

# IMPLEMENTATION OF HEAD OF REGIONS DISCRETION IN THE REGIONS FUNDS MANAGEMENT FOR NATURAL DISASTER MANAGEMENT EARTHQUAKE, TSUNAMI, AND LIQUEFACTION

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## ABSTRACT

*Background: The main problem in this paper is the implementation of the discretionary use of regional heads (Governor of Central Sulawesi Province and Mayor of Palu) in disaster management in the style of earthquakes, tsunami, and liquefaction that occurred in Palu City. Materials and Methods: The legal materials consisting of primary legal materials in the form of legislation, regional head regulations, and regional head decrees who have a relationship with the topic under study, secondary law, namely books and journals both international and national journals, plus tertiary legal material, namely dictionaries. In addition to the secondary data is also used primary data which obtained from field data of the Central Sulawesi Province Government and Palu City Government. Methods of research namely: juridical normative and analytical approach namely the approach of analyzing any legislation, laws, and regulations, regional head regulations, and regional head decrees, relating to the use of regional head budget discretion. Results: As for the results of research in Central Sulawesi Province, discretionary actions for regional heads for natural disaster management include: 1) To discern regional budget shifts between regional units and organizations for unexpected expenditure allocations. 2) Discretionary use of the emergency budget originating from the unexpected expenditure budget (BTT) 3) Discretionary expenditures for goods and services without tenders. Conclusion: Based on the results of research, the right concept and model is the concept of accountability for the use of regional head budget discretion which is carried out after the use of the budget has been completed, following the meaning of discretion as to the independent authority of the official concerned, therefore discretionary action should not require approval from superiors especially previously as determined in article 25 paragraph (1) of Law Number 30 of 2014 concerning Government Administration. And the budget discretionary accountability model in Indonesia is accountable based on state administrative law through the State Administrative Court and if there is an element of abuse of authority in the budget, it can be prosecuted under the law to eradicate corruption.*

**Keywords:** Use of Budget Discretion, Regional Heads, Natural Disaster Management

## INTRODUCTION

The implementation of discretionary use of regional budgets in Indonesia is carried out when natural disasters occur, for example, on September 28, 2018, at 17.05 WIB, Palu City,

Donggala Regency, Sigi Regency & Parigi Moutong Regency in Central Sulawesi Province were shaken by an earthquake with a magnitude of 7, 4 on the Richter Scale with the epicenter on the Palu Koro fault line, precisely located 26 km north of Donggala Regency and 80 km northwest of Palu City with a depth of 10 km. This earthquake caused a tsunami with a wave height of 0.5-3 m. Not only that, but this earthquake shock also caused a liquefaction phenomenon in 4 (four) places, namely: Balaroa, Petobo, Jono Oge & Sibalaya.

According to BNPB data dated 28 October 2018, the number of victims who died as a result of this natural disaster reached 1,948 people. This number is around 0.07% of the total population of the population in Central Sulawesi Province which reached 2.97 million people. Most victims died there in Palu city, reaching 1,539 souls, then followed by Sigi 222 inhabitants and Donggala 171 Soul. Meanwhile, 10,679 people were injured as a result of the earthquake and tsunami, and 10,679 people lost to 835. Meanwhile, the number of refugees reached 74,444 people spread over 147 points, with details of Palu city reaching 38,621 people, Donggala Regency 20,223 people, and Sigi Regency 15,600 people. An earthquake with a magnitude of 7.4 on the Richter scale on September 28, 2018, damaged 65,733 houses and 2,736 schools, plus one hospital and six health centers were damaged.

Based on BNPB's calculations dated 26 October 2018, Central Sulawesi Province suffered damage and losses of Rp. 18.48 trillion, especially in 4 (four) affected districts/cities, namely: Palu City, Donggala Regency, Sigi Regency, & Parigi Moutong Regency. the largest comes from settlements followed by the economic sector. This condition caused the Governor of Central Sulawesi Province to determine the status of a disaster emergency area for fourteen days which was later extended by the Mayor of Palu based on the Decree of the Mayor of Palu Number 360/252/BPB D/2019 concerning the Determination of the Second Extension of Emergency Transition Status to Earthquake, Stunami Disaster Recovery, and liquefaction.

During a natural disaster emergency, there are four important priorities, namely; 1). Evacuation to search for dead and injured victims, 2). Medical services for disaster victims. 3). Fulfillment of basic needs and logistics for refugees, and 4). Repair of public infrastructure and services.

With the determination of the status of a natural disaster emergency by the Governor of Central Sulawesi and the Mayor of Palu, the provisions of Article 28 paragraph (4) of Law Number 17 of 2003 concerning State Finances and Article 81 paragraph (2) of Government Regulation Number 58 of 2005 concerning Regional Financial Management shall apply. Which says:

In an emergency, the local government can make expenditures for which the budget is not yet available, which is then proposed in the draft revised APBD, and/or submitted in the budget realization report."

Article 28 paragraph (4) Law Number 17 the Year 2003 and Article 81 paragraph (2) Government Regulation Number 58 Year 2005 in an emergency gives authority to regional heads to make expenditures for which no budget is available. The word "can" refers to the authority discretionary budget of regional heads to use the budget or not to use the unexpected budget or disaster emergency budget. Following Article 6 paragraph (1) and (2) letter c Law Number 17 of 2003 and Article 28 paragraph (1) of Law Number 23 of 2014 concerning Regional Government places the position of the regional head as the holder of regional financial management power.

For this reason, in conditions of natural disasters that occurred in Central Sulawesi Province and Palu City, the regional head of the Governor and Mayor of Palu could use the budget discretion according to the mandate of the law. Meanwhile, the discretion made according to the provisions referred to is to use a budget that is not yet available. Based on articles 134 and 160 Permendagri Number 13 of 2006 concerning Guidelines for Regional Financial Management in a state of natural disaster, the available budget is the Unexpected

Expenditure (BTT) budget and if the budget is insufficient it can be budgeted in the following year and the regional head in overcoming the budget can do shifting budgets between organizational units, between activities and between types of expenditure.

According to Yopie Morya Immanuel Patiro (2011: 18) discretion is the freedom to act or make decisions by authorized state administration officials based on their own opinions. Discretion is also called *freies ermesen* in language comes from the word *frei* which means free, independent, not bound, and independent. Meanwhile, *ermessen* means to consider, assess, suspect, and consider something. This term is then typically used in the government sector so that *freis ermesen* (discretionary) is defined as one of the means that provide space for movement for officials or state administrative bodies to take action without being fully bound by the law.

According to article 1 number 9 Law Number 30 of 2014 concerning Government Administration, discretion is defined as decisions and/or actions that are determined and/or carried out by government officials to overcome concrete problems faced in government administration in terms of laws and regulations that provide choice, not regulating, incomplete or unclear, and/or stagnation of government.

Article 25 paragraph (1) of Law Number 30 of 2014 states that the use of excretions that have the potential to change the budget allocation must obtain approval from the superior official under the provisions of the laws and regulations. The sentence for changing the budget allocation must obtain the approval of the superior referred to for the head. Regent/Mayor based on the approval of the Governor and for the Governor based on the approval of the Minister of Home Affairs.

In practice, discretion issued by government officials can raise concerns and invite dilemmas in society. On the one hand, when the discretionary authority is too often feared it will create new arbitrariness. On the other hand, if it does not use discretion, it is feared that it will hinder national development. Alamsah Deliarnor, 2017)

The provisions of article 25 paragraph (1) of Law Number 30 of 2014 which include the sentence in changing the budget allocation must obtain the approval of the superior, this provision does not indicate the existence of the free authority of the authorized official to deal with an emergency that requires rapid disaster management. Such as the natural disaster that occurred in Central Sulawesi Province, especially Palu City. With the terms of approval from the superior officials it will take time and at the same time it also shows the dependence on the use of discretion to the superior concerned, this means that there is no free authority possessed by the authorized official, or in other words, there is no independent authority attached to the office so that it is not following the meaning of discretion itself. Then the sentence of article 25 paragraph (1) of Law Number 30 of 2014 is following the provisions of the laws and regulations refer to the provisions of the Law. Und Law Number 17 Year 2003 concerning State Finance which is followed up by Government Regulation Number 58 Year 2005 concerning Regional Financial Management. Article 84 paragraph (3) and (4) Government Regulation Number 58 of 2005 states that the cancellation of regional regulations concerns Amendments to Provincial APBD and Governor's regulations concerning Elaboration of APBD amendments shall be carried out by the Minister of Home Affairs. And the cancellation of regional regulations concerning amendments to the Regency/City APBD and regent/mayor regulations concerning the elaboration of APBD amendments is carried out by the Governor. So it can be understood that the provisions of Article 25 paragraph (1) of Law Number 30 Year 2014 adopt the provisions of Article 34 paragraph (3) and (4) government Regulation Number 58 Year 2008 is the concept of tiered budget management before the budget is used that is must obtain superior approval and budget evaluation from higher superior government organs.

Based on the above problems, there are problem formulations that can be formulated in this paper, namely:

1. What are the implementation of the use of regional head budget discretion during the earthquake, tsunami, and liquefaction natural disasters in Central Sulawesi Province and Palu City?
2. What is the right concept and model for the use of regional head discretionary budgets and the accountability of regional head budget discretion in Indonesia?

The purpose of this paper is to find the concept of using a discretionary budget for regional heads in Indonesia and models of accountability for the use of discretionary budget for regional heads in Indonesia.

## ANALYSIS OF LITERATURE REVIEW

According to the provisions of article 1 number 9 of Law Number 30 of 2014 states that discretion is a decision and/or action determined and/or carried out by government officials to overcome concrete problems faced in the administration of government in terms of laws and regulations that provide options, not regulating, incomplete or unclear and/or stagnation of government.

The definition of using discretionary action above refers to two problems, situations, and conditions that can be used for discretionary action, namely:

- 1) Situations or conditions of discretionary use refer to instruments filling in the legal void that occurs in the form of statutory regulations giving choices, incomplete laws, and unclear laws. This condition is described in the expression according to Mochtar Kusumaatmadja (2013: 104) as a condition of *het recht hink achter de feiten aan* (law always lags and follows the development of society), so there is always a legal vacuum (*limten in het recht*).
- 2) Situations or conditions for the use of discretion in an emergency or abnormal situation, namely in-laws and regulations that cause stagnation in the government. What is meant by stagnation of government is the inability to carry out government activities as a result of deadlock or dysfunction in government administration, for example, natural disaster or turmoil. According to Saldi Isra and friends (Study of discretion in local government administration, 2016), decision-making and/or action is due to government stagnation for broader interests. What is meant by broader interests are interests that are related to the lives of many people, save humanity and the integrity of the country, including among others: natural disasters, disease outbreaks (non-natural disasters), social conflicts, riots, defense, and national unity.

Based on the meaning of Law Number 30 of 2014, according to Prajudi Atmosudirjo, discretion is needed as a complement to the legality principle, namely the legal principle which states that every act or act of state administration must be based on statutory provisions (Eri Yuliksan, 2016: 37).

In-state administrative law, the discretionary state administration/*freies ermessen* is only given to the government or state administration to carry out ordinary actions and legal actions when *ermessen's* discretion is embodied in a juridical instrument, then it is in the form of a policy regulation (*beleids regel*).

Discretion should not be construed as to liberation or independence of legislation right, but discretion referred to as the freedom to practice law has been determined that originates from the attributive authority. For that discretion is made in the form of regulations by Ridwan HR policies (2018: 175) only serves as part of the operational implementation of the tasks of government, by therefore cannot change the rules or deviate from the legislation. Discretionary action originating from *Freies Ermessen* emerged as an alternative to fill the shortcomings and weaknesses in the application of the legality principle (*wetmatigheid van bestuur*).

## METHODOLOGY/RESEARCH METHOD

The research method used is normative analysis with a normative juridical approach (legal approach), analytical approach, case approach. Secondary data in this study include primary legal materials, namely all laws and regulations, regional head regulations, and regional head decrees related to research topics and secondary legal materials, namely previous studies, books, and literature. In addition to secondary data, primary data were also used which were obtained from the field, namely from the regional government of Central Sulawesi Province and the regional government of Palu City, which were areas affected by natural disasters of earthquakes, tsunami, and liquefaction.

## DISCUSSION RESULT

### Implementation of the Use of Regional Heads of Budget Discretion for Natural Disaster Management of earthquakes, tsunami, and liquefaction in Palu City.

Based on the conditions of natural disasters that occurred in Central Sulawesi province and Palu City as areas affected by the earthquake, tsunami, and liquefaction on 28 September 2018, there were several budget discretions made by regional heads (Governor of Central Sulawesi and Mayor of Palu) as head regions as well as holders of regional financial management power, namely:

- a. Discretion in spending emergency or unexpected expenditures with a budget disbursement mechanism is sufficient for proposals from related regional organizations or the Regional Disaster Management Agency (BPB ), which then distribute the budget directly to the public in the form of social assistance and infrastructure improvements to public needs.
- b. As a result of large disaster losses, the emergency budget for disaster management was insufficient, the regional head of the Governor and Mayor of Palu took budget discretion by shifting budgets between organizational units, between activities, and between types of expenditure allocated in the unexpected budget for the benefit of natural disaster management.
- c. Discretionary use of grants and/or social budget assistance from other countries, and/or between provincial governments, between the district and/or city governments as well as assistance from the private sector and the public which is directly distributed to victims of natural disasters without being included in the Provincial APBD treasury Central Sulawesi and Palu City APBD first. This is because, when put into Treasury Fund budget beforehand will in discussing appropriate budget mechanism that takes a long time for a regional head just enough to tell Parliament both in provincial and district and/or city.
- d. Discretionary expenditure for goods and services for disaster emergency budget is carried out without a tender mechanism as in normal circumstances but is carried out using a direct appointment mechanism by budget users.

The regional government of Central Sulawesi Province and the local government of Palu City provide a budget for natural disasters or an Unexpected Expenditure budget (BTT) which can be seen in the table below:

No.	YEAR	BEFORE THE CHANGE	AFTER THE CHANGES
1	2018	Rp. 2,300,000,000.00	Rp. 1,000,000,000.00
2	2019	Rp. 4,000,000,000.00	Rp. 7,500,000,000.00

For the regional government of Central Sulawesi Province unexpected expenditure when a natural disaster occurs, a budget of one billion rupiahs is used from the available budget of two billion three hundred million rupiahs in 2018 Revised APBD, for 2019 the Central Sulawesi

provincial government budgeted four billion rupiahs which then experienced the addition to seven billion and five hundred million rupiahs in the 2019 Revised APBD. Meanwhile, the regional government of Palu City as an area experiencing the impact of natural disasters, the emergency budget is seen in the following table:

No.	Fiscal year	Total Budget
1	2018	Rp.2.100.000.000, 00
2	2019	Rp.2.000.000.000, 00

The local government of Palu City budgeted Unexpected Expenditures (BTT) for natural disasters that occurred in the amount of two billion and one hundred million rupiahs in the 2018 fiscal year, based on the results of an interview with Suradji, MM head of the budget division of the Regional Asset Management Agency (BPKAD) of the Palu City Government on August 26, 2020, provides information: "from the budget of two billion and one hundred million rupiahs for earthquake, tsunami and liquefaction disaster management in Palu City, the budget used is one billion two hundred million rupiahs and for the 2019 budget year, the Palu city government provides an unexpected budget. in the amount of two billion rupiahs ". If you look at the amount of available budget above with the losses that occur in the earthquake, the stock and liquidation of the unexpected expenditure budget are not sufficient to finance the management of natural disasters that occur. Based on BNPB's calculations on October 26, 2018, Central Sulawesi Province suffered damage and losses of Rp. 18.48 trillion in four affected districts/cities, namely: Palu City, Donggala Regency, Sigi Regency, and Parigi Moutong Regency.

This was stated by the Deputy Governor of Central Sulawesi Dr. H. Rusli Dg. Palabi, SH.MH. during the interview on August 11, 2020, as follows "In the face of natural disasters, earthquakes, tsunami and liquefaction that occurred in Central Sulawesi Province and Palu City, it is inevitable for the Governor and Mayor to take discretionary actions in the form of shifting budgets and reducing budgets between organizations. Regional Apparatus (OPD) according to regional financial capacities and priority interests of the people of Central Sulawesi. "This statement describes the source of financing for overcoming shortages in disaster emergency budget or unexpected expenditures from APBD regional heads. Governors and Mayors shifting budgets and reducing budgets of respective apparatus organizations both in the regional government of Central Sulawesi Province and the regional government of Palu City.

### **Accountability for the Use of Regional Head's Budget Discretion in the Management of Earthquake, Tsunami, and Liquefaction in Palu City.**

The accountability for discretionary regional budgets is closely related to laws in the field of state finance and laws in the field of government administration. Law Number 17 of 2003 concerning State Finances is further elaborated by article 81 paragraph (1) letter d and letter e of Government Regulation Number 58 of 2005 concerning Regional Financial Management, it is stated that APBD adjustments with developments or changes in circumstances are discussed with DPRD and local governments in the context of preparing an estimate of changes to the APBD for the fiscal year concerned, in case of letter d an emergency and letter e is an extraordinary situation.

For the criteria for an emergency, it is regulated by Article 81 paragraph (3) of Government Regulation Number 58 of 2005 that the state of emergency at least meets the following criteria.

- a. Is not a normal activity of local government activities and cannot be predicted in advance.
- b. Not expected to happen repeatedly.
- c. Beyond the control and influence of local government, and
- d. Has a significant impact on the budget for recovery caused by the emergency.

Based on Law Number 17 of 2003 concerning State Finance, Law Number 23 of 2014 concerning Regional Government, Law Number 24 of 2007 concerning Disaster Management, Law Number 1 of 2004 concerning State Treasury, Law Number 15 In 2004 concerning Audit of State Financial Management and Accountability, Government Regulation Number 58 of 2005 concerning Regional Financial Management states that there are two mechanisms for discretionary budgetary accountability for regional heads for handling natural disasters such as earthquakes, tsunami and liquefaction that occurred in Central Sulawesi Province and Palu City, namely accountability. Through DPRD and accountability to superiors (if the governor is accountable to the Minister of Home Affairs and if the Regent/Mayor is accountable to the Governor), if there is an element of state loss, it can be followed up on accountability in the law of the sentence, namely in the event of Corruption Crime.

### **Notification to DPRD**

Article 134 paragraph (1) Permendagri Number 13 of 2006 concerning Regional Financial Management Guidelines states "the basis for unexpected expenditures budgeted in APBD to fund emergency response for natural disaster and/or social disasters, including repayment of excess regional revenue from previous years. which has been closed and stipulated by a regional head decree and notified to DPRD no later than 1 (one) month from the date the said decision was stipulated. "The sentence is sufficient to notify the DPRD at the latest 1 (one) month on the discretionary use of the regional head's budget, without requiring approval. The DPRD uses the emergency budget for natural disaster management as a form of facilitating the use of discretionary budgets for regional heads in dealing with situations of natural disasters that have occurred. If the sentence requires approval in the use of the emergency budget, it is feared that it will hinder the acceleration of disaster management. Such conditions are used for the safety and the public interest of the people according to the principle of *Salus Populi supreme lex esto*, meaning that people's safety is the highest law.

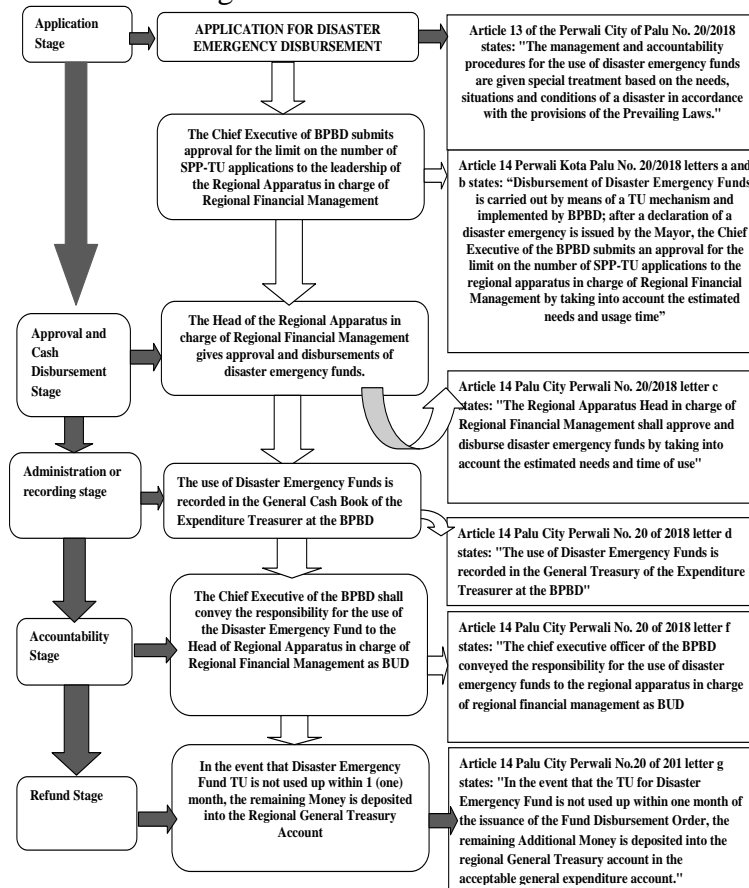
The discretionary accountability of regional heads in conditions of natural disaster emergencies is carried out during the discussion of the Revised APBD and reports on the realization of the budget article 28 paragraph (4) and paragraph (5) of Law Number 17 of 2003 states paragraph (4) in an emergency the regional government can carry out expenditures for which the budget is not yet available, which is subsequently proposed in the draft revised APBD and/or submitted in the budget realization report. And paragraph (5) the regional government submits a draft Regional Regulation concerning Amendments to the APBD for the current fiscal year with the approval of the DPRD and obligations for the regional government to report the government budget realization report to the DPRD is a form of the regional head's accountability for the use of budget discretion that has been carried out. And if the DPRD does not approve the amendment to the APBD, according to Article 84 paragraph (2) Government Regulation Number 58 of 2005 which states if the evaluation process and stipulation of the draft regional regulation regarding APBD amendments and the draft regional head regulation concerning the Elaboration of APBD Amendments are not followed up by the regional head and the DPRD regional regulations and regional head regulations are canceled and at the same time declaring the validity of the APBD ceiling for the current year including for emergency funding. Problems that arise if the APBD amendment does not get approval from DPRD and the APBD amendment is canceled

while budget discretionary measures have been carried out how to account for the law discretionary regional heads' budgets that do not have legal legality.

### Accountability to Superiors

According to the provisions of Article 134 paragraph (3) of the Regulation of the Minister of Home Affairs Number 13 of 2006 concerning Guidelines for Regional Financial Management, it is stated that the head of the agency/institution receiving emergency response funds is responsible for the use of these funds and is required to submit a report on the realization of the use of emergency response funds to their direct supervisor and/or regional head. Furthermore, in paragraph (4) Permendagri Number 13 of 2006, the procedures for giving and accounting for unexpected expenditures for emergency response as referred to are stipulated in the regional head regulation.

Based on the Regulation of the Mayor of Palu Number 20 of 2018 concerning Procedures for Providing and Accountability for Disaster Emergency Response Expenditures, the mechanism for disbursement of unexpected expenditures and accountability for unexpected expenditures can be seen in the image below:



**FIGURE 1**  
**EARTHQUAKE DISASTER EMERGENCY BUDGET DISBURSEMENT CHART, PALU CITY GOVERNMENT'S STUNAMI AND LEQUIVACTION**

Based on the above chart image, it can be understood that there are five stages related to the use of unexpected expenditures based on Palu Mayor Regulation Number 20 of 2018 including the stages of applications submitted by related technical agencies/Regional Disaster Management Agency (BPBD) to the head of the Financial and Asset Management Agency

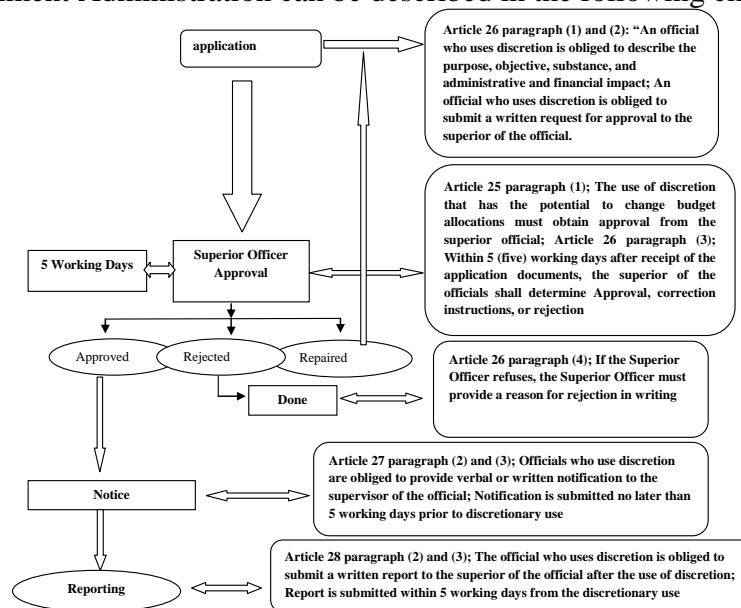


Regions (BPKAD) as the regional general treasurer, the head of the BPKAD to the relevant technical agencies/BPBD according to the proposed needs then directly distributed for the needs of disaster management and social assistance, the recording and administration stages by BPKAD for the use of unexpected expenditures, the stage accountability in the form of reporting from related technical agencies or the head of BPBD on the use of unexpected expenditures to the head of BPKAD, and the stage of refunding if the unexpected expenditure budget is not used up, it must be returned to the regional treasury.

Position regulations regional head for the handling of the disaster management of the Issuer Diang gap as the provision of discretionary budgets of regional heads are accountable use of discretionary budget cannot be separated from changes in the budget which, according to Article 84 of Government Regulation No. 58 Year 2005 on Regional Financial Management noted the evaluation process and determination of the draft Regional regulations concerning APBD Amendments and draft regional head regulations concerning the translation of APBD changes into regional regulations and regional head regulations apply with the same provisions in the evaluation process for the formation of Regional Regulations concerning APBD. Article 84 paragraph (3) and (4) of Government Regulation No. 58 of 2005 states the cancellation of local regulations on the Amendment Provincial Budgets and Governor Regulations of translation changes the budget made by the Minister of the Interior and the cancellation of local regulations on budget changes Regency/City and regulations Regent/Mayor concerning the Elaboration of Amendments to the APBD is carried out by the Governor.

The discretionary accountability model for regional heads according to Government Regulation Number 58 of 2005 is then spelled out in Permendagri Number 13 of 2006 concerning Guidelines for Regional Financial Management as also adopted by article 25 paragraph (1) of Law Number 30 of 2014 concerning Government Administration which states the use of discretion that has the potential to change budget allocations must obtain approval from superiors following the provisions of laws and regulations. The supervisor meant for the head of the Regional Apparatus Organization (OPD) is the regional head, for the Regent and/or Mayor is the Governor and for the Governor is the Minister of Home Affairs.

The mechanism for using budget discretion according to Law Number 30 of 2014 concerning Government Administration can be described in the following chart:



## **FIGURE 2**

### **PROCEDURE CHART FOR THE USE OF REGIONAL HEAD DISCRETION IN CHANGING THE REGIONAL BUDGET ALLOCATION**

Based on the procedural mechanism for the use of budget discretion according to Law Number 30 of 2014, there are four stages, namely the application stage, the approval stage, the notification stage, and the reporting stage. If we look at these stages from a legal analyst it can be understood that the budget discretion is quite rigid and/or rigid in its use and implementation. The conditions in this rule do not describe the atmosphere of a disaster emergency condition and are not normal. This condition does not indicate the existence of free authority from the authorized official to overcome an emergency that requires a quick resolution. With the terms of approval from a superior official, it will take time and at the same time show dependence on the use of budget discretion to the superior concerned, this means that there is no free authority possessed by the competent official, or in other words, there is no independent authority attached to the office so that incompatible with the meaning of discretion itself. While the superior's approval in accountability will cause legal problems in the future if the regional head's budget discretion is taken into trouble in the future, it will be a question of whether the superior can also be sanctioned because he has approved of budget discretion with a legal origin.

#### **Accountability to Law Enforcement Officials**

Accountability to law enforcement officials is linked to accountability in the field of criminal law, which is of course the sanction given in the form of imprisonment. The provisions of Article 34 paragraph (1) and (2) of Law Number 17 of 2003 concerning State Finance state the minister/head of institution/governor/Regents/Mayors who are proven to have deviated from policies stipulated in the Law on APBN/Regional Regulations concerning APBD shall be punished with imprisonment and a fine under the Law Paragraph (2) head of the organizational unit of the state ministry/institution/work unit Regional apparatus proven to have deviated from budget activities stipulated in the Law on APBN/Regional Regulations concerning APBD shall be punished with imprisonment and a fine following the provisions of the law.

Meanwhile, what is meant by statutory provisions is related to article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crime, namely any person to benefit himself or another person or a corporation, misusing his/her authority, opportunity, or means due to his/her position. or a position that can cause losses to the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp.50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

This article regulates the abuse of authority committed by someone official due to the presence of state financial loss. The provisions of article 34 paragraph (1) and (2) Law Number 17 of 2003 and Article 3 of Law Number 31 of 1999 show that criminal responsibility is prioritized in terms of accountability for policies or budget discretion carried out by regional heads so that it often occurs criminalization of the use of budgetary discretion.

Prioritizing the approach of accountability for criminal penalties in the misappropriation of budget discretionary acts due to the post-reformation of excessive hatred towards the New Order which was laden with corruption, law enforcement officials always used criminal penalties as a deterrent to the perpetrators of criminal acts of corruption which of course now needs to be reviewed. This is because there has been a shift in the measure of the success of law enforcement efforts against corruption, which can no longer be measured by putting as many corruptors or state officials in prison as possible. However, prioritizing the aspects of prevention and repayment of state financial losses by undertaking preventive supervision, guidance, and legal

assistance for budget management by Law Enforcement Officials (APH) and State Audit Agency (BPK) and Regional Government Internal Apparatus Supervisors (APIP) on each expenditure. budget for the implementation of activity programs sourced from state finances.

The provisions of Article 3 of Law Number 31 Year 1999 according to Eddy OSHiariej when he was an expert witness in the Constitutional Court decision Number 25/ PUU-XIV/2016 revealed that based on the research results of the Research and Development Agency for the Attorney General's Office of the Republic of Indonesia in 2009, more than 80 % were suspected of corruption. have been charged under Article 2 paragraph (1) and Article 3 of Law Number 31 Year 1999 concerning the Eradication of Corruption Crime, the question is why the two articles are often used by law enforcement officials? First, both articles contain vague norms that can be used to ensnare anyone who committing a criminal act of corruption. The vague norm is essentially contrary to the *nullum crimen nulla poena sine lege certa* principle as an absolute requirement contained in the legality principle. Second, the logical consequence of an obscure norm, in court is very easy to prove by the public prosecutor. Third, the law to eradicate corruption as a whole is compiled in an atmosphere of mystical reformation which demands to eradicate corruption to its roots so that it uses criminal law as a law of revenge (*lex talionis*). The use of criminal law as revenge is no longer following the modern criminal law paradigm as in the UN convention on anti-corruption which implicitly embracing corrective, rehabilitative, and restorative justice.

The obscure norm in article 3 and article 2 paragraph (1) of Law Number 31 of 1999 is the norm for the word *can*. The existence of the word *can* indicate that the offense focuses more on deeds and not on consequences. That means there is no need for state losses in real terms, but it is sufficient that the potential state financial loss of the state official can be subject to article 2 and article 3 of Law Number 31 of 1999. Following the origin of 1 number 22 Law Number 1 of 2004 concerning State Treasury, it means that state/regional losses are shortages. money, securities, and real and definite amount of goods as a result of an act against the law, whether deliberately or negligently. According to Harjono while giving expert in Constitutional Court Decision No. 25/PPU-XIV/2016 words *can* experiment with the same interpreted according to the understanding the law of a trial cannot be on the wearing of criminal sanctions because it is not something that has legal consequences for certain. While article 2 and Article 3 of Law Number 31 Year 1999 includes the word *can* which is equated with probation, which means that any official who commits an attempted criminal act of corruption can be punished under the provisions of Article 2 and Article 3 of the law on corruption. According to the explanation of article 2 and article 3 of Law Number 31 Year 1999, it must be removed and the word *can* be removed from the formula according to the nature of the actual norm as a norm.

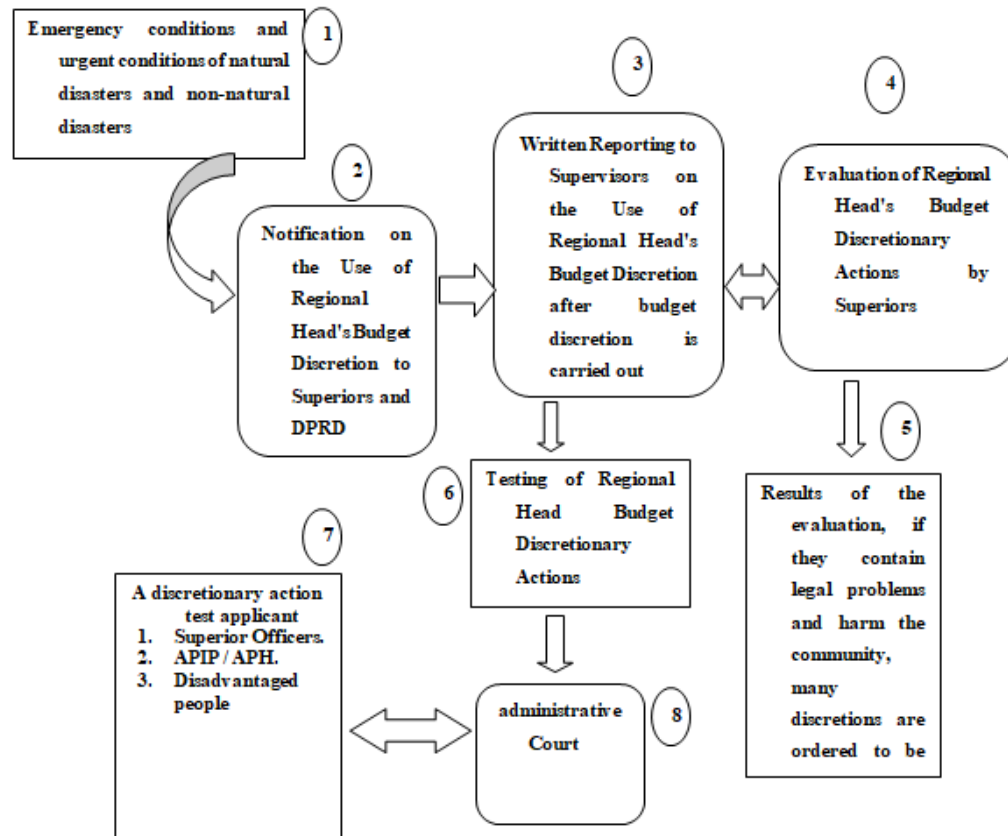
Based on the aforementioned problems in its implementation, therefore based on current legal conditions it is necessary to review the implementation concept of the use of regional head budget discretion and the discretionary accountability of regional heads following legal needs and the development of current legal concepts where criminal sanctions are the final law in accountability for state administrative law (*ultimum remedium*).

### **Concepts and Models for Appropriate Use of Budget Discretion and Accountability for Regional Heads of Budget Discretion in Indonesia.**

The concept of using regional head discretionary budgets and the regional head discretionary accountability model that is appropriately enforced in Indonesia is the use of budget discretion without approval from direct superiors before the use of budget discretion is taken because if the superior officials (governors and interior ministers) do not give temporary approval the condition emergency natural disasters must immediately take a discretionary budget action, it will cause discretionary regional head budget without superior approval can be

considered an action that has no legal legality and can be considered an illegal act even though it is based on the good faith of a regional head. on the use of discretionary budgets for regional heads in Indonesia, namely without the approval of the superior or without the need for prior approval from the superior before the use of budget discretion is carried out as stipulated in Article 25 paragraph (1) of Law No. 30 of 2014 concerning Government Administration.

The concept of using discretionary budgets for regional heads without superior approval can be seen in the chart below:



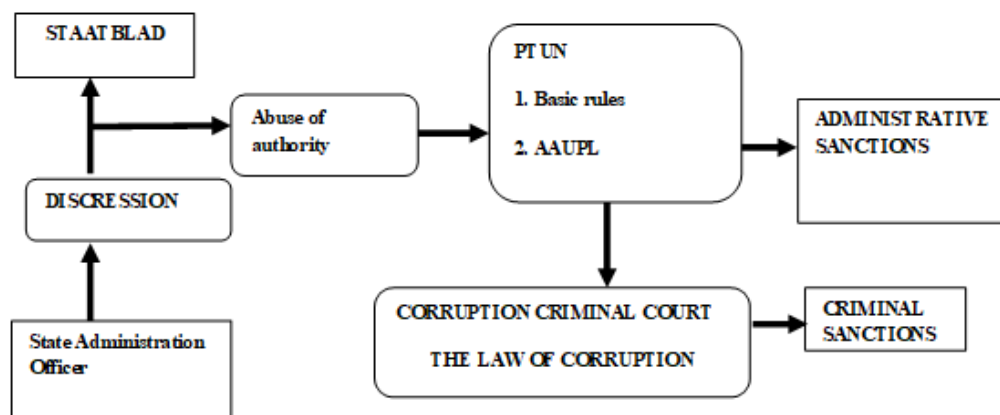
**CHART 1**  
**CONCEPT CHART FOR THE USE OF DISCRETIONARY HEADS OF REGIONS WITHOUT SUPERVISORY APPROVAL**

The explanation of this concept chart is (1) discretionary budgets of regional heads can be made if the state of disaster emergency with the criteria of the problems that appear to be related to the public interest, the problem appears suddenly and is outside the plan, the legislation has not been set it up, the procedure cannot be completed according to normal administration, if the matter cannot be resolved quickly, it will result in losses for the public interest. (2) The use of discretionary budgets for regional heads with sufficient notification to DPRD and superiors of regional heads for the Regent and/or Mayor to notify the Governor and to the Governor of the notification to the Minister of Home Affairs. (3) Written reporting to the superior of the regional head on the discretionary actions of the head's budget. Regions after the use of budget discretion. (4) The superior of the regional head evaluates the discretionary act of the budget. (5) The results of the evaluation if legal problems are found that harm the community, the superior officials of the regional head can order to revoke the discretionary act of the regional head's budget. (6) If the head regions that do not revoke budget discretionary actions can be examined at the State

Administrative Court. (7) People who feel aggrieved, Government Internal Supervisory Apparatus (APIP) and Law Enforcement Officials (APH) as well as superior regional head officials can request a review of the chief budget discretionary actions. area to the State Administrative Court. APIP and APH can request a discretionary act of regional heads' budget judgments because they are related to the element of abuse of authority in criminal acts of corruption. (8) The State Administrative Court (PTUN) hears and decides on discretionary acts of regional head budgets that are requested by the injured community, Enforcement Officials Law, the Government Internal Supervisory Apparatus (APIP), and the direct supervisor of the regional head as a form of regional head accountability. And if it is found that there is an element of abuse of authority that has implications for state losses, APH can follow up in the criminal legal process for criminal acts of corruption.

The accountability model for the use of discretionary budgets by regional heads through state administrative court trials and accountability in criminal legal proceedings if elements of corruption are found. The question is why it is necessary to involve two court institutions, namely the state administrative court and the corruption court in examining the discretionary acts of regional heads' budgets. This is because, on the one hand, there is a need for legal protection for officials or regional heads who are serious about carrying out regional governance and bringing the public good. on the other hand, how can the position of the state administrative court not be used as a bulwark against corruptors so that this balance is important to maintain good and clean government authority.

In terms of assessing the discretionary act of the regional head whether there is an act against the law or not as well as the deviation of budget discretionary action, it is necessary to test it through the state administrative court and if the results of the PTUN examination find an act against the law resulting in state financial loss, then the accountability is carried out based on a criminal legal process. through public courts. The discretionary accountability model for regional heads through state administrative courts and general courts can be illustrated in the chart below:



**CHART 2**  
**CONCEPT OF LAW ENFORCEMENT AGAINST THE USE OF DISCRETION BY**  
**ADMINISTRATIVE OFFICIALS CONCERNING ABUSE OF AUTHORITY**  
**CATEGORIZED AS A CORRUPTION CRIME**

State administrative court judges can examine, adjudicate and decide the discretionary authority of the regional head's budget if it is based on the suspicion that there is an error in determining the discretionary decision of the regional head's budget. Furthermore, in examining the discretionary act of the regional head's budget, the basis for testing used by the PTUN judge is General principles of proper governance or general principles of good governance. Decisions

on discretionary acts of regional heads' budgets should be final and binding without any legal remedy such as examining ordinary state administrative decisions so that they can be directly implemented by the parties. The PTUN declared the discretionary decision canceled and the action was an act against the law to the regional head and/or state administrative bodies/officials who were ordered to revoke the discretionary budget decision. N, then the discretionary act of the regional head's budget is declared an act that has legal legality. Thus the discretionary decision of the regional head's budget who issued at the state administrative court is not only an accelerated trial process to obtain a decision, but legal certainty is also accelerated so that it can be immediately implemented by the disputing parties, including government internal supervisors and law enforcement officers. Against corruption cases, to further process according to the provisions of the law in the field of corruption crime is what is meant by the enforcement of criminal law as *ultimum remedium* (the provision of the most recent sanctions) if the state administrative-legal institutions cannot be implemented.

### CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the discussion above, several things can be concluded, namely:

1. The implementation of the discretionary use of regional heads' budgets can be carried out during natural disasters such as earthquakes, tsunami, and liquefaction that occurred in Palu City and Central Sulawesi Province.
2. Discretionary budgets of regional heads in the event of a natural disaster can be the use of an emergency budget or unexpected expenses (BTT), if the budget is not sufficient to do spending yet available budget and local leaders can shift budgets and budget reductions between organizational units, between types of activities and between types of shopping.
3. The concept of proper use of budget discretion in Indonesia is the use of budget discretion without superior approval with an accountability model after the use of budget discretion is carried out by reporting to the superior official or regional head as well as the accountability model through the state administrative court mechanism and if there are indications of criminal acts of corruption it can be followed up. to the general court or court of corruption by the Government Internal Supervisory Apparatus (APIP) and Law Enforcement Officials (APH).

The suggestions that can be given in this paper are

1. To the government to harmonize laws and regulations between law in the field of state finance, the law in the field of criminal acts of corruption, and law in the field of state administrative law.
2. There is a need for the elimination of article 25 paragraph (1) of Law Number 30 of 2014 concerning Government Administration and the abolition of article 49 of Law Number 5 of 1986 concerning State Administrative Courts relating to several exempted cases.

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