

## Synchronization of Legislation on Narcotics Abuse by Civil Servants from the Perspective of General Principles of Good Governance

Andi Hikmal, Hadin Muhjad, Trisna Agus Brata  
Sekolah Tinggi Ilmu Hukum Sultan Adam Banjarmasin

### ABSTRACT

This study aims to analyse the synchronisation of regulations concerning the dismissal and reinstatement of Civil Servants (PNS) involved in narcotics-related criminal offences, by examining the alignment between Government Regulation (PP) Number 94 of 2021 on Civil Servant Discipline and the Regulation of the Head of the National Civil Service Agency (BKN) Number 3 of 2020 on Technical Guidelines for the Dismissal of Civil Servants. The study employs a normative legal research method with a statutory approach and the general principles of good governance (AUPB). The findings reveal a lack of harmony between these two regulations, as PP 94/2021 stipulates dismissal as a severe disciplinary sanction for civil servants involved in drug abuse, whereas BKN Regulation 3/2020 allows for reinstatement under certain conditions. This inconsistency has the potential to create legal uncertainty and opens the door for subjectivity in the implementation of civil service policies. To ensure legal certainty, this study recommends regulatory harmonisation through a revision of BKN Regulation 3/2020 to align more closely with PP 94/2021. Furthermore, there is a need for stricter standard operating procedures (SOPs), a transparent oversight mechanism, and enhanced capacity-building for personnel management officials in applying the principles of good governance. These measures are expected to ensure legal certainty while supporting a more professional and integrity-driven bureaucratic reform.

**Keywords:** *Legal certainty, civil servants, drug abuse, disciplinary sanctions, general principles of good governance.*

### Corresponding author

**Name:** Andi Hikmal

**Email:** andi\_hikmal@yahoo.co.id

## INTRODUCTION

In order to realise the nation's aspirations and achieve the state's objectives as outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia, it is essential to develop a civil service apparatus characterised by integrity, professionalism, neutrality, and independence from political interference. Additionally, the civil service must be free from corrupt practices, collusion, and nepotism while being capable of delivering public services to society. Civil servants must also serve as a unifying force for national cohesion, adhering to Pancasila and the 1945 Constitution of the Republic of Indonesia.

The concept of good governance underscores the necessity of a professional, clean, and politically independent bureaucracy in executing governmental duties. According to Dunn (1994), effective governance must be supported by the principles of transparency, accountability, and efficiency in public service delivery. In line with this, Weber (1978) emphasised that an ideal bureaucracy operates on the principle of meritocracy, where promotions and appointments are determined based on competence and performance rather than political factors or nepotism.

To establish the civil service as an integral part of bureaucratic reform, regulatory frameworks must define civil service as a profession responsible for self-management and professional development. Furthermore, civil servants must be accountable for their performance and uphold the merit system in personnel management. The merit principle serves as a fundamental pillar of bureaucratic reform, aiming to develop competent and high-integrity civil servants (Ridwan HR, 2014).

The Civil Service (ASN) comprises public servants and government employees on contractual agreements working within government institutions. ASN personnel, which include civil servants (PNS) and contractual government employees, are appointed by personnel management authorities and assigned governmental duties or state responsibilities. Their remuneration is governed by applicable statutory regulations. PNS refers to Indonesian nationals meeting specific qualifications and permanently appointed as ASN by the personnel management authority to hold governmental positions, as stipulated in Law No. 5 of 2014 concerning the Civil Service.

Law No. 5 of 2014 on the Civil Service regulates civil servant discipline, including obligations, prohibitions, and disciplinary sanctions applicable to those found in violation. The imposition of disciplinary sanctions aims to rehabilitate errant civil servants, ensuring they acknowledge their misconduct, refrain from repeating similar offences, and strive for self-improvement. In administrative law theory, Hadjon (1987) explains that administrative sanctions serve to uphold legal certainty and maintain bureaucratic credibility in accordance with good governance principles.

A pressing issue in enforcing civil servant discipline is the increasing involvement of civil servants in drug abuse. Drug-related offences are transnational in nature, employing sophisticated methods, leveraging modern technology, and operating through extensive organisational networks. Drug abuse has claimed numerous victims and poses significant threats to society, the nation, and the state. According to the Indonesia Drugs Report by the National Narcotics Agency (2021), drug abuse in Indonesia has risen sharply, including within the civil service. This situation underscores the urgency of stringent actions against ASN personnel involved in drug abuse.

This phenomenon is particularly concerning given that civil servants are expected to set a moral example as state officials, serving the public and upholding institutional integrity. However, when drug abuse infiltrates the civil service, institutional credibility is severely compromised. Zehr (2002), in his concept of restorative justice, asserts that legal violations committed by government officials have a more profound social impact than those perpetrated by the general public, as they erode public trust in government

institutions. Therefore, civil servants bear a significant responsibility in preventing and combating drug abuse within both societal and institutional settings.

Drug abuse offences are criminalised under legal instruments governing narcotics, specifically Law No. 35 of 2009 on Narcotics. Narcotics are defined as substances or drugs derived from plants or synthetic sources that can induce altered consciousness, relieve pain, and cause dependence. Narcotics are categorised into various classifications as stipulated in the law. The general explanation of Law No. 35 of 2009 states that while narcotics are essential for treating certain medical conditions, their misuse poses serious threats to society, necessitating stringent regulatory measures.

To establish a civil service that is professional, ethical, and free from drug abuse, firm policies based on the general principles of good governance (AUPB) are required. These principles include legal certainty, proportionality, and accountability. Such policies must align with existing regulations, ensuring that enforcement measures adhere to good governance principles while incorporating rehabilitative efforts for ASN personnel requiring treatment for drug dependency (Rhodes, 1996).

According to the National Narcotics Agency's Centre for Research, Data, and Information, 302 civil servants were involved in drug-related offences in 2020. Disciplinary sanctions for civil servants found using or distributing narcotics are governed by Government Regulation No. 94 of 2021 on Civil Servant Discipline, wherein offenders may face severe penalties based on investigative findings. Criminal sanctions for civil servants engaged in drug-related activities adhere to Chapter XV of Law No. 35 of 2009 on Narcotics, with no distinction in the application of criminal law between civil servants and the general public.

Furthermore, Head of the National Civil Service Agency (BKN) Regulation No. 3 of 2020 provides technical guidelines on the dismissal of civil servants. Article 2 delineates the procedures for dismissal, temporary suspension, and reinstatement. Article 43(1) specifies conditions for the reinstatement of civil servants convicted of unintentional crimes and sentenced to two or more years in prison, provided that:

- (a) their actions do not undermine the dignity of the civil service;
- (b) they have demonstrated commendable work performance;
- (c) their reinstatement does not disrupt the work environment; and
- (d) a vacant position is available.

The procedure for reinstating civil servants who have completed a prison sentence of less than two years, or two years or more for unintentional offences, requires submission to the Personnel Management Authority within 30 calendar days upon sentence completion. The reinstatement decision, including associated employment rights, must be issued within 14 working days upon receipt of a complete reinstatement request.

In analysing the dismissal or reinstatement of civil servants involved in drug abuse from a welfare state perspective, the government is obligated to promote public welfare (*bestuurszorg*). To achieve this, the government is empowered to intervene (*staatsbemoeienis*) in various aspects of public life. This necessitates proactive governmental measures to address societal challenges. The welfare state concept aims to

enhance national well-being by complementing legal principles with government interventions grounded in regulatory frameworks. However, as societal dynamics evolve alongside scientific and technological advancements, emerging issues may lack pre-existing regulations.

All government interventions must be based on applicable statutory regulations as a manifestation of the principle of legality, which is fundamental to the rule of law. Since the adoption of the welfare state concept, the government has assumed responsibility for public welfare, authorising interventions in all spheres of public life, sometimes beyond statutory provisions but guided by its own initiatives. However, such interventions must always adhere to the general principles of good governance (AUPB).

The general principles of good governance play a crucial role in public administration, serving as guidelines for government officials in executing their duties. Muin Fahmal (2014) argues that these principles act as safeguards to ensure that state administration aligns with legal objectives. By adhering to these principles, government administration can function in an orderly, transparent, and accountable manner in accordance with good governance.

In regulating the dismissal or reinstatement of civil servants convicted of drug abuse, adherence to the general principles of good governance is paramount. This ensures that policy decisions comply with administrative legal principles and do not create legal uncertainty. Civil servants hold significant responsibilities in governance and public service delivery, necessitating administrative actions based on the principles of legal certainty, proportionality, accountability, and transparency.

The legal framework governing the dismissal of civil servants convicted of serious offences is outlined in Law No. 5 of 2014 on the Civil Service. Under this law, civil servants committing serious offences may be subject to dismissal without honour. Government Regulation No. 11 of 2017 on Civil Servant Management also stipulates that civil servants sentenced to two or more years of imprisonment by a legally binding court ruling may be dismissed without honour.

Given the severe societal impact of drug abuse, strict measures against civil servants engaged in such offences are imperative to uphold the integrity of the civil service. This study aims to analyse the synchronisation of regulations concerning drug abuse by civil servants from the perspective of the general principles of good governance. The findings of this study are compiled in a thesis titled: "The Synchronisation of Regulatory Frameworks on Drug Abuse by Civil Servants from the Perspective of the General Principles of Good Governance."

## **METHOD**

This study employs a normative legal research method, which is a scientific approach in legal studies that focuses on the examination of written legal norms and the systematic structure of applicable legislation. This method is oriented towards the analysis

of legal regulations as a normative system by examining legal principles, rules, and hierarchy to identify cohesion and synchronisation in their application.

As a normative study, this research is based on library research, referring to three main categories of legal materials:

Primary Legal Materials, which are sources of law that have direct binding authority and serve as the primary references for this study. These include the 1945 Constitution of the Republic of Indonesia, laws, government regulations, presidential regulations, regional regulations, and various other regulations relevant to the civil service administration system and legal policies related to the enforcement of civil servant discipline in drug abuse cases.

Secondary Legal Materials, which provide an understanding, explanation, and interpretation of primary legal materials. These include draft laws, official government documents, academic research findings, expert legal opinions, and scholarly journals that discuss relevant issues from the perspectives of administrative and criminal law.

Tertiary Legal Materials, which are supplementary sources that function as instruments for comprehensively understanding primary and secondary legal materials. These include legal dictionaries, legal encyclopaedias, legislative indices, and other academic references that clarify concepts and terminology used in this research.

The research approach adopted in this study follows the statutory approach, which involves analysing all laws and regulations in the field of government administration, synchronised with the general principles of good governance (AUPB). The type of research used is vertical and horizontal synchronisation analysis. In examining the degree of vertical and horizontal synchronisation, this study investigates the extent to which existing and applicable written positive law aligns harmoniously with one another. The objective of this research is to determine whether the existing written positive law is consistent and mutually supportive.

Vertical synchronisation refers to the consistency of legislation applicable to a specific area of life when viewed hierarchically, ensuring that there are no contradictions between different levels of regulations. Horizontal synchronisation, on the other hand, refers to the consistency of regulations of the same hierarchical level governing a particular area of life.

This study utilises primary legal materials consisting of fundamental norms such as the 1945 Constitution and legislation concerning civil servants. Secondary legal materials include supplementary sources derived from primary legal materials, such as academic works discussing the enforcement of civil servant discipline in drug abuse cases. Tertiary legal materials provide explanations of primary legal materials, such as legal dictionaries and Indonesian language dictionaries.

The legal material collection technique employed in this study involves Library Research, which entails searching for legal materials relevant to the research topic, inventorying, and compiling them before using them as references in legal writing.

Once collected, all materials are processed through a comparative study, which involves comparing primary and secondary legal materials to identify correlations or relationships between them.

## **FINDING AND DISCUSSION**

### **A. Vertical Synchronisation between Head of BKN Regulation No. 3 of 2020 and Government Regulation No. 94 of 2021 in the Reinstatement of Civil Servants Involved in Narcotics-Related Criminal Offences**

#### **1. The Framework for Vertical Synchronisation**

According to the hierarchy of statutory regulations, Government Regulation (PP) No. 94 of 2021 holds a higher legal status than the Regulation of the Head of the National Civil Service Agency (BKN) No. 3 of 2020. However, there is a potential conflict in the implementation of these two regulations concerning the reinstatement of Civil Servants (PNS) involved in drug-related offences:

#### **a. Severe Disciplinary Sanctions in Government Regulation No. 94 of 2021 and Their Implications for the Integrity of the Civil Service (ASN)**

Regulations concerning the discipline of the Civil Service (ASN) constitute a crucial instrument in ensuring professionalism, accountability, and integrity in governmental administration. Government Regulation (PP) No. 94 of 2021 on the Discipline of Civil Servants (PNS) represents a concrete governmental measure to uphold ASN integrity, particularly through the imposition of severe disciplinary sanctions, including dismissal for specific violations. From the perspective of administrative law, this policy is not solely aimed at maintaining internal order but also reflects the government's efforts to instil legal certainty and foster public trust in ASN as the backbone of the bureaucracy.

##### **1) Theoretical Foundation in the Enforcement of Civil Servant Discipline**

The enforcement of disciplinary sanctions as stipulated in Government Regulation (PP) No. 94 of 2021 on the Discipline of Civil Servants (PNS) can be analysed through the perspective of legal theory and public administration. In this context, the principle of legal hierarchy within the state administration system is crucial to ensuring that subordinate regulations do not contradict higher legal norms. Hans Kelsen's Stufenbau theory asserts that law is hierarchical, where lower legal norms must conform to and refer to higher legal norms within the legislative hierarchy. Within the civil service system, PP 94/2021 serves as an implementing regulation referring to Law No. 5 of 2014 on the Civil Service, meaning that the implementation of disciplinary sanctions against civil servants must align with the legal principles established in the law (Kelsen, 1967).

From a legal theory perspective, Arimba (2023) emphasises that in a hierarchical legal system, disharmony between lower and higher regulations can lead to legal uncertainty and create room for subjectivity in law enforcement. Therefore, adherence to the principle of legal hierarchy is a crucial aspect in ensuring that government regulations do not conflict with the laws underpinning their formation

(Arimba, 2023). Similarly, Carrozza (2019) highlights that one of the main challenges in modern legal systems is ensuring that judicial review functions effectively to maintain regulatory consistency within a hierarchical legal system. In practice, weaknesses in administrative legal review systems often cause regulatory overlaps, resulting in legal uncertainty for state officials (Carrozza, 2019).

Beyond legal certainty within the hierarchy of norms, Aristotle's theory of justice can also be applied to assess proportionality in the imposition of disciplinary sanctions on civil servants. Aristotle categorises justice into two main types: distributive justice and retributive justice. In the context of civil servant dismissal as a severe disciplinary sanction, distributive justice is reflected in the principle that all civil servants who commit violations should be treated fairly regardless of their position or status, while retributive justice ensures that the sanctions imposed are proportional to the severity of the violation. In the study by Simamora and Esther (2024), the concept of judicial preview is proposed as a solution to maintaining legal justice in the state administration system, ensuring that newly formulated regulations align with principles of justice and do not generate legal uncertainty in practice (Simamora & Esther, 2024).

However, in its implementation, regulatory disharmony between PP 94/2021 and National Civil Service Agency (BKN) Regulation No. 3 of 2020 creates potential legal conflicts that may undermine the effectiveness of disciplinary sanction enforcement against civil servants. The BKN regulation provides flexibility in the rehabilitation and reinstatement of civil servants who have undergone disciplinary sanctions due to drug abuse, which in some cases contradicts the strict provisions of PP 94/2021. This situation potentially leads to legal uncertainty for personnel management authorities, ultimately resulting in inconsistencies in the implementation of civil servant disciplinary policies and potential discrimination in the imposition of sanctions. The study by Shakti et al. (2022) concludes that one of the primary challenges in administrative legal systems is ensuring consistency between technical regulations and higher-level legislation to prevent interpretative gaps that could lead to injustices in their application (Shakti et al., 2022).

To address this regulatory disharmony, harmonisation between PP 94/2021 and BKN Regulation No. 3/2020 is necessary to prevent contradictions that could result in inconsistencies in the application of disciplinary sanctions. Additionally, strengthening the judicial review mechanism within the state administrative legal system is a crucial step to ensuring that all issued regulations adhere to the principles of legal hierarchy and substantive justice. As emphasised in the study by Arimba (2023), an effective administrative legal system must always prioritise legal certainty, regulatory hierarchy, and justice in the implementation of its legal norms. Therefore, a legal approach oriented towards legal certainty within the regulatory hierarchy structure and justice in policy implementation are two key aspects that must be considered in maintaining the effectiveness of the civil service system.

## 2) Legal Certainty in the Enforcement of Disciplinary Sanctions

Legal certainty is one of the fundamental principles in a rule of law state (rechtsstaat), ensuring that all applicable regulations possess clarity, consistency, and predictability in their implementation. This principle aims to prevent legal uncertainty that may lead to injustice in the practice of state administration. In the context of civil servant (PNS) discipline, legal certainty serves to provide clear guidance on the boundaries of behaviour subject to sanctions and the mechanisms that must be followed in their enforcement. Therefore, Government Regulation No. 94 of 2021 on Civil Servant Discipline (PP 94/2021) serves as the primary guideline for the imposition of disciplinary sanctions on ASN personnel who commit serious violations, including drug abuse, corruption offences, and moral infractions that may tarnish the reputation of ASN.

Government Regulation No. 94 of 2021 (PP 94/2021) provides legal certainty by classifying types of violations and specifying applicable sanctions, thereby facilitating personnel management authorities in determining proportional penalties. This regulation also serves a crucial preventive function, as strict rules are expected to create a deterrent effect, discouraging other civil servants from committing similar violations. However, in practice, the principle of legal certainty in the implementation of disciplinary sanctions faces various challenges, particularly regarding potential biases in the evaluation of violations and regulatory conflicts with other legal provisions governing similar matters. Inconsistencies in administrative law enforcement may lead to perceptions of injustice and create opportunities for subjectivity in sanctioning decisions.

One of the primary challenges in implementing disciplinary sanctions is the potential bias in evaluating violations. Decisions made by personnel management authorities largely depend on the interpretation of the committed violation, making them susceptible to subjectivity and conflicts of interest. The concept of bureaucratic accountability highlights the importance of mechanisms that ensure all decisions made by administrative officials are objective and transparent. A study conducted by Nasirin et al. (2024) on legal certainty in the construction sector found that uncertainty often arises due to ambiguous definitions of violations and inconsistencies in sanction enforcement. A similar situation occurs in the civil service disciplinary system, where regulatory ambiguities allow for differing interpretations, ultimately leading to injustice in the application of sanctions. Therefore, strict and transparent standard operating procedures (SOPs) are needed to ensure that disciplinary processes remain objective, from investigation to final decision-making.

Moreover, potential legal conflicts between PP 94/2021 and National Civil Service Agency (BKN) Regulation No. 3 of 2020 could hinder legal certainty. PP 94/2021 stipulates that severe violations, such as drug abuse, may constitute grounds for the dismissal of civil servants. However, BKN Regulation No. 3 of 2020 allows for the reinstatement of civil servants who have undergone rehabilitation,



taking into account their employment record and institutional impact. This approach aligns with the concept of restorative justice, which focuses on rehabilitating individuals so they can reintegrate into society, as proposed by Zehr (2002). However, these differing approaches create a dilemma for personnel management authorities in making appropriate decisions, as no explicit provisions harmonise these two regulations.

In legal hierarchy, lower-level regulations must comply with higher-level regulations, as explained in Hans Kelsen's Stufenbau Theory. In this context, BKN regulations should not contradict PP 94/2021, given that the latter holds a higher legal status within the national legal framework. If inconsistencies arise between these regulations, the lower-level rules must be amended to prevent normative conflicts. This indicates the urgent need for legal harmonisation between PP 94/2021 and BKN Regulation No. 3 of 2020 to ensure legal certainty in the civil service disciplinary system. Otherwise, regulatory ambiguities may lead to disparities in law enforcement, ultimately diminishing public trust in the bureaucratic system.

A study by Vasilyev (2023) on the enforcement of ethical sanctions in the sports sector found that unclear norms often result in inconsistencies in sanction application, disadvantaging those involved. This provides insight into the civil service context, where regulatory clarity is essential to avoid subjectivity in decision-making. Furthermore, research by Sadnyini et al. (2024) in the healthcare sector highlights the importance of transparent oversight mechanisms to ensure that disciplinary rules are enforced fairly and proportionally. These findings suggest that to strengthen legal certainty in the civil service disciplinary system, written regulations alone are insufficient; an accountable implementation mechanism is also required.

From the above analysis, it can be concluded that while PP 94/2021 provides a clear legal framework for the enforcement of disciplinary sanctions for civil servants, its implementation faces various challenges that may undermine legal certainty. Several steps can be taken to improve the system, including harmonising regulations between PP 94/2021 and BKN Regulation No. 3 of 2020 to prevent regulatory overlaps, clarifying definitions of violations and sanctions to avoid divergent interpretations, and strengthening oversight and grievance mechanisms to ensure decisions align with the principles of justice and proportionality. Additionally, more transparent SOPs and an accessible appeals system for civil servants should be reinforced to enhance accountability within the disciplinary framework. By implementing these measures, legal certainty in the enforcement of civil service disciplinary sanctions can be better ensured, fostering a professional, transparent, and highly ethical bureaucratic system.

3) The Integrity of Civil Servants (ASN) from the Perspective of Ethics and Morality

Severe sanctions, including dismissal, serve not only as punitive measures but also as a learning mechanism for other civil servants (ASN). From the perspective of Jeremy Bentham's utilitarianism theory, dismissal can be considered morally justified if it yields greater benefits, such as preserving bureaucratic integrity and restoring public trust. Thus, the dismissal of ASN personnel involved in serious violations not only acts as a deterrent but also ensures that those who remain in service are individuals of high integrity.

However, it must be understood that ASN integrity is not solely maintained through the threat of sanctions but also through continuous developmental efforts. Within the framework of Lawrence Kohlberg's moral development theory, ASN personnel should be given the opportunity to comprehend the ethical values underpinning disciplinary regulations, ensuring that their motivation for compliance is not merely external (fear of punishment) but also internal (ethical awareness).

#### 4) The Influence of Disciplinary Sanctions on the Government's Image

In the study of government-society relations, the integrity of civil servants (ASN) has a direct correlation with public perception of government legitimacy. The imposition of severe sanctions on ASN who violate regulations, as stipulated in Government Regulation No. 94 of 2021, contributes to strengthening government legitimacy by demonstrating a firm commitment to enforcing discipline impartially.

However, another critical risk must be considered. If severe disciplinary sanctions are applied inconsistently or without transparency, this may create a perception of injustice among ASN and negatively impact organisational morale. David Easton's theory of legitimacy asserts that governmental legitimacy is not solely dependent on formal regulations but also on societal acceptance of the fairness and transparency of implemented policies.

#### 5) Social and Psychological Dynamics in the Enforcement of Discipline

The enforcement of severe disciplinary sanctions must also take into account the social and psychological dynamics within an organisation. Strain theory suggests that pressure resulting from the threat of severe sanctions can generate negative effects, such as excessive fear or distrust among employees. Therefore, Government Regulation No. 94 of 2021 should be complemented with a developmental approach that emphasises rehabilitation and capacity-building for civil servants, ensuring that severe sanctions serve as a last resort after developmental measures have been deemed ineffective.

#### 6) The Balance Between Discipline and Rehabilitation

Although Government Regulation No. 94 of 2021 primarily focuses on the imposition of sanctions, a rehabilitative approach should also be an integral part of the civil service discipline policy. In the context of offences such as drug abuse, rehabilitation can provide civil servants with an opportunity for self-improvement without permanently losing their employment. The theory of restorative justice

supports this approach by emphasising recovery over retribution, which benefits not only the individual offender but also society as a whole.

However, it must be acknowledged that a rehabilitative approach is not always appropriate for all types of offences. In cases involving corruption or other criminal acts that undermine public trust, dismissal remains the most viable option to uphold institutional integrity.

7) Alignment with the Principles of General Principles of Good Governance (AUPB)

Government Regulation No. 94 of 2021 implicitly reflects several general principles of good governance (AUPB), such as legal certainty, non-abuse of authority, and public interest. However, the implementation of severe sanctions must also adhere to the principle of transparency, which is essential in ensuring openness and accountability in disciplinary processes. This aligns with the principles of good governance as outlined by the United Nations Development Programme (UNDP), namely transparency, responsiveness, and participation.

8) Recommendation for Strengthening Implementation

To enhance the effectiveness of Government Regulation No. 94 of 2021, several strategic measures are required:

a) Development of Comprehensive Standard Operating Procedures (SOPs)

Each stage of the sanctioning process must have clear guidelines to prevent bias and ensure consistency.

b) Training and Socialisation

Personnel management officials must undergo periodic training to gain an in-depth understanding of the regulation, ensuring that decisions are made not only based on legal provisions but also on ethical and moral considerations.

c) Collaborative Approach

The government can involve institutions such as the National Narcotics Agency (BNN) in addressing cases of drug abuse, with a focus on the rehabilitation of civil servants who demonstrate potential for recovery.

d) Monitoring and Evaluation

The implementation of Government Regulation No. 94 of 2021 must be regularly evaluated to ensure that the sanctions imposed reflect the principles of justice, transparency, and utility.

b. Technical Mechanism for Temporary Dismissal and Reinstatement under BKN Regulation No. 3 of 2020

The Regulation of the Head of the National Civil Service Agency (BKN) No. 3 of 2020 on Technical Guidelines for the Dismissal of Civil Servants (PNS) provides a technical mechanism for addressing employees facing legal issues, particularly those who have served criminal sentences. This regulation outlines procedures for temporary dismissal as well as the reinstatement of civil servants upon completion of their sentence, subject to specific conditions. This policy is designed not only to uphold discipline and integrity within the civil service but also to offer rehabilitation

opportunities for those deemed eligible to reintegrate and contribute. However, to assess its effectiveness and relevance, an in-depth analysis is required, employing various legal theories, civil service management principles, and public administration perspectives.

This regulation can be analysed through the Stufenbau Theory introduced by Hans Kelsen. Within the hierarchy of legal norms, BKN Regulation No. 3 of 2020 serves as an implementation of higher legislative instruments, such as Law No. 5 of 2014 on the Civil Service and Government Regulation No. 94 of 2021 on Civil Servant Discipline. In this context, the BKN Regulation functions as an implementing norm that ensures dismissal and reinstatement policies for civil servants are conducted in accordance with the principle of legality and the prevailing legal framework.

Furthermore, from the perspective of Aristotle's theories of distributive and retributive justice, BKN Regulation No. 3 of 2020 seeks to strike a balance between retributive justice (sanctions for violations) and distributive justice (restoration of rights for individuals who qualify for reinstatement). This reflects the philosophy of a rule-of-law state, which not only enforces penalties but also provides rehabilitation opportunities for individuals.

#### 1) Technical Mechanism for Temporary Dismissal and Reinstatement

Article 43 of BKN Regulation Number 3 of 2020 stipulates that the reinstatement of civil servants (PNS) who have served a criminal sentence is subject to specific conditions, such as:

- a) The individual's actions do not undermine the dignity and honour of civil servants.
- b) Demonstrates a commendable work performance record.
- c) Does not negatively impact the work environment upon reinstatement.
- d) Availability of a vacant position.

The temporary dismissal during legal proceedings is also regulated as a mitigation measure to ensure that the functioning of government operations remains uninterrupted by individual legal issues. This aligns with the principle of administrative efficiency, which underscores the importance of organisational stability and public service delivery.

However, subjective criteria such as "not undermining the dignity and honour of civil servants" and "not affecting the work environment" present challenges in implementation. The interpretation of these conditions may vary among personnel management officials, leading to risks of inconsistency in their application.

According to Jeremy Bentham's Utilitarianism Theory, this regulation aims to achieve the greatest benefit for society. Granting reinstatement opportunities to civil servants who have demonstrated improvement can have positive impacts, both for the individual and the organisation. Rehabilitated civil servants can contribute once more, reducing the costs associated with hiring new employees and improving workplace morale if implemented fairly and transparently.

However, the Deterrence Theory in criminal law offers a different perspective. Severe sanctions, including permanent dismissal without reinstatement,

can serve as a general deterrence for other civil servants, discouraging them from committing similar violations. In this context, reinstatement policies must be implemented selectively to prevent the perception that civil servants who violate the law can easily return to their positions.

Regulation of the National Civil Service Agency (BKN) Number 3 of 2020 seeks to accommodate several principles within the General Principles of Good Governance (AUPB), such as:

- a) The Principle of Legal Certainty  
This regulation provides clear technical procedures regarding temporary suspension and reinstatement, thereby ensuring legal certainty for civil servants involved in legal cases.
- b) The Principle of Utility  
By providing a second chance to eligible civil servants, this policy ensures that administrative decisions not only impose sanctions but also contribute to the long-term benefits of both the organisation and the individual.
- c) The Principle of Non-Abuse of Authority  
With a reactivation mechanism that requires strict evaluation, this regulation prevents the misuse of authority by personnel management officials.

However, the principles of transparency and non-discrimination require greater attention. Criteria such as "good work performance" may introduce bias if not measured with objective and verifiable indicators. Therefore, it is crucial to ensure that every evaluation process is documented transparently and subject to audit.

From a human resource management (HRM) perspective, reinstatement policies should be regarded as part of talent management strategies. In HRM literature, human capital theory emphasises that individuals are valuable assets that can be developed through training and coaching. Granting a second chance to civil servants who have served their sentences reflects recognition of an individual's potential for self-improvement and future positive contributions.

However, within the context of public organisations, organisational reputation theory highlights the importance of maintaining institutional image and public trust. Reinstating individuals previously involved in legal violations, especially without adequate rehabilitation, may damage an institution's reputation. Consequently, this policy must be balanced with transparency measures and effective public communication.

In restorative justice theory, the primary objective of sanctions is to restore relationships damaged by violations. BKN Regulation No. 3 of 2020 partially adopts this principle by providing reinstatement opportunities for civil servants meeting specific criteria. However, this approach is only effective when accompanied by a comprehensive evaluation and rehabilitation process. Rehabilitation should not only encompass legal restoration but also moral and ethical development.

Conversely, deterrence theory underscores the importance of strict punishment to prevent future violations. In this context, reinstatement mechanisms

must be selective and applied only to truly eligible individuals to avoid the perception that civil servants can easily return to work after violating the law..

## 2) Recommendation for Policy Strengthening

To ensure the effectiveness of BKN Regulation Number 3 of 2020, several measures can be undertaken:

- a) Standardisation of the Evaluation Process  
Establishing clear indicators for criteria such as "commendable work performance" and "not affecting the work environment" to minimise potential bias in decision-making.
- b) Enhancement of the Capacity of Personnel Management Officials  
Conduct regular training to ensure that officials have a comprehensive understanding of these regulations and can apply them fairly.
- c) Holistic Approach  
Integrating this policy with a rehabilitation programme that encompasses training, moral development, and psychological evaluation for civil servants seeking reinstatement.
- d) Monitoring and Evaluation  
Establishing a supervisory mechanism to ensure that reinstatement decisions comply with regulations and the principles of good governance (AUPB).

## 2. Findings of Conflicts in Regulation

The primary conflict lies in the differing approaches between the two regulations:

- a. Government Regulation No. 94 of 2021 places a stricter emphasis on the dismissal of civil servants as a sanction for serious violations.

Government Regulation No. 94 of 2021 on Civil Servant Discipline (PNS) reflects a retributive justice approach, which prioritises punishment as a response to violations in order to restore moral balance within society. According to the concept of retributive justice popularised by Immanuel Kant, punishment is administered not only to prevent future crimes but also as a form of accountability for wrongful actions committed. In the context of the civil service, dismissal serves not only as a deterrent but also as a means to uphold the integrity of institutions. This is particularly crucial given that the civil service constitutes the backbone of the bureaucracy, entrusted by society to provide public services.

This regulation also embodies the implementation of social contract theory, which posits that citizens and governmental institutions are bound by a mutual trust relationship based on legal norms. Serious violations such as drug abuse or corruption by civil servants not only breach internal regulations but also violate the social contract with the public they serve. Consequently, dismissal as a form of strict punishment serves as a mechanism to restore public trust in governmental institutions.

Government Regulation No. 94 of 2021 explicitly outlines criteria for offences that may lead to dismissal. This reflects the application of the principle of

legality, which is a fundamental tenet of the rule of law (rechtsstaat). In Friedrich Julius Stahl's theory of the rule of law, all governmental actions, including the imposition of disciplinary sanctions, must be based on clear and accountable legal provisions. By specifying the types of offences categorised as severe, this regulation provides legal certainty for civil servants and mitigates the risk of abuse of authority by personnel management officials.

Furthermore, the legal certainty established by this regulation reinforces the principle of accountability in good governance. Accountability ensures that every decision, including the dismissal of civil servants, is justifiable to the public. Transparency in defining violations also serves to prevent subjective interpretations that could undermine the principle of justice.

The approach adopted in Government Regulation No. 94 of 2021 can also be analysed through the deterrence theory in criminal law. According to Jeremy Bentham, this theory emphasises the prevention of violations through the threat of stringent and effective punishment. In the context of this regulation, the dismissal of civil servants involved in serious offences such as corruption or drug abuse not only serves as a deterrent to offenders but also acts as a warning to other civil servants.

1) *General deterrence*, an effort to prevent violations among civil servants (ASN) through the strict enforcement of sanctions.

2) *Specific deterrence*, to ensure that the offender no longer has the opportunity to commit a similar violation in the future.

However, deterrence theory also has its weaknesses, particularly when applied rigidly without considering individual circumstances. Criminological studies suggest that deterrent effects are more effective when combined with rehabilitation and guidance efforts, as not all offenders are likely to reoffend if given a second chance.

The strict approach in Government Regulation No. 94 of 2021 offers advantages in terms of consistency and legal certainty but lacks flexibility in handling individual cases. From a human resource management (HRM) perspective, losing talented civil servants (ASN) who actually have the potential for rehabilitation and improvement can be a significant loss for an organisation. In human capital theory, individuals are regarded as assets that can be developed through training and mentorship. Therefore, excessively rigid policies may overlook the long-term investment potential in human resource development.

Furthermore, from an organisational psychology standpoint, the imposition of overly stringent punishments without considering individual conditions may create negative effects on overall organisational morale. Other ASN personnel may become reluctant to take initiative or pursue innovation due to fears of severe sanctions in the event of mistakes. Such tensions can reduce organisational productivity and effectiveness.

Although the approach of Government Regulation No. 94 of 2021 provides legal certainty, its implementation is not without challenges:

1) Subjective Interpretation

Despite the detailed criteria for serious violations, there remains room for interpretation in assessing the severity of the offence and the decision to terminate employment. This can create uncertainty among civil servants and raise the potential for injustice.

2) Social Impact

The dismissal of civil servants involved in serious violations may have repercussions on their social environment and family. In some cases, this can impose additional pressures that hinder the rehabilitation process of the offenders.

3) Public Stigma

Dismissed civil servants often face significant social stigma that is difficult to overcome, even after serving their sentence in accordance with legal provisions.

- b. BKN Regulation Number 3 of 2020 provides an opportunity for the rehabilitation of civil servants (PNS) deemed eligible for reinstatement based on a subjective evaluation.

The Regulation of the Head of the National Civil Service Agency (BKN) No. 3 of 2020 reflects the application of the restorative justice principle, which prioritises rehabilitation as the primary objective of sanctions. This principle is rooted in the view that every individual, despite having committed a violation, has the right to self-improvement and the opportunity to contribute to society once again. According to this theory, as articulated by Howard Zehr, justice should focus on repairing the harm caused by violations, whether to individuals, organisations, or society at large. In the context of the Civil Service (ASN), the reinstatement of civil servants (PNS) who have served their sentence embodies trust in individual rehabilitation while also facilitating the restoration of relationships between offenders and the bureaucratic system they have affected.

Restorative justice is also supported by virtue ethics, which emphasises the development of character and positive values in individuals who have breached regulations. Civil servants reinstated after serving their sentence are expected to have internalised lessons from their past mistakes, thereby becoming more capable of performing their duties with integrity and responsibility.

The approach outlined in BKN Regulation No. 3 of 2020 aligns with human capital theory, which regards individuals as valuable assets that can be further developed. According to Becker (1964), training and education constitute investments that enhance an individual's value within an organisation. In this context, providing a second chance to civil servants who have completed their sentence is an optimisation of the existing human resources. Reinstating qualified



civil servants not only reduces the costs associated with recruitment and training of new employees but also retains the experience and expertise of those individuals.

However, this theory necessitates an effective mentoring mechanism to ensure that reinstated individuals meet the required standards of competence, morality, and professionalism. In this regard, the provisions of BKN Regulation No. 3 stipulate conditions such as "having a good work record" and "not diminishing the dignity of civil servants," indicating an effort to balance organisational needs with individual rehabilitation.

The advantages of the rehabilitation opportunity approach:

1) Social and Professional Recovery

This approach provides individuals with the opportunity to restore their reputation and resume their roles as civil servants. It reflects the application of contractual ethics theory, which recognises the right of individuals to be treated fairly after serving their sentence.

2) Organisational Efficiency

By reinstating individuals who meet the necessary criteria, organisations can reduce administrative costs associated with recruitment, training, and employee adaptation.

3) Enhancement of Organisational Morale

An inclusive approach fosters a more supportive work culture, where individuals feel given the opportunity to rectify their mistakes.

Although offering significant opportunities, this approach has certain weaknesses, particularly concerning potential bias and subjectivity in evaluating rehabilitation criteria. For instance, conditions such as "not diminishing the dignity and honour of civil servants" are challenging to measure objectively. In Weberian administrative theory, one of the fundamental principles is rationality and objectivity in administrative decision-making. When evaluation criteria lack measurable indicators, reinstatement decisions may be influenced by individual preferences or external pressures, ultimately undermining regulatory credibility.

Moreover, this approach may generate negative public perceptions. In organisational legitimacy theory, as articulated by Suchman (1995), public perception of government decisions significantly influences policy legitimacy. The reinstatement of civil servants who have committed serious violations, if not accompanied by transparency and effective communication, may lead to the perception that the bureaucracy is not stringent in upholding integrity.

Some of the key challenges in implementing National Civil Service Agency Regulation No. 3 of 2020 include:

1) Lack of Standardised Evaluation

Criteria such as "commendable work performance" and "not diminishing dignity and honour" require measurable indicators to prevent subjectivity in assessments.

- 2) Impact on Organisational Reputation  
If not implemented with transparency, the reinstatement of civil servants who have previously committed violations may tarnish the organisation's public image.
  - 3) Social and Political Pressure  
In certain cases, the decision to reinstate specific civil servants may be influenced by external pressures, including from political officials or the media, which can compromise the independence of the decision-making process.
3. Conformity with the Principles of Good Governance (AUPB)
- The General Principles of Good Governance (AUPB) serve as a fundamental guideline in public administration, aiming to establish governance that is effective, efficient, and equitable. AUPB, as stipulated in Law No. 30 of 2014 on Government Administration, encompasses the principles of legal certainty, expediency, justice, prohibition of abuse of authority, transparency, and public interest. In the context of regulations governing civil servant discipline, namely Government Regulation No. 94 of 2021 and National Civil Service Agency (BKN) Regulation No. 3 of 2020, an analysis of their alignment with AUPB provides insights into the effectiveness and challenges associated with the implementation of these regulations.
- a. The principle of Legal Certainty  
In the legal state theory proposed by Friedrich Julius Stahl, legal certainty is one of the fundamental elements ensuring that all governmental actions are based on clear, consistent, and predictable regulations. Government Regulation No. 94 of 2021 explicitly outlines the criteria for serious violations that may result in the dismissal of civil servants, such as drug abuse and corruption. This regulation provides strong legal certainty for civil servants and the public, establishing clarity regarding the legal consequences of violations.  
  
However, a weakness of this regulation is the lack of detailed mechanisms for the reinstatement of civil servants who have completed their criminal sentences. The absence of clear operational guidelines may lead to uncertainty in implementation, particularly for personnel management authorities who must make decisions in complex cases.  
  
Meanwhile, National Civil Service Agency (BKN) Regulation No. 3 of 2020 creates an opportunity for the reinstatement of civil servants through a rehabilitation mechanism. However, this regulation poses a risk of inconsistency with Government Regulation No. 94/2021 if not properly aligned. This reflects the potential conflict between the principle of legal certainty and administrative flexibility, necessitating harmonisation to maintain the consistency of the regulatory hierarchy (Hans Kelsen, Stufenbau Theory).
  - b. Principle of Benefit

The principle of utility in the General Principles of Good Governance (AUPB) emphasises that every governmental action must yield optimal benefits for both individuals and society. From the perspective of Jeremy Bentham's utilitarianism, a morally sound action is one that generates the greatest happiness for the largest number of people.

Regulation No. 3 of 2020 issued by the National Civil Service Agency (BKN) reflects this principle by offering rehabilitation opportunities for civil servants (ASN) who demonstrate improvement, thereby enabling them to reintegrate and contribute to the organisation. This approach aligns with the human capital theory, which regards individuals as valuable assets that can be developed through training and guidance (Becker, 1964).

However, without clear criteria and measurable indicators, the implementation of this regulation risks undermining the overall integrity of the civil service. If reinstatement is granted to individuals who are not genuinely qualified, the anticipated benefits may instead become a burden on the organisation and create a negative public perception. Therefore, to ensure the effectiveness of this regulation, a transparent and evidence-based evaluation mechanism is necessary.

c. Principle of Justice

The principle of justice in AUPB demands equal treatment for all individuals without discrimination. In Aristotle's theory of distributive justice, justice is achieved when individuals are treated according to their rights, obligations, and contributions. Government Regulation No. 94/2021 establishes a foundation of justice by imposing sanctions proportionate to violations, ensuring that punishments are administered fairly and transparently.

However, the strictness of this regulation may lead to disparities if not accompanied by a fair rehabilitation mechanism for individuals demonstrating potential for improvement. Conversely, National Civil Service Agency Regulation No. 3 of 2020, while attempting to provide justice for individuals eligible for reinstatement, encounters challenges related to subjectivity in evaluation. Criteria such as "not diminishing the dignity and honour of civil servants" may be interpreted differently by personnel management officials, creating the potential for discriminatory application.

The harmonisation of both regulations is necessary to achieve comprehensive justice. According to John Rawls in *A Theory of Justice*, a just policy must provide equal treatment to individuals while also considering the specific needs of those in disadvantaged positions. In this context, harmonisation must ensure that eligible civil servants (ASN) are granted the opportunity for rehabilitation without compromising legal certainty and bureaucratic integrity.

#### 4. The Recommendation for Vertical Synchronisation

The vertical synchronisation between Government Regulation (PP) No. 94 of 2021 on the Discipline of Civil Servants and the Regulation of the Head of the National Civil Service Agency (BKN) No. 3 of 2020 on the Technical Guidelines for the Dismissal of Civil Servants is necessary to prevent conflicts in implementation, ensure legal consistency, and establish good governance. Within the hierarchy of statutory regulations, a Government Regulation holds a higher position than a Regulation issued by the Head of BKN, meaning that all technical regulations must align with the superior legal framework. This principle is consistent with Hans Kelsen's Stufenbau Theory, which asserts that legal norms must be structured hierarchically to create a coherent legal system.

##### a. Substantive Revision

A substantive revision of BKN Regulation No. 3 of 2020 is necessary to eliminate potential inconsistencies with Government Regulation (PP) No. 94 of 2021. Within the framework of Positive Legal Theory as developed by H.L.A. Hart, the law must provide clear and predictable guidance to ensure legal effectiveness and certainty. The misalignment between the BKN Regulation, which allows opportunities for rehabilitation, and the stricter provisions of the Government Regulation regarding serious violations may lead to confusion in implementation.

The substantive revision should include adjustments to the reinstatement mechanism for civil servants involved in criminal offences, ensuring that the conditions and indicators are aligned with the provisions of PP 94/2021. For instance, conditions in the BKN Regulation, such as "not diminishing dignity and integrity," should be further elaborated with measurable parameters, such as data-driven performance evaluations or workplace environment surveys. Through this revision, technical regulations will not only complement but also effectively support the implementation of the Government Regulation.

##### b. Implementation Guidelines

The issuance of joint technical guidelines integrating dismissal and reinstatement mechanisms is a strategic step to ensure alignment. The theory of Administrative Rationality, as explained by Max Weber, emphasises the importance of rational, clear, and standardised administrative rules to prevent subjective interpretation in decision-making.

The joint technical guidelines must encompass the following:

##### 1. Standard Operating Procedures (SOPs)

Establish detailed steps for the processes of dismissal and reinstatement, including objective evaluation indicators.

##### 2. Coordination Flow

Define the roles and responsibilities of each party, such as personnel management authorities, the National Civil Service Agency (BKN), and relevant ministries.

3. Supervisory Mechanism

Develop a monitoring system to ensure the implementation aligns with the principles of accountability and transparency, in accordance with the general principles of good governance (AUPB).

c. Periodic Evaluation

Establishing a data-driven evaluation system is a crucial step in assessing the effectiveness of the reinstatement of civil servants and its impact on the organisation. This evaluation reflects the implementation of evidence-based policy, which emphasises the importance of decision-making based on valid evidence and data. This approach aligns with policy evaluation theory as proposed by Dunn (1994), which asserts that evaluation should consider the effectiveness, efficiency, fairness, and sustainability of policies. Furthermore, data-driven evaluation can support the principle of accountability, which is a fundamental pillar of good governance.

Periodic evaluations must encompass:

1. Performance of Reinstated Civil Servants

Utilising indicators such as productivity levels, discipline, and contributions towards organisational objectives.

2. Social and Organisational Impact

Analysing the perceptions of colleagues, the work environment, and society regarding the reinstatement decision.

3. Efficiency and Effectiveness of Policy

Assessing whether rehabilitation policies are more beneficial than recruiting new employees in terms of cost and time.

**B. Harmonisation of National Civil Service Agency Regulation No. 3 of 2020 and Government Regulation No. 94 of 2021 in Establishing the General Principles of Good Governance**

1. The Fundamental Framework of Harmonisation

The harmonisation of regulations in governance is a crucial process to ensure legal consistency, policy integration, and the application of the general principles of good governance (AUPB). In relation to Government Regulation (PP) No. 94 of 2021 on Civil Servant Discipline and the National Civil Service Agency (BKN) Regulation No. 3 of 2020 on Technical Guidelines for the Dismissal of Civil Servants, harmonisation is necessary to address complex cases such as the involvement of civil servants in narcotics-related offences. By adhering to AUPB principles, including legal certainty, utility, transparency, and justice, this harmonisation aims to create synergy between disciplinary policies and rehabilitation opportunities for civil servants.

Harmonisation within the legal system seeks to ensure that lower-level regulations (BKN Regulations) are consistent with higher-level regulations (PP 94/2021). According to Kelsen, an effective legal system possesses a hierarchical structure that is mutually supportive, with fundamental norms as its foundation. Any disharmony between PP 94/2021 and BKN Regulations may create legal uncertainty, contradicting the principle of legality within AUPB.

Radbruch emphasised that law must provide certainty, justice, and utility. In the context of harmonisation, legal certainty necessitates clear, unambiguous, and reliable regulations for civil servants and personnel management authorities in handling serious violations. When regulations conflict, as in this case, legal certainty is compromised.

Regulatory harmonisation must also consider a rehabilitative approach, aligning with the principle of utility in AUPB. Restorative justice underscores that individuals who have served their sentences have the right to be reintegrated both socially and professionally. Consequently, rehabilitation opportunities as stipulated in BKN Regulations can support this concept if applied proportionally and integrated with PP 94/2021.

As the basis for harmonisation, the General Principles of Good Governance (AUPB) include:

a. Legal Certainty

Legal certainty requires regulations that are not contradictory and provide clear guidelines for implementation. Government Regulation No. 94/2021 establishes a firm framework for addressing serious violations, including dismissal sanctions, yet pays insufficient attention to the reinstatement mechanism. Conversely, the BKN Regulation allows for rehabilitation opportunities but risks inconsistencies if not aligned with the Government Regulation. Harmonisation in this context necessitates substantive revisions and technical guidelines to ensure that both regulations function within a coherent legal framework. In Friedrich Julius Stahl's theory of the rule of law, legal certainty is a fundamental element ensuring that the government operates in accordance with established rules. Without harmonisation, these regulations could create legal uncertainty at the operational level, potentially violating the principle of legal certainty within AUPB.

b. Utility

The principle of utility emphasises that regulations should yield maximum benefits for individuals and organisations. Harmonisation is essential to ensure that civil servants eligible for rehabilitation can return to contributing without undermining bureaucratic integrity. According to Jeremy Bentham's utilitarianism, an action is morally justified if it produces the greatest benefit for society. In this context, providing rehabilitation opportunities to individuals demonstrating improvement benefits both organisations and society.

c. Transparency

The principle of transparency demands openness in the processes of dismissal and reinstatement of civil servants. Harmonisation of regulations should ensure that such decisions are based on clear criteria accessible to all relevant stakeholders. Organisational accountability theory, as proposed by Roberts (1991), highlights the importance of transparency in fostering public trust in the bureaucracy.

d. Justice

Harmonisation of regulations must also reflect the principle of justice, which requires equal treatment of all individuals without discrimination. In Aristotle's theory of distributive justice, fairness is achieved when individuals are treated according to their contributions and transgressions. Government Regulation No. 94/2021 upholds justice through strict sanctions, whereas the BKN Regulation provides justice by allowing deserving individuals a second chance. Harmonisation is needed to balance retributive and rehabilitative approaches effectively.

1. Analysis of Alignment with the General Principles of Good Governance (AUPB)

The General Principles of Good Governance (AUPB) serve as a normative foundation in public administration to establish governance that is fair, transparent, and accountable. AUPB encompasses principles such as legal certainty, utility, and the prohibition of abuse of authority. In the context of Government Regulation No. 94 of 2021 on Civil Servant Discipline and the National Civil Service Agency (BKN) Regulation No. 3 of 2020 on Technical Guidelines for the Dismissal of Civil Servants, an analysis of their alignment with AUPB is crucial to ensuring that both regulations support the objectives of effective and integrity-driven governance.

a. Legal Certainty

Legal certainty is one of the fundamental principles in a rule of law state (*rechtsstaat*), requiring legal norms to be predictable, not arbitrarily altered, and applied with clarity and precision (Radbruch, 1946). This concept is rooted in classical legal theory, which emphasises that law must be determinative, free from interpretative ambiguity, and capable of providing individual protection as well as stability within the legal framework (Hart, 1994)

In the context of civil service personnel, legal certainty is a crucial aspect in regulating the discipline of civil servants (PNS), particularly in handling serious violations, including drug abuse. Government Regulation No. 94 of 2021 on Civil Servant Discipline (PP 94/2021) serves as the primary legal framework establishing stringent disciplinary standards for civil servants who breach regulations, with explicit mechanisms for imposing sanctions. From the perspective of the principle of legality in the General Principles of Good Governance (AUPB), this regulation ensures that the enforcement process is grounded in clear legal foundations, thereby preventing subjective and inconsistent interpretations (Hadjon, 1987).

However, in practice, there is potential for normative disharmony when National Civil Service Agency (BKN) Regulation No. 3 of 2020 allows flexibility in the rehabilitation and reinstatement of civil servants who have undergone disciplinary sanctions due to drug abuse. This regulation permits civil servants who have

completed rehabilitation and demonstrated good performance records to return to the bureaucracy, based on the premise that they can once again contribute to governmental institutions. This approach is grounded in restorative justice theory, which prioritises reintegration into society over a retributive legal approach (Zehr, 2002).

Although this approach is based on legal humanism and aligns with the concept of progressive law (Rahardjo, 2009), discrepancies between PP 94/2021 and BKN Regulation No. 3/2020 may create legal conflicts that undermine legal certainty. Inconsistencies in these regulations can lead to ambiguity in rule enforcement for personnel management authorities and may foster perceptions of discriminatory decision-making in disciplinary actions against civil servants.

From the perspective of Hans Kelsen's Stufenbau Theory, legal norms are structured hierarchically, where lower regulations must conform to higher legal norms (Kelsen, 1967). In this context, BKN regulations, as technical regulations, should not contradict PP 94/2021, since the latter holds a higher position within the legislative hierarchy. In the event of disharmony between the two, the principle of legality and legal hierarchy dictates that lower regulations must be aligned to prevent systemic imbalances in the legal order (Marzuki, 2016).

Therefore, harmonising the substance of PP 94/2021 and BKN Regulation No. 3/2020 is imperative to ensure that legal hierarchy remains consistent and does not create uncertainty in civil service administration. Such harmonisation not only upholds the principle of legal certainty within AUPB but also ensures that the regulatory system operates effectively, cohesively, and without contradictions in its implementation.

b. Utility

Utility demands that every governmental policy or action should provide optimal benefits to society and organisations (Bentham, 1789). In this context, BKN regulations reflect the principle of utility by offering opportunities for civil servants who have completed their sanctions to reintegrate through rehabilitation mechanisms. This approach aligns with utilitarianism, which evaluates policies based on their overall societal benefits.

Granting a second chance to civil servants (PNS) who demonstrate improvement offers several benefits:

a. Optimisation of Human Resources

Reinstated civil servants can leverage their experience and competencies to enhance organisational performance. This aligns with Becker's (1964) human capital theory, which emphasises the importance of investment in individual development.

b. Organisational Efficiency

Rehabilitation reduces the need for new recruitment, which is both time-consuming and costly.

c. Moral Restoration



This approach reflects a humanistic aspect of bureaucracy, where civil servants are given the opportunity to rectify their mistakes without permanently losing their rights.

However, these benefits can only be realised if the reinstatement process is conducted transparently and accountably. Ambiguities in rehabilitation criteria, as observed in BKN regulations, may erode public trust and lower the morale of other civil servants. Therefore, clear indicators must be established to assess rehabilitation eligibility, such as data-driven performance evaluations or workplace environment surveys.

d. Non-abuse of Authority

This principle ensures that government decisions are made based on legitimate regulations, with the aim of serving the public interest, and are not used for personal or group-specific gains (Dunn, 1994). In the context of both regulations, this principle is highly relevant as the reinstatement process of civil servants, which involves individual evaluations, has the potential to create opportunities for the misuse of authority.

The BKN regulation, with rehabilitation criteria such as "not diminishing the dignity and honour of civil servants," risks granting excessive discretion to personnel management authorities in making decisions based on subjective interpretations. This contradicts the Weberian bureaucracy theory, which emphasises the importance of rational, impersonal, and rule-based decision-making to prevent bias or conflicts of interest.

Conversely, Government Regulation No. 94/2021 provides a stricter sanction structure, which can prevent the abuse of authority by limiting the discretion of officials in assessing violations. However, if this regulation is enforced rigidly without considering individual contexts, the risk of injustice remains. Therefore, the synchronisation of both regulations must ensure that reinstatement decisions are based on an objective evaluation mechanism, such as a data-driven scoring system incorporating performance and behavioural assessments.

1. The Barrier to Harmonisation

Regulatory harmonisation is an effort to ensure that applicable regulations do not contradict one another and can be implemented synergistically. In the context of Government Regulation (PP) No. 94 of 2021 on Civil Servant (PNS) Discipline and the Head of the National Civil Service Agency (BKN) Regulation No. 3 of 2020 on Technical Guidelines for the Dismissal of Civil Servants, significant barriers to harmonisation exist. These obstacles include regulatory overlaps and a lack of clear implementation guidelines, which have the potential to create conflicts in legal application and undermine the integrity of the bureaucratic system.

a. Regulatory Overlaps

1) Legal Hierarchy Perspective

According to Hans Kelsen's Stufenbau Theory, lower legal norms must align with higher norms. As a technical regulation, the BKN Regulation should support Government Regulation (PP) 94/2021. However, the flexibility offered by the BKN Regulation may be considered contradictory to the stringent approach stipulated in the PP. This disharmony weakens the principle of legal certainty, which is a fundamental element in Friedrich Julius Stahl's theory of the rule of law.

2) Adaptability and Stringency

This regulatory overlap also reflects a tension between two different approaches: adaptability and stringency. PP 94/2021 places greater emphasis on deterrence through strict sanctions, aligning with the deterrence theory in criminal law. In contrast, the BKN Regulation adopts a more inclusive approach by providing opportunities for rehabilitation, which aligns with the principles of restorative justice. The imbalance between these two approaches may create ambiguity for personnel management authorities when making decisions on serious violations.

3) Impact on Implementation Consistency

Regulatory inconsistency may lead to non-uniform law enforcement at the implementation level. In organisational legitimacy theory, as proposed by Suchman (1995), consistency in the application of regulations is crucial for maintaining public trust in bureaucracy. If personnel management authorities interpret the two regulations differently, it may undermine public confidence in the fairness and integrity of the system.

b. Lack of Implementation Guidelines

Clear and detailed implementation guidelines are essential to ensure consistent regulation enforcement. The absence of implementation guidelines in PP 94/2021 and BKN Regulation No. 3 of 2020 creates a broad scope for interpretation, potentially leading to inconsistencies in decision-making.

1) Administrative Rationality Theory

Max Weber's theory of administrative rationality highlights the importance of clear and standardised rules to ensure efficiency and objectivity in decision-making. Without detailed guidelines, personnel management authorities risk making decisions based on personal preferences or external pressures, which could violate the principle of non-abuse of authority within the General Principles of Good Governance (AUPB).

2) Ambiguity in Rehabilitation Criteria

The BKN Regulation includes criteria such as "not diminishing the dignity of civil servants" and "demonstrating good work performance" as conditions for rehabilitation. However, these criteria are subjective and lack measurable indicators. According to policy evaluation theory by Dunn (1994), effective policies must be supported by clear evaluation indicators that enable evidence-based decision-making. The absence of technical guidelines creates

a risk of varying interpretations among personnel management authorities, ultimately undermining the principle of fairness within the AUPB.

3) Risk of Abuse of Authority

The lack of detailed guidelines also increases the risk of abuse of authority. In organisational control theory, a non-transparent decision-making structure can create opportunities for conflicts of interest and biased decisions. Harmonising both regulations should include the formulation of comprehensive implementation guidelines to minimise these risks

2. Policy Recommendation

Policy recommendations for aligning regulations between Government Regulation No. 94 of 2021 on Civil Servant Discipline and the National Civil Service Agency (BKN) Regulation No. 3 of 2020 encompass three main pillars: the development of an integrated Standard Operating Procedure (SOP), strengthening inter-agency coordination, and enhancing the capacity of implementers. These measures aim not only to resolve regulatory conflicts but also to support the implementation of the General Principles of Good Governance (AUPB), including legal certainty, utility, and the prohibition of abuse of authority. Drawing from public administration, legal, and management theories, this analysis provides in-depth insights into the significance of coordination-based and accountability-driven policies.

a. Development of an Integrated SOP

Standard Operating Procedures (SOPs) are vital instruments in public administration to ensure that decision-making processes are consistent, transparent, and accountable. In the context of harmonising Government Regulation No. 94/2021 and BKN Regulation, the development of an integrated SOP is necessary to align sanctions and rehabilitation approaches in accordance with AUPB principles.

1. Administrative Rationality Theory

According to Max Weber, administrative decision-making should be rational and based on clear rules. An integrated SOP reflects this principle by providing step-by-step guidelines that minimise subjective interpretation by implementers.

2. Principle of Legal Certainty

In Friedrich Julius Stahl's theory of the rule of law, legal certainty is a fundamental element to ensure that every government decision has a clear legal basis. An integrated SOP that aligns Government Regulation No. 94/2021 and BKN Regulation can mitigate the risks of legal uncertainty caused by regulatory conflicts, thereby strengthening the trust of civil servants and the public in the bureaucratic system.

3. Utility in Integrated SOPs

An SOP combining sanctions and rehabilitation reflects Jeremy Bentham's utilitarianism theory, which evaluates policies based on their benefits to society. By offering rehabilitation opportunities to qualifying civil servants, the

government can maximise human resource potential without compromising disciplinary enforcement.

b. Strengthening Coordination

Effective coordination between the National Civil Service Agency (BKN), relevant ministries, and law enforcement agencies is crucial to ensure that regulatory implementation is consistent and transparent. Contingency organisational theory suggests that coordination is essential to tailor policies to specific needs and operational challenges.

1. Inter-Agency Collaboration

In regulatory harmonisation, inter-agency coordination facilitates clear role allocation, prevents authority overlaps, and fosters synergy in implementation. Rhodes' (1996) policy network theory highlights that collaboration among policy actors enhances efficiency and effectiveness in addressing complex issues.

2. Transparency and Accountability

The principle of transparency in AUPB requires that every regulatory implementation step is conducted openly. Inter-agency coordination must include accurate data exchange and joint monitoring mechanisms to ensure that decisions are made on a well-founded basis. This aligns with public accountability theory, which posits that transparency and collective oversight enhance policy legitimacy (Roberts, 1991).

3. Operational Efficiency

According to Katz and Kahn's (1978) organisational systems theory, effective coordination enhances efficiency by reducing task duplication and inter-agency conflicts. In this context, strengthening coordination between BKN and relevant agencies ensures that regulatory implementation follows an integrated and non-contradictory process

c. Capacity Building for Implementers

Enhancing implementers' capacity through training and outreach initiatives is essential to ensure that personnel management officials have a thorough understanding of both regulations and AUPB principles. This supports human capital theory, which emphasises the importance of investing in individual development to improve organisational productivity (Becker, 1964).

1. Competency-Based Training

Specialised training for personnel officials should include: a) Comprehensive understanding of Government Regulation No. 94/2021 and BKN Regulation. b) Application of AUPB principles, including legal certainty, utility, and fairness. c) Case studies and simulations to enhance skills in performance evaluation

and civil servant rehabilitation. This training not only enhances technical skills but also fosters ethical awareness, aligning with Lawrence Kohlberg's moral development theory, which suggests that moral training improves individuals' ability to make ethical decisions in complex situations.

2. Outreach to All Civil Servants

Regulatory harmonisation outreach is necessary to ensure that all civil servants understand the legal consequences of violations and the available rehabilitation opportunities. According to Suchman's (1995) organisational legitimacy theory, effective communication with stakeholders enhances policy acceptance and support.

3. Internal Monitoring

Capacity-building efforts should also include the establishment of internal monitoring teams to ensure that decisions made by personnel management officials adhere to SOPs and AUPB principles. Organisational control theory highlights the importance of internal monitoring to mitigate the risk of authority misuse.

## CONCLUSION

Through a normative legal analysis approach, based on legal theory and the general principles of good governance, this study has identified several key points:

1. Vertical Synchronisation

There is an implementation gap between National Civil Service Agency (BKN) Regulation No. 3 of 2020 and Government Regulation (PP) No. 94 of 2021. Although PP holds a higher position in the legal hierarchy, BKN's technical regulation does not fully reflect the strict provisions of PP 94/2021 regarding sanctions for civil servants involved in narcotics-related offences. This highlights the need for harmonisation to ensure legal certainty and justice in civil service governance.

2. Legal Certainty and Justice

The implementation of severe sanctions such as dismissal must adhere to the principle of legal certainty, as stipulated in PP 94/2021. However, BKN Regulation provides an opportunity for rehabilitation under specific conditions, which could introduce subjectivity if not supported by measurable and transparent evaluation indicators.

3. General Principles of Good Governance (AUPB)

Both regulations largely reflect the principles of AUPB, such as legal certainty, utility, and the prevention of abuse of power. However, the principles of transparency and justice require further attention to ensure that every decision, particularly regarding the reinstatement of civil servants, is conducted objectively and accountably.

#### 4. Recommendations for Harmonisation

To establish effective governance, this study recommends revising the substantive content of BKN Regulation No. 3 of 2020 to align more closely with PP 94/2021. Additionally, joint technical guidelines should be developed, incorporating clear Standard Operating Procedures (SOPs), oversight mechanisms, and periodic evaluations to enhance the transparency and accountability of both dismissal and reinstatement processes for civil servants.

## REFERENCES

### A. Books

- Abdurrahman. (1995). Ilmu Hukum, Teori Hukum, dan Ilmu Perundang-Undangan. Jakarta: PT Citra Aditya Bakti.
- Becker, G. S. (1964). Human Capital: A Theoretical and Empirical Analysis, with Special Reference to Education. University of Chicago Press.
- Bentham, J. (1789). An Introduction to the Principles of Morals and Legislation. Clarendon Press.
- Dunn, W. N. (1994). Public Policy Analysis: An Introduction. Prentice Hall.
- Erwin, Muhamad. (2016). Filsafat Hukum: Refleksi terhadap Hukum dan Hukum Indonesia (dalam Dimensi Ide dan Aplikasi). Jakarta: PT Rajagrafindo Perkasa.
- Fahmal, Muin. (2014). Hukum Administrasi Negara dan Good Governance. Jakarta: Raja Grafindo Persada.
- Hadjon, Philipus M. (1987). Perlindungan Hukum bagi Rakyat di Indonesia. Surabaya: Bina Ilmu.
- Hart, H. L. A. (1994). The Concept of Law. Oxford University Press.
- Kelsen, H. (1967). The Pure Theory of Law. University of California Press.
- Moelyono, Anton M. (1988). Kamus Besar Bahasa Indonesia. Jakarta: Balai Pustaka.
- Nadaek, Wilson. (1983). Korban dan Masalah Narkotika. Bandung: Indonesia Publing House.
- Radbruch, G. (1946). Legal Philosophy. Harvard University Press.
- Rawls, J. (1971). A Theory of Justice. Harvard University Press.
- Ridwan HR. (2014). Hukum Administrasi Negara. Jakarta: PT RajaGrafindo Persada.
- Sasangka, Hari. (2003). Narkotika dan Psikotropika Dalam Hukum Pidana Untuk Mahasiswa dan Praktisi Serta Penyuluh Masalah Narkoba. Bandung: Mandar Maju.
- Soedjono, D. (1977). Narkotika dan Remaja. Bandung: Alumni Bandung.
- Soekanto, Soerjono & Mamudji, Sri. (2012). Penelitian Hukum Normatif. Jakarta: PT Raja Grafindo Persada.

- Stahl, F. J. (1856). *Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*. Edinburgh: T&T Clark.
- Weber, M. (1978). *Economy and Society: An Outline of Interpretive Sociology*. University of California Press.
- Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books.

## **B. Articles**

- Adriantini Sintha Dewi, Dyah. (2016). Pendayagunaan Freies Ermessen Pejabat Pemerintahan Dalam Konsep Negara Kesejahteraan.
- Arimba, C. I. (2023). Hans Kelsen's Nomostatics and Nomodynamics Legal Theory. *Justice Voice*, 2(2), 55-63.
- Bagas Suratno, Sadhu. Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik. *E-Journal Lentera Hukum*.
- Carrozza, P. (2019). Kelsen and Contemporary Constitutionalism: The Continued Presence of Kelsenian Themes. *Estudios de Deusto*, 67(1), 55-82.
- Isdiyanto, Ilham Yuli. (2018). Problematika Teori Hukum, Konstruksi Hukum dan Kesadaran Sosial. *Jurnal Hukum Novelty*, 9(1), 54–55.
- Laporan Pusat Penelitian, Data, dan Informasi Badan Narkotika Nasional. (2021). *Indonesia Drugs Report*. Jakarta.
- Nasirin, K., et al. (2024). Strengthening Legal Certainty in the Construction Sector. *IJOMS*.
- Rhodes, R. A. W. (1996). The New Governance: Governing without Government. *Political Studies*, 44(4), 652–667.
- Roberts, J. (1991). *Accountability and Responsibility in Modern Governance*. Palgrave Macmillan.
- Sadnyini, I. A., et al. (2024). Legal Approaches for Clinical Audits and Sanctions in Indonesian Health Service Facilities. *Jurnal Hukum Prasada*.
- Shakti, A. G., Tyas, M. W., & Farid, M. L. R. (2022). The Integration of Judicial Review in Indonesia. *Syiah Kuala Law Journal*, 6(3), 212-227.
- Simamora, J., & Esther, R. E. (2024). The Design of the Idea of Judicial Preview Authority of the Constitutional Court in the Indonesian Constitutional System. *Jurnal Hukum dan Peradilan*, 13(1), 167-188.
- Suchman, M. C. (1995). Managing Legitimacy: Strategic and Institutional Approaches. *Academy of Management Review*, 20(3), 571–610.
- Vasilyev, I. A. (2023). Legalization of Ethics in Sports and Disciplinary Liability for “Disrepute.” *Kutafin Law Review*.

### **C. Legislative Regulations**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan.

Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara.

Peraturan Pemerintah Republik Indonesia Nomor 94 Tahun 2021 tentang Disiplin Pegawai Negeri Sipil.

Peraturan Pemerintah Nomor 11 Tahun 2017 tentang Manajemen Pegawai Negeri Sipil.

Peraturan Kepala BKN Nomor 3 Tahun 2020 tentang Petunjuk Teknis Pemberhentian Pegawai Negeri Sipil.