LEX LOCALIS - JOURNAL OF LOCAL SELF-GOVERNMENT
Vol. 21, No. 2, pp. 441-469, April 2023

Discretion as a Government Policy Innovation in Indonesia

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Abstract The research aims to find out how discretion is implemented as a form of government policy innovation in Indonesia. The importance of discretion for local governments to provide innovative policies for ideal government services. This study uses normative legal research methods with statutory approaches, conceptual approaches, case approaches, and comparative approaches. The analytical method used is descriptive and prescriptive methods. The results of the discussion show that discretionary arrangements that are implemented as a form of government policy innovation are steps that must be taken in supporting innovative officials as an effort to find common ground between innovation and law, not to be passive in realizing innovation. Discretionary criteria as government policy innovations in their implementation are assessed based on four aspects: authority, limits, testing, and judicial control. The ideal discretionary model in making innovation policies to realize bureaucratic reform must be based on the main values of the welfare state. In addition, discretionary policies must follow Pancasila values, as well as collaboration between authorities. Discretionary policies must follow the general principles of good governance (AUPB). Thus, it is necessary to have additional principles as a basis for implementing discretionary innovation policies in realizing bureaucratic reform, namely the principle of motivation, the principle of fair play, the principle of prohibition of detournement de pouvoir, the principle of justice, the principle of freedom, the principle of integrity, the principle of real goals, the principle of effectiveness and the principle of participation.

Keywords: • discretion • innovation • government policy • discretionary criteria • discretionary model

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https://doi.org/10.4335/21.2.441-469(2023)
ISSN 1581-5374 Print/1855-363X Online © 2023 Lex localis
Available online at http://journal.lex-localis.press.

1 Introduction

The development of state administrative law in realizing a democratic, clean and authoritative government system is a top priority for the people. One of the current developments in state administrative law is the bureaucratic reform agenda because it is a real demand that must be implemented. The public criticized the history of the bureaucracy in Indonesia, both at the central and regional levels, during the New Order era. The behavior of the bureaucracy at that time was not following its function and role as a public servant. Before the reform era, there were several problems with bureaucratic performance, such as poor quality of public services, bribery problems in licensing services, complicated administrative processes, fat organizational structures that tended to be inefficient, and even wasteful budget management (Haning, 2018). The government implements bureaucratic reform policies to create a dynamic and competitive world-class bureaucracy. The implementation has provided some improvements, though not quite as significant. Because the approach is too formalistic and uniform, the resulting changes have not been sufficient to have a real impact and benefit the public. Public sector innovations are presented to make up for these deficiencies, which government agencies have done at the central and regional levels. However, public sector innovation still needs to be accelerated so that its implementation runs more evenly and massively to encourage reform (Antonius Galih Prasetyo, 2017).

The practice of innovation in the public sector in Indonesia's central and regional spheres is not without problems. The most obvious problem, in this case, is that the formal legal framework in the form of existing laws and regulations is often not in line with the will to innovate (Prasojo, 2007). Innovation policies have not run optimally to harmonize the community's interests. Many public policies have been canceled or revised due to public officials' low ability to innovate (ability to innovate) and willingness to innovate (willingness to innovate). For this reason, policy innovations are needed that can substantively reinforce solving societal problems (Ahmad Sururi, 2016).

Mapping the problem between public sector innovation and the legal framework of state administration is always needed so that later clarity is obtained regarding the meeting point of conformity between discretion as freedom in the use of authority and public accountability as a consequence of administrative law. Discretion as a government policy innovation is not without reason, corruption eradication expert Robel Kligaard (Robert Kligaard, 1998) reveals that corruption occurs due to monopoly, which is used in the freedom to use authority but minus accountability. Indonesia has experience in implementing discretion and accountability. However, both practices tend to have defects due to misperceptions, discretion is free authority, and accountability is reduced to mere performance accountability reports. However, the discretionary policy in its implementation has the potential to cause legal and administrative problems. Because in its implementation, sometimes

policies have exceeded the limits of authority that are not following the laws and regulations. For this reason, public control is needed on the actions of government officials or state administration equipment in carrying out a clean and authoritative government in the context of realizing good governance (Aristoni, 2014).

For example, in 2004, the former chairman of the General Elections Commission (KPU), Nazaruddin Sjamsudin, was tried as a result of his decision to charge the public budget without an auction process. As chairman of the commission, he decided to protect KPU employees under the insurance program. Unfortunately, due to time constraints, the program was not carried out through an open auction process. Although the general election was successful, it did not help to release him from the court process. The judge found him guilty of harming the public budget and sent him to prison for seven years. In principle, this policy has a positive aim to protect KPU employees from the health aspect because the election workload is very high. This became evident in the 2019 election with a very high workload by the Voting Organizing Group (KPPS), causing 889 deaths from officers. Of the 889 victims who died, none of the KPPS officers received insurance because the KPU did not provide a policy on this matter.

In the discretionary framework, policymakers have broad freedom to design the best policy response for certain circumstances, which can be said that the central point of discretion as part of the authority to carry out policies that violate and or override the law for the benefit of the term or emergency situation still does not have certainty and definite criteria. This is because discretion is a subjective policy carried out by leaders/leaders to deal with emergencies. Based on this inequality in its implementation, there are many pros and cons. This is in the opinion of Finn Kydland and Edward Prescott, who were the first to offer a solution to the conflicting policy of discretion and regulation. A classic 1977 article introduced the distinction between time-inconsistent and time-consistent rules. Policies inconsistent with time can make the public happy in the short term but ultimately fail to produce long-term policy goals. On the other hand, time-consistent policies set long-term policy goals but do not make people unhappy in the short term. It can be argued that Kydland and Prescott stress the importance of understanding the desired policy for a given set of circumstances and the framework that is likely to produce the best policy over time. They go on to argue that rules produce time-consistent results because they make the statements of policymakers credible. Kydland and Prescott emphasize the importance of credible regulatory frameworks and values.

The concept of discretion in practice has pros and cons in its implementation and the legalistic view considers that all government actions follow statutory regulations. The government's actions in not following the laws and regulations are considered violations of the law. The legalistic view follows the opinion of Herbert Packer, who states: "The basic trouble with discretion is simply that it is lawless, in

the literal sense of that term." (Mhd Taufiqurrahman, 2022) Albert Venn Dicey argues the concept of discretion in his book rule of law, which states that every government system must be based on laws and regulations, every official who issues an action must have authority, it should not be arbitrary, that power must be restricted (Krishna Djaya Darumurti, 2014). It has an antithesis with Nonet and Selznick's opinion showing how internal dynamics push law from the repressive legal stage, where the law is a harsh political instrument, to autonomous law, where legal integrity and formality are central, to the third stage of responsive law, where legal integrity and formality are central. Law serves a substantive and policy-related purpose.

The development of state administrative law related to discretionary actions and obtaining legal protection is an inseparable part of good governance. The birth of Law Number 30 of 2014 concerning Government Administration is a breakthrough in the development of state administrative law (Mirza Sahputra, 2021). The regulation of discretion has been contained in the provisions of the law. Article 1 point 9 "discretionary policies can be taken by authorized government officials if the laws and regulations that provide choices, do not regulate, are incomplete or unclear, and there is stagnation of government". Based on these rules, it is apparent that the basis for the use of discretion by government officials but government officials are still afraid to innovate in realizing bureaucratic reform. Regional officials' concerns are usually related to disbursing the budget in the APBD to finance programs related to innovations that trigger delays in budget absorption.

Innovation policies in several regions have stumbled upon criminal acts of corruption, such as the case of the Sragen Regent, who was entangled in the corruption of the Sragen Regency APBD in the One Stop Service (OSS) program innovation policy which was sentenced to 7 years in prison. (Taufik Rachman, 2012) The Regent of Jembrana, I Gusti Winasa, made an innovation policy by creating a lean and efficient regional apparatus structure so that he was able to take advantage of the small APBD for free health and education services but was eventually caught in a corruption case and many other regional heads. (Novianto, 2012) Likewise, the former Governor of DKI Jakarta Basuki Tjahaja Purnama (Ahok) issued a policy in the form of asking developers to add contributions as a condition for continuing the reclamation project in which it is used for welfare programs, such as the procurement of flats for the underprivileged. . In addition, the application of e-budgeting which is used in preparing the regional budget (APBD) of DKI Jakarta which is not based on a legal basis (Fuji Lara Sakti A, H. A Sihabudi, 2017). This condition is hazardous for regional progress if the policy innovation can be criminalized, so innovation should not be encouraged or appreciated, let alone used as a policy. Misunderstandings like this will result in refusal, reluctance, and fear to implement innovation policies by local governments.

The proximity of corruption and discretion has indeed become a debate for legal scientists, starting with the argument that Klitgaard, who is one of the giants of anti-corruption academic research during the last half century, once briefly summarized his perspective on the causes of corruption in a “corruption formula”: C = M + D – A, or (to put this back into words): “Corruption equals monopoly plus discretion minus accountability.” Eradicating corruption means reducing monopoly power, reducing discretion, and increasing accountability in many ways. Reducing monopoly power means enabling competition. Limiting discretion means clarifying the rule of law and making it known to all. Increasing accountability means improving performance measurement.

In addition, according to Klitgaard, the probability of arresting the perpetrators of corruption, as well as the punishment for them (both giver and taker), should be increased. Klitgaard's formula regarding corruption has received criticism from a number of parties, including Stephenson (2014). According to Stephenson, Klitgaard's corruption formula is not only outdated but affirmatively misleading and, therefore, dangerous. In his argument, Stephenson commented on Klitgaard's formula, namely:

1. Monoply
   It study does not conclude that replacing monopoly with competition always reduces competition. Sometimes it is, but sometimes competition can increase corruption. For example, a company that tends to pay bribes may shop for corrupt bureaucrats. On the other hand, competition between jurisdictions can make them compete to offer the most attractive corruption opportunities. Moreover, the record of privatizing government services in reducing corruption.
2. Discretion
   Government officials who have too much discretion can abuse it. However, government officials with too little (formal) discretion may be more likely to bend or ignore rules that appear stupid, inefficient, and contrary to prevailing social norms. In other words, while some forms of corruption involve the exercise of lawful discretion, other forms of corruption involve violating formal limits on discretion. Tightening these boundaries can reduce the former type of corruption but exacerbate the latter. In addition, overemphasizing rigid limits on official discretion can lead to poorer decisions (because discretion, despite its costs, also has the important benefit of enabling officials to adapt their decisions to the nuances of a particular situation and adapt over time).
3. Accountability
   This formulation has several problems: (1) responsible officials are under pressure to produce visible short-term results, which can create incentives to engage in forms of corruption at long-term costs (such as illicit campaign contributions) to deliver such results; (2) when officials are subject to “hyper-accountability” so that they expect them to be removed from office as soon as minor misconduct occurs (even if it is not their fault), they may be less

constrained by their desire to remain in office, and are more likely to enrich themselves as much as possible; (3) accountability to bureaucratic superiors can only push the locus of corruption up the hierarchy, and if superiors (say, politicians) are more corrupt than subordinates (say, bureaucrats), then increasing the latter's accountability to the former might make corruption worse.

Based on the opinion above, it is true that the policy of exercising discretion has the potential to cause corruption, but not all discretion leads to corruption. Even if it leads to corruption, it does not necessarily mean that innovations made by regional heads are immediately considered failed or wrong. It must be seen on the subject of corruption. If the innovation program is considered good, then the conclusion is that it only places the right people in carrying out the program and should not just because of administrative defects because it breaks through rigid laws and then claims it is a criminal act of corruption. Therefore, the law should not only be placed on the formal norms of positivism but also in the progressive and responsive aspect that aims at expediency.

However, this reasoning ignores an important aspect of the policy innovation process. Because successful policy experiments are eventually emulated, they have a public good component. Experiments benefit not just the innovating government but also potential imitators, and so local governments have an incentive to free-ride off their neighbors. Alternatively, a central government should take this learning externality into account when it is deciding whether to consider a policy experiment. The application of discretion underwent several changes after the enactment of Law Number 11 of 2020 concerning Job Creation, which in its provisions eliminates the conditions for government officials to exercise discretion. At the same time, the provisions of Article 24 of Law Number 30 of 2014 concerning Government Administration limit the use of discretion so that it does not conflict with statutory regulations. However, based on the provisions of Article 175 of Law Number 11 of 2020 concerning Job Creation, it removes the condition "not contrary to the provisions of laws and regulations" for government officials to exercise discretion. This will harm the climate of government administration because of the potential to abuse discretion. This study aims to find the discretionary setting applied as a form of government policy innovation, discretionary criteria as a government policy innovation containing the principle of benefit, and a discretionary model as an ideal government policy innovation.

2 Literature overview

Research related to discretion as a government policy innovation needs analysis of 3 basic things. First is the importance of philosophically understanding discretion in essence. Understanding the concept of discretion as an innovation of government policy with a philosophical basis through the concept of the rule of law, the concept

of the welfare state, and the concept of natural law. Second, it is essential to understand the discretionary criteria as government innovations that contain the principle of benefit so that it can be known and understood that the policy fulfills not only the concept of discretionary nature but also, especially its legality and aims for the public interest so that it can be seen in real terms its benefits for life. Public. Third, a discretionary model can be built as an ideal government innovation to realize bureaucratic reform, and discretion is carried out cleanly without any violation of discretionary policy morals, does not violate the principle of legality, does not violate the general principles of good government and does not neglect its pragmatic goal, namely expediency.

The legal principle is a formation that is also used as a basis for making decisions or actions, while theory is used as a tool to analyze phenomena that occur in research problems and concepts are used to analyze the achievement of research objectives. At the level of grand theory, in the exercise of discretionary government power, the concept of the rule of law in a general sense is not specific to a particular country. Thus, at this theoretical level, what is highly emphasized from the generally accepted concept of the rule of law is the level of similarity in the elements of its essential understanding. One example of the general application of the rule of law concept is the emphasis, in essence, as a demand to all countries to protect human rights (HAM). (Danilo Zolo, 2007). Based on this, discretionary power is justified by law, especially in the framework of the rule of law, with the character of its power deviating from the principle of legality. First, the granting of power (authorization) for discretionary power is not the source of the principle of legality, but the law itself, so the concept of discretionary power also reflects the moral content of the law. The statement that can be made here is the nature of the relationship between the concept of law and the law. The law has many weaknesses, such as clarity and completeness, but the law does not. Law is the regulatory principle for legislation. Aristotle, in Rhetoric, states: *If the written law tells against our case, clearly we must appeal to the universal law, and insist on its greater equity and justice . . . We must urge that the principles of equity are permanent and changeless and that the universal law does not change either, for it is the law of nature, whereas written laws often do change.* Second, as legal power, discretionary power reflects the ideals of law described above. The idea of the law in question is the law's internal morality, such as justice, a force capable of setting aside the validity of the law.

When Augustine declared *lex iniusta non*-est lex, Augustine had laid the principle for discretionary power with a strong morality dimension, namely justice set aside the enforcement of unfair laws. Suri Ratnapala explained the context of Augustine's statement as follows: *at some point on the moral scale, an enactment may be seen as so immoral or unjust that it loses its authority as law* (Suri Ratnapala, 2009). In conclusion, justice itself can be the basis for action when the law does not provide explicit regulatory provisions (prescriptions) for action. The theory of natural law

strengthens the exercise of discretionary power as the basis for knowing the concept of universal discretion. The teaching of natural law focuses on recognizing the existence of morality where the moral or legal validity of the law can be measured. Therefore, the teaching of natural law is normative. Based on this, the author has an argument against the concept of discretion in theory adhering to the teachings of natural law (natural law) compared to the teachings of legal positivism because the concept of discretion can be more easily explained using natural law teachings than legal positivism teachings.

The reason for choosing the teachings of natural law (natural law) is because, First, the teachings of natural law (natural law) are always open to arguments for justification related to the concept of discretion when measuring the level (hierarchy) of positive law. This can be seen from Aristotle's thoughts on the concept of equity quoted by Peter Mahmud Marzuki explaining it as follows: "*However, Aristotle realized that in the implementation of the law, it was not impossible that in concrete cases there would be difficulties due to the application of rigid laws. To overcome this problem, Aristotle proposed the existence of equity. He defines equity as a correction to the law if it is not correct because it is general."*(Peter Mahmud Marzuki, 2008) Based on this opinion, it can be concluded that the existence of the concept of discretion can stand alone without needing to be supported by positive law. Second, positive law is considered incapable of providing complete and comprehensive legal instruments to decision-makers to deal with any problems needed. (Clement Fatovic, 2009) Therefore, discretion is needed as a breakthrough outside the legislation but is still legitimate which has legitimacy by law.

At the middle range theory level, discretion is law enforcement's goal. Philosophically, discretion is a natural law perspective. According to Peter Mahmud Marzuki, the law aims to direct the will so that the ideal can be achieved. (Peter Mahmud Marzuki, 2008) Legal goals are important because these goals can create dignified laws. According to Gustav Radbruch, the purpose of the law is defined as an aspect of value or purpose. Radbruch also states that law is a cultural phenomenon, namely a fact related to values.

The concept of law can only be defined as something given, which means embodying legal ideas. The law may be unfair, but the law is only because it means fair. (Kurt Wilk, 1950) The purpose of the law is also called the rules made by the authorities, as is the opinion of Peter Mahmud Marzuki. The purpose of the law is to meet human needs in social life. Based on this description, the problem is whether the concept of discretion can be justified in morality and justice so that the discretion is valid within the framework of legal objectives. The concept of government discretion must be understood in the context of its objectives so that it can be compared to whether these goals are consistent with legal objectives. So the author

concludes that the purpose that is the basis of the existence of the concept of discretion must be consistent with the law.

At the level of applied theory, the application of discretion is aimed at the benefit (doelmatigheid). The law's main purpose is justice, benefit and certainty. According to utilitarianism theory (Erwin, 2011), the benefit is a goal of the law because the benefit is that it can be used as much as possible for people. Benefit as a measure of an assessment of whether the law is good or bad, fair or not, so that legal culture is expected to correlate with the formation of law. Government officials in the formation of law must be based on the existence of a goal that puts benefits the community. Likewise, discretionary action must have a purpose that does not conflict with the laws and regulations, which are the basis for discretion and general principles of good governance. The purpose of the discretion must put benefit as the main purpose of issuing the discretion. The purpose of discretion is also emphasized in Nana Saputra's opinion, where the exercise of discretion is given freedom and prioritizes the effectiveness of achieving a goal (doelmatigheid) rather than sticking to legal provisions.

Besides that, according to Bahsan Mustafa, the reason for giving discretionary authority to the government is because the government functions as a state administration in organizing public welfare. The discretionary authority prioritizes achieving its goals or objectives (doelmatigheid) compared to the applicable law (rechtmatigheid). (Ridwan HR, 2016) Utilitarianism theory will put benefit as a legal goal, benefit is also a form of happiness. Jeremy Bentham links the utilitarian principle of human life to maximum happiness and reducing suffering. The assessment of the good and bad of human actions depend on whether their actions towards actions bring happiness or not. Whereas with the principle of utilitarianism, according to Bentham's view, the legislators, the products are appropriate, reflecting justice for all individuals. With this principle, legislation can provide happiness to the community. (Lili Rasjidi and Ira Thania Rasjidi, 2012) Based on this opinion, the author concludes that the purpose of the law is for the greatest happiness for as many individuals as possible. John Stuart Mill agrees with Bentham that an act should aim to achieve as much happiness as possible, including making laws and regulations. Regarding the results of his research, justice stems from the human instinct to reject and avenge the damage suffered, both by oneself and by anyone who gains sympathy from us, so that the essence of justice includes all the essential moral requirements for the welfare of humanity. (Otje Salman, 2012)

3 Research

The research method used is normative legal research, which is legal research that puts the law as a building norm system. (Mukti Fajar and Yulianto Achmad, 2013) The approach method in this research uses several approaches, such as the first, the legal approach, where this approach is related to the study of the products of

legislation related to the problems to be studied by researchers. Second is the case approach where the researcher examines the discretionary acts of innovation policy carried out by the regional head who later stumbled on a corruption crime, the One Stop Service (OSS) program innovation policy by the Sragen Regent ended up being convicted of corruption. The discretion of the innovation policy by I Gusti Winasa (Regent of Jembrana), who encourages creating innovations in regional apparatus structures related to efficiency in the use of the APBD budget for free health and education services, is entangled in corruption. Third, this conceptual approach is carried out because the researcher will analyze legal materials related to legal terms in theory and practice. (Bambang Sungono, 2009) Fourth, the research uses a comparative approach to research results compared to the laws of other countries. The countries that are compared in the discretionary arrangement are the Netherlands and England.

The model for collecting legal materials used is a library research model or literature study. The results of the analysis of legal materials will be interpreted using (a) systematic: (b) grammatical: and (c) theological interpretation methods (Asshiddiqie, 1997). The results of this study are presented in the form of a narrative, secondary data containing legal materials that have been obtained are then analyzed, which then concludes the results of the study. The analysis technique used in this research is descriptive and prescriptive. This descriptive analysis is intended to provide an overview or explanation of the research object as the research results. This perspective analysis is intended to provide an argument for the results of the research that has been done.

4 Discussion

4.1 Discretionary Regulations Are Implemented as a Form of Government Policy Innovation

The enactment of Law Number 30 of 2014 concerning Government Administration on October 17, 2014, has become a new milestone for administrative reform in Indonesia. Authorized government officials are allowed to exercise discretion (make decisions and actions to overcome concrete problems faced in the administration of government) to launch government administration, fill legal voids, provide legal certainty, overcoming government stagnation in certain circumstances for the benefit of and public interest. Thus, Law Number 30 of 2014 concerning Public Administration is the legal basis for Government Agencies and Officials, community members, and other parties related to government administration to improve the quality of government administration. The influence of regulations and policies on innovation is complex and depends on the types of innovation (Ashford, 2000). The ways the policies and regulations are drafted and implemented should incorporate the dynamic nature of the innovation (Leitner, et al., 2010). Since the willingness to change, the capacity to change, and the

opportunity to change are among the important elements that are necessary for promoting technological changes, the government policies should therefore be put in place to generate conditions that support these elements.

According to experts, this discretion arises because of community developments that impact certain urgent situations that make government officials unable to use their authority, especially those bound (gebonden bevoegheid) to normally carry out legal and factual actions. (Julia Mustamu, 2011) According to Benjamin Hoessen, discretion is defined as the freedom of officials to make decisions according to their considerations. (Benyamin Hoessen, 2011) Thus, according to him, every public official has discretionary authority. Conceptually, the implementation of discretion prioritizes the effectiveness of achieving a goal (doelmatigheid) rather than simply complying with legal provisions (rechtmatigheid). This is inseparable from the rapid dynamics of community needs, which are often unpredictable from the start (unpredictable) or even unreachable by formal procedures regulated in various policies.

Moreover, at this time, government officials are required and are competing to innovate to accelerate development and public services. The spirit of the formation of Law Number 30 of 2014 concerning Government Administration stipulates that government administrators have clear signs in implementing government decisions and actions and avoiding abuse of authority by government officials. The discretion regulated in the Government Administration Law is a conditional and mechanistic (procedural) discretion. Regarding the scope of discretion, in Law Number 30 of 2014 concerning Government Administration, it is explained that the discretion of Government Officials includes:

a. Making decisions and actions based on the provisions of laws and regulations provides a choice of decisions and actions. The words characterize the choice of decisions and actions of government officials can, may, or are given authority, entitled, should expect, and other similar words in the provisions of laws and regulations. What is meant by choice of decisions or actions is the response or attitude of government officials in carrying out government administration following the provisions of laws and regulations.
b. Making decisions and actions because the laws and regulations do not regulate. What is meant by statutory regulations that do not regulate is the absence or legal vacuum that regulates government administration in certain conditions or outside the norm.
c. Decision-making and action due to incomplete or unclear laws and regulations. What is meant by "incomplete or unclear statutory regulations" if the laws and regulations still require further explanation, overlapping regulations (not harmonious and out of sync), and regulations requiring implementation regulations but have not yet been made?
d. Decision-making and action due to government stagnation for the broader interest. What is meant by "wider interests" are interests related to the lives of

many people, saving humanity, and the integrity of the state, among others: natural disasters, disease outbreaks, social conflicts, riots, defense, and national unity.

In addition, discretion must also meet many conditions to overcome concrete problems, laws, and regulations that provide choices, do not regulate, are incomplete or unclear, or there is government stagnation. There are still conditions that must be in good faith, not conflict with the laws and regulations, and do not cause a conflict of interest. In addition, discretion must be reported by mechanism and seek approval from superiors in advance if the discretion to be taken is related to budget allocation. Meanwhile, if discretion will cause public unrest, emergency, urgent, and natural disasters occur, Government Officials are required to notify the Official's Superior before using discretion and report to the Official's Superior after using discretion. In fact, in Law Number 30 of 2014 concerning Government Administration, it is stated that the mechanism for submitting an application and submitting a discretionary report is within 5 (five) days, either before or after the discretion is exercised. This means that discretion based on Law Number 30 of 2014 concerning Government Administration is difficult to implement and not as ideal discretion. Procedures related to discretionary actions, in Law Number 30 of 2014 concerning Government Administration are explained as follows:

a. In the case of the use of discretion that has the potential to change budget allocations and cause legal consequences that have the potential to burden state finances, it is mandatory to obtain approval from the Official's Superior.
b. In the case of the use of discretion that has the potential to cause public unrest, Government Officials are required to report to the Official's Superior before the use of such discretion.
c. The use of discretion in an emergency, urgent or natural disaster occurs, the government official is obliged to notify the superior of the official after the use of discretion.

The use of discretion that has the potential to change budget allocations and cause legal consequences that have the potential to burden state finances must obtain approval from the Official's Superior. This procedure eventually causes many officials to refuse to exercise discretion, especially if the discretion to be taken impacts state finances. The discretion exercised will be considered as a form of abuse of authority and can lead to criminal acts of corruption, there are even some law enforcement officers who argue that Law Number 30 of 2014 concerning Government Administration does not support the spirit of anti-corruption. When viewed from the type of corruption according to Law 31/1999, which has been amended by Law no. 19 of 2019 and also the Constitutional Court Decision No. 25/PUU-XIV/2016, then the types of corruption that may be related to discretion are corruption related to state financial losses; bribery-related corruption; corruption related to conflict of interest in procurement; and corruption related to gratuities. Discretion will become corruption when the discretion exercised by an official

fulfills a number of elements of these types of corruption. Such discretion is carried out against the law to enrich oneself and to harm the state's finances.

These various types of corruption are related to discretion as a result of the use of discretion by authorized officials. However, they are not carried out following the requirements set when referring to Law 30/2014. In this regard, Law 30/2014 explicitly stipulates a number of requirements that must be met before exercising discretion, namely: (1) following the purpose of discretion; (2) does not conflict with the provisions of laws and regulations; (3) following the General Principles of Good Governance or AUPB; (4) based on objective reasons; (5) does not create a conflict of interest; and (6) done in good faith.

The concept of discretion based on Law Number 30 of 2014 concerning Public Administration changed after the ratification of the Job Creation Law. The enactment of the Job Creation Law has shifted the administration of government administration, one of which is regarding discretion as regulated in article 175. The shift in the concept of discretion is due to the government's assumption that the concept of discretion that has been regulated so far has narrowed the space for government officials to issue discretion related to licensing. as an effort to accelerate investment. So in the Job Creation Law, there is a change in the concept of discretion, which was initially limited to discretion, to an increasingly broadened discretion. Even though this change in discretion has caused conflict in the community, it is considered that the change in the concept of discretion contained in the Job Creation Law is too broad and is feared that it will impact the instability of the administration of government (Nurmayani Mery Farida, 2021).

This change was made because the Government Administration Law is considered one of the laws which, in some regulations, hinder investment development in Indonesia. Changes in the rules in the Government Administration Law are very influential in the administration of government administration, one of which is related to discretion. The change of discretion in the Job Creation Law aims to make it easier for government officials to issue discretion related to the speed of investment, especially in the licensing sector. The expansion of the concept of discretion in the Job Creation Law gets much criticism in the community because it is considered that the discretionary concept in the Job Creation Law is made too broad so that it is feared that it will have a harmful effect on the administration of government. The concept of discretion in the Job Creation Law which abolishes discretion, must not conflict with laws and regulations, causing many problems in society because basically, the concept of discretion adopted by Indonesia is a concept of limited discretion, not broad discretion that allows abuse of authority.

The following will describe the problematic concept of discretion after the enactment of the Job Creation Law:

a. Potential for Unconstitutional Discretion

As stipulated in Article 1 paragraph (3) of the 1945 Constitution, Indonesia as a legal state has the consequence that every administration of government must be based on the law and not only on the power inherent in government officials themselves, as well as in making discretion. Discretion, which is the freedom of local government officials to take action and make decisions, if expanded as stated in the Job Creation Law, has the potential to form unconstitutional discretion. Unconstitutional is the formation of a legal product contrary to the 1945 Constitution. (Wicaksono Indra, 2019) So that the discretion in the form that will later be colored by the political interests of the power holder, because with the abolition of the conditions, it must not conflict with the laws and regulations in the Job Creation Act in issuing this discretion. Received much criticism because it was considered too broad, this is because if we pay attention that based on the legislation as regulated in Article 7 of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation consists of from:

- The 1945 Constitution of the Republic of Indonesia;
- Decree of the People's Consultative Assembly;
- Laws/Government Regulations instead of Laws;
- Government Regulations;
- Presidential Regulation;
- Provincial Regulations; and
- Regency/City Regional Regulation

As a result of the abolition of conditions that must not conflict with the laws and regulations in the formation of discretion, there will be a potential for the discretion issued by government officials to be unconstitutional because it may be contrary to the 1945 Constitution, which is the highest law in Indonesia. Based on this, the 1945 Constitution is a reference in the formation of government administration policies so that when taking economic policies as stipulated in the Job Creation Law, it must not be violated and excluded because of economic interests. As emphasized by Jimly Assidiqqie that the provisions on the economy in the 1945 Constitution are an instrument of controlling market dynamics as well as a means of engineering economic development to achieve common goals, namely the creation of justice, the creation of shared prosperity, and freedom. The constitution serves as a balance between the interests of the state, society, and the market (Elviandri Khuzdaifah Dimyati and Absori, 2019).

Therefore, every policy issued must not conflict with the 1945 Constitution even though it aims to improve the economy, such as the Job Creation Law.

b. Contrary to the General Principles of Good Government (AUPB)

The General Principles of Good Government (AUPB) is one of the limitations in the formation of discretion so that in issuing discretion, it must not conflict with the AUPB. Besides that, AUPB is also an effort to direct and maintain that the authority exercised by government officials can be controlled and avoid acts of abuse of power. (Sumeleh, 2017) Therefore, the discretion issued by government officials will not harm the interests of the community. In addition, there are measures of discretion according to the AUPB, namely: honesty (fair-play), accuracy (zorgvuldigheid), purity in goals (zuiverheid van oogmerk), balance (evenwichtigheid), and legal certainty (Rechts zekerheid).

AUPB in the administration of government is regulated in Article 10 of the Law on government administration which consists of legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest and good service. The principles in the exercise of discretion can be said to be a touchstone, to test whether the discretion issued by government officials is following the interests of the general public, if the discretion issued is contrary to the AUPB, the discretion can be canceled. However, new problems arise due to changes in the concept of discretion in the Job Creation Law which allows violations of the discretionary principle, namely the principle of legal certainty. That is the principle in a state of law that prioritizes the basis of the provisions of laws and regulations, propriety, constancy, and justice in every policy of government administration. This is because removing the discretionary conditions for using discretion must not conflict with the laws and regulations. It will cause the discretionary provisions issued not to have a clear legal basis, thus creating legal uncertainty in government administration. Then when viewed based on the opinion of Gustav Radbruch, that legal certainty is certainty about the law itself. So the concept of discretion in the Job Creation Law must at least meet four things related to the meaning of legal certainty according to Gustav Radbruch, namely (Fahmi Ramadhan Firdaus Anna Erliyana, 2020):

1) Law is positive and based on legislation (Gsetzliches Recht).
2) That the law is based on facts (Tatsachen), not a formulation of the judgment that the judge will later make, such as "good faith" and "politeness".
3) The facts must be formulated clearly to avoid mistakes in meaning (multi-interpretation) and be easy to implement.
4) The positive law should not be changed frequently.

Based on these four criteria, the concept of discretion in the Job Creation Law does not meet the requirements based on statutory regulations, resulting in the distortion of legal certainty in government administration. This change in the concept of discretion in the Job Creation Law also has the potential to violate the principle of not abusing authority in the AUPB because the concept of discretion in the Job Creation Law is too broad so that it is vulnerable to being used as a tool for abuse of power by government administration officials. Thus the concept of discretion in

the Job Creation Law will cause problems that result in AUPB being violated. The concept of discretion in the Job Creation Law is too broad; the formation of discretion in the administration of government administration is still experiencing problems with abuse of authority by government officials, which ends in corruption, as statistical data on perpetrators of corruption will be released by the KPK until 2021 as 143 regional heads. Affected by corruption cases, one of them is corruption by regional heads because the discretion given is not balanced with integrity.

The Government Administration Law has explicitly regulated the limits on the use of discretion. Abuse of discretion has risks, namely legal consequences and legal liability by discretionary actors. Forms of responsibility for the abuse of discretion are the form of criminal, civil law, and administrative law. (Made Suteja, 2013) This abuse of discretion is the lack of oversight of discretion from both the central government and the community. Thus, expanding the concept of discretion in the Job Creation Law will further increase the abuse of discretion because it is possible for government officials to exercise discretion contrary to the laws and regulations. Thus, the concept of discretion in the Job Creation Law, if not balanced with increased supervision over the use of discretion, will lead to futility and only make corruption more entrenched in government administration.

Based on the description above, the concept of discretion in the Job Creation Law has problems that must be resolved immediately so that the discretion that will be issued can support the purpose of the Job Creation Law, which is to increase investment, not vice versa, it will further expand the abuse of the situation, as stated by Ridwan HR that discretion and regulations the policy is considered invalid or deviant if it is contrary to the laws and regulations and legal principles (rechtsbeginsel), there is an element of abuse of authority and arbitrary element or violates the principle of rationality, violates human rights, is contrary to the general principles of good governance and the principle of good governance (Goed Bestuur), and there is an element of maladministration. (Adam Setiawan and Nehru Asyikin, 2020) Because of the problematic concept of discretion, a solution must be found immediately.

Based on these rules, both Law Number 30 of 2014 and amendments through Law Number 11 of 2020 concerning Job Creation regarding the basis for implementing discretion, unfortunately, until now, there are still many Government Officials who are hesitant to use discretion when facing problems in government administration. Most government officials are worried that if they exercise discretion, these decisions or actions will later be interpreted as administrative irregularities (mal-administration), which are the forerunners of general crimes and criminal acts of corruption. Based on this, what efforts can be made so that government officials do not hesitate or are afraid to exercise discretion in innovation policies in order to improve bureaucratic reform.

4.2 Discretionary Criteria as Government Policy Innovations Containing Benefit Principles

In comparison to the adoption and diffusion of service innovation and information technology innovation literature reviewed above, the literature on policy innovation diffusion is relatively new and smaller in size, especially as it relates to the adoption of ICT. Some political scientists criticize the policy innovation diffusion literature (Chatfield & Reddick, 2018). Mintrom (1997a) argues: "Political scientists have paid little attention to how ideas for innovation gain prominence on government agendas" (p.738). More pointedly, Balla (2001) disputes: "Although scholars have found that policy innovations diffuse across states in a systematic manner, they generally have not examined the role that individuals and institutions play in promoting diffusion" (p. 221). Based on Article 1 point 9 of Law Number 30 of 2014 concerning Government Administration explains that discretionary authority is a decision or action that is determined and carried out by Government Officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, not regulated, incomplete or unclear, and government stagnation. Due to the breadth of policy-making carried out by government officials, it must be balanced with legal protection for policymakers, in which every policy passed must be accounted for. Discretion is needed as a complement to the principle of legality, namely the legal principle, which states that every act or act of state administration must be based on the provisions of the law, but the law cannot regulate all kinds of things in the practice of daily life. (Irfan M. Islamy, 2009) The concept of discretion is part of the legal concept so that the application of discretion granted to government officials is always under supervision or is limited according to applicable law. In addition, Syahran Basah explains that the application of discretion legally has two limitations, namely the upper and lower limits. The upper limit is meant for compliance with statutory provisions based on the principle of compliance, i.e., regulations of a lower degree may not conflict with regulations of a higher degree. Meanwhile, the lower limit is the regulation made or the attitude of the state administration (both active and passive); it must not violate the rights and obligations of the citizens. (Ridwan HR, 2006).

In the context of this argument, the law always provides flexibility to government officials in making and determining a policy regulation based on subjective or personal considerations, provided that the legal criteria are met, in this case, it does not conflict with the principle of legality as the main guideline for the rule of law. Discretionary actions taken by government officials must be accountable for their validity and implementation because discretion in the conception of the principle of the rule of law is a necessity whose legitimacy has been agreed upon so that with the emergence of discretion/freedom to act in the corridor of implementing the interests of the nation which is inherent in the principle of legality, it is necessary to take responsibility for the use of discretion by government officials as control

and supervision of discretion so as not to deviate or contradict the principle of legality.

Discretion in its implementation needs to be tested in the legal corridor, and every government action is required to follow the law (rechmatiq). According to this understanding, the legitimacy (rechmatigheid) of government actions, including the exercise of discretionary power, is a major issue in line with the previous discussion that the law imposes limits on government power through the rule of law. In testing the exercise of government power in ordinary situations (related powers) based on testing the exercise of government discretionary power.

The main issue in discussing the question of the basis for testing the government's discretionary action here is none other than the conception of law. The known forms of ratione material testing are wetmatiqheidstoetsing, rechtmatiqheidstoetsing, and doelmatigheidstoetsing in the final analysis representing the development of the conception of law as the basis for testing. (Hilaire Barnett, 2002) In the application of wetmatigheidstoestsing, the basis for testing is the law (legislation) and implementing regulations or regulations (wet; lex). Such a testing method is known as a rule-based approach. The rule-based approach is only adequate in the case of government actions within the corridor of bounded power/authority. In the test on rechtmaigheidstoetsing is the law (Recht;ius), namely with the understanding of "a body of ideals, principles, and precepts for the adjustment of the relations of human beings and the ordering of their conduct in society. (Roscoe Pound, 1960).

This is commonly known as testing with a right-based approach. The concept of Right here in philosophical language contains the concept of "excellent or just law, " binding on us because it is good or just. (George P. Fletcher, 1984) This right-based test is a test in the realm of the rule of law (the rule of law) in a broad sense (thick, substantive). The difference between rule-based and right-based only occurs in legal discourse in countries that use English because there is no specific difference between ius and lex in the English vocabulary. These two different concepts are only represented in one word, namely law. To overcome the difficulty of distinguishing law in the sense of lex and law in the sense of ius, the term right is used (with the sense of good or Therefore, testing is based on law or is better known as right-based testing.

The basis of testing on doelmatigheidstoeting is doel or the purpose of the action. This testing method is better known as the goal-based approach. This is strongly influenced by the development of instrumental legal conceptions (law as a means to an end). (Brian Z Tamanaha, 2006) Related to this, the issues in doelmatigheidstoeting are in terms of usability (consideration of efficiency) and usability (consideration of effectiveness).) of the action associated with the goals (goals, goals) to be achieved through the action. Ratione temporis, usability, and usability testing can be done both at the time the action is taken (ex tunc) and at the

time after the action (ex nunc). In this case, what is meant by ex nunc is the change in facts and circumstances referred to in the assessment of action. (Philipus M. Hadjon, 1987).

Judicial control over government acts (including in exercising its discretionary power) is limited by the principle of wisdom: "Judicial machinery should be conserved for problems which are actual and present or imminent, nor squandered on problems which are abstract or hypothetical or remote. (Kenneth Culp Davis, 1955) Limitations through the principle of wisdom are essentially related to the issue of institutional relations between judicial bodies and government agencies in deciding disputes caused by an act of government without intending to interfere with government policies in it. (Ernest Gellhorn & Barry B. Boyer, 1981) The peculiarity or uniqueness of government functions has been recognized theoretically as a comparative advantage possessed by the government compared to other government agencies.

The judicial control mechanism in Indonesia against government acts is differentiated ratione material according to the type of government action that is the issue. For acts of government in the form of State Administrative Decisions, judicial accountability of the government is carried out through the State Administrative Court. Meanwhile, for government actions in basic form, judicial accountability of government is carried out through general courts in the form of accountability for unlawful acts by the authorities (onrechtmatige overheidsdaad). In the judicial tradition in England, judicial control over discretionary government actions emphasizes the will that the government's discretionary power be used fairly or rationally. H.W.R Wade concludes various legal superiors against discretion as follows: Discretion must be exercised reasonably and in good faith, that relevant considerations only must be taken into account, that there must be malversation of any kind, or that decision must not be arbitrary or capricious. (H.W.R Wade, 1986)

Regarding the comparative approach, it appears that the practice of Dutch Administrative Law is sharper than the practice of English administrative law in conceptually distinguishing the principle of the prohibition on abusing power with the principle of arbitrary prohibition. The doctrine of British Administrative Law seems to confuse the two concepts still as happened in the concept of reasonableness which was developed as a basis for testing the government's discretionary actions. This refers to the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948), in which Lord Justice Greene M.R acted to provide a judicial opinion elaborated on the ratio decidendi of this case. Craig explained that the concept of unreasonable has two meanings, namely "umbrella sense" and "substantive sense". The first can be called the "umbrella sense" unreasonable is used here simply as a synonym for a host of more specific grounds of attack, such as taking account of irrelevant considerations, acting for improper purposes, and acting mala fide…The second meaning may be termed the "substantive sense" of

unreasonableness; a decision may be attacked if it is so unreasonable that no reasonable public body could have made it. (PP Craig, 1983)

4.3 Discretionary Model as an Ideal Government Policy Innovation

Discretion as an innovation policy becomes urgent in the context of social change. (Xiao-ying, 2007) After the power shift that was centralized in the New Order era, the reform era provided considerable opportunities, especially for regional governments in autonomy to manage their regional affairs independently. Now, innovative policies are more likely than ever before. Therefore, discretionary policies also have the same opportunity to be implemented constructively, especially in certain conditions where situations require handling outside the existing legal channels.

The problems of innovation policy are caused, among others, by the low professionalism of the bureaucracy so that the bureaucracy cannot take advantage of the discretionary space that should be used to increase responsiveness to community demands. The discretion of the local government bureaucracy as a safety valve for policy gaps (especially those determined by the center) with the real needs of the people in the more dynamic regions has not been utilized properly. There are still many inappropriate policies and regulations in the regions that do not answer the community's actual needs. The cause of this discrepancy is not only because policies are more determined by the central government but also because local government officials have not been able to fully implement the vision and commitment to the welfare of the people (Warsito and Yuwono, 2003).

In an effort to implement the discretionary innovation policy, special attention and training are needed from both the central government and the local government itself so that this discretionary policy can be one of the drivers of improving people's welfare. Empowerment of bureaucratic power needs to be done because ample bureaucratic power without proper empowerment will also weaken the potential power of the bureaucracy itself as a whole. From a juridical or regulatory perspective, the central government has guaranteed protection for regional heads who take discretionary actions in the context of accelerating development for the welfare of the people through innovation policies. Therefore, discretion in the national government system is juridically made possible by various legal regulations or policies, so this can be interpreted as an act of public officials with a legal basis.

This legality ideally shows the flexibility of a public official in the administration of government, especially in the context of developing innovation at the center and at the local level, which is substantially an action within the framework of the legality of a state of law. According to the principle of legality, a government can only take legal action if it already has legality or is based on a law that is the

embodiment of the aspirations of citizens. The practice of innovation policy in the first bureaucratic reform agenda in 1998 as best practice in Indonesia includes Jembrana Regency, Sragen Regency, Solok City, Surakarta City, Tarakan City, Gorontalo Province and Tanah Datar Regency. Jembrana Regency in the innovation of budgeting is oriented towards cost-effectiveness, exemption from school fees for primary and secondary education, and health insurance based on an insurance system for the poor. Meanwhile, Sragen Regency is the integration of licensing and non-licensing services, virtual office applications, and restructuring of the regional bureaucracy that emphasizes function enrichment through the introduction of ad-hoc work units.

The innovation program in the second bureaucratic reform, both in Jembrana Regency and Sragen Regency, was replicated in other regions, so it is not surprising to find almost uniform patterns in the innovation program in each region. The phenomenon of replication is due to the regional head not wanting to make innovations, to overcome this problem, the government makes a national program, as stated in Presidential Regulation Number 81 of 2010, concerning the Grand Design of Bureaucratic Reform with a transparent five-year achievement scheme (roadmap), definitive change areas, as well as measurable targets and the achievement of a world-class bureaucracy, although in practice it has not been achieved. The city of Surabaya has also made innovations in governance since 2002, utilizing technology such as e-governance in the field of regional financial management systems, e-HR, e-education, e-office, disaster preparedness systems-112, e-permits, e-health field, e-dishub field, media center field.

Although the regional head stumbled on a corruption case in some of these innovations, the point was not to the legal subject but to the innovation program based on discretion. Because as Satjipto Rahardjo said with his progressive law, the law can be analogous to a sword, when a reasonable person holds the sword, the sword will be used to protect the people around him from the arbitrary actions of other parties. Vice versa, when the wrong person wields the sword, then the sword will be used to oppress and even kill other people.

Regional heads implemented innovation policies before the issuance of Law Number 23 of 2014 concerning Regional Government and Law Number 30 of 2014 concerning Government Administration which guaranteed discretion by regional heads. However, regional heads continued to apply appropriate innovation discretionary policies. With legality, the local government's actions are still legal. Actions within the framework of the constitutional system because the policies are based on the existing legal system arrangements. Comparatively, each of these policies has a solid legal basis. Regarding discretion which can be categorized as corruption, according to Williams, abuse of discretion refers to a situation where discretion is exercised, including (1) unreasonable; (2) irrationality; (3) ulterior

motives; (4) improper purpose; (5) failure to take into account relevant considerations; (6) take into account irrelevant considerations; and (7) bad faith

There are various problems found in the development of local government innovation; for example, as stated by Fadel M, the problem of local government innovation can be seen from the perspective of reinventing local government. In this perspective, the problem of developing local government innovation is intertwined in several areas that need serious attention, including leadership issues. Leadership must be the driver of change. A leader with a clear vision will encourage his followers to realize that vision through his creative and innovative power. Leaders with vision are certainly not enough, but political will is also needed because leadership in the public sector is political. Without local government leaders' strong political will, an innovation's success is almost impossible. (Fadel Muhammad, 2009)

Then related to organizational culture. Most of today's public organizations are still oriented toward group culture and hierarchies, and this cultural orientation tends to inhibit innovation. (Eko Prasojo, 2006) Moreover, related to the issue of incentives and rewards. The bureaucracy must be given space to experiment and find new solutions to meet society's demands and problems. Successful experiments must be given incentives and rewards to be motivated to continue to innovate. Then the problem of innovation capacity, both individual capacity and system capacity. Capacity at the individual and organizational levels is key to how organizations and the people within them manage creative inputs in the innovation process.

The researcher shows at least 3 (three) main points related to the institutional capacity to improve the performance of local government administration for innovative policy efforts to be carried out. The first is the regulatory system. There must be regulatory certainty in its implementation, the second is the normative system, as values that are needed both for leaders and technical service implementers so that the goals of innovation can be achieved, and the third is a cognitive-cultural system, organizational culture is creating good habits of people in the organization to support the realization of innovative policy goals. The leadership factor can be said to influence an idea of innovation. The leadership factor can realize ideal human values or expectations to help citizens realize their ideal future. The dominant leadership factor in an institutional capacity that embodies the government's innovative policies can be said to be in line with the concept of governance.

The implementation of discretionary policies in Indonesia must primarily rely on the core values of a welfare state. The concept of the welfare state is a key concept in one of the governance goals. The implementation of discretionary policy demands strong substantive justification because the exercise of discretionary power does not operate normally. The obligation to wait for the legality principle

and the substantive reasons that trigger the government to take discretionary action must be robust. Therefore, discretionary action must be able to explain the reasons for its actions according to Pancasila values so that its discretionary action becomes valid. Pancasila is a substantive justification as the basis for discretionary actions taken by the government. The fundamental truth will be found as a legal basis for discretionary government actions.

The researcher does not intend to associate Pancasila with the concept of discretionary government power. This effort makes much sense if it departs from the framework of thinking that the concept of discretionary government power is a legal concept and Pancasila is a legal ideal for the Indonesian people, namely the ideal image of a state and law as a prescription for the actions of the government and citizens in Indonesia. In addition, the ideal model for implementing discretionary policies is integrated and directed in collaboration between authorities and competent in implementing this discretionary policy organically and institutionally. Collaboration is needed at every level of the organization because, in essence, collaboration is cooperation. Collaboration can occur in two contexts, namely internal and external organizations, or between organizations carried out by several organizations (two or more) to achieve specific goals. (Sawitri Butami, 2017)

Based on the context of this collaboration, the exercise of discretion must identify the implementing agency so that it can provide professional guarantees for the realization of the vision and mission of the policy in this discretion. The readiness of human resources and the required expertise should be the primary consideration in this integrated collaboration system because it is implemented to guarantee the successful implementation of this discretionary policy at the technical level. This model can be considered institutionally because it involves the technical capacity of the institution in implementing discretionary policies. This element of integrated cooperation is included as one of the crucial elements in the ideal model of implementing innovation discretionary policies in realizing bureaucratic reform, based on the consideration that the evaluation of an innovative policy and can be used as best practice is a cooperation between related sectors, not only internally but on a broad scale, namely social environment.

Therefore, the concept of collaboration or collaboration carried out in an integrated manner can be an essential complement to this ideal model. Also, considering that it often lacks collaboration between parties, an innovative policy becomes ineffective because the implementation process does not take into account the concept of cooperation or collaboration, so the policy seems to run in place without maximum achievements. The ideal model for implementing innovation discretionary policies in realizing bureaucratic reform is the general principles of good governance (AUPB) as a conception of the welfare state, which places the government as the party responsible for the general welfare of citizens and to realize

this welfare the government is authorized to intervene. In all fields of community life, this intervention is not only based on statutory regulations but, in certain circumstances, can act without relying on statutory regulations based on their initiative. However, on the one hand, the government's activity in seeking public welfare must always be based on the general principles of good governance. (Solechan, 2019) AAUPB can be likened to a traffic sign and travel guide to facilitate government relations between the government and the governed or community members.

The AAUPB was subsequently used as the basis for assessment and administrative efforts and as an unwritten legal norm for government actions (Solechan, 2019). However, in the development of the AUPB regulation, it found its momentum getting stronger when Law No. 30 of 2014 concerning Government Administration. In UUAP, the term used is the General Principles of Good Governance. The term AUPB can be mentioned in Articles 1, 5, 7, 8, 9, 10, 24, 31, 39, 52, 66, and 87. AUPB itself is regulated in Article 10, Paragraphs (1) and (2), as well as explanations. Article 10 paragraph (1) contains 8 (eight) AUPB principles: legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest, and good service. (Sri Nur Hari Susanto, 2021)

According to the researcher, there need to be other principles for implementing discretion as an innovation policy, among others: first, the principle of motivation where the assessment indicator is that discretionary policy must have a solid, concrete fact base. The discretionary policy, given the reasons, must be transparent, accurate, and fair. Giving reasons can be supported, and decisions do not conflict with published policies. The motivation of the State Administration Agency or Official must be fair and transparent or accurate and clear. Adequate considerations must accompany a discretionary policy that is not purely profitable. Second is the principle of fair play, where discretionary policies must provide the broadest opportunity for citizens to seek truth and justice and are allowed to defend themselves by providing arguments before an administrative decision is rendered. The State Administration Agency or Official may not hinder the opportunity of an interested person to obtain a decision that will benefit him. That government agency should provide the broadest opportunity for citizens to seek truth and justice.

This principle emphasizes the importance of honesty and openness in the Process of resolving State Administrative disputes. The State Administration Agency or Official must comply with the rules that have been determined in the applicable laws and regulations and are also required to be honest and open to all aspects related to the rights of citizens. Third, the principle of the prohibition of detournement de pouvoir that the authority of the State Administrative Agency or Official may not be used for purposes other than for which the authority was given, the authority of State Administrative Agency or Official may not be used for public interests other than the intended public interest. Constitution. Fourth is the principle

of justice. This principle requires government agencies not to act arbitrarily or improperly or to place something in proportion. If government officials act arbitrarily or inappropriately, such action can be canceled. This principle also requires giving something to those entitled according to the law.

Fifth, the principle of freedom is that administrative officers should take discretionary policies and be free from interference and complaints. Sixth, the principle of integrity, administrative officials in making discretionary policies should prioritize impartiality in all activities, and government administration must be able to identify, declare and handle conflicts of interest, comply with all parties involved in government with principles relevant to norms in society, arrangements in handling conflicts related to government issues. Seventh, the principle of tangible goals, that discretionary policies must be based on clarity of goals, schemes, program directions and objectives, and jurisdictional boundaries. Government administration must be based on precise governance arrangements about the adjudication role of incumbents. Eighth, the principle of effectiveness, where the Agency or Administrative Officer, in carrying out his discretionary authority, must maintain commitment, establish quality, receive and handle any problems and complaints effectively against the risks that arise and in terms of efficient financing. In exercising discretionary authority, the Agency or Administrative Officer should be oriented towards achieving the institution's goals, developing potential, and efficiently utilizing the resources used (money, time, energy, etc.). Ninth, the principle of participation, that discretionary policy-making must involve many parties and ensure innovation and policy dialogue between institutions, discretionary policy-making must involve all stakeholders in program implementation, and policy-making must be clear and transparent.

Conceptually the ideal discretionary policy model for innovation policy can be said to be a description of the basic system of implementing discretion for innovative policies, where legal actions taken by the government are based on ideal principles so that the guarantee in policy decisions does not conflict with all moral elements or wisdom. Moral, ethical, judicial, and professional. This model is not structural or hierarchical but is a unified whole with each essential element having the same power and interests so that all elements are bound together by strength and position, both from the concept of a welfare state, Pancasila, integrated collaboration, principles of principles outside of written legal provisions such as the principle of motivation, the principle of fair play, the principle of prohibition of detournement de pouvoir, the principle of justice, the principle of freedom, the principle of integrity, the principle of real goals, the principle of effectiveness and the principle of participation. Based on this, it creates an ideal discretionary model as an answer to the dilemmatic attitude that is often absent in the field of public administration of state government when an official carries out or makes discretionary decisions that lead to the achievement of constitutional values that Indonesia is a consequence of state welfare.

5 Conclusions

Discretionary regulation as a government policy innovation is a step that must be taken in supporting innovative reforms. It lies in finding a meeting point between innovation and law, not taking it passively before being pushed by the Ministry of State Apparatus Empowerment and Bureaucratic Reform. Discretion itself is a central and unavoidable part of a law. Discretion becomes a central part of the law because it is administrative officials to decide matters in order to achieve broader legislative objectives. Discretion becomes unavoidable because of the translation of rules into the activation process, so abstraction becomes actualization and involves people in interpretation and choice. The problem between innovation and the legal framework of state administration is needed to clarify the meeting point of conformity between discretion as freedom in the use of authority and accountability as a consequence of administrative law. The regulation of discretionary authority regulated in Law Number 30 of 2014 concerning Government Administration is a new breakthrough in the direction of reform in the field of administration to expedite the administration of government, fill legal voids, provide legal certainty and overcome government stagnation in certain circumstances. However, the implementation of discretion must be conditional and mechanistic. (procedural). After there was a change through Law no. 11 of 2020 concerning Job Creation, discretionary arrangements are increasingly being expanded, resulting in instability in government administration. The problem with the concept of discretion as a result of these changes has the potential to be unconstitutional because Indonesia is a state of law. The discretion in its formation can be colored by the political interests of the power holders because the abolition of conditions must not conflict with the laws and regulations. Besides, the impact of these changes is contrary to the general principles of good governance, which eliminate the principle of legal certainty.

Discretionary criteria as government policy innovations in their implementation are studied based on four aspects: authority, limits, testing, and judicial control. Discretionary authority is a type of power that uses authority based on the initiative of officials. The granting of discretionary authority is obtained from the principle of legality based on laws and regulations. Then theoretically, it is obtained through attribution, delegation, and mandate authority. Therefore, the exercise of discretion needs to be limited as a consequence of the concept of the welfare state. The discretionary authority must not conflict with the applicable legal system. In implementing discretion, it is necessary to test within the legal corridor, such as testing based on statutory regulations and the concept of the rule of law. Discretionary measures are also likely tested by judicial control in government policy. Discretionary policies in innovations that contain the principle of benefit can be seen from innovations that are born from a perspective on a problem which is then manifested in policies that are compared to previous policies and look at more positive issues.

The ideal innovation policy discretionary model can be said to be an illustration of the basic system of implementing discretion for innovative policies, where legal actions taken by the government are based on ideal principles so that guarantees in policy decisions do not conflict with all elements of morals or wisdom, ethics, justice and professional. This model is not structural or hierarchical but is a unified whole with each essential element having the same power and interests so that all elements are bound together by strength and position, both from the concept of a welfare state, Pancasila, integrated collaboration, and the principle of Principles other than written legal provisions such as the principle of motivation, the principle of fair play, the principle of prohibition of detournement de pouvoir, the principle of justice, the principle of freedom, the principle of integrity, the principle of real goals, the principle of effectiveness and the principle of participation. Based on this, it creates an ideal discretionary model as an answer to the dilemmatic attitude that is often absent in the field of public administration of state government when an official carries out or makes discretionary decisions that lead to the achievement of constitutional values that Indonesia is a consequence of state welfare.

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