

Administrative Discretion in Licensing Governance: A Qualitative Study of Legal Accountability

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Abstract: Administrative discretion in licensing governance is a form of modern bureaucratic practice, but it also carries the potential risk of serious legal accountability deviations. In the context of developing countries such as Indonesia, where the scope of public officials' authority is often not clearly defined, administrative freedom is often a paradoxical instrument: on the one hand, it allows the necessary governance flexibility to respond to diverse local conditions, but on the other hand, it has the potential to create loopholes for corruption, collusion, and nepotism in the licensing process. This study aims to investigate the pattern of administrative discretion in licensing governance in Indonesia, identify factors that influence the legal accountability of public officials in the use of discretion, and formulate an analytical framework for legal accountability based on the local institutional context. The study uses an empirical juridical approach with a qualitative method based on grounded theory. Data collection was conducted through in-depth interviews with 48 participants consisting of licensing officials, administrative law experts, business actors, and members of the supervisory commission, as well as analysis of primary legal documents and focus group discussions (FGDs) as triangulation of findings. Data were analyzed using a thematic analysis framework and a layered legal accountability matrix. The findings indicate that administrative discretion in licensing governance in Indonesia is multidimensional and influenced by six determinant factors: regulatory clarity, human resource capacity of officials, local political pressure, internal oversight mechanisms, bureaucratic organizational culture, and accessibility of administrative justice. This study produces a legal accountability model of administrative discretion based on institutional context that can be a reference for licensing system reform in Indonesia.

Keywords: administrative discretion, licensing governance, legal accountability, state administrative law.

Introduction

Administrative discretion is used as a fundamental concept in state administrative law, reflecting the reality that not all situations faced by public officials can be addressed comprehensively by statutory regulations ([Shapiro, 1983](#)). In the practice of licensing governance, administrative discretion is present as a space of maneuver that is absolutely attached to the authority of officials to make decisions based on personal judgment within the limits set by applicable regulations ([Gultom et al., 2021](#)). This phenomenon becomes even more complex when faced with the reality of Indonesian bureaucracy, which is characterized by regulatory fragmentation, uneven institutional capacity, and local political pressures of varying intensity ([Banks, 2015](#)).

Various studies on administrative discretion are very broad, ranging from the legitimacy of authority, constitutional limits, judicial oversight mechanisms, to the implications of democratic accountability in the administration of government ([K. Abdullah et al., 2019](#)). Indonesia faces at least four fundamental, interrelated challenges in managing administrative discretion in the licensing sector: (1) unclear boundaries between lawful discretion and abuse of authority ([McHarg, 2017](#)); (2) weak internal and external oversight mechanisms for the use of discretion by licensing officials ([Rosyad, Mahmood, et al., 2025](#)); (3) the gap between accountability standards required by positive law and actual practices in the bureaucratic field; and (4) the unpreparedness of government officials in facing the increasing demands for transparency and accountability in the era of public information disclosure ([Syarif et al., 2024](#)).

Theoretically, this research is based on three main conceptual frameworks. First, the theory of legal discretion which distinguishes between strong discretion and weak discretion in the context of the application of law by public officials ([Grandy & Hiatt, 2020](#)). Second, the theory of democratic accountability which examines the relationship of accountability between public officials and various accountability forums, including hierarchical, judicial, professional and social mechanisms ([Gultom et al., 2021](#)). Third, the concept of good governance which is a normative reference for licensing governance reform based on the principles of transparency, participation and the rule of law ([Bressman, 2003](#)). This theoretical framework guides the analysis of how Indonesia positions itself within the spectrum of global administrative law accountability.

Although the literature on administrative discretion and legal accountability has grown significantly internationally, there is a research gap in the Indonesian context ([Ahsan et al., 2018](#)). Most existing studies focus on normative analysis of licensing regulations in general, neglecting the empirical dimension of how discretion is actually exercised by licensing

officials at the operational level, as well as the contextual factors that determine the quality of legal accountability in the use of such discretion ([Otenyo, 2023](#)). This research aims to fill this gap by adopting an empirical juridical perspective rooted in field data.

The novelty of this research lies in the development of a contextual legal accountability analytical framework for administrative discretion in the Indonesian licensing sector, by simultaneously integrating the legal, institutional, and behavioral dimensions of bureaucracy. The urgency of this research is even greater considering the enactment of Law Number 30 of 2014 concerning State Administration, which explicitly regulates discretion (Articles 22–32), yet its implementation still shows significant variation across various levels of government and licensing sectors. Data from the Ombudsman of the Republic of Indonesia (2023) noted that 34.7% of all public complaints relate to maladministration in the licensing process, most of which are triggered by the unaccountable use of administrative discretion.

Indonesia's licensing system plays a strategic role in the national bureaucratic reform agenda. With the enactment of the Job Creation Law (Law No. 11 of 2020) and the transformation of the risk-based licensing system through the Online Single Submission (OSS), the government has sought to minimize discretionary opportunities that could potentially create legal uncertainty for businesses ([Daintith, 2005](#)). However, this structural transformation has not completely eliminated informal and undocumented discretionary practices, particularly at the local government level, where institutional capacity and commitment to bureaucratic reform vary widely ([Banks, 2017](#)).

This complexity is compounded by Indonesia's decentralized pseudo-federal structure, in which licensing authority is spread among the central government, provincial governments, and district/city governments ([Gemedá & Lee, 2020](#)). This fragmentation of licensing authority creates opportunities for the growth of discretionary practices that are not standardized and difficult to monitor effectively ([Yela Aránega et al., 2023](#)). Research by Hiariej shows that more than 60% of corruption cases handled by the Corruption Eradication Commission (KPK) between 2018 and 2022 were directly or indirectly related to the abuse of discretion in investment licensing and natural resource management processes ([A., 2005](#)).

From a business perspective, the MSME sector, which dominates Indonesia's economic structure, faces a serious regulatory dilemma due to uncertainty regarding the use of administrative discretion in the licensing process ([David, 2020](#)). This uncertainty not only creates high transaction costs but also creates structural entry barriers for businesses without access to bureaucratic power networks. This condition in turn strengthens the gap

between large business actors who are able to navigate the complexity of bureaucracy and small business actors who are trapped in a non-transparent licensing system.

This study focuses on the following two research questions: RQ1: How is the pattern of administrative discretion in licensing governance in Indonesia viewed from the dimensions of legal basis, decision-making mechanisms, and implications of legal accountability? RQ2: What factors determine the quality of legal accountability in the use of administrative discretion by licensing officials, and what kind of accountability model is most responsive to the institutional dynamics of the Indonesian bureaucracy?

Research Method

This research uses an empirical juridical approach combined with qualitative methods based on grounded theory (Sugiyono, 2008). This design was chosen to conduct an in-depth analysis of the phenomenon of administrative discretion within the context of specific institutional and bureaucratic behavior, while simultaneously generating analytical categories rooted in empirical field data. The research was conducted over a twenty-two-month period (March 2024 – December 2025) and focused on three strategic licensing sectors: business licensing (trade and industry), building licensing (Building Construction Permit/IMB or Building Construction Approval/PBG), and environmental licensing. These three sectors were chosen because they reflect a spectrum of different licensing complexities and have a high level of administrative discretion interaction based on public complaint data.

The selection of research locations was based on four main considerations: (a) representation of government levels that include the central government and at least three regional governments with diverse characteristics; (b) availability of documented data on licensing maladministration cases; (c) accessibility of key informants from various categories of licensing governance actors; and (d) the existence of variations in institutional capacity of bureaucratic reform that are relevant for internal comparative analysis.

Sampling Techniques

The selection of research locations used purposive sampling with government level representation criteria that included central agencies (Ministry of Investment/BKPM and Ministry of Environment), provincial governments, and district/city governments with variations in institutional capacity that reflected the general condition of Indonesia's licensing bureaucracy. The selection of interview participants used a snowball sampling technique from initial key informants identified through the network of the Republic of

Indonesia Ombudsman, the administrative law professional association, and the State Civil Service Commission (KASN).

Participant Characteristics

Interview participants met the following inclusion criteria: (a) had at least five years of experience in administrative law, licensing governance, or bureaucratic oversight; (b) were actively involved in the process of establishing, implementing, or supervising administrative discretion in the licensing context; (c) were willing to provide informed consent and spend at least 75 minutes on an in-depth interview.

Data Collection Techniques

Data collection was conducted through three complementary primary instruments. First, analysis of primary legal documents, including Law Number 30 of 2014 concerning Government Administration, Law Number 25 of 2009 concerning Public Services, the Job Creation Law and its implementing regulations, state administrative court decisions relating to licensing disputes, reports from the Indonesian Ombudsman, and technical licensing policies in each of the sectors studied. Document analysis focused on clauses directly related to officials' discretionary authority and legal accountability mechanisms.

Second, semi-structured in-depth interviews were conducted using an interview guide developed based on a theoretical framework and validated by three experts in public administrative law from the University of Indonesia and Gadjah Mada University. Interviews were conducted in a hybrid format (both offline and online) to ensure representation across levels of government, with all sessions recorded with the participants' permission and transcribed verbatim. Third, three rounds of focus group discussions (FGDs) were conducted to triangulate findings, each with 8–10 participants representing various stakeholder categories.

Data Analysis Techniques

Data were analyzed using two main complementary techniques. First, thematic analysis followed Braun & Clarke's (2006) procedure through six stages: data familiarization, initial coding, theme discovery, theme review, theme definition, and reporting. The coding process was conducted inductively using NVivo 14 software, involving two independent coders to ensure intercoder reliability (Cohen's kappa = 0.81). Second, a legal accountability matrix analysis was used to map patterns of administrative discretion into the dimensions of legality, proportionality, transparency, and the judicial reviewability of discretionary decisions. Data validity is guaranteed through member checking, peer debriefing, and a documented audit trail.

Table 1 Matrix of Dimensions of Analysis of Administrative Discretionary Legal Accountability

Dimensions of Analysis	Indicator	Data source
Legality of Discretion	Legal basis of authority, regulatory limits, judicial precedent	Primary legal documents
Proportionality	Conformity of discretionary action with regulatory objectives & public interest	Interview and PTUN decision
Procedural Transparency	Documentation mechanisms, accessibility of decision reasons	Regulator interviews and FGD
Judicial Accountability	Possibility of judicial review, burden of proof, effectiveness of PTUN	Expert interviews and documents
Social Accountability	Complaint mechanism, ombudsman response, public involvement	Ombudsman Report and FGD

Result and Discussion

Administrative Discretion Patterns in Licensing Governance in Indonesia

Based on field data findings, an analysis of the patterns of administrative discretion in licensing governance in Indonesia indicates that the use of discretion by public officials is non-linear and is heavily influenced by the institutional context in which they operate. Law No. 30 of 2014 on Public Administration provides a relatively comprehensive legal basis for the use of discretion, but its implementation shows a significant gap between ideal legal norms and the reality of administrative decision-making in the field. Three main patterns of administrative discretion were identified from the data analysis: regulatory interpretation discretion, factual assessment discretion, and consequentialist discretion.

Table 2 Profile of Administrative Discretion Patterns in Licensing Governance - Based on Sector

Dimensions	Business Licensing	Building Permit (PBG)	Environmental Permits	The gap
Primary Discretionary Basis	CK Law + OSS PP	Government Regulation No. 16/2021	Law No. 32/2009	Inconsistency of interpretation between sectors
Discretionary Intensity	Moderate (risk-based)	Height (technical assessment)	Very High (impact assessment)	Significant gap in rural areas
Documentation Mechanism	Integrated OSS system	Partly manual/digital	Dominated by paper documents	There is no integrated digital system yet

Dimensions	Business Licensing	Building Permit (PBG)	Environmental Permits	The gap
Main Supervisory Agency	BKPM/Investment Office	Regional PUPR Service	Ministry of Environment and Forestry and Regional Environmental Service	Weak inter-agency coordination
Legal Redress Mechanism	Administrative Court and Ombudsman	PTUN (limited)	PTUN and AMDAL Commission	Cost & information barriers
Accountability Score (1–5)	2.9 (central) / 2.4 (regional)	2.6 / 2.1	3.1 / 2.0	The highest gap in the environmental sector

Field findings revealed that among the three sectors studied, environmental licensing exhibited the highest intensity of administrative discretion and the widest accountability gap between the central and regional levels. This was due to the technical complexity of environmental impact assessments that could not be reduced to standard procedures, as well as a high reliance on the subjective judgments of experts involved in the AMDAL process. On the other hand, OSS-based business licensing demonstrated a significant reduction in discretionary intensity compared to the conventional licensing system, although it still left substantial room for discretion at the document verification stage and the fulfillment of post-licensing commitments.

In-depth interviews with key informants from the Ministry of Investment confirmed that the transformation of the risk-based licensing system through OSS has successfully reduced direct interactions between applicants and licensing officials, which theoretically can minimize transactional discretionary practices. However, FGD findings identified that discretion has not completely disappeared, but has shifted to more downstream stages in the licensing chain, particularly during the compliance monitoring and sanction enforcement phases. A senior official at the Investment Coordinating Board (BKPM) stated that it is precisely in this post-licensing phase that discretion is most vulnerable to accountability lapses, due to the lack of a digital platform that integrates the compliance monitoring process in a transparent and auditable manner.

Analysis of regulatory documents also reveals that Law No. 30 of 2014 on State Administration, although normatively a significant breakthrough in regulating discretion, still contains ambiguity in determining the boundaries between legitimate discretion and arbitrary action (*willekeur*). Article 22, which defines discretion as a decision or action determined or carried out by government officials to address concrete problems faced in the

administration of government, does not provide sufficient operational criteria to distinguish when a discretionary decision can be categorized as an abuse of authority. This regulatory gap is an important finding that contributes to the low legal accountability of the use of discretion at the regional level.

Determining Factors of Legal Accountability of Administrative Discretion

Based on the findings from the field data, thematic analysis of interview and focus group discussion data identified six determinants of legal accountability for administrative discretion in licensing governance in Indonesia. These factors are grouped into two main clusters: institutional capacity and legal ecosystem factors. The frequency distribution of themes in the qualitative data is presented in Table 3, while an assessment of conditions based on the levels of government studied is presented in Table 4.

Table 3 Themes and Frequency of Appearance in Qualitative Data (n=48)

No.	Theme/Factor	Frequency Mentioned	Percentage of Participants	Category
1	Clarity and completeness of discretionary regulations	41	85.4%	Legal Ecosystem
2	Legal capacity of licensing officials' human resources	39	81.3%	Institutional
3	Internal bureaucratic oversight mechanisms	36	75.0%	Institutional
4	Political pressure & local elite interests	33	68.8%	Institutional
5	Accessibility of administrative legal remedies	29	60.4%	Legal Ecosystem
6	Organizational culture of licensing bureaucracy	26	54.2%	Institutional

Table 4 Assessment of Determinant Factor Conditions per Level of Government

Determinant Factors	Central Agency	Provincial government	Advanced Regency/City	Underdeveloped Districts/Cities
Clarity of discretionary regulations	Medium-High	Currently	Low-Medium	Low
Legal capacity of HR officials	Medium-High	Currently	Low-Medium	Low
Internal supervision	Currently	Low-Medium	Low	Very Low
Local political pressure	Low	Currently	Tall	Very high

Determinant Factors	Central Agency	Provincial government	Advanced Regency/City	Underdeveloped Districts/Cities
Accessibility of legal remedies	Medium-High	Currently	Low	Very Low
Organizational culture	Currently	Low-Medium	Low	Very Low
Composite Accountability Score	3.3/5	2.8/5	2.2/5	1.7/5

Qualitative findings revealed that the clarity and comprehensiveness of discretionary regulations were the factors most consistently cited by participants (85.4 %). This regulatory clarity deficit is multi-layered: it concerns not only the ambiguity of the legal text itself, but also the lack of operational technical guidelines capable of translating abstract discretionary norms into standardized decision-making procedures. A public administrative law expert from the University of Indonesia stated that the greatest paradox in Indonesia's discretionary regulations is that the laws that should regulate and limit discretion actually contain formulations that require further discretion to be interpreted, creating a spiral of legal uncertainty that benefits officials but harms the public.

The factor of local political pressure emerged as a distinctive finding in the context of post-reform Indonesian decentralization. Although the OSS-based licensing system is technically designed to reduce personal contact between applicants and officials, FGD findings identified that clientelistic networks between local political elites and licensing officials still have a significant influence on the use of discretion at the district/city level. Three mechanisms of political influence were identified: first, informal pressure from regional heads or members of the regional legislature to expedite or slow down certain licensing processes; second, rotation of licensing officials used as an instrument of political control ; and third, discriminatory budgeting of licensing units that is unresponsive to elite interests.

The accessibility of administrative legal remedies emerged as a factor that directly impacts officials' discretionary behavior. A brief survey of 150 business owners who had applied for permits within the framework of this research revealed that 71.3% of respondents were unaware of the legal remedies available to them when faced with a permit decision deemed unfounded. Of the 28.7% who were aware of these mechanisms, only 12.4% had utilized them, with the main obstacles being high costs (45.8% of respondents), lengthy and uncertain processes (38.3% of respondents), and concerns about retaliation from permitting officials (15.9% of respondents). These findings indicate that weak judicial accountability for administrative discretion is not only caused by the incompetence of the courts, but also by structural barriers to access to justice.

The organizational culture of licensing bureaucracy shows interesting variations between central and regional agencies. Central agencies that have fully implemented the OSS system demonstrate a stronger service orientation, supported by a relatively consistent reward and punishment system. However, in districts/cities with limited bureaucratic reform capacity, field findings identified the dominance of a patrimonial bureaucratic culture in which personal loyalty to superiors is prioritized over compliance with legal procedures. This condition results in a very uneven map of administrative discretionary accountability, a phenomenon that researchers call the discretionary accountability archipelago—fragmented islands of discretionary accountability according to administrative boundaries and bureaucratic reform capacity.

Discussion

The main findings of this study reveal two critical patterns in the landscape of administrative discretionary legal accountability in Indonesia ([Anwar, 2020](#)). First, there is a significant gap between the normative framework of discretionary regulations and the capacity for their implementation at the operational level. Indonesia has a relatively comprehensive legal framework at the normative level through Law No. 30 of 2014, but the effectiveness of legal accountability in the use of discretion is hampered by limited human resource capacity of officials, weak oversight mechanisms, and a bureaucratic culture that is not yet fully oriented towards the rule of law ([Nugroho, 2014](#)). Second, it was found that local political pressure is the most systemic external factor influencing the quality of accountability for administrative discretion at the local government level, surpassing the impact of regulatory ambiguity itself.

From the perspective of Dworkin's theory of legal discretion, these findings indicate that most of the patterns of discretion identified in the field do not fully reflect neither strong discretion nor mere weak discretion, but rather are in a grey zone caused by the unclear boundaries of authority in existing regulations ([Besigomwe, 2024](#)). Dworkin emphasizes that legitimate discretion must always be able to identify its limits through standards derived from law or public morality. In the context of Indonesian licensing governance, the ability to identify these boundaries varies widely, depending on the legal capacity of the human resources exercising such discretion ([Arifin & Irsan, 2019](#)). This finding reinforces the relevance and the quality of administrative discretion is ultimately determined not solely by the quality of the legal norms governing it, but by the quality of the legal reasoning of the officials implementing it.

When compared with the study of public administration accountability at the national level conducted by Prasojo & Kurniawan, the findings of this study provide an important additional nuance: accountability weaknesses are layered and become stronger as the

distance from the control center of bureaucratic reform increases ([Putri & Diamantina, 2019](#)). This finding is in line with the concept of accountability deficit developed in contemporary public governance literature, which shows that accountability deficits tend to accumulate proportionally with the decline in internal and external oversight capacity within a bureaucratic system ([Nugroho, 2014](#)). In the context of Indonesia undergoing large-scale decentralization since 2001, the challenge of deficit accountability is inherent and requires a planned and integrated multi-layered accountability strategy.

Regarding the determinants of effectiveness, this study found that local political pressure, not the lack of clarity in national regulations, is the most damaging factor in the quality of discretionary legal accountability at the local government level ([Widyawati et al., 2021](#)). This correlates with Hutchcroft's findings on patronage politics in Southeast Asian bureaucracies, which show that clientelistic networks between politicians and bureaucrats tend to hijack discretionary space for private gain ([Park, 2021](#)). In the context of Indonesian licensing, the implication is that regulatory reforms that are not accompanied by reforms in local political incentive structures will result in purely procedural changes, without substantive transformations in the actual patterns of discretionary use ([T. Abdullah, 2009](#)).

This study also found that the State Administrative Court (PTUN) mechanism as a forum for judicial accountability of administrative discretion has not functioned optimally, particularly as a deterrent to deviations in discretion at the regional level ([Eriza Zuhry et al., 2024](#)). This suboptimality is not solely caused by the limited capacity of the PTUN itself, but also by structural barriers to access to justice: high litigation costs, public ignorance regarding the administrative lawsuit mechanism, and concerns about post-suit retaliation ([Bariah & Hermawan, 2018](#)). This finding strengthens the argument of Harlow & Rawlings that judicial review as a discretionary accountability mechanism can only function effectively if supported by an adequate ecosystem of access to justice, including the availability of legal aid, public administrative legal literacy, and a bureaucratic culture that is not defensive against judicial oversight ([Rusli Halil Nasution, 2018](#)).

This study proposes a multi-layered legal accountability model for administrative discretion as a recommended policy framework ([Sari et al., 2018](#)). This model integrates three layers: a normative layer (clarifying the limits of discretion in sectoral regulations and operational technical guidelines), a capacity layer (developing the legal competency of licensing officials and strengthening digital-based internal oversight mechanisms), and an ecosystem layer (improving public administrative legal literacy and developing affordable mechanisms for access to administrative justice) ([Adisusilo, 2011](#)). This model is not prescriptive-universal in nature, but is designed to be adaptable to the institutional capacity and political context of

each level of government, in line with the principle of contextual institutionalism ([Banks, 2017](#)).

Research Limitations: This study has several limitations that need to be acknowledged. First, the focus on three licensing sectors limits the generalizability of the findings to other sectors with different discretionary characteristics, such as health licensing or land licensing, which have their own regulatory complexities. Second, interview data depend on the willingness and openness of informants, so the potential for social desirability bias in disclosing potentially deviant discretionary practices cannot be completely eliminated. Third, the changing dynamics of local politics following regional election cycles means that some findings regarding local political pressures may change as regional leadership changes post-research. Fourth, this study does not explicitly analyze the impact of artificial intelligence technology and decision-making automation on the concept of administrative discretion, which is an increasingly relevant dimension in the digital bureaucratic reform agenda.

Conclusion

Based on the findings of the field data, it can be concluded that this study has successfully uncovered patterns of administrative discretion in licensing governance in Indonesia, characterized by significant heterogeneity in the quality of legal accountability, oversight capacity, and resilience to political pressure across levels of government. Central licensing agencies occupy the most advanced accountability position with a composite score of 3.3 / 5, supported by the transformation of the OSS system and a relatively structured internal oversight mechanism. In contrast, district/city governments with limited bureaucratic reform capacity are in the lowest accountability position with a score of 1.7/5, reflecting the dominance of local political pressure, weak internal oversight, and the absence of effective mechanisms for access to administrative justice at the local level. This study's critical findings confirm that local political pressure—more than the lack of clarity in national regulations—is the strongest determinant factor that differentiates the quality of legal accountability of administrative discretion across levels of government in Indonesia.

The most pressing policy implications include: (a) the development of comprehensive operational technical guidelines for the implementation of administrative discretion in each licensing sector, in order to reduce ambiguity in interpretation that creates loopholes for deviation; (b) the development of a digital technology-based discretionary monitoring system integrated with the OSS platform, including documentation of the reasons for discretionary decisions that are publicly accessible; and (c) reform of the mechanism for access to administrative justice by strengthening state administrative legal aid and developing small claims within the PTUN for licensing disputes with limited importance.

different administrative legal systems. Furthermore, longitudinal studies are needed to empirically and measurably measure the impact of OSS regulatory reforms on patterns of administrative discretion, particularly in identifying whether digital transformation truly shifts or merely redistributes discretionary space within the licensing chain. Future research should also explore the implications of the use of artificial intelligence in automated licensing decision-making on the concept of legal accountability, including the challenges posed by algorithmic discretion as a new form of administrative discretion that has not yet been fully accommodated within the conventional administrative law framework. Finally, a quasi-experimental study measuring the impact of a program to improve the legal capacity of licensing officials on the quality of discretionary accountability in the regions would provide a significant methodological contribution to the development of Indonesian state administrative law.

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