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# Policy Analysis of Civil Servant Mutation on the Needs of Local Government Organizations Based on BKN Regulation No. 5 of 2019

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## Abstract

The implementation of the civil servant mutation policy in the context of the needs of regional government organizations in Gowa Regency is a strategic action carried out by the regional government to transfer employees according to the needs of certain units or departments. Thus, the goal to be achieved is to increase the efficiency and effectiveness of public services by placing employees in positions that suit their abilities and competencies. The research used is field research. This research uses qualitative analysis, intending to provide a systematic description of a phenomenon, symptoms and conditions that occur as well as explaining precisely the conditions that are related to the variables studied. The resulting data shows that the civil servant mutation process must be enforced with strong legal protection, which ensures that all stages of mutation take place fairly, openly and in accordance with applicable regulations. Legal protection for civil servants who experience transfers by the regional government in Gowa Regency includes several important aspects, such as: 1) Principle of Legal Certainty; 2) Transparent Procedures; 3) Consultation and Clarification; 4) Protection from Discrimination and 5) Appeal Mechanism.

**Keywords:** *Mutation; Civil Servant; Local Government*

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## INTRODUCTION

The state is the highest organization among one group or several groups of people who aspire to live united in a certain area and have a sovereign government<sup>1</sup>. The task of the state according to modern understanding (in a welfare state/*social service state*) is to carry out the public interest to provide the greatest prosperity and welfare based on

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<sup>1</sup>Moh. Mahfud MD. *Indonesian Constitutional Policy and Structure (Revised Edition)* ( Jakarta: Renika Cipta, 2000), p. 64.

justice in a State of Law<sup>2</sup>. For this reason, government institutions are state instruments that apply law and have government power to take care of state issues and state welfare.<sup>3</sup>

The administration of government affairs in Indonesia creates a relationship between the central government and with local governments. The government relations aims to carry out what is mandated by the 1945 Constitution in the preamble to the fourth alenia, <sup>4</sup> namely "*to protect the entire Indonesian nation and all Indonesian bloodshed and to promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, lasting peace and social justice*"

Local governments, in accordance with the mandate of the Constitution of the Republic of Indonesia Year 1945 (UUD 1945) are authorized to regulate and manage their own government affairs based on the principle of autonomy and assistance duties. Granting broad autonomy to regions aims to accelerate the realization of community welfare through improved services, empowerment, and community participation.<sup>5</sup> Local governments exercise the widest autonomy, except for government affairs which by law are determined to be the affairs of the Central Government. Local governments have the right to enact local regulations and other regulations to carry out autonomy and assistance duties. The structure and procedures for administering local government are regulated in law. <sup>6</sup> The concept of decentralization as a delegation of authority from the central government to regional governments and efforts for independence above the demands of regional autonomy is a paradigm of freedom of local governments in organizing government accompanied by capabilities and spearheading the implementation of government tasks, especially in providing services to the community.<sup>7</sup>

Historically, Law No. 32 of 2004 concerning Regional Government, and Law No. 43 of 2004 concerning Personnel Matters, were the basis of arrangements for the implementation of personnel management/administration for Regional Civil Servants, especially personnel affairs which were centralized to regions related to the authority of the Regional Head as the Regional Civil Service Guidance Officer in terms of procurement, appointment, transfer, and dismissal of Regional Civil Servants, so that it

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<sup>2</sup> Tedi Sudrajat, *Government Bureaucratic Law; Strength and Department* (Cet. I; Jakarta: Sinar Grafika, 2017), p. 4

<sup>3</sup> Audria, Audria, and Hananto Widodo. "Mutation of Civil Servants (PNS) Based on PANRB Ministerial Regulation No. 27 of 2021." *Novum: Journal of Law* 01, No. 1 (2022), p. 92

<sup>4</sup> Irfan Setiawan, *Handbook of the Regional Government* (Cet. I; Yogyakarta: Wahana Reresolution, 2018), p.4

<sup>5</sup> Dadang, *Position and Function of DPRD Recommendations in the Implementation of Licensing Authority* (Cet. I; Central Java, CV. Pen Persada, 2020), p. 1

<sup>6</sup> Ani Sri Rahayu, *Introduction to Local Government; Study of Theory, Law and Its Applications* (Cet. I; Jakarta: Sinar Grafika, 2018), p. 3

<sup>7</sup> Hidayat, Hasannudin. "Implementation of Civil Servant Mutation Regulation in the Perspective of Sociology of Law." *AN-NIZAM* 16. No. 1 (2022), p. 2.

has placed the role of Regional Heads very strategic considering that regional heads are a significant component for the success of national development, because regional governments are subsystems of national or state government.<sup>8</sup>

Local government has formally been firmly seated as the power of state government with all its utilization and utilization as *a public service* and state administration system, especially in the field of management of Regional Civil Servants. Local government can also be called *local state governance* or an extension of the central government in providing services for the community as a whole. Indeed, regional autonomy government is very elegant which lies in its concept. However, the concept often raises problems related to how to realize with the needs and complexity of prerequisites and laws that are not only structural but also cultural.

Personnel management by local governments is the process of managing human resources working in various institutions and work units under the jurisdiction of local or local governments. Personnel management is very important in carrying out various public programs and services provided by local governments to their communities. Personnel management carried out by local governments includes personnel planning, recruitment and selection, development and training, job appraisal, performance management, discipline and law enforcement, change management career development.

Regional civil service or civil servants in local government is a system and procedure regulated in legislation which at least includes planning, requirements, appointment, placement, education / training, payroll, dismissal, transfer, retirement, coaching, and awards.<sup>9</sup> Thus, regional civil service becomes a unified bureaucratic network in the national civil service which is supported by positions and rights and obligations.

The regional personnel management system, especially transfer/mutation, is a consequence of decentralization policies that must be carried out by local governments with statutory authority and a balance of rights and obligations owned by employees. Transfer or mutation is part of coaching, in order to provide greater work experience, responsibility and ability to employees. The main purpose of the Civil Servant mutation is to improve the efficiency and effectiveness of the performance of the Civil Servant concerned. In addition to coaching. Mutations can be possible due to simplification or development of an agency.<sup>10</sup>

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<sup>8</sup> Basri, Hasan. "The Authority of Regional Heads in Determining the Formation of Procurement and Appointment of Regional Civil Servants in the Civil Service System in Indonesia." *Pakuan Law Review* 3.2 (2017): p. 99.

<sup>9</sup> Tjahjanulin Domai, *Decentralization* (Cet. I; Malang, Universitas Brawijaya Press (UB Press), 2011), p. 10

<sup>10</sup> Dedi Amrizal et al, *The Effectiveness of the Mechanism for Implementing the Transfer or Mutation of Employees at the Medan City Regional Civil Service Agency (Proceedings of the National Seminar on Regional Development Planning and Regional Policy 2021)* (Medan: UMSU Press, 2021), p. 89

The position and role of civil servants (Civil Servants) in the Republic of Indonesia is very important in realizing a professional bureaucracy. It is even designed to emphasize the ability to think critically about the concepts and practices of governance to achieve certain goals.<sup>11</sup> Article 1 paragraph 3 of Law No. 5 of 2014 concerning the State Civil Apparatus confirms that "*Civil Servants, hereinafter abbreviated as PNS, are Indonesian citizens who meet certain requirements, appointed as civil servants on a permanent basis by civil service supervisory officials to occupy government positions*", Thus, civil servants as elements of the state<sup>12</sup> civil apparatus, state servants and public servants who are full of loyalty and obedience to Pancasila, The 1945 Constitution, the state and natural government carry out the duties of government and development are also equipped with rights and obligations with awareness and responsibility. The obligations of civil servants are everything that can be done or must be done. While the rights of civil servants are something that must be accepted by civil servants with certain conditions.

Realizing national goals requires civil servants, in this case, Civil Servants are assigned the task of carrying out public service duties, government duties and development tasks. In his explanation, the task of public service is carried out by providing services for goods, services, and/or administrative services provided by civil servants. The duties of government are carried out in the framework of carrying out general government functions which include institutional utilization, staffing, and management. Meanwhile, in the framework of carrying out certain development tasks carried out through nation building (*cultural and political development*) and through economic and social development (*economic and social development*) which is directed at improving the welfare and prosperity of the entire community.<sup>13</sup>

Mutation of civil servants in one Central Agency or Regional Agency is carried out by the Personnel Development Officer; between districts / cities in one province determined by the Governor after obtaining consideration from the head of the State Civil Service Agency (BKN); inter-district/city, inter-provincial, and inter-provincial determined by the Minister of PANRB after obtaining consideration from the head of BKN; mutation of provincial/district/city civil servants to the Central Agency or vice versa determined by the Head of BKN; and mutation of civil servants between agencies The center is set by the Head of BKN.<sup>14</sup>In principle, work mutation in personnel administration is a manifestation of employee maintenance as human resources who play

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<sup>11</sup>Yanto Suharto and Fariyah Sulasih, *Become ASN with Character in Various Frames* (Cet. I; Malang: Media Nusa Creative, 2021), p. 55

<sup>12</sup>Law No. 5 of 2014 concerning the State Civil Apparatus, p.3

<sup>13</sup>M. Mu'iz R. *Understanding the State Civil Apparatus from its Decade* (Cet. I; West Java: Guepedia, 2020), p. 8

<sup>14</sup>Sahya Anggara, *State Civil Service Administration* (Cet. I; Bandung: CV. Pustaka Setia, 2016), p. 61

a vital role in work activities to achieve organizational goals and are even needed to mobilize, motivate, maintain and impose sanctions on employees to have commitment and carry out their main duties and functions properly as a mandate that must be carried out.<sup>15</sup>

In the Regulation of the Head of BKN No. 5 of 2019 concerning Procedures for Implementing Mutations, ASN mutations within government agencies must be carried out properly through planning ASN mutations in their environment, taking into account aspects consisting of: a) competence; b) career patterns; c) employee mapping; d) succession plan group (talent pool); e) career transfer and development; f) assessment of work performance/performance and work behavior; g) organizational needs; and h) the nature of the technical or policy work depends on the job classification.<sup>16</sup>For this reason, it is expressly stated that the mutation of civil servants in this regulation is carried out on the basis of conformity between employee competence and position requirements, position classification and career patterns, taking into account organizational needs, and by taking into account the principle of prohibition of conflicts of interest. In addition to mutation due to duty and/or location as intended, according to this Regulation, civil servants can apply for mutation of duty and/or location at their own request.

The effectiveness of ASN mutations is fundamental to the management of these mutations. That is, strongly consider the planning of the planned mutation program. One of the mutation considerations that is actually carried out by local governments is through balancing the needs of government organizations.<sup>17</sup>Government organizations are state institutions that are given authority based on laws and regulations to run the government in accordance with their fields.<sup>18</sup> In the Indonesian government system, government organizations can be divided into at least 2 categories, namely vertical and horizontal organizations.<sup>19</sup>Vertical government organizations are state institutions that organize government based on laws and regulations and have a line of responsibility from work units in the Regions to central work units. Examples of vertical government organizations are Ministries and Non-Ministerial State Institutions. Meanwhile,

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<sup>15</sup>Mangemba, Mualim Dg, and Fadhli Juned. "Implementation of Civil Service Mutation: Merit, Maintenance and Punishment Mutation." *Journal of Socio-Science* 4.2 (2018): 139

<sup>16</sup> 8Mochammad Iqbal Fadhlurrohman, Suswanta Suswanta, and Etika Khairina. "Polemic on the Implementation of Mutation and Open Bidding / Open Selection in Ciamis Regency." *Journal of Government Science Widya Praja* 47.1 (2021): 52-66

<sup>17</sup> Pandu Wibowo, M. E. *New Designers of Bureaucracy: Welcoming the Wave of Millennial ASN in Bureaucracy* (Jakarta: Phoenix Publisher, 2019), p. 13

<sup>18</sup> Liu, Christin Nathania. "The Position of State Ministries in the State Government System of the Republic of Indonesia." *Lex Privatum* 10.5 (2022), p. 26.

<sup>19</sup>Abdullah, Dudung. "The Relationship of the Central Government with Local Government." *Journal of Positum Law* 1.1 (2016), pp. 83-93

horizontal government organizations are state institutions that organize government based on laws and regulations and have a line of responsibility only within the scope of a region. An example of a horizontal government organization is Local Government.

The organization was founded for no one and is not without purpose. Humans are the most interested parties in the establishment of an organization, both governmental and non-governmental organizations. That is, the purpose of establishing a government organization is to maintain a system of order in society in order to live its life reasonably. The main function of government is to provide services to the people. The government is formed not to serve itself, but to serve society, creating conditions that allow each member of society to develop his abilities and creativity in achieving common progress. The meaning of the formation of the government can be understood that the government formed has the obligation to provide services to the community as much as possible. This commitment can only be held if the people feel that the current government is still directed towards efforts to protect and serve its people.<sup>20</sup>

The general principle that must be applied by all organizations, especially government agencies, is that mutation actions must be based on humanitarian, organizational, development or repositioning, justice, openness, accountability and sustainable dimensions. However, the implementation of civil servant mutations currently experiences many definite problems which include: 1) lack of information disclosure from the Civil Service Agency in transferring employees; 2) Lack of clear or optimal analysis of employee work to be mutated; 3) The number of flows that must be done in managing employee files. Even mutations or rotations carried out by government officials often cause overlaps. Moreover, in practice, each organization that carries out mutations and rotations varies greatly according to the characteristics, competencies, organization and individual employees.<sup>21</sup>

Normally, employees will experience mutations although not absolutely. This usually applies to functional structural officers and auditors. The mutation policy unconsciously contains elements of integrity control. But it also presents thorny problems as it is common for employee mutage to rest on seniority and rank and even influenced by politics and informal power.<sup>22</sup> For officials in the regions, the moment of direct elections is always considered a frightening specter for employees both before, during, and after knowing the results of the elected regional head candidates. Even during the time the regional head was in office, he was always haunted by various forms of

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<sup>20</sup> Labolo, Muhadam. *Understanding Government Science (a study, theory, concept and development)* (Jakarta: Rajawali Pers, 2014), p. 31

<sup>21</sup>Tb. Sjafrri Mangkuprawira, *Effective Strategies for Managing Employees* (Cet. I; Bogor: IPB Press, 2011), p. 8

<sup>22</sup> Gatot Subroto, *Tax and Funding of Indonesian Civilization* (Jakarta: PT. Elex Media Komputindo, 2020), h. 70

mutations, both mutations in the form of moving equivalent positions, demotion (demotion) and dismissal from office (*non-job*).<sup>23</sup>

It should be acknowledged that local government agencies carry out mutation or transfer policies also intended to punish employees, known as *penal transfers*. Usually, this mutation / transfer is carried out against employees who commit mistakes or misappropriations, in addition to being a punishment reward, also to prevent the recurrence of acts of abuse of position / position.<sup>24</sup> However, the mutation system does not mean that it is carried out arbitrarily by local governments through demotion or non-job. Worse yet, if *non-job officials* make "resistance" in the form of objections and complain about the problem to other institutions, it is tantamount to prolonging suffering. So many accept it as it is.<sup>25</sup>

The mutation of Civil Servants until now is still a massive phenomenon discussed. The mutation policy that is commonly carried out by the district / city government including Gowa Regency has drawn the spotlight, especially Gowa Regency is a district that is very intensive in carrying out employee mutation movements. The movement of employees or mutations by the Gowa Regency Government was again carried out in October 2022. The mutation program is the largest mutation where there are 118 people who are mutated at the same time appointed to new positions.<sup>26</sup> In addition, the Gowa District Government through the Gowa Regency Human Resources Development and Personnel Agency (BKPSDM) in 2021 received accumulated promotions in April and October of around 1000 people.<sup>27</sup> For this reason, the existence of the Gowa Regency Government which carries out rapid personnel management, especially in terms of civil servant mutation, encourages researchers to study the "Civil Servant Mutation Policy for the Needs of Local Government Organizations Based on the Head of BKN Regulation No. 5 of 2019 (Gowa Regency Study)" In line with that, this research in the future can contribute scientifically in terms of the development of legal science in The field of state administrative law, especially the management of mutations of Civil Servants within the scope of local government as well as practical contributions to local governments in carrying out personnel mutations based on the principles of humanity, justice and openness in line with the general principles of good governance and as an effective

<sup>23</sup> English Nainggolan, *Civil Servant Released from Political Party Stuck in Regional Elections* (Cet. I; Jakarta: Kencana, 2021), p.207

<sup>24</sup> Gatot Subroto, *Tax and Funding of Indonesian Civilization*, h. 71

<sup>25</sup> English Nainggolan, *Civil Servant Released from Political Party Stuck in Regional Elections*, p.207

<sup>26</sup> 118 ASN Up New Department, Adnan: If There's a Card and an Enemy Sect, Both I'm Copot - Fingertips Diaxed December 1, 2022

<sup>27</sup> Gowa Regency Government Ranks Second in South Sulawesi Completion of ASN Promotion - (gowakab.go.id) Diakases December 1, 2022

instrument in ensuring the protection of the rights of mutations of local government employees.

## METHOD

This type of research is qualitative field research. The study is to use qualitative analysis, intending to provide a systematic picture of a phenomenon, symptoms, and conditions that occur and accurately explain the conditions that have to do with the variables studied. In this qualitative research, researchers record, analyze and interpret the existing situation actually, meaning collecting information according to reality with predetermined variables that are indications in research. <sup>28</sup>

## RESULT AND DISCUSSION

### 1. Implementation of Civil Servant Mutation Policy on the Needs of Local Government Organizations in Gowa Regency

Local governments are the organizers of government affairs mandated by law to implement regional autonomy policies. The autonomy policy becomes the freedom and full authority of local governments in carrying out political decisions in accordance with laws and regulations. Based on Law No. 23 of 2014 Article 1 Paragraph 6 Regional Autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities in the Unitary State system of the Republic of Indonesia.

The concept of regional autonomy is important in a country that consists of diverse cultures, needs, and challenges that differ in each region. By granting autonomy to regions, the central government can accommodate local needs and enable better decision-making at a level closer to the community. The degree of regional autonomy can vary between countries and certain regions, depending on the constitution and applicable laws. Some countries have highly decentralized autonomy systems, in which regions have significant political and economic authority. Meanwhile, other countries may have more centralized systems, where the central government has greater control over important policies and decisions.

The implementation of Law No. 23 of 2014 concerning Regional Government empirically becomes a guideline for the implementation of the principle of decentralization/regional autonomy. The implementation of regional autonomy contains various principles including; *First*, promoting the principle of democracy, *Second*, prioritizing the principle of community participation; *third*; promote the principles of

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<sup>28</sup>Djam'an Satori and Aan Komariah, *Qualitative Research Methodology* (Cet. III; Bandung: CV. Alfabeta, 2011), p. 22.



equity and justice; and *fourth*; Prioritizing the principle of utilizing regional potential and diversity. All of these principles must be implemented by local governments in an effort to achieve arguments for the purpose of autonomy, as follows:

1. Efficiency of government administration effectiveness. Providing services and protection to the people, maintaining the integrity of the nation state, and defending against possible attacks from other countries, are universal government duties. Since this is not possible in a centralized way, the division of duties and the granting of authority is inevitable for the modern world.
2. Political education. Many political science circles argue that local government is a *training ground* and development of democracy in a country.
3. Local government as preparation for an advanced political career. Many political science circles agree that local government is a preparatory step to pursue further careers, especially careers in politics and government at the national level.
4. Political stability. Almost all political scientists/government scholars agree that one of the benefits of decentralizing autonomy and governance is the creation of stable politics, for reasons that can
5. Political *equality*. Through local government, political equality among various components of society will be realized. This is because people at the local level, as well as people at the center of government, will have the opportunity to get involved in politics.
6. Public accountability. Democracy provides opportunities for the community, including in the regions, to participate in the form of governance. Participation can be realized in the early stages of public policy making, especially in the context of forming a governance agenda at the local level.

Regional autonomy has a significant impact on the implementation of local government mutations including the Gowa Regency government. There are several symbolic relationships between the principle of autonomy and mutation policies by local governments, including<sup>29</sup>:

- a) Authority to determine mutation means that regional autonomy gives local governments the authority to regulate and carry out personnel administration in their own regions. This includes decision-making regarding employee mutations at the regional level. Local governments have the authority to determine mutation criteria, procedures, and priorities according to local needs and objectives.
- b) Adjustment to local conditions means that regional autonomy allows local governments to be more sensitive to local conditions and needs. This can include a better understanding of the social, economic, and cultural dynamics in their

<sup>29</sup>Zubair Usman, S.STP, M. Si ( Head BKPSDM ), Interview, Gowa, 12 July 2023

region. As a result, employee mutations can be adapted to changing regional needs and improve the effectiveness of public services at the local level.

- c) Diversification of mutation policies means that local governments can develop more diverse mutation policies that suit the challenges and opportunities unique to their regions. They can prioritize mutations to meet specific needs, such as the economic development of a particular region or the improvement of educational services in a particular region.
- d) Coordination with the central government means that although local governments have autonomy in the management of their personnel administration, they also need to coordinate with the central government in some matters. For example, the transfer of employees between provinces or between districts requires good coordination with the central government and the fulfillment of administrative requirements set by the central government
- e) Flexibility in implementation means that regional autonomy gives local governments the flexibility to determine how to implement mutations according to their conditions. This includes setting up the selection process, announcing mutations, and other administrative adjustments according to the local context.

The mutation policy in local governments has become an important thing as the implementation of one of the fundamental functions of the state personnel management system. The mutation of employees is actually expected to be able to create and encourage *good governance reforms* and regulatory reforms at the local government level, especially the Gowa district government.<sup>30</sup> Mutation is considered very important, especially in facing the demands of the professionalism of government organizations in providing public services. That is, mutation as a manifestation of employee maintenance as a resource that has a major role in work activities in order to achieve organizational goals. In principle, the mutation of civil servants in agencies at the local government level plays a role in maintaining, motivating, mobilizing and imposing sanctions for employees in strengthening commitment and carrying out duties and functions in accordance with applicable regulations.

The importance of the mutation of Civil Servants lies in the development and refreshment of Human Resources. By moving employees from one unit or position to another, local governments can ensure that employees continue to develop their skills and knowledge.<sup>31</sup> This helps prevent stagnation and burnout in the workplace that can affect public services, alignment of policy changes and optimization of labor placement.

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<sup>30</sup>Akbar Fauzi Saputra, S.STP, (Head of Mutation), Interview, Gowa, July 25, 2023

<sup>31</sup>Zubair Usman, S.STP, M. Si ( Head of BKPSDM ), Interview, Gowa, July 12, 2023

The Gowa Regency Government is a local government agency responsible for personnel management and human resource development in Gowa Regency. The Gowa Regency Government has an important role in implementing policies related to civil servants (PNS) in the district area. The legal basis for the implementation of the mutation of civil servants (PNS) in Gowa Regency refers to the laws and regulations applicable at the national and regional levels. Some of these regulations are Law Number 5 of 2014 concerning State Civil Apparatus (ASN), Government Regulation Number 11 of 2017 concerning Civil Service Management, State Civil Service Agency Regulation Number 5 of 2019 concerning Procedures for Implementing Mutations, Circular Letter of the Minister of State Apparatus Empowerment and Bureaucratic Reform concerning Personnel Mutation in Presidential Regulation Number 50 of 2022 concerning Income of Administrative Officials Affected by Bureaucratic Structuring; and Gowa Regent Regulation Number 71 of 2016 concerning the Position, Organizational Structure, Duties and Functions, and Work Procedures of the Human Resources Development and Personnel Agency as well as internal policies of the Human Resources Personnel & Development Agency. In addition, legal and regulatory arrangements regarding the mutation of civil servants may change from time to time. This requires the district to refer to the latest legal documents in Gowa District or consult local authorities if you have specific questions about the mutation process in the region.<sup>32</sup>

Overall, the legal basis for mutation above is an essential basis to ensure that the ASN mutation process takes place properly, transparently, fairly, and efficiently. This not only affects employees and organizations, but also impacts public services and public trust in government. Therefore, the development and application of a good mutation law basis is very important in effective government administration and integrity. The implementation of mutations in the context of good, transparent, fair and efficient has different meanings. *First*, the implementation of a "good" mutation means that the mutation process meets the goals and needs of the organization or local government. This means that mutations are carried out with the aim of increasing efficiency, productivity, and public services. In addition, a good mutation process also considers the interests of employees and ensures that they are placed according to their skills and skills to develop their careers; *Second*, the "transparent" implementation of mutations means that the entire mutation process is carried out openly and clearly. Information on mutation criteria, procedures, and decision-making is available to all relevant parties, including employees and the public. This helps avoid speculation, conflict, or distrust of the mutation process; *Third*, the "just" implementation of mutation means that the mutation process is based on the principles of justice and equality. All employees have an equal opportunity to be

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<sup>32</sup> A. Afrianto Hamka, SH, (HR Analyst Functional Officer), Interview, Gowa, July 12, 2023

considered for mutation, and mutation decisions are not influenced by illegitimate factors such as nepotism or discrimination. Fair also means that the mutation process considers the performance, competencies, and needs of the organization; and four, "Efficient" execution of mutation means that the mutation process is carried out at cost, time, and resources efficiently. The mutation process should not be too complicated or excessively time-consuming. The goal is to ensure that employees are placed in positions that match their skills as quickly as possible so that they can make a positive contribution to the organization or local government. Thus, combining these four aspects in the implementation of mutation is an effort to create a balanced mutation policy.

The implementation of employee mutation in the Gowa Regency government sector involves several parties or institutions that have certain roles and responsibilities in the process. Here are the parties typically involved in the implementation of mutations and the extent of their roles<sup>33</sup>:

1. The Gowa District Human Resources Development and Personnel Agency (BKPSDM) is an institution that plays a central role in the management of civil servants (PNS) and human resource development at the district level. The role of BKPSDM Gowa Regency is very important in carrying out personnel functions which include mutation and management of civil servants.
2. PPK Personnel Development Officer (PPK) is an official who has the authority to determine and issue civil servant mutation decrees. KDP is the Regent/Mayor. The role of a Regent in the process of mutation of civil servants includes 1) Key Decision Makers: The Regent is the highest leader at the district or regional level. They have the authority to approve or reject mutation recommendations submitted by relevant agencies or agencies. The decision of the Regent is the final step in the process of mutation of civil servants; 2) Determining Personnel Policy: The Regent plays a role in formulating and establishing personnel policies in Gowa Regency, including policies related to the mutation of civil servants. They may issue regulations or policies governing mutation procedures and criteria; 3) Coordination with Related Agencies: The Regent needs to coordinate with the Human Resources Personnel and Development Agency (BKPSDM) and other relevant agencies in implementing the mutation of civil servants. They ensure that the mutation process runs in accordance with applicable regulations; and 4) Ensure Organizational Interests Are Met: The Regent must ensure that the mutation of civil servants is carried out to better meet the interests of the organization or public services. They must ensure that the placement of civil

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<sup>33</sup>Dra Irawaty Sir Idar, M.Si ( BKPSDM Secretary), Interview, Gowa 22 May 2023

servants is in accordance with the needs of the region and the tasks that must be carried out.

3. The Inspectorate is an organizational unit tasked with supervising and evaluating various government activities and functions within an entity, such as local government mutation policies. Therefore, the technical role of the inspectorate in the implementation of mutations is: 1) Mutation Control: The inspectorate can provide recommendations or suggestions to local governments related to civil servant mutation policies. They can identify potential risks or abuses in the mutation process and provide necessary solutions or improvements; 2) Complaint Handling: If any employee feels aggrieved or dissatisfied with the result of the mutation, they can lodge a complaint with the Inspectorate. The inspectorate will conduct an investigation into the complaint and provide recommendations to local authorities; 3) Provision of Recommendations: The Inspectorate may provide recommendations related to the improvement of mutation procedures, improvement of efficiency, and prevention of potential violations in the implementation of mutations; and 4) Reporting: The inspectorate can report the results of mutation monitoring and evaluation to local leaders, both in the form of positive findings and problems that need to be resolved.

Each mutation will usually be based on requirements that have been set by the local government, such as mutation policies, selection procedures, and meritocracy principles. In the context of Gowa District the mutation requirements are as follows<sup>34</sup>:

1. Employee Status. Employees who want to apply for mutation must have the status of a Civil Servant (PNS) with permanent status in the relevant agency or local government. This status can be measured through rank/class or position.
2. Educational Qualifications and Skills: Sometimes, mutations can involve moving into positions that require specific educational qualifications or skills. Therefore, employees must have qualifications that are in accordance with the intended position.
3. Good Performance: Usually, employees who want to be transferred must have a good performance record. This can include adequate performance appraisals and good attendance.
4. Regulatory Compliance: Employees must comply with all applicable regulations, ethics, and codes of conduct within the agency or local government. They must also comply with mutation-related regulations set by local staffing agencies.

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<sup>34</sup> Akbar Fauzi Saputra, S.STP, (Head of Mutation), ), Interview, Gowa, July 25, 2023

5. Work Experience: Sometimes, work experience in previous positions is also a consideration. Holders of relevant work experience may take precedence in the mutation process.

The supporting conditions are such as 1) Compliance with Working Time, Employees must be willing to work in accordance with the applicable schedule and working time in the position to be transferred; 2) Health Requirements: Some mutations may require employees to meet certain health requirements, such as medical examinations or medical tests.; and 3) Support from Authorized Officials: Sometimes, mutations require approval from authorized officials in local agencies or governments.

The process of mutation of civil servants is actually regulated by laws and regulations. This process involves several stages such as selection, performance appraisal, and approval of superiors. Mutated civil servants will usually receive written notice and must comply with procedures set by government agencies. Therefore, the stages in the mutation process of Gowa District Government civil servants are carried out as follows<sup>35</sup>:

- a. Identify Needs: Government agencies or organizations identify needs for mutations, such as vacancies or new placements.
- b. Candidate Selection: To fill positions that are vacant or that require new placement, the agency will hold a selection. This can be in the form of internal selection (from civil servants who already exist in the organization) or external selection (opening opportunities for prospective civil servants from outside to follow the selection process).
- c. Performance Appraisal: Civil servants who are candidates for mutation will usually be assessed for performance. This performance appraisal may include an assessment of their target achievement, competencies, experience and qualifications.
- d. Selection of the best candidates: after the selection process and performance appraisal are completed, the best mutation candidates that match the needs of the organization will be selected.
- e. Approval of superiors: mutation decisions must be approved by authorized superiors. This can mean approval from the head of the organization or the official responsible for the mutation of civil servants.
- f. Notification and Coordination: Prospective civil servants selected for mutation will be officially notified of their transfer. Furthermore, there will be a coordination process to facilitate their transition to new positions or work units.

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<sup>35</sup> Zubair Usman , S.STP, M. Si ( Head of BKPSDM ), Interview, Gowa, July 12, 2023

- g. Internal Announcements: Agencies usually announce mutations to members of the organization or other staff to notify them of upcoming changes.
- h. Training (if required): Civil servant candidates who transfer to a different position with significant duties and responsibilities from a previous job may need to undergo additional training.

The conception of mutation is the wisdom to advance the organization with applicable legal processes and certain standards. Therefore, mutations in local government structures including the Gowa Regency Government are based on organizational interests and also involve all responsible parties so that mutation considerations do not involve the interests of individuals or groups. The implementation of mutation must and must be based on objective assessment and consider the achievement index that has been achieved so that mutation as a means of opportunity and maintenance can be achieved properly.

Objective assessment in the context of mutation refers to the process of evaluating employee performance or competence based on factors that can be measured objectively and are relevant to mutation criteria. While the achievement index is a metric or number that describes the extent to which an employee has achieved the goals or performance targets that have been set for him in his role or duties.<sup>36</sup> In the context of mutation, the achievement index can be used as one of the factors in an objective assessment to determine whether an employee is worthy of consideration for mutation to another position. This achievement index usually covers various aspects of performance, including the achievement of quantitative or qualitative targets, productivity, timeliness, and so on.

The mutation of employees carried out by the local government of Gowa Regency is simply through two ways, namely by transfer (mutation) which is not accompanied by a promotion / rank. The mutation aims to increase the shortage of energy in other units, fulfill the wishes of employees and place on the ability and skills of their fields. On the other hand, mutation, promotion or transfer followed by promotion accompanied by promotion / position such as filling position formations, developing employee abilities and building employee careers. Furthermore, mutation methods without promotion and with promotion have no significant differences in the process or requirements that must be met, it's just that the goals of the two are very specific different. In addition, the implementation of civil servant mutations in the Gowa Regency Regional Government is carried out in approximately one to two times a year and there is no definite schedule.

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<sup>36</sup> Zubair Usman , S.STP, M. Si ( Head of BKPSDM ), Interview, Gowa, July 25, 2023

Mutation is carried out dynamically by looking at the state of an organization and the needs of positions in the organization.<sup>37</sup>

In addition, in terms of objectivity, the position of the Gowa Regency Government also carries out two mechanisms for the mutation of civil servants for structural and functional officials. Functional officials are civil servants who have special expertise and competence in certain fields, such as law, finance, health, information technology, education, or other fields. While structural officials are civil servants who occupy positions based on the hierarchical structure of the organization. They have managerial authority and responsibility to supervise and manage certain work units or departments in government organizations such as heads of agencies, heads of agencies (e.g. heads of financial agencies), sub-districts, and sub-districts.<sup>38</sup>

The mutation procedure of the local government of Gowa Regency as revealed by Zubair Usman<sup>39</sup> refers to article 4 of BKN Regulation No. 5 of 2019 concerning Procedures for Implementing Mutations which includes proposals, mutation approvals, technical considerations and mutation decisions. In detail, the procedure for implementing mutations according to article 4 is as follows:

1. *The receiving agency's KDP makes a mutation proposal to the original KDP or the agency where the civil servant concerned works to seek approval.*
2. *The mutation proposal of the receiving agency's KDP as referred to in letter a, is made according to the example as set out in Annex II which is an integral part of this Agency Regulation.*
3. *If the KDP of the originating agency approves, mutation approval is made.*
4. *Approval of mutation from the KDP of the originating institution as referred to in letter c, made according to examples as stated in Annex III which is an integral part of the Regulations of this Body.*
5. *Mutation approval as referred to in letter d is made in 2 (two) copies and submitted to:*
  1. *KDP receiving agency; and*
  2. *PNS concerned.*
6. *Based on the mutation approval as referred to in letter c, the receiving agency's KDP submits the mutation proposal to the Head of BKN/Head of BKN Regional Office for technical consideration.*
7. *The mutation proposal referred to in letter f, is made according to the examples as set out in Annex IV and Annex V which form an integral part of this Agency Regulation.*

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<sup>37</sup> A. Afrianto Hamka, SH, (HR Analyst Functional Officer), Interview, Gowa, July 12, 2023

<sup>38</sup> Dra Irawaty Sir Idar, M.Si (BKPSDM Secretary), Interview, Gowa May 22, 2023

<sup>39</sup> Zubair Usman, S.STP, M. Si (Head of BKPSDM), Interview, Gowa, July 24, 2023



8. *Technical considerations of the Head of BKN/Head of BKN Regional Office are given if they meet the requirements and after BKN verifies and validates the position needs in the receiving agency and the originating agency.*
9. *Technical considerations of the Head of BKN/Head of BKN Regional Office as referred to in letter h shall be determined no later than 15 (fifteen) working days from the receipt of the mutation proposal.*
10. *Technical considerations of the Head of BKN/Head of BKN Regional Office as referred to in letter h, are made according to examples as set out in Annex VI which is an integral part of this Agency Regulation.*
11. *Based on the technical considerations of the Head of BKN/ Head of BKN Regional Office as referred to in letter h, the appointed official determines the mutation decision according to his authority.*
12. *The mutation decision referred to in letter k, is made according to the example as set out in Annex VII which is an integral part of this Agency Regulation*
13. *The mutation decision is made at least 5 (five) verse and communicated to:*
  1. *KDP receiving agency;*
  2. *KDP of the original agency;*
  3. *PNS concerned;*
  4. *Head of the Treasury Office and State Treasury/Regional Treasury; and*
  5. *Head of BKN/Head of BKN Regional Office*

The implementation of the mutation of Gowa Regency Government civil servants in the era of regional autonomy shows an increasing level of independence. This can be seen from the increasing ability to manage the organization and management of civil servant mutations between regions in each autonomous region. This phenomenon reflects the development of self-reliance, where autonomous regions are now better able to make decisions about civil servant mutations without having to rely entirely on the central or provincial governments. In other words, autonomous regions have taken steps towards complete independence in determining decisions about the mutation of civil servants according to their needs and priorities, without having to consider other regions. However, a consequence of this independence is the emergence of restrictions on the careers of employees, since inter-regional mutation management operates separately in each autonomous region and no longer depends on central management from the central or provincial governments.

In line with that, based on Article 2 paragraph 1 of BKN Regulation No. 5 of 2019 concerning Procedures for Implementing Mutations, ASN mutations within government agencies must be carried out properly through planning ASN mutations in their environment, taking into account aspects consisting of: a) competence; b) career patterns; c) employee mapping; d) succession plan group (talent pool); e) career transfer and

development; f) assessment of work performance/performance and work behavior; g) organizational needs; and h) the nature of the technical or policy work depends on the job classification. Based on the regulation, aspects of planning and implementing mutations of the Gowa Regency Government are patterned on two dominant aspects, namely organizational needs and competence or achievement.

The placement of civil servants through mutations carried out by the Gowa Government is fundamental to meeting the needs of organizations or government agencies supported by the competence of these employees. The main orientation in the implementation of mutations based on organizational needs are: 1) Vacancy, there are positions left by civil servants who retire, resign, or move to other positions. To maintain smooth operations and public services, agencies need to fill these vacancies with mutations of civil servants who have the appropriate qualifications; 2) Changes in organizational priorities. Organizations can experience changes in the focus or priority of work. As a result, some positions may become more important while others may no longer be needed. Mutations can help allocate human resources according to those changes; 3) Provision of new skills, in situations where the agency requires specific skills or expertise that do not yet exist in the organization, mutations can be used to bring in civil servants with appropriate background or education; 4) Resource Optimization, mutations can also be used to optimize the use of human resources in the organization. This can mean shifting civil servants from one work unit to another that has more urgent needs.

The mutation process through organizational needs requires synergy from all parties, both personnel development officials (regents/deputy regents), the Gowa Regency Human Resources Development and Personnel Agency (BKPSDM) and related regional institutional agencies. The first step taken by local governments is the identification of organizational needs. This process greatly assists the organization in planning and allocating resources and ensures that those resources are used to support the organization's strategic objectives. The number of mutations to an organization's needs is also highly dependent on a variety of factors, including changes in organizational structure, position vacancies, employee rotation policies, and developments in public service needs. Correspondingly, Gowa District has a roadmap of staffing needs every year and each agency is information that may change from year to year. In practice, local governments prepare personnel needs plans that are tailored to regional development goals, service priorities, and changes in organizational structure. This plan may include the number of employees required, the type of skills required, and the allocation of human resources.

The local government of Gowa Regency can detail the roadmap of personnel needs in various documents, such as the Regional Medium-Term Development Plan (RPJMD), Regional Development Plan (RPD), or other planning documents. This plan can be a guideline in the management of civil servants (PNS), including the implementation of mutations, to achieve regional development goals. However, it is important to note that the roadmap of staffing needs may change from year to year as local government priorities and external conditions change. Therefore, this requires flexibility in the implementation of mutations and staffing management in general.

Law Number 5 of 2014 concerning the State Civil Apparatus (ASN) has strictly regulated the implementation of mutations based on the needs of government organizations/institutions in article 23.

*Article 23 (1) Mutation can be carried out on the basis of the needs of the organization, taking into account the principle of employee interests. (2) In the event of a mutation, the employee concerned shall be given the opportunity to submit an opinion or proposal. (3) The employee concerned shall accept the mutation decision made by the authorized official. (4) The implementation of mutations as referred to in paragraph (1) and paragraph (2) shall be carried out in accordance with applicable laws and regulations.*

Article 23 paragraph (1) explains the basic principles in the mutation mechanism of civil servants (PNS) that prioritize consideration of organizational needs while paying attention to the interests of employees. This is a fundamental principle that underlines that the mutation of civil servants must consider the balance between the needs of government organizations and the welfare of employees. Furthermore, the Regulation of the State Civil Service Agency of the Republic of Indonesia Number 5 of 2019 concerning Procedures for Implementing Mutation also reregulates the principle of organizational needs in the implementation of mutation policies in article 2 paragraph 4, namely:

*Article 2 paragraph 2 Mutation is carried out on the basis of compatibility between the competence of civil servants with the requirements of positions, position classifications and career patterns, taking into account the needs of the organization*

The organizational needs in the mutation of civil servants (PNS) is one of the main factors to be considered in the mutation process. This is highly respected by the Gowa Regency government on the basis of juridical and sociological foundations that affect the cycle of local governance. Organizations need to ensure that they have employees who match the needs of the position and the tasks that must be carried out. The mutation of civil servants (PNS) in Gowa Regency is carried out through the Regional Civil Service Agency (BKD) on the proposal or recommendation of the leader or head of the service/high official in each local government agency. Employee mutation due to organizational needs/desires, this can occur due to several reasons, namely: a) The need

to adjust temporarily, for example someone does not come to work. b) Coping with emergencies due to fluctuations in the volume of work. c) Training needs, such as job rotation. d) The need for ploeg work.

Procedurally, the implementation of mutations in Gowa Regency has been carried out in accordance with applicable procedures. However, it is undeniable that the implementation of mutations is influenced by various inhibiting factors. The implementation of mutations in Gowa District, as in many other regions, can face a number of obstacles from both internal and external factors. Here are some of the obstacles faced in the implementation of mutations in Gowa Regency<sup>40</sup>:

a. Internal Factors:

- 1) Unclear and Changing Policies and Procedures, If mutation-related policies and procedures are not clearly defined or easily interpreted differently by the staff involved, this can result in uncertainty
- 2) Mutated employees may experience resistance to change, especially if the mutation requires them to move to a different region or work unit. This can affect productivity and working atmosphere.
- 3) Quality of Data and Documentation: The quality of employee-related data and documents, such as performance records and job history, can be an obstacle if this information is not well documented or accurate.
- 4) Human Resource Management Capacity: The ability of human resource management in carrying out mutations well is very important. If human resource management does not have sufficient skills or experience, mutations can become more difficult to execute.

b. External factors:

- 1) Political Pressure: Political pressure from various parties, including community groups or other stakeholders, can influence mutation decisions. This can compromise the integrity and objectivity of the mutation process.
- 2) Social or Political Instability: Gowa District, like any other region, may experience social or political instability that may interfere with the implementation of mutations, especially if conflicts or demonstrations occur in the context of mutations.
- 3) Family Influence and Nepotism: The practice of nepotism or placement based on family relationships in the execution of mutations can become a serious problem if not fought decisively.

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<sup>40</sup> Dra Irawaty Sir Idar, M.Si ( Secretary BKPSDM), Interview, Gowa May 22, 2023

- 4) Employee Rights Claims: When employees feel their rights are being violated or they feel unfair in the mutation process, lawsuits or protests may arise, which may hinder the implementation of the mutation.
- 5) Economic and social conditions, economic and social conditions of the people of Gowa Regency can affect the acceptance or rejection of mutations by employees, especially if the mutation significantly affects their lives, such as housing and children's education.

The constraints of mutation implementation in Gowa Regency are certainly a responsibility that must be considered both systematically and collectively. To overcome these obstacles, the Gowa District government adopted various strategies and actions that can help improve the effectiveness of mutation implementation, namely<sup>41</sup>:

- a) Formulation of a clear mutation policy: Gowa District must formulate a clear and detailed mutation policy, including objective criteria, procedures, and performance appraisals. This policy document should be easily accessible to all parties involved in the mutation process.
- b) Training and Human Resource Development, Increasing the capacity of human resource management (HR) in carrying out mutations is key. Training and development of employees in the field of personnel administration and HR management can help improve competence and understanding related to mutations.
- c) Transparency and participation, encourage transparency in the mutation process by providing clear information about mutation criteria and procedures to employees and the general public
- d) Involve stakeholders, including trade unions and employee associations, in the discussion and formulation of mutation policies.
- e) Performance Evaluation and System Improvement, Conducting regular evaluations of the mutation system to ensure that the process is efficient and running well. This evaluation can help identify potential problems and necessary fixes.
- f) Application of Information Technology, Using information technology to facilitate reporting, monitoring, and implementation of mutations. A good staffing information system can help reduce potential errors and speed up the mutation process.
- g) Effective Communication, Ensuring effective communication with employees affected by mutations. This includes providing clear information about the reasons

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<sup>41</sup> Dra Irawaty Sir Idar, M.Si ( BKPSDM Secretary), Interview, Gowa May 22, 2023

and benefits of mutations, and opening communication channels for employees to ask questions and feedback.

- h) Use incentives or support, such as housing assistance or child education, to assist mutated employees in adjusting to their new environment.
- i) Law enforcement and ethics, Enforcing ethics and legal principles in the implementation of mutations. This includes addressing acts of nepotism or abuse of power.
- j) Consult with experts or external parties, Consult or cooperate with experts or external parties who have experience in personnel administration to provide independent views and advice related to the mutation process.
- k) Supervision and evaluation is an important component in the implementation of the mutation process of civil servants (PNS) or local government employees. With good supervision and evaluation, local governments can ensure that the mutation process is carried out fairly, transparently, and effectively.

Evaluation and accountability are the final stages in the implementation of the mutation of Civil Servants in Gowa Regency. Evaluation and accountability are two important aspects in maintaining compliance with the law and ensuring that mutations run according to the goals to be achieved. The form of evaluation conducted by the Gowa Regency government is: 1) Employee Performance Evaluation, this evaluation involves evaluating the performance of employees to be transferred. This is done to ensure that the mutated employee has qualifications and performance in accordance with the position to be filled; 2) Evaluation of the Selection Process: Evaluation of the selection process of employees to be transferred is an important step. This includes an assessment of transparency, objectivity, and fairness in the selection process; 3) Legal Compliance Evaluation: This evaluation aims to ensure that the entire mutation process is within the limits of applicable law. This includes an assessment of the laws and regulations governing mutations; 4) Mutation Impact Evaluation: Evaluation is conducted to evaluate the impact of mutations on the organization and employees affected by mutations. This includes an assessment of whether the purpose of the mutation was achieved; and 5) Employee Satisfaction Evaluation: Measuring the satisfaction level of employees who experience mutations can provide important input into how the mutation affects them personally. In addition, the accountability system carried out by the Gowa Regency government includes the storage and management of mutation documents, this includes filing mutation decrees and other related documents as well as reporting mutations to the KDP (Personnel Development Officer) which is then forwarded to the regional inspectorate.

## **2. Legal Protection Arrangements for Civil Servants Mutated by Local Governments in Gowa District**

Civil servants are individuals who are responsible for carrying out government functions and providing services to society. To meet the needs of workers in various agencies and regions that may experience employee shortages, transfers or mutations are often carried out. This mutation process only applies to civil servants, not to government employees who work under employment agreements because civil servants do not have an employment contract, but are employed under public agreements recognized by the state. However, in practice, the process of mutation of civil servants often carried out by related institutions sometimes results in an imbalance between the rights and obligations of civil servants as a state apparatus and public servants. Therefore, it is very important for civil servants to have appropriate legal protection when engaged in the mutation process. Regarding the implementation of mutations, every civil servant who undergoes a mutation must be given fair treatment, including the rights and obligations that should be owned by the civil servant concerned. This legal protection is important to ensure that the mutation process is carried out with fairness and in accordance with applicable legal principles.

Legal protection refers to the right of individuals or groups to protect themselves from actions or policies that may harm or violate their rights. Legal protection is one of the basic principles in the legal system and is an important part of maintaining justice, human rights, and social order. Correspondingly, Legal protection for Civil Servants (PNS) is a set of legal rights and security provided to civil servants to protect their interests and rights in the context of their work and career. This legal protection aims to ensure that civil servants are treated fairly, transparently, and in accordance with applicable laws and regulations.

The Indonesian Constitution, namely the 1945 NRI Constitution, has provided a more comprehensive guarantee of the rights of Indonesian citizens through the addition of Chapter XA which regulates Human Rights. In the context of the implementation of mutation, it is important to ensure that the mutation process does not reduce the rights constitutionally guaranteed to employees, because employees of the state civil apparatus are part of Indonesian citizens who have the same rights as other citizens. Therefore, in regulating the problem of mutation, it is not only necessary to pay attention to the authority alone, but also to regulate the rights of employees who experience changes in work areas. Law No. 5/2014 Article 6 distinguishes between employees of the state civil apparatus consisting of civil servants and government employees with work agreements who work in government agencies. Article 73 of Law No. 5/2014 previously described

only applies to civil servants, so the transfer of work areas only applies to civil servants, and does not include government employees with work agreements.

#### 1. Law Number 5 of 2014 State Civil Apparatus (ASN)

Law Number 5 of 2014 concerning the State Civil Apparatus (ASN) regulates various aspects of protection and rights of civil servants in several articles. One of the articles that regulates the protection of civil servants is Article 21.

*Article 21 (1) The State Civil Apparatus is entitled to equal legal protection against all unlawful acts committed by state administrators. (2) Legal protection as referred to in paragraph (1) includes protection against all discriminatory acts, harassment, unilateral dismissal, forced transfer, withholding of wages, and degrading and humanitarian treatment. (3) Legal protection as referred to in paragraph (1) includes protection against interference in carrying out its duties and authorities stipulated under the provisions of applicable laws and regulations. (4) During his time as a State Civil Apparatus, employees are entitled to equal legal protection for criminal acts detrimental to the state.*

Article 21 affirms the right of civil servants to get equal legal protection against unlawful acts committed by state administrators. This protection covers a wide range of aspects, including protection against discriminatory acts, harassment, unilateral dismissal, forced transfer, withholding of wages, and degrading and humanitarian treatment. In addition, legal protection also includes the right of civil servants to be protected from interference in carrying out their duties and authorities in accordance with applicable laws and regulations. This article affirms the principle of equality and protection of the rights of civil servants in carrying out their duties.

#### 2. Government Regulation Number 11 of 2017 concerning Civil Servant Management

Protection of Civil Servants (PNS) in Indonesia is regulated in legal provisions governing the management of civil servants. Article 308 of Government Regulation Number 11 of 2017 concerning Civil Servant Management confirms that:

*Article 308 (1) The government shall provide protection in the form of: a. health insurance; b. guarantee of work accidents; c. death guarantee; and d. legal aid.*

The guarantees mentioned, namely health insurance, work accident insurance, death insurance, and legal assistance, are vital components in the protection and social security for Civil Servants (PNS) in Indonesia. First, health insurance includes access for civil servants and their families to adequate health services. This could include health insurance programs or health facilities provided by the government or related agencies. The purpose of health insurance is to ensure that civil servants have adequate access to medical care and treatment. Second, work accident insurance provides protection against the risk of accidents or injuries that occur in the context of work. Civil servants who suffer



accidents or injuries while carrying out their duties can get benefits such as medical treatment, compensation, or other benefits in accordance with applicable regulations; Third, Death insurance includes benefits or benefits provided to the family or heirs of deceased civil servants. This benefit aims to provide financial support to the families of civil servants left behind, such as funeral costs, death benefits, or other benefits that can help overcome economic difficulties arising from the death of civil servants; and 4) Legal aid is an essential right that enables civil servants to obtain legal assistance if they face legal problems in the context of their work. This could include legal assistance in employment contract matters, employment disputes, or other legal issues related to their employment as civil servants. This legal aid aims to ensure that the rights of civil servants are safeguarded and maintained in the legal system.

### 3. Law Number 30 of 2014 concerning Government Administration

Law Number 30 of 2014 concerning Government Administration regulates several aspects related to legal protection for civil servants. One of the articles that regulates this is Article 88.

*Article 88 (1) State administrators must protect the rights and obligations of Civil Servants in accordance with laws and regulations. (2) Protection as referred to in paragraph (1) includes the right to fair and equal treatment in employment, position, and position without distinction of sex, ethnicity, race, religion, and belief, as well as the right to obtain protection against threats or criminal acts, violence, or harassment that occur in the work environment and in connection with work.*

Article 88 affirms the obligation of state administrators to protect the rights and obligations of Civil Servants (PNS) in accordance with applicable laws and regulations. Such protection includes the right of civil servants to fair and equal treatment in employment, position, and position without discrimination based on sex, ethnicity, race, religion, or belief. In addition, this article also affirms the right of civil servants to obtain protection against threats or criminal acts, violence, or harassment that occur in the work environment and in connection with work. This reflects a commitment to creating a safe work environment free from various forms of harassment or violence against civil servants.

### 4. Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform (PAN-RB) Number 30 of 2019 concerning Procedures for Handling Civil Servant (PNS) Complaints

Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform (PAN-RB) Number 30 of 2019 concerning Procedures for Handling Civil Servant (PNS) Complaints regulates various aspects related to handling civil servant complaints.

This regulation has several articles related to the protection of civil servants in the context of complaints. One of the articles that regulates this is Article 6.

*Article 6 (1) A valid and qualified complaint, as referred to in Article 4 verse (1) of the letter a and the letter b, is protected in accordance with applicable legal regulations. (2) PNS filing a complaint shall not be subject to sanction, disconnection of work relationship, transfer, or salary deduction during the complaint handling process, unless proven to be in violation of applicable legal regulations.*

Article 6 regulates the protection of civil servants who file valid and proper complaints. Civil servants who file complaints have the right to get protection in accordance with applicable laws and regulations. This includes the right not to be penalized, terminated, transferred, or withheld during the complaint handling process, unless it is proven that the civil servant violated applicable laws and regulations. Thus, Article 6 of PAN-RB Ministerial Regulation Number 30 of 2019 aims to protect the rights of civil servants who report problems or violations that occur in their work environment. This creates incentives for civil servants to dare to report problems or violations without fear of retaliation that harms them during the complaint handling process.

#### 5. Law No. 8 of 1974 on Officers Trees (UU No. 8/1974)

Law Number 8 of 1974 concerning the Basics of Civil Service regulates various aspects related to employment, including legal protection for Civil Servants (PNS). Although this law has undergone several amendments and amendments, some articles regulating the legal protection of civil servants in Law No. 8 of 1974 may include:

*Article 7 (1) Every civil servant has the right to a fair and decent salary in accordance with his workload and responsibilities. (2) Salaries received by civil servants must be able to spur productivity and ensure their welfare. (3) The fair and decent salary of public servants as referred to in paragraph (1), shall be determined by a Government Regulation*

Basically, Law No. 8 of 1974 provides a legal basis for legal protection of civil servants in various aspects, including rights, obligations, codes of ethics, disciplinary action, and dismissal. Civil servants have the right to obtain legal protection and fair procedures in accordance with applicable regulations.

From some of the regulations above, it certainly becomes a valid legal umbrella in protecting all basic rights and interests of civil servants both at the central and regional levels, especially in Gowa Regency. Civil servants have a central role in the implementation of government duties, both at the central and regional levels. They have a great responsibility in accordance with the State Civil Apparatus Law which replaced the Basic Civil Service Law, and this is something that is non-negotiable. While they have this great responsibility, their rights as citizens must also be respected so that they can

achieve maximum performance as expected by the government, which is also their employer.

The mutation of civil servants is one aspect that can create an imbalance between their rights and obligations as state civil servants and as citizens. Therefore, appropriate legal protection is needed to protect civil servants in the implementation of such mutations. Thus, there are indicators applied by the Gowa Regency government in ensuring legal protection for civil servants who are the object of mutation in Gowa Regency, namely<sup>42</sup>:

- 1) Mutated civil servants must be based on a clear legal basis, such as appropriate legislation or organizational policies. Civil servants have the right to know the legal basis for their mutation.
- 2) Mutations are carried out for the benefit of the organization or public service, not as a discriminatory or sanctioned act. Civil servants have the right to protection from unauthorized or arbitrary mutations. As based on Article 23 in Law Number 5 of 2014 concerning the State Civil Apparatus (ASN) which regulates the importance of considering organizational needs and the principle of interest of civil servants in the implementation of mutations.
- 3) Civil servants have the right to be clearly and timely notified of the mutation to be carried out. They may also have the right to provide input or consultation related to their mutation. Providing opportunities for Civil Servants (PNS) to provide input or consultation related to their mutations is an important step in carrying out a fair and transparent mutation process. This allows civil servants to actively participate in decision-making regarding mutations that may affect their careers and lives.
- 4) Civil servants have the right to obtain fair procedures in the implementation of mutations. This includes the fulfillment of administrative procedures, transparency, and the right to provide a defense or objection if a mutation is deemed unfair.
- 5) Mutation should not harm the rights and benefits provided to civil servants. Civil servants who experience mutations are still entitled to receive salaries, benefits, and other rights in accordance with applicable regulations.
- 6) Civil servants have the right to be protected from human rights violations in the implementation of mutations. Acts of mutation that violate human rights can be grounds for filing complaints or legal action

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<sup>42</sup> Zubair Usman , S.STP, M. Si ( Ka . BKPSDM ), Wawancara, Gowa, 12 Juli 2023

- 7) Mutations should not be based on discrimination based on sex, religion, race, or other factors that violate human rights. Civil servants have the right to be protected from discrimination.

In the context of the implementation of mutation, every civil servant who undergoes a mutation must be treated fairly, both in terms of the rights and obligations he has as a civil servant. Mutation should not be a reason to reduce the rights possessed by the employee, including salary, leave entitlements, opportunities for promotion, and safe and healthy working conditions. In addition, the implementation of mutations must also ensure that the workload and responsibility of employees for their work remain the same as those carried out at their previous work sites. However, it should be noted that mutation as a form of promotion can result in an increase in the employee's responsibilities and workload, which goes hand in hand with the increase in income provided as a consequence of the new position assumed by him.

In addition, the Gowa Regency government provides opportunities for civil servants who feel aggrieved to pursue legal remedies. However, before taking legal action, civil servants are given a forum by the local government internally to raise concerns and actions that are considered personally detrimental related to mutations. The internal consultation step starts from the problem identification stage where employees must clearly identify their problems or concerns related to mutations. This can include questions about the reason for the mutation, its impact on career or personal life and so on. And if there is a lack of clarity or information lacking in the mutation decision, employees can ask for further clarification to the BKPSDM.<sup>43</sup> During the consultation, employees can try to find solutions together with superiors or management. This may include reviewing mutation decisions or looking for alternative options that meet the interests of both employees and the organization.

If no settlement is found through internal or alternative processes, the civil servant may file a lawsuit in a court or competent legal institution in accordance with the applicable jurisdiction.<sup>44</sup> The filing of this lawsuit must comply with the legal procedures applicable in the region. The basis for filing a lawsuit to the TUN Court is regulated in Article 53 of Law 9/2004 explained that the basis as well as the reasons for filing a lawsuit to the TUN Court are:

*(1) A person or civil law entity who feels that his interests are harmed by a State Administrative Decision may file a written claim with the competent Court demanding*

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<sup>43</sup> A. Afrianto Hamka, SH, (HR Analyst Functional Officer), Interview, Gowa, July 12, 2023

<sup>44</sup> A. Afrianto Hamka, SH, (HR Analyst Functional Officer), Interview, Gowa, July 12, 2023

*that the disputed State Administrative Decision be declared void or invalid, with or without a claim for damages and/or rehabilitation.*

*(2) The reasons that can be used in a lawsuit as referred to in paragraph (1) are: a) The decision of the State Administration that is being sued is contrary to the applicable laws and regulations; b) The challenged Administrative Decision is contrary to the general principles of good governance.*

A lawsuit to the State Administrative Court (PTUN) is a legal step that can be taken by individuals or civil servants. PTUN is a special court that handles administrative law disputes between citizens or legal entities and government bodies or officials. In principle, the description of the lawsuit must be based on or contrary to laws and regulations. In addition, it is contrary to the general principle of good government. The general principles of good governance refer to the principles and values underlying effective, efficient, transparent, accountable, participatory, and public interest-oriented governance.

Furthermore, Article 75 of Law Number 20 of 2014 clearly provides further explanation of administrative efforts that can be taken by civil servants in carrying out repressive protection against the decision to transfer government officials. According to Article 75 paragraph 1 of Law Number 30 of 2014 concerning Government Administration that:

*(1) Community Citizens who are aggrieved by a Decision and/or Action may submit an Administrative Remedy to a Government Official or Superior Officer who establishes and/or carries out a Decision and/or Action. (2) Administrative remedies as referred to in paragraph (1) consist of: a. objections; and b. appeals. (3) Administrative remedies as referred to in paragraph (2) shall not delay the implementation of the Decision and/or Action, unless: a. otherwise stipulated in law; and b. incur greater losses. (4) Government Agencies and/or Officials must immediately complete Administrative Efforts that have the potential to burden state finances.*

Administrative action that can be taken in accordance with paragraph (1) that objection becomes the first administrative remedy that can be raised by a person who feels aggrieved by a decision or administrative action. In the context of a civil servant mutation, a person who disagrees with the mutation he received can raise an objection to the responsible government official. If the objection raised does not result in a satisfactory decision, the individual concerned may proceed with an appeal. This is the next step in administrative efforts to resolve disputes involving administrative decisions or actions. Civil servant administrative actions have never been carried out in Gowa Regency in practice, however, the local government, especially the Gowa Regency Human Resources

Development and Personnel Agency, still provides a forum for civil servants who want to make these efforts.

Article 129 paragraph 3 of Law No. 5/2014 states that objections as referred to in paragraph 2 are submitted in writing to the superior officer authorized to punish by containing the reasons for the objection and a copy of which is submitted to the punitive authority." If we observe this provision, it seems that administrative remedies in Law No. 5/2014 only apply to punitive decisions.<sup>45</sup>This may result in the impossibility of resolving disputes related to ordinary mutation decisions (which are not intended as punishment) through administrative remedies. This situation will lead to two different laws being used to resolve disputes related to civil service mutation decisions. First, if the mutation is considered a punishment, then the dispute resolution will follow Law No. 5 of 2014. Second, if the mutation is considered an ordinary mutation (not as a punishment), then the dispute resolution will follow Law No. 30/2014.

Administrative remedies in Law No. 5 of 2014 consist of administrative objections and appeals. Similar to Law No. 5 of 2014, Law No. 30 of 2014 also has administrative remedies that include objections and appeals. The difference lies in the options available if the outcome of the appeal settlement is still not satisfactory to the civil servants.<sup>46</sup> According to Law No. 30/2014, if civil servants are not satisfied with the outcome of the appeal settlement by the official's superiors, they can file a lawsuit with the court. Referring to this provision, civil servants have the opportunity to file a lawsuit over their mutation decision to the state administrative court. However, there needs to be a clearer clarification on dispute resolution in the state civil apparatus to avoid diverse interpretations in its implementation. This is in line with the mandate in Article 129 paragraph 5 of Law No. 5/2014 to regulate administrative efforts and state civil apparatus advisory bodies through Government Regulations.

The challenges and prospects in influencing the legal protection of civil servant mutation (PNS) in Gowa Regency are<sup>47</sup>: a) prospects such as: 1) Personnel Reform: Many countries have made reforms in their personnel systems to improve transparency, accountability, and legal protection of employees. This reform process can bring positive changes in the legal protection of civil servant mutations; 2) Role of Independent Institutions: The existence of independent institutions such as ombudsmen or supervisory bodies can strengthen the legal protection of employees in mutations. These agencies can independently evaluate and investigate employee complaints; 3) Employee Advocacy and Awareness: Employee awareness of their rights and ability to advocate for

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<sup>45</sup>A. Afrianto Hamka, SH, (HR Analyst Functional Officer), Interview, Gowa, July 12, 2023

<sup>46</sup> Akbar Fauzi Saputra, S.STP, (Head of Mutation), Interview, Gowa, July 25, 2023

<sup>47</sup> Zubair Usman, S.STP, M. Si ( Head of BKPSDM ), Interview, Gowa, July 12, 2023

themselves can enhance legal protection. Training and education on employee rights can be a good prospect; 4) Technology and transparency: The use of technology in personnel management can improve the transparency and efficiency of the mutation process. More modern systems can provide better access to mutation information and status and 3) Public Interest: Legal protection of civil servant mutations can also be strengthened through awareness of the importance of public interest in personnel management. Mutations made for the sake of improving public services and organizational effectiveness can be upheld. And challenges include legal uncertainty in personnel regulations. If laws and regulations are unclear or can be interpreted differently, employees may find it difficult to understand their rights and determine if the mutation they receive is in accordance with the law and political influence, the mutation of civil servants can be influenced by political considerations. This can result in placements that are not always based on organizational needs or employee qualifications.

## CONCLUSION

The implementation of the civil servant mutation policy on the needs of local government organizations in Gowa Regency are steps taken by local governments to transfer employees according to the needs of certain units or departments. The aim is to improve the efficiency and effectiveness of public services by placing employees according to their competence. This mutation process is based on evaluating employee performance and the specific needs of each organizational unit. Despite having a positive impact, the implementation of mutation policies is also faced with challenges such as change management and employee resistance. Therefore, periodic evaluations are needed to ensure that organizational goals are still achieved and employees feel fair in the mutation process.

Civil servants who experience mutations must have legal protections that ensure that the mutation process is fair, transparent, and in accordance with applicable regulations. Legal protection for civil servants (PNS) who undergo mutation by the local government in Gowa Regency covers several important aspects including the Principle of Legal Certainty where civil servants have the right to know clearly the rules and procedures related to mutation. Mutation policies and regulations should be readily available and accessible to civil servants; 2) Transparent Procedure i.e. the mutation process must be transparent, so that civil servants can understand the reasons behind their mutations and how the decision is taken. Information about performance appraisals, competencies, or organizational needs underlying mutations should be provided openly; 3) Consultation and Clarification: Civil servants to be mutated have the right to consult or provide clarification if they feel there is any disagreement or error in their mutation

process. This mechanism allows them to fight for their interests; 4) Protection from Discrimination: The law should protect civil servants from mutations based on discrimination of race, religion, sex, or other irrelevant factors. Mutations should be based on objective considerations, such as performance and competence; and 5) Appeal or Grievance Mechanism: Civil servants who feel that their mutation is invalid or unfair should have access to an appeal or grievance mechanism. This mechanism allows them to file complaints and request a review of mutation decisions.

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