

# Accountability of Management System of State Finances in Order to Actualize the Legal Certainty

Jailani, Syamsir, Ilham Khalik<sup>1</sup>

## Abstract

The opinion of developing integrated management system of state finances has to be translated and to be understood concretely in its applying, there for, it's needed deeply to arrange the opinion of integrated management system of state finances, in order that every institutions can do the best both in main task or fuction and have ability in tune to complete each other, without colliding with regulation and exceeding of each institution authority. Based on its thought, rightly management system of state finances has to be attentined seriously with a more strategic and focused task than other state task. Besides the purpose to create a good system in management of state finances, the importance of accountability management system of state finances has a purpose to realize good governance. This issue, connected with basic-essential of institution filoshophy and task of official who manage state finances that has purpose to increase welfare and to realize good governance.

## INTRODUCTION

Since begining of state finance-pack applied by starting of launching The Act Number 17 of 2003 about State Finance, The Act Number 1 of 2004 about State Treasury, The Act Number 15 of 2004 about Examination, management and resposibility of state finance, and than published of The Act Number 15 of 2006 about The Audit Board of The Republic Indonesia (BPK), bringing hopes and certainty in management, examination and responsibility of Indonesian finances, Its called like this, because of this finance role pack can answer the demand of examination fuction in creating transparancy and accountability both in management and responsibility of state finances, such as<sup>2</sup>:

- 1) The definition of state finances as an object from examination of BPK clearly has been regulated.
- 2) Arranging of examination fuction and controlling inter-audit board and control and supervision board, including the purpose and scope of each task, clearly has been regulated.
- 3) The government has applied Standard of Government Accountance on 20005.
- 4) The periode of sending finance report from government to BPK and DPR, and periode of examination of BPK clearly has been regulated.
- 5) The following up and utilization of finding-result BPK by government and DPR, clearly has been regulated.
- 6) The following up of examination and punishment if finding-result did not be held as well as, clearly has been regulated.

Before publishing its finance-pack, management of state finances regulated and connected with regulation of ICW (indonesische comptabiliteit wet) or the treasury role that applied by Hindia Government on 1864 and acted for the first on January 1st 1967. When ICW was be planned, constitution of Nederlands 1848 just had decided that the parlement has a authority to take apart in managing government and to take over government right that authorized before by king as eksecutive head. The constitution contain things as following below<sup>3</sup>:

1. Regulations to manage government;
2. Regulations of money;
3. The way to hold management and resposibility of colony.

Seen from development history of ICW firstly it was be planned by Panud Minister on 1855, than for twice it was submitted by Rochussen Minister on 1858, and for third time it was submitted by Fransan van Putte Minister on 1863 and acted as rule on April 24th 1866, briefly at third plan that acted as rule since Januari 1st 1867<sup>4</sup>, the regulated subjects on the rule, those were:

1. The regular budget and capital budget, appointed once a year;
2. The remaining budget that still be after budget closed, has to be appointed by rule;
3. Governor general is public manager of state finances;
4. Supervision to state finances is held by Algemeene Rekenkamer (Audit Board) who appointed by King;
6. Hindia's Supportings for Nederlands (Nederlends Indis Bijtrage) keep going on;

<sup>1</sup> The authors are students of Doctoral Program of Law, at Faculty Law, Jambi University

<sup>2</sup> Periksa lebih lanjut Penjelasan Umum Undang-Undang No. 17 Tahun 2003 tentang Keuangan Negara LN Tahun 2003 Nomor 47 TLN Nomor 4286

<sup>3</sup> M. Subagio, Hukum Keuangan Negara, Cetakan kedua, CV. Rajawali, Jakarta, 1991. hal. 21

<sup>4</sup> Ibid. hal 23

7. Containing the ways to responsible management of state finances, that addressed to Algemeene Rekerkamer;
8. Containing rule about claims for compensation that addressed to official and to treasure who has make state incur loss.

ICW has faced alot of changes, those were before Indonesia getting a freedom and after getting a freedom, so that it could be understood that The Constitution of 1945 article 23 section (2), article 23A, article 23F section (1), all of those contain rules that applied in Nederlands on 1867, just only redactional was changed, but it has similar mean in Indonesian Language, for example acted rule in Constitution 1945 chapter VIII about Finances.

Article 1 section 1 the Act Number 17 of 2003 about State Finances explains that the meaning of state finances is all of right and duties of state that can be appraised by money, and tools that can be as related state assets with its rights and duties. For more understanding about state finances definition and scope of state finances can be seen from object matter, subject, process, and goal, from object matter, the meaning of state finances contains all of rights and duties that can be appraised by money, including policy and fiscal programme, moneter and management of separated state properties, and all of things both money and tools that can be as state assets, from subject matter, the meaning of state finances contains all of objects as told above as state asset, or all of managed objects by central government, local government, state corporation and local corporation, and other institution that has a relationship with state finances, which keeps follow and hold basic rule in managing its state finances, those are: 1) The accountability that result oriented; 2) Profesionality; 3) Proporsionalitiy; 4) Transparancy in managing local finances, and: 5) Examination of finances by independent audit board or institution.<sup>1</sup>

Refers to above issue, the harmonic governance with reformation agendas is a must and a requirement. The government as an organization has important role for keeping stability in citizen complexity on every institutional changes, as an effort for increasing public prosperity. The role held by tool or state asset or other institutions that can support to manage the state. The established organization will be assessed as organization that has no function effectively if can not resolve any problems. Even if created (by state) politic institution, law, or social can not solve and lessen the problems and preasures that arising in change, so directly the government can increase or widen role in statehood or social life.

The thought like this has a meaning revitalitation of its own state institution role and function has to be a transformation policy to return the efectivity and sharpness of task and function. In accountability prespective, the management of state finances and empowering presidential system is held throught incrising effectivity of internal audit system that contains effective of bussines process, risk management and internal audit. In this condition, the audit board deeply has central role in state internal supervision. Meanwhile, state finances regulation that regulated on brief regulation in The Constituion of 1945, has a yuridic problem to define the state finances, so that opening different interpretation, but in frame of law theory, the clause of article 6 section 1 The Act Number 17 of 2003 about State Finances explains that the president as a government head has authority to manage the state finances as part of government authority, its managing of the state finances is delegated to minister or head of institution that use regular budget and to head of local government, but unfortunately, the regulation does not ascertain giving authority to president through government internal auditor to examine managing of state finances, even though basicly prisedent has to hold responsible its managing the state finances to people who has elected him<sup>2</sup>, by its representation system of responsibility has to be held throught Legislative Assembly as implementation of people independence in state finances.

In accordance with exanination of state finances, government gives more objective authority and higher authority to audit board or examination institution as like The Audit and Development Board of The Republic Indonesia in order to be more useful and more successful. This matter mentioned, base on the internal audit board under ministry is considered that it has no independency either to other unit in Ministry of Finance or to other ministry, even though independency of audit board to examined institution determaines objectivity level of examination result too, therefore the government need to place official position of internal audit higher that will make indepency of all ministry including both ministry of finance and non-ministerial ministry<sup>3</sup>.

The examination matter of state finances issue gets critics from experts and finance observers by bringing out theme about corruption cases on vaious of government instanstion from central level till local level. This phenomenon is very worrying for Indonesian people who is getting tranformation toward the democraton of strong state, modern, and dignified, therefore, all of people need to strive for preventing and fighting mental corruption at all of level. It's according with managing the state finance on all ministry and

<sup>1</sup> Muhammad Djumhana, Pengantar Hukum Keuangan Daerah, PT. Cintra Aditya Bakti, Bandung, 2007, hlm, 54

<sup>2</sup> Adrian sutedi, Pengelolaan Keuangan Negara Dengan Sistem Terpadu, Rineka Cipta, Jakarta, 2001, hal. 187

<sup>3</sup> Arifin P. Soeria Atmadja, Keuangan Publik dalam Perspektif Hukum, Raja Grafindo Persada, Jakarta, 2009. hal 251

institution that has to be disciplined in order that state-loss cases and corruption can be prevented and not to be happened again<sup>1</sup>. In efforting for realizing good governance, clean and responsibility, the supervision duty has important role. In detail, it's can be seen and observed in The Act Number 15 of 2004 about Examination of Management and responsibility of State Finances. Technicly, the supervision duty of state finance can be seen too base on main task and fuction of audit boards of state finances, both internal audit and external audit.

In theory, audit and supervision mechanism of state finances can be separated on two issue, those are internal audit and eksternal audit. Usually, internal audit contains supervision audit (built in control), bureaucracy controlling and controlling throung internal audit board. At supervison controlling or head controlling to all employees at each supporting unit, the head has a duty to control state finances toward all employees under his command<sup>2</sup>. With this gradual supervision hoped can find, know and prevent earlier all deviation (early warning system)<sup>3</sup>.

If reviewing formulation of The Constitution 1945 about controlling institution or supervision of state finance, basicly there is no more rule and regulation that regulated a position, criteria, task and authority in establishing controlling and examination of state finance, in other words, the containing subject about controlling institution of state finances in the regulation is more little bit than other institution regulation<sup>4</sup>, even although there is little bit regulation, but controlling institution of state finance as usually called The Audit Board of The Republic Indonesia has a duty to examine the responsibility of state finances, therefore in philosophy, its rule as a accomodated duty in The Constitution 1945 base on character as supreme audit.<sup>5</sup>

Base on its filosofy thought, the imporatance of accountability of management system of state finances besides has a purpose to create right system in managing of state finances, it has a purpose too to realize good governance. It related with the essential of basic philosophy of state finances institution. Base on it, the existance of institution of state finances, both internal or external, which is empowered by regulation, should be able to be a shield that can prevent developing of deviation in finances management of all government level. For answering, it's needed more research in order to disappear subjective impression. But the more important than answering the questions above is how to inisiatie integrative finance controlling system, merges comprehensively among institution of controlling of state finances each other.<sup>6</sup>

## ISSUES

Base on argumentation in introduction above, so the issues can be difined as following below:

1. How is the effort to develop acoountability system of management of state finances in order to realize legal certainty for establishing clean governance without corruption, collusion and nepotism?
2. Can accountability management system of state finances realize equitable legal certainty in clean governace system, without corroption, collusion and nepotism?

## DISCUSSION

### 1. Acoountability of Management of State Finances

Seem from terminology, the meaning of accountability basicly come from English terminology, it is accountability which has meaning as condition for held responsible, condition can asked responsibility. According to The Oxford Advance Learner's Dictionary, accountability is required or expected to give an explanation for one's action.<sup>7</sup> In other words, can be held responsible in accordance with applied regulation. Accountability matter always can be asked and blamed, and it has consequence in law, in accountability is contained a duty to serve and report all programme, especially in administration of financial sector to higher level parties.

Acoountability closely related with transparation, because something is called accountability if there is no deliberate covered things. In J.B. Ghartey's opinion, accountability addressed to find the answer from questions about service of what, who, whom, whose, which and how.<sup>8</sup>

In Ledvina V. Carino's opinion, accountability as an programme evolution that held by someone either

<sup>1</sup> Anonim, *Harian Kompas* edisi 21 Mai 2012

<sup>2</sup> Anwar Nasution, *Sistem Pengawasan Keuangan Negara*, Sekjen Badan Pemeriksa Keuangan Negara RI, Jakarta, 2009, hal. 201

<sup>3</sup> *Ibid*, hal. 221

<sup>4</sup> Arifin P. Soeria Atmadja, *Op.Cit.*, hal 268

<sup>5</sup> *Ibid*, hal. 267

<sup>6</sup> Sughandi Tanubrata, *Pengawasan Keuangan Negara Berbasis Kinerja*, Alumni, Bandung, 2008, hal. 134

<sup>7</sup> Gary Seidman, *The Origins of Accountability: Everything I Know About the Sovereign's Immunity, I Learned from King Henry III*". *St. Louis University Law Journal* , 2009, hal. 393-480.

<sup>8</sup> J.B. Ghartey dalam Syamsul Hadi, *Akuntabilitas Penyelenggaraan Pemerintahan yang Berkeadilan*, *Jurnal Ilmu Pemerintahan*, Ghothe Institut Press, Bogor, 2010, hal. 30

still be in its authority or has been out of its responsibility and authority.<sup>1</sup> Therefore in every opportunities the government official absolutely has to pay attention to environment especially related with its behaviour.

There are four dimensions that can separated accountability with the others, those are who has to hold accountability, to whom has it held accountability; what is used standart for assesing accountability; and its own accountability value.<sup>2</sup> Tokyo declaration about guidance of public accountability sets definition that accountability as personal duties or the authority duties that trusted to manage public resources dan all about it, for answering all things about fiscal responsibility, management and programme.<sup>3</sup>

The provisions of article 7 The Act Number 28 of 1999 about State Administration Free of Corruption, Collusion and Nepotism explains the meaning of “The Principle of Accountability” is the principle deciding that every programme and the final result of state administrators programme has to be held responsible to the people or public as holder highest of state sovereignty, in accordance with applicable rule and regulation. Therefore, someone who hold the mandate should be held accountable or responsible to the people who has given the mandate.

Conceptually in various literature, accountability could be divided into: First; Finances accountability. Finances accountability as responsibility regarding the integrity of the financial, appointment and obedience to regulation. The goal of its responsibility is served financial report and applicable regulation that contains receiving, saving and spending money by government.

Second; Benefits Accountability. Basically, benefits accountability give attention to the result of government programme. In this case, all of government officials has been seen having ability to answer goal reached by caring to its costs and benefits and not only abedience to hierarchy neccecities and procedures.<sup>4</sup> The efectivity that should be reached not only be in form of output but also more important is the efectivity of outcome prespektif. The benefits accountability almost the same with programme accountability.

Third; Procedural Accountability. Procedural accountability as responsible regarding has the decision procedure and implementation of the policy considered morality issues, ethics, legal certainty, and obedience to the political decision for reaching set final goal. The definition of procedural accountability almost the same with process accountability.

Base on these description, so accountability of government pereformance is a duty to give responsibility or to anwer and explain performance and action of personal/corporation/head of organization to the parties who has right or authority for asking explanation or asking responsibility. In accordance with this definition, so all instantions, board and state institutions in central an local, base on each main task should understand the scope of each accountabilities, because asked accountability contains the success and failure in its instanstion mission. Regarding with managing state finances, one institution or official who manage the finance, will be called having a accountability if institution or official has work ethics appropriate with regulations.

In The Act Number 17 of 2003 about The State Finances as organic regulation for realizing more all constituion regarding the state finances, distinguishing between state money and state finances. The state finances contains the state right to take a tax, to spend and distribute money, to take a loan, to establish public seviles of state government and to pay the third party billing; also state wealth/local wealth that managed by its self or by other party in form of money, securities, credits, goods and other right that can be appraised by money, including separeted wealth on state corporation/local corporation; wealth other party under government authority in order to establish government task and/or public interest; wealth other party that gotten by using given facilities by government;

The rule of The Act Number 31 of 1999 about The Eradication of Corruption, which it has been amended by The Act Number 20 of 2001 about Amandement upon The Act Number 31 of 1999 about The Eradication of Corruption, uses the same formulation of state finances with the formulation on The Act Number 17 of 2003 about The State Finances. Widening Principle of state finances scope on The Act Number 31 of 1999 jo. The Act Number 20 of 2001 and The Act Number 17 of 2003, discribed that the state finances not only just the money, APBN (state government budget) and everything under direct control of government, but the right that appraised by money. In explanation of The Act Number 31 of 1999 jo. The Act Number 20 of 2001 told that the state finances is state wealth in every form at all, either separated or not under control of government or separated in corporation. Besides that, included into the state finances is rights and duties that arised because: under controlling, managing and responsibility of officials of state instituion both in central

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<sup>1</sup> Ledvina V. Carino dalam Ibid, hal. 31

<sup>2</sup> Ibid

<sup>3</sup> Roberts Jennnifer T. Accountability in Athenian Government. Madison, WI: University of Wisconsin Press (terjemahan Doar Sitinjak), Ebooks, Yogyakarta, 2002, hal. 58

<sup>4</sup> Hendra Karianga, Partisipasi Masyarakat Dalam Pengelolaan Keuangan Daerah, PT Alumni, Bandung, 2011

level and local level; and under controlling, managing and responsibility of state-owned enterprises/ local-owned enterprises, foundations, corporations and companies that including state capital or companies that including the third party capital base on the state agreement. On Government Regulation Number 39 of 2007 about The Managing State/Local Finances, told that state money is separated money by state general treasurer. Its mean that not all state finances is state money. State capital addition both through state-owned enterprises Company and state-owned enterprises Public company as corporation is not state money even called state finances. The reason is, although the first capital has included, that is not state money anymore, but as separated state wealth. The usage of mentioned fund should be under private law or The Act Number 19 of 2003 about The State-owned Enterprises, not in regulation about APBN (State Government Budget) submit under public law.

The management of state finances as a programme that will be influence prosperity enhancement and public prosperity and Indonesia people. The duty of central government and local government is reporting financial report as accountability of management of state/local finances.<sup>1</sup> Recently, there is new paradigm about management of state finances. Its paradigm such as increasing people awareness having good government, clean, accountable, and transparency in managing state finances.

Direct or indirect, the government hold authority of management of state finances as part of government authority. A part of its authority is authorized both to Minister of Finance as fiscal manager and vice of government in belonging separated state wealth, and to Minister/Leader of institution as budget user/user of tools of state ministry/institution leaded. In accordance with spirit of decentralisation in government administration as its president authority is authorized to governor/regent/mayor as manager of state finances. Similarly, for reaching stability of rupiah value, setting and establishing monetary policy and managing and keeping continuity of payment system is done by central bank.<sup>2</sup>

In rule of article 4 section (1) The Act Number 19 of 2003 about The State-owned enterprises, explained that capital of company come from separated state money/wealth. In law concept of company, separating state wealth that included into capital of company is called as capital addition. In public law concept, state capital addition is separating state wealth. For this, needed administration procedures in accordance with rule and regulation of management of state wealth.

In article 1 section 7 of Government Regulation Number 44 of 2005 about The ways of addition and managing state capital on State owned enterprises and incorporated company: "Addition of state capital is separating of state wealth from state government budget or determination of company reserves or other sources to become as capital of state-owned enterprises and/or other incorporated company, and managed in corporate way.

The capital deposit both when established and when capital addition of incorporated company is the addition that can be done in the form of buying stocks. The consequence of its stock, so when state including its capital into company, it should be done through "buying stocks". In accordance with the rule, its separate state wealth will become company wealth, it will not become state wealth anymore. Since that time, position of state will change as the stock holder that having same position with the other stock holder. In this condition, the state seem as authority that having right absolutely upon its wealth base on regulation. The confusion will be arise at condition when the state should be not having public authority on managing private corporation that submit to private law. The importance in distinguishing between public law and private law in this case is about distinguishing of law relationship in public law and private law. Law relationship in private law has been horizontal and equal, whereas law relationship in public law has been vertical and has not been equal.<sup>3</sup>

In law theory, it can be distinguished between *contra norm* (*contra legem*) and *incompatibility norm* (*praepria*). The lower regulation cannot organize a law norm that have contradiction with organized law norm by the higher regulation. But, if organized subject is not contradiction in *contra legem* meaning, but just *incompatibility* in *praepria* meaning with set subject in the higher regulation, so it is still alright if seen from law theory.<sup>4</sup> If there is different organizing between one regulation with the other, so its understanding can be related with social sector or theology of its regulation subjects, namely recent condition on people's purposes. If the utilization purposes (*doelmatigheid*) is same, the differences of applied technique when it does not disturb to the reaching process of main goal or purpose, so its regulation can be received as legal document in definition of *incompatibility norm* above.<sup>5</sup>

<sup>1</sup> Brian Binder, *Pengelolaan Keuangan Pemerintah Daerah*, Penerbit UI Press, Jakarta, 2009, hal 83

<sup>2</sup> *Ibid*, 85

<sup>3</sup> Gunawan Widjaya, *Seri Keuangan Publik; Pengelolaan Harta Kekayaan Negara Suatu Tujuan Yuridis*, PT. Raja Grafindo Persada, Jakarta, 2008

<sup>4</sup> E. Utrecht, *Pengantar Dalam Hukum Indonesia*, Penerbit Ichtiar Baru, Jakarta, 2003, hal. 262-263

<sup>5</sup> *Ibid*

## 2. The Legal Responsibility of Management of The State Finances

The term of responsibility in law dictionary is responsibility and liability. In law dictionary Henry Campbell Black in Balck's Law Distionary, definition of responsibility is responsibility in public, that's called by just responsibility, while responsibility in law is called by liability. Liability is meaning as condition of being responsible for a possible or actual loss, penalty, evil, expense or burden, condition which creates a duty to performact immediately or in the future.<sup>1</sup> In practice definition and practice usage, the term liability refers to legal responsibility, namely the responsible upon made faults by law subject. While the term of responsibility refers to politic responsibility or law duty.<sup>2</sup> Regarding with responsibility of officials, in Kranenburg's opinion dan Vegtig's opinion, there are two underlying theories, these are:<sup>3</sup>

- a. Fautes de personalles theory, the theory explains that the loss to third party is imposed to officials which is caused their action arising the loss. In this theory, responsibility addressed to human as personal.
- b. Fautes de services theory, the theory explain tha the loss to third party is imposed to instantiation of its officials. According to this theory, responsibility is imposed to position. In implementation, the arised loss adjusted too is the made fault as heavy fault or light fault, which heavy and light of faults makes implication to responsibility to be borne.

Whereas, in detail Hans Kelsen explains theory about liability in law. It is a concept related with duty of legal responsibility (responsibility) meaning concepts of legal liability (liability). In law someone called has been responsible for a certain action is that he or she can be punished in the opposite action case. usually, in a case of the punished sanction to person (deliquent) is caused his owned action that makes the person has to hold responsible.<sup>4</sup> Next, Hans Kelsen tell that the failure for making a prudent that required by law, it is called "oversight" (negligence); and usually the oversight is seen as other one kind of "mistake" (culpa), even although it is not as hard as fulfilled mistakes because prevent and require, with or without malice, the dangerous effect.<sup>5</sup>

Hans Kelsen devides liability into four kinds, these are:

- a. Personal liability is one person holds responsibility for made infraction by its self;
- b. Collective liability means that one person holds for a made infraction by other person;
- c. Liability bases on faults, its mean that one person holds responsible for made infraction deliberately and estimated by making loss motive;
- d. Absoulutely liability, its mean that one person holds responsible for made infraction because undeliberately and unestimated.<sup>6</sup>

The term that refers to liability in law dictionary, is liability and responsibility. Liability as wide law term refering almost all risk characters or responsible, certainly, depending or perhaps containing all right and duty characters actually or petencially as like loss, threat, crime, cost or condition that creats task to implement regulation. Responsibility means something that can held responsible upon a duty, and including decision, skill, ability and proficiency containing too duties to hold responsible of held regulation.

In theory, the principles of liability in law, can devided into following below:<sup>7</sup>

First; Liability principle based on fault element (fault liability atau liability based on fault), its is the common principle applied in criminal law and civil law. In Code of Civil Law (KUHPperdata), especially article 1365, 1366, and 1367, this principle was held firmly. This principle asserts, someone can be asked the liability in law if there is made fault factor. Article 1365 of Code of Civil Law (KUHPperdata) usually was called as article of act against the law, required contained of main four, those are: a) there is action; b) there is fault factor; c) there is losses; d) there is causalitas relationship between fault and loss.

While the meaning of fault is element that is contrary to law. The law definition is not only in contrary to law but also propriety and decency on people.

Second; Presumption Principle to hold liable; This principle expresses that defendant is always considered holding liable (presumption of liability principle), untill can be proved that defendant has no faults. The worf of "considered" on principle of "presumption of liability" is important, because there is possibility

<sup>1</sup> Henry Campbell Black, Black's Law Dictionary, St Paul Minn West Publishing. Co, Boston, 1991, hal 914.

<sup>2</sup> E. Utrecht, Pengantar Dalam Hukum Indonesia, Penerbit Ichtiar Baru, Jakarta, 2003, hal. 262-263

<sup>3</sup> Ibid

<sup>4</sup> Hans Kelsen, Teori Hans Kelsen Tentang Hukum, terjemahan Jimly Asshiddiqie dan M. Ali Safa'at, Konstitusi Press, Jakarta, 2012, hal. 56

<sup>5</sup> Hans Kelsen, General Theory Of Law and State, Teori Umum Hukum dan Negara, Dasar-dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Deskriptif-Empirik, terjemahan Somardi, BEE Media Indonesia, Jakarta, 2007, hal. 83

<sup>6</sup> Hans Kelsen, Teori Hukum Murni, terjemahan Raisul Mutaqien, Nuansa & Nusamedia, Bandung, 2006, hal. 140

<sup>7</sup> Shidarta, Hukum Perlindungan Konsumen Indonesia, Edisi Revisi, Gramedia Widiasarana Indonesia, Jakarta, 2006, hal. 73-79

that defendant breaks loose from liability, it is in condition when defendant can prove that he has “taken” all required actions for avoiding the loss.<sup>1</sup> In this principle, the burden of proof is on defendant. In this case, it seems the burden of proof reversed (omkering van bewijslast). Of course this is in contrary to law principle of presumption of innocence. But if applied to customer case, it will seem this principle can be relevant. If this theory used, so the parties who has to prove the fault is to sued businesses. Defendant should attend the proofs that he is not at fault. But customer can not file the suit at will. Position of customer as plaintiff is always opened to be sued back by businesses, if he fails to show and find defendant’s faults.

Third; Presumption Principle to not hold liable; This principle is contrary from the second principle, presumption Principle to not hold liable just only known in scope of very limited customer transaction, the sample of this this principle implementation is on the transport law. Loss or damage on cabin baggage or hand luggage as usually brought and under control of passenger (customer) is liability of the passenger. In this case, carrier (bussinessmen) can not asked the liability at all. The burden parties to prove the fault is on the customer.

Fourth; Strict liability principle, this principle is often likened with absolute liability. Even though, there are experts that distinguish two terms above. There is opinion that expresses, strict liability is liability principle that define the fault is not determining factor. But there are exceptions which allow to get off from liability, for example on condition of force majeure. In contrary, absolute liability is liability principle without the faults and no exeptions. In E. Suherman’s opinion, strict liability equated with absolute liability, in this principle there in no possibility to get off from liability, except if the arised loss caused by the fault of the injured party, the liability is absolutely.<sup>2</sup>

Fifth; Limitation of liability principle, this principle is highly favored by bussinessmen for included as exoneration clause of standard agreements made. On article 19 section (1) The Act Number 8 of 1999 about The Customer Protection, specified that bussinessmen has liability for damages, defilement and/or customer loss as effect of consuming goods and/or services produced. In relation with implementation of the notary office, so required professional liability related with given services. In Komar Kantaatmaja’s opinion, professional liability is legal liability related with profesional services given to the clien. This professional liability can arise because of providers of professional services does not fulfill the agreement they agree with their clien, or effect from default of its providers of professional services, resulting occurrence of acting against the law or an unlawful act.<sup>3</sup>

The responsibility as a reflection of human behaviour. The performance of human behaviour related with its soul control, as a part of intellectual consideration or its mentality. When a decision has been decided or rejected, it has been a part of responsibility and consequences of its choice always. There is no reason why that should be taken and left. The decision is considered as led decision by its awareness and intellectuality.<sup>4</sup> Responsibility in law meaning is the truly responsible related with righ and duty, it does not mean responsibility related with a moment of mental turmoil or something unconscious its effect. In services, the professional hold responsible to his self and to the people. Holding responsible to his self means he works on moral integrity, intellectual and professional as part of his life. In giving services as part of his life. In giving services, a professional always keeps high idea of profession suitable with liability claims of his conscience.<sup>5</sup>

Responsibility to the people means always ready to give services as well as possible without discriminating between paid services of free services, and producing excellent services that give a positive impact for the people. The given services is not only for profit oriented but also for dedication to fellow human. The responsibility dares too to bear the risk that arise as services impact. The oversight in doing the duty give rise to dangerous impact or perhaps as boomerang for self, other person and sinned against to God.<sup>6</sup>

### **3. The legal certainty of the management of state finances**

In theory, the regulations as a system that doesn not want and does not correct the contrary between its factors and parts. The regulation is related each other and as part of system, namely system of national law. The need of harmonic and integrated regulations is most required for realizing orderliness, ensuring of certainty and legal protection. Practicely, the limited of the interest holder capacity, including law enforcer, in unerstanding and interpreting the regulation, get impact to using of uneffective-rule. Based on this thought, the first step should be taken is making harmonic of interpretation system and law/rule understanding to parts of regulations for

<sup>1</sup> E. Suherman, *Masalah Tanggung Jawab Pada Charter Pesawat Udara Dan Beberapa Masalah Lain Dalam Bidang Penerbangan (Kumpulan Karangan)*, Cet. II, Alumni, Bandung, 1979, hal. 21

<sup>2</sup> *Ibid*, hal. 23

<sup>3</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia*, Edisi Revisi, Gramedia Widiasarana Indonesia, Jakarta, 2006, hal. 82

<sup>4</sup> Masyhur Efendi, *Dimensi/Dinamika Hak Asasi Manusia Dalam Hukum Nasional Dan Internasional*, Ghalia Indonesia, Jakarta, 1994, hal. 121

<sup>5</sup> E. Sumaryono, *Etika Profesi Hukum: Norma-Norma Bagi Penegak Hukum*, Kanisius, Yogyakarta, 1995, hal. 147.

<sup>6</sup> Abdulkadir Muhamad, *Etika Profesi Hukum*, Penerbit Citra Aditya Bakti, Bandung, 2001, hal. 60

realizing and ensuring the legal certainty.

The law as tool for realizing law supremacy should be defined that the law including law enforcer, has to be given a place as main instrument that will guide, keep and controlling government system. The law enforcing has to be done systematically, directional, and based on right concept, and high integrity. Beside that, The law enforcing should be addressed to increase the guarantee and legal certainty on people, so the justice and legal protection can be felt indeed by people.<sup>1</sup>

Government state system that told on The Constitution of 1945 that “Indonesia is legal country”. Therefore in The Constitution of 1945 told the law supremacy in The Republik of Indonesia. In other words, The Constitution of 1945 has put the law on supreme position and important in constitutional system and government of Indonesia. With The Constitution of 1945 could be said, in constitutional there is legal guarantee that given not only to native citizen of Indonesia but also to all of Indonesian people.

The law supremacy (rule of law) contains mean that the law is highest norm for setting social life, life of nation and life of state. Therefore, the using of authority to make constitutional life running well and government actions should be on rule of law. The legal country principle seen from law implementation aspect has mean all government actions and people actions has to be all the same always with applied and positive law. The system of national law contains all of formal decision results written from the authority that common binding. The relationship of regulation in one system of national law is one complex unity that such as related part one another. Therefore, the regulation which as one system related globally with law system in frame of national law system. The harmonic relationship in national law system, consistence and under principle, bases on Pancasila and sources from The Constitution of 1945.

On other side, there is different opinion regarding with separating between public law and private law. Van Apeldoorn separates law public and private law based on containing of rule of law. It's said, that basically the containing of rule of law is setting special interest and common interest. The special interests is set on private law, than common interests is set in public law.<sup>2</sup> The consistency of implementation of rule of law should be supported by strict separating between public law and private law. Either implementation consistency or separating of law will influence to legal certainty.

The legal forming/establishment is arranging common regulation that globally applied, for everyone. The legal establishment is done by the regulation former. The legal in regulation form as instrument of national system law made through a social process will get public trust, as something hoped will give orderliness and justice for social life. Its consequence, the law in regulation form should have a credibility, and the credibility only can be owned if the forming of regulation is able to show a flow consistency. The inconsistent of regulation forming will not make the people want to hold it as rule tools that sets people life. The consistency in this legal establishment can be called as legal certainty. The consistency is needed as guidance for daily human behaviour with the other human. The consistency in legal establishment is not matter that can be just in the way it self, so it can be a risk that makes the legal establishment in inconsistency. It's said by Rawls that the inconsistency legal establishment should be consistence in its inconsistency, “More over, even where laws and institutions are unjust, it is often better that they should be consistently applied”.<sup>3</sup> Therefore the function of law certainty is for giving a standard for life behaviour of community.

The legal certainty should have formal quality and material quality, because of usually people has good common sense for injustice, and legal certainty has performances that seen by the people.<sup>4</sup> Formal performance is produced by consistency in applying of ways and procedures that relatively similar with a deviant behaviour from legal norm, as said by Rawls “Formal justice is adherence to principle, or as some have said, obedience to system”.<sup>5</sup> The formal performance of law could be as guarantee for reaching of substantive justice, “This it is maintained that where we find formal justice, the rule of law and the honoring of legitimate expectations, we are likely to find substantive justice as well”.<sup>6</sup> It is different with formal legal certainty that gotten especially through its performance, material legal certainty is produced by the feeling of proportional justice, that arises when deviant behaviours from legal norm which different qualities gets assessment. It could not called the formal legal certainty, if when sometimes ago a corruption gets criminal punishment, although after that to be action gotten punishment by private sanction, or may be just the discipliner

<sup>1</sup> Kusnu Goesniadhie S., *Harmonisasi Hukum Dalam Perspektif Perundang-undangan*, Lex Specialis Suatu Masalah, Penerbit JPBooks, Surabaya, 2006, hal. 3

<sup>2</sup> Van Apeldoorn, *Pengantar Ilmu Hukum (Inleiding Tot De Studie van het Nederlandse Recht)*, terjemah Oetarid Sadino, Pradnya Paramita, Jakarta, 2001, hal. 171

<sup>3</sup> John Rawls., *A Theory of Justice*, London, Oxford, New York: Oxford University Press, 1973, diterjemahkan Penerbit Gramedia, Jakarta, 2006, hal. 59

<sup>4</sup> *Ibid*, hal. 56

<sup>5</sup> *Ibid*, hal. 58

<sup>6</sup> *Ibid*, hal. 60



punishment that of course it will not make someone more discipline.<sup>1</sup>

It could not called the material legal certainty too, if the treasurer of head district office that does corruption on district level, and a high state official by first esselon does corruption on first degree esselon, on the final they get criminal punishment for example five years in jail. Both from basic components of legal certainty, and from factors that guides people orientation, moreover from the honorability to justice prinsiple of its law implementation, indeed that the institution which determines legal standard, doing it, or cracking down on violations, and moreover the officials that on their institutional position play big role.<sup>2</sup> In legal country, it is in country where the government authority is established based on the law, not based on authority, attitude continuity and consistency on action of its institution is very important in forming standard of legal certainty. The fragility of attitude continuity and consistency on action so will effect the absurd of legal certainty. Because of the institution that hold responsible and authority in legal establishment, finally as a product of political process, their attitude continuity dan consistency on action depends on political stability.<sup>3</sup>

According to Friedrich Julius Stahl,<sup>4</sup> the sign of a legal country such as there is protection to human rights, separation or deviding of authority, government bases on regulations (*wetmatigheid van bestuur*) and administration court on disputes. The concept of legal country besides contains social welfare (welfare state), now too moves toward regulation of human rights protection launched on written constitution of a country. Based on it, the country/state beside has a duty to make people welfare and give social justice, so the country/state has to give protection of human rights. Mochtar Kusumaatmadja said to reach orderliness efforted the legal certainty of human community association, because of it is impossible for human can improve skills and abilities given by God optimally without the legal certainty and orderliness.<sup>5</sup>

Meanwhile Satjipto Rahardjo stressed, for establishing legal/law country needs a long process, not only regulations should be well-governed, but also needed a strong institutional with extra-ordinary authorities and independent, free from intimidation or executive's and legislative's intervention, that held by high moral human resources and moral tested so it is not easily fall out of intended planning and framing for realizing a legal certainty which full justice.<sup>6</sup> The law is not only a bussiness of rules, but also matter of behavior.<sup>7</sup>

The law as a life veins of life nation for reaching justice and prosperous social idea. For Hans Kelsen the law itself is a *sollens categorie* or *duly categories*, not *seincategorie* or *factual cetegories*, its mean is the law is constructed as a *duly* that set human behaviour as rational creation. In this matter, disputed something by the law is not what the law ought to be, but what is the law.<sup>8</sup>

According to Sudikno Mertokusumo, the people hoped benefits in implementation or law enforcement. The law is for the human, so law implementation or law enforcement should give benefits and utilities for the people. Dont let caused the law is applied or enforced, instead will give rise to unrest in society itself, so there will not find a legal certainty.<sup>9</sup>

Definition of legal certainty normatively is most related with formation of the rule that made and acted certainly, setting obviously and logically. Obviously, it means not cause the law absurd or multi-interpretation, and logically means it becomes a norm-system with other norms so there is no impact and conflict norm. The konflik norm that came from rule uncertainty could be in norm-contestation form, norm reduction or norm distortion. So legal certainty is law or rule certainty, not action certainty to or same with the rule of law, because frase of legal certainty cannot describe behaviour certainty to the law truely. The legal certainty appointed to obvious law enforcement, permanent, and consistence that its implementation cannot be affected by subjective conditions.<sup>10</sup>

In law enforcement, everyone always hopes that the law could be applied in concret occurrence, in

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<sup>1</sup> Budiono Kusumohamidjojo, *Ketertiban Yang Adil Problematik Filsafat Hukum*, Gramedia Widiasarana Indonesia, Jakarta, 2001, hal. 157-158

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> Friedrich Julius Stahl dalam Moh. Mahfud MD, *Demokrasi dan Konstitusi di Indonesia*, Rindi Press, 2010, hal 27.

<sup>5</sup> Mochtar Kusumaatmadja, *Pengantar Ilmu Hukum, Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum*, Alumni, Bandung, 1999, hal. 3

<sup>6</sup> Fahmi, *Kepastian Hukum, Dalam 'Membedah Hukum Progresif*, Harian Kompas, Media Oktober 2016, hal 17

<sup>7</sup> Satjipto Rahardjo, *Hukum dan Perubahan Sosial Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman di Indonesia*, Genta Publishing, Yogyakarta, 2009, hal. 199.

<sup>8</sup> Hans Kelsen, *Teori Hukum Murni*, hal 15.

<sup>9</sup> Sudikno Mertokusumo, *Tentang Kemafaatan Hukum*, Gadjah Mada University Press, Yogyakarta, 1999, hal 161

<sup>10</sup> Bernard L. Tanya, *Teori Hukum: Strategi Tertib Manusia, Lintas Ruang dan Generasi*, Genta Publishing Yogyakarta, 2010, hal 71

other words its occurrence should not deviate and should be assigned with the law enacted, that finally the legal certainty can be realized. The important of legal certainty in accordance with the article 28D section 1 The Constitution of 1945, that “Everyone has a right of recognition, protection guarantee and legal certainty and equality before the law”.

In paradigm of positivism, law definition should forbid all rules that similar of law, but it is not mandatory from sovereign authority. The legal certainty should be upheld what ever the effect, and there is no reason for not uphold it, because in positive law paradigm is the only law. From this matter, it seems that for the positivistic is the legal certainty ensured by the authority. The intended legal certainty is the formal regulated law and acted by state certainly. The legal certainty means that everyone can demand in order the law implemented, and the demand has to be appeased. Anyway, on paradigm of positivism that the law system is not held to give the justice for people, but just only protects personal freedom, the main weapon of its personal freedom is the legal certainty.

The paradigm of positivistic said, for the legal certainty so the justice and expediency may be sacrificed. The positivistic thought that has reduce the law, so it becomes simple thing, linear, mechanistic and deterministic, so that if it is reviewed, the law is not as human regulation any more but just as media of profession, anyway caused by deterministic, so that the thought gives a highest protection of legal certainty. It means, people can life with an obvious reference and legal compliance for orderliness of social life, which as the requirement. Without the legal certainty, everyone will not understand what should be done, and finally it will be unrest on social life.

According to Gustav Radbruch, there are two kinds of definition of legal certainty, these are legal certainty by law and legal certainty on or from law.<sup>1</sup> The law which successes to ensure alot of legal certainty on people is useful legal. The legal certainty because the law gives other law duty, namely justice law and the law should be useful always. Whereas, the legal certainty on the law will be reached if its law as much as possible on regulation. The regulation is made based on *rechtswerkelijkheid* or the indeed law condition, and on the regulation there is no terms that can be understood by various interpretation.

## CONCLUSION

As closing of this brief and short article, it will be concluded as following below:

1. The efforting to improve accountability in the management system of state finances should to be defined by referring to opinion of integrated system of management of state finances, in order that each institution will complete one another, without colliding with regulation and exceeding of each institution authority.
2. The management system of state finances should gets serious attention with a more strategic and focused task than other state task. the importance of accountability management system of state finances has a purpose to realize good governance, in accordance with connected with basic-essential of institution philosophy and task of official who manage state finances that has purpose to increase welfare and to realize good governance, creating justice legal certainty.

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