

POLICY FORMULATION TO PREVENT CONFLICTS OF INTEREST IN SOUTH BORNEO PROVINCE (STUDY IN A REGION BASED ON THE WETLAND ENVIRONMENT)

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Abstract

Indonesia has show his commitment to The UN Anti- Corruption Convention with ratified UNCAC through Law Number 7 of 2006. With ratification that, then Indonesia has obligation to implement UNCAC articles. One of The rule in Law Number 7 of 2006 is to avoid or prevent collision interests in the organization both central and regional governments. Collision interest tend cause behavior corruption and taking detrimental decision _ interest public. This is the basis How Readiness Local Government to avoid from this conflict of interest, it is very important to see what policies have been issued especially in South Kalimantan. In some the index released by the Regional Government Corruption Eradication Committee was obtained Still violate so matter what can _ so solution policy wise. Obedience UNCAC will be urgent to prevent collision interest. Findings from This research found policies issued Regent / Mayor in place research has been fulfilled and varied nomenclature different However the same substance

Keywords: Policy, Conflict Importance, South Kalimantan.

INTRODUCTION

International world, including Indonesia, agrees that corruption is a crime extraordinary (extraordinary *crime*) which can be cross country, both from facet actors, flow of funds and impact. The cases faced by Indonesia, such as Innospec, Alstom, Rolls-Royce, require e-KTP eradication corruption with a comprehensive strategy as well as Work The same international enforcement _ law nor prevention corruption. Agreement the Then realized in a UN initiative through The *United Nations Convention Against Corruption* (UNCAC) was signed on December 18 2003 in Merida, Mexico. UNCAC includes series guide in implementation eradication corruption, includes effort prevention, formulation types included crimes _ corruption, enforcement process law, provisions cooperation international as well as mechanism recovery asset especially those of nature cross country.

UNCAC includes series guide for states parties to implement eradication corruption, includes effort prevention, formulation types included crimes _ corruption, enforcement process law, provisions cooperation international as well as mechanism recovery asset especially those of nature cross country. Implementation provisions in UNCAC effective can be considered as reflection strong commitment a country to eradicate corruption, implementing good governance and upholding the rule of law.

As of 26 June 2018, a total of 186 countries, including Indonesia, have become States Parties to UNCAC. State Party own meaning of the country committed with ratified UNCAC into regulations domestic. Indonesia has show his commitment to The UN Anti-Corruption Convention with ratified UNCAC through Law number 7 of 2006. With ratification that, then Indonesia has obligation to implement UNCAC articles. To ensure implementation of UNCAC in States Parties, carried out review mechanism in 2 rounds, each lasting 5 years. The review process for The implementation of UNCAC can be a strategic momentum to demonstrate as well as appreciate existing good practices _ _ implemented by Indonesia, as well as to improve loopholes in regulations existing laws and government policies Possible misused by perpetrators corruption.

Review process UNCAC implementation is a strategic momentum to demonstrate as well as appreciate existing good practices _ _ implemented by Indonesia, also to improve loopholes in regulations legislation as well as existing government policies Possible misused by perpetrators corruption. From 32 recommendations from UNCAC review round results Firstly, Indonesia has just finished about 8 recommendations whereas of 21 recommendations round review results secondly, Indonesia has just completed it about 13 recommendations.

Commission Eradication RI Corruption (KPK) identified there are 6 issues priorities that need to be resolved from recommendations for UNCAC Review Rounds I and II Indonesia, among others : following : Completion of the Revision of the Action Law Criminal Corruption (Tipikor); Enhancement Public Sector Transparency and Integrity and Strengthening Implementation of Bureaucratic Reform ; Enhancement Private Sector Transparency and Integrity ; Completion of the Revision of the Law on Mutual Legal Assistance in Problems Criminal (MLA); Strengthening Independence and Institutions of Anti- Corruption Institutions ; and Completion Draft Asset Confiscation Law .

In Article 7 paragraph (1) relating to the Public Sector, it has been agreed regarding efforts to establish , implement and strengthen recruitment , placement , employment , promotion and retirement systems . employee civil and, if deemed necessary, officials Other public who did not go through the election process:

- a) which is based on principles _ efficiency, transparency, and criteria objectives such as achievement, attitude fairness, and talent;
- b) which includes adequate procedures _ _ for selection and training of people for positions the public in particular considered vulnerable corruption as well as rotation, if deemed necessary, the person to another position;

- c) which is encouraging giving adequate rewards and scale _ fair salary _ with consider level development the economy of the State Party;
- d) that improve education and training programs to use possible they fulfill requirements for carrying out public functions in a correct, honorable, kind and giving manner to they training specifically and precisely to improve vigilance they are at risk corruption inherent in the exercise of their functions. These programs can refer to codes and standards ethics in the fields related.

Then in paragraph (2) it is emphasized that the State Party Must also consider taking it actions appropriate legislative and administrative , in accordance with objective This Convention and based on principles base law nationally , to improve transparency in funding candidacy for office public and, if deemed necessary, funding parties politics . In this regard, in its implementation, the funding of political parties is not made transparent. As is the case with A Danya the appearance of “ dowry politics ” in the regional elections simultaneously Can said as one of the political parties' strategies to obtain source the funding .

Problem issue dowry political naturally not Can free from limited source funding political parties and transparency of party funds Not yet can be managed well, worse appear accusations of an unscrupulous person the party that takes advantage issue dowry This politics is for interests personal. Weak openness budget Political parties also cause it Lots cadres and administrators political parties who do not know financial details party so that cause an impact bad for the political party itself the article is one form dimensions political party walk The best thing is to have transparent and accountable disclosure of political party funds so that it is hoped that conflicts of interest can be prevented as intended in Article 7 paragraph (4), namely the State Party mandatory , in accordance with principles base law national , strive to establish , implement , and strengthen systems that improve transparency and prevent collision interest .

Efforts to improve transparency funding for nominating candidate _ yourself to occupy position public and parties political contained in Law no. 7 of 2017. Existing rules require identification on sources of funds, bookkeeping, storage, restrictions big donations, as well reporting and auditing. Bawaslu do supervision regarding campaign finance. Several laws and regulations _ push integrity, honesty and responsibility answer official public, especially Article 5 of Law no. 28 of 1999 and Article 3 of Law no. 5 of 2014, which also contains a Code of Ethics and Guidelines Behavior apparatus state civil service (Article 5). There are various code ethics and guidelines other more specific behavior that applies to ministries, government regions, and institutions government other.

Violation Guidelines Conflict Interest will worn penalty the same administrative as a violation guidelines behavior, even if there is none supervision effective related imposition sanctions by institutions. ASN is mandatory report to the relevant Corruption Eradication Committee gifts and gifts received (UU No. 30 of 2002, Article 16), except if conditions or context accepted giving can be excluded (KPK Circular Letter No.B 1341 / 01-13/03/2017). Based on Law no. 20 of 2001, official government forbidden accept related

gratification _ with position and opposite with his obligations or duties, however There is a number of threshold used _ related enforcement this rule. The Corruption Eradication Committee has publish Guidelines Control Gratuities in June 2015 and Handling Guidelines Conflict Interest in 2009 to facilitate control gratification and handling conflict interest.

Why can't officials do business? Isn't work a human right? What's wrong if officials and their families carry out transactions and become richer while in office? Questions like these have been cropping up a lot lately, when the business of officials and their families is increasingly being shown to the public. What is overlooked in arguments about the right to do business is the public responsibility that officials have. Once a person is entrusted with making decisions that will affect the public, he must be isolated from all personal situations that might affect the quality of his decisions or actions professionally. A situation that can cause a dilemma between what is useful for himself or for the public who should benefit This is what is known as a *conflict of interest* .

About the collision This interest is very serious. In some countries, awareness will danger collision interest even gives rise to a form of blind trust, namely a management forum finance for someone who has a problem interests so that all interests his finances regulated by this container without He Can know What is being done to the money. With so, expected He Can take decision without influenced by his interests.

Collision interest tend cause behavior corruption and taking detrimental decision _ interest public. Indonesian history is proof of this. So government Suharto fall, we often hear the terms KKN or corruption, collusion and nepotism. Nepotism is the term given to the situation collision interest. Not only in the state, in the business world too, the concept of conflict of interest is very important. The core message regarding conflicts of interest is the potential that there is a part of a human being that allows him to make decisions in the interests of himself and his family or those close to him. There are several forms of conflict of interest, including involvement in the business process, family affiliation or relatives of the business owner (OECD/Organization for Economic Co-operation and Development, 2007).

RESEARCH METHODS

For kind This research is research empirical to use know and observe development application articles in the rules legislation. With use based mix method approach with combination between approach data qualitative through interview depth and approach quantitative through questionnaire.

RESULTS AND DISCUSSION

Conflict Interests in Legislation _

Definition conflict conflict of *interest* refers to a *situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest and professional interest or public interest.* ¹Duncan Williamson

interprets conflict interest as "something a situation in which a person, such as an officer public, a person employee, or person professional, have interest private or personal with influence goals and implementation from the duties of his office or organization". According to Commission Eradication Corruption (KPK) definition conflict interest is the situation Where a state administrators who get it power and authority based regulation legislation have or are alleged to have own interest personal on every use the authority he has so it can influence quality and performance as it should be.² Definition similar with those formulated by the Council of Europe (2000), which mentions " conflict interests are potential that if not managed in a way transparent and accountable will push official public take decisions that are not based on interests public ". As for according to Organization for Economic Co-operation and Development (OECD), conflict interest is: "*A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official's private-capacity interest could improperly influence the performance of their official duties and responsibilities.*"³

Definition operational conflict interest according to Law no. 30 of 2014 concerning Administration Government contained in Article 1 number 14, namely: " Conflict interests can drive a Official experience condition where personal considerations influence, dominate, even exclude professionalism in carrying out his duties. Consideration personal it can originate from interest personal themselves, relatives or later groups _ pressing or reducing his ideas so that his decision deviant and implicated bad service _ to public".

Based on a number of definition mentioned above, an outline can be drawn that at least There are 3 (three) prerequisites happen conflict interests, namely;

- a) There is actors (parties government or party private);
- b) There is authority or authority possessed, and;
- c) There is decision or action taken. _

Regarding who subject laws in conflict interests / conflicts this interest, the KPK said the actor with term State⁴ Administrator, which means someone who holds office or has power and authority to administer state functions within the territory of state law and use budget in whole or in part originate from the country, for example state official, official public, organizers service public and various term others available _ in the regulations legislation. Definition of KPK (Commission Eradication Corruption) clearly only _ refers to someone who works for the government. Whereas someone who works in the sector private or company generally called employees, with scope The definition is at all levels of existing positions, starting from the level of the Board of Commissioners, Directors, Branch Heads, and others. According to <http://kbbi.web.id/>,⁵ An employee is a person who works at something institutions (offices , companies , etc.) with get salary (wages); employee ; worker . A neutral term in referring to it subject law here is Employee.

Based on explanation general PANRB Ministerial Regulation Number 37 of 2012 concerning General Handling Guidelines Collision Interest Conflict interests can drive an Official experience condition Where consideration personal influence, dominate, even get

rid of professionalism in carrying out his duties. Consideration personal it can originate from interest personal themselves, relatives or later groups _ pressing or reducing his ideas so that his decision deviant and implicated bad service _ to public.

Consequence _ from official the public does abuse power or resources for interests private, to acquire advantage or benefit personal inappropriately, will _ _ result no trust public. In order to research Implementation of UNCAC in Indonesia, especially Articles 7, 8 and 9 concerning Prevention and Management Collision Interests, then there are two problems law. *First* related draft implementation Because remembering what was researched is UNCAC as source law international so For research implementation in Indonesia of course to regulation legislation related to what applies in Indonesia which shows different norm structures , *second* related draft collision interest is the situation Where a state administrators who get it power and authority based regulation legislation have or are alleged to have own interest personal on every use the authority he has so it can influence quality and performance as it should be . From concept collision these interests matter started from motivation and consequences deed. Temporary draft the law lies Actions and consequences alone do not regulate to motivation from something action, even though it was a collision those interests are known from motivation and consequences deed. Because that appeared collision Interest is motivation and consequence deeds, then in the regulations legislation will not found even precisely tend forbid to deed collision interest.

If in Mode Violation Conflict Interests such as the two examples taken, namely 1. Appointment / transfer / promotion process personnel employee based on connection close / reply services / recommendations / influence from State Administrators 2. The process of making policies for state administrators who take sides to something party consequence influence / relationship close / dependence / gift gratification. Then normalize it as prohibition so regulations made _ the potential violate someone's human rights. In other words, if wrong explain conflict interests into regulations _ legislation in order implementation of UNCAC is varied and potential human rights violations against someone. For example, regarding recruitment official, if concerned _ of course meet the conditions that have been set, then everyone has rights The Same Competing for positions does n't matter _ is family close or friend near.

Conflict Interests in the Public sector

The United Nations Convention Against Corruption (UNCAC), provides mandate for conflict interests can be prevented and managed well. Indonesia itself has ratified UNCAC through Law Number 7 of 2006 concerning Ratification of UNCAC, 2003. This means that Indonesia is obliged to apply UNCAC articles into regulations domestic. One of an interesting aspect to study is prevention and management conflict interests in the sector public, as regulated in Article 7 UNCAC. Prevention and management conflict interest as regulated in Article 7 of the UNCAC, includes a number of matter main points: *First*, the recruitment, placement and promotion system employees, including retirees _ Apparatus State Civil Service (ASN)⁶. *Second*, criteria nominations and elections position public⁷. *Third*, transparency in funding candidacy for office public, and if deemed necessary,

funding parties politics⁸. *Fourth*, a transparent and adequate information system to prevent conflict interest⁹.

Related with a recruitment, placement and promotion system employees, Indonesia itself has enacted Law Number 5 of 2014 concerning Apparatus State Civil Service (ASN Law), as replacement for Law Number 8 of 1974 concerning Principles Staffing. The ASN Law regulates in a way be explicit about its importance implementation of a merit system, namely ASN policies and management based on qualifications, competencies and performance in a way fair and reasonable with without differentiate background behind politics, race, color skin, religion, origin, type gender, marital status, age, or condition disability¹⁰. Therefore, ASN management is mandatory held based on this merit system¹¹. Even in the process of implementing this merit system, the ASN Law mandates it formation institution ie Commission Apparatus State Civil Service (KASN) on duty do evaluation to implementation of the merit system, at once supervise violation to code ethics employee government. The following is a list of related regulations tightly with effort prevention conflict interests in the public sector:

- Law Number 5 of 2014 concerning Apparatus State Civil Service, which regulates the merit system (Article 1 number 22), principles basic ASN as profession (Article 3), values basic ASN, code ASN ethics and behavior (Article 5), up to principle free from influence and intervention of all groups and parties politics, as mentioned in the provisions of Article 9 paragraph (2).
- Regulation Government Number 11 of 2017 concerning Management of Civil Servants, as stated changed to PP Number 17 of 2020. In Article 134 paragraph (2) of PP 11 of 2017, the merit system criteria are regulated, including guidelines selection open to position leader tall intermediate and position leader tall pratama.
- Article 227 letter d of Law Number 7 of 2017 concerning General Elections, which regulates submissions Report Treasure Riches State Official (LHKPN) as condition nomination.
- Article 334-339 of Law Number 7 of 2017 concerning General Elections, which regulates campaign finance reports, which include must identification on sources of funds, bookkeeping, storage, restrictions magnitude donations, as well reporting and auditing. Meanwhile on aspects supervision of campaign funds, Bawaslu given the authority to do so monitoring campaign finances as effort increase transparency funding for nominating candidate _ yourself to occupy position public and parties politics.
- Articles 74-76 of Law Number 1 of 2015 concerning Pilkada, which was last amended to Law Number 10 of 2016, which regulate funding _ campaign Regional elections.
- Article 12B paragraph (1) Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication Act Criminal Corruption, which regulates efforts control to gratification.

- PKPU Number 5 of 2017 concerning Campaign Funds Participant Regional elections, as they have been changed to PKPU Number 12 of 2020.

However so, though there is diverse regulations made _ as form implementation of UNCAC in efforts prevention conflict interests in the public sector, in fact Still there is a number Problems that often arise include: _ other: *First*, dowry politics. In the nomination process head area, esp If through track party politics, issues dowry politics never _ quiet. By normative , prohibitive dowry political arranged in a way explicit in the provisions of Article 47 paragraph (1) of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Determination Regulation Government Replacement of Law Number 1 of 2014 concerning Elections Governors , Regents and Mayors become law (UU Number 8 of 2015), which states that , “ *Party Political or combined Party Political forbidden accept reward in kind anything during the nomination process Governor and Deputy Governor , Regent and Deputy Regent , as well Mayor and Deputy Mayor* ”. Party political or combined party accepting politics _ compensation in the nomination process, may be imposed law criminal prison and fines in a way cumulative.

Provision This sanction is regulated in Article 187B of Law Number 10 of 2016 concerning Amendments Second Regarding Law Number 1 of 2015 concerning Determination Regulation Government Replacement of Law Number 1 of 2014 concerning Elections Governors , Regents and Mayors become law (UU Number 10 of 2016) , which states that , “ *Member Party Politics or members combined Party Politics that with on purpose do deed oppose law accept reward in kind anything during the nomination process Governor and Deputy Governor , Regent and Deputy Regent , as well Mayor and Deputy Mayor as intended in Article 47 paragraph (1) shall be punished with criminal the shortest prison term is 36 (three tens six) months and a maximum of 72 (seven twenty- two) months and a fine of at least Rp. 300,000,000.00 (three hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)*”.

Not only to party political or combined party politics, however These sanctions may also be imposed to giver reward. This is regulated in Article 187C of Law Number 10 of 2016, which reads , “ *Every person or institution proven to with on purpose do deed oppose law give rewards during the nomination process Governor and Deputy Governor , Regent and Deputy Regent , as well Mayor and Deputy Mayor so determination as candidate , partner candidate elected , or as Governor , Deputy Governor , Regent , Deputy Regent , Mayor or Deputy Mayor as intended in Article 47 paragraph (5), shall be punished with criminal imprisonment for a minimum of 24 (twenty four) months and criminal imprisonment for a maximum of 60 (six twenty) months and a fine of at least Rp. 300,000,000.00 (three hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)*”.

But in practice, it's give and take these rewards are still taking place in the nomination process head area, even often done _ in a way openly. For example, in networking and registering parties political peg a number price certain. The reasons are survey costs, administration costs, operational costs, and so on¹². The rates too varies, from 10 to 25 million, even more¹³. In fact, the selection and registration period is open for each party Politics is part of it of the nomination process head area, which is absolutely not allowed

to receive rewards certain. That means it's the same as legalizing it money politics in regional elections. So there are different interpretations against Articles 187B and 187C of Law 10 of 2016 concerning Pilkada, which requires reconstruction so that the meaning of the " nomination process " is understood from upstream to downstream nomination, which also includes the selection and registration period carried out by the party politics.

Second, neutrality Position. Apart from ASN's neutrality in the context of their employment status, ASN's neutrality in context the position he holds, is also still there leaving Lots problem. In lots case, polemic is official leader tall middle and leadership tall the primary must put his position moment follow networking party politics, often comes up during the Pilkada momentum. Article 119 Law Number 5 of 2014 concerning Apparatus State Civil Service, mentions that, "*Official leader tall middle class and officials leader tall Pratama will _ nominate become governor and deputy governor, regent / mayor, and deputy regent /deputy mayor must state resignation self in a way written from civil servants since register as candidate*". If read with carefully formulation this article, which is regulated only provisions regarding employment status as a civil servant. However How with his position status, either as leader tall middle or leader tall pratama? And how if that would nominate you are an official outside government _ second type position leader that high?

As an example case, this happened moment Regional Secretary of West Java Province, Iwa Karniwa, who intended run for election Governor of West Java in 2018. Even Iwa Karniwa Not yet in a way officially "register as candidate", but the person concerned has already participated networking carried out by the party politics, even do socialization with install attribute as Regional Secretary many place¹⁴. The same thing also happened in East Kalimantan at the time title 2018 regional elections. The Regional Secretary of East Kalimantan Province, which at that time was held by Rusmadi, planned proceed as candidate head area, and even follow networking carried out by the party politics¹⁵. By principle, if both of them follow networking head areas carried out by the party politics, even already doing socialization with attributes, though undercover as socialization of government programs, however potency conflict interest so big, which of course has an impact to ASN neutrality in the environment their respective governments. Article 5 paragraph (2) letter h Law Number 5 of 2014 concerning Apparatus the State Civil Service has confirmed this in a way explicit that, "*ASN must keep it from happening conflict interest in implementing his duties*".

Third, the appointment of the board of commissioners, supervisory board and directors of BUMN/BUMD. Even though Minister of State-Owned Enterprises Regulation Number PER-02/MBU/02/2015 concerning Requirements and Procedures for Appointment and Dismissal Members of the Board of Commissioners and Supervisory Board of State-Owned Enterprises, and Regulation of the Minister of BUMN Number PER-03/MBU/02/2015 concerning Requirements , Procedures for Appointment and Dismissal Member Directors of State-Owned Enterprises adopt a selection system open , however second This rule still exists open room conflict interest . In second regulations The above statement does not confirm the cooling *down* period for requirements for the board of commissioners, supervisory board and directors of BUMN. Condition only mentioned that,

“no administrator Party Politics and/or candidates member legislature and/or members legislative. Prospective members legislature or members legislative consists from candidates / members of the DPR, DPD, DPRD Level I, and DPRD Level II”.

The same thing applies to requirements for the board of commissioners, supervisory board and directors of BUMD. In the provisions of Article 38 letter k and Article 57 letter l of PP 54 of 2017 concerning BUMD, which states that, " *not being an administrator party politics, candidate head region or candidate for deputy head region, and/or candidate legislative members*". This provision is open room conflict interests, remembering precisely There are many BUMD officials from circles member party politics. When compared with position public in state institutions, for example, a cooling off period applies, namely not registering or resigning self as member party political for 5 years. In lots case, member party politics, though No administrator, however own affiliate fraught politics _ with conflict interest. Even in various place, BUMD only made banking by the elite politics, with the mode of placing certain people in the BUMD.

CONCLUSION

Findings from This research found policies issued Regent / Mayor in place research has been fulfilled and varied nomenclature different However the same substance. Every institution public must own code ethics require _ standard tall will ethics behavior and staff them to have minimal strong compliance with _ Regulation District head.

Foot Notes

- 1) <http://www.businessdictionary.com/definition/conflict-of-interest.html>. See also 5 Steps to Manage Conflict of Interest Scenarios, in: <http://www.latinbusinesstoday.com/productivity/leadership/2012/12/5-steps-manage-conflict-interest-scenarios>.
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- 3) OECD (Economic Co-operation and Development). 2005. Managing Conflict of Interest in the Public Sector: A Toolkit. Paris: OECD Publishing. Pg 13
- 4) KPK. 2009. Guide ... Op.Cit.Pg 3
- 5) <http://kbbi.web.id/> is an application site for the Big Indonesian Dictionary (KBBI) in the online version (on the network).
- 6) See Article 7 paragraph (1) of the United Nations Convention Against Corruption.
- 7) See Article 7 paragraph (2) of the United Nations Convention Against Corruption.
- 8) See Article 7 paragraph (3) of the United Nations Convention Against Corruption.
- 9) See Article 7 paragraph (4) of the United Nations Convention Against Corruption.
- 10) Article 1 number 22 of Law Number 5 of 2014 concerning Apparatus State Civil.

- 11) Article 51 of Law Number 5 of 2014 concerning Apparatus State Civil.
- 12) Source: <https://kaltimkece.id/warta/politik/tika-parpol-memungut-ongkos-administrasi-dari-kandidat-wali-kota-melanggar-uu-dan-kental-aroma-politik-uang>.
- 13) Source: <https://kaltim.tribunnews.com/2019/09/13/inilah-register-uang-penbesaran-bakal-calon-parpol-di-pilkada-samarinda-bawaslu-angkat-cepatan?page=4>.
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- 18) Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (Convention United Anti - Corruption Nations, 2003)
- 19) Law Number 30 of 2014 concerning Administration Government