

Mechanism of Filling The Position of High Madya Leadership through The Office Auction System According to Law No. 5 Of 2014 Concerning The State Civil Apparatus

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ABSTRACT

Posisiton action system is one of the most effective strategies to fight nepotism, collusion and corruption in government positions. Filling positions in government is closely related to the rights of every person, which is the responsibility of political rights as part of human rights that must be guaranteed and protected by the State. The state should provide equal opportunities to every citizen to fill available positions in the government, including the position of regional secretary which is realized through the filling mechanism. This paper reviews the mechanism for filling middle high leadership positions through a job auction system using the concept of Good Governance which is carried out with a qualitative research approach.

Keywords: *Posisiton action system, good governance, authority.*

Background

The State is the supreme body of the organization of power in which there is division of positions through a mechanism that is systematically organized in accordance with the authority and obligations of each official. The division of state and government duties needs to be separated and separated in various state institutions in order for mutual control (checks and balances) (Ridwan, 2014). That way the government can carry out its functions collectively and is expected to strive to achieve the state's goal of realizing justice and welfare for all Indonesian people as mandated in the opening of the 1945 Constitution.

The Constitution of the Republic of Indonesia in 1945 article 28 D paragraph (3) states that "every citizen is entitled to equal opportunity in government", this is a guarantee of legal certainty in the determination of government officials for those who qualify. Since the era of reform, the development of local government has been very dynamic, can be seen since the enactment of Law No. 22 of 1999, then there has been a change that is Law No. 32 of 2004, until changes to Law No. 23 of 2014 on Local Government, human resource structuring continues to be improved in the field of staffing, but the more and more complex it is solving is getting slower. This is influenced by the number of unproductive employees with inadequate quality so that the professionalism of those who work in government is considered by many who are not competent (Miftah, 2016) .

It can be said that the problem faced by the organization in general is the problem of the quality of employees of the State Civil Apparatus (hereinafter referred to as ASN) which must be observed and traced related to the competence and professionalism of ASN employees in the Organization (Kadarsiman, 2018). One of the focus of improvement that must be considered is on the process or mechanism of appointment that must really consider the eligibility of a person to be appointed in a position (Kadarsiman,2018).

How important is the mechanism of filling government positions that can ensure people who are elected and sit in structural positions have been filtered through a clean process to dampen perceptions in society, so far the inherent opinion related to the process of appointing employees in government positions is tinged with corrupt practices, collusion, and nepotism because the system tends to be closed so that it has an impact on the low quality of ASN. So the management of ASN employees becomes very strategic and important, especially in the aspect of comprehensive and programmatic employee design in order to provide and meet the needs of qualified ASN employees in government. Departing from the implementation of various post-reform filling mechanisms that still do not guarantee the full trustworthiness of the organization, it should be done revamping in the bureaucratic order in order to change the old culture that is not in accordance with the development of society. Improvement in the state administrative system is indeed a very important thing, especially in the arrangement of the government apparatus that today there has been a change in the governance towards a democratic and good governance because realizing a democratic, clean and authoritative system of government has always been an obsession for the people and government in modern times (Miftah, 2016). Then the government bureaucracy including the arrangement of the resources of the apparatus must reform to be in accordance with the demands of the times.

Law No. 5 of 2014 on The State Civil Apparatus was formed with the main basis of thinking that to be able to carry out their duties properly ASN employees must have professional competence. In this case the management of the State Civil Apparatus is carried out based on the merit system, thus the promotion of civil servants is carried out based on competence, open, and non-discriminatory. The resource management of the state apparatus must be competency-based covering all aspects in the management of human resource development which includes, among others: recruitment, selection, appointment, placement, training, and employee development (training and development) (Moehariono, 2014).

Local government is one of the tools in the system of governance. This local government refers to the administrative authority in an area smaller than a country where the state of Indonesia is a country whose territory is divided into provincial areas. The province is further divided over the district and the city area. Every province, district, and city area has a local government that is regulated by law (Rudy, 2012). In the implementation of local government, the Governor, Regent and Mayor are assisted by regional devices that include the Regional Secretariat, the DPRD Secretariat, the Regional Office, and the Regional Technical Institution (Nurmayani, 2009). In general, regional devices or often referred to as Regional Device

Organizations (OPD) are tasked with helping the preparation of policies, coordination, and implementation of policies that are regional affairs.

The size of the progress and development of an area is determined by the achievement of performance and work performance produced by each Regional Device Organization (OPD). No matter how great a regional head, if not supported by the professionalism of the OPD then the wheels of government cannot run optimally. OPD can also be said to be an extension of the task of the Regional Head to carry out the vision and mission that they have promised to the people when campaigning. Then, loyalty to OPD is also very necessary to form a local government with more optimal performance than previously existing. However, if the OPD that has been trusted by the regional head is not loyal, it can cause all the planned programs will not get the appropriate results.

One element of the regional device is the regional secretariat, According to Article 213 of Law No. 9 of 2015 concerning the second amendment to Law No. 23 of 2014 on Local Government, the Regional Secretariat is headed by the Regional Secretary. As is known that the Regional Secretary is an official who is tasked with assisting regional heads (Governors, Regents / Mayors) in drafting policies and coordinating regional agencies and regional technical institutions (Nurmayani, 2009). The duties and obligations of the Regional Secretary are the other most important is to carry out the duties of service to the community. In the implementation of his duties the Regional Secretary is responsible to the Regional Head. The position of Regional Secretary in both the Province and regency / city is the highest career / structural position in the government bureaucracy at the level of their respective regions. The Regional Secretary has a position as the builder of the State Civil Apparatus (ASN) in his area. The Regional Secretary can be called the most top position in the career pattern of ASN in the Region.

The implementation of the election of leaders in the government, especially regional secretaries proposed by regional heads (Governors, Regents / Mayors) is still many who do not take into account the ability side and capacity side of candidates from the Regional Secretary. The election is sometimes undemocratic and impressed there is an element of corruption, collusion, money politics, a closed system, reciprocity, or political closeness to the nepotism authorities. As a result, a leader appears who is cheating, unclean, uncompetipable, and more concerned with his own personal and class interests. This is what then hurts the protection of the human rights of everyone to get the same opportunity in government based on the mandate of the constitution of the 1945 Constitution.

With the issuance of Law No. 5 of 2014 on State Civil Apparatus (ASN) and Regulation of the Ministry of Empowerment of State Apparatus Reform and Bureaucracy (Kemenpan-RB) Number 13 of 2014 on Procedures for Filling High Leadership Positions in Government Agency Environments, filling the Position of main and municipal High Leaders in ministries, secretarial of state institutions, nonstructural institutions, and Regional Agencies including Provincial and District/City Secretaries are carried out Openly and competitively among civil servants with regard to the requirements of competence, qualifications, strength, education

and training, track record of position, and integrity and other requirements needed in accordance with the provisions of the laws and regulations and carried out at the national level. As for the Government Regulation No. 11 of 2017 concerning the Management of Civil Servants, it is regulated how the mechanism of filling the position of a high-ranking executive who is vacant.

In practice, the filling of positions openly is popularized with the term "Job Auction" and applied by the ministry and local government (Rasyid, 2016). The term job auction began to be famous in the era of Joko Widodo when he served as governor of DKI which is quite grabbing public attention, it is increasingly interesting because it reaps pros and cons from the public, especially from among civil servants (Sendhikasari, 2009).

Job auctions are catalysts for the creation of good governance in government. Therefore, the government must continue to encourage the creation of a culture of office auctions, both at the central and regional levels. This system will be one of the levers of the success of bureaucratic reform, which can prevent the politicization of bureaucracy, or the attitude of leaders who choose officials with capital like and dislike. However, because of its still unusual nature, this method or mechanism of filling positions openly (job auction) in its application still attracts various controversies or debates considering the existing legal basis and currently applied is considered inadequate to implement the mechanism, so it is feared that it will be a policy that is legally flawed. In other words, the problem that arises later is how the arrangement and mechanism of the implementation of open charging.

In addition, the mechanism of filling positions openly tends to cause concern for the role of the Department and Education Advisory Board (Baperjakat) which previously proposed a list of candidates for office to the Mayor / Regent as the Regional Staffing Board (Sendhikasari, 2016). The current mechanism does not have the relevant standardization in assessing the capabilities and professionalism of prospective officials, but only prioritizes openness over accountability. This refers to the mechanism of filling positions openly that allows changes in positions carried from the basic qualifications of the relevant officials. Not only that, in terms of funding, this mechanism tends to be less efficient and excessive than when it is done filling the position chosen simply or through a direct appointment mechanism.

Based on the problems and backgrounds that have been outlined earlier, this paper will discuss "The Mechanism of Filling the Position of High Madya Leadership Through the Office Auction System According to Law No. 5 of 2014 concerning the State Civil Apparatus".

Literature Review

Good Governance

Good governance was first proposed by the World Bank, the United Nations Development Program (UNDP), the Asian Development Bank (ADB). Furthermore, many experts in developing countries work hard to realize the good ideas contained in good

governance, regarding governance based on local conditions by prioritizing elements of local wisdom (Dwiyanto, 2006).

According to UNDP, it is explained that good governance is the exercise of political, economic, and administrative authority to manage the nation affair at all levels. Furthermore, UNDP provides 10 characteristics of government that can be categorized as good governance in carrying out their duties as quoted by Andhika Danesjvara, among others: involving community participation in every decision making; have legal certainty; open in every action; upholding the agreement; have the principle of equality; effective and efficient; have accountability; have a strategic vision; And appreciated and tolerant.

Other international organizations that provide understanding of good governance, namely the Organization for Economic Cooperation and Development (OECD) and the World Bank as quoted by Muin Fahmal, namely as the implementation of solid and responsible development management in line with democracy and efficient markets, avoidance of misallocated funds, scarce investment, and prevention of corruption, both politically and administratively, implementing budget discipline and the creation of legal and political frameworks for the growth of activities as synergistic and constructive relationships in the private sector and society (Fahmal, 2006).

The term Good Governance began to be widely known in Indonesia since the 1990s, especially as interactions with lending and grant countries always highlight the objective conditions of Indonesia's economic and political development. The term governance is often associated with the policy of granting assistance or lending by making the issue of governance as one of the important aspects considered in the granting of loans or grants. Good governance is a concept for the government to be able to run the government with renewable rules. The state and its functions have been the subject of contestation among theorists and philosophers. Nonetheless, government and the state have been defining features of organized political communities from the very beginning of human society itself (Canovan, 2000). In the language of ordinary people, government and state are used interchangeably and confusedly, although there are differences between them. Government is a more formal, tangible, and clear aspect of the state that is studied with a government philosophy approach (Karniawati, 2015). On the other hand, the term state includes a variety of formal and informal processes, and its efforts are directed at achieving the goals and aspirations of people who are committed to living together. Thus, government institutions need leaders who can introduce and direct the community's economy towards prosperity so that the leader is said to be a hero. It is also thought that the government's wisdom of a society lies in its ability to guide the economy towards the common well-being of all who live in each geographic area (Lee, 2017). Thus, in this case Foucault proposes that the essence of government is the art of exercising power in the economic form of society, and that government is a proper disposition, regulated in such a way as to lead to convenient ends. (Burchell, 1991).

Good governance is seen as a new paradigm and a necessary feature in the public administration system. In general, governance is defined as the quality of the relationship

between the government and the people it serves and protects, governance concerns 3 (three) domains namely state (state / government), private sector (private sector / business world), and society (society), therefore, public sector good governance is interpreted as a process of good governance, involving stakeholders, to various economic activities, Socio-political and utilization of various resources, such as natural resources, finance, and human for the benefit of the people carried out by adhering to the principles: justice, equality, equality, efficiency, transparency and accountability.

The application of Good Governance in the government environment is inseparable from the implementation of the government management system which is a series of results from the implementation of management functions (planning, organizing, actuallying, and controlling) that are carried out professionally and consistently, as well as the principles of good governance according to the Office of the Minister of State Empowerment of State Apparatus, namely: the existence of legal certainty of openness, accountability, and professionalism.

Authority Theory

Conceptually, the term authority or authority is often aligned with the Dutch term "bevoegdheid" (meaning authority or power). Authority is a very important part of the Law of Governance (Administrative Law), because the new government can carry out its functions on the basis of the authority it obtains. The validity of government actions is measured based on the authority stipulated in the laws and regulations. The matter of authority can be seen from the State Constitution which gives legitimacy to public bodies and state institutions in carrying out their functions. Authority is the ability to act provided by applicable laws for conducting relationships and legal acts (Danesjvara, 2005).

The principle of legality is one of the main principles that serve as the basis in every administration and statehood in every state of law. In other words, every administration and statehood must have legitimacy, i.e. the authority granted by law. Thus, the substance of the principle of legality is authority, i.e. an ability to perform certain legal actions.

Hassan Shadhily clarified the translation of authority by giving an understanding of "delegation of authority". Delegation of authority is the process of handing over authority from a leader (manager) to his subordinates (subordinates) accompanied by the onset of responsibility to perform certain tasks. The delegation of authority process is carried out through steps, namely: determining the duties of the subordinate; surrender of authority itself; and the obligation to perform the tasks that have been determined (Atmadja, 1996).

I Dewa Gede Atmadja, in the interpretation of the constitution, elaborates as follows: "According to the Indonesian system of statehood is distinguished between authoritative authority and persuasive authority. Authoritative authority is constitutionally determined, whereas persuasive authority is otherwise not explicitly constitutional authority."

Authoritative authority to interpret the constitution is in the hands of the MPR, because the MPR is the forming body of the Constitution. Conversely, the persuasive authority of constitutional interpretation in terms of its sources and legally binding power is carried out by: The establishment of legislation (called authentic interpretation); Judges or judicial powers (called jurisprudence interpretations) and jurists (called doctrinal interpretations). Explanation of the concept of authority, can also be approached through a study of the source of authority and the concept of justification of the act of government power. The theory of the source of such authority includes attribution, delegation, and mandate. Prajudi Atmosudirdjo argues about the notion of authority in relation to authority as follows (Atmadja,1996):

Authority is what is called formal power, power derived from Legislative Power (granted by Law) or from Executive/Administrative Power. Authority is the power of a particular group of people or power over a particular sphere of government (or field of affairs), while authority is only about a certain part. Within the authority there are powers. Authority is the power to do something public law (Atmosudirdjo, 1981).

Indroharto argues that authority is obtained by attribution, delegation, and mandate, each of which is described as follows: Authority obtained by "attribution", namely the granting of new government authority by a provision in the laws and regulations. So, here was born / created a new government authority" In the delegation there is the passing of an authority that has been by the Agency or Tun Department that has obtained an authority of government attributes to other TUN Agencies or Positions. So, a delegation is always preceded by the existence of an attribution of authority. In the mandate, there is no granting of new authority or delegation of authority from one tun agency or department to another (Indroharto, 1993).

This is in line with the opinions of several other scholars who present the attribution as the creation of (new) authority by the wet forming (wetgever) given to a state organ, both existing and newly formed for it. Without technically distinguishing the terms authority and authority, Indroharto argues in a juridical sense: the notion of authority is the ability given by laws and regulations to cause legal consequences (Atmosudirdjo, 1981). Attribution (attributie), delegation (delegatie), and mandate (mandaat), by H.D. van Wijk / Willem Konijnenbelt (1998) is formulated as follows:

1. *Attributie* : toekenning van een bestuursbevoegdheid door een weigever aan een bestuursorgaan;
2. *Delegatie* : overdracht van een bevoegdheid van het ene bestuursorgaan aan een ander;
3. *Mandaat* : een bestuursorgaan laat zijn bevoegdheid namens hem uitoefenen door een ander.

Stroink and Steenbeek, as cited by Ridwan, expressed different views, as follows: "That there are only 2 (two) ways to gain authority, namely attribution and delegation. Attribution is concerned with the transfer of new authority, while delegation concerns the transfer of existing authority (by an organ that has acquired authority attributeally to another organ; so

delegation is logically always preceded by attribution). Regarding the mandate, it is not discussed about the handover of authority or the transfer of authority. In the event of a mandate there is no change in authority whatsoever (in the formal juridical sense), all there is is internal relations."

Philip M. Hadjon (1994) said that Any government action required must rest on legitimate authority. The authority is obtained through three sources, namely attribution, delegation, and mandate. Attribution authority is usually outlined through the division of state power by basic law, while delegation and mandate authority is authority derived from "delegation".

Authority consists of at least three components: influence, legal basis, and legal conformity. The component of influence is that the use of authority is intended to control the conduct of legal subjects, the basic component of law is that the authority must be designated on its legal basis, and the component of legal conformity contains the existence of standards of authority, namely legal standards (all types of authority) and special standards (for certain types of authority) (Hadjon, 1998).

Method

This paper is a legal research that uses a legal *yuridis* approach, and a conceptual approach. Sources of law in this paper come from statutory regulations, especially those relating to the auction system for the position of the leadership of the state civil apparatus, as well as literature related to legal issues and the appointed government system. The analysis was carried out qualitatively.

Result and Discussion

A. Mechanism of Filling the Position of High Madya Leader Through the Office Auction System According to Law No. 5 of 2014

1. Understanding the Department

Government Regulation No. 11 of 2017 on the management of Civil Servants defines a position as a position that indicates the function, duties, responsibilities, authority, and rights of an ASN employee in an organizational unit. The definition of a position in the government bureaucracy is known as a career position that is a position in a bureaucratic environment that can only be occupied by civil servants (PNS). Job procurement is a set of jobs that contain the same tasks or relate to each other, and the implementation asks for the same skills, knowledge, skills and abilities even though they are spread in various places. So the position is part of the work in the arrangement of a unit of state organization that is engaged by a state civil apparatus with duties, functions, responsibilities, and authorities in it.

According to Logemann (Hakim, 2011), the positions are the work environment is durable and underlined, and that is provided for being occupied by appointed stakeholders

and provided to be represented by them as individuals. In the nature of formation this must be clearly stated.

From the above understanding, Logemann wants certainty and continuity in a position so that the organization in functioning properly. The department is run by the person as a representative in such a position and acts on behalf of the department, called the stakeholder. Whether then the stakeholder is authorized to represent his position to others or not, Logemann responded with "in this case it is necessary to place a appointed successor to represent the position fully under the leadership of the stakeholder". This is what Logemann thinks plural stakeholder. Since there is a connection between such positions, it appears as a group as a whole (Hakim, 2011).

Furthermore, quoted from Utrecht (1957) states tha the office is a permanent work environment that is held and carried out for the benefit of the state (public interest). Each office is a fixed work environment associated with the highest social organization, named state.

2. Term Office Auction

The auction of positions can simply be interpreted as filling vacant positions through an open selection mechanism or in the sense of openness to the state civil apparatus in the government environment that will fill vacant positions in accordance with certain requirements that have been set by the competent authorities fairly and submitted with certain principles (Defriadi, 2017). The term auction is identically known as the process of procuring goods and services with consideration of the highest price or wage offer, but not so in filling government positions. The auction of positions referred to in this case is a fierce competition in obtaining positions using the competence, qualifications, and integrity of civil servants conducted in a transparent, fair, and accountable manner.

Job auctions in the concept of new public management are actually also known and practiced in other countries with different terms, basically aiming to choose an apparatus that has sufficient competence, qualifications, and integrity to fill certain positions / positions so that they can carry out more effective and efficient tasks. When the auction of positions that are in the process is actually done openly, using certain assessment standards and conducted by independent and competent parties in selecting it can automatically minimize the potential for corruption, collusion, and nepotism in the country.

Previously Law No. 43 of 1999 on staffing points explained about the requirements of filling positions for Civil Servants (PNS) (Nasution, 2015). In article 17 paragraph 2 it is explained that "The appointment of civil servants in a position is carried out based on the principle of professionalism in accordance with the competence, work performance, and rank level set for the position and other objective conditions regardless of gender, ethnicity, religion, race or class". To ensure the election of professional and competent people in

accordance with the standards of competence of the position, it should be followed up with a more selective and trustworthy selection mechanism.

The reference for the auction of positions or open selection is contained in the circular letter of the Ministry of Utilization of State Apparatus and Bureaucratic Reform Number 16 of 2012 which regulates the procedures for filling structural positions that are openly vacant in government agencies, Law No. 5 of 2014 on State Civil Apparatus, then further regulated in the Regulation of the Minister of Utilization of State Civil Apparatus and Bureaucratic Reform No. 13 of 2014 on procedures for filling jobs. High leaders openly in the environment of government agencies. In practice, openly filling positions has been popularized with the term "job auction" and applied by ministries and local governments not limited to high positions but also to administrative positions such as Camat positions, service heads, and principals.

Job auction is a form of promotion of positions that is carried out transparent and selectively. It is said to be transparent because the process is carried out openly and everyone who meets administrative requirements in the form of a level of rank and group is allowed to register to fill available vacancies (Nasution, 2015).

In line with this, the ministry of empowerment of state apparatus and bureaucratic reform (Kemenpan RB) launched a grand design program of bureaucratic reform and one of them is the ASN promotion system program openly. This program aims to ensure the availability of structural officials who have the competence of the position in accordance with the competencies and requirements required by the position. To achieve this, it is necessary to hold the promotion of structural positions based on the merit system and open, taking into account the continuity of the career of the civil servant concerned. Law No. 5 of 2014 article 1 number 22 explains that:

"The merit system is an ASN policy and management based on qualifications, competence, and performance fairly and reasonably without distinction of political background, race, skin color, religion, origin, gender, marital status, age or disability consensus."

The candidate of the job auction is any person who has met the criteria that have been determined under the regulations that apply as a competency-based job filling system and made public. Filling the position in question is devoted to officials at the level of echelons I and II, while aselon III and IV are sufficient to use existing mechanisms through selection in Baperjakat. In relation to the appointment of civil servants in the structural position of state apparatus resource management must be competency-based which covers all aspects in the management of human resource development which includes, among others: recruitment, selection, appointment, placement, training, and employee development (training and development) (Moehariono, 2014).

3. Filling Positions Openly

Constitutionally, the filling of positions in government institutions has been clearly regulated under the 1945 Constitution, under article 28D stating that "every citizen has the same opportunity to participate in government. The guarantee of every citizen to have an equal opportunity to be involved in government, is a firm guarantee of the State in realizing the civil and political rights of every citizen, as part of human rights, the State guarantees and protects the rights of every citizen in Indonesia without exception.

This indicates that the state should provide equal opportunities for every citizen to fill positions available in government, including in the position of secretary of state which is realized through a mechanism of filling positions that are able to accommodate these opportunities openly and competitively.

Filling the position of each employee to occupy a position is adjusted to the needs of carrying out the tasks and functions contained in the organization. Recruitment is a process of collecting candidates for office holders in accordance with the plan of ASN employees to occupy a certain position in the job function (employee function) (Kadarisman, 2018). The principle of placement according to A. W. Widjaja is the right man on the right place. To be able to implement this principle properly there are two things that need to be considered, namely (Kansil, 2005):

- a. The existence of a good job analystys, an analysis that describes the scope and nature of the tasks carried out by an organizational unit and the conditions that must be owned by the officer who will occupy the position in the organizational unit.
- b. There is an assessment of the implementation of the work (employee proficiency) of each employee who is well maintained and continuous. With this job assessment can be known about the nature, proficiency, discipline, work performance, and others of each employee.
- c. Filling state positions can be done by the method of election and / or appointment of state officials individually or in groups with institutions where they serve, both in state institutions and government institutions, both central government and daerah government.

Based on Law No. 5 of 2014, the mechanism of filling high leadership positions is regulated in article 110 which states that:

- 1) The filling of high leadership positions as referred to in article 109 is carried out by staffing officials by first forming a selection committee of Government Agencies
- 2) In forming the selection committee as referred to in paragraph (1) of the Office of Personnel Development in coordination with KASN
- 3) The selection committee of Government Agencies as referred to in paragraph (1) consists of internal and external elements of the relevant Government Agencies.
- 4) The selection committee is selected and appointed by the Office of Staffing Based on knowledge, competency experience, track record, moral integrity, and neutrality through an open process.

- 5) The selection committee as referred to in paragraph (1) conducts selection with regard to the requirements of competence, qualifications, principality, education and training, track record of position, integrity, and assessment of competency tests through assessment centers (assessment centers) or other assessment methods.
- 6) The selection committee as referred to in paragraph (1) carries out its duties for all selection processes to fill open positions for the period of duty set by the Office of Personnel Development.

Then based on Kemenpan-RB Regulation No. 13 of 2014 on Procedures for Filling High Leadership Positions Openly in Government Agency Environment:

Article 1

The Procedure for Filling the Position of High Leader in the Environment of Government Agencies is as stated in Annex I which is an integral part of this Ministerial Regulation.

Article 2

The procedure for filling high leadership positions openly as referred to in Article 1 is used as a guideline for central and local government agencies in the implementation of filling high leadership positions openly.

Article 3

Every Government agency is obliged to apply the principles and avoid practices prohibited in the merit system at every filling exercise.

Article 4

This Ministerial Regulation comes into force on the date of promulgate until the government regulations govern the filling of high leadership positions openly.

The filling of the first high leadership position is carried out openly and competitively among civil servants with regard to the requirements of competence, qualifications, education, and training, track record of positions, and integrity and other position requirements in accordance with the provisions of laws and regulations conducted openly and competitively at the national level or between districts / cities in 1 (one) province. The implementation of an open promotion system conducted through filling positions that are vacancies competitively based on the merit system, the implementation of promotion of positions is based in accordance with qualifications, competencies, and performance fairly and fairly without distinguishing political background, race, color, religion, origin, gender, marital status, age or disability conditions. One of the principles of the Nine principles in the merit system is to recruit, select and prioritize based on open and fair competence.

Looking at the mandate in the regulation of Law No. 43 of 1999 article 19 paragraph (2), it is explained that the association in office is based on work performance, loyalty, application, experience, trustworthiness, and other objective conditions. Then in article 20 paragraph (2) it is explained that to further guarantee objectivity in considering and establishing promotion

and appointment in office there is a list of assessments of the implementation of work and a list of rank-and-order.

Civil servants who are addressed in certain ranks and positions in government agencies are one part of ASN management with principles implemented based on professional principles, and avoid corruption, collusion, and nepotism. To implement these principles, ASN management is carried out with a merit system, as affirmed in article 51 of the ASN Law which states that ASN management is held based on qualifications, competencies, and performance fairly and reasonably without distinguishing political background, race, color, religion, origin, gender, marital status, age, or disability conditions. Then in article 72 of the ASN Law affirms that "Every qualified civil servant has the same right to be promoted to a higher level." This statement means that the civil servant promotion system must be implemented in an open and competitive manner.

4. Mechanism of Filling The Position of High Leader of the Municipality

Law No.5 of 2014 on State Civil Apparatus (UU ASN) article 7 paragraph (1) describes the High Leadership Position (JPT) is a group of high positions in government agencies. Article 19 paragraph (1) describes JPT consisting of: JPT Utama, Madya, and Pratama. Article 19 paragraph (2) describes jpt serves to lead and motivate every ASN employee in government agencies through:

- a. Pioneering in areas of professional expertise, policy analysis and recommendation, and management leadership;
- b. Development of cooperation with other agencies; and
- c. Transparency in practicing the basic values of ASN and implementing the code of ethics and code of conduct of ASN.

Article 131 of Law No. 5 of 2014, equalizes civil servant positions as follows:

- a. The position of echelon I.a Head of Non-Ministerial Government Institutions is equivalent to the Main JPT.
- b. The echelon positions of I.a and I.b equivalent to the JPT Madya, such as: Secretary General of the Ministry, Director General, Deputy, Inspector General, Provincial Regional Secretary, and other equivalent positions.
- c. The position of echelon II is equivalent to JPT Pratama, such as: Director, Secretary of the Directorate General, Secretary of the Inspectorate General, Head of The Center, Head of The Great Hall, Assistant Secretary of the Provincial / Regency / City, Regional Secretary of the Regency / City, Head of Office / Head of Provincial / Regency / City Agency, Secretary of the Regional People's Representative Council, and other equivalent positions.
- d. The position of echelon III is equivalent to the Position of Administrator.
- e. The position of echelon IV is equivalent to the Supervisory Office.
- f. The position of echelon V and general functional is equivalent to the Acting Position.

Jpt filling is Competitive and Open, where the selection is carried out by the Selection Committee of selected agencies and appointed by the Office of Staffing Trustees (PPK) in coordination with KASN (State Civil Apparatus Commission). Then the process is as follows:

- a. The Main And Vice High Leaders are carried out at the national level
- b. Pratama High Leader is carried out at the national, provincial, or inter-agency level in 1 (one) district / city

Article 109 of Law No.5 of 2014 explains that jpt charging can be filled by non-civil servants. Certain primary and municipal JPT can come from non-civil servants with the approval of the President whose filling is done openly and competitively and stipulated in the PRESIDENTIAL DECREE. JPT can be filled by TNI soldiers and police officers after resigning from active service if needed and in accordance with the competencies established through an open and competitive process. Here is an overview of the JPT charging process.

First at the preparatory stage, the selection committee was formed by the PPK in coordination with the State Civil Apparatus Commission (KASN). The selection committee consists of elements: related officials from the relevant agencies, officials from other relevant agencies, academics / experts / professionals. The selection committee numbers at least 5 people and a maximum of 9 people. The ratio of internal and external selection committees is 45:55. The selection committee can be assisted by a team of competency assessors (assessors).

Second, the implementation stage. The filling of JPT in the Central Agency must be done openly for civil servants who meet the requirements set by the laws and regulations. The filling of Madya and main JPT must be done openly for civil servants who meet the requirements set by the laws and regulations. The President can assign the TPA to determine the best Candidate objectively based on the principle of merit.

The filling of Madya JPT at the provincial level is carried out by the Provincial PPK by forming a Pansel in coordination with KASN. Pansel presented the 3 best candidates to the Provincial Staffing Management Office. The Office of Staffing Trustees proposed 3 candidates for the High Office of the Madya to the President through the Minister of Home Affairs. The President appoints one of the 3 candidates as a High-Ranking Official.

At the stage of implementation of the announcement to fill jpt vacancies are announced publicly, in the form of circulars through the notice board, and/or print media, electronic media (including internet media). The announcement is carried out at least 15 (fifteen) business days before the deadline for the application acceptance date.

The selection stage is divided into three parts, namely: (1) administrative selection, (2) managerial competency selection, (3) field competency selection. Administrative selection is given the conditions with the provisions: competence, qualifications, strength, education and training, track record of position, and integrity. At the selection stage managerial competencies use psychometric methods, competency interviews, case analysis or presentations for areas that have not been able to use the assessment center method in full. Standards of managerial competence are prepared and set by each agency according to the

needs of the position & can be assisted by assessors. At the competency stage of the field using written methods and interviews, as well as other methods. Field competency standards are prepared and set by each agency according to the needs of the position and can be assisted by assessors.

At the stage of the announcement of the results of the selection, the selection committee announces the results of each stage. The Selection Committee conveys the rating of values to the PPK. The Selection Committee conveyed the results of 3 (three) candidates in the order of the highest value to be submitted to the PPK. The competent officials propose 3 (three) names of candidates who have been selected by the selection committee to the PPK.

5. Comparison of The Recruitment System of High Leadership Positions According to Law No. 43 of 1999

If referring to the laws and regulations that apply in the new order period regarding staffing, it is necessary to describe the provisions under Law No. 8 of 1974 Jo Law No. 43 of 1999 on Staffing Points. Law No. 8 of 1974 which has been amended by Law No. 43 of 1999 on The Subject of Staffing which regulates the management of State staffing which is structured based on the frame of mind that employees as individuals and as korp are an integral part of state government.

Therefore, every civil servant is required to have full loyalty to the government of the State. The government through the Minister of Home Affairs at that time, issued The Minister of Home Affairs Regulation No. 12 of 1969 which came to be known as Permen 12, this Candy prohibited civil servants to be actively involved in political parties, then in Presidential Decree No. 82 of 1971, Suharto officially established the Civil Servant Corps of the Republic of Indonesia as the sole container of civil servants who accommodated the interests of the regime at that time (Matanasi, 2019). Such provisions are seen as incompatible with an increasingly democratic and decentralized government, an increasingly open government, and an increasingly competitive economy. Law No. 43 of 1999 has mandated the establishment of the State Staffing Commission as an independent authority to maintain the professionalism, neutrality, and apolitization of state apparatus human resources.

Substantially, there is indeed a significant difference between the State Civil Apparatus Act (which is further in this discussion called ASN) to the previous staffing principal law. In terms of the recruitment system, in the ASN Law the preparation of employee needs is submitted to each agency each referring to the job analysis and workload analysis and there is clarity in the procurement period, namely a period of five years with details per year. This can be seen based on the ASN Act, namely:

Article 49

Each agency arranges the needs of the number and type of civil servant positions based on job analysis and workload analysis.

Article 50

The preparation of the needs of the number and type of civil servant positions as referred to in paragraph (1) is carried out for a period of 5 (five) years detailed per 1 (one) year based on priority needs and in accordance with the budget cycle.

Article 51

Procurement of civil servant candidates is an activity to fill vacancies according to the needs of employees.

While in the previous Staffing Basic Law, the preparation of staffing needs is determined based on formation and a certain period of time. Broadly speaking, the procurement of employees in ASN is arranged based on priority needs while in the Basic Law of staffing is arranged based on rank. This can be seen based on the Basic Law of Staffing, namely:

Article 15

- 1) The number and rank of civil servants required are stipulated in the formation
- 2) The formation as referred to in paragraph (1), is determined for a specified period of time based on the type, nature, and workload to be implemented.

Article 17

Civil Servants are appointed in certain positions and ranks

Referring to the spirit of bureaucratic reform, the procurement of formations in the main law of staffing has previously become a "commodity" in the political scene, the placement of civil servants' structural positions intervened by political interests, so that the competence and qualifications of civil servants are not as needed. The problem as intended is the impact of the weak implementation of the Basic Staffing Law and the lack of governing norms. When reviewing the recruitment system of civil servants in the ASN Law through job analysis and workload analysis, it can be expected that the procurement of employees in accordance with existing needs, so as to create the right man in the right job, and minimize political intervention in the procurement of employees in the region and overcome the spirit of regionality.

Judging from the Promotion System, the placement of positions regulated by the ASN Law indicates open and competitive charging in accordance with certain requirements. This can be seen under the ASN Act:

Article 19

Filling the Position of Chief Executive and Vice in ministries, secretarial state institutions, non-structural institutions, and Local Government is carried out openly and competitively among civil servants with regard to the requirements of competence, qualifications, education and training, track record of position and integrity and other requirements needed in accordance with the provisions of the laws and regulations.

Article 64

The appointment and determination of civil servants in certain positions as referred to in paragraph (1) is determined based on objective comparisons between competencies, qualifications, and requirements required by the position with the competence, qualifications, and requirements possessed by employees.

While in the Law of Staffing Principles the placement of positions is carried out based on the principles of professionalism, work performance, and rank level but without clear indicators about the assessment system. Broadly speaking, ASN creates an open career base while the Basic Staffing Law actually causes a closed career base. See based on the Basic Staffing Act:

Article 17 (2)

The appointment of civil servants in a position is carried out based on the principle of professionalism in accordance with competence, work performance, and rank level set for the position and other objective requirements regardless of gender, ethnicity, religion, race, or class.

Article 22

For the purposes of the implementation of the duties of the ministry and in the framework of the construction of civil servants can be held the transfer of positions, duties, and / or work areas

The Open Career Base carried by the ASN Law is very in accordance with the values of Bureaucratic reform to eliminate political intervention in the placement of positions, especially structural positions among employees who have been known as "my man". My man or my person, merukan a handful of elites who are close to the ruler so that they get the "mandate" exclusively to control a position to the exclusion of various other human resources outside the campok that is actually more qualified. With an open and competitive system, it is expected that every qualified employee can compete in a healthy manner and be able to create high-ranking bureaucratic officials who are competent.

B. Implications of The Implementation of Open Selection System (Job Auction) in Filling The Position of High Leader of the Madya

The implementation of filling positions through open selection or job auction is one form of bureaucratic reform program that is expected to bring the Indonesian system of government in a better direction. Job auctions as a form of promotion of positions conducted openly and through their own standards in the selection process focus on competence and according to the qualifications of the candidates, this appointment mechanism is applied not only at the central level but applies to the regional level.

ASN employees who are appointed in certain ranks and positions in Government Agencies are one part of ASN Management with principles implemented based on professional principles, and avoid the practice of corruption, collusion, and nepotism. To implement that principle, ASN Management is implemented with a merit system, as affirmed in article 51 of the ASN Act which states that ASN Management is held based on the Merit System, namely asn policy and management based on qualifications, competencies, and performance fairly and reasonably without distinguishing political background, race, color, religion, origin, gender, marital status, age, or disability.

In article 2 of the ASN Law stipulates that the implementation of asn policy and management is based on the general principles of good governance, especially the principle of legal certainty, the principle of professionalism, the principle of proportionality, the principle of neutrality, the principle of accountability, the principle of openness, the principle

of nondiscriminative and the principle of justice and equality. One of the principles that later becomes important to be considered is the principle of legal certainty where every government action must have a strong legal basis so that the government's actions are legally valid and can be accounted for.

Several factors can affect the practice of job auctions can be successful or not, among others, namely (Nasution & Mahfud, 2013):

1. Competence

Competency assessment in the implementation of open selection is emphasized to be done as one of the methods of assessment of employees in the placement of structural positions this aims to know the competence of employees both managerial competence and field competence. Competency tests are usually conducted by assessment center methods conducted by several assessors and simulations to find out more about competency assessment.

2. Work performance

Employee work performance can be assessed through two things, namely from employee performance and employee discipline. These two things are a condition to get a reward or award as an achievement of work performance owned by employees. The form of reward can be in the form of nominal rupiah or things related to appreciation such as bonuses and good names that are carried. The government itself will provide rewards or rewards for employees who excel in performance this is considered more effective to spur achievement than with punishment then this is a step to further increase employee productivity.

3. Departmental Level

Affirmation of the specification of the position in the administrative requirements for the level of rank set is one of the efforts to attract competent employees, the rank level is able to influence the employee for when the right time he can participate in the auction. From that level of rank, candidates will understand about what abilities and education are needed to fill the position, therefore the government expects the right man and the right position.

4. Objective Assessment

Job auctions or open selection requires the assessment of participants must be based on the objectivity of this in doing to minimize the level of subjectivity that is felt to be detrimental and hurt the auction process of positions that have a competitive and open spirit. The local government seeks to conduct an assessment by involving elements of each selection to assess participants objectively, therefore the organizer conducts several tests and from each element will give a different view.

In its development, of course, the practice of the job auction system or promotion recruitment system should be an appreciation amid public skepticism in the service of ASN employees to the wider community, therefore in order to realize bureaucratic reform, this open recruitment system becomes a solution to improve the performance of ASN employees

themselves. Because in principle, the implementation of this office auction still has some significant impacts that must be considered in the process of organizing government.

Several factors can have implications for hindering the implementation of job auctions in filling ASN positions, such as what was conveyed by M. Ryas Rasyid, there are several negative sides of the office auction system so that it can affect the implementation of government, namely (Wicaksono & Widya, 2012):

1. First, the use of the term "job auction" in a governmental environment is absolutely wrong, both in terminology and in staffing administration practices. "Auction" activity only applies in the context of buying and selling and strongly prioritizes the value of profit (profit). In government, the filling of positions is always in the context of public service with the main reference on competence and professionalism (merit system). What is noted his concern is that the government has never corrected the use of the term "office auction" which continues to circulate in the mass media and in various public forums. There is a kind of warning of something wrong, so that the image of the government bureaucracy is hurt continuously.
2. Second, in modern administrative practice there is known as an "open career system" which one form is "open recruitment." The application of this open career system is generally limited to certain positions that require competence and high personality integrity. The requirements are formulated in detail and the method of determination is done openly. The process begins with administrative selection, paper writing, presentation, competency test, and psychological test.
3. Third, based on the application of the open career system, the enactment of open filling of positions "for all positions" in government is unusual and therefore inappropriate. In government bureaucracy, factors of experience, achievement, loyalty, and power cannot be ruled out, and are determinants of the development of employee career patterns. All assessments of the complexity of these factors in each employee can only be known and assessed by the direct superior in a multilevel manner. Therefore, the application of open filling of positions for "all positions" whose selection process is carried out by a selection team that is a personnel who comes from outside will potentially damage the career pattern of employees.
4. Fourth, in the implementation of employee career patterns based on experience, achievement, and loyalty, the assessment of direct superiors and the recommendations of superiors two levels above is an important factor that cannot be ignored. Neglect of these factors can have implications for the incompatibility of the implementation of tasks in the work environment, which further leads to inefficiencies and ineffectiveness of governance.

M. Ryaas Rashid concluded that there was a fatal error in the application of the job auction so far lies in 3 things, namely (Mutiarin & Zaenudin, 2014):

- a. Applied to all positions, and not just for certain positions that require high competence of expertise and personality integrity. As a result, with a relatively long process, many

areas experience a vacuum of officials, which then raises other problems, such as disruptions in the smooth management of budgets and slowness of strategic decision-making in the implementation of tasks.

- b. So far the government has not made references on technical competency standards for auctioned positions that apply nationally. As a result, there is a variation in standards between regions, and at the same time uncertainty in assessing the feasibility of the standards used by each region.
- c. The selection system does not follow procedures applicable in administrative practices in developed countries such as the United States. For example, for the presentation of candidates, the assessment is not only carried out by the panel, but also by experts who are invited to attend as parties who have the authority to assess professionally. In addition, the formation of panel also tends not to be entirely objective.

The practice of the job auction system seems to still be an important discourse in the discipline of state administration, considering the impact of the implementation of the job auction system will also affect the cadreization system, or career path process in each government agency. The cadreization system implemented by an agency is nothing but to promote someone who has been recommended by internal agreement, this is considered important because someone who has been recommended by internal agreement based on experience and performance capabilities so that it is expected to be able to lead an organization well but if the auction of positions is opened in general feared by many apparatus, the candidates selected auctions still need more adaptation. Long and do not have the condition of experience to better know the dynamics in the agency (Justine, 2006). On the other hand, the demand to have a government bureaucracy that is accountable, transparent, and creates clean & good governance becomes an urgency in the framework of the State of Democratic Law in Indonesia.

CONCLUSSION

1. Job auctions are one of the surefire strategies to fight nepotism, collusion and corruption in government posts. The filling of office in government is closely related to the rights of every person, which is the responsibility of political rights as part of human rights that must be guaranteed and protected by the State. Similarly, Indonesia, which regulates these rights fundamentally in Article 28D of the Constitution of the Republic of Indonesia of 1945 which clearly mandates that every citizen has the same opportunity to participate in the government.
2. The Mechanism of Filling the Position of High Leader Openly in this case the Regional Secretary, compared to the arrangement of filling the position of regional secretary before the ASN Law and before the arrangement of filling the position of regional secretary openly, namely the Basic Law of Staffing, it can be concluded that the arrangement of

filling the position of regional secretary openly described in the ASN Law can produce competent and qualified regional leaders if the selection is carried out in objective manner with regard to the requirements of competence, qualifications, strength, education, and training, track record of position, and integrity and other requirements needed in accordance with the provisions of the laws and regulations. The implementation of filling the position of regional secretary is openly carried out in accordance with the law and Regulation of the Minister of Utilization of State Apparatus and Bureaucratic Reform of the Republic of Indonesia Number 13 of 2014 on Procedures for Filling High Leadership Positions Openly in Government Agency Environment.

3. The application of an open recruitment system known as job auction, or open career system seems to still leave prolonged discourse, because it could be a recruitment system based on the regulations of the ASN Law has implications for the implementation of government by ASN employees. On the one hand, the open recruitment system has a positive impact based on the merit system principles and general principles of good governance, by giving birth to competent, qualified ASN employees considering the long process carried out in recruitment to pay attention to important instruments based on competence, work performance, qualifications, education, track record and so on, but on the other hand, this system also has implications for budget allocation and time with It costs a considerable amount, so that the phenomenon of vacancies in some areas is often a stumbling stone for the implementation of local government, plus the mechanism of filling open positions, will have an impact on the cadreization system or career level that has been done early on by every government agency, considering the career patterns of employees based on experience, achievement, and loyalty, direct superior assessment and recommendations of superiors two levels above it. It's an important factor that can't be ignored. Neglect of these factors can have implications for the incompatibility of the implementation of tasks in the work environment, which further leads to inefficiencies and ineffectiveness of governance.

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