

# The Application of the Retroactive Principle in Decisions of State Administrative Officials to Realize Legal Utility

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**Abstract:** This study examines the application of the retroactive principle in the issuance of State Administrative Decisions (KTUN) by regional administrative officials amid digitalization in public services. The research aims to examine the legal basis of retroactive application within administrative law and to identify appropriate mechanisms to ensure its benefit for public administration and society. Using a normative juridical method with statutory and conceptual approaches, the research is supported by literature studies on legal documents and regulations. The findings indicate that, under Indonesian administrative law, the retroactive application of KTUN is legally permissible if it meets specific conditions outlined in the Law on Government Administration—primarily to prevent greater harm and/or to protect citizens' rights. Retroactive KTUN may address discrepancies between the timing of decision issuance and actual administrative activities, especially in a digital governance environment. The study concludes that to ensure legal certainty and accountability, such application must be based on formal mechanisms, including the development of standard operating procedures (SOPs) and the issuance of regional head regulations as normative foundations. These measures are essential to institutionalize retroactive KTUN and ensure its use aligns with principles of legal certainty, public benefit, and good governance in regional government administration.

**Keywords:** Decisions of State Administrative Officials; Legal Utility; Retroactive Principle

## 1. Introduction

The dynamic and complex development of society imposes consequences on the state to adapt and respond to changes across various sectors, including law as a fundamental system within the state. Law is understood as a social system that maintains societal stability through rules, enforcement, and a culture of compliance with legal values (Sihombing et al., 2024). Although relatively new, administrative law must remain adaptive to societal dynamics. One of the main instruments in administrative law is the Decision of State Administrative Officials, also known as a *beschikking*, which serves to issue specific and concrete individual decisions as a manifestation of governmental legal actions (HR, 2018).

The existence of State Administrative Decisions is functionally recognized within Indonesia's constitutional system, particularly in the implementation of regional policies. In practice, however, the retroactive application of such decisions—meaning they are enforced for conditions or events occurring prior to their issuance—is often encountered. The application of this retroactive principle may serve as an administrative solution in urgent situations or procedural irregularities, such as delays in proposal submissions, gaps in document numbering, or pressing needs related to budget execution and public policy implementation. Nevertheless, the retroactive enforcement of such decisions raises legal

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concerns, as it may undermine the principles of legal certainty, justice, and the protection of citizens' rights.

The non-retroactivity principle, in a constitutional context, is a firmly upheld doctrine, particularly within criminal law, as stipulated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia and reinforced by the principle of legality in the Indonesian Penal Code. In contrast to criminal law, administrative law is not absolute, tends to be less consistent, and may be applied retroactively in pursuit of public benefit and policy objectives (Moeljatno, 2008). Yarik Kryvoi and Shaun Matos describe the non-retroactivity principle as a general rule in criminal law; however, it is not fully binding within administrative law. States may implement retroactive administrative regulations—for instance, in environmental legislation to address the effects of climate change or in tax policies. A notable example is Australia's enactment of retroactive tax laws in the 1980s to curb tax avoidance (Kryvoi & Matos, 2021).

In regional practice, as observed in the Government of Gorontalo City, retroactive application of State Administrative Decisions is frequently employed to adjust the implementation of governmental programs and activities that have already commenced but lack formal legal authorization. Data indicates irregularities in decision numbering, delays in administrative procedures, and other technical challenges that hinder the effectiveness of public administration. In such circumstances, the application of the retroactive principle in State Administrative Decisions is regarded as a corrective instrument to confer legal legitimacy on actions that have already been carried out.

Therefore, the study of the application of the retroactive principle in State Administrative Officials' Decisions becomes essential—not only to assess its legality but also from the perspective of legal utility and the effectiveness of public administration. This research focuses on how the retroactive principle can be proportionally applied in the formation of local legal products without disregarding the fundamental principles of administrative law. Accordingly, the study aims to formulate a normative and practical framework that ensures administrative order while supporting the realization of good governance.

## 2. Methods

This research is a type of normative or doctrinal legal study that positions law as a system of norms, encompassing legal principles, legislation, court decisions, and legal doctrines (Nugroho et al., 2020). The approaches employed in this research are the statute approach and the conceptual approach. The statute approach is used to examine various regulations relevant to the legal issue under study, particularly concerning the retroactive principle in administrative law (Irwansyah, 2020). The legal instruments referenced in this research include the 1945 Constitution of the Republic of Indonesia, Law Number 30 of 2014 on

Government Administration, as well as other legislative and regulatory provisions governing the formation and implementation of legal norms within the national legal system.

The conceptual approach is employed to construct legal arguments through the analysis of expert opinions and legal doctrines, including the ideas and thoughts of legal scholars regarding the retroactive principle in administrative law practice. The legal materials used in this research consist of primary legal sources such as statutes and court decisions; secondary legal sources, including legal literature such as books and journals; and tertiary legal sources, such as bibliographies and indexes. Legal material collection is conducted through literature study by examining both legal and non-legal documents, accessed conventionally and through digital media. The analysis of legal materials is carried out qualitatively using interpretative methods, which include grammatical, historical, and antinomy interpretations, to interpret legal provisions related to the retroactive principle and to resolve potential normative conflicts.

### 3. Discussion

Indonesia positions law as the fundamental basis for regulating national and state life. Law functions not only as a tool for social control but also as an instrument for achieving justice and public welfare. This provides legitimacy for the government to actively regulate various public affairs through administrative law. The administration of government demands that state apparatus exercise their authority in a proportional and accountable manner. The relationship between the government and citizens often gives rise to administrative disputes, particularly due to decisions made by state administrative officials that are perceived to infringe upon citizens' rights. Administrative decisions represent the most dominant form of governmental action and are central to the study of administrative law (HR, 2018).

The application of the retroactive principle becomes crucial when an administrative action is applied retroactively and has the potential to create legal uncertainty or cause harm to citizens. Therefore, the principles of good governance—such as transparency, participation, and accountability—must serve as the foundation in formulating and implementing administrative policies and decisions, ensuring alignment with the principle of legality and the protection of citizens' rights (Sihombing et al., 2024).

#### The Conflict of Retroactive Principle Application in Administrative Law

The application of the retroactive principle remains a subject of debate, as it conflicts with the supremacy of the principle of legality in law. The principle of legality is closely associated with countries that adhere to the civil law system. This system is influenced by the school of legalism, which is a derivative of legal positivism. This school of thought has played a significant role in shaping the philosophy, theory, and practice of law in civil law countries. Legal positivism views law as a manifestation of state authority, in which the most prominent elements are power and legitimacy (Setyawan & Rhiti, 2022).

The principle of legality within the scope of administrative law requires that every governmental action must be based on statutory regulations (*wetmatigheid van bestuur*). However, the implementation of this principle varies from country to country. Some nations apply it strictly, while others adopt a more flexible approach. A government that operates solely on the basis of the legality principle (written law) is often considered inadequate, particularly amidst the continuously evolving dynamics of society. Written laws have limitations in responding to social change and also contain structural weaknesses.

Bagir Manan notes that written law contains both inherent and artificial flaws. Legislation can only capture the dominant social, political, economic, and cultural conditions at the time of its creation. Moreover, the mismatch between the rapid pace of societal change and the slow process of lawmaking renders written law easily outdated and less responsive. This imbalance is often illustrated by describing legal development as progressing in arithmetic sequences, while social change moves in geometric sequences (HR, 2018). As a result, written law frequently lags behind in meeting societal needs, especially in governance that demands flexibility and speed.

### **3.1 The Application of the Retroactive Principle in State Administrative Officials' Decisions within the National Legal Instrument**

Asas The retroactive principle is generally prohibited in national law; however, developments in international and national law indicate that the application of this principle is beginning to be adopted, particularly within legislation. Deviations from the principle of legality are reflected in various provisions of international law and constitutions. One example is found in the 1968 Vienna Convention on the Law of Treaties, which affirms that a treaty does not have retroactive effect unless explicitly stipulated or agreed upon by the parties (HR, 2018).

A similar provision is found in Article 15(2) of the International Covenant on Civil and Political Rights, which allows courts to try and punish acts that were considered crimes at the time they were committed according to the general principles of law recognized by the international community. Additionally, Article 29(2) of the Universal Declaration of Human Rights permits limitations on human rights, provided such restrictions are made to respect the rights and freedoms of others and to meet the requirements of just morality, public order, and the general welfare in a modern society (HR, 2018).

Based on several international conventions, the principles of international law permit the retroactive application of laws to acts that, at the time they were committed, were already considered crimes under international law, even if not explicitly regulated in the national law at that time. This principle is generally applied to serious crimes such as genocide, crimes against humanity, war crimes, and aggression.

The application of the retroactive principle is fundamentally prohibited in national law; however, the 1945 Constitution (UUD 1945) provides room for limitations on human rights

through Article 28J paragraph (2), which allows exceptions to absolute rights as regulated in Article 28I paragraph (1) (Aditya, 2020). This was affirmed in the Constitutional Court Decision Number 065/PUU-II/2004, which states that the right not to be prosecuted under retroactive laws is not absolute if there are considerations of morality, religious values, and public order within a democratic society (Mahkamah Konstitusi Republik Indonesia, 2004). Thus, the retroactive principle may be applied under certain conditions to fulfill the demands of justice.

A concrete example of the retroactive principle in Indonesia can be seen in Law Number 26 of 2000 concerning the Human Rights Court, particularly Article 43, which allows the examination of serious human rights violations that occurred before the law was enacted through ad hoc human rights courts. A similar provision is found in Government Regulation in Lieu of Law (Perppu) Number 1 of 2002 concerning the Eradication of Terrorism Crimes, which permits retroactive application for certain acts of terrorism committed before the regulation was enacted, as stipulated in Article 46. These regulations demonstrate that the retroactive principle is applied as an effort to protect human rights and maintain public order.

Meanwhile, Law Number 12 of 2011 on the Formation of Legislation does not explicitly prohibit the retroactive application of rules but imposes limitations through Article 87. A regulation may be applied retroactively if it is expressly stated within the regulation itself and does not conflict with general legal principles, especially criminal law. Additionally, retroactive provisions must meet strict criteria, such as not imposing a concrete burden on the public and clarifying the legal status of actions that occurred before the enactment date (Kementerian Sekretariat Negara RI, 2011). This serves as an important guideline to ensure that the retroactive principle remains within the framework of justice and legal certainty.

#### The Application of the Retroactive Principle in Decisions of State Administrative Officials in the Implementation of Government Administration

The complexity of governance today demands that every decision or action by public officials be based on law and comply with the provisions of legislation. In Indonesia, administrative law enforcement has long referred to Law Number 5 of 1986 concerning State Administrative Courts, which has been amended by Law Number 9 of 2004 and Law Number 51 of 2009. However, these laws primarily emphasize procedural law (formal law) in resolving disputes between administrative government officials and civil law subjects.

To address the need for legal certainty in the practice of governance, Law Number 30 of 2014 concerning Government Administration serves as an important legal foundation for government officials in making decisions and/or taking actions. This law aims to realize good governance and improve the quality of public services. Within this regulation, decisions of State Administrative Officials, referred to as Government Administrative Decisions or State Administrative Decisions, are defined as written determinations issued by government bodies and/or officials in the context of government administration.

The non-retroactivity principle in Indonesian administrative law is a fundamental principle governing the validity of State Administrative Decisions. This is affirmed in Article 57 of Law Number 30 of 2014 on Government Administration, which states that decisions are effective from the date of enactment unless otherwise specified. Article 58 paragraph (6) reinforces this principle but allows exceptions if retroactive application is needed to avoid significant losses or to protect the rights of citizens (Kosasih et al., 2017).

According to Ade Kosasih et al., this provision aims to maintain legal certainty, although under certain conditions the principle may be set aside for legal utility (*doelmatigheid*). The application of the retroactive principle to State Administrative Decisions is considered valid if it aims to correct administrative errors with broad impact, restore neglected rights, or respond to emergencies such as disasters, disease outbreaks, technological developments, or court decisions. These conditions require a swift government response to prevent greater harm.

The application of the retroactive principle in State Administrative Decisions does not conflict with the principle of legality but constitutes a normatively and constitutionally legitimate exception. However, it must meet strict conditions, namely that it is explicitly stipulated in legislation or included in the decision itself. In line with Mary Anne Buhagiar's principle, retroactivity is permitted as long as it does not violate acquired rights and is aimed at the public interest. Therefore, the retroactive principle can be a functional legal instrument if applied proportionally and does not create new legal uncertainty (Buhagiar, n.d.).

The application of the retroactive principle in State Administrative Decisions generates tension between the principle of legal certainty and the principles of substantive justice and legal utility. On one hand, legal certainty requires that every decision applies from the date it is established and cannot be applied retroactively. The principle of legal certainty in Administrative Law is reflected in the *presumptio justae causae* principle, which presumes that every decision of a state administrative official is valid until proven otherwise by a judge (Rahim et al., 2023). However, for the sake of substantive justice and legal utility, erroneous decisions must be corrected even if they have passed, especially if they cause harm. The principle of utility emphasizes that law must provide real benefits to society because law exists to serve human interests.

The principle of utility in Administrative Law stresses that every administrative action must be directed towards producing the greatest benefit for society. This principle encourages the government to prioritize the optimization of public welfare when formulating policies and making decisions. Utility in this context is not only oriented toward individual interests but also encompasses collective or public interests (Pandapotan et al., 2024).

### **3.2 Strengthening the Legality of State Administrative Officials' Decisions through Standard Operating Procedures and Regulation of the Retroactive Principle**

The government is currently facing highly complex challenges due to the evolving dynamics of social, economic, technological, and political developments, which demand adaptive, effective, and responsive actions (Pandapotan et al., 2024). These various challenges require government administrators to respond through a range of legal instruments used to regulate and manage governmental and societal affairs (HR, 2018). One such legal instrument is the administrative decision, also referred to as a state administrative decision or a government administrative decision.

State Administrative Decisions (such as mayoral decrees) serve as the legal foundation for the implementation of various governmental affairs in the context of regional governance. These decisions operationalize public policy at the administrative level to ensure the achievement of established objectives. A decision can be considered legally legitimate if it meets both formal and material requirements. Formal requirements relate to the rules concerning procedures, processes, and mechanisms that must be followed in the issuance and enforcement of the decision. Meanwhile, material requirements concern the substantive aspects, including the authority of the official issuing the decision and the appropriateness of its content (Kosasih et al., 2017).

The formal validity of a State Administrative Decision is determined by procedures that comply with statutory regulations and the general principles of good governance. It must also be communicated to the relevant parties; the physical form of the decision is not an absolute requirement, as internal memos or official notes can also be considered State Administrative Decisions. Materially, a State Administrative Decision must be issued by a competent authority, be free from defects of will such as fraud or coercion, and adhere to the form and procedures stipulated by its legal basis. The content and purpose of the decision must also align with the intended objectives to ensure optimal legal utility (Kosasih et al., 2017).

In line with this, the Administrative Governance Law stipulates that a decision is considered valid if it meets three main requirements. First, the decision must be issued by an official with the appropriate authority. Second, the process of formulating the decision must follow the applicable procedures. Third, the substance of the decision must align with the subject matter under the official's authority. The validity of a decision in administrative law is determined by its conformity with statutory regulations and the general principles of good governance (AAUPB). This is affirmed in Article 53 paragraph (2) of Law Number 5 of 1986 in conjunction with Law Number 9 of 2004, which states that a decision may be contested if it contradicts statutory regulations or the AAUPB. Thus, these two aspects serve as the primary benchmarks in assessing the validity of a State Administrative Decision.

The formation of State Administrative Decisions at the regional level is considered legally valid as a juridical basis if it meets formal requirements in accordance with the

provisions of the Administrative Governance Law, one of which is through standardized and clear procedures. Therefore, authorized officials are required to formulate and implement a Standard Operating Procedure (SOP) for decision-making and publicly disclose it. The SOP serves to prevent administrative errors, enhance efficiency and accountability, and protect officials from potential maladministration and legal liability.

In addition to SOPs, a regulation issued by the regional head is also necessary to govern the procedures and principles for decision-making in a methodological manner, including provisions regarding the retroactive principle as stipulated in Articles 57 and 58 of Law Number 30 of 2014. Observations conducted at the Legal Division of the Regional Secretariat of Gorontalo City indicate that there is currently no SOP in place for the formation of decisions by the regional head. Therefore, the development of SOPs and tiered regional head regulations is an essential prerequisite to ensure that the application of the retroactive principle has a legitimate legal basis and can be implemented appropriately.

### **3.3 Limitations on the Application of the Retroactive Principle to Decisions of State Administrative Officials in Regional Government Affairs**

The retroactive principle in administrative law is generally not applied in the issuance of State Administrative Decisions, as it conflicts with the principles of legality and legal certainty. However, Law Number 30 of 2014 on Government Administration allows the limited application of this principle under two conditions: to prevent greater harm or to restore neglected citizens' rights. As long as one of these two conditions is met and the application is based on the general principles of good governance (AUPB), the retroactive principle can be legally justified. These limitations serve as a clear legal foundation to ensure that the retroactive principle is not applied arbitrarily and remains subject to the principles of legality and administrative prudence.

The implementation of regional governance, particularly in concurrent governmental affairs—both mandatory and optional—may utilize the retroactive principle as a means of administrative correction. For example, in the fields of education and healthcare, the retroactive application of decisions to rectify errors in the calculation of allowances or delayed services serves as a form of protection for citizens' rights. This provision aligns with the principles of utility, substantive justice, and the local government's responsibility to ensure equitable access to basic public services.

The application of the retroactive principle is also relevant in optional government affairs, such as agriculture, tourism, or fisheries, especially when administrative errors occur in the distribution of aid or land allocation. Retroactive decisions in such cases serve as a tool to restore citizens' rights, maintain the legitimacy of public policies, and build trust in the government. Therefore, with the principles of proportionality and adherence to social and legal norms, the retroactive principle is not only legally valid but also ethically important in a state that upholds welfare and social justice. Consequently, limiting principles such as



proportionality, accountability, and protection of public rights become key guidelines to prevent the misuse of retroactive application by State Administrative Officials at the regional level..

### **3.4 Mechanism and Procedure for the Formation of State Administrative Decisions Based on Technology**

Digitalisasi Digitalization in government administration, or e-government, offers significant opportunities to enhance efficiency, transparency, and accountability in public services, including the formation of State Administrative Decisions (Pandapotan et al., 2024). The use of information technology, such as electronic signatures, enables faster, valid, and digitally documented decision-making processes. Law No. 30 of 2014 on Government Administration explicitly recognizes decisions in electronic form, both those made and delivered through digital media, granting them legal status equivalent to written decisions.

The technology-based procedure for forming State Administrative Decisions generally involves four stages: first, submitting a request or initiating a decision revision; second, electronic verification of data and documents; third, decision-making by the authorized official; and fourth, issuance and validation of the decision through electronic signature (e-signature). This procedure adheres to the provisions of Law No. 11 of 2008 on Electronic Information and Transactions and its amendments. This digital procedure plays a crucial role in overcoming technical issues traditionally associated with the formation of State Administrative Decisions, such as mismatched dates between decision issuance and proposal, as well as gaps in numbering at the beginning of the fiscal year.

While digitalization brings many benefits, the transparency it creates also exposes potential new administrative risks. One such risk is when government activities are carried out without a prior legally valid digital State Administrative Decision as a legal basis. This situation can cause problems in budget accountability and risks neglecting citizens' rights. Metadata in digital systems stores the historical trace of decision formation chronologically, preventing any manipulation of time or retroactive approvals that do not comply with procedure (Nugraha & Mahardika, 2016).

Policy innovation is needed as a response to these challenges in the form of legal breakthroughs by applying the retroactive principle in the formation of technology-based State Administrative Decisions. Although uncommon, this principle can be applied in a limited manner under certain conditions, as regulated in Article 58 paragraph (6) of the Government Administration Law. The application of the retroactive principle serves as a legitimate corrective instrument to prevent greater losses and protect public rights. Thus, digital transformation in government administration can proceed adaptively without neglecting the principles of legality, utility, and substantive justice.

#### 4. Conclusion

The application of the retroactive principle to State Administrative Decisions in administrative law is essentially permitted, provided it meets the conditions to prevent greater harm or the neglect of public rights. Although Article 28I of the 1945 Constitution prohibits the retroactive enforcement of laws, Article 28J allows for certain restrictions as long as they aim to protect the public interest. The retroactive principle, in the context of the Government Administration Law, can be applied in a limited manner with a focus on legal utility to realize a welfare state.

A technology-based mechanism (digitalization) is necessary to optimize the use of the retroactive principle in State Administrative Decisions within regional governance. Through digitalization, transparency and accountability in the formation of these decisions can be maintained while preventing manipulation of decision issuance dates. This promotes effective, efficient governance aligned with the principles of good governance.

The development of standard operating procedure (SOP) guidelines for applying the retroactive principle in accordance with the Government Administration Law is highly needed. Additionally, the establishment of regional head regulations as a normative basis and legitimate foundation for these SOPs is essential to ensure legal certainty so that the application of the retroactive principle remains definite and oriented toward public benefit.

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