

Discretionary Legal Responsibility of Government Officials Which Have Not Been Regulated in the Indicated Law there have been Deviations in the State Budget

Binsar Jon Vic¹, Angga Perdana²

binsarjonvic@gmail.com¹, anggaadvocad@gmail.com²

Universitas Borobudur^{1,2}

Abstract. The government has power in all aspects of people's lives, even on its own initiative through the concept of discretion in administrative law which is urgent in the public interest. The aim of this research is to provide clarity on the position of the exercise of discretion in regional government administration. This research uses normative legal research methods, using statutory and conceptual approaches. The research results concluded that the exercise of discretion which tends to detect budget misuse and arbitrariness in carrying out duties can result in criminal acts of corruption as regulated by UURI no. 31 of 1999 concerning Corruption. Because the discretionary authority is only for the public interest or the interests of society, on the other hand, if the discretionary authority is used for personal and group interests, then the discretionary action becomes a criminal act of corruption in the case of a crime or misuse of influential work.

Keywords: Discretion, legal responsibility, corruption

1 Introduction

Viewed from the administrative side, every government institution that has an office or administrative officials in carrying out their duties is obliged to fulfill all administrative standards properly in accordance with procedures, on the basis of these procedures it can be ensured that every strategy taken by the leader as an open authority can run according to with applicable regulations. General standards that are important from a good administration perspective are the exercise of power and the prohibition of acting inconsistently with procedures or rules that apply randomly. Guidelines used as a basis in approving public authorities to legitimate decision-making but not in accordance with the rules of legitimacy, then usually called wisdom. This is an indicator of acting outside the current regulations, including the organization or government authority they lead in carrying out these tasks in accordance with their duties and positions in the institutional structure. Government activities to represent the general public's choices to the highest authority, so that implementation in the

field is guided by caution or in accordance with the rules becomes one of the focuses in large-scale administrative implementation.

The concept of *rechtstaat* originates from human reason, stating that there is individualistic liberalism, anthropocentric humanism, and absolute separation of state and religion - atheism is possible. According to FJ Stahl, there are four main elements of a rule of law, namely: 1) The existence of guarantees for human rights; 2) there is a division of power; 3) the government must be based on legal regulations; and 4) the existence of administrative justice. Meanwhile, according to Scheltema, the elements consist of 1) Legal Certainty; 2) Equality; 3) democracy, and; 4) serving government _ interest general.[1]

A number of element that has been explained will implemented in a Country with the concept of the rule of law, not a powerful state. Power state according to the draft is considered Not yet capable in a way intact to ensure its implementation Because not yet legal certainty, temporarily exists equality between democracy and government that is on duty to serve the interest general. However, that's what dominates For interest groups or party certain just. The principle of the rule of law according to the draft is no give permission to anybody if that country enforced but to remove principles of democracy That Alone based on the Constitution. Therefore that's necessary exists emphasize that sovereignty fully is in the hands of the people based on its Constitution or *Constitutional Democracy* which also goes hand in hand with reaffirming that the country of Indonesia is a legal state with the sovereignty of the people or democratic.[2]

Marcus Lukman as quoted by Saut P Panjaitan says that problems urgent importance for quick follow-up and at least contain the necessary elements fulfilled as follows the problems that arise must concern interest general,[2] for example:

- a. The interests of the nation and state, the interests of the general community, and the interests of development infrastructure;
- b. Appearance problem new / incident in a way suddenly, there outside plans that have been determined ;
- c. For finish problem these, regulations and legislation are not yet arranged in detail or only arranged in a way general course, so the administration government area has the freedom to finish on initiative himself;
- d. The procedure No in accordance according to administration normally, or If resolved according to procedure normal administration is lacking Empower use and succeed To use even deviate from rules;
- e. If there's a problem that is not quickly resolved, then will give rise to something loss of interest in general.

According to Anna Erliyana, the use of *fries ermessen* by officials administration government area intended to finish problem important and urgent as well as sudden in nature cumulative. Normal just appear important problem But No urge For quick resolved. There is also a possibility that appear problem is urgent, but no too important to resolve. Something problem new can qualify as a problem important if the problem is the interest general, whereas the criteria interest general must determined by a regulation legislation.[3] The basis for testing the State Administrative Court based on Laws of the Republic of Indonesia Number 5 of 1986 as amended with Laws of the Republic of Indonesia Number 9 of 2004 and Laws of the Republic of Indonesia Number 51 of 2009 concerning the State Administrative Court as well based on Laws of the Republic Indonesia Number 30 of 2014 concerning Administration Government, in article 1 paragraph 10 states that State Administrative disputes are disputes caused in field of state administration between individuals or legal entities civil with the body or state

administration officials, both at the center as well as in the region as consequence he took it out state administrative decisions, incl dispute staffing based on regulation applicable legislation so that authority State Administrative Court for examine, adjudicate and resolve State Administrative disputes at the level first. Policies that can be determined by officials government is one of them is policies set in place time but also need legality. Policy the generally taken by officials of government in form discretion. Simple, understanding discretion according to the Big Indonesian Dictionary, means freedom to make decisions Alone in every situation faced.[4]

Based on description the in Instructions President of the Republic of Indonesia Number 1 of 2016, January 9, 2016, concerning the accelerated implementation National Strategy Project, the President of the Republic of Indonesia instructed to: Cabinet Minister Work; Attorney General of the Republic of Indonesia; Indonesian National Police Chief; Secretary Cabinet; Chief of Staff to the President; Heads of Non-Ministerial Institutions; Governors; Regents/ Mayors, for give support acceleration of implementation Project National Strategic between others :

- a. Improving good governance and improving governance function Apparatus Internal Government Supervision in frame supervision to coaching Project National Strategic;
- b. Administrative process government in carrying out inspection and completion on report abuse exercised authority official in implementation Project National Strategic.

According to the Legal Dictionary published by the National Legal Development Agency, it is defined discretion or policy is a power Act from the official government in a situation based on beliefs that lead to goodness, justice, and worthiness.

UURI Number 30 of 2014 in Article 1 paragraph 9 concerning Administration Government explains that discretion is something decision and/ or action an official in something government to overcome problem in a way concrete problems encountered in organizing government regulation legislation as well as give choice, no set, no complete or no clear, and/ or exists stagnation government. Consequences too far away as well as breadth in taking policies carried out by government officials the so should be balanced with there is an administrative process government in accordance provisions of Law Number 30 of the Year 2014 about Administration Government before carrying out investigation on report related communities with authority in implementation Project National Strategic. In his opportunity as reported by one of the national media. [5] Indonesian President Jokowi explained the necessity of intended instructions to apparatus enforcer the law so it doesn't criminalize policy officials (discretion), the basis and reasons instructions the based on from notes government Because many convicted official Because case corruption or deviation budget among them eight Ministers, 19 Governors, two Governors of Bank Indonesia, five Deputies Governor of Indonesia, 40 Members of the DPR RI, 150 Members of DPRD, and less more than 200 Regents / Mayors. Apart from that, on another occasion, the President of the Republic of Indonesia said: that leaving from these data is caused by fear of officials taking decisions and/ or actions Because obscurity definition of corruption as well as many officials who are criminalized by discretion and procedure law (administration government) which is still Not yet clear and lacking transparent, so cost loss must be covered government is very big. Corruption is the effect of abuse of authority due to discretion. Historically, Costa Rica also has the characteristics of a Pacific country, without any coercion by the democratic consolidation system in the country and a relatively high level of public corruption. Of course, corruption incidents in the last few years are based on reports of corruption cases that have worried public opinion and provoked changes in the legal system which tend to be too conflicting with this corruption problem, so special handling of these corruption cases is needed, starting from law enforcement or

prevention in order to reduce the number of perpetrators. The aim of this research is to provide clarity regarding the position of the exercise of discretion in regional government administration

2 Problem

How can the discretionary legal responsibilities of government officials that have not been regulated in law result in deviations from the state budget?

3 Method and Approach

3.1 Method

This research uses normative legal methods in its discussion. Legal research always starts from curiosity to find answers to actual problems to obtain correct knowledge about the object to be faced through scientific research to find out the object using methods so that legal rules, legal principles, and legal doctrines can be discovered. which aims to describe and answer the legal issues that will be faced.[6] This normative legal research also has legal objects in the form of legal norms, legal concepts, legal principles, and legal doctrine.[7] In the analysis, the writing uses normative legal research methods which also include doctrinal legal research, namely legal research carried out by conducting and examining library materials or data. This method also explains the discretionary legal responsibilities of government officials which have not been regulated based on the Law of the Republic of Indonesia number 30 of 2014 concerning Government Administration. This research will discuss legal sources in the form of literature studies on secondary legal materials that will relate to policy discretion or authority.

3.2 Approach

Scientific value something discussion to problem highly researched law depends on the method approach that will used. If the way approach is not right, then the weight study is no accurate and truthful from study This can aborted. That thing is naturally No desired by the researcher. Likewise inside study normative, via a different approach, then produces a conclusion different too. Therefore, it is necessary to know the approach that will be used in normative legal research. Discretion and Responsibilities of Government Officials according to Law of the Republic of Indonesia number 30 of 2014 concerning Government Administration, legal theories, legal teachings, and the opinions of leading scholars. This is the same as what was stated by Soetandyo Wingioesobroto that doctrinal legal research is legal research in the form of an investigation limited to positive legal norms/legislative regulations, then the discovery of the basic teachings of doctrine/legal expert opinions. Based on the legal doctrine explained above, the construction of legal research uses normative or doctrinaire legal methods in answering

the legal problems being studied. The nature of the research is prescriptive explanatory, namely trying to provide and explain research on the legal issues being studied.

4 Research Results and Discussion

4.1 Welfare State Theory

The welfare state concept or welfare state begins with the definition of that country itself, according to Mahfud MD the country is something organized among One group public or a number of the group that has ideals and authority from Discretion Official His reign was influential Act Criminal Corruption. Discretion is the freedom of a leader to act or make decisions according to the opinion official competent government. Wisdom implemented or sympathy is the base or attitude line or guidelines for implementation and retrieval decision. Condition This naturally expected the possible government to act fast and precisely in behaving in accordance with objective national people's interests. From the corner Another view, implementation discretion officials are also close by with abuse authority or arbitrariness task when action official tall government the can harm interest public wide. Basically, power in action discretion is given to the official government as a complement to what is required based on Law. Regulation legislation is also basically No can follow development identical era with development social, so required independent state agencies can make fast and correct decisions related to problems that occur in the region in it works.[8] Characteristic time is urgent and not Possible for the official government the decide something to wait for an ordinance or letter decision from the leader area or competent ministry. In condition specific, action discretion the closely connection with the abuse position, which is one indicator that exists grounded corruption from Constitution Act Criminal Corruption. The phrase "abuse authority" in Article 3 of the Corruption Law is door enter problem discretion as reason happens follow criminal corruption. This action happens because of discretion from the official free government, where discretion is done at the time rule law in regulation legislation No arranged or No complete. The goal for life united in a certain territory because the country is also a territory that has a sovereign government. [9] The concept of the welfare state First developed in Western European countries such as England first addressed as an alternative to race-focused poor law only on giving help to poor people, it's different from the concept of poor law so the draft welfare state more focus on maintenance protection social issues in the community in which it is implemented as reflection exists right citizenship in a country, the concept of a welfare state strive exists source For increase well-being for its citizens in a way fair and sustainable. Esping Anderson explained that the welfare state is something draft it's not a standard approach, however, something the concept of a welfare state is present To give birth to something policy-related service social to a society organized by the state to inhabitant his country, for example, such as education services, income transfers, reductions poverty and problems about service public as well as application policy-related public related with administration governance and its impact direct felt by society. The welfare state concept basically refers to the active role of the state in managing and organizing the existing economy available within the territory of the country, the concept of a welfare state also contains meaning regarding not quite enough answered the internal

state frame to ensure availability service to well-being base for inhabitant his country. Draft welfare state endeavors to free its citizens from dependency on utility market mechanisms to get well-being by making it right for every citizen who can obtain through policy social who have provided by the state. This gives the meaning that the Indonesian state implements its draft meaningful welfare *state* action or involvement government in the draft welfare state as a responsible party answer to realize well-being and prosperity inhabitant its people have opportunities the bigger. As a rule of law, the action government gives based on instructions regulations applicable legislation, or Acts based on discretion in the Administrative Law Governance.

4.2 Administration government

On Draft Academic Manuscripts Constitution Administration Government No explain about comparison comprehensive legislature to arrangement draft discretion That Alone so that Academic Manuscript of the Administration Bill Government state that as following: three Discretion is authority official administration competent government for take decision free government Because Not yet exists rule about something matter certain in regulation available legislation. Discretion is one of the possible actions that give positive benefits for the implementation activity government what is sustainable and what is not hampered by the emptiness of the law is not yet available, however fact the realization Discretion can give rise to impact negative when inside its implementation even precisely violate signs existing laws as well as opposite or contradictory with existing and applicable norms exist in society and are contradictory with interest general. Based on definition the of Discretion in the Academic Manuscript of the Administration Bill Government appears Because exists emptiness law that. However, the arrangement of its implementation discretion is more carried on in the Administrative Law Government experience development. Discretion official government has arranged in Article 1 number (9) of the Law Republic of Indonesia Number 30 of 2014 concerning Administration Government, in regulation Alone Discretion in a way special arranged in Chapter VI of the Administrative Law The government defines it that Discretion is a decision and/ or action determined and/ or implemented by Officials Government For overcome problem concrete problems encountered in the field in maintenance government in accordance regulation legislation that provides choice, no set, no complete or No clear, and/ or exists stagnation government Because emptiness law.

4.3 Elements Discretion

Definition furthermore gives elements of Discretion, namely: 1) Issue decision and/ or action; 2) Determine and/ or do ; 3) Carried out by officials government; 4) Because it is emptiness law and overcoming problem concrete in maintenance government; 5) Discretion the held as nature of action alternatives, such as a) Regulations legislation give alternative choice; b) Regulations legislation No arrange; c) Regulations available legislation no complete or No clear ; d) There is stagnation in administration government.[10] Mentions discretion is decision and/ or prescribed actions and/or carried out by officials government to overcome problem concrete problems encountered in maintenance government in matter regulation legislation that provides choice, no set, no complete or No clear, and/ or exists stagnation government. Arrangement discretion in UURI is still Not yet detailed in a way details so brings up different interpretations and meanings. Procedure reason official in do rejection in determination agreement

discretion. Not set yet in a way clear and detailed related rejection discretionary submission to official However if no give answer in period five days ' time since application discretion the accepted. Arrangement application five days time for submit the agreement to the superior official, this will hinder the service public specifically urgent needs, circumstances emergencies, and/ or disaster nature needs handling with fast. According to the author, no arrangement time for application agreement from a superior official but enough with report accountability implementation discretion exercised with faith good.[9]

Explanation on naturally Government center can overcome it through several factors as considerations, the President of the Republic of Indonesia Jokowi assessed responsive perhaps quick Discretion to get it to speed up the implementation of development, the second factor that is something understanding in wrong mentoring from enforcer law, next first understanding for interpret Article 3 Eradication Law Act Criminal Corruption. The enforcer's law will uphold high and always embracing “abuse authority” and assume that in something follow criminal corruption always there are those who benefit, okay That in a way individual from perpetrator That Alone or other people or corporation. Discretion Alone is always seen as an abuse of authority because No in accordance with the existing law applied and valid, it is known what should be qualified discretion That is an abuse of authority, The same case with criminal corruption then must be reviewed formerly Discretion in a way individual will get profit from discretion issued or is There is other parties participating as well as benefit. Or with what other terms? In the use of authority Discretion, there is the intention of no Good or evil (men's rea) or not from an individual so that from the explanation the writer formulates about authority Discretion Official Government implications follow criminal corruption and law enforcement against the use of authority Discretion Official Government implications follow criminal corruption

4.4 Legal Responsibility for Abuse Authority on Discretion

Not quite enough answer law official government in carrying out its function as official public or leader area differentiated between not quite enough answer personal and responsible answer position. According to Philipus M. Hadjon, that not quite enough answers to the position concerned with legality (validity) above the decision or action government. In law administration, problems with legality decisions or actions government related to short-for-power government. Whereas not quite enough answers personally relate with the connection approach in a way functionary or behavior in law administration. Not quite enough answers personally regarding abuse administration in the use of authority or service public. According to the author, discretion is no way on right for the official government through his authority in doing policies and actions service the public, his actions No in accordance rule even rule out regulation applicable legislation. Authority next government is the authority of the Agency and/ or Official Government or Other state administrators to carry out action in the realm of law public as arranged in Article 1 point 6 of Law Number 30 of 2014 concerning Administration Governance.

Authority from apparatus Law Enforcement itself in Handling Act Criminal consequent corruption, Discretion next state official leads to deviation State budget or corruption. Indicated has happened abuse authority so apparatus enforcer law own authority to prevent and eradicate corruption in accordance authority regulated duties and

responsibilities in the regulation applicable legislation. Commitment to government is already clear in eradicating corruption, based on Regulation President Number 87 of 2016 concerning Unit Teams Clean Illegal Extortion (Saber Extortion) so authority apparatus enforcer law in carrying out Operation Arrests such as cases illegal levies or request an amount of money that is not official at the agency government area, operation catch hand to official alleged government do activity abuse authority or corruption. There are various responses variety on handling case corruption the consequences of abuse of authority consequence do and the use of discretion that gives rise to state losses. Including existing official government conveys that No can do in a way maximum in absorption budget because there is worry and fear sent by enforcers law. Therefore that's the stipulation in the Laws of the Republic Indonesia Number 30 of 2014 concerning the administration of government gives rise to party between pros and cons including expert law, esp expert law Criminal, and expert law State Administration is related to appropriate actions and conditions what is meant by its influence? to authority Justice Corruption.[10] Laws of the Republic Indonesia about Administration Government to emphasize and add Power innovation as renewal For effort eradication corruption Because with the existence of APIP, the existence of conjecture about abuse authority can avoid since beginning as effort in prevention or preventive. The opinion expressed by Krishna Harahap, Ad Hoc Judge for Corruption Crimes at the level of the Supreme Court clearly conveys that the Laws of the Republic of Indonesia regarding the Administration of Government in a way effective can prevent criminal abuse of effective authority in deviation budget or corruption. Inhibiting factors in effort eradication follow criminal corruption in accordance with the provisions stated in Laws of the Republic Indonesia Number 30 of 2014, in a way clearly not aligned with Laws of the Republic Indonesia Number 20 of 2001 concerning change in Laws of the Republic Indonesia Number 31 of 1999 concerning Eradication Act Criminal Corruption. In Article 3 of the Law Corruption the arrange how ' every individual as person abusers authority on position, opportunity or existing facilities to him Because position or position that's what can be done harm State budget or country's economy. However every individual who fulfills elements regulated offense in Article 3 results individual the threatened criminal prison of 1-20 years,

Abuse of authority exercised by State officials is always accompanied by aim and purpose to others as the object given authority that, so application authority can in a way direct in accordance with objective Meaning he gave authority that. If use authority is given not in accordance with aim and purpose giving beginning authority the so-called abuse authority that has been given. The consequence from a legal state is through obligations and guarantees to State Administration as tool state equipment so can operate government and citizens his country own rights and obligations get guarantee protection to welfare too. Therefore, government power is in line with the development of the principle of legality which has started since the emergence of the concept of a classical legal state, namely formelrechtsstaat, which means the government is formed according to law. Whether the official has used his authority deviantly for other purposes or not. There needs to be proof that the abuse of authority was carried out consciously by diverting the objectives that had been given to that authority, not because of a legal vacuum.

4.5 Law enforcement in Corruption cases due to discretion

Law enforcement in corruption cases due to the discretion of state officials through official notifications is certainly contrary to the welfare state because the discretion exercised is only beneficial for individuals and their groups. Likewise, Costa Rica, whose government also has the same problem, namely corruption. Therefore, the democratic consolidation system in the last few decades has created cooperation with neighboring countries to restore previously ratified international instruments of mutual agreement, because many individuals who are suspected of being the perpetrators in closing authority due to discretion which causes corruption in the State budget will run away, abroad to avoid legal proceedings and eliminate traces of tracking by law enforcement officials.[11] The Mérida Convention, which is implemented in Brazil and several other countries, also makes references to the Criminal Convention on Corruption, further facilitating cooperation between various countries and various parties who have the same goals, namely: combating, preventing, detecting, sanctioning and participating in acts of corruption. in the international Community. According to the opening statement, "Corruption is a threat to the State. Council of Europe, in Strasbourg, held on 27 January 1999. Discusses the principles of good governance, equality, and social justice, reducing competition in business, entering economic development, and facing success. This cooperation also focuses on state officials who commit corruption in their country and then flee abroad, so countries that have signed the cooperation and ratified the convention will help put them on the wanted list so that they can return to their homeland and be held accountable for their actions through a conference. According to Laws of the republic Indonesia Number 30 of 2014, in a way clearly not aligned with Laws of the republic Indonesia Number 20 of 2001 concerning change on UURI Number 31 of 1999 concerning Eradication Act Criminal Corruption in chapter II article 3 states that every person who, with the aim of benefiting himself or another person or a corporation in his position, abuses the authority, opportunities or facilities that are nearby and used to support his activities because or whose position is in a position that could harm the state's financial budget or the state's economy, will face legal proceedings in court with a sentence of life imprisonment or imprisonment for a minimum of one year and a maximum of twenty with a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

5 Conclusion

The legal consequences of the existence of discretion in the implementation of government administration tend to detect the protection of the State budget and arbitrariness in carrying out tasks that violate the limits of power or act beyond the limits of the validity of orders given based on the provisions of statutory regulations or exceed the limits of the area of authority and are not in accordance with the provisions procedures for using Discretion, then the legal consequences of the use of Discretion will be invalid and can result in criminal acts of corruption. Therefore, discretionary authority can be exercised only for the public interest or the interests of the community, on the other hand, if discretionary authority is used for personal and group interests, then the act of discretion becomes a criminal act in corruption of his position, abusing authority through the means available to him because of his or her position due to his position. which could harm the state's financial budget or the state's economy, will face legal proceedings in court or protection of influential works.

References

- [1] G.S.R. Barda Nawawi Arief, Purwoto, "Sistem Pidana Dan Tindakan 'Double Track System' Dalam Hukum Pidana Di Indonesia," *Diponegoro Law Review*, vol. 1, no. 4, 2020.
- [2] Artis.MI Kom, *Demokrasi Dan Konstitusi Di Indonesia*. Pekanbaru: CV. Nuansa Jaya, 2020.
- [3] Irianto, Sigit, "Kedudukan yang Sama di Depan Hukum (Equality before the Law) dalam Penegakan Hukum di Indonesia," *Jurnal Hukum dan Dinamika Masyarakat*, vol. 5, no. 2, hlm. 2010.
- [4] Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum (Apa dan Bagaimana Filsafat Hukum Indonesia)*. Jakarta: PT Gramedia Pustaka Utama, 1995.
- [5] Syarif, S dan Suparno, S, "Legal Ideal of Pancasila on Legal Politic in the Formulation of Laws and Regulations," dipresentasikan pada ICLSSEE 2021, EUDL, Mar 2021.
- [6] Ali Zainuddin, *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2011.
- [7] Sunggono, Bambang, *Metode Penelitian Hukum*. Jakarta: Raja Grafindo, 2003.
- [8] E. Yudisthira dan M. Barthos, "Legal Analysis on the Implementation of Good Corporate Governance in State Owned Enterprises," dalam *Proceedings of the First Multidiscipline International Conference, MIC 2021, October 30 2021, Jakarta, Indonesia*, Jakarta, Indonesia: EAI, 2022. doi: 10.4108/eai.30-10-2021.2315859.
- [9] Mardoto, *Good Governance dan Clean Good Governance*. Jakarta: Taruna Negara University Press, 2009.
- [10] John Rawls, *A Theory of Justice*. London: Oxford University press, 2006.
- [11] P. Lince, A. Redi, dan B. Nurdin, "Juridical Study on Supervision Tasks in the Implementation of Correctional Functions in the Perspective of Law Number 22 of 2022 concerning Correctional," dalam *Proceedings of the 2nd Multidisciplinary International Conference, MIC 2022, 12 November 2022, Semarang, Central Java, Indonesia*, Semarang, Indonesia: EAI, 2023. doi: 10.4108/eai.12-11-2022.2327376.