

Challenges to Accountability and Transparency in Implementing Discretion in Public Services in Indonesia

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Abstract— Talking about the implementation of public policies cannot be separated from the implementation or application of public policy through programs, activities, actions, and doings in a mechanism that is bound to a particular system. In addition, actors have a major role in implementing public policies as well as the authority of public officials towards public policies. One of the authorities of public officials is to carry out positions held for discretionary power. A policy that is a discretionary principle is a general regulation issued by a government agency related to the exercise of the governmental authority over citizens or other government agencies. The making of the regulation does not have a firm basis in the constitution and formal laws either directly or indirectly. This regulation is not based on the authority to make laws but is based on the authority of the government, a state administrative organ relating to the exercise of its authority. Discretion is an authority given to public officials to act on their own initiatives in carrying out actions that are not regulated by legislation. Such conditions make a position vulnerable to abuse because the official carries out the position together with carrying out policies for the public. There is an easy intention to attract personal or group benefits. Therefore, in this research we see how are the accountability and transparency of public actors in implementing discretion in public services. The research uses a descriptive qualitative approach with a focus on literature review from various sources such as media, scientific journals, academic writing, and other research findings. The result of this research is that several public officials do not pay attention to accountability and transparency in the implementation of discretion. Therefore, it indicates that they do corruption. From some findings, public officials use accountability more in implementing public services

Keywords— Public Policy, Discretion, Public Service, Accountability, Transparency

I. INTRODUCTION

The issuance of public policies is based on the need to resolve problems occurring in the community. Public policies are determined by some parties (stakeholders), especially the government oriented towards meeting the needs and interests of the community. The meaning of public policy implementation is a relationship that allows the achievement of objectives or targets as the final result of the activities carried out by the government. The shortcomings or faults of public policies will be known after the public policy is implemented. The successful

implementation of public policies can be seen from the impact caused as a result of evaluating the implementation of policy (Rohman, 2016).

In order to carry out the public service, certain institutions and standards are needed to ensure the implementation of justice and people's welfare through the law, especially administrative law. Because of the wide and complex problems faced by the community, it turns out not all the actions that will be taken by the state administration are available. Therefore, a special consequence arises where state administration requires independence to act on its own initiative, especially in resolving critical and important problems that suddenly arise. On the other hand, the rules for completing it do not yet exist or are vague or formulated very intricately, not firmly or vaguely or with very mountable words. This is the case in administrative law called discretionary power or *pouvoir discretionary* or *freies Ermessen*.

To facilitate the role, the duty and responsibility of the government are to carry out extensive and heavy development of public service tasks. The government is also given authority in the form of *Ermessen freies* or *discretionaire*. In carrying out the development process so far, many officials have done various actions in the form of *Ermessen freies*, such as regulations, circulars, announcements, guidelines and so on. All these actions are carried out without based on the attribution of the authority of legislation to make or apply them.

In the perspective of Administrative Law, any policy issued by a government that has no legal basis or authority to issue it does not have a general binding power legally. Therefore, the policy does not have compelling power. Its strength is no more the same as an announcement, notification, circulars or instructions.

Freedom of government administrators is needed in making decisions to act to create prosperous people immediately. This freedom is often called discretion. Granting authority to government officials to act on their own initiative is known as *freies ermesen*/ discretionary power. In Indonesian, it is known as *diskresi*, which is a term containing extensive obligations and powers (Patiro, 2012, p. 2).

As in some cases in Indonesia regarding the first discretion in the education policy: The draft of Regional Regulation (Ranperda) of education customary funds in RPJMD of Sikka Regent in 2019-2023 was rejected to be discussed by six factions in the Sikka DPRD in faction views. However, Sikka regent did discretion with the

mandate of the law Article 1 number 9 of Law Number 30 of 2014 (tribunnews.com). Secondly, in the policy of saving the fate of fishermen by the governor of West Kalimantan, this discretion contains the fate of fishermen harmed by the minister regulation (tribunnews.com). Then, many unconditional levies were found the discretion made by Ahok about the 'Agreement of Thugs' which contains reclamation (detik.com). In addition, there is discretion in the health sector, especially in the BPJS, the Ministry of Health advises hospitals to be able to provide services without complicating the community (tirto.id). To welcome democracy party in 2019, the election supervisory body with the KPU did discretion to prisoners in order to vote (jawapos.com). Lastly, the Ministry of Internal Affairs prepared a breakthrough or discretionary policy to run Malang City Government which was threatened to stop because 41 members of Malang City DPRD were caught in corruption. The Minister of Internal Affairs, Tjahjo Kumolo, explained that the policy was deemed necessary because there remained four DPRD members in Malang City. As a result, this number did not meet the quorum to hold a plenary meeting. (Tribunnews.com)

Because of the doubts of government officials in making decisions and/or acting in realizing the prosperity and prosperity of the nation and state, the Government and the House of Representatives of the Republic of Indonesia decided and stipulated Law No. 30 of 2014 concerning Government Administration, which regulated the discretion of government officials. In this research, the author focused on finding out, study and examine the following problem: how is the accountability of government officials for discretionary actions?

II. LITERATURE REVIEW

A. Discretion Concept

Conceptual discretion is a step taken by an administrator to resolve a particular case that is not or has not been regulated in standard regulatory provisions (Dwiyanto, 2002). Implicitly, this definition contains two keywords, namely initiative and creativity. When confronted with a particular case with no provisions governing the settlement of the case, the implementer needs to take the initiative to take creative steps to overcome it. Discretion is an administrative process which has also become part of the legislative process because political considerations are an important element indiscretion (Chandler and Stanley, 1988). Thus, Chandler's opinion further clarifies that discretion is the result of the interaction between politics and administration on a continuum basis. As part of the legislative process, discretion is a form of deviation from the principle of legality in the sense of *wet matigheid van bestuur* so it is an "exception" from the principle of legality Panjaitan, (2001) , Lipsky(1980), Weatherley and Lipsky (1977) , Laffin and Entwistle(2000),Alon etal. (2016).

In the literature of the State Administrative Law, many experts have set limits on this term. Prajudi Atmosudirdjo (1981: 85) said, "The principle of discretion (*discretie*; *freies Ermessen*) is that ruling official must not refuse to make decisions on the ground that there are no rules that

they are given the freedom to make decisions in their own opinion provided they do not violate the principles of jurisdiction and legality."

In line with this opinion, Sjachran Basah (1985: said that he was treated to *freies Ermessen* by the state administration: "It is possible by law to act on its own initiative especially in resolving important issues that arise suddenly. In this case, the state administration is forced to act quickly to make a solution. However, the decision taken to resolve the problems must be accountable."

Discretion as one form of choice of actions that can be taken by the government/state administration in the perspective of a welfare state system or a dynamic law state is the implementation of a form of responsibility in an effort to realize legal protection and general objective (people's welfare). It is through this discretion that the government is conceived as the main response in the implementation of the state and is always required to be present in any atmosphere faced by the people. The enactment of Law Number 30 of 2014 concerning Government Administration (UU AP) in the perspective of Government authority has provided legal certainty regarding the legal basis for the conduct of discretionary actions by the government. The enactment of the law also guarantees that government actions caused by certain matters as stipulated in the law can be legally justified as long as they are part of the government's authority.

Normatively, the reasons for discretionary actions by government officials have been determined in Article 22 of Law No. 30 of 2014 as follows: Every use of Government Official Discretion is intended to:

- expedite governance;
- fill in the legal vacuum;
- provide legal certainty; and
- overcome government stagnation in certain circumstances for expediency and public interest.

B. Public Policy

A policy can be defined as a series of program plans, activities, actions, decisions, attitudes, actions or non-actions carried out by the parties (actors) as a stage to resolve the problem at hand. The determination of a policy is an important factor for the organization to achieve its objectives (Iskandar, 2012).

Furthermore, the policy has two aspects (Thoha, 2012). First, the policy is a social practice. It is not a single or isolated event. Thus, the policy is something that the government produces formulated based on all the events that occur in the community. The events grow in the practice of social life and are not independent, isolated, and alien event for the community. The second policy is a response to events that occur, both to create harmony from the conflicting parties and incentives for joint action for parties who get irrational treatment of the joint venture.

With regard to the implementation of policy, Islamy (2010) presents the notion of public policies as follows:

- The state policy in its initial form is in the form of provisions of government actions.
- State policy is not enough only to be stated, but must be implemented in a tangible form.
- Good state policies at doing or not doing something are based on specific goals and objectives.
- State policies must always be aimed at fulfilling the interests of all members of society.

The implementation of the policy is a continuation of the process of formulation and policy setting. Therefore, the implementation of policies can be interpreted as actions taken, by both individuals and groups of government oriented towards achieving the objectives outlined in the policy decision. The implication of the implementation of the policy is the consequence that arises as a result of it. The results of the evaluation of the implementation of the policy can produce the expected (intended) or unexpected impact (negative spillover effect).

C. Dimensions of Public Policy Implementation

Based on several concepts and the nature of actions relating to the implementation of Good Governance, according to the author's understanding, the implementation of policies can be measured/ evaluated based on dimensions: consistency, transparency, accountability, justice, effectiveness, and efficiency.

1) Consistency

The implementation of the policy goes well if the implementation of the policy is carried out consistently by adhering to the applicable procedures and norms (Mutiasari, Yamin, & Alam, 2016).

2) Transparency

Transparency is freedom of access to information that should be known by the public and/ or interested parties (Coryanata, 2012). Information relating to the implementation of public policies needs to be carried out in an open, easy and accessible manner to all parties who need them provided adequately and easy to understand (Rohman, 2016).

3) Accountability

Every activity in implementing public policies must be accountable both administratively and substantively in accordance with the provisions of legislation (Rohman, 2016).

4) Justice

Justice in general can be understood as goodness, virtue, and truth, which is binding among the members of society in realizing harmony between the use of rights and the implementation of obligations (Nasution, 2016). Justice in public policies is manifested in non-discriminatory service activities. The implementation of public policies does not distinguish the quality of service in the target group based on consideration of ethnicity, race, religion, class, social status, etc. (Rohman, 2016).

5) Participation

Community participation is the involvement and participation of the community in implementing policies. In addition to supporting the implementation of policies, community participation will have an impact on the process of evaluation/ control of government performance and can minimize abuse of authority. Community participation is the key to the success of implementing public policies because it concerns aspects of supervision and aspiration. The supervision referred to includes executive supervision through the legislature (Coryanata, 2012). Based on this description, the implementation of policies should be participatory, namely the implementation of policies that can encourage community participation by considering the aspirations, needs, interests, and expectations of the community (Rohman, 2016).

6) Effectiveness

Effectiveness is related to the achievement of predetermined results or the achievement of the objectives of actions, which are related to aspects of technical rationality and are always measured from units of products or services (Dunn, 2003). In the implementation of public policies, effectiveness is measured by the success of achieving the objectives and targets set out in public policies.

7) Efficiency

Efficiency is regarding the amount of resource use needed to produce a certain level of effectiveness. Efficiency has a relationship with effectiveness.

III. RESEARCH METHOD

This research used a normative juridical approach by reviewing and interpreting theoretical matters related to principles or theories, conceptions, and legal norms relating to criminal liabilities for acts of discretion by government officials that indicate abuse of authority. The literature method was conducted through books, regulations, judges' decisions, and other relevant and important documents related to this research.

IV. RESULTS AND DISCUSSION

Talking about the state is inseparable from a government. However, when discussing government, it will be more related to policies and welfare. A policy can be defined as a series of program plans, activities, actions, decisions, attitudes, actions or non-actions carried out by the parties (actors) as a stage to resolve the problem at hand. The determination of policies is an important factor for an organization to achieve its objectives (Iskandar, 2012). Today, policymakers often face obstacles including the lack of time, difficulty in gathering information and predicting the future, and the complexity of procedures when making rational calculations (Wahab, 2002). Thus, the government as a policymaker does a lot of discretion. □

The principle in applying discretion states that violations or acts of procedure deviation need not be overly questioned as long as the action is taken remains on the corridor of the organization's vision and mission and within the framework of achieving organizational

objectives (Dwiyanto 2001). Discretionary taking will also not be a problem as long as there is no kickback or covert intention in applying the use of discretion and no reason for an official to be asked for his criminal responsibility (Effendy 2010). Moreover, the implementation of discretion concerns a public policy as it deals with the implementation of policies. Islamy (2010) put forward the notion of public policies as follows:

- The state policy in its initial form is in the form of provisions of government actions.
- State policy is not enough only to be stated, but must be implemented in a tangible form.
- Good state policies at doing or not doing something are based on specific goals and objectives.
- State policies must always be aimed at fulfilling the interests of all members of society.

Therefore, to implement appropriate public policy discretion, it is necessary to pay attention to its implementation dimensions such as transparency and accountability. Seeing the discretionary phenomenon in the current government, in my opinion, it has had transparency and accountability, for example, discretion about the final voter list to face the election. To maximize the potential of the voters in the Correctional Institution, Bawaslu has made a number of recommendations. One of them presents relief requirements for correctional institutions and hospitals. The law does say that it must be based on e-KTP, but for certain areas such as in correctional institutions and hospitals, Bawaslu makes discretion. So the KPU has no difficulty in interpreting the technical rules. Bawaslu has identified this problem long ago and has made recommendations. The authority and capacity were from the KPU.

Transparency and accountability are in the aspects of not only elections but also the government administration when corruption cases are as huge as those in Malang. Ministry of Internal Affairs prepares a breakthrough or discretionary policy to operate Malang City Government which is threatened to stop because 41 Malang City DPRD members were caught in corruption. The policy is needed because there remained four DPRD members in Malang City. As a result, this number did not meet the quorum to hold a plenary meeting. Discretion added to the role of the council secretary in helping to formulate the DPRD agenda because the deliberative assembly was inactive. Then, regulations were made by the Regent and Mayor without having to pass the DPRD's approval. Lastly, political parties are expected to be able to carry out Inter-Time Agreements with Malang City DPRD members involved in corruption cases. Kemendagri has agreed with the Corruption Eradication Commission that Malang City will be an example of discretion applied after the determination of 41 members of Malang City DPRD as the suspects of corruption. With this discretion, it is hoped that the administration of the government will not be disrupted.

Health problems, for example, must have a policy that issues discretion, such as a BPJS Kesehatan. Based on the data compiled by the Ministry of Health, at least 341 hospitals have not been accredited but have expressed their

commitment to meet these requirements. When referring to a number of applicable rules, BPJS Kesehatan cooperation with partner hospitals that have not been accredited can actually be directly extended. However, the Ministry of Health issued a discretion which gave an extension of the time for hospitals until 30 June 2019.

From this policy problem, the government does not complicate services to the community. In other words, people's welfare is the goal of policy. When discretion needs to be done, the government immediately does it by looking at the implementation dimensions of policy, two of which are transparency and accountability.

V. CONCLUSION

Public policies will not be separated from their objectives, namely people's welfare. When inter-regulation complicates a public policy, policymakers must exercise discretion. This act of discretion must be carried out by paying attention to the dimensions of a policy in accordance with the objectives of transparency and accountability.

The implementation of this discretion will prosper the community when policymakers can take responsibility for their actions. Good leaders will certainly implement good governance so that the implementation of this discretion will be interesting viewed from several policy dimensions not only transparency and accountability. Therefore, future researchers will be able to find discretion from other perspectives.

REFERENCES

- [1] Alon, I., Li, S. and Wu, J. (2016), "Corruption, regime type and economic growth", *Public Finance and Management*, Vol.1 6 No.4, pp.332-361
- [2] Coryana, I. (2012). Akuntabilitas, Partisipasi Masyarakat dan Transparansi Kebijakan Publik sebagai Pemoderasi Hubungan Pengetahuan Dewan Tentang Anggaran dan Pengawasan Keuangan Daerah. *Jurnal Akuntansi dan Investasi*, 12(2), 110-125. Retrieved from <http://journal.umy.ac.id/index.php/ai/article/view/678/8>
- [3] Detik. 2016. <https://news.detik.com/berita/3216771/ahok-jelaskan-landasan-perjanjian-preman-diskresi-yang-diatur-undang-undang>. Diakses 2 Februari 2019
- [4] Dunn, W. N. (2003). *Pengantar Analisis Kebijakan Publik*. Yogyakarta: Gajah Mada University Press
- [5] Dwiyanto, A. 2001. *Reformasi Birokrasi Publik di Indonesia*. Universitas Gajah Mada, Yogyakarta.
- [6] Dwiyanto, Agus, dkk. 2002. "Reformasi Birokrasi Publik di Indonesia". Yogyakarta: PSKK.-UGM
- [7] Effendy, M. 2010. "Apakah Satu Kebijakan Dapat Dikriminalisasi?" Lembaga Pengembangan Fraud Auditing (LBPPFA), Jakarta.
- [8] Iskandar, J. (2012). *Kapita Selekta teori Administrasi Negara*. Bandung: Puspaga.
- [9] Islamy, I. (2010). *Prinsip-Prinsip Perumusan Kebijakan Negara*. Jakarta: Bumi Aksara
- [10] Jawapos. 2019. <https://www.jawapos.com/jpg-today/12/02/2019/baru-969-napi-yang-masuk-dpt-bawaslu-kepri-rekomendasikan-diskresi>. Diakses 2 Februari 2019
- [11] Laffin, N. and Entwistle, T. (2000), "New problems, old professions? The changing natural world Of the local government professions", *Policy and Politics*, Vol.28 No.2, pp.200-20
- [12] Lipsky, M. (1980), *Street Level Bureaucracy: Dilemma of the Individual in Public Services*, Sage, New York, NY. □

- [13] Mutiasari, Yamin, M. N., & Alam, S. (2016). Implementasi Kebijakan Perizinan dan Pemberitahuan Kegiatan Masyarakat pada Kepolisian Resort Kota Kendari. *Publica*,1(1), 1-14. Retrieved from <http://ojs.uho.ac.id/index.php/publika/article/view/1322/960>
- [14] Nasution, B. J. (2016). Kajian Filosofis tentang Hukum dan Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern. *Al-Ihkam*, 11(2), 29-56. Retrieved from <http://www.ejournal.stainpamekasan.ac.id/index.php/alihka/article/view/936>
- [15] Panjaitan, Saut P. 2001. "Makna dan Peranan Freies Ermessen dalam Hukum Administrasi Negara", dalam SF. Marbun, ed, Pokok-pokok Pemikiran Hukum Administrasi Negara, UII Press
- [16] Patiro, Y. M. I. (2012). *diskresi pejabat publik dan tindak pidana korupsi*. Bandung: Keni Media.
- [17] Prajudi Atmosudirjo, 1981, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta
- [18] Ralph C. Chandler dan Jack C. Plano. 1988. "The Public Administration Dictionary (2nd edition)". California: ABC-CLIO
- [19] Rohman, A. T. (2016). Implementasi Kebijakan melalui Kualitas Pelayanan Penerimaan Pajak Daerah dan Implikasinya terhadap Kepuasan Masyarakat di Dinas Pendapatan Kabupaten Kuningan. Bandung: Universitas Pasundan. Retrieved from <http://repository.unpas.ac.id/1661/>
- [20] Sjachran Basah, 1985, *Eksistensi Tolok Ukur Badan Peradilan Administrasi di Indonesia*, Alumni, Bandung
- [21] Thoha, M. (2012). *Dimensi-dimensi Prima Ilmu Administrasi Negara*. Jakarta: Raja Grafindo Persada.
- [22] Tirto.id.2019.<https://tirto.id/rs-mitra-bpjs-harus-tetap-melayani-meski-belum-terakreditasi-ddHR>. Diakses 2 Februari 2019
- [23] Tribunnews.2018.<http://www.tribunnews.com/nasional/2018/09/04/mendagri-keluarkan-diskresi-untuk-pemerintahan-kota-malang>. Diakses 2 Februari 2019
- [24] Tribunnews.(2019),<http://pontianak.tribunnews.com/2019/02/17/daniel-sampaikan-terima-kasih-pada-gubernur-kalbar-jangan-ragu-diskresi-demi-nelayan>. diakses pada 1 Februari 2019
- [25] Tribunnews.(2019),
<http://kupang.tribunnews.com/2019/02/15/dprd-tolak-bahas-dana-adat-pendidikan-bupati-sikka-gunakan-hak-diskresi> diakses pada 1 Februari 2019
- [26] Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan
- [27] Wahab, Solichin Abdul. 2002. "Analisis Kebijaksanaan: Dari Formulasi ke Implementasi Kebijaksanaan Negara". Jakarta: Bumi Aksara
- [28] Weatherly,R.and Lipsky,M.(1977),“Street-level bureaucrats and institutional innovation:
- [29] Implementing special education reform”, Harvard Educational Review,Vol.47 No.2, pp.171-97