectiveness. (iv) Participatory, namely encouraging community participation in the delivery of public services by taking into account the aspirations, needs and hopes of the community. (v) Equal rights, namely non-discrimination in the sense of not distinguishing between ethnicity, race, religion, class, gender and economic status. (vi) Balance of rights and obligations, namely that providers and recipients of public services must fulfill the rights and obligations of each party.<sup>31</sup>

Moreover, in building a service-oriented licensing legal system, there are several principles in public services that must be taken into account, namely: (i) Simplicity, namely public service procedures that are not complicated, easy to understand and easy to implement. (ii) Clarity. Clarity includes: a. public service administrative technical

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<sup>31</sup> . Juniarso Ridwan and Achmad Sodik Sudrajat, Op., cit, p. 101.

requirements. b. work unit or official who is authorized and responsible for providing services and resolving complaints/problems/disputes in the implementation of public services c. details of public service costs and payment procedures. (iii) Time certainty, where the implementation of public services can be completed within a predetermined time period. (iv) Accuracy, where public service products are received correctly and legally. (v) Security, public service processes and products provide a sense of security and legal certainty. (vi) Responsibility, the head of the public service provider or appointed official is responsible for providing services and resolving complaints or problems in public services. (vii) Completeness of facilities and infrastructure, namely the availability of adequate work facilities and infrastructure, work equipment and other supports including the provision of communication and information technology (telematics) facilities. (viii) Ease of access, where the place and location as well as adequate service facilities are easily accessible to the public and can utilize telecommunications and information technology. (ix) Discipline, politeness and friendliness, where service providers must be disciplined, polite and courteous, friendly, and provide service sincerely. (xi) Comfort, namely an orderly, orderly service environment, provided with a comfortable, clean, tidy waiting room, a beautiful and healthy environment and equipped with service support facilities such as parking, toilets, places of worship and so on.<sup>32</sup>

The same thing and no less important in building a service-oriented licensing legal system is adopting the General Principles of Decent Government (AAUPL), namely, the principle of legal certainty, the principle of orderly state administration, the principle of public interest, the principle of transparent, the principle of proportionality, and the principle of professionalism, as well as the principle of accountability. The importance of this principle in developing a service-oriented licensing law is because a permit is a state administrative decision (KTUN) and if in its issuance there are parties who are harmed, citizens can file a lawsuit against the KTUN, on the grounds that the KTUN is contrary to the principles. principles of decent government. Because the reason for filing a lawsuit with the State Administrative Court is not only that the KTUN is contrary to statutory regulations but also contrary to the general principles of proper government.

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<sup>32</sup> . Ibid, hlm. 103.



Ridwan HR stated that in its development, AAUPL has an important meaning and functions. For state administration, it is useful as a guide in interpreting and applying statutory provisions that are vague, vague or unclear. Apart from that, it also limits and avoids the possibility of state administration using it *free discretion*/ carry out policies that deviate greatly from statutory provisions. In this way, it is hoped that state administration will avoid this action *onrechmatige daad, detournement de pouvoir, abud de droit, dan ultravires*. For public, as seekers of justice, AAUPL can be used as the basis for a lawsuit as stated in Article 53 of Law no. 5/1986. For TUN judges, it can be used as a testing tool and to cancel decisions issued by agencies or functionary of TUN. Apart from that, AAUPL is also useful for legislative agencies in drafting laws.<sup>33</sup>

In Indonesia, licensing legal regulations are still spread across various sets of statutory regulations. Therefore, providing state administration licensing services is regulated in Law Number 25 of 2009 concerning Public Services. Thus, the state administration in providing licensing services in terms of serving is subject to Law Number 25 of 2009 concerning Public Services, and in terms of issuing permits the state administration is guided by the laws and regulations that regulate licensing in certain sector. This could have implications for a conflict of legal norms between licensing regulations, which are the basic rules for issuing permits, and legal regulations regarding public services. Therefore, it is necessary to build a legal licensing system that is independent and service-oriented, so that public services in the form of goods and other service systems are subject to legal regulations regarding public services, while public service systems in the form of services in the form of licensing service systems are subject to legal regulation of the system. licensing.

Regarding public services in Indonesia, it is regulated in Law Number 25 of 2009 concerning Public Services. The presence of this law has brought a new paradigm in the provision of public services by state administration and citizens or recipients of public services.

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<sup>33</sup> , Ridwan HR, Op., cit, hlm. 252.

The beginning of this law was based on the consideration that, the Preamble to the 1945 Constitution of the Republic of Indonesia mandated that the purpose of establishing the Republic of Indonesia, among other things, was to advance general welfare and make the life of the nation intelligent. This mandate means that the state is obliged to meet the needs of every citizen through a government system that supports the creation of excellent public services in order to fulfill the basic needs and civil rights of every citizen regarding public goods, public services and administrative services. This law is expected to provide clarity and regulation regarding public services, including, among other things: the definition and limits of the implementation of public services; principles, objectives and scope of public service delivery; coaching and structuring public services; rights, obligations and prohibitions for all parties involved in the implementation of public services; aspects of public service implementation which include service standards, information system service announcements, facilities and infrastructure, service costs/tariffs, complaint management, and performance assessment; community participation; resolving complaints in service delivery; and sanctions.<sup>34</sup>

Other considerations for the need to enact Law Number 25 of 2009 concerning Public Services are as follows: (a) The public service sector requires strong supervisory institutions, because regulations in the public service sector will have sectoral implications for other fields, (b) The implementation of public services is assessed requires sanctions and threats of punishment that can only be determined through law. (c) It is necessary to carefully formulate the rights and obligations of parties related to the provision of public services. (d) It is necessary to clearly formulate the institutions providing public services and their authority.<sup>35</sup>

In Article 3 of Law Number 25 concerning Public Services, it is stated that the objectives of the Law concerning Public Services are: (a) the realization of clear boundaries and relationships regarding the rights, responsibilities, obligations and authority of all parties involved in the implementation of public services ; (b) the realization of a proper public service delivery system in accordance with the general principles of good governance and corporations; (c) fulfillment of public service delivery in accordance with statutory

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<sup>34</sup> . Explanation of Law Number 25 of 2009 concerning Public Services.

<sup>35</sup> . Adrian Sutedi, Op., cit, p. 150.



regulations; and (e) the realization of legal protection and certainty for the community in the delivery of public services.

The condition of legislation in the field of public services is still fragmented and does not sufficiently regulate the necessary aspects of public services, so the potential for deviations from public service obligations is relatively large. Therefore, to ensure the achievement of public services that satisfy the community, a law is needed that specifically regulates public services as *Umbrella rules* for the implementation of public service activities in Indonesia and which have sanctions, so that they have coercive power towards fulfilling certain standards in public services. The need for the nature of coercive power is in accordance with the principle of coercive measures in State Administrative Law.<sup>36</sup>

Another interesting thing about Law Number 25 of 2009 concerning Public Services is the use of the terms public service organizer and the term public service implementer. In Article 1 paragraph (2) it is stated that public service providers, hereinafter referred to as organizers, are every state administration institution, corporation, independent institution, which is formed based on law for public service activities, and other legal entities formed solely for service public activities. And furthermore, in Article 1 paragraph (5) it is stated that public service executors, hereinafter referred to as executors, are officials, employees, officials, and every person who works in an organizing organization whose task is to carry out an action or series of public service actions.

Article 1 paragraph (2) shows that service providers are institutions, corporations or independent institutions, so organizers refer to organizational units in the form of offices, while public service providers in Article 1 paragraph (5) refer to officials, employees and everyone who works in the organization. The problem is when a violation occurs because both the organizer and the executor can be subject to sanctions in the form of a written warning, release from office, temporary suspension of salary, or dishonorable dismissal. The question is whether it is possible for offices/institutions which are inanimate objects to be subject to sanctions or in other words which are not legal subjects? Therefore, it is not efficient and economical and can even be misleading to use the term executor, because in a

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<sup>36</sup> . Ibid, hlm.151.

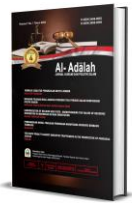
state institution and/or state organization there is already an executor, namely the state administration, which consists of various positions or scopes of work for each state administration. Therefore, there is no longer a need to use the term service executor, especially since the term service executor is not commonly used in state administrative law. For this reason, it is necessary to update and/or change the terms used in Article 1 paragraph (5) of Law Number 25 of 2009 concerning Public Services, so as not to give rise to various interpretations or even cause conflict of norms. So, the expectation to build a service-oriented licensing legal system is far from expected.

Building a legal system for public services, especially in the field of service-oriented licensing, apart from having to accommodate the principles and/or principles in public services and general principles of proper government, must also pay attention to the theoretical aspects of the formation of statutory regulations as stated by Maria Farida Indrati S that, in forming a law in a comprehensive manner, it is necessary to pay attention to 3 (three dimensions), namely the past which is related to the history of the nation's struggle, the present, namely the objective conditions that exist now with its strategic environment by looking towards the aspired future. In this regard, it is necessary to consider the heterogeneity of law consisting of customary law, Islamic law, other religious law, contemporary law, as well as Pancasila and the 1945 Constitution of the Republic of Indonesia as the highest sources of law. Moreover (i) the basic principles in the formation of laws that need to be upheld are Loyalty to the ideals of the Youth Pledge, the Proclamation of Independence on 17 August, as well as the philosophical values contained in Pancasila, as well as constitutional values as enshrined in the Constitution. NKRI 1945. (ii) The implementation of a democratic, just, prosperous and peaceful Indonesian legal state; and (iii) The development of new legal norms and legal institutions in order to support and underlie society in a sustainable, orderly, smooth and peaceful manner and to protect the entire bloodshed and the entire Indonesian nation.<sup>37</sup>

Furthermore, Yuliandri stated that, the formulation of the principles of forming good legislative regulations (*general principles of proper regulation*), can be divided into two parts, namely: formal principles (*formal courtship*) and material principles (*material principles*). The formal basis includes: (i) The basis of a clear purpose, (ii) The basis of an

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<sup>37</sup> . Maria Farida Indrati S, Ilmu Perundang-Undangan Proses dan Teknik Membuatnya, Yogyakarta, Kanisius, 2007, hlm. 52.



accurate organ/institution, (iii) The basis of the necessity of arrangements, (iv) The basis of being feasible, (v) The basis of consensus. And for the material basis includes: (i) The basis of clear terminology and systematics, (ii) The basis of recognition, (iii) The basis of equal treatment in the law, (iv) The basis of legal certainty, and (v) The basis of the implementation of the law in accordance with the circumstances individual.<sup>38</sup>

And then, according to A. Hamid S Attamimi as quoted by Yuliandri, he emphasized that, in the formation of statutory regulations, there are at least several guidelines that can be developed in order to understand the principles of forming good and correct statutory regulations, namely: *First*, the principles contained in Pancasila as general legal principles for statutory regulations. *Second*, state principles are based on law as general legal principles for legislation. *Third*, principles of government based on the constitutional system as general principles for legislation, and *Fourth*, the principles of legislation developed by experts.

Furthermore, it is said that, regarding the general principles contained in Pancasila, it can be developed: *First*, The principles in Pancasila as legal ideals. The five principles in Pancasila serve as the legal ideals of the Indonesian people in the life of society, nation and state, positively, namely "*guiding star*" which provides guidance and guidance in all activities providing content to each statutory regulation, and negatively constitutes a framework that limits the space for movement in the content of the statutory regulation. Regarding the contents of statutory regulations, these precepts, whether individually or together, either singly or in pairs, constitute general legal principles. *Second* The norms in Pancasila are fundamental norms. Apart from being a legal ideal, Pancasila is also a fundamental state norm. Therefore, the principles in Pancasila, either individually or together, singly or in pairs, are the basic norms or highest norms for the application of all legal norms that apply in the lives of the Indonesian people as a society, nation and state.<sup>39</sup>

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<sup>38</sup> . Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik Gagasan Pembentukan Undang-Undang Berkelanjutan*, Jakarta, PT. Raja Grafindo Persada, 2010, hlm. 114.

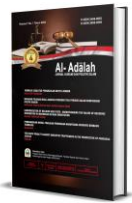
<sup>39</sup> . Ibid, hlm. 116.

#### 4. Conclusion

Legal development is a core the renewal of existing laws and the creation of new laws. Therefore, in order to build a service-oriented legal system, it is necessary to accommodate the principles in providing licensing services as well as the principles in providing public services and accommodate the general principles of decent government (AAUPL) as well as the principles in forming laws and statutory regulations. Specifically, in providing services in the licensing sector, a separate law is needed which also regulates the state administration that provides licensing services. Therefore, the provision of state administrative licensing services is specifically regulated by a separate special rule. Thus, public services in the nature of goods are subject to the Law on Public Services, while public services in the nature of licensing services are subject to separate laws relating to licensing.

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