

DISKRESI (*FREIES ERMESSEN*) OLEH PEJABAT PEMERINTAH RAMBU HUKUM, ALAT UKUR KEABSAHAN, DAN KECERMATAN DALAM PENGUNAANNYA

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ABSTRAK (Indonesia)

Tidak ada suatu undang-undang yang rumusan pasal-pasal nya dapat menjangkau seluruh aspek kehidupan masyarakat dan keseluruhan kejadian yang tidak dapat diramalkan. Diskresi dimaksud untuk menerapkan ketentuan hukum tertulis yang masih samar-samar (*vagenormen*) untuk situasi konkrit, sehingga fungsi pemerintahan dapat dijalankan secara fleksibel dan efektif. Meskipun diskresi tidak berlandaskan pada ketentuan hukum tertulis yang jelas, atau tidak ada sama sekali teksnya secara tertulis, diskresi tetap terikat dengan asas keabsahan (*rechtmatigheid*), baik dari aspek kewenangan, prosedur, maupun substansi. Rambu-rambu hukum diskresi sudah jelas dan universal tapi sering "dibengkokkan" atau "dipatahkan", Agar cocok atau sesuai dengan keinginan dan kemauan pengguna diskresi. Cara diskresi yang demikian itu sudah di luar konteks diskresi yang sejati, melainkan penyalahgunaan wewenang dan penyalahgunaan hukum. Yang demikian itu tidak terletak pada persoalan hukumnya, melainkan pada perilaku pengguna diskresi.

ABSTRACT

There was not the Law that the formulation of his articles could cover all the aspect of the life of the community and the incidents whole that could not be forecasted. Discretion was meant to apply the provisions of the law was written that still was very vague (*vagenormen*) for the real situation, so as the function of the government could be undertaken flexibly and effectively. Despite discretion not based on in the provisions of the law was written that was clear, or did not have completely his text in writing, discretion continued to be tied with the legality principles (*rechtmatigheid*), both from the aspect of the authority, the procedure, and the substance. Signs of the discretion law already clear and universal but often was "bent" or "broken", in order to agree with his user's appetite. So, the discretion method like that already apart from the context of true discretion, but abuse of the authority and abuse of the law. Like that was not located in the problem of his law, but in the behaviors of the user of discretion.

The key words: Discretion, *rechtmatigheid*, abuse of the authority, abuse of the law.

I. PENDAHULUAN

Diskresi sebagai instrumen pemerintahan banyak diperbincangkan dan