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MIMBAR KEADILAN

Reconstruction of The Concept of Authority in Administrative Law Related to National Strategic Projects Based on Substantive Justice

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Abstract

The National Strategic Project (PSN) is one of the government's efforts to prosper society, although its implementation often causes problems in aspects of administrative authority, risk management, state finances, and the dimension of justice. To comprehensively analyze and integrate the aspects of administrative authority, risk management, state finance, and justice within a complete conceptual framework, particularly in the context of PSN. This research is a normative legal study with a conceptual and legislative approach. Discretion plays an important role in the implementation of PSN, although it must be carried out within the framework of legislation and the Principles of Good Governance (AUPB) as the basis for legitimacy and testing of administrative actions. In the context of PSN, characterized by high risk, high capital, and high discretion, there is a tension between the need for policy flexibility and the demand for state financial accountability, especially in distinguishing between policy risk and losses due to abuse of authority. Based on the perspective of substantive justice, the assessment of state losses should not rely solely on formal aspects but must also consider good faith, policy objectives, and their benefits to the public. Therefore, this research reconstructs the concept of administrative authority based on risk-based administrative justice, which integrates aspects of administration, state finance, and justice, thereby enabling the realization of a more adaptive, accountable, and substantively just use of authority.

1. Introduction

The development of the state's role in the modern constitutional system shows a paradigm shift from a minimal state to a welfare state, positioning the state as the main actor in driving economic development and societal welfare.[1] The concept of the welfare state from a global perspective is also relevant to the 2030 Sustainable Development Goals (SDGs), emphasizing the state's important role in sustainable development and improving the quality of life for every citizen.[2] In that framework, the state not only functions as a regulator but also as an active participant in economic activities thru various policy instruments, including the implementation of National Strategic Projects (PSN) as part of the development acceleration agenda.

Normatively, the exercise of state authority in the field of development cannot be separated from the principle of the rule of law as stipulated in Article 1 paragraph (3) of the

[1] Dicky Eko Prasetio and Muh. Ali Masnun, "Beneficiary Pays Principle : Rekonstruksi Pengaturan Pelindungan Lingkungan Dalam Mewujudkan Kelestarian Sumber Daya Air," *Jurnal Hukum Lingkungan Indonesia* 11, no. 1 (October 9, 2025): 1–22, https://doi.org/10.38011/jhli.v11i1.957.
[2] Bagus Surya Dharma et al., "Harmonization of Laws Regulating the Formation of Village Government Work Plan Drafting Teams," *Ex Aequo Et Bono Journal Of Law* 2, no. 2 (January 31, 2025): 69–81, https://doi.org/10.61511/eaebjol.v2i2.2025.1092.

1945 Constitution of the Republic of Indonesia (UUD NRI 1945). This principle requires that every government action must be based on the law (*rechtmatigheid van bestuur*) and carried out within the framework of legitimate authority.[3] In the context of state administrative law, that authority is obtained through the mechanisms of attribution, delegation, and mandate, which then serve as the basis for government officials in making decisions and taking actions.[4]

Regulations regarding the use of authority by government officials are governed by Law Number 30 of 2014 concerning Government Administration (Law No. 30/2014)), which emphasizes that government officials have the authority to make decisions and/or take actions, including through the use of discretion under certain conditions. Discretion in Article 1, point 9 of Law No. 30/2014 is interpreted as decisions and/or actions determined and/or taken by government officials to address concrete issues when legislation provides options, is unregulated, incomplete, or unclear, as well as when there is governmental stagnation. The regulation of discretion as an important instrument in the use of administrative authority has been emphasized in Article 22 paragraph (2) of Law No. 30/2014, which explicitly reinforces the legal status of state administration in relation to the need for flexibility in governance, especially in facing the dynamics of complex public policies that cannot always be anticipated by static legal norms.

Articles 22 to 24 of Law No. 30/2014 also emphasize that the use of discretion aims to facilitate the administration of government, fill legal vacuums, and provide legal certainty in certain situations, while still requiring that discretion must be exercised in accordance with the grant authority, not contrary to laws and regulations, and guided by the General Principles of Good Governance (AUPB).[5] Based on this, normatively, discretion is not a form of deviation from the law, but rather an integral part of the state administrative legal system designed to ensure the effectiveness of governance, especially in the context of high-risk policies such as National Strategic Projects.

Nevertheless, the use of discretion is not without limits. This has been emphasized in Article 24 of Law No. 30/2014, which stipulates that every exercise of discretion must align with the grant authority, not contradict the provisions of legislation, and adhere to the AUPB. In that framework, discretion cannot be understood merely as a space of freedom for public officials in making decisions, but also as an authority that has been limited by legal norms from the outset to prevent the abuse of power.

Based on Law Number 17 of 2003 concerning State Finance (Law No. 17/2003), specifically Article 3 paragraph (1), it is emphasized that state financial management must be carried out in an orderly manner, in compliance with laws and regulations, efficiently,

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[3] Henry DP Sinaga Agus P. Priyono, "Is Administrative Justice A Problem-Solving Of Tax Dispute?," *Journal of Tax Law and Policy* 1, no. 7 (2022): 63–70, https://scholar.archive.org/work/xok5dp27rrap7iy5byjnymhmpm/access/wayback/https://scientium.co.id/journals/index.php/jtlp/article/download/59/27.

[4] Hananto Widodo, Dicky Eko Prasetio, and Fradhana Putra Disantara, "Relasi Kekuasaan Antar Presiden Dan Wakil Presiden Dalam Sistem Ketatanegaraan Republik Indonesia," *Pandecta Research Law Journal* 15, no. 1 (2020): 13–25, https://doi.org/10.15294/pandecta.v15i1.24554.

[5] Wicipto Setiadi Saputra, M. Reza, "Implementation of General Principles of Good Government in Decision Number 8/G/2013/PTUN-KPG," *International Journal of Law and Society* 3, no. 1 (2024): 825–31, https://doi.org/10.57235/qistina.v3i1.2429.

economically, effectively, transparently, and responsibly, with due regard for a sense of justice and propriety. In this regime, every use of state finances must be accountable, and the existence of state losses becomes an important indicator in assessing legal violations. In practice, in the implementation of PSN, the level of policy complexity increases along with the broad scope and interests involved. Normatively, the PSN are regulated thru government policies, among others in Presidential Regulation Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects (Presidential Regulation No. 3/2016), which has been amended several times by Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects (Presidential Regulation No. 109/2016), which provides a legal basis for the acceleration of national priority projects.[6] The characteristics of PSN, which require significant investment, face high levels of risk, and demand speed in decision-making, ultimately encourage the optimization of administrative discretion by government officials. In its implementation, the execution of PSN often involves State-Owned Enterprises (BUMN) as executors, which legally occupy a hybrid position between public entities and business entities as regulated in Law Number 19 of 2003 concerning State-Owned Enterprises and its amendments, the latest of which was amended by Law Number 16 of 2025 concerning the Fourth Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (Law No. 16/2025).[7]

Problems arise when losses incurred in the implementation of PSN are directly classified as state financial losses in the financial sense, without considering that these losses may be a consequence of calculated policy risks. This approach implies a tendency to equate every loss with abuse of authority, thereby opening the door to disproportionate legal accountability. In practice in Indonesia, this phenomenon can be observed, among other things, in several toll road infrastructure projects undertaken by state-owned enterprises such as PT Waskita Karya (Persero) Tbk and PT Hutama Karya (Persero). The construction of the Trans-Sumatra toll road, for example, was carried out through a government assignment scheme with the consideration of accelerating national connectivity.[8] However, in the initial stages of operation, several toll segments experienced suboptimal traffic, which impacted cash flow and potential financial losses. In this context, the losses are better understood as consequences of long-term policies and infrastructure investment risks, rather than merely as indications of deviations in the use of authority.

Another example can be found in strategic projects in the energy sector involving PT PLN (Persero), particularly in the 35,000 MW power plant development program.[9] This

[6] Shandy Aura and Muhammad Zaenal Abidin, "Perlindungan Hak Ulayat Masyarakat Adat Dalam Proyek Strategis Nasional (PSN): Studi Kasus Pembangunan Ibu Kota Nusantara (IKN)," *Sanskara Hukum Dan HAM* 4, no. 01 (2025): 241–54, https://doi.org/10.58812/shh.v4i01.540.

[7] Thamasi Masnun, Muh Ali, Prasetio, Dicky Eko, Konara, "Financial Reconstruction of State-Owned Enterprises in Indonesia as Special State Finances: Public or Private Law?," *Jurnal Hukum Bisnis Bonum Commune* 9, no. 1 (2026): 44–62, https://doi.org/https://doi.org/10.30996/jhbbc.v9i1.132464.

[8] Intan Zania et al., "Penugasan Pembangunan Jalan Tol Trans Sumatera Pada BUMN," *Binamulia Hukum* 12, no. 2 (January 4, 2024): 443–57, https://doi.org/10.37893/jbh.v12i2.674.

[9] Jahen Fachrul Rezki Anggoroa, Yohanes Dwi, "The Impact of the 35,000 MW Power Generation Program on Employment and Poverty Levels in Indonesia," *Jurnal Ekonomi Dan Pembangunan Indonesia* 26, no. 1 (2026): 69–85, https://doi.org/https://doi.org/10.7454/jepi.v26i1.1635.

program is designed to meet the long-term national electricity needs, but in its implementation, it faces various challenges, such as changes in electricity demand projections, energy price fluctuations, and technical constraints. As a result, there are projects that experience delays or do not achieve the expected level of utilization. If these conditions are directly classified as state financial losses without considering policy rationality and external factors, it has the potential to blur the line between policy risk and abuse of authority and create legal uncertainty for decision-makers.

From the perspective of administrative law, abuse of authority has certain criteria, including the use of authority that deviates from the purpose of granting authority (*detournement de pouvoir*) or exceeding the limits of authority (excess of power).[10] However, in practice, the line between administrative errors and policy risks becomes blurred, especially when the approach of state financial law places more emphasis on the consequences in the form of state losses. This condition indicates a disharmony between the regime of state administrative law and state financial law. On one hand, administrative law provides space for the use of discretion as an instrument to achieve government objectives. On the other hand, state financial law tends to adopt a more rigid approach by making state losses the main indicator of accountability. The legal disharmony caused by the lack of synchronization between administrative law and state financial law has the potential to create legal uncertainty and encourage the phenomenon of policy criminalization.

Substantively, a legal approach that overly emphasizes formal legality also has the potential to overlook the dimension of substantive justice. In this context, not all actions that are legally valid can be considered fair, especially if the policy does not take into account aspects of proportionality, rationality, and the public interest in a balanced manner. On the contrary, not all state losses can be immediately considered a form of injustice if those losses are part of the inherent risks in public policy. Based on this, a conceptual reconstruction of the use of administrative authority in the context of managing PSN is necessary, integrating approaches from administrative law, state financial law, and justice theory. This reconstruction needs to consider the development of the risk-based governance concept, which emphasizes the importance of risk management in the public policy-making process. On the other hand, there is a need to redefine the concept of state financial loss, not only as measurable financial loss but also in relation to the policy context and principles of administrative justice. With this approach, it is hoped that a balance can be created between the protection of state finances and providing space for public officials to use discretion responsibly.

Referring to the description, there is a need to develop a conceptual model that can integrate the use of administrative authority, risk management in public policy, and principles of justice in the context of PSN. This research is important to fill that gap, while also contributing to the development of state administrative law and state financial law that are more adaptive, responsive, and just. Comprehensive research and studies on the interrelation

[10] Sri Nur Hari Susanto, Peni Susetyorini, and Kadek Cahya Susila Wibawa, "The Coherence of Good Administration and Good Governance in Government (A Conceptual Approach)," *International Journal of Multidisciplinary Research and Analysis* 07, no. 03 (2024): 1100–1105, https://doi.org/10.47191/ijmra/v7-i03-31.

between administrative authority, state financial management, and the principle of justice have indeed developed in various branches of legal science, particularly in administrative law and state financial law. Nevertheless, these developments still tend to be somewhat fragmented, with each aspect being discussed partially without any comprehensive integration, especially in the context of public policies that involve high levels of risk, such as PSN.

In the realm of state administrative law, research related to authority and administrative discretion has been quite extensive, especially emphasizing the aspect of legitimacy in the use of discretion by public officials. This is in line with the research conducted by Widodo, et al. (2024), which discusses discretion as an important instrument for regional heads in implementing various policies.[11] Discretion is generally positioned as an instrument to overcome the rigidity of norms and prevent governmental stagnation, with the main limitations being alignment to grant authority and adherence to AUPB. This regulation can normatively be found in Law No. 30/2014, specifically Articles 22 to 24, which regulate the purpose, scope, and conditions for the use of discretion. Several studies have also formulated parameters to assess the validity of discretion, such as rationality, proportionality, and accountability. However, most of these studies still operate within the framework of rule-based governance, thus not explicitly accommodating the risk dimension as a primary variable in administrative decision-making.

Meanwhile, from the perspective of state financial law, the main focus of research is more directed toward the concept of state financial loss and its accountability mechanisms.[12] State losses are commonly understood as a decrease in the state's wealth that is real and certain in amount; thus, the approach used tends to be quantitative and financially oriented. This approach is reflected in Law No. 17/2003 on State Finance, specifically Article 3 paragraph (1), which emphasizes the principles of orderly, rule-abiding, efficient, economical, effective, transparent, and accountable state financial management. In practice, this approach is often associated with the eradication of corruption, where state losses become one of the important elements. Several studies have begun to criticize the tendency to equate every loss with an error or abuse of authority, although these criticisms are generally still limited to the normative level and have not yet reached the stage of comprehensive conceptual reconstruction. This is in line with the research conducted by Iqbal, et al. (2026), which analyzes state financial losses in state-owned enterprises (SOEs) and the efforts for legal accountability.[13]

Furthermore, some studies highlight the phenomenon of policy criminalization, which is the tendency to treat administrative decisions as objects of criminal law enforcement when they cause state losses. These studies generally emphasize the negative impacts, such as the decreased courage of public officials in making decisions and the hindrance of policy

[11] Hananto Widodo et al., "Legal Implications of the Authority of Acting Regional Heads Based on Policy Regulations," *Indonesian Journal of Administrative Law and Local Government* 1, no. 1 (November 9, 2024): 65–81, https://doi.org/10.26740/ijalgov.v1i01.35774.
[12] Adi Darmawansyah, "People's Role as Victims in State Financial Corruption," *Indonesian Journal of Multidisciplinary Science* 2, no. 4 (2023): 2284–93, https://doi.org/10.55324/ijoms.v2i4.420.
[13] Iqbal Rahmansyah Yusuf et al., "Tinjauan Yuridis Kerugian Negara Dalam Tindak Pidana Korupsi Badan Usaha Milik Negara," *Perspektif* 31, no. 1 (2026): 22–34, https://doi.org/10.30742/perspektif.v31i1.976.

innovation. Some studies even propose the need for a clearer separation between administrative errors and criminal offenses, as well as strengthening the protection of discretion used legitimately. However, this discussion has not yet been systematically linked to the characteristics of high-risk public policies, including in the context of PSN. This is as seen in the research conducted by Kasman S. (2025), which analyzes the sugar import policy implemented by Tom Lembong during his tenure as Minister of Trade, linking it to acts of corruption.[14]

Recent developments in public policy studies have introduced the concept of risk governance, which emphasizes the importance of risk management in the decision-making process. This approach has developed within the discipline of public administration, emphasizing flexibility, adaptability, and the use of risk analysis as the basis for policy. Nevertheless, in the context of law, particularly administrative law and state finance, the integration of this concept is still relatively limited and tends to be descriptive, not yet deeply addressing the normative dimension, especially in relation to the concepts of authority, discretion, and legal accountability. In the perspective of legal philosophy, the theory of justice has developed with an emphasis on substantive justice that not only looks at procedural aspects but also the outcomes and impacts of policies. This theory provides a normative foundation to assess whether a policy reflects justice, particularly in the distribution of benefits and burdens. However, the application of the theory of justice in the study of administrative law and state finance remains limited and has not yet been directly integrated into the analysis of the use of authority or the management of state finances.

Based on the aforementioned description, it can be understood that despite numerous relevant studies, there has yet to be a comprehensive research that integrates the aspects of administrative authority, risk management, state finance, and justice into a cohesive conceptual framework, particularly in the context of PSN. This research focuses on three main aspects: (i) the concept of administrative authority in the management of PSN, (ii) the relationship between administrative discretion and the risk of state financial loss in PSN from the perspective of substantive justice, and (iii) the reconstruction of the concept of administrative authority based on risk governance in realizing substantive justice.

2. Methods

This research specifically aims to contribute to the development of state administrative law and state financial law that are more adaptive, responsive, and substantively just, using normative legal research. The main characteristic of normative legal research is the use of authoritative legal materials in the form of legislation, which are then analyzed based on doctrines, theories, principles, and legal teachings that have developed in legal science.[15] The primary legal materials used in this research are: the UUD NRI 1945, Law No. 17/2003, Law No. 30/2014, and Presidential Regulation No. 3/2016. The secondary legal materials used are journal articles and research findings discussing PSN, substantive justice, state administrative

[14] Mochammad Kasman, "Tuduhan Pelanggaran Wewenang Dalam Kasus Korupsi Tom Lembong: Perspektif Hukum," *Locus Journal of Academic Literature Review* 4, no. 3 (2025): 168–76.

[15] Masnun, Muh. Ali, Dicky Eko Prasetio, Maalikatussofa "Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis," *Novum: Jurnal Hukum* 12, no. 3 (2025): 372–84, https://doi.org/https://doi.org/10.2674/novum.v12i03.74364.

law, and state financial law. The non-legal materials used are legal dictionaries as well as journal articles and research findings in non-legal fields, such as public policy, which are relevant to this research. The collected legal materials were then subjected to a comprehensive prescriptive analysis, where the legal materials were analyzed based on doctrines, theories, principles, and legal teachings that have developed in legal science, adjusted to the existing legal issues. The result of the prescriptive analysis is the presence of a legal solution, in this case, a reconstruction of the concept of administrative authority based on risk governance to achieve substantive justice.[16] The approach used is a conceptual and legislative approach.

3. Results and Discussion

3.1. The Concept of Administrative Authority in the Management of National Strategic Projects

PSN is a series of development programs or activities designated by the government as top priorities because they have a significant impact on economic growth, equitable development, and the widespread improvement of community welfare.[17] Constitutionally, the PSN are development policy instruments that are substantively closely related to the goals of the state as formulated in the Preamble of UUD NRI 1945, particularly in the aspect of advancing the general welfare. In this context, the implementation of PSN, which includes various infrastructure, energy, and economic zone developments, can be viewed as a concrete manifestation of the state's efforts to achieve general welfare and social justice for all Indonesian people. The relevance becomes even more apparent when linked to PSN as one of the instruments in fulfilling the constitutional rights of the community, such as the fulfillment of constitutional rights in Article 34 of UUD NRI 1945, which regulates the state's responsibility toward the poor and abandoned children, and is also correlated with PSN, especially in terms of basic infrastructure development and public services aimed at reducing social disparities and improving community access to basic needs.

On the other hand, PSN is also relevant to other constitutional rights, such as Article 28H paragraph (1) of UUD NRI 1945, which guarantees the right of every person to live a prosperous life both physically and mentally, and to obtain a good and healthy living environment, also demanding that the implementation of PSN pay attention to the principles of sustainable development and environmental protection. Thus, PSN is not only a technocratic development policy but also has strong constitutional legitimacy as a state instrument in realizing national goals in accordance with the mandate of UUD NRI 1945. In legislation, the regulation of PSN is generally governed by Presidential Regulation No. 3 /2016 concerning the Acceleration of the Implementation of National Strategic Projects, where Article 1 emphasizes that, "National Strategic Projects are projects carried out by the Government, Regional Governments, and/or business entities that have a strategic nature for the improvement of growth and equitable development to enhance the welfare of the community and regional development." In another regulation, PSN is also governed by Government Regulation Number 42 of 2021 concerning the Ease of National Strategic Projects

[16] Tunggul Ansari Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *ACLJ* 4, no. 1 (2023): 5.
[17] Tessa Talitha, "Megaprojects as a 'Space of Exception': Unraveling Institutional and Policy Dynamics in Indonesia's National Strategic Projects Agenda," *Environment and Planning C: Politics and Space* 44, no. 1 (February 25, 2026): 104–22, https://doi.org/10.1177/23996544251353061.

(GR No. 42/2021), particularly in Article 1 paragraph 1 which states that, "National Strategic Projects are projects and/or programs carried out by the Central Government, Regional Governments, and/or Business Entities that have a strategic nature for growth and equitable development to create jobs and improve community welfare."

From the definitions above, it can be concluded that PSN essentially has two important aspects, namely being carried out by the government, whether by regional governments or business entities, which in the implementation of PSN perform governmental functions, and PSN is carried out with a strategic nature to ensure the realization of economic growth and job creation. In general, in Article 1, paragraph 1 of Presidential Regulation No. 3/2016, Article 1, paragraph 1 of GR No. 42/2021, there are differences in the definition of NSPs, particularly regarding the orientation of NSP implementation. In Article 1, paragraph 1 of Presidential Regulation No. 3/2016, NSPs are oriented toward achieving equitable development to improve community welfare and regional development. Meanwhile, in Article 1, paragraph 1 of GR No. 42/2021, there is an orientation toward growth and equitable development in efforts to create jobs and improve community welfare. This difference in definition is due to the enactment of Law Number 11 of 2020 concerning Job Creation, which was later amended by Law Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Law No. 6/2023), one of whose orientations is to increase the number of jobs through job creation for the community.[18]

PSN, as formulated in the various regulations mentioned above, is generally carried out in strategic sectors that encompass vital sectors such as transportation infrastructure, energy, water resources, telecommunications, as well as the development of industrial and tourism areas. The designation of a project as a PSN is based on its urgency, strategic value, and contribution to achieving medium- and long-term national development targets. In its implementation, PSN often receives various conveniences, such as expedited permits, financial support, and cross-ministerial and institutional coordination to ensure the project runs effectively and on time. The existence of PSN also reflects the active role of the state in intervening in development to address inter-regional disparities, enhance national connectivity, and boost Indonesia's competitiveness on the global stage.

The implementation of PSN is relevant in various fields of law, one of which is the field of state administrative law. The relevance of PSN in the field of state administrative law is very close, because in essence, PSN is a product of public policy implemented through the authority of government administration within the framework of the rule of law. This is fundamentally in line with Paul Craig's view, which emphasizes that administrative law not only serves as an instrument of power control but also as a means to ensure that public administration operates effectively in achieving the welfare goals of society.[19] In this perspective, PSN is not only understood as a physical development project, but also as a series of government actions (*bestuurshandelingen*) involving various forms of decisions and administrative actions, such as

[18] Irfa Nugroho, Arinto, Ronaboyd, Emmilia Rusdiana, and Sonny Zulhuda Prasetio, Dicky Eko, "The Impact of Labor Law Reform on Indonesian Workers : A Comparative Study After the Job Creation Law," *Lex Scientia Law Review* 8, no. 1 (2024): 67–108.

[19] Wahyu Desiana and Zamroni Abdussamad, "Reconstructing Administrative Remedies from the Perspective of Administrative Justice Principles and Legal Certainty," *Journal of Public Representative and Society Provision* 6, no. 1 (February 13, 2026): 256–74, https://doi.org/10.55885/jprsp.v6i1.841.

site selection, granting permits, land acquisition, and the use of discretion by public officials. The entire process is subject to the fundamental principles of state administrative law, including the principle of legality, the principle of legal certainty, the principle of utility, and the principle of prudence, collectively known as AUPB.[20] In this context, the implementation of the PSN must ensure that every policy and administrative action has a clear legal basis, is not arbitrary, and is legally accountable.

One important aspect of PSN related to state administrative law is the use of discretion by the government to expedite project implementation. The discretion, although justified in certain conditions to overcome bureaucratic stagnation, must still be limited by legal norms to prevent abuse of power.[21] Here lies the important role of Law No. 30/2014 as an instrument to control government actions, particularly in regulating the limits, conditions, and mechanisms for the use of discretion. Thus, the PSN within the framework of state administrative law reflects a dynamic relationship between the need for accelerated development and the obligation to uphold the principles of the rule of law, so that development is not only effective but also fair, transparent, and accountable.

PSN, as an instrument for accelerating development that has a wide impact on the economy and the welfare of society, essentially contains three important aspects from a legal perspective that must receive serious attention, namely high risk, high capital, and high discretion, because all three are inherently attached to the character of large-scale projects that involve many interests and resources. First, the high-risk aspect indicates that PSN has a high level of risk, both legally, socially, economically, and environmentally, such as the potential for land acquisition disputes, conflicts with local communities, environmental damage, and the possibility of project failure that could harm the state's finances.[22] Therefore, a strong regulatory framework, legal certainty, and comprehensive risk monitoring and mitigation mechanisms are needed to ensure that each stage of the project proceeds according to the prudential principle. Second, the aspect of high capital emphasizes that PSN requires very large financing, whether sourced from the State Budget (APBN), private investments, or government-business partnership schemes (KPBU), thus demanding transparent, accountable financial governance free from practices of corruption, collusion, and nepotism, considering the large funds involved have the potential to cause deviations if not balanced with an effective control system.

Third, the aspect of high discretion relates to the extensive discretionary space held by the government in determining, managing, and accelerating the implementation of PSN, including in terms of permits, location determination, and the provision of various facilities

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[20] Eny Sulistyowati Muh. Ali Masnun, Dicky Eko Prasetio, Mohd Badrol Awang, "Reconstructing Indonesia's Trademark Registration System through the Lens of General Principles of Good Governance to Realize Substantive Justice," *Journal of Law and Legal Reform* 5, no. 3 (2024): 891–912.

[21] Adam Muhshi and Fenny Tria Yunita, "Diskursus Pengujian Peraturan Kebijakan (Beleidsregel) Oleh Peradilan Tata Usaha Negara," *Media Iuris* 7, no. 2 (2024): 191–220, https://doi.org/10.20473/mi.v7i2.39218.

[22] Nurnaningsih Nurnaningsih, Irwansyah Irwansyah, and Irene Eka Sihombing, "Assessing Government Responsibility in Land Acquisition for National Strategic Projects," *Scholars International Journal of Law, Crime and Justice* 7, no. 09 (September 3, 2024): 334–38, https://doi.org/10.36348/sijlcj.2024.v07i09.001.

and conveniences; although this discretion is necessary to overcome bureaucratic obstacles and accelerate development. On the other hand, it also has the potential to lead to abuse of power if not constrained by good governance principles, such as transparency, accountability, proportionality, and effective oversight. Thus, these three aspects indicate that PSN is not merely an ordinary development project, but rather a complex policy entity laden with legal dimensions that require a holistic, integrative, and rule-of-law-based approach to achieve development goals without neglecting the protection of community rights, legal certainty, and the integrity of governance.

Within the framework of PSN, the right to a healthy environment, the rights of indigenous peoples, the right to meaningful public participation, and the right to legal certainty must be viewed as integral components of the realization of substantive justice, which is a standard of justice that demands the restoration of material conditions, recognition of collective identity, and protection of basic rights that enable a dignified life for affected communities. This is because each PSN carries ecological, social, and economic risks that can alter livelihood structures, displace the cultural bases of indigenous communities, damage ecosystems that support local food security, and create legal uncertainties that weaken the bargaining position of residents.

The concentration of executive power under the PSN framework has resulted in the marginalization of public participation and the erosion of appropriate democratic accountability, as centralized decision-making mechanisms often given urgent status allow executive authorities to expedite licensing processes, land acquisition, and resource allocation without substantial involvement from the affected communities. In practice, the delegation of authority to special bodies or the simplification of procedures often reduces the space for public consultation, narrows access to information, and closes opportunities for legislative control and independent administrative oversight, weakening both horizontal and vertical control.[23] This results in decisions that have a significant impact on land rights, the environment, and livelihoods, and prolonged conflicts that reflect a failure of the representation mechanism. Therefore, the concentration of executive power within the framework of the PSN demands procedural reforms, including strengthening meaningful public participation, adequate access to information, the role of legislative oversight and independent bodies, as well as fast and fair dispute resolution mechanisms so that strategic development does not sacrifice democratic principles and the protection of citizens' rights.

One of the important issues related to the regulation and implementation of PSN is the extensive use of discretion in PSN. Moreover, PSN is not only carried out by the government, both central and regional, but also by business entities, particularly State-Owned Enterprises (BUMN). BUMN, in carrying out PSN, holds two positions simultaneously: as entities executing governmental authority in implementing PSN and as business entities. Problems often arise due to the extensive use of discretion, accompanied by losses incurred, for example, by BUMN in implementing PSN. Discretion in PSN is intended for the government to make certain decisions or actions in concrete situations to accelerate development, especially when

[23] Akhyar et al., "Freies Ermessen in the Delegation of Authority From District Government To Village Government," *Jurnal Ilmiah Peuradeun* 11, no. 2 (2023): 615–32, https://doi.org/10.26811/peuradeun.v11i2.851.

legislation has not clearly regulated it or there is stagnation in the bureaucratic process. This aligns with Van Vollenhoven's view, which emphasizes that the characteristic of state administrative law is "*staat in beweging*," thus focusing on flexibility according to the concrete conditions present in society.[24]

Discretion is an inherent part of administrative authority in administrative law, so its use cannot be separated from legitimate sources of authority, namely attribution, delegation, and mandate.[25] Attribution is the granting of original authority directly sourced from the constitution or laws to a government organ to act in a specific field. In this context, discretion exercised by officials who obtain authority through attribution has strong legitimacy because it is directly attached to positions established by legal norms. Meanwhile, delegation is the transfer of authority from a higher-ranking official or organ to a lower-ranking official, where responsibility and authority shift to the delegatee.[26] Within this framework, the use of discretion by the delegatee must remain within the limits of the delegated authority and not exceed the scope defined by the delegator. As for a mandate, it is the delegation of authority to act on behalf of the mandator, but the legal responsibility remains with the mandator.[27] Therefore, in the use of discretion based on a mandate, the executing officials do not have full authority, but only exercise authority on behalf of the mandator, so their discretion is more limited and must strictly adhere to the instructions and policies of the mandator. Thus, it can be understood that discretion does not stand alone as freedom of action, but rather is part of administrative authority that must have a clear basis of legitimacy and be exercised in accordance with the characteristics of the source of authority underlying it, to ensure legal certainty and accountability in the administration of government.

Normatively, discretion is regulated in Law No. 30/2014, which grants authority to government officials to act based on their own judgment for the public interest, provided that it does not conflict with laws and regulations, aligns intending to grant authority, and adheres to AUPB. In the context of PSN, discretion is often used in aspects of licensing, expediting land acquisition, determining project locations, and simplifying administrative procedures to overcome obstacles that could hinder the realization of strategic projects. Article 23 of the AP Law essentially provides prerequisites for the exercise of discretion, namely: (i) when a regulation provides options for a decision and/or action, (ii) when the regulation does not regulate, (iii) when the regulation is incomplete or unclear, and (iv) when there is a governmental stagnation for broader interests.

The concept and limitations of the use of administrative authority, particularly discretion, in the management of PSN is a very crucial issue within the framework of state

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[24] Sri Nurhari Susanto, "Komponen, Konsep Dan Pendekatan Hukum Administrasi Negara," *Administrative Law & Governance Journal* 4, no. 1 (2021): 144–57.

[25] Purwanto Purwanto et al., "Streamlining Regional Regulations with Omnibus Law for Legal Harmonization," *Rechtsidee* 12, no. 2 (December 26, 2024): 7–13, https://doi.org/10.21070/jihr.v13i1.1038.

[26] Akhyar et al., "Freies Ermessen in the Delegation of Authority From District Government To Village Government."

[27] Hezron Sabar Rotua Tinambunan et al., "Recentralization of Mining Licensing Authority and Its Impact on Local Autonomy in Indonesia," *Jurnal Suara Hukum* 7, no. 2 (August 26, 2025): 520–39, https://doi.org/10.26740/jsh.v7n2.p520-539.

administrative law, considering the characteristics of PSN that are fraught with complexity, the need for acceleration, and high potential legal risks. From the perspective of administrative law, discretion is understood as the authority granted to administrative officials to make decisions or take actions in specific situations when legislation does not provide complete, clear, or policy-choice regulations. Discretion becomes an important instrument in the implementation of PSN because these projects often face field dynamics that cannot be fully predicted or accommodated by general and abstract legal norms. Therefore, the use of discretion allows public officials to maintain the continuity and effectiveness of project implementation without being hindered by gaps or ambiguities in the norms.

The use of discretion is not unlimited. In the doctrine of administrative law, discretion must adhere to the principle of legality in administrative law, which not only emphasizes compliance with regulations but also with the AUPB. The position of the AUPB in the use of discretion has a very fundamental function, both preventively and repressively, within the framework of administrative law. Preventively, AUPB serves as a normative foundation that determines whether a discretionary action is appropriate and permissible for an administrative officer to undertake. In this case, AUPB serves as a legal parameter that must be adhered to from the beginning of the decision-making process and/or actions in the implementation of discretion.[28] This means that before discretion is used, government officials must ensure that the actions align with principles such as legal certainty, utility, impartiality, precision, not abusing authority, and transparency. Thus, AUPB functions as an "initial filter" that prevents the emergence of discretionary decisions that have the potential to violate the law or harm public interests, ensuring that discretion is not exercised arbitrarily, but remains within the corridors of rationality and administrative propriety.

Repressively, AUPB holds a position as an instrument for testing the implementation of discretion that has been carried out by administrative officials. In this context, if a decision or discretionary action leads to a dispute or is suspected of violating the law, then AUPB is used as a benchmark to assess the legality of that action. This examination can be conducted through internal oversight mechanisms or through external control, such as the Administrative Court. Administrative judges in examining discretionary disputes do not only rely on written legislation but also use AUPB as a basis to assess whether there are elements of abuse of power (*detournement de pouvoir*), arbitrary actions (*willekeur*), or violations of the principles of justice and propriety. Thus, AUPB functions as a corrective tool that ensures that every use of discretion remains legally accountable and does not deviate from the objectives of governance.

In the context of PSN, there are several relevant cases, particularly related to the use of discretion, which, on one hand, actually creates problems in society. The Rempang Eco-City case, Pantai Indah Kapuk (PIK) 2, as part of the national project, Wadas, and the Nusantara Capital City (IKN) each offer concrete examples of how administrative discretion is exercised, and to what extent these decisions adhere to the AUPB.[29] The planning and land acquisition

[28] Dicky Eko Prasetio et al., "The Construction Of The Lex Sportiva Principle In Indonesia's Sports Law: Implications And Future Arrangements," *UUM Journal of Legal Studies* 16, no. 2 (July 31, 2025): 58–69, https://doi.org/10.32890/uumjls2025.16.2.4.

[29] Christiani Prasetiasari and Et.al. Suwalla, "Pentingnya Kesadaran Hukum Masyarakat Untuk Meningkatkan Daya Saing Usaha Mikro , Kecil Dan Menengah (UMKM) Di Era Digital Pada Kelurahan

processes show a pattern of dominance by development and investment interests that exploit the discretion of regional and central officials to expedite the release of areas, with evidence of inadequate communication practices, often formalistic consultation procedures, and suboptimal social-environmental impact assessments, leading to criticism that the principles of legal certainty and accountability are not fully implemented. In the PIK 2 project, for example, administrative discretion is also evident when authorities expand the use of coastal areas for high-intensity commercial and residential purposes. The land use change and permitting processes often involve decisions that favor investors, leading to violations of the principles of proportionality and non-discrimination.

In the case of Wadas, land acquisition for mining and/or infrastructure projects shows the most contrasting example between administrative formalities and social realities, as the use of discretion by officials, including site designation, protest restrictions, and security apparatus interactions, results in prolonged conflicts, pressure on the land rights of indigenous peoples or local communities, and compensation claims deemed unfair or inadequate by the residents. In the perspective of the rule of law, these actions raise serious complaints about violations of the principles of legal certainty, protection of human rights, and the principle of service that should ensure a commitment to public welfare; thus, substantive justice has not been achieved. In the case of the Nusantara Capital City (IKN) as a high-profile project, it presents another dimension of administrative discretion because its scale, political urgency, and strategic objectives provide significant room for fiscal policies, spatial programming, and land procurement regulated through special legal instruments.[30] However, the implementation of these policies faces challenges in translating the principles of the rule of law into operational practices, suboptimal strategic planning documents, inadequate AMDAL studies, and compensation mechanisms deemed disproportionate. Various cases above show that administrative discretion within the framework of PSN often serves as a tool to facilitate national development goals, but is also prone to abuse of AUPB if not accompanied by mechanisms of transparency, participation, accountability, and independent oversight. This results in formal compliance with administrative procedures, not automatically guaranteeing the fulfillment of good governance principles or the realization of substantive justice.

From the analysis above, it can be seen that the development acceleration paradigm, which emphasizes efficiency and speed, gives rise to a form of administrative exceptionalism where exceptions to procedures often reduce the protection of citizens' constitutional rights, including the right to information, the right to participation, the right to land ownership, and the protection of indigenous peoples' rights. The expansion of administrative power justified by the PSN status has the potential to create institutional precedents that normalize practices of violation, so that the transitional phase initially intended for project acceleration can transform into a structural mechanism that places the will of development above constitutional protection.

Sembulang Kecamatan Rempang Pulau Galang Kota Batam," *Yumary: Jurnal Pengabdian Kepada Masyarakat* 4, no. 1 (2023): 19–25.

[30] Aura and Abidin, "Perlindungan Hak Ulayat Masyarakat Adat Dalam Proyek Strategis Nasional (PSN): Studi Kasus Pembangunan Ibu Kota Nusantara (IKN)."

The position of AUPB, which is both preventive and repressive, is reinforced in Law No. 30/2014, which explicitly places AUPB as the foundation and parameter in the use and testing of discretion. This emphasizes that the relationship between AUPB and discretion is integral and inseparable, where AUPB serves as the basis of legitimacy and a control tool, ensuring that discretion is exercised within a framework of fair, accountable, and public interest-oriented law. In the context of PSN, which has characteristics of high risk, high capital, and high discretion, these limitations become increasingly important to prevent the occurrence of abuse of power or arbitrary actions. Discretion used without a rational basis and without clear accountability has the potential to cause state losses, conflicts of interest, and violations of the rights of communities affected by the project. This emphasizes that the exercise of discretion in the PSN can only be carried out for specific purposes, namely: facilitating the administration of government, filling legal vacuums, providing legal certainty, and overcoming government stagnation in certain situations for the benefit and interest of the public. Furthermore, the use of discretion must meet certain conditions, such as not being contrary to laws and regulations, adhering to the principles of good governance, being based on objective reasons, not causing conflicts of interest, and being carried out in good faith. In the context of PSN, this provision emphasizes that the acceleration of development cannot be used as an excuse to disregard fundamental legal principles, one of which in administrative law is the AUPB.

3.2. The Relationship between Administrative Discretion and the Risk of State Financial Loss from the Perspective of Substantive Justice

Discretion is fundamentally relevant to contemporary views in administrative law, which emphasize the aspect of rechtsmatigheid, where discretion is not only based on and assessed by legislation but must also align with AUPB. According to Philipus M. Hadjon, AUPB as a legal principle has an abstract nature, meaning it is not always explicitly and detailed formulated in written norms, but lives as general principles that serve as guidelines in the administration of government. The existence of AUPB as the basis and evaluator of discretion expands the meaning of discretion in line with societal needs, allowing government administrative officials to present legal aspects that can accommodate societal needs. AUPB in practice faces real practical limitations when confronted with the dynamics of PSN, due to political pressure for acceleration, large-scale investments, and the need for cross-institutional coordination that drives pragmatic administrative practices, often compromising normative principles for the sake of efficiency. Operationally, limitations arise from normative ambiguities and regulatory gaps that provide ample room for discretion, so the implementation of AUPB depends on the goodwill of officials and the capacity of supervisory institutions, which are not always consistent across regions. This emphasizes that although AUPB remains an important normative benchmark in PSN, these practical limitations demand the strengthening of implementation instruments so that the principles of good governance are not only stated in documents but also realized in the actual practice of PSN.

Related to PSN, discretion becomes an important instrument to ensure that PSN can be implemented as intended. However, in PSN, there is sometimes a risk in the form of the risk of state financial loss. The concept of state loss in practice is fundamentally understood as any decrease in the state's finances or wealth that is real and definite in amount as a result of unlawful acts, whether committed intentionally or due to negligence. In the practice of state

administrative law and state financial law in Indonesia, this concept is not only viewed normatively but also through a factual approach that emphasizes the existence of actual loss that can be proven and clearly calculated, in accordance with the provisions of Law Number 1 of 2004 concerning State Treasury (Law No. 1/2004), which asserts that state losses must be real and definite in amount. Related to the implementation of public policies, one of which is PSN, every public policy carries the risk of potential state losses.

Administrative policies in the implementation of PSN are often treated as potential manifestations of corruption, as the close ties between large resource allocation, expedited permits, and intense interactions with private actors create a field vulnerable to nepotism, bribery, and abuse of power. At the same time, the prevailing state financial regime that emphasizes strict fiscal accountability, retrospective audits, and the threat of criminal or administrative sanctions for budget deviations has significantly narrowed the scope of legitimate administrative policy-making due to these safeguarding rules, which, although intended to prevent corruption, often translate into a series of procedural restrictions and legal risks that make public officials reluctant to make proactive or innovative decisions. This results in public officials often experiencing widespread "decision-making paralysis," where concerns about potential criminal, civil, or administrative liability, even when discretion is necessary to advance public interest, respond to emergencies, or adjust project implementation to local community needs.

The problem of proving the link between policy risk and state loss is a crucial issue in the practice of administrative law, as there is often an overlap in assessing a public official's decision. Conceptually, policy risk is the consequence inherent in every administrative decision-making, especially in situations of uncertainty, which does not necessarily result in state losses in the legal sense. On the other hand, state losses require a real and definite reduction in state finances, as stipulated in Law No. 1/2004. The main issue with state financial losses lies in the standard of proof, where law enforcement officers often interpret state losses broadly to include potential losses from policies that are not necessarily legally wrong. The problem of proof also arises in the assessment of discretion, where officials are given the freedom to act to achieve government objectives. If every policy risk is directly construed as a state loss, this has the potential to cause overcriminalization and make public officials reluctant to make strategic decisions. Therefore, the evidence must be able to clearly distinguish between administrative errors (maladministration), policy failures (policy failure), and unlawful acts that involve intent or abuse of authority. Thus, a more careful and proportional approach is needed, emphasizing the aspect of legality by focusing on legislation and adherence to the principles of good governance.

The issue related to the potential loss to the state in PSN is fundamentally due to the differences in the administration of state governance between rule-based governance and risk-based governance. Rule-based governance emphasizes strict adherence to written rules, where every administrative action must be rigidly based on established legal norms, providing legal certainty but tends to be less flexible in facing complex dynamics. Risk-based governance emphasizes risk management and rational consideration in uncertain situations, where public officials are given the space to use discretion to effectively achieve policy goals, while still considering the potential impacts that may arise. In the context of decision-making under

conditions of uncertainty, a risk-based approach becomes more relevant because not all situations can be anticipated by written rules, thus requiring adaptive analysis, prediction, and policy consideration skills. This becomes very important in the implementation of PSN, which has the characteristics of high risk, high capital, and high discretion, so it cannot be fully managed solely with a rule-based approach.

However, regarding the potential state losses in PSN, there is essentially an issue of legal disharmony between the State Finance Law and the State Budget Law. Legal disharmony is a form of inconsistency between the substance of one regulation and the substance of other regulations. The State Budget Law emphasizes an approach that focuses on processes and authority, making it more flexible and in line with the implementation of PSN, which is characterized by high risk, high capital, and high discretion. Law No. 17/2003, on the other hand, has a different approach and emphasizes aspects of results and losses. The logic in Law No. 17/2003 essentially places state finance as the main object that must be protected, so its regulatory orientation heavily emphasizes results (output) and the potential losses to the state. This approach reflects a result-oriented accountability paradigm, where the success or failure of a policy is often measured by its impact on the financial condition of the state. However, this result-oriented and loss-focused logic in practice can create problems, especially when applied to policies that involve high risks. Not all losses that arise are due to legal violations; they can also be consequences of policy risk in situations of uncertainty. If the logic in Law No. 17/2003 is used, this could disrupt the implementation of PSN because, under certain conditions, it will be considered detrimental to state finances even tho the loss is a consequence of policy risk.

The use of discretion in PSN, considering the disharmony between the provisions in Law No. 30/2014 and Law No. 17/2003 related to state financial losses, will become problematic and often experience overcriminalization in policy. This is because discretion is fundamentally characterized by *rechtmatigheid* or risk-based governance, which contradicts Law No. 17/2003, which is based on rule-based governance. This makes every detrimental discretionary action in PSN due to policy risks categorizable as a loss of state finances.

From the aspect of justice, the use of discretion in PSN should be viewed based on substantive justice, which is different from Law No. 17/2003 that emphasizes procedural justice. According to Gustav Radbruch, substantive justice is the core of law that cannot be reduced merely to formal legal certainty.[31] Radbruch emphasizes that law must contain three fundamental values, namely justice (*gerechtigkeit*), legal certainty (*rechtssicherheit*), and utility (*zweckmäßigkeit*).[32] In this context, substantive justice refers to the content or substance of the law that must reflect real values of justice, not merely the mechanical application of rules.[33]

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[31] Carlos A. Casanova, "Rethinking Radbruch's Laws That Are Not Right and Right Above the Laws. A New Translation with Introductory Note," *Copernican Journal of Law* 2, no. 1 (June 2025): 37–57, https://doi.org/10.71042/CJL01202503.

[32] Bayangsari Wedhatami Dicky Eko Prasetio, Muh Ali Masnun, "Legal Uncertainty of Golf Game as Sports and Entertainment Branch in Local Tax Imposition," *Wawasan Yuridika* 4, no. 1 (2024): 76–93, https://doi.org/https://doi.org/10.25072/jwy.v8i1.4369.

[33] Mochamad Ikwan Nurul Hikmah, Syahid Akhmad Faisol, Dicky Eko Prasetio, Kamaluddin Nurdin Marjuni, "Professional Waqf 5.0: Penta Helix Strategy and Legal Pluralism in the Digital Era," *Krtha Bhayangkara* 20, no. 1 (2026): 173-194., https://doi.org/https://doi.org/10.31599/krtha.v20i1.5312.

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This emphasizes that if there is a sharp conflict between positive law and justice, then an extremely unjust law can lose its character as law. In other words, substantive justice must be prioritized when positive legal norms produce intolerable injustice. Thus, according to Radbruch, the law should not be understood rigidly as merely written rules, but must always be tested in terms of the justice values it embodies.

If viewed from the aspect of substantive justice, then the risk-based governance paradigm places discretion as an important instrument in implementing PSN. The procedural justice paradigm adopted in Law No. 17/2003 can be said to be inappropriate and contrary to substantive justice. Therefore, the use of discretion in the implementation of the PSN policy aligns with the concept of substantive justice as long as it emphasizes the risk-based governance paradigm, thus not categorizing every policy risk as a financial loss to the state. This can provide a sense of security for policy implementers while also giving them the space to dare to take policy risks under certain conditions to succeed in a policy, one of which is PSN.

3.3. Reconstruction of the Concept of Administrative Authority Based on Risk Governance in Achieving Substantive Justice

Reconstruction is generally understood as the arrangement or reworking of something that already exists but still has deficiencies.[34] In the context of this research, the reconstruction of the concept of administrative authority is necessary, considering that in the implementation of PSN, there are still issues related to administrative authority, particularly concerning discretion. Criticism of the existing legal paradigm shows that the modern legal system is still dominated by a rule-based governance approach that tends to be rigid and overly oriented toward formal compliance with written rules. These limitations become apparent when the law fails to respond to complex social dynamics, as it places more emphasis on procedures rather than the substance of justice. Moreover, there is a strong bias toward financial loss, where the measure of violation or error is often reduced to the aspect of material state loss, while the dimensions of social justice, utility, and public policy objectives are neglected. This paradigm is further exacerbated by the weaknesses of the legal formalism approach, which places too much emphasis on the formalities of law rather than its normative context and objectives, potentially neglecting empirical realities on the ground. As a result, the law loses its flexibility and sensitivity to the values of substantive justice, and risks producing decisions that are procedurally valid but substantively unjust.

The reconstruction of risk-based administrative discretion positions discretion not merely as a space for freedom of action for administrative officials, but as a risk decision tool used in a measured way to address public policy uncertainties. In this framework, discretionary decision-making must be based on a comprehensive risk analysis, so that each action not only considers formal compliance but also the potential impact it may cause. Therefore, clear parameters are needed, namely rationality, proportionality, and accountability, as benchmarks for the legitimacy of discretion. Rationality demands a basis for consideration that is logical and data-driven, proportionality ensures that the actions taken are balanced with the goals to be achieved and the risks faced, while accountability asserts that

[34] Hananto Widodo Dicky Eko Prasetio, "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (2022): 2.

every decision can be held legally and administratively accountable. With this approach, administrative discretion is expected to become an adaptive and responsive instrument without neglecting the principles of prudence and substantive justice.[35]

The reconstruction of the concept of state financial loss demands a paradigm shift from a definition that solely focuses on financial loss to a broader approach based on administrative justice, particularly in the context of PSN. In conventional practice, state loss is often rigidly measured thru figures of material loss, without considering the larger public policy goals such as accelerated development, social utility, and long-term impact. However, in the implementation of PSN, which has characteristics of high risk, high capital, and high discretion, not every potential financial loss can automatically be categorized as a state loss in the sense of legal deviation. Therefore, a new approach is needed that assesses losses based on administrative justice, by considering good faith, policy rationality, and the alignment of actions with development goals. This reconstruction allows for a more equitable distinction between administrative errors that can be tolerated within the framework of discretion and unlawful acts that materially harm the state, so that the law does not hinder innovation and decision-making courage in the PSN.

The risk-based administrative justice model is a new approach in state administrative law that seeks to integrate risk analysis into the framework of administrative justice more comprehensively and adaptively to the dynamics of government administration, particularly in the context of strategic policies fraught with uncertainty. This model is based on the main principles of justice, balance, and legal protection, where justice is no longer narrowly defined as formal compliance with norms, but rather as an effort to achieve substantive justice that considers the goals of public policy and its impact on society. The principle of balance emphasizes the importance of harmonizing the courage to take risks by administrative officials with the obligation to maintain accountability and integrity in state financial management, so that over-deterrence does not occur, which would hinder policy innovation. Meanwhile, legal protection is directed not only at the state from potential losses but also at officials who act in good faith within the corridor of legitimate discretion.

In an integrative framework, this model combines three main dimensions, namely administration, state finance, and justice, as an inseparable unity. The administrative aspect emphasizes responsive governance based on rational considerations, the state finance aspect ensures that every decision adheres to the principle of prudence in the use of public resources, while the justice aspect serves as the normative foundation to assess whether an administrative action is morally and socially acceptable. Thus, risk-based administrative justice not only functions as a tool for evaluating government actions but also as a normative guideline in formulating and implementing high-risk public policies. This model is ultimately expected to create a more flexible, contextual, and substantively just administrative legal system, without neglecting the principles of good governance and the protection of state finances.

The formulation of an ideal model for the use of authority in PSN requires a normative framework that can balance the need for accelerated development with the principle of prudence in governance. In this context, the standards for the use of discretion must be

[35] Mhd Taufiqurrahman, "Discretionary Policy Before and After the Job Creation Law," *International Journal Reglement& Society* 5, no. 1 (2024): 8–14.

formulated clearly and measurably, placing discretion as a policy instrument based on rationality, proportionality, and the goals of public interest, rather than merely as unrestricted freedom of action. This emphasizes that the use of discretion must be based on the provisions of legislation, particularly Law No. 30/2014 and AUPB. Discretion in PSN must be based on adequate risk analysis, supported by relevant data, and consider both short-term and long-term impacts on state finances and society. Moreover, the limits of accountability need to be clearly defined to distinguish between administrative errors arising from policy complexity and unlawful acts involving elements of abuse of authority. Accountability should not solely be oriented toward the outcome in the form of financial loss, but also consider the decision-making process, good faith, and adherence to the principles of good governance. On the other hand, protection mechanisms for officials become a crucial element to prevent them from being trapped in excessive fear when making strategic decisions, which can ultimately hinder the effectiveness of PSN implementation. Such protection can be realized through clear regulations, comprehensive operational guidelines, and a supervisory system that is preventive and corrective, rather than merely repressive. Thus, this ideal model is expected to create space for the adaptive and innovative use of authority, while remaining within the legal framework that ensures accountability, justice, and the sustainability of national development.

The reconstruction of the concept of administrative authority based on risk governance in realizing substantive justice is a fundamental renewal of the perspective and practice of authority usage in governance, particularly in PSN. The theory of the three pillars of risk-based administrative authority should be framed as an operational and normative conceptual framework to assess the legality and legitimacy of administrative policies in PSN and other high-impact public policies. The aspect of rationality demands that every use of administrative discretion is based on a transparent risk analysis, empirical evidence, and clear public objectives so that decisions are not merely political or technocratic reactions but rather the result of considerations that can be rationally justified. The aspect of proportionality requires that the measures taken are commensurate with the level of urgency and risk faced. The aspect of accountability emphasizes the obligation of effective horizontal and vertical control mechanisms, ranging from pre-decision transparency (access to information and public participation), process accountability (audit, documentation, and formal reasoning), to post-decision accountability (appeal mechanisms, litigation, and prompt and substantive remediation), so that officials are not only formally accountable but also required to provide evidence that their actions meet the standards of rationality and proportionality.

4. Conclusions

The concept of administrative authority in the implementation of PSN places discretion as an important instrument to ensure the effectiveness and sustainability of development amidst the limitations and incompleteness of legal norms. However, discretion is not an absolute authority; it must be exercised within the framework of an expanded principle of legality and is subject to the rule of law, which holds a strategically preventive position as the basis for the legitimacy of discretion use, as well as a repressive instrument for testing discretionary actions that may deviate. In the context of PSN, characterized by high risk, high capital, and high discretion, these limitations become important to prevent abuse of authority and arbitrary actions. Therefore, the implementation of discretion in PSN must be based on

statutory regulations and AUPB to ensure a balance between flexibility of authority and legal accountability, ensuring that PSN management remains effective while adhering to rules and legal principles, particularly administrative law.

The relationship between administrative discretion and the risk of state financial loss in the implementation of PSN shows a tension between the need for policy flexibility and the demand for state financial accountability. Discretion as an instrument of risk-based governance is essentially necessary to address the uncertainty and complexity of PSN, so not every policy risk can be immediately classified as a state loss. However, in practice, the paradigm difference with the results-oriented state finance regime (rule-based governance) often leads to proof problems and the potential for overcriminalization. From the perspective of substantive justice as proposed by Gustav Radbruch, the assessment of state losses should not only rely on formal legal certainty but also consider the justice and utility of a policy. Therefore, policies taken through discretion in good faith and within the limits of authority should not be categorized as financial losses to the state because the losses incurred are due to policy risks. This emphasizes that the approach of substantive justice underscores the importance of a clear distinction between policy risks and unlawful acts, to create a balance between protecting state finances and the government's courage in making strategic decisions in the implementation of PSN.

The reconstruction of the concept of administrative authority based on risk governance in realizing substantive justice is an effort to renew the legal paradigm that has been too rigid and oriented toward formal compliance and financial loss. In the context of the implementation of PSN, this reconstruction places administrative authority, particularly discretion, as an instrument of risk-based decision-making that must be carried out rationally, proportionally, and accountably. This approach also encourages a shift in understanding state financial losses, not only from a material aspect but also within the framework of administrative justice that considers policy objectives, good faith, and decision-making processes. Thus, through the integration of administrative aspects, state finance, and justice in the risk-based administrative justice model, the use of administrative authority can become more flexible, contextual, and capable of achieving substantive justice without neglecting the principles of accountability and prudence.

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