

The Polemic Of Discretion In Abuse Of Authority By Public Officials In The Perspective Of The Principles Of A Clean And Corruption-Free Legal State

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Abstract: Discretion is a legal instrument given to public officials to make decisions or act under certain conditions without explicit laws and regulations. Discretion is critical in government, especially in providing flexibility for state apparatus to perform their duties and obligations. However, in practice, discretion is often misused by public officials under the pretext of broader administrative or policy interests. Abuse of authority through discretion can give rise to various legal problems, including increased practices of corruption, collusion, and nepotism (KKN), which are contrary to the principles of a clean and corruption-free legal state. Therefore, an in-depth study is needed regarding the limitations, supervision, and accountability mechanisms of public officials in implementing discretion so that it does not conflict with the principles of good governance and legal certainty. This study uses a normative juridical method with a statute and a conceptual approach. The analysis was conducted on various legal norms that regulate discretion, including the Law on Government Administration, as well as the principles of administrative law relating to the authority of public officials. In addition, this study also examines the mechanism of supervision of discretion to prevent abuse of authority that can harm the interests of society and the state. Thus, this study is expected to provide a deeper understanding of discretion in a state of law and provide recommendations on possible actions to strengthen the supervision and accountability of public officials in exercising their authority.

Keywords: Discretion, abuse of authority, public officials, state of law, corruption, accountability.

INTRODUCTIONS

Discretion is an important concept in state administrative law that gives public officials the authority to make decisions or act in situations that are not expressly regulated in laws and regulations (Muhlizi, 2012). In government practice, discretion is used as an instrument to maintain the flexibility of state administration, especially in dealing with conditions that require a quick response and cannot be postponed (Arifin, 2025). This concept allows public officials to act based on their judgment within the limits of applicable law. However, the application of discretion must remain in line with the principle of legal certainty and not be used arbitrarily (Ansori, 2015).

In governance, discretion plays a role as a tool to ensure the effectiveness of state administration in providing public services (Almahdali, 2024). The government cannot always rely on rigid regulations, because in some circumstances, the necessary actions are not necessarily explicitly stated in written rules. With discretion, public officials can take the steps needed to maintain the smooth functioning of government and avoid stagnation in the

bureaucracy. This flexibility is important in a dynamic government, where public policy can adapt to social, economic, and technological developments (Asmara, 2022).

Conceptually, discretion in state administrative law has a strong basis in legal theory. Administrative law experts define discretion as the authority held by public officials to make decisions based on rational considerations in situations where regulations do not specifically regulate the actions to be taken (Syafri, 2023). In a democratic government system, discretion is an integral part of the decision-making process because it provides space for state officials to carry out their duties without relying entirely on written regulations that may not be able to reach all aspects of community life (Huda, 2024).

On a legal basis, the concept of discretion in Indonesia has been regulated in various laws and regulations, including in the 1945 Constitution of the Republic of Indonesia (UUD 1945). Article 1 paragraph (3) of the 1945 Constitution states that "The State of Indonesia is a state of law", which means that all actions of state administrators must be based on law, including the use of discretion by public officials. The principle of good governance requires that discretion must still pay attention to aspects of justice, legal certainty, and balance between authority and accountability (Pratiwi, 2016).

Discretion is the authority held by public officials in making decisions or actions to overcome government stagnation for the public interest, as regulated in Article 1 number 9 and Article 24 of Law Number 30 of 2014 concerning Government Administration, but its use must meet certain requirements and must not conflict with higher laws and regulations. In the context of a state of law as emphasized in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution, all actions of officials, including discretion, must uphold the principles of justice, legal certainty, and equality before the law. Furthermore, Article 17 paragraph (2) letter b of Law 30 of 2014 requires officials to be morally and legally accountable for their discretion. Although discretion can be an effective instrument in public service, in practice it often becomes a loophole for abuse of authority that can lead to criminal acts of corruption, which is contrary to the principle of clean state administration as mandated in Law Number 28 of 1999 (Setiawan, 2020). Thus, although officials have the freedom to make decisions, these actions must remain within the applicable legal corridor.

In addition to the 1945 Constitution, regulations regarding discretion are also regulated in Law Number 30 of 2014 concerning Government Administration. This law provides clearer guidelines on how discretion can be used in the context of government (Hadi, 2017). The definition of discretion in Law Number 30 of 2014 concerning Government Administration is stated in Article 1 number 9, which states that discretion is a decision and/or action determined and/or carried out by government officials to overcome government stagnation in certain matters for the public interest. Meanwhile, the scope of the use of discretion is explained in more detail in Article 22 paragraph (1), which states that government officials may use discretion if laws and regulations provide options, do not regulate, are incomplete or unclear, and/or there is government stagnation. Thus, the legal basis for the use of discretion in overcoming concrete problems that are not or have not been fully regulated in laws and regulations is specifically stated in Article 22 paragraph (1) letters b and c (Nalle, 2016). This regulation aims to provide legal certainty in the use of discretion and avoid abuse of authority that can harm the public interest.

In implementing discretion, public officials must also pay attention to the general principles of good governance (AUPB) (Solechan, 2019). AUPB functions as a guideline for state apparatus in carrying out their duties so that they remain on track in accordance with the principles of state administrative law. Some principles that must be adhered to in the use of discretion include the principle of legal certainty, the principle of benefit, the principle of proportionality, and the principle of accountability (Sumeleh, 2017). Legal certainty requires

that every action taken must have a clear legal basis, while the principle of benefit requires that the decision taken must provide benefits to the community (Rahim, 2023). The principle of proportionality ensures that the actions taken are balanced between their objectives and impacts, while the principle of accountability requires that officials who use discretion must be responsible for the decisions they make (Azhar, 2015).

In practice, the discretion used by public officials must meet certain criteria to be categorized as a legitimate action. One of the main criteria is the existence of a legal basis that justifies the use of discretion under certain conditions (Aviano, 2022). In addition, decisions or actions taken must be oriented towards the public interest and carried out transparently. Discretion should not be used as a means to gain personal or group advantage. With these criteria, discretion is expected to remain within reasonable limits and not contradict the principles of good state administration (Susilo, 2015).

Another aspect that must be considered in discretion is the principle of caution. Public officials who are given discretionary authority must be able to consider various aspects before making a decision, including the potential impact on society. Decision-making that is hasty or without careful calculation can have greater negative consequences, including public dissatisfaction with the policies taken. Therefore, every discretion-based action must be carried out by considering various relevant factors and based on strong legal considerations (Budianta, 2016).

By understanding the concept, legal basis, and criteria for using discretion, it is hoped that public officials can use their authority responsibly and in accordance with the principles of good governance. Discretion is an instrument that can provide flexibility in the implementation of state administration but must still be controlled through strict legal mechanisms. Clear regulations and general principles of good governance are key factors in guaranteeing that discretion is used appropriately and does not conflict with the public interest.

RESEARCH METHODS

This research method uses a normative legal method, namely an approach that focuses on the analysis of laws and legal principles that are relevant to the problems studied. The approaches used in this study include the statute approach and the conceptual approach. The statute approach is used to study various legal provisions that regulate the discretion of public officials, including the Law on Government Administration and other regulations related to the limitations of authority and oversight mechanisms for the use of discretion. Meanwhile, the conceptual approach is used to understand the concept of discretion in state administrative law, its relationship to abuse of authority, and its relevance in building the principle of a clean and corruption-free legal state.

The data sources in this study consist of primary legal materials and secondary legal materials. Primary legal materials include applicable laws and regulations, while secondary legal materials include legal literature, scientific journals, books, and expert opinions related to discretion and abuse of authority by public officials. The analysis technique used is normative-qualitative analysis, where the data obtained is systematically studied to find the relationship between legal norms and discretionary practices in the field. The results of this analysis are then used to compile arguments that can clarify the relationship between discretion, abuse of authority, and efforts to ensure accountability and transparency in government. Thus, this study contributes to strengthening the legal understanding of discretion and its role in realizing the principle of a clean and corruption-free legal state.

RESULTS AND DISCUSSION

Forms and Factors Causing Abuse of Authority in Discretionary Practices by Public Officials in Indonesia

Discretion in government administration is the authority given to government officials to make decisions or take action in certain situations to ensure the smooth running of government, especially when facing legal vacuums or unclear norms. According to Article 1 number 9 of Law Number 30 of 2014 concerning Government Administration, discretion is defined as "decisions and/or actions determined and/or carried out by Government Officials to overcome government stagnation in certain matters for the public interest." The primary purpose of discretion is to provide flexibility in administrative decision-making so that the government can run effectively, efficiently, and responsively to the needs of the community, without always waiting for changes in formal regulations. The scope of discretion is outlined in Article 22 paragraph (1) of the same Law, which states that officials can use discretion in cases where: a) laws and regulations provide options; b) laws and regulations do not regulate; c) laws and regulations are incomplete or unclear; and/or d) there is government stagnation. However, discretion cannot be used arbitrarily, because it must meet certain requirements as stipulated in Article 24, it must be carried out within the framework of public interest, not in conflict with the provisions of higher laws and regulations, by the purpose of discretion, and based on objective reasons.

Abuse of authority in the practice of discretion is one of the serious problems in governance. Discretion, which should be an instrument to increase the effectiveness of state administration, is often used in ways that are not by legal provisions. This abuse can occur in various forms, both in terms of substance and procedure. Substantive abuse occurs when public officials use discretion for purposes that deviate from the public interest or violate the principles of administrative law. Meanwhile, procedural abuse occurs when discretion-based decisions are taken without following the mechanisms and procedures that have been set out in the regulations (Kumalaningdyah, 2019).

Substantively, abuse of authority in discretion often occurs when public officials make decisions that conflict with applicable regulations or have elements of deviation from interests. One example is when officials issue policies that benefit certain parties at the expense of the interests of the wider community. Decisions made based on personal or group motives, without considering the principle of public interest, show a form of abuse of discretion that can harm the state and society. This situation is often difficult to control because discretion-based decisions do not always have clear guidelines in laws and regulations.

In addition to substantive abuse, there is also procedural abuse of discretion that is rooted in violations of decision-making mechanisms. Public officials who use discretion without going through the correct administrative stages or consulting the authorities can be said to have abused their authority. An example of this abuse is when a decision is taken without going through a due diligence mechanism or without considering recommendations from related institutions. This kind of procedural abuse may create legally flawed policies and is at risk of being canceled or having legal consequences for the officials concerned (Endang, 2018).

Abuse of authority in the practice of discretion by public officials can appear in various forms, one of which is a deviation from applicable legal provisions, which is commonly referred to as an act of overmatch or *ultra vires*. Overmacht occurs when officials use discretion beyond the limits of authority granted by laws and regulations so that their decisions are not based on valid legal provisions and harm the public interest. It often creates legal uncertainty and injustice because these actions cannot be legally accounted for. Furthermore, discretion used for personal or group interests is also a form of abuse that occurs quite often, where officials make decisions for the benefit of themselves, certain groups, or interested parties

illegally, thus ignoring the principles of justice and siding with the public interest. This action contradicts the principles of accountability and transparency in the administration of government and damages the integrity of public institutions.

Besides, abuse of discretion can also be seen in decisions that contradict the principles of justice and accountability, where officials do not consider the social and legal impacts of their decisions, resulting in discrimination or unfair treatment of the community. Examples of cases of abuse of discretion can be found in various reports from the Corruption Eradication Commission (KPK) and court decisions that reveal corruption cases that originated from the improper use of discretionary space. For example, officials who grant business permits or certain projects without proper procedures for personal or group gain, thereby harming the state and the wider community. Cases like this are also often in the spotlight of the media and the public because they show how discretion, which should be an instrument of flexibility in government, is instead used as a tool for corrupt practices and abuse of authority.

One of the main factors causing abuse of discretion is the lack of supervision and control over the actions of public officials. In a government system that does not have a strict oversight mechanism, public officials are freer to use discretion without fear of strict consequences. The lack of transparency in the decision-making process also makes abuse of discretion difficult to detect. Weak check and balance mechanisms can provide opportunities for public officials to act beyond the limits of their proper authority.

Apart from the weak supervision, weak regulations and sanctions against abuse of discretion are contributing factors to this problem. Although there are various regulations governing the authority of public officials, their implementation is often ineffective due to legal loopholes that can be exploited. Indecisiveness in enforcing sanctions is also the main cause of the rampant abuse of authority in discretionary practices. Public officials who commit violations often do not face appropriate legal consequences, so there is no deterrent effect for the perpetrators or other officials.

In addition to regulatory and supervisory factors, political and economic interests are often the background to discretion abuse. Public officials who have certain political interests tend to use discretion to strengthen their or their group's position in government. For example, administrative decisions can be directed to support the interests of certain political parties or business groups close to the authorities. Economic interests are also often a driving factor in abuse of discretion, especially in cases of granting business permits or managing natural resources that involve big business interests.

Uncontrolled abuse of discretion can have various negative impacts on government and society. One of the most significant impacts is the erosion of public trust in the government. When the public sees that public officials use their authority arbitrarily and not in the public interest, they will lose confidence in the existing government system. The distrust can lead to low public participation in the democratic process and increased dissatisfaction with government policies.

In addition to the erosion of public trust, abuse of discretion can also trigger increased corruption and collusion in government. When discretion is used without an effective control mechanism, public officials are more likely to engage in corrupt practices, such as accepting bribes or providing benefits to certain parties illegally. Corruption that originates from abuse of discretion is often difficult to detect because the decisions taken appear administratively legitimate, even though there are hidden interests behind them. As a result, corruption that occurs through discretion can continue to grow and damage the government system.

Abuse of discretion by public officials has a very detrimental impact on governance, one of which is the loss of public trust in government institutions and the administrative decision-making process. When officials use discretion improperly for personal or group interests, the public becomes skeptical of the integrity and credibility of state administrators, thereby reducing public participation and support in various government programs. In addition, abuse of discretion also contributes to the increasing practice of corruption, collusion, and nepotism (KKN) which is increasingly rooted in the bureaucracy, disrupting the efficiency and effectiveness of public services. Inequality and injustice in public services also become apparent, because the policies or decisions taken are no longer oriented towards the public interest but rather towards certain groups, thus widening the gap in social and economic inequality. This condition certainly disrupts the principles of good governance that prioritize transparency, accountability, participation, and the rule of law, which ultimately weakens the foundation of the rule of law and hinders the realization of a clean and authoritative government.

In addition to the impact on the government, abuse of discretion also contributes to inequality in public services. Officials who use discretion irresponsibly often prioritize certain groups over society. As a result, the distribution of public resources becomes uneven, and people who should receive equal services experience discrimination. This inequality in public services can worsen social injustice and create tension in society.

Relevance of the Use of Discretion to the Principles of a Clean and Corruption-Free Legal State in the Implementation of Government

Government discretion must always be based on the principle of the rule of law as stipulated in the 1945 Constitution. The rule of law concept emphasizes that every government action, including discretion, must be based on applicable law and the principles of justice and legal certainty. In this context, discretion is not absolute freedom for public officials to act without limitations, but rather an instrument that must be used responsibly by the principle of checks and balances. This principle ensures that every use of discretion remains within the legal corridor and is not misused for personal or group interests. A democratic rule of law requires a balance between executive authority in making decisions and effective oversight mechanisms so that policies made remain in line with the interests of the wider community.

Oversight and accountability mechanisms are important elements in ensuring that discretion is used responsibly. Supervisory institutions such as the Ombudsman, the Audit Board of Indonesia (BPK), and the Corruption Eradication Commission (KPK) have a strategic role in overseeing the use of discretion so that it remains following applicable regulations. The Ombudsman functions to receive public reports regarding abuse of authority in government administration, while the BPK is tasked with auditing the use of the state budget that may be affected by discretionary policies. Meanwhile, the KPK has the authority to handle cases involving abuse of discretion that indicate corruption. In addition to external supervisory institutions, internal supervisory mechanisms within government institutions must be strengthened to detect potential deviations early on.

Legal control over the use of discretion is not only carried out by administrative supervisory institutions but also through the judicial system. Administrative courts have the authority to test policies taken based on discretion, ensuring that the decision does not conflict with the general principles of good governance (AUPB). If there is an indication that a discretionary action violates the law or harms the community interests, the court can cancel the decision or impose administrative sanctions on the official concerned. In addition, in more serious cases, criminal justice also plays a role in prosecuting officials who are proven to have abused discretion which leads to criminal acts, including corruption. With a strong legal

mechanism, discretion can be controlled so that it remains within the corridor of law and state administrative ethics.

Efforts to prevent abuse of discretion in a clean and corruption-free state based on the rule of law must begin with strengthening regulations and accountability mechanisms. Legislation governing discretionary authority should be clarified to provide room for overly broad interpretation. In addition, a strict accountability system is needed for officials who use discretion, both in the form of periodic reporting and periodic policy audits. Strengthening regulations must also include provisions regarding strict sanctions for abuse of discretion so that there is a deterrent effect for officials who intend to use their authority for illegitimate interests.

Transparency in discretionary decision-making is also a fundamental step in preventing abuse of authority. The discretionary policy-making process must be carried out openly and can be accessed by the public so that the public can participate in monitoring decisions made by public officials. Publication of policy documents, reports on the use of discretion, and public consultation mechanisms before decision-making are some steps that can increase transparency. With openness of information, the possibility of abuse of discretion can be minimized because public officials know that every decision they make will be monitored and can be accounted for by the public.

In addition to transparency and strengthening regulations, bureaucratic reform is also a key factor in limiting the gaps for corruption in the use of discretion. Bureaucratic structures that are too complex and convoluted often create space for officials to abuse their authority in decision-making. Therefore, bureaucratic reform must be directed at simplifying administrative procedures, increasing the professionalism of state apparatus, and implementing digital systems in public services to reduce the opportunity for unauthorized intervention. With a more efficient bureaucracy based on a transparent system, the use of discretion can be more controlled and in line with the principles of a clean state of law and free from corrupt practices.

CONCLUSION

Discretion is a critical instrument in government that allows public officials to make decisions outside normative rules in certain situations for the public interest. However, this authority has great potential for abuse, especially when it is not supported by strict regulations and effective oversight mechanisms. Abuse of discretion can harm the principle of a state of law because it opens up loopholes for arbitrary actions that are contrary to the principles of legal certainty, justice, and transparency. The impact of abuse of authority through discretion not only erodes public trust in government institutions, but also worsens the practices of corruption, collusion, and nepotism in the bureaucracy. Therefore, in a government system based on the supremacy of law, the application of discretion must always be controlled through the principle of accountability and the mechanism of checks and balances so that it remains in line with the goal of a clean and corruption-free state of law.

To ensure that discretion does not become a tool for abuse of authority, several strategic steps need to be taken. Regulations governing discretion must be strengthened by clarifying the limits of its use and tightening its oversight mechanisms. In addition, it is necessary to increase the capacity of public officials to understand and implement discretion in an accountable manner so that every decision taken remains by the general principles of good governance. Supervisory institutions such as the Ombudsman, BPK, and KPK must optimize their control functions over discretion to prevent potential deviations. Law enforcement mechanisms must also run effectively so that every act of abuse of discretion can be dealt with

firmly by applicable regulations. With these steps, discretion can continue to function as an effective tool of government without violating the principles of the rule of law and still upholding integrity and public interest.

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