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DISCRETIONARY AUTHORITY AND LEGAL RESPONSIBILITIES OF GOVERNMENT OFFICIALS

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ABSTRACT

This study focuses on the issue of "Discretionary Authority and Legal Responsibilities of Government Officials." The authors sought to examine the boundaries that limit the exercise of discretion in the decisions and actions undertaken by government officials. The study used the normative research method, also known as library research. The data sources for this study include primary legal materials in the form of relevant laws and regulations, secondary legal materials such as literature on State Administrative Law, State Administrative Court Procedural Law, and Criminal Law, as well as tertiary legal materials relevant to the subject under study. The findings reveal that discretion refers to the discretionary power granted to government officials for the execution of governmental functions. Discretionary instruments are associated with specific positions and are used to handle specific issues that arise in government administration when laws and regulations are either lacking, incomplete, unclear, or when government action is stagnant. The use of discretion must adhere to certain criteria: alignment with the intended purpose of discretionary authority, conformity with legal provisions, adherence to the General Principles of Good Governance, foundation in objective reasoning, avoidance of conflicts of interest, and execution in good faith. Nevertheless, exercising discretion can potentially harm society and, therefore, needs to be legally accountable. Regarding legal responsibility, government officials' discretion involves job and personal responsibility. Job responsibilities pertain to the legality of decisions and actions, including authority, procedures, and substance. Meanwhile, personal responsibility addresses unlawful acts and maladministration, evaluating whether elements involve the breach of law and maladministration aspects.

KEYWORDS: Authority, court procedural policies, discretion, government, laws and regulations, legal responsibility

Introduction

In a law-abiding society, every decision and action taken by the government for the public good must be based on the existing laws, just like authorities require citizens to abide by laws and existing regulations (Tyler and Darley, 2000). This helps the respective government officials ensure that the decisions and actions taken hold legal validity (rechtmatig). This study focuses on government officials' discretionary Authority and Legal responsibilities regarding tasks these officials ought to perform based on the powers entrusted to them. In contrast, in public office." The existing laws which influence the official performance of duties in public offices require "validity," which refers to "legality," hence "lawfulness" regarding a decision and action taken (Hamzah et al. 2016).

This paper, therefore, explains the importance of government officials as the main object required to ensure provisions established within the constitution are legally implemented. This means that one of the fundamental elements of the rule of law is that every government decision and action must be underpinned by authority (Allan, 2017). Of course, the said authority is typically governed by laws and regulations (formal legality). However, with the evolution of the concept of a material rule of law state in the execution of governmental affairs, these laws and regulations no longer suffice as the sole basis for authoritative actions. These legal frameworks exhibit various weaknesses, such as ambiguous and void norms.

Consequently, the government is granted the autonomy to take the initiative, particularly in resolving issues arising from critical and urgent situations for which specific regulations do not yet exist (Brattberg & Valášek, 2019). Ridwan (2013) argues that governmental bodies can exercise discretionary authority when providing public services concerning vague or open norms within laws and regulations. This discretion establishes clarity or introduces options into the regulatory framework.

According to Ishviati (2016), discretion involves the power to exercise freedom within a government framework. When executing governmental actions, the benchmarks for decision-making are assessed in alignment with statutory provisions and the overarching principles of good governance. In this context, the Great Indonesian Dictionary defines discretion as the liberty to formulate decisions based on the situation.

Discretionary authority can only be used under specific circumstances, allowing government officials to ascertain and interpret the instances that necessitate its application (Parker, 2019). One of the roles of discretionary authority is to supplement the principle of legality, a legal tenet stipulating that every governmental action must be rooted in statutory regulations (Spicker, 2023). Not all laws and regulations include the entirety of societal actions, particularly when addressing crucial and unforeseen issues. Hence, the government must resolve such matters that arise abruptly.

Using discretionary authority, government officials often find themselves misunderstood as having abused power (Mortenson, 2019). Government officials are susceptible to falling under the criminal provisions, which threaten penalties for officeholders who exploit their authority. However, within the theory of administrative law, officials primarily act as representatives of their office's authority. When government officials employ discretionary authority, as long as

it aligns with their formal jurisdiction or falls within the context of exercising office authority, any ensuing consequences become the office's responsibility (Metzger & Stack, 2017). Consequently, it is inappropriate for government officials to be easily subject to criminal allegations while executing their authority.

In cases where the government surpasses its formal authority, its actions can be deemed to carry elements of maladministration, thereby invoking personal responsibility. A government policy is considered deviant if it entails aspects of authority misuse and arbitrariness (Harmon, 2023). According to the Dutch Wet AROB, a policy is deemed arbitrary if it is unreasonable (Philipus, 1993).

Thus, the paper sought to examine the boundaries that limit discretion in the decisions and actions undertaken by government officials within public offices. An in-depth exploration and analysis to establish legal assurances and protection for government agencies and officials, on the one hand, and for the community, on the other hand, was conducted as established in the present paper.

Theoretical Review

Authority forms the basis on which government agencies and officials decide actions and inactions (Smith, 2021). To use resources to accomplish organizational goals is to have authority in the broader sense of State Administrative Law. In Dutch, bevoegdheid is a synonym for authority. It is described as having legal authority, the capacity to direct or take action, and the capacity of public officials to demand compliance with orders legitimately given in the course of performing their public duties (Henry, 1990). Based on the terminology of Dutch laws, Philipus (1993) offers insights into the terminology of “authority” and “bevoegdheid.” In the concepts of private law and public law, "bevoegdheid" is used, whereas "authority" is always used in the concepts of public law (Philipus, 1993).

It has been established that authority in State Administrative Law focuses on the power vested in officials, which includes empowering them to issue directives to other entities, thereby compelling obedience from those subject to such authorities (Stack, 2015). The authority is a fundamental basis for engagement, action, and the execution of organizational activities. In other words, without authority, individuals have no capacity for action. It is, therefore, crucial to distinguish between authority and power; power primarily describes the entitlement to perform actions or abstain from them (Williams, 2022), while legal authority fundamentally encompasses rights and corresponding obligations (Lindahl, 2016). In the context of regional autonomy, rights entail the ability to self-regulate and self-govern (Bagir, 2000).

Legality stands as a cornerstone among the principles used as the basis for every government and state administration concerning the rule of law of a country, particularly those adhering to the civil law system or the continental European legal framework. This principle of legality takes center stage in the context of state administrative law (Ammann, 2020), where it signifies that the government is subject to the law, plus the principle of legality, which stipulates that all provisions binding citizens must find their basis in law (Ridwan, 2013).

Aligned with the primary tenet of a rule of law state, specifically the principle of legality, it is upon this principle that governmental authority draws its foundation from statutory regulations (Diver, 1985). Attribution and delegation are the two ways that governments can acquire power in the context of administrative law; mandates are occasionally acknowledged as a separate method (Philipus, 1993).

The principle of legality requires that no action or decision of state administration may be executed without a legal (written) foundation (Crocker, 2020). Broadly speaking, if an action is undertaken under the pretext of an "emergency," the legitimacy of the emergency must be proved (Westcott et al., 2017); if this cannot be established, such actions could potentially incur accountability and might be subject to legal proceedings (Duri et al., 2022). However, from the Indonesian perspective, governmental authority is derived from statutory regulations, which are acquired in three ways, as outlined in Article 11 of Law Number 30 of 2014 (Law Of The Republic Of Indonesia, 2014) regarding Government Administration. According to the Law Of The Republic Of Indonesia (2014), the following has been established:

Attribution

Attribution has been interpreted as the granting of Authority to Government Agencies and Officials with a basis in the 1945 Constitution of the Republic of Indonesia (Law Of The Republic Of Indonesia, 2014). In other words, government agencies and officials have been empowered through attribution. Specifically, it has been stipulated in the 1945 Constitution of the Republic of Indonesia that the authority is novel. However, it did not previously exist, and attribution is granted to government agencies and officials.

This means that for public agencies and government officials who obtain authority through attribution, the responsibility for exercising that authority rests with the respective agencies and the respective officials. In the Indonesian context, attribution authority cannot be delegated unless explicitly stipulated in the 1945 Constitution of the Republic of Indonesia, which acts as the country's supreme law.

Delegation

The transfer of authority from a higher-level government agency and its official to a lower-level government agency and official entails the complete delegation of responsibility and accountability to the appointed delegate. In delegation, authority is not newly created; it is passed from one official to another. The legal responsibility no longer resides with the delegator but instead shifts to the delegate (Swaine, 2004).

However, it has been noted with delegation that the party granting delegation retains the right to revoke it per the principle (Shapiro, 2018). This principle signifies that a body and or an official who issues a "decision" has the power to revoke or cancel it. Within the Indonesian constitution, this is stipulated in Article 13, paragraph (6) of Law Number 30 of 2014 regarding Government Administration which asserts that in cases where the exercise of authority based on delegation results in ineffective governance, the agency and or government officials

granting the delegation of authority hold the prerogative powers to withdraw the delegated authority (Law Of The Republic Of Indonesia, 2014).

Mandate

A mandate is a transfer of power from a higher level government agency or official to a lower level government agency or official. However, the mandate giver retains the responsibility and is accountable (Eriksen, 2021). In this case, the mandate recipient solely acts on behalf of and for the mandate giver. The ultimate responsibility for decisions made by the mandate recipient continues to rest with the mandate giver. This means that the government agency or official receiving the mandate must clearly indicate that they are acting on behalf of the government agency or the official granting the mandate.

Concept of Discretion

In a broad sense, discretion can be interpreted as the freedom to decide based on judgment (Hart, 2013). More specifically, in the context of government, discretion represents authority that arises due to the evolution or expansion of the concept of government functions. Additionally, discretion can signify the government's autonomy to react to evolving demands as administrators of the public interest within a nation (Robbins, 2005). This governmental latitude is conceived because legal frameworks are limited due to ambiguous regulations, regulatory gaps, or rule inconsistencies. Despite these conditions, the state administration must persist to ensure uninterrupted functioning, even without precise regulations (Bahlieda, 2015). Building on this notion, discretion embodies a distinct connotation—an exemption from typical circumstances that affords the government sufficient legal ground to take action (Hall, 2017). Within a standard scenario, the authority vested in the government constrains authority, signifying that the principle of legality—integral to the rule of law—continues to be paramount.

Several legal experts have advanced theoretical perspectives or concepts regarding discretion, including Atmosudirjo (1994), who describes discretion as the latitude for action or decision-making granted to state administration officials who are both authorized and obligated to exercise their judgment. He also mentions that discretion is essential as a complementary facet of the principle of legality, which underscores that "every action or activity of state administration must be rooted in the law provisions" (Atmosudirjo, 1994). However, it remains impracticable for the law to encompass all conceivable scenarios encountered in daily practical life.

According to Indroharto (1993), as facultative authority, discretionary authority doesn't compel state administrative bodies or officials to utilize their power; instead, it offers options, albeit limited to specific matters stipulated in the fundamental regulations. At the same time, Basah (1997) describes the freedom to take action independently as execution required to align with the law, as outlined in a legal state founded on a given Ideology, such as Pancasila. Koentjoro (2004) perceives freedom for state administration or government (executive) as a basis needed during an emergent problem in a state of urgency, particularly when no regulations exist to resolve the issue.

Drawing from the concepts above, theoretical insights, and legal doctrines, it can be deduced that, at its core, discretion denotes the freedom of action or decision-making vested in government administrative bodies or officials based on their judgment. This discretion operates as a complementary mechanism to the principle of legality, particularly when the prevailing law fails to address abrupt issues arising due to the absence of regulations or unclear regulatory guidance.

When considering these concepts and perspectives, it is further evident that a dual form of state administration freedom or discretion is essential: free and bound discretion. In the context of free discretion, the law establishes confines, allowing state administration officials to formulate decisions within these boundaries. On the other hand, bound discretion involves the law outlining several alternative decisions, granting the state administration the freedom to select from the decision options provided by the law.

Within the context of administrative law, the notion of legality (legaliteitsbeginsel), also known as the notion of governmental legitimacy (het beginsel van wetmatigheid van bestuur), is acknowledged. This principle of legality is regarded as one of the most crucial foundational principles of the rule of law (gezien als een van de belangrijkste fundamenten van de rechtsstaat). Though legality is regarded as the foundation of the rule of law, basing every government decision in the public interest solely on the idea of legality or written law is not without its difficulties. According to Neumann (2021), such difficulty stems from natural and artificial defects in statutory regulations as a form of written law.

While fulfilling government duties, government bodies and/or officials have endowed themselves with both attributive and delegated authority. Amid the development of society, specific pressing situations frequently arise that render government administrative officials/bodies incapable of exercising their authority, particularly their binding authority (gebonden bevoegdheid) to perform routine legal and factual actions.

According to Ešer (2019), the application of freies ermessen by State Administration Agencies or Officials is designed to address significant, urgent, and unexpected issues that arise over time. In this case, there may exist the potential for issues deemed important yet not pressing to need immediate resolution, alongside the possibility of urgent matters that hold lesser importance. A new concern can get the status of an important matter if it directly pertains to the public interest, with the criteria for such public interest stipulated by statutory regulation (Ešer, 2019).

Based on the previous discussion, it can be deduced that government administrative bodies or officials are authorized to exercise discretionary powers primarily in specific scenarios where existing laws and regulations fail to adequately address an issue or when the applicable regulations lack clarity. In such cases, discretionary authority is employed, particularly in emergencies or urgent situations, with the primary aim of safeguarding the public interest, as stipulated in statutory regulations.

Concept of Government Officials' Responsibility

Official responsibilities relate to government positions attached to government functions and authority. In public law, the terms government and governance are known. Governance is bestuurvoering or carrying out government duties (Britton-Purdy et al, 2019). Perezhniak et al. (2021) interpret government in two distinct ways: on the one hand, as a "government function" (governing activities), and on the other hand, as a "government organization" (a collective of government units).

The term "government" is categorized into two distinct senses: government in a narrow sense and government in a broad sense. In a narrow sense, government refers to an organ or tool of the state entrusted with the responsibility of administering and executing laws. In this sense, the government serves solely as an executive entity (executive or bestuur). On the other hand, government, in a broad sense, encompasses all the institutions that exercise the nation's executive, legislative, and judicial powers (Macaulay, 2020; Harrington & Carter, 2014).

In relation to government functions, it is understood that central government power is vested in the authority of the President and executed through state ministries. Regional government authority operates through decentralization—a process that delegates power from the center to the regions, enabling them to manage their local affairs independently. Both the Central and regional governments share the duty and responsibility of providing community services, particularly in addressing various challenges, whether legal frameworks regulate these challenges or not. As a result, the Central Government and Regional Governments are endowed with inherent discretionary powers.

Regarding governmental Responsibility in legal doctrine, the concept of legal action is recognized as actions inherently capable of eliciting specific legal consequences or actions intentionally undertaken to establish rights and obligations. Originally derived from civil law teachings, the term legal action (het woord rechtshandeling is ontleend aan de dogmatiek van het burgerlijk recht) has been extended to Administrative Law, giving rise to the term administrative legal action (administratieve rechtshandeling).

An administrative legal action represents an expression of intent from an administrative body under specific circumstances, aimed at causing legal consequences within administrative law. Broadly, government legal actions can assume the form of actions regulated by statutory provisions (regeling), state administrative decisions (beschikking), and civil legal actions (materiale daad). In the construct of a rule of law state, every legal action must adhere to applicable law (rechtmatigheid). Instances, where Government Officials deviate from norms and use their discretionary authority, must be subject to legal accountability.

Every exercise of authority by officials is accompanied by responsibility. Authority and accountability are inseparable. Since authority is tied to the position, but its execution is carried out by individuals as representatives or functionaries of that position, determining who bears legal responsibility in case of deviations must be approached contextually, as such responsibility can take the form of position responsibility or individual liability.

Methodology

This research used a normative juridical research methodology, utilizing a conceptual approach, a statute approach, and a case approach (Al Amaren et al., 2020). This approach was chosen because this study's subject is the limits or criteria governing the exercise of discretionary authority by Government Officials within Government Administration Law (UUAP) and other relevant laws and regulations. The analysis was conducted in line with the general concepts and legal principles inherent in administrative law.

Sources of Data

This research was conducted using a library research approach to obtain research sources that include primary Legal Materials: The research used applicable laws and regulations, including Law Number 5 of 1986 concerning State Administrative Courts, Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Court, Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Court, Law Number 30 of 2014 concerning Government Administration, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, and Decisions of the State Administrative Court. Secondary Legal Materials: Supplementary legal materials include literature on State Administrative Law, State Administrative Court Procedure Law, Criminal Law, and other relevant materials, particularly those pertinent to the subject under study. Tertiary Legal Materials: Additional legal sources are derived from dictionaries, magazines, newspapers, and the internet to provide more information to the research.

Processing and Analysis of Legal Materials

The gathered data underwent a collection and compilation process, followed by an editing phase. During this editing process, the acquired data were examined and cross-referenced to ensure their accuracy and alignment with reality and that they came from credible sources of reliability and validity.

Subsequently, the accumulated data were subjected to qualitative analysis. Using an inductive methodology, efforts were directed toward identifying patterns, values, and legal norms in the literature. This information was then analyzed, and conclusions were drawn to answer the research questions.

Results

Discretion and Government Responsibilities

Discretion in terms of the concept

Discretion, in general, can be defined as the freedom to decide in every situation according to one’s opinion. In brief, government discretion is the power that emerges due to the development or expansion of the concept of government functions. Discretion can also be

defined as the government's freedom of action to respond to the evolving demands of government as the overseer of public interests in a country. This freedom of action within the government arises when legal regulations are limited due to unclear rules, regulatory gaps, or regulation contradictions. Meanwhile, under such circumstances, state administration must continue functioning to avoid disruptions due to the reasons above. Examining this fundamental concept, discretion is a power with a very precise significance—it signifies exceptions to normal situations, ensuring adequate legal arrangements exist for government actions. In typical scenarios, the power applicable to the government is constrained authority. In those situations, the principle of legality, a fundamental component of the rule of law, always remains paramount.

Discretionary authority is a facultative form, indicating that state administrative bodies or officials aren't compelled to implement it (Biernat, 2020). Instead, it offers choices exclusively in specific cases stipulated by the foundational regulations (Craig, 2007). Sidel (2005) adds that having the freedom to act independently is what is meant by discretion. The state administration must nevertheless adhere to the law in carrying out its duties, as required by the Pancasila (the Five Principles of Indonesia)-based system of legality. Diana Halim Koentjoro, on the other hand, defines "freies Ermessen" as the authority granted to state administration or the government (executive) to address urgent issues when no regulations are in place to address the issue.

The principle of legality, which states that every act or action of state administration must be based on the provisions of the law, must be supplemented by discretion, according to Jansen (2023). But it is improbable that the law would arbitrate all possible positional situations in real life. With this awareness, the dictum "there is no rule without exception" has become more widely accepted in law. As a result, there is a need for unrestricted and constrained discretionary freedom within state administration. The law merely establishes the limits; as long as a choice does not go beyond or against these restrictions, state administration is free to make it.

On the other hand, when it comes to internal discretion, the law establishes a number of alternate options, and state administration is free to select from those options. The provisions in Law Number 94 of 2021 concerning Civil Servant Discipline regarding the determination of severe disciplinary penalties for Civil Servants serve as a practical illustration of bound discretion. The level of Disciplinary Punishment must be one of the following: a. Mild Disciplinary Punishment; b. Moderate Disciplinary Punishment; or c. Severe Disciplinary Punishment, according to Article 8, paragraph (1). The mild disciplinary action mentioned in paragraph (1) letter a is then described in paragraph (2) as either a verbal reprimand, a written reprimand, or a written statement of dissatisfaction. A 25% reduction in performance allowances for 6 (six) months, a 25% reduction in performance allowances for 9 (nine) months, or a 25% reduction in performance allowances for 12 (twelve) months are the three types of moderate disciplinary punishment listed in paragraph (1) letter b in paragraph (3). The severe disciplinary sanctions listed in paragraph (1) letter c include, for example, being demoted to a lower level for 12 (twelve) months, being released from their acting position for 12 (twelve) months, or being dismissed honorably without cause from their position as a civil servant.

Based on the provisions mentioned above, even though disciplinary sanctions have been established, the imposed penalties can vary depending on the gravity of the committed violation and the resulting consequences. As a result, officials vested with the authority to apply sanctions can determine the penalties by considering the severity of the infractions committed by the relevant civil servants. This exemplifies the nature of bound discretion.

Discretion emerges as a solution to address the various shortcomings of the legislative process that led to the establishment of the principle of legality. Notably, the principle of legality predominantly applies to the realm of criminal law, while Administrative Law operates under different guidelines. However, these two legal domains converge when a government official commits an unlawful act. A case in point is Law No. 31 of 1999 concerning the Eradication of Corruption (Law on Corruption), subsequently amended by Law No. 20 of 2001. In this context, it becomes evident that actions within state administration have been subjected to criminalization through provisions stipulating "engaging in actions that are unlawfully advantageous for oneself, another individual, or a corporate entity, resulting in potential harm to state finances or the national economy." This includes "misappropriating authority, opportunities, or resources at their disposal due to their position or role, which can lead to potential harm to state finances or the national economy."

The term "can" in the Law on Corruption can mean that actions with the potential to harm the state's finances or economy constitute criminal acts, even if actual state losses have not yet occurred. This creates a multi-interpretation gap that could potentially encourage supervisors and law enforcers to misuse their authority (detournement de pouvoir). There is even a tendency to subject a policy enacted by state officials to criminal prosecution, even when it should be addressed through state administration mechanisms like Judicial Review or Executive Review. Moreover, the current wording of this article places excessive emphasis on the element of state loss. At the same time, the consideration of whether the act is a discretionary action that benefits the public interest receives insufficient attention. This dynamic has instilled fear in the bureaucracy, leading to hesitancy in performing their duties due to the lack of room for exercising freies ermessen.

Discretion originated from the Rechtsvinding school, which recognized that legislators could not keep up with the rapidly changing pace of society or the highly dynamic processes of social development, causing laws to lag consistently. The law cannot be all-encompassing and cover every scenario, always leaving room for leemten (voids in the law) that require legal reconstruction to address. Sossin (2010) and Wright (2002) note important and urgent issues that necessitate discretion must, at the very least, encompass the following elements:

- The problem must pertain to the general interest, encompassing the well-being of the nation, state, society, the general populace, and development.
- The emergence of these issues must be sudden and fall outside of predetermined plans.
- The nature of the problem should be complex and require swift attention.

- The statutory regulations either inadequately address the problem or only offer general guidelines, thus allowing state administration the flexibility to address it on their initiative.
- The issue cannot be effectively resolved through normal administrative procedures, or if such procedures are followed, they are rendered ineffective or inefficient.
- Failure to promptly address the issue will harm the public interest.

Certain authority currently held by the legislative body is ceded to the government/state administration, which serves as the executive body, with this discretion. This does not, however, imply that the supremacy of the executive body will supersede that of the legislative body (Booth, 2007) because it is thought that state government can deal with the problem without needing legislative changes. This occurs because, in theory, if a matter is within their purview, government administrative bodies or officials cannot refuse to provide services to the general public on the basis that a law does not exist or is unclear.

In its development, discretion has been extensively explored within administrative law. Administrative (State) Law is often called State Administrative Law or Governance Law. The scope of government in Administrative Law operates within an office environment separate from the powers of the Legislative and Judiciary.

Most of Indonesia's Administrative Law Laws and Regulations remain sectoral (bijzondere bestuurswetten), resulting in several issues. First, no consistent standard concerning terminologies in administrative law, principles, or concepts exists. For instance, terms like “state administration decision” are added to “administrative decision,” or “exceeding authority” is added to “abuse of authority.” Second, there is a lack of synchronization of administrative law principles. For example, most sectoral laws and regulations do not adopt the principle of praesumptio iustae causa (vermoeden van rechtmatigheid). Third, there is a lack of shared understanding regarding concepts in administrative law. For instance, discretion is complicated by law violations and abuse of authority by the misuse of opportunities and the improper use of delegation and mandate. Such circumstances significantly impact public service, law enforcement, legal protection for the people, and anti-corruption efforts.

Discretion in terms of Legislation

According to Article 1 Number 9 of Law No. 30 of 2014 concerning Government Administration (hereinafter referred to as Law No. 30 of 2014), discretion in government involves the thoughtful and deliberate exercise of decision-making authority by officials in situations where laws and regulations may not provide clear guidance or where flexibility is necessary to address unique circumstances. It is a fundamental aspect of effective governance but must be balanced with accountability and transparency to ensure that it serves the public interest.

Additionally, pursuant to Article 22 paragraph 2 of Law No. 30 of 2014, it is mandated that every discretionary action taken by public officials is intended to:

- simplifying government operations;

- close judicial gaps;
- offer legal security, and
- overcome government stagnation when appropriate for the good of the public.

From the provisions mentioned, it can be concluded that discretion entails the freedom to interpret the provisions of laws and regulations by government officials within the scope of their authority to make decisions and/or take actions in the administration of government while remaining in compliance with the principles and provisions of the applicable law, as it can be justified legally. This freedom is significant when the laws and regulations that underpin the actions of these government officials offer options or when there is a "gap" or absence of norms that permit decisions to be made to exercise their authority. Failure to do so would result in government stagnation.

Limitations on the Use of Government Discretion

When exercising its discretionary authority, the government must meet specific criteria. According to Article 24 of Law No. 30 of 2014 concerning Government Administration, discretion must satisfy the following conditions: a. Align with the purposes of Discretion as defined in Article 22 paragraph (2); b. Avoid conflicting with the stipulations of laws and regulations; c. Conform to AUPB (Code of Ethics of Government Officials); d. Be founded on objective justifications, e. Prevent any potential Conflict of Interest; and f. Be executed in good faith (Wahyunadi, 2016).

Additionally, Article 1 paragraph (9) establishes that discretion involves decisions and/or actions undertaken by government officials to address specific challenges encountered in the course of government administration, particularly when dealing with laws and regulations that provide options, are not explicitly regulated, incomplete, unclear, and/or when government processes have become stagnant. The criteria that serve as a gauge for the exercise of discretion by government officials when making decisions and/or taking actions include:

- Discretion acts as an exception to the principle of legality, necessitating public officials to base their decisions and actions on norms prescribed by statutory regulations.
- The authority to execute legal and factual actions in government administration is present.
- A public official's evaluation of a particular situation/condition or an urgent circumstance for providing solutions to issues involves a blend of subjective and objective perspectives, with legality resting on an objective assessment.
- Government stagnation exists.
- Provision of legal certainty.
- Incorporation of an element of wisdom or discretion granted to public officials in implementing statutory regulations, whether this involves interpreting written texts as

imperative or dealing with conflicting norms (text antinomies), ambiguity (vague van normen), or the absence of written provisions (leemten van normen). This discretion cannot be challenged legally (legal review is confined to rechtmatigheid and not doelmatigheid).

- While "freedom of interpretation" is permissible in exercising discretionary decisions and actions, public officials must always consider the intent of the discretion.

- Adherence to values, particularly the upper and lower bounds encompassing the hierarchical structure of laws and regulations as well as the general values of good governance.

Discretionary decisions and actions undertaken by public officials must be held accountable under the law, both to their superiors or institutions and to the public. Accountability for the discretionary decisions and actions of public officials is achieved through legal review in an administrative, judicial process, primarily via the state administrative court. Derived from the insights above, the limits of discretion can be outlined as illustrated in the following chart:

Table 1. Limits on the Exercise of Discretionary Authority by Public Officials

Authority	Limitations On The Exercise Of Authority
DISCRETION	1. Aligned with the intended purpose of granting discretion. 2. Does not contradict statutory provisions. 3. Consistent with the general principles of good governance. 4. Based on objective reasoning. 5. Avoids generating conflicts of interest. 6. Executed in good faith.

Legal Responsibilities of the Government in the Exercise of Discretion

Every governmental action must be founded on the authority stipulated in laws and regulations, serving as the fundamental basis for the actions undertaken. However, not every law and regulation that forms the basis for the use of this authority regulates in detail how this authority is used. According to Bagir Manan, written law has natural and artificial defects and a limited reach compared to rapid or accelerated societal changes (Neumann Jr et al., 2021).

Legislation in the realm of administrative law remains largely sectoral, differing from that in criminal and civil law domains. Administrative law norms are interlinked and hierarchical, ranging from the highest regulations to the most specific ones. Consequently, government officials engaging in legal actions must navigate and correlate between different rules. In such scenarios, government officials have discretionary authority to address their challenges independently.

In administrative law, legal actions are defined as actions that inherently lead to certain legal consequences or are intended to establish rights and obligations. According to H.J. Romeijn, as cited in Idwan HR, administrative law entails expressions of intent from administrative bodies under unique circumstances to trigger legal consequences within administrative law. Governmental legal actions can assume the form of statutory regulation-based legal actions (regeling), state administrative decisions (beschikking), and material civil legal actions

(materiale daad). Within a rule of law state, every legal action must align with the relevant legislation (rechtmatigheid). The rule of law also requires that instances of deviant legal actions causing harm to other parties or infringing upon the rights of other legal entities should be resolved through judicial institutions (Nolasco Braaten & Vaughn, 2021).

Law Number 30 of 2014 concerning Government Administration imposes limitations on discretion by stipulating that government officials and/or other legal entities utilizing discretion in decision-making must consider the intended purposes of discretion, the laws and regulations serving as its foundation, and the overarching principles of effective governance. Furthermore, Article 28, paragraphs (2) and (3), assert that the use of discretion must be held accountable by superiors and the affected public, who have suffered losses due to discretionary decisions. Such decisions can be examined through administrative proceedings or legal action at the State Administrative Court.

To explore the government's legal responsibility when its discretionary authority deviates and causes harm to other parties or infringes upon the rights of other legal entities (the community), one must examine the government's legal position and the dynamics among authority, position, and officials. Aside from its activities in public law, the government often becomes involved in civil law. In public law, the government represents both public law subjects and legal entities subject to private law.

From an administrative law perspective, the government's focus lies in the execution of functions. Functions constitute the operational context within the broader relationship, also called a position. Conversely, a position signifies an institution with an evolved operational context endowed with tasks and authority to achieve State objectives. A position can also be viewed as a sustained operational context for the State's benefit. Positions are constant, while officeholders may change. In contrast, officials wield authority but not the inherent authority; it is positions that hold authority. These positions bear the obligation of executing legal actions.

From the perspective of Civil Law, legal subjects encompass individuals (natuurlijke personen) and legal entities (rechtspersonen). Legal subjects represent the foundations of legal rights and obligations. In civil matters, the government operates as the representative of a legal entity, rather than as a representative of a position. The position shares similarities with other subjects in civil law. If any unlawful action or administrative malpractice arises from the exercise of directorial authority, it translates into the personal responsibility of the concerned official.

Based on the preceding description, the exercise of authority by officials inherently carries responsibility (no authority without accountability). Authority is intrinsic to the position, while officials implement it to represent those positions. The question revolves around the legal entity that bears responsibility when irregularities transpire in using discretionary authority. This matter necessitates an examination of responsibility, whether it pertains to the position's obligations or personal accountability.

Position Responsibility

The duties of the position are connected to the legality of government actions taken by representatives of and for the position (ambtshalve). F.R. Bothlingk contends that although both the representative and the person being represented are actors, this does not necessarily entail that they share the same level of accountability. The response is unambiguous with regard to legal action. A legal action is a declaration of responsibility and intent that is primarily aimed at the party who is represented and whose intent is being expressed. The representative does not state their intention, which would be unfair to hold them accountable.

Discretionary authority is a form of free authority (vrij bevoegdheid) and is also attached to the position. Since it is an integral part of the position, the exercise of discretion essentially falls within the context of implementing the authority of the position. In other words, when government officials exercise discretion, they act on behalf of and for the position (ambtshalve). Government officials use discretion, as long as their actions are conducted within the formal scope of their authority (zolang hij tenminste binnen formele kring van zijn bevoegdheid heft gehandeld) or carried out in the context of implementing the authority of the position, will be accountable for all ensuing consequences on behalf of the position (Schinkel et al., 2020). The form of positional responsibility in using discretion, particularly in policy regulations, may sometimes conflict with statutory regulations and the overarching principles of good governance. The yardstick for positional responsibility is closely tied to the legality aspect of government officials' decisions and/or actions. This legality aspect includes both procedural and substantive authority. In other words, it examines whether government officials' decisions and/or actions align with procedural authority, as outlined in statutory regulations, and the fundamental principles of good governance.

Thus, the responsibilities associated with positions can be depicted as follows:

Table 2. Position Responsibilities

Basis of Action	Measure of Action	Scope of the Action Assessment
1) Legislation. 2) General Principles of Good Governance	1) Authority 2) Procedure 3) Substance	Aspect of Legality (whether there are any defects in terms of authority, procedure, and substance)

Personal Responsibility

In principle, discretion is intended to achieve the goals and interests of the State. Still, it is often utilized for specific political objectives that may not align with the State's interests and objectives. As a result, discretion can be influenced by personal, family, corporate, or other interests, leading to the possibility of deviation or conflict with established legal norms. In the exercise of discretionary authority, personal responsibility may arise in cases of maladministration in its use.

According to F.R. Bothlingk, officials or representatives bear full responsibility when they misuse their position by engaging in immoral actions that go against the interests of third parties

(Bothlingk, 1954). A person is personally responsible for a third party if they have acted in a morally reprehensible manner, in bad faith, or with extreme negligence, leading to an act of maladministration. The term “maladministration” originates from the Latin words “malum” (evil, bad, ugly) and “administrare” (to manage, administer, or serve). Maladministration refers to poor or inadequate service or management.

According to Ramsey (2002), The idea of "discretion" affects both bound and free government power (also known as "vrij bestuur," "freies Ermessen," and discretionary power). Government Legal Acts, also known as "beschiking," are individual, concrete decisions made by state administration officials. Onrechtmatige overheidsdaad, detournement de pouvoir, ultra vires, or abuse de troit are all examples of maladministration that may be committed during its implementation by Public Officials themselves. Maladministration has many forms, and Law No. 30 of 2014 concerning Government Administration does not provide a separate definition regarding the meaning of maladministration. Only the "Prohibition of Abuse of Authority," a type of bad administration, is covered in detail by this law. The definition of abuse of authority in the law is based on Article 17 paragraph (2) of Law No. 30 of 2014 concerning Administration, and it is divided into three categories: 1) prohibition on exceeding authority, 2) prohibition on mixing authority, and/or 3) prohibition against acting arbitrarily.

Administrative law recognizes three distinct types of abuse of power: Abuse of authority can take several different forms. It can be used to carry out actions against the public interest or to advance personal, group, or class interests; it can also be used to describe official actions that are intended to serve the public interest but diverge from the objectives established by law or other regulations; it can also be used to describe using one set of procedures to achieve another set of goals. The concept of abuse of authority in state administrative law can be divided into two categories on the basis of the review provided above:

- Detournement de pouvoir or exceeding authority/limits of power: According to Wiktionary, “exceeding authority” refers to taking actions outside the scope of authority defined by specific laws. Based on the interpretation in Article 1, Number 3 of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, which outlines the elements for fulfilling an administrative action under point two: “exceeding authority, using authority for purposes other than the intended purpose, or displaying negligence or disregard for legal obligations in providing public services.

- Abuse de droit or arbitrary. According to Lovett (2012), arbitrary action, namely actions by officials that are not following objectives outside the scope of statutory provisions. This opinion implies assessing whether there is an abuse of authority by testing how the purpose of the authority is given (the principle of specialization). Acting arbitrarily can also be interpreted as using authority (the right and power to act) beyond what should be done so that the action contradicts the provisions.

The illegality (legal flaws) of a government decision or state administrator action is closely related to abuse of authority. The elements of authority, procedure, and substance are the three main components of legal errors in decisions and/or actions taken by government or state

administrators. As a result, there are three different categories of legal errors in state administrators' actions: errors of authority, errors of procedure, and errors of substance. The core of abuse of authority consists of these three components.

Furthermore, if government officials take decisions or take actions that: a. go beyond their term of office or the authority's validity period; b. go beyond the boundaries of their authority's applicability; or c. violate statutory regulations, their actions or decisions go beyond the intended authority as stated in Article 17, Paragraph (2), Letter (a). In contrast, a conflict of authorities—defined in Article 17, Paragraph (2), Letter (b)—occurs if the decision or action taken: a. exceeds the boundaries of the subject matter covered by the granted authority; and/or b. runs counter to its goals. Government representatives are deemed to be acting arbitrarily in accordance with Article 17, Paragraph (2), Letter (c) if the decision or action taken: a. lacks an authoritative basis; and/or b. conflicts with a court decision that has permanent legal effect.

Fordham (2003) points out that within the context of Administrative Law, the scope of maladministration does not solely result from deviant behavior. Instead, it can also emerge due to misguided ideas, incorrect judgments, or irrational considerations. This pertains to the officials' capability to assess the rationality of government actions or decisions. Several examples of this include 1) failure to consider relevant factors, 2) failure to implement existing legal regulations, 3) failure to establish or examine existing governance procedures, and 4) failure to create sound legal rules or policies (Bingham, 2010). On the other hand, abuse of power or unreasonableness is the primary criterion for identifying deviations within corruption crimes. These parameters apply alongside other administrative law principles in utilising government authority. In situations involving maladministration and, naturally, an unlawful act, the action becomes the personal responsibility of the officer responsible for its commission (Kingsbury, 2005).

Based on the description and study provided above, it is evident that a clear distinction exists between positional responsibility and personal responsibility. The General Principles of Good Governance (AUPB), as well as the presence of elements suggestive of abuse of authority (such as the prohibition of exceeding authority, the prohibition of mixing authority, and/or the prohibition of acting arbitrarily), are among the criteria for evaluating positional responsibility. In contrast, the criteria for assessing personal responsibility are associated with maladministration and elements of unlawful acts. These aspects of personal responsibility fall under the purview of officials who commit such actions.

Conclusion

Discretion is a supplementary authority to the principle of legality within government administration. Government officials are granted the autonomy to interpret the specific issues they encounter independently. However, despite this autonomy, government actions must not exceed the boundaries that deviate from the original intent behind granting discretion. Consequently, alongside the principle of legality attached to statutory regulations, the General Principles of Good Governance also impose limits on the conduct of government officials while performing their duties. Every exercise of authority, including discretionary authority, is

subject to legal accountability. This accountability can manifest as job-related responsibility or personal responsibility. Position responsibilities pertain to the legality aspect (whether defects exist in terms of authority, procedure, and substance) of decisions or actions executed by government officials. Conversely, personal responsibility is related to whether elements of unlawful acts and maladministration are evident in government decisions and/or actions.

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