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## **Limitation of use and abuse of the authority of the discretion which create the state financial losses**

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**Abstract.** Discretion is the authority of government administration to face problems for which there are no regulations (*eemten in het recht*), and/or (*vage norms*) so that it requires explanation, interpretation, consideration of various related interests, and/ or because there are options that can be made in regulation. By government organs in carrying out their duties, namely discretionary authority. The limits on the use of discretionary powers must not deviate from and conflict with the rules above, in accordance with the hierarchy of laws and regulations, not violating human rights and obligations of citizens, not being used arbitrarily, still in the position of the scope of the basic regulations, used in a state of coercion/urgent for the sake of public welfare/interest, and based on the General Principles of Good Governance. Responsibility of Public Officials uses discretionary powers which results in *detournement de pouvoir* with *wederrechtelijkheid* which results in losses to state finances.

**Keywords.** Discretion, Abuse of Authority, State Financial Losses

### **Introduction**

Authority is the legal power, the right to rule or act, the right or power of public officials to comply with the rule of law in the scope of carrying out public obligations. Authority in the concept of public law consists of at least three components, namely influence, legal basis and legal conformity. The influence component is that the use of authority is intended to control the behavior of legal subjects. The legal basis component states that the authority must be able to designate a legal basis. The conformity component implies that there are standards of authority, namely general standards (all types of authority) and specific standards for certain types of authority.

Mohammad Sahlan (Sahlan 2016) argues that the terms authority are always associated with the right and power to act or do something. This opinion is in accordance with the provisions of Article 1 point 5, Law Number 30 of 2014 concerning Government Administration which states that "Authority is the right held by Government Agencies and/or Officials or other state administrators to make decisions and/or actions in the administration of government."

It appears that this authority is the power (right) given to a public or government official to rule or act. Constitutionally, and also obliged to act on the basis of general principles of good governance, this is commonly applied in states that claim to be a rule of law.

Discretion according to Article 1 paragraph (9) of Law Number 30 of 2014 concerning Government Administration, is defined as Decisions and/or actions that are determined and/or carried out by government officials to overcome concrete problems faced in the implementation of laws and regulations giving choices, not regulating, incomplete or unclear, and/or stagnation of government. Which aims to streamline governance, fill the legal vacuum; and overcoming government stagnation in certain circumstances for the benefit and public interest.

In the event that a government official uses the authority inconsistent with the purpose and purpose of granting that authority, such government official has carried out a *detournement de pouvoir*. (Kraakman et al. 2017) In the framework of state administrative law, the parameters that limit the free movement of state administrative authority are the *detournement de pouvoir* and *abus de droit*.

Decisions taken to resolve these problems must be accounted for, either legally or morally, so the actions or actions of the state administration are carried out according to suitability or suitability, meaning that they are based on objective views under consideration of the public interest which are just and proper, and to find special interest. The actions or actions of the state administration must comply with the legal limits of the decision, and the use of the decision in a manner suitable for the purpose of granting authority. (Laurance Hasiholan Pasaribu, Jauhari, and Zahara Lubis 2008)

The researcher gave three originalities of the research, namely policy regulations which are the principle of discretion, which are general regulations issued by government agencies regarding the implementation of governmental authority. This regulation is not based on the authority to make laws, but is based on the governmental authority of an organ of state administration with regard to the exercise of its authority. (Yuhdi, Wisnuwardhana, and Pemerintahan 1987) The exercise of discretionary authority in government administration is a logical consequence and constitutes the state's power which is given the task and responsibility to carry out welfare for the community, although this does not mean that discretionary authority can be used freely but must still pay attention to the limitations as regulated in law. Government administration law. (Kuswanto 2016) Limitation of discretion by state administrative officials is an abuse of authority that is categorized as a criminal act of corruption, if an action or act committed by the state administrative official deviates from what it should have been done, with the intention or intention of benefiting himself or another person so that it can cause financial loss or the country's economy. (Sihotang, ., and Sa'adah 2017) Based on the description of the background, how can the boundaries be formulated between the use and abuse of discretionary powers that cause state financial losses?

## **Method**

This study uses a doctrinal legal research approach. Doctrinal law research is research on the law that is conceptualized and developed on the basis of the doctrine adopted by the conceptualist. Doctrinal research is also called normative research. (Michael 2019)

## **Research Results and Discussion**

### **Discretionary Usage Limits**

The authority of discretion is allowed to be exercised by administrative officials and legal authorities because legally it has authority and isn't binding, this authority is given to officials by law or by delegation. Discretionary power doesn't impose an obligation on the decision maker to use it or to be able to use it in any particular way. Administrative officials must exercise discretionary powers in accordance with legal requirements. Discretionary powers should be exercised sufficiently, impartially and avoid unnecessary pressure or

error.(Ansori 2015) Discretion can be exercised (meaning that discretion doesn't have to be exercised) by an authorized official, with the provisions as stipulated in Article 22, Law Number 30 of 2014 concerning Government Administration, which can only be carried out by authorized Government Officials, every use of discretion by government officials is aimed at to streamline governance, fill legal void, provide legal certainty and overcome government stagnation in certain circumstances for the benefit and public interest.

The meaning of decision making due to incomplete laws and regulations means that the norms are incomplete or the structure is incomplete so that more regulations are still needed. It's not clear to interpret it carefully for government officials who will use discretion, whether these vague regulations require interpretation. Discretion can be used if government officials are faced with problems that cause stagnation and/or result in broader interests if decisions and/or actions are not taken.(Dworkin 2017)

The limitation of objective reasons for the use of discretion can only be exercised by authorized Government Officials, with various requirements as stated in the regulated discretionary requirements, namely; in accordance with the objective of discretion as referred to is provided, doesn't conflict with the provisions of laws and regulations, is in accordance with the general principles of good governance, based on objective reasons, doesn't create conflicts of interest and is carried out in good faith. The purpose of discretion must not conflict with statutory regulations and the application of discretion must be in accordance with the general principles of good governance.(Junaidi and Sadono 2018)

### **Discretionary Abuse**

Abuse of authority in administrative law can be interpreted into three components(Sihotang et al. 2017), namely the abuse of authority to carry out actions that are contrary to the public interest to benefit the private interests of groups or groups, abuse of authority in the sense that the official's actions are properly submitted for the public interest, but deviating from the purpose for which the authority is granted by laws or other regulations, and abuse of authority in the sense of abusing procedures that should be used to achieve certain objectives, but has used other procedures in order to be carried out. The failure to fulfill the three components of the legality of authority, procedure and substance has resulted in a juridical defect in an act of government.

In order to assess whether there is an abuse of power in governmental acts, it must first be distinguished whether this authority is included in the clarification of bound authority or independent authority. The category of authority is bound to assess whether there is an abuse of authority using the legality principle or *wetmatigheid van bestuur*, while in the category of *discretionary power* the parameters used are General Principles of Good Governance, because the *wetmatigheid* principle is inadequate.

The state economy (Nasution, Erlina, and Muda 2020) is the economic life which is structured as a joint effort based on the principle of kinship or community effort independently based on government policies, both at the central and regional levels in accordance with the provisions of the applicable laws which aim to provide benefits, prosperity and welfare to all people's life.

Can be subject to Law Number 31 of 1999 concerning Eradication of Corruption because it has the impact of disrupting the country's economy. In Article 14; Every person who violates the provisions of the law which explicitly states that a violation of the provisions of the law is a criminal act of corruption, the provisions stipulated in this law shall apply, "the provisions that apply in this law are both material criminal law, as well as formal criminal law. (Apriansyah 2016) Can be subject to *specialisiteitsbeginsel* if the granting of authority to the

government is given by means of statutory regulations where an act deviates from the objectives determined by law.

The form of responsibility for the abuse of discretionary power of public officials, namely the responsibility of public office and private responsibility of public officials. Job responsibility occurs when policy makers use discretion for and on behalf of office, while personal responsibility is exercised in terms of policy makers committing mal-administrative actions.

Ridwan explained that there are two entities that can be distinguished but cannot be separated, namely the position and the position holder/official. Associated with these two entities, there are two types of norms, namely *bestuurnorm* and *gedragsnorm*. Government norms are written and unwritten legal rules that apply to government positions, while norms of behavior are written and unwritten legal rules that must be considered and obeyed by office holders. (Hasanah 2019) Constitutional Law, it's the position that is burdened with obligations, which is given the authority to carry out legal acts. Rights and obligations continue, regardless of the change of officials. Because the authority is attached to the position, while the responsibility in the public sector is related to the authority, the burden of responsibility is basically also attached to the position. (Rahmat 2014)

This principle of accountability is a system, in which there are various subsystem principles/rules such as justification and excuse as a principle/rules of exclusion from accountability. Thus the existence of the principles of accountability is vital for law, namely so that the principles of legal behavior have a meaning as law in their function as control. (Hulu 2018)

### **Conclusion**

Discretion can be used when government officials are faced with problems that have consequences for broader interests, if decisions and/or actions are not taken. Discretion can only be done with various conditions as stated in the discretionary requirements, namely: in accordance with the discretionary objectives as referred to given; doesn't conflict with the provisions of laws and regulations; in accordance with the general principles of good governance; based on objective reasons; doesn't create a conflict of interest; and done in good faith.

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