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**ONRECHTMATIG OVERHEIDSDAAD BY THE
GOVERNMENT ON THE LIABILITY OF THE
GOVERNMENT REGULATION (CASE STUDY ON LAW
NUMBER 18 OF 2017)**

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ABSTRACT

This paper discusses about "Government Actions Against the Obligation to Prepare Government Regulations from Law No.18 of 2017" in the form of a Legal Memorandum. Where the Government in making and issuing Government Regulations from Law No. 18 of 2017 has exceeded the time limit that has been regulated in in law. The legal questions that arise are (1) is the government's attitude that exceeds the time in issuing the Government Regulations an act of the government in carrying out government administration functions? (2) Is the government's attitude exceeding the time in issuing the Government Regulations a violation of State Administration law? This study uses normative legal analysis. The purpose of this writing is the invention of recommendation given by the author for consideration to readers and the people of Indonesia, especially is those who feel be aggrieved by the government's actions in the state arrangement. The results of the analysis of this Legal Memorandum conclude that the government's action is an administrative function of the government and is an unlawful act. As for the recommended recommendations, citizens who feel aggrieved by the government's actions can take repressive actions against government actions from Law No.18 of 2017, these citizens can sue the President to the State Administrative Court as an authorized court according to law after committing administrative effort.

Keywords: government administration functions; unlawful acts; government actions.

INTRODUCTION

Indonesia, as a developing country, is continuously engaged in comprehensive development. Every individual has the right to fair and decent treatment in the workplace. Focusing on the employment sector is one of the strategies to improve the quality of the workforce and promote good working relationships.¹ Indonesian citizens working abroad are a cause for concern. Despite numerous reports of cases involving Indonesian migrant workers, they have not received sufficient protection from their home country, Indonesia.

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¹ UUD Pasal 28D ayat (2).

In an effort to protect its citizens working abroad, the Indonesian government has established regulations regarding employment, namely Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Manpower Overseas (UU TKILN). This law is criticized for focusing more on the placement of Indonesian manpower overseas rather than on their protection.² The government took the initiative to revise the aforementioned law with a new one, demonstrating its commitment to protecting migrant workers.

The Indonesian Migrant Worker Protection Act No. 18 of 2017 (PPMI) is a revised version of Act No. 39 of 2004. The new act introduces five main changes to the protection of Indonesian workers, namely: decentralisation of protection for Indonesian migrant workers; a greater role for labour attachés; private employment agencies (PJTKI) only have two functions (transfer agency and marketing); the government handles migrant worker insurance; and there are sanctions for violators of the law.³

The UU PPMI was enacted on 22 November 2017. It consists of 13 chapters and 91 articles that regulate General Provisions, PMI, Protection of PMI, One-Stop Integrated Services, Duties and Responsibilities of the Central and Regional Governments, Institutions, Implementation of Placement of Indonesian Migrant Workers, Coaching and Supervision, Dispute Resolution, Investigation, Transitional Provisions, and Closing Provisions.⁴

Article 90 of the closing provisions mandates that the implementing regulations of the PPMI Law must be established no later than 2 (two) years from the date of enactment of this Law. The PPMI Law mandates the creation of three Government Regulations (GR) which have been simplified from the initial plan of eleven GRs. Additionally, the law also mandates the creation of twelve Ministerial Regulations (MR) which have been simplified to five MRs. Furthermore, the law mandates the creation of two Presidential Regulations (PR) and three Head of Agency Regulations (HAR) which have not been simplified.⁵ The details of the Implementation Rules mandated by the PPMI Law can be seen in Table 1.

² Moh. Nizar, Astiwi Inayah, Aman Toto Dwijono, "Penguatan Peran Pemerintah Melalui Perlindungan Hukum Terhadap Pekerja Migran Indonesia", *Jurnal Sosiologi*, Vol. 20, No. 2, pp. 95-111

³ *Ibid*, pp. 103-104.

⁴ Luthvi Febryka Nola, "Dampak Pelanggaran Batas Waktu Pembentukan Peraturan Pelaksana Undang-Undang Nomor 18 Tahun 2017 tentang Perlindungan Pekerja Migran Indonesia", *Negara Hukum*, Vol. 11, No. 2, November 2020. p. 252.

⁵ *Ibid*, p. 253.

Simplification of Implementation Rules for PPMI Law, Table 1

No	Simplification Plan	Chapter	Implementing Rules for Article Source
1	The Indonesian Migrant Worker Protection Government Regulation was promulgated on April 6, 2021. ⁶	Chapter 3	Article 20, Article 23, Article 28, Article 36
		Chapter 4	Article 38 Paragraph (4)
		Chapter 5	Article 43
		Chapter 7	Article 52 Paragraph (2)
		Chapter 8	Article 75 Paragraph (3) and Article 76 Paragraph (3)
2	Government Regulation No. 10 of 2020 outlines the procedures for the placement of Indonesian migrant workers by the Indonesian Migrant Workers Protection Agency. It was promulgated on 31 January 2020.	Chapter 7,	Article 50, Paragraph (2)
3	The Government Regulation on the Placement and Protection of Ship Crew and Fishermen has been enacted on 8 June 2022.	Chapter 7,	Article 64
4	On 30 December 2019, the Indonesian Migrant Worker Protection Agency was established by Presidential Regulation No. 90 of 2019.	Chapter 6	Article 48
5	Regulation of the Minister of Manpower No. 18 of 2018 concerning Social Security for Indonesian Migrant Workers (published on December 10, 2018)	Chapter 3	Article 29 Paragraph (5)
6	Minister of Manpower Regulation No. 17 of 2019 concerning Termination and Prohibition of Placement of Indonesian Migrant Workers (enacted on 1 October 2019)	Chapter 3	Article 32 (4)
7	Regulation of the Minister regarding the Indonesian Migrant Worker Placement Company. Number 10 of 2019 concerning Procedures for Granting Licenses to Indonesian Migrant Worker Placement Companies. (published on July 2, 2019)	Chapter 3	Article 37 Paragraph (2)
		Chapter 7	Article 51 Paragraph (3), Article 53 Paragraph (4), Article 54 Paragraph (3), Article 55 Paragraph (3), Article 57 Paragraph (5) and Article 74 Paragraph (2)
8	Regulation of the Minister of Manpower No. 7 of 2020 concerning the Procedures for Imposing	Chapter 3	Article 37 Paragraph (2)

⁶ Setkab.go.id, Terbitkan PP. 59/2021, Pemerintah Perkuat Aspek Pelindungan dan Jamsos Pekerja Migran, <https://setkab.go.id/terbitkan-pp-59-2021-pemerintah-perkuat-aspek-pelindungan-dan-jamsos-pekerja-migran/>, accessed 24 September 2022.

	Administrative Sanctions in the Implementation of Placement and Protection of Indonesian Migrant Workers (enacted on 20 April 2020).		
9	Regulation of the Minister of Manpower No. 9 of 2019 concerning the Procedures for Placement of Indonesian Migrant Workers (published on June 28, 2019).	Chapter 6	Article 60, Article 61 Paragraph (3), Article 63 Paragraph (4)
10	Regulation of the Head of the Agency No. 9 of 2020 concerning the Exemption of Placement Fees for Indonesian Migrant Workers (published on July 14, 2020).	Chapter 3	Article 30
11	Number 01 of 2020 concerning Standards, Signing, and Verification of Employment Agreements for Indonesian Migrant Workers. (published on 28 April 2020).	Chapter 3	Article 15 Paragraph (3)
12	Regulation of the Head of the Agency on the required processes for Indonesian Migrant Worker Candidates. Number 7 of 2022 concerning the process before working for Indonesian Migrant Worker Candidates. (published on July 4, 2022)	Chapter 3	Article 12 Paragraph (2)
13	Regulation on the Duties and Authorities of Employment Attachés by the President (not yet enacted).	Chapter 3	Article 22 Paragraph (4)

Legal protection for ship crew members (ABK) is the responsibility of the state. National legal regulations are governed by Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Manpower Abroad, which has been replaced by Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. According to Articles 64⁷ and 90⁸ of Law No. 18 of 2017, the government is required to create Government Regulations (GR) regarding the Placement and Protection of Ship Crew and Fishermen as referred to in Article 4 paragraph (1) letter c.⁹

⁷ "Ketentuan lebih lanjut mengenai penempatan dan perlindungan pelaut awak kapal dan pelaut perikanan sebagaimana dimaksud dalam Pasal 4 ayat (1) huruf c diatur dengan Peraturan Pemerintah."

⁸ "Peraturan pelaksanaan dari Undang-Undang ini harus ditetapkan paling lama 2 (dua) tahun terhitung sejak Undang-Undang ini diundangkan."

⁹ "Pekerja Migran Indonesia meliputi: a. Pekerja Migran Indonesia yang bekerja pada Pemberi Kerja berbadan hukum; b. Pekerja Migran Indonesia yang bekerja pada Pemberi Kerja perseorangan atau rumah tangga; dan c. Pelaut awak kapal dan pelaut perikanan."

The government has undoubtedly made efforts to create implementing regulations for Law No. 18 of 2017. At least 13 drafts of implementing regulations will be formed from Law No. 18 of 2017, but only 4 implementing regulations were successfully enacted on time. These are contained in Permen No. The text refers to four regulations: Law No. 18 of 2018 on Social Security for Indonesian Migrant Workers, Minister of Manpower Regulation No. 9 of 2019 on Procedures for the Placement of Indonesian Migrant Workers, Minister of Manpower Regulation No. 17 of 2019 on the Termination and Prohibition of Placement of Indonesian Migrant Workers, and Minister of Manpower Regulation No. 10 of 2019. Law No. 18 of 2018 on Social Security for Indonesian Migrant Workers, Minister of Manpower Regulation No. 9 of 2019 on Procedures for the Placement of Indonesian Migrant Workers, Minister of Manpower Regulation No. 17 of 2019 on the Termination and Prohibition of Placement of Indonesian Migrant Workers, and Minister of Manpower Regulation No. 10 of 2019. The term 'timely' here means that the aforementioned regulations were issued within two years, in accordance with Article 90 of Law No. 18 of 2017. After November 22, 2019, eight rules were issued.¹⁰ There is one rule that has not been published until May 2022 when this text was written.

In addition, during the working meeting of Commission IX of the Indonesian House of Representatives with the Minister of Manpower, the Minister of Marine Affairs and Fisheries, and the Ministry of Transportation at the House of Representatives building on 12 February 2020, the Minister of Manpower, Ida Fauziyah, emphasized that the state always provides protection for Indonesian migrant ship workers, and currently (February 2020) the draft bill has entered the harmonization stage at the Ministry of Law and Human Rights.¹¹

This is a synchronisation of cross-ministerial regulations. It is also one of the obstacles to the issuance of the regulation on the Placement and Protection of Ship Crew and Fishermen. After undergoing harmonization, this lesson plan was accepted by the Ministry of State Secretariat (Kemensetneg) on 22 July 2020.¹²

According to Aris Wahyudi, the Director General of Job Placement and Job Creation Development (Binapenta and PKK) at the Ministry of Manpower, during an online discussion on Wednesday, 12th August 2020, there is still a further stage within the Ministry itself, namely clarification, which is a time-consuming process.¹³

¹⁰View on table 1, pp. 2-3.

¹¹Sekretariat Jendral DPR RI, "Pemerintah Harus Komitmen Selesaikan RPP Awak Kapal", <https://www.dpr.go.id/berita/detail/id/27690/t/Pemerintah+Harus+Komitmen+Selesaikan+RPP+Awak+Kapal+>, accessed 18 June 2022.

¹²Medcom.id, "RPP Perlindungan Awak Kapal Memasuki Tahap Klarifikasi", <https://www.medcom.id/nasional/politik/eN40Pg7N-rpp-perlindungan-awak-kapal-memasuki-tahap-klarifikasi>, accessed 18 June 2022.

¹³*Ibid*, accessed 18 June 2022.

The chronological table of the aforementioned legal facts is as follows:

Table 2: Chronology Based on Recent Government Actions

No	Date	Social	Legal Facts
1	February 2020	The Commission IX of the Indonesian House of Representatives worked together with the Minister of Manpower, the Minister of Marine Affairs and Fisheries, and the Ministry of Transportation at the Indonesian House of Representatives building.	The RPP has entered the harmonization stage at the Ministry of Law and Human Rights.
2	February 2020	The Commission IX of the Indonesian House of Representatives worked together with the Minister of Manpower, the Minister of Marine Affairs and Fisheries, and the Ministry of Transportation at the Indonesian House of Representatives building.	The RPP has entered the harmonization stage at the Ministry of Law and Human Rights.
3	June 08,2022	The President has issued a Presidential Regulation on the Placement and Protection of Migrant Commercial Vessel Crew and Migrant Fisheries Vessel Crew.	The government has issued Regulation No. 22 of 2022 concerning the Placement and Protection of Migrant Commercial Ship Crew and Migrant Fisheries Ship Crew.

Given the legal facts outlined above, the following legal questions arise:

1. Did the government exceed its administrative function by delaying the issuance of the Placement and Protection of Commercial and Fisheries Vessel Crew Regulation?
2. Did the government's delay in issuing the Placement and Protection of Commercial and Fisheries Vessel Crew Regulation exceed the time limit set by Article 62 and Article 90 of Law No. 18 of 2017 on State Administration? Was this action a violation of the law?

RESEARCH METHODS

The type of research used in this writing is normative juridical research, with primary and secondary written legal materials as data sources. However, the author conducted interviews with several sources to obtain additional information. The interviews were conducted with three former migrant workers in Tegal and the

Indonesian Migrant Workers Union in Jakarta. The primary legal materials are legally binding and authoritative. They include the Basic Principles of Pancasila, the 1945 Constitution, MPR Decrees, Legislation Un-codified Legal Materials such as Jurisprudence and Treaties.¹⁴ Secondary legal materials provide explanations or support for primary legal materials. This legal source does not have any binding legal force, unlike books, journals, or other scholarly works written by legal scholars, internet sites, and theories or opinions of experts related to the issues discussed in this text.

DISCUSSION

Government Actions that Exceed the Time Limit in Issuing Government Regulations from Law No. 18/2017, Are Government Actions in Carrying out the Government Administration Function.

Before further discussing whether or not the government's action in issuing regulations derived from Law No. 18 of 2017 is a government action in the exercise of administrative functions, we must first know the position and authority of the government. This is necessary so that it can be understood and not misunderstood that there is a difference between the position and authority of officials or positions in government actions.

a. Positions and officials in administrative law

According to the Great Indonesian Dictionary (KBBI), a position is defined as a job (task) in a government or organization. Meanwhile, an official is defined by the KBBI as a government employee who holds an important position (leadership element).¹⁵

Government Administration Act, Act No 30 of 2014, Article 1(3):

"Government Bodies and/or Officials are entities that perform Government Functions, both within the government and other state administrators."¹⁶

Government Regulation No. 48/2016 on the Procedure for the Imposition of Administrative Sanctions on Government Officials, Article 1, Paragraph 3:

"Government Bodies and/or Officials are entities that carry out Government Functions, both within the government and other state administrations."¹⁷

¹⁴M.Syamsudin, *Mahir Menulis Legal Memorandum*, Jakarta: Prenada Media Group, 2015, p. 33.

¹⁵Aplikasi Kamus Besar Bahasa Indonesia edisi V, <https://github.com/yukuku/kbbi4>, accessed 25 September 2022.

¹⁶Undang-Undang tentang Administrasi Pemerintahan, UU Nomor 30 Tahun 2014, p.2.

¹⁷Undang-Undang tentang Administrasi Pemerintahan, UU Nomor 30 Tahun 2014, p. 2.

Bagir Manan argues that an office is a permanent job that contains certain functions, which as a whole reflect the purpose of an organisation. The state contains various positions with different functions to achieve the state's goals.¹⁸

Logemann: "Het is and door het ganse staathandelingen wordt bevoegd gemaark. Plichten en rechten werken door, ongeacht de wisseling der ambtsdrager."

(Under Constitutional Law, it is the office that is burdened with obligations, which is authorized to perform legal acts. Rights and obligations continue, regardless of the change of office).¹⁹

b. Legal Position of the Government

The definition of government can be divided into two, namely the definition in a broad sense and a narrow sense. Government in a broad sense is a state organization with all its organs that have legislative, executive, and judicial functions. This means that the state with all its organs is the definition of government in a broad sense. Meanwhile, in a narrow sense, the definition of government only refers to one function, namely the executive function.²⁰

1945 Constitution Article 4 Paragraph 1:

"The President of the Republic of Indonesia holds the power of government according to the Constitution."

According to Prof. Dr Jimly Asshiddiqie, there are several characteristics of the Presidential system of government, as follows:

- a. The position of the head of state is not separate from the head of government
- b. The head of state is directly responsible to the people.
- c. The president is not authorized to dissolve Parliament.
- d. The cabinet is fully accountable to the President.

Based on various sources of legislation and expert opinions above, it can be concluded that the system of government adopted by Indonesia is by Article 4(1) of the 1945 Constitution and the nature of presidential government according to Prof Jimly Asshiddiqie. While the president is assisted by ministers in the exercise of executive power in their respective fields, the ministers are also responsible to the president in the administration of government. As regards the drafting of government regulations, the process of drafting and harmonization is carried out by the relevant ministers. With the approval of the President.

¹⁸Bagir Manan, Pengisian Jabatan Presiden Melalui Pemilihan Langsung, paper, p. 1. in the book DR. Ridwan HR. p. 71

¹⁹DR. Ridwan HR, *Op. Cit*, p. 77.

²⁰Preprints, Jelaskan Pengertian dan Bentuk-Bentuk Pemeritnahan, <https://osf.io/69ruf>, accessed 08 October 2020

From the above analysis, it can be seen that the government is the organization of the state and performs the executive function in the presidential system of government. In the presidential system, the President is directly responsible to the people and the position of the President as the executive branch of power and is the head of state as well as the head of government, where the President has the power to appoint or dismiss ministers. Therefore, the Minister is responsible to the President and is an assistant to the President.

As for the implementation of the issuance of Government Regulations from Law No. 18 of 2017 according to Law of the Republic of Indonesia Number 15 of 2019 on Amendments to Law Number 12 of 2011 on the Formation of Legislation Article 26 paragraphs 1 and 2, that the PP is determined and signed by the President where his position is as head of government, but in the process of drafting and harmonizing it is carried out by the Minister by creating an inter-ministerial committee and non-ministerial institutions that have a relationship with the PP to be formed.

c. Law No. 30 of 2014 of the Republic of Indonesia on Government Administration Article 1 Paragraph 5:

"Authority is the right possessed by government agencies and/or officials or other state administrators to make decisions and/or take actions in the administration of government".

Article 1 Paragraph 6:

"Governmental authority, hereinafter referred to as "authority", is the power of governmental agencies and/or officials or other state administrators to act in the field of public law."

F.P.C.L. Tonnaer said:

"Overheidsbevoegdheid wordt in dit verband opgevat als het vermogen om positiefrecht vast te stellenn aldus rechtsbetrekking tussen burgers onderling en tussen overheid en te scheppen"

(The authority of the government in this respect is seen as the ability to implement positive law, and this can specify the legal relationship between the government and the citizens).²¹

H.D. Van Wijk/Willem Konijnenbelt defines the source of authority of the law as follows:

- a. Attribution, is the granting of governmental authority by lawmakers to government organs.

²¹Faculty of Law Pattimura University, Aspek Teoritik Kewenangan Pemerintah, <https://fh.unpatti.ac.id/aspek-teoritik-kewenangan-pemerintah/>, accessed 9 October 2022.

- b. Delegation, is the delegation of authority from one organ of government to another organ of government.
- c. This mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf.²²

Based on the analysis related to government authority above, a common thread can be drawn, that authority is a right owned by the government to carry out certain legal actions. There are 3 (three) sources of authority from the law, namely Attribution, Delegation, and Mandate.

In this case, if referring to the definition of authority and its source, then save the author the government's task to make and issue derivative rules from Law No. 18 of 2017 is the source of Attribution authority. For government organs that have been authorized by lawmakers, they must be carried out by applicable laws and regulations, as ordered by Article 9075 of Law No. 18 of 2017. This means that the government that has been given the authority must issue these regulations within 2 years since Law No. 18 of 2017 was issued. In this case, the person who has the authority to make and issue rules derived from Law No. 18 of 2017 is his position, not his official. If the Government Regulation is signed by the President, if the rules to be made are Ministerial Regulations, then they are signed by the Minister, as well as other rules with authorized positions.

d. Government Actions

Government actions are legal acts carried out by the government in carrying out its government functions. According to Romijen, the government's actions are the government's actions of "*bestuur handeling*" from every government equipment.²³ The government's position as a subject of law has two kinds of actions, namely legal actions (*recht handelling*) that can cause legal consequences and real/factual actions (*feitelijk handelling*) actions that do not cause legal effects.²⁴ Muchsan laid out the following elements of government legal action:

- a. The act is carried out by the government apparatus in its position as a ruler or as a government equipment with its initiative and responsibility;
- b. These acts are carried out to carry out government functions;
- c. The act of the field as a means to cause legal consequences in the State Administration Law;

²² DR. Ridwan HR, *Op. Cit*, p. 98.

²³ DR. H Yusri Munaf, SH. M.HUM, *Hukum Administrasi Negara*, Pekanbaru: Publishing Marpoyan Tujuh, 2016, p. 77.

²⁴ Muhtar Said, "*Asas-Asas Hukum Administrasi Negara*", Yogyakarta: Penerbit Thafa Media, 2019, p. 25.

d. The act concerned is carried out in the context of maintaining the interests of the state and the people.²⁵

A.F.A. Korsten and F.P.C.L Tonnaer argued for the government's public law actions as follows:

“Publiekrechtelijke rechtshandelingen, waarvan de overheid voor de uitoefening van hoar bestuursfunctie publiekrechtelijke rechtshandelingen”

(Public law acts carried out by the government in carrying out its government functions can be distinguished from unilateral public law actions and the actions of many parties).²⁶

From the various opinions of legal experts above, it can be sorted that government actions are divided into two, namely legal actions and factual actions. Legal actions themselves have legal effects, while factual actions have no legal effect. This explains that acts that have legal effect on state administrative law are more legal (*rechtshandelingen*).

The rules contained in Article 87 of Law Number 87 of 2014 concerning Government Administration explain what is meant by the State Administrative Decree as follows:

- a. A written determination that also includes factual actions;
- b. Decisions of State Administrative Agencies and/or Officials within the executive, legislative, judicial, and other state administrators;
- c. Based on statutory provisions and AUPB;
- d. Final in a broader sense;
- e. Decisions that have potential legal consequences; and/or
- f. Decisions that apply to Community Citizens²⁷

Based on the analysis of legal actions above, if it is related to the legal question on page seven part one, then in reasonable reasoning a common thread can be drawn that the government's action to issue derivative rules from Law No. 18 of 2017 is the government's authority from laws and regulations by way of attribution. The government's action in issuing various derivative regulations is a government legal action that is public but only unilateral.

²⁵Muchsana, “Beberapa Catatan tentang Hukum Administrasi Negara dan Peradilan Administrasi Negara di Indonesia” (in the book DR. Ridwan HR).

²⁶A.F.A Korsten dan F.P.C.L Tonnaer (in the book DR. Ridwan HR).

²⁷Undang-Undang Nomor 87 Tahun 2014 tentang Administrasi Pemerintahan.

Government Actions That Exceed the Time Limit in Issuance of Government Regulations from Law No. 18 of 2017, Are Acts Against State Administration Law

a. Government Functions and General Principles of Good Government

the principle of the rule of law is Government Based on Laws and Regulations (*Wetmatigheid Van Bestuur*). Where every government action when carrying out its functions must be based on applicable laws and regulations. In addition, the government must also pay attention to the General Principles of Good Government (AAUPB) contained in Law No. 30 of 2014 concerning Government Administration.

According to the book *General Principles of Good Government*, the government has 2 (two) functions, namely:

- a. If the function of governing (*bestuursfunctie*) is not carried out, then the wheels of government will be stuck.
- b. Service function (*vervolgens functie*) The service function is a supporting function, if it is not carried out it will be difficult to prosper the community.²⁸

Of the many functions of government, causing the government to carry out very many and heavy tasks. Therefore, in addition to resources, strong institutions are also needed and have appropriate behaviors, values, and norms in society. The government can take steps by providing good public services to the community.

Law Number 25 of 2009 concerning Public Services Article 1 paragraph 1:

"Public service is an activity or series of activities to fulfill service needs laws and regulations for every citizen and resident of goods, services, and/or administrative services provided by public service providers."

Decree of the Minister of State Apparatus Empowerment Number: 63/Kep/M.Pan/7/2003 concerning General Guidelines for the Implementation of Public Services.

General Definition:

"Public Service is all service activities carried out by public service providers as an effort to meet the needs of service recipients and the implementation of laws and regulations."²⁹

Based on the analysis above, the author can add a common thread that the government has the duty and function as a custodian of the state and the organizer of justice, besides that the government is also tasked with providing services and providing goods and services for the community. Service for the community is

²⁸Cekli Setya Pratiwi, Shinta Ayu Purnamawati, Fauzi, Christina Yulita Purbawati, *Penjelasan Hukum Asas-Asas Umum Pemerintahan yang Baik*, Jakarta: Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP), 2018, p. 50.

²⁹Keputusan Menteri Pendayagunaan Aparatur Negara Nomor: 63/Kep/M.Pan/7/2003, p. 3.

referred to as public service, while public service has 6 (six) principles that are the basis for carrying out services so that they can run optimally.

The government should issue Government Regulations on time by Law No. 30 of 2014, but many derivative regulations are issued beyond the specified time. In this case, of course, government actions that exceed the time limit do not meet one of the principles of public service, namely the principle of accountability. Where in the Decree of the Minister of State Apparatus Empowerment Number: 63/Kep/M.Pan/7/2003 it is explained that the principle of accountability is an act that can be accounted for by the provisions of laws and regulations.

Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration, Article 1 Paragraph 17:

"The General Principles of Good Governance, hereinafter abbreviated as AUPB, are principles used as a reference for the use of Authority for Government Officials in issuing Decisions and/or Actions in the administration of government."

Article 5:

"The administration of government is based on:

- a. Principle of Legality;
- b. Principles of Protection of Human Rights; and
- c. AUPB"

Article 7 Paragraph 1:

"Government officials are obliged to carry out Government Administration by the provisions of laws and regulations, government policies, and AUPB."

Article 8 Paragraph 2:

"Government Agencies and/or Officials in exercising authority shall be based on:

- a. Laws and Regulations; and
- b. AUPB.

CHAPTER V Article 10 Paragraph 1:

"The AUPB referred to in this Law includes the principles of:

- a. Legal certainty;
- b. Expediency;
- c. Impartiality;
- d. Accuracy;
- e. Do not abuse authority;
- f. Openness;
- g. Public interest; and

h. Good service"³⁰

According to Jazim Hamidi quoted from A.M. Donner, there are 5 principles within the scope of AAUPB, namely, the Principle of Honesty, the Principle of Accuracy, the Principle of Purity in Purpose, the Principle of Balance, and the Principle of Legal Certainty.³¹

According to Lotulung/J.J. Veld and N.S.J. Koeman, there are 7 principles in AAUPB. These principles are the Principle of Prohibition, Prohibition of Arbitrary Act, Principle of Equality, Principle of Legal Certainty, Principle of Growing Hope, Principle of Honesty, and Principle of Prudence.³²

From several expert opinions and article references regarding AAUPB, it can be said that the government in carrying out its actions is not only bound by the rules of law as written law but also pays attention to the unwritten law, namely AAUPB. AAUPB itself has many principles, even from some experts there are differences in number, while the principle that becomes very important in AAUPB is the principle of legal certainty. If AAUPB is used as a test tool in examining a case, then the judge must respond to the overall value of truth and justice. Because according to the book Cekli entitled "Legal Explanation of General Principles of Good Government", the substance of the decision made by the judge must ensure fair legal certainty.³³

b. Unlawful Acts by Government Bodies and/or Officials (Onrechtmatige Overheidsdaad)

According to Soetojo Recht is a right, and a right is an authority given by law to a person, the violation of rights by a person cannot be separated from the term unlawful act.³⁴

Article 2 paragraph (1) of the Supreme Court Regulation explains that cases of unlawful acts by Government Agencies and/or Officials (Onrechtmatig Overheidsdaad) are the authority of the state administrative court.³⁵

Supreme Court Decision in Josopandojo Case (decision No. 838K/Sip/1970). The criteria for unlawful acts by the ruler according to this judgment are as follows:

- a. Acts of the ruler that violate applicable laws and regulations;

³⁰More complete explanation of each of these principles can be seen in the Academic Text UU No. 30 Tahun 2014 tentang Administrasi Pemerintahan.

³¹Cekli Setya Pratiwi, *Op. Cit*, p.58.

³²*Ibid*, p. 58.

³³*Ibid*, p. 59.

³⁴Syukron Salam, *Perkembangan Doktrin Perbuatan Melawan Hukum Penguasa*, *Nurani Hukum*. Vol. 1 No. 1 Desember 2018. p. 36.

³⁵Peraturan Mahkamah Agung

- b. The deeds of the ruler violate the interests in society that are supposed to be obeyed.³⁶

Ridwan HR in his book entitled State Administration Law stated that government actions that may cause harm to the community or legal entities in general there are 3 (three) types:

1. Government actions in the field of making laws and regulations (*regeling*).
2. Government actions in issuing decisions (*beschikking*).
3. Government actions in the civil sector (*materiele daad*).

Arrest HR (1919) considers that the criteria for determining an act to be contrary to the law are generally as follows:

1. Contrary to the legal obligations of the offender;
2. Infringe the rights of others;
3. Acts that violate decency;
4. Contrary to the principle of propriety, prudence in good society.

Based on the four criteria above, if the action of the state administration violates any of them, it can be said to be unlawful.³⁷

Sudikno Mertokusumo, When certain legal subjects do not fulfill their obligations as they should, or violate the rights of other legal subjects, it is said to be a violation of the law.³⁸

Based on the above analysis, the author can conclude that the government's actions when it does not also issue the implementing regulations of the orders of Law No. 18 of 2017 are included in the criteria of unlawful acts. If the implementing regulations are not issued, the community will suffer many losses. In this case, one of them is the three crew members who feel that their interests have been harmed by the government's action of ignoring or disregarding the Government Regulation on the Placement and Protection of Commercial Ship Crew and Fishing Ship Crew by exceeding the time limit specified in Article 90 of Law No. 18 of 2017, namely 2 (two) years. This action is certainly contrary to the Government's obligation as the holder of the power to issue implementing regulations by the law and the AAUPB.

In this case, of course, the government's authority from the regulations of Law No. 18 of 2017 is given by way of attribution and is an act derived from public law.

³⁶DR. Ridwan HR, *Op. Cit.* p. 273

³⁷M. Adiguna Bimasakti, *Op. Cit.* p. 265.

³⁸M. Adiguna Bimasakti, *Op. Cit.* pp. 265-286.

CONCLUSION

Based on the analysis described by the author in the discussion section, the following conclusions or legal opinions can be drawn. The Government (President) in this case has the authority to make and issue implementing regulations from Law No. 18 of 2017, this is by Law No. 30 of 2014 on Government Administration, that it is not the official who has the authority, but the position. Positions are regulated and subject to the laws of the Constitutional Law and the Government Administration Law.

Thus, the legal position of the government based on public law is representative of the position and is an element that carries out government functions according to Law No. 30 of 2014, Article 1, Paragraph 3. According to Law No. 30 of 2014, Article 1, Paragraph 8, actions are actions of the government or other state administrators either to do or not to do concrete actions in the administration of the state. This means that the actions of the government in issuing the implementing regulations of Law No. 18 of 2017, whether they are carried out or not, are still included in the actions of the government administration.

The actions of the Government Administration to create and implement regulations of Law No.18 of 2017 are classified as lawmaking and regulations (*regeling*). This conduct is one of the factors that can cause harm to the community or legal entity.

Apart from laws and regulations, the government should also pay attention to AAUPB. In Law Number 30 of 2014 concerning Government Administration, Article 1, Paragraph 17, AAUPB is a principle that must be referred to in government administration. If one of the principles is violated, it is considered an illegal act.

In terms of implementation, only 4 (four) by-laws were successfully promulgated and the rest exceeded the time limit. Based on the case situation in Chapter I, the effect of the government's delay in promulgating these regulations is the lack of legal certainty for the people concerned. One of the cases raised by the author is the discrimination and exploitation of Indonesian migrant crew members. The analysis shows that the government's actions are not by the AAUPB, namely the lack of legal certainty for 5 (five) years specifically for the PP on Placement and Protection of Seafarers and Fishermen, as well as the abuse of authority beyond the specified period. In this case, the actions of the government are included in the unlawful actions.

The legal actions of the government, in this case, the negligent actions against the orders of Law No. 18 of 2017, certainly have a legal impact on society. An example that the author takes from the derivative regulations that have not been issued is the Government Regulation on the Placement and Protection of Commercial and Fishing Ship Crews, which had not been ratified by the government at the time of writing. The issuance of this PP follows a lawsuit by victims of migrant crew members, who have not

obtained legal certainty since the enactment of Law No. 18 of 2017 until 2022. Based on the analysis that the author explores, the government, in this case, the President, has the authority to issue this PP. But in fact, the President did not carry out the order by law, and even in the provisions of the Principles in AAUPB, the government violated the principle of legal certainty. This is certainly included in the unlawful act.

Based on the above legal opinion, the author can make the following recommendations. With the existence of such unlawful acts, the aggrieved community can fight for legal protection. The kind of legal protection that is implemented is repressive legal protection.³⁹ Citizens can sue the president because, in the implementation of government actions, it is the office that performs and is responsible, not the official, according to the repressive action against government actions from Law No. 18 of 2017. The President is the Head of State and Head of Government. Therefore, he has the power to appoint and dismiss ministers. Meanwhile, the Minister is an assistant to the President and is responsible to the President.

This means that although the process of issuing government regulations is carried out by the relevant ministers, the power to issue remains in the hands of the President. A complaint can be filed with the competent court, in this case by Supreme Court of the Republic of Indonesia Regulation No. 2 of 2019 on Guidelines for Dispute Resolution of Government Actions and Authorities.

Adjudication of unlawful acts by government bodies and/or civil servants (Onrechtmatige Overheidsdaad) that the competent court is the State Administrative Court. The State Administrative Court is empowered to hear disputes concerning governmental acts after administrative remedies have been exhausted, in accordance with Act No. 30 of 2014 and PERMA No. 6 of 2018.⁴⁰

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³⁹ Perlindungan Hukum yang Bertujuan untuk Menyelesaikan Sengketa

⁴⁰ Peraturan Mahkamah Agung republik Indonesia Nomor 2 Tahun 2019. p. 5.

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