

The Authority in Fostering the Leadership Training For State Civil Apparatus

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Abstract: The Law Number 5 of 2014 on State Civil Apparatus (ASN) mentions that the authority in fostering the leadership training for ASN is under National Institute of Public Administration (LAN). However, the presence of leadership training of the domestic governance (Pimpemdagri), which is fostered and organized by Human Resource Development Agency of the Ministry of Home Affairs (BPSDM Kemendagri), has led to a polemic of dualism in the authority to foster the leadership training for ASN between LAN and BPSDM Kemendagri. This research aims to study the essence of the existence of two authorities in fostering the leadership training for ASN and to describe the legality of authority of the two institutions in fostering the leadership training for ASN. The results of this normative juridical research show that the essence of the existence of two authorities in fostering the leadership training for ASN between LAN and BPSDM Kemendagri is based on the need to fulfill substances of different competences, leadership training of LAN is general in nature in order to meet collaborative, strategic, operational, tactical and performance accountability competences for Structural Officers in managing the change and managing their organizational resources. The scope of trainees of the Leadership Training of LAN applies to ASN in all government agencies. Whereas Pimpemdagri training is aimed to fulfill and to overcome the gap of technical and specific competence in the administration of domestic governance, it also applies limited to ASN only, in the environment of the Ministry of Home Affairs (Kemendagri) and Regional Government. Then its legality aspect, the authority of LAN in fostering the leadership training is based on/is sourced from the Law on ASN (UU ASN), while the authority of Kemendagri that is based on the Law on Regional Government only has the authority to "Determine the Competences of Government". LAN specifically is an institution in the field of Leadership Training for ASN, while Kemendagri hold the position as general fostering and supervision of the implementation of public affairs of the domestic government so that LAN and Kemendagri do not have the same authority in fostering the leadership training for ASN. LAN is the owner of the authority in fostering Leadership Education and Training (Diklat) for ASN in ASN management system nationally, while Kemendagri is limited to determine the competence of domestic government. It is recommended that the content of substance of competence in Pimpemdagri of Kemendagri be integrated into the substance of LAN Leadership Training.

Date of Submission: 25-11-2019

Date of Acceptance: 10-12-2019

I. INTRODUCTION

The Law Number 5 of 2014 concerning State Civil Apparatus (Law 5/2014 concerning ASN) and the Government Regulation Number 11 of 2017 concerning Management of Civil Servants (PP 11/2017 on Management of Civil Servants) stipulates that management of ASN management is carried out nationally based on Merit System¹ namely the management of ASN management based on qualifications, competencies and performance.² Article 2 of the Law on ASN states that the implementation of management of ASN is based on the principles, including the following: "(1) the principle of legal certainty...; (2) the principle of professionalism is to prioritize the expertise based on a code of ethics and the provisions of the legislation; (3) the principle of integration, namely the management of ASN Employees is based on one management system that is integrated nationally; (4) the principle of delegation is that part of the authority to manage ASN Employees in which its implementation can be delegated to the ministry, non-ministerial government institution, and regional governments ...".

¹Pasal 51 UU ASN.

²Pasal 1 angka 22 UU ASN.

The Law on State Civil Apparatus (ASN) put ASN as a profession that is based on the competence needed in accordance with the field of duty. The competences required for ASN as referred to Article 69 of the Law on ASN are: (a) Technical competence is knowledge, skills, and attitudes/behaviors that can be observed, measured, and developed that are specifically related to the technical field of the Position; (b) Managerial Competence is knowledge, skills and attitudes/behaviors that can be observed, measured, developed to lead and/or to manage organizational units; and (c) Socio-cultural competence is knowledge, skills and attitudes/behaviors that can be observed, measured and developed related to the experience of interacting with plural society in terms of religion, ethnicity and culture, behavior, nationality insight, ethics, values, morals, emotions and principles, which must be fulfilled by every position holder to obtain the work that is in accordance with the role, function and position.

Technical competence is fostered and carried out by each ministry/non-ministerial institution related to the field of duty which becomes the affairs of the related institution³. For the competences of Social and cultural, they are determined by LAN and organized by accredited training institution⁴. For Managerial Competence (Leadership), it is organized in the form of structural training⁵ of leadership that is fostered and organized by LAN and accredited training institutions⁶.

In addition to the three competences, in the Law of Number 23 of 2014 concerning Regional Government (Law No. 23/2014 on Regional Government) also requires ASN of Head of Regional Apparatus Unit to meet Competences of the Government⁷. The competence is determined by the Ministry of Home Affairs and is organized in the form of Education and Training for Domestic Leadership (Diklat Pimpemdagri) fostering by Human Resource Development Agency of the Ministry of Home Affairs (BPSDM Kemendagri)⁸.

Thus, based on different legal regimes, namely the Law on ASN and the Law on Regional Government with provision of its implementation rule, they require 2 (two) mandatory Leadership Training for ASN of Structural Officers so that this condition raise issues including⁹: (a) Polemic of dualism in fostering leadership training for ASN between LAN and BPSDM Kemendagri; and (b) Development of managerial competences (leadership) in the national competence development system will be carried out by 2 (two) different agencies.

Based on the formulation of the problems mentioned above, this study describes as follows:

1. What is the essence of the existence of two authorities between LAN and BPSDM Kemendagri in fostering the leadership training for ASN in ASN management system nationally.
2. How is the legality of authority between LAN and BPSDM Kemendagri in fostering Leadership Education and Training (Diklat) for ASN in ASN management system nationally.

The results of this study are expected to become scientific work in the development of legal science, as well as being a scientific reference in managing the policy of regulating the authority in fostering the leadership training for ASN between LAN and BPSDM Kemendagri.

II. METHODS

This type of research is normative legal research that is research that examines the application of norms in positive law¹⁰. The analytical approaches that are used are: (a) Statute Approach.¹¹ This approach is carried out by examining the laws and regulation related to the legal issues that are raised.¹² The approach conducts the study on legislations relating to the authority in fostering the Leadership Education and Training for ASN. (b) Historical approach. This approach is carried out to study the development of regulations regarding the legal issues at hand¹³. The techniques of Data collection is carried out through reviewing the data on the written legal literature (literature) and in legislations. The legal material obtained was analyzed in descriptive and in prescriptive.

³Pasal 214 ayat (4) Peraturan Pemerintah Nomor 11 tahun 2017 tentang Manajemen Pegawai Negeri Sipil.

⁴Pasal 216 Peraturan Pemerintah Nomor 11 tahun 2017 tentang Manajemen Pegawai Negeri Sipil.

⁵ Pasal 217 Peraturan Pemerintah Nomor 11 tahun 2017 tentang Manajemen Pegawai Negeri Sipil.

⁶ Pasal 43 Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara.

⁷ Pasal 233 Undang-undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah

⁸ Peraturan Menteri Dalam Negeri Nomor 85 Tahun 2017 tentang Pendidikan dan Pelatihan Kepemimpinan Pemerintahan Dalam Negeri.

⁹ Zulpikar. et.all "*Policy Brief Kajian Isu-isu Strategis: Rekonstruksi Kebijakan Pendidikan dan Pelatihan Kepemimpinan Aparatur Sipil Negara*". Lembaga Administrasi Negara Press, 2017. hlm. 2.

¹⁰ Johnny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*, Bayumedia, Malang, 2012, hlm. 295.

¹¹ Johnny Ibrahim, *ibid.* hlm 295.

¹² Marzuki, Peter Mahmud, *Penelitian Hukum*, Prenada Media, Jakarta, 2005. hlm.93.

¹³ Dyah Ochtorina dan A'an Efendi, *Penelitian Hukum (Legal Research)*, Sinar Grafika, Jakarta, 2014, hlm.126.

III. RESULT

A. The Essence Of The Existence Of Two Authorities In Fostering The Leadership Training For ASN.

Leadership in English is termed as Leadership. Leadership is a practical skill that includes the ability of a person or an organization to "lead" or to guide another person, team, or the whole organization. George R Terry and Leslie W. Rue¹⁴ mention that Leadership as the ability of a person or leader, to influence the behavior of others according to their desires in a particular situation. Based on the needs of the value of "Leadership", thus ASN of Structural Officers must be able to lead subordinates and all strategic stakeholders in order to carry out program and activities in their organizations. In the world of bureaucracy, structural positions are managerial positions that carry out the mandate of leading an organization and managing resources in its organization in order to achieve its objectives so that the position and responsibilities of these positions require them to have leadership competences of collaborative, visionary, strategic, tactic and operational, namely ability to plan, the implementation of program of agency activities and the ability to influence as well as to mobilize subordinates and strategic stakeholders in carrying out the programs and activities that has been planned. Thus in this context, ASN Leadership Training is needed in accordance with the level of structural positions¹⁵ consisting of: (a) Madya leadership training; (b) Pratama Leadership Training; (c) Administrator leadership training; and (d) leadership training of Supervisor.

The leadership training fostering that is based on the specific Law on ASN is carried out by LAN. The legal basis for the implementation of leadership training fostering and organizing for ASN is determined by LAN Regulation, namely (1) National Leadership Training of Level I is a structural leadership training of Madya (intermediate), the competences developed are collaborative leadership competence¹⁶; (2) National Leadership Training Level II is leadership training of pratama structural positions, the competences developed are strategic leadership competences.¹⁷; (3) Administrator leadership training is structural leadership training of Administrators for structural officials of echelon III, the competences developed are performance management leadership competences¹⁸; and then (4) Supervisor Training is structural leadership training addressed to structural officials of echelon IV, the competences built are leadership competences of service and accountability¹⁹. Leadership Training of LAN aims to supply visionary, collaborative, strategic, tactic, and operational leadership competences as well as accountability for Structural Officials. Leadership Training of LAN places every trainee of the training as an *Agent of Change* in order to create "leader of change" in their respective institutions. This is in line with the concept of "Leadership" as mentioned in the discussion above, namely forming the leaders who are able to manage the change within the organization and across organizations, as well as empowering the resources that are in their control.

Then, the emergence of Pimpemdagri Training and Education (Diklat Pimpemdagri) which is based on the Government Regulation (PP) No. 12 of 2017 concerning the Development and Supervision of Local Government enforcement as a derivative of the Law No. 23 of 2014 on Regional Government is intended to fulfill "more technical and specific governmental competences" limited to the Head of Regional Apparatus Work Unit and in the scope of the Ministry of Home Affairs. The mentioned government competences are determined by the Ministry of Home Affairs. It is developed through Pimpemdagri Training and Education (Diklat Pimpemdagri) fostered by BPSDM Kemendagri which is regulated in Permendagri No. 85 of 2017 concerning Pimpemdagri. There are technical and specific substances of the competences of the government that is taught including knowledge, attitudes and skills related to: (a) decentralization policy; (b) the relationship between the Central and the Regional Government; (c) general government; (d) financial management of region; (e) government affairs which are under regional authority; (f) the relationship between the regional government and Regional House of Representative (DPRD); and the ethics of governance²⁰. Diklat Pimpemdagri aims to²¹: (a) improving the competences of government according to characteristics of leadership and the implementation of technical practices of domestic governance; (b) Improving the competences of government based on the values of ASN, Public Administration (kepomongprajaan) and the ethics of governance; (c) Internalizing the values of Pancasila, The 1945 State Constitution of the Republic of Indonesia (UUD 1945), Bhinneka Tunggal Ika (Unity in Diversity), and the Unitary State of the Republic of Indonesia in carrying out their duties; and (d)

¹⁴George R. Terry dan Leslie W. Rue, *Dasar-Dasar Manajemen*, Sinar Grafika Offset, 2011, hlm.192

¹⁵Pasal 217 ayat (1) Peraturan Pemerintah Nomor 11 Tahun 2017 tentang Manajemen PNS.

¹⁶ Pasal 3 ayat (2) Peraturan LAN Nomor 6 Tahun 2018 tentang Pelatihan Kepemimpinan Nasional Tingkat I.

¹⁷ Pasal 4 Peraturan Lembaga Administrasi Negara Nomor 2 Tahun 2019 tentang Pelatihan Kepemimpinan Nasional Tingkat II.

¹⁸ Pasal 4 Peraturan Lembaga Administrasi Negara Nomor 16 Tahun 2019 tentang Pelatihan Kepemimpinan Administrator.

¹⁹ Pasal 4 Peraturan Lembaga Administrasi Negara Nomor 15 Tahun 2019 Tentang Pelatihan Kepemimpinan Pengawas.

²⁰ Penjelasan Pasal 233 UU 23/2014 tentang Pemerintahan Daerah

²¹Badan Pengembangan Sumber Daya Manusia Kemendagri, *Petunjuk teknis penyelenggaraan Diklat Pimpemdagri di lingkungan Kemendagri dan Pemda Jabatan Administrator*. BPSDM Kemendagri, Jakarta, 2017. hlm. 4.

increasing government competences in leading the implementation of duties, functions and authority in public service activities, government administration and development in accordance with the level of position. Based on the content of the technical and specific substances as well as objectives of Diklat Pimpemdagri, it was concluded that the presence of Pimpemdagri was more to overcome the *gap* of technical and specific competences related to the implementation of domestic government, this is because the factors in the scope of administration affairs of domestic government that are complex and broad and it also involves a very diverse stakeholder. Therefore, government competences are intended to complement managerial, technical and socio-cultural competences for apparatus in the regions.

B. The Legality of authority in Fostering the Leadership Training for ASN.

The concept of authority in constitutional law and state administration law has an important position and is related to the principle of legality. In constitutional law, it is related to the legality of the source and the essence of an authority possessed by the state and governmental organs. In the state administration law, it is related to the legality of the operationalization of an authority from the state and governmental organs in the use of power.

According to Ateng Syafrudin²², authority is authority, *gezag*. Authority is formal authority originating/given by law, in which there are authorities "*onderdeel*" (part) within the authority. The same opinion was expressed by Prajudi Atmosudirdjo who defines that authority is what is called as formal power, power that comes from legislative power (given by the law) or from executive/administrative power, in which there are authorities within the authority²³. Juridically²⁴ it is stated that "authority is the right owned by the Agency and/or Government Official or other state administrators to make decisions and/or actions in the administration of government." Afterwards, the Government Authority, hereinafter referred to as "Authority is the power of the Agency and/or Government Official or other state administrators to act in the field of public law". Authority is obtained through:

- a. Attribution²⁵ is provision of authority by the lawmakers themselves to a government organ, both existing and completely new. Attribution is the authority to make decisions (*besluit*) directly sourced from the law in the material sense, the authority that is obtained through attribution by government organs is the original authority.
- b. Delegation²⁶ is the transfer of authority possessed by government organ to the other organ. Delegation contains submission. The authority that has been given by the delegator (*delegans*) will then become the responsibility of the authority recipient. The authority obtained from the delegation can also be sub-delegated to *subdelegatoris*. This *subdelegatoris* applies the same as the delegation's provisions.
- c. Mandate²⁷, there is no provision of new authority or transfer of authority and Agency or State administration officials (*Pejabat TUN*), one to the other. Responsibility for the authority on the basis of the mandate still remains on the mandatory and does not turn to the recipient of the mandate.

The source of government authority according to H.D van Wijk/Willem Konijnenbelt as quoted by Ridwan H.R²⁸ comes from legislation that is obtained through three ways:

- a. Attribution is a provision of authority of the government by lawmakers to government organs (*atribute is toekenning van een bestuursbevoegheid door een wetgever aan een bestuursorgaan*).
- b. Delegation is the transfer of Government's authority from the government organ to the other government organ (*delegatie is overdracht van een bevoegheid van het ene bestuursorgaan aan een ander*).
- c. Mandate is when a government organ allows its authority to be carried out by another person on its behalf (*mandaat is een bestuursorgaan loot zijn bevoegheid namens hem uitoefenen door een ander*).

Based on the constitution of state, the President has the position as the executive body organizing governmental power. The President delegates part of his power to the organs of the administration of government's power to the Ministries of State, Non-Ministerial Government Institutions and Non-Structural Institutions. One of the affairs of the administration of government power is in the field of apparatus utilization. Based on the Article 25 of the Law on ASN, The President delegates part of his authority regarding the implementation of management of ASN to:

- a. The ministry that carries out government affairs in the field of utilization of the state apparatus, relates to

²²Ateng Syafrudin, *Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab*, Bandung, 2000, hlm. 22.

²³Prajudi Atmosudirdjo, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta, 2001, hlm. 27.

²⁴Undang-Undang 30 Tahun 2014 tentang Administrasi Pemerintahan.

²⁵Pasal 12 UU Administrasi Pemerintahan.

²⁶Pasal 13 UU Administrasi Pemerintahan.

²⁷Pasal 14 UU Administrasi Pemerintahan.

²⁸Ridwan HR, *Hukum Administrasi Negara (edisi revisi)*, Rajawali Pers, Jakarta, 2014, hlm.101-102

- the authority of formulating and determining policies, coordinating and synchronizing the policies, as well as supervising the implementation of policies on ASN;
- b. ASN Commission, it relates to the authority of monitoring and evaluating the implementation of policies and Management of ASN to guarantee the realization of the Merit System as well as supervision towards the application of the principles as well as code of ethics and code of behavior of ASN;
 - c. LAN, relating to authority of research, study on the Policies of Management of ASN, Fostering, and organizing the education and training of ASN; and
 - d. BKN, it relates to authority of the implementation of ASN Management, supervision and control of the implementation of norms, standards, procedures and criteria of ASN Management.

The legality of the position, duties and authority between LAN and BPSDM Kemendagri in the field of Employee Affair from historical and judicial aspects are as follows:

1) State Administration Institution is a non-ministerial government institution, the initial formation of this institution was by the Government Regulation Number 30 of 1957 concerning LAN²⁹. The establishment of LAN at that time was mainly driven by the Government's very urgent need for developing the competences of civil servants, especially those who held leadership positions in the government apparatus, for the proficiency and skills in the field of administration and management that would support its ability in carrying out its duties³⁰. Article 3 of the Government Regulation (PP) No. 30 of 1957 states that LAN: "... (a) organize and supervise the education and training of civil servants and/or prospective civil servants, so that they become state administrative personnel who have the personality and proficiency in accordance with their duties ...". In 1972, tasks and functions of LAN were expanded. Through the Presidential Decree No. 34 of 1972 concerning Functional Responsibilities of Education and Training, in conjunction with (Jo.) Presidential Instruction No. 15 of 1974 stated that "LAN has the duty and responsibility on fostering the special Education and Training (Diklat) for civil servants.³¹ In Government Regulation Number 14 of 1994 concerning Education and Training (Diklat) for Civil Servants³² which has been replaced by Government Regulation Number 101 of 2000, it states that "the fostering agency of Education and Training (Diklat) of Civil Servants (PNS) is LAN that is functionally responsible for the coordination, arrangement and administration as well as supervision and control of Education and Training (Diklat)". The position of LAN is then emphasized in the Law No. 5 of 2014 concerning ASN. Article 1 number 20 states that; "The State Administration Institution, hereinafter referred to as LAN, is a non-ministerial government institution that is authorized to conduct the assessment and education as well as training for ASN as stipulated in this law". Then, Article 43 of the Law on ASN states that LAN has the functions as follows: "(a) development of quality standards for the education and training of ASN Employees; (b) fostering education and training in managerial competences of ASN Employees; (c) organizing education and training for managerial competences of ASN Employees both individually and jointly with other educational and training institutions; (d) assessment related to ASN policy and management; and (e) conducting the accreditation of Education and Training institution for ASN Employees, both individual and joint with other government institution....". Furthermore, Article 45 of the Law on ASN states that LAN has the authority: "(a) to revoke licenses for organizing education and training for ASN Employees which violates the provisions of the legislation; (b) to provide recommendations to the Minister in the field of policy and Management of ASN; and (c) to revoke the accreditation of Education and Training institutions for ASN Employees that do not meet the accreditation standards. In more detail, the Organizational Structure and Administration of LAN are stipulated in Perpres No. 79 of 2018 on LAN. Article 2 of the mentioned Presidential Regulation (Perpres) states that LAN carries out governmental tasks in the field of state administration which is under and is responsible to the President through the Minister.

The Ministry of Home Affairs was formerly known as The Department of Home Affairs (Depdagri) is a ministry that is in charge of domestic affairs. In 1956, the policy of the field of Education and Training (Diklat) began to be issued by the leader of The Department of Home Affairs (Depdagri) gradually and continuously including through, the Courses for civil servant of Department Section A (*Kursus Dinas Pegawai Bagian A (KDA)*), the Courses for civil servant of Department Section B (*Kursus Dinas Pegawai Bagian B (KDB)*), Courses for civil servant of Department Section C (*Kursus dinas Pegawai Bagian C (KDC)*)³³. In 1955, the Academy of Domestic Government (APDN) began to be held in Malang as an increase in KDC Malang. As a continuation of APDN, non-degree education is provided in the form of tiered courses, such as: Advanced School of Public Administration Level II (*Sekolah Lanjutan Pemerintahan Umum Tingkat II (Selaputda)*), Advanced School of Public Administration Level I (*Sekolah Lanjutan Pemerintahan Umum*

²⁹Buku 60 Tahun Lembaga Administrasi Negara; Berkarya dan berbakti untuk negeri". Lembaga Administrasi Negara, Jakarta, 2017, hlm, 8

³⁰https://id.wikipedia.org/wiki/Lembaga_Administrasi_Negara, diakses tanggal 08 September 2019

³¹Pasal 3 Keppres Nomor 34 Tahun 1972 tentang Tanggung Jawab Fungsional Pendidikan dan Latihan .

³²Peraturan Pemerintah Nomor 14 Tahun 1994 Tentang Pendidikan dan Pelatihan Jabatan Pegawai Negeri Sipil.

³³<http://bpsdm.kemendagri.go.id/profile/page/9>. Diakses tanggal 08 September 2019.

Tingkat I (Selaputti), *Sekolah Lanjutan Umum Tingkat Tinggi* (Selaputti) which are held in various cities in Indonesia. In 1974, the government issued Presidential Decree No. 44 of 1974 concerning the Principles of Organization of Department. Education and Training Agency of the Department of Home Affairs (Badan Pendidikan dan Pelatihan Depdagri) is appointed as the institution that organizes Education and Training (Diklat) for civil servants (PNS) in the scope of Depdagri and Local Governments. In 1972, the Government issued a new policy in the field of Education and Training which stipulated that Education and Training (Diklat) for Civil Servants was held by the training and Education Agency of the Department or Non-Departmental Government agency with the fostering and coordination of the State Administration Institution³⁴ as stipulated in Presidential Decree No. 34 of 1972 jo Presidential Instruction No.15 of 1974. Since 1972, The Department of Home Affairs has also held a Education and Training (Diklat) for civil servants that was guided by that government's policy. Then, if we analyze the historical record of the Law on Regional Government, it places the the position of the Minister of Home Affairs in the field of Employee affair in the Regions in terms of: (a) in the scope of authority to approve administrative documents related to the legal status of personnel in the regions; (b) limited to setting the standards of government competences for ASN in the region and in the scope of the Ministry of Home Affairs; and (c) has a coordinative function in the context of fostering and supervising in the implementation of domestic government affairs at the provincial government level. After the issuance of Law 23/2014 concerning Regional Government, the Ministry of Home Affairs in the context of supervision and fostering towards the implementation of provincial government has the task of conducting general guidance regarding Employee Affair in the regional apparatus, developing technical competences, and organizing Education and Training of *Kepamongprajaan*³⁵. Furthermore, the Ministry of Home Affairs is regulated by Presidential Regulation No. 11 of 2015 concerning the Ministry of Home Affairs. Article 2 states "The Ministry of Home Affairs has the duty of organizing the affair in the field of domestic government to assist the President in organizing the government of the country". The Ministry of Home Affairs carries out functions such as ".....the implementation of human resource development in the field of domestic government", which is carried out by Human Resource Development Agency (BPSDM) of Kemendagri³⁶. The form of fostering is general and technical, it is conducted in the form of facilitation, consultation, education and training as well as research and development. One of the forms of fostering and supervision is to set the government competences for ASN employees who occupy positions as the head of the work unit in the local government³⁷.

Based on the description above, then from the historical aspect, LAN which was founded in 1957 is placed as a specialized institution in the field of Civil Servants Education and Training (Diklat PNS) and Development of State Administration. Whereas, the Ministry of Home Affairs was formed in order to carry out the functions of fostering and supervising the administration of domestic government so that both institutions do not have the same position and authority in fostering ASN Leadership Training in ASN management system nationally. From the juridical aspect, LAN which is a special institution based on special provisions of the Law No. 5/2014 on ASN and the Government Regulation (PP) No. 11/2017 on Management of Civil Servants (PNS) is given the authority in fostering and supervising Leadership Training (managerial) for ASN in the national ASN management system while the Ministry of Home Affairs (Kemendagri) refers to the Law No. 23/2014 on Local Government which only give the authority limited to "Determine the Competences of Government", and organizing education and training of *kepomongprajaan*.

The legality of the authority in fostering the leadership training of ASN between LAN and BPSDM Kemendagri, if it is seen from the perspective of AAUPB, can be explained as follows. Currently, the administration of government is based not only on legal norms in the legislations, but also based on General Principles of Good Governance (AAUPB), in which this principles have shifted from unwritten into written legal norms and they are contained in several laws. The legality of the authority in fostering Leadership Education and Training of ASN between LAN and BPSDM Kemendagri is analyzed from the approach of "the Principle of Professionalism" and "The principle of not mixing authority".

- a) First, the Principle of Professionalism is principle that prioritizes expertise based on a code of ethics and the provisions of legislation that is applicable. The principle of professionalism is adhered in several laws, namely: (a) the principle of professionalism based on the Law on anti corruption, collusion and nepotism (Anti KKN) of 1999 is principle that prioritizes the expertise based on a code of ethics and law. (b) The principle of professionalism according to the Law on Local Government of 2014 is a principle that prioritizes the expertise which is based on a code of ethics and law; (c) the principle of professionalism according to the Law on Public Service of 2009 is that service providers must have competences that are in

³⁴Pasal 3 Keppres 35 tahun 1972 berbunyi "...Ketua Lembaga Administrasi Negara bertugas dan bertanggung jawab atas pembinaan pendidikan dan latihan khusus untuk Pegawai Negeri."

³⁵Pasal 776 ayat (1) Undang-Undang No. 23 Tahun 2014 tentang Pemda.

³⁶Pasal 36 Perpres 11 Tahun 2015 tentang Kemendagri.

³⁷ Pasal 233 UU 23 Tahun 2014 tentang Pemerintahan Daerah.

accordance with the field of work; and (d) The principle of professionalism according to the law on ASN of 2014 is that prioritizing expertise based on a code of ethics and law. Based on the understanding of the principle of professionalism above, there are elements including (1) prioritizing expertise/competence; and (2) based on a code of ethics and the provisions of the legislation/according to the field of duty. The principle of professionalism is identical to the demands of professionalism in carrying out a profession in a field of work. Horton Bakking and Robers Patterson explain that professionalism criteria, as follows: ¹ (a) must fulfill the needs of the community and use scientific principles that are acceptable to the community; (b) demands a professional training which is adequate and entrenched; (c) demand a systematic and specialized institution; (d) provide the information about the skills needed which public does not have; (e) must be a type of work that is useful; (f) must develop the results that are highly examined; (g) must have required policy and staff training; (h) have an awareness of group bonding as the power that is able to encourage and foster its members; (i) made as stepping stone to find another job; and (j) recognize the obligations in society by asking its members to comply with a code of ethics that is accepted and developed. Thus, if the principle of professionalism is attached to an institution/organization in conducting authority over it, it must be based on competence and expertise in carrying out its duties. Competence and expertise itself will be obtained if an institution continuously *de facto* conducting its duties and functions consistently, can be measured, and gets the legitimacy of the trust from the relevant stakeholders. Based on the description of the aspect of “Professionalism Principle”, by looking at the readiness of Human Resources (SDM), its infrastructure and operationalization, and the performance experience of the two institutions, then LAN in *de jure* and *de facto* are very legitimate and has structured as well as its performance indicator is measurable in both fostering and organizing ASN Leadership Training. Thus, the most competent and professional LAN is authorized to conduct the fostering of ASN leadership training nationally, while Pimpemdagri training institutions has just appeared in 2017, the existence of Pimpemdagri Training and Education (Diklat Pimpemdagri) is still new so that it needs further arrangements for its readiness.

- b) Second, the principle of not mixing the authority (*Principle Of Non Misuse Of Competence*)³⁸. According to Philipus Hadjon in Kuntjoro Purbopranoto³⁸: The principle of not mixing the authority, where the state administration officials have the authority specified in the legislation (both in terms of material, territory, time) to take legal action in order to serve/to regulate citizens. This principle is also identical to “the Principle of Not Misuse the Authority” which is the principle that requires every agency and/or government official does not use his authority for personal interests or other interests and is not in accordance with the purpose of granting such authority, does not exceed, does not abuse, and/or do not mix authority. Thus, this principle want to state administration officials do not use their authority for other purpose other than those that has specified in applicable regulations or use the authority that exceeds the limits. Referring to the Article 17 letter c of the Law No. 30/2014 on Government Administration, there are 3 (three) elements of prohibition on misuse of authority, namely: (a) prohibitions to exceed Authority; (b) a prohibition on mixing the authority; and/or (c). prohibition of arbitrary actions. Then, Article 18 paragraph (2) of the Law 30/2014 states that an agency and/or Government Officials is categorized as mixing the authority, if the Decision and/or Actions that are taken as follows: (a) are outside the scope of the field or material of the Authority that is given; and/or (b). are contrary to the purpose of the given Authority. Therefore, “Not Mixing the Authority” means that every Agency and or Government Officials in making decisions and/or carrying out the actions is prohibited from exercising the authority outside of their field or material of the authority granted; and/or contrary to the purpose of the authority granted.

Based on the aspect of the principle of “Not Mixing the Authority”, the implementation of the duties and authority of LAN in the field of fostering ASN Leadership Training is not included in the category of mixing the authority, because the authority of LAN is appropriate and coherent with higher legal norms (the Law on ASN and PP on Management of Civil Servants). The opposite is the “authority bias” that is possessed by the Ministry of Home Affairs, which is in the Law on Regional Government (UU Pemda), it mentions that it is limited only to the authority to “determine the competences of the government” and was not mentioned to have the authority to conduct ASN Leadership Training Fostering. However, in PP 12/2017 and Permendagri 85/2017, Development is carried out through Diklat Pimpemdagri. In addition, in the Regulation of Minister of Home Affairs (Permendagri), it states that the fostering agency of Pimpemdagri is BPSDM Kemendagri, whereas according to the higher rules BPSDM is not the fostering agency of Leadership competence training. Then, the scope of Pimpemdagri Education and Training (Diklat Pimpemdagri) applies to the level of Regional Government of the Regency/City, whereas in the Law on Regional Government and its derivative Government

³⁸ Philipus Hadjon, Pengantar Hukum Administrasi, Indonesia Introduction to Indonesian Administrative Law, Gadjadara University Press, Yogyakarta, 2002. hlm.279

Regulations, the scope of the authority to guide and to supervise the enforcement of regional government is only at the Provincial Government level. This means that the authority that is carried out exceeds the limit area of validity of authority.

IV. CONCLUSION

In essence, the existence of two authorities for fostering leadership education and training for ASN is based on the need to develop different types of competences and different legal consideration. LAN Leadership Training is based on regimes of special legislation of ASN management, namely the Law 5/2014 on ASN and PP 11/2017 the management of Civil Servant (PNS) as well as the regulation on LAN. LAN Leadership Training aims to fulfill general managerial competences (leadership), to equip leaders with the values of competence according to their level of position (namely visionary, collaborative, strategic, operational, tactic and accountability) so that they are able to manage resources both in their organizations and across organizations in dealing to dynamic and diverse changes in the organizational environment. The scope of the validity of the trainee of LAN Leadership Training applies nationally to ASN in central and regional institutions. As a result, LAN leadership training graduates are made as a requirement to become structural “leaders/officials” in any institution both at the central and regional levels, it means that it applies nationally and does not hamper the open selection system that applies nationally in the ASN merit system. If it is seen from the needs and goals of competences that want to be built in LAN Leadership Training, then in essence, LAN Leadership Training is in line with the concept of “Leadership”, namely create the ability of a leader to manage employees and their organizations in achieving common goals (organization). Whereas the opposite is Diklat Pimpendagri, referring to the regime of general legislation of regional government namely the Law No. 23/2014 on Local Government, Government Regulations (PP) 12/2017 on Supervision and Fostering Local Government Administration, the Regulation of Minister of Home Affairs (Permendagri) No. 85/2017 on Diklat Pimpendagri. Based on the content of technical and specific substance³⁹ as well as the objectives of Diklat Pimpendagri⁴⁰, that the presence of Pimpendagri was more to overcome the *gap* of technical and specific competences related to the administration of domestic government, this is because the factors in the scope of administration affairs of domestic government that are complex and broad and it also involves a very diverse stakeholder. Therefore, government competences are intended to complement managerial, technical and socio-cultural competences for apparatus in the regions. The scope of participants is limited only to ASN Structural Officials in the Ministry of Home Affairs (Kemendagri) and Regional Government. As a result, Pimpendagri Education and Training (Diklat Pimpendagri) graduates are only used as the requirement to become structural “leaders/officials” at the Ministry of Home Affairs and regional government, so that it means that it can hamper the open selection system that applies nationally in the ASN merit system. If it is seen from the needs and material content of the competences that are wanted to be built in Pimpendagri, then in essence, the Pimpendagri is more appropriate to be carried out in the form of Technical Competences Training for Domestic Government.

The legality of the authority of fostering ASN leadership training between LAN and BPSDM Kemendagri is based on aspect of history, juridical and AAUPB the special Law (UU) on ASN. From the juridical aspect, based on hierarchy and coherence in the regulation of legal norms, the authority of the guidance and operational policy of leadership training by LAN is still within the authority of LAN as the coach of ASN and Widyaiswara Education and Training (Diklat ASN dan Widyaiswara) according to Law No. 5/2014 on ASN and PP 11/2017 on Management of Civil Servants. Meanwhile, the authority of BPSDM Kemendagri as fostering institution of Diklat Pimpendagri in Permendagri 85/2017 is not coherent (contradictory) with the norms of authority mandated in the Law 23/2014 on the Regional Government which are used as its consideration. In the Law No. 23/2014 the Ministry of Home Affairs, it is only stated that BPSDM Kemendagri has the authority to determine government competence and civil education as well as the training of Public Administration (kepomongprajaan) so that “the authority bias” that is possessed by the Ministry of Home Affairs, which is in the Law on Regional Government (UU Pemda), it mentions that it is limited only to the authority to “determine the competences of the government”. From the aspect of “the Principle of Professionalism”, based on the readiness of Human Resources (SDM), its infrastructure and operations, as well as the experience of performance of the two institutions, then LAN in *de jure* and *de facto* is very legitimate and has structured as well as its performance indicator is measurable in fostering and in implementation of ASN Leadership Training. Then, the most competent and professional LAN is authorized to conduct the fostering of ASN leadership training nationally, while Pimpendagri training institutions has just appeared in 2017, the

³⁹lihat penjelasan Pasal 233 UU 23/2014 Pemerintahan Daerah. Kompetensi pemerintahan adalah mencakup pengetahuan, sikap dan keterampilan yang terkait dengan: (a) kebijakan desentralisasi; (b) hubungan Pemerintah Pusat dengan Daerah; (c) pemerintahan umum; (d) pengelolaan keuangan daerah; (e) urusan pemerintahan yang menjadi kewenangan daerah; (f) hubungan pemerintah daerah dengan DPRD; dan etika pemerintahan

⁴⁰ BPSDM Kemendagri, *Op.cit* hlm. 4.

existence of Pimpemdagri Training and Education (Diklat Pimpemdagri) is still new so that it needs further arrangements for its readiness.

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IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

Edy Saputra. The Authority in Fostering the Leadership Training For State Civil Apparatus." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 12, 2019, pp. 14-23.