

Study of Law Development Policy in Government Act Liability as State Administrative Tools

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Abstract

Existence of responsibility principle of government is one of balancing factors among the position of government and the people on the exercising of state administration. The government has its authority to regulate, tax picking, enforcing law, apply sanction, and so forth, those are various "authority" in the process of achieving state goals. Meanwhile, the people have rights to gain law protection against governmental action that may cause disadvantage. This principle provides sufficient space for people participation that is necessary in democratic government. Consistent and consequent implementation of the government responsibility, in turn can increase the prestige of the government and acknowledgment of the people for their government.

Keywords: *Responsible Government, Civil Society*

1. Introduction

Law reformation is one important mandate for the implementation of national reformation agenda. It includes reordering the agenda of various political and legal institutions from the national level to village government level, renewal of the various sets of rules and regulations ranging from the Constitution down to the level of village regulations and updates in attitudes, ways of thinking and various legal aspects of people's behaviour towards conditions in accordance with the demands of the times. In other words the law reformation agenda has included the notion of institutional reforms (institutional reform), legislation reforms (instrumental reform), and legal culture reforms (cultural reform).

Legal reform should also be initiated from the conditions of good government. A healthy governance and firm will support any reform measures mandated. Government as a legal subject mean also can perform a legal act, the government is potentially commit irregularities or violations of the law. Why is that? According to James Madison, writing in the Federalist Papers states "*if men were angels, no government would be necessary. If angels were to govern men neither external nor internal controls on government would be necessary*".¹

Government includes systems, functions, how to act, activity, and affair or govern actions taken or held or carried by the 'government' in the broad sense (all State agencies) and in the narrow sense (the president along with the ranks or apparatus). The Executive is branches of State power that implement public policy (state and or government) through legislation which has been set by the legislature or on its own initiative.

Theoretically, the president or the government has two positions namely, as one of the state organs and the state administration. As a state organ of government that act for and on behalf of the state. While the state administration, the government can act both in the field setting (regelen) and in field service (bestuuren).²

'Administration' (State) is an institution or a position in the field of executive power that has independent authority under the law to take action both in the field of government regulation, as well as state administration.³

Back to the statement that any person can always make a mistake, it would require a scrutiny both internally and externally. One of the instruments that control is through and by law, and because government is constitutionally authorities establish and implement the law, then everything should be wary of the potential for violations of the law by the government.

¹ Asep Warlan Yusup, 2002, *Rule based on Law, Articles*.

² Iskatinah, Legal Function Implementation of State Administration In Achieving Good Governance, Indonesian Defence Research and Development, Balitbang DepHan 2004.

³ To obtain a broader picture of the term of government and administration, then in Black's Law Dictionary, means that: *Government, from the Latin Gubernaculum, signifies the instrument, the helm, whereby the ship to which the state was compared, was guided on its course by their "gubernator" or helmsman, and agency of state distinguished as it must be an accurate thought from its scheme and machinery of government. In US Government consist, of the executive, legislative, judicial branches, in addition to administrative agencies. Further it is said that what is meant by 'executive' is 'as distinguished from the legislative and judicial departments (i.e branches) of government, the executive departments is that which is changed with details of carrying the laws info effect and securing their due observance'.*

In general, the prevalence of violations of the law by the government according to Felix A. Nigro can be categorized in 9 forms of violation are:¹ (a) *dishonesty*; (b) *unethical behavior*; (c) *overriding the law*; (d) *unfair treatment of employees*; (e) *violations of procedural due process*; (f) *failure to respect legislative intent*; (g) *gross inefficiency*; (h) *covering up mistakes*; (i) *failure to show initiative*.

Prioritize the rule of law is the most rational choice to prevent such irregularities. In short it can be said that all the government activity must remain in control with adequate supervision. The existence of government are always in control implies that the government should be comply with the law.

Efforts should be made to improve governance is, among others, with effective oversight through monitoring the judiciary and the community as well as by the general principles of good governance.²

Implementation of good governance in turn will also make people feel peace and obtain inner and outer, comprising: (a) Survival and exercise of the right does not depend on the physical and non-physical force; (b) Throughout does not violate the rights of others and harm the public can freely carry out what he believes to be the truth, and can freely develop their talents and pleasures; (c) Feeling be treated fairly, humane, just and civilized even make mistakes.

To ensure and provide the legal basis that government actions (*bestuurshandeling*) conducted by government as an act of legitimate (legitimate and justified), accountability (accountable and responsible) and responsible (liable), then every action must be based on the rule of law fair, dignified and democratic.

Community development these days, forcing the political system with first gripping hard to adjust the respect for human rights. Democratic political system requires an independent judiciary which must also have good quality and supervision. This development is also direct international demands to reduce the inefficiency of government that centralization and the need for legal certainty in implementing economic performance. The condition of government has shown indecision of government policy in providing oversight of law enforcement officers in combating corruption and other crimes related to state losses.³ Reality shows that law is often only used as a tool to organize people and rarely sheer self as a reference for the government and other stakeholders. This is the first must be recognized by all parties conditions in order to achieve statehood an established and prosperous people that the law should be treated as a commander in state law.⁴

Based on problem background description, the problem formulation of this paper is how does the of legal accountability roles of government actions as a tool of State Administrative in law development policies?

2. Literature Review

Justice and power must be balanced in its implementation so that law rule remain should to give priority for democracy. Justice and power must be balanced in its implementation so that the rule of law still must give priority to democracy. Democracy is a set of ideas and principles about freedom, but it involves a set of practices and procedures that are formed through a long history and tortuous. All democracy is a set of system which in this case are non-citizens make decisions through majority rule.⁵

Power that the majority is not always democratic, because in a democracy, the majority rule is also coupled with human rights, which means also have to respect the rights of minorities. Respect for minority rights means implementing the rule of law, it is important to realize because of the current development not yet fully capable of providing just welfare for the whole society and not in favour of the minority. The powers that be in government it's basically not good nor bad, depending on the owner of the power itself, but because of the

¹ Felix A. Nigro and Lloyd g.Nigro, *Modern Public Administration*, Harper and Row, Publishers, Third Edition, 1973, pp. 396-403

² This analysis assessed the opinion of Philip Hadjon, about *detournement de pouvoir* is associated with the concept of Welfare State that The main task of the government in this regard is to provide service to the community, but in the concept of government action should not be based on the principle of legality so back to *Freies Ermessen* concept which gives freedom for government within its competence to carry out the stewardship of public interest.

³ Paul Suparno, 2003, *Combating Corruption Culture through Education*, Kompas.

⁴ Herkristuti Herkrisnowo, 2003, *Human Rights In the frame of the National Integration and development Law*, National Law Commission of the Republic of Indonesia.

⁵ Nuri Rismawati, 2004, *The phenomenon of Democratic Transition in Indonesia, the Renaissance*, Political Research and Studies and Head of Socio-Economic IMM FISIP UMM, Sulawesi Utara.

properties and nature of it tends to perverted power (power tends to corrupt), then there should be limits.¹ That's needed for effective law as a regulatory authority. A power-holders should have a passion to serve the public interest (sense of public service). This is the essence of understanding that power (government) should be subject to the law.

Constitutional state is the state whose life based on the constitution characterized by national and democratic. A constitution can be said characterized national when the constitution was based on a state awareness. In a democratic say in the constitution when the constitution was based on the people who deal means the highest state authority is in the hands of the people.²

The Constitution is a fundamental norm of the State (*staatsfundamentalnorm*) which is a reference for all the underlying rule of law and as the embodiment of popular sovereignty in which, have contained the entire system of constitutional from a country that is a collection of rules which organize, establish and govern in the state government.³ Therefore this fundamental norm reference should be a mandate that must be implemented for the sake of realization of responsible government view. As such, various acts of injustice that coiled around human life can be terminated.⁴

The effectiveness of the power use are subject to the law, will eventually be working for authorities and assessment agencies of government, therefore, that legal norms can be run effectively and efficiently, it is necessary to observe some of the criteria that can be used as parameters seem adequate for law enforcement who have high levels (enforceability) high. Some of these criteria include the following: (1) Necessity, that law should be formulated appropriate to the need systematically and well-planned; (2) Adequacy, that the formulation of law rule should have levels and high levels of compliance; (3) Legal Certainty, that the law should have a grade level of high legal certainty; (4) Clearly, that law should actually contain rules with clear and real, not vague and does not give rise to interpretation; (5) actuality, that the law should be able to adapt to the development of society and the times, without ignoring the rule of law; (6) Feasibility, that the law should have feasibility can be accounted for, especially with regard to the level of the arrangement; (7) verifiability, that law should be framed in a condition ready to test objectively; (8) enforceability, that the law essentially continue to have forced power that adhered to and respected; (9) Provability, that the law should be made such a way as to be easy in the proof.⁵

Above criteria provide conclusion that legal rules have legal powers: the ability to bind to the legal consequences of legal events. The applicability of the law does not refer to the original physical strength but still based to a separate juridical structure that is not derived from something else. This is determined by the nature of normative legal aspects demonstrating a characteristic that is normative juridical entity.

Pretext "for development", is always used as an excuse in the practice of government, for the exclusion of the law. Not a few people who think that it is a development effort to improve the economic, political, cultural, community infrastructure and so on. With such an understanding that the word 'development aligned with the word 'social change'.

The crisis of confidence in the national laws that hit Indonesia in fact also due to the uniformity or centralized rule of law and monopoly law enforcement officers.⁶

Legal and political system is a subsystem in the community. Each carry out certain functions to drive the social system as a whole. Broadly speaking, the laws do *social control function*, *dispute settlement* and *social engineering* or *innovation* while the political functions include system maintenance and adaptation (*socialization*, and *recruitment*), conversion (*rulemaking*, *rule application*, *rule adjudication*, *interest articulation* and *aggregation*) capabilities and functions (*regulative extractive*, *distributive* and *responsive*).

¹ This nation needs to learn from Sudan, who has tried 164 suspects whom are government officials for alleged violations include rape and murder in the region of western Sudan Darfu which war wound, some state media reported. The announcement spread when the UN Security Council are preparing debate a draft resolution that refers to France 51 suspects were identified by a team of UN investigators for trial on charges of war crimes to the International Criminal Court in Den Haag. www.yourcompany.com

² Sugeng Istanto, 1998, *Constitutionalism and Political Law*.

³ Dwi S. Nugroho, 2002, *Problem Amendment and the idea of establishment of the 1945 Constitutional Commission*, as well as citing the opinion of Slamet Effendi Yusuf and Umar Basalim, article.

⁴ Kotan. Y. Stefanus, 2004, *A portrait Human Rights in the Public Sector*.

⁵ Compare the writing Jong P, Handhaafbaar Milieurecht (Enforceable Environment Law), Deventer W.E.J Tjeenk Willink, 1977. Also writing Hawkins, K, Environment and Enforcement, Regulations and this Social Definitions of Pollution, Oxford: Clarendon Press, 1984, p 32-33.

⁶ Fathullah, *Strengthening the Regional Autonomy Law and Society, Legal Consultant for Regional Autonomy*, CIDES, Jakarta, 2000

Although the legal and political justification has basic functions and different but both are not contradictory, but complementary. Each of should contribute according to function to drive the social system as a whole, especially the commitment to support the implementation of development.¹

Responsible government means being able to realize the true function of the public economy back on function allocation, distribution, and Stabilization.²

Ideally a development is the growth focused, with a planned system changes as well as possible. Each establishment should have a pre-established goal, growth and development towards the achievement of goals and to achieve these goals need no ability, the ability to change to grow and evolve towards achieving what is desired by the organizers of development.

Actual development must balance between power and political, moral and religious integrity needs to be built needs emphasis that practical politics and law as it ought to be.³

Karen Lebacqz states, *there may be no more urgent cry today than that of "justice", and no more frequent accusation than that of injustice*. This is reasonable, because, as stated by Danile Webster that justice is the most noble of human interest in this earth. After all that's what people search for justice unceasing, championed by people with persistent, eagerly anticipated by people with full confidence of the ruling party and people will oppose every effort when justice is not given or if justice does not exist.⁴

Based on description above it can be concluded that law should be used as guidelines in the construction, which means: (1) Law as a principle of development which can be interpreted that every motion must be stated in the law of development, both in terms of its activities and the foundation pillars of its development, it is thus, the law must also be interpreted as guarantor of maintaining the results of good development; (2) The existence of a national entity which serve the interests of humanity, civilization and prosperity of the nation and the State. This does not mean negating or denying the existence of a legal plurality which established and enforced through legal and customary or religious laws that should actually be a fundamental for building the national law. What meant by the National Law is law established and enforced for the sake of cornerstone of the nation's development and empowerment in achieving prosperity and justice all of people.

3. Material and Methods

This study is a literature study where the data discussed a secondary data derived from the study of the documentation collected by researchers particularly on policy development in Indonesian law.

4. Discussion

The *Governmental Liability* term is often misinterpreted with the term *State Liability*. For example, writing of J.J. Van Der Gouw, et al (1997) entitled *Governmental Liability in Netherlands* said that both countries, the central government and local government, water council and other institutions which have the task of government, classified as a legal entity (legal person) which can asked its accountability, both civil law and administrative law, when committed an illegal act (unlawful action).

Opinions of Otto Depenheuer (*Governmental Liability in Germany, 1997*) that under Article 131 of *Welmar Constitution* states, "The state was responsible (the state was liable) in a public legal on any apparatus actions who make mistakes ". Further said that, "The provision of Article 131 is an action preceded the civil action which will drag the officials concerned before *civil court*" Act of public law (e.g. in the form of dismissal) under section 131 was used, according to use of Article 839 of the Civil Code for German which is the personal responsibility of officials (official personality) are often not satisfactory (unsatisfactory), which in turn can lead to public distrust of government.⁵

In general, the Government Responsibility terms is the obligation of the legal arrangement (compulsory compliance) of state or government or government officials or other officials who performing the governmental functions as a result of an objection, *accusation*, judicial review, submitted by a person, society, civil law

¹ Oka Mahendra, Law and Politics, 1999

² Suyono, 2004, Review About Government Economic Function (Allocation, Distribution and Stabilization).

³ Abdul Munir Mulkan, 2004, Religious movement should be Supporting Law Enforcement, Republika.

⁴ As quoted by Roscou Pond, 1965, *Tugas Hukum*, Muhammad Radjab, Bhatara, p. 9; similar opinion was expressed by Joseph Qordhawi, 2000, "Time, Wealth Power as Amanah of Allah ", translation, Abu fahmi, Gema Insani Press, p. 107.

⁵ Depenheuer, *Governmental Liability*, this "Comparative Studies on Governmental Liability in East and Southwest Asia", edited by Yong Zhang, Kluwer Law International 1999, p.173.

through adjudication or settlement out of court for fulfilment in the form of: (a) the payment of a sum of money (subsidies, compensation, benefits, etc.); (b) issue or cancel / revoke a decision or regulation, and; (c) other acts which constitute the fulfilments of its obligations, for example to supervise more effectively and efficiently, to prevent any danger to humans or the environment, to protect the property of citizens, to manage and maintain public infrastructure, to impose sanctions against an offense and so on.

That's a clear understanding that *governmental liability* is concerned with civil and administrative liability, whereas criminal liability attached to the personal conduct of concerned officials, for example corruption, murder, adultery, and so on, in accordance with the provisions of the criminal. In the context of *governmental liability*, in the civil field is generally based on an unlawful act committed by the ruler (*onrechmatige overheidsdaad* or unlawful acts of the government) as defined in Article 1365 of the Civil Code. Completion of this civil action can be done through the court or outside the court through ADR mechanisms (such as: mediation and arbitration).

Path procedure of civil lawsuit under Article 1365 of the Civil Code is intended that the government is responsible in civil for compensation payments, so it must be proven: (a) the government's actions are against the law; (b) completely innocent; (c) the plaintiff (public/private corporation) did suffer a loss; (d) the loss as a result of government action.

Meanwhile, four basic characteristics of a state law in the formal sense, namely: (a) the guarantee recognition of human rights; (b) the division of power in the state; (c) the government organized under the laws (written and unwritten); (d) the existence of judicial administration.

The existence of judicial administration have a very important role to create the good governance in establishing the state law, that is as the control institute or oversight over the laws actions of the government that remain on the path of law in addition as the protector rights of citizens against the abuse of ruler authority.

Accountability of government in the field of administrative law, there are four possible causes due to the ruler action: (1) express decisions contrary to the laws and regulations; (2) abuse of authority; (3) arbitrary; (4) contrary to general principles of good governance.

Beside the administrative judiciary, to control the legal acts of government can also be played by ordinary judicial through 'judicial review' processes it means any product legislation under the constitution can be tested materially. In addition to the judiciary that can control as well as hold accountable governance both in terms civil law and the state administration, the principle of government accountability can be enforced through non-judicial agencies control, such as the *National Ombudsman Commission* that can hold the liability of the government officials, among others, have done maladministration or show attitude and actions detrimental to society as a result of poor service bureaucracy.

In addition there is also the *Wealth Examiners Commission of National Coordinator* (KPKPN), formed on the basis of Law No. 28 Year 1999 on National Coordinator who Clean from the corruption that always work to do preventive of corruption practice in the implementation of state.

Maintenance of several institutions such as the Ombudsman Commission and KPKPN case or other agencies that actually has been directed to an effort upheld GL principles in the governmental implementation. Therefore when viewed in terms of monitoring, principle accountability of this government in general it can be said enough.

In addition to institutions control over this rule accountability enforcement, in the legislation already known forms of government accountability, for example such as government's accountability to the damages as set out in Article 4 paragraph 2 letter c and Article 26 of Law no. 24 of 1992 on Spatial Planning which basically states that the government shall provide adequate reimbursement to communities for a condition that is experienced by as a development activity in accordance with the spatial plan. It is clear though the development activities in accordance with the spatial plan but cause harm to society, so the government is required to provide adequate compensation. Moreover, the development activities are not in accordance with the spatial plan, of course, not just compensation. There is also a Presidential Decree No. 55 in 1993, on Land Acquisition for Development Implementation for Public Interest that says that the government needs the land for the development implementation for the public interest, so to the holders of land rights, among others, shall be given adequate compensation according voluntary agreement made through deliberation. This decree ensures that even for the public interest, but as the embodiment of the principle enforcement of accountability rule, so the government is obligated to provide compensation or other similar especially if it not the public interest.

Similarly, government accountability enforcement in law administration, among others, can be seen from the Law no. 24 of 1992 earlier and Act No. 23 of 1997 on Environmental Management which basically states that the government in the preparation and adoption of spatial plans, as well as for licensing should be transparent

and open. The government must announce to the public about the existence of spatial plans and consent for business activities. The intent of this openly announcement is the public given and guaranteed the right to: (a) access to information; (b) reviewing participate; (c) provide opinions and or objection; (d) influence in decision making; (e) participate in overseeing of decision implementation.

Also found in Article 33 paragraph 3 of the Constitution 1945 which basically states that the right to control the state on management of natural resource wealth should really be directed to the prosperity of the people, this Article statement has underscored government that there is no reason from government to not implementing the clause consistently.

This responsibility is actually one of balancer in positioning the government and the community in running the state organization. The government has the authority to regulate, collect taxes, enforce the law, impose sanctions and so on, which is a series of "power" in an effort to achieve the goal of statehood. On the other hand, people have also the right to obtain legal protection from a range of government actions that may cause harm to the public.

The existence of the responsibility principle of the government, actually provide enough space for the emergence of community participation that are needed by a democratic government. With the implementation of the responsibility principle of government consistently and consequently, then indeed will also improve the prestige and dignity of the government in the eyes of the people, because if the government is willing to enforce the responsibility principle of government, it will be achieved at least some of the important things that are: (a) the enforcement of the state law principle '*rule of law*', law supremacy and equality before the law in the administration of government, because the government also appeared to respect and obey the law; (b) given the Indonesian people in general are still embrace paternalistic culture, then with the principle of the government responsibility, it encourage public awareness voluntarily (*voluntary compliance*); (c) strengthen reformation commitment to achieving good governance in line with the strengthening of civil society; (d) to reinforce the principle of the government responsibility to enable the rule of law, justice and legal protection, it should be considered to set up a law on State Responsibility.¹

The principle of the 'responsibility of government' within the meaning is distinguished by the principle of 'responsible government'. The responsibility of government is measured from the level of legitimacy of government action (*bestuurhandeling*), both from the legal validity (*rechtmatigheids*), the validity of the legislation (*wetmatigheids*), and in terms of the legitimacy of the purpose or intent (*doelmatigheids*) and how well their legal liability.

Both two things 'government responsibility' and 'responsible government' have the same spirit and idea that is form a good government in order to enforce the democratic constitutional state. Therefore, the two cannot be separated in governance. However, in this paper only discussed matters relating to the responsibility of the government, because in many ways they had not been optimal use, for example, in many cases of the State and the civil administration compensation involving the government's responsibility.

Embodiment of good governance and clean also influenced by the role of professional codes of ethics and enforcement strategies. Ethics in the context of governmental can be prefixed with the understanding Ethics by Aristotle's that shows moral philosophy about values and moral norms, orders, acts of virtue and conscience. Personal ethics determine good or bad behaviour of per person in relation with other individuals. Meanwhile, organizational ethics outlines the context of the ethical decisions of individuals that actually should belong to the people who become public servant. Ethics of an organization (ethics of rule) is reflected in the organization structure with the functions and procedures including the system of incentives and disincentives and sanctions based on rules.

The role of codes of conduct for government officials should be used as a compass that grant or shows the direction for the government officials as well as ensuring the moral quality of the profession in front of the society. Government officials as a public servant may not detach himself from the lives of the people it serves therefore materially they have an obligation to provide better public services. With a basic understanding of ethics and governance, it expected to reduce the reprehensible actions, that's not admirable and harm society. The formulation of a code of conduct is lead the apparatus to the moral consciousness of his professional position and which obtained from the country in the name of the people. Apparatus who obeys the code will place obligations as government officials on other interests.

¹ In Germany called the State Liability Act, 1981, in Japan called the Government Liability Act, 1946. Moreover it is also need the Law on Compensation (in Korea called the National Compensation, Act, Administrative Compensation for Injury and Administrative Compensation for Loss.

Code of Conduct serves as a benchmark of ideal mental attitude for all government officials to encourage the success of the organization. Government organization will succeed if officials have good initiative, meticulous, honest and have a high loyalty and quality like this is to be achieved when the code of conduct formulated.

History of Etiquette known in the theory of Immanuel Kant (1724-1804)¹ which states about the relationship between what is subjectively become moral standard and what are objectively become standards of social behaviour. Kant also distinguishes between legality (law) and morality, with the 'legality' it means the appropriateness of an action with the norms or rules of law material.

Legality means an act outwardly measured according to the rules. Inner motives behind action conformity with the norms are not matter. Kant's intention may can explained by the popular phrase among politicians and bureaucrats that "the important thing is prescribed", or provided in accordance with the applicable procedures. So to the allocation of comparative study funds or setting of excessive amount of salary shall be considered not any, as long as in accordance to the original order or procedural rules that have been defined for such cases. Here the values and moral awareness or motivation and spiritual impulses are not observed. Legality is limited to the outer aspect of an action. Morality, according to Kant means the suitability between an attitude and acts with the inner law, and with what is recognized as a liability and moral action.

Morality is revealed in the form of an inner determination and become the most powerful force to moral action. So, the legality is an outward act matter while morality rooted in the deepest inner principles. Legality can be seen, while according to Kant, "Only God can see that our inner determinations are moral and pure". Perspective of morality states that a person does not steal (= obey the rules "Do not Steal") is not an issue he would outwardly acting within the law, but because he was acutely aware of the obligation to act on the way. Therefore it is clear that what outwardly conform to the rules or follow the legal procedures, not necessarily a moral sense.

According to Kant, every person should act in such a way so that it subjective principles can become a law principle that generally applicable. So the maxim "what is borrowed must be returned" and this should be desired as well as an objective and universally applicable principles for anyone. That is one form of the categorical imperative that is the subjective principle can also become an objective moral principle and generally accepted.

Rule of law is no longer appreciated as it should be because of the rule of law is said to have factual validity if that rule in actually fact are in society are obviously obeyed by the citizens and by the competent authorities earnestly are implemented and enforced.²

Law should be instilled in the consciousness of society, when the law simply just to know (in the new sense only touch the surface of human cognition) it will likely be the case that people with a range of efforts, subterfuge and deception are still bent on breaking the law and depart.³

The law application requires a power to support it, but a power without law is a mere despotism, so the authorities still have to implement the law by not abusing its authority and power.⁴

The law enforcement officers, in applying some of the principles above, should have to re-use the moral considerations and political considerations in a balanced position.⁵

5. Conclusion

The existence of government accountability principle actually one of the balance positioning between government position and community in running state organization. Government has authority to regulate, collect taxes, enforce the law, impose sanctions, and so on, which is a series of "power" in achieving the goal of statehood.

In another side, people have also the right to obtain legal protection from government employed several actions that may cause harm to public. Therefore, this lack of accountability actually provides enough space for the emergence of liberal community participation that is needed by a democratic government. The principle implementation of accountability consistently and consequently, will improve also the prestige and dignity of government in its people eyes.

¹ Immanuel Kant, 1797, *Metaphysik der Sitten*, (Metaphysics Decency), cited by Young Ohoitumur, as presented in the article *Legality and Morality*, [@ yahooogroups.com/msgoo183.html](http://www.mail-archieve.com/filsafat), , 2005.

² Arief Sidhartha, 2003, *The Enforceability of Law*, Articles.

³ Sutandyo Wignjosoebroto, 2002, *Law, Paradigms, Methods and Dynamics problem*, Jakarta, Elsam and Huma, p. 376.

⁴ Mochtar Kusumaatmadja, 1976, *Function and Legal Developments In National Development*, Jakarta, Binacipta, p. 5

⁵ Hans Kelsen, 1995, *Pure Theory of Law, Basics of Normative Law as Empirical Legal Studies In Descriptive*, Editor Somardi, Jakarta, Rimdi Press, First Printing.

This is because, if government is willing to enforce the principle of least achieved some important things which are: (a) The enforcement of state law principles, Rule of law, supremacy of law and equality before the law in governance, because the government is turned out to honour and obey the law; (b) Given the generally the people of this nation is still paternalistic culture embraces the government's lack of accountability encourage public awareness voluntarily (voluntary compliance); (c) Strengthen the commitment to achieving good governance reforms in line with the strengthening of civil society; (d) To strengthen government accountability to occur legal certainty, justice and legal protection, it should be considered to be formed Law on State Responsibility (in Germany known as the State Liability Act, 1981, in Japan called the Government Liability Act, 1946). In addition it is also need the Law on Compensation (In Korea called *National Compensation Act, Administrative Compensation for Injury and Administrative Compensation for Loss*).

6. Recommendations

Some Recommendations that would be addressed include:

- a. The code of ethics role for government officials should be used as guidelines to provide direction to the government officials as well as ensuring the quality of the profession in the face of moral society.
- b. The law enforcement officers, in applying some of the principles or rules of law, should have to re-use the moral considerations and political considerations in a balanced position.

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