

## GOVERNMENT DISCRETION IN CREATING LEGAL PRODUCTS FOR THE PEOPLE

Angga Perdana<sup>1</sup>; Hidayati<sup>2</sup>.

Faculty of Law, Pakuan University<sup>1</sup>

Jl. Pakuan, RT.02/RW.06, Tegallega, Bogor Tengah Subdistrict, Bogor City, West Java 16129,  
Program Doctor of Law, Borobudur University, Jakarta, Indonesia<sup>2</sup>

Jl. Raya Kalimalang No.1, RT.9/RW.4, Cipinang Melayu, Makasar District, East Jakarta City,  
Special Capital Region of Jakarta 13620

E-Mail : [anggaadvocad@gmail.com](mailto:anggaadvocad@gmail.com)<sup>1</sup>, [hidayati@borobudur.ac.id](mailto:hidayati@borobudur.ac.id)<sup>2</sup>

Naskah diterima : 02/01/2025, revisi : 16/01/2025, disetujui 24/03/2025

### Abstract

*This study aims to ensure public welfare by granting the state administration the freedom to act independently within its authority. Such freedom becomes crucial, especially when addressing issues that require solutions not explicitly stated in existing laws and regulations, or when governance proves inadequate or unclear. The primary goal of this research is to hold the government accountable for its reasonable actions while providing a warning against potential abuses of power. The research adopts a normative legal method with a common law system approach, utilizing secondary data from primary legal books, secondary legal books, and tertiary legal documents. The study addresses problems related to various forms of power misuse, including government officials acting under the guise of their institutions for personal gain. The findings reveal that Law No. 30 of 2014 on Government Administration provides a framework for government officials to tackle issues encountered in administrative governance while maintaining principles of accountability and transparency. In conclusion, the state administrative court plays a vital role in resolving administrative disputes arising from government actions and decisions. Legal enforcement through this court aims to ensure that government decisions do not harm specific individuals or entities while preserving integrity and accountability in the decision-making process.*

**Keywords:** *Common Sense, Legal Products, People.*

### A. Introduction

The Unitary State of the Republic of Indonesia is characterized as a state of law (*Rechtsstaat*), not just based on power (*Machtsstaat*). This shows that the Indonesian government structure is based on legal principles. In such a framework, all decisions and operations carried out by state officials must be rooted in law, not just rely on the authority possessed by government officials. An effective legal system is a system that is in harmony with the legal norms prevalent in society. This theoretical concept proposes a balance between written law necessary for a legitimate society, to ensure legal certainty and

unwritten law that recognizes the influence of society on the formation and direction of law. Legal developments in Indonesia, including lawmaking, must take into account existing social norms to promote legal certainty<sup>1</sup>

The amount of state power is proportional to the amount of work that must be done by the government. According to Montesque's trias political theory, government authority (executive) has specific government affairs which are regulated by law. According to this theory, the concept of government function is related to the concept of government authority (executive)<sup>2</sup>. This concept inspired the residual theory (residue theory) in determining the extent of government affairs that must be carried out by the government, which is likened to its superior function. ( Soehino, (1984 ). Understanding the concept of a rule of law is closely related to the understanding of its citizens. In the end, laws that create regulations and provide limits on government authority are seen as laws that are established based on authority/determination as citizens. In the context of a rule of law, the sovereignty the people is a fundamental aspect, in addition to concern for the welfare of the people<sup>3</sup>

States function as entities with defined goals. In the Indonesian context, the state's objectives are outlined in the fourth section of the Preamble to the 1945 Constitution, emphasizing Indonesia's identity as a rule-of-law state that embraces the idea of a welfare state. As a rule of law that strives for the advancement of public welfare, all efforts, in addition to pursuing stated goals, must comply with the governing laws that dictate state, governmental, and communal operations.

In developing countries that experience significant population growth, the government needs to provide various resources and support to improve living standards, especially in countries that embrace the concept of a welfare state such as Indonesia. As a result, the state is obliged to expand its involvement and intervention in societal affairs to promote overall well-being. Assessing the functions carried out by government bodies, the scope of government functions is very broad, especially within the framework of the welfare state. In general, government functions include a wide range of official acts, decisions, regulations of a general nature, civil law activities, and special initiatives. In particular, legislative functions performed by political leaders and judicial functions performed by the judiciary are exceptions to the broad spectrum of government functions. The idea of a welfare state suggests that government intervention is necessary to address all problems affecting the lives of citizens, even in the absence of established regulations. As a result, the government is empowered to take proactive steps in the public interest to overcome challenges or a country in a state of crisis.

The government is mandated to provide services to the community, not limited to legislative functions. As such, it has the authority to establish a specific legal framework

---

<sup>1</sup> Agussalim Andi Gadjong, *Regional Government, Political and Legal Studies* (Ghalia Indonesia, 2007). P. 25.

<sup>2</sup> Philipus M. Hadjon, et al., *Introduction to Indonesian Administrative Law* (Gadja Mada University Press, 2008). P. 10.

<sup>3</sup> Satjipto Rahardjo, *Law and Society* (Angkasa, Bandung, 1984). P. 83.

aimed at fulfilling the objectives of the law<sup>4</sup>. In addition, the increasing involvement of law in social transformation has led to challenges in utilizing law intentionally to shape a new societal order. This is proven in the legitimacy and effectiveness of legal regulations. Delegating public service responsibilities to the government has significant implications for national administration. To effectively improve the welfare of society, state administration must have the autonomy to address critical problems that arise in the absence of predetermined, known regulations the principle of discretion in administrative law<sup>5</sup>. The presence of "*Ermessen fries*" in jurisprudence leads to the transfer of legislative authority to the government, allowing the issuance of legislative regulations without parliamentary approval in certain circumstances and to a certain extent. This transfer signals a shift in power from the legislative branch to the government, which functions as the executive arm of the country.

When implementing policies, it becomes important to determine tolerance thresholds to prevent arbitrary decision-making. Limiting the scope of this policy involves giving the state administration the freedom to act proactively in dealing with urgent problems that do not have specific regulations, ensuring first that there is no negative impact on society, both legally and ethically<sup>6</sup>

One of the efforts carried out by the Indonesian government to establish a prosperous country is the enactment of Law Number 30 of 2014 concerning Government Administration. The government administration law functions as a legal basis that aims to improve the quality of public administration because efficiency depends on government officials carrying out administrative duties by the law. This legislative framework describes the regulations and role of public services to manage the role of society to improve society's welfare. Officials in government are involved in two main forms of administrative action, namely: legal action and factual action. Through legal actions establishing legal rights and responsibilities, the government is generally categorized into public legal actions and individual legal actions<sup>7</sup>. Along with the principles of legal supremacy, the participation of government officials in the context of society must comply with the principle of legality. This explains that officials who intend to take action must obtain their authority from written law or government officials are given freedom of action, known as discretion, under special conditions. This concept is explained in Article 1 paragraph (9) of Law Number 30 of 2014 concerning Government Administration. Wisdom lies in the decision-making and actions taken by government officials to overcome specific challenges faced in the governance process. These challenges may arise due to the absence of clear regulations, incomplete legislation, few options provided by law, or

---

<sup>4</sup> Muchsan, Some Notes on State Administrative Law and State Administrative Justice in Indonesia (Liberty, 1981). P.12.

<sup>5</sup> Sunggono Bambang, *Law and Public Policy* (Sinar Graphic, Jakarta, 1994). P. 1.

<sup>6</sup> Kurniawaty, Y., "*The Use of Discretion in the Formation of a Legal Product*," Indonesian Legislation Journal (2016).

<sup>7</sup> Eri Yulikhsan, *Discretionary Decisions in Government Dynamics* (Application in PTUN) (Deepublish, Yogyakarta, 2016). P. 12-13.

government inertia. Government officials are granted freedom of action, known as discretion, under special circumstances. State goals will be disrupted by the actions of state and government officials who enrich themselves through corruption. This corruption grew to reach all levels of government, from central to regional. A country's economy fails due to corrupt behavior, which also damages the people's economy<sup>8</sup>. The emergence of these problems is caused by the absence of clear regulations, incomplete laws, several options provided by law, or regulations. the government itself<sup>9</sup>. The aim of this research is government accountability for discretionary actions which are a benchmark for abuse of authority.

## B. Method Research

Using normative juridical legal investigations in legal methodology in resolving legal confusion that arises in it. The envisioned result is the establishment of a statute of limitations regarding the relevant legal issues at hand. Methodology that includes legal, conceptual, and historical approaches. Analysis of legal materials relies on primary legislative resources collected through inventory and categorization techniques. Secondary legal sources from library materials are prepared using text summaries in outline form containing the author's initial point of view, special notes, and the author's analysis.

## C. Results and Discussion

### 1. Discretionary Liability is Used in the Formation of Legal Products to Achieve a Prosperous Country

#### a. Understanding discretion

According to the legal dictionary, "discretion" means the freedom to make one's own decisions in certain situations. According to S. Prajudi, Atmosudirjo (1994) defines discretion as the freedom of officials who have the power and competence to act or make decisions according to their wishes. He also explained that freedom of choice is needed to complement the principle of legality, namely the legal principle which states that all state administrative actions must be based on the rule of law. Laws cannot regulate all problems in this country. Therefore, state administration must have freedom which consists of bound freedom and free freedom<sup>10</sup> Based on individual choices, the state administration has the freedom and determines authority in all fields and does not exceed and commit violations because of the authority created based on regulations According to Sjachran Basah, all legal regulations provide several options and *the* state is free to choose one of the options provided by law. According to Saut P.Panjaitan, (2011), *Freies Ermessen (2011) is the absolute authority to carry out state administration by the rules of law and implemented according to individual wishes or initiative so that problems can be resolved and*

<sup>8</sup> Wijayanto, *Corruption Corrupts Indonesia: Causes, Consequences, and Prospects for Eradication* (Gramedia Utama, Jakarta, 2009). P.13.

<sup>9</sup> Muhsin, MS., "Juridical Study of Abuse of Discretionary Authority by Government Officials According to Law Number 30 of 2014 Concerning Government Administration," *Lex Administratum* (2019). P. 12.

<sup>10</sup> CT Simorangkir, et al., *Legal Dictionary* (Sinar Graphic Publishers, 2008). P.12.



*encourage administration that still has a legal vacuum to be implemented properly. full of responsibility.*

#### **b. accountability is used in the formation of legal products related to abuse of discretion**

To create a local legal product, it is necessary to meet the following criteria;

- 1) In good governance, discretionary decisions are legal actions to implement the following principles: a) the principle of legal certainty: the principle in the design of the rule of law that prioritizes legal regulations, propriety, and justice in making wise decisions regarding State administrators; b) the principle of balance; c) the principle of similarity; d) principle of rapid action; e) motivational principles; f) the principle of spillover of authority; g) principles of very feasible implementation;
- 2) Application of discretion includes;
  - a) Legal trust;
  - b) Balanced;
  - c) careful/careful
  - d) Sharp in setting targets/subjects;
  - e) Wisdom;
  - f) Mutual cooperation

These requirements are cumulative and comprehensive, meaning that all must be fulfilled in order to carry out actions that do not violate the law. Through this approach, if there are benchmark requirements that have not been met, its implementation is considered to be an unlawful act with all the consequences.

#### **c. PLegal Responsibility to Leaders who issue Decisions regarding the Basis of Discretion from the Perspective of government agencies power**

That is beyond legislative and judicial power is government power. The term *bestuur* is more common in the Netherlands. The concept of *sturing* according to Philipus, (2010) has several elements, including: 1) *sturing* is a continuous action; 2) *sturen* is related to utilizing power; 3) *sturen* covers areas of legislative limitation responsibility; 4) *sturen* means goal. Apart from being a territorial authority, government authority also has a discretionary perspective, or discretionary authority. Discretionary authority is a difference between pure discretionary authority that can be accounted for and discretionary authority that is not original

Discretionary power is impure. The concept of discretion entails genuine freedom to make a decision, although it does not necessarily involve the freedom to interpret unclear legal norms. Against the constraints of power, the *wetmatigheid principle* proves sufficient but fails in the realm of discretionary power. The expansion of discretionary authority in certain contemporary legal systems, within the limits of the principle of *rechtmatigheid van bestuur*, underlines the importance of general principles of good governance (*algemene beginselen van voorlijk*). These principles serve as a foundation for governance practices, legal recourse, and a fundamental basis for litigation. The



implementation of government functions is directed at achieving transparent and effective governance, along with compliance with the basic principles of good administration as an important tool in fostering healthy and transparent governance. However, the actuality reflects that the hope of having a *Good Governance* and *Clean Governance* government is the national ideal of the State of Indonesia.

Its implementation covers various aspects, including preventing abuse of power. According to Muin Fahmal, (2006), there are several criteria that must be met for deviations in authority in administrative law, namely ;

1) Specialist Principles (goals and intentions)

This criterion evaluates the behavior of administrative officials vested with discretionary authority to determine abuse, by determining whether their actions are consistent with the purposes for which the power was granted (the principle of non-abuse of authority). Any deviation from this goal constitutes an abuse of authority.

2) Principle of Legality

In accordance with the principle of legality, government actions are considered legal if they are in accordance with existing law or are based on laws in the name of the will of the people. In a democratic environment, government actions must comply with a legal framework that upholds the principles of justice and legality. gain the trust of the community which is officially stipulated in law.

#### d. Basics of Discretionary Powers

In a variety of scenarios involving government duties and responsibilities, officials face situations where legal regulations do not explicitly permit their actions, even though there is an urgent need for the government to act toward certain goals. The concept of Discretionary Powers gives administrative bodies the flexibility to carry out actions without being completely legally restricted by legislation. However, in pursuing state goals through development according to Syachran Basah, government activities do not reflect unilateral actions but rather focus on the role and focus of the duties and responsibilities of the government itself.

1) Prohibition of arbitrariness (*willekeur*);

basically actions that have no legal basis or compliance with rules in government administration. Such actions are considered irrational, and to ensure the absence of arbitrariness, the benchmark is rational;

2) Within the framework of legal rules;

all government actions are based on legal provisions, because of the principle of *wetmatigheid van* or legality forms the foundation of the legal system. This principle dictates that without the legal basis provided by existing laws, government entities have no authority to influence or modify the legal status of individuals in society. The concept of legality, according to Syachran Basah's opinion, aims to balance the importance of understanding legal principles and people's sovereignty based on the principle of *monodualism* , which is constitutive. Therefore, not every government action is always regulated by applicable law;

3) Under certain circumstances;

In the urgent need to address social problems without appropriate legal regulations, government bodies were granted discretionary powers, such as *freies ermessen*, which allowed them to act without full compliance with legal constraints.

*Freies Ermessen* has legislative implications for the government, leading to the emergence of the right of legislative initiative to enact laws independently of the DPR's approval, the right of delegates to determine their issuance at a lower level than the legislature, and the function of the right to interpret *enunciative regulations themselves*. Therefore, in describing it, it has the following elements of a legal state: a) its purpose is to continue public service duties; b) Reflects an active response approach by the State administration; c) Responsiveness is legally permitted.

4) There are legal and moral reasons for its implementation;

Based on the matters mentioned above, administrative government actions can be divided into three criteria, including: a) making regulations; b) make a decision; and c) perform material acts. These three types of acts are legal acts carried out by government administrative officials through special authority to make decisions and with the aim of regulating the balance between state administration and society.

#### e. Legal Responsibility For Discretionary Use

In Law Number 30 of 2014 concerning Government Administration, the policies of government officials are specifically regulated to assist in managing government affairs and improving the quality of public services. The main objective is to achieve optimal governance in all government bodies and officials, both at the central and regional levels. As defined in Article 1 paragraph (1) of Law Number 25 of 2009 concerning Public Services, public services include various activities aimed at fulfilling the service requirements of every citizen and resident, relating to goods, services, and/or administrative services provided. provided by public service providers by legal provisions. According to Article 1 paragraph (9) of Law of the Republic of Indonesia Number 30 of 2014 concerning Government Administration, the policies of government officials are decisions and/or actions taken by government officials to overcome certain problems faced during the period of government administration when legal regulations offer options. , incomplete, unclear, and/or ambiguous. Furthermore, Article 23 of Law No. 30 of 2014 concerning Government Administration outlines the policy arrangements of government officials, which include decision-making processes, such as a) situations where legal regulations provide decision-making options; b) cases where legal regulations do not exist; and c) cases where government action is necessary for the public interest. As a result, regardless of the provisions in Law No. 30 of 2014 concerning Government Administration, many aspects of the policy remain subject to ambiguous interpretation. The protocols used by chief government officials to independently grant approval or rejection lack clear guidelines regarding the delegation of discretion to the official's superiors. Failure to respond within five days of receipt of a request for discretion may impede public services during emergencies, urgent situations, and/or natural disasters.

The authors suggest that accountability reports for the implementation of policies undertaken in good faith should not mandate approval from superior government officials.

## 2. Legal handling resulting from Discretionary Abuse of Authority in Corruption Crimes

### a. The role of law enforcement in handling discretionary abuse of authority

Law enforcers play their role in accordance with the law to prevent and stop corruption in accordance with applicable regulations. The government's fight against corruption is proven in the issuance of Presidential Regulation Number 87 of 2016, establishing the Illegal Extortion Cleaning Unit (Saber Pungli). The actions of law enforcement authorities, for example, *Operation Hand Catch*, target minor offenses, namely illegal levies, but also government officials suspected of committing corrupt practices. Responses to corruption cases involving abuse of authority have varied, with some officials hesitant to fully enforce budget absorption for fear of legal repercussions. The enactment of Law No. 30 of 2014 concerning Government Administration sparked debate among experts in Criminal Law and State Administrative Law, regarding its implementation of Anti-Corruption Justice<sup>11</sup>. The Government Administration Law will increase efforts to eradicate corruption by detecting potential abuse of power early. On the contrary, Ad Hoc Anti-Corruption Judge Krisna Harahap at the Supreme Court (MA) argued that Law No. 30 of 2014 hampers anti-corruption efforts because it contradicts previous legislation<sup>12</sup>. Provisions of Article 3 of the Law. Anti-corruption, which focuses on individuals abusing their authority to the detriment of state finances, is not effectively enforced by Government Administration legislation. This legislation still has weaknesses in providing protection against abuse of power that leads to corrupt practices eradication of criminal acts of corruption and Law Number 30 of 2014 concerning Government Administration which essentially hinders efforts to eradicate corruption by stipulating that "any person who abuses the authority, opportunity or means available to him because of his position or position can harm state finances or the state's economy "You will be subject to a minimum prison sentence of 1 year and a maximum of 20 years. The author thinks that Law Number 30 of 2014 concerning Government Administration has weaknesses in providing legal remedies and providing limits and elements to authority indicating abuse of authority that causes corruption. In state administrative law, every delegation of authority to an official needs to be given a clear objective and purpose of the delegation of authority, so that the implementation of the authority is under the direction and intended purpose of the authority itself. The exercise of authority if there is a deviation from the initial direction and purpose intended for the authority is said to be an act of misused authority<sup>13</sup>

---

<sup>11</sup> Ari, "The Government Administration Law is Considered a Coup Against Corruption Eradication," accessed September 6, 2016, <http://news.second.com/news/2873765/uu-administrasiPeman-diujung-delegatamemoration-corruption>.

<sup>12</sup> Sahlan, M., "Elements of Abuse of Authority in Corruption Crimes as Absolute Competency of Administrative Justice" (2016), P.15.

<sup>13</sup> Syamsudin, A., Ilyas, N., & Badeoda, YB., SF. Marbun, *Juridical Theoretical Analysis of the Akbar Tandjung Case from the Optics of State Administrative Law* (Sinar Library, Jakarta, 2004), P.3.



Because the rule of law means that all its citizens have the rights and obligations to receive the same legal remedies, Law Number 30 of 2014 concerning Government Administration receives protection as a tool for running the government. Therefore, the principle of legality has been developed since the publication of the official rule of law, which means government according to law. Abuse of authority must be proven through a trial if an official has misused it for personal or group interests<sup>14</sup>.

The public must be able to prove that an official has abused their authority in a way that is not under regulations<sup>15</sup>. Furthermore, It needs to be proven if the neglect of authority is carried out consciously by ignoring the goals and targets that have been given to the authority. The transfer of goals and targets is based on individual and group interests for themselves and/or government officials in making decisions and/or taking actions, mixing authority, and/or acting arbitrarily" is considered a judicial abuse of authority.

When a government agency and its officials issue a decision that exceeds their authority, including a) the length of time in office that exceeds the regulations; b) territorial boundaries; or c) deviating from statutory regulations. Decisions from government agencies or officials are considered to mix authority if they are carried out outside the work unit agency or authority material given and/or conflict with the objectives of the authority. In addition, if their decisions and actions are carried out without the basis of authority and/or are in conflict with court decisions that have permanent legal force, government agencies, and officials are declared to have violated their authority. State administrators and government administrators can be declared to have committed maladministration if they commit acts against the law, and exceed the authority of their duties and positions, including negligence or neglect of legal obligations in providing public services that cause material or immaterial losses to society or individuals. According to experts and practitioners, State Administrative Law is conceptually and theoretically inaccurate and tends to be misleading<sup>16</sup>.

#### **b. Efforts to Prevent Government Officials from Abusing Discretionary Authority**

Administrative law is the main legal regulation controlling officials and society. Law Number 30 of 2014 concerning Government Administration was created with a focus on administrative law with the aim of: 1) Creating an orderly administration of government; 2) the existence of legal provisions; 3) preventing abuse of authority; 4) guaranteeing transparency and accountability of work unit agencies and government officials; 5) legal action against citizens and government officials; 6) follow up and comply with applicable laws and regulations; and 7) Providing the best public services.

<sup>14</sup> Facrudin, I., *Administrative Justice Supervision of Government Actions* (Alumni Harapan, Bandung, 2004). P.14.

<sup>15</sup> Latif, A., *Administrative Law in Corruption Crimes* (Prenada Media Group, Jakarta, 2014). P.15.

<sup>16</sup> Hulu, S., & Pujiyono, P., "Criminal Liability for Discretionary Actions of Government Officials Which Indicate Abuse of Authority," *Legal Issues* 47, no. 2 (2018). P. 167-174.



There are two main objectives in drafting Law Number 30 of 2014 concerning Government Administration. The first is to provide legal protection for the implementation of government administration and the second is to improve the quality of services provided by the government to citizens. Because these rules regulate all decisions or actions of government administration, abuse of authority will not occur.

Apart from that, the government administration law regulates discretion, decisions, and the implementation of activities determined by government officials to resolve specific problems that occur in the administration of government officials. Several reasons for these regulations were made, because: 1) statutory regulations cause stagnant government, irregular, incomplete, or unclear; 2) need to be adjusted to the purpose of granting authority; 3). the need for implementation to safeguard public interests and the implementation of community prosperity by Article 24 of the Government Administration Law. Government officials who follow a code of ethics will prioritize their obligations as government officials over individual interests. To increase the success of government, a code of ethics is used by every government official as a mental and ethical standard. Therefore, steps are needed to achieve this success through the performance of staff with good initiative, thoroughness, honesty, and loyalty to achieve effective government. According to Ateng Syarifudin, assessing government from the perspective of fairness and justice is part of the science of administrative law. Principles related to clean government unite these two perspectives (Muhamad Azhar, (2015) . Creating a state that is free from all activities related to corruption, collusion, and nepotism, the service principle of Law Number 28 of 1999 concerning State Administration which is Clean and Free from KKN explains that this principle upholds moral norms, decency, and law. Furthermore, it is very appropriate that all government officials who use discretionary power provide reports as a means of upholding transparency and accountability<sup>17</sup>

### c. Legal Action against the Discretion of Government Officials Which Harms Citizens

In general criminal law, the government relies on general criminal law rather than civil law in carrying out administration in government. This reference comes from the important role of government in regulating society through public legal mechanisms. Throughout the work of government, various forms of government action are used by the government itself. Sometimes, the use of such measures can lead to conflicts of interest between the government and the community, especially when the legal rights of the community are at stake. It is important to ensure protection for those whose rights have been violated. This is important because of the inherent risk of abuse of government authority by officials, as the English Lord Action famously articulated, “power tends to corrupt, but absolute power corrupts absolutely.” Such abuse results

---

<sup>17</sup> Muhsin, MS., "Juridical Study of Abuse of Discretionary Authority by Government Officials According to Law Number 30 of 2014 Concerning Government Administration," *Lex Administratum* (2019). P. 7.

in arbitrary decisions, unlawful acts, or other forms of government action that cause harm to the state and its citizens, underscoring the need for legal protection.

From the perspective of citizens, guarantees of legal protection must be based on the protection of their rights, including<sup>18</sup>:

- a) guarantees of legal certainty regarding all government actions that affect citizens;
- b) the right to compensation for damage commensurate with that incurred by members of the public;
- c) the right to seek redress through authorized state entities such as the courts; and
- d) the right to voice objections before an official decision. In the academic realm, the legal system that handles lawsuits initiated by citizens who are harmed by government actions is called the state accountability system. This framework determines that the state must provide compensation for direct or indirect losses caused to citizens, both material and immaterial, as a result of harmful government actions. In the Indonesian context, there are various legal avenues for individuals who have been harmed by government actions, especially repressive ones, to find ways to resolve disputes with the government.

This includes both proposed and non-litigation approaches, involving entities such as the Supreme Court, District Courts, Administrative Tribunals, Ombudsman, and other independent state bodies authorized to resolve conflicts between communities and government.

Before the establishment of the Government Administration Law, the government had responsibilities related to legal accountability for actions carried out by the government. The classification of government actions falls into two categories, specifically responsibility for losses to citizens and responsibility for government actions deemed to be unlawful activities by the government. The existence of two different forms of system in government accountability has its application to the extent of justice jurisdiction in each assessment and determination of cases against the government. can be handled legally through public courts (district courts) based on unlawful violations by leaders<sup>19</sup>. In a democratic country governed by the principles of Pancasila, the use of various government actions in government underlines the need for legal legality. and protection of human rights. These fundamental aspects have implications for the implementation of government administration, assisted by a system of legal supervision and control (juridical control) mandated by the state through various legislative regulations, whether originating from internal government bodies or external government entities (legislative or judicial). The purpose of this supervision from a legal perspective (juridical supervision) is to ensure that governance practices are in line with the constitutional mandate given to the government in Indonesia.

This emphasis is rooted in the observation that in the realm of government, there

<sup>18</sup> Philipus M. Hadjon, *Legal Protection for the People in Indonesia* (Civilization, 2007). P. 213.

<sup>19</sup> Utrecht, *Introduction to Administrative Law of the Republic of Indonesia* (Pustaka Tinta Mas, 1986). P.23.

is a tendency for government officials to abuse their authority through actual unlawful actions by the government through various forms of government action that cause harm to the state and the people. This situation often culminates in disputes between the people and the government. The determination of legal responsibility for claims arising from government actions is guided by the theory of responsibility, delineating official responsibility and personal responsibility. These responsibilities relate to government positions held by individuals (officials), who embody the role of institutions or, as Logemenn suggests, positions that represent rights and obligations that require representation (*vertegen woordgeving*). According to Hadjon, the attribution of responsibility for government actions, especially regarding legality issues, depends on the source of authority.

Losses suffered by each member of society serve as a basis for initiating legal action in the State Administrative Court, to reverse decisions that hurt the interests of society. The Government Administration Law discusses compensation for losses to members of the public resulting from detrimental government decisions/actions in Article 71 paragraph (5), holding government agencies and officials responsible for losses arising from decisions/actions that are revoked. In addition, Article 72 outlines the return procedures mentioned in Article 70 paragraph (3) and the responsibility of government bodies and officials for losses arising from decisions/actions specified in Article 71 paragraph (5) as detailed in the Government Regulation. Previously, the Government Administration Draft Law detailed compensation arrangements for losses caused by *rechmatigeheid* government decisions/actions in Article 41.

This stipulates that the cancellation of government administration decisions must include compensation for the affected parties and restoration of the annulled decision with relevant documentation. The amount of compensation, as outlined in paragraph 1, must comply with the principles of justice and expediency, with government officials or agencies determining the amount of compensation specified in paragraph<sup>20</sup>. Article 41 paragraph (2) emphasizes that the amount of compensation must be proportional to the losses caused by government administrative decisions, which reflects the principles of justice and expediency.

However, the principle of damage compensation in Article 41 paragraph (2) of the Government Administration Draft Law is not integrated into the previous Law, thereby reducing it. The level of protection provided to citizens affected by government actions. Differences in compensation provisions throughout the Government Administration Law, Constitutional Law, and their implementation relate to the fact that additional compensation claims are an alternative option and have limited value, deviating from the core principles of justice and expediency. as outlined in the previous Government Administration Draft Law.

---

<sup>20</sup> Arwanto, B., "The Authority of the Administrative Court in Resolving Disputes on Unlawful Acts by the Government (*Onrechmatige Overheidsdaad*)," JATISWARA (2018). P.16.

#### **D. Conclusion and Recommendations**

From As a result of the establishment of the Government Administration Law, it is very important that all government actions are based on regulations and that legal remedies for citizens affected by such actions are regulated specifically in a case. These provisions are effectively established through the State Administrative Court as a consolidated administrative court responsible for handling all administrative disputes, including those originating from factual government actions that were previously under the jurisdiction of the General Court. The many choices that government officials have when carrying out their duties can cause legal and administrative problems, including concerns about good governance because state losses arise due to abuse of discretion by officials that benefit individuals or groups.

The role of law enforcers in efforts to prevent abuse of the authority of officials who exercise discretion as a legal product goes beyond their duties and responsibilities so that they are under the Government Administration Law and are beneficial for the welfare of their citizens. Prevention of corruption regarding official discretion can be controlled by funds authorized to supervise the implementation of the discretion. Discretion must be accounted for considering the possible legal and administrative chaos that may arise. As a result, the implementation of appropriate decisions is under the current situation while still being guided by government policy in general which is of course good and benefits society.



## BIBLIOGRAPHY

### A. Book:

- Agussalim Andi Gadjong. *Regional Government, Political and Legal Studies*. Ghalia Indonesia, 2007.
- Eri Yulikhsan. *Discretionary Decisions in Government Dynamics (Application in PTUN)*. Deepublish, Yogyakarta, 2016.
- Utrecht. *Introduction to Administrative Law of the Republic of Indonesia*. Pustaka Tinta Mas, 1986.
- Latif, A. *Administrative Law in Corruption Crimes*. Prenada Media Group, Jakarta, 2014.
- Muchsan. *Some Notes on State Administrative Law and State Administrative Justice in Indonesia*. Liberty, 1981.
- Philipus M. Hadjon. *Legal Protection for the People in Indonesia*. Civilization, 2007.
- Philipus M. Hadjon, [et al.]. *Introduction to Indonesian Administrative Law*. Gadjara Mada University Press, 2008.
- Prajudi Atmosudirjo. *State Administrative Law*. Ghalia Indonesia, Jakarta, 1994.
- Satjipto Rahardjo. *Law and Society*. Angkasa, Bandung, 1984.
- Wijayanto. *Corruption Corrupts Indonesia: Causes, Consequences, and Prospects for Eradication*. Gramedia Utama, Jakarta, 2009.

### B. Journal:

- Arwanto, B. "The Authority of the Administrative Court in Resolving Disputes on Unlawful Acts by the Government (Onrechmatige Overheidsdaad)." *JATISWARA*, 2018.
- Hulu, S., & Pujiyono, P. "Criminal Liability for Discretionary Actions of Government Officials Which Indicate Abuse of Authority." *Legal Issues* 47, no. 2 (2018).
- Muhsin, MS. "Juridical Study of Abuse of Discretionary Authority by Government Officials According to Law Number 30 of 2014 Concerning Government Administration." *Lex Administratum*, 2019.
- Kurniawaty, Y. "The Use of Discretion in the Formation of a Legal Product." *Indonesian Legislation Journal*, 2016.

### C. Online Articles:

- Ari. "The Government Administration Law is Considered a Coup Against Corruption Eradication." Accessed September 6, 2016.  
<http://news.second.com/news/2873765/uu-administrasiPeman> diunduh-delegatamemoration-corruption.

### D. Others:

- Facrudin, I. *Administrative Justice Supervision of Government Actions*. Alumni Harapan, Bandung, 2004.
- JCT Simorangkir, et al. *Legal Dictionary*. Sinar Graphic Publishers, 2008.
- Sahlan, M. "Elements of Abuse of Authority in Corruption Crimes as Absolute

Competency of Administrative Justice." 2016.

Syamsudin, A., Ilyas, N., & Badeoda, YB. *SF. Marbun: Juridical Theoretical Analysis of the Akbar Tandjung Case from the Optics of State Administrative Law*. Sinar Library, Jakarta, 2004.

Sunggono Bambang. *Law and Public Policy*. Sinar Graphic, Jakarta, 1994.