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EXPANSION OF THE DISCRETION CONCEPT REVIEWED FROM LEGAL ANTI-POSITIVISM

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Abstract

The terms of discretion have been determined finitely in Article 24 of Law Number 30 of 2014 concerning Government Administration. However, the requirement "not contrary to the provisions of the legislation" was removed after the issuance of Law Number 11 of 2020 concerning Job Creation. This paper examines 3 (three) circumstances related to discretion. First, how is the concept of discretion viewed from the government administration? Second, how is the concept of discretion viewed from the school of legal anti-positivism? Third, what are the parameters of the validity of discretion based on the legislation? This study used a normative juridical method with a statutory, conceptual, and philosophical approach to analyze the norm and concept of discretion. The results of the study indicate that in the administrative field, discretion may be contrary to the provisions of the legislation if there is stagnation of government and it is intended for the public interest. Such a concept departs from a critique of legal positivism which leads to many subsequent ideologies including utilitarianism, legal realism to CLS. The parameters of the validity of discretion are formal legitimacy consisting of authority and procedures as well as material legitimacy. This research suggests that there is a need for heightening the control mechanism for the issuance of discretion through the superiors of the administration officials concerned.

Keywords: discretion; positivism; public interest

INTRODUCTION

Background

The concept of a legal state continues to develop along with the growing needs of the people in a country. The dynamics of the legal state concept began from the idea of Immanuel Kant who called this concept as the Night Watch State (*nachtwacher staat*) or the Liberal State of Law[1] which plays a role in protecting society limited only in the field of security and order. The passive role of the State makes *rechts* on the *staat* only used as a tool against the protection of individual human rights.[2]

The concept of the Liberal Legal State is in fact not an ideal legal state concept. The

1 A. Rosyid Al Atok, *Negara Hukum Indonesia*, Makalah disampaikan dalam Kajian Rutin di Laboratorium Pancasila Universitas Negeri Malang dengan tema "Konsep dan Aktualisasi Negara Hukum Pancasila, 22 April 2016, hal. 8.

2 H. Murtir Jeddawi, *Hukum Administrasi Negara* (Yogyakarta: Total Media, 2012). 35.

passive role of the state in protecting citizens does not in fact bring welfare, moreover, this concept hands down economic affairs to the private sector or the liberal bourgeoisie without state interference.[3] Thus, in this condition, the concept of State Administrative Law is very minimally applied.

Such conditions made Julius Stahl try to initiate the concept of a legal state that is slightly more active than before, namely the State of Formal Law as stated in his scientific work, namely *philosophie des rechts*.[4] Although this idea is a concept of renewal, it still has weaknesses because it only pays attention to formal aspects, not material. This concept emphasizes *wetmatigheid van het bestuur* (government by law).

The increasing needs of society and the increasing number of aspects that must be fulfilled for the welfare of society bring the concept of a legal state to develop into a Material Law State. This concept allows the state/ruler to deviate from the provisions of the law as long as it aims to improve the welfare of society and is carried out based on legal signs,[5] or better known as the concept of government based on law (*rechtmatigheid van het bestuur*).

The concept of the Modern Legal State allows the ruler/state to actively act solely for the benefit of society by expanding the meaning of the implementation of its government to be based on law. Therefore, the state is given the authority to be free to act in order to organize a welfare state with free authority (*freies ermessen)* embodied in discretionary form.

Based on the provisions of Article 1 number (9) of Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the AP Law), discretion is defined as a decision and/ or action determined and/or carried out by Government officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or there is government stagnation. Furthermore, when viewed in *a quo* Article 24 of the Law*,* the discretionary terms are formulated as follows:

a. in accordance with the purpose of discretion as referred to in Article 22 paragraph (2);
b. does not contravene the provisions of laws and regulations;
c. in accordance with General Principles of Good Government (AUPB);
d. based on objective reasons;
e. does not create a conflict of interest; and
f. conducted in good faith.

The discretionary requirements above have changed after the of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the CK Law). Article 175 of the government administration cluster in the CK Law removes the requirement of "not contravening the provisions of laws and regulations". If referred to the Academic Text of the CK Law, the abolition of this requirement is motivated by the ineffective provisions of the AP Law, making it difficult for administration officials to issue discretion, especially in implementing the ease of investment both at the central and regional levels as intended by the establishment of the CK Law.

This situation raises several questions, mainly related to what kind of parameters will be used to assess the validity of a discretion issued by administration officials if it is not based on the provisions of laws and regulations. The validity of discretion is needed since it is not impossible that the discretion issued actually violates human

3 A. Rosyid Al Atok, *Op Cit.,* 9.
4 *Ibid*. 9.
5 Abu Daud Busroh, *Ilmu Negara*, Cetakan Pertama (Jakarta: Bumi Aksara, 1990). 54 sebagaimana dikutip dalam H. Murtir Jeddawi, *Op cit.*, 51.

rights. Further, the question will be related to what if the discretionary issuance procedure is contrary to the statutory provisions. This question needs to be answered in order to prevent the actions of government officials who issue discretion as if they have accommodated the interests of the people, but in fact, the substance is only the desire of the state (*autocratic legalism*).[6]

Research on the expansion of the discretion concept after the CK Law has been written previously by Janitra Syena Narindra, Budi Ispriyarso with the title "Analysis of the Elimination of Conditions Not Contrary to Laws and Regulations in the Use of Discretion in the Omnibus Law on Job Creation". This paper analyzes the new naming in the CK Law regarding the concept of discretion and the legal implications of changing norms, which consist of positive implications related to fiscal decentralization and negative implications related to the loss of one of the AUPB principles.[7]

Another article on the concept of discretion has also been written by Muhammad Addi Fauzani with the title "Discretionary and Fictitious Positive Design After the Implementation of the Job Creation Law". This paper analyzes the legal consequences of expanding the concept of discretion that has the potential to violate the AUPB and eliminate judicial control.[8]

The two papers have not outlined the schools that are contrary to legal positivism that can be used as an analytical tool in testing the expansion of the concept of discretion. This paper outlines the schools born in response to the school of legal positivism. These schools will justify why a decision or action can be formed and contrary to legislation.

Research Question

The formulation of the problem in this paper is stated as follows:

1. How is the concept of Discretion viewed from the administrative aspects of government?
2. How is the concept of Discretion viewed from the school of legal anti-positivism?
3. What are the parameters of discretionary validity under the legislation?

Objectives

The objectives of this study are stated as follows:

1. To know the concept of discretion and the possibility of expanding the concept of discretion from the administrative aspects of government;
2. To know the schools of legal anti-positivism that can justify the expansion of the concept of discretion;
3. To find out the validity parameters of the discretion issued by administration officials based on laws and regulations.

Research Methods

Approach

The research approach used is the statue approach, which is an approach that uses legislation and regulation[9] and a conceptual approach that departs from the views and doctrines that develop in the legal sciences

6 Istilah *Autocratic Legalism* penulis kutip dalam Pendapat Ahli Pengujian Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja terhadap UUD NRI tahun 1945 oleh Zainal Arifin Mochtar sebagaimana dikutip dari Kim Lane Scheppele, 2018.

7 Janitra Syena Narindra dan Budi Ispriyarso, "Analisis Penghapusan Syarat Tidak Bertentangan dengan Peraturan PerundangUndangan Dalam Penggunaan Diskresi Pada Omnibus Law Cipta Kerja", Jurnal Pembangunan Hukum Indonesia, Vol. 4, No. 3, (2022): 418-432.

8 Muhammad Addi Fauzani, "Desain Diskresi Dan Fiktif Positif Pasca Pemberlakuan Undang-Undang Cipta Kerja", Jurnal Literasi Hukum, Vol. 5 No. 2, (2021): 8-22.

9 Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2005). 97.

as the basis of the primary legal material and the secondary legal material.

Sources of Legal Materials

The sources of legal materials used in this journal are primary and secondary legal materials. They are in line with the statutory approach and the conceptual approach, including:

1. Primary Legal Materials, consisting of the 1945 NRI Constitution, Law Number 30 of 2014 concerning Government Administration, and Law Number 11 of 2020 concerning Job Creation.
2. Secondary Law Materials, consisting of scientific books and journals related to the concept of discretion and philosophy of law.

Methods of Collecting Legal Materials

This journal used a literature study procedure in the collection of legal materials. Literature studies are carried out by reviewing written information about the law that comes from various sources and is widely published and needed in normative legal research[10], which in this case includes laws and regulations, law books, scientific books, scientific journals, scientific magazines, and other legal materials relevant to the issue under study.

Methods of Analysis of Legal Materials

This study used a qualitative juridical analysis of legal materials, namely data analysis by elaborating data structurally, which turned into sentences that are orderly, direct, logical, non-overlapping, and effective. By doing so, interpreting the data and understanding the results of the analysis became easier. In other words, qualitative analysis is a way of analyzing data sourced from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions or the researcher's own views[11], So, a strong and appropriate basis can be determined to discuss the problems raised by researchers.

DISCUSSION

The Concept of Discretion in Terms of Aspects of Government Administration

As stated in the Preamble to the 1945 NRI Constitution, especially in the fourth paragraph, the politics of state law prioritizes aspects of social justice for all Indonesians. This ideal is accomplished by the development of an understanding of the welfare state.[12] As a logical consequence of the development of this understanding, the state must act actively in accommodating the interests of the community. This is where the role of State Administrative Law becomes enormous to create general welfare (*bestuurszorg*).

The active actions of the state within the framework of the welfare state can be accomplished by free authority or *Freies Ermessen* which is done by discretion. Discretion is defined as a freedom to judge or freedom of action given to state administration so that they prioritize effectiveness rather than being fully fixated on laws and regulations that in certain circumstances can cause government stagnation.[13] In order not to use discretion as an instrument for arbitrary action by administration officials, Sjachran Basah expressed some discretionary conditions as

10 H. Ishaq, Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi (Bandung: Alfabeta, 2017). 96.

11 *Ibid*. 69-70.

12 Bagir Manan sebagaimana dikutip dalam Ridwan HR, *Hukum Administrasi Negara* Edisi Revisi (RajaGrafindo Persada 2011). 19 sebagaimana dikutip dalam Sadhu Bagas Suratno, "Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan yang Baik", Lentera Hukum, Volume 4 Issues 3 (2017): 172.

13 Nata Saputra, *Hukum Admiistrasi Negara* (Jakarta: Rajawali, 1998). 15 sebagaimana dikutip dalam H. Murtir Jeddawi, *Op Cit*., 118.

follows:[14]

a. Intended to perform public service duties;
b. It is an active act of state administration;
c. The attitude of the act is made possible by law;
d. The attitude of the act is done based on its own initiative;
e. The attitude of the act is intended to solve important problems that suddenly occur;
f. The attitude of the act can be accounted morally to God Almighty and legally;

If examined, the discretionary as mentioned above requires that discretion must be made possible by law, broader than merely made possible by legislation. In order to ensure this condition, the issuance of discretion is intended for the benefit of society. In addition, discretion must also be accountable not only legally, but more philosophically, namely morally accountable to God Almighty. This is a logical consequence of the development of the State of Material Law.

Discretion is a part of the policy regulations which is based on the law. Policy regulations contain at least 2 (two) meanings, *first,* it is interpreted as freedom given to the subject who in this case is an administrative official to choose an alternative to solving a legal problem. S*econd,* it is interpreted as a solution to legal problems that occur in certain circumstances as a result of its freedom.[15]

According to this understanding, discretion functions as a further rule of the above rules or in other words functions as a more detailed rule. This understanding explains that the government functions as a legislator in shaping government policies through the state, while administration officials function as implementers that realize people's will through administrative policies (realization policies).[16] Based on this understanding, discretion should only be issued in certain circumstances, as follows:[17]

1. There are not any specific laws that regulate the resolution of a problem *in konkrito,* even though the situation requires an alternative solution immediately;
2. The laws and regulations that form the basis for making these policy regulations provide opportunities for freedom. For example, it provides an open norm clause such as "creating a state of danger";
3. The existence of delegation from legislation, means that administration officials have the authority to regulate the delegated matters themselves. For example, local governments have the authority to regulate themselves in terms of management of Essential Ecosystem Areas (KEE) because that authority has been delegated through Law Number 24 of 2014 concerning Regional Government.

The above circumstances are the reason for the establishment of discretion by administration officials. However, the issuance of such discretion remains subject to the corridors of restrictions. Muchsan determined that the boundaries referred to (1) the use of *ermessen freis* should not conflict with the prevailing legal system (positive legal rules), (2) the use of *ermessen fries* should only be allowed solely in the public interest.[18] The thing that needs to be further examined from the above limitations is regarding the legal system clauses. This understanding becomes important to acknowledge the extent to which discretion can be formed by

14 Sjahran Basah, *Perlindungan Hukum Atas Sikap Tindak Administrasi Negara* (Bandung: Alumni, 1992). 43 sebagaimana dikutip dalam H. Murtir Jeddawi, *Op Cit*., 119-120.
15 Willy D.S Voll, *Dasar-Dasar Ilmu Hukum Administrasi Negara* (Jakarta: Sinar Grafika, 2016). 140.
16 *Ibid*. 137.
17 Ridwan HR, *Hukum Administrasi Negara* (Jakarta: RajaGrafindo Persada, 2011). 171-172.
18 *Ibid*. 173.

the word 'freedom of action' attached to the subject of discretion makers.

A system is a single entity consisting of certain parts or components that are intertwined to lead to a certain goal. Meanwhile, the law itself contains many meanings which, when referring to Van Apeldorn's opinion, these meanings are many in their own and so broad that it is not possible to give a satisfactory definition of law. The same case happens in the the legal system. Referring to the opinion of LM Friedman, the legal system is not an object like a chair, a horse, or a book. The legal system cannot be perfectly defined according to the concept, so in short, there is no definition that academics or the public really agree on defining legal system.[19]

However, in order to reveal the parameters of discretionary formation, the legal system can be understood as a complex organism in which the structure, substance, and culture of law interact with each other.[20] Based on its characteristics, in general, the legal system in the world consists of Civil Law Systems, Common Law Systems, Customary Law Systems, Religious Legal Systems, and Mixed Legal Systems.[21]

A mixed legal system is an unavoidable matter since there are no more countries in the world that are consistent in common law or civil law systems. For example, in addition to civil law, Indonesia also adheres to customary law which is reflected in the explanation of Article 5 of Law Number 5 of 1960 concerning Agrarian Principles. It states that customary law is used as the basis for new agrarian law. This makes Vernan Valentine Palmer's classify Indonesia as leaning towards a mixed legal system.[22]

Based on the condition above, discretion must reflect the characteristics of the legal system adopted by the country, which in this case reflect the protection of Human Rights (HAM), the government based on the law, and reflect a free and impartial judicial institution. In addition, discretion must also reflect the existence of separation/division of powers, the existence of administrative justice, equality before the law and reflects the due process of the law.

In order to achieve the conditions for issuing discretion as previously explained, Prof. Muchsan said that the issuance of discretion by administration officials is limited by the following circumstances:

1. In the event of a legal vacuum;
2. The existence of freedom of interpretation/ interpretation;
3. The existence of a legislative delegation (*delegatie van wetgeving*);
4. For the fulfillment of the public interests.[23]

Regarding the fulfillment of the public interests required in the establishment of discretion, it can be illustrated through Minister of Home Affairs Regulation (Permendagri) Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples (MHA). Article 3 of the Permendagri has normalized the organizational structure of the Indigenous Peoples Committee at regencies/city level. In addition, article 3 also

19 Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1987): 1.

20 Edward James Sinaga, "Implementation of Regulatory Policy in Government Agency", Jurnal Ilmiah Kebijakan Hukum, Vol 16 No. 02, (2022): 325.

21 Lita Tyesta Addy Listya Wardhani, dkk, "The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal System", *Cogent Social Science*, Taylor & Francis, Vol. 8 Issues 1, (2022): 4.

22 *Ibid.* 3-9.

23 Muchsan, *Beberapa Catatan Tentang Hukum Administrasi Negara Dan Peradilan Administrasi Negara di Indonesia* (Yogyakarta: Liberty, 1981). 78 sebagaimana dikutip dalam Yanto Demetus Modu dkk, "Eksistensi Kewenangan Diskresi Kepala Daerah dalam Penataan Ruang", Pagaruyung Law Journal, Vol. 4 No. 1, (2020): 92-93.

put the Local Government Agencies (SKPD) in the field of community empowerment as secretary. However, in practice, these SKPDs do not have a budget ceiling to carry out the implementation of MHA recognition and protection. This has led to a stagnation of government that makes it difficult for local governments to provide formal protection to MHA who are in danger of being expelled from their customary territories because they are considered to have no instrument of recognition.

Such a situation should be seen as a discretionary loophole for regional governments to issue a Decree (SK) about the indigenous peoples' committees by including the local government agencies that do have a budget ceiling to deal with protection matters for MHA. If referring to Law Number 23 of 2014 concerning Regional Government, the SKPD that are referred is the ones in charge of environmental affairs.

Based on the above situation, it means that discretion is possible to conflict with laws and regulations if it causes government stagnation and is solely for the fulfillment of the public interest.[24] This is because it is highly possible for a law to experience *a* congenital defect or artificial defect.[25] This is a deviation from the principle of legality in the sense of *wet matigheid van bestuur*. It is this shift in principle that must be underlined. Consequently, the law is defined as broader than the act. Thus, the expansion of the concept of discretion can be justified in an administrative context as long as it does not conflict with the law more broadly.

Among other things, discretion is not possible contrary to the purpose of the establishment of the discretion itself (*doelmatigheid*) which is realized on the condition that it does not conflict with the AUPB, based on objective reasons, does not raise a conflict of interest, and is carried out in good faith so that it can be accounted for.[26]

Even so, the meaning of the concept of responsibility is legally proposed by Sjachran Basah. He explained 2 (two) forms of responsibility limits, namely the upper limit and the lower limit. The upper limit is the observance of the principle of the provisions of the legislation, which in this case is the principle of *lex superiori derogat legi generalis*. This principle means that the provisions of the lower legislation must not conflict with the provisions of the higher legislation. As for the lower limit, it is interpreted as a decision/ action taken by administration officials that must not violate the human rights of citizens.[27]

The above concept of legal responsibility cannot necessarily be applied to be used as a limit of responsibility for the establishment of discretion. This is because discretion is issued in certain circumstances. For example, the act does not regulate the related situation, the act is unclear, the act provides an opportunity for choice, or it has established a mechanism, but the mechanism causes government stagnation.[28] That is where the

24 Pasal 22 ayat (2) Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan

25 Bagir Manan, "Peranan Hukum Administrasi Negara Dalam Pembentukan Peraturan Perundangundangan", makalah disampaikan dalam Penataran Nasional Hukum Administrasi Negara, diselenggarakan Fakultas Hukum Universitas Hasanuddin, Ujung Pandang, 31 Agustus 1996. hlm. 1 sebagaimana dikutip dalam Hermawan Susanto, "Urgensi Penggunaan Instrumen *Regeling* dalam Pembentukan Kebijakan Pemerintah di Lingkungan Sekitar Kabinet", *Administrative Law & Governance Journal*, Vol. 2 Issue 1, (2019): 180.

26 Pasal 24 Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan

27 SF Marbun dkk, *Hukum Administrasi Negara/ Dimensi-Dimensi Pemikiran* (Yogyakarta: UII Press Yogyakarta, 2004). 119.

28 Pasal 23 Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan

role of discretion is needed to find a way out of the legal deadlock which may have differences in substance with the legislation that regulates it.

The Concept of Discretion Reviewed from Anti-Legal Positivism

The issuance of discretion is aimed at overcoming matters that are not regulated, have not been regulated, or have not been clearly regulated through legislations. Such a concept must have been influenced by criticism of legal positivism that is overly rigid and fixated on things that have been given authority by the ruler. August Comte as the father of positivism believed that the positive stage is the highest stage of the process of legal development that was previously influenced by the theological stage and the metaphysical stage.[29]

Although positivism was brought through Comte's thought, it became more famous after it was brought by Hans Kelsen who was influenced by the thought of Jeremy Bentham. Positivism refutes the teachings carried through the school of natural law which believes that there is another authority higher than man who is believed to be the determinant of law. Meanwhile, Kelsen believes that the highest authority in determining the law is man himself. The law, then, must be determined by man. Kelsen believed that between the law that should be separated from the existing law, which in this case was authorized by the supreme political ruler (as Austin called the supreme political authority) through legislation.[30]

Although similar, Austin and Kelsen have their own beliefs in viewing the Positive Law. These schools are the Analytical Jurisprudence School developed by John Austin and the Pure Law School (Reine Rechtslehre) developed by Hans Kelsen.[31] Austin through his analytic tradition emphasizes more on the existence of a distance between the ruler and the people who are ruled. Austin believes that the essence of the law is that when a state ruler forms a rule, then the rule is obeyed by all people regardless of the reason why people obey the rule that has been made, and is accompanied by sanctions if people do not obey the rules that have been authorized by the ruler.[32]

As for Kelsen, the essence of law lies when the law is separated from non-juridical factors. For him, it becomes another issue that should not be interfered with the law. Although the two schools seem close, Kelsen criticized what Austin called "sanctions". According to Kelsen, the rules issued by the ruler do not necessarily lead to sanctions, because sanctions are more relevant to the criminal law. Meanwhile, not all legal sciences are in criminal law cluster, for example, laws that are private. Through his thinking, Kelsen succeeded in developing the concept of General Legal Teachings, namely Adolf Melki's *stufentheory* which was later developed by Kelsen's disciple, Hans Nawiasky.[33]

29 FX Adji Samekto, *Pergeseran Pemikiran Hukum dari Era Yunani Menuju Post-Modernisme*, (Bandung: PT. Citra Aditya Bakti, 2020). 51-52 sebagaimana dikutip dalam Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Dasar-Dasar Ilmu Hukum*, (Jakarta: Red&White Publishing, 2021). 264.

30 Roger Scruton, Kamus Politik (Penerjemah Ahmad Lintang Lazuardi), (Yogyakarta: Pustaka Pelajar, 2013). 738-739 sebagaimana dikutip dalam Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Dasar-Dasar Ilmu Hukum*, (Jakarta: Red&White Publishing, 2021). 266.

31 Darji Darmodiharjo & Sidharta, *Apa dan Bagaimana Filsafat Hukum Indonesia*, (Jakarta: PT. Gramedia Pustaka Utama, 2006). 113 sebagaimana dikutip dalam Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Dasar-Dasar Ilmu Hukum*, (Jakarta: Red&White Publishing, 2021). 267.

32 Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Dasar-Dasar Ilmu Hukum* (Jakarta: Red&White Publishing, 2021). 268.

33 *Ibid*, 267-278.

Kelsen believes that the validity or enforceability of a legal norm lies in the substance of higher regulations that will eventually culminate in the highest legal norms, that is, the basic norms (*grundnorm/* basic norm).[34] This was made clear by Kelsen by saying that a norm is conditioned by another norm of higher level in the hierarchy of norms.[35] This means that if there is a conflict between norms, then the lower norms must be subject to higher norms.[36]

Positivism began to strengthen as church authorities and religious leaders had undergone demystification at the time. This is also helped by public awareness that each society has a different structure so an authority is needed to justify it. In fact, this is also guaranteed by Kelsen who said that there is a control authority which in this case is a judicial institution that can be a place of settlement if people's rights are violated by that authoritative truth.

However, this school has gradually received more and more criticism due to being too fixated on authoritative truths. Positivism began to be criticized for being too rigid and tending to fail in creating justice in law. Similarly, positivism is considered too formalistic and prioritizes the aspect of legal certainty alone.[37] This is what underlies the concept of expanding discretion in the CK Law. Based on Article 1 number (9) of Law 30/2014 on AP, discretion is aimed at solving concrete problems faced by the government administration. It is not impossible that the solution to these concrete problems is not regulated in a law. Thus, of course, in this case there will be an antinomy between legal certainty and legal expediency, where the discretion tries to stand more upright on the aspect of legal expediency.

For that criticism, this school became much influencing the later schools such as utilitarians which are not completely anti-positivists, only adding more aspects of expediency to the authoritative truths brought by positivists. Rudolf Von Jhering as an adherent of social utilitarianism also considered that the philosophical foundation that exists in positive law must bring expediency. If not, then that philosophical foundation becomes deprived of meaning.

The concepts brought by positivists have caused a lot of criticism in later schools, such as legal realism which is the beginning for the emergence of the Critical Legal Studies (CLS) school. Legal realism departs from a very narrow sphere of movement, namely casuistic social facts. However, the point lies with legal realists who believe that the law cannot only be fixated on legal texts or documents but goes beyond that.[38] As Karl N. Liewellyn argues, realism does not believe in legal concepts before they are portrayed by people and constructed directly in court. This concept illustrates a very viscous approach to pragmatism.[39]

34 Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum*, (Bandung: PT Citra Aditya Bakti, 1999). 50 sebagaimana dikutip dalam Muhammad Erwin, *Filsafat Hukum: Refleksi kritis Terhadap Hukum dan Hukum Indonesia (Dalam Dimensi Ide dan Aplikasi*), (Jakarta: RajaGrafindo Persada, 2018). 247.

35 J.G Strake, *Fundamental Views and Ideas of Hans Kelsen* (1881-1973), 48, Aist L.J., hal. 43 sebagaimana dikutip dalam Muhammad Erwin, Filsafat Hukum: Refleksi kritis Terhadap Hukum dan Hukum Indonesia (Dalam Dimensi Ide dan Aplikasi), (Jakarta: RajaGrafindo Persada, 2018). 247.

36 Darmini Roza dan Gokma Toni Parlindungan S, "Teori Positivisme Hans Kelsen Mempengaruhi Perkembangan Hukum di Indonesia", Lex Jurnalica Volume 18 Nomor 1, (2021): 22.

37 Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Op Cit.*, 278.

38 *Ibid*. 310.

39 Darji Darmodiharjo & Sidharta, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*, (Jakarta: PT. Gramedia Pustaka Utama, 1995). 100 sebagaimana yang dikutip dalam Zainal Arifin Mochtar dan

This skepticism is also carried by Critical Law Studies (CLS) which depart from the frequent failures of the law in realizing justice or at least realizing order. The ideal concepts which have authority given by the ruler actually brought a great gap between the *normative doctrinal* and the *constitution realia*. Peter Fitzpatrick and Alan Hunt criticized the law in force today for being believed to be biased to politics and not at all neutral.[40] Although legal realism and CLS lead to judicial activity and the interpretation of judges in interpreting the law, the point underlined in these two schools is that they cannot accept the law as what has been given the authority of the ruler *an sich*.

Such a concept at least affects the meaning of its main discretion after the establishment of the CK Law. The law allows discretion to at any time be contrary to the provisions of the legislation as long as it is intended for a benefit greater than the original circumstances, or solely for the public interest. Administration officials certainly cannot allow government stagnation to occur. It is because if this situation occurs, many government activities, in order to protect the rights of citizens and carry out their obligations to protect citizens, are hampered and create greater harm to the rights of citizens.

This kind of goal certainly departs from the utilitarian tradition. Although there are two different goals between Jeremy Bentham and John Stuart Mill in interpreting expediency, they still depart from the same approach. Bentham introduced 2 (two) aspects of his utilitarian, namely (1) personal pleasure or happiness, and (2) the greatest happiness of the greatest number.[41] Bentham with his two utilitarian aspects emphasized that *social interest as a simple sum of personal interest, thinking that everyone is striving to maximize their happiness, naturally, it also enhances the interests of society.*[42] It means that Bentham moves away from individual happiness before talking about broader happiness, as Bentham says "*every individual in the country tells for one; no individual for more than one*". [43]

Discretion is more inclined to stand on Mill's version of the utilitarian tradition which emphasized more on public welfare. It can also be seen in the provisions of Article 22 paragraph (2) of Law 30/2014 concerning AP which states that one of the purposes of using discretion is to realize the benefit and public interest. Mill believes the theory brought by Bentham is too selfish because it makes 'oneself' the main benchmark. Mill then explains that there will definitely be a conflict between individual interests and public interests. For Mill, there is no catastization in seeing happiness, in the sense that no major doer should take happiness first because everyone will get their happiness counted and one person's happiness must not be more important than the happiness of another who is more in quantity.[44]

Parameters of Validity of Discretionary Based on Legislations

The imposition of discretion normalized in the CK Law becomes a discourse itself. Eliminating the requirement of "not contrary to the provisions of the legislation" previously normalized in the AP Law is feared to be interpreted in *a contrario* manner. It means that it is legal to issue discretion arbitrarily contrary to the provisions of the legislation.[45]

Eddy O.S Hiarej, *Op Cit*., 309.

40 Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Op Cit.,* 325.

41 XinYuan Lu, "*Utilitarianism of Mill and Bentham: a Comparative Analysis*", Francis Academic Press, UK, Vol. 3, Issue 4 (2019): 35.

42 *Ibid*. 36

43 Piers Norris Turner, Ohio State University, "*The Rise of Liberal Utilitarianism: Bentham and Mill*", Final Version Draft Forthcoming in The Blackwell Companion to 19th Century Philosophy, ed. J.A. Shand, p. 5.

44 Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Op Cit*., 285-286.

45 Kertas Kebijakan Catatan Kritis Terhadap

Given that this may be the case, it is necessary to determine the limits or parameters of valid discretion so that even if the phrase "in accordance with the provisions of the legislation" is omitted, the issued discretion can still be objectively measured for its validity.

Regarding the limits or benchmarks of *freies ermessen*, there are at least 3 (three) tolerance limits that can be used, namely (1) the freedom or flexibility of the state administration to act on its own initiative; (2) to resolve pressing issues for which there is no rule for it; (3) must be accountable, both morally and legally.[46] In order to clarify this understanding, the author divided the basis or parameters of the validity of a discretion into 2 (two) legitimacy. They are formal legitimacy consisting of authority and procedure, and material legitimacy consisting of AUPB, discretionary purposes, objective reasons, not causing conflicts of interest, and good faith.

Regarding formal legitimacy about the subject who is authorized to issue discretion, in this case it can refer to Article 4 paragraph (1) of the AP Law, they are government bodies and/or officials who carry out government functions within the scope of executive, judicial, legislative, and other government agencies and/or officials who carry out government functions mentioned in the 1945 NRI Constitution and/or laws. Indeed, basically the administration is only attached to the executive institution. This can also be seen through the way of thinking from the theory of residues that defines state administration as follows:

> *"The combined administrative officer position-under the leadership of the government does some of the government tasks that are not carried out by the judiciary or the legislature agencies".*[47]

However, such a concept underwent expansion after the issuance of the AP Law in 2014. This means that if at any time the law is not clear in directing the resolution of a concrete problem in a particular situation, the judicial institution can issue discretion, for example in the case of detention authority for the purpose of examination of judges in court as long as it is part of its governmental function, as explained through Article 1 number 2 of the AP Law that the functions of government include regulatory functions, services, development, empowerment and protection.[48]

Thus, it is open to the possibility that the discretion issued by the judicial institution will be tested by the judicial institution itself. Concerns about this are expressed by critical legal studies who although they lay the groundwork on the role of judges, they do not reject the notion that judges often pretend or naively believe that what they believe is objective and independent of other factors outside the law, politics for example. In fact, judges' rulings are also influenced by ideology, legitimacy, and mystery to corroborate certain groups.[49]

Everyone who is attached to a position is certainly also attached to an authority which is defined as the power to carry out an act of public law. The authority attached to the field of public law consists of at least

Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020), Fakultas Hukum Universitas Gadjah Mada, 10.

46 SF Marbun dkk, *Op Cit*., 115-117.

47 E. Utrecht, *Pengantar Hukum Administrasi Negara Indonesia*, (Bandung: FH UNPAD, 1960) sebagaimana dikutip dalam SF Marbun dkk, *Hukum Administrasi Negara/ Dimensi-Dimensi Pemikiran*, (Yogyakarta: UII Press Yogyakarta, 2004). 119.

48 Tesis Ashfa Azkia, Problematika Hukum Pemberian Diskresi Pada Lembaga Yudikatif, Universitas Islam Indonesia, 2021. 9.

49 Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Op Cit.*, 327.

3 (three) components, namely influence, legal basis, and legal conformity. Influence component, meaning that authority must be able to influence the actions of legal subjects. The basic component of the law means that the authority must have a definite legal basis (certainty). Meanwhile, legal conformity means that there are standards of authority consisting of general standards for all types of authority and standards specific to certain types of authority.[50]

Authority is certainly closely related in determining whether discretion has been issued in accordance with applicable procedures. John Rawls illustrates the importance of procedure in achieving justice by saying that justice for him is not measured through the presence or absence of benefits or how much benefit is obtained, but rather determined through the procedure. As long as the procedure is carried out correctly and no rights and obligations are violated, then at that time justice can actually be obtained.[51]

Related to that, Rawls in *A Theory of Justice* divides procedural justice into 3 (three) categories, namely perfect procedural justice, imperfect procedural justice*, and pure procedural justice.*[52] Perfect procedural justice is characterized by the existence of independent standards for determining which outcome is fair and the existence of procedural guarantees that lead to the expected result. The procedure becomes imperfect when there are independent criteria for achieving the correct result, but there is no procedure that can be done to get to the correct result. Whereas pure procedural justice is characterized by the absence of independent criteria for correct results, but on the contrary, there is a correct or fair procedure so that the results are also true or fair. Whatever it is, as long as the procedure is followed correctly.[53]

Based on this category of justice, it means that the establishment of discretion must be able to achieve perfect procedural justice. Such circumstances can be achieved when legislation provides procedures to lead to a fair outcome. Meanwhile, administration officials must have established an independent standard of which fair outcome is to be achieved through discretion. Therefore, the issuance of discretion by administration officials should not be categorized as an act without authority (*onbevoegdheid*). The act without authority can be of substance, territory, and/or time.[54] This can be measured by referring to the laws and regulations governing the duties and authorities of the administrative officer in question.

Regarding material legality, the author derives it in several component parameters, namely AUPB, discretionary purposes, reasons that are objective, not causing conflicts of interest, and good faith. According to Bagir Manan, the issuance of discretion must be in line with the General Principles of Proper Government (AAUPL), if the discretion meets all the general principles of proper government, then the discretion can still be continued and the opposite applies.[55]

AAUPL is also known as the General Principles of Good Governance (AAUPB) which at least consist of formal principles

50 Sri Nur Hari Susanto, "Metode Perolehan dan Batas-Batas Wewenang Pemerintahan", *Administrative Law & Governance Journa*l, Vol. 3 Issue 3 (2020): 431.

51 Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Op Cit.,* 325.

52 Martin Gustafsson, "*On Rawls's Distinction between Perfect and Imperfect Procedural Justice"*, Philosophy of the Social Sciences, Vol. 34, No. 2 (2004): 300.

53 *Ibid*. 300-301.

54 Sri Nur Hari Susanto, *Op Cit.,* 438.

55 Ridwan et.al, *Perluasan Kompetensi Absolut PTUN*, Cetakan Pertama (Yogyakarta: Kreasi Total Media, 2018). 119 sebagaimana dikutip dalam Tesis Ashfa Azkia, Problematika Hukum Pemberian Diskresi Pada Lembaga Yudikatif, Universitas Islam Indonesia, 2021. 11.

regarding the formation of decisions consisting of; the principle of formal accuracy, the principle of fair play, and the principle of prohibition of *de-tournement de procedure*.[56] Formal principles regarding decision formulation; the principle of consideration, the principle of formal legal certainty. Material principles regarding the content of decisions; the principle of certainty of material law, the principle of trust, the principle of equality, the principle of material accuracy, the principle of balance, the principle of prohibition of *detournement de pouvoir*, and the principle of prohibition of *willekeur*.[57] The use of AAUPB in the issuance of discretion is important because in the realm of state administration, AAUPB has 2 (two) strategic functions, namely as a condition for filing a lawsuit and as a touchstone against state administrative decisions.[58]

It means that in order to assess the validity of the issuance of discretion, it must indeed be leaned on the 2 (two) legitimacy previously described. However, what must be underlined in this case is that although the condition "not contrary to the laws and regulations" has been removed through the UUCK, but the two legitimacies actually remain in the conditions for issuing discretion as normalized in the CK Law. It is because authority and procedure (formal legitimacy) are actually contained in the AUPB which are written as the principle of "not abusing authority". Thus, the formal legitimacy can make the AUPB a base or an analysis tool to formally measure its legality.

Even so, the issuance and use of discretion still requires internal control or guardian institutions. As Bedner stated, controlling mechanism is one of the elements of the *rule of law* with the dimension of an independent judiciary accompanied by indicators of whether citizens have effective access to justice in overseeing a policy/ discretion.[59]

Before referring to the judicial matters, the superiors of administration officials play a strategic role. Officials who wish to issue discretion must optimize the mechanism for written approval about the use of discretion that has the potential to burden state finances to the superior of administration officials as stipulated in Article 25 of the AP Law.

In addition, the issuance of discretion must also be followed by optimizing the obligation to notify the use of discretion that has the potential to cause public unrest and reporting after using discretion by administration officials to the superiors of administration officials as a form of active accountability. The notice is accompanied by a description of the intent, purpose, substance, and impact caused. The notification and report in question must be in

56 S.F, *Eksistensi Asas-Asas Umum Penyelenggaraan Pemerintahan Yang Layak dalam Menjelmakan Pemerintahan Yang Baik dan Bersih di Indonesia,* Disertasi Program Pascasarjana Fakultas Hukum Universitas Padjajaran, Bandung, (2001): 169-170 sebagaimana dikutip dalam Sanggup Leonard Agustian, "Asas-Asas Umum Pemerintahan yang Baik Sebagai Batu Uji Bagi Hakim dalam Memutus Sengketa Peradilan Administrasi Negara", Jurnal Hukum Magnum Opus, Vol. 2 No. 2, (2019): 159.

57 Indroharto, *Usaha Memahami Undang-Undang tentang Pengadilan Tata Usaha Negara,* Cetakan Kedua, (Jakarta: Pustaka Sinar Harapan, 1991). 299-312, sebagaimana dikutip dalam Cekli Setya Pratiwi, dkk, *Asas-Asas Umum Pemerintahan yang Baik*, Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP), (2016): 43.

58 Aju Putrijanti, dkk, "Peran PTUN dan AUPB Menuju Tata Kelola Pemerintahan yang Baik (*Good Governance*)", Mimbar Hukum, Vol. 30 Nomor 2, (2018): 282.

59 Bedner, A., "An Elementary Approach to the Rule of Law", Hague Journal on the Rule of Law, Vol. 2 No. 1, (2010): 48-74 sebagaimana dikutip dalam Victor Immanuel W. Nalle, "The Scope of Discretion in Government Administration Law; Constitutional or Unconstitutional?", Hasanuddin Law Review, Vol. 4 Issue 1, (2018): 9.

written form to facilitate tracking in the future.

CLOSING

Conclusion

Based on the explanation above, from the administrative aspect of government, it is concluded that discretion is indeed possible to conflict with legislation if there are certain concrete circumstances (pre-conditions) that cannot be resolved by legislations. “For the fulfillment of the public interest” can be used as legitimacy for the issuance of discretion contrary to legislations.

The concept of discretion correlates with various legal anti-positivism schools of thought. Positivism began to be criticized for being too rigid and prone to fail in creating justice in law. Positivism is considered too formalistic and prioritizes the aspect of legal certainty alone. For this criticism, this school became much influencing later schools such as utilitarian, legal realism, and critical law studies (CLS) which refuse to give absolute power to lawmakers.

As for the parameters of the validity of discretion, The author divides them intor in 2 (two) legitimacy. *First*, formal legitimacy consists of authority and procedure. *Second*, the material legitimacy consists of AUPB, discretionary purposes, objective reasons, not rising conflicts of interest, and good faith. Although the requirement of “not contrary to the laws and regulations” has been removed through the UUCK, the two legitimacies actually remain in the terms of issuing discretion. It is because regarding authority and procedure (formal legitimacy), in fact it has been contained in the AUPB which is written as the principle of “not abusing authority”. Thus, the formal legitimacy can make the AUPB a base or an analysis tool to formally measure its legality.

Suggestion

Based on the explanation above, the suggestion that the author proposes is that first, it is necessary to improve the control mechanism for issuing discretion through the superior of the administration official concerned so that the discretion issued has been tested both in formal legitimacy and material legitimacy.

Second, it requires optimizing the mechanism for written approval of the use of discretion that has the potential to burden state finances to the superiors of administration officials as stipulated in Article 25 of the AP Law.

Third, it is necessary to optimize the obligation to notify the use of discretion that has the potential to cause public unrest and reporting after using discretion by administration officials to the superiors of administration officials as a form of active accountability.

In order to make this research perfect, the object that can be studied further is the effect of expanding the discretionary concept in the CK Law on the investment climate in Indonesia. This is because the CK Law was born with the spirit of ease of investment. Therefore, it must be further studied the extent to which the expansion of this concept can have a positive influence on the investment opportubities and challenges in Indonesia.

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REFERENCES

H. Ishaq, Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi (Bandung: Alfabeta, 2017).

H. Murtir Jeddawi, *Hukum Administrasi Negara* (Yogyakarta: Total Media, 2012).

Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1987).

Muhammad Erwin, *Filsafat Hukum: Refleksi kritis Terhadap Hukum dan Hukum Indonesia (Dalam Dimensi Ide dan Aplikasi*) (Jakarta: RajaGrafindo Persada, 2018).

Peter Mahmud Marzuki, Penelitian Hukum, (Jakarta: Kencana, 2005).

Ridwan HR, *Hukum Administrasi Negara* (Jakarta: RajaGrafindo Persada, 2011).

SF Marbun dkk, *Hukum Administrasi Negara/ Dimensi-Dimensi Pemikiran* (Yogyakarta: UII Press Yogyakarta, 2004).

Willy D.S Voll, *Dasar-Dasar Ilmu Hukum Administrasi Negara*, (Jakarta: Sinar Grafika, 2016).

Zainal Arifin Mochtar dan Eddy O.S Hiarej, *Dasar-Dasar Ilmu Hukum* (Jakarta: Red&White Publishing, 2021).

A. Rosyid Al Atok, *Negara Hukum Indonesia*, Makalah disampaikan dalam Kajian Rutin di Laboratorium Pancasila Universitas Negeri Malang dengan tema "Konsep dan Aktualisasi Negara Hukum Pancasila, 22 April 2016.

Aju Putrijanti, dkk, "Peran PTUN dan AUPB Menuju Tata Kelola Pemerintahan yang Baik (*Good Governance*)", Mimbar Hukum, Vol. 30 Nomor 2, (2018).

Darmini Roza dan Gokma Toni Parlindungan S, "Teori Positivisme Hans Kelsen Mempengaruhi Perkembangan Hukum di Indonesia", Lex Jurnalica Volume 18 Nomor 1, (2021).

Edward James Sinaga, "Implementation of Regulatory Policy in Government Agency", Jurnal Ilmiah Kebijakan Hukum, Vol 16 No. 02, (2022).

Hermawan Susanto, "Urgensi Penggunaan Instrumen *Regeling* dalam Pembentukan Kebijakan Pemerintah di Lingkungan Sekitar Kabinet", *Administrative Law & Governance Journal*, Vol. 2 Issue 1, (2019).

Janitra Syena Narindra dan Budi Ispriyarso, "Analisis Penghapusan Syarat Tidak Bertentangan dengan Peraturan PerundangUndangan Dalam Penggunaan Diskresi Pada Omnibus Law Cipta Kerja", Jurnal Pembangunan Hukum Indonesia, Vol. 4, No. 3, (2022).

Lita Tyesta Addy Listya Wardhani, dkk, "The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal System", *Cogent Social Science*, Taylor & Francis, Vol. 8 Issues 1, (2022).

Martin Gustafsson, "*On Rawls's Distinction between Perfect and Imperfect Procedural Justice"*, Philosophy of the Social Sciences, Vol. 34, No. 2, (2004).

Muhammad Addi Fauzani, "Desain Diskresi Dan Fiktif Positif Pasca Pemberlakuan Undang-Undang Cipta Kerja", Jurnal Literasi Hukum, Vol. 5 No. 2, (2021).

Piers Norris Turner, Ohio State University, "*The Rise of Liberal Utilitarianism: Bentham and Mill*", Final Version Draft Forthcoming in the Blackwell Companion to 19th Century Philosophy, ed. J.A. Shand, (2019).

Sadhu Bagas Suratno, "Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan yang Baik", Lentera Hukum, Volume 4 Issues 3 (2017).

Sanggup Leonard Agustian, "Asas-Asas Umum Pemerintahan yang Baik Sebagai Batu Uji Bagi Hakim dalam Memutus Sengketa Peradilan Administrasi Negara", Jurnal Hukum Magnum Opus, Vol. 2 No. 2, (2019).

Sri Nur Hari Susanto, "Metode Perolehan dan Batas-Batas Wewenang Pemerintahan", *Administrative Law & Governance Journa*l, Vol. 3 Issue 3, (2020).

W. Nalle, "The Scope of Discretion in Government Administration Law; Constitutional or Unconstitutional?", Hasanuddin Law Review, Vol. 4 Issue 1, (2018).

XinYuan Lu, "*Utilitarianism of Mill and Bentham: a Comparative Analysis*", Francis Academic Press, UK, Vol. 3, Issue 4, (2019).

Yanto Demetus Modu dkk, "Eksistensi Kewenangan Diskresi Kepala Daerah dalam Penataan Ruang", Pagaruyung Law Journal, Vol. 4 No. 1, (2020).

Tesis Ashfa Azkia, Problematika Hukum Pemberian Diskresi Pada Lembaga Yudikatif, Universitas Islam Indonesia, (2021).

Cekli Setya Pratiwi, dkk, *Asas-Asas Umum Pemerintahan yang Baik*, Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP), (2016).

Kertas Kebijakan Catatan Kritis Terhadap Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020), Fakultas Hukum Universitas Gadjah Mada.