



Application of General Principles of Good Governance in Law No. 30 of 2014 as Guidelines in Implementing the Authority of Discretion by Government Officials in Indonesia

Fatma Ulfatun Najicha^{1*}

¹Faculty of law, Universitas Sebelas Maret Surakarta, E-mail: fatmanajicha_law@staff.uns.ac.id

Abstract

This research was conducted with the aim to find out how the discretionary authority of Government officials based on Law No. 30 of 2014 concerning Government Administration and how the Implementation of General Principles of Good Governance (AUPB) within the discretionary authority of Government officials based on Law No. 30 of 2014 concerning Government Administration. By using the normative juridical research method, it is concluded: 1. Discretion is a decision or action determined or carried out by a government official to overcome concrete problems encountered in the administration of government in terms of laws and regulations that provide choice, not regulate, incomplete, or not clear, or government stagnation. In accordance with Law No. 30 of 2014 concerning Government Administration for its use discretion is used primarily because; first, an emergency that makes it impossible to apply written provisions; second, there are no or no regulations governing it; third, there are rules but they are vague or multiple interpretations. Freedom of discretion is freedom of administration which includes freedom of administration (*interpretatievrijheid*), freedom of consideration (*beoordelingsvrijheid*), and freedom to take policy (*beleidsvrijheid*). 2. General Principles of Good Governance is a way that directs and maintains the use of government authority in order to remain controlled from the abuse of power of government officials. This shows that the legal relationship between discretionary authority and General Principles of Good Governance (AUPB) is the General Principles of the Government.

Keywords: Authority; Discretion; General Principles Of Good Governance; Government Administration

I. Introduction

The state of Indonesia is one of the countries that limits power in state administration by dividing government power into three parts, namely: (1) legislative power, (2) executive power, (3) judicial power. Among the three powers, executive power is the most influential power because executive power plays an important role in the decision-making process of state administration.¹ The executive power in carrying out and deciding state administrative decisions must be exercised based on existing laws and regulations, but in accordance with Article 23 of Law No. 30/2014 concerning Government Administration explains that if there are things that have not been regulated by statutory regulations, and the rules governing are incomplete or unclear, an

¹ A zizi Zaelani Muhammad, H. I. (2019), General Principles of Good Governance Based on Pancasila as the Basis for the Use of Discretion, Jurisprudence Journal, 9(1), ??

executive of state administration in this case has the authority to make decisions and / or actions that prevent government stagnation for broader interests. The authority in question is discretionary authority.² When viewed from the *General Principle of Good Government* produced by *the demochy commission* in the Netherlands, AUPB aims to protect people's human rights from all government actions. That is what underlies the AUPB to become one of the mandatory things that must be used in the implementation of the obligations of government officials as contained in Article 8 (2) of Law No. 30 of 2014 concerning government administration and is a requirement for the use of government administrative discretion in Article 24 of Law No. 30 of 2014 concerning Government Administration.³

The phenomenon of rampant government officials who misuse discretion is a very worrying fact.⁴ Discretion is often abused by the executive government for the purpose of taking personal advantage. The issue of the use of discretion has actually entered a gray area between state administrative law and criminal law with all matters of the criminal process. By looking at the aforementioned background, the authors are interested in examining "The Implementation of Discretionary Authority in the Perspective of General Principles of Good Governance (AUPB) Based on Law no. 30 of 2014 concerning Government Administration".

II. Method

The writing method used in this writing uses a normative juridical research approach, namely a study that refers to the existing literature study or to the primary and secondary data used.

III. Main Heading of the Analysis or Results

A. *Overview of State Administrative Law Theory*

² Handayani, I. G. (2018). Environmental Management Strategy in Mining Activities in Forest area Accordance with the Based Justice in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 21(2). 1-8.

³ Muhammad, T. A. (2017). Normative Analysis of the Use of Discretion by Government Officials in Relation to the Abuse of Authority in Corruption Crimes, Undergraduate Thesis, Hasanuddin University Makassar, Makassar, pg. 5

⁴ Lutfil, A. (2015). Discretion and Government Accountability in Government Administration. *Juridical Journal*, 2(1), ??

The principle in the legal sense is what is the basis of a norm or rule. Principles are what start a rule or the beginning of a rule.⁵ So the principles of state administrative law are the principles that serve as guidelines for AAN in carrying out its duties and functions to realize the public interest. This principle was born as a logical consequence of a democratic country oriented to the principles of "welfare state".

Besides being a country based on rule of law (rechstaats) not power (machstaat), Indonesia is also a country that adheres to the concept of people's sovereignty. In a country oriented to the principles of "welfare state", the State Administration Tool (AAN) as the legal subject of HAN must have an important role in carrying out its duties and functions in carrying out public interests.⁶ Thus, AAN's actions in realizing the public interest must comply with and comply with the prevailing laws and regulations (written / unwritten) from the central / regional levels. These unwritten laws are what we call the General Principles of Good Governance as unwritten norms and rules.⁷

The functions and significance of the general principles of good governance:

- 1) For AAN, it functions as a guide in interpreting and implementing unclear statutory provisions. Besides that, it also limits the possibilities for AAN to use the principle of *freies ermessen* which is far deviating from the prevailing laws and against laws that do not yet exist.
- 2) For justice seekers, it can serve as a basis for a lawsuit. (UU Peradilan TUN / Law No.5 / 1986) For the legislature can be used as a guide in drafting.

B. Discretionary Authority of Government Officials Based on Law No. 30 of 2014 concerning Government Administration.

a. Position of Discretion

⁵ Najicha, F. U. (2020). The Construction of Law System in the Field of Environmental Governance in Realizing Justice and Green Legislation in Indonesia. *International Journal of Psychosocial Rehabilitation*, 24(7). Pg. 8629-8638.

⁶ Najicha, F. U. (2020). Legal Protection substantive Rights for Enviromental Quality on Enviromental Law Against Human Rights in the Constitution in Indonesia. *Atlantis Press*. Pg. ?

⁷ Philipus, M. H. (Edition 11th 2011). Introduction to State Administrative Law. Yogyakarta:: Gajahmada University Press. Pg. ?

Law No. 30/2014 in Article 1 point 9 states that discretion is a decision and / or action determined and / or carried out by government officials to solve concrete problems faced in the administration of government in terms of laws and regulations that provide options, do not regulate, are incomplete, or unclear, and / or the stagnation of government.⁸ Government officials have the right to exercise discretionary powers in making decisions or actions in accordance with the instructions and directions in Law No. 30 of 2014 in the provisions of Article 22 paragraph (8).

b. Discretionary Procedure

The procedures related to discretionary acts contained in Article 25 are described in Articles 26-29 of Law No. 30 of 2014 as follows:

- 1) In the case of the use of discretion which has the potential to change the budget allocation as well as causing legal consequences that have the potential to burden state finances, it is obligatory to obtain approval from the Supervisory Officer.
- 2) In the case of the use of discretion that has the potential to cause public unrest, Government Officials are required to report to the Official Supervisor before the use of the discretion.
- 3) Use of Discretion in an emergency, urgent and natural disaster, Government Officials are obliged to notify their Supervisors after the use of discretion.

c. Result of Discretion

The use of discretion is categorized as beyond authority if:

- 1) Acting beyond the time limit for the validity of the authority;
- 2) Acting beyond the boundaries of the validity of the authority
- 3) Not in accordance with the provisions of Article 26, Article 27 and Article 28 of Law No. 30 of 2014 concerning Government Administration.

The legal effect of the use of discretion as referred to above is invalid.

⁸ Ibid, pg. ?

*C. Implementation of General Principles of Good Governance (AUPB) in the
Authority of Government Officials' Discretion based on Law No. 30 of 2014
concerning Government Administration.*

Based on Law No. 30 of 2014 concerning Government Administration General Principles of Good Governance is a way that directs and maintains the use of government authority in order to remain controlled from acts of 'abuse of power' government officials.⁹ The application of the AUPB as a reference in exercising discretionary authority is a necessity that must be carried out by government officials. Because every decision or action of a government official can cause or give rise to legal consequences that can be sued in court.¹⁰

Currently, many government officials ignore the AUPB as a condition for using discretion. One example of clear evidence that has occurred is that many government officials use their discretionary powers to dismiss officials who are under them without paying attention to the AUPB. This actually does not happen if government officials who use discretionary powers remain within the limits contained in Article 24 of Law No. 30 of 2014 concerning Government Administration in which it alludes to AUPB as a condition for using discretion.¹¹

The General Principles of Good Governance (AUPB) are divided into several divisions.

a) The Principle of Legal Certainty

This principle ensures that the principle of legal certainty is "a principle in a rule of law that prioritizes the basis of statutory provisions, appropriateness, fairness and justice in every governmental administration policy".

b) Principle of Benefit

The core benefit principle of Law no. 30 of 2014 concerning Government Administration is an element of benefit that must be considered in a balanced and fair manner between these various interests.

⁹ Julista, M. (2011). Discretion and Responsibility of Government Administration. Sasi Journal, 17(2)

¹⁰ Septya Hanung Surya Dewi, I. G. (2020). Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiami Hutan Adat, . Jurnal Legislatif, 4(1), pg. ?

¹¹ Suhady, I. (2009). Good Governance Pre-Position Goal Training Module. I and II. Jakarta: State Administration Institute.

c) The Principle of impartiality

The principle of impartiality according to Law no. 30/2014 concerning Government Administration provides an understanding that in making decisions, treatments or actions, every Government Agency or Official must consider the interests of the parties as a whole and must behave and act fairly, and not be discriminatory.

d) Principle of Carefulness

Every Government Official must be careful and careful in making decisions or when carrying out an action based on complete information and documents to support the legality of decisions, implementation of decisions, actions.

e) The Principle of Not Abusing Authority

The principle of not abusing authority requires that in making decisions an official is based on the authority given to him by the State.

f. Principle of Openness

This principle provides an opportunity for the public to obtain true, complete and accurate data / information about the activities and results achieved by the government. This principle demands the honesty of the apparatus in providing information and without favoritism. The principle of openness also provides an opportunity for the people to convey constructive feedback and criticism against the government, and to provide an assessment of the running of the government. In addition, the information conveyed by the government to the public must contain the truth, not the result of fabrication. Correct information must also be conveyed sincerely to the entire community.¹²

g. Principle of Public Interest

That is the principle that must prioritize the general welfare by understanding and accommodating the hopes and desires of the community carefully. In addition, this principle demands that in carrying out government tasks, the government (apparatus) always prioritizes public interests over personal interests or the interests of certain groups.

¹² Ibid, pg. ?

h. Good Service Principle

This principle is a principle of providing services that are on time, clear procedures and costs, in accordance with service standards, and the provisions of laws and regulations.

A. Conclusion

Discretion is a decision or action determined or taken by government officials to solve concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete, or unclear, or there is stagnation of government. In accordance with Law No. 30 of 2014 concerning Government Administration for its use discretion is used mainly because; first, an emergency condition that makes it impossible to apply written provisions; second, there are no or no regulations governing it; third, there are rules but vague or multiple interpretations. The freedom of discretion is administrative freedom which includes administrative freedom (*interpretatievrijheid*), freedom to consider (*beoordelingsvrijheid*), and freedom to take policies (*beleidsvrijheid*). The General Principles of Good Governance are a path that directs and maintains the use of government authority in order to remain controlled from acts of *abuse of power* of government officials. This shows that the legal relationship between discretionary authority and the General Principles of Good Governance (AUPB) is a parameter to limit the discretionary authority of government officials. The need for tighter sanctions to the officials concerned when there is neglect of the General Principles of Good Governance in exercising discretionary powers.

References

- A zizi Zaelani Muhammad, H. I. (2019). General Principles of Good Governance Based on Pancasila as the Basis for the Use of Discretion. *Jurisprudence Journal*. Vol 9 No. 1.
- Handayani, I. G. (2018). Environmental Management Strategy in Mining Activities in Forest area Accordance with the Based Justice in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, Vol 21, Issue 2.
- Julista, M. (June 2011). Discretion and Responsibility of Government Administration. *Sasi Journal*, Vol. XVII No. 2.

- Lutfil, A. (June 2015). Discretion and Government Accountability in Government Administration. *Juridical Journal*, Vol. 2 No. 1.
- Muhammad, T. A. (2017). In *Undergraduate Thesis: " Normative Analysis of the Use of Discretion by Government Officials in Relation to the Abuse of Authority in Corruption Crimes"* (p. 5). Makasar: 2017: Hasanuddin University Makasar.
- Najicha, F. U. (2020). The Construction of Law System in the Field of Environmental Governance in Realizing Justice and Green Legislation in Indonesia. *International Journal of Psychosocial Rehabilitation*. , Vol 24, Issue 7.
- Najicha, F. U. (2020). Legal Protection “substantive Rights for Enviromental Quality” on Enviromental Law Against Human Rights in the Constitution in Indonesia. *Atlantis Press*.
- Philipus, M. H. (Edition 11th 2011). *Introduction to State Administrative Law*. Yogyakarta:: Gajahmada University Press.
- Republic Indonesia. (Law no. 30 of 2014). Concerning Government Administration. . *Law - Law Courts T ata State Law No.5 of 1986 Jo Act - Act No. 9 of 2004 Amendments to Law Number 5 of 1986 concerning State Administrative Courts. to Law Number 5 of 1986 concerning State Administration*.
- Septya Hanung Surya Dewi, I. G. (2020). Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiami Hutan Adat, . *Jurnal Legislatif*, Vol 4, No 1. Desember.
- Suhady, I. (2009). *Good Governance Pre-Position Goal Training Module. I and II*. Jakarta: State Administration Institute.