

## SUMMARY

### THE DISCRETION AND LIABILITY OF ADMINISTRATIVE OFFICER IN EXECUTING OF ADMINISTRATION IN INDONESIA

The obligation of administrative officials to provide public services in order to achieve social welfare demands consequence in government involvement as well as their intervention on all aspects of life of citizens. Principally, any government intervention has to conform with the laws/legislations (legality principle). However, some citizen's affairs are not regulated by government regulation or sometimes the existing legislations only create vague norms (*vage norm*), *open texture*, or providing choice. Consequently, the administrative officials are granted with some freedoms, such as: freedom to implement policy (*beleidsvrijheid*), freedom to do interpretation (*interpretatievrijheid*), freedom to take consideration (*beoordelingsvrijheid*) on particular interest or freedom to take choice in providing public services.

The use of discretion for administrative officials in central government and local government level is directed to the achievement on effectiveness and efficiency in administering governance and public service purposes within the framework of Indonesia as a legal state that protects the entire Indonesian people, achieves social welfare, educates the nation and enforces world order based on freedom, perpetual peace and social justice.

The discretion which is vicious to government institutions (*inherent aan het bestuur*) is not only important for achieving effectiveness (*doeltreffendheid*) and efficiency (*doelmatigheid*) in administering government affairs, but it is also relevant with legislation characteristic as general and abstract regulations. It has to be created collegially between executive and legislative institutions and it has limited scope. Fundamentally, it has open and cryptic norms that leads to consequence for its inapplicable nature in responding directly to any citizen's issue.

Discretion grant to the government essentially means to grant authority, in the sense of free authority (*vrije bevoegdheid*) to do interpretation, to make consideration or to take choice for the implementation of policy.

Any use of authority has to be consistent with norms of government (*bestuursnorm*) and norms of conduct (*gedragsnorm*). Application of the authority that abuses both norms initiate consequence for liability based on the principle of *geen bevoegdheid zonder verantwoordelijkheid* (no authority without liability)

The use of discretion can be examined by using the general principles of proper administration (AUPB) since the legality principle is insufficient (*ontoereikend*). The user of discretion is burdened by official liability and personal liability if the applied discretion is in conflict with the general principles of proper administration (AUPB), especially, when it is against principle of abuse of power prohibition (*verbod van detournement de pouvoir*) and the principle of arbitrariness prohibition (*verbod van willekeur*) or rationality principle.

Through this study it was found that the use of discretion in Indonesia, set forth in the form of regulatory policy was contrary to the legislation, contrary to the principle of law (*rechtsbeginsel*), there are elements of abuse of authority, there is an element of arbitrary or violate the principle of rationality, violates human rights, and contrary to the general principles of proper administration.

Official responsibility and liability of administrative officials in exercising the discretion appear if the administrative official acts on behalf of his/her position (*ambtshalve*), carry out under his/her formal authority (*binnen formele kring van zijn bevoegdheid heeft gehandeld*) and also abuse government norms in the absence of element personal failure and maladministration found in exercising such discretion. Meanwhile, the liability and personal liability of administrative officials occur if the administrative officials abuse norms of conduct or carry out maladministration.

