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Detrimental To The Community

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TAIWAN GOVERNMENT'S RESPONSIBILITY FOR THE PROVISION OF PUBLIC FACILITIES DETRIMENTAL TO THE COMMUNITY

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ABSTRACT

This article aims to analyze Taiwan's government accountability for fishermen who are working in the waters of Nanfangao, Taiwan. Jeremy Bentham through his book "Introduction to the morals and legislation" states that legal duty is nurturing goodness and preventing evil, so the law should provide benefits or usability for the crowd (to serve Utility). The law is so appropriate to realize what is the benefit of the community, the goal of the law is to give as much benefit, so that the certainty through the law of society is the main purpose of the law. In relation to this, in Indonesia, state officials have functions as public servants in the community. The community as a basic component can sue the government if in other cases raises losses on the management of public facilities and infrastructure. It also relates to the Taiwan government's liability for legal protection, for which the state's responsibility has been regulated in the SCL (State Compensation Law) or the Taiwan State Compensation Act. As for that would be a case study of bridge collapse which is one of the disability management of state-owned public facilities that cause harm to the community in Taiwan. That article 2 SCL describes the country or Government of Taiwan shall be liable for any form of loss, property damage and loss of life arising from the management of the state's public facilities. This is a real example of the application of Taiwan's accountability to public services as a form of legal protection to the public. Then Indonesia, where the concept of the responsibility is governed by article 1365 BW, that personal accountability is caused by individual events and legal acts. There is a comparative study of government and local Government accountability within the scope of administrative law.

Keywords: Government responsibility, State Compensation Law Taiwan, The concept of Accountability, Administrative law.

INTRODUCTION

According to sociologists, the meaning of sociology is a social science that has categorically pure, abstract, by trying to contribute to the general understanding, rational and empirical.

In the relationship between humans and other human beings the most important is how the reaction arises as a result of relationships that cause a reciprocal relationship. A sociologist in his research studying human society will relate to social groups, such as families, village communities, city communities, and nations. That is without purpose, the emergence of community groups is to unite the purpose of a welfare and prosperity.

Salus Populi Sumprema Lex Esto which means, prosperity and welfare of the people is the highest law in a country. The concept

of state welfare by Bagir Manan, state or Government is not merely as a security guard or community order, but assume the primary responsibility to realize social justice, general welfare, and the greatest prosperity of people. In line with the opinion of Bagir Manan, according to Sjahan Basah, related to the welfare state, the purpose of the Government is not merely in the field of governance alone, but must implement social welfare in order to achieve the goals of the State through national development.

Taiwan as one of the governments that accepted the challenge of balancing democracy with the security threat of unification of military forces by Beijing. The long-time People's Republic of China (RRT) has declared the "reunification" of Taiwan de jure to end the stand-alone Taiwan government. Until now, Taiwan still

remained in a stand-alone government with a lack of de facto recognition to become a country.

Thomas Hobbes argues that without the reign of life being human life is solitary, poor, evil, bruised and short. At the time the government overcame the war on all areas of society such as industry, science and culture. Thus the government created an orderly framework that settled with the emergence of the country.

China's policy became a follow-up to Taiwan to implement the One Country Two System concept, which meant that there were one country with two systems with the formulation of Deng Xiaoping in the 1980s. However, the concept was rejected by Taiwan, where the political law of Taiwan was given a special administration (SAR) to provide a high level of autonomy against Taiwan in implementing governance policies. It is disclosed directly by President Tsai Ing-Wen on Wednesday, January 2, 2019 will never accept the concept of one country as proposed by China.

As the issue arose about the Government of the Republic of Taiwan. In its sovereignty Taiwan referred to itself as the Republic of China that stood based on the democracy that had been created by its people. Some things related to government in Taiwan are protection against the public by the government. In the function of the protection, on October 2, 2019 then through bangkokpost.com published that "towering arch bridge over a bay in eastern Taiwan collapsed on Tuesday, sending an oil tanker lorry falling onto boats in the water below." According to the Taiwan government, the 140-meter bridge in Nanfangao, Taiwan is a small fishing village on the Pacific coast that is usually used by residents around to perform their activities as fishermen. Due to this incident, there are at least 5 to 6 fishermen who are doing activities under the bridge collapsed at 9.30 local time. It cannot be confirmed by the Government for the cause of the bridge collapse. The picture below shows how the circumstances and environment surrounding the bridge collapse.

Picture 1.

Source : liputan6.com/read/2019

Based on the image above, the form of loss suffered by the community due to the collapse of the bridge as the picture above is one form of State responsibility. Article 2 SCL stipulates that the state will be responsible for any loss (loss, property damage and loss of life) incurred by the general management of the state's public Facilities. In article 42 the City Zone Act also regulates the public facilities is a facility that is actually used for the benefit of many people.

The above phenomenon becomes the basis of State responsibility. Hence the compensation due to the collapse of the bridge in Nanfangao as a form of the management of public facilities belonging to the State or also can be said as negligence of the officers who manage it. When discussing the liability, it also relates to the protection of the law.

The community is the accepting of services as a means of policy objectives assessing the implementation of service policy. So that the policy objectives set must be in accordance with the will of society. The preparation of public service standards should also be considered and applied to the principles of standard service as a reference and size to be obeyed by the organizers and receivers, as follows:

1) Consensus, meaning that the public service standards are set up based on the agreement and the result of mutual agreements between the leadership and staff of the Service unit that concern the interests of the parties concerned and in reference to the laws and regulations.

2) Simple, meaning that the standard service that has been set contains the basic rules so that it is easy to understand and implemented by the service providers and the public;

3) concrete, meaning the standard of service that has remained and clear to be implemented;

4) easy to measure, meaning that the standard service set can be measured implementation, both technical and non technical;

5) Open, which means that the appointed service standard is open to obtaining advice and input for improvement.

Affordably, that service standards can be implemented properly and correctly by providers as well as by the public as a service recipient.

In Indonesia, the phenomenon of collapse bridges has also occurred in Kutai Kertanegara, East Kalimantan. The Mahakam II Bridge or Kutai Kartanegara Bridge collapsed over eight years ago on Saturday, November 11, 2011. The bridge was built in 1995 and was completed in 2001, which is a link between Tenggarong City and Samarinda City. Its function is not merely a means of transportation but also has become a tourist attraction in Tenggarong. The result of the collapse of the bridge was a victim of the current SAR team data as many as 20 people were declared dead. Polri at the time, only confirms that the result of the incident was a suspected government negligence at the time of development. Therefore, the public officials should be responsible for the provision of public facilities on the basis that the community has been harmed due to the collapse of the bridge and should be compensated as a form of legal protection.

Philipus M. Hadjon stated that legal protection for the masses is divided into two kinds, namely the protection of preventive law and the protection of repressive law. Preventive legal protection has the meaning that the public is given the opportunity to make an objection to the government based on government action that can cause disputes while the protection of the repressive law aims to resolve the dispute.

In Indonesia the concept of liability for losses is governed in article 1365 BW mentions that any act against the law that brings harm to others, obliging the person due to the harm of issuing the loss, reimburse the losses. The meaning of the article is a causal relationship between loss and legal action caused by legal events.

Perpetrators are not only responsible for the losses caused by his own actions, but also bear the actions of the person who is the responsibility. It is an area in the private law shutter in Indonesia.

Construction and development and renewal of national law must be in accordance with the mind of the Law (*Rechtsidee*) determined by the nation namely Pancasila as it is in the opening of the Constitution of the Year of the Republic of Indonesia, namely to organize the order of the world based on the eternal peace and social justice which means simultaneously the law to cultivate order (*Kamtibnas*-national stability) From the side of the law was able to establish a life of democratic, social justice and humane.

Based on the explanation above, this writing also provides solutions how the level of administrative law in the current national law, various discourse of the codification rule of law in government action is being discussed by the President in particular on the concept of omnibus law used in Indonesia with the aim of unifying central and local policy in supporting the harmonization of regulations in the governance. Omnibus Law has so far been understood as one of the methods to incorporate the existing rules of law by replacing them in a legislation that contains chapters that attribute a wide variety of things, one of which is the task and authority of the government and how the government's responsibilities towards society in the use of authority.

The author aims to analyze with comparative study of the concept of government accountability to the public as a form of legal protection in public service.

Based on the background above, the authors will examine the following problems:1. The Taiwan Government's responsibility for the provision of public facilities.2. Comparative responsibility of the Indonesian Government in the legislation.

RESEARCH METHODS

This research is a sociology research law (*Sosio legal Research*). This method is based on the fact that the community is directly linked to the rules of the law. The method to be used in this research is *sociolegal*. Legal sociology Research is a study used in terms

of viewing and researching the applicability of the law in the community based on the correctness of correspondence that is adjusted based on data (empirical). Research begins with socio-logical research followed by deep observation to obtain non-legal and related data on the Laws and regulations examined

RESULTS AND DISCUSSION

1.1. Responsibility dan Liability

Indonesia's state destination has been contained in the fourth paragraph of the opening of the CONSTITUTION of NRI 1945 mandated that ".... Indonesian government that protects all Indonesians and all over Indonesia's blood and to advance the general welfare...".

Jeremy Bentham through his book "Introduction to the morals and legislation" argues that the legal duty is to nurture goodness and prevent evil, so that the law should provide benefits or usability for the crowd (to serve utility). The law is so appropriate to realize what is the benefit of the community, the goal of the law is to give as much benefit, so that the certainty through the law of society is the main purpose of the law.

Responsabilite according to the concept of the French law, gives the understanding that in identifying the implementation of authority in the event of misuse of authority, the Government will be responsible for the damages to the citizens caused by the decisions on the conduct of love. Broadly, responsibility is a form of government accountability to the Department in accordance with the prevailing laws and regulations. While liability is the concept of the responsibility of the State against the losses suffered by the Community either directly or indirectly, materically or mentally by compensating losses. The above concept is expressed by Maxim's theory, to a extent, some foundation *for developing the theory of vicarious liability of the State as referred to below*. (Yong Zhang, 1999).

That is, that the responsibility of the State over the responsibility imposed on the person against other deeds based on the legal relationship between the parties.

Responsibility is a state of obligation to bear all things (can be prosecuted, indicted, reaped, if something happens) by accepting the loading, as a result of the attitude of the party itself or other parties. The granting of

authority to government action becomes a consequence for power holders in the event of misuse of authority.

Onrechtmatige overheidsdaad is one of the actions of public officials who perform tasks, subjects and functions outside or not based on the prevailing laws and regulations. So that public or government officials may be subject to an offence either in a position or in person on the basis of arbitrariness.

Government officials as authority authorities in the Government have a responsibility that includes: the responsibility of the position and personal responsibility. The responsibility of the Department in relation to the legality of governmental acts through the approach of government power. While the personal responsibility relates to the Functionarians approach in administrative law as a form of maladministration in the use of authority and public service.

Sudikno Mertokusomo in his book titled "Deeds Against the law by the Government" explains the boundaries of the country can be held accountable by the public, namely to know that the government is doing the act against the law should be known for whether the country has power and obligations. That is, the state as a legal entity for the nation's unity incarnation. Thus the state as a legal subject that is not a person and as the subject of law. The legal entity may be held accountable for acts against the law from the oration. The intent of the "organ" is in the sense of constitutional state according to Kranenburg. If actions against the law are done by the legal entity is done in the environment of its task.

The term of *Onrechtmatige Overheidsdaad* is often interpreted as an act against the law by the Government. The "overhead" translation is interpreted as ruler while "Overheidsdaad" is interpreted as an act of ruler. As for this, it can be said that the State could be a responsibility party. So in general *Onrechtmatige Overheidsdaad* is actually more commonly translated by the deed against the law by the Government. The translation is more precise because it sees the legal side in the unity of the term.

1.2. State Compentation Law (SCL) in Taiwan

As part of the superpowers that are viewed by the international world, Taiwan became the center of the government that advanced in various aspects of both social, political, economic and government. Although Taiwan has not received de facto recognition to become a country. The record is an introduction that the Taiwanese

government calls itself as the Government of the Democratic Republic. In this respect, Taiwan's governance is a highlight of the community.

The State compensation liability in Taiwan is applied in the State Compensation Law (SCL). State Compensation Law or abbreviated SCL was formed in Taiwan on July 1, 1981. The state will be responsible by providing compensation arising from the negligence of the state either intentional or when the official is on duty. There are several pengecualiaan where the state compensation liability is governed by special provisions in certain legislation.

In article 2 SCL is governed on how the state will be liable for any loss of both property losses, losses, to the loss of the person's life resulting from the management of the state's public facilities. Further, in article 42 the City Zone ACT stipulates that public facilities are a facility that is used for the benefit of the crowd, for example: highways, bridges, parks, schools, markets and so on. And public facilities are mandatory to belong to a non-private state. The form of abandonment from state officials is found to be detrimental to the public for the losses incurred, so the State provides compensation for damages, but the state only gives orders to the relevant officials to compensate compensation for his own actions.

Further in article 5 SCL stipulates, regarding the provisions set forth in the Book of civil law will be applied to national compensation. Then, if in any other case not set forth in the law, losses will be reimbursed if there is no profit/raib (article 216 of the Civil Code). In the performance of public tasks, the act of State officials in the governance of the Government serves to perform its duties, including the description of orders, the execution of orders, providing services, caring for the public interest. Thus the execution of the duties in this case is not all viewed as a legitimate act and is the full authority of the state.

The liability for compensation for detention and unfair punishment, the Compensation Act in the country of Taiwan on unfairly detention and proof was announced on 1 September 1959 and amended on 22 November 1991. As stipulated in article 1 of the Law govern that: in any case filed into a court in accordance with the law of a criminal event, the affected Party may submit the compensation of the State, if they have any of the following conditions:

1) before the revocation of claims or forgiveness of guilt was decided, the injured party was in custody.

2) before the indictment is decided on the first level of trial or extraordinary appeals procedure, the sufferer is in custody or the penalty/sanction has been imposed. If the injured party is not withheld under criminal proceedings, the sufferer may still apply for State compensation in accordance with these provisions.

The responsibility of State compensation against the other forms of loss is stipulated by provisions in the administrative legislation. That the state is fully responsible if there is a case if the police perform adverse actions and/or cause the loss of a person's life at the time of duty as set out in article 10 of the police authority's use rules. According to the theory of the State with a substitute responsibility, State officials shall be liable for damages arising to the sufferer due to the implementation of the Authority whether it In this theory the country will be responsible as a substitute for officials who harm others. Therefore, all risks to the loss suffered by the community due to intentional or not deed in the event of negligence, then the state is entitled to compensate.

Further liability for State compensation against other forms of loss is stipulated by the provisions in the administrative legislation specifically stipulates, who the responsible party includes:

A. Based on State Compensation Law, which is responsible for the losses and rights of the infringed people is the state through his/her country officer.

B. In the event that the police officers do their job and cause physical injury or death then the responsible officer is authorized to the incident.

C. In the event that the administrative misconduct caused the loss of the community, the Office of Land Administration is responsible.

Based on what has been set and the State responsibility is established in the form of compensation in accordance with the validity of the legislation in Taiwan becomes one of the legal facts to improve the role of public to the compensation function as a form of legal protection of citizens.

1.3. Administration Law

Validity of Government action

There are 3 (three) approaches to administrative law, such as:

1. Power approaches

The Government in terms of action must fulfill some elements of power i.e. authority, procedure, and substance. Authority and substance are the foundations of formal legality. The basis of formal legality is the principle of "Presumptio iustae causa". On the basis of the provisions of article 67 paragraph (1) of Law No. 5 year 1986 Jo. Law No. 9 of 2004 stating that "the lawsuit does not suspend or obstruct the implementation of the Agency or State administration official's decision as well as the Act of State Administration or government office of the defendant."

Authority is the hallmark and concept of public Law on the use of power. This is in accordance with the statement of Tan Berge which argues that public law action can be done through the use of public authority. The determination of government decisions by the authorized organs shall be based on the authority which has been clearly regulated where the authority is stipulated in the rules of the law in advance. British administrative law is very popular with the *ultra vires* approach. The Dutch administrative law strongly emphasized the *Rechtmatigheid* facet which is essentially associated with the *Rechtmatigheidscontrole* (J. Van der Hoeven, loc. cit). These approaches describe power (government) as the focus of administrative law.

2. Rights based approaches

The Right based approach is an approach to British administrative law. The main focus of the new approach is two things:

1) Protection of human rights (principles of fundamental right)

2) Principles of good administration include: legality, procedural propriety, participation, openness, reasonableness, relevancy, propriety of purpose, legal certainty, and proportionality. (Peter Leyland and Terry Woods, *Administrative Law Facing the Future: Old First and New Horizons*, p. 18).

3. Functionarians approach

This approach is to complement the existing approach with the intention that implementing governmental authority is a public official. Therefore, administrative law should be attention to the behavior of apparatus. Thus, the legal norm of administration does not only include the

norms of governance but also the norm of behavior of apparatus (*Overheidsgedrag*). The norm of behaviour is measured by the concept of maladministration as a benchmark for the success of government public services in the society. In the Netherlands, however, the norm of public official behavior is applied through the existence of the Ombudsman, which is essentially two, namely serving (*Diensbaarheid*) and trusted Attitudes (*Betrouwbaarheid*) (J.B.J. M ten Berge, *De Persoon in het Bertuusrecht*).

Based on the administrative legal approach, relating to the legality of government acts, the scope of the legality of governmental acts, including:

Authority is the foundation for formal legality. In accordance with the formal legality basis to implement the legal State principle that any governmental action required shall be resting on the lawful authority. The authority is obtained through three sources, namely: the principles of the State of law, the principle of democracy, and the instrumental principle.

Substance is an aspect directly related to the study of the principle of legal certainty (legal certainly).

The procedure according to Philipus M. Hadjon is a principle that rests on 3 (three) foundations, namely:

A. The principles of the State of law, whose main principle is to protect the fundamental rights of society.

B. The principle of democracy, in the procedure stated that with respect to the transparency or disclosure of government to the community will cause participation in the community.

C. Instrumental principle, become one of the principles that include the principle of efficiency (*Doelmatigheid*: Power use) and the principle of effectiveness (*Doeltreffendheid*: the results).

In this case there is still a lack of procedures regarding the implementation of undersea management that has not increased the effectiveness and efficiency of governments and local governments to be able to run the program and implementation of policies pertaining to the necessary governmental procedures.

Based on the explanation above, an act of government will always be closely related with the administrative law. The government as the organizer of the country has an important role in each action to protect the community. The theory of the country with its own responsibility can be called by the national risk-responsibility theory, the essence of the deed should be implemented

in the public interest, if the state's deeds harm society with all aspects of its life, then the state will be liable to compensate either intentional or due to negligence.

1.4. Government responsibilities in Indonesia's statutory regulations

Maria Farida Indrati argues that the principles of the establishment of legislation is a guideline or signs in the establishment of good legislation. Because it is related to the legal basis that becomes the establishment of the law itself. In the implementation can also be distinguished by getting to know the two theories, among others, when following the willpower theory, which is concerned is that the right to give priority to the owner of the rights of different desires with other parties. While the interest theory, emphasizes the right to role to protect or develop the interests of the rights owners.

In Indonesia, it is not regulated specifically in the National Compensation Act, but is a component of the chapters/chapters which are distributed in the ACT, PP, Presidential decree etc. Generally implied in the CONSTITUTION 1945 is the principle of family relationships and the principle of common welfare. Which in this case, the responsible party includes :

A) in accordance with the claim to the disputed government filed in the PTUN if the lawsuit was granted by the judge) If specified otherwise in the Act, for example: UULLAJ, LAW No. 31 year 2014 Jo. UU No. 13 Th 2006 on the Protection of witnesses and victims, the provisions of land used for the public interest in Presidential decree No. 55 Th 1993 and so forth.

Pursuant to section 1365 BW mentions that "any act against the law that brings harm to others, obliging the person because of the harm to issuing the loss, reimburse it". The deed against the law in Dutch is called "Onrechmatige Daad" and in English is called tort. The word tort etymologically interpreted as wrong. However, the word tort in the legal language is interpreted as a civil "fault" and is not derived from default in a contractual agreement. In line with the notion of action against the law is called the Onrechmatige Daad in the Dutch legal system or in other continental European countries. The word "tort" derives from the Latin word "torquer" or "Tortus" in French, as "wrong" derives from the French word "wrung" which means a mistake or a loss (injury). So in principle, the purpose of the establishment of a legal system which is then known as the Act against the law is to achieve what is said in the Latin language, namely the Juris

Praecepta sunt luxec, Honestevivere, alterum non laedere, suum cuique tribuere (the motto of law is to live honestly, not harm others, and give others the right).

Soebekti and Tjitrosudibio interpret article 1365 BW that "any act against the law, which brings harm to another, obliges the person who is due to harm in issuing the loss, reimburse it". That is, if someone deliberately does something that causes harm to others, then in this case clearly the active nature of the term against it. Whereas if a person intentionally does not do something or still, when knowing that they must actually do something to do not harm another person or with other words to be passive, even reluctant to make a loss to others, then it has "fight" without having to move the body. Here's the passive nature of the term fight.

Soedarto (1983.91) said the elements of error include:

1. The ability to be responsible for the maker means the soul of the maker must be normal,

2. There is an inner connection between the creator and his actions, which is intentional or misconduct is mentioned as a form of error,

3. Absence of reasons that remove mistakes or no forgiving reasons.

Today, in Indonesia there is still no regulation that specifically regulates the accountability of public officials in terms of compensating for indemnification in both the personal and the responsibility of the Department. As explained in the previous chapter that Government accountability to the community for the provision of public facilities through State Compentation Law Taiwan. Which, in a strict and clear rule, clearly governs how the government becomes sued in the event of an act that harms its citizens, especially in the provision of public facilities.

Pursuant to article 10 of the Government Administration Act that a government action is obliged to pay attention to the general principles of good or commonly called AUPB. One of them is the principle of accuracy in the development of public facilities that are used by the community continually. A real example of the bridge collapsed in Kutai Kartanegara, East Kalimantan as it has been outlined in the background of the problem. The importance of government officials is to consider AUPB as a good form of organizing. Further, concerning government affairs conducted by the Local Government through the provisions of Law No. 23 of 2014 on local government.

Based on the laws and regulations of the local government and government administration, there has been no explicit rules regarding the compensation of State responsibilities to the public in the event of an omission, provision of public facilities conducted by the Government within the scope of its authority when carrying out duties.

Therefore, Indonesia has not yet had a legal rule regarding the concept of Government accountability when conducting an *onrechtmatige overheidsdaad* (Deed against law by the Government), then need a new idea in the legislation in Indonesia especially in the field of government responsibility. It is in line with the government as a protector, community protection and administrative organizers to walk in accordance with the law.

CONCLUSION

Based on the explanation of the problem above, then the author can draw the following symplulsion:

1. The objective is theoretical to explain that, although the laws in each system and country have a difference but there are some common objectives. Thus the practical purpose of comparative law is on consideration in the practice of problem-solving and relief tools for the order of society, and to make the applicability to the validity of the law and provide knowledge of external law and internal law to the legislator. Specifically related to the responsibility in Taiwan that has been regulated in State Compentation Law as a form of legal protection against society. So it gives a view on how the concept of Government accountability in Indonesia that does not have a specific regulation regarding state compensation if there is a loss due to the management of public facilities and infrastructure.

2. The renewal and reconstruction of the law between the application of accountability in the Civil Code with other *Perundangan-undangan* regulations, especially government administration as a form of benefit and legal certainty.

3. The omnibus law becomes one of the solutions in the implementation of government authorities in the implementation of accountability in statutory regulations. In which the legislation is relevant to the administrative administration of the law number 30 of 2014 about government administration that still cannot accommodate thoroughly, especially in government accountability. It is necessary

to have a functional approach because there is a common function between the legal system. Although the two comparable legal systems have common functions but both of them have different objectives. The similarity is used only as a method of comparing the two legal systems to be compared. It is done to start the similarities in a different legal system.

ADVICE

Responding to the explanation exposed in the discussion of how the concept of government's accountability in the public service to realize the protection of the law then:

1. The need for renewal and reconstruction of laws in the form of legislation relating to state compensation against losses through alignment related to the concept of government accountability between the Civil Code and other *Perundangan-undangan* regulation, especially administration through omnibus law;

2. The people as a fundamental component in order to create the norm in providing legal certainty in the event of losses suffered by government negligence while on duty; DanThe Government of Indonesia can utilize the concept of good governance as a procedural principle.

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