

The need to strengthen
bureaucracy in the use of
discretionary space
appropriately and accountably:
Case in several Indonesian's
local government

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**L'ADMINISTRATION PUBLIQUE FACE À DE NOUVELLES
DYNAMIQUES: CONTRAINTES, INNOVATION ET DURABILITÉ**

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Relégitimer l'action publique: Rôles et responsabilités / Re asserting public action: Roles and Responsibilities

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**The need to strengthen bureaucracy in the use of
discretionary space appropriately and accountably:
Case in several Indonesian's local government**

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Abstract

Since the change of political system in Indonesia, local bureaucracy having much political pressure and in some ways it has not shown an increase in public services. Indeed, bureaucracy still remains be a political tool that neglect the need for bureaucratic professionalism and official's competences. Whereas the professional bureaucracy should be able to use their discretion in order for the sake of smooth running of public services. Nevertheless, bureaucrats were still subject to limited discretionary spaces due to the intense of extra-bureaucratic interventions. Discretionary space abounded precisely with political interests rendering bureaucrats incapable of upholding normative paramters that should be guidance in performing their tasks.

Therefore, this paper is aimed to discusses the need to strengthen bureaucracy in the use of discretionary space appropriately and accountably. This study found that the exercise of bureaucratic discretions were extremely low. This could be observed from the varied interventions that 'coerced' bureaucracy to carry out their desires. Bureaucratic discretionary space abounded with political interests rendering bureaucrats incapable of upholding legal and normative parameters that should be guidance in practicing discretions.

Key words:

Bureaucratic discretions, discretionary space, normative parameters, autonomy, democracy.

Introduction

Discussion about bureaucracy's role and authority will not become an endless issue, especially when bureaucracy faced with demands to accommodate the values of pluralist-democracy on the one hand and the administrative-efficiency on the other side. In general view, bureaucracy is typically conceptualized as necessary for the effective administration of public programs, but as being legalistic and largely indifferent to the wishes and demands of individual citizens (Goodsell, 2004; Gay, 2000). But actually the relationship between bureaucracy and democracy is both paradoxical and complementary. The linkage between those two elements of governing is paradoxical primarily because an effective democracy may require an effective and well-functioning bureaucracy. Indeed, the emphasis on efficiency and the use of the market in public service delivery during the past several decades has demonstrated the extent to which the

values of formalized bureaucracy may be important for a democracy to function well (Peters, 2008).

In democratic system, any public policy taken by the executive together with the legislature and then implemented by the bureaucracy must remain within the corridor of public interest (not interest groups / political parties and certain community groups). The real power in democratic system is actually the ability to shape public opinion and public policy. But there are consistently perform manipulation to gain advantages over support given to the politicians. Not only political officers but also the bureaucrats tend to have co-opted by certain political interests. Thus the domain of bureaucratic authority, including the space of bureaucratic discretion, will be the most vulnerable area that easily interfered by political interest and likely tend to ignore the values of social equity, whenever the bureaucratic professionalism have not be upheld yet.

This paper discusses the use of discretion space of bureaucracy, particularly in managing human resources in order to improve the local government bureaucracy's performance. Since the change of political system and governance in Indonesia, local government bureaucracy having much political pressure and in some ways it has not shown an increase in public services. Indeed, bureaucracy still remains a tool of political parties that are always concerned with power and neglect the need for bureaucratic professionalism. Staffing decision is often based on political interests rather than on official's competences. That's why the bureaucratic reform have not succeeded in creating good governance and delivering better public services. Why discussing bureaucratic discretion is interesting? This because one of professionalism indicators is the ability to make decisions and act based on expert judgment. It means that bureaucrats are able to use their discretionary decisions appropriately and accountably.

What is bureaucratic discretion and discretionary space?

Bureaucratic discretion had no exact definition, despite the normatively clear-cut requirements of non-infringement of the prevailing laws and ethical norms. With the exception of urgencies and for the sake of greater public interests, discretion can be exercised even if it must

contradict the existing formal rules or procedures. However, discretion should be exercised without having to disempowering the existing laws. As Davis (1969:4) says : " A public officer has discretion wherever the effective limits on his power leave him free to make a choice among possible course of actions and inactions ". Likewise, Chandler and Plano (1982: 108) define discretion as "... the freedom administrators have to make choices which determine how a policy will be implemented ". Administrative discretion refers to the degree of latitude or flexibility exercised by public administrators when making decisions or conducting any agency business (Finkelstein and Boyd, 1998; Susan, 2002, Warren, 2003). More clearly, Cox III (2004) explained that ² discretion represents the judgment as to what activities in an agency are to receive priority. The common assumption is that, at any moment in time, administrative officials have a choice of what to do, and that the choice affects the agency and the public. The exercise of discretion *presumes* both the need for and the capacity to exercise judgment. Undoubtedly, discretion is not only necessary to job performance, but also it is virtually inherent in that job .

Those normative definitions can be interpreted differently and subjectively. In a legal point of view, discretion is not acceptable and considered as infringement since the prevailing rules do not allow any discretionary space. In this case, bureaucrat serves as executor without having right to make any decision, since everything has already been stipulated or regulated in those existing rules. However, in public administration perspective, discretion is desirable to bureaucrats in performing their tasks including decision-making in the domain of bureaucracy efficiently and effectively. In fact, in certain urgencies, bureaucrat can take action or make decision contradictory to rules. Accordingly, meaning and definition of bureaucratic discretion are highly varied depending on the adopted perspectives.

In the notion of discretions as the scope of legal power, the conception of discretion is nested in a general theory that is called the hierarchical and dynamic character of the law. Discretion fits into the ongoing process of norm-creation and norm-application, when Kelsen (1998) suggests that the higher norm governs "to different degree" the content of the lower norm. In his view, the higher level norm cannot determine every detail of the act that applies it. "there must **always** remain a range of discretion, some time wider, sometimes narrower, so that the higher level norm, in relation to the act applying it..., has simply the character of a frame to be filled in the way

of the act". Besides, Kelsen argues that discretion also encompasses those cases in which the indeterminacy of a legal norm is unintended, as when the applicable norm is ambiguous, such as the authority that is to apply the norm is confronted with various possible meanings. (Kelsen, 1998; Prechal & Roermund (eds), 2008). The range of discretion that allows bureaucrats to be able to make decisions based on their own professional judgment, in this paper stated as discretionary space.

In the present study, the adopted perspective was the one that stressed that bureaucratic discretion was something inherent in every task, authority and policy that was required in order to achieve the expected goals efficiently and effectively. Discretion refers to the ability of an administrator or bureaucrat to choose among alternatives and to decide how the policies of government should be implemented in specific instances (Rourke 1984, in Krause 1999). This device is important for successful policy making and is woven into the fabric of the Constitution as a means of diffusing both power and conflict among interests (Bryner 1987, in Krause 1999). Magnitude of discretion was to a great extent determined by definition of authority given to respective tasks and functions, so that the appropriateness of discretionary decisions was dependent on capability of the bureaucrats themselves in exercising discretionary spaces already inherent in their job description and authority.

In the era of local autonomy, bureaucrats should be more capable of exercising their discretionary spaces in increasing the quality of public services and accelerating local development outcomes (Dwiyanto, et al. 2003). Nevertheless, the contrary was the case. Generally, bureaucrats were still subject to limited discretionary spaces due to the intense of extra-bureaucratic interventions. Based on research findings in the areas of personnel management, it could be found that the exercise of bureaucratic discretionary spaces was extremely low. This low level of the use of discretionary space could be observed from the varied extra-bureaucratic interventions that 'coerced' bureaucrats to carry out their desires. Decision-making in bureaucratic domain remained to be colored by negotiation of the competing political and other interests. Bureaucratic discretionary space abounded precisely with political and individual interests rendering bureaucrats incapable of upholding principles of ethics, professionalism, expertise and public interests that should guidance in performing their tasks and functions.

Classification of Public Policy, Discretion and Their Bases of Consideration

Theoretically, types of bureaucratic or administrative discretion vary in accordance with the basic types of public policy. Interrelatedness of public-policy logic and types of discretion was necessary to be appreciated by bureaucrats to make sure that any policy would be executed properly and goals of the policy could be attained (Morgan, et al, 2002). However, there are inappropriateness exercise of discretions that could be reviewed from the adopted parameters and outcomes of a decision. In paper written by Morgan, et al (2002) mapped types of public policy that led to different types of bureaucratic discretion. Such typology of public policies that generate a characteristic of bureaucratic discretions was only one of models for facilitating assessment whether administrator or bureaucrat have exercised appropriate type of discretion in implementing such public policy. With regard to the existing law and regulations, as a basis of operational implementation, bureaucratic discretion must firstly based on the essence of public policy or legal aspect and then, secondly, must considering other aspects (as seen on Table 1).

Table 1
Classification of types of Policy, Discretion and Their Bases of Consideration

Types of Policy	Types of Discretion	Bases of Considerations
Distributive policy	Technical	Legal, knowledge
Redistributive policy	Political	Legal, ethical, public interests, social equity
Regulatory policy	Social planning	Legal, ethical, professional
Self-regulatory policy	Professional	Legal, professional, knowledge

Source: Adapted from Morgan et al, (<http://www.eli.pdx.edu/2002>)

The present study sought to analyze the exercise of bureaucratic discretionary space in the policy areas of personnel management within the government bureaucracy. Personnel management or employee affairs in bureaucracy as one of the interesting issues in the era of local autonomy and democracy in Indonesia, since that areas has attracted many people and parties to take advantages, besides the demand for professionalism that still be a question in conducting better public services. This research was conducted in some regions in Indonesia which are the municipality of Surabaya, Regency of Situbondo and Bima.

The analysis is also emphasized on the most important aspects of exercising bureaucratic discretion whether it has compliance with the normative parameters that the discretion is really necessary, meeting the public interests, or conversely there has been indicated abuse of authority. Considering the conflicting views regarding the exercise of discretion, it is urgent to limit the exercise of discretion within certain bound of parameters. The purpose of these parameters is to place limits around what is considered acceptable or appropriate action on the part of bureaucratic discretion (Scott, 1995). The main parameters of discretion are: (1) the compliance with a wider legal provisions (Legal), as well as other normative parameters for the use of discretion space; (2) not in conflict with ethical values and morality (ethical), (2) put the wider public interest (citizen / public interest) as a priority, and (3) based on the principles of professionalism and knowledge, as illustrated in figure 1.

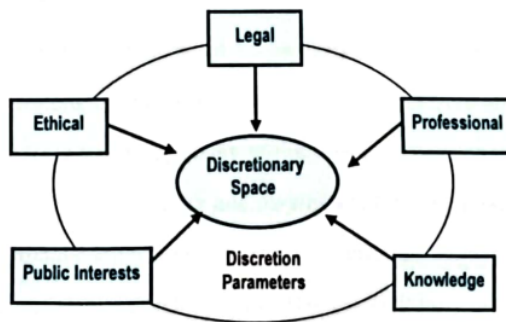


Figure 1 – Normative parameters as considerations in the exercise of bureaucratic discretionary space
Source: Adapted from Scott (1995).

In contrast to the empirical and theoretical discourse that the use of bureaucratic discretion space should be limited, in this study however, suggests that the use of discretion space by the official bureaucracy is still low. In some cases observed in this study precisely showed lower capability of bureaucrats in exercising available discretionary spaces, so that decisions to be taken in order to implement any policy were frequently ineffective. In order to analyze those issues, this discussion covered the relational analysis between types of public policy, types of bureaucratic discretion and considerations underlying the exercise of discretionary spaces.

As Chandler and Plano (1982) argue that the laws, rules, and regulations passed by Congress must first be heeded. These give the administrator the limits within which he or she must work. Nevertheless, the legal consideration was not a 'fixed price', where legal system could not fully guides local government bureaucracy in executing affairs to which they had authorities. This was considering that laws and regulations were unlikely to be capable of regulating comprehensively the whole measures that would to be done by the government. This led to demand that governmental bureaucracy be awarded discretion to take measures on their own initiatives, especially in dealing with critical and urgent public issues. Appreciating the relationships between types of public policy, bureaucratic discretion, and motives of consideration underlying bureaucratic discretion would help us comprehend and assess to what extent an implementation of policy or an exercise of discretion was acceptable and done rightly.

Dilemma was frequently faced bureaucrats or administrative officials in running a certain policy. Therefore, bureaucrats were demanded to be able to filter and unite competing interests in order to achieve objectives of the policy. Considering the obscure definition of discretion, criteria of main indicators and parameters for appropriateness of discretion was a conformity with broader legal rules as well as additional normative deliberations that had become parameters of the exercise of discretionary spaces: non-infringement of the ethical and moral values, broader public interests, principle of professionalism, and knowledge as illustrated in Figure 1.

Decisions in technical and operational levels belonged to bureaucratic authority as an executor of the policies formulated in the political level and it was in the execution of this authority that bureaucracy was awarded discretion. In determining operational measures that should be carried out in order for the policies to run effectively according to the stated goals, bureaucracy was demanded to strive on the basis of professionalism and upheld ethical values of state administration such as prioritizing public interests, transparent, fair, and empathetic (Frederickson, 1997: 162).

Considerations Underlying Decision-Making at Bureaucratic Level : Some Cases in Personnel Decisions

Some cases of limited exercise of discretionary spaces indicated that bureaucrats were not fully capable in making decisions independently and emphasized professionalism and competency in their domains of authority. This present study would identify what are the empirical considerations underlie discretionary decisions and whether those considerations satisfied acceptable discretion parameters or not.

The prevailing public policy that regulates public personnel management system, especially in structural official employment, was stated very clearly, including aspects to be taken into account by executive officials of local employee affairs where factors of seniority, age, educational background and positional training, and experience should be heeded. Additional stipulations that were binding and should be taken into account by executive officials of local employee affairs were stated clearly as follows:

"Civil Servants who shall be or have been at structural positions are obliged to attend and pass leadership education and training according to competencies stated for the positions (Subsection 1 of Section 7 of Government Regulation No. 13 of 2002).

And

"Civil Servant at structural position can be appointed to one level higher of structural position if he or she has already been and/or is at his or her structural position for 2 (two) years except for appointment to structural position at presidential authority (Section 7a of Government Regulation No. 13 of 2002).

Regents or executive officials need to take into account inputs by regency/municipal Board of Position and Rank Considerations Team, headed by Local Secretary, for appointment, transfer, and dismissal within and out of structural positions of echelons II and lower. In the execution of their tasks, '*Regency board of position and rank considerations*' team must certainly comply with stipulation as stated in the Government Regulation. In the event of resorting to decision making beyond the stated criteria, the teams should refer to normatively acceptable parameters (see Figures 1). In practice, however, these personnel - management decisions were considerably motivated by considerations beyond those acceptable criteria.

The more detailed a policy, the more limited the discretionary space allowing the officials to make decisions based on their own view and considerations. Decisions to be made had to satisfy formal criteria according to the prevailing regulations. In fact, there were leaving very limited

discretionary spaces in executing policies because all of its aspects had been stated clearly and in detail. This was also the case with local personnel-management policies, which substantively provided only a limited discretion. It followed that the executive officials of local employee affairs and *Regency board of position and rank considerations team* must comply with those stated requirements thoroughly.

In the section 5 of Government Regulation No. 100 of 2000, it is cited several additional requirements: Civil Servants who are appointed in the structural positions has the stated qualifications and education levels, all components of performance assessment is well worth at least within 2 (two) last years, and have to possess the required positional competencies. Based on this regulation, *Regency board of position and rank considerations team* in the bureaucracy must have and exercise discretion based on professional considerations in making personnel decisions especially the appointment of structural positions.

Nonetheless, as it is known, that strategic role of civil servants in the execution of all governmental policies related to public interests and having direct access to sufficiently broader community, has rendered bureaucracy highly susceptible influenced by and become political powerful instrument. Indeed, in the era of local democracy, the intensity of political intervention over local government officials (bureaucrats) is getting higher. Those interventions were mainly occurred considerably in decisions of recruitment, promotion, and appointment of employees that were dominated by political interests, conceptually infringing principle of professionalism of public-sector human resource management.

There were indications implying that bureaucracy in the era of local autonomy was still inherited prior governmental culture, namely neo-patrimonial bureaucratic culture where power and influence were obtained and maintained by exchanging positions, material interests or organizational prestige with political supports and loyalty (Sobari and Faturohman, 2002: 120). In other words, there was a pattern of transactional relation. The more loyal bureaucrat, the closer was he or she to a higher position, facilities and prestige. It followed that individual loyalty departed from organizational orientation to the ruling individuals or political elites. Subsequently, this condition led to a democratic life that was no longer neutral and increasingly abandoning people's interests due to constant orientation to

private individual profits that could only be obtained by means of endorsement for and loyalty to their political superiors. In other words, bureaucracy has become a 'stooge' of practical political interests.

In the Old Order era (under Soekarno's administration, 1959-1966), the many political parties having intense accesses to bureaucracy, especially the three components of Nationalists, Religionists, and Communists, indicated domination of practical political interests over bureaucracy. While in the New Order (under Soeharto's administration, 1966-1998), bureaucracy became an "apparatus" of the dominant social and political force of the ruling political party. In both previous periods, bureaucratic cultures were considerably influenced by patronization values. This was the case with the current reformation era in Indonesia, where practical political interests championed by a variety of political parties mutually competed for bureaucratic supports. This condition was similar to the era of Old Order. In this democratic system and local autonomy (since 1998), bureaucracy was increasingly co-opted and intervened by political parties preparing for the elective victory of their candidate for the local leaders (Thoha, 2002). Subjective interests of those parties were growing intense to dominate and impede the neutrality of bureaucracy.

The political intervention over the domain of bureaucratic authority, especially in the public personnel management system regarding recruitment, promotion and mutation policies, was an indication of Jacksonians or spoils system. There was the policy of placing political supporters into appointed offices. Many Jacksonians held the view that rotating political appointees in and out of office was not only the right but also the duty of winners in political contests (Wikipedia, the free encyclopedia, 2010). Using the political powers, political parties pressure the bureaucratic officials in staffing decisions that should be the domain of bureaucrat's authority, as set out in the existing regulation. The intense of practical political interests could be seen in personnel-management cases in local government of Surabaya identified in this study.

Based on the three cases as shown in table 2, it could be determined that discretion exercised by Municipal Secretaries (M. Yasin and Sukanto Hadi) along with their *Regency board of position and rank considerations team*, that made decisions according to their

capacities subsequently to be proposed to Mayor as the executive official of local employee affairs, apparently was not based on main criteria of discretion, namely the prevailing legal rules and other normative considerations, such as professionalism and competence. As it has been known, in the period of Municipal Secretary M. Yasin, decisions on the officials rotations were political-interests-ridden endorsing Mayor Sunarto. Municipal Secretary M. Yasin exercised his discretion to appoint several village chief (lurah) and sub-district heads and other structural officials based on purely political considerations, without taking into account the prevailing rules and human resources' competence. With regard to decisions made by Municipal Secretary Sukamto Hadi, despite fulfillment of administrative rules, it ignored principles of employee affairs that should be brought forward in order to develop a bureaucratic professionalism. Therefore, those decisions were classified as unacceptable or less acceptable discretion. On the other hand, the decision made by Municipal Secretary Alisjahbana to dismiss several administratively unqualified officials was a form of discretion that actually satisfied the prevailing rules. This discretionary decision made by Alisjahbana was based more on legal considerations. Therefore, this decision could be classified as acceptable discretion.

Table 2

Type of Policy, Type of Discretion, and Considerations Involved in Personnel Decision-Making: Case of Municipality of Surabaya

Type of Policy	Type/ Extent of Discretion	Normative Considerations	Decisions to be Made (Discretion)	Real Considerations	Explanation
Govt. Reg. No. 100 of 2000/ Regulatory policy	Social planning/ limited	Legal, ethical, professional	Promotion of officials in the era of Municipal Secretary M. Yasin	Purely political	Normatively unacceptable
			Arrangement and dismissal of officials in the period of Municipal Secretary Alisjahbana	Legal and professional	Normatively acceptable
			Retirement prolongation of officials in the period of Municipal Secretary Sukamto Hadi	Legal but tended to be political	Normatively unacceptable

Source: Woro, Astuti, 2009.

In addition to analysis of specific cases identified in those three periods of municipal secretaries and evidence of respondents' opinions, it could be said that considerations

involved in personnel decision-making were full of political interests in order to safeguard policies of Mayor and Local Legislative Board. Based on the survey result, the majority of respondents (51%) thought that decisions on employee affairs were motivated more by political motives and ignored principle of professionalism.

Similarly, this was the case with local government of Situbondo and Bima Regency. Many decisions on employee affairs that took into account by *Regency board of position and rank considerations team* were most apparently not based on both legal and normative parameters. The identified cases indicated a misuse of discretion space so that decisions being made were unacceptable or less acceptable. Decisions by the Regency secretary and *Regency board of position and rank considerations team* to be proposed to the Regent were not compliant with the prevailing regulations and not be based on ethics, professionalism and the real employee demands considerations, but were based more on the interest of "re-compensatory" politics.

With regard to prolongation of retirement, as regulated in Government Regulation No. 32 of 1979 on Dismissal of Civil Servants and Decree of National Board of Employee Affairs No. 13 of 2002, there was certainly a possibility of making policy of prolongation of retirement period for Civil Servants. The maximum retirement age for Civil Servants was 56 years old and those who were at structural positions of echelon II could prolong that maximum age up to 60 years old. Based on that regulation as well, prolongation of maximum retirement age for Civil Servants who were at structural positions of echelons I and II must be carried out selectively by taking aspects of competence, cadre formation and health into considerations. However, decisions made by executive official of local employee affairs, Regency secretary and *Regency board of position and rank considerations* in Regency of Situbondo were not based on the stated consideration of the need for heeding factors of competence and cadre formation. The intense of political motives in the decision of retirement prolongation made in the bureaucratic level of Situbondo Regency was confirmed by rate of respondent responses of 81%, whereas 12% indicated exercise of competence-related consideration and 6% stated that retirement prolongation was carried out due to the absence of replacement officials.

According to Mladenka's hypothesis that in implementing distributive policies such as public service policies, it is often to be manipulated to influence the discretionary decisions of bureaucrats for the sake of practical politics that does not really represent the public interest, as Mladenka (1980) said about the politics of urban politics as follows:

"... urban services are political sources that can be manipulated, redistributed, and withdrawn in the scramble for electoral advantage. Loyal wards are rewarded with superior services. Major service decisions are made by the machines, handed down to the bureaucracy, and implemented in accordance with the scheme that seeks to wring maximum political advantage from the distribution of finite service resource".

These finding indicates that in implementing regulatory policies such as public personnel policies also tend to intervened by the political authorities. Politicians offer the advantages to bureaucrats so long as they provide political support. There are exchanges between the support of bureaucrats against politicians with better positions in the bureaucracy.

Based on the analysis of factors underlying those personnel decisions, it could be inferred that the available bureaucratic discretionary spaces were not exercised properly with the result that the resultant decisions were normatively unacceptable or less acceptable. In fact, personnel management was one of critical factors in the efforts of bureaucratic reform. Empirically, however, the biggest obstacle of bureaucratic reform was precisely in the area of employee affairs. Considering the appointment of officials that did not take considerations of professionalism, knowledge, and principles of good governance into account, it could be confirmed that those officials, in the future, would not be capable of carrying out measures of improvement in their capacities as structural officials that were supposed to take actions dauntlessly and professionally.

Some considerations underlying personnel decision-making could be classified as follows: (1) Political considerations, meaning that decisions to be made in order to influence political affiliation of employees and/or officials and their families; (2) Power- and position-related considerations, meaning that decisions to be made in a nepotistic manner under pressures or clouts of higher positional power; (3) Individual considerations, meaning that decisions to be made due to factor of individual proximity beyond factors of both authority hierarchy and political reasons.

Table 3
Type of Policy, Type of Discretion, and Considerations Involved in Personnel Decision-Making: Case of Regency of Situbondo

Policy/Type	Type/Extent of Discretion	Normative Considerations	Decisions Made (Discretion)	to be	Real Considerations	Explanation
Govt. Reg. No. 100 of 2000 and Govt. Reg. No. 13 of 2002/Regulatory policy	Social planning/limited	Legal, ethical, professional	Appointment of sub-district heads under PKB pressure		political	Normatively unacceptable
			Appointment of Heads of Service who did not satisfy criteria of administration and competence		Political	Normatively unacceptable
Govt. Reg. No. 32 of 1979 /Regulatory policy	Idem	Idem	Prolongation of retirement period of the Director of Local General Hospital		Political	Normatively less acceptable
Govt. Reg. No. 97 of 2000 on Formation of Civil Servants/Regulatory policy	Idem	Idem	Recruitment of officials' sons or daughters inconsistent with educational background		Compliance with superior	Normatively unacceptable

Source: Astuti,Woro, 2009.

Discretionary spaces available based on government regulations were not exercised properly. Informal systems prevailing in respective local governments that were invariably colored by interests mutually competing for interventions to bureaucratic neutrality in the management of employee affairs indicated that bureaucratic discretion in the era of local autonomy was currently low.

Results of the present research indicated an objective condition of lower capability on the part of bureaucracy of exercising its discretion according to normatively acceptable parameters: legal, ethical, professional, knowledge, and public interests. In general, the available discretionary spaces was exercised more for "granting" access to other considerations beyond those normative ones, resulting in less acceptable decisions. Decisions and measures to be made and taken in bureaucratic domain were not invariably safeguarded in order to consistently be based on legal and normative parameters. Some decisions made in the domain of bureaucracy were precisely made on the basis of interests or considerations beyond those acceptable parameters (see Figure 2).

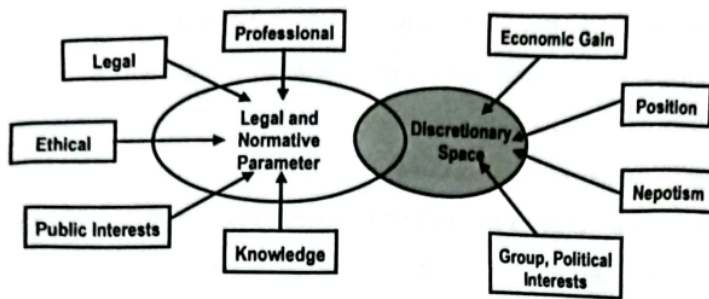


Figure 2 - Pattern of exercise of bureaucratic discretionary space in Indonesian local government system

The exercise of discretionary spaces in democratic system should be constantly safeguarded against departure from legal and normative parameters (as illustrated in Figures 1). However, in the course of its journey in Indonesia-- since the Old Order era through Reformation era -- bureaucratic system was seemingly not sufficiently 'sturdy' to resist entry of interests beyond those parameters by extra-bureaucratic sides merely for the sake of vested interests or group interests (as illustrated in Figure 2).

The Influence of Bureaucratic Culture and Structure

The political influence against bureaucratic discretion areas can vary its strength down to lower levels affect the behavior of employees of the government bureaucracy (read: public officials). This happens because the bureaucratic structures were still hierarchical with a patrimonial culture. The very strong role of top executive who is a political appointee, often obscure and weaken the bureaucratic professionalism and neutrality. In some cases regarding the appointment of career officials at the local bureaucracy as mentioned above, there are indicate that the political forces often intervene the personnel decision making in which be a domain of bureaucratic decision. In making personnel decisions such as mutation and promotion there are a variety of interventions from local political officials. This has clearly reduce the area of bureaucratic discretions in managing or restructuring the internal bureaucracy in order to improve the bureaucratic performance especially in performing better public services.

In addition to environmental factors that influence the use of bureaucratic discretion, the internal factors of bureaucracy itself also influence the extent of bureaucratic officials may use their

discretions in accordance with the demands of professionalism in carrying out the duties of government and public service. Those internal factors are the structure and bureaucratic culture. As generally known, bureaucracy is a form of bureaucratic institutions and arrangements that contain the structure and culture. Bureaucratic structure describing the composition of an order, whereas culture contains the values system, and customs made and conducted by the principals that reflect the behavior of its human resources (Thoha, 2002). Bureaucracy is a large organization with a long hierarchical structure in which the higher the officials' position, the greater his/her authority. Officers who are on the lower structure will receive the delegation of authority from his superiors, until the bottom level that has a very limited operational authority and more act only as implementers. As a result, officials at lower levels especially the staff who actually deal directly with the public often feel does not have any authority to make decisions, even though relating to their operational duties. In other words, they only have very small or almost none discretionary space to make decisions.

Those structural weaknesses of the bureaucracy increasingly aggravated with the development of paternalistic culture. Officials at the top hierarchy felt that with great authority they have to make decisions in accordance with their own interests or other people who have higher or greater power, such as politicians. With this structure of authority and the strong paternalistic culture, bureaucracy was became the power engine that always be subordinated to the political officials which is tend to be driven by individual political and power interests.

The influence of cultural aspects, it seems that there is widespread not only in the internal bureaucracy but from the culture that developed in the local community. Heterogeneous characteristics of Surabaya people had implications to a variety of considerations in the exercise of discretionary spaces covering political considerations or merely a political party gains and benefits, and interests of increasing local revenues. Meanwhile, there were also varied sources of intervention toward bureaucratic discretions: interventions of political parties through representatives, intervention of Mayor (regional head), bureaucratic officials' interventions, and entrepreneurs' interventions, as well.

In the case of local administration of Situbondo Regency, the exercise of discretionary spaces was to a considerable extent influenced by political interests. This phenomenon was

attributable to characteristics of local people. In Regency of Situbondo there was a shift in the exercise of bureaucratic discretionary spaces in line with the shift in paternalistic cultural values of *pesantren* (Islamic scholars) toward a more rational and modern culture. Political interventions and cleric's (Islamic religious leaders) interventions in the period of Regent Diaaman was highly conspicuous, whereas in the period of Regent Ismunarso those interventions began to diminish and shifted toward individual interests of both officials and entrepreneur's interventions.

The need to strengthen the use of discretionary space

Theoretically, there was a potential mapping of discretion types with normative considerations in order to implement certain type of policies. However, based on this field of study, there was a discrepancy of normative aspects and real aspects underlying exercise of bureaucratic discretionary spaces, resulting in unacceptable discretions. In the case of Surabaya Municipality, for example, regulatory policies in employee affairs that required and/or resulted in discretion or social planning based on legal, ethical, and professional were in practice precisely based, to a considerable extent, on political considerations and tended to heed legal considerations merely as formal requirement.

Apparently, bureaucracy could not release itself from the firm grips of interventions by varied sides such as political parties, entrepreneurs, its superiors (regents, mayors, higher officials). It followed that the existing bureaucratic system did not exhibit changes from a bureaucratic system dominated by a patronage culture toward a neutral and professional bureaucratic system. It means that in the era of autonomy, local government bureaucracy should be equipped with the regulations that ensure the proper use of discretionary space to be more accountable in order to improve government bureaucratic performance. The necessary regulations should provide assurance to the bureaucrats to be able to take decisions in their areas of duties and authority independently based on the principles of professionalism. Differ from the opinion that bureaucratic discretion should be limited because of frequent abuse of bureaucratic authority, in the recently case of Indonesia, which is required just the opposite. Bureaucracy just

need more equipped with the spirit of neutrality, so as not to be easily co-opted by narrowly political interests and in turn bureaucracy can be more professional and accountable.

In contrary to the general opinion of bureaucratic discretion that often been characterized as a potential abuse of power and authority, in this paper I would argue that the use of bureaucratic discretionary space should be improve in responsible and accountable way. It means that bureaucracy must be strengthen in term of using their discretion based on the legal and normative paramaters such as broader public interest, ethics, knowledge and professionalism judgment, etc. such of this argument arise due to the fact that the excessive actions to reduce discretion have damaged the capability of public officials and organizations to accomplish delegated tasks, by making administrative processes more confusing and reducing the ability of agencies to function effectively. Especially in personnel decisions, the bureaucracy needs to be given flexibility to define and promote credible public officials without any fear of political pressures. As experienced by Alisjahbana, Surabaya city secretary, who must ultimately dismissed from the position because some of his decisions were conflicting with the political interest of the ruling party at that time.

What has happened in Indonesia after running local democracy system, it is likely to bring unfavorable impact of increasing bureaucratic capacity due to excessive political euforia. One solution offered here is the adoption of the principal of new public management (NPM) in balance with new public service (NPS) through increased liability for the bureaucrats accountable and responsible for the decisions they make. In that context, discretion is necessary as a tool or instrument in order to build and enhance the professionalism of the bureaucratic capacity.

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