

# **Problems of State Civil Apparatus Governance Centralistic In Law No. 5 of 2015 Concerning State Civil Apparatus**

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## **ABSTRACT**

The existence and role of state civil apparatus in the field of public services has a strategic position if without the role of state civil apparatus, the state's obligation to serve its citizens will not be carried out. The problems faced in the implementation of public services include the organizational management system that has not been maximized, the occurrence of disciplinary violations committed by state civil apparatus, poor performance, poor quality of public services provided, a lot of overlapping state civil apparatus, not maximally provided by the state, and Often there is the implementation of tasks that are not in accordance with their duties and responsibilities. At this time, the election of regional heads is a source of problems for mutations on a large scale, usually the elected regional heads make changes in the form of changing and decreasing positions to changing the workplace of an state civil apparatus. Then how is the governance of the state civil apparatus centralized and how is the merit system in managing the state civil apparatus. The research method used in this study uses qualitative methods, namely a research method by means of interviews, observation, documentation in collecting data, then on the data that has been found a data analysis will be carried out. According to the Indonesia State Civil Apparatus Act Law, the state civil apparatus recruitment system in Indonesia is inappropriate for regional head officials to transfer state civil apparatus for political reasons, based on proximity and others. If the regional head transfers his state civil apparatus without paying attention to the regulatory aspects, then a regional head has violated the law. The implementation of state civil apparatus governance in Indonesia is currently regulated by many rules, so that the legal rules for state civil apparatus governance support strongly. However, in terms of substance there are still many problems. There are so many rules that are not considered by regional head officials in transferring or promoting state civil apparatus.

**Keywords:** state civil apparatus governance, merit system.

## **1. INTRODUCTION**

Indonesia as a large country when viewed in terms of population and area, is a gift from God Almighty as a great potential to create a prosperous life for the Indonesian people. Demographic bonuses and the vast territory owned by Indonesia on the one hand are a challenge in itself if a country as big as Indonesia is not managed properly by human resources spread throughout Indonesia. Therefore, in order to realize the optimal, professional, accountable and transparent implementation of state government and public services, it really requires the presence of a state leader and public service officials who have good competence and morals.

The government in carrying out its duties and authorities in the field of public services is assisted by a subordinate or known as the State Civil Apparatus (SCA). SCA is a profession carried out by a Civil Servant (CS) and a Government Employee with an Employment Agreement (GEEA) whose scope of work works for central and regional government agencies (Pio, 2019). An SCA in working to serve the public is a mandate from the state which is ordered by law and gets a salary reward from the state. must be an important component in realizing the country's development.

The existence and role of SCA in the field of public service has a strategic position because without the role of an SCA, the state's obligation to serve its citizens will not be carried out. SCA can be said to be one of the important components owned by the state. In order to realize quality public services, it does not only require the quality of human resources from an SCA, but there must be a neat and merit-based system of SCA governance.

The problems faced in the delivery of public services include the institutional management system that has not been maximized, disciplinary violations committed by SCA, poor performance, poor quality of public services provided, many overlapping regulations regarding SCA, not optimal welfare provided by the state, and often the implementation of tasks that are not in accordance with their duties and responsibilities (Wahyurudhanto, 2020). Public services or the bureaucracy in Indonesia are still often colored by performance problems that are not optimal and do not produce innovative public service implementation and there are no strict sanctions that can be imposed if an SCA does not work properly (Fazil & Fahmi, 2022). In addition, with the enactment of the regional autonomy system as stipulated in the Law on Regional Government No. 23 of 2014 which provides a strategic position for regional heads as state administration officials whose existence originates from the people's choice through elections so that they have the authority to transfer positions to an SCA within their territory (S. Purnomo et al., 2022).

Changes in the Indonesian state administration system during the reform period, on the one hand, were a factor that affected the low quality of public services performed by SCA. The problem posed by the reforms to this constitutional system is that regional heads as regional leaders who are tasked with serving the needs of the people in the regions, in fact use their authority to carry out mutations of SCA, which sometimes mutations are carried out not because of the need or the quality of the human resources possessed by a person. SCA, but because of collusion or other interests. Actions like this if carried out continuously will cause a negative perception in the public eye of an ASN (Habib & Hasan, 2021). Even though the essence of a mutation in SCA governance aims to improve the quality of SCA human resources, improve the



performance of professional SCA, realize the implementation of a bureaucracy that is accountable and open to the public.

By definition, a mutation is an agenda for staffing overhaul in the form of moving from one particular position to another position in a central government institution or a regional government institution based on criteria for skills, qualifications or an assessment of work ability (E. P. Purnomo & Rusli, 2020). Based on this concept, the implementation of transfers carried out by regional heads may not be based on political interests or because of family interests. Transfers must be based on a merit system and uphold professionalism, accountability and transparency.

At present, regional head elections are a source of the problem of large-scale mutations, usually the elected regional heads carry out mutations in the form of replacement and demotion of positions up to the transfer of the workplace of an SCA. On the other hand, for those who support the elected regional head during the election, they will get a distinct advantage, because if previously they held a less strategic position, then they will get an important position. Reality like this illustrates that the governance of the Indonesian bureaucracy has been colored by political elements.

The entry of political elements into bureaucratic institutions in various regions will worsen the quality of public services to the community and will tarnish the image of government institutions in the eyes of the public, because the system of professionalism and filling of positions based on competence is no longer working (Schröter, 2004). Because of this, there is a need to overhaul the system for good SCA governance so that the implementation of public services can work properly. This is a necessity and the responsibility of the central government and the Indonesian Parliament to reform the SCA governance regulations. It is hoped that this system change will improve the quality of public services and will be a solution to improve the quality of ASN human resources.

Based on the research background described above, to focus on writing this paper, the formulation of the problem to be discussed is as follows:

- a. What are the problems with SCA governance in Indonesia?;
- b. Has the merit system in the SCA Law been properly implemented by the government and regional governments?;

## **2. RESEARCH METHOD**

The type of research in this study is research on normative juridical law, namely research based on literature studies which include primary legal materials and secondary legal materials.



Primary legal material is carried out by examining laws and regulations and legal regulations related to the legal question being investigated and secondary legal material in the form of books, journals and documents, as well as related studies related to predetermined titles. by the author.

There are two approaches in this journal, namely the statute approach and the case approach. The statute approach is an approach that is taken by identifying and discussing the applicable laws and regulations, which are related to the issues discussed, while the case approach is analyzing the ratio decidendi of court decisions on cases discussing Business Judgment and rules.

### **3. RESULTS AND DISCUSSION**

#### **Efforts to Realize Ideal ASN Governance**

ASN is an important element in the administration of a country, without the existence of SCA, public services will not be carried out, therefore the existence of ASN in state life is an integral part. Departing from this, in realizing maximum public services in accordance with the general principles of good governance, it is necessary to have a regulation that regulates comprehensively regarding recruitment, coaching, and up to retirement. Arrangements regarding SCA governance must be managed centrally by an agency from the central government that has authority in SCA management relating to transfers and promotions. Implementation of this system will be more effective and create the professionalism of an SCA, so that there will be no mutation and promotion policies that are not based on a merit system.

SCA governance must be carried out based on the general principles of good governance so that the public services provided by SCA to the community can run optimally and bring benefits to the country. Based on Government Regulation No. 101 of 2002 Good Governance, the general principles of good governance include (Altamuro et al., 2005):

- a) Professionalism. The principle aims to maximize the competence of the state apparatus to provide maximum public services;
- b) Accountability. This principle aims to improve the quality of public services with the criteria that all policies taken by state apparatus are for the greatest benefit of society;
- c) Transparency. This principle aims to build public trust in the government by providing information easily to the public;

- d) Excellent service. This principle aims to provide public services that apply good procedures, determine the right rates, be on time, facilitate access, be friendly to the public, and provide good service supporting infrastructure.
- e) Efficiency and effectiveness. This principle aims to maximize all resources owned by the state as well as possible in order to be able to provide maximum service, and put forward the principle of being responsible;
- f) Democracy and participation. This principle aims to provide opportunities for the public to criticize and provide input on government decisions related to public services;
- g) The rule of law and acceptable. This principle aims to create social justice in the field of law enforcement and justice.

The principle of running a state is not only a reference in a country but is a basic principle that is universal because it is contained in the United Nations Development Program (UN), which consists of 14 principles of good governance, while the 14 principles include (Siti, 2016):

- a) Foresight;
- b) Openness and transparency
- c) Society participation;
- d) liability;
- e) rule of law;
- f) Democracy;
- g) Professionalism and competence;
- h) Comprehension;
- i) Decentralization;
- j) Partnership;
- k) Commitment;
- l) Fair market commitment.

SCA as a state apparatus in public service and gets a salary from the state, then to maximize their duties and functions they must follow the principles of good state administration. This is because the principle of administering public services based on the general principles of good governance is no longer only interpreted as an unwritten principle but has been regulated in laws and regulations. Therefore, public services that follow these basic principles are part of the commitment to comply with laws and

regulations. In addition, the obligation to comply with this principle is not only for civil servants who have a low position, but must be obeyed by all institutional leaders and regional heads. This is very important to do not only to provide public services to the community, but also to serve as a guideline for SCA who have high positions so that in carrying out SCA transfers and promotions there are no more arbitrary actions that carry elements of corruption, collusion and nepotism.

SCA governance is part of improving the quality of human resource competencies, so it is important to implement this in order to provide quality public services. The implementation of the public service delivery system will have a positive impact on the country's image in the eyes of the public. In realizing centralized SCA governance, it should be based on the following criteria, while these criteria include:

- a) Develop a mechanism for placing SCA in an institution based on the needs of that institution;
- b) Develop a mechanism for recruiting SCA in a strict and orderly manner so that corruption, collusion and nepotism do not occur;
- c) Formulate a regulation related to increasing the welfare of an SCA through efforts to increase salaries, improve the quality of human resources, promote positions, and provide pensions;
- d) Conduct a comprehensive study of the potential needs of SCA in the future;
- e) Create a program to improve the quality of human resources and assess the quality of work of an ASN;
- f) Regulate SCA management and mutation.

Based on this criterion, a regional head or an institution leader in making structural changes to positions should not be based on interests outside of the needs that should exist in an institution. Therefore, with this pattern it is hoped that when there is a change in regional heads or institutional leaders it will not cause problems in the structure of existing SCA positions. So SCA can focus more on working to serve the public. Then the system for recruiting SCA candidates follows a strict step-by-step process through concentration of tasks and authority only in the State Civil Service Agency in order to avoid unfair and neutral recruitment. Of course with the implementation of a neutral and fair pattern it will bring more benefits to the quality of public services, because it has been filled by SCAs who have been selected based on a strict and fair selection.

SCA as part of the individuals in society have various kinds of needs to meet their daily needs. Therefore, according to the researcher's opinion, the state has an obligation to provide welfare in the form of a decent wage to SCA. If the state has guaranteed the welfare of an SCA, it will not only encourage an increase in the quality of public services, but will also encourage the creation of public services that are free from corruption, collusion and nepotism. The relationship between welfare and the quality of public services is an inseparable unit. On the one hand SCA has the obligation to provide maximum public services, on the other hand SCA requires the provision of ideal salaries and benefits. So, the state has a big role in overcoming this problem, considering the state as the organization that regulates and manages SCA in providing public services.

The basic problem is that the transfer and promotion policies are so very easy and tend to be carried out not because of considerations of need or competence, because of the provisions in Article 53 of Law No. 14 of 2015 concerning the State Civil Apparatus. The sound of this rule is as follows:

"The President as the highest authority for SCA development can delegate authority to determine the appointment, transfer and dismissal of officials other than main and middle high-ranking officials, and functional officials with main expertise to:

- a) Minister in ministry;
- b) Institutional leaders in non-ministerial institutions;
- c) Secretariat general at the secretariat of state institutions and non-structural institutions;
- d) governor in the province;
- e) Regents/mayors in regencies/cities"

In the article above, it regulates matters of appointment, transfer and dismissal, the president delegates his authority to the regions, so that in this case the merit system is very difficult to run if there is still authority attached to regional heads. This kind of arrangement cannot guarantee the implementation of SCA management with integrity because there is no guarantee that an elected regional head will fully implement the merit system in the SCA law. So the problem lies at the level of regulation and also human resources. Therefore, the government and the Indonesian Parliament have the responsibility to revise this regulation by eliminating the authority of regional heads in policies on the appointment, transfer and dismissal of SCA. Meanwhile, the heads of ministerial and non-ministerial institutions are not a source of problems because their positions are not chosen based on elections but are appointed by the President. Regional heads who



are elected through elections will be more prone to abuse of authority due to dislike for those who do not support them during the regional elections.

But even so, the root of the problem is contained in Article 53 of the ASN Law, but if the government and leaders of state institutions, both ministries and non-ministerials, as well as regional heads have integrity and commitment to the principles of the rule of law and the general principles of good governance, then there is no arbitrariness in governance. managing SCA would not be possible. In Government Regulation No. 101 of 2002 Good Governance, the general principles of good governance have regulated these matters and Law No. 14 of 2015 concerning State Civil Apparatus Article 1 number 22 regulates the merit system, so that these two rules are part of the applicable law in Indonesia.

The commitment of state administrators to the law is very relevant to the theory of legal certainty which explains that legal certainty contains two definitions, firstly, the existence of law in the midst of society automatically allows everyone to know what can be done and what cannot be done, and second, with the existence of rules that protect the public, the state will know what its duties and obligations are. Therefore, the rules that apply in people's lives are a guide in behaving well in relationships between individuals and other individuals as well as in social life.

### **Merit System in the Recruitment of State Civil Apparatus**

The merit system is defined as human resource management in an institution based on achievement or the quality of a worker's human resources (Woodard, 2005). The merit system is a concept that regulates human resource management starting from employee recruitment, placement, promotion to retirement based on competence and laws and regulations (Moonti et al., 2018). A person who will be recruited as an employee must have reliable competence according to needs and may not use other parameters. The term merit system in the sense of the word is a benefit, so that if it is implemented in a bureaucracy, the merit system is also related to awarding good performance so that it has the eligibility to fill positions and positions that are higher than before (Meirina et al., 2003). As stated by Simora, that in order to realize the optimal implementation of the merit system, it must be carried out in the following ways (Daryanto, 2007):

- a) Implementing the maximum standardization system in personnel management;
- b) Implement an appropriate employee performance quality assessment system based on the output produced;
- c) Conduct training for employees and provide feedback to subordinates;
- d) Providing compensation for employee performance achievements proportionally;

Implementing a salary increase system based on the quality of performance.



The central government institution that has authority in SCA governance is carried out by the Minister of State Civil Apparatus Empowerment and Bureaucratic Reform (MENPAN RB). Within the scope of MENPAN RB's duties, specifically SCA governance issues are carried out by the State Civil Service Agency. Based on Regulation of the Head of the State Civil Service Agency No.19 of 2014 concerning Organization and Work Procedures of the State Civil Service Agency, the State Civil Service Agency has the task of implementing SCA governance or management based on statutory regulations. Therefore, the State Personnel Agency in implementing its duties is carried out by carrying out the following functions (Adusah-Karikari & Ohemeng, 2014):

- a) Formulation and determination of technical policies in the field of personnel management;
- b) Implementation of procurement, transfer, dismissal and retirement, as well as the legal status and position of Civil Servants;
- c) Administration of pensions, state officials and former state officials;
- d) Implementation of personnel management information systems;
- e) Implementation of supervision and control of the implementation of personnel management;
- f) Conducting potential mapping and competency assessment of civil servants;
- g) Organizing and mapping the civil servant recruitment system;
- h) Research and development in the field of personnel management;
- i) Implementation of legal aid;
- j) Organizing education and training in the field of personnel management;
- k) Fostering and administering administrative support to all organizational units within the State Civil Service Agency;
- l) Supervision of the implementation of their duties.

The governance of government affairs in the personnel sector is carried out by the State Personnel Agency based on procedures regulated in laws and regulations both in the SCA Law, STA Regulations and other regulations. Particularly in carrying out SCA recruitment, the State Civil Service Agency applies a merit-based selection system. The merit system as stipulated in the SCA Law is "the policy and management of SCA based on qualifications, competence and performance in a fair and reasonable manner regardless of political background, race, skin color, religion, origin, gender, marital status, age or disability condition".

Each organizer of the State Personnel Agency's SCA selection is based on the regulations of the State Personnel Agency which differ from time to time and adjust to the circumstances that occur. Like the procurement of SCA in 2021, it is stated in the Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia No. 27 of 2021 concerning Procurement of Civil Servants and the Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia No. 28 of 2021 concerning Procurement of Government Employees with Work Agreement for Teacher Functional Positions in Regional Agencies in 2021.

Based on Article 22 of the Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia No. 27 of 2021 concerning Procurement of Civil Servants, the implementation of SCA recruitment procurement is carried out through the following stages (Simandjorang & Kurniawan, 2022):

- a) Planning;
- b) Job announcements;
- c) application;
- d) Selection;
- e) Announcement of selection results;
- f) Appointment of civil servant candidates and probationary period of civil servant candidates;
- g) Appointment as civil servant.

Based on the description above, the recruitment of SCA in Indonesia is carried out following the recruitment pattern in a merit system and is carried out based on several stages. Therefore, if the implementation of the selection is not based on a merit system but is based on other factors then this is contrary to the applicable laws and regulations. The impact that will result from this unlawful act will have a major impact on the quality of public services in Indonesia. This is because public service institutions have been filled by those who do not have good competence. The merit system is the right standard in producing a qualified ASN. Theoretically, the merit system is a concept that regulates human resource management starting from employee recruitment, placement, promotion to retirement based on competence and laws and regulations (Bauw et al., 2022).

In order for the implementation of SCA governance to have a strong legal standing and legal umbrella, so far it has been supported by various laws and regulations. The rules governing SCA governance include the following:

- a) Law No. 14 of 2015 concerning Civil Apparatus
- b) Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia No. 27 of 2021 concerning Procurement of Civil Servants;
- c) Regulation of the Minister of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia No. 28 of 2021 concerning Procurement of Government Employees with Work Agreements for Teacher Functional Positions in Regional Agencies in 2021
- d) Regulation of the Head of the State Civil Service Agency No.19 of 2014 concerning Organization and Work Procedures of the State Civil Service Agency

Basically the problem with SCA management does not lie in the number of regulations but rather in the substance, therefore revisions to the SCA laws and implementing regulations must be carried out as soon as possible. The problem of inappropriate mutation and promotion of SCA by regional heads is a state problem because it is not just happening in one region. There have been many complaints experienced by SCAs throughout Indonesia, where they were eventually transferred, demoted for reasons that didn't make sense even though some of them were people who had contributed greatly to their agencies. In terms of the quality of their human resources, there is no doubt. One of them is what happened in Wakatobi Regency, in 2020 Wakatobi Regency had just held a regional head election party, in which the regional head election was attended by two pairs of candidates for regent and candidate for deputy regent. In the end, the winner was Haliana and Ilmawati. Of course, when talking about polemics, regional elections on the one hand are a people's party and also momentum to find an ideal leader so that they can provide progress and prosperity for the people. On the other hand, regional elections are actually the root cause of certain issues, such as the breakdown of kinship ties, the emergence of unfair transfer policies and promotions.

In relation to the transfer of SCA positions, within the regional government of the Wakatobi Regency, especially in the Wakatobi Regency Education and Culture Office, there have been a lot of mutations and promotion of positions. Several elementary schools experienced this, such as SD Negeri 2 Wali, where before the couple Haliana and Ilmawati led Wakatobi, SDN 2 Wali was led by Mr. Hasanudin as the school principal. He is a principal who has made many major contributions in improving teaching facilities at schools. Dedicatedly, he has served himself for more than 50 years. The problem arose when during the local elections he chose Arhawi's partner instead of the pair currently leading Wakatobi.



Therefore, if there are no local elections, this kind of problem will not occur, so there should be a revision of the SCA Law so that SCA does not worry about carrying out their duties as servants of the state and public servants. The regulation on the regent's wanagan in transferring and promoting SCA must be abolished, as this has become a source of polemic not only in Wakatobi but also throughout Indonesia .

In several other studies, for example, the Politics of Structural Transfers of Civil Service Civil Servants Regional Government of Rokan Hilir Regency:

" Mutations of State Civil Apparatus within the scope of local government agencies and the central government are always colored by various phenomena both in the merit system and based on political interests. The research method used in this research uses qualitative methods, namely a research method by means of interviews, observation, documentation in collecting a data, which then on the data that has been found a data analysis will be carried out. The results of this study still show that the implementation of job transfers is still colored by political elements because there is still a lack of professional attitude, as well as bad SCA management arrangements so that it provides an opening for institutional leaders to carry out mutations based on their own political perspective. The implementation of job transfers in the government environment of Rokan Hilir Regency is still influenced by political elements, which are still dominated by economic interests such as those related to government and non-government projects. The basic causes of mutations in the Rokan Hilir Regency environment are very closely related to political support during regional head elections. ”

#### **4. CONCLUSIONS**

The authority of regional heads to carry out transfers and promotions of their ASNs in the regions sometimes creates polemics, namely because the transfer and promotion policies they carry out are not based on aspects of need but because of elements of political or other closeness. One of the factors causing transfers and promotions is not due to quality or need, namely due to regional head election events and Whereas Indonesia in its personnel management system basically applies a merit system, this has been stated in the SCA law, but because of the authority of regional heads or institutional leaders, this is sometimes not implemented .

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