

# Position of Principle of Propriety in the Use of Discretion in Government Actions

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## Abstract

One characteristic of the 'welfare state' concept is the government's obligation to seek public welfare or *bestuurszorg*. If the state's obligation, or in this case the government in promoting public welfare, is a feature of the concept of a welfare state, it can be concluded that Indonesia is included as a welfare state since the government's duty is not only running the government sectors, but also carrying out social welfare to realize the state goals set forth in paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia which are carried out in national development. The administration of government activities must not be terminated due to the absence of underlying legal basis. Therefore, administrative officials are given discretionary authority whose formulation of qualifications was carried out after the enactment of Law number 30 of 2014 concerning Government Administration related to discretion. The use of discretionary authority is regulated starting from the terms of use, purpose of use, to the legal consequences of its use. One of the conditions for the use of discretionary authority is that it must be in accordance with the Good Governance Principles (AUPB) in which the principle of propriety is not required in its implementation. The principle of propriety is only as an explanation of the principle of legal certainty. In fact, the principle of propriety has a different meaning from the principle of legal certainty. Although they are in a unity, essentially, the principle of propriety and the principle of legal certainty are two different things.

**Keywords:** principle of propriety, discretion, government

## 1. Introduction

The imposition of the duty in realizing the welfare of citizens is explicitly contained in paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia, as stated: "...*protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice...*". According to Sjachran Basah, the realization of the country's goals must be pursued through multi-complex national development. Multi-complex national development makes the government must contribute a lot in the lives of the people in all sectors. The contribution is certainly contained in the statutory provisions; both in the form of laws and in the form of other regulations carried out by the state administration that carry out public-service duties (Basah, 1985).

One characteristic of the 'welfare state' concept is the government's obligation to seek public welfare or *bestuurszorg*. According to E. Utrecht, *bestuurszorg* is a sign that states the welfare state (Utrecht, 1962). The socio-economic dimension of the state based on law is in the form of state or government obligations to realize and guarantee social welfare (public welfare) in a state of maximum prosperity according to the principle of social justice for all societies, in which this dimension specifically leads to the welfare state (*verzorgingsstaat*) (Manan, 1999; Pierson & Castles, 2006).

If the state's obligation, or in this case the government in promoting public welfare, is a feature of the concept of a welfare state, it can be concluded that Indonesia is included as a welfare state since the government's duty is not only running the government sectors, but also carrying out social welfare to realize the state goals set forth in paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia which are carried out in national development. However, a different point of view was stated by Philipus M. Hadjon that in fact the determination of the Indonesian state to realize public welfare is not solely inspired by the

concept of a welfare state, but by the history of the Indonesian nation itself. In the kingdom era of the archipelago, before the colonial era, public welfare is not a monopoly of the *welvaartsstaat* concept.

Regardless of the debate of the concept of public welfare currently applied comes from, the involvement of the government in the lives of citizens is an unavoidable thing; especially for countries born at the end of the twentieth century like Indonesia. Various fields of society life, including economics, social, health, education, and culture, cannot be separated from the role of government.

A distinctive character in a legal state is the involvement of the government in every citizen affair based on the principle of legality (*legaliteitbeginsel*) which is considered as the most important basis of a law state (*als een van belangrijkste fundamente van de rechtsstaat*). The reinforcement that Indonesia is a legal state written in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that Indonesia is a legal state. This brings the consequences of the involvement of the Indonesian government in the lives of citizens that must be based on the principle of legality. The choice of Indonesia to become a law state must be realized by the legislatures that the idea of *rechtsstaat* tends to lead to legal positivism. Basing every government action in the public sector on written law must face obstacles. According to Manan, Constitution, as a form of written law, has natural and artificial defects. As the written law, constitutional regulation has a limited range. Therefore, it is easily becoming “out of date” compared to changes in society that are getting faster and being faster (Manan, 1999).

SF Marbun believes that the development of the current concept of the state law creates a dilemma because in taking action, the government must be based on the law or at least not be contrary to the law; both legal and unwritten law. In addition, the government is also given roles and duties, and responsibilities that are increasingly broad and heavy (Marbun, 2001). It means that the gap between the principle of legality and the reality faced by the government often occurs. In dealing with such conditions, the government may not be silent on something by reason of waiting for a written law to be made or waiting for a new rule (*rechtsvacuum*). In order to anticipate this gap, the government is given an *ermessen freise*; namely the independence of the government to be able to act on its own initiative in resolving social issues, (Utrecht, 1962).

The above description shows clearly that basically every government involvement in the life of the citizen must be based on the principle of legality; in other words, it must be based on applicable laws and regulations. However, due to natural and artificial defects in the laws and regulations, the government is given discretionary authority or *ermessen*. Basing government action on the principle of legality and discretion or *ermessen*, is actually basing that action on authority. Government actions that are based on the principle of legality mean that the government bases the action on bound authority (*bevoegdheid gebondend*). Meanwhile, actions based on discretion mean basing the government’s actions on the bound authority. Related to the existence of accountable authority. It is in accordance with the principle which states that there is no authority without accountability “*geen bevoegdheid zonder verantwoordelijkheid*” (Sufriadi, 2017).

Discretion actually arises implicitly in the provisions of Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that the President of the Republic of Indonesia holds governmental power according to the Constitution. The meaning of the provisions of the article is, in his/her position as a state official, the President is given the freedom to take action as the head of executive power in carrying out the law. The general explanation of the 1945 Constitution of the Republic of Indonesia clearly states that the Constitution of a country is only part of the basic law of the country itself. The constitution is a written basic law but the unwritten basic law also applies in it; i.e. the basic rules that arise and are maintained in the practice of administering the state, even if it is not written.

The term *Ermessen*, which by some experts begins with adjective ‘noch freies ermesen’, is actually not appropriate. Philipus M. Hadjon stated that the German Administrative Law term was *Ermessen* (not “*Freies Ermessen*”). In the German Administrative Law, the following are mentioned (Hadjon et al., 2010):

When *Ermessen* is given to a government agency, this does not mean that the agency is ‘free’ in determining legal relations with the private sector. Thus, the phrase ‘*Freies Ermessen*’ which once prevailed in literature and German jurisprudence was outdated. It is more appropriate to use ‘*Ermessen* that is in accordance with obligation’ or ‘*Ermessen* that is bound by the rule of law’. If the government agency does not carry out obligations that are legally bound by *Ermessen*, it is called *Ermessen’s* deviation.

Generally, the discretion of administrative officials is actualized in the form of policy regulations. Marzuki (1996) stated that the elements of the policy regulation include: (1) it is determined by the agency or official as an embodiment of *Freies Ermessen* in written form, after which it was announced to be applied by the citizens, (2) the contents of the policy regulations, in fact is a separate general rule and not merely as an operational implementation guideline, as the original purpose of the policy regulation itself, (3) an agency or official who sets the policy rules does not have the authority to make general regulations in such a way, but it is still considered as legitimate considering the rules of wisdom are the embodiments of *Freies Ermessen* in written form.

The product of the regulation of wisdom is inseparable from the *Freies Ermessen* in which the state administration formulates the policy in the form of jurisdictional rules which are not accompanied by the authority to make regulations from officials who issue policy regulations (*wetgevede bevoegdheid*), and are part of governmental activities (*bestuuren*) (Patiro, 2012). The policy is not a statutory regulation, so it is called *pseudowetgeving* or shadow law (*spiegelsrecht*). Therefore, the policy regulation is not legally binding but has legal relevance. Policy regulations can appear in various respects (1) within the framework of the scope of legislation (*binnenwettelijke beleidregel*) and outside the framework of the scope of legislation (*buitenwettelijke beleidregels*); and (3) contrary to the laws and regulations (*tegenwettelijke beleidregels*).

In its development, the policy regulation (*beleidregels*) is actually a product of the use of personal *ermessen* or discretionary power in written and published form which is given the predicate of regulation. Although the policy rules (*beleidregels*) are part of pseudo-legislation (*pseudowetgeving*), they often find problems because the use of discretion manifested in policy regulations does not have clear limits. Theoretically (Basah, 1985), discretion has two limits covering the upper and lower limits. The upper limit of the use of official discretion is adherence to the provisions of legislation while the lower limit is the rules made or the attitude of the state administration (both active and passive) and may not violate the basic rights and obligations of citizens.

Law No. 30 of 2014 concerning Government Administration, has formulated several matters related to discretion. Article 1 number (9) of Law Number 30 of 2014 concerning Government Administration states that discretion is a Decision and/or Action that is determined and/or carried out by Government Officials to overcome the stagnation of concrete problems faced in the government administration within the legislation that giving choices, not regulating, incomplete or unclear, and/or containing government stagnation. The normative formulation related to the notion of discretion does indeed indirectly impose limits on the real meaning of discretion. However, going to further examination, law scholars have provided various kinds of definition of discretion.

Law Number 30 of 2014 concerning Government Administration also provides discretionary requirements, which are listed in Article 24 of Law number 30 of 2014 concerning Government Administration. Government Officials who use Discretion must fulfill the following conditions:

- a. In accordance with the objectives of Discretion as referred to in Article 22 paragraph (2); note that every use of Government Official Discretion aims to: (a) facilitate the administration of the government, (b) fill the legal vacuum, (c) provide legal certainty, and (d) overcome the stagnation of government in certain circumstances for public benefit and interest.
- b. Not contrary to statutory provisions;
- c. In accordance with AUPB;
- d. Based on objective reasons;
- e. Not causing conflicts of interest; and
- f. Carried out in good faith

Providing conditions in conducting discretion in the context of government actions is a new thing. On the other hand, this can provide clarity to government officials in using discretion in every act of government they run. On the other hand, the provision of this condition must also be examined again whether or not this provision of conditions really provide clarity for the government or even provide an opportunity for other interpretations in which the use of discretion is not in accordance with its objectives.

If we go back to the theory of discretion that the use of discretion is a way taken to keep turning the wheels of government when the legislation does not or does not yet regulate it, then the provision of discretionary conditions is a breakthrough in the modern legal era which conditions can indirectly also be the giving of limits from the use of discretion. The provision of limits on the use of discretion also means the establishment of laws that narrow the potential of government officials to carry out arbitrary acts or even abuse of authority.

In this research, the starting point of the authors' discussion is the terms of discretion use in Article 24 letter (c) of Law Number 30 of 2014 concerning Government Administration. Article 24 letter (c) of Law Number 30 of 2014 concerning Government Administration which requires that government officials who use discretion must fulfill the requirements in accordance with the General Principles of Good Governance (hereinafter referred to as AUPB). This Law uses the term AUPB which is contained in Article 10 of Law Number 30 of 2014 concerning Government Administration which reads "(1) AUPB referred to in this Law covers the principles of:

- a. legal certainty;
- b. benefits;
- c. impartiality;
- d. accuracy;
- e. not abusing authority;
- f. openness;
- g. public interest; and
- h. good service."

“(2) Other general principles other than AUPB, as referred to in paragraph (1), can be applied as long as they are used as the basis for judges’ judgments contained in court decisions that have permanent legal force.”

Regarding to this, the term AUPB is something familiar in the world of government. Normatively, the definition of AUPB is a principle that is used as a reference for the use of authority for government official, (According to Article 1 number (3) of Law Number 30 of 2014 concerning Government Administration, government officials are elements that carry out government functions within the government and other state administrators), in issuing decisions (According to Article 1 number (7) of Law Number 30 of 2014 concerning Government Administration, Government Administration Decisions, also called State Administrative Decisions or Decrees of State Administration, hereinafter referred to as Decisions are written provisions issued by the Agency and/or Government Officials in the government administration, and/or actions in the government administration (Article 1 number (17) Law Number 30 of 2014 concerning Government Administration). AUPB is used as the basis for the use of authority by government officials.

## 2. Research Problems

How is the position of the principle of propriety in the use of discretion in government action?

## 3. Discussion

The terms for the use of discretionary authority are in accordance with the provisions contained in Article 24 letter (c) of Law Number 30 of 2014 concerning Government Administration that the use of discretion must be in accordance with the General Principles of Good Governance (AUPB). Article 1 number (17) of Law Number 30 of 2014, concerning Government Administration, defines that AUPB is a principle used as a reference for the use of authority for government officials in issuing decisions and/or actions in the government administration.

Article 10 (1) Law Number 30 of 2014 concerning Government Administration stated that what is meant in this Law covers the principles of:

- a. legal certainty;
- b. effectiveness;
- c. impartiality;
- d. accuracy;
- e. no abusing authority;
- f. openness;
- g. public interest; and
- h. good service.”

In the above discussion on AUPB, it does not appear that the principle of propriety is included in the AUPB section, the word propriety is included in the explanation of Article 10 paragraph (1) letter a of Law Number 30 of 2014 concerning Government Administration which reads: legal certainty “is the principle in a state of law that prioritizes the basis of the provisions of legislation, propriety, fairness, and justice in every policy of governance.

It was explained in the previous chapter that there are principle differences between the Principle of Legal Certainty and the Principle of Propriety. The authors have determined that the Principles of Propriety cannot be included in the part of the Principle of Legal Certainty, because the Principles of Propriety are a separate part. Proper thing does not necessarily have legal certainty, whereas something that has legal certainty is not necessarily fulfilling propriety. It means that the explanation of Article 10 paragraph (1) letter (a) of Law Number 30 of 2014 concerning Government Administration in addition to not binding. It is considered as non-binding because according to the theory of legislation an explanation in the laws and regulations does not have binding power. Also cannot be used as a basis by Government Officials in carrying out Government Actions.

The principle of propriety in Law Number 30 of 2014 concerning Government Administration is not clearly included as part of the AUPB contained in Article 10 of Law Number 30 of 2014 concerning Government Administration but is included as part of the explanation that explains the Principle of Legal Certainty.

Article 10 number (2) of Law Number 30 of 2014 concerning Government Administration, which states that other General Principles outside of AUPB as meant in paragraph (1), can be applied as long as they are used as the basis for judges’ judgments contained in court decisions that have legal force permanent. The explanation of this paragraph states that “other general principles other than AUPB” are general principles of government that are either sourced from unreasonable district court decisions, or high court decisions that are not supervised or ruled by the Supreme Court. It means that the judge’s decision is *inkracht*.

The article is also the critical material of the author because the article provides an opportunity for Government Officials to be able to explore the existence of other general principles of government other than those mentioned in Article 10 paragraph (1) of Law Number 30 of 2014 concerning Government Administration. However, the authors assume that this actually adds to the weakness of the Law itself. The authors base this on Bruggink’s opinion which says that in the context of the application of the legal principle it only contains a

measure of value and indirectly only provides guidance. Since the legal principle is not always positive in the rule of law, then it is difficult to establish when the legal principle has lost its validity. For instance, when the authority bearers no longer enforce certain legal principles or the judges no longer accept the measure of value and are no longer a reference for behavior, it is difficult for the judge to be able to trace the validity of the principle.

Article 10 paragraph (2) becomes weak when it turns out that the authorities do not apply a certain principle so that the judges also have difficulty in tracing the application of principles that are not accommodated in legislation.

Based on the explanation of Article 10 letter a of Law Number 30 of 2014 concerning Government Administration, what is meant by the Principle of Legal Certainty is the principle in a legal state that prioritizes the basis of the provisions of legislation, propriety, fairness, and justice in every government policy. In this Law, propriety is inputted as part of an explanation of the Principle of Legal Certainty. According to the authors, the principles of Legal Certainty and Propriety have fundamental differences.

### 3.1 Principle of Legal Certainty

The principle of legal certainty is one of the popular general principles. Legal certainty comes from the word 'certainty' in which the Indonesian Dictionary defines it as fixed; should; certain; and must. Based on Gustav Redbruch's opinion, there are three basic legal ideas which some legal experts interpret them as legal objectives, consisting of justice, usefulness and legal certainty. Certainty is defined as "provisions, strictness". However, if certainty is combined with the word legal, they become legal certainty, which means "legal instruments of a country that are able to guarantee the rights and obligations of every citizen". Legal certainty has historically emerged since the idea of separation of powers was stated by Montesquieu, that with the separation of powers, the task of creating the law was in the hands of the legislators. Meanwhile, the judge (the judiciary) only has the duty to voice the contents of the law (Van Apeldoorn, 2009). Legal certainty focuses on an attitude to protect citizens from government arbitrariness. If you see from the history of the emergence of legal certainty, it is a reaction to the arbitrariness of the monarchy, where the head of the kingdom is very decisive in the legal system. The court at that time was clearly just a servant of the monarchy (Utrecht, 1989). Legal certainty is a value that principally provides legal protection for every citizen from arbitrary power so that the law gives responsibility to the state to carry it out. In this case, we can see the relationship between the issue of legal certainty and the state (Manullang, 2007).

Legal certainty contains two meanings: first, in the form of general rules that make individuals aware of what may or may not be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules individuals can know what the state may charge or do with them. Legal certainty is not only in the articles in the law, but also consistency in the judge's decision between one judge decision and another for a similar case that has been decided (Marzuki, 2010).

Legal certainty, according to Soedikno Mertokusumo, is one of several conditions that must be fulfilled in law enforcement. He interpreted legal certainty as a protection of the judiciary against arbitrariness which means that someone can get something expected under certain circumstances (Sudikno, M. (2005). Scheltema describes the elements of the rule of law where one element is the guarantee of legal certainty. Therefore, in this connection, the derivative elements of legal certainty are described as follow (Adnyana, 2011):

- a. the principle of legality;
- b. the law that regulates authorized actions in such a way that citizens can know what to expect;
- c. the law may not be retroactive;
- d. the control is free from the influence of other powers.

Since the principle of legal certainty is a movement to protect citizens from the arbitrariness of the government, the government may not issue rules of implementation that are not regulated by law or contrary to law. If that happens, the court must declare that such regulations are null and void which means that they are deemed never to exist. Thus, the consequences of the regulation must be restored as usual. However, if the government still does not want to revoke the rules that have been declared null and void, it will turn out to be a political problem between the government and the legislators (Budiarta, 2016). Three meanings of legal certainty provided by experts include:

- a. having definite legal regulations that govern certain government issues that are abstract;
- b. having a definite legal position between the subject and the legal object in the implementation of the rules of the state administrative law;
- c. preventing the possibility of arising from arbitrary actions (*eigenrechting*) from any party, as well as actions from the government.

### 3.2 Different Basis between the Principle of Propriety and the Principle of Legal Certainty

In understanding the value of legal certainty, it must be noted that the value has a close relationship with positive

legal instruments and the role of the state in actualizing it in positive law. The principle of legal certainty was born from a reaction of the people who wanted to get out of the acts of arbitrariness of the king in the era of the monarchical kingdom where the court was only a servant of the kingdom. Citizens do not have legal protection because there is no legal certainty. However, since the existence of legal certainty, citizens have legal protection that their rights and obligations are regulated by law. The principle of legal certainty is closely related between citizens and the state (government). Through this principle, the government carries the responsibility of being able to provide legal protection for every citizen activity of the country and the country itself. In this case, the authors agree that the principle of legal certainty is included in the General Principles of Good Governance in Article 10 of Law Number 30 of 2014 concerning Government Administration.

Regarding propriety, the discussion in this paper is the disagreement of the authors if the principle of propriety is included in the explanation of the principle of legal certainty in Article 10 letter (a) of Law Number 30 of 2014 concerning Government Administration. According to the authors, the principle of legal certainty and the principle of propriety have different characteristics that are not elegant if it is juxtaposed to be used as an explanation between the two. The principle of propriety is closely related to morals and ethics. In the context of Agreement Law, the Principles of Compliance are also related to justice between the two parties who make the agreement. This principle is set forth in Article 1339 of the Civil Code. In this case, the principle of propriety relates to the provisions regarding the contents of the agreement. This principle is a measure of relationships that is also determined by a sense of society justice. The propriety itself, in the Indonesia Dictionary, is interpreted as good, decent, profane, appropriate, correct, commensurate, balanced, reasonable, common, proper, and actual. However, propriety also presents and exists in every religious and customary laws that applies in the society. On this occasion, the authors want to give conclusions about the characteristics related to the principle of propriety, as follows:

- a. The principle of propriety is present in the midst of society and is considered in accordance with the agreement of the society itself;
- b. Regarding to the principle of propriety in customary society, customary law has a role to be able to determine what is appropriate and inappropriate in the community;
- c. The principle of propriety relates to ethics and morals;
- d. The measurement of the principle of propriety is not only given to the society but each individual has a measure of good feeling that underlies the individual's attitude in behavior. It is done by not treating someone else the treatment we do not want to experience.
- e. The principle of propriety is also very much related to religious law.

Principally, the principle of legal certainty is established to guarantee legal protection for the public from government arbitrariness. The government has the responsibility to make the rule of law positive to ensure legal certainty for the society. Meanwhile, the principle of propriety is born from the society and lives in the society. Its recognition and enactment depend on each society in which it is not always written but lives and is recognized within the society.

### 3.3 Normalization of AUPB in Sectoral Legislations

Many sectoral legislations on the administration of the state mentions General Principles of Good Government (although some do not mention the name AUPB but they have the same meaning), as can be seen in Table 1.

Table 1. Normalization of AUPB in Sectoral Legislations

<b>Law Number 28 of 1999 concerning the Implementation of a Free and Clean Country from Corruption, Collusion and Nepotism</b>	<b>Law Number 30 of 2002 concerning the Corruption Eradication Commission</b>	<b>Law Number 30 of 2014 concerning Government Administration</b> (This law refers to the General Principles of Good Governance)
Principle of Legal Certainty	Principle of Legal Certainty	Principle of Legal Certainty
Principle of Orderly State Administration	Principle of Openness	Principle of Effectiveness
Principle of Public Interest	Principle of Accountability	Principle of Impartiality
Principle of Openness	Principle of Public Interest	Principle of Accuracy
Principle of Proportionality	Principle of Proportionality	Principle of No Abusing Authority
Principle of Professionalism		Principle of Openness
Principle of Accountability		Principle of Public Interest
		Principle of Good Service

Based on the above table, not all principles in Law Number 28 of 1999 concerning the Implementation of a Free and Clean Country from Corruption, Collusion and Nepotism and Law Number 30 of 2002 concerning the

Corruption Eradication Commission are accommodated in Law Number 30 of 2014 concerning Government Administration.

To identify the origin of AUPB in Law Number 30 of 2014 concerning Government Administration, the next step is to look at the results of the level I and level II meetings. There was a debate between the participants of the consensus meeting of the drafting team of Law Number 30 of 2014 concerning Government Administration when they discussed the formulation of General Principles of Good Governance. The PKS (Prosperous Justice Party) Deputy Faction viewed that the draft Law on Government Administration must pay attention to the values and principles of clean and good governance as well as the principles of implementing good governance with the aim of realizing governance that is free of corruption and serving the community well. Some parties mentioned that General Principles of Good Governance are the Principles of Accuracy, Principle of Fairness, and Principle of Accuracy, etc. However, it was then decided that what included into the AUPB in Article 10 of Law Number 30 of 2014 concerning Government Administration is the principle of legal certainty, effectiveness, impartiality, accuracy, no abusing authority, openness, public interest, and the last is the principle of good service.

Formulation of Article 10 according to the analysis of the authors is not in accordance with the “spirit” of the academic text that has been made. It has been explained above that the “spirit” of this Act, viewed from an academic text, comes from Law Number 28 of 1999 concerning the Implementation of a Free and Clean Country from Corruption, Collusion and Nepotism as well as the Law Number 30 of 2002 concerning the Corruption Eradication Commission. Yet, during the discussion regarding the general principles of good governance, the drafting team talked more about public services and did not mention the two laws. Meanwhile, Law Number 28 of 1999 concerning the Implementation of a Free and Clean Country from Corruption, Collusion and Nepotism and Law Number 30 of 2002 concerning the Corruption Eradication Commission have different policy directions.

The clause on the principle of propriety was never discussed during the formulation of Law Number 30 of 2014 concerning Government Administration. Talks about general principles of good governance also experienced inconsistencies between those written in academic texts and the drafting meetings. There is a discrepancy between what is the guideline in the academic text and what is the material in the meeting formulating Law Number 30 of 2014 concerning Government Administration. There were many things can be criticized in being the cause of inconsistency in the discussion of the AUPB. First, it comes from the quality of academic texts. As a result of research and assessment that must be accountable, academic texts must have the following characteristics of scientific writing:

- a. it is scientific writing based on the results of research or review;
- b. it is objective in which the expressed information is in accordance with the characteristics of the object;
- c. the contents of scientific writings are systematic which means that the arrangement of their contents is systemic;
- d. it is developed based on references;
- e. information on scientific writing is explicit, and
- f. it has linguistic characteristics that contain objective are interpretive characteristics, do not contain emotion such as the use of language styles, and do not create the impression that it is difficult to interpret.

Referring to the above characteristics, the academic text of Law Number 30 of 2014 concerning Government Administration above has many weaknesses. It includes references and philosophical foundations that are not strong enough so that the establishment of the law has the potential to not reach the objectives. Regarding philosophical basis, it becomes a deep meaning for the breath of the Law itself. The underlying values should be raised in the philosophical foundation, this is so that people can find out what is the philosophical foundation of a law so that they can find out what is the direction of their policies so that the objectives of the law can be achieved.

#### 4. Conclusions

After the stipulation of Law Number 30 of 2014 concerning Government Administration, the use of discretionary authority is regulated starting from the terms of use, purpose of use, to the legal consequences of its use. One of the conditions for the use of discretionary authority is that it must be in accordance with the Good Governance Principles (AUPB) in which the principle of propriety is not required in its implementation. The principle of propriety is only as an explanation of the principle of legal certainty. In fact, the principle of propriety has a different meaning from the principle of legal certainty. Although they are in a unity, essentially, the principle of propriety and the principle of legal certainty are two different things.

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