

# The Implementation Method of General Principles of Good Governance (AUPB) on The Corruption of the Village Government in Indonesia: The Alternative Solution of Building Control Functions

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## Abstract

The implementation of General Principles of Good Governance as a behavior political corruption village administration is very urgent, because over General Principles of Good Governance philosophy had a role in showing furnish and the lack of clarity and uncompleteness a norm. This type of research is non doctrinal research. The method of applying General Principles of Good Governance as a test stone for corruption in village funds is carried out with 2 (two) methods, namely: (1) legal changes and renewal. This legal amendment and renewal can only be done through national legislation carried out by the DPR, but this legislation path is very difficult to do unless there is a common logic of political equality, so that legal changes and reforms can be carried out. (2) the method of construction by the judge. This method is carried out by the judge in order to find the law because the law is vague in regulating or occurring a vacuum of norm. This path is commonly known as the Jurisprudence pathway where the law can also be born from a judicial institution.

**Keywords:** Implementation, General Principles Of Good Government, AUPB, Corruption, Village Government In Indonesia.

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## INTRODUCTION

The implementation of the General Principles of Good Governance known by (AUPB) as a test of the political corruption behavior of village government, has not been used or carried out either in the Indonesian national legal system or in several countries in the world, whereas the existence of General Principles of Good Governance is very urgent in administering including village government. Urgent AUPB is a test because General Principles of Good Governance is an ethical philosophy for government administration officials, including for village heads in carrying out actions that have legal consequences.

The Principles of Good Governance (AUPB) (*Algemene Beginselen van Behoorlijk Bestuur / ABBB*) in the Netherlands, and in *Anglo Saxon* countries are formed in the "principles of good governance" is a general and abstract rationale as a normative emission of a philosophy of life as a basis a footing that provides direction or views for the government to organize a good and clean government which ultimately becomes an authoritative country to be respected by countries in the world.

The village is the smallest form of government in the country. The area of the village is usually not too broad and is inhabited by a number of families. The majority of the population works in the field of agriculture and the level of education tends to be low. Because the population is not so many, the relationship between the people is usually strong. The people also still believe and uphold the customs and traditions left by their ancestors. As the smallest part of the government system in Indonesia, the village plays an important role especially with regard to developments that directly touch the community. Many programs are issued by the Government to create a better and more prosperous village life system [<sup>1</sup>].

On the other hand as the smallest government unit, the village needs a reliable government support apparatus, which is able to explore the village's

<sup>1</sup> I Yuyun Yulianah, (2015), "The Potential of Misappropriation of Village Fund Allocation is Assessed According to the Minister of Home Affairs Regulation Number 37 of 2007 concerning Village Financial Management", in the *Justimbar Journal*, Vol. 1 No.02, July-December 2015 Edition, p. 610

financial potentials and is able to provide optimal protection to the community. But on the other hand, the human resources of the village apparatus itself are generally still weak and limited. While a variety of direct assistance is provided by the government to villages in various forms and variations, both assistance in the form of direct cash, facilities or other tools and forms (seeds, seeds, etc.) [2].

In Article 1 number 2 Government Regulation Number 6 of 2014 concerning Village Funds, jo. Article 1 point 2 Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia Number 19 of 2017 concerning Determination of Priority for the Use of Village Funds in 2018, confirms that Village funds are funds sourced from the State Revenue and Expenditure Budget destined for Villages transferred through District/city Regional Revenue and Expenditure Budget and used to finance government administration, development implementation, community development, and community empowerment.

The success of program implementation financed by the Village Fund will not be separated from the capacity of the village head itself, both in terms of education level and managerial aspects. This is closely related to the formation and determination of policies that must be taken by the village head and will be the main factor determining the success and success of managing village funds in building villages. Besides that the main supporting factors are human resources of the village apparatus itself. If this is not fulfilled, it will have an impact on the ineffectiveness of program implementation to impact corruption.

In addition to that, there are several factors that make the program ineffective and have an impact on corruption, namely:

- The planned program is not on target;
- The replacement of the program which was originally budgeted to be financed, replaced by another program which resulted in corruption;
- Supervision of existing programs is not optimal;
- There was a compromise between the village head and village officials;
- There was a compromise between the village head, village officials and village fund supervisors;
- Domination of the role of the village head, so that the community cannot do anything.

## METHODS

This type of research is non doctrinal research, is the form of empirical studies to find theories about the process of occurrence and about the process of

working the law in society. This research typology is also often referred to as Socio Legal Research [3]. The approach used in this study is an empirical or sociological approach. The type of data used in this study is primary data, secondary data. Then the primary data collection techniques are carried out through interviews. Whereas secondary data is carried out through a search of books, papers, articles, as literature studies, legislation, and data from electronic media relating to the problem of using village funds. Then sampling and determining the respondents from this study were conducted with non random sampling, the determination of which used purposive sampling method.

## ANALYSIS AND DISCUSSION

### Village Fund Control and Monitoring System

The amount of government assistance allocated to rural development is one form of government attention to the village, but in this case the potential for village finance misappropriation is clearly very large. This is inseparable from the weakness of supervision from the district government apparatus on the flow of the process of flow of funds. In addition, what is not less important is the Human Resources (HR) of the Village Government apparatus itself who are generally weak. The amount of Village Fund Allocation (ADD) received by the Village Head is very small and not proportional to the responsibility of the Village head who is expected to organize village development. Moreover, the culture of cutting ADD by bureaucratic individuals so that the village government is small [4].

In the author's observation, the amount of village funds received by the village head is not small, but very large in accordance with the broad capacity of the village occupied area. The amount of village funds if managed properly by the government is very capable of building an independent village towards a prosperous village, but because of the magnitude of corruption that occurs in village funds, making development in the village run almost no difference between villages before receiving village funds by receiving funds village.

Next see the following table:

<sup>3</sup>Soetandyo Wignjosoebroto, (2002), "Law of Paradigm, Method and Dynamics of the Problem, Jakarta: Elsam and Huma,, then see also Bambang Sunggono, (2007), "Legal Research Method", Jakarta: RajaGrafindo Persada, p. 42.

<sup>4</sup>Ibid, p. 608

<sup>2</sup>Ibid, p. 611

**Table-1: APBDES Bandungan village of Pakong district of Pamekasan 2018**

No	Fund source	Revenew	Budget	Total number
1	DD	789.448.000	Operating village governance	251.442.300
2	BHP	20.924.015	Village infrastructure	998.693.562,43
	ADD	462.510.000	Society guidance	33.400.000
3	SILPA 2017	10.633.847,43		
4	JUMLAH PENDAPATAN	1.272.882.015		
5	BELANJA	1.283.515.862,43		

Source: Bandungan village of Pakong district Pamekasan 2018

**Table-2: APBDES Bangkes village of Kadur district of Pamekasan 2017**

No	Fund Source	Revenew	Budget	Total number
	ADD	656.618.300	Government part	122.783.000
	DD	1.005.672.800	Infrastructure part	1.157.207.400
	BAGI HASIL PAJAK	25.813.475	Society guidance part	106.727.000
	SILPA 2016	21.978.721	Human resource	38.995.000
	JUMLAH PENDAPATAN	1.713.113.296	Unpredict fund	4.896

**Table-3: APBDES Ponjanaan Timur village of Batu Marmar district Of Pamekasan 2017**

No	Fund Source	Revenew
1	Village fund	960.211.200
2	Budged	619.964.300

Source: Ponjanaan Timur village of Batu Marmar district of Pamekasan 2017

If you pay attention to the table above, it really shows how much the village funds budget received by the village in the period of each year. If the village budget is used properly according to the existing program without any indicators of corruption, then the villages in Madura will become prosperous villages.

It is undeniable, that the main factor of misuse of village funds is due to factors of weak supervision. In the case of supervisors already in existence, the weak supervision is the failure of the control function of the regional government and the central government.

When Law Number 6 of 2014 concerning Villages was ratified and promulgated, almost all villages were happy with the presence of the law because through this village law village funds could be born, and became public discussion. In this case the Corruption Eradication Commission (KPK) conducted a study, the results showed that there were opportunities for village funds to be misused because of several factors, namely: Regulation, governance, supervision and the quality and integrity of Human Resources (HR) who manage village funds. Therefore, it is necessary to work together with the Ministry of Village with the Financial and Development Supervisory Agency (BPKP) so that the report on the village fund management system is simpler.

Law Number 6 of 2014 concerning Villages has opened up opportunities for villages to manage their own funds in order to optimize the assets owned by the village. Nevertheless, since the beginning of its implementation, some circles have worried that the capacity of the village government that is still weak will

make village funds prone to corruption. After corruption in village funds occurred, it was found that one of the reasons for corruption was due to lack of supervision. Difficult forms of reporting up to lack of community involvement, making village funds vulnerable to corruption. This condition needs to get the attention of the central government [5].

The central government needs to optimize supervision of village fund management to prevent corruption. The DPR RI through its oversight function needs to continue to encourage the government to conduct supervision and improve evaluation of village assistance. In addition, joint regulations are needed to create the same understanding between the government in the regions and at the center and related technical ministries, so that it can facilitate each party to supervise the management of village funds in the future [6].

In principle, one of the methods is to control and supervise village funds by using the Village Financial System (*Siskeudes*) application that helps rural financial governance which is currently being implemented by the village government. In this application, village facilitators can interact with village heads if they encounter difficulties in managing village funds. In addition, the principle of honesty for village assistants must be upheld. During this time between village heads and village assistants there was a bad conspiracy in managing village funds, resulting in corrupt behavior.

<sup>5</sup>Debora Sanur, Op.Cit., p. 17

<sup>6</sup>Ibid.

Basically the government already knows the problem of ineffectiveness in controlling the use of village funds carried out by the Escort Team for Government Security and Development (TP4) is not enough to prevent irregularities in the misuse of village funds. According to Robert Andi Jaweng, the role of the Village Assistant is not optimal. Village Facilitators were formed only to ensure that village funds were received by the village and were fully utilized for village empowerment and development, but there was no further assistance so that the village apparatus was able to make the fund management accountability report [7].

Regarding supervision, according to the Village Minister of PDPT and Transmigration, Eko Putro Sandjojo, actually a task force (*Satgas*) village fund was formed to assist the village head in managing village funds in accordance with the provisions. The ministry has also made a call center at 1500-040 to receive reports from the public about possible misuse of village funds. However, until now the existence of the Task Force and complaint center has not been able to support the implementation of maximum supervision for village fund management [8].

In principle, every government administration, and included in this context, is the organizer of the village administration can not be separated from (*control function*) control function of the authorized institution to supervise. Supervision is carried out in order to effectively organize village government in managing village funds.

In fact, through supervision created an activity that is closely related to the determination or evaluation of the extent to which the implementation of work has been carried out. Supervision can also detect the extent to which the leader's policy is carried out and to what extent the deviations occur in the execution of the work. The concept of such supervision actually shows that supervision is part of the management function, where supervision is considered as a form of inspection or control from a higher party to parties under it.

At present, the National Police with the PDPT and Transmigration Ministry of Villages have agreed to make a memorandum of understanding or Memorandum of Understanding (MoU) for monitoring and mentoring village funds throughout Indonesia. This collaboration is important so that the use of village funds is not diverted. The police involved in this matter are the Babinkamtibmas in the village. It functions to supervise and assist village fund projects, from planning, programs, physical work of the project, to the suitability of budget use with the program. The

government also needs to get support from the Supreme Audit Agency (BPK). The right formulation is needed to audit village fund management, so that village funds can be accounted for concretely to the state, just like other state budgets [9].

### **The Principles of Good Governance (AUPB) Classification and Qualification as a Review on Village Fund Corruption Behavior**

General Principles concerning Good Governance (AUPB) serve as an effort to increase legal protection for the people against the government as an effort to protect from arbitrary actions and abuse of authority by the government. Which principle was then used by Van der Grinten in a report on Administrative Courts and judicial violations of disciplinary rules in corporate organizations [10].

General Principles concerning Good Governance (AUPB) are not only applied in certain cases, but in all matters in general in the administration. Amrah Muslimin, affirms that in the state administrative court, General Principles concerning Good Governance (AUPB) have been applied to assess whether the provisions issued are contrary to General Principles of Good Governance or not [11].

Furthermore Philipus M. Hadjon stated, the General Principles of Good Governance (AUPB) can be seen as unwritten legal rules, especially for KTUN (state administration decisions) in matters of policy space. No fundamental conflict between General Principles of Good Governance is not written with written law, but AUPB is formulated as a principle [12].

Meanwhile, in Indonesia General Principles of Good Governance was compiled on writings of Kuntjoro Purbopranoto presenting the General Principles of Good Governance (AUPB) with 13 (thirteen) principles, the eleventh and twelve principles were the results of their own findings namely [13]:

- *Principles of legale security.*
- *Principles of proportionality.*
- *Principles of equality.*
- *Principles of cariffulness.*
- *Principles motivation.*
- *Principles of non misuse of competence.*
- *Principles of fair play.*

<sup>9</sup>Ibid

<sup>10</sup> Amrah Muslimin, (1985), "*Some Principles and Principles of Administration and Administrative Law*", Bandung: Alumni, p. 145.

<sup>11</sup>Ibid.

<sup>12</sup> Philipus, M. Hadjon et.al. (2011), "*Introduction to Indonesian Administrative Law*", eleventh printing, Yogyakarta: Gajah Mada University Press, , p. 268.

<sup>13</sup> Kuntjoro Purbopranoto, (1985), "*Some Notes on Government Governance Law and State Administrative Justice*", Bandung: Alumni, p. 29.

<sup>7</sup>Ibid, p. 19

<sup>8</sup>Ibid



- *Principles of reasonable or prohibition of arbitrariness.*
- *Principle of meeting raised expectation.*
- *Principles of undoing the consequences of annulled decision.*
- *Principle of protecting the personal way of life).*
- *Principle of sapiently).*
- *Principles of public service.*

According to Wahyudi Kumorotomo, these thirteen principles focus more on judiciary values that rely on the internalization of a sense of justice in the process of government administration and the utilization of the judiciary in handling administrative problems or disputes [<sup>14</sup>].

In its development in Indonesia General Principles of Good Governance has manifested itself in various laws and regulations as a control mechanism for government actions, namely:

- AUPB in Article 3 of Act Number 28 of 1999 concerning Implementation of a State that is Clean and Free of Corruption, Collusion and Nepotism affirms 7 (seven) General Principles of State Administration
- AUPB in Article 10 of Law Number 30 of 2014 concerning Government Administration
- AUPB in Article 4 of Act Number 25 of 2009 concerning Public Services
- AUPB in Article 2 of Act Number 5 of 2014 concerning State Civil Apparatus
- AUPB in Article 58 of Law Number 23 of 2014 concerning Regional Government
- AUPB in Article 3 of Act 37 of 2008 concerning the Ombusman of the Republic of Indonesia
- AUPB in Law 14 of 2008 concerning Public Information Openness
- AUPB in Article 53 paragraph (2) b of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning PTUN.
- AUPB in Article 2 of Act Number 2 of 2012 concerning Procurement of Land for Development in the Public Interest.

Thus, the urgency of the existence of General Principles of Good Governance is in addition to being a guideline for the state administration in carrying out public services, it is a test tool that can be used by administrative judges (can also be used as a test or foundation for corruption in village funds born of the principle of legal certainty or principle of abuse of authority, cursive author). Therefore, the application of AUPB is one of the conditions to create a clean and

authoritative government (*clean and stable government*).<sup>15</sup>

After the author describes General Principles of Good Governance which is spread in several laws in Indonesia above, it can be classified General Principles of Good Governance as a test stone for corruption behavior of village funds into several principles. The principle in question is the principle of legal certainty, and the principle of prohibiting abuse of authority (*abuse of authority*) as follows:

### Principles of Legale Security

The principle of legal certainty, this principle shows that in the modern law state every government action must prioritize the basis of the provisions of legislation, propriety, constancy, and fairness in every government administration policy. This state wants to show that all government actions want to be based on the legality of the validity of the action.

According to Asep Warlan Yusuf, basically the principle of legal certainty has characteristics, namely [<sup>16</sup>]:

- The material aspect is closely related to the principle of trust;
- Do not preclude withdrawal, because there is a change in circumstances;
- Changes can be made, but still benefit the community / applicant;
- Changes can be made if there are requirements that are wrong / not fulfilled;
- Changes can be made as sanctions;
- The format and technique of "*legal drafting*" must be clear.

Legal certainty in the context of the Indonesian legal system can only be provided by law, if the law exists, then the certainty of one's legality is fulfilled. But according to Satjipto Rahardjo, arguing that certainty has the potential to collide with justice and social benefits, justice has the potential to experience conflict with certainty and usefulness, while the demands for benefits at one time will collide with justice and certainty [<sup>17</sup>].

<sup>14</sup>Wahyudi Kumorotomo, (2015), "*State Administration Ethics*", 15th print, Jakarta: RajaGrafindo Persada, p. 342

<sup>15</sup>Wet Sjachran, (1992), "*Legal Protection Against Attitudes of State Administration*", second printing, Bandung: Alumni, p.8

<sup>16</sup>Asep Warlan Yusuf, (2016), "Accountability for Administrative Law on Actions of Officials of State Administration", Paper presented at the National Seminar on Discretionary Law of Post-Enactment of Law No. 30 of 2014 concerning Government Administration", held by FH Unpad Bandung on October 19, 2016, p. 6-7

<sup>17</sup>Satjipto Rahardjo, (2008), "*Let the Law Flow*", Jakarta: Kompas, p. 81.

In the end, in a modern law state, every legal action of the government with any juridical instrument used must remain in the legal corridor and be directed to realize general welfare (*bestuurszorg*), in accordance with the initial idea of the emergence of the concept of a modern state of law (*welfare state*) [18].

The principle of legal certainty as a test for corruption in village funds shows that the actions of the village government in the use of village funds must reflect actions based on legal norms. The absence of legal norms as the basis for village government policy in using village funds is an action that does not reflect disobedience to the principle of legal certainty. Actions that do not reflect principles are unlawful acts of law because General Principles of Good Governance is considered an unwritten legal norm.

Therefore, violations of the principle of legal certainty carried out by the village government in the use of village funds are actions that can be categorized as violations of legal norms. In this case, the use of village funds that cause losses to the State due to violations of the principle can be categorized as corrupt acts.

### Principle Abuse of Authority

The use of authority for the Village Head as the head of the village administration is quite complicated, especially for modern law countries such as Indonesia which are still categorized as developing countries which have encouraged the role of village heads to be very active in developing the welfare of rural communities.

The validity of government actions is measured based on the authority stipulated in the legislation. Regarding the authority can be seen from the state constitution which gives legitimacy to the Public Agency and State Institution in carrying out its functions. Authority is the ability to act given by laws that apply to conduct relationships and legal actions" [19].

Government power is very important to be limited so that there is no abuse of authority and does not act arbitrarily. This has been stated by British historian Lord Acton who asserts, that "Power tends to corrupt, but absolute power corrupt absolutely". This means that every power tends to be misused, while absolute power must be misused. Acton's view is also in line with M.De's view. Secondat, Baron de Montesquieu, he argued that holders of power have a

tendency to increase their own power beyond the provisions of applicable law [20].

According to Sudarsono, abuse of power, including authority (*detournement de pouvoir*) and arbitrary acts (*willekeur / abuse de pouvoir*) are long-standing symptoms, as well as reminding them of the importance of control over the use of authority itself, especially more with the principle of presumption of validity (*vermoden van rechtmatigheid = praesumptio iustae causa*) which obliges us to consider legally a government action before a decision or regulation states otherwise. This principle according to Sudarsono, can encourage a person to abuse authority or act arbitrarily, if the control over the use of authority itself is weakened or reduced [21].

In Indonesia, the control over the use of government authority (*cursive village government writers*) already exists for a long time, whether it is internal control (*built in control*), or external control; preventive control (*a priori control*) or repressive control (*a posteriori control*); juridical control, political control, social control and other controls, one form of which is the state administrative court [22].

The freedom of action held by the village head in the use of village funds needs to be corrected and constantly monitored by the community or the supervisory institution through AUPB as a test stone for the corruption behavior of the village government. This is because under existing conditions of authority it is possible to abuse authority (*detournement de pouvoir*). This means that the existing authority is used for other purposes or to benefit him deviating from the original purpose of giving the authority by law. If that happens, then it is said to violate the principle of prohibiting abuse of authority (*detournement de pouvoir*), or taking arbitrary actions, so this action is free from the existing rules, this can also be said to abuse authority, because the actions taken by the village head are based on the power or authority that is inherent in his position. This abuse of authority in the use of village funds causes corruption and losses in the State's finances.

Corruption behavior by the village head includes the category of abuse of authority. The act of abuse of authority is an act that crashes or breaks through AUPB, namely the Principle of Abuse of

<sup>18</sup>Ridwan HR, Law ... .. Op. Credit, p. 237.

<sup>19</sup>Sjahran Basah, (1997), "*Existence and Benchmark of Administrative Court in Indonesia*", (Bandung: Alumni, p. 255

<sup>20</sup>Vide Sudarsono, (2008), "The Choice of Law in State Administrative Dispute Settlement in the State Administrative Court", Speech inauguration of Professor in State Administrative Law at the Faculty of Law, University of Brawijaya, delivered at the Senate Open Senate Meeting of Universitas Brawijaya, Malang, March 26, 2008 , p. 1

<sup>21</sup>Ibid, p. 1-2

<sup>22</sup>Ibid, p. 2

Authority. Therefore, the corrupt behavior of village funds carried out by the village head causes financial losses to the State is an act of use of authority.

Viewed from the perspective of the essence of General Principles of Good Governance, the integrity of General Principles of Good Governance is a principle that contains normative ethical values that are used as a foundation and become a parameter of good, clean governance so that it can become an authoritative state. In this context, General Principles of Good Governance is a parameter of the implementation of a clean and authoritative village government (clean and stable geovernance).

The Principles of Good Governance (AUPB) (*Algemene Beginselen van Behoorlijk Bestuur / ABBB*) in the Netherlands, and in Anglo Saxon countries are formed in the "principles of good governance" is a general and abstract rationale as a normative emission of a philosophy of life as a basis a footing that provides direction or views for the government to organize a good and clean government which ultimately becomes an authoritative country to be respected by countries in the world.

In this connection, according to Philipus Hadjon, *Detournement de pouvoir* as General Principles of Good Governance (AUPB), it is also considered the rule that an authority should not be used for other purposes than for the purpose for which it was given. In the government law in the Netherlands there are not many examples of this rule that cause cancellations. In general, abuse of an authority will also be contrary to a law [23]. Regarding the actions of village heads who break through or contravene the General Principles of Good Governance (AUPB), the General Principles of Good Governance acts as a control mechanism for the actions of village heads who deviate from the legal channels and General Principles of Good Governance.

#### **General Principles of Good Governance (AUPB) Implementation Method Against Village Fund Corruption Behavior by the Village Government Method of Change and Legal Renewal**

Philosophically, village funds are given by the government to the Village on the basis of several things:

- Improve the welfare of rural communities;
- Increasing equity in rural development;
- Improve public services in the village;
- Promote the economy of rural communities;
- Overcoming the development gap between villages;
- Improve inter-village relations in building rural communities;

- Recognize as the lowest government;
- Village Community Empowerment;

To improve the welfare of rural communities and the quality of human life and poverty alleviation, the priority of using village funds is directed to the implementation of village development programs and activities, including:

- Development, development and maintenance of infrastructure or physical facilities and infrastructure for livelihoods, including food security and settlements;
- Development, development and maintenance of public health facilities and infrastructure;
- Development, development and maintenance of educational, social and cultural facilities and infrastructure;
- Development of community economic enterprises, including the construction and maintenance of production and distribution infrastructure; or
- Development and development of renewable energy facilities and environmental conservation activities.

Bagir Manan (1999) assesses subjectively various laws and regulations are made to overcome the immediate situation, so that less attention to the future insight. Even legislation only has a limited range. This deficiency can actually be limited if law enforcers play an active role in filling various legal vacancies or providing a new understanding of a method. The solution is to pay attention to General Principles of Good Governance (cursive writer).

The changes to the law on corruption as a door to the General Principles of Good Governance (AUPB) are legally formal, showing the replacement of the current law (*renewal*) (*ius constitutum*) by the aspired law (*ius constituendum*).

In this connection, Soerjono Soekanto stated, that *ius constitutum* now, in the past was *ius constituendum*, if *ius constitutum* now had the power of law, then as *ius constituendum* had historical value. Such a process usually occurs in various ways, namely [24]:

- Instead of a law with a new law (the new law was originally designed as an *ius constituendum*).
- Changes to existing laws, by means of entering (new elements were originally *ius constituendum*).
- Interpretation of laws and regulations. Existing interpretations may not be the same as past

<sup>23</sup> Philipus M. Hadjon, et.al, Introduction to Administrative Law .....Op.Cit p. 277

<sup>24</sup> Soerjono Soekanto and Purnadi Purbacaraka, (1994), "*Various Ways to Differentiate Law*", Bandung: Citra Aditya Bakti, p. 7.

interpretations. Interpretation at the present time was the *ius constituendum*.

- Development of doctrine or opinions among prominent legal experts in the field of legal theory.

Thus, a symptom that exists now will be lost in the future because it is replaced (= continued) by the symptoms originally aspired to. However, it is not uncommon to see that the absolute limits of the development process are difficult to determine [<sup>25</sup>].

Under a legal system that has been technically developed, the procedure for applying legal law takes place in several stages, namely the assurance of the facts about wrongdoing; an order from the court addressed to an executive body to carry out coercive actions or sanctions formulated in legal norms; implementation of individual norms by an executive body separate from the court [<sup>26</sup>].

That is, because the legal system gives authority to a law-applying organ to apply general norms of role-playing laws, it guarantees that this body has a wide range of space for free discretion which is within the latter can create a new law for the case being handled [<sup>27</sup>].

### Construction As A Method of Finding Law

Based on this phenomenon, General Principles of Good Governance is a legal principle, it also provides direction or instructions to the judge in resolving concrete events relating to the actions of the village head who are in conflict with General Principles of Good Governance as a test of action of the village head itself.

Legal findings can be carried out with a number of mechanisms that have been commonly found in the practice of forming new law both by the judge and by the legislature or by academics, because the legal discovery can be done by academics in addition to the two institutions.

Legal discovery methods by judges can be divided into 2 (two) types, namely [<sup>28</sup>]:

- Interpretation method
- Construction methods

Differences in interpretation and construction are:

<sup>25</sup>Ibid.

<sup>26</sup>Hans Kelsen, (1973), *"Essays in Legal and Moral Philosophy"*, D. Reidel Publishing, Dordrecht, Holland, 1973: Interpreting by B. Arief Sidharta, (2006), *"Law and Logic"*, Bandung: Alumni, p. 60

<sup>27</sup>Ibid. p. 70.

<sup>28</sup>Achmad Ali, (1996), *"Menguak Tabir Hukum: A Philosophical and Sociological Study"*, First Print, (Jakarta: Chandra Pratama, p. 167

- In the interpretation, interpretation of the text of the law, still adheres to the sound of the text (in the statement / affirmation of the text of the law, cursive of the writer).
- In construction, the judge uses his logical reasoning to further develop a text of the law, in which the judge no longer adheres to the sound of the text, but on condition the judge does not ignore the law as a system.

According to Achmad Ali, construction consists of: *argumentum Peranalogiam* (analogy); *argumentum a-contrario*; *rechtsverwijning* (legal concreting); and fiction [<sup>29</sup>].

Legal findings are not only carried out by judges and legislators as they are known so far, that legal findings are carried out by judges and legislators and other law enforcers who are always struggling with the world of disputes.

However, the discovery of the law can also be carried out by researchers to find a law that previously did not exist where the results of their research were recommended to the branch of state power, namely the legislature. Legal findings can be said to find the law because the law does not exist and is not clear through legal research (legal research).

The discovery of law is not only merely applying legal norms to concrete events, but at the same time constituting the creation and formation of laws that were not previously found. The source of legal discovery is none other than the source or place where the law must be explored.

The concept of legal discovery by judges was mainly spearheaded by Paul Scholten's open law system, in which he stated, namely [<sup>30</sup>]:

- The law is not a written legal system that cannot be changed before the legislative body changes it, meaning that the law can be changed its meaning, even though the words are not changed to adjust them to the concrete facts.
- Openness of the legal system relates to the issue of emptiness in law, where there are two kinds of vacancies in the law, namely:
  - a. The legal vacuum itself, that is if the judge says that he found a vacancy because he did not know how he should give his decision.
  - b. Lack of legislation, namely with construction and logical reasoning, the problem remains unresolved, in that case the judge must fill this gap as he is in the position of a legislator and member of the

<sup>29</sup>Ibid, p. 168

<sup>30</sup>Ibid, p. 190



decision as if the legislator would give his verdict in dealing with such a case.

In this connection Sudikno Mertokusomo argued, that the main source of legal discoveries are laws and regulations, customary law, jurisprudence, international agreements and doctrines. In the teaching of legal discovery the law is prioritized or takes precedence over other legal sources [<sup>31</sup>].

As a legal norm, General Principles of Good Governance has at least three areas, namely [<sup>32</sup>]:

- Field of interpretation and application of statutory provisions.
- The field of formation of government regulations in which government organs are given freedom of wisdom by laws and regulations or there are no provisions that limit the freedom of wisdom to be carried out.
- At the time of the exercise of wisdom.

According to Paulus Effendi Lotulung, the most effective way to popularize General Principles of Good Governance, in the future is through jurisprudence, especially in the form of jurisprudence, it is due to [<sup>33</sup>]:

- In addition to the jurisprudence pathway, namely the legislative pathway, for example, requires a long time and a complicated and lengthy discussion process in the DPR.
- The path of jurisprudence is possible to be developed in Indonesia, because the Indonesian system recognizes jurisprudence as a source of law. In order to optimize the application of General Principles of Good Governance through this jurisprudence to its intended purpose, the judges need a very in-depth knowledge of State Administrative Law.
- In order that the decision of the judge of jurisprudence has scientific weight and can be accounted for, the decision must describe a deep philosophical foundation, logical legal construction, and clear motivation. These three conditions of decision are the heart of the judge's decision or often called the *ratio decidendi*.

Although it does not have a formal juridical place in the corruption act, but the General Principles of Good Governance (AUPB) can be used as a test stone for village fund corruption committed by the village through a corruption court judge on the grounds that the

act corruption has violated one of the principles of Good Governance General Principles (AUPB), therefore it does not have to always be proven to violate the law, but violating the General Principles of Good Governance (AUPB) can be punished.

## CONCLUSION AND SUGGESTION

### CONCLUSION

The method of applying General Principles of Good Governance (AUPB) as a test stone for corruption in village funds is carried out with 2 (two) methods, namely: (1) legal changes and renewal. This legal amendment and renewal can only be done through national legislation carried out by the DPR, but this legislation path is very difficult to do unless there is a common logic of political equality, so that legal changes and reforms can be carried out. (2) the method of construction by the judge. This method is carried out by the judge in order to find the law because the law is vague in regulating or occurring a vacuum of norm. This path is commonly known as the Jurisprudence pathway where the law can also be born from a judicial institution.

### SUGGESTION

As recommendations that researchers can do in the results of this study are as follows:

Village fund management carried out by the village head has caused corruption in several villages in Indonesia in general and in Pamekasan in particular, the problem occurred due to the weak supervision carried out by the government and the weakness of the village facilitator itself. Therefore it is recommended to strengthen supervision of village fund distribution from the center to the regions and to the village head. This supervision must certainly involve independent teams from universities in their respective regions, because supervision has not been effective.

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<sup>31</sup>Sudikno Mertokusomo, (2006), *"Legal Discovery: An Introduction"*, cet-4, Yogyakarta: Liberty, p. 48.

<sup>32</sup>Indroharto, General Principles of Good Governance, in Jazim Hamidi, Verdict of the Supreme Tanjung

<sup>33</sup> Cassation, Perspective of the Implementation of General Principles of Decent Governance

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