The Role of Discretion in Handling COVID-19

Alvian R.E. Purnomo 1*, Didik G. Suharto 2, Rutiana D. Wahyunengseh 3

1Department of Public Administration, Sebelas Maret University. E-mail: alvian.rep@student.uns.ac.id
2Departement of Public Administration, Sebelas Maret University. E-mail: didikgsuharto@yahoo.com
3Departament of Public Administration, Sebelas Maret University. E-mail: rutiana.uns@gmail.com

Abstract

Keywords: Discretion; Covid-19; Public Policy; Public Service

Indonesia is now experiencing national disaster called covid-19 or corona outbreak. This case will be a kind of history in the future to become a lesson for central or regional government in making public policy in emergency state. By facing the covid-19 outbreak, public officials must quickly resolve the problem. Discretion gives the opportunity for public officials to do free action to solve the urgent case. Public officials are given alternatives to reach the aim of public service by using discretion even though there is no regulation upon it. Moreover, we know that the implementation of discretion still remains several problems. This research used the literature study method with a qualitative research approach. It was based on several references in order to give the description of the discretion role in handling covid-19 outbreak. Theoretical reference in discussing discretion role was based on the study of journals, books, dan others. Being deeply studied, the discretion implementation of social distancing in big scale belongs to regulatory policy that needs social planning discretion. This type creates more different interests and contains a relatively high complexity. The result of study shows that the implementation of discretion is important because the main function of government is to serve the citizens in emergency state. Therefore, discretion becomes the effective and efficient choice. The integrity of discretion makers becomes one of the variable indicators in creating successful discretion. The government accountability needs to be explained to the society. Moreover, it can be studied more fairly.

Introduction

Covid-19 is a plague that causes the state to become emergency disaster. Emergency state is an unplanned condition with dangerous scale. Indonesia established covid-19 as a disaster emergency, based on the decision of the Head of the National Disaster Management Agency No. 13.A 2020, regarding the extension of the status of specific emergency disasters of the corona virus disease in Indonesia.

The emergency state needs a quick action from public officials for public interests. In making public policy, it normally needs times (steps of public policy: arranging agenda, formulating policy, adopting, and etc. A decision of public officials must be based on the legitimation whereas covid-19 needs a quick action to prevent widespread dissemination. Therefore, discretion becomes one of the options used by public officials to solve the urgent case.

Discretion is regulated in Law No. 30 of 2014 concerning government administration, in article (1) Number (9) It states that discretion is a decision or action determined or carried out by government officials to overcome the concrete case in governmental administration in terms of
laws and regulations that provide choice, not regulate, incomplete, or unclear, and / or government stagnation.

We have known that the issue of state administration is still procedural and must comply with the regulation (legitimation). It is because Indonesia’s state administration adheres to continentalism. Even though understanding public policy is not written, there are 2 kinds of theory, namely: (1) continentalist, it tends to see that public policy is the descendant of law, especially public or constitutional law. Therefore, it is seen as the process of interaction among state institutions. (2) anglo-saxonis, it tends to understand that public policy is the descendant of politic democracy. Therefore, it is seen as a product of interaction between state and public (Findlay, 2015)

Every officials’ action in public field must be basically based on the authority of law regulation. If the action is not based on the authority, it will belong to the category of authority abuse. The principle of discretion implementation is that violations and deviations of procedure are not a problem. However, it must follow the vision and mission of the organization and be consistent in the achievement framework of organizational goals (Trusty, 2012).

In several countries, the concept of discretion is also conducted, such as: (1) England; basic thought of discretion is a kind of action conducted by king/queen without any responsibility. Public officials have same position with the ordinary citizens. They have responsibility toward the court if there is an action conducted by public officials which is demanded by citizens. As explained by Taylor (2006), he stated that all officials stand on the same footing as ordinary citizens so far so the liability for their wrongful acts is concerned. England’s Public officials are given a discretion authority as long as their action is still within the scope of the authority. The citizens can sue the action or authority if it is oppressive in conducting the public functions.

The disadvantages suffered by the citizens are not put upon to the state, but by the public officials themselves. There was a case of public official discretion demanded by the citizens; public officials let the hole open on the road. The discretion action is only closing the hole using tent surrounded by the warning lamps. A kid tempted to investigate by throwing the lamp inside and causing the burst which was injured himself (Thomann, 2008). (2) Holland; the state implements empire system. It needs to declare that the position of law in Holland is divided into 2; as a representative of law agency and a representative of position. There will be an action issued by law agency if there is a mistake. It will belong to civil category. However, an action issued by position will be given a liability in the field of civil and public. In Holland, the citizens can propose a plea to ombudsman to investigate the deviant action conducted by public officials. (3) Germany; there is a law regulating the public officials to take a decision or administrative action. The law can be written or not. It is also called discretion or eremessen. All actions must be appropriate with the regulation issued by the law. If the decision is not written, it must be emphasized with writing containing the signature of discretion maker. (4) Australia; there is a guidance made by ombudsman of Australia if the public officials do the discretion. There are 10 steps conducted by public officials if they want to use discretion; (a) determine whether the decision maker has the authority to take discretion decision (b) follow the administrative procedure and law regulation (c) collect the relevant information to build up the facts (d)
consider the applicable evidentiary standard (e) take action fairly without raising the bias (f) consider the provisions concerning procedural fairness (g) consider the characteristic of case (h) inform the progress of discretion action (i) make and keep the record of the discretion. Below is the table elaborating the brief concept of discretion in several states:

<table>
<thead>
<tr>
<th>No</th>
<th>State</th>
<th>Law source</th>
<th>Characteristic</th>
<th>Elaboration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>England</td>
<td>Royal constitution/ sovereignty</td>
<td>Politics (prerogative rights)</td>
<td>It is known as discretionary powers which means an action only conducted by king/ queen without asking for agreement from anyone and there is no liability. The decision of king/ queen becomes a constitution.</td>
</tr>
<tr>
<td>2</td>
<td>Holland</td>
<td>Law regulations</td>
<td>Law (authority)</td>
<td>It is known as discretion bevoegdheiten which means a concept of giving public authority. The use of the concept concerns with the freedom to take policy from the government divisions. However, it is still limited to avoid the deviation towards the law.</td>
</tr>
<tr>
<td>3</td>
<td>Germany</td>
<td>Law regulations</td>
<td>Law (authority)</td>
<td>It is known as eremessen which means each state/ public institution has discretion rights. The authority has been regulated in governmental laws which have the same concepts in Indonesia. In Germany, an official can only do the discretion if there are clear rules regarding the implementation of the discretion. it also applies the principle of proportionality to measure whether the discretion can be legally accepted or not.</td>
</tr>
<tr>
<td>4</td>
<td>Australia</td>
<td>The regulation of ombudsman as the guidance</td>
<td>Common Law</td>
<td>It states that discretion is a situation in which the decision maker has an authority to choose between acting or not, agreeing or not with the certain condition. Discretion must also</td>
</tr>
</tbody>
</table>
consider the procedural fairness.

The authority of discretion is a government authority to do an action in certain situation based on the personal assessment of government. Discretion may appear because there is change of situation from normal to abnormal or uncommon. In political side, there is an expansion of government authority in conducting the function of governance that manages the public interests. After the implementation of discretion authority, it is expected to create benefits for public.

Discretion can be meant as policy, innovation and space for public officials without any bond on the law to overcome the urgent case and unresolved regulation. Discretion conducted by government officials is a concept of innovation in bureaucracy. There is a freedom to take any decision with accountability principle. Discretion concept gives an alternative to reach the aim of public service due to the urgent case. Procedurally, it might not be applicable, but if the motive and situation are taken for public interests, the officials can use the discretion rights to simplify the public service (Ribot, 2003; Bovens, 2002; Cohen, 2007).

We all know that the implementation of discretion is not frequently conducted by the government. It is because discretion becomes “the law trap” for public officials. According to a statement from law enforcement agency (corruption eradication commission), it is expected that the officials and district heads are more courageous to take discretion policy for the sake of public interest and prosperity. The role of corruption eradication commission is as the law enforcement that conducts an action of authority abuse. However, the discretion does not belong to their authority. It should also be followed with good intention for certain interest. The president has instructed to the law upholder to avoid criminalization to the public officials. The instruction was based on the fact that there was 246 billion transferred to the region for establishment. The budget was settled in regional bank which was actually used to build the region. The officials were worried to use it because they were worried of getting punishment (Sasongko. 2016).

Discretion has important role in the aspect of nationality, especially in filling the written determination, alleviating a rigid and out of date determination and adapting a present context which is better and more beneficial for the society (Beatson, 2011). However, the concept becomes a polemic in reality. It raises negative excess which does not belong to criminal punishment, but rather the difference of perception in assessing the discretion. Polemic of discretion also appears from the risk of multiple interpretation from the kind of discretion itself. Multiple interpretations of the discretion can affect on the pros and cons from the public. As for example, a different action conducted by the officials might be supposed as discretion or authority abuse.

One of the examples can be seen from the discretion conducted by the governor of Jakarta, Basuki Tjahya Purnama (Ahok) related to additional retribution of 15% for reclamation. Ahok was sued by a member of regional house of representative in the court. He wondered the additional contribution which must be only 5%. The logic base of discretion conducted by Ahok was a good determination for the government interest. He added:

“... imagine that I don’t use the discretion to determine the number. It gives billion profits for province government of Jakarta. So, how can my
discretion be questioned? If I don’t make any discretion, I can be suspected which means there is a play with the developer.” (statement from media, 2016)

Furthermore, he explained:

“. . .discretion is not problematic because it is based on the law No.30 of 2014. It states that discretion can be both “allowed and banned”. The discretion might not be conducted if it gives benefit for personal. But, if discretion is beneficial for regional government which has free law, the regional head is encouraged to conduct discretion.” (statement from media, 2016)

Based on the statement above, Ahok indicates that his action is based on the law No.30 of 2014 about governance administration which regulates the action of public officials to use discretion (Purnamasari, 2016)

There is also same case and imprisonment in the case of medical tools provision by health minister, Siti Fadilah. The case started when there was the outbreak of avian influenza. It was supposed as an emergency state that the minister conducted an engagement of direct appointment to provide medical tools to the third sides. However, it found a kickback conducted by the third case by transferring money to several officials. Siti Fadilah was sued by the law upholder because she conducted an arbitrary action through direct appointment. The law upholder argued that the condition was not urgent. Siti Fadilah was sentenced for jail because she was supposed to create financial lose for 6 billion. Nevertheless, there was no fund transferred to Siti Fadilah. The judge assessed that Siti Fadilah had a contribution and must be responsible for the state loss.

Therefore, this paper deeply analyzed how the government conducts a discretion as the solution to handle covid-19 and its responsibility on the use of discretion itself. In analyzing discretion practice to handle covid-19 conducted by public officials, there are some focuses to discuss through these questions in this paper: (1) what is the discretion action conducted by the government to overcome covid-19 in Indonesia? (2) Through normative analyzing of government action, has the discretion been appropriate and accepted by the citizens?

Research Method

This paper used literature study method by describing the phenomena scientifically, intensively, and in detail about a program, event and activity of individual, group, institution or organization to obtain deeper knowledge about the event itself (Chen, 2016; Gerring, 2018). This paper focused on certain object as a case to deeply study and to overcome the reality behind the phenomena. The research was started by conducting a study on several literatures that can support the analysis approach. The studies consisted of; discretion, governmental administration and etc. The sources of study were from reference books, journal, related regulation and other references. In collecting the literatures, the writer considered two aspects; the relevance of literature with its topic (case) and its latest condition. The conclusion of the literature analysis was described according to the related case study.
The writer used descriptive-qualitative approach which means as a process of research conducted properly and naturally based on the objective condition without any manipulation (Pineiro, 2019). Qualitative approach emphasizes on the process analysis of inductive thinking process which relates to the relation among the object phenomena and it always uses natural logic (Huarng, 2016). Qualitative research is meant to understand the phenomena experienced by the subject of research such as behavior, perception, motivation, action and etc. It is entirely conducted by describing through the words and languages on natural and special context using several natural methods.

In this paper, most of data were collected based on the news evidences. The reference data will give the answers upon the questions on the research. The limitation of methodology in this paper is a tendency of the writer in creating the domination of certain methodology regions or anarchy methodology (Dixon, 2006).

Discussion
Discretion of Large-scale Social Restriction as the substitution of lockdown area (Law No.6 of 2018 about health quarantine)

Discretion is still discussed because it implies to the justice. When the issue of anxiety on injustice raises up and needs rapid action, the discretion becomes the solution (Halland, 2003; Keiser et al., 2004). Law cannot answer all questions. However, it is taken over the government to overcome and take the action to handle the concrete situation. The authority in taking the consideration or choice in that situation is called discretion.

Covid-19 outbreak is a national disaster which needs a rapid handling. It needs a rapid action from the government. As we know, Indonesia has a law No.6 of 2018 concerning area quarantine or lockdown. This action has been applied in several countries to decrease the effect of covid-19, such as Philippine, India, Malaysia, China and etc. However, Indonesia has not implemented the law as the policy reference. According to the data from the government in March 30, 2020, there are 1,285 people who have been infected with covid-19 and 114 of them have died. The outbreak of covid-19 is really fast. It needs a rapid handling by the government to overcome this disaster.

The number of covid-19 outbreak is raising day by day. Therefore, the central and regional government take several discretion actions such as asking the citizens to stay home and take some days off on several governmental activities and schools (Large-scale Social Restriction). Whereas, the government has a law reference to conduct area quarantine or lockdown based on the law no.6 of 2018. However, it is not implemented. It raises the controversy whether it needs to do or not. The government does not lock down the area but they ask the citizens to stay home. The situation is same as lock down. All have known the reference of Large-scale Social Restriction of discretion. Discretion is a decision made by state administration officials which is based on the personal value instead of others’ opinion and there is a subjective consideration from the state administration officials. States that the action might not break the regulation. Large-scale Social Restriction must fill the regulation and belongs to governmental subjectivity (Gao, 2019).
There are basic differences between area quarantine and Large-scale Social Restriction. It can be seen from location, restriction, actor and etc. Below is the table of comparison.

**Table 2**
The differences between area quarantine and *Large-scale Social Restriction*.

<table>
<thead>
<tr>
<th>Aspects</th>
<th>Area quarantine</th>
<th>Large-scale Social Restriction.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>An area suspected of being infected with a disease</td>
<td>An area suspected of being infected with a disease</td>
</tr>
<tr>
<td>Restriction</td>
<td>Restriction of all citizens in an area</td>
<td>Restriction of certain activity in an area</td>
</tr>
<tr>
<td></td>
<td>Citizens who are doing a quarantine cannot enter and exit the area of quarantine</td>
<td>Restriction of activities might be: Taking the days off schools and offices Restricting the religion activities Restricting the activities in public area</td>
</tr>
<tr>
<td>Guarding</td>
<td>Area of quarantine is guarded by quarantine officials and polices</td>
<td>Not specific</td>
</tr>
<tr>
<td>Fulfilment of needs during restrictions</td>
<td>Basic living needs of people and animal feed in quarantine area becomes the government responsibility</td>
<td>Not regulated</td>
</tr>
<tr>
<td>Actor</td>
<td>Involving the regional government and related parties</td>
<td>Coordinating and working with several related parties (not specific)</td>
</tr>
</tbody>
</table>

*Source: Narasi, 2020*

Many sides want the government to implement lockdown or area quarantine (law no.6 of 2018) to prevent the covid-19 outbreak. However, the government decides to conduct Large-scale Social Restriction. It is implemented because there will be some impacts on economy if the lockdown is applied. It will also create chaos and danger. The decision of discretion of Large-scale Social Restriction is chosen as the alternative. The citizens must keep the distance to decrease the covid-19 outbreak. Based on the public administration, the decision is allowed because the situation is urgent. The government uses discretion as a choice to make a policy according to the article 1 No.9 on Law No.30 of 2014 concerning government administration.

In conducting the policy of Large-scale Social Restriction, the minister of health becomes the highest authority officials. Discretion is based on the minister’s subjectivity. If the citizens or other institutions propose questions upon the discretion, the liability must be absolutely conducted. The demand on accountability of official action to the public appears in line with the changing system of government monolithic-centralistic to democratic. Bureaucracy in conducting the task is
also sued to be responsible to the public. In governance paradigm, the government must be responsible to the society (Utomo, 2017). The output will be some kinds of services and building results which are determined by public assessment because the impact of the decision will always be implicated to the public interest (Chandler, 1988)

Likewise, the discretion made both in the form of a decision to do or in the form of a decision not to do must be accountable through the existing mechanism or accountability system (Davis, 1969). Therefore, discretion needs to be conducted carefully in order to be accepted and accounted for. This case is appropriate with the principles of human governance stated by Baggini as the social accountability. Social liability must be conducted by public administration more broadly and can be used as the dialog tool with the stakeholder (Thoha, 2008) Accountability and discretion are two sides of coin that cannot be separated from one another. The use of discretion space must be accountable that can be realized using accountability system through the internal or external system of bureaucratic control mechanism. Denhardt (1999) states that the mechanism of external check and balances (objective responsibility) conducted by legislative institution is more effective to avoid the abuse of bureaucratic power (mall administration) including the use of discretion. Friedrich (1978) also added that the increase of problem complexity in modern society makes the legislative be more difficult in formulating the detail policy and tends to delegate it to the bureaucracy. Meanwhile, a bureaucracy that has been growing and realizing the need to build a spirit of "democratic responsibility" as part of the administrator's task, will certainly be more demanded to develop its internal responsibility capacity. In this study, both opinions are considered to have a balanced force and need to be implemented so that the use of discretion does not come out of the normative discretion parameter that is acceptable.

The definition of accountability is still comprehended as a formal or written accountability and can account for the use of resource especially financial source. The low accountability of officials to public in government (especially in regional government as the object of the research) is not only because of the low human resources, but also the system of accountability devices which is called Government Agency Performance Accountability Report. In the report, the officials of bureaucracy are still limited to comprehend the budget accountability. Meanwhile, the output is not elaborated based on the clear criteria or reference.

**Discretion analysis on Large-scale Social Restriction.**

Discretion as the government authority is free and owned by the government officials. It is also the opposition of the bounded authority. The characters of the government action force the government authority not only to conduct the law but also to put forward the substantcial doelstelling (goal setting) and beleid (policy). Discretion is a logic consequence of welfare state conception. Nevertheless, in the design of law state, discretion cannot be implemented without restrictions. Based on this background, Manville (2017) states the elements of discretion in a law state:

1. Aimed to implement the duties of public service
2. Belongs to active action of public administration
3. Attitude and action are possible by lw
4. Taken on own initiative  
5. Resolve important issues which raise suddenly  
6. Accountability to the public

According to Pinotti, (2020), discretion relates to the decision making which is not bounded by the law. The personal assessment does not really have significant role. The freedom of action (discretion) surely creates problem complexity because it breaks the legal principles. Therefore, the further analysis will focus on the most important aspect in discretion namely the fulfillment of normative parameter to create right solution and needed on operational level. It is also aimed to avoid the authority abuse. The discretion restrictions have not been clear enough. Therefore, the proper criteria of indicators and main parameter is the compliance of broader law. There are other parameters used in discretion space besides normative consideration, such as (1) it does not against the value of moral and etiquette, public interests and professionalism principle as described below.

**Picture 2**  
**Normative parameter of discretion usage**

![Diagram of Normative Parameter of Discretion Usage](source: Scott (1994))

It is also stated by Paulus (1993) that in Holland and Indonesia, the procedure deviation belongs to an action that opposes the law regulation instead of authority abuse. It means that there is a difference between authority abuse and procedure deviation. The parameter used is also different. The parameter of authority abuse is specialty principle. Meanwhile, procedure deviation uses law regulation as its base. The action of Large-scale Social Restriction belongs to regulatory policy that needs social planning discretion. This type creates more different interests and contains high complexity. Public officials must be careful with the consideration related to public interests especially to the ones who get the impacts on the discretion.

Based on the factor of public interest, the discretion is conducted through the citizens’ desire to prevent covid-19 outbreak. Some of them also suggest to lockdown the area (in accordance with law of area quarantine). However, the theory states that discretion is unilateral action of government to solve the covid-19 outbreak. Action taken by government to decrease the covid-19 outbreak does not refer to the law no. 6 of 2018 about area quarantine. It cannot be implemented because of the economy factor. In article 55 paragraph 1 states that (1) during the area quarantine, basic living needs and animal feed become the responsibility of the central government. (2) the responsibility of central government in conducting area quarantine (as stated in article 1) must involve the regional government and related parties. The current polemic happens because the
outbreak is getting higher and the citizens are less concern about the warning to keep the distance. Therefore, some experts suggest that area quarantine needs to be conducted. Below is normative analysis upon the policy of Large-scale Social Restriction

<table>
<thead>
<tr>
<th>Discretion action</th>
<th>Type of discretion</th>
<th>Real consideration</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking the days off for schools</td>
<td>Social Planning</td>
<td>Professional</td>
<td>Normatively accepted</td>
</tr>
<tr>
<td>Restricting the religion activities</td>
<td>Idem</td>
<td>Idem</td>
<td>Idem</td>
</tr>
<tr>
<td>Restricting the public activities</td>
<td>Idem</td>
<td>Professional dan</td>
<td>Normatively accepted, but politically refused. It is because the micro economy close and the government does not provide the guarantee.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Political</td>
<td></td>
</tr>
</tbody>
</table>

*Source: Analysis, 2020*

Based on the parameter, Large-scale Social Restriction is conducted through real professional consideration. Meanwhile, in political field, it restricts the public activities. It also creates some impacts on lower-middle economy. The society with daily income will experience the impacts because of the activity restriction. The government does not give any guarantee for the basic living needs. It will be different if the government implements the law of area quarantine in which they provide the needs for society.

Discretion conducted by the government does not give any trust to the public. Therefore, discretion is not optimum. It will only make the polemic become longer. There are some factors in detaining the discretion based on some researches such as; Gailmard (2009) states that there are three factors in detaining the discretion such as; a) appearing from the bureaucracy itself; skeptical attitude and do not want to change in making the decision; b) politic environment; the organization demand cannot always be filled because the condition is not conducive such as adding/ decreasing budget, obstructing regulation and community interests; c) environment outside the public sector such as the public hesitation toward effectivity of action and the difficulty in giving trust to the public.

Smith (2010) explains 8 obstructions in discretion process, such as; a) the unwilling to close the failed program; b) the exaggerated dependence on work display; c) technology is available but it obstructs the culture and organization; d) there is no wage or reward on discretion; e) do not have any brave to take any risk; f) short-term budgeting and planning; g) pressure and administrative obstructions and; h) culture of risk aversion. Discretion of Large-scale social restriction experiences polemic in its implementation. There is a claim from
society forum related to the budget for handling vovid-19 that cannot be criminalized. Based on the theory, discretion can be implemented in emergency state and the policy cannot be criminalized. Nevertheless, the law upholder can still supervise if there is a kickback conducted by public policy on behalf of discretion. The law must be used to handle it. Kickback means criminal action like corruption.

It must be noted that law officials always assume that the norm violation of goods and services provision belongs to criminal violation. Based on the interview with law upholder of judiciary in Solo, he stated;

“…. Along with the finding of personal benefit upon the policy of public official, it must be processed through criminal law by the judiciary. However, it must also be processed in PTUN to follow the president instruction. Judiciary is as the representative of city government, not as a prosecutor.” (interview, 2019)

According to the president instruction of 2007 to the law upholder of police and judiciary, it explains that; first instruction is about the discretion policy (the decision is taken by the government officials). President forbids the law upholder to criminalize the discretion. Second instruction, all government administration might not also be criminalized.

“Please, differentiate which one is stealing and which one is administration. I think the regulation is clear, which one is the return which one is not (speech of President Jokowi, 2017)

Third instruction, it related to the finding of state financial loss by the audit result of Indonesian supreme audit institution. Government institution involved must be given 60 days to clarify and answer the finding. Fourth instruction, it is announced that each data concerning the state loss must be concrete and real. Fifth instruction, it concerns the prohibition to share the accusation that has not been proven and entered the legal proceedings. The law upholders might not expose all the running cases to the mass media before the prosecution appears. President instruction refers to the law no.30 of 2014 concerning government administration. The content of the law regulates and explains that the mistaken administration does not belong to a criminal act. It becomes the base for the government to be brave in using the discretion. Based on these references, the government wants public officials not to be afraid of taking discretionary actions, as long as these actions are in good faith to the public. Therefore, polemic of public officials’ anxiety in carrying out the discretion already has legal protection.

The public officials are afraid because each problem cannot always be overcome using discretion. One of the heads of SKPD said:

“…we cannot suddenly conduct discretion. Even though our intention is good, there is a political accountability that must be accepted. We don’t want to sacrifice our career” (interview, 2019)

Furthermore, he explained:
“In our opinion, the decision of using discretion must be implemented in urgent case. If the problem comes out from the bureaucracy, we choose to use the existing regulation. We will not directly carry out the discretion as the solution”

The policy can be categorized as criminal violation, if it is seen from the authority abuse. According to the criminal law, the term is not quite different like the case of *sumber waras* in Jakarta. In the theory of HAN, the authority abuse is utilizing the position to get bribes, threaten, and cheat for illegal money. Therefore, if there is no indications mentioned above, the act belongs to discretion. Law No.30 of 2014 concerning government administration on discretion gives boundary in carrying out the discretion in some articles as follows:

**Table. 4**
The restriction of discretion based on the law No.30 of 2014

| Article 24 | The government officials who use the discretion must meet the requirements as follows (1) in accordance with the purpose of discretion (2) not contrary with the law regulation (3) in accordance with AUPB (4) based on objective reasons (5) do not cause conflict (6) carried out with good commitment |
| Article 25 | Discretion that has potential to change budget allocation must obtain the approval from the supervisor’s official |
| Article 26 | The officials who use the discretion must elaborate the intention, purpose, substance and the impacts of administration and financial. |
| Article 27 | The maximum notice of implementing discretion is 5 working days before the discretion is carried out |
| Article 28 | Reporting the use of discretion is no later than 5 (five) working days from the use of discretion |
| Article 29 | Officials who use discretion are exempt from the provision of notifying citizens |

Source: FGD (2019)

The intention of implementing discretion becomes the important purpose for the law upholder to assess whether there is the criminal indication or not. One of the cases can be seen from the use of fund for handling avian influenza in health ministry. The consideration in taking out the discretion is considered as the intention of corruption.

If there is a violating discretion (process of taking discretion), the administrative sanction will be applied. According to the government officials on discretion, administrative sanction will be given to the officials who do not; (1) get the supervisor’s approval in using discretion that has a potential in changing the budget. (2) notify the superior officer before reporting to them in the case of the use of discretion causing public anxiety, emergencies, urges and / or
natural disasters. (3) implement the valid and invalid decisions or actions by the court or the official concerned. Sanctions can be in the form of: (1) forced payment of money and / or compensation (2) temporary dismissal by obtaining office rights. (3) temporary dismissal without obtaining office rights.

The severe administrative sanction is given to the officials for several reasons; (1) abusing several authorities such as; abusing authority, mixing authority and acting arbitrarily. (2) determining and conducting the decision that has a potential to own an interest. (3) violating the regulation that causes state financial loss, national economy and damage the living environment. The severe administrative sanctions can be: (1) permanent dismissal by obtaining financial rights and other facilities (2) permanent dismissal without obtaining financial rights and other facilities (3) permanent dismissal by obtaining financial rights and other facilities and published in the mass media (4) permanent dismissal without obtaining financial rights and other facilities and be published in the mass media.

**Conclusion**

Based on the study above, it can be concluded as follows: (1) the implementation of discretion in running central and regional government is quite required because the government has the authority to manage the public service. Discretion gives a way to broaden the goal effectively and efficiently. It is expected that there is no stagnation in resolving problems in public. In law no.30 of 2014, the discretion action is not bounded but it has some restrictions in its implementation. It is also regulated in detail in article 22 to 32. (2) official integrity becomes one of the indicators that can be used to measure the accuracy of discretion implementation. Official integrity can be seen from regulation, decision and action resulted as a form of implementation. (3) unpopular discretion taken by the government is politically failed and they must be responsible to the public. (4) the discretion in conducting Large-scale social restrictions has been appropriate with the discretion procedure on law no.30 of 2014. (5) government accountability to the public must be clearly explained in order that it can be studied academically.

There are some suggestions on the discretion of Large-scale social restrictions; (1) the implementation of the discretion must be more detail if it is conducted in public, (2) if there is a refusal from society upon the discretion, the government needs to give a space to the society to carry out the advocacy. (3) discretion operationalization needs to be regulated in an independent government regulation. It is because the law of government administration does not regulate the detail institution that can give advocacy on the discretion for public interest. (4) There must be clarity toward the law enforcement officials, not only the president’s instruction stating that public policy cannot be criminalized. There are laws and regulations governing the procedure for evaluating public policy in accordance with the principle of public or private interests.
Bibliography/References


