

## **The Concept of Using Budget Management Discretion in the Handling of the COVID-19 Pandemic by the Regional Government in Indonesia**

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### **Abstract**

The main problem in this research is the use of discretion in managing the regional government budgets for handling the COVID-19 pandemic in Indonesia. Material and method data related to discretionary budget management for handling the COVID-19 pandemic were obtained from secondary sources, namely laws and regulations, while the primary data were from the field, including the Jakarta Provincial Government. This research used the juridical normative analytical method. The Result of this research indicated during the COVID-19 pandemic, Law Number 30 of 2014 did not accommodate discretionary actions in budget management. The Conclusion of the research is eliminating the requirement of supervisor approval for budget discretion made by regional heads is the right concept for handling the COVID-19 pandemic.

**Keywords:** Budget Management Discretionary Concept, Regional Government, COVID-19 Pandemic Handling in Indonesia

### **INTRODUCTION**

According to Article 1 point 9 of Law Number 30 of 2014 concerning Government Administration, "discretion is a decision and/or action determined and/or carried out by government officials to overcome concrete problems in administration in terms of laws and regulations that provide choices, are unregulated, incomplete or unclear, and/or concern government stagnation." According to Article 25 paragraph 1 of Law Number 30 of 2014, "the use of discretion that has the potential to change budget allocations must obtain the approval of superiors."

Budget management discretion in the administration of regional government in Indonesia was implemented during the global COVID-19 pandemic. Since the discovery of infected patients in February 2020 in Depok City, a significant increase in COVID-19 cases was noted between March and July 2020. Based on data from July 10, 2020, 72,347 cases were declared positive, with 33,529 cures and 3,469 deaths. (Data source: <https://www.COVID.19.go.id>. 2020).

Meanwhile, Jakarta province experienced the greatest impact due to the high mortality rate of infected patients, a decline in economic growth, an increase in unemployment, and new poverty. The economy experienced negative growth due to the Large-Scale Social Restrictions (PSBB) and the Enforcement of Restrictions on Community Activities (PPKM) policies. This was indicated by the negative correction of the Gross Regional Domestic Product (GRDP) growth of Jakarta Province by -8.22% in the

second quarter. In March 2020, the Central Statistics Agency (BPS) recorded a 1.06% increase in the percentage of poor people in the province compared to September 2019, signifying that the COVID-19 pandemic impacted people's purchasing power, thereby increasing poverty rates.

The decline in economic growth also increased the burden on the State Revenue (Turaev&Ganiev, 2021) and Expenditure Budget (APBN) as well as the Regional Revenue and Expenditure Budget (APBD). Financial conditions that conflicted with the targets of these budgets in 2020/2021 caused the central and regional governments to apply budget management discretion in overcoming the impact of the COVID-19 pandemic in Indonesia (Purwanto et al., 2021).

However, the provisions in Law Number 30 of 2014 concerning Government Administration do not accommodate legal interests during a pandemic. The reason is that the discretion made by officials amid an emergency, such as the COVID-19 pandemic, is classified as extra-ordinary. This form of discretion is applied when facing real and sudden emergency problems or conditions that require rapid responses. Furthermore, the procedure for budget management was not regulated in Law Number 30 of 2014 because the COVID-19 pandemic occurred in 2019, years after this government administration law was created. The linkage of corruption issues has also become a trap for regional heads that take extra-ordinary discretion. This is because they may be questioned and accused of corruption in the future due to the multi-interpretation of discretionary actions/extra-ordinary discretion in the management of regional budgets. Hence, formulating the right concept of using budget management discretion to overcome the COVID-19 pandemic in Indonesian regional governments is necessary.

Based on the problems above, this research aims to uncover the right concept of discretionary budget management to be used by the regional government administration in handling the COVID-19 pandemic in Indonesia.

## LITERATURE REVIEW

Theoretically, discretionary or free authority is opposed to bound authority (Volpp, 2019). The term "authority" is often equated with "*bevoegdheid*" in Dutch. According to Muttaqim (2013), bound authority is given to certain officials whose basic norms have been firmly determined, and the state administration cannot take other legal actions besides the already decided measures. Conversely, the free administrative authority can select the legal actions that will be implemented.

The discretionary act aims to complement the law and, according to PrajudiAtmosudirjo, "it is needed as a complement to the principle of legality or based on the provisions of the law." In a state of law, the governments are obliged to pay attention and maximize efforts to realize the welfare of the community in the broadest sense (*bestuurzorg*). Hence, they must function actively by intervening in the socio-economic life of the community, signifying that a state administration official cannot refuse to provide services because there is no law (*rechtsvacuum*). This indicates that government officials are free (*vrijebevoegdheid*) to execute their authority or discretion.

## METHODOLOGY

This is an analytical normative legal research using juridical (law), analytical, and case approaches. The primary data were obtained from the research location in the Jakarta Provincial Government as the area most affected by the COVID-19 pandemic. Conversely, secondary data were obtained from primary legal materials, comprising laws and regulations, alongside secondary legal materials consisting of studies, journals, and books, while the tertiary materials included dictionaries and encyclopedias.

## RESULTS AND DISCUSSION

### The Use of the Jakarta Provincial Government's Budget Management Discretion in Handling the COVID-19 Pandemic

On April 13, 2020, the President of Indonesia declared COVID-19 as a non-natural national disaster based on Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters of COVID-19 as a National Disaster. This decree as well as Presidential Instruction Number 4 of 2020 concerning Refocusing Activities, Budget Reallocation, and Procurement of Goods and Services in Accelerating Handling COVID-19 were made to manage the budget for financing the pandemic response. Other regulations were also formulated concerning the discretionary action on budget management in the regional government administration. These include Ministry of Finance Regulation Number 17/PMK.07/2021 concerning the Management of Transfers to Regions and Village Funds for the Fiscal Year 2021 in Support of Handling the COVID-19 Pandemic, alongside Ministry of Finance Regulation Number 35/PMK. 07/2020 concerning Management of Transfers to Regions and Village Funds for the Fiscal Year 2020 in Handling the COVID-19 Pandemic and/or Facing Threats that Endanger the National Economy.

The discretion of the Jakarta Provincial Government budget management based on these regulations is as follows; (1) Refocusing the budget of the Jakarta Provincial Government (budget management discretion based on Ministry of Finance Regulation Number 17/PMK.07/2021 concerning Transfer Management to Regions and Villages for the Fiscal Year 2021 in Support of Handling the COVID-19 Pandemic, Ministry of Finance Regulation Number 35/PMK 07/2020 concerning Management of Transfers to Regions and Village Funds for the Fiscal Year 2020 in Handling the COVID-19 Pandemic and/or Facing Threats that Endanger the National Economy, and Circular Letter of the Ministry of Home Affairs of Indonesia Number 440/2622/SJ of 2020 concerning Formation of the Task Force for Acceleration Handling COVID-19 in the Regions); (2) Using the Unexpected Expenditure Budget (BTT) of the 2019 and 2020 Jakarta Provincial Government Budgets for financing the COVID-19 pandemic response through budget discretion based on Article 55 paragraph (4), Article 68, and Article 69 of Government Regulation Number 12 of 2019 concerning Management Regional Finance.

Refocusing the Jakarta Provincial Government budget for handling the COVID-19 pandemic was implemented through a focus on budgetary arrangements. This was majorly performed by reallocating the budget, which was previously intended for other activities than the pandemic, to focus on accelerating the handling of COVID-19. The implementation involved shifting and reducing the budget within the Provincial Government, particularly decreasing Regional Employee Allowances (TKD) and unimportant spending on Regional Apparatus Organizations (OPD) activities. Subsequently, the results of the budget reduction and shift were used to increase the Unexpected Expenditure Budget (BTT) in the 2020 and 2021 Regional Revenue and Expenditure Budgets (APBD).

Table 1 shows the Unexpected Expenditure Budget (BTT) in the 2020 Regional Revenue and Expenditure Budget (APBD) of the Jakarta Provincial Government, according to the Governor of the Special Capital Region of Jakarta Number 162 of 2019 concerning the Elaboration of the 2020 Regional Revenue and Expenditure Budget:

Table 1. Unexpected Expenditure Budget (BTT) for the Provincial Government of Jakarta Financial Year 2020

<b>Unexpected Expenditure Budget (BTT) of 2020</b>
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Initial	IDR 2.897.264.053.765
Additional budget	IDR 2.298.574.884.951
BTT Amount After Change	IDR 5.195.838.938.716

Data Source: Jakarta Governor Regulation Number 95 of 2020

Although the initial amount of the Unexpected Expenditure Budget (BTT) in the 2020 budget was IDR 2,897,264,053,765, an addition of IDR 2,298,574,884,951 was made after the COVID-19 pandemic, resulting in a total budget of IDR 5,195,838,938,716. The procedure for using the Unexpected Expenditure (BTT) budget according to Governor Regulation Number 116 of 2020 regarding the Implementation, Administration, and Accountability of Unexpected Expenditures to Fund the Needs for the Acceleration of Handling COVID-19 is illustrated in Figure 1 as follows:

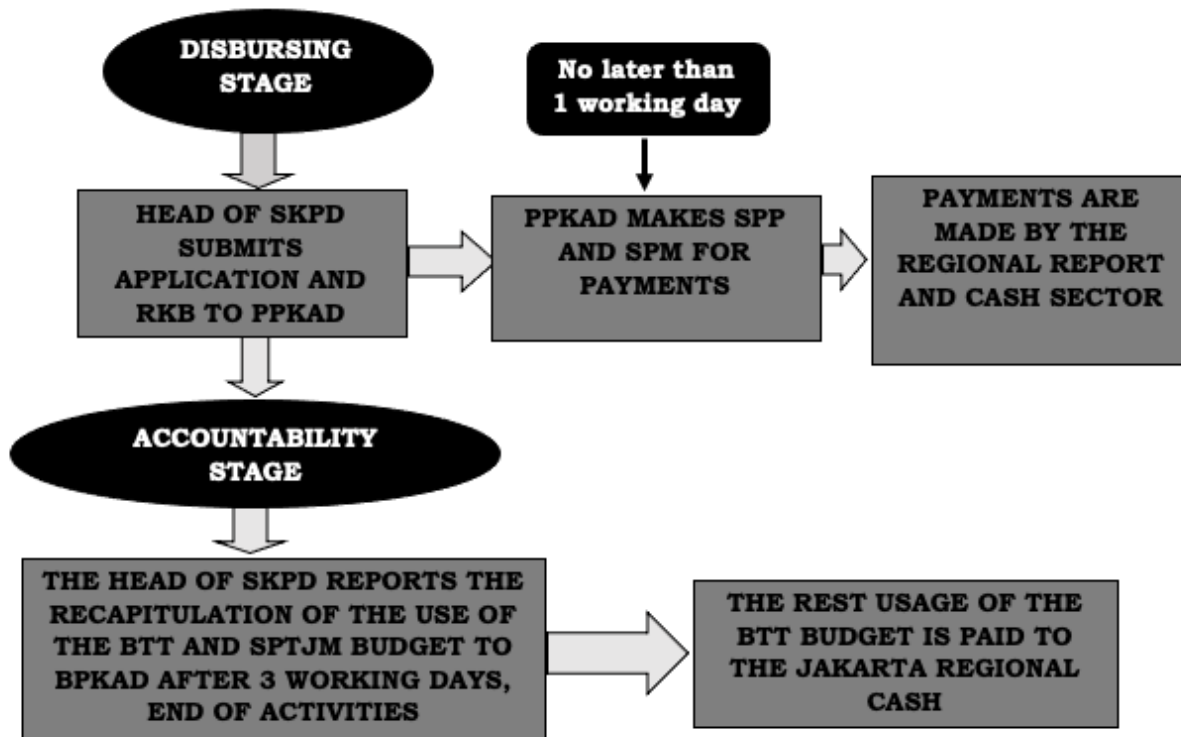


Figure 1. The Stage of Use of the Jakarta Province Government's Unexpected Expenditure Budget to Fund the Covid-19 Pandemic Handling

Data Source: Governor Regulation Number 116 of 2020

Figure 1 shows the stages of the procedure for using the Unexpected Expenditure Budget (BTT) to handle COVID-19 in the Jakarta Provincial Government. It involves disbursing and the accountability of the COVID-19 BTT budget. The disbursement of the budget begins with the submission of an Expenditure Activity Plan (RKB) for activities to overcome the COVID-19 pandemic by the head of the Regional Apparatus Work Unit (SKPD). This is submitted to the Regional General Treasurer or the head of the Regional Financial and Asset Management Agency (BPKAD) as the Regional Financial Management Officer (PPKD). Based on the RKB, the Regional Financial Management Officer prepares and submits a Payment Order (SPP) and Payment Order (SPM) to the head of the Financial Management Agency for the

Treasury and Regional Treasury for disbursement of the COVID-19 pandemic response budget no later than 1 working day. The second stage is budget accountability by the head of the Regional Apparatus Work Unit by submitting a recapitulation report on the use of the response budget and an Absolute Accountability Letter (SPTJM) to the Regional Financial Management Officer. After 3 working days of activities are completed, any remaining funds are returned and paid to the bank's regional treasury. The ease of disbursement and accountability of the Unexpected Expenditure Budget (BTT) in this Governor Regulation is a form of budget discretion by the Governor based on the urgent conditions of the danger and impact of the COVID-19 pandemic.

Budget management discretion was implemented at the Jakarta Provincial Government during the pandemic because, first, the situation caused emergency conditions that impacted various sectors, including health, economy, social, and government public services. Second, the government has the responsibility to provide health protection from the dangers of the virus, meaning that the administration must offer social protection through a safety net and economic recovery for the affected communities. Third, laws and regulations relating to the handling of the pandemic are non-existent, resulting in a vacuum and the lack of a strong legal basis in increasing the effectiveness of prevention, mitigation, and management of this disease in Indonesia.

### **The Concept of Using Budget Management Discretion in Regional Government Administration for Handling COVID-19 in Indonesia**

Law Number 30 of 2014 concerning the Government Administration includes procedures for using budget management discretion and involves the stages of application, approval, notification, and reporting. Article 25 paragraph (1) of this law states that "the use of discretion that can change budget allocations require approval from superior officials in accordance with the provisions of the legislation." The procedure involves the application of approval by the leadership of the Regional Apparatus Work Unit (SKPD) to regional heads, namely Regents, Mayors, and Governors. Then, the Regent/Mayor seeks approval from the Governor, who submits to the Minister of Home Affairs.

The discretion in managing the budget for the regional government requires the approval of the Governor as the superior of the Regent and/or Mayor as well as the Minister of Home Affairs as the Governor's superior. Therefore, the representation of the requirement for approval from superiors in changing the budget allocation as a discretionary action with free and independent authority is questioned. The word "requires approval" causes dependence on the approving institution or organ, which is considered contrary to the nature of discretion as a free and independent authority (Gadinis, 2013). According to Manan (1994), approval is a form of administrative supervision performed through ratification (*goedkeuring*).

According to Article 25 paragraph (1) of Law Number 30 of 2014, the term 'superior and subordinate relationship' in the use of discretionary budget management is more focused on the relationship with employment, not between the central and regional governments. This is as stated in Article 21 paragraph (2) of Government Regulation Number 53 of 2010 concerning Civil Servant Discipline that, "If the official authorized to punish, as referred to in paragraph (1), does not impose a disciplinary sentence on a Civil Servant who commits a disciplinary violation, the official is subject to disciplinary punishment by his superiors."

Meanwhile, the relationship between the Minister of Home Affairs and the Governor cannot be equated to superiors and regional head subordinates (Governor, Regent, and Mayor), as referred to in the legal environment of personnel whose appointment procedure is based on the staffing administration. The

appointment of regional heads is a political position based on a Presidential Decree for the Governor and a Decree of the Ministry of Home Affairs for Regents and/or Mayors, accompanied by a process of filling positions through direct elections by the region's citizens. This signifies that the officials cannot be equated in the relationship between superiors and subordinates in the employment law. Furthermore, the COVID-19 pandemic condition can be categorized as an emergency or urgent situation, meaning that the discretionary budget management process for the regional government administration can override formal procedures. This was expressed by Deliarnoor (2018) with the term 'Extra-Ordinary Discretion' in the following equation:

“*Extra-Ordinary Discretion* is  $EOD=K+S$ .

Where:

$EOD$  = *Extra-Ordinary Discretion*.

$K$  = Authority

$S$  = Substance

In an Extra-Ordinary Discretion condition, such as the COVID-19 pandemic, budget management discretion can be used with several circumstances (Arestis, 2022). First, the authority of the regional head as the holder of regional financial management power, according to the provisions of Article 4 paragraph (2) letter e of Government Regulation Number 12 of 2019 concerning Regional Financial Management. Second, the substance is intended to be discretionary in managing regional government budgets based on considerations of emergencies or urgent circumstances, such as the COVID-19 pandemic (Benavides & Nukpezah, 2020). Therefore, the government must take quick action through discretion in the management of regional budgets, which can override the formal procedures regulated in the law. The procedure can be waived, providing it remains within the framework of the authority of the official concerned and cannot be abused by the substance. Therefore, the COVID-19 pandemic is considered an Extra-Ordinary Discretion circumstance, as it is yet to be accommodated in Law Number 30 of 2014 concerning Government Administration.

Based on the above understanding, the pandemic handling by the Indonesian regional government administration was established through budget management discretion without accountability or the approval of superiors, according to the meaning of discretion as a free and independent authority. The concept of discretionary budget management in the regional government administration to handle the COVID-19 pandemic in Indonesia is illustrated in Figure 2.

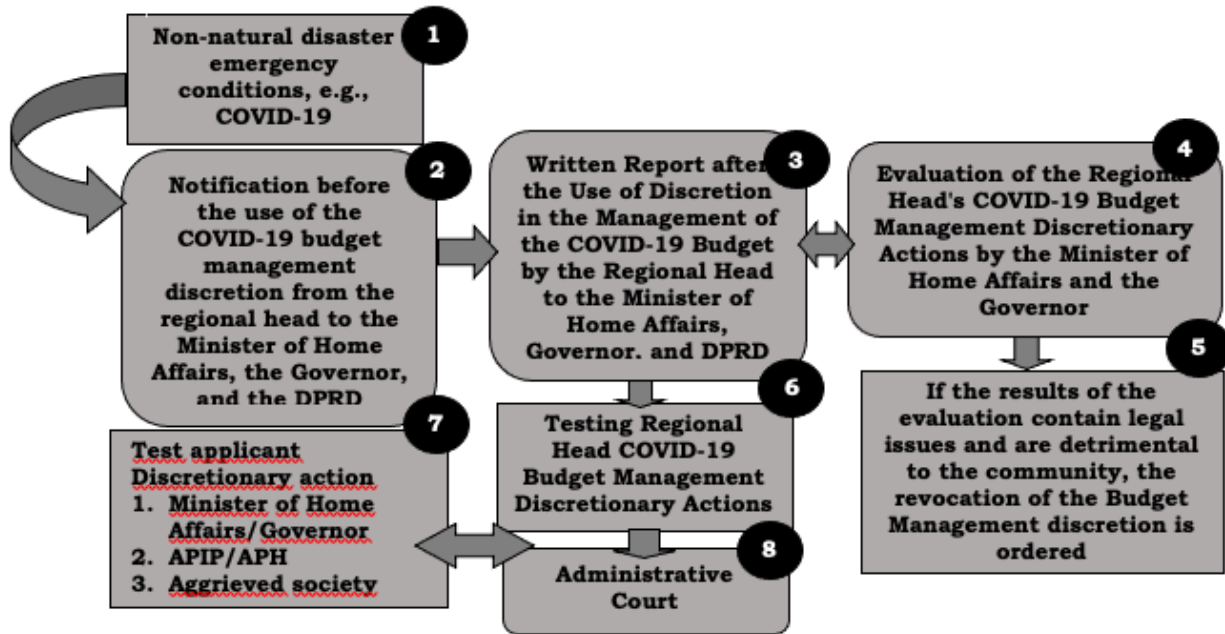


Figure 2. Concept of the Use of Budget Management Discretion in the Implementation of Regional Government to Handle COVID-19 in Indonesia

Based on Figure 2, the concept of using discretionary budget management in the regional government administration for responding to the COVID-19 pandemic can be explained as follows; (1) Regional government budget management discretion is made in the non-natural disaster emergency condition of the COVID-19 pandemic; (2) The representatives of the central government, comprising the regional head, the Provincial/Regency and/or City Regional House of Representatives, the Minister of Home Affairs, and the Governor are notified before the budget management discretion is used; (3) After conducting the COVID-19 budget management discretionary action, the regional head sends a written report to the Provincial/Regency and/or City Regional House of Representatives, the Minister of Home Affairs, and the Governor as representatives of the central government; (4) The Minister of Home Affairs and/or the Governor evaluate the discretionary actions of the COVID-19 budget management made by the regional heads including Governor, Regent, and Mayor; (5) Supposing the evaluation of the Minister of Home Affairs and/or the Governor detects legal problems and public losses, the Regional Head is instructed to revoke the discretion in managing the COVID-19 budget; (6) Assuming the regional head does not revoke the discretion, the Minister of Home Affairs, the Governor, the disadvantaged community, the Internal Supervisory Apparatus (APIP), and the Law Enforcement Apparatus (APH) can test the discretionary measures for managing the COVID-19 budget in the State Administrative Court (PTUN); (7) The State Administrative Court examines, hears, and decides on discretionary actions for COVID-19 budget management requested by the Minister of Home Affairs, Governors, disadvantaged communities, Internal Supervisory Apparatus (APIP), and Law Enforcement Apparatus (APH); (8) The conclusion of the discretionary action for managing the COVID-19 budget as contrary to its purpose and the General Principles of Appropriate Governance may lead to its cancellation, accompanied by administrative sanctions to the head of the region concerned, according to Law Number 30 of 2014 concerning Government Administration. Also, the State Administrative Court may recommend law enforcement officials to be

processed based on the corruption law through the Corruption Court in the event that the COVID-19 budget management discretion contains elements of abuse of authority and state financial losses.

The mechanism that places the procedure for resolving disputes over discretionary actions to manage the COVID-19 budget is first examined at the State Administrative Court (PTUN). This step is based on Law Number 30 of 2014, allows discretionary actions to manage budgets by benchmarking the General Principles of Good Governance Eligible (AAUPL). Meanwhile, the position of the Corruption Court is to examine the misuse of discretionary actions in budget management and determine the aspects that meet the elements of corruption based on Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The State Administrative Court as the primary *remedium* (initial settlement) and the Corruption Crime Court as the *ultimumremedium* (final settlement) are consulted during cases of budget misappropriation indicated by acts of corruption following the COVID-19 budget management discretion in Indonesia.

### CONCLUSION

Based on the results of the discussion above, several conclusions were made, as follows; (1) The discretion applied in the budget management for the Jakarta Provincial Government to overcome the COVID-19 pandemic was exhibited by the Governor's shift in the 2020 APBD and use of the 2020 Unexpected Expenditure Budget (BTT); (2) The concept of using discretionary budget management in the regional government administration for handling the COVID-19 pandemic in Indonesia does not require approval from the superior of the regional head. This involves the Governor as the head of the Regent/Mayor and the Minister of Home Affairs as the Governor's superior. Instead, the accountability of the COVID-19 budget based on discretion is conducted after the implementation of pandemic prevention activities.

### SUGGESTION

The suggestions given are as follows; (1) The government and parliament should amend Article 25 paragraph (1) of Law Number 30 of 2014 concerning Government Administration by removing the requirement of "approval of superior officials" for regional heads who make budget management discretionary decisions for COVID-19 mitigation; (2) The government also needs to speed up the procedural law of state administrative courts (formal law) as a follow-up to Law Number 30 of 2014 by accommodating the legal interests of conditions or circumstances of Extra-Ordinary Discretion, such as the COVID-19 pandemic.

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