

## **DiscreSSION Against Error System on E-Government in Fulfillment of Public Services**

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### **Abstract**

*Good public service is a hope for the whole community as mandated by the constitution of Article 34 paragraph (3) of Jo Law no. 25 Year 2009 on Public Service. One of the manifestations of bureaucratic reform in public services is e-government. The presence of e-government provides a refresher to the entire community to get a professional, modern, and reliable public service. However, it is not always the public service system that has changed from the manual system to the online system with e-government can run perfectly without problems (system error), so the government should be able to provide solutions when government services that have been transformed based on e-government experienced system error. Based on Article 53 paragraph (2) of Law no. 30 Year 2014 on Government Administration, If there is a system error of more than 10 (ten) days and the government does not proactively provide solutions (discretion), then the silence of the government in running the public service can be qualified as maladminstrasi action.*

**Keywords:** *E-Government, Public Services, Discretion, Maladministration.*

### **INTRODUCTION**

Conceptually authority and authority are the spirit of government, the essence of government consists of organs and functions. In carrying out government functions, power that is legitimized by law is needed. Its power obtained from authority and authority in which there are rights and obligations. Thus, apart from being a spirit in government, authority and authority are also at the same time driving the government, so that it is referred to as a state in motion. The government is in control in the realization of a prosperous country (welfare state), for this reason, regulatory instruments are needed as a tool to achieve this goal. The legal instrument referred to is outlined in Law Number 30 of 2014 concerning Government Administration, there are 3 (three) points of consideration in its formation, including the following:

1. Improving the quality of governance.

Government bodies and/or officials in exercising their authority must refer to the general principles of good governance and based on the provisions of laws and regulations;

2. Solving problems in governance.

Regulations regarding government administration are expected to be a solution in providing legal protection, both for citizens and government officials;

3. Realizing good governance, especially government officials.

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The Law on Government Administration is the legal basis needed to underlie decisions and/or actions of government officials to meet the legal needs of the community in administering government.

Thus it is strictly regulated that in carrying out the fulfillment of public services, the government must always be active and always provide the best service to its citizens. These public services cannot be separated from developments that are occurring at this time, but these developments should not make the government indifferent, on the contrary, the government is required to always actively follow developments that occur.

The rapid progress of Science and Technology as well as public communication requires that the government bureaucracy in Indonesia transform into a modern state based on Information and Technology. Responding to global challenges to create a world-class government. The development of an IT-based bureaucracy is one of the ways in the governance of the government bureaucracy in Indonesia to overhaul institutional performance, simplify procedures, and facilitate interaction between government and society. Good public service is a hope for all people as mandated by the constitution of Article 34 paragraph (3) Jo. Law Number 25 of 2009 concerning Public Services. One embodiment of bureaucratic reform in the field of public services is e-government. Presencee-government provide refreshment to the whole community in order to obtain professional, modern and reliable public services. However, the public service system has not always changed from a manual system to a system online with e-government can run perfectly without any problems (system error), so that the government must be able to provide solutions when government services that have been transformed are based e-government having trouble system error.

In more detail, the definition and meaning of authority is regulated in Article 1 paragraph (5) of Law Number 30 Year 2014 concerning Government Administration, authority is the right owned by Government Agencies and/or Officials or other state administrators to make decisions and/or take actions in administering government. As for the authority regulated in Article 1 paragraph (6) Authority is the power of Government Agencies and/or Officials or other state administrators to act in the realm of public law. Based on Article 53 paragraph (2) of Law Number 30 of 2014 concerning Government Administration, the government has the obligation to make decisions and/or take action on applications submitted by the public in public services with a time limit of 10 (ten) days. When it happens system error more than 10 (ten) days and the government is not proactive in providing solutions (discretion), then the government's silence in carrying out public services can be qualified as an act of maladministration.

During the New Order regime (1966-1998) a multidimensional crisis occurred in the fields of politics, law, economy, and bureaucracy thus causing corruption, collusion, and nepotism which result in not realizing the welfare of society. In 1999, since the transformation of power (reform), the public demanded that the services provided by the government be better than before through bureaucratic reform. Bureaucratic reform is fundamental in government, but in reality the first wave of bureaucratic reform did not run optimally. This was used as the basis for the issuance of Presidential Regulation No. 81 of 2010 concerning Grand Design Bureaucratic Reform 2010-2025 which is used as a reference for the government in carrying out bureaucratic reform based on the principles of good governance. Application of principles good governance intended to increase accountability, responsiveness, and transparency in the administration of government and the state. The government uses the system e-government as an effective and efficient system as the embodiment of the principle good governance in the modern era.

Regarding the operation of the electronic system for public services used by the government, it does not always work well, so that there are deficiencies in the new electronic system for implementation e-government doesn't always work properly in this millennial era, here are the advantages and disadvantages of the system e-government:

1. Increase effectiveness, efficiency, and reduce costs;
2. Improve service;
3. Increasing community participation;
4. Increase transparency and reduce corruption.

Following are the deficiencies in the electronic system in its application in this millennial era, including:

1. The lack of local regulations governing implementation e-government;
2. There is no tradition of sharing information (no culture of sharing);
3. There is no tradition to document (no culture of documentation);
4. Lack of reliable human resources and community ability to use technology;
5. Expensive and inadequate infrastructure;
6. Limited access.

The explanation above proves that there is e-government doesn't always go well and precisely. There are deficiencies that make e-government itself is not working properly. It was proven that in 2004 the government carried out the first wave of bureaucratic reforms. But according to the survey results Political and Economic Risk Consultancy (2010) shows that the quality of the bureaucracy in Indonesia is among the worst along with Vietnam and India. According to the results survey which is also shown The World Competitiveness Year book issued by Institute Management Development (IMD) which classifies Indonesia's bureaucratic competitive index as the lowest before India and Vietnam. It is evident from the survey results above that changes in the public service system in Indonesia have not made public services better. There is a system that error on e-government make the government must provide responsive and solutive actions to existing problems, so that there is no stagnation in the administration of government. The government is given 10 (ten) days to take action on existing problems as stipulated in Article 53 paragraph (2) of Law Number 30 of 2014 concerning Government Administration. When the system occurs error more than 10 (ten) days how the government's action on the problem and whether the government's silence when it has an obligation to provide public services will have an impact on maladministration actions.

Based on the description above, the fulfillment of community rights must still be carried out by government officials. When it happens error system on the system e-government then public officials can continue to carry out their duties through a manual system and recorded in the archives while carrying out repair and always have to make improvements (maintenance) against the system. Besides that, public officials must communicate with citizens regarding error system this so that there is no misunderstanding between the government and the community.

The central issue in this research is the theory of authority and authority in the concept of administrative law associated with Law No. 30 of 2014 concerning Government Administration. From the central issue referred to, a legal issue is raised, namely the nature of discretion exercised by the relevant government system error in e-government for public service.

Research type normative law intended to examine positive legal provisions and positive legal instruments that are examined normatively will be used as a source of legal material. Legal research must be carried out at the level of legal normativity. Morris L Cohen agreed with Peter Machmud Marzuki stated "Legal Research is the process of finding the law that governs activities in human society". At first glance it seems that what was put forward by Morris L Cohen is for practical purposes. Such procedures are still needed in

legal practice to determine both the impact of past events and their implications for the future. With that statement, in fact what he put forward also includes legal theory.

This type of legal research is associated with existing legal research theories included in this type of research Doctrinal Research, namely research that provides or produces a systematic explanation of the legal norms governing a certain category, in this case regarding the government's discretionary actions in the occurrence of error system in e-government. This Legal Research also serves as material for law reform (Reform Oriented Research), namely research to evaluate existing legal regulations and provide recommendations on changes to legal regulations that are found to be as desired so as to answer the proposed legal issues.

## Discussion

### 1. Discretion as a Free Authority Owned by the Government in the Event of an Occurrence Error System on E-government

Governance has 2 (two) meanings, Which First in a broad sense (regulation or government) is the implementation of the duties of all agencies, institutions, and officers who are entrusted with the authority to achieve the goals of the state. Then which second, in a narrow sense (governance atau government) is covering the organization of functions that carry out government tasks. Government or interpreted as chief is a function of government in the sense of carrying out government tasks (management function). Ruler or "government" is interpreted by the power of the entire organization formed with the aim of compiling and upholding society in a container that supports that power is referred to as a state. The concept of administrative law is a domain in government tasks which has a narrow meaning, namely government duties water reduced the task of forming laws (regulate) and justice (jurisdiction), so that administrative law deals only with executive (administrative) duties. Thus talking about government has relevance regarding the organization and functions of government.

The implementation of bureaucratic reform has been neatly arranged in Presidential Decree No. 81 of 2010 concerning Grand Design Bureaucratic Reform in 2010-2025 and there are also Road Map Bureaucratic Reform. The purpose of Presidential Decree No. 81 of 2010 concerning Grand Design The 2010-2025 Bureaucratic Reform is the regulation of the governance of bureaucratic reform, especially in public services. Public services are emphasized in Article 1 point 1 of Law Number 25 of 2009 concerning Public Services: "Public services are activities or series of activities in the framework of fulfilling service needs in accordance with statutory regulations for every citizen and resident for goods, services and/or administrative services provided by public service providers".

Furthermore, the Decree of the Minister of Administrative Reform No. 63 of 2003 concerning General Guidelines for the Implementation of Public Services defines public service as: efforts to fulfill the needs of the community as well as in the context of implementing the provisions of laws and regulations. Development e-government contained in Presidential Instruction No. 3 of 2003 concerning National Policy and Strategy in Development E-government which states "Development e-government is an effort to develop governance based on (using) electronics in order to improve the quality of public services effectively and efficiently" and Law Number 19 of 2016 concerning Electronic Information Technology which states "An electronic system is a series of electronic devices and procedures that function to prepare, collecting, processing, analyzing, storing, displaying, announcing, sending, and/or disseminating electronic information".

Creating a good and clean government, a frame of reference is needed as a reference in acting, so that the framework for thinking and acting is based on a written law and

legally. For this reason, an understanding of the purpose and/or function of a rule is required, as follows:

Purpose/Function of the Law on Government Administration is:

1. Creating an orderly implementation of Government Administration;
2. Creating legal certainty;
3. Preventing abuse of authority;
4. Ensure the accountability of Government Agencies and/or Officials;
5. Provide legal protection to citizens and government officials;
6. Carry out the provisions of laws and regulations and apply AUPB;
7. Providing the best service to the community.

As an effort to optimize the performance to be realized by government agencies/officials based on the above objectives/functions, a clear understanding of the obligations/tasks is required. for government officials to use the useful embodiment and useful results (effective and efficient), as follows:

Government Office Duties:

1. Make decisions and/or actions according to their authority;
2. Comply with AUPB and in accordance with statutory provisions;
3. Comply with the requirements and procedures for making decisions and/or actions;
4. Comply with this Law in exercising discretion;
5. Providing Official Assistance to Government Agencies and/or Officials requesting assistance to carry out certain government administrations;
6. Provide opportunities for members of the public to have their opinions heard before making decisions and/or actions in accordance with statutory provisions.
7. Notifying the community members related to decisions and/or actions that cause losses no later than 10 (ten) working days from when the decisions and/or actions are set and/or carried out;
8. Compile Standard Operating Procedures / SOPs for making decisions and/or actions;
9. Examining and researching Government Administration documents, as well as opening access to Government Administration documents to members of the public, unless otherwise stipulated by law;
10. Issuing a decision on the application of a community member, in accordance with the matters decided in the objection/appeal;
11. Carry out legal decisions and/or actions and decisions that have been declared invalid or canceled by the Court, the official concerned, or the Official's Superiors; And
12. Comply with Court decisions that have permanent legal force.

Authority based on the definition of Black's Law Dictionary interpreted as "Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in scope of their public duties". Conceptually authority is power that arises based on rights regulated by law, because in these rights are also attached obligations.

Regarding rights and obligations, Nicolai thinks "A right means the (legally given) freedom to perform or refrain from performing a certain actual act, or the (legally given)

entitlement to the performance of an act by another person. A right implies an obligation to do or refrain from doing a certain act” (Rights contain the freedom to do or not take certain actions or demand other parties to take certain actions. Meanwhile, obligations contain the obligation to do or not do certain actions). Thus power is an authority obtained based on rights and obligations regulated by law (jurisdiction of lawful), so that legitimate power (legal force) is based on legal authority (jurisdiction of lawful). An act of government is legal, when it is acceptable as part of the legal order, and an act of government has the force of law when it is based on authority. This means that the authority can affect the association of law after it is explicitly stated that the authority is valid, only then the government's actions gain legal power.

Discretion in the General Provisions in Article 1 paragraph (9) of Law no. 30 of 2014 concerning Government Administration states "Decisions and/or actions determined and/or carried out by government officials to address concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear and / or there is government stagnation" According to JP. Wind, there are no written provisions that are able to regulate all aspects concretely, only the outline is regulated, to anticipate this, policies are needed against the existence of a legal vacuum in assessing a problem. Therefore, in order for the principle of legality at the operational stage to be implemented dynamically, effectively and efficiently, it is necessary discretion. Sjachran Basah say that discretion is the freedom to act on one's own initiative, but in practice the actions of the state administration must be in accordance with the law, as has been stipulated in the rule of law based on Pancasila. The elements that must be met in discretionary action are:

1. There are tasks public service carried out by the state administrator;
2. In carrying out these tasks, state administrators are given flexibility in determining policies;
3. These policies can be accounted for both morally and legally.

Reform comes from the word reformation, in basic words reform which means repair, renewal, improve, and get better. Reform is a change in rearranging things that have deviated and are no longer in accordance with the structure and conditions of state administration in the life of the nation and state. Khans (1981) gives the notion of reform as an attempt to change the principal in a bureaucratic system that aims to change the structure, behavior, and existence or habits that have long been. Meanwhile, according to Quah (1976) defines reform as a process to change processes, public bureaucratic procedures and attitudes and behavior of bureaucrats to achieve bureaucratic effectiveness, and national development goals. Reform activity as another equivalent of change, improvement, or modernization. "The scope of bureaucratic reform is not only limited to processes and procedures, but also involves changes at the level of structure and behavior(the ethics being)".

In the performance of bureaucrats there are several theories that provide a basis for the development of bureaucratic behavior models. Understanding bureaucratic theory is important for examining government bureaucracy to determine how far bureaucracy is appropriate and/or different from these theories. Theories of bureaucratic behavior, among others are:

1. Self Interest: Theoretical Approach One
  - a. The Budget-Maximizing Bureaucrat;
  - b. Testing Different Interests.
  - c. Control, Compliance, and the Principal-Agent Framework
2. Institutional Rules and Barriers: Theoretical Approach Two:

- a. Internal Control;
- b. External Control;
- c. Social control.
3. A Joint Theoretical Framework for Explaining Bureaucratic Behavior:
  - a. Explaining Bureaucratic Behavior;
  - b. Linking Theory and Reality.
4. Government Bureaucratic Behavior
2. Execution of Discretion Executed by the Government in the Event of an Occurrence Error System in E-government

In connection with the explanation above regarding bureaucratic theories that bureaucrats must have in carrying out changes in the wheels of government through meaningful bureaucratic reforms to provide major changes in the Indonesian governance system. "Besides that, bureaucratic reform also means a big gamble for the Indonesian nation in facing the challenges of the 21st century." Therefore, bureaucrats must work seriously because basically bureaucracy becomes integration in Indonesia. The link between integration and the bureaucracy is the existence of neutral and fair actions and/or behavior of bureaucrats in serving the community regardless of caste and/or degree. This is a driving force to make Indonesia a country that is high in tolerance and justice. Not only neutral and fair, however, the bureaucracy must show a firm and honest face in order to create a good bureaucracy in the eyes of the public.

In developed countries, e-government is the result of the transformation of bureaucratic interaction mechanisms with a friendlier society. Likewise in developing countries, many policy makers believe that a clean, authoritative and transparent government can be realized through e-government. Information and communication technology (ICT)-based bureaucracy development also needs special attention. The development of ICT has created greater opportunities for the bureaucracy to modernize institutional structures, simplify work processes, and facilitate interactions between government and citizens and other stakeholders. In addition, the use of ICT can also minimize the possibility of KKN practices because the existence of ICT is able to facilitate the government to solve various bureaucratic weaknesses in carrying out its duties concerning planning, coordination and supervision.

Legislation that is used as a guideline for government agencies in developing e-government only Presidential Instruction No. 3 of 2003 concerning National Policy and Strategy for Development e-government and a number of technical guidelines, such as guidelines for developing a development master plan website government. Conceptually, the basic concept of e-government actually is how to provide services through electronics (e-service), such as via the internet, cell phone and computer networks, as well as multimedia. Through development e-government In line with this, information management systems and public service processes are also being reorganized and optimizing the use of information and communication technology.

Successful implementation in development e-government, government action must comply with good governance and General Principles of Good Governance. Good governance has long been the hope of the Indonesian people, the desire to make it happen good governance is really very big, but in practice it is difficult to make it happen, it is proven that until now corruption, collusion and nepotism are still rampant in this country. Good governance derived from the word "good" which means good and "governance" which means government. Good governance is a form of good governance to create excellence in government performance management in accordance with applicable regulations. The existence of regulations makes it limited for bureaucrats to take actions



that are not in accordance with their portion of authority. Pancasila is a guideline that must be applied in its embodiment good governance so that the implementation is structured and does not deviate.

The silent action of the government regarding a problem that occurs in matters relating to the administration of the state and public services can lead to acts of maladministration, this is in accordance with the definition of maladministration contained in the dictionary Cambridge and also Law Number 37 of 2008 concerning the Ombudsman Article 1 paragraph (3). The government is required to provide good service to the community based on the General Principles of Good Governance. But often in practice, the government has not been able to carry out its duties and obligations in providing public services based on AAUPB. Moreover, since the issuance of Presidential Instruction No. 3 of 2003 concerning National Policy and Strategy for Development E-Government, The State Civil Apparatus is facilitated in carrying out the duties and obligations to carry out public services assisted by the existence of a system in carrying e-service.

There is development e-government can minimize the occurrence of maladministration because public services that are carried out face-to-face or direct contact can now be carried out online, but that does not mean that maladministration acts on development e-government can't be done. Maladministration can occur if the State Civil Apparatus or state administrators commit negligence and neglect of the error system for 10 days, this is in accordance with Article 53 paragraph (2) of Law no. 30 of 2014.

There are 2 (two) classifications in maladministration, namely personal error and positional error, personal responsibility and positional responsibility. It can be said personal error when person it issues a decision that is detrimental to the state and society, so that personal accountability, in this case the actions committed, can be criminally responsible. While the position error if person it issued the wrong decision or policy so that he is held accountable in his position in the competency test at the State Administrative Court. Therefore, if the State Civil Apparatus has the authority to act to solve problems with the existing system error However, the officials decided to remain silent, so their decision to remain silent on the existing problems is an act of maladministration that is included in the classification of individual errors (behavior norms) that must be accounted for individually which is within the competence of the District Court to adjudicate them.

In fact, the fulfillment of public services must still be carried out by the government in the framework of board care.[36] Happening error system against the system e-government cannot be used as an excuse for the government to stop providing public services in the context of fulfilling its citizens. When it happens error system in system e-government the government can continue to provide public services through a manual system as previously done until the system e-government operating again.

## CONCLUSION

Justice and social welfare are the objectives of the State of Indonesia which have been listed in the Preamble of the 1945 Constitution of the Republic of Indonesia, fourth paragraph. In order to achieve justice and social welfare, there is a need for bureaucratic reform in public services, public services that the community wants are effective and efficient services. However, what is the right of the community has not been fully accommodated in responsive and solutive public services.

One of the problems and constraints in public services is an electronic system that cannot work properly. When the electronic system error, the government must take responsive and solutive actions. One of the government's actions is to exercise discretion over the system e-government Whicherror and in these actions the government must always heed the General Principles of Good Governance and good governance principle. Application



of the General Principles of Good Governance will minimize the abuse of authority and eliminate the KKN culture in Indonesia, so that prosperity and justice can be realized for all people without exception. Participation from the community is needed to support the success of bureaucratic reform in public services and to realize the vision of bureaucratic reform, namely the realization of world-class government.

## **SUGGESTION**

Forms of Discretion that can be exercised by the Government regarding their existence error system in e-government is to continue to fulfill public services through a manual system. In addition, the government must always do maintenance on the electronic system used, so that the maintenance of the network can minimize the occurrence of an online public service system error. Providing training on electronic systems to government apparatus is also needed so that public servants can have the ability to operate reliable and professional technology. The government must make improvements to the necessary infrastructure and superstructures, especially in terms of electronic-based public services (e-government) that have not been spread evenly, there are even ironic anomalies in certain areas where there are still many that do not have electricity, especially the internet network (internet connection).

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