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Restructuring of Management Authority in Arrangement Institution of Indonesian Mangrove Forest

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Abstract
Restructuring of management autority in arrangement institution of indonesian mangrove forest, aims to reorganize some authorities contained in the Institutional ministries that manage and utilize mangrove forests in Indonesia. The impact of the authority of each institution owned by the ministry, namely the Ministry of Environment and Forests, Ministry of Maritime Affairs and Fisheries, the Ministry of Agricultural and Spatial Planning and the Ministry of Internal Goverment Affair has implications for the occurrence of overlapping authority, so create egosectoral.
Keywords: Restructuring, authority, management, forest and mangrove.

A. BACKGROUND

Indonesia is a country in the world that is in a cross two oceans widest and deepest, namely the Pacific and Indian oceans, and flanked by two continents, namely; Asia and Australia. The existence of Indonesia is located on such conditions, so that natural resources are very abundant, ie one is forest located on land, and mangrove forests in the coastal areas of the sea[3]. The existence of the largest mangrove forest in the world, for Indonesia is the natural resources provided for in Article 33 paragraph (3) the Constitution of the Republic Indonesia 1945 which states that: "Earth and Water and the natural riches contained there in sould be controlled by the State and used by the prosperity of the people". Means that, the existence of Article 33 (3) Constitution of the Republic of Indonesia 1945 is to achieve the purpose of the state, which is more focused on improving people's welfare as a whole, with the utilization of existing natural resources to the maximum.

Kusmana said that, Indonesia is an archipelagic which has the longest coastline in the world4. The consequence of the longest coastlines, making Indonesia has coastal areas and the largest mangrove forest in the world anyway5. Burhaanuddin, said that, the reports of The World Atlas of Manroves which was launched late in 2010 by the United Nations Environment Programme field (UNEP) stated that the current distribution of mangrove forests are in 132 countries, covering an area of 150 thousand km2. The broadest of mangrove forest area is in Indonesia that is 21%. The rate of destruction of mangrove forests each year has increased, and has approached 50%, according to Nugroho, the General Director of Watershed Management and Social Forestry estimated 1.8 million hectares of mangrove forests in Indonesia having damaged. 1.8 million hectares that represent 58 percent of the 3.1 million hectares of mangrove forests throughout which is exist in Indonesia.

Refers to the extent of forests that have been damaged above, illustrates that, the damage reaches 1.8 million hectares of land, due to several factors, including: (i) clearing land for plantations; (Ii) clearing land for the pond; (Iii) another conversion for the infrastucture development, so eg for industry, and (iv) the activities of people who live in areas for fuel purposes.In addition to these factors, the most fundamental is, the overlap between the agencies involved in the management of the mangrove forest. One of the factors causing the damage to the mangrove forests, because of the overlap of authority institutional ministry has the authority to mangrove management. Those ministries, among others: (i) the Ministry of Forestry and Environment; (Ii) The Ministry of Maritime Affairs and Fisheries; (Iii) the Ministry of Agrarian and Spatial; (Iv) The Ministry of Home affair . Thus, the issue that arises is, "The arragement of the Government institutional authority in Mangrove Forest Management".

B. GOALS AND SIGNIFICANT OF THE RESEARCH

Goals to be achieved in this study are: to assess, analyze and develop the institutional law that became the basis of the government authority in the regulation and management of mangrove forests in Indonesia. While the

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[4] **Cecep Kusmana**, http://www.reposity.ipb.ac.id/bitstream/handle/123456789/26315/prosiding, retrivied 15 Nopember 2011
[5] FAO/UNEP melakukan estimasi luasan hutan mangrove secara global untuk pertama kalinya dalam Tropical Forest Resources Assesment pada tahun 1980. Pada masa itu, luasan mangrove diperkiran seluas 15,6 juta hektar. Setelah itu ada beberapa estimasi antara 12 sampai 20 juta hektar. Dalam studi estimasi luasan mangrove global terbaru yang dilakukan oleh FAO (2003), dapat disimpulkan bahwa Indonesia memiliki luasan mangrove terbesar di dunia (22%), diikuti oleh Brazil, Nigeria, dan Australia yang masing-masing memiliki proporsi 6% dari luasan mangrove global, lihat Asihing Kustanti, Manajemen Hutan Mangrove

expected benefits of this research are (i) provide a very significant contribution to the development of thought, both theoreticaly and practicaly in the development of law, especially in the field of Forestry, which are more specifically the mangroves; (ii) to provide a solution to the problems of overlapping institutional authority in the management of mangrove forests in Indonesia.

C. METHODS

Characteristics of normative legal research, its uniqueness because it based on the "truth coherence". Coherence truth is the truth that is based on the assessed conformity with the rules that apply. According to **Marzuki** said that, legal research is a process of finding the rule of law, principles of law, as well as legal doctrines in order to answer the legal issue at hand. This is consistent with the prescriptive character of the knowledge of law[1]. The method using normative legal research methods, the approach in which there is a problem, such approach to the concept (conceptual approach) and approaches the law (statute approach). Both of these approaches, created conceptual associated with the legislation. This legislation, both primary and secondary legal materials will be made systematization, to sort out the laws and legislation related to the issues raised. **Marzuki** said that, the primary legal materials that authoritative legal materials means that its have authority. The primary legal materials consist of: the Constitution of the Republic of Indonesia 1945, legislation (UU), official records or treatis in the making of legislation and decisions of judges. In addition, the primary legal materials, there is also a secondary legal material in the form of all the publicity about the law, which is not an official document. Publication of the law included text books, dictionaries of law, legal journals, and commentaries of court decision[2].

Referring to the approach above, then do the processing and analysis of the legal materials. All sources of legal materials collected in this study, both of primary and secondary sources of law will be processing the analytical approach according to the nature and character of the normative legal research. The primary source of law is done by doing an inventory of positive law, either of legislation and all other regulations in connection with this research. On the other hand, the source of secondary law is done by tracking the entire legal material literature that related with this research.

The whole source of both primary and secondary law, it has the structure of a legal, **Meuwissen** [3]said that, the law shows a polar structure, meaning that it is in itself constitute between idea and law (contents) on one side and the shape (structure forma) on the other side. On the one hand there is the idea-law (legal ideals: the contents or purpose of the law), and on the other side of Instrumentarium juridical (legislative, judicial, state), and with the help of that Instrumentarium,the idea-law must in realize.

Moreover, in conducting a review of legal materials, will also be done using legal reasoning, using inductive-deductive method, and also do interpretation to be able to find answers to the legal issues or legal issues raised in this study, by using the doctrine, rules and regulations, principles or legal principles contained in the regulations and the opinion of scholars. **Marzuki**[4] said that the legal reasoning familiar with the two methods, methods of deduction or induction. Both of these methods will be used in analyzing legal materials in this study.The use of deductive method to explain or analyze and solve legal issues in this research by relying on all the rules contained in the legislation and other rules and its associated with the legal facts.the analysis of material sources of law, in particular with regard to the idea-law (legal ideals: the content and purpose of the law), the analysis using normative analysis/prescription, which is derived from the analysis of official rules and would be associated with the legal issues in this study. On the other hand, the analysis was also performed with a descriptive approach, namely explore the content or the meaning of the rule of positive law (provision legislation) that is used in this study, as well as to the content or the meaning of the legislation are not clear (hazy), will be used interpretation or interpretation to clarify the meaning contained in the laws being used. Interpretation, which is used is a grammatical interpretation, and systematic. **Hadjon**[5] provides an understanding of each of the following: a grammatical interpretation: intreper a legal term or a phrase as the everyday language or the language of the law. While the systematic interpretation of the starting point of a system of rules to interpret a provision of the law, ... ".

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[1] Peter Mahmud Marzuki, Legal Researcher, Prenada Media Group Press, Jakarta, 2005, p. 35
[2] *I b i d*
[3] Meuwissen, Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum, Penerjemah, B. Arief Sidharta, Refika Aditama, Third edition: October 2009, Bandung, p. 38
[4] Peter mahmud Marzuki, ..., Op.cit, p.47
[5] **Philipus M. Hadjon**, *Pengkajian Ilmu Hukum Dogmatik (Normatif),* Yuridika, Majalah FH UNAIR, No. 6 Tahun IX Nopember-Desember 1994, h.6, dalam Istislam, *Sanksi Paksaan Pemerintah Dalam Perlindungan dan Pengelolaan Lingkungan Hidup,* Disertasi Program Pascasarjana Fakultas Hukum Universitas Airlangga, Surabaya, 2012, p.73

D. DISCUSSION

1. Authority Concept

The authority of the Government in the protection and management of natural resources, the main source is the Constitution of the Republic of Indonesia 1945 and other legislation. The authority is the legal term that gives power to the apparatus of the country (people) to realize the programs that have been launched by the Government. The authority attached to the apparatus of the state (officials) government, is a responsibility that must be accounted for, either as officials or as an individual or individuals. The institutional authority, tipped to the ministry institutions that take over management of mangrove forests in Indonesia. Therefore, when linked with the problem of mangrove forests are increasingly degraded at this time, due to takeover to other purposes, such as ponds, oil palm plantations, and other purposes. The question that arises, which is most responsible for the ministry whether the misistry of Maritime and Fisheries Affairs, Ministry of Environment and Forestry, Ministry Home Affairs, the Ministry of Agrarian and Spatial and or the Ministry of Agriculture ?. The authority attached to the ministry of the institutions above, in formal legal, should not be blamed. To answer this question, it should be done with a rational approach to the legal argument. **Hadjon and Djatmiati** stated that, three layers of rational legal argument (drienieveaus van rationale Juridische argumentatie), are: (a) a layer of logic: the internal structure of the argument; (B) a layer of dialectical comparison of the pros and cons argument; (C) layer procedures (procedural law).

Related to the 4 (four) ministries that have authority concerning the protection and management of mangroves, and its associated with the approach of the legal argument, then based on three (3) of legal arguments layers, then according to the author, in point (a) is most associated, namely "layer logic ". the use of logic layer, because it serves to see things from the perspective of a reasonable or unreasonable. The existence of the Ministry of the Environment and Forestry, functionally and nomenclature that all forests in the territory of Indonesia is its responsibility. However, on the other hand the Ministry of Maritime and Fisheries Affairs has the responsibility, because mangroves are in coastal areas. While the Ministry of Home affairs as the ministry that responsible for all that happens in the country of Indonesia, then the Ministry of Agriculture has also has the responsibility of the entire community activities related to the conversion of forests into rice fields. Ministry of Agrarian and Spatial has also the responsibility to manage all of the land that is in the territory of the Republic of Indonesia. The authority listed as norms contained in the clauses in the legislation, showing a concept that is not logical. According to Hadjon and Djatmiati that: "the norm in the logic is a proposition (normative). Explaining the norm should be preceded by a conceptual approach as the norm as a form of proposition is composed of a series of concepts. Thus the fault concept resulting in the flow of thought and misleading conclusions ".

Referring to the view of Hadjon and Djatmiati above, so the norm draft that concerning the authority to that the ministry, did not show a norm logically which is a proposition or a coherent concept, so that giving the multiple interpretations to it. Thus, based from mistakes norm draft in the articles of Law No. 41 of 1999 on Forestry, Law No. 1 of 2015 on Coastal Areas, Act No. 26 of 2004 on the Spatial, the proposition violates the logic of "Ex falso quoliber" (from the misguided conclusion arbitrarily).

1.2. The Sources of Government Authority in Mangrove Management.

The sources of that authority comes from the administrative legal order, because, administrative law is public law, which emphasizes aspects of government action. The government implementing or carrying out the functions, where the authority that comes from rules and regulations, which is commonly called the "norm authority". In this Norm authority, including in the legal governance. According to Hadjon[1] that: the norms of governmental authority. The main parts of this area include the following: a. sources of authority: attribution; delegation and mandates; b. principles of governance. Based on the principle state of law, the basic principle is the principle of legality (rechtmatigheid van bestuur); c. discretion; d. authorize the use of the procedure.

Hadjon[2] conducted the approach the administrative law with three approaches, namely: a. approach to government power[3]; b. rights approach (rights-based approach)[4]; c. approach functionaries[5]. The power

[1] *Ibid*, p. 20
[2] *Ibid*, p. 8
[3] Hukum administrasi Inggris sangat populer dengan pendekatan ultra vires. Hukum Administrasi Belanda sangat menekankan segi-segi *rehmatigeheid* yang pada dasarnya berkaitan dengan *rechmatigheidscontrol*. Pendekatan-pendekatan tersebut menggambarkan kekuasaan (pemerintahan) sebagai fokus hukum administrasi.
[4] Right based approach merupakan pendekatan baru dalam hukum administrasi Inggris. Fokus utama pendekatan baru ini pada dua hal, yaitu: 1. Perlindungan hak-hak asasi (principle of fundamental rights). 2. Asas-asas pemerintahan yang baik (principle of good governance administration), antara lain: legality, procedural propriety), participation, opennes, reasonableness, relevancy, propriety of purpose, legal certainty and proportionality.
[5] Pendekatan ini tidak menggusur pendekatan sebelumnya tetapi melengkapi pendekatan yang ada dengan titik pijak bahwa yang melaksanakan kekuasaan pemerintahan adalah pejabat (orang). Oleh karena itu hukum administrasi *harus* memberi perhatian pada perilaku aparat. Dengan pendekatan ini, norma hukum administrasi tidak hanya meliputi norma pemerintahan

approach associated with the concept of general administrative law, which by **Hadjon**[1] split three basic components of administrative law, namely: (1) Law for organizing government (het voor het recht besturen door de overheid; voor het recht bestuur: norming van het bestuursoptrenden); (2) The law by the government (het recht uit dit dat bestuur onstaat; van het recht bestuur: nadere regelgeving, beleidsregels, concrete bestuurbesluiten); (3) The law of the government, namely the law concerning the legal protection for the people against government actions (tegen het het recht bestuur).

2. Restructuring Institutional of the Ministry Mangrove Management

The ministerial is seting up to assist the President in government performing. The provisions in Article 17 of the Constitution the Republic of Indonesia 1945 stated that: (1) The President is assisted by ministers. (2) The ministers are appointed and dismissed by the President. (3) Every minister in charge of affairs in the government. (4) The establishment, alteration, and dissolution of state ministries are regulated by law. The implementation of Article 17 of the Constitution the Republic of Indonesia 1945, further regulated by Article 4 of Law No. 39 of 2008 concerning the Ministry of State, stated that: (1) Every minister in charge of certain matters in the government. (2) certain affairs in the government referred to in paragraph (1) Consist of: a. government affairs ministry nomenclature is expressly mentioned in the Constitution of the Republic of Indonesia 1945; b. the scope of government affairs mentioned in the Constitution of the Republic of Indonesia Year 1945; and c. government affairs in order management, coordination, and synchronization of the government program.

Assembled with the provisions set forth in Article 17 of the Constitution the Republic of Indonesia in 1945 above, then the Ministry of Environment and Forestry, the Ministry of Marine and Coastal Areas, Ministry of Agrarial and Spatial and the Ministry of Home Affairs, as the formal legal authority attached to it is a legitimate authority. With the authority of mangrove management contained in the ministry's institutions, then raises egosektoral resulting in neglect of responsibilities attached to the ministry. To perform the reconstruction in institutional ministry carried out by three (3) approaches, namely: (i) legal aspects; (Ii) the institutional aspects of the political and institutional aspects of the state apparatus.

2.1. Aspects of legal approaches

Institutional restructuring of the ministry that manages the mangrove forests, which needs to be done is to investigate for the norms/rules that give authority to the President as the head of government. This investigation still refers to the constitution or the Constitution of a country. **Mahfud M. D.** said that: "the constitution knowledge to carve constitution unequivocally that the constitution is the result of the state of political, economic, social, and culture when the constitution was made". Therefore, the constitution illustrates the need and answers to the problems faced at the time. Considering the changing society and follow the changing challenges as well, so as resultente *poleksosbud* of the constitution should also open the possibility to be changed ". President as the head of government, in accordance with the mandate of Article 17 of the Constitution Homeland Year 1945, has an authority to conduct the formation of the ministry according to his needs. The establishment of this ministry legally reflects that the state of Indonesia is a country of law. **Hadjon**[2] formulate the elements of the law or the elements of the State of Pancasila Law, namely: 1. Harmony relations between the Government and the people based on harmony; 2. The functional relationship between state power proportionally; 3. The principle of resolving disputes amicably and justice is a means the end, and 4. The balance between rights and obligations.

2.2. Political Aspects Institutional Approach

The approach institutional aspects of politics in a democracy are a thing is inevitable, because the political parties be one element in the legal state. In addition, the involvement of political parties in parliament representative by legislators as part of a legislative element. One of the legislative tasks, to make regulations together with the President. **Miftah Thoha**[3] said that: "..., politics as we know consists of people who behave and act politically that organized politically by interest groups and other group interests' aside ..."

2.3. The approach Institutional Aspects of Administrative

The Ministry is a state institutional that is tasked to formed national development goals. This ministry is held these duties, driven by state apataur or can be called the "bureaucracy". **Blau** and **Meyer**[4] say: types of

saja, tetapi juga norma perilaku aparat (overheidsgedrag). Di Belanda norma perilaku aparat digali dari praktek ombudsman, yang norma dasarnya ada dua yaitu: sikap melayani (dienstbaarheid) dan terpercaya (betrouwbaarheid).

[1] *I b i d, p. 19*

[2] Philipus M. Hadjon, Perlindungan Hukum Bagi Rakyat di Indonsia, PT. Bina Ilmu, Surabaya, 1987, p. 65

[3] **Miftah Thoha**, *Birokrasi & Politik di Indonesia*, Rajawali Pers, Jakarta, 2011, p. 80

[4] Peter M. Blau dan Marshal Meyer, Birokrasi Dalam Masyarakat Modern, Universitas Indonesia Press, Jakarta, Edisi Ketiga, 1987, p. 4

organizations that are designed to handle the administrative tasks on a large scale as well as coordinate the work of the people are systematically called "bureaucratic". The bureaucracy in the ministry is contained a very important organization, because the main task of bureaucratic organization will be seen from two sides, namely: "in terms of process and outcome". **Lynn**, as cited by **Siswadi**[1] said that "good government management viewed from two sides, namely the process and of the results. Government management as a process, should be priority to democratic process. While management will describe the government as a result of sincerity, will efficiently use resources limited with emphasis on good administration over existing processes ".

3. Resolution of Authority Conflict

The resolution norm conflict can be done by referring to **Malt** [2] in his paper "Methods for the Solution of Conflicts between Rules in a System of Positive Law", namely: (1) disanoval (denial)[3]; (2) reinterpretation[4] (3) The invalidation (cancellation)[5]; and (4) remedy (recovery)[6]. Resolution of conflict norms, carried out with reference to the principles of law are not binding. **Mertokusomo**[7] said that: "the written law contained in the form of tangible concrete legal regulations. To understand or apply the contents of concrete legal regulations, then a law degree should be more in depth into the deeper layers again, the legal principle ". According to **Nieuwenhuis** and **Klanderman**, as cited by **Mertokusomo**[8] that: "The principle of the law is rooted in the reality of society (the real factor), and in the values chosen as a guideline by a life together. The function principle of law in general is to unite the real factors and factors such idiil. The function principle of law is ratified and has influence normative and binding on the parties. Have the legally because its existence is based on the formulation by legislators and judges. The function of law in legal science is set up and is explicative".

This logic of this law is a form of legal reasoning that becomes the main challenge for lawyers and officials law enforcement. Therefore, it is undeniable that in discussing concrete law everyday, we only revolved around the provisions of the articles of a law and not on the logic of existing law in the aforementioned articles**.** **Harris**[9] said that: the rule-systematizing legal logic of science: is comprised of four principles: (1) By exclusion is meant that principle in accordance with legal which science presupposes a determinate number of independent sources for any legilastive legal system, and thereby Identifies the system. (2) By subsumption is meant that principle in accordance with legal roomates science makes hierarchical connection between legal rules and inferior suprior originating in legislative sources. (3) By deregotaion is meant that principle in accordance with legal roomates science rejects a rule, or part of a rule, because of its conflict with another rule in a superior orignating sources. (4). By non-contradiction is meant that principle in accordance with legal roomates science rejects the possibility of describing a legal system in such a way that one could affirm the existence of a duty, and Also the non-existence of a duty, covering the same act -situation on the same occasion.

The use of legal analysis and legal reasoning conducted to assess a norm or rule that has been formulated in a concrete norm, such as legislation. According to **Heide**[10] was quoted as saying by **Shidarta** that: "The legal reasoning was based reasoning problems. The problem comes from the concrete events that occur due

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[1] Edi siswadi, Birokrasi Masa Depan, Menuju Tata Kelola Pemerintahan Yang Efektif dan Prima, Mutiara Press, Bandung, 2012, p. 47

[2] I b i d, p. 34-35

[3] Pengingkaran (disanoval) langkah yang sering menimbulkan paradok, dengan membiarkan atau mempertahankan seperti tidak ada konflik norma. Dalam praktek seringkali konflik norma itu terjadi dalam kaitan asas lex spesialis menghadapi konflik pragmatis atau dalam konflik logika diinterprtasi sebagai pragmatis.

[4] Reinterpretasi dilakukan dengan langkah, pertama menginterpretasi kembali norma yang utama, dengan cara melakukan interpretasi yang lebih fleksibel, kemudian langkah kedua dengan reinterpretasi dengan menginterpretasi norma-norma utama tersebut dalam penerepannya dan menyampingkan notrma yang lain

[5] Pembatalan ada dua jenis yakni abstrak-formal dan praktikal. Pada pembatalan abstrak-formal dilakukan atau merupakan kewenangan dari lembaga khusus, misalnya pengujian UU di Indonesia merupakan dan dilakukan berdasarkan kewenangan Mahkamah Konstitusi (MK), sedangkan pembatalan Peraturan Perundang-undangan di bawah UU dilakukan oleh Mahkamah Agung (MA). Pembatalan praktikal dilakukan dengan tidak menerapkan norma tersebut dalam kasus konkret. Suatu catatan dalam praktek peradilan d Indonesia, dikenal "menyampingkan Peraturan Perundang-undangan; contoh Kasas "Majalah Tempo" hakim PPTUN menyampingkan Peraturan Menteri Penerangan tentang Surat Izin Penebrbitan Pres (SIUPP), karena bertentangan dengan UU Pers.

[6] Pemulihan dalam mempertimbangkan dapat membatalkan suatu ketentuan. Contoh, suatu norma yang unggul, dalam arti "overruled" norm misalnya berkaitan dengan aspek ekonomi, maka sebagai ganti dari pembatalan norma yang kalah itu, maka ditempuh cara pemberian kompensasi sebagai biaya "pemulihan".

[7] Sudikno Mertokusomo, Teori Hukum, Universitas Atma Jaya, Yogyakarta, 2011, p. 45

[8] Sudikono Mertokusumo, ... Op.cit, p. 49

[9] J.W. Harris, Law and Legal Science, An Inquiry into the Concepts Legal Rule and Legal System, Claredon Press, Oxford University Press, walton Street, London, Oxfor OX2 GDP, 1982, p. 10-11

[10] Shidarta, Hukum Penalaran dan Penerapaan Hukum, Buku 1 Akar Filosofis, Genta Publishing, Cetakan Pertama, Yogyakarta, 2013, p. 3346

to the interaction of human interest that one with another human being, both as individuals and social groups. Legal reasoning, therefore, tried to answer the problem by providing a certain verdict. In answer, the decision is always required to ensure the stability and presumption with reference to the system of positive law

Referring to the provisions in the articles regulating the authority of the ministry that responsible for mangrove forests, the Government and Parliament did not comply with Article 5 of Law No. 12 of 2011 making laws and regulations, concerning the "principle of creation", and "the principle of the substance rules and regulations ". The provisions in Article 5 of Law No. 12 of 2011 on the point that: ..., the principle of the establishment of legislation that is good, which includes: a. clarity of purpose; b. institutional or forming appropriate officials; c. correspondence between the types, hierarchy, and substance; d. can be implemented; e. usefulness and beneficient; f. clarity of formulation; and g. openness. While, Article 6 of Law No. 12 of 2011, establishes the principle of the substance of the legislation, namely: a. shelter, b. humanity, c. nationality, d. family, e. kenusantaraan; f. Unity in Diversity; g. justice; h. equality before the law and government; i. order and legal certainty; j. balance, harmony, and alignment. Therefore, in Article 5 and Article 6 of Law No. 12 of 2011 has set the principle of the establishment of legislation, and the principles of the substance of the legislation. Both of these artices is the primary reference for the President and the Parliament in designing a legislation.

In addition to the general principles contained in the general Principles of Good Governance (Asas-asas umum Pemerintahan Yang Baik), and legal principles in the Act No. 12 of 2011 mentioned above, also there has been a violation of Law No. 25 of 2003 on Public Service implementation. The implementation of public services to behave; fair and not discriminatory, carefully, professionally, able with decency, and not deviate to the procedure. In the other hand, also be considered in carrying out the principles of public service above, is the personal guidance of state administration officials in their duty. In the event of deviation from the principles are concerned, the relevant administration officials, it called as a violation of the public service.

Focus to the general principles of good governance, the principles in making laws and regulations, and the approach to legal reasoning by using conflict approach and interpretation of the language norm (grammar), the principles of the right to serve as a baseline for forest management mangroves, namely "Act No. 5 of 1990 on Natural Resources and Ecosystems. One of the principles contained in Law No. 5 year 1990, is: "the usage of natural resources and its ecosystems in a balanced and sustainable". The principle that is the fulcrum for all the principles contained in the legislation relating to mangrove forests. The meaning of the principles of law have been widely discussed, one of the definitions of the legal principle propounded by **Larenz**[1] in his book: *Methoden-lehre der Rechstwissenchaft*, that the based of law is the etic measurements of the reconstruction of law.

Overlapping the authority that occur in the ministry above, then the way to resolve it is referring to the general principles of good governance (AAUPB). According **Cartigny**[2], that the principles of good governance (AAUPB) are unwritten law principles that must be considered by the corporation or the Administrative Officer in performing legal actions assessed later by the Administrative Judge. According to **Hakim**[3], this definition clearly implies that government officials in addition to bound the provisions of any written law or rule, is also bound to the principles of law are not written, the general principles of good governance, developed in judicial practice (jurisprudence) and administrative law doctrine, Therefore, the ministry as a government institution that is driven by the Minister, the position of minister of a state administrative official (TUN), which is subject to the laws and regulations associated with the TUN.

The Government that represented by the President and the Parliament has made Law No. 9 of 2004 concerning the State Administrative Court, Law No. 28 of 1999 on the State management Clean and Free from Corruption and Nepotism. Both of these regulations have established the principle of legal certainty (principle of security) is the first principle which exists in principles relating to the administration of the state. Provisions in general terms, it is stated that, the principle of legal certainty is a principle in law that prioritizes state foundation of legislation, decency, and fairness in every policy of state officials. According to **Sibuea** that: The principle of legal certainty is a principle that aims to respect the rights that have been owned by a person or entity based on the decisions of state administration officials. In legal certainty, a decision the government or the state administration officials have given citizens the right to a person will not be revoked by the agency or administrative authorities of the country concerned, although the decision was to have defects or deficiencies. If the rights are owned by a person may be revoked at any time by an institution or official which entitles it, there are a variety of possible losses. First, the owner of the rights, that individual can not enjoy their rights safe and secure. Second, the owner of the rights would losses if their rights may be revoked at any time because there is

[1] H.J. M. Gigema Hommes, dalam, 0. Notohamidjojo, Demi Keadilan dan Kemanusiaan, BPK Gunung Mulia, Jakarta, 1975, p. 49
[2] G.J.M. Cartigny, dalam Olden Bidara, Asas-Asas Umum Pemerintahan yang Baik dalam Teori dan Praktek Pemerintahan, dalam Lukman Hakim, Filosofi Kewenangan Organ dan Lembaga Daerah, Perspektif Teori Otonomi & Dsesentralisasi Dalam Penyelenggaraan Pemerintahan Negara Hukum Dan Kekuasaan, Setara Press, Malang, 2012, p. 158
[3] I b i d, h. 2010, p. 159-160

no legal certainty. Third, public trust in the government will be lost because there is no consistency in the actions of the government or the state administration officials.

Examining the views of **Sibuea** above, is understanding the principle of legal certainty of the civil aspect. Emphasis aspect of the principle of legal certainty, which focuses on the interests of the individual, so that if the act of administration officials, resulting in losses to someone, then that person can file a lawsuit, as the implementation of the principle of legal certainty. On the other hand, **Sibuea**[1] that: act carefully, requires that institution or officials of state administration always act carefully so as not to cause harm to the citizens. The residents losses can occur for the following reasons: (1) a loss may arise due to the state institution or administrative official do an action; (2) The loss can arise due to the state administrative officials or institution are not doing anything was supposed to do.

To test the entire governance that has been made by the local government as the host of the regional administration, the point of departure is the implementation, in accordance with the principles of good governance or not. The tests on local government programs have been recognized and adopted by Law No. 25 of 2004 on National Development Planning System (State Gazette of the Republic of Indonesia Year 2004 Number 104, Supplement to State Gazette of the Republic of Indonesia Number 4421). The provisions in Article 2 paragraph (3) of Act No. 25 of 2004 declared that the system of national development planning organized by the General Principles of host State .In the explanation of Article 2 paragraph (3) of this, it is stated that, what is meant by the General Principles of State Officials: 1. The principle of legal certainty; 2. The principle of the orderly delivery of the country; 3. The principle of public interest; 4. The principle of openness; 5 principle of proportional; 6. The principle of professional and 7. The accountability principle.

Referring to the general principles which make the benchmark in holding local government public service, if it does not heed these principles, will describe local governments are less well in carrying out these duties. According to **Hadjon**[2], that: "from the standpoint of administrative law, the concept of good governanance relating to the execution of the function to organize activities in the public interest. Good Governance closes to the implementation of the basic tasks of government, namely: 1. to guarantee the security of all persons and society itself. 2. Manage an effective framework for the public sector, the private sector and civil society. 3. Helping forward in economic focus, social, and other culture as the society interest.

The mplementation of development is a manifestation of the realization of government purposes in managing the country for the sake of nation and state of Indonesia. The development program as a governmental duty, which has been delegated to local government, is the authority of government action that comes from the legislation. **Hadjon** said that, each authority is limited by the material (substance), space (territory: locus) and time (tempus). Beyond the boundaries of an act of government was an act without authority (onbevoegdheid). Action without authority (onbevoegdheid) could constitute rationare onbevoegdheid materiae, onbevoegdheid rationare loci (region), and onbevoegdheid rationare materiae temporis (time). The scope of the legality of acts of government include: authority, procedure and substance.

This decentralization concept, the level of implementation of constitutional transformed because of the authority arising from the Constitution of the Republic of Indonesia Year 1945 as legislation highest and serves as guidelines for legislation thereunder. Be concerned with the local authorities in managing natural resources, especially mangrove forests is the authority that was born from the concept of authority. **Maarseveen** say seems to use the two terms in explaining this concept, when analyzing the Constitution as a *document van attribute*, use the term of power whereas in analyzing the "delegation" to use the term of authority.He also suggests there are two concepts of power, the power that was associated with the law called *blotemacht* or in English means neck power. On the other hand, based on the rule is called authority[3].

E. CONCLUSIONS

Starting from the overlapping of authorities who manage the ministry institutional mangrove forests in Indonesia, then this is the trigger destruction of mangrove forests. This overlapping authority, poses egosime sectoral, sectoral selfish cause a waiver of responsibility, ignored the impact on legal principles contained in the legislation. Ignorant of the principles of law and principles of good governance (AAUPB), impact on violations of the duties and responsibilities of officers authorized as state officials. Therefore, the solution offered is: do the institutional reconstruction of the ministries related to the management of mangrove forests, the "Ministry of Natural Resources". This ministry, including in the affairs of the Central Government, together with financial affairs, Legal affairs and human rights, defense and security affairs and foreign affairs. The existence of the Ministry of Environment and Forestry, the Ministry of Marine and Fisheries, and the Ministry of Agrarian and

[1] *I b i d*, p. 2010, p. 159-160
[2] Philipus M. Hadjon, Hukum Administrasi Sebagai Instrumen Hukum untuk Mewujudkan Good Governance, Hukum Administrasi dan Good Governance, Penerbit Universitas Trisakti, Jakarta, 2010, h. 9
[3] I b i d, h.74

Spatial and the Ministry of Home affairs, which is associated with the business of mangrove forests used as the Directorate General[1].

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[1] Supriadi, …op.cit, h. 348-349

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