

Discretionary Authority in Government Administration after Law Number 30 of 2014 concerning Government Administration

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ABSTRACT

This study examines the regulation and implementation of discretionary authority in Indonesian government administration following the enactment of Law Number 30 of 2014 concerning Government Administration. Using a normative juridical approach, the research analyzes the legal framework, guiding principles, and mechanisms of accountability associated with the use of discretion by public officials. The law formally defines discretionary authority, outlines conditions for its application, and incorporates safeguards to ensure decisions align with legal norms and serve the public interest. The findings indicate that while the law improves legal certainty and promotes good governance, practical challenges remain in its application, including limited legal awareness among officials, fear of legal repercussions, and weak oversight mechanisms. The study concludes that strengthening institutional capacity and providing legal guidance are essential to ensure the responsible and effective use of discretion in public administration.

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1. INTRODUCTION

Discretionary authority is an essential component of public administration that grants government officials the flexibility to make decisions in the absence of explicit statutory directives or when interpretive judgment is needed. This authority enables responsiveness to evolving social and political contexts and ensures that government actions remain relevant and effective. Often, legislative bodies intentionally draft laws with vague language, thereby providing administrators the space to interpret and apply policies so long as they align with statutory intentions [1]. Discretionary power

is justified when it serves the public interest and aligns with constitutional objectives for common welfare and national development [2]. Nevertheless, such discretion must be exercised within the bounds of good governance principles, including legal certainty, accountability, transparency, and the protection of citizens' rights, to prevent abuse and maintain public trust. The principle of good administration offers a framework to ensure that discretionary acts are transparent and accountable, and that they uphold public interest [3]. Legal and regulatory frameworks—comprising both statutory and soft law—serve to guide and limit this

discretion, safeguarding against arbitrary actions [4]. Mechanisms such as legislative oversight, judicial review, and the professionalization of public service further enhance rationality regulation and control over administrative discretion [5], while the integration of hard and soft law ensures that discretion remains aligned with legislative intent and administrative norms [4].

The promulgation of Law Number 30 of 2014 concerning Government Administration (Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan) marked a pivotal reform in Indonesia's administrative legal framework by formally recognizing and regulating discretionary powers (*diskresi*) within government administration, offering a legal basis and clear procedural guidelines for their application. Prior to this legislation, discretion in Indonesian public law was often ambiguously defined and inconsistently enforced, raising concerns over arbitrariness and potential misuse of authority. The law establishes a structured framework that outlines the scope, requirements, procedures, legal consequences, and accountability mechanisms related to discretionary actions, emphasizing their alignment with principles of good governance and the sovereignty of the people, as rooted in Pancasila [6]. It introduces a paradigm shift in identifying and mitigating abuse of power by defining it to include exceeding authority, misuse of discretion, and arbitrary decisions, with indicators such as legal violations, deviation from intended purposes, procedural irregularities, and lack of proper authorization [7]. Although discretion is instrumental in addressing administrative inertia—enabling officials to act in the absence of explicit statutory guidance—it carries inherent risks of abuse if not tightly regulated [8]. By codifying discretion, the law not only mitigates these risks but also prevents the unjust criminalization of policy actions, especially in the context of strategic national projects [6].

Under Law No. 30 of 2014, discretion is no longer viewed merely as a privilege but

is redefined as a legal tool grounded in administrative necessity, subject to specific conditions and limitations to ensure its alignment with public interest and legal norms. This law embeds discretion within a framework of good governance by requiring procedural safeguards such as written justification and adherence to principles of propriety and proportionality [9], [10]. While the principle of propriety is not mandatory, it functions as a guideline to promote fairness and reasonableness in decision-making, complementing the principle of legal certainty [10]. To enhance transparency and accountability, discretionary actions must be documented and justified in writing [11]. The law also provides mechanisms for administrative appeals and judicial review through the State Administrative Court (PTUN), allowing for the testing of legality and appropriateness of discretionary actions, particularly if they violate legal norms, exceed authority, or deviate from intended purposes [7], [11]. Furthermore, discretion is permitted only if it does not contradict existing legislation—unless its purpose is to overcome governmental stagnation in serving the public interest—reflecting a pragmatic shift from rigid legal positivism [12]. To this end, the law articulates that discretion must meet both formal and material legitimacy requirements, ensuring that public officials act responsibly within the legal and ethical boundaries established by the state [12].

This study employs a normative juridical approach to analyze the development, structure, and implications of discretionary authority as regulated by Law No. 30 of 2014 by examining statutory provisions, legal doctrines, and administrative jurisprudence to answer key questions such as how the law defines and regulates discretion, what the boundaries of its legitimate use are, and how its regulation affects administrative efficiency and legal accountability in governance. The objective of this research is to provide a comprehensive legal analysis of discretionary authority within Indonesia's government administration, offering insights into its role,

regulation, and challenges following the enactment of Law No. 30 of 2014, with the findings expected to contribute to academic discourse, legislative refinement, and the enhancement of administrative practices in the public sector.

2. LITERATURE REVIEW

2.1 *Concept of Discretion in Administrative Law*

In Indonesian administrative law, discretion is a crucial tool for public officials, especially in delivering public services. Before Law Number 30 of 2014, the lack of clear legal guidance led to inconsistent and sometimes arbitrary use of discretion. The law established a legal framework requiring that discretion align with good governance principles—transparency, accountability, fairness—and with Dicey’s concept of the rule of law. It prohibits discretionary acts that contradict existing laws to prevent misuse [9], [13]. However, the introduction of Law Number 11 of 2020 on Job Creation weakened some of these safeguards, creating legal ambiguities [13]. Even so, discretion remains essential to fill legal gaps and ensure responsive public services [13], [14], provided it upholds good governance [9]. Effective internal and external controls are necessary to prevent abuse [15], and a clear understanding of discretion is vital to avoid arbitrary actions [4].

2.2 *Legal Framework: Law Number 30 of 2014*

Law Number 30 of 2014 concerning Government Administration provides a comprehensive framework for the exercise of discretionary authority by government officials in Indonesia, addressing situations where regulations are absent or unclear by allowing decisions to be made in the public interest while upholding good governance principles. The law mandates that discretion must be exercised in good faith, not violate legal norms, and be accompanied by written justification to ensure a balance between administrative flexibility, accountability, and legal certainty. It introduces legal clarity by defining the scope and conditions for

discretion, requiring documentation and accountability reports to promote transparency and oversight [9], [11]. However, critics argue that the law’s limited scope—excluding policy rules such as circulars and instructions—may cause conflicts with existing laws and undermine governance principles [16]. Moreover, concerns persist regarding the potential for abuse, as discretion often relies on individual judgment, particularly among regional officials [8], [17]. To address this, the law allows judicial review and administrative appeals through the PTUN to test the legality of discretionary acts [11], while scholars propose expanding its scope to include policy rules for stronger oversight and more consistent application of control mechanisms [16].

2.3 *Principles Governing Discretion*

The exercise of discretion in governance must align with principles of good governance—legality, proportionality, accountability, and transparency—to ensure decisions are just, lawful, and effective. These principles are embedded in administrative justice systems such as those in Germany and the Netherlands, where judicial review acts as a safeguard against arbitrary use of discretion, emphasizing legal compliance and alignment with governance objectives [18]. Discretion must operate within established legal boundaries, though it may extend beyond specific legal prescriptions if serving the public interest and constitutional goals [2]. The principle of proportionality ensures that actions taken are appropriate to the circumstances and not excessive, thereby maintaining fairness and justice in administrative outcomes [18], [19]. Accountability requires public officials to justify discretionary decisions with clear reasoning and evidence, serving as a critical mechanism to prevent misuse and ensure alignment with the public good [20]. Transparency, meanwhile, calls for open and understandable decision-making processes, enabling public trust, facilitating citizen access to justice, and supporting judicial oversight [19], [21].

2.4 Previous Research

Several studies have examined the implications of Law No. 30 of 2014 on administrative practices, highlighting both its contributions and challenges. The law has significantly improved administrative discipline by ensuring that decisions are made in accordance with existing procedures and legal norms, thus enhancing legal certainty for both public officials and citizens [22]. It also enables regional leaders to act in unregulated or ambiguous situations, an essential function for effective governance [17]. However, the law's implementation still faces challenges, particularly the absence of detailed guidelines and weak institutional mechanisms to control administrative court decisions [22]. Studies also show that internal legal advisory units play a crucial role in guiding officials to properly exercise discretionary powers, underscoring the importance of institutional support [23]. The lack of policy regulation terms such as *beleidsregel* contributes to legal uncertainty and highlights the need for legislative refinement to stabilize the administrative legal environment [24]. Furthermore, while discretion is necessary, it remains subjective and vulnerable to misuse without clear protection mechanisms and consistent regulatory guidance.

3. METHODS

The normative juridical approach is employed in this study to examine legal materials including legislation, legal doctrines, and judicial decisions. This approach is particularly suitable for analyzing the normative content and implications of laws that shape public administration and governance. It enables a critical evaluation of the consistency of existing regulations with constitutional values and principles of administrative justice. This study utilizes three categories of legal materials: primary legal materials, such as Law Number 30 of 2014 concerning Government Administration, the 1945 Constitution of the Republic of Indonesia, relevant Supreme Court and Constitutional Court decisions, and other

related legislation governing public administration; secondary legal materials, including legal textbooks, academic journals, scholarly interpretations, and government publications that discuss discretionary authority and administrative law; and tertiary legal materials, such as legal dictionaries, law encyclopedias, and bibliographic indexes used to trace relevant sources.

To analyze these materials, the study applies three interpretative techniques: systematic interpretation to assess how the regulation of discretion under Law No. 30/2014 aligns with the broader framework of administrative and constitutional law; grammatical interpretation to understand the meaning of essential legal terms like "diskresi," "pejabat pemerintahan," and "kepentingan umum"; and teleological (purposive) interpretation to uncover the legislative intent, particularly its objectives of enhancing public service delivery, preventing abuse of power, and fostering good governance. Additionally, the study incorporates a brief comparative analysis of Indonesia's legal regulation of discretion with administrative law practices in countries such as the Netherlands and Germany, both of which have advanced systems of administrative jurisprudence that offer valuable insights for contextual evaluation.

4. RESULTS AND DISCUSSION

4.1 Legal Definition and Scope of Discretionary Authority

Law Number 30 of 2014 on Government Administration provides a structured framework for the exercise of discretion by government officials, transforming it from an informal practice into a recognized and regulated administrative instrument. By explicitly defining discretion as the authority to make decisions in the absence of clear, complete, or existing legislation—so long as such decisions adhere to general legal principles and serve the public interest—the law establishes a formal legal foundation intended to prevent arbitrary actions and ensure alignment with good

governance [6], [9]. Article 24 of the law further outlines specific conditions for the lawful use of discretion, including acting in good faith, serving the public interest, and complying with the principles of governance, while also mandating mechanisms to review discretionary actions to safeguard against misuse [7], [9]. Despite these safeguards, challenges persist, as discretion remains vulnerable to subjective interpretation and personal judgment, which may lead to abuse if not carefully monitored [8], [17]. To address this, the law adopts a broad definition of abuse of power, encompassing actions that exceed authority, misuse discretion, or result in arbitrary decisions, thereby reinforcing the importance of accountability and legal oversight [7].

4.2 Principles Governing the Use of Discretion

Law No. 30/2014 establishes fundamental principles that guide the exercise of discretion by public officials, ensuring that such decisions are aligned with the values of good governance and legal accountability. These principles include legality, which requires that discretionary actions do not contradict higher legal norms and remain within the scope of official authority, thereby grounding decisions in the rule of law [9], [25]. Proportionality demands that actions be balanced and not excessive in relation to the intended public interest, preventing arbitrary or disproportionate use of power [19], [25]. Accountability obliges officials to explain and justify their decisions, fostering transparency and public trust [9], [19]. The principle of public interest mandates that discretion be exercised for societal benefit rather than personal or political gain, ensuring alignment with constitutional objectives and the common good [2]. Lastly, good faith requires that decisions be made honestly and ethically, without ulterior motives, thus promoting integrity in public administration and protecting against misuse of authority [2], [19]. The incorporation of these principles not only ensures responsible governance but also provides legal protection for public officials who act within these boundaries.

4.3 Oversight and Judicial Control

To prevent the misuse of discretion, Law No. 30/2014 provides mechanisms for institutional oversight and judicial control, ensuring that discretionary authority is exercised within the bounds of legality, accountability, and transparency. Internal supervision is carried out by government inspectorates and internal control units, which require officials to document the reasoning and legal basis for their discretionary actions, thereby upholding the principle of legality and preventing administrative or financial errors [26]. External supervision is conducted by institutions such as the Ombudsman and the Supreme Audit Agency (BPK), which have the authority to investigate reports of maladministration and improper use of discretion, ensuring that public complaints are addressed and governance standards upheld [26]. Recent reforms through Law No. 6 of 2023 have further strengthened the role of the State Administrative Court (PTUN) by setting clearer boundaries for discretionary authority and emphasizing the need for transparency and accountability in decision-making [27]. Judicial review also plays a critical role, allowing courts to examine whether discretionary actions violate principles such as legality, proportionality, and rationality when challenged by the public [27]. Landmark rulings by the Indonesian Constitutional Court and Supreme Court consistently reaffirm that discretion must be exercised within legal limits and remain subject to public accountability, thereby reinforcing the integrity of administrative governance [27].

4.4 Challenges in Implementation

Despite its clear legal framework, the implementation of discretionary authority in Indonesia faces several practical challenges that hinder its effectiveness. Many government officials, particularly at the regional level, lack adequate legal awareness about the proper use and procedural safeguards of discretion, leading to either misuse or reluctance to exercise it [28]. This hesitancy is often driven by fear of legal

repercussions, as past associations of discretion with corruption or maladministration have made officials cautious, even when its use is justified [28]. Additionally, the absence of clear technical guidelines and sector-specific regulations results in inconsistent interpretation and application, creating legal uncertainty [25]. Oversight mechanisms also remain insufficient in some areas, as supervisory institutions often lack the necessary resources or independence to conduct thorough evaluations and investigations of discretionary actions [29]. Addressing these challenges requires a comprehensive strategy, including strengthening the capacity and independence of oversight bodies, developing operational guidelines, providing legal protections such as liability insurance, and enhancing officials' legal literacy through targeted training and education programs [13], [25], [28].

4.5 Discussion

The recognition and regulation of discretionary authority under Law Number 30 of 2014 are crucial for promoting administrative flexibility while ensuring legal certainty, as the law provides a normative framework that aligns with international principles of administrative law and seeks to balance state authority with public protection. However, the effectiveness of this regulation is not solely determined by its legal provisions but also relies heavily on institutional readiness, bureaucratic culture, and the professional integrity of public officials. To strengthen its implementation, long-term reforms should prioritize training and legal education for officials, the development of clear internal Standard Operating Procedures (SOPs), the empowerment of supervisory institutions, and the provision of legal

protection for officials who act in good faith and within the bounds of the law. Achieving a proper balance between discretion and control is a defining feature of mature governance, and while Indonesia has taken significant steps through this legislation, consistent and faithful implementation remains essential to fully realize its objectives.

5. CONCLUSION

Discretionary authority is a fundamental aspect of government administration, enabling officials to respond flexibly to complex and unforeseen public needs. The enactment of Law Number 30 of 2014 marks a significant advancement in formalizing and regulating discretion within Indonesia's legal system by providing clear definitions, guiding principles, and procedural safeguards that promote good governance, accountability, and legal certainty. Normatively, this regulation aligns with international administrative law standards by emphasizing legality, proportionality, public interest, and transparency. However, its effective implementation remains challenged by limited understanding among public officials, fear of legal consequences, and the absence of detailed operational guidelines. To address these issues, the government must enhance legal education and training for civil servants, develop technical guidelines to operationalize the law, strengthen institutional oversight and accountability mechanisms, and ensure legal protection for officials acting in good faith. Ultimately, achieving a balance between administrative flexibility and the rule of law is essential to improving the responsiveness, legitimacy, and overall quality of public governance in Indonesia.

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