



## The Shifting in the Legal Politics of Regulating the General Principles of Good Governance in Indonesian Legislation

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Received: 03-01-2023

Revised: 02-02- 2023

Accepted: 23-04-2023

### Abstract

Prior to the enactment of Law Number 30 of 2014 concerning Government Administration, the regulation of the General Principles of Good Governance (AAUPB) was abstract in nature. With the explicit mention of AAUPB in this new Administrative Law, it is intriguing to examine it from a legal and political perspective and consider its legal consequences. This article aims to analyse the form legal political shift in the regulation of AAUPB in Indonesia and the resulting legal consequences. This study is normative juridical research using a legislative approach. The findings reveal that, first, the shift in the legal politics of AAUPB in Indonesia occurred with the issuance of Law Number 30 of 2014 concerning Government Administration. The Law Number 30 of 2014 concerning Government Administration shifted the legal politics of AAUPB, as there is a normativization in the form of AAUPB regulation in the article. Secondly, the legal consequences of the shift in the legal politics of AAUPB in Indonesia are as follows: a) the status of the principle becomes a concrete legal norm; b) it facilitates courts in judging an action of administrative officials; c) it eases the control of administrative actions; d) it simplifies public control; e) it emphasises the need for supervision of official actions; f) it guarantees civil rights through the enforcement of AAUPB; g) it prevents governmental arbitrariness.

Keywords: Legal Politics, General Principles of Good Governance, Legislation



## Introduction

The rule of law is essentially aimed at providing legal protection for the people. Philipus M. Hadjon believes that legal protection for the people against government actions is based on two principles, namely the principle of human rights and the rule of law.<sup>1</sup> As time rolls on, the main objective of the rule of law has increasingly eroded, shifting from a formal rule of law (*nachtwatersstaat*) to a material rule of law (welfare state). This is due to the actions of the government, responsible for ensuring the welfare and prosperity of its citizens, growing larger. SF Marbun asserts that the government's actions to provide this welfare must also be based on the applicable law or often act based on *freies ermessen*, but these actions often cause *onrechtmatig overheidsdaad*, an abuse of authority that leads to a conflict of interest between the citizens and the government.<sup>2</sup>

In 1946, to avoid or minimise the occurrence of such conflicts, the Dutch Government formed a commission, led by de Monchy, tasked with investigating several alternatives for *verhoogde Rechtsbescherming*, or enhancing legal protection for the people from deviant state administration actions. In 1950, the de Monchy commission reported its research findings on *verhoogde Rechtsbescherming* in the form of the General Principles of Good Governance / *Algemene beginselen vor beho orlijk bestuur*.<sup>3</sup>

The General Principles of Good Governance (hereinafter referred to as AUPB) first appeared in Indonesia during discussions when it was still Draught Law Number 5 of 1986 on State Administrative Court. However,

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<sup>1</sup> Philipus M. Hadjon, *Perindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987), 71.

<sup>2</sup> S.F Marbun, *Peradilan Administrasi Negara dan Upaya Administratif* (Yogyakarta: FH UII Press, 2011), 366.

<sup>3</sup> S.F Marbun, *Pokok-Pokok Hukum Administrasi Negara* (Yogyakarta: Liberty, 2009), 57–68; sri Nurhari Susanto, “Komponen, Konsep Dan Pendekatan Hukum Administrasi Negara,” *Administrative Law and Governance Journal* 4, no. 1 (10 Maret 2021): 155, <https://doi.org/10.14710/alj.v4i1.144>; La Ode Husen dkk., “The Principle of Good Governance: A Study of the Implementation of ‘Algemene Beginselen Van Behoorlijk Bestuur’ in the Legal System in Indonesia,” *International Journal of Innovative Research and Development*, 30 Juni 2020, 225, <https://doi.org/10.24940/ijird/2020/v9/i6/JUN20067>.

at that time, it was not accepted under the assumption that the Indonesian administration tradition was not as good as the Dutch's, and the proposal put forward by the ABRI faction was rejected. Ridwan HR argues that the non-inclusion of the AUPB in the State Administrative Court Law does not mean its existence is not recognised at all because it turns out that court practise, especially State Administrative Court, also applies the AUPB.<sup>4</sup> The understanding of the AUPB can not only be seen from the linguistic side but also from its history, as this principle arises from history as well.<sup>5</sup>

The AUPB started to be recognised in writing in Indonesia on a significant change after the birth of the First Amendment to the State Administrative Court Law, namely State Administrative Court Law Number 9 of 2004 concerning State Administrative Court procedural law, as stipulated in Article 53 Paragraph 2 letter b, by including the violation of the General Principles of Good Governance as the reason or basis for the plaintiff's lawsuit. AAUPB refers to Law Number 28 of 1999 on Clean and Free State Administration from Corruption, Collusion, and Nepotism. Even more so with the issuance of Law Number 30 of 2014 About Government Administration (hereinafter referred to as UUAP), which explicitly mentions AUPB as an applicable norm. Based on this, there has been a shift in the legal and political regulation of The AUPB provisions in Indonesia. Thus, it is interesting to conduct a study related to the shift in legal and political regulation of the AUPB in Indonesia.

Some previous research that discusses the AUPB includes, first, a study entitled "The Function of the General Principles of Good Governance in Resolving State Administrative Procedure Legal Disputes," written by Andy Gunawan et al. The difference between that study and this one is the focus of the research. The focus of that study was the function of The General Principles of Good Governance as a benchmark in the decision of

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<sup>4</sup> S.F Marbun, *Hukum Administrasi Negara* (Yogyakarta: FH UII Press, 2018), 240.

<sup>5</sup> Marbun, 234.

state administrative procedure legal disputes, whereas in this study it is more focused on the legal politics of regulating The General Principles of Good Governance and its legal effects.<sup>6</sup> econd, a study entitled "The General Principles of Good Governance in Public Service," written by Solechan The difference between that study and this one is the focus of the research. The focus of that study was AUPB as a legal foundation in the administration of public services, whereas in this study it is more focused on the legal politics of regulating the AUPB and its legal effects. Third, a study entitled "The Existence of the General Principles of Good Governance as a Basis for Testing the Validity of State Administrative Decisions in the State Administrative Court", written by Soehartono The difference between that study and this one is the focus of the research. The focus of that study was the function of The General Principles of Good Governance as a benchmark in the decision of state administrative procedure legal disputes, whereas in this study it is more focused on the legal politics of regulating The General Principles of Good Governance and its legal effects.<sup>7</sup>

Based on the background described above, the formulation of the problem and focus of this study are as follows: First, what is the form of the shift in the legal and political regulation of the AUBP in Indonesia? Second, what are the legal consequences of the shift in legal politics at the AUPB in Indonesia?

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<sup>6</sup> Andy Gunawan, I. Wayan Arthanaya, dan Luh Putu Suryani, "Fungsi Asas-Asas Umum Pemerintahan Yang Baik Dalam Menyelesaikan Sengketa Hukum Acara Tata Usaha Negara," *Jurnal Analogi Hukum* 1, no. 1 (17 Desember 2019): 28, <https://doi.org/10.22225/ah.1.1.2019.28-33>.

<sup>7</sup> Soehartono -, "Eksistensi Asas-Asas Umum Pemerintahan Yang Baik Sebagai Dasar Pengujian Keabsahan Keputusan Tata Usaha Negara Di Peradilan Tata Usaha Negara," *Yustisia* 1, no. 2 (2 Mei 2012): 180, <https://doi.org/10.20961/yustisia.v1i2.10644>.

## Research Method

This research is a normative juridical (legal research) study.<sup>8</sup> The study uses a legislative approach.<sup>9</sup> The legal materials used in this research are from primary and secondary legal sources.<sup>10</sup> Primary legal materials include Law Number 30 of 2014 on Government Administration, Law Number 9 of 2004 on Amendments to Law Number 5 of 1986 on the State Administrative Court, and Law Number 51 of 2009 on the Second Amendment to Law Number 5 of 1986 on the State Administrative Court. Secondary legal materials consist of books, journal articles, and research results related to this study. The data analysis method to be used is qualitative analysis.

## Shift in the Legal Policy Regulation of the AUPB

The legal umbrella or “umbrella lex” regulating decision-making and/or actions by agencies and/or government officials is enshrined in UUAP. Prior to the enactment of the UUAP, there were several laws that formed the basis for assessing government administration. Firstly, Law Number 5 of 1986 on State Administrative Courts (hereinafter referred to as UUPTUN 1986); secondly, Law Number 9 of 2004 on Amendment of Law Number 5 of 1986 on State Administrative Courts (hereinafter referred to as UUPTUN 2004); and thirdly, Law Number 51 of 2009 on the Second Amendment to Law Number 5 of 1986 on State Administrative Courts (hereinafter referred to as UUPTUN 2009)

An important provision with the enactment of the First Amendment to the UUAP concerns the procedure of the Administrative Court, as stipulated in Article 53 Paragraph 2 Letter B, which incorporates violations

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<sup>8</sup> Iqbal Hasan, *Pokok-Pokok Materi Metodologi Penelitian dan Aplikasinya* (Jakarta: Ghalia Indonesia, 2002), 11.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2012), 93.

<sup>10</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2008), 51.

of the General Principles of Good Administration (GPBGA) as a reason or basis for the plaintiff's lawsuit. Article 53 states that:<sup>11</sup>

- (1) A person or civil legal entity who feels that their interests have been harmed by a state administrative decision can file a written lawsuit to the competent court containing a claim that the disputed state administrative decision is declared null and void, with or without an accompanying compensation claim and/or rehabilitation
- (2) The reasons that can be used in the lawsuit, as referred to in paragraph (1), are:
  - a. The disputed state administrative decision is contrary to applicable legislation;
  - b. The disputed state administrative decision is contrary to the general principles of good governance.

This means that if the public's rights are harmed by an administrative official due to a State Administrative Decision (hereinafter referred to as KTUN) that contradicts the AUPB, then the public can file a lawsuit for the cancellation of the KTUN with the Administrative Court. Whereas the previous Administrative Court Law did not explicitly regulate this AUPB. With the inclusion of AUPB into the First Amendment of the Administrative Court Law, there appears to be a serious effort by lawmakers to position the Administrative Court as a tool to control government actions from arbitrary actions, misuse of power, or other actions that harm the rights of citizens.<sup>12</sup> According to Ridwan HR, responsibility and compensation claims or rights are directed at any legal

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<sup>11</sup> "UU No. 9 Tahun 2004 tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara [JDIH BPK RI]," diakses 12 Juni 2023, <https://peraturan.bpk.go.id/Home/Details/40500/uu-no-9-tahun-2004>.

<sup>12</sup> Herlambang P. Wiratman, "Asas-Asas Umum Pemerintahan yang Baik (AUPB) dalam Perkara Tata Usaha Negara" (Lembaga Kajian & Adcokasi Indepedensi Peradilan, 2016), 9.

subject that violates the law, regardless of whether the legal subject is an individual, a legal entity, or the government..<sup>13</sup>

The change in status from being an unwritten law to a legal norm, or the affirmation of the regulation of AUPB as a legal norm, for the stream of legalism or positivism is certainly appropriate or fitting, because for them, the only source of law is the law. This stream prohibits judges from interpreting the law, and the interpretation of the law is considered taboo. This differs from the stream of legal realism, in which judges do not feel their movement is limited because they consider the written law not to be the only source of law. In connection with the affirmation of the regulation of AUPB as a legal norm, Riawan Tjandra, quoting Muchsan's statement, expressed the following opinion.<sup>14</sup>

“Today, AUPB has been placed as a legal norm in the explanation of Article 53 paragraph (2) of Law Number 9 of 2004 in conjunction with Law Number 28 of 1999; this in fact limits the judges. Ideally, AUPB remains ethical; it does not need to be included in the law, so it can be discretionary for judges in examining KTUN.”

Another perspective is put forth by Wiyono, where the provisions contained in Article 53, paragraph (2), clause b, essentially only confirm or provide a written legal basis for the already existing practise of using AUPB as a basis for testing administrative decisions. The desire to codify all social problems into law is still indicative of a strong influence from the concept of formal rule of law, resting on the paradigm of legality of administration. Regulatory inflation without implementation causes the law to lose its prestige, and legal norms simply become library history, not civilization history.<sup>15</sup>

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<sup>13</sup> Ridwan HR, *Hukum Administrasi Negara* (Jakarta: PT Raja Grafindo Persada, 2014), 339.

<sup>14</sup> W. Riawan Tjandra, *Peradilan Tata Usaha Negara Mendorong Terwujudnya Pemerintah yang Bersih dan Berwibawa* (Yogyakarta: Universitas Atma Jaya Press, 2009), 142.

<sup>15</sup> Tjandra, 142.

The application of AUPB as stated in Article 53 of the UUPTUN is proposed by Paulus Effendi Lotulung, who proposed the inclusion of AUPB principles. This desire was also reinforced through the National Work Meeting of MARI 1 (Supreme Court of the Republic of Indonesia) from September 18 to 22, 2005, in Denpasar. There arose a thought among the Administrative Court judges that if the judge applies the AUPB used as the basis for testing the contested administrative decision, the judge must clearly elaborate on it in his legal considerations. Consequently, this was followed up with the issuance of Book II on Technical Guidelines for Administration and Technical Administrative Court, 2007 Edition, published by the Supreme Court of the Republic of Indonesia in 2008. However, Paulus Efendi Lotulung initially argued that AAUPB is not necessary for normativization, which is explained as follows:<sup>16</sup>

“The formulation of AUPB along with its detailed principles are not collected and concretely formalised in a specific legislation on AAUPB because the principles concerned are unwritten legal norms reflecting the ethical norms of governance that must be respected and complied with in addition to relying on written legal norms.”

Furthermore, an analysis of AUPB provisions in UUAP is conducted. This UUAP was ratified and enacted on October 17, 2014. The development of AUPB principles found its momentum getting stronger when the UUAP was ratified in 2014, as intended in the UUAP, so that it can be applied as long as it is the basis for the judge's assessment, as stated in the court decision that has legal force.<sup>17</sup>

In addition to the formulation of AUPB in the UUAP, there are also AUPB formulations in various other laws, such as the PB Law Number 25 of 2009 on Public Services, Law Number 23 of 2014 on Regional

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<sup>16</sup> Paulus Efendi Lotulung, *Himpunan Asas - Asas Umum Pemerintahan yang Baik (AAUPB)* (Bandung: Citra Aditya Bakti, 1994), 14.

<sup>17</sup> Cekli Setya Pratiwi dkk., “Penjelasan Hukum Asas-Asas Umum Pemerintahan yang Baik (AUPB)” (Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP), 2016), 38-40.



Government, Law Number 5 of 2014 concerning State Civil Apparatus, and the Law Number 37 of 2008 on the Ombudsman. This further strengthens the existence of AAUPB as a reference basis that must be obeyed by the government in making KTUN. This obligation has implications for judges in examining and assessing whether or not an administrative decision made by the government is valid. Article 52, paragraph (2), of the AP 2014 Law explicitly states that the validity of a decision is based on the provisions of legislation and AUPB. Furthermore, Article 66, paragraph (3), clause c of the UUAP 2014 mentions that the decision to cancel can be made on the court's decision. This means that, in addition to the PTUN 2004 Law, the AP 2014 Law has also given judicial legitimacy to judges to apply AUPB as a test tool for KTUN issued by the government or official. Therefore, the UUAP explicitly states that compliance with AAUPB is not an alternative condition for compliance with the legislation by administrative officials in issuing KTUN.<sup>18</sup>

The UUAP, which places AUPB as a written legal norm, adds to its binding force. The regulation of AAUPB can explicitly be found at least scattered in 12 (twelve) articles, namely Articles 1, 5, 7, 8, 9, 10, 24, 31, 39, 52, 66, and 87 of the AP 2014 Law. In addition, the AP 2014 Law also places AUPB as an open norm, meaning the law still acknowledges the binding force of unwritten AUPB as long as it is the basis for judges in deciding a case.<sup>19</sup>

AUPB is an open principle. This can be seen from the provisions of Article 10, paragraphs (1) and (2), and their explanations. Article 10, paragraph (1), contains eight (eight) AUPB, namely: legal certainty, usefulness, impartiality, precision, non-abuse of authority, openness, public interest, and good service. Whereas in Article 10, paragraph (2), it is hinted

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<sup>18</sup> Wiratman, "Asas-Asas Umum Pemerintahan yang Baik (AUPB) dalam Perkara Tata Usaha Negara," 15.

<sup>19</sup> Dezonda R. Pattipawae, "General Principles of Good Governance in Execution in State Administrative Courts," *Journal of Law, Policy and Globalization* 81, no. 0 (2019): 130, <https://doi.org/10.7176/JLPG/81-16>.

that other principles outside the 8 principles can be recognised as AAUPB, as long as they are applied by judges in deciding cases and have legal force. Other principles outside the ones mentioned in Article 10, paragraph (2), can be interpreted as additional AAUPB adopted by judges from various applicable laws or from doctrines developed by experts in administrative law.<sup>20</sup>

In the provision of Article 52, paragraph (2), of the UUAP 2014 on the condition of the validity of government decisions, it is stated that "administrative decisions can be declared valid if made in accordance with legislation and based on AUPB." From this provision, it is clear that the fulfilment of AUPB is one of the conditions for the validity of an administrative decision. Therefore, the government is obliged to understand and comply with the principles recognised by AUPB. If the AUPB principle is ignored in making an administrative decision, then the administrative decision can be sued for its validity.<sup>21</sup>

Article 61, paragraph (1), of the UUAP 2014 also states that administrative decisions that are revoked and to be reissued must be based on the applicable law and in accordance with AUPB. That is, the reissue of an administrative decision to replace an expired administrative decision must be based on applicable legislation and also in line with AAUPB. Thus, violation or disregard of Article 61, paragraph (1), can also cause the administrative decision to be submitted for cancellation. The increasingly important position of AUPB as a binding and written legal norm can be seen in other provisions in the UUAP 2014, where AUPB is mentioned in more

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<sup>20</sup> Cekli Setya Pratiwi, dkk, *Penjelasan Hukum Asas-Asas Umum Pemerintahan yang Baik (AUPB), ...*, Op. Cit., hlm. 40. Lihat juga perbandingan perkembangan scope AAUPB dalam Mukmin Muhammad, *General Principles of Good Governance (Algemene beginselen vor behoorlijk bestuur) in State Civil Apparatus Law, International Journal of Innovative Science and Research Technology*, Vol 4, Issue 1, January 2009, hlm. 73.

<sup>21</sup> Wiratman, "Asas-Asas Umum Pemerintahan yang Baik (AUPB) dalam Perkara Tata Usaha Negara," 16.

than 16 articles.<sup>22</sup> Both Article 52, paragraph (2), Article 61, paragraph (1), and other articles scattered in the UUAP 2014 further strengthen the position of the AAUPB as a binding legal norm. This is quite different from the UU PTUN 1986 and its amendments, which do not explicitly regulate AUPB.

Ridwan HR stated the functions and significant meaning of the General Principles of Good Governance (AAUPB) as follows:<sup>23</sup>

- a. "For the State Administration, it is useful as a guide in interpreting and applying provisions of legislation that are vague or unclear;
- b. For citizens, as seekers of justice, AAUPB can be used as the basis for a lawsuit, as mentioned in Article 53 of Law No. 5 of 1986;
- c. For the administrative judge, it can be used as a tool to examine and cancel decisions issued by administrative bodies or officials;"
- d. In addition, AAUPB is also useful for legislative bodies in drafting a law

Almost similar to Ridwan HR, SF Marbun explained the four functions of AAUPB as follows.<sup>24</sup>

- a. "AUPB's function in law-making; here, AAUPB serves as a stimulus for the formation of laws that are very important and strategic, as by including AAUPB, authority will flow that can guide administrative officials in exercising their authority, especially in using their discretionary authority.
- b. AUPB's function for lawsuit criteria This function is related to the explanation or application of AUPB in the law. This means that simply by being included in the law, AUPB can subsequently be used as a comparison basis at every level, including the judiciary.
- c. AUPB's function for administrative judges Here, AAUPB can serve as a benchmark for the administrative court judges to cancel an administrative official's decision.

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<sup>22</sup> Xaviera Qatrunnada Djana Sudjati dan Dewi Cahyandari, "General Principles of Good Governance in Administrative Court Decision Regarding Request for Review of Abuse of Authority," *Jurnal Dinamika Hukum* 21, no. 3 (29 Maret 2022): 461-79, <https://doi.org/10.20884/1.jdh.2021.21.3.3070>. Pratiwi dkk., "Penjelasan Hukum Asas-Asas Umum Pemerintahan yang Baik (AUPB)," 17.

<sup>23</sup> HR, *Hukum Administrasi Negara*, 234.

<sup>24</sup> S.F Marbun, *Asas-Asas Umum Pemerintahan yang Layak* (Yogyakarta: FH UII Press, 2001), 52-67.

- d. AUPB's function for the implementation of administrative official authority With AUPB, administrative officials can control the use of their authority and also provide legal protection. This can also be linked to the discretionary authority possessed by administrative officials; thus, through AUPB, the use of such authority can be measured."

Based on the above discussion, it can be concluded that the legal and political shift in AAUPB regulation in Indonesia occurred with the issuance of UU AP. The UU AP has shifted the legal political regulation of AUPB from being merely implicit written law, appearing in the explanation of the Administrative Court Law, to being explicit written law because it is normatively present in the main body. Previously, AUPB only appeared as a reason or basis for a plaintiff's lawsuit in Law Number 9 Year 2004 concerning Amendments to Law Number 5 Year 1986 concerning the State Administrative Court. Previously, in Law Number 5 Year 1986 Concerning the State Administrative Court (UU 5/1986), it was proposed but not accepted on the assumption that the Indonesian administration's tradition was not as good as the Dutch, so the proposal put forward by the ABRI faction was rejected. However, even though AUPB was not included in UU 5/1986, it does not mean that its existence was not recognised at all, because in practise, especially the Administrative Court, also applied AUPB and recognised it as unwritten law.

### **Legal Consequences of the Legal Political Shift of AUPB Regulation in Indonesia**

With the legal political shift of AAUPB regulation as explained above, the UU AP has shifted the previously implicit written law, appearing in the explanation of the Administrative Court Law, to being explicit written law. Therefore, it is important to outline the legal consequences of the legal political shift of AAUPB as follows:

### **1. Lower the Status of Principles that are Abstract and Recognised as Unwritten Law Into Concrete Legal Norms and Use Other Open Principles;**

As articulated above, the AUPB (General Principles of Good Governance) are principles of law from which concrete legal norms can be drawn. Furthermore, AUPB, as a foundation, can also serve as a guide to explain a legal norm. Both Jue and Van Wijk argue that AAUPB, as a legal basis, can be accepted as a generally applicable legal norm that is vague or nebulous in its extraordinary function, containing explanations and the fairness of more concrete legal norms. With the emergence of the AUPB in Law No. 30 of 2014 on Government Administration, particularly the AUPB explicitly mentioned in Article 10 paragraph (1), it can officially be used by administrative officials as a guide in carrying out administrative actions. However, AAUPB still cannot serve as a basis for the authority of administrative officials, but only as a binding guideline. This provision is also emphasised in Article 5 of Law No. 30 of 2014, which states that the administration of government is based on the General Principles of Good Governance (AAUPB).

Furthermore, Article 10 paragraph (2) also allows room for the General Principles of Good Governance (AUPB) that are not regulated in Law No. 30 of 2014, as long as they are taken into consideration in PTUN (State Administrative Court) decisions and have a permanent legal force. Thus, PTUN jurisprudence is also recognised in Law No. 30 of 2014.

Contrary to this, Hotma P. Sibuea suggests that:<sup>25</sup>

“Good governance principles arise from the practise of running a state and government, so they are not a formal product of a state, such as laws. Good governance principles are born in line with the times to enhance the protection of individual rights. The function of good governance principles in the administration of government is as a

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<sup>25</sup> Hotma P. Sibuea, *Asas Negara Hukum Peraturan Kebijakan dan Asas Asas Umum Pemerintahan yang Baik* (Jakarta: Erlangga, 2002), 151.

guide for the government or state administration officials to ensure good governance."

This is in line with SF Marbun, who, quoting the opinion of H.D. Van Wijk, suggests that AAUPB contains two essential elements, namely: first, these principles contain ethical normative principles. Second, these principles contain explanatory principles. AUPB being ethically normative means that it can be used as a guide to complete a significant characteristic containing various legal meanings, such as the principle of equality, the principle of legal certainty, and others. The ethical normative principle is the principle that guides the ethical degree of administrative legal action. The AAUPB's being explanatory means that it provides explanations of several laws and regulations.<sup>26</sup>

S.F. Marbun admits that, actually, AAUPB with unwritten legal norms can lead to misunderstandings because, in the context of legal science, it is known that there is a difference between "principle" and "norm". A principle or concept is a general and abstract basis of thought, an idea or concept, and does not have sanctions, while a norm is a concrete rule, an elaboration of an idea, and has sanctions.<sup>27</sup>

AUPB often seems unwritten because the legal norms implied by this principle also appear as written norms, for example, with the formal demands of AUPB, such as the obligation to hear, motivation, and so on. Also, material requirements such as the prohibition of abusing authority (*detournement de pouvoir*) have been included as legal norms in various laws and regulations; even in administrative law, there is a growing demand for a number of legal norms derived from these principles to be codified. Meanwhile, Hirsch Ballin argues that AUPB is not only a set of principles but also legal regulations.<sup>28</sup>

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<sup>26</sup> Marbun, *Asas-Asas Umum Pemerintahan yang Layak*, 6.

<sup>27</sup> Marbun, *Peradilan Administrasi Negara dan Upaya Administratif*, 374–75.

<sup>28</sup> Marbun, *Asas-Asas Umum Pemerintahan yang Layak*, 6–12.

In continental European countries like France and the Netherlands, the AUPB has been accepted and developed in their governmental administrations. In France, these principles are referred to as '*principles généraux du droit coutumier public*'. These principles were developed by the Conseil d'Etat to balance the increasing freedom granted by law to state administration. In the Netherlands, this principle is referred to as '*algemene beginselen van behoorlijk bestuur*', and this principle has easily grown and developed due to the lack of codified administrative law. Consequently, some specific administrative laws (sectoral) explicitly grant courts the authority to annul the implementation of administrative law that is clearly in contradiction with the '*algemene beginselen van behoorlijk bestuur*'.<sup>29</sup> In various laws regulating administrative courts in the Netherlands, the AUPB is referred to as a basis for appeal or examination under Article 8 paragraph (1) of the wet AROB/*Administrative Rechtspraak Overheidsbeschikkingen*).<sup>30</sup>

Before the regulation of AUPB in the Netherlands, it already found a place in considerations or grounds for appeal against government decisions. Later on, in the Netherlands, the AAUPB was recognised and adopted as an unwritten law, which is always adhered to by the government. Furthermore, the AUPB can also be referred to as unwritten legal principles, which can, under certain circumstances, be used as a reference for deriving certain laws.<sup>31</sup> Jazim Hamidi revealed that most of the AUPB still consists of unwritten law. This is in line with Ridwan HR, who states that administrative law experts like H.D. van Wijk/Willem Koninjenbelt and J.B.J.M. TEN Berge argue that the AAUPB's position is unwritten law. Philipus M. Hadjon also opined that the AAUPB should be viewed as unwritten legal norms.<sup>32</sup>

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<sup>29</sup> Marbun, *Hukum Administrasi Negara*, 152.

<sup>30</sup> Marbun, 54.

<sup>31</sup> Philipus M. Hadjon, *Pengantar Hukum Administrasi Negara* (Yogyakarta: Gadjah Mada University Press, 2008), 270.

<sup>32</sup> HR, *Hukum Administrasi Negara*, 237-38.

The practise of AUPB in Indonesia first emerged during the discussion of PTUN Bill No. 5 of 1986. However, at that time, it was not accepted on the assumption that Indonesian administration tradition was not as good as that in the Netherlands, and the proposal submitted by the ABRI faction was rejected. Ridwan HR stated that the absence of AAUPB in the PTUN Law does not mean that its existence is not recognised at all, as it turns out that judicial practise, especially PTUN, also implements AUPB.<sup>33</sup>

Jazim Hamidi stated the following regarding AUPB:<sup>34</sup>

1. "General principles of good governance are ethical values that live and develop within the environment of state administrative law;
2. Secondly, the general principles of good governance function as a guideline for state administration officials in carrying out their functions, as a test tool for administrative judges in assessing state administrative actions (in the form of decisions or *beschikking*), and as a basis for filing lawsuits for plaintiffs;
3. Thirdly, most of AUPB still consists of unwritten principles that are still abstract and can be derived from the practise of life in society. Fourthly, some other principles have become written legal rules and are scattered in various positive legal regulations. Although some of these principles have turned into written legal rules, they still retain their nature as legal principles

Contrarily, S.F. Marbun states that AUPB is neither an ethical tendency nor a moral tendency for administrative officials who run the government's machinery. To strengthen his opinion, S.F. Marbun, referring to the opinion of H.L.A. Hart, distinguishes between legal regulations and moral regulations as follows:<sup>35</sup>

1. "Legal rules oblige a person to follow them, and

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<sup>33</sup> HR, 240.

<sup>34</sup> Nadir Nadir dkk., "Philosophical Validity, Theoretical, Normative and Empirical Paradigm of General Principles of Good Governance (AUPB) as a Review Af Presidential Impeachment," *Brawijaya Law Journal* 4, no. 1 (31 Maret 2017): 95–116, <https://doi.org/10.21776/ub.blj.2017.004.01.05>. Jazim Hamidi, "Penerapan Asas-Asas Umum Penyelenggaraan Pemerintahan Yang Layak (AAUPPL) Di Lingkungan Peradilan Administrasi Indonesia," Universitas Indonesia Library (Citra Aditya Bakti, 1999), 24, <https://lib.ui.ac.id>.

<sup>35</sup> Marbun, *Asas-Asas Umum Pemerintahan yang Layak*, 13.



2. Violations of legal rules can be expected when the person has acted in good faith, and legal rules are part of a complex moral rule that does not require a relationship that can have consequences because they will comply of their own accord."

In addition to H.L.A. Hart, SF Marbun also quotes the opinion of P. Nicolai, as follows:<sup>36</sup>

- a. "Dutch administrative courts and law have proven the existence of search and formulation that must be considered by the state administration to govern properly;
- b. The Dutch legislative body has stated that judges are authorised to cancel a decision if it contradicts AUPB;
- c. Centrale Raad van Beroep, as a civil servant judge, has even suggested that AUPB can be applied as a regulation;
- d. AUPB would be better if the government body oriented itself to the norms contained in AUPB.
- e. AUPB has been derived from an abstract principle recognised as unwritten law into a concrete legal norm."

## **2. Facilitating the Administrative Court's (TUN) assessment of whether an administrative official's action is in contradiction with the AAUPB or not and/or disinclining the Administrative Court to delve into the AUPB beyond what has been mentioned**

S.F. Marbun states that one of the functions of the General Principles of Good Governance (AAUPB) can serve as a benchmark for Administrative Court (PTUN) judges to annul a decree issued by an administrative official.<sup>37</sup> Despite the fact that prior to the enactment of Law No. 30 of 2014, the PTUN had no constraints in evaluating a decision that contradicts the AAUPB, the inclusion of the AAUPB in Law No. 30 of 2014 further emphasises the existence of the AAUPB in Indonesia's positive law.

On the other hand, this could make judges lazy about exploring the law and finding principles that are alive in society. This assumption is based on the premise that when it was still considered unwritten law, many

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<sup>36</sup> Marbun, *Asas-Asas Umum Pemerintahan yang Layak*.

<sup>37</sup> Marbun, 52-67.

judges were lazy in exploring the principles of law or were constrained by written law, let alone when it has been specified; hence, they are likely to be fixated on what has been written and too lazy to explore the AUPB alive in society that is not listed in the UU AP.<sup>38</sup>

### **3. Facilitating administrative officials control of their administrative actions**

The shift in the legal policy regulation of AUPB will facilitate administrative officials' tracking of the use of AUPB as a guide in administrative actions. Before the UUAP was enacted, AUPB was scattered in various opinions and academic books, PTUN decisions, and was partially included in Law No. 28 of 1999 about clean governance from corruption, collusion, and nepotism. This dispersion also poses a difficulty for state administrative officials to sort out which ones to use as guidelines in performing administrative actions. The absence of norms requiring administrative officials to refer to AAUPB is also one reason why officials rarely use AUPB as a guide in decision-making. With the enactment of the UUAP, administrative officials are obliged to consider the AUPB in their actions. This obligation to consider the AAUPB can also make it easier for officials to control the administrative actions of officials below them (internal check), especially when it relates to the use of discretionary powers.

This is in line with the function of AAUPB expressed by S.F. Marbun, which is that with AAUPB, administrative officials can control the use of authority and thus provide legal protection. This can also be related to the discretionary power possessed by administrative officials; through AAUPB, the use of that authority can be measured.

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<sup>38</sup> Soehartono Soehartono, *Membangun Konstruksi Penemuan Hukum Oleh hakim dalam Penyelesaian Sengketa Tata Usaha Negara*, (Surakarta: Disertasi Universitas Sebelas Maret, 2012), 381-82.

#### **4. Facilitating Public Control Over Government Actions for the Public**

The positivization of AUPB can also make it easier to control the actions of administrative officials that harm the community. Hence, the original purpose of AUPB as an instrument to protect the public from excessive government power can be easily realised. In general, the positivization of AUPB in Law No. 30 of 2014 is a progress, as in the Netherlands AUPB has also been included in the AROB Law, even though in practise it has long been recognised and used as a basis for evaluating government decisions. This means that Law No. 30 of 2014 strengthens or emphasises (stressing) the position of AUPB in Indonesian positive law..

#### **5. Asserting the Need for Supervision of Administrative Officials Actions**

As mentioned above, in the concept of a welfare state, the government's task in managing the public interest becomes very broad, not only maintaining security but also actively participating in community affairs for the welfare of the people.<sup>39</sup> To realise this concept in its actions, the government needs discretion (*freies ermessen, discretionair*) in determining its policies, one of which can be in the form of a state administrative decision. However, in a rule of law, it is a requirement that every government action be based on law, meaning the government's attitude must be accountable both morally and legally. Therefore, the cornerstones of the rule of law must be maintained, and so that on the one hand, government actions in managing the government do not deviate from the path of the rule of law, and on the other hand, the basic rights of citizens or the community are still guaranteed protection, a supervisory system is needed.

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<sup>39</sup> Marbun, *Peradilan Administrasi Negara dan Upaya Administratif*, 366.

## 6. Guaranteeing Civil Rights Through the Enforcement of AAUPB

As previously stated, the birth of AUPB was motivated by the expansion of state authority involved in the effort to achieve public welfare. Along with this expansion of authority, a public response emerged, expressing concern over potential violations of civil rights through government intervention policies, particularly in the economic and social sectors. The inception of AUPB asserts that these government actions must be executed based on measurable parameters that can be controlled by the public. However, the details concerning AUPB are not singular; they are multiple and vary according to expert opinion. This multiplicity can also result in legal uncertainty. Conversely, the normalisation of AAUPB can thus make AAUPB clearer and provide certainty when viewed from a legal perspective. Therefore, the courts and civil service apparatus are bound by the provisions of the UUAP.

This aligns with the concept of legal protection for the people in relation to the terms "*rechtsbesherming van de burgers tegen de overheid*" and "legal protection of the individual in relation to acts of administrative authorities". Although the terms have the same meaning, each country has a different concept of legal protection for its people. The concept of legal protection in Indonesia is fundamentally based on the meaning of Pancasila, which means kinship or mutual cooperation. According to Philipus M. Hadjon, this kinship-based principle can also be referred to as the harmony principle. This harmony principle underlies the relationship between the government and the people, as well as between one state power organ and another, which gives rise to a proportional functional relationship between state powers.<sup>40</sup>

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<sup>40</sup> Hadjon, *Perindungan Hukum Bagi Rakyat Indonesia*, 1.

## 7. Preventing Arbitrary Government Actions

The administration of good governance today must reflect the principle of obedience to the law, or what is more popularly known as compliance with the law. This is appropriate given that Indonesia is a country based on the law, and this will impact the execution and administration of government, specifically targeting bureaucrats. To prevent the misuse of positions and authority, or more aptly "to achieve and sustain good, clean governance (*behoorlijk bestuur*)", there are several foundational principles of state administration and governance.

### Conclusion

Based on the previous discussions, the following conclusions can be drawn: Firstly, a shift in the legal policy governing the General Principles of Good Governance (AAUPB) in Indonesia occurred with the enactment of Law Number 30 of 2014 on Government Administration (UU AP). UU AP shifted the AAUPB's legal policy from being implicit written law, appearing in the explanation of the State Administrative Court Law, to explicit written law due to its normative provision in the form of AAUPB regulation. In addition, AAUPB previously only emerged as a reason or basis for the plaintiff's claim in Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 on State Administrative Courts. Previously, in Law Number 5 of 1986 on State Administrative Courts (UU 5/1986), it had been proposed but not accepted on the assumption that the administrative tradition in Indonesia was not as advanced as in the Netherlands, and thus the proposal put forward by the ABRI faction was rejected. However, the absence of AAUPB in UU 5/1986 does not mean its existence is completely unrecognised, as judicial practise, particularly the State Administrative Court, also applies AAUPB and recognises it as unwritten law.

Secondly, the legal consequences of the shift in the legal policy governing AAUPB in Indonesia are as follows: first, it downgrades the abstract principles recognised as unwritten law into concrete legal norms and utilises other open principles; second, it facilitates the State Administrative Court in assessing whether an administrative official's action is contrary to AAUPB or not and/or discourages the State Administrative Court from exploring AAUPB outside of what has been mentioned; third, it simplifies the administrative official's control over his administrative actions; fourth, it eases the public's control over government actions; fifth, it affirms the necessity for supervision over the actions of State Administrative Officials; sixth, it guarantees civil rights through the enforcement of AAUPB; seventh, it prevents arbitrary government actions.

## References

- Gunawan, Andy, I. Wayan Arthanaya, dan Luh Putu Suryani. "Fungsi Asas-Asas Umum Pemerintahan Yang Baik Dalam Menyelesaikan Sengketa Hukum Acara Tata Usaha Negara." *Jurnal Analogi Hukum* 1, no. 1 (17 Desember 2019): 28-33. <https://doi.org/10.22225/ah.1.1.2019.28-33>.
- Hadjon, Philipus M. *Pengantar Hukum Administrasi Negara*. Yogyakarta: Gadjah Mada University Press, 2008.
- — —. *Perindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, 1987.
- Hamidi, Jazim. "Penerapan Asas-Asas Umum Penyelenggaraan Pemerintahan Yang Layak (AAUPPL) Di Lingkungan Peradilan Administrasi Indonesia." Universitas Indonesia Library. Citra Aditya Bakti, 1999. <https://lib.ui.ac.id>.
- Hasan, Iqbal. *Pokok-Pokok Materi Metodologi Penelitian dan Aplikasinya*. Jakarta: Ghalia Indonesia, 2002.
- HR, Ridwan. *Hukum Administrasi Negara*. Jakarta: PT Raja Grafindo Persada, 2014.
- Husen, La Ode, Mukmin Muhammad, Hamza Baharuddin, dan Nurul Qamar. "The Principle of Good Governance: A Study of the Implementation of 'Algemene Beginselen Van Behoorlijk Bestuur' in the Legal System in Indonesia." *International Journal of Innovative Research and Development*, 30 Juni 2020. <https://doi.org/10.24940/ijird/2020/v9/i6/JUN20067>.

- Lotulung, Paulus Efendi. *Himpunan Asas – Asas Umum Pemerintahan yang Baik (AAUPB)*. Bandung: Citra Aditya Bakti, 1994.
- Marbun, S.F. *Asas-Asas Umum Pemerintahan yang Layak*. Yogyakarta: FH UII Press, 2001.
- – –. *Hukum Administrasi Negara*. Yogyakarta: FH UII Press, 2018.
- – –. *Peradilan Administrasi Negara dan Upaya Administratif*. Yogyakarta: FH UII Press, 2011.
- – –. *Pokok-Pokok Hukum Administrasi Negara*. Yogyakarta: Liberty, 2009.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2012.
- Nadir, Nadir, Soedarsono Soedarsono, Jazim Hamidi, dan Muchamad Ali Syafaat. "Philosophical Validity, Theoretical, Normative and Empirical Paradigm of General Principles of Good Governance (AUPB) as a Review Af Presidential Impeachment." *Brawijaya Law Journal* 4, no. 1 (31 Maret 2017): 95–116. <https://doi.org/10.21776/ub.blj.2017.004.01.05>.
- Pattipawae, Dezonda R. "General Principles of Good Governance in Execution in State Administrative Courts." *Journal of Law, Policy and Globalization* 81, no. 0 (2019): 130. <https://doi.org/10.7176/JLPG/81-16>.
- Pratiwi, Cekli Setya, Sinta Ayu Purnamawati, Fauzi Fauzi, dan Christina Yulita Purbawati. "Penjelasan Hukum Asas-Asas Umum Pemerintahan yang Baik (AUPB)." Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP), 2016.
- Sibuea, Hotma P. *Asas Negara Hukum Peraturan Kebijakan dan Asas Asas Umum Pemerintahan yang Baik*. Jakarta: Erlangga, 2002.
- Soehartono -. "Eksistensi Asas-Asas Umum Pemerintahan Yang Baik Sebagai Dasar Pengujian Keabsahan Keputusan Tata Usaha Negara Di Peradilan Tata Usaha Negara." *Yustisia* 1, no. 2 (2 Mei 2012). <https://doi.org/10.20961/yustisia.v1i2.10644>.
- Soehartono, Soehartono. *Membangun Konstruksi Penemuan Hukum Oleh hakim dalam Penyelesaian Sengketa Tata Usaha Negara*. Surakarta: Disertasi Universitas Sebelas Maret, 2012.
- Sudjati, Xaviera Qatrunnada Djana, dan Dewi Cahyandari. "General Principles of Good Governance in Administrative Court Decision Regarding Request for Review of Abuse of Authority." *Jurnal Dinamika Hukum* 21, no. 3 (29 Maret 2022): 461–79. <https://doi.org/10.20884/1.jdh.2021.21.3.3070>.
- Susanto, sri Nurhari. "Komponen, Konsep Dan Pendekatan Hukum Administrasi Negara." *Administrative Law and Governance Journal* 4, no. 1 (10 Maret 2021): 144–57. <https://doi.org/10.14710/alj.v4i1.144>.
- Tjandra, W. Riawan. *Peradilan Tata Usaha Negara Mendorong Terwujudnya Pemerintah yang Bersih dan Berwibawa*. Yogyakarta: Universitas Atma Jaya Press, 2009.

“UU No. 9 Tahun 2004 tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara [JDIH BPK RI].”  
Diakses 12 Juni 2023.  
<https://peraturan.bpk.go.id/Home/Details/40500/uu-no-9-tahun-2004>.

Waluyo, Bambang. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika, 2008.

Wiratman, Herlambang P. “Asas-Asas Umum Pemerintahan yang Baik (AUPB) dalam Perkara Tata Usaha Negara.” Lembaga Kajian & Adcokasi Indepedensi Peradilan, 2016.