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Review Article

State Authority and Legal Action: How to Prevent the State Misconduct?

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Abstract: The ideal organization is the bureaucracy whose activities and objectives rationally think and divisions of duty and authority are clearly stated. There are some expert opinions on the notion of authority. According to Philipus M. Hadjon, in constitutional law, the Authority (*Bevoegdheid*) is described as the rule of law (*Rechtsmacht*). So, in the concept of public law, authority relates to power. Ferrazi defines the authority as the right to do one or more management functions, which include arrangements (regulation and standardization), Management (Administration) and supervision (supervision) or specific affairs.

Keywords: Song Guide; Prostitution; Deviation; Criminology; Criminal Law

Introduction

The state is an organization or supreme body that has the authority to govern matters relating to the interests of the general public and has an obligation to be protected, protect and educate the life of the nation. Prof Miriam Budiardjo gives the understanding that the organization in an area can legally enforce its power against all other strengths and that can set the purpose of living together. Thus, the country is a group of people occupying certain territories and organized by legitimate state governments, who generally have sovereignty (out and in). Meanwhile, according to Prof. Soenarko, the country is a community organization that has a specific territory where state power is fully effective as a sovereignty (Utrecht, 1970). The ideal organization is the bureaucracy whose activities and objectives rationally think and

divisions of duty and authority are clearly stated. There are some expert opinions on the notion of authority. According to Philipus M. Hadjon, in constitutional law, the Authority (*Bevoegdheid*) is described as the rule of law (*Rechtsmacht*). So in the concept of public law, authority relates to power (Hadjon, 1997). Ferrazi defines the authority as the right to do one or more management functions, which include arrangements (regulation and standardization), Management (Administration) and supervision or specific affairs (Hadjon, 1997). In state management, delegation of authority has a huge influence. Because, without delegated authority, it will result in achievement of state objectives. However, in the provision of authority to the person/agency can cause new problems that misuse the authority.

Therefore, the paper analyses two main important points, *first*, how is the government legal position? And *second*, what is the authority and legal action of the government? The paper is intended to find out how the legal position exists in

the government, and to know the authority and legal action of the Government.

Result and Discussion

A. Government Legal Status

The Division of Law into public law and private law conducted by Roman jurists, Ulpianus, when Ai writes "*Publicum ius est, quod ad statum rei romanae spectat, Privatum Quo ad singulorum Utilitatem*" (Public Law is applicable law Welfare of the Roman state, while private law is the law governing family relationships), its influence is considerable natural history of legal thought, until now. One of the remaining influences until now is that we are not able to refrain from such divisions, including in reviewing the existence of the Government in conducting legal associations. The daily reality shows that governments in addition to carrying out activities in public law, are also often involved in the civil field. In a legal association, the government has often performed with the *pet'en twee*, with two heads, as a representative of the department (AMBT) who is a resident of the public law and a representative of the legal entity (*Rechtspersoon*) which is subject to private law. To know when the administration of the state is involved in public relations and when involved in civil law, first to do is to see the state's legal institution, inevitably should involve the division of two types of The law (Ridwan, 2014).

In the perspective of public law, State is the office organization. According to Logemann "in the form of social reality, the state is an organization that pertains to various functions. The meaning of function is the detailed work environment in its overall relationship. These functions are called positions. The country is a job organization ". According to Bagirmanan, a position is a permanent work environment containing certain functions that overall reflect the purpose and work of an organization. The country contains various positions or fixed working environments with various functions to achieve the country's objectives. In other words, a position is a permanent work environment (*Kring van Vaste werkzaamheden*) that provides and is used in the interests of the State. The position is fixed, while the position holder (*Ambstdrager*) can be alternated.

The position of government government or State administration has a position as representatives of public institutions, and as representatives of private legal entities. Government authority according to the legality principle that the government is regulated by legislation in its authority. The application of this principle supports the validity of legal certainty and treatment similarities. This means that the legality principle is intended to guarantee citizens ' legal status to the government. Sources and ways of obtaining government authority are sourced from the Constitution and laws. Theoretically, the authority derived from the Law regulation is obtained through 3 (three) ways, namely Attribution (*Attributie*), delegation (*Delegatie*), and Mandate (*Mandaat*). Attribution is the granting of government authority by the lawmaker to the government organs, the delegate is the delegation of governmental authority from one governmental organ to another, and the mandate is to occur when the organ The government allowed his authority to be practiced by other organs on his behalf (Hawke, 2017).

1. Government Legal Status in Public Law

The Government's legal position in public law is the legal actions undertaken by the authorities in carrying out governmental functions. This public legal action is carried out based on public law authorities that can only be born from public law authorities as well. While private legal action is a legal action based on the provisions of civil law. Agency or official actions may be categorized into 3 (three) sections, as highlighted by Hadjon (2015), as follows:

- 1) Decision making action (*beschikking*)
- 2) Making rules (*regeling*)
- 3) Material action (*materiele daad*)

According to P. Nicolai and friends, there are some traits in the office or organ of government that is: the Government organs exercise authority on its own name and responsibility, which in the modern sense, is placed as a liability Political and personnel or government responsibilities in the presence of judges. Government organs are the sole responsibility of liability. The implementation of authority in maintaining and maintaining the legal norm of administration, the Organ of government can act as the defendant in the judicial process, namely the nature of things there are objections, appeals, or resistance. Besides as the defendant, the government organs can also appear to be a party

that is not satisfied, meaning as Plaintiff (*Pengugat*). In principle the governmental organs do not have their own property. The Organ of government is a part (instrument) of the legal entity according to private with its assets. The Department of Regent or Mayor is the organs of the legal entity "county". According to the rule of law, this general body can have property, not its organ of government. Although these government positions are held with rights and obligations or are authorised to commit legal action, the position cannot act alone. The position can do legal action, which is done by proxy (*vertegenwoordiging*) i.e. acting (*Ambtsdrager*), acting on that office.

According to E. Utrecht by represented acting, the position is running. The exercise of rights and obligations supported by the Department is acting. The department acted with the intermediary of his companions. P. Nicolai and friends say that: "The authority given to the organ of government must be exercised by man. Their energy and minds are appointed to perform the function of the organ, the acting ". According to the provisions of the law, acting only exercised authority, as the acting did not "possess" authority. The authority is office.

Logemann says, "under the laws of the State, it is to be burdened with obligation, authorized to do legal acts, right and obligation to go on, no matter the change of acting".

According to F.A.M. Stroink and J.G. Steenbeek said that in both offices and officials applied different types of law. Tax Inspector Department authorized to issue tax decree. The position was executed by his deputy, the acting. This representative is a human being who acts as a tax inspector of officers, and in its quality as a clerk he is subject to the law of personnel. This vice is merely able to execute the position decision. As such, the appointment as a tax inspector has delivered authority to the Department of Tax inspectors, in order to represent it.

2. *Government Law Status in Private Law*

In the legal library, there are several elements of the legal entity (Anggara, 2015: 3-5):

- 1) Association of people (organized organizations);
- 2) May conduct legal acts in legal relations;
- 3) The existence of a separate property;
- 4) has its own interests;
- 5) has an admin;
- 6) Have a specific purpose;

- 7) has rights and obligations;
- 8) Can be sued or sue in front of a court.

If based on the public law of the country, the province, and the district is a department or group organization of the State and government organs. While based on the civil law of the state, province, and District is a collection of legal entities whose laws are executed by the government. The purpose of the legal entity here is a collection of people, that is all in the life of society in accordance with the provisions of the Law can act as human beings, who have rights and authority, such as a group of people, Limited liability company, shipping companies, societies and so on (Darma, 2017: 221-234).

When the government acts in the field of civil law and is subject to legal regulations, the government acts as a representative of the legal entity, not a representative of the office. Therefore, the position of the government in the Association of Civil Law is no different from a person or private legal entity, has no special position, and can be a party to the civil dispute with the same position as Civil law (equality before the law) in a general judicial.

Then the Government law in the field of civil law is as representative of a legal entity (*Rechtspersoon*), which is subject and regulated by civil law. Thus, the Government's position in private law is as representative of the legal entity of civil law. The theoretical existence of Governments has two functions as representatives of the Department and legal entities, each governed and subject to different laws (private law and public law) often confusing for most laymen. One way to relieve such confusion is through an in-depth understanding of the concept of governmental authority.

3. *Various Kinds of Government Position*

Because the scope of the administration activities of the country or government is very broad and diverse, there is the dynamics of development of society that demands the arrangement and involvement of State administration. Therefore, government offices as organizers of government activities as organizers of government and community activities are also many and varied, even the implementation of government duties are not only executed by the office of Government such as government agencies, but also by private agencies.

According to Philipus M. Hadjon: "*The authority of the public law can only have by ruler*". In this doctrine it is contained that every person or everybody who has a public law must be put into the ruling class according to its definitions. This means that any person or entity that has public legal authority and is not included in the name of the public government bodies as mentioned in the Constitution (lawmakers, governments, ministers, provincial and municipal bodies of the municipality) Must be included in decentralization (functional). A juridical form of organization is not a question. The body is in the form of a body established by law but can also be a government body of a Civil Law foundation/institution that has public law authority (Hadjon, 2015).

Subsequently, Indroharto grouped the state's governmental or administrative organs as follows (Kansil, 2010):

- 1) Official government installations under President as chief executive.
- 2) Installation in the environment of the country outside the executive power environment based on the legislation to carry out government affairs.
- 3) Civil law bodies established by the Government with the intent to carry out the duties of government.
- 4) Installation which is cooperation between the Government with the private parties that carry out the duties of government.
- 5) Private law institutions based on legislation and licensing systems perform governmental duties.

To grouping more detailed information about the TUN agency or office that organizes the affairs, functions or duties of government, SF. Marbun elaborate as follows (Kansil, 2010):

- 1) Those who belong to the executive class ranging from the president to the head of Government (including his assistants in the center such as the vice President, the ministers and Non-departmental institutions).
- 2) Those who conduct decentralized affairs, namely regional head of Level I, head of level II and village government.
- 3) Those who conduct deconcentration affairs, such as the governor, Regent, Walikota, administrative mayor, Camat, and Lurah.
- 4) Third parties or private parties who have a special relationship or regular relationship with the Government, whether governed by public law or private law.

- 5) Third or private parties who acquire a concession or permission from the government.
- 6) A third or private party subsidized by the Government, such as private schools.
- 7) Foundations established and supervised by the Government.
- 8) Third parties or cooperatives established and awed by the government.
- 9) Third parties or banks that are established and supervised by the Government.
- 10) Third or private parties who act jointly with the Government (Persero), such as state-owned enterprises that obtained the attribution of authority, PLN, Posdan Giro, PAM, Telkom, Garuda, and others.
- 11) Chairman of the District Court, Chairman of the High Court and Chief of the Supreme Court and clerks in the judicial environment.
- 12) Secretaries of the state's supreme institutions (MPR) and state high institutions and secretaries of the DPRD.

The classification by Indroharto and SF. Marbun theoretically seems to be acceptable, but in practice (especially in the PTUN judicial process) The qualification is not easy to implement, still holds a number of issues.

- 1) First, the chairman of the court and the Chief Justice mentioned by SF. Marbun in eleven points is a state organ that acts for and on behalf of the State, not as a State administration.
- 2) Secondly, when the Government conducts cooperation with the private sector, it is not necessarily the private sector as a TUN agency or office, because it could be that the cooperation was done on the basis of a treaty in the civil context, and the government represents State as *Privaatrechlijkerechterspersoon*.
- 3) Third, private bodies that are formed, supervised, and financed by the Government, such as foundations, cooperatives, banks, private schools, etc. In its activities are governed and subject to civil law. In other words, the establishment and financing of the Government does not necessarily make the private body is classified as a TUN agency or office.

In the law of Administrative literature, civil law entities can be categorized as State administration with the following conditions (Ridwan, 2014):

- 1) The agencies were formed by public organisations;
- 2) Those agencies perform governmental functions;
- 3) Legislation expressly authorizes the conduct of government affairs and under certain conditions authorities enforce administrative sanctions. H.D. Van Wijk refers to it as a private party as the government (*particulere nals overhead*).

B. Authority and Acts of Government Law

1. Legality Principle

The legality principle is one of the main principles that serve as the basis in every government and state administration in every country of law, especially for the countries of the law in the Continental System. At first the principle of legality is known in tax withdrawal by the state. In the famous English phrases; "No taxation without representation", no tax without (approval) of the Parliament, or in America no expression; "Taxation without representation is robbery", tax without (approval) of the Parliament is a robbery. This means that tax withdrawals can only be made after the laws governing the voting and tax determination. This principle is also called by law (*de heerschappij van de Wet*). The principle of legality in the law of the State administration has meaning, "*Dat het bestuur aan de wet is onderworpen*" (that the government is subject to legislation) or "*Het Legaliteitsbeginsel Houdt in Dat alle (algemene) de burgers bindende bepalingen op de wet moeten Berusten*" (The principle of legality determines that all provisions that bind the citizens must be based on the law). This legality principle is the principle of the law country which is often formulated with the phrase "*Het Beginsel van Wetmatigheid van Bestuur*" the principle of government legitimacy.

H.D. Stout, quoting Verhey's opinion, suggests that *Het beginsel van Wetmatigheid van Bestuur* contains three aspects, namely the negative aspect (*Het* negative aspect), the formal-positive aspect (*Het Formeel*-positive aspect), and the material-positive aspect (*het Materieel*-positive aspect). The negative aspect determines that governmental action should not be contrary to law. The formal-positive aspect determines that the Government has only certain authorities as long as it is given or by law. The *Materile*-positive aspect determines that legislation contains general rules that bind to government action. This means that the

authority must have a statutory basis and also that its contents are determined by the law. The legality principle is closely related to the idea of democracy and the idea of legal state. The idea of democracy demands that every form of legislation and decisions get the approval of the representatives of the people and as many as possible to observe the interests of the people. According to Sjachran Basah, the principle of legality means the effort to realize integral duet harmoniously between legal and understanding of the sovereignty of the people based on the principle of monoduality as Pilate-pillars, which is the nature of the constituent.

The implementation of the principle of legality, according to Indroharto, will support the validity of legal certainty and treatment similarities. The similarity of act occurs because everyone in the situation as specified in the provisions of the law is entitled and obligated to do what is specified in the law. While the legal certainty will occur because a regulation can make all the actions that the government will do can be foreseen or predicted in advance, by looking at the prevailing regulations, it can essentially Be seen or expected what the government officials will do. Governance is based on the legality principle, which means that the law is based (written law), in practice is not adequate especially in the community who have a high level of dynamic. Bagir Manan mentions the difficulties faced by the written law, i.e. the first, the law as part of the community life covers all aspects of life is very broad and complex, so it is not possible to be entirely *antediluvian* in legislation; Second, legislation as written law is static (in general), can not quickly follow the movement of growth, development and change of society that must be carried (Manan & Magnar, 1987). Prajudi Atmosudirdjo mentions several requirements that must be met in the governance of the administration, namely:

- 1) Effectiveness, meaning that the activity must be about a defined goal;
- 2) Legitimacy, meaning that the administration activities of the State should not cause yammer because it cannot be accepted by the local community or the environment that is in transit;
- 3) Juridity, is a condition that states that the conduct of State administrative officials should not violate the law in a broad sense;
- 4) Legality is a condition that states that the deed or decision of the State Administration shall not be conducted without the basis of the law

(written) in a broad sense; If something is executed in the pretext "Emergencies", then the emergency is mandatory to prove later; If then not proven, then the act can be sued in court;

- 5) Morality is one of the most concerned conditions by the community; The moral and ethic of general and obligatory must be held high; Profanity, rude, insolent, disrespectful, inappropriate words, etc. must be avoided;
- 6) Efficiency is required to be optimally pursued; The cost and productivity must be undertaken highest;
- 7) Highest techniques and technologies must be used to develop or maintain the highest quality of achievement.

2. *Government Authority*

Every state and government organization must have legitimacy, which is the authority given by the law. Thus, the basic substance of legality is the authority, namely "*Het vermogen tot het verrichten van Bapaalde Rechtshandelingen*", namely the ability to perform certain legal actions. H.D. Stout says that authority is a sense derived from a governmental organization, which can be explained as a whole of the rules relating to the acquisition and use of government authorities by the subject of public law within Public legal relations. The authority therein contains rights and obligations, according to P. Nicolai, which is the ability to perform certain legal actions (i.e. actions intended to cause legal consequences, and includes about arising out and disappearance of Law). R.J.H.M. Huisman declared a *deespat* that the government Organ could not assume that he had his own governmental authority. Authority is granted only by law. Lawmakers can grant governmental authority not only to governmental organs, but also to employees (e.g. tax inspectors, environmental inspectors, and so on) or to special bodies (such as the Electoral Council of , special courts for land lease), or even against private legal entities.

3. *Resources and How to Acquire Government Authority*

Along with the main pillars of the state of law, which is the legality principle, this principle implied that the authority of the Government is derived from legislation, meaning that the source of authority for the Government is; Statutory regulations. Theoretically, the authority locally from legislation is obtained through 3 ways, namely

attribution, delegation, and mandate. Legislators who are competent to provide attribution of the authority of the Government are distinguished between:

- a. Who is domiciled as an original legislator; In our country at the central level is the MPR as a constitutions of the Constitution and Parliament together with the government as the giving birth of a law, and at the regional level is the DPRD and local government that gave birth to local regulations.
- b. Acting as a delegated legislator; such as the President based on a provision of legislation issued a government regulation in which the government created authority to the agency or the administrative department of a particular state.

In delegation there is an authority that has been established by the Agency or the administrative department of the State that has obtained the authority of the government in an attribute to the Agency or other State Administration department. So a delegation is always preceded by an attribution of authority (Manan & Magnar, 1987).

Regarding attribution, the delegation, and this mandate H.D. van Wijk/Willem Konijnenbelt defines the following:

- a. Attribution is the granting of government authority by lawmakers to governmental organs.
- b. Delegates are the delegation of governmental authority from one governmental organ to another.
- c. The mandate occurs when The Government permits its authority to be executed by another person on his behalf (Sugiarto, 2018).

In *Algemene Wet Bestuursrecht* (AWB), the mandate means granting authority by the governmental organ to other organs to make a decision on its behalf, while the delegate is interpreted as a delegation of authority by the Government organ to the people Others to take Decisions with their own responsibilities. In the event that the delegation of governmental authority through this delegate there are the following conditions.

- a. Delegation must be defined by the Delegation of Delegates (Delegans) can no longer use the authority that has been bestowed;
- b. The delegate must be based on the provisions of the legislation, meaning that delegation is

- only possible if there is provision for it in The legislation;
- c. The delegation is not to the subordinate, meaning in the employment hierarchy relationship is not dayagel permitted delegation;
- d. Obligation to provide information (explanation), meaning de; Egans reserves the right to seek explanation of the implementation of such authority;
- e. Policy rules, which means delegation provides instruction on the use of such authority (Hadjon, 1998).

In Terms of attribution, recipients of authority can create new authority or expand existing authority, with internal responsibility and extention of the implementation of the authority attributed entirely to the recipient of authority (Atributaris). In Delegation there is no creation of authority, which exists only the authority of the authorities of the one to the other officers. The responsibility of the juridical is no longer at the delegation of Delegates (Delegans), but to the delegation of Delegates (Delegataris).

Table 1. The difference between delegation and mandate

Delegation	Mandate
Delegation of authority The authority cannot be exercised on an incidental basis by an organ that has the original	command to execute Authority may at any time be undertaken by the Mandans
There was a transitional responsibility	No switching of liability
Must be under the Law	Not necessarily under the Law
Must be written	Can be written, can also be orally

Philipus M. Hadjon makes the following delegation and mandate differences (Hadjon, 1994).

Item	Delegation	Mandate
The procedure of Delegation	In the routine relationship of the superiors: ordinary unless	From an organ of government to others: with statutory regulations

	strictly prohibited	
Responsibilities and Responsibilities	Stay on the mandate provider	Responsibilities of the defendant. Switching on Delegataris
Possibility that the giver uses that authority again	At any time can self-use the authority bestowed on it	Cannot use that authority again unless there is a repeal by sticking to the principle “ <i>contrarius actus</i> ”.

In the literature, there is a division of the Nature of government authority, which is bonded, factorist, and free, especially in relation to the authority of the creation and publication of decisions by government organs, so it is known Freely binding decisions. Indroharto said that: first, the authority of the Government is bound, that is when the basic rules determine when and in the part that how the authority can be used or the basic rules are little Determining the content of the decision to be taken, in other words, when the basic rules that determine the content of the decision to be taken in a detailed way, then such government authority shall constitute a binding authority; Second, the factative authority, occurred in the case of the agency or administrative official of the State is not obliged to apply its authority or a little much still SDA options, even if that choice can only be done in matters or circumstances specified in the basic rules; Third, free authority, that is when the basic rules give freedom to the agency or the State administration officials to determine for themselves the contents of the decision to be issued or the basic regulation provides the scope of to the relevant State administration officials.

C. Governmental Action

1. Governmental Action Definition

The Government or administration of the State is as the subject of law, as *Dragger van de rechten en plichten* or advocates of rights and obligations of liability. As the subject of the law, government as another legal subject performs various actions of both the real action (*Feitelijkhandelingen*) and legal action (Ridwan, 2016).

The government performs two kinds of actions, ordinary acts and legal action. In legal studies, the most important thing to put forward is the actions in the second category. The Act of Governmental law is the action undertaken by the Agency or the State Administration Office in order to implement governmental affairs. The legal action of the government is two kinds of public and private. Public law acts are further divided into two namely public law and two-pointed public law. Two-sided public acts are further divided into joint agreements and actions (Anggriani, 2012).

In a legal state, any governmental action must be based on the law, because within the country there is a fundamental principle of legality. This principle determines that without the basis of the authority given by a prevailing law, all kinds of government apparatus will not have any authority that could affect or change the legal position of the citizens Society. However, it is not always every governmental action to have the legislation set up. Can happen, under certain conditions especially when governments must act quickly to solve concrete problems in society, Law regulations are not yet available. In such circumstances, the government is given the freedom to act in the discretion.

If it is said that the action of government law is an assertion of the unilateral will of the Government organ (*eenzijdige wilsverklaring van de Bestuursorgaan*) and carries the consequences on the relationship of law or the existing law, then the will of the organ may not contain defects such as *dwaling*, fraud (*Bedrog*), coercion (*Dwang*), and other causes of unauthorized legal action. In addition, as any action of the law must be based on the prevailing laws and regulations, the action itself shall not be distorted or contrary to the relevant regulation, which may cause The consequences of the law that Arise is void (*nietig*) or can be cancelled (*Nietigbaar*).

2. Elements of Governmental Action

It is said that actions of governmental law are actions performed by government organs or State administration that are intended to cause the consequences of government law in the field of State administration. Based on This sense appears that there are some elements in it. Muchsan mentions elements of governmental action as follows (Anggriani, 201):

1) The deed was done by the government officials in his position as a ruler as well as a

governmental tool with his own initiative and responsibility.

- 2) The deed is carried out in order to implement governmental functions.
- 3) The act is intended as a means for the cause of law in the field of administrative law.
- 4) The Act concerns the preservation of the interests of the country and people.
- 5) The act must be based on the prevailing rules of abuse.

3. Sorts of Governmental Law Actions

It is obvious that government or state administration is the subject of the law representing two institutions, namely government offices and legal entities. Because it represents two institutions, there are two kinds of legal actions, namely public law action and private law.

The position of government law representing the two institutions, performing with "a *tweet Petten*" and governed by two distinct areas of law, public law and private law, will give birth to legal action with the consequences of the law that is also different. In practice it is quite difficult to distinguish when the legal action of the Government is governed by public law and when the action is governed and subject to civil law, especially with the fact that governmental action is not always carried out by organs Government, but also by a person or by a civil legal entity with certain requirements. In addition, there are other difficulties in determining the boundary lines of government action or public or private, especially with regards to the existence of two kinds of public law, namely pure, such as legal action implemented By public authority, and is a mixture of public law and private law. It is therefore necessary clarification regarding when these governmental or administrative legal acts are and are governed by civil law and when the action is governed by public law.

Theoretically, the way to determine whether the action of the Government is governed by private law or public law is to look at the government's position in carrying out the action. If the government acts in its quality as a government, then only the public law is valid, if the government acts not in its quality as the government, then the privacy laws apply, in other words when the government is involved In his civil association and not as his position as a party to the public interest, he does not differ from the private party, which is subject to private law.

4. Characteristics of Government Legal Action

Among scholars there have been differences of opinion on the nature of the law action. Some claim that legal acts occurring within the scope of public law are always unilateral or one-sided legal relationship (*Eenzijdige*). For them there is no public legal act of two, no treaty governed by public law. When between the government and a particulates held a treaty, the law governing the Covenant was always private law.

In a legal state any legal action of the Government must always be based on a legality principle or must be based on a legal basis or must be based on applicable laws and regulations. This means that the legal action of the Government is essentially the action undertaken in order to enforce the provisions contained in the prevailing laws and regulations or in order to govern and serve the public interest Contained in the provisions of the relevant legislation. The provisions of this law give rise to certain authorities for the Government to perform certain legal actions. Because this authority is only given to certain governmental organs, not to the other party, then the action of the ruling Law on the foundation is unilaterally, not the result of the approval with the party is subject to the action of the law. In the law of the State administration, the legal relationship (*rechtsbetrekking*) between the Government, in its capacity as a representative of the government office is not in its capacity as a representative of the governing body, with a person or a civil legal entity this Causing a legal relationship between the government and a person and a civil legal entity is ordinative (Ridwan, 2016).

In practice the government affairs are not conducted independently by governments, but also operated by other parties even private parties who are authorized to conduct government affairs in the framework of cooperation relations. According to E. Utrech the governmental action can be done in various ways (Ridwan, 2016):

- 1) The Act is the administration of the State itself.
- 2) Acting is the subject of the law (equal to any other legal entity) that does not include the State administration and that has a special relationship or common relationship with the government.
- 3) Acting is another subject of law that does not include the State administration and is undergoing its work based on a onsession or

based on permission (*vergunning*) given by the government.

- 4) Acting is another legal subject that does not enter into the administration of the state and which is given government subsidies.
- 5) The act is the government together with other legal subjects that are not the administration of the State and the two parties are joined in the form of cooperation (*Vorm van Samenwerking*) which is governed by private law.
- 6) The Act is a foundation established by the Government or government supervised.
- 7) The Act is the subject of another law which is not the State administration but is given something of ruling authority (the delegation of legislation).

Conclusion

Based on the explanation above, it can be concluded that in essence all power has authority to do or not to do. Effort and effort to minimize systemic damage need to be emphasized the operational standards of procedures to prevent misuse of authority and position in deciding or to involve a policy involving the lives of the crowd. The authority of the Government (in conducting public works, therein is governed by what, in what way, and how the government uses its authority; the use of this authority is poured in the form of legal instruments so that it is Also about the creation and use of legal instruments in exercising power.

Using authority must be realized on the basis of harmonization with applicable laws and regulations. The notion of a legal state requires that the implementation of government affairs and Governance should be based on legislation and provide assurance to the fundamental rights of people. The principle of legality becomes the basis for the legitimacy of governmental actions and the assurance of protection from people's rights. Implementation of the principle of legality, according to Indroharto will support the validity of legal certainty and treatment similarities. The similarity of treatment occurs because everyone who is in a situation as specified in the provisions of the law is entitled and obligated to do what is specified in the law.

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None

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