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# Bridging The Legal Gap Between Open Selection and Internal Selection of State Civil Apparatus Promotion In Indonesia

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**Abstract.** Based on Law No. 5 Year 2014 concerning State Civil Apparatus (ASN, Aparatur Sipil Negara-Red.), job promotion is part of ASN management, which is based on the merit system. However, the implementation of the merit system cannot be fully implemented by the government because there are 2 (two) different mechanisms for filling positions, namely through open selection and internal selection. Open selection is made to the High Leadership Position by opening up opportunities for every civil servant who meets the qualifications to register and compete in filling positions. The superior recommending his subordinates to fill certain positions according to his assessment internally carries out the mechanism on administrative positions, clearly this is not open and subjective. Based on the 2 mechanisms for filling in the ASN positions, there are problems that must be examined, first, how is the standardization of the process of filling in ASN positions based on the merit system? and Second, what categorization is used to be able to create the objectivity of filling ASN positions in an open selection pattern and internal selection. This paper used normative juridical research with a qualitative approach. The problem approach by statute approach and conceptual approach. The data analysis uses qualitative normative with several interpretation models including grammatical and systematic interpretation. Based on the study, it known that every filling in the position of ASN is based on different norms, standards, procedures and criteria, but has 3 (three) fundamental aspects namely fulfilment of certain qualifications, competencies and performance. These three prerequisites create a pattern of filling positions based on 3 (three) competency assessment models namely substantive competency assessment, managerial competence and social cultural competence. This competence is a measure of the validity of the assessment process in filling in merit system-based positions.

## 1. Introduction

In this reformation era, the position and role of State Civil Apparatus is important and decisive for the state to organize government and development in order to achieve national goals. [1] These goals can be achieved with the personnel organization which contains of vision, mission and targets that implemented by State Civil Apparatus. With the development of basic tasks, the number and quality of State Civil Apparatus is needed. That's why the development of basic tasks can lead to the increase number of State Civil Apparatus and therefore needed a regular and planned personnel management to carrying out their duties and functions.

One form of personnel management is job promotion for State Civil Apparatus. Promotion is an award with a promotion in an organization or government agency. According to Lili Ramli, someone who receives a promotion must have a good qualifications compared to the other candidates. Promotion is an opportunity to develop and it will encourage employees to be better or more enthusiastic in doing a job within the organization. [2]



With the promotion target, every State Civil Apparatus will feel valued, cared, needed and recognized by the government and they will produce high outputs and will increase loyalty. Therefore, the leaders must realize the importance of promotion in increasing productivity that considered objectively. If the leader has considered those values, the government will avoid problems such as: employee dissatisfaction, complaints, decreased work discipline, high absenteeism or even carrying out maladministration.

To create a good pattern of promotion, the government must have an appropriate system of remuneration. The mechanism to determine the appropriate remuneration for a work performance is by evaluating work performance. [3] Through work performance assessment it will be known how well the State Civil Apparatus have carried out the tasks assigned to him. The government to find out the shortcomings and potential of State Civil Apparatus can also use the work performance assessment. From these results, the government can develop a comprehensive human resource plan. Overall human resource planning in the form of career paths through State Civil Apparatus promotions.

Basically, in terms of implementing State Civil Apparatus promotion there is functional-structural relationship between Officials which given authority and State Civil Apparatus as an executor of official duties. This relationship is identified as a constant relationship between control and dominance functions. In this relation, there's a problem "who controls who and who controls, leads and dominates who". When the dominance of the administration of government is in one position, the potential of political and subjective interests will be stronger. It will affect the problem for the controlling mechanism. If this condition correlated with the implementation of a merit system, which is based on competence, qualifications and performance, then the pattern of promotion of civil servant positions will be vulnerable with the interests and intervention.

Based on the problems above, every arrangement concerning with the relationship between positions will be affected to the government's efforts to create a merit system. It should also be noted that various regulations that have been established have not fully reflected and found an appropriate and reasonable pattern of authority relations in the promotion of civil servant positions. That's why it is necessary to find the norms, standards, procedures and criteria for filling pattern of merit system.

## **2. Research Problem**

The pattern of filling the position of State Civil Apparatus is still perceived as an obstacle, especially from the aspect of norms, standards, procedures and criteria for filling pattern of merit system. It is an interesting issue when there is a legal relation between positions which has implications of abuse of authority. Ideally, the relationship between The Authorized Officers and State Civil Apparatus can be used as the basis for determining duties and authority and measuring whether rights and obligations are carried out properly. On the contrary, rights and obligations will allow officials to take actions, whether legal actions or certain concrete actions (*recht-enfeitelijkehandelingen*). This legal concept can lead to the search for policies to anticipate the issue of relations between positions in the promotion of State Civil Apparatus based on merit systems.

## **3. Methodology**

This paper used doctrinal approach which is placed on legal review or legal study about the concept of state civil apparatus and promotion. It consists of legal dogmatics study, legal theory, and law philosophy. The problem is solved by using a statute approach, analytical approach and conceptual approach, then the analysis is using normative analysis qualitative by 2 (two) models of interpretation, grammatical and systemic interpretation.

## **4. Result and Discussion**

To reach targets for bureaucratic reform, the personnel management is centrally implemented through an integrated system. Integrated system is a personnel system whose staff management starts from recruitment, placement, development, assessment to payroll and pensions determined by the central government. [4] In terms of fostering personnel management, Article 25 of the Law No. 5 Year 2014

concerning State Civil Apparatus (referred as to ASN Law) stipulates that the President as the holder of government power is the highest authority in policy, professional development, and ASN management. To exercise power, the President delegates part of his power to:

- a. The ministry which organizes government affairs of the state apparatus (Ministry of Administrative Reform and Bureaucratic Reform, referred to as KEMENPANRB), is concerned with the authority of formulation and policy setting, coordination and synchronization of policies, and supervision of the implementation of ASN policies;
- b. The State Civil Apparatus Commission (referred to as KASN), is concerned with the authority to monitor and evaluate the implementation of ASN policies and management to guarantee the realization of the Merit System and supervision of the application of the ASN principle and code of conduct and code of conduct;
- c. Institute of Public Administration (referred to as LAN), relating to the authority of research, assessment of ASN Management policies, guidance, and implementation of ASN education and training; and
- d. The National Civil Service Agency (referred to as BKN), is related to the authority to administer ASN Management, supervision and control of the implementation of ASN Management norms, standards, procedures and criteria.

For the implementation of personnel management which regulated in Article 53 of ASN Law stated that the President as the highest authority holder of ASN management can delegate the authority to determine the appointment, transfer and dismissal of officials other than the main and middle high-ranking officials, and functional officials the main expertise to:

- a. Minister in the ministry;
- b. Chief of institutions in non-ministerial government institutions;
- c. Secretary General in the secretariat of state institutions and non-structural institutions;
- d. Governor in the Province; and
- e. Regents / Mayors in Regency / City.

Based on the patterns of delegation above, in applying the Norms, Standards, Procedures and Criteria for promotion of State Civil Apparatus at the Local and Central, the authority is delegated to the Personnel Development Officer (referred to as Pejabat Pembina Kepegawaian (PPK)).[5]

In relation to career development, the role of personnel management must be enabled to provide the personnel needed at every level of position in the organization, includes:

- a. Government apparatus as servants of the state and public servants need to improve their loyalty to the nation based on Pancasila and the 1945 Constitution of the Republic of Indonesia;
- b. The development of government apparatus directed to create State Civil Apparatus that efficient, effective, clean and able to carry out all the general tasks of government based on enthusiasm and dedication to the community, nation and state. In this relation, the ability of government officials to plan, supervise and control needs to be improved. For this reason, it is necessary to improve the quality, capability and human welfare, organization and work procedures, including coordination and provision of facilities and infrastructure.
- c. Improvement and developing of government apparatus, both at the central and local levels need to be carried out continuously that they can improve their abilities, dedication, and discipline.

The pattern of personnel development should be inherent in personnel management that follows the overall policy of the government to prescribed legal rules, such as State Civil Apparatus law, therefore in the implementation of public services there are 4 (four) functions related to governance aspects, namely:

- a. Instrumental function, which describes the legislation and public policy in routine activities to serve and create commodities;
- b. Political function, to give input in the form of advice, information, vision and professionalism to influence the leader;
- c. The catalyst function of public interest, which is articulating public aspirations and interests and integrating or incorporating government policies and decisions;

- d. The entrepreneurial function, which is to inspire innovative and non-routine activities, activate potential sources that are idle, and create an optimal resource mix to achieve goals.

Based on the relation between the functions of government officials in government management, State Civil Apparatus as part of the government administration system is an important element in the implementation of public services to create good governance. In the legal context, the service pattern whose authority is handed over to State Civil Apparatus has a central role in bringing the components of government policies and regulations.

Through the aspect of staffing, Indonesia as a unitary state that adheres to the principle of autonomy and co-administration is expected to be able to manage the regions in accordance with their potential and needs. In general, there are 3 (three) goals that must be achieved in implementing local government to create local and community empowerment. First, creating conditions that encourage and support people's efforts to meet people's needs and solve problems faced by these communities and Secondly, develop government tools that support the level of community participation to the smallest service units. Thus, the Government has broad authority to convey its perceptions, while making a planned strategy to achieve the goals of good governance.

Based on those condition, structuring personnel management by empowering existing potential is a solution to the current conditions. This model is called management talent, which includes capacity building aspects as the main approach in development that aims to strengthen the ability of humans to determine what is useful for themselves and their priorities and the ability to organize themselves to make changes for their future. The fundamental reason for developing capacity is that humans have the ability to survive and develop themselves.

Basically, promotion is intended to increase the work motivation of State Civil Apparatus which related with the work behavior of the organization. Therefore, in order to fill the empty formation, there are 9 (nine) principles to implement the merit system, such as :

1. conduct recruitment, selection and priority based on open and fair competition;
2. treat State Civil Apparatus fairly and equally;
2. provide equal remuneration for jobs that are equal and value high performance;
3. maintain high standards for integrity, behavior and concern for the benefit of the community;
4. manage State Civil Apparatus effectively and efficiently;
5. maintain or separate State Civil Apparatus based on the performance produced;
6. provide an opportunity to develop competencies for State Civil Apparatus;
7. protect State Civil Apparatus from inappropriate / appropriate political influences; and
8. provide protection to ASN employees from laws that are not unfair and not open.

When examined the contents of the ASN Law related to promotion, there are 2 (two) approaches to the promotion pattern. Under the ASN Law, the level of position in the organizational structure is classified as High Leadership Position (referred to as JabatanPimpinanTinggi (JPT)), Administrative Position and Supervisory Position. Practically, the type of position will have implications for the process of filling in different positions. Article 72 paragraph (3) of the ASN Law states that Promotion of Administrative Officers and Functional Officers of State Civil Apparatus is carried out by PPK after being considered by the State Civil Apparatus performance appraisal team at Government Agencies. The Article 77 paragraph (1) of the ASN Law states that the assessment of the performance of State Civil Apparatus is under the authority of the Officials in their respective Government Agencies. Article 77 paragraph (2), the assessment of State Civil Apparatus performance as referred to in paragraph (1) is delegated in stages to direct superiors from State Civil Apparatus. This article clearly interpreted that the process is internal, tiered (bottom up) and closed. The Article 108 of the ASN Law states that for the main JPT, second and first level are conducted openly and competitively.

In this present time, there is euphoria from the Government to promote all types of positions through open selection, both for administrative, functional and JPT positions. This is due to the interpretation of the Government to use the open selection method in each position. In the explanation of Ministry of Administrative Reform and Bureaucratic Regulation Number 13 Year 2014 which statedIf in the internal office there are no human resources that meet the requirements in accordance

with the required competencies, agencies can also hold open promotions for the positions of Administrators, Supervisors or other strategic positions according to the needs of their respective agencies.

This formula adopted by the Government to openly use selection for each position that was deemed not to have qualified Human Resource. The results of the study stated that, this mechanism had an impact on budget in filling positions and the results of their filling had not been felt effective.

If the substance of the ASN Law is examined more closely, there is a formulation of Article 111 paragraph (1) of the ASN Law which states that the provisions regarding the filling of High Leadership positions as referred to in Article 108, Article 109, and Article 110 of the ASN Law can be excluded from Government Agencies that have implemented Merit in State Civil Apparatus with KASN approval. Paragraph (2) states that government agencies that have implemented the Merit System in the formation of ASN Employees as referred to in paragraph (1), must report regularly to KASN to obtain new approval.

The content of Article 111 of the ASN Law confirms that the existence of open and competitive promotions is only temporary and in the future standardization of career development patterns will be made in each government agency through certification of the implementation of the merit system. The pattern of JPT promotion will be directed back to the implementation of a tiered promotion system by emphasizing the concept of management talent in their respective Government agencies. This is in line with Article 71 of the ASN Law that:

(1) To ensure the harmony of the potential of State Civil Apparatus with the need to carry out government and development tasks, career patterns of State Civil Apparatus that are nationally integrated need to be developed.

(2) Every Government Agency prepares civil servant career patterns specifically in accordance with the needs based on national career patterns.

The development of this career pattern emphasizes the balance of State Civil Apparatus with the competencies needed. On that basis, the Government have an obliged to plan a system of State Civil Apparatus guidance in a comprehensive and synergic manner. If we compare with the concept of promotion in Singapore, it is clear that the promotion of civil servant positions is done in 2 (two) ways, namely the development of talent and promotion based on the merit system. Article 110 paragraph (2) of the Singapore Constitution states that "The promotion of public officers shall be on the basis of official qualifications, experience and merit". This means that the concept of job promotion is a reward for State Civil Apparatus based on qualifications, experience and work performance. M. Satish stated that Singapore consistently promotes people entirely according to merit and it is common to see younger senior officers, but less competent, officers. In the context of promotion to higher levels of office, the promotion system is based on the principles of (1) the potential of employees to determine the rate of promotion (rate of promotion); (2) promotion depends on performance; and (3) promotion advance guidelines determine the promotion steps so that an employee will not be promoted beyond his ability.[6]

The Indonesian government use a merit system, but not implement the concept of management talent. Supposedly, filling the position is inseparable from the concept of developing internal State Civil Apparatus as stipulated in Article 71 of the ASN Law. Based on the concept of justice, humans are basically actively constructing and modifying concepts, models, reality, including knowledge and truths of the law. In this context, it must be based on philosophical and methodological aspects which include First, ontological, i.e. reality is a social construction. The truth of a reality is relatively applicable according to the specific context that is considered relevant by social actors. Second, epistemology, namely transactional/subjective: understanding of a reality or finding a problem as a product of interaction between the object and the subject, Third, methodological namely reflective / dialectic which emphasizes empathy and dialectical interaction to construct reality Fourth, axiological namely ethical values and choices moral is an inseparable part of the object of study.

Based on condition, the concept of justice is based on the first activity, pondering, thinking and understanding and interpreting the concept towards the creation of a justice value-based promotion system and; Second, create comparisons between the reality and the concept of fairness in promotion.

This concept emphasizes the principle of fairness towards State Civil Apparatus based on the balance of rights and obligations. In this view there is a neutral order, that promotion is media while filling in positions is the outcome of the personnel management. On that basis, the concept of justice is more emphasized on strengthening management, not on the mechanism of promotion through the talent pool. The talent pool is a program to fill the formation by considering employee competencies based on the suitability of career development in the internal environment of the organization. This approach can bridge the legal gap between career patterns and the promotion system. In the future, the promotion system will be filled internally while still prioritizing the merit system.

## 5. Conclusion

The concept to solve the problems of promotion mechanism is first, the relation of authority between the Officials and the State Civil Apparatus is still based on structural and coordinative relations, but it based on the Norms, Standards, Procedures and Criteria; and Secondly, the civil servant promotion process is directed to develop the potential of internal State Civil Apparatus according to the national career patterns based on the concept of management talent.

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