The Dynamics of the Elements of Abuse of Authority in the Authority of the Administrative Court After the Enactment of the Latest Job Creation Law

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**Abstract**
Abuse of authority as part of testing the discretionary authority of the State Administrative Court has changed with the presence of Law No. 6 of 2023 concerning Job Creation. Changes can be seen in Article 175 number 2 of the UUCK which expands discretion by eliminating the requirement that it is contrary to the law. However, Law No. 30 of 2014 also does not emphasize the definition of authority testing, thus creating problems, namely the blurring of the parameters of discretion testing by the State Administrative Court Judges. The author also conducts a comparative study with France to find trends in global solutions in solving problems. This research uses normative legal research methods that analyze applicable laws and regulations accompanied by literature studies in the form of books, journals, and other literature. The dynamics of the elements of Abuse of Authority from the UUAP to the birth of the existence of the UUCK has brought the consequences of a paradigmatic shift in the concept of discretion, which was originally limited to be freed because of the elimination of the requirement not to conflict with the provisions of the legislation. However, considering that discretion is actually only the (free) authority possessed by a State Administrative Officer to make a decision and/or take an action, the decision and/or action as a manifestation of the discretionary authority is still bound by the provisions of Article 52 of the UUAP regarding the legal requirements of a decision. The State Administrative Justice System in France and Indonesia has a difference that lies in the phrase used, in France using the term abuse of power, or what is called detournement de pouvoir. This reason is used if an official in issuing an administrative decision deliberately uses his/her authority for purposes that deviate from the original purpose/intention, in contrast to Indonesia which defines abuse of authority more complexly as a form of exceeding authority, mixing authority, and arbitrariness.
I. Introduction

Discretion was born out of a shift in conception to the welfare state, which ultimately led to a shift in the role and activities of the government. In the conception of nachwachtersstaat, the principle of staatsonthouding applies, namely the limitation of the state and government from the social and economic life of the community. Whereas in the welfare state conception, the government is given the obligation to realize bestuurszorg (general welfare), for which the government is given the authority to intervene (staatsbemoeienis) in all fields of community life. This means that the government is required to act actively in the midst of the dynamics of community life.¹

Basically, any government intervention must be based on the applicable laws and regulations as a manifestation of the principle of legality, which is the main foundation of the rule of law. However, due to the limitations of this principle or because of the weaknesses and shortcomings contained in the laws and regulations, the government is given the freedom of freies Ermessen, namely the freedom of the government to be able to act on its own initiative in solving social problems.²

Freies Ermessen/discretion are one of the means that provides space for officials or State administrative bodies to take action without having to be fully bound by the law. In practice, this freies Ermessen opens up opportunities for conflicts of interest between the government and citizens. Chapter VI of the AP Law regulates discretion, which consists of the scope of discretion, discretion requirements, procedures for using discretion, and legal consequences of discretion.³

Article 24 of the AP Law regulates the conditions that must be met by Government Officials when using discretion with its derivative rules until it develops in Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. The definition of discretion in the CK Law is still the same as what is in the AP Law. It’s just that the regulation regarding the conditions of discretion that must be met by government officials is slightly different in the CK Law. The CK Law eliminates one of the conditions for the use of discretion, namely the condition that it does not conflict with statutory provisions.

Article 175 number 2 of the CK Law if the design of discretion desired by the legislator is like this, then there has actually been a shift in the concept of the

conditions for the use of discretion by government officials. The following argument can be traced from the concept of the conditions for the use of discretion described by several scholars as follows. In the civil law system, discretion is considered valid if it does not conflict with written law (gescheven recht) and unwritten law (ongescheven recht), namely algemene beginslen van behoorlijk bestuur) or general principles of good governance.

In addition, because discretion means consideration of various interests related to the choice and achievement of goals, the validity of discretion is also based on rationality, effectiveness and efficiency. Government discretion is considered deviant if "aperte onredlijkheid in de belangenafweging" or manifestly unreasonable in consideration. Thus the author will analyze the extent to which the dynamics of the development of testing the elements of abuse of authority at the normative level, as well as between the realm of PTUN and state losses in criminal acts. The author also conducts a comparative study of the form of abuse testing in other countries.

2. Research Method

Based on the descriptions above, this research uses normative legal research methods through the approach of applicable laws and regulations and literature studies. The approach of legislation sourced from primary data in the form of the 1945 Constitution of the Republic of Indonesia and other laws and regulations, as well as literature studies sourced from secondary materials in the form of books, journals, and other legal materials. The author also uses descriptive analysis in qualitative data management accompanied by the deductive method, where the acquisition of data is processed descriptively to conclude general questions into specific conclusions.

3. Results and Discussion

Dynamics of Discretion Development Against Abuse of Authority by Government Officials at the Normative Perspective

The complexity of the dynamics of societal change and the development of the times actually encourages the government to play a more active role in serving the community and organizing public welfare. As a consequence, state administration officials are given the freedom to act on the basis of their own initiative to resolve various issues that require quick handling when there is no or no regulation, due to the limitations and impossibility of statutory regulations to regulate everything in

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detail in people’s daily lives.\textsuperscript{7}

S.F Marbun said that the granting of freedom of action \textit{(freies ermessen)} to the state administration in carrying out its duties to realize the welfare state or social rechtstaat in the Netherlands had raised concerns that the consequences of freies ermessen would cause harm to citizens. Therefore, to improve legal protection for citizens, in 1950, the Committee de Monchy in the Netherlands made a report on the general principles of good governance or algemene beginselen van behoorlijk bestuur. Initially, there were objections from government officials and employees in the Netherlands because there were fears that Judges or Administrative Courts would later use the term to pass judgment on policies taken by the government, but such objections have now disappeared because they have lost their relevance.

The presence of Law Number 30 of 2014 concerning Government Administration (UUAP) has normatively become the basis for the legality of discretionary arrangements along with the scope and limitations that must be guided by Government Officials in making a decision and/or taking an action to overcome concrete problems faced in the administration of government.\textsuperscript{8}

With the additional authority to examine cases related to the actions of government agencies or officials and/or other legal entities that cause material or immaterial losses, the State Administrative Court’s function as a juridical control function over the government is more complete. Lintong Oloan Siahaan said that the Government as a servant (public service) has the power (power) to carry out its service duties, which if misused will be fatal from a legal point of view. For this reason, control is needed, so that the possibility of abuse of power, arbitrariness and others can be avoided or minimized. In other literature he mentions that juridical control is part of other controls on the government such as political control, control through postal tolls, internal administrative control, external control of organizations / institutions both structural and non-structural.\textsuperscript{9}

Then, one of the considerations for the establishment of Law Number 11 of 2020 concerning Job Creation (UU CK) is that efforts to change regulations need to go through changes in sector laws that do not support the realization of regulatory synchronization, so that a legal breakthrough is needed that can solve various problems in several laws into one comprehensive law. This means that in order to achieve the objectives of the formation of the CK Law, one of the clusters that needs a legal breakthrough is the government administration cluster.\textsuperscript{10}

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\textsuperscript{8} Eri Yulikhsan, \textit{Keputusan Diskresi Dalam Dinamika Pemerintahan (Aplikasi Dalam PTUN)} (Deepublish, 2016).


"Implementation of Government Administration to Support Job Creation". In general, although the formation of this law was carried out by an unusual mechanism, the President and the House of Representatives did not hesitate to jointly agree on the formation of this CK Law.\(^{11}\)

However, the normative arrangements regarding discretion in the UUAP have slightly undergone changes and conceptual shifts along with the birth of Law Number 11 of 2020 concerning Job Creation (UUCK), especially with regard to the conditions of discretion as a limitation on its use by Government Officials.\(^{12}\)

Based on the series of descriptions above, this article finds the appeal and urgency of its writing because it will discuss and examine in depth the shift in the concept of discretion after the birth of the UUCK. The discourse will begin with a comprehensive study of the normative provisions of discretion in both the UUAP and UUCK, and will then describe various conceptual errors and problems. On the basis of these various conceptual errors and problems, this article will further present an analytical study in reinterpreting the concept of discretion after the birth of the UUCK in conjunction with its testing mechanism at the State Administrative Court.

Examination of Decisions by the State Administrative Court Against Discretion Made by Government Officials in the practice of cases in the State Administrative Court will be known through court decisions, especially court decisions that have obtained permanent legal force. The reason why the discussion of the problem is carried out with the instrument of Court decisions is because according to Artidjo Alkostar, court decisions are part of the law enforcement process which aims to achieve truth and justice. Court decisions are products of law enforcement that are based on juridically relevant matters that legally appear at trial. The quality of court decisions correlates with the professionalism, moral intelligence, and sensitivity of the Judge’s conscience. So, a decision can simultaneously contain 2 (two) elements, namely on the one hand the decision is a settlement or solution of a concrete event and on the other hand it is a legal regulation for the future.

Normatively, Law Number 30 of 2014 concerning Government Administration (UUAP) has regulated discretion in detail which includes definitions, objectives, scope, conditions, procedures for use and legal consequences. Regarding the definition, UUAP defines discretion as Decisions and/or Actions determined and/or carried out by Government Officials to overcome concrete problems encountered in the administration of government in terms of laws and regulations that provide options, do not regulate, are incomplete or unclear, and/or there is government stagnation. Such discretion can only be exercised by authorized Government Officials and is intended to expedite the administration of government, fill legal gaps, provide...

\(^{11}\) Satya Arinanto (2), *Politik Hukum 3* (Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2001), hlm.115.

legal certainty, and overcome government stagnation in certain circumstances for the benefit and public interest.

However, the discretion is not determined to be unconditionally free, but must fulfill the conditions, namely in accordance with the purpose of discretion, not contrary to the provisions of laws and regulations, in accordance with the General Principles of Good Governance, based on objective reasons, does not cause conflicts of interest, and is carried out in good faith. With regard to these requirements, especially for the use of discretion that has the potential to change budget allocations and burden state finances, it is mandatory to obtain approval from the Official's Superiors. As for the use of discretion that has the potential to cause public unrest, it must be notified to the Superior Official before its use. Meanwhile, the use of discretion that occurs in an emergency, urgent situation, and/or natural disaster, must also be reported to the Supervisor of Officials after its use.\(^\text{13}\)

The improper use of discretion will have the following legal consequences: First, the use of Discretion is categorized as exceeding the Authority when acting beyond the time limit of the validity of the Authority granted by the provisions of laws and regulations; acting beyond the territorial limits of the validity of the Authority granted by the provisions of laws and regulations; and/or not in accordance with the provisions of Article 26, Article 27, and Article 28. The legal consequences of the use of Discretion of these three things are invalid. Second, the use of Discretion is categorized as conflicting Authority if the use of Discretion is not in accordance with the purpose of the Authority granted; not in accordance with the provisions of Article 26, Article 27, and Article 28; and/or contrary to the General Principles of Good Governance. The legal consequence of the use of Discretion from these three things is that it can be canceled. Third, the use of Discretion is categorized as an arbitrary act if it is issued by an unauthorized official. The legal consequence of the use of such Discretion is that it becomes invalid.\(^\text{14}\)

At first glance, it can be understood that the legal consequences of Discretion exercised by exceeding authority and/or carried out arbitrarily are invalid, while the legal consequences of Discretion exercised by confusing authority can be canceled. However, considering that the discretionary authority of Government Officials must still be translated into Decisions and/or Actions, the provisions of Article 30, Article 31, and Article 32 a quo must be interpreted systematically with other provisions, namely Article 52 regarding the legal requirements for Decisions, Article 66 regarding the juridical defects of Decisions, Article 70 regarding the invalidity of Decisions and/or Actions and their legal consequences, and also Article 71 regarding the revocability of Decisions and/or Actions and their legal consequences. Correlatively, the provision of norms regarding the legal consequences of improper


\(^\text{14}\) Yasser, “Pengujian Unsur Penyalahgunaan Wewenang Pada Peradilan Tata Usaha Negara Dalam Kaitannya Dengan Tindak Pidana Korupsi.”
categorization of the use of discretion, in addition to having an interrelation with the norms mentioned above, also has a close interrelation with the provisions regarding the Prohibition of Abuse of Authority contained in Article 17, Article 18, and Article 19 of the UUAP.\footnote{Nicken Sarwo Rini, “Analisis Implementasi Prinsip Non-Diskriminasi Dalam Peraturan Daerah Di Bidang Pendidikan Dan Kesehatan,” Jurnal HAM 9, no. 1 (2018): 19–36.}

Explicitly, UUAP does not provide a strict definition of abuse of authority, but only qualifies it into 3 (three) different species, namely exceeding authority; mixing authority; and acting arbitrarily. Furthermore, it is determined that Decisions and/or Actions made by Government Agencies and/or Officials are categorized as exceeding authority if they exceed the term of office or time limit for the validity of the authority, exceed the limits of the area of validity of the authority, and/or conflict with the provisions of laws and regulations.\footnote{Daffa Ladro Kusworo et al., “Establishment of a National Regulatory Body to Overcome Disharmonization of Natural Resources and Environmental Policies,” International Journal of Multicultural and Multireligious Understanding 9, no. 11 (2022).}

As for the category of conflicting authority when the Decisions and/or Actions carried out by Government Agencies and/or Officials are outside the scope of the field or material of the authority granted, and/or contrary to the purpose of the authority granted. Meanwhile, Government Agencies and/or Officials are categorized as acting arbitrarily when the Decisions and/or Actions they take have no basis in authority and/or are contrary to a Court Decision that has permanent legal force. As a legal consequence, Decisions and/or Actions that are determined and/or carried out by exceeding authority and arbitrary are invalid. Meanwhile, Decisions and/or Actions that are determined and/or carried out by confusing the authority, as a legal consequence, can be canceled.

The presence of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (UUCK) carries a mission as a legal breakthrough to resolve various problems in various laws by changing them into only one law, apparently disturbing the regulation of the government administration sector. As a consequence, there has been a regulatory shift in the UUAP which has practically brought a paradigmatic shift in the concept of government administration after the enactment of the UUCK. One of the arrangements in the UUAP that has been shifted by the UUCK is the concept of discretion as stated in Article 175 Number 2 of the UUCK which basically changes the provisions of Article 24 of the UUAP regarding the conditions for the use of discretion by Government Officials.

From these provisions, there is a fundamental differentiation between the concept of discretionary restrictions in the former Article 24 of the UUAP and the provisions of the new Article 24 of the UUAP vide Article 175 Point 2 of the UUCK, which was previously required not to conflict with the provisions of laws and regulations but now is not required to do so. Or in another narrative, it can be said that the concept
of discretion was originally very limited but now it is very free. The shift in concept is increasingly visible where the ratio legis of the birth of Article 175 Number 2 of the UUCK considers that the discretionary requirement not to be allowed to conflict with the provisions of laws and regulations creates ineffectiveness of the space for freedom of action (discretion) itself so that it needs to be reorganized and rearranged. Reflexively, such a ratio legis actually wants freedom in the free authority of administrative officials to act without having to be fully bound by the provisions of laws and regulations, even allowed to contradict them.17

Conceptually, especially based on the rule of law scheme, even though discretion is a free authority or freedom of action that allows state administrative tools to prioritize the effectiveness of achieving a goal (doelmatigheid) rather than sticking to the provisions of laws and regulations (rechtmatigheid), its use is still limited by signs and must still be accountable both morally and legally.

Thus, the normative provisions of Article 175 Number 2 of the UUCK, which seem to want to streamline discretionary authority by eliminating the condition that its use must not conflict with laws and regulations, are actually misguided and conceptually wrong. On the basis of these misconceptions and conceptual errors, it is necessary to reinterpret the Decisions and / or Actions of State Administrative Officials as a manifestation of discretionary authority owned in its relationship with the testing mechanism at the State Administrative Court.

The existence of UUCK has brought the consequences of a paradigmatic shift in the concept of discretion, which was originally limited to be freed because of the elimination of the requirement not to conflict with the provisions of laws and regulations. However, considering that discretion is actually only the (free) authority possessed by a State Administration Official to make a decision and/or take an action, the decision and/or action as a manifestation of the discretionary authority is still bound by the provisions of Article 52 of the UUAP regarding the legal requirements of a decision.

In connection with these three requirements, it is emphasized that a Decree is only valid if it is based on the provisions of laws and regulations and the General Principles of Good Governance (AUPB). As a consequence, a Decision that is not made by an authorized official has the legal effect of being invalid. Meanwhile, a Decision that is not made in accordance with procedures and has a substance that is not in accordance with the object of the Decision has legal consequences as a void or revocable Decision. In connection with these legal consequences, Article 70 of UUAP further emphasizes that Decisions and/or Actions made by Government Agencies and/or Officials that are not authorized, exceed their authority, and/or act arbitrarily are invalid so that they are not binding since the Decisions and/or Actions

are stipulated and all legal consequences arising from them are considered to have never existed.  

As for Decisions and/or Actions that contain procedural or substantive errors, they can be canceled so that they are not binding from the time they are canceled or remain valid until the cancellation and end after the cancellation. On the basis of this logic, it can be seen that the touchstone of discretionary decisions is the AUPB where one of the principles is the prohibition of abuse of authority (detournement de pouvoir), so that the testing mechanism uses the principle of specialty (specialiteitsbeginsel) to see whether the decisions and/or discretionary actions of government officials deviate or are in accordance with the purpose of granting authority based on statutory regulations. In addition, considering that the principle of prohibition of acting arbitrarily (willekeur) is also one of the AUPB, the testing mechanism uses the principle of rationality (rationaliteitsbeginsel) to see whether the decisions and/or discretionary actions of government officials are based on careful consideration or have rational reasons.

In Article 53 paragraph 2 letter b of Law No. 5 of 1986 concerning PTUN, abuse of authority is the reason why a person or civil legal entity who feels aggrieved by the issuance of a KTUN then files a lawsuit against a State Administrative Official on the grounds that the Official has violated the principle of abuse of authority. Now under the Government Administration Law, abuse of authority is part of what must be tested and proven in decisions and/or actions taken by Government Officials. Abuse of authority in the Government Administration Law is also regulated as a prohibition of abuse of authority.

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of authority in the Government Administration Law is also regulated as a prohibition of abuse of authority.19

In essence, with this new competence, materially regulated prohibition of abuse of authority or normalization (principle) prohibition of abuse of authority. This arrangement is contained in Article 17 and then detailed in Article 18 and in Article 10 paragraph 1 letter e, namely:

a. Prohibition of exceeding authority, including: exceeding the term of office or time limit for the validity of the authority; exceeding the boundaries of the area where the authority is valid; and/or contrary to the provisions of laws and regulations.

b. Prohibition of mixing authority, including: outside the scope of the field or material of the authority granted; and/or contrary to the purpose of the authority granted.

c. Prohibition of acting arbitrarily, namely: taking actions without the basis of authority; and/or Contrary to a court decision that has permanent legal force.

d. The principle of not abusing authority is a principle that requires every Government Agency and/or Official not to use their authority for personal interests or other interests and not in accordance with the purpose of granting the authority, not to exceed, not to abuse, and/or not to mix authorities.

In this Government Administration Law, discretion is also part of the process of governance, so it is not uncommon for discretion to result in abuse of authority. Discretion exercised by Government Officials also gives birth to several decisions and/or actions that have the same legal consequences as abuse of authority. The formal law of testing for abuse of authority by the Administrative Court in accordance with the Government Administration Law only regulates the time limit for the court to examine and decide on requests for abuse of authority. This arrangement can be understood for at least two reasons: First, this law is intended to be the material law of the state administrative court system; Second, the formal law of the state administrative court already exists in the Administrative Court Law itself (plus the civil procedural law). This formal law is found in Article 21 paragraph (3), paragraph (4), paragraph (5), and paragraph (6) of the Government Administration Law.

Then to fill the void of procedural law related to the expansion of the absolute competence of abuse of authority testing, on August 21, 2015 the Supreme Court issued Supreme Court Regulation No. 4 of 2015 Guidelines for Procedures in Assessing Elements of Abuse of Authority (hereinafter referred to as Perma No. 4 of 2015). Prior to the issuance of Perma No. 4 of 2015, the procedure for filing

an application for abuse review was still limited to the Government Administration Law. On January 9, 2015, the Jakarta State Administrative Court, through the Chief Justice of the Jakarta State Administrative Court, issued Decree No. W2.TUN/54a/2015 on Procedures for Receiving and Examining Applications on the Basis of Article 21 and Article 53 of Law No. 30 of 2014 on Government Administration at the Jakarta State Administrative Court dated January 9, 2015. In Annex III of the decision, the petition case based on Article 21 is processed like a state administrative dispute lawsuit as stipulated in the State Administrative Court Law, namely there are stages of reading the petition, reply, submission of evidence from the Petitioner and Respondent, examination of witnesses and experts and conclusions. Meanwhile, the difference with the Administrative Court Law is the absence of the Consultative Meeting/Dismissal process as a special characteristic of the examination at the Administrative Court and the term Plaintiff-Defendant becomes Applicant-Applicant. Then the Chairman of the Jakarta Administrative Court corrected the letter with a letter regarding ”Requirements for filing an Application Based on Article 21 of Law No. 30 of 2014 in accordance with Supreme Court Regulation Number 4 of 2015.

In connection with the conception of discretion, based on the results of normative searches in the UUAP, this article finds conceptual errors regarding the provisions on the prohibition of abuse of authority, its types and categories, as well as its legal consequences, which in turn these conceptual errors also create problems in regulating discretionary authority considering that abuse of discretion is an abuse of authority. In subsequent developments, the presence of UUCK has brought a paradigmatic shift in the concept of government administration, especially with regard to discretion, which was originally conceptualized as limited to be freed by the elimination of the condition that the use of discretion must not conflict with the provisions of laws and regulations. However, there is a reinterpretation that Decisions and/or Actions as a product of discretion of government officials are still bound by the provisions of Article 52 of the UUAP regarding the validity of a Decision and/or Action so that it must still be based on and must not conflict with the provisions of laws and regulations and the General Principles of Good Governance, even though these conditions have been eliminated by the enactment of Article 175 Number 2 of the UUCK.

First, changes to the discretionary provisions in the CK Law. As explained earlier, Article 175 number 2 of the CK Law regulates the conditions for the use of discretion that must be met by government officials. The CK Law eliminates one of the conditions for the use of discretion, namely the condition, "not contrary to statutory provisions." Although the definition of discretion in the CK Law is still the same as that in the AP Law. Theoretically, the argument that discretion must

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not conflict with the provisions in the legislation can be described as follows. Discretion is considered valid if it does not conflict with written law (gescheven recht) and unwritten law (ongescheven recht), namely algemene beginselen van behoorlijk bestuur) or general principles of good governance.\(^{21}\)

Thus, the formulation of the conditions for the use of discretion in the CK Law is ambiguous because it still maintains the requirement "in accordance with AUPB (General Principles of Good Government)" which in this case is unwritten law (although in the end the AP Law regulates the existence of AUPB and what are examples of AUPB). Similar to the above argument, it must also be understood that the free nature of government authority formulated in the basic regulations must still apply unwritten norms called the General Principles of Good Government. Policies taken by government officials are not allowed by ordinary judges to judge them. It is not the court that can judge the discretion of the ruler, so the government’s policy should not be interfered with by the General Judge.

**Comparative Examination of the Elements of Abuse of Authority by Government Officials in the State Administrative Court in France**

The existence of the State Administrative Court as an independent institution within the structure of judicial power is one of the characteristics of a legal state with a Continental European tradition. The Administrative Justice system in Indonesia is closer to the Administrative Justice system in France, although there are several differences. First, the Administrative Justice system in France culminates in the Conseil d'etat (a kind of DPA institution), not in the Cour de cassation (a kind of Supreme Court institution in Indonesia). Secondly, in France there is a specialized State Administrative Court that resolves certain types of state administrative disputes in accordance with its special competence. Meanwhile, the State Administrative Court in Indonesia has a general system that handles all types of state administrative disputes. Although there is a special civil service dispute settlement, after passing through the administratieve beroep and the defeated party cannot accept the decision of the administrative settlement, it can file a lawsuit to the High Administrative Court. Third, both the Conseil d'etat and the Administrative Tribunal in France have preventive (advisory) and repressive (review of administrative acts) supervisory functions. The State Administrative Court in Indonesia only has a repressive supervisory function (a posteriori review of administrative decisions).

Nevertheless, the duality of jurisdiction in the French administrative court system, which distinguishes the administrative dispute resolution system from the civil dispute resolution system, has similarities with the judicial system in Indonesia and in general in countries with Continental European legal traditions. The administrative court systems in France and Indonesia have similarities in

the basis for supervision of state administrative legal actions, namely the basis for supervision based on written laws and regulations (schriftelijke recht) and general principles of good governance as unwritten law (onschriftelijk recht). In both Indonesian and French administrative court systems, the function of judges in trials is also based on the principle of judge activism and the principle of free evidence. This is due to the goal of realizing material truth in the examination of State Administrative Decisions which generally characterizes the State Administrative Court system in countries with Continental European legal traditions.

A closer look at the two systems of Administrative Justice in France and Indonesia shows that the active-passive nature of the Administrative Justice system in France through the advisory and judicial authority of the Conseil d'etat oversight of the government in France has a preventive and repressive character. The advisory function exercised by the Conseil d'etat can prevent administrative law actions of the government in France from violating laws and regulations and general principles of good governance.  

The implementation of the advisory function, to the extent that it is optimally implemented and complied with by government officials in France, can also minimize the occurrence of state administrative disputes in the future as long as the government in issuing State Administrative Decisions (administrative deeds) uses references and considerations as suggested by the Conseil d'etat. When compared to the Indonesian constitutional system before the amendment of the 1945 Constitution, it can be analogized to the function of the Supreme Advisory Council (DPA) which theoretically also has the attribution of the advisory function. State administrative disputes that occurred as claims from citizens that were handled through the implementation of the repressive function of the Conseil d'etat, only occurred if the advice that had been given by the Conseil d'etat was violated/ignored by government officials or there was a State Administrative Decree that after being determined turned out to violate the administrative rights of citizens. A similar pattern could be considered by attributing an advisory function to the Administrative Court in Indonesia. This idea can be part of the dynamics of the implementation of the functions of the State Administrative Court in Indonesia.

The pattern of judicial review in France according to Auby is carried out in relation to the following grounds of judicial review: incompetence: the decision was not made by an official or public legal entity authorized to make the decision; violation of procedure (vice de forme ou de procedure): the administrative decision is defective in its form or does not follow the procedure for making the decision; violation of law (violation de la loi): the substance of the

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decision contradicts one or more provisions that must be followed by state administrative officials; invalidity of consideration (vices de motives): can be broken down into 3 (three) types: error in fact (erreur de fait), error concerning the law (erreur de droit); inaccuracy in qualification or inaccuracy in qualifying the facts (erreur dans la qualification juridique des faits, erreur manifeste d’appréciation, et cetera).

4. Conclusion
The conclusions of this study are as follows:

a. The dynamics of the Elements of Abuse of Authority from UUAP to the birth of UUCK has brought the consequences of a paradigmatic shift in the concept of discretion, which was originally limited to be freed because of the elimination of the requirement not to conflict with the provisions of laws and regulations. However, considering that discretion is actually only the (free) authority possessed by a State Administration Official to make a decision and/or take an action, the decision and/or action as a manifestation of the discretionary authority is still bound by the provisions of Article 52 of the UUAP regarding the validity of a decision. The existence of the State Administrative Court as an independent institution in the structure of judicial power is one of the characteristics of a legal state with a Continental European tradition. The State Administrative Court system in Indonesia is closer to the State Administrative Court system in France, although there are some differences. The State Administrative Court systems in France and Indonesia have similarities in the basis of supervision of state administrative legal actions, namely the basis of supervision based on written laws and regulations (schriftelijke recht) and general principles of good governance as unwritten law (onschriftelijk recht). In France, abuse is defined as an abuse of power (detournement de pouvoir). This reason is used if an official in issuing an administrative decision deliberately uses his authority for a purpose/purpose that deviates from the original purpose/purpose of granting the authority to the official concerned to be tested at the Conseil d’etat.

b. The concept of discretion stipulated in the AP Law is much better than the concept of discretionary changes stipulated in the CK Law, so, the legislator should maintain the old law that is already good rather than replacing the new law which actually causes problems, so it is necessary to revise the CK Law again. Regarding the element of abuse of authority, how in the level of implementation needs to be streamlined and uphold the principle of prudence for judges so that they do not misinterpret which ones are detrimental administratively and criminally in state losses.
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