

The Concurrent Implications of Government Officials in Indonesia are Viewed from the Concept of Good Governance

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Abstract

Large countries generally have territory, population, government, and sovereignty. The state is literally a construction created by humans regarding the pattern of relations between people in social life organized in such a way as to fulfill interests and achieve common goals. The government in running the wheels of government has received a lot of attention from the public. One of the highlights is the concurrent position of government officials. In Indonesia, many concurrent officials can certainly have potential conflicts of interest. This is interesting to research, which is related to 2 (two) main issues, namely: how is the concurrent arrangement of positions for government officials in Indonesia? and how are the implications of concurrent positions of government officials in Indonesia viewed from the concept of Good Governance? The research was conducted using normative legal research methods and using conflict of interest theory. The results showed that there are arrangements that prohibit concurrent positions and also arrangements that allow concurrent positions which of course can cause potential conflicts of interest. Concurrent positions in terms of the concept of Good Governance directly violate the general principles of good governance, there will be potential for seepage of information and / or policy assistance for those concerned. Therefore, new laws and regulations are needed that must strictly prohibit concurrent positions for legal unity and avoid conflicts of interest for government officials.

Keywords: Good Governance; Conflict of Interest; Departmental Verse; Government Office.

Large countries generally have territory, population, government, and sovereignty. Philosophically, Hans Kelsen in his book "General Theory of Law and State" explains that state elements include The Territory of the State, Time Element of The State, The People of The State, The Competence of the State as the Material Sphere of Validity of the National Legal Order, Conflict of Laws , The so-called Fundamental Rights and Duties of the States , and The Power of the State . The state is literally a construction created by humans regarding the

pattern of relations between people in social life organized in such a way as to fulfill interests and achieve common goals .

The State of Indonesia, in principle, adherents of Trias Politika, namely dividing 3 (three) powers, consisting of Executive Power, Legislative Power and Judicial Power. Executive Power is the power to carry out laws and regulations and the wheels of government, where in the 1945 Constitution, it is regulated that the President of the Republic of Indonesia is the holder of government power according to the

Law. The President in carrying out his office is assisted by ministers, where each minister is in charge of certain affairs in the government.

Government officials and civil servants are manifestations in the administration of government which is currently receiving a lot of attention from the public. The community highlights various aspects, such as institutional aspects, authority, regulations, relations between institutions, and resources of the office apparatus. The highlight is the effort to control the community as part of the process of improving the performance of government administrators.

One of the things that is being hotly discussed is the matter of concurrent positions. Quoted from the detik.com online news media report entitled, "Complete! List of Sri Mulyani's Subordinates Become Commissioners of SOEs". The media clearly reported the names of officials at the Ministry of Finance as government officials have concurrent positions in State-Owned Enterprises (SOEs), including the following:

- Director General of Treasury of the Ministry of Finance Hadiyanto concurrently serves as President Commissioner concurrently as Independent Commissioner of PT Sarana Multi Infrastruktur (Persero).
- Deputy Minister of Finance Suahasil Nazara concurrently serves as Deputy Commissioner of PT PLN (Persero).
- Director General of State Wealth Rionald Silaban concurrently serves as Commissioner of PT Bank Mandiri (Persero) Tbk.
- Director General of Customs and Excise Askolani concurrently serves as Commissioner of PT Bank Negara Indonesia (Persero) Tbk.
- Director General of Budget Isa Rachmatarwata concurrently serves as Commissioner of PT Telkom (Persero) Tbk.
- Secretary General Heru Pambudi concurrently serves as Commissioner of PT Pertamina (Persero).

- Treasury Sergeant Astera Primanto Bhakti framed the department as Commissioner of MIND ID.
- Director General of Financing and Risk Management Suminto concurrently serves as Member of the Board of Directors of Indonesia Eximbank.
- Head of the Fiscal Policy Agency Febrio Nathan Kacaribu concurrently serves as Commissioner of PT Pupuk Indonesia (Persero).
- Inspector General Awan Nurmawan Nuh concurrently serves as President Commissioner of PT Penjaminan Infrastruktur (PII).
- Director General of Financial Balance Luky Alfirman concurrently serves as Commissioner of the Deposit Insurance Corporation (LPS), ex-officio Member of the Ministry of Finance.
- Head of the Financial Education and Training Agency and Andin Hadiyanto concurrently serves as Commissioner of PT Bank Tabungan Negara (Persero) Tbk.
- Expert Staff for Organization, Bureaucracy, and Information Technology Sudarto concurrently serves as Commissioner of PT Pegadaian.
- Expert Staff for Tax Supervision Nufransa Wira Sakti concurrently serves as President Commissioner of PT Sarana Multigriya Financially (SMF).
- Expert Staff for Tax Compliance Yon Aرسال concurrently serves as Commissioner of PT Indonesia Infrastructure Finance (IIF).
- Expert Staff for State Expenditure Made Arya Wijaya concurrently serves as Commissioner of PT Bio Farma (Persero).
- Expert Staff for Legal and Institutional Relations Rina Widiyani Wahyuningdyah concurrently serves as Commissioner of PT SMF.
- Special Staff of the Minister of Finance for Strategic Communication Yustinus Prastowo concurrently serves as Commissioner of Semen Indonesia Group (SIG).

- Special Staff of the Minister of Finance for Fiscal and Macroeconomic Policy Masyita Crystallin concurrently serves as Commissioner of Indonesia Financial Group.

- Special Staff of the Minister of Finance for Sectoral Fiscal Policy Formulation Candra Fajri Ananda concurrently serves as Independent Commissioner of PT Bank Pembangunan Daerah Jawa Timur Tbk.

These are just a few examples of concurrent positions that have become the focus of the public which raises the question: is a government official in Indonesia allowed to hold concurrent positions? Is it not against the rules? does a person's position as a government official who has earned a large salary have to be placed in a BUMN with a fairly large salary or benefits? Is this a form of application of the principle of the right man in the place?

The questions that arise are interesting to be researched and discussed with a deeper study related to the concurrent positions of government officials in Indonesia, with the title of research: Implications of Concurrent Positions of Government Officials in Indonesia Viewed from the Concept of Good Governance. The author in this study formulated 2 (two) problem formulations, namely:

1. What is the concurrent arrangement for government officials in Indonesia?
2. What are the implications of concurrent positions of government officials in Indonesia in terms of the concept of Good Governance?

The formulation of the problem mentioned above will be examined by normative legal research methods, namely: legal research methods that focus on analysis and interpretation of norms in laws and regulations, using literature materials or secondary data .

Conflict of Interest Theory

Conflict is part of the social phenomenon found in human life. The nature of conflict itself is inherent which means that it will continue to occur in every space and time, anywhere and anytime . In this view, society becomes an arena

or place of conflict or conflict and integration that always takes place.

Dahrendorf suggests that society has two faces, namely conflict and consensus. Dahrendorf with his conflict theorization posited that societies are united by forced unfreedom. Thus, certain positions in society delegate power and authority to others. Dahrendrof views conflict with three broad types of groups, namely pseudo-groups, interest groups, and conflict groups. A pseudo-group is a group of people occupying positions with identical role interests. Interest groups are groups in the sociological sense and they are the real agents of group conflict. They have a structure, organizational form, program or purpose and member personnel. Conflict groups or those that are actually involved in group conflicts, arise from these many interest groups .

According to the Dahrendrof there are only two conflict groups that can be formed within each association. Groups holding positions of authority and subordinate groups having specific interests "whose direction and substance conflict with each other". Here we are confronted with another key concept in Dahrendorf's conflict theory, namely interest. The groups at the top and those at the bottom are defined based on common interests .

Meanwhile, in the Big Indonesian Dictionary (KBBI) Online, conflicts are formulated as disputes; disputes; conflicts; tension or opposition in fictional stories or dramas (conflict between two forces, conflict in one character, conflict between two characters, and so on) . Still in KBBI Online, interests are defined as needs, needs, interests .

May Lim Charity in the book "Conflict of Interest", explains that conflict of interest is a situation where a state administrator who obtains power and authority based on laws and regulations has or is suspected to have a personal interest in every use of authority he has so that it can affect the quality and performance it should have .

Based on the opinion mentioned above, a conflict of interest can be interpreted as a conflict between needs or needs with obligations and responsibilities in a position of authority.

Department's Framework

By definition, concurrent position is someone who has more than one position or position, where one position with another position has different responsibilities and obligations. The concurrent positions themselves vary, some are really far from the background of each position, some have a relationship or relationship or relevance between one position and another.

Government Officials

According to Law No. 9 of 2010 concerning Protocol, Article 1 number 7 affirms that Government Officials are officials who occupy certain positions in the government, both at the central and regional levels. In carrying out their positions, Government Officials have various duties and functions, such as planning and coordinating government administration activities, coordinating with agencies and related parties, formulating policies in the field of government administration and so on. Indonesian government officials in carrying out their duties focus on their duties to run the wheels of government led by the President of the Republic of Indonesia.

Good Governance

Good Governance or good governance is a pattern of government management that can accommodate the role of the community, especially people in democratic countries. Good Governance is generally defined as good governance management. The word 'good' means that every government action must be based on certain rules in accordance with the basic principles of Good Governance. The word governance comes from the word to govern (which is different in meaning from to command or to order) which means to rule. Government or Government, in English means "the authoritative direction and administration of the affairs or men/women in a nation, state, city, etc".

Government is a direction that has authority and regulation over the activities of people who are in a country, state, city, and so on. It can also be interpreted as an institution or body that organizes the government of the state, state, city, and so on.

The principles of state administration on the basis of Good Governance have been mandated in the provisions of Article 3 of Law Number 28 of 1999 concerning Clean and Free State Administration from Corruption, Collusion and Nepotism. In addition, it is also contained in the provisions of Article 10 of Law Number 30 of 2014 concerning Government Administration, and various provisions of the Law governing the administration of the state with the principles of good governance have been carried out in accordance with its principles, but the implementation has not been fully implemented perfectly, there is still a rudimentary structure as well.

In these various provisions, there are several general principles of good governance, including :

- The principle of Legal Certainty is a principle in a state of law that prioritizes the basis of laws and regulations, decency, and justice in every policy of the State Administrator.
- The foundation of the National Maintenance Order is the foundation that serves as the foundation of orderliness, compatibility, and balance in the handling of national maintenance.
- The Public Interest Principle is one that prioritizes the common good in an aspirational, accommodating, and selective way.
- The principle of Openness is a principle that opens up to the right of the public to obtain true, honest, and non-discriminatory information about the administration of the state while taking into account the protection of personal rights, groups, and state secrets.
- The principle of proportionality is a principle that prioritizes the balance between the rights and obligations of State Administrators.

- The principle of professionalism is a principle that prioritizes expertise based on the code of ethics and the provisions of applicable laws and regulations.

- The Accountability Principle is a principle that determines that every activity and the final result of the activities of the State Administrator must be accountable to the community or the people as the highest sovereign holder of the state in accordance with the provisions of the applicable laws and regulations.

Concurrent Position Arrangement of Government Officials in Indonesia

In the laws and regulations, there are several regulations that regulate the prohibition of concurrent positions, namely:

a. Law Number 19 of 2003 concerning SOEs, Article 25 explains that members of the board of directors are prohibited from holding concurrent positions. Furthermore, Article 33 also prohibits members of the commissioner from holding concurrent positions.

b. Law Number 25 of 2009 concerning Public Services, Article 17a states that public service providers are prohibited from concurrently serving as commissioners or administrators of business organizations for implementers from government agencies, state-owned enterprises, and regional-owned enterprises. Furthermore, Article 54 paragraph (7) regulates sanctions for members of the board of directors and members of the board of commissioners who hold concurrent positions will be subject to sanctions in the form of exemption from office.

c. SOE Minister Regulation Number 2 of 2015 concerning Requirements and Procedures for Appointment and Dismissal of Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises, Chapter V states that members of the board of commissioners are prohibited from holding concurrent positions as directors. In addition, it is also prohibited to hold concurrent positions as

commissioners except based on special assignments from ministers.

d. Regulation of the Minister of SOEs Number PER-03 / MBU / 02/2015 concerning Requirements, Procedures for Appointment and Dismissal of Members of the Board of Directors of State-Owned Enterprises, Chapter IV explains the reasons and procedures for dismissing directors of SOEs, namely "no longer meet the requirements as Directors based on the provisions of the articles of association and laws and regulations including concurrent prohibited positions and resignation".

Unlike the regulations mentioned above, the Financial Services Authority Regulation Number 33 of 2014 concerning the Board of Directors and Board of Commissioners of Issuers or Public Companies actually allows directors and commissioners to hold concurrent positions with certain conditions stipulated in Article 6 and Article 24, one of the conditions, which is not to conflict with other laws and regulations.

These regulations expressly prohibit the concurrent holding of a person who has held a government position. However, there are also permissibility in the regulation by having special requirements related to it. Laws and regulations that regulate this as a limitation to avoid potential conflicts of interest and abuse of power. However, if you pay attention to the provisions that allow a government official to hold concurrent positions, of course, there is a potential for conflicts of interest, if the government position he holds has relevance to other positions.

As with conflict theory, according to Dahrendorf there are only two conflict groups that can be formed within each association. Groups holding positions of authority and subordinate groups having specific interests "whose direction and substance conflict with each other". Here another "buzzword" in Dahrendorf's conflict theory is interest. This indicates a conflict ("conflict") of interests of the person who has the concurrent position.

The concurrent implications of government officials' positions are viewed from the concept of good governance

Filling state positions can be done by the method of selecting and/or appointing state officials individually or in groups with institutions where they serve, both in state institutions and government institutions, both in the central and local governments. Concurrent positions carried out by the State Civil Apparatus may violate legal norms, but have limited limits that have been regulated in the provisions of Article 23 of Law Number 39 of 2008 concerning State Ministries ("State Meter Law").

Article 23 of the State Meter Law, states "Ministers are prohibited from holding concurrent positions if the position in question is as another state official or a commissioner/director in a state/private company or concurrently as the head of an organization financed by the APBN/APBD".

Beyond this limit, ministers or ministerial-level state officials who hold concurrent positions cannot be removed from office, unless dismissed by the President in accordance with Article 24 of the State Meter Law. The existence of a legal basis for the ban on concurrent positions can ensure that ministers can work in a focused and more effective manner to carry out government affairs because they are no longer bound by other responsibilities. This requirement aims to maintain the independence of government administration so that it is not contaminated from the interests of certain groups or organizations.

In addition, the prohibition of concurrent positions is also regulated in various provisions of laws and government regulations, including:

- Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition.

- Law Number 5 of 2014 concerning State Civil Apparatus.

- Law Number 25 of 2009 concerning Public Services.

- Government Regulation Number 53 of 2010 concerning Civil Servant Discipline.

- Government Regulation Number 29 of 1997 concerning Civil Servants Occupying Concurrent Positions.

However, in practice, filling political offices allows for concurrent positions, both in the executive, legislative and judicial areas. The Constitution or the 1945 Constitution of the Republic of Indonesia does not explicitly prohibit concurrent office, because it guarantees everyone the right to vote and be elected which is the ideal of democracy. In addition, political positions other than through general elections, positions can also be given by elected officials or also called political appointees. Concurrent public office when associated with the ethics of state administration is not in line with the ideals of the state, as the provisions of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number VI / MPR / 2001 concerning the Ethics of National Life (which has been embodied in various formulations of laws), where the purpose of state administration based on ethics is able to create a harmonious atmosphere between actors and between socio-political groups regardless of personal and group interests in order to fulfill them public interest.

The practice of filling positions by public officials that cause concurrent positions in addition to being considered contrary to the ethics of public officials, is also considered too forced. Given that there are still very many potential people who can fill a public office. So it is very unethical if a position is filled by someone who has already occupied a position in another agency. Concurrent positions are considered unfair, because those who occupy a public office are only people who are in the government and close to the ruler.

Miftah Thoha argued, in addition to being inappropriate and unethical, the concurrent position is a channel for deviant acts or conflicts of interest, such as the mixing of rights and vanity matters. The use of state facilities is impossible for the official, whether large or

small, whether he realizes it or not, when the official performs an activity that is difficult to distinguish between state duties or duties for his group or company .

In practice in Indonesia, a conflict of interest is actually a situation that can lead to or result in abuse of authority as an element of corruption. When viewed from the causes, there are at least five main sources of conflicts of interest in Indonesia, namely concurrent positions, affiliate relationships, receipt of gratuities, ownership of assets and the use of discretion that exceeds the limit. Based on these sources of causes, there are various types of conflict of interest violations, such as determining one's own salary, side jobs to owning shares in companies that can interfere with the objectivity of supervision by a public official . This can raise ethical issues and questions.

As Dahrendrof explained earlier, a person who holds a government position (position of authority) who "coincidentally" also serves as a commissioner of a company (subordinate group) is very likely to have a conflict of interest, In this condition, the loyalty of a ministerial/non-ministerial official who concurrently holds the position of commissioner of SOEs has rank and priority, which one is number one and which is secondary, his duties as an official in the home agency or as a commissioner in SOEs.

There is the potential for information seepage (inside information) from the original agency (as a regulator and industrial supervisor) to SOEs (as industrial operators), or even vice versa, the SOE where the person concerned concurrently holds a position requires a special regulation to be made in favor of SOEs, then the commissioner concerned in his position in the ministry may propose making regulations in favor of The SOE.

If you look at the background of government officials from the ministry of finance who then serve "also" (concurrent positions) as commissioners of a company, it can be possible to have a potential conflict of interest related to the tax of the company concerned. This is very unethical and has violated the provisions of laws and regulations.

Conclusion

The concurrent position of a government official has been specifically regulated regarding its prohibition. A regulation that allows for concurrent positions, requires very important provisions to be observed. However, there is still the potential for a conflict of interest from the person concerned. So it can have bad implications when reviewed in the concept of Good Governance. There will be policies based on personal interests or groups that violate the provisions of the concept of Good Governance.

Suggestion

The need for a new law related to the prohibition of concurrent positions is accompanied by sanctions. The new regulation must replace the old regulation that provides leeway and is prone to conflicts of interest. This is important as a legal entity to avoid conflicts of interest and provide justice for the community and stakeholders in government. In addition, clear information transparency and public participation are also needed to create Good Governance by increasing effectiveness, transparency, and accountability in governance and overall decision-making.

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