

An Approach on Application of General Principles of Good Governance (AUPB) as a Review of the Village Government Corruption Behavior in Indonesia

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Abstract

This research at legal issues do General Principles of Good Governance stone behavior can be propagated as test corruption government politics village as the alternative solution build control mechanisms for corruption be able to control of the village head in village funds. This research method is a study of *legal research*. The results of this study the approach to applying AUPB as a test for village government corruption behavior by a judge can technically be done in 2 (two) ways, namely: through induction and deduction legal reasoning. Practical experience shows that the settlement of disputes in the Court so far usually begins with an induction step, which is in the form of formulating facts, seeking a causal relationship, and determining the probability. After the induction step, it is followed by efforts to apply the law as a step of deduction. In the application of law, it always begins with identification of legal rules. Efforts to identify the rule of law, often encounter conditions; legal vacuum (*leemten in het recht*), legal antinomy (*conflict of norms*), and vage norms.

Keywords: An Approach General Principles of Good Government, Review, Village Government, Corruption Behavior.

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INTRODUCTION

The paradigm of the application of Good Governance General Principles (AUPB) as a test for the corruption behavior of the village government is very important (urgent), because the General Principles of Good Governance (AUPB) philosophically play a role in completing deficiencies and obscurity as well as incomplete legal norms in the administration of government. Good and clean and authoritative, although it is very difficult to establish a good and clean governance organization. Along with the government's commitment to build villages that have been left behind, the government has made new innovations by providing village development funding managed by the head of village.

To build villages and rural areas, a number of funds are needed. The village funds are sourced from the State Budget and Revenue as stipulated in the Government Regulation of the Republic of Indonesia Number 22 Year 2015 concerning Amendments to Government Regulation Number 60 of 2014 concerning Village Funds sourced from the State Revenue and Expenditure Budget, namely Village Funds sourced from the State Revenue and Expenditure Budget

allocated to villages transferred through the district / city Regional Revenue and Expenditure Budget and used to finance government administration, development implementation, community development, and community empowerment.

Philosophically village funds are used to improve the welfare and equity of rural development through improving public services in the village, advancing the village economy, overcoming inter-village development gaps and strengthening rural communities as the subject of development [1].

Empirically the use of village funds has not been found evenly in the use of village development, especially in the perspective of advancing the village economy, and even there is an abuse of authority from the village head in the use of village funds by the village head. Such a large fund should be able to build a village for the welfare of the village community.

¹Anonymous, "Principles of Priority Policy for the Use of Village Funds in 2016", Directorate General of Rural Community Development and Empowerment, pdf accessed July 7, 2018

Based on this phenomenon, the distribution and use of village funds in building villages needs to be monitored, because they are vulnerable to being misused by the village head. This was also conveyed by the Village Minister, that the amount of village funds that reached Rp 100 trillion this year was prone to being corrupted. Therefore, the Minister of Villages, Development of Disadvantaged Regions and Transmigration

Eko Putro Sandjojo asked for input from the Corruption Eradication Commission (KPK) to oversee village funds [2].

The Deputy of the Corruption Eradication Commission, Laode M Syarif, explained that the Corruption Eradication Commission would at least provide three inputs to the ministry, namely [3]:

- There must be better coordination between the Ministry of Health, the Ministry of Home Affairs and other ministries.
- Accountability of the use of village funds must be better in the future.
- The Corruption Eradication Commission requested that the Secretariat General and the Director General at the Ministry of Villages, Development of Disadvantaged Regions and Transmigration increase the transparency of village funds.

Furthermore, it was confirmed that the Corruption Eradication Commission would create a Village Guard application, so that people could participate via mobile phones, for example, could propose the program they wanted, then report if he suspected misuse. Village funds have 4 (four) objectives when launched, namely: (1) meeting the basic needs of the community. (2) village infrastructure development. (3) development of local economic potential. (4) and utilization of natural resources and the environment [4].

METHOD

This research method is a study of *legal research*. The method aims to find the principle or the doctrine of positive law. This type of research is commonly known as dogmatic study or generally known as the *doctrinal research* [5]. Selection of this type of research is corresponded to the legal issues, that is the law drafted in the form of legislation designed, built and enacted by the competent institutions, so the

unwritten laws that are always evolving into the development of human civilization in accordance with principles which have universal values. The approach used in this research is theoretic approach, statute approach, conceptual approach, historical approach, comparative approach, and philosophical approach. The types and sources of legal materials, such as primary legal materials, secondary, and tertiary.

ANALYSIS AND DISCUSSION

The Dynamics of Eradicating Corruption in Indonesia

Talking about corruption has been done various ways even after the theory of warehouse has been eradicated. Therefore, eradicating corruption in various countries in the form of anti-corruption institutions, including in Indonesia, has been carried out since the reign of the old order, the new order and the reform era even today [6]: in the Old Order era, there were 2 (two) times established corruption eradication bodies. First, with the rules of the Dangerous State Act, this institution is called the State Apparatus Retooling Committee (Paran). This body is led by A.H. Nasution and assisted by two members, namely Professor M. Yamin and Roeslan Abdulgani. To Paran, all officials must submit data regarding the official in the form of the form provided. Predictably, the resistance model of corrupt officials at that time was reacting violently with the juridical pretext that with the doctrine of accountability directly to the President, the form was not submitted to Paran, but directly to the President. Filled with political turmoil, Paran ended tragically, deadlocked, and finally handed back the execution of his duties to the Djuanda Cabinet. Second, Operasi Budhi, In 1963, through Presidential Decree No. 275 of 1963, the government again appointed A.H. Nasution, who at the time served as Coordinating Minister for Defense and Security / Kasab, was assisted by Wiryo Prodjodikusumo with a new institution better known as Operasi Budhi. This time with a more difficult task, namely dragging corruption perpetrators to court with the main target of state companies and other state institutions that are considered vulnerable to corruption and collusion practices.

Next to the New Order, in the early days of the New Order, through a state speech on August 16, 1967, Soeharto openly criticized the Old Order, which was unable to eradicate corruption in relations with democracy centered on the palace. The speech seemed to give great hope along with the establishment of the Corruption Eradication Team (TPK), chaired by the Attorney General. However, it turned out that the TPK's lack of seriousness began to be questioned and led to Soeharto's policy of appointing the Four Committee consisting of old figures who were considered clean and

² Anonymous, in <http://nasional.republika.co.id/berita/nasional/umum/16/08/08/obkra7394-tiga-masukan-kpk-for-village-fund-monitoring> accessed July 6 2018

³Ibid.

⁴Ibid.

⁵Soetandyo Wignjosebroto, (1974), "Legal Research: A Typology", Indonesian Public Magazine first year No. 2 1974.

⁶ http://id.wikipedia.org/wiki/Komisi_Pemberantas_Korupsi#History_Lembaga_Pemberantas_Korupsi_di_Indonesia, accessed July 16, 2018

authoritative, such as Prof. Johannes, I. J. Kasimo, Mr. Wilopo, and A. Tjokroaminoto, with the main task of cleaning the Ministry of Religion, Bulog, CV Waringin, PT Mantrust, Telkom, Pertamina, and others.

These four clean figures became without spurs when the findings of a corruption case in Pertamina, for example, were ignored by the government. The weak position of this committee is also the main reason. Then, when Admiral Sudomo was appointed as Pangkopamtib, an Orderly Operation (Opstib) was formed with the task of eradicating corruption. Disagreements regarding the bottom up or top down method of corruption eradication among corruption erasers themselves tend to further weaken the eradication of corruption, so Opstib was lost along with the strengthening of the position of corruptors in the New Order throne.

Then the reform era, in the reform era, the effort to eradicate corruption began with B. J. Habibie by issuing Law Number 28 of 1999 concerning the Organization of a State that is Clean and Free from Corruption, Collusion and Nepotism and the formation of various new commissions or bodies, such as the Commission for the Supervision of State Officials (KPKPN), KPPU, or the Ombudsman Institute. The next president, Abdurrahman Wahid, formed a Joint Team for Combating Corruption Crime (TGTPK) through Government Regulation Number 19 of 2000. However, amidst a passionate spirit to eradicate corruption from members of this team, through a judicial review of the Supreme Court, TGTPK was finally dissolved with the logic of bumping into Law Number 31 of 1999. A similar but not the same fate was experienced by KPKPN, with the establishment of the Corruption Eradication Commission (KPK), the task of the KPKPN merged into the KPK, so that the KPKPN itself disappeared and evaporated. That is, the KPK is the latest corruption eradication institution that still exists today.

The Corruption Eradication Commission (KPK) was formed as an independent legal institution. Based on Law Number 30 of 2002 concerning the Commission Eradication of Corruption. The KPK was given the mandate to eradicate corruption in a professional, intensive and sustainable manner. The KPK's biggest responsibility is to the people of Indonesia. For this reason, the KPK is expected to be free from any power intervention. But keep intertwining cooperation with all elements of the country. The KPK's performance report is submitted openly and periodically to the president, the House of Representatives (DPR), and the Supreme Audit Agency (BPK). In carrying out the mandate, one of the tasks carried out by the KPK is coordination. In this case, the KPK coordinates with

agencies that also have the authority to deal with corruption [⁷].

In carrying out the duties of investigation, investigation, and prosecution of corruption, the KPK cannot be negligent. Because, the KPK was not given the authority to stop a case. Therefore, it is always guided by the principles of legal certainty, openness, accountability, public interest, and proportionality. In addition, not all corruption crimes can be handled by the KPK. There are several conditions, so that a case can be handled by the KPK. Among other things, corruption cases involve law enforcement officials, state administrators, as well as others who are related to criminal acts of corruption by law enforcement officials and government officials. And also, the amount of state losses due to corruption cases must be at least Rp1 billion and trigger public unrest [⁸].

Village Fund Corruption Behavior in the Village Government System

The effort to eradicate corruption by the Corruption Eradication Commission (KPK) is not only on a national scale. Want to continue to improve the quality of the program, the application of rules, and network coaching in combating corruption, since September 19, 2006, Indonesia ratified the United Nations Convention Against Corruption (UNCAC). UNCAC is the United Nations Anti-Corruption Convention which is an international legal instrument that aims to address the problem of corruption at the global level. UNCAC introduces a set of standards, rules and measures that can be applied by countries in the world to strengthen its legal framework in combating corruption effectively [⁹].

Democracy requires the recognition of popular sovereignty which is realized in the form of recognition of civil society as a pressure force and counterweight to the state. The people as the main element of civil society absolutely get a strategic position guaranteed by the constitution to carry out its roles as a form of active participation in the context of eradicating corrupt behaviour [¹⁰].

Corruption in countries in the world always gets more attention, when compared to other criminal acts, because it is closely related to the loss and destruction of the character of the state. This

⁷Vide 2017 KPK Annual Report, p. 46

⁸Ibid.

⁹Vide 2017 KPK Annual Report, p. 46

¹⁰Nadir, (2012), "Hacking Corruption in a Democratic State (An Islamic Law Offer through the Istishlah Concept)", *Al-Ihkam Journal*, Vol. 7 No. June 1, 2012, in <http://ejournal.stainpamekasan.ac.id/index.php/alihkam/article/view/321>, accessed August 7, 2018, p. 143

phenomenon is understandable given the negative impact caused by this crime. The impact can touch various areas of life. Corruption is a serious problem faced by a nation, criminal acts of corruption can endanger the stability of the economy, politics, and can also damage the democratic values and morality of a nation, because sooner or later this act will become culture. In addition, the consequences of criminal acts of corruption which are very crucial are damaging the system of values of a nation, and which clearly hinder the planned national development [¹¹].

The case that caught the attention of the Village fund case problem which then dragged Pamekasan Madura East Java Regent at that time. This case was handled directly by the Corruption Eradication Commission (KPK) in a hand arrest operation. This case began with a number of non-governmental organizations reporting alleged budget irregularities in infrastructure projects worth Rp. 100 million that use village funds. In the capture operation of the KPK in Pamekasan Madura, East Java raised the spotlight on extraordinary village funds. Deviations that occur in the distribution and use of village funds become new corruption land by the regional head and by the village head. The issue of irregularities in village funds in Pamekasan is not the only one, papsti has experienced many other areas, but what has been successfully revealed is only in Pamekasan.

According to Debora, village funds allocated to villages are expected to be used responsibly, so that all villages can be more independent and can play a role in national development. Nevertheless, since the beginning of its implementation, some circles have been concerned about the issue of financial transfers that will be managed by the village, because the capacity of the village government is still weak, so that it will make village funds vulnerable to corruption [¹²].

In reality what was feared really happened. Hand Catching Operations (OTT) by the Corruption Eradication Commission (KPK) in Pamekasan Madura, East Java, on August 2, 2017 has revealed a case of alleged corruption in village funds involving at least 5 (five) relevant officials. The official was Pamekasan Regent Achmad Syafii Yasin, Pamekasan District Inspectorate Head Sutjipto Utomo, Head of the District Attorney (Kajari) Pamekasan Rudy Indra, Dassok Agus Mulyadi Village Head, and Pamekasan District Inspectorate Administration Section Noer Solehhoddin [¹³].

In the OTT, the KPK found that the village head of Dasok had given a bribe of Rp.250 million to Kajari Pamekasan. Bribery was carried out so that the District Attorney (Kejari) Pamekasan did not follow up on reports regarding alleged budget irregularities in infrastructure projects worth Rp. 100 million that used village funds. According to KPK Deputy Chair Laode Muhammad Syarif, reporting made by a number of NGOs to Kejari had made the Dasok Village Chief feel frightened and tried to stop the legal process of alleged corruption. Then opened communication with several parties in the Pamekasan District Attorney's Office and the Pamekasan District Government who agreed that the case handling would be stopped if the Pamekasan District Government handed over Rp. 250 million to the Pamekasan District Attorney [¹⁴].

An interesting issue in the case of village funds in Pamekasan Regency is the case of the village funds which is not the first, but there have been many cases of previous village funds. In 2015 there were 6 village heads in Seram District, Maluku, who were named suspects for alleged corruption in misappropriation of village funds. The village head of Bunder, Gunungkidul, Yogyakarta was also appointed as a suspect in the alleged corruption case of the Bunder Village Budget and Revenue, because it included the village's original income into his personal wealth [¹⁵].

Based on this, corruption cases in vulnerable villages occur due to administrative irregularities and under-running supervision. As stated by the Corruption Eradication Commission (KPK), one of the weaknesses of village fund management is that there is almost no supervision. Meanwhile, the Indonesian Forum for Budget Transparency (FITRA) assessed that corruption in village funds occurred because of the innocence of village heads who did not understand village fund management until they were successfully squeezed and mocked by law enforcement officials who sought loopholes from village fund management from the center. This spurred the regional government to play a more active role in reporting village funds. But unfortunately in the practice of active role the Regional Government not only checks the reporting documents and also supervises, but helps the villages that fail to compile reports and supporting administrative attachments [¹⁶].

Basically the village head is not weak and does not understand in managing village funds, only the problem is they want to enrich themselves in various ways ranging from material reduction in projects, work programs that are less clear, replacing work programs in hopes of benefiting themselves.

¹¹Ibid.

¹²Debora Sanur, (2017), "Village Fund Supervision", Magazine Brief Information on Domestic Governance, Vol. IX, No. 15 / I / Puslit / August / 2017, p. 17

¹³Ibid, p.18

¹⁴Ibid.

¹⁵Ibid.

¹⁶Ibid.

Basically, the success of the village in managing village funds is influenced by 2 (two) main factors, namely [¹⁷]:

- Factor of the village head who has a great vision and mission for his village who is a figure who wants to devote his life to the prosperity of his citizens.
- Factors of village community involvement that are needed to oversee village funds. The participation of villagers to participate in overseeing government and law enforcement agencies is very important.

Morally, a clean attitude can foster a sympathetic appeal for his subordinates to actively participate, whereas gross nature can lead to destructive behavior and other negative judgments. As for the authoritative attitude for a government, it is not enough only with a power approach that tends to be formal legalistic, but must be by the exemplary behavior of its leaders [¹⁸]. Therefore, the nature of village governance that is clean and free of corruption is a government that is able to provide good examples for its subordinates and village communities and uphold the values of constitutional democracy.

Through Law Number 6 of 2014 concerning Villages, since 2015 the government has allocated village budget funds. Village fund allocation continues to increase until 2017, but in 2018 there was no increase due to several problems.

In view of the findings of Indonesian Corruption Watch (ICW), corruption in the village, which concerns the village budget, is one of the fundamental problems. This problem was born because of a large budget management, but its implementation at the village level was not accompanied by the principles of transparency, participation, and accountability in political governance, development, and village finance [¹⁹].

Various forms of village budget abuse are feared to become increasingly in 2018, the year of 2018 simultaneous local election contestation and 2019 simultaneous election. This concern does not only depart from reading the phenomenon of corruption in the last three years in the village. But there is also a lack of public and national media attention to the village, especially with regard to the village's strategic position in the context of electoral victory, the phenomenon of village head affiliation with certain regional head

candidates, and the lack of knowledge and supervision of the village community.

Indonesian Corruption Watch (ICW) has monitored corruption in the village. The results of ICW monitoring, in 2015 to 2017 corruption cases in the village increased. In 2015, corruption cases reached 17 cases and increased to 41 cases in 2016. The surge more than doubled then occurred in 2017 with 96 cases. A total of 154 cases of corruption were found.

Not all of the 154 corruption cases in the village sector above are village budget corruption. The number of cases with village budget objects reached 127 cases, while there were 27 cases with non-budget village objects or a total of 18% of the total cases. Cases with non-budget village objects such as illegal levies by village officials. While the object of corruption in the village budget includes corruption of Village Fund Allocation (ADD), Village Fund, Village Cash, and others.

The village head is the dominant actor caught in the case. The number of village heads who were ensnared was 112 people. This number continues to increase from year to year, with 15 village heads in 2015, 32 village heads in 2016, and 65 village heads in 2017. Not all the perpetrators were Village Heads, other actors were 32 village officials and 3 were family heads of villages [²⁰].

There are also many factors that cause corruption in the village sector, including the lack of community involvement in the village budget planning and supervision process, the inability of the Village Consultative Body, the limited competence of village heads and village officials, and the high political costs of electing the village head. Meanwhile, ICW's Political Corruption Division, Almas Sjafrina said that corruption in the village sector had become a new trend in Indonesia. Village funds and ADD are mentioned as two village budget posts which are prone to be misused, especially for election winners. The budget potential that flows to the village for electoral purposes has been identified since 2015. In 2018 the village budget, both village and ADD are increasingly vulnerable to being misused. The reason is politics because 2018 we face political contestation in 171 regions. Presidential elections and legislative elections will begin in September 2018. Village funds are one of the main tools or parts for winning elections. Especially in areas where the regional head is advancing or incumbent [²¹].

¹⁷Ibid, p.19

¹⁸ Ateng Syafrudin, (1982), *"Confirming a Clean, Strong and Authoritative Government"*, cet. First, Bandung: Tarsito, p. 15

¹⁹Village Fund Outlook 2018 Potential Abuse of Village Budget in Political Year

²⁰ ICW: "Head of Village Becomes Main Actor of Abuse of Village Funds", in <http://sp.beritasatu.com/home/icw-kades-jadi-aktor-utama-penyguna-dana-desa/122673> accessed May 12 2018.

²¹Ibid.

Law Number 6 of 2014 concerning Villages gives autonomous authority to the village government in managing and developing the village. Village communities are more prosperous with various empowerment programs and management of village resources. The village government can do a pattern of improving the village economy through the Village-Owned Enterprises (BUMDes), regulating the Village Budget (APBDes) and carrying out various infrastructure developments that can support the improvement of the village economy. From the village to build the country to be realized [²²].

The abundance of village resources provides significant opportunities for the village government in developing the village economy and welfare for the village community. These potentials must be properly identified and developed through empowerment of the community on an ongoing basis. There are so many potentials that have not been explored optimally and have not been managed properly. Many obstacles lie behind, including village finance, village human resources and infrastructure that does not support [²³].

Criminal acts of corruption are a threat to the ideals of a nation in order to lead civil society. The mechanism of criminal acts of corruption is carried out in various ways and various forms planned by the corruptor subjectively and systematically. Therefore, it is not surprising that this criminal act has become a public concern in various countries [²⁴].

Therefore, the weak substance of the law (law) built in the country of Indonesia can result in weak law enforcement apparatus structures to ensnare the perpetrators of corruption, so that the weakness of the existing substance can be used as a justification by corruptors. This is because the State of Indonesia is too rigid with the legal concept of positivism where we actually know that the law is incomplete and impossible to complete because the development of human intellectual civilization as well as legal actors has always evolved along with the development of science and technology [²⁵].

Approach to the Application of Good Governance General Principles as a Test of Village Government Corruption Behavior

According to Wiarda, the character of the General Principles of Good Governance (AUPB) is

²²Hayat, Mar'atul Makh is easy, (2016), "Prevention of Corruption in Village Government: Political Study of Village Natural Resources Management Policy and Law", in the Journal of Yustisia. Vol. 5 No. May 2-August 2016, UNS, p. 363

²³Ibid.

²⁴Nadir, Op. Credit, p. 143

²⁵Ibid, p. 145

ethics tendencies which underlie administrative law, both written and unwritten, including government practices, and can also be derived from judicial law and practice. Meanwhile, according to de Monchy commission, AUPB is a moral tendency of the general government, but they do not explain in more detail what is meant by general government ethical and moral tendencies, thus inviting questions and interpretations among administrative law experts [²⁶].

Ridwan HR gave an explanation of the General Principles of Good Governance as follows that the understanding of AUPB can not only be seen in terms of language but also in terms of its history, because this principle arises from history as well. Relying on these two contexts, the Good Principles of Good Governance can be understood as general principles which are used as the basis and procedures for the proper administration of government, in such a way that the administration of the government is good, polite, fair and respectful, free from tyranny, violation of regulations, acts of abuse of authority, and arbitrary actions [²⁷].

According to Philipus M. Hadjon, the application of legal principles (including AUPB) by administrative judges in court, can technically be approached in 2 (two) ways, namely: through Induction and deduction legal reasoning [²⁸].

Practical experience shows that the settlement of disputes in the Court so far usually begins with an induction step, which is in the form of formulating facts, seeking a causal relationship, and determining the probability. After the induction step, it is followed by efforts to apply the law as a step of deduction. In the application of law, it always begins with identification of legal rules. Efforts to identify the rule of law, often encounter conditions; legal vacuum (*leemten in het recht*), legal antinomy (*conflict between legal norms*), and vague norms [²⁹].

In dealing with legal vacancies (laws and regulations), judges hold to the principle of "ius curia novit", namely that judges are considered to know the law and cannot refuse cases for reasons that the rules are unclear (none). In addition, the judge is obliged to

²⁶Vide description of S.F. Marbun, (2014), "*General Principles of Decent Governance*", Yogyakarta: FH-UII Press, p. 8.

²⁷Ridwan HR, (2008), "*State Administrative Law*", Jakarta: PT. RajaGrafindo Persada, p.234

²⁸Philipus M. Hadjon, (1994), "Study of Dogmatic Law (Normative)", in Yuridika magazine, No. 6 Year IX November-December 1994, p. 12-14.

²⁹Jazim Hamidi, (2007), "Application of AAUPPL by Administration (An Effort Towards "Clean and Stable Government")", in the Journal of UNISIA, V ol. XXX No. 66 December 2007, p. 357

explore the legal values that live in the community (including, AAUPPL) (cursive AUPB writer). This effort is often referred to as *rechtsvinding* (legal discovery method) [³⁰].

According to Sudarsono, the induction method is a method that concludes observations (specific) statements are deduced from a more general statement or from the observation of people to universal statements, by the method of induction is born from the way of thinking about empiricism [³¹].

While the deduction method is a method of inference that is processed from a statement that is traceable, logically, which describes the general arguments drawn by a specific conclusion, by the method of induction is born from the way of thinking about rationalism [³²].

As described above, that in the induction method, the first step taken by the judge in handling disputes is collecting facts, looking for a causal relationship and determining the probability. Then followed by the deduction method, where the initial step is to formulate the facts, after the facts have been formulated, efforts are made to implement the law (legal principle).

The application of AUPB within the Administrative Court has been practiced since the enactment of Law Number 5 of 1986 concerning State Administrative Courts or long before Law Number 9 of 2004 was passed. Judges when applying AUPB refer to Article 14 jo. Article 27 of Law Number 14 of 1970 concerning the Principles of Judicial Power and Item V of Dictum 1 of the Supreme Court (*Juklak*) Directive dated March 24, 1992 Number: 052 / Td. TUN / II / 1992 stating that, "if the judge considers AUPB as the basis for the cancellation of the stipulation, it is not necessary to be included in the decision dictum but is sufficient in consideration of the decision by mentioning which principles of AUPB are violated. Unfortunately, along with the reform of PTUN, the implementation of the operational guidelines is still maintained today. In fact, Law Number 9 of 2004 and Law Number 30 of 2014 have more explicitly placed AUPB as a positive legal norm and placed AUPB as the reason or basis of the lawsuit. Whereas in Book II of the Administrative Administration and Technical Guidelines for State Administration of Justice (2007 edition) issued by the Republic of Indonesia Supreme Court in 2008 (page 64, number 6), it is stated that if there is a violation against AUPB, then the AUPB must

be included in the dictum the decision as the norm which cancels the TUN Decision being sued. Therefore, to guarantee legal certainty, violations of AUPB are not enough to only be included in legal considerations, but it is important to mention in the decision dictum [³³].

In essence, the principle has an important role in filling the legal vacuum or the obscurity of the law. Therefore, the existence of AUPB is very important when PTUN judges examine a case where the legal basis has not been explicitly regulated in the legislation (vacuum of norm), or when the arrangements exist but are very marginal (vague of norms) In this case, the recognition of AUPB as a positive legal norm will be very useful for judges in carrying out independence and judicial power to test all government actions that are deemed arbitrary, contrary to the law, or abuse their power with appropriate and accurate considerations with indicators what is clear and by prioritizing aspects of legal certainty. The existence of other unwritten AUPB is also very important in realizing the aspects of justice and benefit from the judge's decision [³⁴].

The position of AUPB has been normalized in Law No. 30 of 2014 concerning Government Administration as part of positive law, in addition to being stated in Law Number 9 of 2004. Therefore, it is very easy for PTUN judges to assess corruption cases committed by village head born of abuse of authority.

Even in the United States in its development what is meant by law does not necessarily mean that the positive law issued by a legitimate ruler is in the form of a written regulation, but that the patterns of relations that are already valid and continuously carried out in the community and accepted as something that must be done, are actually law. So the law derives from regularities that originate from the fact or association of the community itself, this conception of thought that underlies the birth of *the legal flow of realism* pioneered by Oliver W. Holmes with his thought of *the life of law but experience* [³⁵].

In the Indonesian context, unwritten law is part of national law that must be maintained through its application and enforcement to create justice. Based on a theoretical perspective, the concept of meteoric law

³⁰Ibid

³¹I Dewa Gede Atmadja, Sudarsono, et.al, (2014), *"Philosophy of Science: from the Tree of Knowledge to the Scientific Character of Legal Sciences"*, Malang: Madani, p. 38

³²Ibid

³³Cekli Setya Pratiwi, et.al, (2016), "Legal Explanation of Good Governance General Principles (AUPB), 2016 Research Results Report, accessed August 18, 2018 in <https://www.cilc.nl/cms/wp-content/uploads/2016/05/Explanation-Principles-General-Good-Government-Law-Administration-State-Principles.pdf>, p. 21

³⁴Cekli Setya Pratiwi, et.al, Legal ExplanationP.. 21

³⁵FX. Adji Samekto, (2008), *"Justice Not For All: Criticism of Modern Law in the Perspective of Critical Law Studies"*, print one, Yogyakarta: Genta Press, p. 23-24

(*meteriele wederrechtelijkheid*) refers to the unwritten law that grows and develops in society [³⁶].

The rationality and intellectuality of judges in using the AUPB principle plays a very important role, especially in exploring and finding law when dealing with TUN disputes which are not clear yet in its regulation and or its arrangements are still multi-interpretive (*vague*). The existence of AUPB in the formation of law requires the judge's creativity in discovering the values of truth and justice. While the existence of AUPB in the application of law requires the creativity of judges in building a consistent and measurable legal construction, if the existing law is still very vague. Basically, the application of law is interpreted as the application of legal regulations to concrete events [³⁷].

The "*law enforcement*" function has been carried out by judges, while "*legal discovery*" is still very rarely done by Jon Z. Loudoe suggests that legal findings can be done through interpretation, analogy, and legal refinement. Legal findings occur because the application of the provisions to the facts and provisions is sometimes still to be established, while it cannot always be found in existing laws [³⁸].

The urgency of the existence of AAUPPL, besides being a "*guideline*" for the State Administration, it is a "*test instrument*" that can be used by the Administrative Judge. As such, the application of AAUPPL is one of the conditions to create a clean and authoritative government (*clean and stable governance*).

CONCLUSION AND SUGGESTION

CONCLUSION

The approach to applying Good Governance General Principles (AUPB) as a test for village government corruption behavior by a judge can technically be done in 2 (two) ways, namely: through induction and deduction legal reasoning. Practical experience shows that the settlement of disputes in the Court so far usually begins with an induction step, which is in the form of formulating facts, seeking a causal relationship, and determining the probability. After the induction step, it is followed by efforts to apply the law as a step of deduction. In the application

of law, it always begins with identification of legal rules. Efforts to identify the rule of law, often encounter conditions; legal vacuum (*leemten in het recht*), legal antinomy (*conflict between legal norms*), and vague norms.

SUGGESTION

As a recommendation that researchers can do in the results of this study is the distribution of village funds from 2015 until now should be evaluated, this is intended to assess how far the village progress in terms of economy, infrastructure, education, etc., than before the village received village funds, because the amount of village funds obtained with their use in the field is not directly proportional.

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³⁶ Budi Pramono, (2011), "Misuse of Authority in Corruption in Indonesia", Dissertation of the Law Faculty of the Law Faculty of Brawijaya University, Malang 2011, p. 337

³⁷ Sudikno Mertokusumo and A. Pitlo, (1983), "*Chapters on the Discovery of Law, Cet. First*", Bandung: Alumni, p. 21-28

³⁸ John Z. Loudoe, (1995), "*Finding the Law through Interpretation and Facts*", Cet. First, Jakarta: Bina Aksara, p. 69