

Government Discretionary Authority: Legal Framework and Control Mechanisms in Indonesian Administrative Law

Ricky Thio, Wagiman, Hotma Pardomuan Sibuea, Khalimi

¹rickyfiatjustitia@gmail.com, ²wagiman.martedjo@uta45jakarta.ac.id,
³pardomuansibuea58@gmail.com, ⁴khalimipelita280@gmail.com

^{1,2,3,4}Faculty of Law, Universitas 17 Agustus 1945 Jakarta, Indonesia

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Abstract

The This study examines the legal framework and control mechanisms governing government discretionary authority within Indonesian Administrative Law. The research addresses the fundamental challenge of balancing administrative flexibility with legal accountability in the exercise of discretionary power.

The research aims to analyze the legal parameters of governmental discretion, examine accountability mechanisms, and evaluate control systems in preventing abuse of authority. This study employs a normative juridical method, utilizing statutory, case law, and conceptual approaches through analysis of legislation, court decisions, and administrative law doctrines.

The findings demonstrate that governmental discretion must operate within clear legal boundaries established by administrative law principles and systematic accountability mechanisms aligned with good governance principles. The research reveals significant regulatory gaps in the current framework, particularly in establishing preventive measures against authority abuse. The study identifies the need for strengthened institutional oversight mechanisms while maintaining administrative efficiency.

This research contributes to administrative law scholarship by providing analysis of discretionary power boundaries and proposing enhanced control mechanisms that combine legal instruments with monitoring systems in Indonesia's administrative law framework.

1. Introduction

In a welfare state, the government is entrusted with the responsibility of ensuring public welfare. It is entitled to realize this objective and possesses the authority to intervene in all areas of public life. Therefore, the government is granted the power by legislative regulations to take independent initiatives, known as discretion (Effendi, 2017).

The increasingly dynamic and complex interests and needs of society demand that the government be able to adaptively accelerate its responses, acting both swiftly and accurately. The government must not refuse to serve the interests and needs of its people under any circumstances. It cannot afford to be slow-moving; rather, it is required to act promptly and adaptively in addressing and managing the myriad developments of interests and needs within the society. Such situations often arise situationally and pose unique challenges for the government.

Discretion, or the authority to act on one's own initiative, is a power granted to the government. The term "discretion" is derived from the German "freies Ermessen," which etymologically stems from "freies" meaning free, unbound, independent, and not constrained, and "ermessen," which implies to consider, evaluate, estimate, and anticipate (Zaelani et al., 2019). Referring to this etymological meaning, the term "freies Ermessen" or discretion encompasses the notion of freedom or liberty in making considerations, evaluations, and estimates. These recommendations, evaluations, and estimates are formulated by a government body or official in response to specific circumstances, matters, materials, or situations (Sibuea, 2010).

In the context of Administrative Law, discretion or "freies Ermessen" serves as a means for government institutions and officials to act without being fully bound by laws and statutory regulations. The emphasis here is on "doelmatigheid" (the principle of utility) in the delegation of tasks and functions to government officials, rather than "rechtmatigheid" (the principle of legal certainty) from the perspective of positive law (Kurniawaty, 2016).

In a legal state, welfare is a process of rethinking in relation to the objectives of the legal state. Legal certainty (rechtmatigheid) in a formal legal state is the primary goal and the principle of legality to achieve that goal is accepted as the basis of procedural law (formal). The main objective of the substantive legal state is the utility (doelmatigheid) of law for the benefit of the wider community. This represents the concept of substantive legal rules that provide the government with the freedom to act (Sibuea, 2010).

In practice, the issue of power becomes complex, especially in the area of national security. A representation of this complexity and a valuable study of the

phenomenon is the political approach to the war on terror undertaken by then President of the United States, George Walker Bush Jr. To justify his administration's hardline actions against terrorists, the Bush administration rationalized its discretionary actions by stating (Krishna D. Darumurti, 2012):

“In a crisis, executive action validates itself”

In this context, even if the subject in question is a foreign government official. This is a prime example of how major interests such as national security should not be used as a pretext for engaging in arbitrary actions beyond their control or authority (Krishna D. Darumurti, 2012).

In executing its function to regulate society, the government is authorized to engage in various acts or actions aimed at managing the public interest (bestuurs handeling). These governmental actions can also be described as those performed by governing apparatus, whether high or low level, spontaneously and independently, to safeguard the interests of the state and its people. In performing legal actions (recht handelingen) and factual actions (feitelijke handelingen), officials of governmental administrative bodies possess governmental instruments (Syahrizal, 2012).

The government, which undertakes the role of bestuurszorg, embodies a governing function that is not limited to regulation but also encompasses management and service delivery (public service). The latitude for action granted to state administrative bodies is bound by law and further extended by conferring the power of discretionary authority on a position or state authority, enabling autonomous action (based on its own deliberation).

The grant of discretionary authority often leads to the abuse of power through excessive exercise of discretionary powers. To what extent is such authority permissible? How can the losses to the state and financial damages incurred by the nation due to discretionary decisions be mapped? Furthermore, what is the role of Information Technology in minimizing the abuse of authority in the exercise of discretion, serving as a basis to ensure it does not exceed its intended scope?

2. Research Method

This research employs a normative legal research methodology, primarily utilizing secondary data sources. The data comprises primary legal materials including legislations and secondary legal materials such as journals on discretion, court decisions, and books outlining the prerequisites and procedures for the use of discretion. The research is grounded in a statute approach, a conceptual approach, and an analytical approach, focusing on the clarification of norms within the realm of legal studies (Irwansyah & Yunus, 2021). The legal materials are collected through document study techniques, and the analysis is

conducted using qualitative methods to interpret and elucidate the findings.

3. Results and Discussion

From the perspective of administrative law, the state's function to achieve the welfare and prosperity of its people is manifested as a form of governmental authority. According to Lemaire, there exists a fifth type of power in governance, namely the administration of general welfare. Consequently, the government, in a broader sense, encompasses the power or function of managing general welfare (bestuurszorg) (Safudin, 2020).

From the welfare state perspective, actions based on the principle of discretion or *freies ermesen* of civil servants are not legally binding. Nevertheless, it is imperative that the administrators involved should not act without specific considerations and justifications. Every action by state administration officials must always have limitations and reasons in terms of legal rules. If a government action cannot be legally adjudicated, it does not imply that it cannot be explained. Morality and common sense must be regarded as actions that cannot be legally justified, which predominantly are based on moral reasoning and the rationality of common sense. Discretion or *freies ermesen* should not be interpreted excessively as if allowing any state administrative body or public official to act arbitrarily or without basis due to unclear reasons or individual subjective considerations (Maciver, 2013).

Normative legal research also refers to legal rules and norms found both in statutory regulations and in court decisions. Authorized government officials may undertake discretionary actions in accordance with Article 22 of Law No. 30 of 2014 on Government Administration (UUAP), as long as the purpose of the discretionary actions are as follows:

- a. Facilitating the administration of governance;
- b. Filling legal vacuums;
- c. Creating legal certainty; and
- d. Overcoming governmental stagnation in certain situations for the benefit and interest of the general public.

Discretion has a scope limitation as regulated in Article 23 of Law No. 30 of 2014 on Government Administration (UUAP), thereby it can be determined under the following conditions (Negara, 2016):

- 1. Making decisions and/or actions based on legal provisions that allow for choices in decisions and/or actions.**

In legislation, terms like 'may', 'permitted', or 'given the authority', 'entitled', 'should', 'expected' are used. This implies that authorized government officials may exercise discretion.

2. Decision-making and/or action due to the absence of governing laws or regulations (*rechtsvacuum*).

This condition represents a legal vacuum or absence of laws governing a specific aspect of state governance under certain or extraordinary circumstances.

3. Making decisions and/or actions due to incomplete or unclear legislative regulations (*vage normen*).

In unusual situations where there is a lack of harmonized regulations across institutions, or when implementation regulations are absent, discretion becomes necessary.

4. Making decisions and/or actions for broader interests due to stagnation in governance.

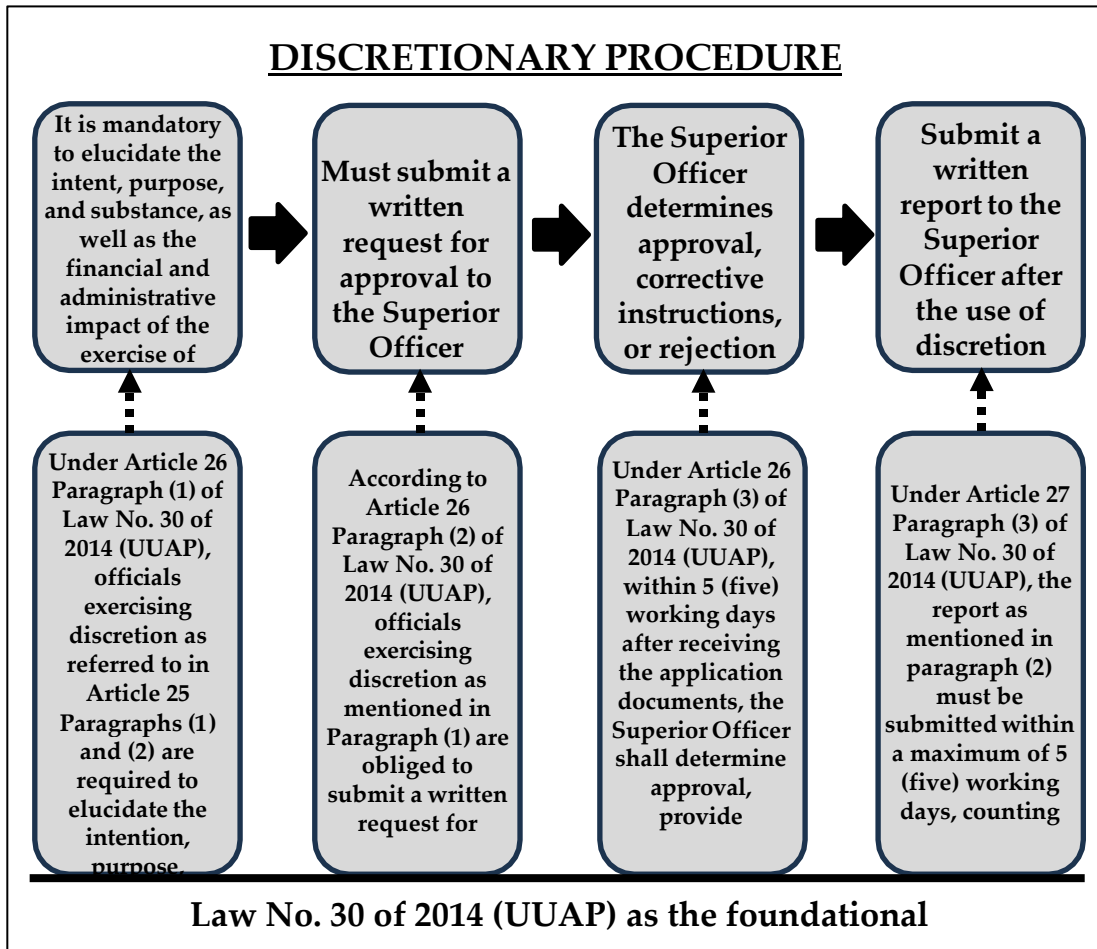
Typically, for significant interests affecting the livelihood of many, missions to preserve national integrity, such as natural disasters, disease outbreaks, social conflicts, unrest, defense, and national unity.

Consider the current pandemic situation, which is truly extraordinary and falls under the category of national salvation and integrity due to the disease outbreak. However, there are very few legislative norms that govern emergency conditions. The author refers to norms, not explanations in the legislation, as explanations in legislation are not legal norms but are authentic interpretations by the legislator. The discretion has the following requirements (Kaharudin & Amalia, 2022):

1. In accordance with the purpose of Discretion;
2. In line with the Principles of Good Governance Administration; meticulously and thoroughly scrutinized;
3. Based on objective reasons, meaning rational;
4. Not causing conflicts of interest, implying alignment with personal interests, elite groups, or certain advantages;
5. Executed with good faith, honestly and in accordance with the Principles of Good Governance Administration.

One of the requirements for Discretion, which has been eliminated due to previous conflicts, is: Not to be in contradiction with legislative provisions, implying that if already regulated, existing regulations should be utilized. However, this requirement has been abolished in the Omnibus Law (Christiawan, 2022).

Figure 1: Diagram of Discretionary Procedure



Since it is implausible for Discretion to align perfectly with existing laws, it inevitably overlooks, sidelines, and contradicts them in certain extraordinary circumstances. For instance, during the Covid-19 pandemic, there were distinct situational policies in financial and banking sectors, such as relaxation policies intended to alleviate the burden on creditors (S et al., 2020). When conditions return to normal, the prevailing legislation reasserts its application, discontinuing the temporary measures.

Beginning with the general rule that discretion can only be exercised by authorized government officials, Figure 1 clearly demonstrates that discretion must not be issued arbitrarily. It outlines specific conditions set forth in Law No. 30 of 2014 (UUAP), governing the issuance of discretion. Figure 1 highlights key aspects officials and even the public must understand: in the exercise of discretion, both before and after its issuance, there are notifications, applications, and reports, each with their respective mechanisms

at every stage. The discretion procedure is regulated under Law No. 30 of 2014 (UUAP), Articles 26 and 27, which are elucidated in Figure 1, the discretion procedure diagram, accompanied by annotations on the articles that form the basis of this discretion procedure.

Discretion is often criminalized in General Courts. Ideally, discretion should be exercised to meet its intended parameters, namely assessing public benefit rather than mere compliance with regulations (**not compliance with all regulations, but compliance for the public's benefit**). Such exercise of discretion must be accountable, not arbitrary, and devoid of any self-interest or personal desires in the discretionary actions taken.

Discretion can enter the realm of criminal law in cases of abuse of authority, specifically (Zaqiah Darojad, 2015):

1. Bribery (omkoperij)

Receiving or giving bribes. Discretion becomes a matter of criminal law when bribery is involved, for instance, decisions made due to an official receiving or giving something. Legal consequences include penalization of both the giver and receiver of bribes, and the discretionary decision can be annulled by an authorized official.

2. Fraud (kuntsgrepen)

Manipulating or other forms to illicitly gain benefits not based on legislation and law. For example, allocating budget or expenses in discretion for personal interests.

Personal accountability is required, and discretion cannot be automatically annulled but must be addressed by a superior official, official, or Administrative Court.

3. Coercion/threat (dwang)

Threatening and employing violence to unlawfully gain benefits or interests. For instance, spreading threats that directly or indirectly impact the issuance of a discretionary decision for personal gain. Personal accountability applies, and discretionary decisions cannot be automatically annulled but must be addressed by a superior official, official, or Administrative Court.

It must be carefully noted that administrative errors cannot be criminalized, as General Courts are not equipped to evaluate the policies of State Administration. If General Courts were to assess the policies of State Administration, it would place them above the executive institutions. Discretion is a form of administrative policy, and its legitimacy in terms of community welfare can only be assessed or tested by the Parliament or legislature. If the Parliament observes criminal indicators in a discretionary decision, it will be followed up by auditors or law enforcement agencies. The distinction in discretion causing state loss can be observed in two types:

1. Discretion leading to Administrative State Loss.

2. Discretion resulting in Criminal State Loss.

The distinction causing State Loss is found in Article 20 of Law No. 30 of 2014 (UUAP) and the Constitutional Court Decision No. 25 of 2016, which states that financial losses to the state are no longer perceived as potential (potential loss) or formal, but must be understood as having actually occurred or being tangible (actual loss), material. A criminal act termed as a material offense is an action deemed to have caused material damage and is regulated with punishment by law. Material offenses may fall under economic crimes such as fraud, money laundering, or theft. In this context, the material loss caused by such actions can take the form of money, goods, or other assets (Lumintang, 1997).

The distinction between the two types of discretion that result in state loss can be explained as follows:

1. Administrative State Loss due to Discretion.

This type of loss can occur due to error or miscalculation (dwaling), leading to (Alti Putra, 2021):

- a. Misuse of authority;**
- b. Administrative errors;**
Including errors in conditions and procedures.
- c. Errors in the technical substance of implementation.**

Administrative State Loss occurs as long as the agency and/or government official does not unlawfully receive anything in any form and does not accept illegal financial inflows. There is also no personal interest, personal initiative, promise, or expectation outside of official duty to obtain anything without valid documentation. Thus, the state loss is resolved administratively or through official responsibility, not through personal criminal accountability. The restitution of state losses is determined within 10 (ten) working days by the competent agency and/or government official. If the loss is due to a mistake in the execution of the duty, the responsible agency must reimburse the state loss.

2. Criminal State Loss from Discretion.

As outlined in articles 2 and 3 of the Anti-Corruption Law regarding mens rea or criminal intent in these articles. Regular courts are not authorized to review and judge administrative decisions of the state (no judgment on the efficiency of such decisions). Only Administrative Courts (PTUN) have the competence to assess and judge misuse of authority in administration. Criminal state loss occurs due to actions such as:

- a. Bribery (omkoperij);**

- b. Fraud (kuntsgrepen);**
- c. Coercion/threat (dwang).**

Criminal state loss happens when government bodies or officials unlawfully receive something or illegal income. This includes personal interest in acquiring, controlling, or obtaining something outside of official duties, on their own initiative, without valid legal documents. Repayment of state loss does not negate criminal liability.

In the context of legal distinctions, there is a notable difference between State Loss and State Financial Loss. Article 1 paragraph (22) of Law No. 1 of 2004 on State Treasury (UUPN) specifies that State/Regional Loss refers to a deficit of money, securities, and goods, quantifiable and certain in amount, resulting from unlawful actions, whether intentional or negligent.

"Unlawful" in this context does not exclusively pertain to criminal offenses but can also encompass administrative violations. Actual State/Regional Loss means the reduction of state-owned money, securities, and tangible goods. This can be substantiated by evidence of cash flow, bank accounts, cash reserves, and state bookkeeping, distinct from those of other legal entities. Proof of securities and goods loss is documented through ownership records in the name of the State/Institution/Ministry/Government. Definite State Loss implies clarity about the decrease in money, securities, and goods. Such a loss can be precisely calculated in terms of lost or diminished state-owned assets. This must be tangible, certain, and convincingly guaranteed (reasonable assurance) rather than based on imagination, assumptions, predictions, or potential.

In his journal explanation, Arfan concludes that redefining discretion in administrative law necessitates an orderly approach, despite a theoretical consensus that discretion cannot be arbitrarily exercised. This flexibility is also limited by the principles of administrative law and general principles of good governance. The foundation is the prohibition of abuse of authority and arbitrary actions. There are numerous formulations of the general principles of good governance (AUPB), which are the basis of discretionary authority, but in practice, these are not implemented by the authorities. The boundaries restricting state officials' authority to issue discretion are easily breached. The formulation of AUPB in positive law is evident in the establishment of Law No. 28 of 1999 on Corruption-Free, Collusion-Free, and Nepotism-Free State Administration (Anti-Corruption Law). Another formulation can be seen in the development of the Administrative Bill, indicating that the Government is part of the bureaucratic framework. The existence of this law can be a legal obstacle to the implementation of discretion as a control function to prevent the abuse of power (*detournement de pouvoir*/abuse of power). Furthermore, Arfan

suggests that law enforcement officials and legislators should restore space for the code of life outside the law to achieve principles of justice and utility in addition to certainty, which is part of the purpose of law. Positive law in the form of legislation cannot keep up with the dynamic movements of society or social development, leading to legislation that is always lagging and not a panacea for all problems. The arrangement of State Administrative Law (HAN) requires awareness not only as the formation or arrangement of a legal order consisting of structure, substance, and the culture of society, bureaucracy, and law enforcement (Muhlizi et al., 2012).

Consistent with Zaqiah's opinion in her journal, she concludes that discretion must be exercised in accordance with its meaning, limitations, and procedures as established in national administrative law. This represents a deviation from Law No. 30 of 2014 and the General Principles of Good Governance (AUPB) since the purpose of discretionary authority is for the public interest or community welfare (fairness and justice), and discretionary actions can be classified as misuse of duty. Acts of corruption occur when a government official acts with ill intent (*mens rea*) in making discretionary decisions, resulting in tangible financial loss to the state. Given that Indonesia adopts a system of power division, and the authority of discretion with clear boundaries and degrees of freedom within provincial administrative law, even requiring written reports to superiors. Following Zaqiah's suggestion, the government needs clearer regulations on violations in anti-corruption laws so that discretion exercised by government apparatus is properly conducted and fully supervised, consistently aligned with the intent and purpose of administrative law (Darojad, 2018).

In line with Lutfil Ansori's view in his journal, he argues that the concept of discretion is necessary to regulate ambiguities, particularly in terms of regulations. This action is taken in emergency situations, urgent scenarios, or extraordinary circumstances to achieve the public interest established by law. An emergency is an unexpected occurrence outside of the norm which requires swift resolution for the public good, and in the absence of specific laws or regulations, or only general regulations to address the issue. The public interest encompasses the interests of the state and nation, community welfare, and development in accordance with applicable laws and regulations. The General Principles of Good Governance (AUPB) serve as boundaries or indicators for the use of discretion. There are two types of responsibilities that arise from discretionary decisions: official duty and personal liability. Official duty applies when actions are taken in an official capacity (*ambtshalve*) and do not involve maladministration, while personal liability applies when actions are taken with elements of maladministration. If maladministration occurs in the execution of governmental duties, causing harm to citizens, then responsibility and legal action will be borne by the individual who committed the maladministration (Ansori, 2017).

Reviewing previous journal research, the author observes that to prevent the misuse of authority in discretionary actions, there is a heightened emphasis on the awareness of the responsible national administrative officials. This approach focuses on pursuing the principles of justice and utility, in addition to the principle of legal certainty, which are integral to the objectives of law. The General Principles of Good Governance (AUPB) and laws serve as legal boundaries, acting as control tools to prevent the abuse of power. However, there is a lack of further explanation, particularly regarding the distinction between official and personal responsibilities. Violations of legislation and administrative regulations do not necessarily constitute a criminal offense. Only when elements such as bribery (*omkoperij*), deception (*kuntsgrepen*), or coercion/threats (*dwang*) are found, do administrative sanctions apply. Criminal sanctions arise if any of these three elements are present. Contrasting the regulatory framework for discretion (extraordinary circumstances) with normal regulatory or legislative conditions is erroneous when considered in the context of criminality, even if state losses are involved. This is because it is an administrative matter, and the appropriate judicial body for decision and adjudication is the Administrative Court (PTUN). As per Article 20 paragraph (1) of the Administrative Law, supervision is conducted by the government's internal audit body (APIP), which is strengthened to monitor misuse of authority, detect potential risks in discretionary decision-making (risk mitigation in discretion). Administrative violations are a matter of official responsibility in an administrative capacity due to official relationships or the performance of official duties, whereas criminal violations are a matter of personal responsibility.

Officials should be cognizant of the factual basis (actual conditions) and specific legal grounds before making discretionary decisions. They must be able to specifically explain the rationale behind a discretionary decision, questioning whether the existing regulatory norms are unclear or non-existent. This should not be a general explanation such as for the public interest; instead, it must be valid, factual, and adequate, not fabricated or fictitious.

The massive development of information technology has seamlessly integrated into various aspects of life, often without explicit acknowledgment. Information technology, long present in everyday household devices like microwaves, refrigerators, televisions, and others, functions as an operating system. It manages data traffic, processing memory, storage allocation, and more. The transformation brought about by information technology extends beyond the realms of economics, business, security, and defense. It also optimizes the legal field, resulting in high-efficiency levels, enhanced accuracy, and reduced human error. This is exemplified by the Supreme Court's adoption of an Electronic Court System (E-Court), which significantly facilitates the process for justice seekers in court proceedings.

The advancement of information technology has significantly altered the way

we live and work. Over the past few decades, information technology has seen rapid development due to increases in various aspects:

1. **Advancements in computing** (H & Sartika, n.d.).
Faster and more powerful computers, along with improved network infrastructure, facilitate quicker data processing and the development of more sophisticated applications.
2. **Developments in internet networks** (I Gede Putu Rahman Desyanta, 2023).
Faster and more expansive internet networks enable quicker and easier access to information and more effective collaboration.
3. **Improvements in algorithms** (Budiman et al., n.d.).
The development of more sophisticated algorithms allows for better data analysis and quicker, more accurate decision-making.
4. **Significant investments from corporations and governments** (Roes Setiyadi & Utana Zahera, 2023).
Both corporations and governments have made substantial investments in information technology to enhance efficiency and productivity.

These factors have motivated the author, as an observer of technology and law, to advocate for the use of integrated information technology as a means to catch up with legal advancements amidst societal evolution. This aligns with the function of law to serve the needs of society. Improving the quality of policies, particularly in the realm of discretion through a screening process, helps to minimize conflicts of norms (configere normen) and abuse of authority leading to corrupt actions.

Information Technology, at its initial stage, processes and generates recommendations on whether a decision to be made contradicts the Principles of Good Public Administration (AUPB). It involves comparing potential losses and benefits, and contrasting with existing laws to identify any potential legal conflicts. Furthermore, it assesses the potential for state loss (potential loss), ensuring that the loss, damage, or decrease in state-owned property is realistically and definitively determined (actual loss).

Information Technology is highly capable of being used as a tool to measure potential state losses through the following methods (Afifah, 2019):

1. **Data Analysis.**
Utilizing data analysis algorithms and big data technology (data gathered from various sources, with large capacity and high complexity, processed using data analysis tools for digital computing purposes) to collect,

analyze, and evaluate data related to discretionary decisions and potential state losses.

2. Simulation Modeling.

Using simulation modeling systems to predict potential state losses and evaluate the impact of various possible scenarios.

3. Monitoring System.

Developing a monitoring system that can observe and audit government activities conducted under discretion, such as budget expenditure, decision-making, and procurement of goods and services.

4. Risk Management System.

Employing a risk management system that can evaluate and measure potential state losses that may arise from discretionary decisions.

5. Automation System.

Creating an automation system to streamline the processes involved in discretion and facilitate oversight of these processes.

Information technology can be utilized as an effective tool for monitoring and control in assessing potential state losses. However, it cannot entirely guarantee the accuracy of the analysis results obtained. This is due to the fact that the outcome of the analysis can be influenced by the quality of the data used, the methodologies applied, and the limitations of the technology employed. Therefore, stringent oversight by the relevant authorities is required to ensure that the results of the analysis are reliable and accountable.

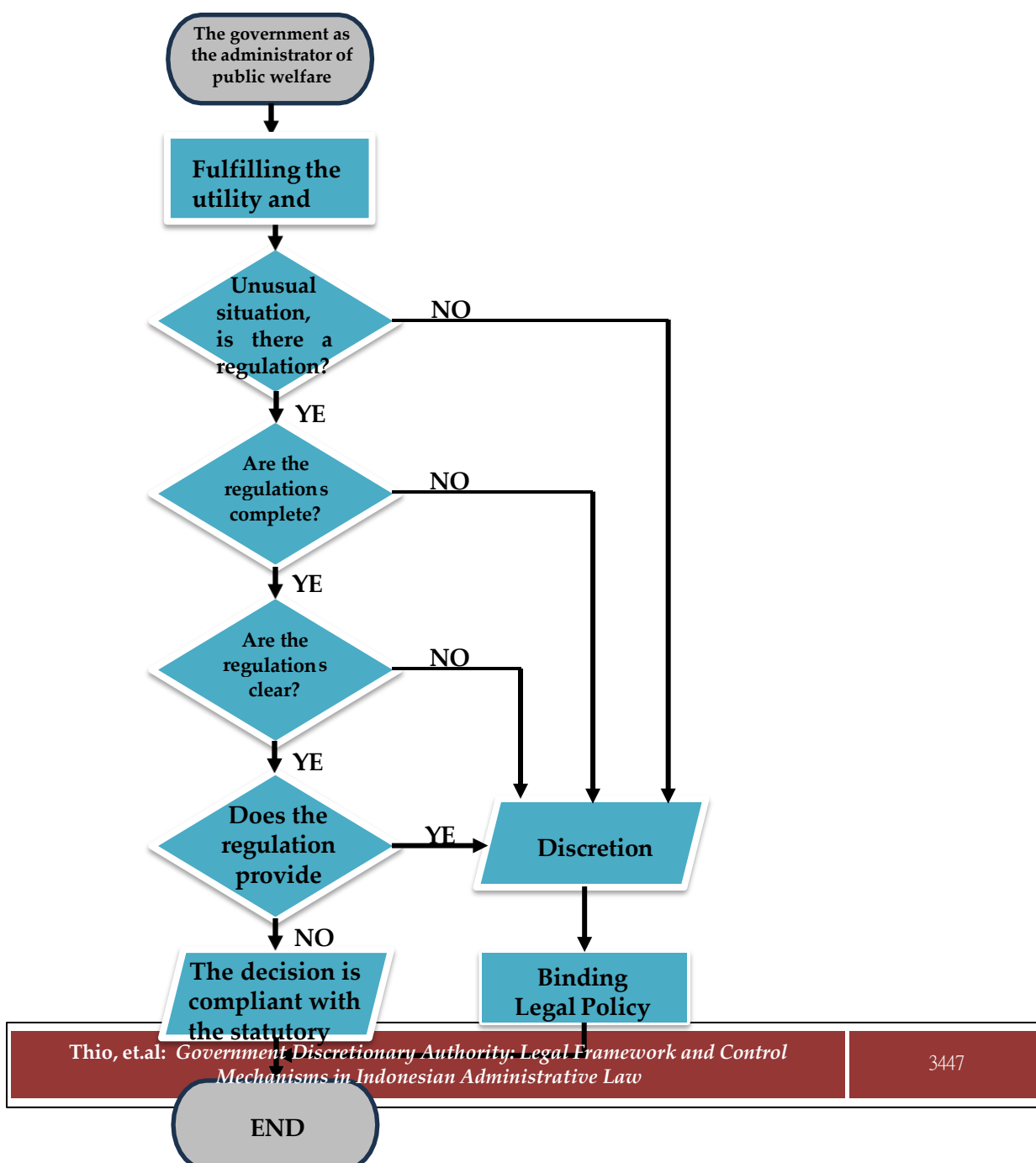
The explanation regarding discretion will be illustrated through a flow diagram, as an initial step to create an automation system aimed at minimizing procedural errors in identifying and detecting high-risk conditions. This is done before making a discretionary decision, which is a decision not strictly bound by rules and not necessarily requiring specific reasons.

The flow diagram of governmental administrative discretion, as depicted in figure 2, outlines the process undertaken by the government to address situations not governed by existing regulations, with the goal of fulfilling public utility and interest. The steps illustrated in this flow diagram are as follows:

- 1. The government as an implementer of public welfare;**
- 2. Aiming to fulfill public utility and interest;**
- 3. The existence of extraordinary situational conditions;**

4. If there are no regulations governing it, then discretion is applied;
5. If regulations exist, they are reviewed for completeness; if incomplete, discretion is applied;
6. If the regulations are complete, their clarity is examined; if unclear, discretion is applied;
7. If the regulations are clear, it's assessed whether they offer choices; if so, discretion is applied;
8. If not, policies are made in accordance with applicable laws.
9. Such discretion can be enveloped within legislation to form binding policies.

Figure 2: Flow Diagram of Discretion



Discretion, which is the authority granted to government officials, wherein the government, as the provider of general welfare, is empowered to make decisions in situations not covered by existing regulations (Maz, 2019). This provides flexibility in responding to changing situations and addressing emerging issues. The discretion flowchart analyzes based on the following sequence of algorithms:

1. Problem Identification

Government officials recognize the existence of a problem that needs to be addressed.

2. Alternative Assessment

Government officials evaluate various available solution options.

3. Decision

Government officials make a decision on the best solution for the problem.

4. Implementation

Government officials implement the decision taken.

5. Evaluation

Government officials evaluate the results of the decision's implementation.

The flowchart in Figure 2 also shows that the government prioritizes the application of existing regulations. However, in extraordinary conditions, discretion is used as the last option if the existing regulations are incomplete, unclear, and provide choices for exercising discretion. All data sources, both internal and external, can be combined and utilized in the decision-making process of discretion. Internal data sources can be derived from the agency's internal systems, such as transaction systems, legislation, General Principles of Good Governance (AUPB), and General Principles of State Administration (AUPN).

External data sources come from external sources, like market data, economic data, or demographic data. This data can be obtained from various sources, such as government institutions, private organizations, or websites that provide open data. However, handling very large and complex data requires special technology known as big data. Big data can be used to analyze vast and complex data, extract relevant information, and provide support for better discretionary decision-making. Ultimately, discretion must be exercised with professionalism, without harming the public interest, and with high transparency and accountability.

4. Conclusion

The evaluation of discretion centers on the extent of benefit it provides to the broader community, especially in extraordinary circumstances, aiming to minimize harm while maximizing welfare. Despite the adage "policy cannot be judged," discretion must not be exercised arbitrarily. Instead, it should adhere to specific guidelines, including serving the public interest over profit motives. Principles such as caution, precision, and accountability must guide the exercise of discretion, ensuring compliance with good governance standards.

Discretion highlights that unconventional situations in State Administration cannot be addressed by ordinary measures but require emergency responses. In urgent or emergency conditions, a distinct legal administrative system is activated, which entails unique regulations and mechanisms, diverging from those applicable in normal or standard situations. Concern arises when discretionary actions potentially lead to criminal liabilities, emphasizing the necessity to exhaust civil law and administrative remedies. For instance, administrative errors should be optimally addressed under the administrative law, specifically referring to Article 20 of Law No. 30/2014, to effectively and efficiently restore financial losses to the state, provided that the discretionary policy makers do not engage in illegal activities like bribery, fraud, or coercion.

Internal government oversight, carried out by Government Internal Supervisory Apparatus (APIP), focuses not on law enforcement but on monitoring through auditing, evaluation, monitoring, and risk mitigation, including support, prevention, limitation, and direction. The legal implications in terms of criminal responsibility for officials who issue discretionary policies are significant, especially if they are suspected of engaging in criminal acts or violating criminal regulations, as stipulated in Law No. 20/2001 on Amendments to Law No. 31/1999 on the Eradication of Corruption Crimes.

Assessing the state and financial losses due to discretionary decisions involves several analytical methods, including:

- 1. Financial performance analysis**

Assessing the nation's financial reports, like balance sheets, profit and loss statements, and cash flow reports, to gauge the financial loss suffered.

- 2. Public opinion surveys**

To measure the satisfaction or dissatisfaction of the public with the government's discretionary decisions.

- 3. Socio economic impact analysis**

Evaluating the effects of discretionary decisions on community welfare, unemployment, and economic growth.

- 4. Internal auditing**

Evaluating the discretionary decisions and identifying potential issues.

5. Legal analysis

Ensuring that discretionary decisions comply with existing regulations.

The utilized formulas must align with the context and purpose of the analysis in evaluating the performance and execution of discretion. The use of information technology as a tool in legal phenomena aims to unearth new legal concepts or regulatory methods, not just explanations but a reconstruction of the law. When applied in state administrative governance, information technology becomes significantly beneficial if accompanied by a mental revolution among officials, reaffirming that the state is an instrument of the people's will, aimed at achieving its primary goal: welfare.

Equally important is strengthening the administrative law system, as done in developed countries, rather than focusing solely on criminal law. This approach ensures that the government's efforts to reinforce national objectives, particularly welfare and social justice, are effectively implemented. This noble goal is a fundamental duty of state administration

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