

# Discretionary Authority of Government Officials in State Administrative Law: Between Effectiveness and Accountability

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## Abstract

Discretion is an important instrument in governance to ensure the effectiveness of public services, particularly in situations of legal vacuum, unclear norms, or urgent situations. However, the use of discretion by government officials also has the potential for abuse, which can undermine the principles of accountability and legal certainty. This article aims to analyze the concept of discretion in state administrative law and examine the legal limits of its use to ensure alignment with the principles of the rule of law and good governance. This study uses normative legal research methods with legal, conceptual, and doctrinal approaches. The results show that discretion can only be justified if it is implemented based on legitimate government objectives, based on general principles of good governance, and accompanied by clear accountability mechanisms. Strengthening the accountability aspect in the use of discretion is a key prerequisite for preventing abuse of authority and ensuring effective governance. Thus, the regulation and oversight of government officials' discretion contribute to strengthening effective, accountable, and transparent public institutions.

## Keywords

Rule of Law; Effective Institutions; Accountable Institutions



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## INTRODUCTION

In a broad sense, government can be defined as the exercise of authorized duties to achieve a nation's goals (Syafri et al., 2023). This broad definition divides government into three branches: the executive, the judiciary, and the legislature. Governance requires state officials to act responsively and adaptively in response to the ever-evolving needs of society. In this context, state administrative law serves not only as an instrument of power control but also as a means to ensure effective governance (Pemerintah & Legislatif, 2020).

One mechanism that allows government officials to act flexibly within the legal

framework is the use of discretion (Pemerintahan, 2018). Discretion provides room for government officials to make decisions or take administrative actions in certain situations that are not yet clearly regulated by law. In the practice of governance in Indonesia, issues of discretion frequently arise in various public service sectors, both at the central and regional levels (Kurniawan et al., 2023). Various cases demonstrate that the use of discretion frequently becomes the object of administrative disputes and investigations by law enforcement officials, especially when the discretion is deemed to exceed authority or does not meet the principle of accountability. Government discretion is essentially a principle to overcome the principle of legality when a legal vacuum or absence of norms occurs, causing the government to encounter an impasse in addressing the concrete problems it faces (Kewenangan et al., 2022).

In Indonesia, the use of administrative discretion has become a focal point of legal and institutional debate, particularly in cases involving high-level policy decisions such as sugar imports or land reclamation projects (Mustopa et al., 2025). The 2014 State Administration Law (Law No. 30 of 2014) formally recognizes discretion as a legitimate component of administrative action, but the law lacks an explicit regulatory framework for regulatory policy (Ismail et al., 2024). This situation reflects the suboptimal understanding and implementation of discretion as a legitimate and measurable instrument of administrative law. On the other hand, overly rigid restrictions on discretion have the potential to hamper the effectiveness of governance and public service delivery. Based on this description, this article aims to analyze the concept and position of discretion in state administrative law and examine the legal limitations of its use to ensure it remains in line with the principles of accountability and the rule of law. This research also seeks to emphasize that proper discretionary management not only serves as an instrument of government effectiveness but also contributes to strengthening effective, accountable, and transparent public institutions.

## **METHODS**

This research uses legal research methods normative juridical, a research approach that emphasizes the study of law as a norm or rule applicable in a positive legal system. Normative legal research is conducted by analyzing secondary legal materials, including legislation, legal literature, scholarly doctrines, and official documents relevant to the issues being studied. The main focus of this research is a literature study aimed at examining the normative construction and systematics of legal regulations governing the use of discretion in governance (Wardhono et al.,

2025).

The approach used in this research is statute approach, which is conducted by examining and reviewing various relevant laws and regulations to identify legal norms governing the authority, limitations, and accountability of government officials in the use of discretion. This approach positions law as a structured, coherent, and logical normative system, thus enabling analysis of the consistency between applicable legal norms, principles, and principles (Syahmi & Nasution, 2024). Through this approach, this research aims to systematically understand and interpret positive law in order to gain a comprehensive understanding of the legal issues under study. Normative analysis is conducted by emphasizing the importance of general principles of good governance, the rule of law, and the value of accountability in assessing the legitimacy of the use of discretion by government officials. Thus, this research method is expected to provide prescriptive and conceptual legal arguments in formulating limits on the use of discretion that align with the principles of effective governance and strengthening public institutions.

## **FINDINGS AND DISCUSSION**

### **The Concept and Position of Discretion in State Administrative Law**

Discretion in state administrative law represents a critical authority vested in government officials, enabling them to make administrative decisions or take actions under specific circumstances, particularly when existing laws and regulations lack complete or clear provisions, or when urgent situations demand immediate resolution.(Java, 2018) This capacity for discretionary action is rooted in the recognition that statutory law cannot foresee every conceivable scenario, thereby necessitating flexibility in governance (Issue & Nalle, 2018). Doctrinally, discretion is understood as a limited exception to the principle of legality, which mandates that every governmental act must be grounded in applicable regulations (Progresif et al., 2016). While the principle of legality is fundamental to a state based on the rule of law, discretion allows the government to continue fulfilling its public service functions effectively, preventing stagnation that might arise from legal gaps or ambiguities. This inherent tension between strict legality and administrative flexibility highlights the complex nature of modern public administration (Старостин, 2024).

Therefore, discretion cannot be interpreted as an unlimited freedom of action (Feng, 2020). Instead, it functions as a legal instrument derived from official authority within the framework of a rule of law state. The exercise of discretion is not arbitrary;

it is subject to rigorous controls and must be aligned with the objectives of public welfare. The core of administrative law revolves around the effective governance of administrative discretion through the rule of law (Ul & Rohaedi, 2020).

The position of discretion within the state administrative law system is normatively recognized as a legitimate part of government action (Escala, 2023). However, its legitimacy is contingent upon its implementation being based on legitimate government objectives and in accordance with the general principles of good governance (Schmidt, 2021). These principles often include public service orientation, active state administration, legal certainty, proportionality, and non-abuse of power. The integration of "good administration" and "good governance" concepts emphasizes that discretionary powers must serve the public interest. The recognition of discretion reflects the imperative for flexibility in modern governance, especially in a welfare state where the government is burdened with creating public welfare under dynamic conditions (Munir et al., 2020). However, this flexibility must always be balanced by an unwavering emphasis on accountability, rationality, and proportionality. Accountability ensures that officials can be held responsible for their discretionary actions, while rationality and proportionality serve as standards for evaluating the soundness and appropriateness of decisions (Discretion, 2024). The rule of reasonableness, prevalent in common law systems, and the principle of proportionality, often found in civil law traditions, are primary standards for controlling administrative discretion, sharing a common objective of rational and efficient decision-making.

Thus, discretion occupies a strategic position, acting as a bridge between the demands of governmental effectiveness and the legal obligation to guarantee certainty and protect citizens rights (Gultom et al., 2021). While administrative discretion is indispensable for preventing rigid law enforcement and achieving substantive justice in individual cases, its misuse can lead to abuses of authority (Publicum, 2024). Therefore, effective control mechanisms, including internal self-regulation and external judicial review, are crucial to ensure that discretion serves its intended purpose without undermining the rule of law. The evolution of governance schemes, from traditional normative control to functional structuring, reflects ongoing efforts to manage this inherent tension and enhance the quality of public administration.

### **Legal Limits on the Use of Discretion by Government Officials**

The exercise of discretion by government officials is inherently bound by legal

limitations designed to prevent abuse of authority and safeguard citizen rights within the framework of the rule of law (Cahya & Wibawa, 2024). In state administrative law systems, discretion is not an unfettered power but a carefully circumscribed authority. Officials can legitimately exercise discretion under specific conditions, such as when existing laws and regulations offer multiple choices, are incomplete, lack clarity, or when governmental inaction could impede the public interest (Lathifah et al., 2024). These conditions underscore that discretion is an integral component of governmental authority, necessitating adherence to legal principles and legitimate public objectives.

Administrative discretion is defined as the latitude or flexibility public administrators possess when making decisions or conducting agency business. This power often arises from vague legislative mandates, allowing administrators to interpret laws provided their interpretations align with statutory provisions (Concept et al., n.d.). While discretion is crucial for administrative efficiency and effectiveness, it also presents risks to the rule of law, particularly when it transfers decision-making from legislators to administrative bodies and potentially undermines fairness and equality norms (Radzhabova, 2024). The inherent nature of discretion as a flexible mechanism for adapting to evolving societal needs and unforeseen circumstances means it cannot be entirely eliminated. However, this flexibility requires robust control mechanisms to prevent its misuse.

To ensure discretion remains within legal bounds, it must be consistently subjected to the General Principles of Good Governance (GPGG), which include legal certainty, expediency, impartiality, accuracy, and transparency, as well as principles of proportionality and accountability. These principles serve as crucial benchmarks for administrative courts when reviewing requests concerning abuse of authority (No et al., 2024). For instance, a discretionary action should not conflict with the public interest. The principle of legality dictates that every governmental act must be grounded in applicable regulations, even when addressing legal gaps through discretion. Furthermore, proportionality ensures that the chosen action is appropriate and necessary for achieving the intended public welfare objective (Covilla, 2025). Accountability mandates that officials can justify their discretionary decisions, particularly given the potential for these decisions to affect public finances or individual rights.

Discretionary actions that overstep authority, are executed in bad faith, or lack rational and objective justifications constitute an abuse of authority. Such abuses can lead to severe consequences, including administrative and judicial accountability. In

several jurisdictions, including Indonesia, detailed regulations like Law Number 30 of 2014 on Government Administration explicitly define discretion and address its potential for abuse of power. This legislation outlines a paradigm shift in understanding abuse of power within discretion, providing specific criteria to classify actions as corruption if they contradict the intent of the discretion or fall outside its defined parameters. The risk of corruption is particularly high when discretion is exercised without sufficient transparency, supervision, and accountability.

The legal limits on discretion thus serve as an essential control mechanism, ensuring that governmental flexibility operates within the established framework of the rule of law and promotes effective, accountable, and transparent governance. Judicial oversight, provided by administrative courts, plays a critical role in reviewing discretionary decisions, acting as a safeguard against potential violations of legitimate rights and interests. Modern administrative law even explores how principles of discretion must adapt when Artificial Intelligence (AI) systems are used in decision-making, particularly concerning duties of care, reason-giving, and judicial review to uphold the rule of law. This continuous adaptation reflects the dynamic tension between the necessity of discretion for effective governance and the imperative to prevent its abuse.

### **Discretion, Accountability, and Strengthening Public Institutions**

The authority of government officials is fundamentally linked to the principle of accountability, which serves as the foundation for strengthening public institutions within the legal framework. This intrinsic link is crucial because the exercise of discretionary power without robust accountability mechanisms inherently risks eroding public trust and weakening the legitimacy of government bodies (Ul & Rohaedi, 2020). Therefore, accountability must be established as a normative prerequisite for any discretionary action, whether through administrative oversight, internal control systems, or judicial review. Integrating discretionary authority within a comprehensive accountability framework not only serves as an important instrument for controlling power but also ensures that all administrative decisions and actions are implemented with rationality, proportionality, and a clear orientation towards the public interest. Furthermore, effective management of discretionary authority, supported by accountability, significantly contributes to the development of effective and transparent public institutions (Ismail et al., 2024). Public sector entities that responsibly exercise discretionary authority demonstrate mature institutional capacity and a firm commitment to the principles of good governance

and the rule of law.

Administrative discretion refers to the freedom granted to government officials to make decisions or take actions not explicitly stipulated by law or regulations, provided they align with the goals and objectives of the government agency (Syafri et al., 2023). This power, often called "Freies Ermessen" in some legal traditions, is crucial in a welfare state for the effective and efficient implementation of policies aimed at the public welfare. Discretion allows the government to adapt to unforeseen situations and overcome weaknesses in existing regulations, thus serving as a necessary alternative solution to a rigid legal framework. However, this inherent flexibility has the potential to be abused, leading to problems such as corruption, collusion, and nepotism, which can divert governance from the public interest to private gain (Ishak, 2019). The tension between the need for discretion for administrative flexibility and the need to control it to prevent abuse is a classic and enduring issue in public administration literature.

The rule of law serves as a fundamental principle in democratic governance, requiring that government actions adhere to recognized rules and principles that limit discretionary power. In this context, administrative discretion, while inevitable, is often viewed skeptically by political theorists who see it as a potential violation of the rule of law or democratic legitimacy. Administrative Law et al., "Towards The Rule Of Law : Judicial Control Of Administrative Discretion In A Comparative Context," 2018. However, some argue that discretion is not only inevitable but also essential for high-quality public administration, as it allows for tailored responses to individual cases and contributes to justice. While beneficial, the exercise of discretionary power by public officials is often poorly controlled by statutory law, requiring robust mechanisms to ensure its lawful and ethical application (*Discretion of Institutions*, 2019).

Accountability is a fundamental element of good governance, encompassing principles such as governing in the public interest, transparency, respect for individual rights, and competent administration. Accountability can be understood as the obligation to be accountable for activities, accept responsibility, and disclose results transparently (Verdiesen et al., 2021). This process involves several key steps: actors providing information about their behavior, a forum for debating that behavior, and a process for assessing it, which then leads to consequences, both informal and formal.

To ensure that discretionary powers are exercised responsibly and do not lead

**Peningkatan Potensi Transparansi**

	<b>Peran Internal</b> Internal Role	<b>Peran Publik</b> Public Role
<b>Sukarela</b>	Data Terbuka Tata Kelola Terbuka Inisiatif Transparansi dan Sertifikasi Transparansi	Open Data Open Governance
<b>Tidak sukarela</b>	Pelapor ('Whistleblower') Platform Pembocoran Jurnalisme Investigatif Lembaga Pemeringkat	Whistleblower Leaking Platforms Investigative Journalism
<b>Transparansi Mengancam ...</b>		<b>Rahasia</b>
<b>Efek Sosial... (?)</b>		<b>Privasi</b>
<b>Kepercayaan</b>		<b>Kontrol Sosial</b>

to abuse of authority, a range of accountability mechanisms must be implemented in an integrated manner. Legal accountability plays a fundamental role by ensuring that all discretionary decisions are made in accordance with applicable laws and constitutional principles, with the judiciary functioning as a key control mechanism to review and, when necessary, invalidate administrative actions that violate legal norms or harm the public interest (Radzhabova, 2024). In this context, institutions such as administrative courts serve to test the legality of decisions, particularly in cases involving procedural irregularities or potential state financial losses (Мета й Завдання Дослідження, 2021). Alongside this, administrative accountability operates through internal bureaucratic mechanisms, including hierarchical supervision, regulatory compliance, codes of ethics, and internal audits, all of which aim to ensure that public officials act in line with institutional standards and professional integrity (Kertha Patrika, 2016). Political accountability further complements these mechanisms by enabling oversight from legislative bodies, public forums, and the media, thereby ensuring that government actions remain answerable to the public (Mensah, 2022). At a broader level, democratic control provides an essential balance between legal and political oversight, emphasizing that discretionary authority should remain responsive to societal needs and public values. Finally, transparency serves as a critical foundation for all forms of accountability, as open access to information, data, and decision-making processes allows the public to monitor government actions, strengthen trust, and promote participatory governance (Jedemark & Londos, 2021). Together, these mechanisms create a comprehensive framework that ensures discretionary power is exercised in a lawful, ethical, and accountable manner.

This figure shows that voluntary transparency efforts such as open data and open governance increase the potential for transparency and play a role in enhancing accountability, while involuntary mechanisms such as whistleblowers act as an

audience to uncover hidden information. The goal of good governance is to ensure that the government, through its representatives, exercises power properly. Good governance practices are closely linked to creating public value, fostering legitimacy, and enhancing accountability, responsiveness, and transparency. Studies show that good governance practices, including corruption control, rule of law, government effectiveness, and voice and accountability, contribute significantly to public trust and readiness for e-participation.

The figure shows a significant positive relationship between indicators of good governance and e-participation, which is often mediated by telecommunications infrastructure. Professional accountability, as described, balances compliance with local decisions and regulations with aspects of professional responsibility, which include autonomy and discretion. In short, administrative authority, while necessary for effective governance and responding to complex and dynamic public needs, must be strictly constrained by accountability. This balance is achieved through a multifaceted approach involving legal, administrative, and political mechanisms, along with transparency initiatives. This integrated approach ensures that authority genuinely serves the public interest, upholds the rule of law, and ultimately strengthens public institutions by building and maintaining public trust.

## CONCLUSION

This study concludes that discretionary authority occupies a strategic and crucial position in state administrative law as a mechanism to ensure effective governance in situations of legal uncertainty, normative gaps, or pressing public needs. However, the legitimacy of discretionary authority is determined not only by its functional necessity but also by its conformity to the rule of law, general principles of good governance, and clear accountability mechanisms. Discretionary authority exercised without adequate legal constraints and rational justification risks transforming administrative flexibility into abuse of authority, thereby undermining legal certainty and public trust. Therefore, strengthening accountability in the exercise of administrative authority is a fundamental prerequisite for establishing effective and legitimate public institutions. Legal, administrative, and political accountability mechanisms, supported by transparency initiatives and judicial oversight, serve as essential instruments to ensure that such authority serves the public interest and not personal or arbitrary ends. In this context, proper regulation and oversight of authority contribute not only to improving the quality of administrative decision-making but also to advancing the broader goal of building

effective, accountable, and transparent institutions.

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