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Problematizations of Discretion Policy in Indonesia's Administration Law Number 30 of 2014

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Abstract

This paper aims to discuss problematizations of discretion issue in the Administration Law 2014. Discretion is one of some discussed issues in the Administration Law which provides a legal guidance for bureaucrats to conduct their jobs. Drawing on Bacchi's WPR (What is problem represented to be?) approach to policy analysis, this paper interrogates what 'problem(s)' is (are) produced in the policy document, what presuppositions are used as arguments to support the 'problems', what left as unproblematic issue that is absence in the policy problematizations, and what effects are produced by the 'problem' representation. The paper finds out that rules and procedures are the key concepts which assumed as policy 'problems' related to discretion issue. Neglecting the certain rules and procedures will be considered as doing illegal action. Only public managers have the discretionary power or managerial discretion, but in a limited room, because of upper manager's intervention. However, this discretion policy remains an inefficient and rigid process in facing certain situation because, in exercising discretion, they have to obey certain rules and procedures. In addition, staffs do not have discretionary authority within their jobs although they might also face some certain situation which needs to make decisions.

Keywords: Problematizations, Discretion policy, Administration Law, Indonesia

I. Introduction

Discretion is a crucial issue in Indonesia's public sector. Public managers and officials occasionally need to make some quick decision or action in a specific situation. This kind situation often drives them to create breakthrough or to make discretion. However, they have to obey some rules or procedures that are set as standard even in urgent times. Neglecting rules or procedures might become a trap for them as they will be alleged to commit a mal-procedure. Moreover, they might be accused to commit corruption if the decision or action spends public budget. Then the accusation might be making a financial loss upon public budget through their decisions or actions. Consequently, they will be sent to court. This phenomenon creates fear among bureaucrats to make discretion in the public sector.

Discretion exercise in Indonesia's bureaucracy is mostly performed by public managers. There are some cases in which public managers are sent to court because of their decisions. For example, in 2004, former Chief of General Election Commission (Komisi Pemilihan Umum/KPU), Nazaruddin Sjamsudin, was sent to court as a consequence of his decision to expense public budget without auction process. As the commission chief, he decided to protect the commission employees under an insurance program. Unfortunately, the program was not performed through an open auction process because of limited time. Although the general election was successfully done, but it did not help to release him from the court process. The judges sentenced him in guilty of making loss upon the public budget and sent him to jail for seven years (Can, 2005).

The second example was a case of power plant project that involved former Director of National Electrical Company, Dahlan Iskan. Prosecutor suspected him made a financial loss on a public

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budget because of power plant project failure. Fortunately, a judge at pre-trial session released him for being innocent. The judge argued that the prosecutor worked in wrong procedure (Primandari, 2015). Another example is former Minister of Health, Siti Fadilah Supari. She recommended a direct appointment in buying health facility to anticipate a bird flu epidemic in 2006. Her recommendation then made her become a corruption suspect because of wrong procedure (Natalia, 2015). The first and the second cases have been over, while the last case is still going on today.

Those case examples show that making discretion is not an easy job in Indonesia's bureaucracy. It is not only about the procedure but also the consequence. Public managers face dilemmatic situation between obeying procedures that will take a long time to process or doing quick action but risky to response the problem. Working in accordance with procedures will make public managers safe from corruption accusation. On the other hand, it might neglect citizen demands that need a quick response. To respond such crucial nature, the discretion matter is then installed as a part of some chapters in Administration Law 2014. Article 22 to article 32 in chapter six of the law specifically discuss the discretion that is possible to conduct. The earlier law proposal was drafted by the government and then was discussed together with the parliament.

The Administration Law 2014, Number 30 is a regulatory policy type because it regulates activities (Hill, 2013, p. 142). In policy studies, there are two mainstream approaches in writing about policy, i.e. policy cycle and policy analysis (Colebatch, 2009: 5). This paper will not specifically discuss those cases nor the legal perspective of the discretion practices. Otherwise, this paper will critically discuss the problematizations of discretion issue in the Administration Law from a policy analysis perspective. Drawing on Bacchi's WPR (What is the problem represented to be?) approach to policy analysis, this paper aims to find out how the discretion issue is constructed and the assumptions underlie it in the policy document. Therefore, two research questions are presented in this paper. First, what problem is the discretion issue in the administration law 2014 represented to be? And second, is it necessary to create a discretion regulation on a specific Law? Then a proposed thesis in this paper is that discretion should be embedded in all official jobs both managers and staffs in accordance with their job authorities.

This paper is organized into five sections. Section one discusses the concept of discretion from some literature. Section two discusses theoretical framework of problematizations based on Bacchi's WPR approach. Section three discusses the method that is used in this paper. Then section four presents discussion and result. Finally, section five is the conclusion.

A. Discretion

There are various definitions of discretion. Hill (2013) compiles some definitions of discretion in his work of The Public Policy Process. A range of definitions from some scholars is presented from constraint to unconstraint definitions of discretion. Davis (in Hill, 2013, p. 237) argues that discretion is owned by a public officer within his power to make a choice to do or not to do an action among a range of possible courses. The public officer has a freedom to decide the best choice in his thought. Then Jowell (in Hill, 2013, p. 240) defines discretion as a room for decisional maneuver or action that owned by decision makers, but they cannot make arbitrary decisions. Furthermore, Simon (in Hill, 2013, p. 241) argues that individuals have freedom to interpret their tasks within general framework from a supervisor.

In these definitions, discretionary right is embedded at public officer authority in performing their tasks. They do not separate managers and staffs in making discretion. Otherwise, they use some terms, such as public officer, decision maker, and individual, as the actor who makes discretion. Those definitions also highlight the term 'freedom' as one of the keywords. On the other hand, discretion discourses inevitably often involve the discussion of rules. As Bull and Donnison (in Hill, 2013, p. 237) argue that discretion emerges when the rules allow functionaries the responsibility to make some decisions in particular situation as they think fit. Since discretion involves the rules, Jacques (Hill, 2013, p. 238) argues that the discretion exercise is then determined by the rules.

Discretionary power is not only owned by managers, but it is also owned by lower officials. Lipsky (2010, p. 3) uses the term 'street-level bureaucrats' to refer officials or staffs who directly interact with citizens in their daily tasks. The street-level bureaucrats, because of their interactive tasks, know what the citizens need and what the citizens complain regarding public services. Lipsky (2010, p. 52) argues that it is reasonable for them to have discretionary power based on some reasons. First, they often work in complicated situations to reduce the fixed formats. Second, they work in situations that often require responses to the human dimensions of situations. And third, it is not likely to be eliminated bears more on the function of lower-level workers who interact with citizens with the nature of tasks.

Furthermore, Taylor & Kelly (2006) argue that there are three elements regarding discretion at street-level bureaucracy. First, rule discretion

is bounded by legal, fiscal, or organizational constraints. The more rules will make fewer discretions at street level. By contrast, the fewer rules will make more discretion exercises at street-level bureaucracy. Second, the value of discretion may be determined by notions of fairness or justice, possibly involving professional codes of ethics or organizational codes of conduct, such as those affecting local authorities in the UK. And third, task discretion is the actual ability to carry out prescribed tasks such as working with clients or responding to requests for information. Of the three elements, task-based discretion has increased as professionals are required to consider the implications of their tasks for targets, managers, and 'customers'.

B. Theoretical Framework of Problematizations

Policy analysis discourses mostly discuss issues outside of the policy, such as why a policy is less effective or even fails to achieve its goals. The WPR approach, according to C. Bacchi (2016), reversely discuss issues inside the policy content or policy proposal. Moreover, this approach recommends a critical interrogation of assumed 'problems' in the policy or policy proposal (C. L. Bacchi, 2009, p. 31). That is why in the WPR approach, the term 'problem(s)' is (are) placed between quotation marks. It is because the 'problems' in this context are not real problems that the policy should tackle. Instead, the term 'problems' is created as the representation in the policy.

Then, the term 'problematization' in the WPR approach is used in two ways. First, it refers to the way(s) in which particular issues are conceived as 'problems'. In other words, it is about how and why certain things (such as behavior, phenomena, and process) become 'problems' in the policies. And second, is to interrogate or problematize the problematizations or how certain things are shaped as particular objects for thought in the policies (C. Bacchi, 2012; C. L. Bacchi, 2009, p. 30). These problematized phenomena are then called as problematizations (C. Bacchi, 2012).

The WPR approach adopts Foucault's genealogy theory which starts from the present situation to the past. It is because the approach starts to find out the policy representation 'problems' from the actual policy document or policy proposal, then historically traces its underlies presumptions of the 'problems'. The WPR approach involves three key propositions, such as:

"(1) We are governed through problematizations; (2) We need to study problematizations (through analysing the problem representation they contain), rather than 'problems'; and (3) We need to problematize (interrogate) the problematizations on offer through scrutinising the premises and effects of the problem representation they contain" (C. L. Bacchi, 2009, p. 25).

To reveal the 'problems' representation in the policy document, this approach sets six interrelated questions to guide policy analysts or researchers in searching the 'problems' representation. The first question is 'What is the problem represented to be in a specific policy?' This question is one of the key questions in the WPR approach, as C. L. Bacchi (2009, p. 4) argues that the goal of this question is 'to identify implied problem representations in specific policies or policy proposals'. Second, 'What presuppositions or assumptions underlie this representation of the 'problem'?' This question is intended to identify and analyze the conceptual logics or arguments that underpin the 'problem' representation revealed before. Third, 'How has this representation of 'problem' come about?' This question discusses a genealogy of the problem representation in which it draws on Foucault's genealogical theory. Fourth, 'What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?' The question searches what issues are left or silenced in the identified 'problem' representation. Fifth, 'What effects are produced by this representation of the 'problem'?' And finally, 'How/where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted, and replaced?' (C. L. Bacchi, 2009, pp. 2–19).

However, self-analysis or reflexivity is needed to decide which questions will be applied. It is because we need to subject our own problem representations to the approach analysis (C. L. Bacchi, 2009, p. 19). Some authors apply several questions only to analyze policies in various fields, such as Alexander & Coveney (2013), Bastian & Coveney (2013), Payne (2014), Barsoum (2015), C. Bacchi (2015), Wahyudi (2016), and so on. Their works explore the contribution of WPR approach, which is considered as post-structural policy analysis, to the knowledge development in several policy analysis discourses.

II. Method

A research in the field of public administration has some uniqueness in which researchers need to acknowledge them. First, public administration research puts the public sector as the central object of the research. Second, the applied nature of the research activity is to find out solutions to topical issues in the public sector rather than to build big theories. Therefore, public administration research should produce practical recommendations or solutions to solve real problems in the public sector. Third, because of the second reason, then the contribution of the public administration research

to a body of knowledge is limited (Thiel, 2014, pp. 1–5).

This paper also responds to real problems in the public administration field regarding discretion issue. This paper uses a critical discourse analysis of the Administration Law document, focusing on discretion issue which is specifically discussed in chapter six. Moreover, the academic paper of the policy draft document is also useful to support required information about the discretion issue in the policy. The academic paper was issued by The Ministry of Administrative Reform which acted as the leading institution during the policy making process. It is important to complete those two documents in order to gain a comprehensive meaning and background of the discretion issue formulation.

The analysis is then performed based on the WPR approach's questions. However, this paper applies four of the six questions, they are question 1, 2, 4 and 5. The question 1 reveals the representation of discretion 'problem' in the document text. Then the question 2 searches the presuppositions or assumptions that underlie the representation of discretion 'problem'. The question 4 searches the left unproblematic or silent in the representation. And finally, the question 5 searches the effects that are produced by the 'problems' representation.

In collecting data, secondary data is mostly used in this study. As this study is a critical analysis of the policy document, then the policy document and its policy academic paper are main sources of the data. Moreover, some literature which discusses discretion issues is used to support and to enrich the discussion in this study.

III. Results and Discussion

In Indonesia's public sector, there are several levels of government or tiers, such as central, province, and district/municipality governments. In addition, the village also has its governmental system along with its representative body. In performing their governmental tasks, they have authority to create laws. While the central government and parliament have an authority to create national law (i.e. Undang-Undang/UU) that is valid throughout the country, the lower tiers such as province, district/municipality, and village governments might create their local laws. The highest laws in the province and the district/municipality tiers are known as Peraturan Daerah or Perda, while the village government has Peraturan Desa (Perdes).

The national law (Undang-Undang) in Indonesia's legal hierarchy has a high position and it is just one level under the national constitution (UUD 1945). To create the national law, two kinds of actors (i.e. executive and legislative bodies) should be involved during law making process. Both the executive (government) and the legislative (parliament) have initiative rights to propose policy drafts which will be discussed together.

The Administration Law (2014) is one of the laws that are proposed by the executive as a national law in which all government agencies in this country must obey. Discretion theme as part of this law, therefore, should be made use by public managers to create discretion in all government agencies. Since this study is a critical discourse analysis of the policy document, then it does not take a specific locus to observe. Otherwise, the content of policy document is the most concern of analysis to reveal the construction of discretion issue in the policy document.

A. Discretion in the Administration Law

Although many kinds of literature provide the various meaning of discretion, but the Administration Law has its own definition. The Administration Law (2014) defines discretion as a decision or action that is conducted by public managers to solve some real problem they face in performing governmental tasks. This definition is different from the definitions discussed above because the Administration Law limits its meaning for public managers only, while some literature allows staffs to make discretions. The concept of discretion in this law is limited and narrower than the discretion in literature generally.

The Administration Law states that discretionary decision or action is available in case existing regulations do not arrange the solution, incomplete, or unclear, and/or the discretion is done in order to solve a certain stagnation in the governmental activities. The discretion issue is completely presented on article 22 to 32 of chapter six. The articles discuss discretion issues in several aspects, such as actor, aim, scope, conditions, procedure, and consequences of discretion.

First, article 22 says that discretionary decision or action is only conducted by authorized public managers as the actors of discretionary authority. Discretion is then intended to expedite the governmental jobs, to fill the incomplete rules, to create the legal certainty, and to solve the stagnation in performing governmental jobs. Article 23 describes the scope of discretion and this article explains the previous one. It says that there are four situations in which public managers can make discretion. First, public managers are allowed of making decisions or actions based on rules in which give them options to do it. Second, making a decision or doing an action due to no specific rule that regulates some certain issue. Third, making a decision or doing an action is conducted because of unclear or incomplete rules. And finally, making a decision or doing an action is conducted due to

broad interest to solve the stagnation in performing governmental jobs.

Second, article 24 sets some preconditions in which public managers must have them before making a certain discretion. The preconditions include: (1) being fit for the objectives stated in article 22 above, (2) is not against other regulations, (3) being fit to good governance principles, (4) based on objective reasons, and (5) conducted in a good intention. Moreover, article 25 sets a rule that in certain situations a public manager must get an approval from the upper manager before performing discretion. The certain situations are stated in this article such as the expected discretion will potentially affect budget allocation, potentially create a new problem among citizens, and the expected discretion is conducted in emergency or force majeure. Then public manager must give a report to upper manager after performing discretion, especially in the emergency or force majeure.

Third, article 26 to 29 discuss the procedures of implementing discretion. A public manager must explain the aim, objective, content, and the possible administration and finance consequences of making discretion. The explanation is expected in a written document and should be proposed to the upper manager. In five days after the discretion has been proposed, there will be three possible responses upon the proposed discretion, such as accepted, revised, or rejected.

Finally, article 30 to 32 discuss the legal consequences of making discretion. It is stated that the discretion is considered as exceeding the authority when public manager acts exceeding his authority period, territory, and does not meet the rules stated on article 26 to 28 of this Administration Law. Those three problems will make the discretion becomes illegal or canceled.

It is argued that this Administration Law constructs its own concept of discretion both in the definition and the process aspects. For the public managers in the government agencies, this law is a 'taken for granted' regulation that they must accept and obey it. Otherwise, they have an opportunity to review or revise this Administration Law in the Constitution Court if they think that this law is inappropriate to perform or contains some problem.

B. Problem Representation

Discretion issue in the Administration Law (2014) emphasizes on rules and procedures as important things and they must be followed by public managers. The salient indicators of the rules and procedures are clearly described in article 25 to 28. Article 25, which concerns rules of discretion usage, clearly says that public managers must get approval before exercising discretion. Then, article 26-28 specifically discuss the procedure in making and doing discretion. The discretion procedure says that public managers, as discretion maker, must explain the proposed discretion to their upper manager. Furthermore, the discretion proposal must be written and at least it consists of some aspects, such as aim, objective, substance, and administrative and financial impacts of the expected discretion.

A legal consequence might be applied if they neglect certain rules and procedures in conducting discretion. Moreover, public managers must set their reasons as the argument of why they exercise discretion. As explained in article 30 to 32, the discretion will potentially be canceled or considered as an illegal decision or action if the required rule and procedure do not meet the relevant law or regulation. The upper supervisor or manager then assesses the discretion proposal and decides whether or not the proposed discretion being appropriately executed. Since rules and procedures dominate the discussion and they become the key issues on the articles, it is argued that the rules and procedures are represented as 'problems' in the policy document (Question 1 of the WPR approach). Therefore, discretion issue is set as rules and procedures 'problems' in the Administration Law in which all public managers must obey them.

This 'problems' representation confirms the characteristic of bureaucracy in Indonesia, which is too many procedures. Even in exercising discretion, it is also arranged in a certain rigid procedure. Dwiyanto (2015, p. 58) argues that procedure problem is one of some bureaucratic pathologies in Indonesia. In fact, bureaucracy in public sector not only develops rigid and complex procedures but also excessive demand to obey the rules and procedures. Neglecting the required rules and procedures will consequently create difficulties to public managers or officials. Even the Administration Law maintains and strengthens this bureaucratic pathology by formalizing the discretion making process in the policy document as one of 'problems' along with the discretion rules.

C. Presuppositions of Problem Representation

An Academic Paper is needed to propose a new law in Indonesia. The Academic Paper on Draft of Administration Law (The Ministry of Administrative Reform, nd) states that discretion is one of public administration actions. This document also highlights that discretionary right is owned by public managers only. This kind of discretion in some literature is known as managerial discretion (Wülferth, 2013, p. 25). Although discretion is intended to fill the lack of regulation or legal vacuum and to expedite the government activities in

performing tasks, but it potentially creates negative impacts such as abuse of power. For that reason, this academic paper recommends a regulation of discretion that is needed to allow the discretion practices to create advantages in performing governmental activities. Moreover, the regulation should be a guidance or sign for public managers in performing their discretionary rights (The Ministry of Administrative Reform, nd).

To interrogate how the meaning is created in the policy document, C. L. Bacchi (2009, p. 7) suggests some methods dig it deeper, i.e. binaries, key concepts, and categories that operate within the policy problematizations. This 'problem' interrogation reveals that the binary and key concepts emerge in the problematizations of the Administration Law, while there is no category, either implicitly or explicitly, discussed in the articles.

First, the discretion policy implies legal and illegal actions. Public managers who neglect the discretion guidance or signs in the Administration Law then will be considered as doing illegal actions. By contrast, their discretions are considered as legal actions if they obey the provided guidance (Question 2 of the WPR approach). It is argued that high control from upper supervisor or manager toward discretion exercise is a form of intervention. This intervention is accordingly made to prevent possible negative impacts and legal consequences as stated in the academic paper.

Second, rules and procedures are the key concepts that operating within the discretion policy. Since the Administration Law emphasizes that certain rules and procedures must be followed by public managers in performing discretions, then the rules and procedures are the important things which cannot be neglected. Almost all articles in the Administration Law discuss rules and procedures, both implicitly and explicitly, in which public managers must pay attention to them (Question 2 of the WPR approach).

D. Left Unproblematic Issue

The Administration Law explicitly mentions that the discretionary right belongs to public managers only. It is clearly stated in article 22 that discretion is performed by authorized public managers only. Public manager levels in Indonesia's bureaucracy mostly consist of several echelon levels, i.e. echelon I (higher), II, III, and IV (lower). Moreover, some agencies put an echelon V as the lowest managerial position tier under the echelon IV. Otherwise, the discretion issue in the Administration Law does not pay attention to discretionary rights for staff level. In fact, discretionary actions often occur at all levels, even staffs at street-level bureaucracy as well. They should have discretionary right to solve certain problems in delivering services. As Lipsky (2010, p. 13) argues, street-level bureaucrats are policy makers. It is because they have higher intention in interacting with citizens rather than their managers, and their individual actions add up to agency behavior.

Discretion is about freedom to do or not to do possible actions in a particular situation. This freedom should be owned by all officials, both managers, and staffs, within their job authorities. However, they have different job characteristics that lead to shape their results. Manager jobs are much more dominated by managerial tasks, while staff jobs mostly contain technical and administrative tasks. In conducting that kind of jobs, staffs (street-level bureaucrats are included) often face critical situations in which they need to make decisions, such as making decisions to face real problems in public service delivery.

The absence of discretionary authority among staffs as a 'problem' representation in the Administration Law remains a question whether, or not, they have the discretionary right. Since the article 22 states that only public managers are authorized to make discretion, therefore staffs are implicitly not allowed to make it. This issue is the left unproblematic or silence one of the problematizations in the policy document (Question 4 of the WPR approach).

Lipsky (2010, pp. 18–19) describes the differences between street-level bureaucrats and managers and the conflict of interests among them. Street-level bureaucrats are interested in processing work consistent with their own preferences, while managers are interested in achieving results consistent with agency objectives. Then, street-level bureaucrats have a desire to maintain and expand their autonomy, while managers try to restrict their staffs' discretion in order to secure their certain results. Indeed, their job characteristics are different, as Lipsky describes the works of police officers, teachers, social workers, and nurses as some examples. They expect themselves to make discretionary decisions, but the absence of managers' involvement in the decision-making process will be regarded as illegitimate. Therefore, Lipsky argues that the maintenance and enhancement of discretion in so important and useful for street-level bureaucrats. Having discretionary power will allow them to decide necessary things in facing real problems during their interaction with citizens.

In addition, as Taylor & Kelly (2006) argue that there are three elements of discretion at street-level bureaucracy. Staffs at street-level bureaucracy, therefore, should have a discretionary authority to face certain situations through one of three kinds of discretion, such as rule discretion, value discretion, and task discretion. The absence of discretionary

authority for staffs remains some questions on whether they can or cannot do something in a certain situation they face. If they cannot make a discretion, the next question is who will be responsible for facing a certain situation at street-level. The last question is whether public managers are also involved in making a decision at street-level bureaucracy. Those questions are not answered in the Administration Law policy.

E. The Problematizations Effects

'Problems' representation in the policy discourses creates some effects. In assessing the 'problems' representation effects, C. L. Bacchi (2009) suggests three kinds of effects that are possible to operate within the policy 'problems', i.e. discursive effects, objectification effects, and lived effects. 'Discursive effects are effects which follow from the limits imposed on what can be thought and said. Then objectification effects are the ways in which subjects and subjectivities are constituted in a discourse. And finally, lived effects are the impact on life and death' C. L. Bacchi (2009, p. 15).

First, the representation 'problems' of rules and procedures in the discretion policy creates effects upon public managers' works. Wasting time and rigidity things over bureaucrats' works are arguably two crucial effects that influence the process of decision making. Some managers might obey the rules and procedures to secure their positions. However, the rules and procedures of discretion exercise need long process and consequently, it is time-consuming. For example, article 26 verse (3) says that upper manager has five days to respond the proposed discretion draft after he receives the proposal. The proposed discretion in this article is the planned discretion which potentially spends budget. Then, the upper manager assesses and decides whether the proposal is feasible to accept, ask for a revision, or reject the proposed discretion. This kind of rule also applies to article 27 verse (3) concerning the proposed discretion which potentially creates social impacts. It is argued that the rules and procedures 'problems' in the policy neglect sense of urgency in making discretion.

Some other managers might leave the rules and procedures behind to make the decision that is decided and executed quickly. However, they will be considered to break the rules and procedures or against the law. Even if the executed discretion spends public budget, then the managers will be accused to commit corruption. The three examples in the introduction above tell the possible consequences of omitting the rules and procedures. Making discretion, for some public managers, is a risky work and therefore they tend to work as usual to secure themselves and their positions.

Second, the rules and procedures 'problems' puts public managers as central subjects in making discretion. Public managers are the authorized individuals of discretionary power. They are the actors who propose discretion to their upper manager and they are also the actors who will execute the discretion. Moreover, they also need to give a report after finishing the discretion. In case the discretion fails, then they will take responsibility for the consequences.

And finally, lived effects might happen as indirect effects of the rules and procedures 'problems'. The effects are specially related to discretion which is stated on article 25 verse (3). This verse says the discretion is related to social, emergency, and natural disaster things. In such situations, quick and right decisions are needed to save people's life. Since discretion is a freedom to decide the best possible courses in a certain situation, managers need to decide it as soon as possible. Therefore, managers should do self-assessment and decide it by themselves. Following rigid rules and procedures in making discretion will prevent them to respond quickly and it will potentially affect people's life.

IV. Conclusion

In conclusion, the discourse of discretion concept in the Administration Law is dominated by legal perspective rather than policy perspective. The Administration Law 2014 produces the rules and procedures as represented 'problems' that must be obeyed by all public managers in Indonesia's public sector as a 'taken for granted' guidance. The rules and procedures are initially intended to prevent possible abuse of power in performing discretion. Since the Administration Law creates discretion issue as rules and procedures 'problems', consequently discretion exercise must obey the given rules and procedures. Moreover, public managers need to get approval from their upper manager if the discretion potentially spends budget or creates some social impact among the people. On the other hand, the rules and procedures cause public managers to take long and rigid process in making decision.

The practice of discretionary authority in Indonesia is a kind of limited managerial discretion. Only public managers have the discretionary authority, according to the Administration Law, but they get an intervention from their upper manager through an approval mechanism. Meanwhile, their staffs do not have discretionary power. The absence of discretionary authority among staffs consequently creates a longer decision-making process at street-level bureaucracy because they need to consult almost everything to their managers and the managers will decide it. On the other hand, they need to make a quick response regarding a certain situation they face, such as problems in

delivering public services. Furthermore, staffs have much more interactions with citizens rather than their managers, therefore, the discretionary right should be owned and embedded at all level jobs, both managers and staffs in bureaucracy.

Finally, the rigid discretion rules and procedures will not make tasks being performed practical and easy. On the contrary, they will make the performing tasks is more difficult and time-consuming. Discretion exercise should not need rigid rules and procedures. Otherwise, general norms are more appropriate to be guidance for bureaucrats in making discretion. It will provide them freedom or room to decide the best options in their thoughts in facing certain situations.

A. Recommendation

Since discretionary right should be embedded at all government officials, it is not necessary to put the technical and procedural matters upon the performing of discretion in the administration law. Otherwise, the law should confirm and strengthen that the discretionary right is owned by all government officials, both managers, and staffs, in accordance with their job authorities, because they have knowledge about the problem they face. Therefore, it needs to revise the discretion articles in the law and to put general norms in performing discretionary right. For instance, discretion must be accountable and put a concern primarily to public interest. Moreover, the law should strengthen government officials' freedom to organize technical matters and to make a decision in performing their jobs to serve people.

B. Limitation

This study makes use of documentary or written resources only. The author did not make in-depth interviews with key informants who were involved in making the administration law process. Therefore, this paper might be lacking some information about the issues debated during the law-making process to answer all questions of the WPR approach.

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