

APPLICATION OF GENERAL PRINCIPLES OF GOOD GOVERNANCE IN
GOVERNMENT LAW DECREE NO. 32/2008 ON ADMINISTRATIVE PROCEDURE
IN TIMOR LESTE

Bye

Manuel Pinto and Dr. Leonito Ribeiro, S.H.,M.H.

Pintoeman12@gmail.com

Abstract

In Europe, in the 18th century, generally, many countries with a formal (classical) legal ideology recognized the type of capitalistic individualist liberal state. The concept of a welfare state arises and develops, as the response of the state as a night watchman. But a welfare state can have an impact on abuse of power (abuso de poder). The concept of a rule of law requires the existence of both written and unwritten legal instruments that can be used as a reference in measuring government performance. And one of the benchmarks is to use the General Principles of Good Governance. In TLs, one of government laws is the Government Law Decree No.32/2008 concerning Administrative Procedure Through this research, the author tries to explore the application of general principles of good governance in this Government Law Decree No.32/2008. The type is normative legal research, with based on the law formation theory and the concept of general principles of good governance. Purpose of study is to know and understand the position and application of the General Principles of Good Governance in the Government Law Decree Number 32/2008 concerning Public Administration Procedures in TLs. This study reveals the legal basis of the General Principles of Good Governance of several regulations. The results show that the general principle of good governance is currently regulated, normalized and comprehensively in regulation in Timor Leste.

Keys word: Application, General Principle of good governance

I. Introduction

1.1. Background

In Europe, in the 18th century, the state is seen more as a night watchman.¹ At that time, generally, countries with a formal (classical) legal ideology recognized the type of capitalistic individualist liberal state. The state is only an institution that deals with security aspects, namely the military, police, judiciary, fire department, including prisons.² In this state of mind that the concept of a welfare state arises and develops, as the response of the state as a night watchman. Since the adoption of the concept of a welfare state, the government has been given the authority to intervene in all fields of people's lives. Intervention from the government, not only based on legislation, as a manifestation of the principle of legality which is the main joint of the rule of law. However, because there are

¹E. Utrecht, *Pengantar Hukum Administrasi Negara*, (Jakarta: Ichtiar baru, 1985), pag. 3-4

²*Ibid.*

limitations to the principle of legality, the government is given the freedom of *freies ermessens*, namely the freedom to act on their own initiative in solving social problems,³ not only based on statutory regulations, but in certain circumstances can act without relying on laws and regulations and based on their own initiative which can have an impact on abuse of power (*abuso de poder*).

As time goes by and the legal changes that occur, a grip on the administration of good governance has emerged which is based on the general principles of good governance as an answer to the problem of government discretion above. There is an affirmation that the concept of a rule of law requires the existence of both written and unwritten legal instruments that can be used as a reference in measuring government performance. And one of the benchmarks is to use the General Principles of Good Governance.⁴ The general principles of good governance can be understood as general principles that are used as the basis and procedures for good governance. These principles have been implemented in the legislation in East Timor (Timor Leste-TLs).

TLs is a state of law (*estado de direito*), as described in Article 1 paragraph (1) of the Constitution of the Republic of Timor Leste of 2002 (*Constituição República Democrática de Timor Leste de 2002 – C-RDTL*): “*A República Democrática de Timor Leste é um estado de direito democrático, soberano, independente e unitário baseado na vontade popular e no respeito pela dignidade da pessoa humana.*” The purpose of this country is regulated by C-RDTL, article 6 letter (e): To promote community development based on social justice, to create material and spiritual welfare for citizens (*Promover a edificação de uma sociedade com base na justiça social, criando o bem-estar material e espiritual dos cidadãos*).

Here is the government's benchmark in realizing the ideals of the nation? Are there laws in TLS that support the realization of the ideals of the nation? To realize the goals of the state, the government needs a law that becomes a benchmark for the activities of government administration in executing the goals of the state. The TLs government has issued various government laws in which the general principles of good governance are set out. One of these government laws is the Government Law Decree No.32/2008 on Public Administrative Procedure (*Decreto Lei Governo N.º 32/2008 sobre Procedimento Administrativo*).

In the legal system for administering government (administration) in TLs, when examined with a statutory approach and a conceptual approach, it is found that several

³Ridwan HR., *Hukum Administrasi Negara*, Edisi Revisi, (Jakarta: Rajawali Press, 2013), pag. 230-231

⁴*Ibid.*

provisions in the Government Law Decree No.32/2008 on Public Administrative Procedure is valuable and has a strong normative meaning regarding the implementation of good governance which is the normalizations of the general principles of good governance. The General Principles of Good Governance of Government Law Decree No.32/2008 on Public Administrative Procedure which is meant, among other things, above in chapter 1, concerning the principle of general (*princípio geral*) which governs the 7 principles, including: a) Article 3, the principle of equality and proportion (*princípio da igualdade e proporcionalidade*), b) Article 4, the principle of using the official language (*princípio utilização das linguas oficiais*), c) Article 5, principle of justice and impartiality (*princípio da justiça e da imparcialidade*), d) Article 6, principle of good faith (*princípio da boa fé*), e) Article 7, principle of decision (*Princípio da decisão*), f) Article 8, principle of fee waiver (*princípio da gratuidade*), g) Article 9, principle of access to justice (*princípio do acesso justiça*).

Whether the presence of the Government Law Decree No.32/2008 on Public Administrative Procedure has become the legal basis for all actions, behavior, authorities, rights and obligations of every government administrator in carrying out their daily duties?

1.2. Formulation of the problem

From the description of the problems above, the authors found problem about, How to apply the General Principles of Good Governance of the Government Law Decree Number 32/2008 concerning Public Administration Procedures (*Decreto Leo Governo n.º 32/2008 sobre procedimento Administrativo Público*)?

1.3. Research Method

This research was conducted using the type normative legal research by conducting approach to legislation as well as conceptual using materials primary, secondary and tertiary law, engineering collection of legal materials in research This is done using a note-taking technique, which is done by citing, summarizing, and providing reviews to legal materials that have been collected which is then analyzed by reconstructing norms using logic deductive and inductive law.

II. Discussion

2.1. Concept of General Principles of Good Governance

The General Principles of Good Governance is a translation of the legal term in Dutch, namely from *algemene beginselen van berhoorlijk bestuur* (ABBB).⁵ In French it is

⁵A.J.C. de Moor Van Vugt, *Alegemen beginselan van berhoorlijk en buiten landseequivalente*, (W.E.j.,

known as *principes generaux du dotroit coutumier publiq.*⁶ In England it is known as The Principal of Natural Justice. In TLs it is called as *os princípios de boa governação*.

The *algemene beginselen van berhoorlijk bestuur* is a terminology in Dutch law, therefore we need to explore every word. The word *algemene* is translated *general*, *beginselan* there are those who translate it with principles, meanwhile, *behoorlijk* is translated with the best, the good, the worthy and the proper. While, the word *Bestuur* is translated with the governance. In Oxford Advanced Learner's Dictionary, the governance is the activity of governing a country or controlling a company or an organization; the way in which a country is governed or a company or institution is controlled.⁷ With this translation, *algemene beginselen van berhoorlijk bestuur* becomes the general principles of good governance.⁸

So, what is good governance? In the 1990s, the World Bank became the first international institution to adopt the concept of good governance into lending arrangements for developing countries and introduce the idea to the general public. In its 1992 report entitled "Governance and Development", the notion of good governance was written as the way in which power is used to regulate the economic and social resources of a country for development. Now, the term good governance has often been used by national and international organizations. Good governance aims to minimize corruption, considering the opinions of minorities, listen to the voices of the oppressed people in the decision-making process, and respond actively to the needs of the community now and in the future.⁹

So, it can be said that the etymological understanding of general principle of good governance is the basics or principles that must be carried out by government organizers in carrying out government activities in a neat, good, orderly manner and without blemish. So, related to the explanation above, good governance in this paper will be better understood as administration of government.

Based on the description above and through a review of various legal literature, were found 11 general principles of good governance including:¹⁰ 1) principle of legal security, 2) principle of proportionality, 3) principle of carefulness, 4) principle of motivation,

Tjeenk-Zholle, 1987), pag. 78-134.

⁶SF Marbun, *Asas-Asas Umum Pemerintahan yang Layak*, Cetakan Pertama, (Yogyakarta: FH UII Press, 2014), pag. 1.

⁷Oxford Advanced learner's Dicionary, (New York: Oxford University Press), pag. 672

⁸Ridwan, RH., *op.cit.*, pag. 233

⁹<https://uclg-aspac.org/good-governance-definition-and-characteristics/>. Accessed, 12/4/2022

¹⁰Ateng Syafrudin, *Asas-asas Umum Pemerintahan yang Layak Pegangang bagi Pengabdian Kepada Daerah*, dalam Paulo Effendi Lotulung, (ed.) *Himpunan Makalah Asas-asas Umum Pemerintahan yang baik*, Bandung: Citra Aditya Bakti, 1994), pag. 38-39

5) principle of non-misuse of competence, 6) principle of equality, 7) principle of fair pay, 8) principle of reasonableness of prohibition of arbitrariness, 9) principle of meeting raised expectations, 10) principle of undoing the consequences of annulled decisions, 11) principle of protecting the personal way of life.

When examined with a approach to legislation an principle concept, it is found that the formulation of the general principles of good governance in addition to those contained in the Government Law Decree No.32/2008 on Public Administrative Procedure is also contained in several laws in TLs.

In the following, the author will describe the position of the general principles of good governance in several laws on governance in TLs as an effort by the government to normalize these principles in statutory regulations in TLs.

1. Law No.5/2009 on the status of the Civil Service (*Lei N.º 5/2009 sobre Estatuto da Função Pública*)

Based on the normative study, it was found that the formulation of the concept of the general principles of good governance has been normalized in the articles of the law, including: 1) principle of impartiality (*princípio da imparcialidade*) article 6; 2) honesty and integrity (*princípio da honestidade e integridade*), article 7; 3) Principle of equality (*principles da igualdade*) article 8.

2. Government Decree Law No. 9/2018 on the Statute of Municipal Administrations, Municipal Authorities and the Interministerial Technical Group for Administrative Decentralization (*Decreto Lei do Governo No. 9 /2018 sobre Estatuto das Administrações Municipais, das Autoridades Municipais e do Grupo Técnico Interministerial para a Descentralização Administrativa*)

General principles of good governance in this government law found based on the provision of Article 5 paragraph (1). According to Article 5 paragraph (1) at least 16 principles as follows: 1) Principle of legality (*Princípio da legalidade*); 2) Principle of specialty (*Princípio da especialidade*); 3) Principle of pursuing the public interest (*Princípio da prossecução do interesse público*); 4) Principle of good administration (*Princípio da boa administração*); 5) Principle of transparency (*Princípio da transparência*); 6) Principle of equality (*Princípio da igualdade*); 7) Principle of proportionality (*Princípio da proporcionalidade*); 8) Principle of justice (*Princípio da justiça*); 9) Principle of impartiality (*Princípio da imparcialidade*); 10) Principle of good faith (*Princípio da boa-fé*); 11) Decision principle (*Princípio da decisão*); 12) Principle of using official languages (*Princípio da utilização das línguas oficiais*); 13) Principle of responsibility (*Princípio da*

responsabilidade); 14) Principle of accountability (*Princípio da prestação de contas*); 15) Principle of coherence (*Princípio da coerência*); 16) Principle of efficiency (*Princípio da eficiência*).

3. Government Decree Law No. 30/2020 on Organization direct and indirect administration of the State (*Decreto Lei do Governo N.º 30/2020 sobre Organização administração direta e Indireta do Estado*)

After conducting an in-depth study of Government Decree Law Nu.30/2020 on Organization direct and indirect administration of the State, it was found that the norms were the measure of governance. These norms are the normalization of the general principles of good governance. What is meant by the General Principles of good governance which are normative in Government Decree Law Nu.30/2020 include: 1) principle of legality (*princípio da legalidade*) Article 3; 2) principle of administration efficiency (*princípio da eficiência administração*) Article 4; 3) principle of unity (*princípio da unidade*) Article 5; 4) Principle of the pursuit of public interest (*Princípio da prossecução di interesse público*) Article 6); 6) Subsidiarity principle (*Princípio da subsidiaridade*) Article 7); 7) principle of typicality (*princípio da tipicidade*) Article 8.

4. Law No. 7/2020 on Measures to Prevent and Combat Corruption (*Lei N.º 7/2020 sobre Medidas de Prevenção e Combate à Corrupção*)

Laws are passed by members of parliament. The results of the study of this legislative law, it was found that in this law, there are legal norms. These legal norms are the result of the normalization of the general principles of good governance. The legal norms are contained in Article 2 paragraph (2) of Law No. 7/2020 on Measures to Prevent and Combat Corruption, among others: a) principle of legality (*princípio de legalidade*, b) principle of public interest (*princípio de interesse público*); c) principle of integrity (*princípio de integridade*) ; d) principle of transparance (*princípio Transparancia*); d) principle of responsibly (*princípioo responsabilidade*).

When examined with a legal certainty theory approach in relation to the principle of good intentions, it can be found that every state or public official in carrying out the duties of administering the government should be based on good intentions. Good intentions can be interpreted as someone's honesty in carrying out a legal act, namely what lies in a person's inner attitude when a legal act is held. It can also mean that carrying out a community service must be based on the norms of propriety or what is deemed appropriate in a society in order to achieve good goals.

2.2. The application of general principles of governance in the Government law Decree

No.30/2008 concerning Public administration procedure in TLs

2.2.1. Definition of application

In Oxford Adventist Learner's Dictionary application, the action or process of making a formal request.¹¹ According to Ali, application is practicing, pairing, or implementing.¹² Meanwhile, Riant Nugroho, application is a way to achieve the desired goal.¹³ In simple terms, it can be said that application is the act of applying something. Application is an action that is carried out, both individually and in groups with a view to achieving the goals that have been formulated. Meanwhile, based on the explanation above, it is clear that application is an act or act of practicing a theory, method, and other things to achieve certain goals and for an interest desired by a group or group that has been planned and arranged in advance.

So, the application in this writing contest is the act or act of the government quoting, using and normalizing the concept of General Principles of Good Governance in the government law Decree No. 32/2008, as a norm in the legal system. invitation in TLs which aims as a guide and benchmark for the administration of government to the community (public) to achieve good governance in order to achieve the nation's ideals, namely the welfare of the community. The general principles of administrative activity defined in the present Decree-Law are applicable to all the performance of the Administration, even if merely technical or private management article 2 paragraph (2).

If the Government Decree law No. 32/ 2008 concerning administrative procedure is studied with the approach the theory of the formation of legislation it is found that laws are divided into chapters and paragraphs accompanied by explanations. And if approach with concept of general principles, it was found that the concept of the general principles of good governance above can also be found in the Government Decree law no. 32/ 2008. This finding shows that there is a normalization of the basic concept of legal norms as stated, particularly in Article 1 paragraph (3-9). The provisions in these Articles talk about the principles or norms of good governance in TLs.

Thus, the application of the general principles of good governance in the Government Decree of Law No. 32/2008 concerning Public Administrative Procedure can be explained as follows:

1. Principle of equality (*princípio da igualdade*),

¹¹Oxfor Advence Learner's, *op.cit.*, pag. 61

¹²Lukman Ali, Kamus Lengkap Bahasa Indonesia, (Surabaya: Apollo, 2007), pag. 104

¹³Riant Nugroho, *Prinsip Penerapan Pembelajaran*, (Jakarta: Balai Pustaka, 2003), pag. 158

In its relations with individuals, the Public Administration must be governed by the principle of equality, not being able to benefit or harm, deprive of any right or exempt from any duty any administered by reason of ancestry, sex, race, language, origin, religion, political or ideological convictions, education, economic situation or social status (*Nas suas relações com os particulares, a Administração Pública deve reger-se pelo princípio da igualdade, não podendo beneficiar ou prejudicar, privar de qualquer direito ou isentar de qualquer dever nenhum administrado em razão de ascendência, sexo, raça, língua, origem, religião, convicções políticas ou ideológicas, instrução, situação económica ou condição social*) article 3 paragraph (1).

From the explanation above, it is found that the principle of equality is none other than the principle of impartiality or non-discrimination. The principle of equality forces the government (government organizer) in TLs to implement a policy of the principle of equality.

It means that the principle of equality, in considering the application of legal norms, means that in the same case the same must be treated; non-discriminatory, not in favor of ethnicity, race, education, position, position, wealth and other reasons as described in the elaboration of the paragraph above. This interpretation is in line with the understanding of the principle of prohibition on abusing authority as referred to in the law, as well as doctrine.

2. Principle of proportionality (*princípio da proporcionalidade*)

The decisions of the Administration that collide with the subjective rights or legally protected interests of individuals can only affect those positions in terms that are adequate and proportional to the objectives to be achieved. (*As decisões da Administração que colidam com direitos subjectivos ou interesses legalmente protegidos dos particulares só podem afectar essas posições em termos adequados e proporcionais aos objectivos a realizar*) article 3 paragraph (2).

The provisions of this paragraph mean that in the community service stage, the principle of proportionality opens up opportunities for dialogue for all parties to exchange rights and obligations fairly. All cases are opened, collected and then considered from the principle of proportionality. So, in public service, the principle of proportionality guarantees equality of rights and freedom in determining/regulating the proportion of rights and obligations of the two parties in a fair manner.

3. Principle of using official languages (*princípio utilização das linguas oficiais*)

The institution (bodies) of the Public Administration, in the exercise of their activity, must use the official language (*os órgãos da Administração Pública, no exercício da sua actividade, devem usar língua oficial*), article 4.

This article talks about the obligation of civil servants to use the official language of the state. Every public official, in carrying out his duties, is obliged to use the official language. According to Democratic Republic of East Timor constitution Article 13 paragraph (1) define that, Tetum and Portuguis are the official languages of Democratic Republic of East Timor (*o Tetum e o Portugûês são as linguas oficiais da República Democrática de Timor Leste*).

4. Principle of justice and impartiality (*princípio da justiça e da imparcialidade*)

determined that: in the exercise of its activity, the Public Administration must deal fairly and impartially with all who come into contact with it (*no exercício da sua actividade, a Administração Pública deve tratar de forma justa e imparcial todos os que com ela entrem em relação*) articel 5

The intent of the article is that everyone in TLs will be treated equally under the same circumstances. Discrimination based on religion, creed, race or gender, political opinion, or other reasons is not permitted. In other words, every public service agency in carrying out public service activities must carry out its duties fairly and impartially for any reason; family reasons, groups, entrepreneurs and others. In law everyone is treated the same.

5. Principle of good intention (*princípio de boa fé*)

1. In the exercise of administrative activity, and in all its forms and phases, the Public Administration and individuals must act and relate in accordance with the rules of good faith (*no exercício da actividade administrativa, e em todas as suas formas e fases, a Administração Pública e os particu-lares devem agir e relacionar-se segundo as regras da boa fé.*
2. In complying with the provisions of the previous number, the fundamental values of law, relevant in view of the situations considered, must be considered and, in particular: a) The confidence aroused in the counterparty by the action in question b) The objective to be achieved with the action undertaken (*no cumprimento do disposto no número anterior, devem ponderar-se os valores fundamentais do direito, relevantes em face das situações consideradas e, em especial: a) Da confiança suscitada na contraparte pela actuação em causa; b) Do objectivo a alcançar com a actuação empreendida*).

The meaning of the principle of good intentions is that every state or public official in carrying out the duties of administering the government should be based on good intentions. Good intentions can be interpreted as someone's honesty in carrying out a legal act, namely what lies in a person's inner attitude when a legal act is held. It can also mean that carrying out a community service must be based on the norms of propriety or what is deemed

appropriate in a society in order to achieve good goals.

6. principle of decision (*princípio da decisão*)

This article is described in two paragraphs, namely:

1. Administrative bodies have the duty to rule on all matters within their competence that are presented to them by individuals, namely:
a) On matters that directly concern them; b) On any petitions, representations, complaints, claims or appeals formulated in defense of legality or the general interest (*os órgãos administrativos têm o dever de se pronunciar sobre todos os assuntos da sua competência que lhes sejam apresentados pelos particulares, e nomeadamente: a) Sobre os assuntos que lhes disserem directamente res-peito; b) Sobre quaisquer petições, representações, queixas, re-clamações ou recursos formulados em defesa da legalidade ou do interesse geral*).
2. There is no duty of decision when, less than two years after the act was performed until the date of submission of the request, the competent body has performed an administrative act on the same request formulated by the same individual with the same fundamentals (*não existe o dever de decisão quando, há menos de dois anos contados desde a prática do acto até à data da apresentação do requerimento, o órgão competente tenha praticado um acto administrativo sobre o mesmo pedido formulado pelo mesmo particular com os mesmos fundamentos*).

This article stipulates the duties and functions of government administrators, that government administrators legally have attribution authority to receive all kinds of complaints from the public that are addressed directly to them. In addition, it also regulates the complaints procedure, namely in the form of petitions, complaints, claims and appeals. For the sake of validity all types of complaints must be submitted in writing-paragraph (1). There is a complaint, the government administrator must decide. A decision is making a choice between several alternatives. The decisions taken must be collective and binding on the community.¹⁴ The government administrator in deciding to act or not to act must be based on the reasons and the reasons must be true and clear, and proportional to the weight of the contents of the report – paragraph (2).

7. Principle of gratuitousness (*princípio da gratuidade*)

This article is described in two paragraphs, namely:

1. the administrative procedure is free of charge, unless a specific rule determines the payment of fees or expenses incurred by the Administration (*o procedimento administrativo é gratuito, salvo se norma específica determinar o pagamento de taxas ou de despesas efectuadas pela Administração*).

¹⁴Miriam Budiardjo, *Dasar-Dasar Politik*, (Jakarta, PR Gramadeia, 1982), hlm.11.

2. In case of proven economic insufficiency, the Administration exempts the interested party from paying the fees or costs referred to in the previous number (*em caso de comprovada insuficiência económica, a Administração isenta o interessado do pagamento das taxas ou dos custos referidos no número anterior*).

The elaboration of the two paragraphs above does stipulate free administrative procedures, it does not necessarily stipulate the relief of administrative costs in general paragraph (1). However, if a fee is not charged, only if someone in managing his administration is found to be really not economically viable, paragraph (2)

8. Principle of access to justice (*princípio do acesso à justiça*)

Individuals are guaranteed access to courts with administrative jurisdiction, in order to obtain the contentious supervision of the Administration's acts, as well as to protect their legally protected rights or interests, under the terms foreseen in the regulatory legislation of administrative litigation (*aos particulares é garantido o acesso aos tribunais com juris-dição administrativa, a fim de obterem a fiscalização contenciosa dos actos da Administração, bem como para tutela dos seus direitos ou interesses legalmente protegidos, nos termos pre-vistos na legislação reguladora do contencioso administrativo*).

This article regulates the legal protection of the rights and obligations of the community. If he is harmed by administrative actions, he has the right to initiate administrative procedures with the help of other parties, as well as institutions whose purpose is to defend the interests of the community.

So, in administrative law, in fact with the Government Law Decree No. 32/2008 on public administration procedure, is a legal norm that becomes a benchmark for the administration of government for the sake of creating a good and clean government which ultimately realizes the welfare of the community itself.

III. Conclusion

From the results of the research above, the author can draw some conclusions as follows:

1. This study reveals the legal basis of the General Principles of Good Governance of several regulations. The results show that the general principle of good governance is currently regulated comprehensively in regulation in Indonesia. The regulation includes 1) Law No.5/2009 on the status of the Civil Service; 2) Government Decree Law No. 9/2018 on the Statute of Municipal Administrations, Municipal Authorities and the Inter-ministerial Technical Group for Administrative Decentralization, 3) Government Decree Law No. 30/2020 on Organization direct and indirect administration of the State;

- 4) Law No. 7/2020 on Measures to Prevent and Combat Corruption; 5) Government law Decree No.30/2008 concerning Public administration procedure.
2. TLs, as a modern country, several General Principles of Good Governance have been implemented and normalized in Government Regulation No. 30 of 2008 concerning Procedures for State Administration (*Decreto Lei do Governo n,º 32/2008 sobre Procedimento Administrativo*). This application will be a spirit for the administration of government in the TL, especially in the context of good governance based on expediency, justice, and legal certainty.

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