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A Legal Analysis of Administrative Disputes Related To The Transfer of Civil Servants In The Makassar City Government

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Abstract: The transfer of positions among Civil Servants (PNS) has become one of the key issues in personnel governance and the implementation of the merit system in Indonesia. As a form of human resource (HR) management within the bureaucracy, transfers must be carried out based on the principles of administrative law, including the principles of legality, accountability, and propriety. However, in practice, transfers are often conducted in a non-transparent manner, not based on objective performance evaluations, and tend to be influenced by political interests or the subjectivity of staffing officials. Such practices have the potential to generate administrative disputes that lead to injustice for civil servants and undermine the principles of good governance. This research is important in filling the gap in the literature that specifically analyzes the transfer of civil servant positions from the perspective of administrative law. Most previous studies have focused on managerial or human resource policy aspects, but have not deeply examined the juridical dimensions that form the legal basis and validity of administrative decisions. Therefore, this study aims to examine two important aspects in the implementation process of civil servant transfers, particularly within the Makassar City Government: First, the legal foundations, procedures, and potential disputes arising from transfer decisions from an administrative law perspective. Second, the legal remedies available to civil servants within the Makassar City Government who feel aggrieved by such transfer decisions. Meanwhile, this study employs both normative and empirical juridical approaches. The normative approach is used to analyze relevant regulations such as Law No. 5 of 2014, Government Regulation No. 11 of 2017, as well as court decisions and opinions from supervisory institutions such as the Indonesian Ombudsman and the Civil Service Commission (KASN). The empirical approach, on the other hand, involves field studies and interviews with staffing officials, transferred civil servants, and other relevant stakeholders. This research seeks to provide a scientific contribution to strengthening the merit system, upholding administrative law principles within the bureaucracy, and serving as a foundation for the formulation of fairer, more transparent, and accountable policies.

Keyword: Administrative Law, Position Transfer, Civil Servants

INTRODUCTION

The concept of the welfare state is a response to the dynamic developments in social, economic, political, cultural, and scientific spheres, as well as technological progress, which demand a more active role of the state in ensuring a decent standard of living for all its citizens. The state is no longer merely a passive guardian of security and order but is viewed as an active implementer of public welfare, as reflected in the fundamental principles of the welfare state. As a country that also claims itself to be a welfare state, Indonesia must strive to ensure a decent life for all its citizens. To achieve this, a well-structured governance system is essential, particularly through a bureaucracy that operates in accordance with the principles of good governance.

Within the bureaucratic system, the role of civil servants (PNS) as part of the state civil apparatus (ASN) is crucial in implementing governance and delivering public services. Civil servants act as executors of public policy, providers of public services, and unifying agents of the nation, as affirmed in Law No. 5 of 2014 on the State Civil Apparatus. As the front line of government administration, they are responsible for ensuring effective, efficient, transparent, and accountable governance. In the context of public service delivery, civil servants are required to perform professionally, responsibly, and in a manner oriented toward citizen satisfaction. Therefore, effective human resource management is essential. A sound human resource management system is a key element in building a professional and high-integrity bureaucracy capable of providing optimal public services. Human resource management encompasses several stages, including needs planning, recruitment, competency development, and performance-based promotion and transfer processes that must be measurable and accountable.

One of the notable issues in civil service management that deserves further examination is the matter of position transfers. The transfer of positions among civil servants (PNS) is an important instrument in personnel management aimed at promoting efficiency, effectiveness, and professionalism in the execution of governmental duties. According to Hasibuan (2017), a transfer is defined as a change in position, title, workplace, or task, carried out either horizontally or vertically within an organization. From a utilitarian perspective, the implementation of transfers benefits each member of the state civil apparatus (ASN), as it provides new experiences, broader perspectives, and helps prevent monotony and job fatigue.

The transfer of positions among civil servants (PNS) represents an ongoing dynamic that continues to pose challenges within personnel management at all levels of government, both central and regional. Although statutory regulations have detailed the procedural framework for implementing transfers, numerous instances still occur where such transfers are carried out in violation of established procedures. A transfer conducted fairly, transparently, and in accordance with legal provisions constitutes an integral part of the merit system, which forms the foundation of state civil apparatus (ASN) management. From the perspective of administrative law, civil servant transfers also serve as objects of supervision, as they carry the potential to give rise to administrative disputes when implemented contrary to legal procedures or in violation of the general principles of good governance (*Asas-Asas Umum Pemerintahan yang Baik /AUPB*).

Within local governments, for instance, the implementation of position transfers often generates controversy and dissatisfaction among civil servants. Several cases indicate alleged abuses of authority, political intervention, and disregard for the competence and track record of civil servants in the transfer process. Such practices not only affect the morale and performance of civil servants but also have the potential to lead to legal disputes, which may be pursued through administrative objections and even lawsuits filed before the Administrative Court (*Pengadilan Tata Usaha Negara* or PTUN).

According to the law on the state civil apparatus (UU ASN), the merit system serves as the fundamental basis for the appointment, transfer, and dismissal of civil servants. Article 3 of the law stipulates that every personnel policy must be grounded in qualifications, competence, and performance. However, in practice, not all transfer policies adhere to these principles. A study conducted by Febrianti and Wahyuni (2023) found that in several regions, transfers are often carried out without an objective and accountable performance assessment process, leading to dissatisfaction and perceptions of unfairness among transferred civil servants, which frequently culminate in administrative disputes.

Disputes over civil servant position transfers constitute part of the broader issues within administrative law, particularly concerning the legality of administrative decisions (*beschikking*) issued by staffing officials. According to Ridwan (2020), an administrative decision that affects an individual's rights may be challenged before the Administrative Court (*Pengadilan Tata Usaha Negara / PTUN*) if it contradicts statutory regulations and/or the general principles of good governance (*Asas-Asas Umum Pemerintahan yang Baik / AUPB*). In this regard, disputes over position transfers may be classified as *onrechtmatige overheidsdaad* (unlawful acts by the authorities) when proven to deviate from normative provisions.

Irregularities in the implementation of transfer procedures and legal mechanisms have also drawn attention from the Indonesian Ombudsman. In its 2022 annual report, the Ombudsman stated that complaints related to transfers and promotions ranked highest among cases of maladministration in the regional government sector. These complaints generally concern procedural violations, unclear criteria, and discriminatory practices in the transfer process. From an administrative law perspective, transfers that violate the principles of legality, accountability, and transparency represent a breach of the fundamental principles of good governance. Subjective transfers—those not based on performance and conducted abruptly without clear justification—can be categorized as arbitrary administrative acts. As Indrayani (2021) explains, every administrative action must be legally accountable and open to public scrutiny.

A study by Rahayu and Nugraha (2024) further reveals that conflicts in civil servant transfer practices are often triggered by a lack of transparency and limited participation of civil servants in performance evaluations. In several cases, affected civil servants felt aggrieved because they were not given the opportunity to defend themselves or receive adequate explanations regarding the transfer decisions. Such conditions generate anxiety among the state civil apparatus (ASN) and disrupt bureaucratic stability within local governments. Furthermore, the administrative law approach in analyzing civil servant position transfers provides a framework for evaluating both the formal and material aspects of such administrative decisions. The formal aspect includes the processes, procedures, and authority exercised in making transfer decisions, while the material aspect concerns the substantive reasons and legal grounds underlying the transfer itself.

This condition highlights the importance of examining administrative law aspects within the transfer process of civil servants, particularly within the Makassar City Government. By analyzing several transfer disputes that have occurred in the Makassar City Government from an administrative law perspective, this study aims to identify existing normative violations, assess the transfer procedures in terms of legality, and formulate recommendations to improve the governance of transfers in accordance with the principles of good governance. Thus, the establishment of clear and accountable procedures constitutes an essential prerequisite for the validity of administrative decisions, including those related to position transfers (Haris & Mulyono, 2023).

Based on the foregoing discussion, it can be understood that the implementation of position transfers among civil servants (PNS) carries significant implications for upholding the

principles of administrative law and the application of the merit system within the governmental bureaucracy. Transfer practices that are not in accordance with legal provisions not only have the potential to violate the general principles of good governance but may also lead to legal disputes that affect bureaucratic stability and professionalism. Therefore, a comprehensive study is needed to assess the extent to which the implementation of position transfers within the Makassar City Government complies with administrative law procedures and mechanisms, as well as to identify the possible legal remedies available to civil servants who feel aggrieved by such transfer decisions.

METHOD

This research employs both normative juridical and empirical juridical approaches. The normative juridical approach is used to analyze the statutory regulations governing the transfer of positions among civil servants (PNS), including Law No. 5 of 2014 on the state civil apparatus, government regulation No. 11 of 2017 on civil servant management, and other relevant technical regulations. This analysis focuses on legal interpretation, the principles of administrative law, and the legal norms that form the basis for decision-making in transfer cases.

The empirical juridical approach is applied by collecting data from the actual practice of position transfers within the Makassar City Government. Data were obtained through in-depth interviews with relevant parties, such as staffing officials, civil servants who experienced transfers, and officers from external oversight institutions, including the Administrative Court (*Pengadilan Tata Usaha Negara*), the Ombudsman, and the state civil service commission (KASN). Field studies were also conducted to directly observe the transfer procedures and review the administrative documents used in the process.

This research is descriptive-analytical in nature, aiming to describe the legal facts and administrative practices in the field and to analyze them within the framework of administrative law. Data collection techniques include document study, participatory observation, and interviews. Secondary data were obtained from academic literature, journals, reference books, and official government documents. The data analysis technique employed is qualitative analysis, carried out through the stages of data reduction, data presentation, and conclusion drawing. This analysis seeks to identify both procedural and substantive violations in the implementation of position transfers and to evaluate the effectiveness of dispute resolution mechanisms from the perspective of administrative law.

By combining normative and empirical approaches, this research method is expected to provide a comprehensive and holistic understanding of the mechanisms and procedures governing civil servant transfers, as well as the legal remedies available to civil servants within the Makassar City Government who feel aggrieved by such transfer decisions.

RESULTS AND DISCUSSION

The Mechanism of Civil Servant Position Transfers within the Makassar City Government from an Administrative Law Perspective

Position transfers within the governmental administrative system are an important instrument in managing the human resources of the state apparatus. Conceptually, the transfer of positions among civil servants (PNS) constitutes an act of administrative law, as it represents a unilateral legal action carried out by an administrative authority (*Pejabat Tata Usaha Negara*) in exercising governmental power. According to Law No. 5 of 2014 concerning the state civil apparatus, article 73 paragraph (1) stipulates that civil servant transfers may occur across positions, institutions, and regions in accordance with competence, qualifications, and organizational needs. This provision underscores that transfers have a strong legal basis and represent a legitimate exercise of administrative authority by the staffing official. From an

administrative law perspective, every administrative action must adhere to the principles of legality, proportionality, and accountability to prevent potential legal issues in the future.

Ridwan (2022) asserts that an administrative act is deemed lawful only when it complies with the general principles of good governance (*Asas-Asas Umum Pemerintahan yang Baik / AUPB*), including professionalism, proportionality, and legal certainty, as well as with statutory regulations. In the context of the Makassar City Government, transfers are conducted to achieve the optimal composition of civil servants in appropriate placements. Normatively, this reflects the principles of efficiency and effectiveness in government administration as stipulated in Article 10(b) of law No. 30 of 2014 on government administration. Transfers based on organizational needs and employee competence demonstrate the government's commitment to the principle of *the right man in the right place* within personnel management. Thus, such transfers can be regarded as a form of *legitimate discretion*, namely, the exercise of administrative authority grounded in rational administrative considerations and consistent with the objectives of administrative law.

Theoretically, transfers are not merely routine bureaucratic procedures but also a means of maintaining organizational dynamism and improving public service quality. Transfers conducted based on organizational needs have legal significance as administrative measures designed to ensure the effectiveness of governmental functions. In this regard, the authority of staffing officials is classified as *attributive authority* that is, authority derived directly from statutory provisions. However, when transfers are made without objective considerations or exceed legal boundaries, such actions may constitute an abuse of power (*détournement de pouvoir*), as discussed by Hadjon (2019).

Furthermore, the findings of this study indicate that every position transfer within the Makassar City Government is generally preceded by thorough preparation, including performance evaluation, organizational needs mapping, and competency assessment of the officials involved. From an administrative law standpoint, this practice aligns with the principles of legality and legal certainty, which serve as the foundation of all governmental actions. Transfers preceded by adequate administrative preparation reflect the application of the *due process of administration* principle meaning that every administrative decision must follow lawful, transparent, and accountable procedural stages. This requirement is reinforced by Government Regulation No. 11 of 2017 on civil servant management, as amended by Government Regulation No. 17 of 2020, which emphasizes that transfers must be based on integrity, morality, competence, and performance evaluation.

From the perspective of administrative law, adherence to procedural rules in transfers demonstrates compliance with the principles of *rechtmatigheid* (legality) and *doelmatigheid* (utility). This indicates that transfer decisions are not only legally valid but also administratively beneficial for governance. As Indroharto (2020) notes, administrative actions must respect the principles of fairness and proportionality to prevent potential administrative disputes. In the case of the Makassar City Government, the preparatory measures undertaken before transfers reflect administrative prudence aimed at avoiding potential objections or lawsuits from affected employees. Nonetheless, such practices must be supported by complete and transparent documentation to ensure the validity of transfer processes in the event of a legal dispute.

Although, in general, the transfer mechanism in the Makassar City Government reflects compliance with administrative law principles, the study also found instances where transfers were influenced by the “chemistry” between superiors and subordinates, beyond formal competency considerations. From an administrative law standpoint, such practices may violate the principles of objectivity and professionalism in the exercise of governmental authority. As Philipus M. Hadjon (2019) explains, abuse of power occurs when a public official uses their authority for purposes other than those prescribed by law. Consequently, transfer decisions

influenced by subjective factors such as personal affinity or emotional compatibility between officials can be categorized as administrative misuse of authority (*abuse of power*).

Under Indonesian administrative law, such deviations may be reviewed through the administrative court (PTUN), as regulated in law No. 51 of 2009 amending Law No. 5 of 1986 on the Administrative Court. Article 53 paragraph (2)(b) provides that an administrative decision may be contested if it contradicts the general principles of good governance (*Asas-Asas Umum Pemerintahan yang Baik / AUPB*). Therefore, if a transfer is made based on irrational or subjective reasons, the decision may be considered substantively flawed and annulled through judicial review. Additionally, the State civil service commission (KASN), in Regulation No. 1 of 2020, emphasizes that all transfers must be grounded in a merit-based system ensuring that civil servants are placed according to their competencies rather than political or personal considerations. Hence, transfers based on “chemistry” between superiors and subordinates should be legally scrutinized, as they contradict the principles of neutrality and professionalism enshrined in Article 2(f) and (g) of the civil service law.

From the overall analysis, it can be concluded that the implementation of civil servant transfers within the Makassar City Government generally adheres to the principles of administrative law, particularly in terms of administrative purpose (*doelmatigheid*) and procedural legality (*rechtmatigheid*). Transfers conducted with prior preparation and based on organizational needs demonstrate a strong awareness of legal compliance in public personnel administration. However, practices influenced by subjective factors such as “chemistry” between officials may lead to potential misuse of discretion, which could result in administrative disputes if left unchecked. From the perspective of *good governance*, position transfers should function as a tool to strengthen bureaucratic professionalism and enhance the quality of public service. Therefore, the Makassar City Government must ensure that every transfer policy: first, is based on objective performance evaluation results; second, is carried out through transparent and accountable administrative mechanisms; and three, is free from subjective or political interference. Only through such measures can transfer policies serve as legitimate, just, and effective administrative instruments aligned with the principles of good governance.

Mechanisms of Objection and Legal Remedies against Position Transfer Decisions for Civil Servants within the Makassar City Government

The right of every civil servant (PNS) to file an objection against a transfer decision reflects recognition of the principle of *procedural fairness* in administrative law. Normatively, Law No. 5 of 2014 on the State Civil Apparatus (ASN Law) and its implementing regulations position a transfer as an administrative decision affecting the rights and status of an employee; therefore, such decisions must allow for internal objection mechanisms and access to higher legal remedies. The existence of an objection procedure indicates formal compliance with the principles of openness and the right to be heard (*audi alteram partem*). However, in administrative law, such a right is only effective if the procedure is clear (including the authority receiving the objection, deadlines, and evaluation standards), accessible, and results in a written response. Without procedural certainty, the right to object risks becoming a mere formality without substantive corrective value (Ridwan, 2022; Indroharto, 2020).

When internal remedies fail, the fact that several civil servants have brought their cases before the administrative court (PTUN) demonstrates the use of external legal remedies as a control mechanism over administrative decisions. Theoretically, PTUN serves as a forum for reviewing the *legitimacy* of administrative acts, including transfer decisions, against the *general principles of good governance* (AUPB). The administrative court law allows aggrieved parties to challenge administrative decisions that are formally or substantively defective; in transfer cases, the plaintiffs usually argue procedural noncompliance, lack of competence, or

abuse of discretion (Hadjon, 2019). Court rulings ordering reinstatement indicate that the court found the transfer decision inconsistent with administrative law principles—violating, for example, objectivity, legality, or the *merit system*.

However, implementation gaps remain between court decisions and bureaucratic realities. In some cases, the reinstatement ordered by PTUN cannot be executed because the position has been filled by another official, revealing problems in enforcing administrative judgments. From the standpoint of administrative law, final court decisions are binding and must be implemented by the responsible authority; failure to do so undermines the *rule of law* and legal certainty for affected civil servants. Practically, a conflict arises between two principles: on one hand, the obligation to comply with judicial decisions (legal certainty and finality), and on the other, the need to maintain public service continuity. Thus, technical solutions must integrate legal and administrative considerations, such as assigning the reinstated official to an equivalent position or reorganizing structures to ensure compliance without disrupting public functions.

Legally, several measures are available to address non-execution of PTUN decisions: (1) requesting enforcement orders from the court; (2) filing administrative complaints to internal oversight bodies such as the regional inspectorate, civil service commission (KASN), or Ombudsman, demanding administrative sanctions against officials who ignore judicial orders; and (3) seeking compensatory or administrative remedies to recover material losses due to delayed execution (Indroharto, 2020). KASN and the Ombudsman play a supervisory role in upholding neutrality and service quality by issuing recommendations or administrative sanctions, while disciplinary regulations under the ASN law allow sanctions for noncompliance with court rulings.

Preventively, the principle that public offices must not remain vacant for too long calls for stronger legal safeguards. One recommended mechanism in administrative law literature is the use of provisional measures in PTUN proceedings to suspend the implementation of contested transfer decisions pending final judgment. This prevents irreversible consequences, such as permanent replacement of a position before the case concludes. Broader awareness among civil servants about this mechanism would enhance preventive protection. However, such measures must remain balanced with public interest to avoid prolonged administrative stagnation.

From a broader legal standpoint, the legitimacy of administrative decisions and the implementation of PTUN rulings have implications for bureaucratic stability. While reinstatement restores individual rights, it can create uncertainty for other officials already appointed through seemingly lawful administrative processes. Therefore, a more rational administrative approach is to design flexible enforcement mechanisms: if reinstatement to the same post is infeasible, equivalent placement, financial compensation, or reassignment to a comparable position may be appropriate. This reflects the principles of proportionality and *doelmatigheid* (administrative expediency), balancing individual justice with public service continuity.

Ultimately, these findings highlight the need for systemic improvements to prevent transfer disputes and facilitate effective resolution when they arise. Practical legal recommendations include: (1) formalizing and clarifying internal objection procedures (timelines, competent authority, assessment criteria); (2) ensuring complete documentation for every transfer as a basis for legal accountability; (3) promoting awareness of provisional measures to prevent irreversible outcomes; (4) drafting standard operating procedures (SOPs) for implementing PTUN rulings—covering reinstatement, equivalent placement, or compensation; and (5) strengthening both internal and external oversight (Inspectorate, KASN, Ombudsman) to impose effective administrative sanctions on officials who disregard court orders. Substantively, these solutions not only address individual cases but also reinforce the

rule of law and *good governance* in the management of civil servant transfers within the Makassar City Government (Ridwan, 2022; Hadjon, 2019; Indroharto, 2020).

CONCLUSION

The implementation of position transfers for civil servants (PNS) within the Makassar City Government has generally adhered to administrative law provisions, particularly Law No. 5 of 2014 on the state civil apparatus (ASN Law) and Government Regulation No. 11 of 2017 on civil servant management, which emphasize the principles of professionalism and meritocracy. However, the findings of this study indicate that although formal procedures have been carefully planned and executed, subjective considerations—such as the “chemistry” between superiors and subordinates—are still occasionally taken into account. Such practices risk deviating from the principle of objectivity and may open opportunities for abuse of authority. Therefore, the implementation of transfers must continuously be aligned with the general principles of good governance (AUPB), including legal certainty, proportionality, and accountability.

For civil servants who feel disadvantaged by a transfer decision, administrative remedies are available under Article 75 of Law No. 30 of 2014 on Government Administration, as well as judicial review through the administrative court (*Pengadilan Tata Usaha Negara* / PTUN). The study found instances where the PTUN granted a civil servant’s lawsuit and ordered reinstatement; however, the execution of such rulings was hindered because the position had already been filled by another official. This condition highlights the ongoing weakness in the enforcement of judicial decisions in civil service administrative disputes. Consequently, it is essential to strengthen enforcement mechanisms and improve the compliance of administrative officials with the law, ensuring that the rights of civil servants are effectively protected in accordance with the principles of the rule of law.

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