

Assessing the Limits of Ministerial Discretion and Its Legal Accountability from the Perspective of Administrative Law

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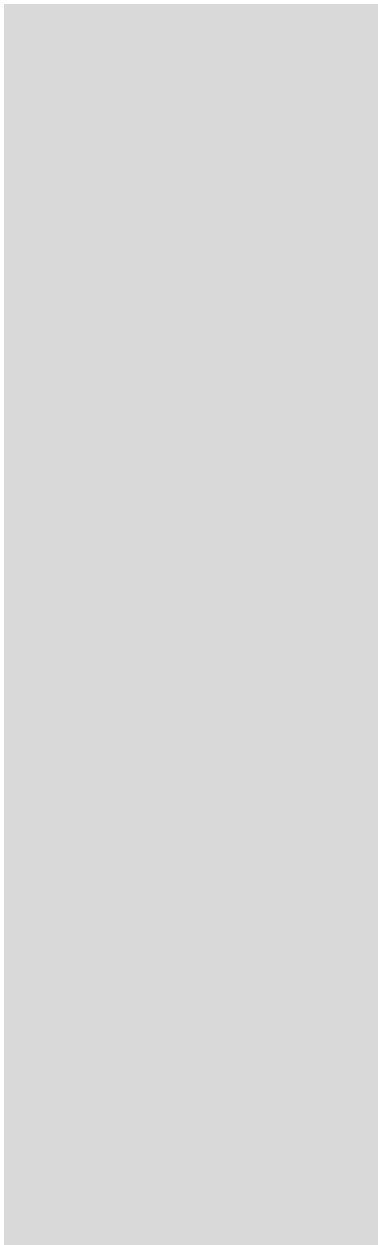
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Abstract

The dynamics of modern governance require public officials, including ministers, to exercise discretion in addressing concrete administrative problems that statutory provisions cannot fully anticipate. However, without clear legal limits and accountability mechanisms, such discretion may create risks of abuse of authority. This study examines the legal boundaries of ministerial discretion and the forms of accountability arising from its exercise. It employs normative legal research using statutory and conceptual approaches, with legal materials analyzed through systematic legal interpretation and conceptual analysis. The findings indicate that ministerial discretion is a lawful administrative instrument exercised within the authority attached to ministerial office, rather than an unrestricted freedom to determine policy. Its exercise must comply with the principle of legality, the purpose for which authority was conferred, objective grounds, the General Principles of Good Governance, good faith, the absence of conflicts of interest, and the prohibition of abuse of authority. Accountability requires distinguishing responsibility attached to public office from personal responsibility for misconduct, while allowing for administrative, political, civil, or criminal consequences where the relevant legal requirements are satisfied. In particular, abuse of authority under administrative law does not automatically constitute a criminal offense; criminal liability requires proof of the statutory elements of an offense. Administrative oversight and judicial review serve to scrutinize and correct unlawful discretionary acts without unnecessarily restricting lawful decision-making. This study contributes an analytical framework linking the legal validity of ministerial discretion to the appropriate forms of accountability, thereby clarifying the distinction between lawful discretion, abuse of authority, and criminal liability.



1. Introduction

The dynamics of modern governance require flexibility in decision-making by public officials. The complexity of social, economic, and political problems often cannot be fully addressed by statutory provisions that are general and abstract in nature. This condition requires government officials to have a certain degree of freedom in decision-making to ensure the effectiveness of government administration. In administrative law, this space of freedom is known as discretion. Discretion serves as an important instrument that enables government officials to take administrative action when existing regulations do not provide adequate rules for a concrete problem (Ridwan H. R, 2006).

The concept of discretion in administrative law is basically related to the idea of *freies ermessen*, namely the freedom of administrative officials to determine a course of action within the limits of applicable law. This doctrine developed in the European administrative law tradition as a response to the needs of government that have become increasingly complex and cannot always be regulated in detail by legislation. In practice, discretion is understood as an authority that enables government officials to make decisions in situations where the law provides choices, does not regulate clearly, or where there is a legal vacuum that requires immediate resolution (Hadjon et al., 2007).

The regulation of discretion in the Indonesian legal system is explicitly provided in Law Number 30 of 2014 concerning Government Administration. This law provides a legal basis for government officials to exercise discretion in order to facilitate government administration, fill legal vacuums, provide legal certainty, and overcome governmental stagnation in the public interest. Discretion, therefore, is not merely freedom without limits, but an administrative authority whose use must remain within the framework of administrative law.

In the context of ministers, the use of discretion must be situated within the authority relationship between the President and ministers, who serve as assistants to the President in administering certain governmental affairs. Ministerial authority does not arise as personal authority, but as official authority exercised within the framework of the President's governmental power. Therefore, the space for ministerial discretion must be understood as part of the exercise of authority derived from delegated authority in a particular field of government. On the basis of such authority, a minister may use discretion as long as it is intended to address concrete problems in government administration and continues to meet the requirements of administrative law, namely conformity with the purpose of discretion, consistency with statutory provisions, conformity with the General Principles of Good Governance, objective reasons, absence of conflict of interest, and good faith (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945; Undang-Undang Nomor 39 Tahun 2008; Undang-Undang Nomor 30 Tahun 2014)..

The granting of discretionary authority to government officials has significant implications for the practice of government administration. Discretion enables officials to make decisions more quickly and adaptively in response to changing social conditions. The development of the welfare state also expands the government's role across various sectors of social life, thereby increasing the need for the use of discretion (Wahyudi, 2017). Government officials often face situations in which the available legal provisions are insufficient to address urgent public policy needs. This condition makes discretion an important instrument in ensuring the continuity of public services and the effectiveness of administrative governance (Iskandar & Dharmawan, 2022).

In practice, however, the use of discretion does not always proceed without problems. The freedom granted to government officials may create the potential for abuse of authority in the absence of clear supervisory mechanisms and legal

limitations. Administrative law recognizes the concept of abuse of authority, which may occur when an official exceeds authority, misuses authority, or acts arbitrarily in carrying out administrative functions (Muchsan, 1992). This potential abuse creates the need to affirm the limits of discretion so that it does not conflict with the principle of the rule of law.

Developments in government practice in Indonesia show that the use of discretion often lies in a sensitive area between administrative policy and potential legal violation. In several cases, policies adopted by government officials through the exercise of discretion have led to legal proceedings that raise debates over the boundary between administrative policy and unlawful conduct. This phenomenon raises concerns about the criminalization of policy, which is essentially an administrative action within the framework of government administration (Wahyudi, 2017). The discourse on the limits of discretion and the accountability of officials has therefore become increasingly relevant in this context.

Several government policies that have attracted public attention show how discretion may arise in administrative policy practice. The policy on the determination and distribution of hajj quotas, for example, often involves administrative decisions that require government policy considerations. The administration of the hajj pilgrimage in Indonesia involves various administrative aspects, such as quota management, service allocation, and the regulation of priority departure for pilgrims (Rahmadhani et al., 2025). The complexity of this management places the government, particularly the minister responsible for hajj administration, in an important position to make administrative decisions that may require the use of discretion (Amirullah et al., 2025).

Another illustration can be found in economic policies involving administrative decisions by the government in the trade and import sectors. On several occasions,

policies adopted by government officials to maintain economic stability or protect national interests have raised debates over the boundary between administrative policy and potential abuse of authority (Pardamean, 2024). These debates show that discretion exercised by government officials often occupies a complex position. On the one hand, it is necessary to maintain the effectiveness of public policy. On the other hand, it must remain subject to the principles of administrative law (Bovens et al., 2014).

Several previous studies have discussed discretion from the perspective of administrative law. Krishna Djaya Darumurti, in his article titled *Perspektif Filosofis Konsep Kekuasaan Diskresi Pemerintah [A Philosophical Perspective on the Concept of Governmental Discretionary Power]*, explains that discretion arises from the inability of law to regulate all concrete situations in detail, thereby requiring the government to have room to act in order to achieve governmental objectives (Darumurti, 2014). Another study by I Gusti Ayu Apsari Hadi, in the article *Pertanggungjawaban Pejabat Pemerintahan dalam Tindakan Diskresi Pasca Berlakunya Undang-Undang No. 30 Tahun 2014 tentang Administrasi Pemerintahan [Accountability of Government Officials in Discretionary Actions after the Enactment of Law Number 30 of 2014 concerning Government Administration]*, emphasizes that the use of discretion must meet the limits determined by law, including conformity with the purpose of discretion, statutory provisions, and the general principles of good governance (Hadi, 2017).

A study on the implementation of discretion was also conducted by Andi Wahyudi in the article *Problematizations of Discretion Policy in Indonesia's Administration Law Number 30 of 2014*, which highlights the tension between the need for flexibility among government officials in making decisions and the rigidity of administrative rules and procedures that may limit the effectiveness of discretion

(Wahyudi, 2017). These studies have contributed to explaining the concept of discretion, its philosophical foundation, and its implementation problems in government administration. However, these studies have not specifically examined the relationship between the limits on the exercise of discretion and the framework of legal accountability for ministers. Ministers occupy a distinct institutional position as assistants to the President while exercising administrative authority in particular areas of government. This position places ministerial discretion at the intersection of official authority, policy considerations, and legal responsibility, which cannot be fully explained through general studies of discretion exercised by government officials. This issue is particularly important because the assessment of ministerial discretion requires a distinction between lawful administrative actions, abuse of authority, and conduct that may give rise to criminal liability. To address this research gap, this study specifically examines the limits of ministerial discretion by analyzing the relationship among the legal basis of authority, the requirements governing the exercise of discretion, and the forms of legal accountability arising from its exercise. The contribution of this study lies in clarifying the relationship between the legal limits of discretion and the mechanisms of ministerial accountability to distinguish the legal consequences of lawful and unlawful exercises of discretion.

Based on the foregoing, this study further examines ministerial discretion in government administration from the perspective of administrative law. This study analyzes the concept of discretion in administrative law, the limits on the use of discretion by ministers in exercising their authority, and the forms of accountability that may be imposed on ministers for the exercise of such discretion. This study is expected to contribute to clarifying the limits of discretion exercised by government officials and to strengthening the framework of legal accountability in government administration based on the principle of the rule of law.

2. Research Method

This study employs normative legal research, using statutory and conceptual approaches to examine the limits of ministerial discretion and the forms of accountability arising from its exercise from the perspective of administrative law. The statutory approach involves examining the 1945 Constitution of the Republic of Indonesia; Law Number 39 of 2008 concerning State Ministries, as amended by Law Number 61 of 2024; Law Number 30 of 2014 concerning Government Administration, as amended by Law Number 6 of 2023; and Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Proceedings in the Assessment of Elements of Abuse of Authority. The analysis of the limits of criminal liability also takes into account Article 604 of Law Number 1 of 2023 concerning the Criminal Code and Constitutional Court Decision Number 25/PUU-XIV/2016. The conceptual approach is used to examine the doctrine of discretion, the sources of governmental authority, the General Principles of Good Governance (AUPB), abuse of authority, and the distinction between responsibility attached to public office and personal responsibility. Primary legal materials comprise legislation and court decisions, while secondary legal materials include books, scholarly journal articles, and relevant research findings. Legal materials are selected based on their relevance to the research questions, the authority of their sources, and the applicability of the law during the period under examination. These materials are then analyzed qualitatively through systematic interpretation of legal norms and conceptual analysis of administrative law doctrines to establish the limits of lawful discretion and the forms of ministerial accountability.

3. Results and Discussion

A. The Concept of Discretion in Administrative Law

Discretion is a fundamental concept in administrative law that concerns the freedom of action available to government officials when exercising their authority. In

the practice of government administration, statutory provisions are not always capable of providing detailed regulation for every concrete problem that arises in society. This condition often places administrative officials in situations that require prompt administrative decision-making to ensure the continuity of public services (Wahyudi, 2017). Therefore, administrative law provides space for government officials to exercise discretion as a decision-making instrument when legal norms do not adequately regulate a concrete problem.

In the construction of governmental authority, discretion cannot be understood as an action that stands alone. It arises from official authority and is then manifested as the exercise of governmental authority. Such authority may derive from attribution, delegation, or mandate in accordance with the structure of authority under administrative law. In the context of ministers, the official authority that serves as the basis for the use of discretion is exercised within the authority relationship between the President and ministers, because ministers are positioned as assistants to the President in administering certain governmental affairs. Thus, ministerial discretion must be understood as a form of exercised on the basis of legally established ministerial authority within the framework of the President's executive power, not as the personal freedom of officials. Therefore, the legality of discretion must be traced from the source of authority, the limits of office, the purpose of granting authority, and the conformity of the action with the principles of administrative law (Hadjon et al., 2007).

The concept of discretion in modern administrative law literature is often associated with the doctrine of *freies ermessen*, namely the freedom of action possessed by administrative officials to determine a course of action within certain limits permitted by law. This doctrine developed within the European administrative law tradition in response to the needs of modern government, which have become

increasingly complex and dynamic (Eliantonio & Marique, 2023). In contemporary administrative law scholarship, this concept is also understood as a form of administrative policy space that remains within the framework of legal control and public accountability. Therefore, the freedom of action possessed by administrative officials cannot be separated from supervisory mechanisms over governmental action. *Freies ermessen* essentially provides administrative officials with space to use their professional judgment in determining the most appropriate action in the public interest when the law does not provide complete regulation (Tagle, 2024). This concept later developed in various modern administrative law systems as a theoretical basis for the use of discretion in governmental action.

The development of the concept of discretion is also inseparable from the transformation of the state's role in the model of the administrative state or the modern administrative state. In the modern state, the government no longer merely performs a regulatory function, but also plays an active role in providing public services, managing economic development, and ensuring social welfare. The expansion of governmental functions often places the government in administrative problems that cannot be fully regulated in detail through statutory provisions (Ridwan H. R, 2006). In such situations, discretion serves as an instrument that enables the government to respond to public problems more flexibly without waiting for amendments to existing legal norms.

Although discretion provides flexibility for government officials, it must remain within the framework of the principle of legality, which serves as the main basis for government administration under the law. The principle of legality affirms that every governmental action must have a valid legal basis and must not be carried out arbitrarily. Discretion is not an absolute freedom for government officials, but rather part of the administrative authority granted by law to overcome the limitations of

normative regulation in statutory provisions (Hadjon et al., 2007). Thus, the use of discretion must remain directed toward the purpose for which the authority was granted and must not deviate from the principle of the rule of law.

In the Indonesian administrative law system, the regulation of discretion has a clear normative basis through Law Number 30 of 2014 concerning Government Administration. This law defines discretion as a decision and/or action taken by government officials to address concrete problems in government administration when statutory provisions provide choices, do not regulate, are incomplete or unclear, or when governmental stagnation occurs. This regulation shows that discretion is explicitly recognized as part of an administrative law mechanism needed to maintain the effectiveness of government administration.

In addition to providing a definition, the Government Administration Law also sets out the purposes for using discretion in government practice. Discretion is intended to facilitate government administration, fill legal vacuums, provide legal certainty, and overcome governmental stagnation in the public interest. This provision affirms that discretion is not merely freedom of action for government officials, but a legal instrument designed to ensure that government continues to function effectively in facing various administrative problems that arise in the practice of government administration (Hadi, 2017).

The use of discretion in government practice must also take into account various principles that have developed in administrative law, particularly the General Principles of Good Governance. These principles serve as normative standards that guide the exercise of administrative authority so that it remains consistent with the principles of justice, legal certainty, and propriety in government administration (Zaelani et al., 2019). Through these principles, the use of discretion is expected to

remain within the legal corridor and not develop into arbitrary action by government officials.

From an administrative law perspective, discretion is also closely related to the concept of abuse of authority. Abuse of authority may occur when government officials use their authority for purposes inconsistent with the purpose for which the authority was granted or exceed the limits of the authority they possess. In the context of discretion, the potential for abuse of authority often arises when the policy space afforded to government officials is not accompanied by adequate supervisory mechanisms (Luthfi, 2024). Therefore, discretion is always related to the need for an accountability system in government administration.

Academic discourse on discretion shows that discretion often occupies a dilemma. On the one hand, discretion is needed to ensure governmental flexibility in responding effectively to public problems. On the other hand, excessively broad discretionary space may also create the potential for abuse of authority in the absence of clear legal limitations. This debate shows that discretion is not only related to administrative authority, but also to mechanisms of control and accountability in government administration (Bovens et al., 2014).

The understanding of discretion as an administrative authority that provides flexibility for government officials shows that its use cannot be separated from the need to maintain a balance between the effectiveness of government administration and compliance with the principles of administrative law. Within this framework, the important issue to analyze is how the limits on the use of discretion are formulated and applied in the administrative law system, especially when such authority is exercised by high-ranking government officials, such as ministers.

B. Limits on the Use of Ministerial Discretion

The use of ministerial discretion in governmental action cannot be separated from the source and limits of official authority that serve as the basis for its exercise. In a presidential system of government, ministers are positioned as assistants to the President in administering certain governmental affairs. This position shows that ministerial authority does not stand alone, but is exercised within the framework of the President's governmental power. Therefore, the first limit on the use of ministerial discretion lies in the scope of authority granted or delegated to ministers. Ministerial discretion can only be justified when it is used within the scope of governmental affairs under the minister's authority, is consistent with the purpose for which the authority was granted, and remains within the framework of the principle of legality. In this context, the principle of legality functions as a control mechanism to prevent discretion from turning into arbitrary action or abuse of authority (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945; Undang-Undang Nomor 39 Tahun 2008; Undang-Undang Nomor 30 Tahun 2014).

Within the framework of administrative law, discretion is a form of authority that arises from the limitations of general and abstract legal rules. Statutory provisions are not always capable of providing detailed regulation for every concrete problem faced by the government in the practice of government administration. Therefore, administrative officials are given a certain space to make decisions based on policy considerations, as long as they remain within the applicable legal corridor (Hadi, 2017). However, such policy space cannot be understood as freedom without limits, because the use of discretion must remain subject to various legal provisions governing administrative authority (Hadjon et al., 2007).

The limits on the use of discretion in the Indonesian legal system are normatively regulated under Law Number 30 of 2014 concerning Government Administration. This law not only recognizes discretion as an instrument of governmental action, but

also establishes various requirements that must be fulfilled in its use. These provisions affirm that discretion may be used only to facilitate government administration, fill legal vacuums, provide legal certainty, and overcome governmental stagnation in the public interest. Thus, the use of discretion must always be directed toward achieving the objectives of government administration and must not be used for interests that deviate from the governmental function itself.

In addition to the purposes of using discretion, the Government Administration Law also establishes several requirements that government officials must fulfill when exercising discretion. The use of discretion must be based on objective reasons, must not conflict with statutory provisions, and must be carried out in good faith in the public interest (Syafri et al., 2023). These provisions show that the use of discretion is assessed not only by the result of the decision taken, but also by the decision-making process carried out by government officials. Therefore, the procedures and considerations used in making a decision become important factors in determining whether the exercise of discretion can be legally justified.

The use of discretion in government practice is permissible only under certain conditions that are normatively determined by statutory provisions. Article 23 of Law Number 30 of 2014 concerning Government Administration provides that discretion may be used when statutory provisions provide policy choices, do not explicitly regulate a particular issue, regulate it incompletely or unclearly, or when governmental stagnation occurs and has the potential to obstruct government administration. These conditions show that discretion is not intended as a substitute for law, but as an instrument to overcome the limitations of normative regulation in concrete situations requiring immediate administrative action (Mahfiana & Lisma, 2021). Thus, the use of discretion must always be linked to the need to maintain the

effectiveness of government administration without disregarding the principles of administrative law.

In addition to being limited by the conditions of its use, discretion must also follow certain procedures intended to ensure that the administrative decision taken remains legally accountable. Article 24 of the Government Administration Law affirms that the use of discretion must be based on objective reasons, carried out in good faith, free from conflict of interest, and not contrary to applicable statutory provisions. In the context of high-ranking government officials such as ministers, the administrative considerations underlying the use of discretion must also be rationally explainable as part of the public policy-making process. This regulation shows that discretion is not only related to the authority to make decisions, but also to the obligation of government officials to account for the basis of the considerations used in making such administrative decisions (Sadat, 2020).

The limits on the use of discretion are also closely related to the application of the General Principles of Good Governance as normative standards in government administration. These principles serve as guidelines for the exercise of administrative authority, ensuring that it remains consistent with the values of justice, legal certainty, and propriety in governmental action. The application of the General Principles of Good Governance is especially important in situations where government officials must exercise discretion to make decisions not explicitly regulated by statutory provisions (Zaelani et al., 2019). Under such conditions, these principles serve as ethical and legal guidelines that direct the exercise of discretion to remain within the framework of good governance.

In government administration, the application of the General Principles of Good Governance in the exercise of discretion is also related to the principle prohibiting the abuse of authority. Abuse of authority may occur when government officials use their

authority for purposes inconsistent with its purpose or exceed the limits of their authority (Luthfi, 2024). In the context of discretion, the potential for abuse of authority often arises when the policy space held by government officials is not balanced by adequate supervisory mechanisms. Therefore, the principle prohibiting the abuse of authority is an important instrument for limiting the use of discretion in governmental action.

The limits on the use of discretion are also related to the obligation of government officials to account for every administrative decision they make. In the modern administrative state, the authority held by public officials is always accompanied by a demand for accountability for its use. Every governmental action must be accountable to society administratively, legally, and politically (Bovens et al., 2014). Therefore, the use of discretion is assessed not only in terms of authority, but also in terms of government officials' ability to explain the basis for the considerations that informed the decision.

In the context of high-ranking government officials, such as ministers, the limits on the use of discretion become increasingly important because their decisions often have broad impacts on public policy. Ministers, as part of government administration, have strategic authority to formulate and implement policies in certain sectors. Therefore, the use of ministerial discretion must remain within the framework of administrative law and observe the principles of good governance (Wahyudi, 2017). Such broad authority cannot be understood as freedom to make decisions without limits, but as authority that must be exercised responsibly within the applicable legal system.

Developments in government practice also show that debates over the limits of discretion often arise when administrative decisions made by government officials are considered to have the potential to cause losses to the state or society. In such

situations, the assessment of the exercise of discretion is carried out not only from the perspective of public policy, but also from the perspectives of administrative law and criminal law. This condition shows that the limits of discretion are not only related to administrative authority, but also to mechanisms of legal accountability for governmental action.

Based on the foregoing, the use of discretion in governmental action must always be placed within a clear framework of legal limits. The principle of legality, the provisions of the Government Administration Law, and the application of the General Principles of Good Governance are important instruments for ensuring that discretion does not become a form of abuse of authority by public officials. In this context, the discussion of the limits of discretion cannot be separated from the issue of legal accountability for the exercise of discretion by government officials, which is an important aspect in assessing the legitimacy of administrative action within the administrative law system.

The use of ministerial discretion cannot be limited solely to the fulfillment of formal requirements set out in statutory provisions, but must also be viewed from the substantive limits attached to the purpose for which the authority was granted. Procedural limits relate to the fulfillment of administrative stages, objective reasons, the absence of conflict of interest, and good faith in decision-making (Hadi, 2017). Substantive limits are related to the conformity of the content of discretionary decisions with the public interest, the purpose of authority, the General Principles of Good Governance, and the prohibition of abuse of authority (Zaelani et al., 2019). Ministerial discretion is not only tested from the aspect of whether an authorized official took the decision, but also whether the decision was used rationally, proportionally, and in accordance with the purpose for which the authority was granted (Darumurti, 2014; Ridwan, 2009).

These limits are important because ministerial authority generally operates within a policy space that has broad societal impacts (Bovens et al., 2014). Ministerial decisions not only produce internal administrative consequences, but may also affect the distribution of public services, the use of state finances, and the direction of certain sectoral policies (Sadat, 2020). The broader the consequences arising from an exercise of discretion, the stronger the need to assess the basis of authority, procedures, objective reasons, and accountability of the decision (Bovens et al., 2014; Luthfi, 2024). In this position, ministerial discretion must be understood as functional authority attached to the office, not as the personal freedom of officials to determine policy (Darumurti, 2014; Sadat, 2020).

Another limit that must be emphasized is the prohibition of abuse of authority. In administrative law, abuse of authority may be understood as exceeding authority, using authority outside its intended scope, or acting arbitrarily (Luthfi, 2024). Exceeding authority occurs when a decision or action is taken beyond the time, territorial, or legal limits that form the basis of authority. Using authority outside its intended scope occurs when a decision is taken outside the field of authority or contrary to the purpose for which the authority was granted. Arbitrary action occurs when a decision is taken without a legal basis of authority or contrary to a court decision that has obtained permanent legal force.

This construction shows that ministerial discretion cannot be invoked to justify every policy adopted in the name of the public interest (Wahyudi, 2017). Discretion only gains legitimacy when it is exercised within a valid scope of authority, based on objective reasons, free from conflict of interest, and directed toward resolving concrete problems in government administration (Hadi, 2017; Ridwan, 2009). Discretion used outside the purpose of authority or contrary to the General Principles of Good Governance may lose its administrative legitimacy and open the way for legal

accountability review (Luthfi, 2024; Zaelani et al., 2019). The assessment of deviations in the use of discretion must first be situated within the framework of administrative law, so that not every administratively flawed policy is immediately understood as a criminal act (Wahyudi, 2017).

The affirmation of the limits of ministerial discretion ultimately shows that discretion and accountability are two inseparable concepts (Bovens et al., 2014; Sadat, 2020). Discretion is necessary to maintain the effectiveness of government administration, but its use must always be tested in terms of authority, procedure, substance, purpose, and legal consequences (Darumurti, 2014; Hadi, 2017). The space for freedom of action granted to ministers must remain within the framework of the rule of law, the General Principles of Good Governance, and public accountability (Bovens et al., 2014; Zaelani et al., 2019). After the limits on the use of ministerial discretion have been formulated, the next discussion should focus on the forms of ministerial accountability for its exercise (Luthfi, 2024; Sadat, 2020).

C. Ministerial Accountability for the Exercise of Discretion

Ministerial accountability for the exercise of discretion is a direct consequence of the attachment of public authority to governmental office (Ridwan H. R, 2006; Luthfi, 2024). Because ministerial discretion is exercised within the scope of authority granted or delegated in the administration of certain governmental affairs, the assessment of accountability must begin with the relationship between office, source of authority, action, and the legal consequences arising from it. If discretion is exercised within a valid scope of authority, in accordance with the purpose for which the authority was granted, and directed toward governmental interests, then accountability initially attaches to the office. However, if discretion deviates from the purpose of authority, involves a conflict of interest, or is exercised arbitrarily, accountability may shift to the personal responsibility of the official. This principle is consistent with the idea that

there is no authority without accountability, because every exercise of governmental authority always creates legal consequences for the official who exercises it.

The position of ministers as government officials differs in character from that of administrative officials at the technical level (Hadi, 2017). Ministers do not merely perform administrative functions in a particular field but also lead the administration of strategic and sectoral governmental affairs. This position places the exercise of ministerial discretion at the intersection of administrative authority, public policy, and political responsibility in government (Bovens et al., 2014; Wahyudi, 2017). Ministerial accountability in the exercise of discretion, therefore, cannot be understood solely as personal responsibility, but must be examined through the relationship among office, authority, action, and the legal consequences arising from them (Luthfi, 2024; Setiawan & Asyikin, 2020).

The distinction between official responsibility and personal responsibility is fundamental in assessing the exercise of ministerial discretion (Luthfi, 2024; Setiawan & Asyikin, 2020). Official responsibility arises when discretion is exercised for and on behalf of the office, within a valid scope of authority, and for the purpose of carrying out governmental functions (Hadi, 2017; Setiawan & Asyikin, 2020). Personal responsibility arises when the exercise of discretion contains elements of maladministration, abuse of authority, conflict of interest, or deviation from the purpose for which the authority was granted (Luthfi, 2024). This distinction is important to ensure that lawful discretion is not easily criminalized, while unlawful discretion cannot be hidden behind the justification of governmental policy (Suhariyanto & Elpah, 2017; Wahyudi, 2017).

Official responsibility in the exercise of ministerial discretion primarily concerns the legality of governmental decisions or actions (Hadi, 2017). Such legality can be assessed in terms of authority, procedure, substance, the purpose of authority, and

conformity with the General Principles of Good Governance (Zaelani et al., 2019). If discretion remains within the scope of official authority and does not involve elements of personal deviation, its legal consequences are more appropriately situated within the framework of administrative responsibility (Luthfi, 2024; Setiawan & Asyikin, 2020). This form of responsibility may include administrative correction, annulment or revocation of a decision, or assessment of the legality of an action through administrative law mechanisms (Hadi, 2017).

Personal responsibility in the exercise of ministerial discretion arises when an action initially carried out in an official capacity is influenced by personal interests, the interests of certain parties, or the use of authority that deviates from the purpose for which it was granted (Luthfi, 2024; Setiawan & Asyikin, 2020). Maladministration is an important factor in determining the shift from official responsibility to personal responsibility (Luthfi, 2024). In this context, maladministration may take the form of abuse of authority, arbitrary action, conflict of interest, or a decision made not for the public interest (Luthfi, 2024). This shift shows that the office cannot serve as a shield for officials who use discretion for purposes that deviate from the law and the General Principles of Good Governance (Sadat, 2020; Zaelani et al., 2019).

Administrative accountability is the form of accountability most closely related to the exercise of discretion in administrative law (Hadi, 2017; Luthfi, 2024). Ministerial discretion must first be assessed through administrative standards, because discretion is essentially an instrument of administrative law for resolving concrete problems in government administration (Wahyudi, 2017). This administrative assessment includes whether discretion is exercised by an authorized official, whether the required procedures have been fulfilled, whether objective reasons are available, and whether the decision is consistent with the purpose of discretion (Hadi, 2017). This mechanism is important so that every policy error is not

immediately treated as a criminal act, as long as the error can still be explained within the sphere of government administration (Suhariyanto & Elpah, 2017; Wahyudi, 2017).

Administrative accountability may also be viewed through internal governmental supervision mechanisms. Supervision of the use of authority under the

Government Administration Law is exercised, among other measures, through the internal government supervisory apparatus, the assessment of administrative errors, and follow-up measures when such errors cause losses to state finances (Luthfi, 2024). The use of discretion related to budget allocation, urgent circumstances, emergencies, or actions that may create public unrest requires mechanisms of approval, notification, or reporting in accordance with the governmental structure (Luthfi, 2024). These provisions show that discretion is not left entirely to officials but is placed within an administrative supervision system, thereby remaining controllable (Kurniawan, 2023).

Legal accountability for ministerial discretion does not stop at internal administrative mechanisms. Decisions or discretionary actions that harm citizens may be challenged through objection mechanisms, administrative remedies, or review by the competent court (Aritonang et al., 2025). Specifically, Article 21 of Law Number 30 of 2014 concerning Government Administration authorizes the State Administrative Court to assess whether a decision and/or action taken by a government official involves an element of abuse of authority, upon an application submitted by a government body and/or official, in accordance with the procedures set out in Supreme Court Regulation Number 4 of 2015 concerning Guidelines for Proceedings in the Assessment of Elements of Abuse of Authority. Judicial review is important because administrative law not only provides space for governmental action but also provides mechanisms to control governmental actions that harm citizens (Aritonang et al., 2025). In this position, the court assesses whether ministerial discretion remains

within the corridor of authority, procedure, substance, and the General Principles of Good Governance, or has shifted into an unlawful or revocable action (Hadi, 2017).

Criminal liability for the exercise of ministerial discretion must be considered a subsequent possibility, not the first measure in assessing administrative policy (Suhariyanto & Elpah, 2017; Wahyudi, 2017). The exercise of discretion may give rise to criminal liability when the conduct satisfies the statutory elements of a criminal offense. Accordingly, an administrative abuse of authority does not automatically constitute a criminal offense (Luthfi, 2024; Muhsin, 2019). In the context of corruption offenses, Article 604 of Law Number 1 of 2023 concerning the Criminal Code regulates the abuse of authority, opportunity, or means available by virtue of an official position for the purpose of benefiting oneself, another person, or a corporation, resulting in losses to state finances or the national economy. This provision replaces the regulation previously contained in Article 3 of Law Number 31 of 1999, as amended by Law Number 20 of 2001. With respect to the previous provision, Constitutional Court Decision Number 25/PUU-XIV/2016 affirmed that losses to state finances or the national economy must be actual and legally demonstrable, rather than merely potential. A policy that produces an unexpected outcome cannot automatically be equated with a criminal act if it can still be explained based on authority, objective reasons, and the public interest (Darumurti, 2014; Wahyudi, 2017). This boundary is important to prevent excessive use of criminal law against governmental policy, while still allowing discretion that is in fact exercised unlawfully to be addressed (Luthfi, 2024; Wahyudi, 2017).

Ministerial accountability also has a broader dimension of public accountability (Bovens et al., 2014). Public accountability requires public officials to provide explanations to forums that have a legitimate claim to demand accountability, whether administrative, political, legal, or public forums (Bovens et al., 2014; Romzek

& Dubnick, 2014). Ministers, as leaders of specific government sectors, are accountable not only to the governmental structure but also to the public affected by their policies (Bovens et al., 2014). This accountability includes explanations of policy reasons, legal basis, decision-making process, budget use, and the impact of decisions on society (Bovens et al., 2014; Sadat, 2020).

Political accountability attaches to ministers because of their position as assistants to the President and as leaders of certain governmental affairs (Bovens et al., 2014). Discretionary policies adopted by ministers may give rise to political assessment when they have broad impacts on the public interest or generate debate within government administration (Bovens et al., 2014). Political accountability may take the form of policy evaluation, requests for explanation from representative institutions, public criticism, policy changes, or consequences for office, in accordance with governmental mechanisms (Bovens et al., 2014; Romzek & Dubnick, 2014). This political dimension is not always identical to legal accountability, but it remains important because ministerial discretion often operates within a policy space that has broad social, economic, and public consequences (Sadat, 2020; Wahyudi, 2017).

Ministerial accountability for the exercise of discretion must ultimately be understood as a mechanism for controlling governmental power (Bovens et al., 2014; Darumurti, 2014). Discretion is indeed necessary so that government does not stop when statutory provisions are incomplete, unclear, or do not regulate the concrete problems at hand (Darumurti, 2014). The need for discretion does not eliminate the minister's obligation to act in accordance with authority, procedure, substance, the General Principles of Good Governance, and the public interest (Hadi, 2017; Zaelani et al., 2019). Accountability serves as the link between governmental flexibility and the rule of law, so that discretion can function as an instrument for problem-solving

without becoming an uncontrolled space of power (Bovens et al., 2014; Wahyudi, 2017).

This construction of accountability shows that ministerial discretion need not be viewed negatively as long as it is exercised lawfully, rationally, and in an accountable manner (Darumurti, 2014; Hadi, 2017). Legal problems arise when discretion is detached from the purpose of authority, disregards the General Principles of Good Governance, creates conflicts of interest, or is used for personal benefit or for the benefit of certain groups (Luthfi, 2024). Ministerial accountability must therefore be placed in layers, beginning with official responsibility, administrative accountability, political accountability, civil liability, and criminal liability when the required legal elements are fulfilled (Bovens et al., 2014; Luthfi, 2024; Setiawan & Asyikin, 2020). This layered framework prevents excessive criminalization of discretion, while also ensuring that unlawful discretion remains subject to legal review and accountability (Suhariyanto & Elpah, 2017; Wahyudi, 2017).

D. Conceptual Reflection on the Use of Ministerial Discretion in Public Policy Practice

The discussion of the limits and accountability of ministerial discretion needs to be clarified through illustrations from public policy practice so that the theoretical framework developed in this article does not remain at a purely normative level. The illustrations used in this section are not intended to turn the study into a case study, but to show how ministerial discretion operates within concrete policy space. The position of these illustrations in this article serves only as an analytical lens for understanding the relationship between authority, the limits of discretion, and ministerial accountability. This framework is important to ensure that the analysis remains within the perspective of administrative law, rather than becoming an assessment of the guilt or innocence of certain parties in criminal proceedings.

The Hajj quota policy is one example of public policy that reflects the complexity of exercising ministerial authority. The administration of the Hajj pilgrimage is not only concerned with administrative services, but also with citizens' rights to perform religious obligations in accordance with the principles of justice, public benefit, transparency, and accountability (Rezki et al., 2025). In the context of Hajj quota policies implemented in 2023–2024, Law Number 8 of 2019 concerning Hajj and Umrah, as in force during that period, designated the minister as the official responsible for administering the Hajj pilgrimage, including determining and allocating Hajj quotas. This position makes ministerial decisions in the field of Hajj administration a form of governmental administrative action that must be assessed in terms of authority, procedure, substance, and the purpose of authority (Aritonang et al., 2025).

The issue of Hajj quotas arises because the limited quota granted to Indonesia is not always proportional to the high number of Hajj applicants. This condition creates a long waiting list and makes quota policy a highly sensitive administrative space for society. The Hajj waiting list shows that quota policy is not merely a technical matter of allocating numbers, but also relates to administrative justice for prospective pilgrims who have registered and waited for a long period before departure (Farhanah, 2016). This complexity requires the minister to have room for administrative consideration in responding to additional quotas, filling remaining quotas, prioritizing elderly pilgrims, and distributing quotas proportionally.

The minister's room for consideration in the Hajj quota policy cannot be separated from the limits of administrative law. Discretion may be justified if it is used to resolve concrete problems, exercised by an authorized official, based on objective reasons, free from conflict of interest, and consistent with the General Principles of Good Governance (Hadi, 2017). A quota policy adopted transparently, proportionally,

and directed toward the interests of pilgrims may be understood as a lawful exercise of administrative authority (Zaelani et al., 2019). Conversely, a quota policy implemented without transparency, deviating from the purpose of authority, or providing benefits to certain parties may amount to an abuse of authority (Luthfi, 2024; Rezki et al., 2025).

The alleged corruption case related to the distribution of Indonesia's Hajj quota for 2023 to 2024 illustrates how the term discretion may enter the realm of law enforcement when administrative policy is allegedly used unlawfully. The Corruption Eradication Commission described the case as an alleged corruption offense related to the distribution of Indonesia's Hajj quota for 2023 to 2024 and placed it within the context of an investigation into the use of authority in quota allocation (KPK, 2026). The reading of this case in this article is not directed at assessing criminal proof, but at showing that ministerial discretion must have a legal basis, objective reasons, clear procedures, and testable accountability (Bovens et al., 2014).

Administrative law analysis of the Hajj quota illustration must begin with the question of whether the decision remains within the scope of ministerial authority, whether the quota allocation procedure has been fulfilled, whether the policy considerations can be explained objectively, and whether the decision is consistent with the principles of transparency and proportionality (Aritonang et al., 2025). These questions are important because deviations in the use of discretion should not always be immediately understood as criminal acts, but must first be assessed under the framework of administrative law (Wahyudi, 2017). In the context of corruption offenses involving abuse of authority under Article 604 of Law Number 1 of 2023, criminal liability requires proof of the relevant statutory elements, including the purpose of benefiting oneself, another person, or a corporation and actual losses to state finances or the national economy (Luthfi, 2024; Rezki et al., 2025). This analytical

pattern prevents excessive criminalization of discretion while also ensuring that discretion does not become a pretext for concealing deviation of authority (Wahyudi, 2017).

The sugar import policy involving the former Minister of Trade may also be used as an illustration of the boundary between administrative policy and legal accountability. Import policy falls within the sphere of economic policy and often requires prompt consideration to address stock needs, price stability, and market interests (Jalil, 2024). Ministerial decisions in the trade sector may involve discretion when regulations allow choices, when urgent needs arise, or when administrative considerations require policy measures. The dynamic nature of economic policy means that ministerial discretion cannot be viewed simply as freedom of action, but as an administrative assessment that must be grounded in authority, data, coordination, and the public interest (Darumurti, 2014; Hadi, 2017).

The sugar import case involving the Minister of Trade's policy for the 2015 to 2016 period reflects a debate over the boundary between policy discretion and alleged abuse of authority. The Attorney General's Office stated that there had been import approvals for raw crystal sugar issued to several private companies to fulfill national sugar stocks and stabilize prices, but considered the policy to be contrary to the applicable provisions of the sugar import mechanism (Kejaksaan, 2025). The position of this case in this article is not used to conclude criminal wrongdoing, but to show that ministerial administrative decisions in the economic sector must still be assessed through the legal basis of authority, coordination procedures, the purpose of authority, and the legal consequences arising from them (Aritonang et al., 2025; Hadi, 2017).

The construction of discretion in import policy shows that ministerial policy cannot be assessed solely from its outcome. A decision that produces an unexpected

result is not necessarily an abuse of authority if it remains within the scope of authority, is based on objective data, and is directed toward the public interest (Darumurti, 2014; Hadi, 2017). A decision that from the outset deviates from the purpose of authority, disregards required procedures, or provides benefits to certain parties may lose its administrative legitimacy (Luthfi, 2024). This distinction is necessary to ensure that administrative law remains the initial instrument for assessing policy limits before criminal assessment is applied (Wahyudi, 2017).

These two illustrations show that the main issue with ministerial discretion does not lie in whether freedom of action exists, but in how that freedom is exercised and accounted for. The Hajj quota policy demonstrates ministerial discretion in the field of religious public services, which is related to distributive justice, transparency, and pilgrims' rights (Farhanah, 2016). The sugar import policy shows ministerial discretion in the economic field, which is related to stabilizing public needs, policy coordination, and the risk of abuse of authority. Both illustrations show that the broader the impact of ministerial policy, the stronger the need to ensure that discretion is exercised within the limits of administrative law.

A conceptual reading of these two illustrations affirms that ministerial discretion must be placed as functional authority attached to office (Luthfi, 2024; Sadat, 2020). Discretion must not be understood as the personal freedom of a minister to determine policy without control, because every decision must be traceable to its legal basis of authority, procedure, substance, purpose, and accountability (Aritonang et al., 2025). Lawful discretion will continue to receive legal protection when it is used to resolve concrete problems in government administration (Hadi, 2017). Discretion that deviates from the purpose of authority or is used for certain interests may create space for administrative, political, civil, or even criminal accountability, depending on the legal elements fulfilled (Luthfi, 2024; Rezki et al., 2025).

This analytical framework also shows the importance of accountability in the use of ministerial discretion. Accountability requires ministers to be able to explain the reasons for policy to competent forums, whether administrative, political, legal, or public forums (Bovens et al., 2014). Hajj quota policy and sugar import policy both occupy spaces that require explanations of their legal bases, decision-making processes, policy considerations, and societal consequences. Accountability becomes the distinction between discretion as a lawful instrument of government and discretion as a space for deviation of power.

The overall discussion shows that ministerial discretion in public policy practice cannot be assessed in a binary manner. Discretion is needed because government cannot always operate only through complete, detailed, and clear rules. The need for discretion must still be balanced with legal limits, the General Principles of Good Governance, transparency, and accountability (Bovens et al., 2014; Zaelani et al., 2019). The illustrations of hajj quota and sugar import policies show that ministerial discretion remains lawful as long as it is exercised within the proper scope of authority, based on objective reasons, and directed toward the public interest (Hadi, 2017). Deviation from these limits causes discretion to lose its administrative legitimacy and opens the way for legal accountability.

4. Conclusion

Ministerial discretion, from the perspective of administrative law, constitutes a lawful and necessary administrative authority to address concrete problems in government administration when statutory provisions provide alternatives, do not regulate particular matters, are incomplete or unclear, or when governmental stagnation occurs. This authority does not exist independently but is attached to the office of a minister as an assistant to the President, who administers specific governmental affairs pursuant to authority established by laws and regulations within

the framework of the President's executive power. On this basis, a minister may exercise discretion, but such discretion does not constitute absolute freedom. Its exercise must comply with the principle of legality, the purpose for which the authority was granted, objective grounds, the General Principles of Good Governance, the absence of conflicts of interest, good faith, and the prohibition of abuse of authority. The exercise of ministerial discretion must also be subject to multiple layers of accountability, including responsibility attached to public office when actions are taken within the lawful scope of authority and personal responsibility when there is a deviation from the purpose of authority, maladministration, a conflict of interest, or abuse of authority. Such accountability may take administrative, political, civil, or criminal forms, provided that the applicable legal requirements are met. Administrative oversight and judicial review mechanisms enable deviations in the exercise of discretion to be assessed and corrected based on the criteria of authority, procedure, purpose, and the General Principles of Good Governance, without eliminating the lawful decision-making authority of ministers. The illustrations of Hajj quota policy and sugar import policy demonstrate that the exercise of ministerial discretion in public policymaking must first be assessed under administrative law standards to prevent the unwarranted criminalization of lawful discretion while ensuring that discretion exercised unlawfully remains subject to legal review and accountability.

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