

FORMULATION OF VILLAGE HEAD DISCRETION POLICY
(***Policy Formulation Study in Sumber Lele Village and Kebon Agung Village***)

Supriyanto*, Hary Yuswadi**

*Universitas Panca Marga Probolinggo

**Universitas Jember

email: supriyanto22012018@gmail.com

Received: 11 Februari 2020, Revised: 10 March 2020, Accepted: 14 March 2020

ABSTRAK:

This study The purpose of this study is to find out the process of formulating discretionary policies carried out by the village head. The method used in this study is a qualitative study method. The type of study used in this study is the type of descriptive study. Based on the results of the study it was concluded that the process of discretion policy formulation carried out by the village head was still not optimal, this is due to the low capacity of the village head as the main actor in the discretion policy formulation process. This can be seen from the lack of ability in discretionary policies, thus affecting the monopoly in the process of formulating discretionary and undemocratic policies, as happened in Kebon Agung Village. Whereas in Sumber Lele Village the conditions are better, because it has involved the parties (stakeholders). Although the parties (stakeholders) which is involved does not yet reflect aspects of democracy and representation, because of the parties (stakeholders) only community and religious leaders were involved.

Keywords: Discretion, Village Head and Formulation

INTRODUCTION

Conceptual governance can be carried out with two types of power approaches, namely the power based approach “*general rule of law*” and “*personal discretion to do justice*”. Both types of approaches to power were stated by Scalia (2012) in a book entitled *The Supreme Court of the United States*. Where Scalia (2012) refers to Aristotle's thought in his work *Politics*. Where according to Aristotle the power is:

Rightly constituted laws should be the final sovereign; and personal rule, whether it be exercised by a single person or a body of persons, should be sovereign only in those matters on which law is unable, owing to the difficulty of framing general rules for all contingencies, to make an exact pronouncement.

At the abstractive level above, the concept of governance, especially in context *personal discretion to do justice* or discretionary policy is interpreted as free power, power based on subjective or personal considerations of the holder of power to do or not do something. Therefore, the capacity of the holder of power is important in this regard. Because with the capacity of capable power holders will be able to produce a good discretion policy. Conversely, when the capacity of incumbent power holder then the discretion policy that is carried out most likely will not be able to according to the will of the public. The purpose of discretionary policy is to accelerate and optimize governance, especially regarding public services. Because currently public services are demanded and directed at services oriented to public satisfaction, so the competence and creativity of the holder of power becomes an important prerequisite in the administration of government (Davis, 1971).

The demand for good public services from the holder of power seems to have also taken place in Indonesia lately. Where the public expects the government to provide optimal public services, so that power holders are also expected to have qualified competence and creativity, in order to balance the increasingly complex public needs of today. However, it seems that this public expectation is faced with the dynamics of the current Indonesian government bureaucracy that has not changed and improved. Keterlibatan and the efforts of the parties (*stakeholders*) to encourage and improve the bureaucratic conditions of the Indonesian government continues. However, the problem of improving public services by the Indonesian government bureaucracy has not yet produced optimal output. The reason is due to weakness *good will* in the bureaucracy of the Indonesian government to change for the better in accordance with public expectations.

The lack of optimal public services in Indonesia, in addition to the problem of low competence and creativity of the holders of power, also influenced by the attitude tends to be monopolistic in the administration of government, where the Indonesian government bureaucracy tends to conduct its own administration (*government*), without involving the parties (*stakeholders*) widely and democratically, so that public services are not able to move from the administration of government to government governance, where public involvement is given broad and democratic space.

It is further related to the administration of governance in the opinion of Osborne and Gaebler (1993), is the administration of government which distributes power (authority and control) to the parties (*stakeholders*) and as a process of interacting various elements (narrowed

down in three key actors, namely the state, society and business) primarily in managing sectors which are the right of the public or public patrimony.

In the context of discretionary policy, The application of governance governance has important meaning, because even though discretionary policies are a part of the subjective authority of the holder of power to do or not do something. However, public involvement also needs to be considered, in order to ensure that discretionary policies are made able to be a panacea for the public. On the other hand, efforts to improve the administration of government by the central government by making Law No. 23 of 2014 concerning Regional Government which instructs governments at every level to bring the public service process closer to the public, through a mechanism of decentralization of authority (autonomy). With the hope that the government bureaucracy in the area is more able to be responsive to the conditions of the people it serves, apparently does not yet have a significant meaning for improving governance. The cause is not yet able to effectively administer the government, because the existing system in the area is still not effective and efficient and the quality of Human Resources local government bureaucracy is competent and creative in articulating public interests, one of them with the discretionary rights that it has. Indicators of the suboptimal quality of governance in the regions can be seen from the many complaints and complaints from the public, both directly and through mass media to the government bureaucracy in the regions.

After discussing governance, especially in the practice of discretionary policies at global, national and regional levels, Furthermore, the authors focus on efforts to practice discretionary policies at the lowest level of governance in the Indonesian governance system accordingly making Law No. 6 of 2014 About the Village, the village. Village selection is the focus of the study, because it is based on the results of preliminary observations of studies that have been conducted in several villages in the Kraksaan District, The author sees the efforts of several village heads in practicing an interesting discretion policy for further investigation, among others: *First*, village heads in practice have made discretionary policies in an effort to provide solutions to public needs. However, discretion policies made often have a bias of interest, so discretion policies are made that are not able to optimally become a solution (panacea) for the public. The reason is because the discretion policy made by the village head is vulnerable to political interests which sometimes only benefit the self interest (village head) and his group, as seen in Kebon Agung Village. This situation makes the resulting discretionary policy far from being a solution (panacea) for the public and contrary to the principle of discretionary policy. Where discretionary policies are made in urgent situations and carried out in order to provide solutions to holders of power and the public (Davis, 1971).

Second, the discretionary policy making efforts by the village head, still tend to be done "alone" by the village head without optimal public involvement, as happened in Kebon Agung Village. Even if there is public involvement in discretion policy making as happened in Sumber Lele Village, public involvement is still limited, only figures. This condition does not substantially violate, because the discretion policy is the subjective right of the holder of power, in this case the village head. But normatively the situation is contrary to the principle of good governance, which must be able to involve the parties (stakeholders) optimally, in order to produce credible public policies.

Third, in the effort of making discretionary policies so far, the village head has not been able to utilize the policy environment (local wisdom) optimally and there is a tendency for local wisdom as the culture and identity of rural communities to be ignored in the policy making process, as seen in Kebon Agung Village. The conditions that occur in the Kebon Agung Village ideally / theoretically contradict the opinions expressed by Dunn (2003). Where according to Dunn (2003), public policy must be sensitive to the development of the policy environment, because the policy environment will later be the beneficiary and driver of the success of the policy.

RESEARCH METHOD

This study uses qualitative research with consideration because this type of qualitative research can look more specifically at the phenomenon that the researcher is researching, especially related to the process of formulating the policy of the discretion of the village head in Sumber Lele Village with Kebon Agung Village, whether it has been effective or not in practice. The opinion of the researcher is in line with the opinion of Moleong (2006), which states that the type of qualitative research is research that uses a natural setting, with the intention of interpreting the phenomena that occur and is done by involving various existing methods.

REVIEW OF LITERATURE

Discretion Policy

Discretionary policies in Burke's opinion (in Haque, 2004, 704), broad discretionary policies for public administrators are needed and inevitable for the implementation of effective public duties and to ensure public trust in government. Burke (in Haque, 2004, 704), understand, that for public administrators to be trusted, they must be given the power to implement discretionary policies so that they have the opportunity to determine what is needed by a responsible administrator. Burke (in Haque, 2004, 704) believe that the role of public administration is directly related to state law that forms a government. But he argues that the law, because of their inertness, it cannot be used to ensure that an administrator is responsible. With reference to Aristotle, Burke (in Haque, 2004, 704) agree that the law is flawed because it is unable to prescribe properly for any equality or emergency situation that is below its literal meaning, then it takes a proporsional attitude, wise and wise in providing solutions to the will of the people through (intrusion) the administrator.

Furthermore, in the opinion of Meyer and Scott (2008) deeper. Where according to Meyer and Scott (2008) states that the main function of the administration of government (public organizations) is to resolve and meet public expectations. In implementation, the administrators (administration of government) should have capable abilities, both in terms of administration, and skills (intuition) and experience. Because in the administration of government, it is filled with dynamics, conflicts (problems) and expectations and interests of the public, which of course is to resolve this, it is not enough to only rely on aspects of administrative ability, but it also needs to be supported by skills (intuition) and experience.

On the other hand, in Burke's opinion (in Haque, 2004, 704), the power of discretion gives all the uses and potential of the law. (Haque, 2004:704), In line with Burke, on a utilitarian basis, Hunold and Peters (2008, 3502), argue that discretion seems necessary, and in some cases also very desirable. According to Hunold and Peters (2008: 352) the legislature rarely has the time or expertise needed to make the type of regulatory decisions needed by modern society. Therefore, the true quality of government decision making, can often be higher if the government allows substantial bureaucratic discretion.

Providing the possibility of a substantial discretion policy involves more substantive expertise and also allows implementation decisions to be more closely linked to the initial intentions of legislative policy, as long as the policy is carried out wisely and constructively. The capacity to link rule making with implementation must also be expected to improve the overall quality of governance. By citing Handler (1996), Hunold and Peters (2008, 3502) argue that allowing discretion in the implementation of decisions can increase the flexibility of institutions in responding to certain problems and therefore discretion is needed and desirable for effective decision implementation.

Without flexibility, it is almost impossible for regulatory bodies, both legislative and administrative, to anticipate variations that might arise in the actual implementation of a program, so building flexibility is important. Referring to these various opinions, then discretion is a necessity in the administration of government in the context of effective implementation of government and in increasing trust in the community. It's just that discretion needs to be done wisely and constructively so that it can help achieve effectiveness and increase trust without abuse of the use of discretion.

While the type of discretionary policy according to Batten (2010b, 474-475) discretion consists of legislative discretion, executive discretion, judicial discretion and administrative discretion. Legislative discretion is carried out by members of the board who are present in the legislature. This body has extensive discretion in drafting legislation that covers a very broad range of state activities. Limitation of legislative discretion is a constitution that guides the members of the board in drafting the law.

Thus, the law which is a product of the members of the council is one form of legislative discretion that is limited only by the constitution. Executive discretion is a discretion carried out by the government within the limits of the constitution and laws that are the product of the legislature. Judicial discretion is a discretion carried out by a judge. This discretion is limited by the laws and regulations and the constitution. Administrative agency discretion is part of executive discretion. This discretion is carried out by administrative officials who are in the governing body of the government. Meanwhile, according to Philips and Jachson (2001) as quoted by Nugraha et al (2007, 43), there are two types of discretion, namely: (1) bound discretion and (2) free discretion. Unrestricted discretion is the freedom of an official of the State administration to make a decision by choosing the choices that have been determined in the legislation, while free discretion is the freedom of an official of the State administration to make a decision by forming a new decision because it is not determined (regulated) in the legislation.

Based on the relationship between discretionary policy and the rule of law, discretion according to Alexander and Richmond (2007, 51-64) can be distinguished from discretion based

on the rule of law and discretion that is not necessarily based on the rule of law. According to Alexander and Richmond (2007, 51-64) discretion that is contrary to the mandate can be done if it meets the conditions of publicity and aims to better realize political values related to democracy (Alexander and Richmond 2007, 62). Alexander and Richmond argue that administrators are responsible for engaging in a discretion that conflicts with the mandate when the mandate can deny the personal freedom of citizens. Alexander and Richmond (2007, 51-64) also argue that discretion that conflicts with the mandate and requires confidentiality or misrepresentation may be permitted to protect personal freedom by considering the constitutional status of the value of such freedom compared to the values of other regimes (Alexander and Richmond 2007, 62). Alexander and Richmond were skeptical of the exercise of discretion that contradicted the mandate when it was carried out for other considerations which the administrator's own conscience identified but did not have a constitutional basis especially if done without publicity (Alexander and Richmond 2007, 62). Based on the opinions of Philips and Jackson and Alexander and Richmond, there are two types of discretion namely discretion which is bound by laws and regulations and discretion that is not determined by legislation. Discretion can even be contrary to the mandate given by the legislation when it is considered that the discretion is carried out with the aim of running democracy better.

Furthermore, related to the actors and dimensions of discretion in Batten's opinion (2010, 473) also suggests that all discretionary policies made by these actors are subject to some type of review and also subject to improvement or modification if there is misuse of discretion. *Judicial review* of administrative discretionary policies in the context in the United States according to Sullivan (2009, 10) is carried out through the Administrative Procedure Act. Batten in another article (2010: 108) also argues that an act of discretion is informal and therefore not protected by security inherent in formal procedures. A public official, for example, has discretion when he has the freedom to make a choice between a number of potential actions. The implementation of discretion is also covered by a number of restrictions. According to Sullivan (2009, 10), an institution when it has the freedom to choose in certain matters does not mean that there is no limit to that freedom. Discretion is not an uncontrolled permit. Decisions have often shown that discretion means legal discretion, not unlimited discretion.

Meanwhile, Batten (2010: 474) argues that discretion in decision making can be seen from a variety of perspectives that are flexible and can be accepted from the point of view of policy makers. Only the constitution can limit the discretion of the legislature in making decisions and legislative products. Likewise with judges, discretion in decision-making is limited by the applicable laws and regulations and the jurisprudence of previous judges. Another opinion regarding the limitation of discretion was also stated by Mustafa (1979) as quoted by Nugraha et al (2007: 40) that there are a number of reasons for the use of discretion, namely: (1) there are important reasons or justifiable reasons that are the background of the actions of the State administration, (2) those acts are still within the scope of the duties assigned by law, and (3) State administration officials concerned can be held accountable for their actions. Thus, discretion can be carried out by many actors in accordance with the authority they have. In carrying out discretion, the actors are bound by a number of restrictions and discretion is used because there are a number of reasons or objectives that are justified.

While the process of discretion in the opinion of Sainsbury (2001: 297) the relationship between rules and discretion is something that needs to be considered. This relationship can be found in the metaphor made by Dworkin (in Sainsbury, 2001: 297), who likens discretionary policies such as "holes in donuts, which exist as areas left open by surrounding areas as barriers, to be able to ensure that administrators are able to be creative in making policies that benefit the public with the education, experience and knowledge they have".

Discretion policy is a concept that is relative and important to be observed, in connection with the dichotomy between rules and discretion. In Dworkin's view, to be able to describe the discretion that officials have, it is necessary to refer to the rules that determine the space they have for the choices they can make. The relationship between discretion and this rule by Davis (1969) is characterized as a continuum or scale with total discretion at one end, and absolute rules at the other end. Policy making can be placed at one point in the continuum and can move between the two ends. Harlow and Rawlings (in Sainsbury, 2001: 298) introduced the term "inherent discretion" to describe choices in substantive policy that are usually not seen as discretion. Furthermore, they stressed that most of the "inherent discretion" is in a scheme that seems real based on giving and rights, and part of its rationality is elimination of discretion.

In Sainsbury's view (2001, 299), discretion is endemic in substance and procedural and therefore all policy-making has a number of "freedom in maneuvering". For that, what is important to do is to look for measures that can promote the highest quality in policy making, In this regard, Sainsbury tries to see it from the perspective of administrative justice. Based on this perspective of administrative justice, so that policy can be accepted, Sainsbury (2001, 302-306) mentions 6 (six) qualities that must exist, namely: (1) accuracy, (2) fairness, (3) timeliness, (4) impartiality, (5) participatory, and (6) accountable. Thus, it is reiterated that the space for discretion is limited by a number of rules.

FINDINGS AND DISCUSSION

Law Number 6 of 2014 Concerning Villages, Article 25 states that what is meant by the Village Government is the Village Head or what is referred to by another name and which is assisted by the village apparatus or referred to by another name. Based on the results of studies that have been done by the authors show that in general the administration of the village in Sumber Lele Village and Kebon Agung Village, the implementation of village government has been relatively effective. An indicator of the effectiveness of village governance in the two villages, can be seen from the implementation of the functions of village administration including development, service and empowerment has been running as it should. However, this does not mean that the administration of village government in the two villages is not without dynamics, conflict and obstacles.

Based on the results of interviews, observations and studies of the documentation in both villages, dynamics, conflicts and obstacles in the administration of government often occur, as the pace of village governance is increasingly democratic. The village head in the administration of village government is demanded more, by having sensitivity to the needs and interests of the village community he leads, so that the needs and interests of the community can be articulated properly. To be able to articulate public needs and interests well, village heads should not only have a single ability, namely administrative ability. But the village head should

also have the skills and intusions to solve complex community problems. Because the implementation of village government in its implementation is more dominated by things that are complicated and sometimes unable to be solved only from the formal legal (administrative) side. So that the skills and intrusions of village heads in the administration of government play an important role. Because with sufficient skill and intusion the village head was allegedly able to resolve and at the same time be able to articulate public interests. Furthermore, related to the above, the authors in this chapter divide into several sub-chapters, including:

Administrative Platform and Discretionary Policy Formulation Process

In the administration of government, particularly in the right to carry out discretionary policies by government administrators in Indonesia, referring to Law No. 30 of 2014 concerning Government Administration. In Law No. 30 of 2014 concerning Government Administration explains that in the administration of government administration (discretionary policies), government administrators (administrators) must adhere to the following methods of government administration: *First*, in the case of the use of discretion that has the potential to change budget allocations and cause legal consequences that have the potential to burden state finances, the approval of the Superior Official is required. What is meant by "obtaining approval from the Official Boss" is obtaining approval from the direct superior of the official authorized to determine and / or make decisions and / or actions. What is meant by "legal consequences" is a condition that arises as a result of the stipulation of discretion.

- a. For the leadership of the Regional Apparatus Organization (OPD) and other elements under the regional head to submit approval to the regional head;
- b. For regents / mayors apply for approval to the governor;
- c. For the governor to submit approval to the minister who carries out domestic government affairs;
- d. For the head of the work unit at the institution to submit approval to the minister / head of the institution, and
- e. The system of budget allocation as a result of the discretion agreement is carried out in accordance with statutory provisions. (Law No. 30 of 2014 concerning Government Administration).

In the implementation of discretionary policies carried out by officials, the official is bound by several obligations, including:

- a. Officials who use discretion must describe the purpose, objectives, substance, and administrative and financial impacts;
- b. The official is required to submit a written request for approval to the Acting Officer;
- c. Within 5 (five) working days after the application file is received, the Official Officer determines approval, direction for improvement, or rejection, and
- d. If the superior's official refuses, the official's superior must provide a reason for the rejection in writing. (Law No. 30 of 2014 concerning Government Administration).

Second, in the case of the use of discretion that has the potential to cause public unrest, Government Officials must report to the Officials' Officials prior to the use of the discretio. Reporting to superiors is used as an instrument for coaching, supervising, and evaluating and as part of official accountability (Law No. 30 of 2014 concerning Government Administration).

- a. In implementing the discretionary policy, there are potential officials according to Law No. 30 of 2014 concerning Government Administration raises anxiety, the official is bound by several obligations, including:
- b. Officials using Discretion must describe the purpose, objectives, substance and administrative impact of potentially changing the burden on state finances, and
- c. The official is obliged to deliver verbal or written notification to the Official Officer, which is delivered no later than 5 (five) working days prior to the use of Discretion.

Third, the use of Discretion in an emergency, urgent and / or natural disaster occurs, Government Officials must notify the Official Officer after the use of discretion. What is meant by "urgency" is an objective condition where it is necessary to immediately determine and / or implement a Decree and / or Action by a Government Official to deal with conditions that can influence, hinder or stop the administration of government. (Law No. 30 of 2014 concerning Government Administration).

In the implementation of discretionary policies according to Law No. 30 of 2014 concerning Government Administration carried out there are officials who have the potential to cause unrest, these officials are bound by several obligations, including:

- a. Officials who use discretion are obliged to describe the intent, purpose, substance and impact caused;
- b. The official is required to submit a written report to the superior's office after the use of discretion, which is submitted no later than 5 (five) working days from the time of use of the discretion, and
- c. Officials who use the above discretion are exempt from the provisions of notifying citizens.

Regarding discretionary policies carried out by Sumber Lele Village Head and Kebon Agung Village Head in the practice of policy formulation, it seems that it has not been fully carried out with the administrative procedures above. Based on observations, interviews and studies of relevant literature, it seems that the process of discretion policy formulation carried out by the two village heads has yet to find an ideal point. This can be seen from the discretion policy formulation process carried out by the Head of Kebon Agung Village, such as the problematic Poor Rice Assistance Program (Raskin), because the Head of Kebon Agung Village in making discretionary policies is suspected not through proper procedures, with no regard to the local context and General Guidelines for the program.

The mistake of the procedure caused social uproar in the middle of the community and impacted on legal reporting, on the indication of abuse of authority by the Head of Kebon Agung Village.

The village head's attitude in making discretionary policies about Raskin was less able to understand and translate the wishes of the community. Furthermore, the attitude of the less-democratic and responsive Kebon Agung Village Head in the process of discretion policy formulation continues in other activities or programs, as in Program Nasional Pemberdayaan Mandiri (PNPM) Perkotaan, Program Anggaran Dana Desa (ADD) and Program Jalan Lain Menuju Kesejahteraan Masyarakat (Jalin Kesra). The public perception of the less democratic and responsive attitude of the Head of Kebon Agung Village occurred, because in the process of formulating a policy of discretion only benefits a handful of groups that have been pro with the

village head and are unfair and laden with political interests, by ignoring the interests of the public and the policy environment (local wisdom).

The dynamics that developed related to the discretion policy formulation process carried out by the Head of Kebon Agung Village, which is considered by some as not involving the parties (stakeholders) and impacting the cynical response of some people, occurs because of the limitations of Human Resources (HR), so that the village head thinks that involving the public is too "rambling" and slowing down the process. Whereas the formulated policy must be carried out quickly to articulate the needs of the public which are all urgent.

The assumption of the opinion of the Head of Kebon Agung Village on the one hand, the writer considers appropriate. Because whatever policies are carried out by government administrators, without exception the village head must be done quickly. But on the other hand, the speed in making policies is not the only way or mechanism that is right to articulate public interests, it needs a careful and responsive attitude in making policies, so that the policies made are able to articulate public interests and be on target. This opinion is in line with the opinion expressed by Dunn (2003). In the opinion of Dunn (2003) public policy should be able to be carried out quickly, precisely and accurately. To be able to make public policies that are fast, precise and careful, the author agrees with Meyer and Scott's opinion that states that to create an effective public policy there needs to be sufficient ability in the administrator (good administrative skills and skills (intuition) and experience) .

Related to the process of discretion policy formulation by the village head which in practice combines aspects of good administrative abilities and skills (intuition) and experience carried out by Sumber Lele Village Government. Although in practice it is not ideal and is able to practice the legal basis in Law No. 30 of 2014 concerning Government Administration, but in the process of discretion policy formulation conducted by Sumber Lele Village Government, it has involved stakeholders (stakeholders) as part of the village head's skill in articulating good governance (governance) and avoiding conflicts and bias of interest in the process of discretion policy formulation and administrative processes the discretion policy formulation is recorded in the Official Report (OR) as part of realizing good village administration.

Regarding points 2 and 3, it seems that the discretionary policy undertaken by the Sumber Lele Village Head is not only because there is a legal vacuum, but also because of the village head's intuitive sense, in order to be able to articulate the public interests served. The attitude of the Sumber Lele Village Head is in line with the opinion of Fredrickson (2001) which states that bureaucrats in providing public services are not enough to only have administrative skills, but also must have intuition (sense), in order to be able to articulate the public interests served.

The discretion policy in Sumber Lele Village shows that in the process of discretion policy formulation, it is carried out by trying to listen to the aspirations and opinions of those who have direct or indirect interests with the discretion policy that is being formulated. With the process of formulating the policy of the secretion creating synergy with the parties and being made wisely, the process of formulating the policy of the secretion was planned successfully. Because when there is no policy from the village head in the form of discretionary policies, when the law or regulation does not regulate and it concerns the needs of the community and does not conflict with the policy environment (local wisdom), then in fact it is a disregard of

people's rights that must be articulated by the head the village becomes a policy by utilizing existing local wisdom. In the previous leadership of Sumber Lele Village Head this was not done, because in the previous leadership it was too lethargic (administrative), if there was no legal basis, it would not make a policy So according to the Sumber Lele community's view, the village head was previously deemed incapable of bringing the people's aspirations. Weaknesses in the previous leadership were corrected by the current village head by often making discretionary policies.

From the two villages above, it appears that in the process of discretion policy formulation, dynamics and perceptions still occur that are not the same among the respective village heads in interpreting discretionary policies as a right of government administrators. Therefore, the process of discretion policy formulation is an interesting part for further study. Because it could be that what was done by the Head of Kebon Agung Village actually opened a discretion policy, however, the motives of the village head's political interests, which are wrapped "as if", are urgent and not discretionary policies, as explained above.

It can be further explained that in the process of discretion policy formulation is vulnerable to bias of interest, because in the discretion policy there are no clear guidelines regarding which may and may not be carried out by the administration of government in the formulation process. Because of the inadequate administrative aspects of the discretion policy formulation process, caution and skills (intuition) are needed in making discretionary policies, lest discretionary policies made by government administrators add new problems, such as those that occur in Kebon Agung Village. Because the true policy of discretion exists and is a right for government administrators to use it as an alternative solution (panacea) for the needs and interests of the public. As for the results of the study, there are several processes of discretion policy formulation or policy formulation which is as if the "discretion policy" carried out by the two village heads (Kebon Agung Village Head and Sumber Lele), as follows:

The Process of Formulating the Discretionary Policy of the Village Head

The use of rights in the process of formulating a policy of discretion by the village head in administering village governance in Kebon Agung Village and Sumber Lele Village is interesting to explore. Because the two villages in the process of formulating a policy of discretion in quantity can be said to often carry out a process of formulating a policy of discretion towards several government programs, both programs originating from the central government and programs from local governments. As for government programs that in practice carry out discretionary policies, among others: *First, the* process of discretion policy formulation on Program Bantuan Beras Miskin (Raskin) conducted by the Head of Kebon Agung Village, which in the end was legally problematic, because in the process of formulating discretion policies not through proper discretion policy procedures, namely by paying attention to the context of local values (especially consultation) and the General Guidelines for the program. Disregard of local values and the General Guidelines for the program was carried out by the Head of Kebon Agung Village by creating a Bagito mechanism (evenly distributed). The Bagito mechanism was made unilaterally by the Head of Kebon Agung Village, due to the inability of the Chief of Kebon Agung Village to translate the enthusiasm in the program. As a result of the lack of personal capacity Head of Kebon Agung Village both in terms of

administration, skills (intuition) and experience in administering government, resulting in a policy break which ended in a legal case, as a result of the dissatisfaction of some parties (the community) with the discretion policy carried out by the Head of Kebon Agung Village by reporting to the police.

In contrast to Sumber Lele Village, even though the distribution mechanism is the same as Kebon Agung Village, it uses the Raskin distribution in an even distribution (Bagito). However, social and legal problems did not occur, it happened because Sumber Lele Village Head in the discretion policy process prioritized aspects of the public interest by involving stakeholders and placing local values, such as deliberation as a mechanism in the process of formulating Raskin discretion policies. Where the results of the deliberations are recorded in the Official Report (BA) of Sumber Lele Village Government, as a legal basis when problems occur in their implementation.

The pattern adopted by the Village Head in the process of formulating Raskin discretion policy is interesting to draw a common thread that the process of formulating Raskin discretion policy carried out by the Sumber Lele Village Head is administratively adequate with the existence of an official report, in the context of skills (intuition) what is done by the Sumber Lele Village Head is also quite smart in warding off conflicts and legal problems by taking the pattern of deliberation as an alternative consensus in solving problems behind the day, both legally and socially. The attitude adopted by the Sumber Lele Village Head is inseparable from his experience of leading for 2 (two) periods, while for the Kebon Agung Village Head is still 1 (one) period, so the experience of managing the public and government has not been honed seriously.

Second, the process of discretion policy formulation Program Nasional Pemberdayaan Mandiri (PNPM) Perkotaan in Kebon Agung Village, which was socially problematic when it was implemented in the midst of the community. Because it was accused of a discretion policy made by the Village Chief of Kebon Agung that only benefited his group, without regard to the interests of local values in the midst of the community and disregard for the provisions contained in the General Guidelines for the Program. The case of neglect of local values and provisions contained in the General Guidelines occurs due to several factors, namely short-term (political) interests and weak capacity, skills (intuition) and the experience of the Kebon Agung Village Head, as mentioned in point 1 in on.

Whereas for PNPM Perkotaan in Sumber Lele Village, Sumber Lele Village Head also used the discretion policy formulation process to make the program effective. However, in its implementation the discretion policy formulation process was made effective. This can happen because the Sumber Lele Village Head is in the discretion policy process program PNPM Perkotaan ensuring the public interest is the main focus. Because the public interest is the main focus, then the Sumber Lele Village Head in the process of formulating a policy of discretion of local values, such as deliberation as an important part. Because according to him, the community as part of the policy is also entitled to be involved in the policies made by the government. Because they are the ones who will feel the policy, especially now that the public is concerned.

Besides deliberation is important for the process of discretion policy formulation, deliberation is also important for the Sumber Lele Village Head if behind the day there are problems and social conflicts.

Third, the process of discretion policy formulation program Anggaran Dana Desa (ADD) and Program Jalan Lain Menuju Kesejahteraan Masyarakat (Jalin Kesra) in Kebon Agung Village, in practice both programs ended in law and social terms, because in the process of discretion policy formulation by the Kebon Agung Village Head, it was still the same as the case in the Raskin Program and PNPM Mandiri Perkotaan, that is less responsive, by taking into account the interests of local values (local wisdom) that exist in the midst of the community and disregard for the provisions contained in the General Guidelines for the program. The attitude is less responsive and ignorant of local values (local wisdom) and the provisions in the General Guidelines occur because of short-term (political) interests and weak capacity, the skills (intuition) and experience of the Village Head in responding to public demands and an increasingly open and democratic climate of governance. The impact of the village head's lack of responsiveness in the process of formulating the discretionary policy has resulted in the abuse of authority and budget in the village.

CONCLUSION

Based on the results of the author's study and discussion, it can be concluded that the process of discretion policy formulation carried out by the village head is still not optimal. This is due to the low capacity of the village head as the main actor in the discretion policy formulation process. This can be seen from the lack of ability in discretionary policies, thus affecting the monopoly in the process of formulating discretionary and undemocratic policies, as happened in Kebon Agung Village. Whereas in Sumber Lele Village the conditions are better, because it has involved the parties (stakeholders). Although the stakeholders involved do not yet reflect the aspects of democracy and representation, because the parties involved are only community leaders and religious leaders.

REFERENCES

- Davis, Kenneth Culp. 1971. *Discretionary Justice: A Preliminary Inquiry*. University of Illinois Press.
- Edward III, 1980. *Implementation Public Policy*. Washington DC: Congressional Quarter Press.
- Fayol, Henry, 1949. *Administrarion, industruelle et generale*, Drucker.
- Friedman, Lawrence M. Friedman. 1969. *The Legal System*. New York: Russel Sage Foundation
- Frederickson, H.George. 2001. *The Spirit of Public Administration*. San Fransisco: Jossey-Bass Publishers.
- Hajer, Maarten. 2004. *Deliberative Policy Analysis: Understanding Governance in The Network Society*. Cambridge : Cambridge University Press.
- Henry, Nicholas. 1988. *Public Administration and Public Affair (Administrasi Negara dan Masalah-Masalah Publik)*. Translate Luciana Lontoh. Jakarta: PT Raja Grasindo Persada.