

DISCRETIONARY AUTHORITY OF GOVERNMENT OFFICIALS: BETWEEN ADMINISTRATIVE EFFICIENCY AND POTENTIAL ABUSE OF AUTHORITY

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Abstract

Discretion is the authority held by government officials to make decisions in situations that are not expressly regulated by laws and regulations. This authority is important in supporting the efficiency of government administration, especially in dealing with urgent or unexpected conditions. However, on the other hand, discretion also opens up opportunities for abuse of authority if it is not accompanied by the principles of prudence, accountability, and adequate supervision. This study aims to analyze the duality of the role of discretion in government practice, by highlighting its benefits in increasing bureaucratic agility and the potential risks that can harm the principles of good governance. The method used is a normative study with an approach to laws and regulations, legal doctrine, and case studies. The results of the study indicate that strengthening internal and external oversight mechanisms, as well as fostering public administration ethics, are strategic steps to maintain balance.

Keywords: *discretion, government, decision, accountability, public administration*

A. Background

In a complex and dynamic government system, not all conditions and problems that arise can be anticipated in detail in legislation. To bridge the legal vacuum, the concept of discretion is known, namely the authority given to government officials to make decisions or actions in certain situations, for the smooth running of administrative tasks and public services. Discretion plays a strategic role in driving bureaucratic efficiency.² When officials in the field face urgent or unexpected situations, discretion allows them to act quickly without having to wait for a lengthy legislative process.³ Thus, discretion becomes an important instrument to ensure government responsiveness to the needs of the community.⁴ However, discretion also carries the potential risk of abuse of authority.⁵ When exercised without adequate supervision, discretion can turn into a tool to legitimize arbitrary, corrupt, or actions that are contrary to the public interest. The main challenge in implementing discretion is finding a balance between administrative flexibility and the principles of accountability, transparency, and the rule of law.

Several experts provide views on the importance of discretion in government administration. Philipus M. Hadjon stated that discretion is a form of freedom of action

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² I. Taylor, "Discretion and Control in Education: The Teacher as Street-Level Bureaucrat," *Educational Management Administration & Leadership* 35, no. 4 (2007): 555–72, <https://doi.org/https://doi.org/10.1177/1741143207081063>.

³ J. B. Bullock, "Artificial Intelligence, Discretion, and Bureaucracy," *The American Review of Public Administration* 49, no. 7 (2019): 751–61, <https://doi.org/https://doi.org/10.1177/027507401985612>.

⁴ A. E. Saputra, R., Muttaqin, Z., Affandi, H., & Rompis, "Discretion as a Government Policy Innovation in Indonesia," *Lex Localis* 21, no. 2 (2023): 441–69, <https://doi.org/https://repository.ubharajaya.ac.id/31048/1/2031-Article%20Text-10982-2-10-20230414%20%281%29.pdf>.

⁵ P. Bronitt, S. H., & Stenning, "Understanding Discretion in Modern Policing," *Criminal Law Journal* 35, no. 6 (2011): 319–32, https://doi.org/https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2611449.

given to state administrative officials within the legal framework to ensure the effectiveness of government administration.⁶ Meanwhile, Indroharto explained that discretion is the authority of state administrative officials to take decisions or actions that are free in order to overcome legal gaps or ambiguities for the public interest. In another view, Riant Nugroho emphasized that discretion must be interpreted as a space for policy innovation in the government system, but must still be subject to the principles of accountability and supervision.

Several previous studies have examined the issue of government officials' discretion from various perspectives, including administrative law, public policy, and bureaucratic accountability. (Sihotang, Pujiyono, & Sa'adah, 2017) in the Law Reform Journal highlighted that the use of discretion in emergency situations is indeed needed, but has the potential to be misused if not accompanied by strict legal accountability. This study emphasizes the importance of control over discretion in order to prevent the practice of deviating from authority by public officials. Furthermore, (Putra, 2022) in the Indonesian Legal Development Journal discusses how the Job Creation Law changes the regulation of discretion, especially by removing the requirement "not contradicting laws and regulations". This change is considered to expand the room for government officials to move but also increases the risk of abuse of authority in decision-making.

(Ashfiya, 2023) in the Journal of Administrative Law conducted a study on the shift in the concept of discretion after the enactment of the Job Creation Law, and how the concept was tested in the State Administrative Court. He concluded that there needs to be an affirmation of the legal limitations on the implementation of discretion in order to ensure legal certainty. In line with that, (Mahasin, 2024) through the Rechtsvinding Journal proposed a purification or re-purification of the concept of discretion so that it remains in line with the principles of good governance, by paying attention to the balance between flexibility and legal compliance. Finally, (Khatimah, Rahman, & Bima, 2024) in the Journal of Lex Theory examined how discretion can become the object of a lawsuit in state administrative disputes, as well as the importance of administrative accountability mechanisms so that discretion is not used as a loophole for abuse.

From these studies, it is clear that discretion is an important and complex issue. On the one hand, discretion is needed to ensure smooth administration and efficiency of public services, but on the other hand, it risks causing abuse if not strictly regulated and supervised. This path shows the urgency for further studies in formulating an effective yet accountable discretionary framework in the Indonesian government system.

Various previous studies mentioned above discuss discretionary authority from a normative perspective, especially in the context of regulatory changes such as Law Number 30 of 2014 concerning Government Administration and the Job Creation Law. For example, (Putra, 2022) highlights the impact of changes in discretionary norms in the Job Creation Law on the potential for expanding authority without adequate supervision. (Ashfiya, 2023) focuses on testing of discretion by the State Administrative Court, and (Mahasin, 2024) discusses the urgency of purifying the concept of discretion from an administrative law perspective. However, most of these studies focus on formal legal aspects and legal testing, without empirically elaborating on the practical impact of

⁶ A. Mustamu, J., Bahri, S., Wahid, M. Y., & Ilmar, "Freedom Act (Discretionary Power) and Its Implementation as Object Corruption Analysis of the Decision Number 2420. K/Special Crimes/2013 Special Criminal Cassation Cases," *International Journal of Scientific and Research Publications* 5, no. 9 (2015): 1–5.

discretion on the efficiency of government administration and the extent to which discretion contributes to or hinders the principle of good governance in bureaucratic practices.

In addition, there are not many studies that highlight discretion as a dilemma between the need for administrative flexibility and the threat of abuse of authority, by directly linking it to the context of enforcing job ethics, internal oversight mechanisms, and public management perspectives. This indicates a relevant research gap to be studied further.

This study presents a new approach by placing discretion not only as a legal phenomenon, but also as an intersection between bureaucratic effectiveness and the risk of abuse of power. The main novelty of this study lies in the multidisciplinary analysis that combines the perspectives of state administrative law, governance theory, and public policy studies that examine how discretion can be used legitimately and responsibly, while also examining institutional factors that cause potential abuse.

This study also offers a balanced conceptual framework of discretion, namely how the government can formulate discretionary regulations that remain flexible but controlled, with measurable indicators of accountability and transparency. Thus, this study not only fills the gaps in previous studies that tend to be normative, but also provides an applicative contribution for policy makers and government supervisors in formulating more effective discretionary control mechanisms.

This research is important to be conducted to examine how discretion is positioned in the Indonesian administrative law system, evaluate its benefits in supporting government efficiency, and identify loopholes that can lead to abuse. The ultimate goal is to provide policy recommendations so that discretion is utilized optimally without sacrificing the principle of good governance.

B. Identified Problems

In order to comprehensively understand the position of discretionary authority in the government administration system, it is necessary to conduct an in-depth study of the concept, limitations, and implications in bureaucratic practice. Discretion does have an important role in creating efficiency, but on the other hand it also holds the potential for abuse of authority if it is not accompanied by an effective oversight mechanism. Therefore, this article is designed to answer several problem formulations, including:

1. What is meant by discretionary authority in government administration according to positive law in Indonesia?
2. What are the potential forms of abuse of authority that can arise from the use of discretion by government officials?
3. How are the internal and external monitoring mechanisms in controlling the use of discretion so that it does not exceed the limits of authority?

C. Research Methods

This study uses a normative legal method,⁷ namely a legal research approach that starts from the applicable positive legal norms. This approach is used to examine and analyze the concept of discretion in the administrative legal system of government in

⁷ T. A. S. Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9, <https://doi.org/https://doi.org/10.22219/aclj.v4i1.24855>.

Indonesia, especially in relation to the effectiveness of the implementation of authority by government officials and the potential for its abuse.

The main data source in this study is primary legal materials consisting of related laws and regulations, such as Law Number 30 of 2014 concerning Government Administration, the Job Creation Law, and other implementing regulations governing discretion. In addition, secondary legal materials are also used in the form of legal literature, expert opinions, textbooks, scientific journals, and previous research results that are relevant to the topic of discretion and the principles of good governance.

Data collection techniques are carried out through library research by reviewing legal documents, both in the form of regulations and academic literature. Data analysis is carried out qualitatively descriptively, namely by interpreting legal norms to examine the position of discretion, the limits of its use by government officials, and the possibility of abuse that can arise if there is no adequate oversight mechanism.

With this method, the research is expected to provide a deep theoretical and normative understanding of discretion as a legal instrument in government administration, while also offering legal guidelines that can strengthen accountability in its implementation.

D. Research Findings and Discussions

1. The Nature and Position of Discretion in Administrative Law

Discretion is the authority given to government officials to make decisions or take actions in certain circumstances that are not expressly regulated in laws and regulations. In the context of administrative law, discretion is not an action outside the law, but rather part of the legal space provided so that the government can continue to run effectively amidst the complexity of problems that cannot always be regulated in detail in regulations.

According to Philipus M. Hadjon, discretion is part of the freedom of action of government officials that must remain within the applicable legal framework. This is also emphasized in Article 1 number 9 and Article 22 of Law Number 30 of 2014 concerning Government Administration which states that discretion can be exercised as long as it aims to ensure smooth governance, avoid stagnation, and meet the needs of the community.

Based on the framework stipulated in Law Number 30 of 2014, discretion is not absolute authority, but rather an exception that is subject to the principles of legality, accountability, and proportionality. Article 22 explicitly requires that the implementation of discretion must meet a number of conditions, including the existence of a regulatory vacuum, urgent circumstances, and not conflicting with higher laws and regulations. This shows that the freedom of action of officials does not mean unlimited freedom, but rather freedom that is limited by legal norms and aims to ensure responsive public services. Furthermore, Article 24 emphasizes that officials who use discretion can still be held accountable if their actions violate the principles of good governance. Therefore, discretion must be placed as a remedial administrative instrument, not as a loophole to avoid legal obligations. In practice, discretion that is not accompanied by transparency and accountability can potentially open up space for abuse of power, so that internal and external supervision becomes very crucial to ensure that discretion is used legally, appropriately, and in accordance with the objectives of administrative law.

One controversial example of the application of discretion in Indonesia is the issuance of a Letter of Termination of Investigation (SP3) by the Police in several major cases. For example, cases of corruption or human rights violations that are given SP3 because they are considered to lack evidence, but instead raise public suspicion of the transparency and independence of law enforcement agencies. Discretion in issuing SP3 is an administratively legitimate action, but must meet strict objective requirements and must not be used to protect political interests or certain groups.

The issuance of SP3 is a real example of the use of discretion by state officials, in this case investigators or heads of law enforcement agencies. However, the use of this discretion is often questioned due to the lack of public explanation and the lack of accountability for the decision. This shows the potential for abuse of discretion if it is not accompanied by effective supervision and control mechanisms. In practice, such discretion actually obscures the substantive justice that criminal law and administrative law want to achieve. In the analysis of administrative law, actions such as SP3 should be justified based on objective legal and factual analysis, not because of political pressure or economic power. If the legal basis and factual considerations are not strong enough, then the discretion can be qualified as an act of maladministration. Supervisory institutions such as the Ombudsman or even the Supreme Court can conduct a judicial review of the action if it is considered to violate the general principles of good governance (AUPB).

On the other hand, there are also examples of successful and legally justified applications of discretion, for example during the COVID-19 pandemic. Many regional heads used discretion to expedite the procurement of goods and services, including social assistance, without going through the lengthy procedures for government procurement of goods. In such emergency situations, discretion is used to ensure the survival of the community and overcome health disasters, which is in accordance with Article 22 paragraph (2) letter b of Law No. 30 of 2014, namely urgent circumstances for the public interest.

The use of discretion during the pandemic can be categorized as responsive and progressive discretion, because it is based on the interests of the people and remains under the supervision of financial institutions and regional inspectorates. In addition, financial reports must still be audited by the BPK so that discretionary actions are still within the corridor of public accountability. This shows that discretion can be a legitimate and useful tool if used appropriately and proportionally.⁸

In the context of administrative law, the action of the Chief of Police in issuing SP3 is a form of discretion that can be justified if it meets the requirements as stipulated in Article 22 of Law No. 30 of 2014, namely:

- a. The existence of legal vacuum or inaccuracy of regulations to the concrete situation.
- b. Urgent circumstances to protect public interests.
- c. Conformity with the general principles of good governance (AUPB).

⁸ H. L. Hart, "Discretion," *Harvard Law Review* 127, no. 2 (2013): 652–65, <https://doi.org/https://www.jstor.org/stable/23742020>.

However, in some cases, the application of discretion such as the issuance of SP3 by investigators is considered deviant because:

- a. Lack of transparency regarding the legal reasons and facts underlying it.
- b. Indications of conflict of interest or intervention by external powers.
- c. Does not meet the principles of proportionality and accountability, as regulated in Article 10 of the Law on State Administration, which states that every government decision and/or action must be based on: legal certainty, benefit, and public interest.

From the two examples above, it can be concluded that discretion is not a legal loophole, but rather a legitimate legal tool if used in accordance with the principles of state administrative law. The biggest challenge is not the existence of discretion itself, but rather how the mechanism of supervision and accountability for the discretion is carried out. Therefore, it is important to strengthen the legal culture among public officials so that every discretionary action is always in line with the values of justice, benefit, and legal certainty.

The application of discretion in cases such as SP3 shows how important the principle of control and supervision is to the discretion of government officials. Although discretion is intended to avoid stagnation and serve the interests of the community, its practice can be a gateway for abuse of authority if it is not based on strong legal principles and adequate supervision.

2. Discretion as an Instrument of Administrative Efficiency

One of the advantages of discretion is its flexibility in accelerating decision-making at the bureaucratic level. In certain situations, such as emergencies, regulatory uncertainty, or urgent public service needs, discretion may allow officials to not rely on long and rigid legislative processes. This supports the principle of efficiency in governance. Therefore, discretion is very important in encouraging bureaucratic responsiveness and ensuring that public services continue to run even when faced with normative constraints.

However, the efficiency benefits of discretion will only be achieved if the officials exercising the authority have integrity and a good understanding of the general principles of good governance. The general principles of good governance (AUPB) are basic principles that must be used as a reference by every government official in carrying out their duties and authorities, including when using discretion. Without using these principles as a basis, discretion risks becoming a loophole for arbitrary actions that deviate from the objectives of public service. AUPB is not only an ethical principle, but also a legal principle that has legally binding power.

The legal basis of AUPB is explicitly stated in Article 10 of Law Number 30 of 2014 concerning Government Administration, which states that decisions and/or actions of government officials must be based on AUPB. The principles in question include: legal certainty, benefit, impartiality, accuracy, not abusing authority, openness, public interest, and good service. Each of these principles has a meaning and control function in administrative decision-making.

The principle of legal certainty requires that government actions be carried out based on applicable laws and provide a sense of security and protection for the community. In the context of discretion, legal certainty requires officials to act only within the limits of the law, not to conflict with higher regulations, and not to ignore

the rights of citizens. This means that discretion cannot be used carelessly just because the regulations do not explicitly regulate it.

Furthermore, the principle of proportionality demands a balance between the objectives to be achieved and the impact or burden caused. In practice, this principle is a measure of whether the discretion taken is commensurate with the situation at hand. For example, in an emergency, discretion to bypass procurement procedures may be justified, but if such action causes major losses to the state or public budget, then the discretion is no longer proportional.

The principle of public interest serves as a signpost that administrative actions are only legitimate if they aim to meet public needs, not for personal or group gain. This is important to prevent manipulation of authority in the name of “people’s interests” which turn out to be just a camouflage for the interests of certain elites. Article 17 paragraph (2) letter c of Law No. 30 of 2014 states that discretion must not conflict with the public interest, making it a normative limit in its application.

The principle of transparency is also an important principle in the implementation of discretion. Every discretionary action must be accessible and known to the public, especially if it concerns decisions that have a wide impact. This transparency is in line with the principle of good governance and can prevent the emergence of allegations of abuse of power. In this case, transparency becomes an initial mechanism for effective social supervision of government officials.

The next principle is not to abuse authority, which means that officials may only use discretion for legitimate purposes and within the limits of their competence. Discretion used to pressure other parties, seek personal gain, or cover up administrative errors is a form of deviation from this principle. Articles 18 to 21 of Law No. 30 of 2014 even specifically regulate actions that exceed, mix up, or abuse authority, which can be sued through the state administrative court (PTUN).

The principle of accuracy emphasizes that every discretion must be carried out based on mature consideration, accurate data, and in-depth risk analysis. Officials cannot simply use the reason of urgency to justify hasty or reckless actions. In many cases of administrative irregularities, violations of the principle of accuracy are often the root of state losses and the loss of public trust in institutions.

The legal implications of violating the AUPB are significant. Officials who use discretion without complying with these principles can be subject to administrative sanctions, even criminal sanctions, depending on the level of the violation. Article 24 of Law No. 30 of 2014 states that officials who violate the AUPB in the use of discretion can still be held accountable, especially if the decision causes harm or injustice to the community.

Thus, AUPB should be the main foundation in the practice of administrative discretion. Discretion guided by AUPB will reflect clean, effective, and trustworthy governance. Conversely, discretion that ignores these principles will open up space for arbitrary actions that damage public trust and harm the principle of the rule of law. Therefore, the understanding and implementation of AUPB need to be strengthened through administrative law education and consistent public supervision.

3. Potential for Abuse of Power in the Implementation of Discretion

Unsupervised discretion can be a source of abuse of authority. This abuse can occur in various forms such as Actions that deviate from the purpose of the law, Decisions that benefit certain parties illegally, or the implementation of discretion that is contrary to the principle of justice. This leads to violations of administrative law, and in certain cases can even be qualified as criminal acts of corruption.

The potential for abuse increases when discretion is exercised without clear documentation,⁹ without justification that can be accounted for, and without supervision from internal or external institutions. Therefore, accountability and transparency mechanisms must be attached to every discretionary action, so that officials do not merely use their authority for personal or group interests. The potential for abuse of discretion is one of the main concerns in government administration practices. When a public official uses his authority without adequate control, discretion can easily turn into an action that deviates from the legal objectives of the state. In many cases, the implementation of non-transparent discretion opens up opportunities for manipulation, nepotism, or even collusion that is detrimental to the wider community.

Law Number 30 of 2014 concerning Government Administration provides strict limitations so that discretion does not turn into abuse of authority. Article 17 states that discretion is prohibited if it is used to violate legal obligations, abuse authority, or is contrary to the public interest. In other words, there is a clear line of distinction between legitimate discretion and abuse of power.

Furthermore, Article 18 to Article 21 of the same Law outlines various forms of deviation of authority: exceeding authority, mixing authority, and abusing authority. These three forms have legal consequences, either in the form of administrative sanctions, cancellation of decisions, or criminal sanctions if they have an impact on state losses or community rights.

Abuse of discretion can also be categorized as maladministration,¹⁰ as regulated in Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia. The Ombudsman has the authority to receive public reports on alleged abuses of authority, including unauthorized discretion. In several annual reports of the Ombudsman, discretion that is not in accordance with the AUPB is one of the forms of public complaints that is quite high.

A concrete example of abuse of discretion can be seen in the case of procurement of goods and services in a number of regional governments. Many regional heads use the pretext of discretion to directly appoint partners without a transparent auction process. For example, the BPK report found that the procurement of medical devices was carried out without a valid discretionary

⁹ N. Padfield, "Discretion and Decision-Making in Public Protection," in *Handbook of Public Protection* (Willan, 2010), 125–54, <https://doi.org/https://www.taylorfrancis.com/chapters/edit/10.4324/9780203833292-17/discretion-decision-making-public-protection-nicola-padfield>.

¹⁰ O. F. Guslan, "Maladministration in Corruption Case: A Study of Limitation on the Criminal Action," *IJCLS (Indonesian Journal of Criminal Law Studies* 3, no. 2 (2018): 147–56, <https://doi.org/https://journal.unnes.ac.id/nju/ijcls/article/view/13249/25644>.

introductory document, which ultimately harmed state finances and led to further legal proceedings.

On the other hand, there are also examples of discretion being used appropriately and legitimately, such as in the early days of the COVID-19 pandemic.¹¹ Several regional heads exercised discretion to divert non-priority budgets to social assistance and health facility spending. In this context, discretion was taken based on considerations of urgency and in the public interest, in accordance with Article 22 paragraph (2) of Law No. 30 of 2014. However, legitimate discretion still requires strong documentation and oversight mechanisms. Article 22 paragraph (3) of the Law emphasizes that discretionary actions must be recorded and reported to the immediate superior, and can be evaluated by the supervisory agency. This is intended so that no discretionary decisions are taken secretly without an internal control process.

In addition to internal supervision, supervision by civil society and the media is also important in preventing abuse of discretion. Openness of public information as regulated in Law No. 14 of 2008 concerning Openness of Public Information must be an additional instrument to access the basis for consideration of a discretionary action, especially one that has a major impact on the livelihood of the community.

In this context, it is necessary to build a legal culture that emphasizes the integrity and responsibility of officials. Discretion is not a gray area for personal policies, but rather a legitimate legal space to answer the dynamics of public administration, provided that it continues to comply with the principles of good governance (AUPB). Officials who exercise discretion must be able to explain the rationality, urgency, and legal legitimacy of their decisions.

Thus, to prevent discretion from becoming a tool for abuse of authority, the state needs to strengthen technical regulations, clarify decision documentation standards, and increase oversight capacity. Without this, discretion, which should be an administrative solution, can turn into a source of legal conflict, injustice, and even corruption. Therefore, reform of discretionary governance is an urgent need to maintain bureaucratic integrity in Indonesia.

4. Urgency of Strengthening Discretionary Regulation and Supervision

Given this reality, it is important to strengthen the legal and institutional systems in regulating discretion. The law on government administration has provided guidelines, such as the requirement to document discretionary decisions, a clear legal basis, and regular reporting. However, the implementation of supervision and evaluation is still a challenge.

The role of institutions such as the Republic of Indonesia Ombudsman, the government's internal supervisory apparatus, and the state administrative court need to be optimized as a control mechanism so that discretion is used appropriately, legally, and proportionally. In addition, coaching for government officials is also important so that they understand the limitations, responsibilities, and legal risks of every discretionary decision they take.

¹¹ R. D Purnomo, A. R. E., Suharto, D. G., & Wahyunengseh, "The Role of Discretion in Handling COVID-19," *Musamus Journal of Public Administration* 3, no. 1 (2020): 40–54.

One aspect that needs to be strengthened is the ex-ante monitoring mechanism (before action is taken) and not just ex-post monitoring (after action is taken). In many cases, discretion is never consulted in advance with internal supervisors or direct superiors. In fact, Article 22 paragraph (3) of Law No. 30/2014 requires reporting and monitoring of the implementation of discretion, which reflects the importance of layered control over each discretionary policy.

The Ombudsman of the Republic of Indonesia (ORI) has a vital role as an independent external supervisor.¹² ORI has the authority to receive public complaints regarding alleged maladministration, including abuse of discretion. Unfortunately, not all members of the public understand the reporting procedures, and not all agencies provide sufficient access to information to enable the public to assess whether a discretionary action is in accordance with the correct principles of administrative law. On the other hand, the Government Internal Supervisory Apparatus (APIP), such as the ministry's inspectorate general and regional inspectorates, must be empowered as proactive internal supervisors. APIP needs to have technical guidelines to assess the validity and legality of discretionary actions, including the ability to audit justifications, supporting documents, and the impact of discretionary policies on public services and the state budget. This requires human resources who are specifically trained in administrative law.

The State Administrative Court (PTUN) can also act as the last bastion in testing the validity of discretion. Through the mechanism of lawsuits by citizens or civil society organizations, the PTUN can overturn discretionary decisions that exceed their authority, are contrary to the law, or harm citizens' rights. However, the effectiveness of this path is highly dependent on the extent to which the public has access and the courage to challenge administrative decisions.

In addition to the legal aspect, strengthening regulations must be accompanied by increasing the capacity and coaching of state apparatus. Many administrative officials do not yet understand the limits of discretion, so they are not aware that their actions can be categorized as abuse of authority.¹³ Routine training, administrative law modules, and strengthening the accountability-based performance assessment system must be part of bureaucratic reform.

There also needs to be a national standard on the procedures for implementing discretion, for example through a presidential regulation or a regulation of the Minister of Home Affairs. This standard can include: the format for documenting discretionary decisions, an online reporting system, indicators for evaluating discretion, and the format for minutes of the underlying legal considerations. Without uniform standards, discretion will continue to be interpreted differently by each agency. Strengthening the discretionary oversight system must also rely on civil society participation. Non-governmental organizations, the mass media, academics, and the general public have a strategic role in encouraging transparency and accountability in government. Therefore, openness of information related to discretion, including the publication of the

¹² S. M. Ispriyarso, B., & Badriyah, "Improving the Role of Ombudsman as a Monitoring Institution of Public Organization in Indonesia," in *ICOLEG 2021: Proceedings of the 2nd International Conference on Law, Economic, Governance, ICOLEG 2021*, 2021, 46.

¹³ A. McHarg, "Administrative Discretion, Administrative Rule-Making, and Judicial Review," *Current Legal Problems* 70, no. 1 (2017): 267–303, <https://doi.org/https://doi.org/10.1093/clp/cux011>.

reasons and objectives of discretionary policies on the agency's official website, is an important prerequisite. Digital reform in governance can also be a long-term solution. An e-administration system that records the entire decision-making process, including discretionary ones, will improve audit trails and facilitate oversight. Integration between digital-based internal and external oversight systems will create a more transparent and resilient governance environment against potential abuse of authority.

Thus, strengthening regulation and supervision of discretion must be a priority in the bureaucratic reform agenda in Indonesia. Clear regulation without a supervisory mechanism will be paralyzed, while supervision without legal standards will lose direction. Therefore, synergy is needed between policy makers, internal and external supervisors, and the community in ensuring that discretion is carried out legally, measurably, and always within a democratic legal framework.

E. Conclusions

Discretion is an important instrument in the administration of government that functions to fill legal gaps or ambiguities in certain situations, with the main objective of maintaining smooth public services and encouraging administrative efficiency. In the context of Indonesian administrative law, discretion has strong legal legitimacy, as regulated in Law Number 30 of 2014 concerning Government Administration. The proper use of discretion can increase bureaucratic flexibility in responding to community needs quickly and effectively.

However, discretion also carries a high risk of abuse of authority if not implemented in accordance with the principles of good governance, such as accountability, transparency, and legal certainty. Abuse of discretion can harm the public interest, harm justice, and even potentially become a criminal act of corruption.

Therefore, it is necessary to strengthen the regulation and supervision of the implementation of discretion, both through legal mechanisms and supervisory institutions such as the Ombudsman, APIP, and administrative courts. Officials who are given discretionary authority must also be equipped with adequate ethical and legal understanding so that the decisions taken do not deviate from public objectives. Thus, discretion can be used as a means to create effective governance while remaining based on the principles of justice and law.

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