

# PREVENTING CORRUPTION OF SELLING AND BUYING POSITIONS COMMITTED BY LOCAL LEADERS: STUDY CASES IN KLATEN AND KUDUS REGENCIES

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## ABSTRACT

*The study discusses the factors that cause the repetition of corrupt practices by district/city regional leaders through the sale and purchase of positions. The research employs the case study approach occurring in Klaten Regency (2016) and Kudus Regency (2019). Data is collected through in-depth interviews and documentation related to problems. Then, data are analyzed and studied using theories, laws and regulations and the views of experts. The results of the study indicate the factors causing the practice of buying and selling positions are: (1) the delegation of authority of the President of the Republic of Indonesia to the local leaders regarding civil servant management as the Personnel Guidance Officer (PPK); (2) weak external supervision such as supervision from governor as the representative of the central government in the regions; and (3) the lack of regulatory, especially institutional coordination and the weakness of the power of each sectoral related institution that creates difficult job in fixing various prevailing laws and regulations in Indonesia.*

**Keyword:** corruption, regent, sale and purchase position

## 1. INTRODUCTION

Various literatures record that corruption has occurred since the time of ancient Egypt, Babylonia, and Rome in the middle Ages. During the Roman times, corruption is carried out by generals by extorting their colonies to enrich themselves. During that period, the nobles of the royal courts also practiced corruption. In other words, corruption has been a major problem in the history of Egypt, Babylon, Hebrews, India, China, Greece, and ancient Rome. Studied from its historical background, the notion of corruption

is closely related to the system of power and government in ancient times as well as in modern times (Nasir, 2006). Meanwhile, Gunawan (1990) says that the notion of corruption related to power is first popularized by E. John Emerich Edward Dalberg Alton, also known as Lord Alton, a British historian who introduced words in the form of the famous corruption argument, "*The power tends to corrupt, but absolute power corrupts absolutely.*"

According to Jain (2001), corruption is a behavior that uses positions/occupations in government

to obtain personal gain against the law. Furthermore, Jain (2001) states that corruption occurs if the following three conditions are met: (1) the existence of power in determining policies and administering the policy (discretionary power); (2) there are economic benefits from the policy (income from corruption); and (3) there are systematic opportunities that provide opportunities for violations by public officials (deterrent to corruption).

In Indonesia, someone who has the power and authority in government is, at the same time, a public official such as a regional head or local leader. It is no secret anymore that corrupt practices carried out by regional heads have been very massive. Based on the annual report on handling corruption cases by the Indonesian Commission

of Corruption Eradication (KPK) in 2015-2020, it is known that the total number of regional heads consisting of governors, mayors/regents and deputy who committed corruption is 143 people. Meanwhile, in terms of corruption, based on case types, bribery is the most common type of case, with details as follows: in 2016 (79 cases), in 2017 (93 cases), in 2018 (168 cases), in 2019 (119 cases), in 2018 (119 cases), and in 2020 (56 cases).

One of the modes of corruption carried out by regional heads is the sale and purchase of positions within the district or city government. During the period of 2016-2021, KPK records eight cases of selling and buying positions carried out by regional heads at the district or city level as shown in Table 1.

**Table 1 Corruption cases involving regents/mayors related to the sale and purchase of positions handled by KPK (2016–2021)**

No	Suspect Name	Position	Year	Positions	Punishment
1	Sri Hartini	Regent of Klaten	Dec 2016	Echelon 3 &4	12 years
2	Taufiqurrahman	Regent of Nganjuk	Oct 2017	Head of department and Principles	7 years
3	Nyono Suharli	Regent of Jombang	Feb 2018	Civil Servant Positions	3,6 years
4	Sunjaya Purwadisastra	Regent of Cirebon	Oct 2018	Secretary of Public Works	5 years
5	Muhammad Tamzil	Regent of Kudus	Jul 2019	Civil Servant Positions	8 years
6	Novi Rahman Hidayat	Regent of Nganjuk	May 2021	Village and Sub-district Heads	In progress
7	Syahrial	Mayor of Tanjung Balai	April 2021	City Secretary	In progress
8	Puput Tantriana Sari	Regent of Probolinggo	August 2021	Civil Servant Positions	In progress

Source: Deputy for Coordination and Supervision of KPK (Presented in webinar on Sept, 16, 2021, Processed by the author)

In the context of the practice of selling and buying positions, the position of the regional head as the Personnel Guidance Officer (PPK)

becomes a separate problem when he does not want to give up his attributes as a member of a political party in carrying out his daily duties as a

bureaucrat. Such conditions will have a big influence on determining the authorities in the regions, where the determination is based on the socio-political impact or even the financial benefits that will be obtained by political parties supporting him or her. Therefore, it is not uncommon for the placement, appointment or transfer of officials to prioritize social, political and economic interests above the feasibility or personnel skills of the candidate officials themselves (Prasetyowati and Suparman, 2018).

The phenomenon of 'selling and buying positions' within the local government elaborated above needs to be studied and understood more deeply, considering that this type of corruption has occurred repeatedly from 2016, causing a counter-productive bureaucracy for the development of the region so that prevention efforts need to be made. KPK, as a state institution that is given the authority to prevent corruption by Law Number 19/2019 concerning the Second Amendment to Law Number 30/2002 concerning the Corruption Eradication Commission (Law 19/2019) is deemed necessary to take preventive steps so that such corruption can be suppressed and even completely eradicated in Indonesia.

## 2. LITERATURE REVIEW

### 2.1 Corruption Behavior of Regional Heads

Basically there are three typologies of corruption found by Jain (2001) in democratic countries, namely grand corruption, bureaucratic corruption, and legislative corruption. Grand corruption, is a corrupt behavior carried out by political elites (political leaders)

by using their power to determine policies in the economic field that provide benefits for themselves personally.

Bureaucratic corruption is a corrupt behavior carried out in the form of cooperation between the holders of power (bureaucracy). Bribery is a tangible form of this type of corruption typology. Legislative corruption is a corrupt behavior of legislators in deciding policies. In the event that policy determination is carried out by voting, the interested parties will vote-buying against the authorized parties to cast their votes according to their interests.

The typology of a corrupt behavior carried out by the bureaucracy in the form of agreements with regional heads that have more authority and power through bribery is a tangible form of the typology in this study. Indonesian Corruption Watch (2000) defines the type of corruption perpetrated by this regional head as transactive corruption, where the parties involved in the corruption act have promised and agreed to each other to obtain mutual benefits. These benefits can occur in various forms, both financially and politically. The corruption act of buying and selling positions in this case can be an agreement to give power or authority to one party while the other party provides financial benefits or other conveniences.

### 2.2 Employee Merit System

According to Woodard (2000), merit system is a set of employment policies and practices that focus on competence and ability in various employment decisions by ignoring factors that are not

related to work, such as patronage, or other forms of favoritism or discrimination. The essence of merit system is to enforce or implement an open selection procedure with the parameters of qualification, competence, work performance, and fairness to ensure that candidates have the required knowledge and skills requirements. Realistic job previews and role assessments in recruitment and selection are techniques that can be used to increase engagement by aligning candidate expectations with organizational expectations (Ma'arif, 2017).

In public management, merit acts as a value or principle that connotes fairness, equity and awards in public employment based on achievement, not on the basis of political principles and discrimination or other acts of favoritism (Woodard, 2000). Merit is used in the public service tradition as well as a theme in public personnel management and is implemented into a system that is implemented in the practice of implementing employee management in the public sector. Using a merit system, employees or people involved in either government or private organizations become competent and professional in carrying out the duties and responsibilities assigned to them.

The dimensions of qualification, competence, work performance, and the principle of fairness refer to Woodard's theory. The theory reveals that various employment decisions including selection, promotion, and compensation should be based on a merit system, as well

as based on other factors, especially competence and individual values that are useful for employees' organizations. The essence of which is that the merit system includes both institutional protections for civil servants to keep out corruption and abuse of "spoils" and focus on ability rather than politics as the basis for appointments (Woodard, 2000). Furthermore, Woodard states that in the arena of governance and law, fairness and equity are the main values that actually provide direction to various policies and practices of Human Resources (HR) management as a reference in developing a merit-based HR management system model. The merit system refers to the principle that someone who works in the service, his placement, promotion, and even dismissal are carried out on the basis of standards and objective tests of achievements and abilities (Rudita, 2014).

### **2.3 Corruption Eradication Theory**

In terms of prevention, Abubakar (2018) recommends the application of a collaborative governance model. The model was compiled using a modified model initiated by Ansell and Gash in their journal entitled Collaborative Governance in Theory and Practice (2007). According to Ansell and Gash (2007:8) collaborative governance is basically a combination of several parties. The party may consist of one or more public agencies dealing with non-state stakeholders. The union is structured in a formal form of government that has an agreement to make policies, make decisions and have the same

goals. The combination or collaboration will agree and work together to manage the same resources or assets or public policies.

From the perspective of public administration, collaborative governance is a strategy or a new concept to involve various parties, both from the government and other stakeholders (including the community) to participate and sit together, collaborate to solve problems faced by the government. Nowadays, the problem of corruption is also becoming more complex because it is getting more massive and mass because it involves many parties. Therefore, efforts to eradicate corruption are not easy, requiring extra effort, will and hard work from various parties. The government also needs to carry out various intensive and comprehensive approaches so that its eradication efforts can be effective and efficient, considering that the forms of corrupt practices are also growing and diverse (Kurniawan, 2017).

Furthermore, Widjabrata and Zacchea (2004) argue that in order to be able to provide effective results, efforts to eradicate corruption must include the following: (1) a focus on law enforcement efforts and an increase in the context of punishing the perpetrators of corruption; (2) a continuation to make prevention efforts by involving public participation and support to detect corruption; (3) an increase of supervision, transparency and accountability of the bureaucracy in order to realize public reform; and (4) an empowerment in the context of

legal provisions, particularly those relating to anti-corruption, money laundering, and good governance.

### **3 METHODS**

This research employs the descriptive qualitative approach. The authors collect and describe the situation in which several regional heads or local leaders at the district or municipality levels have been investigated as suspects and even accused of being perpetrators of corruption in the context of selling and buying positions. Then, the authors analyses the data in order to identify the root cause of the problem. This analysis is useful to be able to find the factors that cause the repeated corrupt practices of selling and buying positions committed by regional heads at the district or city levels. The research tries to describe and interpret the actual data because the descriptive research is limited to efforts to reveal a problem related to humans or a state of life as it is (Handari Nabawi, 2005).

Data is collected through in-depth interviews and documentation related to problems that are connected and studied with theories, laws and regulations and the views of experts. Data analysis as described by Miles and Huberman (1992) is in the form of data collection followed by sorting and reducing data. The results of the sorting and reduction are then presented in the study and drawing conclusions.

### **4 RESULTS & DISCUSSION**

Based on the prevailing laws and regulations, regional heads or local government leaders have considerable authorities to formulate the "positions, organizational structures, duties and functions, as well as work procedures of the

regional apparatus" including to choose or appoint officials in the regions who will occupy the positions to assist them in carrying out their duties. Such authorities are then often misused as tools or means to enrich themselves as well as their inferiors by carrying out corrupt practices of selling and buying positions. By applying a meritocratic system, it is expected that the selection and appointment of the positions of civil servants within the local government structures is free from discrimination and practices of collusion, corruption and nepotism (KKN) or other forms of intervention, such as political interests from political parties.

There is a body, appointed by Law of Civil Servants, to oversee and evaluate civil servant policies and management in realizing a merit system. It is called State Civil Apparatus Commission (KASN). Indeed, KASN must be independent and free from any political interventions and aim to support the state administration that is free of KKN and discrimination so that professional and quality state civil apparatus can be realized. In fact, it is still found the practice of buying and selling positions, especially by regional heads so that the process of filling positions within the local government is not absolutely free from such corrupt behavior. In order to get a more comprehensive picture on the behavior, the authors interview one of KPK investigators on November 3, 2021 in Jakarta):

“Regarding the corruption case in buying and selling positions committed by the Regent of Klaten, the authors get some information such as: (1) it has become a tradition that certain positions in local government

structure is ‘sold’ by its regional heads; (2) the transaction model for job seekers to give facilitation payments or thanksgiving money (“*matur ibu*”) or regional heads who ask for “thank you money”) to obtain certain positions and there are also several intermediaries “people close to the regents” who offer positions at a certain rate; and (3) it is motivated by political needs or interests with high political costs.”

Based on another interview with Alex Deni, Deputy of HRA at the Ministry of State Apparatus Utilization and Bureaucratic Reform (Kemen PAN RB) regarding the appointment and turnover of civil servants and prevention of corruption behavior of regional heads based on laws, it is known that the supervision of the implementation of promotions, transfers and rotations is carried out by each internal control unit at ministry/agency and local government, and KASN. Besides, as has been established so far, KPK can also continue to improve the efforts to eradicate corruption by involving the Ministry of Home Affairs, KASN, BPKP, BKN and other relevant agencies to continue to strive to create professional and integrity civil servants.

Thus, the practice of buying and selling positions in the district is one of the consequences of weak supervision at both internal and external levels. The practice of buying and selling positions in regencies often occurs because it is often considered a tradition or at least an open secret due to the authority or power possessed by the regional

heads. Therefore, it is necessary to do more than just supervise the implementation of the merit system as well as to provide a strong and clear guidance regarding the prohibition of giving thanks or facilitation payments (which are part of corruption crimes) related to the intention to get promotions, transfers or rotations of certain positions of civil servants in the regencies or municipalities.

On one side, red-handed operations (OTT) carried out by KPK related to the practice of buying and selling positions are expected to be a lesson for regional heads and other relevant officials. On the other side, OTT is also expected to be a deterrent factor for perpetrators not to repeat it and in general it is expected to prevent the practice of buying and selling positions by other authorities. However, OTT is of course limited. Preventing the practice of buying and selling positions must be grounded by trying to find out the background of the practice of buying and selling positions in the regencies so that the prevention efforts are the right solutions for the related regencies or municipalities.

The cause of the practice of buying and selling positions does not only come from one aspect (in this case the regional head only) but also comes from several other aspects. So far, KPK has focused more on enforcement efforts such as OTT, whereas there are still many other aspects, such as the regulatory aspects related to the central government, the aspect of supervision which also requires assistance from the central government or at least a higher level, and the aspects of the understanding and culture of the community regarding the sale and purchase of positions which constitute a criminal act of

corruption, which of course requires synergistic cooperation between various related institutions or agencies.

The practice of buying and selling positions in Kudus Regency is of course also inseparable from things that can be potential or behind it. These things can be general in nature as it happens in other areas, or are specific in certain areas as the authors get from an interview as follows:

“There are at least several models for buying and selling positions conducted by the regent in Kudus Regency, namely: (a) a bonded labor system before the election (success team); (b) debt collectors; (c) the system of opening a stall (openly offering a position at a certain rate); and (d) an agreement between the regional head and the requesting office with a certain nominal value. This is done by the regional head because of some factors, such as: (a) the return of political costs that have been incurred during the election; (b) the enrichment of his or her wealthy; (c) corrupt practices that have become entrenched and difficult to eradicate; (d) low mentality of officials; (e) weak social control and no participatory management; (f) non-transparent government policies; (g) the growth of consumptive behavior and hedonistic life among the rulers; and (h) the

existence of prerogative authority from the authorities. So, we badly need a solution in the form of (a) public test; (b) strict supervision by law enforcement officials; (c) open selection/office auction; (d) information disclosure; (e) social control; (f) competency test; and (g) there is a need for regional head regulations governing the process of filling positions. In addition, it is necessary to cooperate with other stakeholders in eradicating corruption in order to synergize with prevention so that it can function as a supervisor” (Sam'ani, 2021, a personal interview with the Secretary of Kudus Regency, 11 November 2021).

According to Tulus Tri, the head of BKPP in Kudus Regency in an interview conducted on November 4, 2021, the processes of the appointment of echelon II officials and other civil servants in Kudus Regency in 2019 has been evaluated by Kudus Regency Government. The results of such evaluation recommends the local government to conduct: (a) the re-selection process for filling three echelon positions II (head of BKPP, head of Budpar Service and head of PUPR Service); (b) the re-assignment of officials according to their qualifications and competencies; and (c) the review of the mechanism for appointment in office that is carried out in accordance with applicable regulations (particularly with regard to positions in the Dukcapil Service). For civil servants who are provenly

guilty, they are subject to disciplinary sanctions according to the level of error in accordance with the provisions of legislations. Improvements that have been made at this time are the preparation of human resources that meet job competency standards through competency tests or talent pools.

Referring to the information above, the reasons behind the practice of buying and selling positions consist of various aspects, starting from aspects of the high-cost regional head election system, deep-rooted traditions or culture, weak supervision and control systems to the mentality and quality of the rulers or regional heads themselves. Thus, although the scope of the local government only covers Kudus Regency area, the solutions to the problem include central government policies so that it is not only a related regional problem but also becomes a problem that needs to be studied and resolved nationally.

Civil servants as public servants should have certain capacities and competencies to be able to support the achievement of national goals. Therefore, we need a management system for handling personnel that can achieve these goals. The Law of Civil Servants mandates the implementation of the merit system as the basis for the implementation of civil servant management in order to ensure the realization of civil servants to become professional, ethical, and free from intervention and KKN.

However, on the other hand, the JPT (Position of High Leadership) selection process with the open-career recruitment model is also considered to have weaknesses in its implementation. Such selection process in practice is likely to:

- a. fulfil certain positions so that the working committee have problems in meeting the quota of eligible candidates;
- b. need considerable costs due to the fact it involves several parties;
- c. take enough time, but in fact such position must be fulfilled immediately in order to keep public services run well as well as other state functions.

The selection process does not even guarantee the fulfillment of a sense of justice and benefit because the final decision-making still remains in the hands of PPK. Despite these shortcomings, the central government has attempted to hold a selection process that is more transparent and fair by regulating it in more detail the process of fulfilling the JPT positions, including supervision from neutral parties, such as KASN and other authorities to resolve disputes.

The local government of Kudus Regency has also tried to apply the above legal provisions in implementing policies in the personnel matters, both for employees who belong to the JPT category and those under the category. However, in practice there are obstacles, such as: (1) the availability of qualified employees is limited; (2) there are difficulties in getting employees who have competence according to the position to be occupied; (3) there are doubts about employee loyalty and integrity; (4) there is an element of remuneration, even though the competence is not appropriate; (5) political intervention; and (6) there is still an assumption that transfers are the results of mistakes or misbehavior when in fact transfers are natural things in order to respond to organizational dynamics (Tulus, 2021).

The process of filling the JPT positions is different from fulfilling positions under them, where decision making is still under the authority of officials within the agency concerned without the formation of a special selection committee. According to Article 53 of Law No. 5/2014 regarding Civil Service, a regent or mayor in a regency/city accept a transfer of power from the President (as PPK) to appoint (promotion), transfer (mutation or rotation), and dismiss officials other than the main and middle high officials. It should be noted that the positions in civil servant organization consist of three categories, namely: (a) administrative positions (covering administrator positions, supervisory positions and executive positions); (b) functional positions, covering primary, intermediate, junior and first experts; and (c) High Leadership Positions (JPT), covering JPT primary, JPT intermediate, and JPT junior). Meanwhile, the district secretary (Sekda) of the regency/city gets a transfer of power as an authorized official from the President based on Article 54 of Law No. 5/2014 regarding Civil Servants. It is these authorized officials who propose the appointment, transfer and dismissal of administrative officers and functional officers (other than functional officials with primary expertise) to PPK. This is also confirmed based on the following interview, where the filling and monitoring processes are carried out internally: "The implementation of promotions, transfers and rotations applies to ministries and institutions as well as local governments, with the supervision of each internal control unit at ministries/agencies and local governments as well as by the State Civil Apparatus Commission (KASN)" (a personal

interview with Alex Deni, 2021). Therefore, the process of promotion, transfer and dismissal of officials in echelon III and IV is under the authority of the relevant agency alone.

Furthermore, Article 72 of Law No. 5/2013 regarding Civil Servants stipulates that the promotion of administrative officers and functional officers is appointed by PPK by taking into account the opinions of the "team of civil servant performance appraisal," a team which is established by the authorized official. In the classification of local government, PPK is led by a regent, while the authorized official is held by ssecretary. Besides, promotions and transfers of civil servants at regency level are under the authority of PPK, in this case the rregent.

The process determination established by Law No. 5 regarding Civil Servants is basically a compromise of the interests of various parties. A KPK, like a rregent, is a political person who in the end is the user of the work of civil servants supervised by him. In accordance with its objectives, Law No. 5/2014 seeks to maintain the neutrality of civil servants from political intervention. Therefore, Law No. 5/2014 seeks to divide the authority of the assessment to the authorized oofficials, who are generally career people in the relevant agency. The consideration is that people who understand the needs and abilities of civil servants in their environment are career people. So that the authorized oofficer comes from the internal environment of the agency concerned and serves as an assessor of the performance of civil servants under him. Within the scope of the local ggovernment, the aauthorized oofficial is the ssecretary of local government.

The Commission of Civil Servant (KASN) as the supervisor in this case realizes that the implementation of civil servant management often encounters various obstacles, whether it is directly against the rules or not. The system of authority distribution that is expected and mandated by Law No. 5/2014 does not work well. The real authority over the management of civil servant is not divided, but remains centered on PPK, in this case the rregent. This centralized authority is then often widely abused by local government heads. In order to ensure the neutrality of civil servant management, central government as well as KASN as a non-structural institution that is independent and free from political influence work together to ensure the implementation of the merit system in civil servant policy and management.

In the case of Klaten Regent, Sri Hartini occurring in 2016, several promotions and transfers carried out by the Regent required money. Regardless the fact whether the thanksgiving money is given before or after the promotion or transfer, the requirements for the money are contrary to the merit system, because it is not based on justice and equality. Meanwhile, in the case of Kudus Regent, M. Tamzil occurring in 2019, it is chronologically illustrated that the promotions obtained by Akhmad Shofian are related to the provision of a certain amount of money. This means the assessment is not purely based on the merit system, performance and achievements of civil servants as mandated by Law No. 5/2014.

"The practice of buying and selling positions involving local leaders as happened in Kudus and Klaten Regencies is a

serious concern for central government because it has violated the practice of the merit principle in civil servant governance which is the domain of KASN supervision. Besides, this is also a criminal act of corruption so that it is handled by the Corruption Eradication Commission from the aspect of corruption” (Alex Deni Interview, KemenpanRB, 2021)”.

Thus the violation of the merit system in civil servant management is a crucial matter that must be resolved immediately because it can affect the organizational performance of government institutions and the interests of the nation as a whole. Therefore, the practice of buying and selling positions, which is a form of violation of the merit system, has attracted the attention of many parties, including KPK.

#### **4.1 Factors causing the practice of selling and buying positions in regencies**

When referring to the provisions of Law No. 5/2014 regarding the Civil Servant Management, the authority of a regent as PPK to determine the appointment, transfer and dismissal of officials other than the main and intermediate JPT and functional officials with the main expertise is based on power transfer from President to a regent in the regency area. Meanwhile, the affairs of civil servant management development are based on power transfer from President to the local government secretary as the authorized official. Specifically for filling

out the JPT, PPK must provide a report on its implementation process to KASN, and KASN supervises the filling of the JPT, to then submit the report to President. However, if there is a violation of merit system, President can withdraw the power transfer. Thus, KASN only acts as a supervisor, while if it is necessary to impose sanctions, the sanctions are imposed by President or the Minister of PANRB (Article 33 of Law No. 5/2014), so that the administration of Government Affairs and civil servant management by local government is on their respective paths, with the supervisors who are also different. Supervision of civil servant management is carried out by related institutions such as KASN, BKN and the Ministry of PANRB which do not directly have status as work superiors such as the Governor and the Minister of Home Affairs.

According to Tanzi (1998, 565-576) there are at least five reasons why many local leaders are suspected of corruption apart from the high cost of local elections, namely: (1) uncontrolled discretion of local leaders; (2) oligarchy and dynasties of power; (3) system incompatibility; (4) weak central supervision; and (5) weak public supervision. Furthermore, Klitgaard (1998: 4) gives his opinion on discretion and corruption, stating that corruption is a monopoly of power over goods or services which include not only the procurement but also the recipients, without any accountability to the authorities including supervisors. Klitgaard formulates it with the following

formula: C (corruption) = M (monopoly) + D (discretion) – A (accountability). This is especially true for the types of affairs such as the appointment, dismissal or transfer of civil servants within the district government, which are not included in the classification of government affairs whose implementation, is under the guidance and supervision of the central government which in this case is carried out by Governor and the Minister of Home Affairs. In accordance with the provisions of Article 26 of Law No. 5/2014, the Minister related to the determination of policies in the field of empowering civil servants is the Minister of PANRB. The policy also includes the transfer of civil servants between positions, between regions and between agencies. The Minister of PANRB is also authorized to give consideration to the President in taking action against authorized officials and PPK who deviate from the merit system in administering civil servant management.

The process of filling out and selection of JPT positions process is carried out by involving and getting supervision from KASN. In addition, the JPT selection is carried out openly so that at least there is a control from the community. While filling positions other than JPT (such as echelon III and IV) only involves internal parties. Even if KASN is of the opinion that there has been a violation of the code of ethics and behavior or the application of the merit system, what KASN can do is provide recommendations for a follow-up to officials who have the relevant authority. In

addition, the opinion of KASN regarding the performance appraisal of civil servants or the application of the merit system in regency government can be biased because the performance appraisal and other qualifications for candidates to fill positions are carried out by the regional secretary whose position is under the authority of the regent.

As a supervisor for the implementation of the merit system, KASN is an external institution, which often does not really know and understand the civil servant management process that occurs within the regional government. Based on Law No. 5/2014, KASN is also only domiciled in the national capital so that in terms of working area, it can be seen that the work of KASN in the regions cannot be carried out optimally because it has not been able to reach all regions in Indonesia which have a very large area.

"In addition, from the budget side, the Governor is also not provided with a separate budget by the Central Government to supervise the civil servant management within the district governments under it. Governor also does not have the power to form a task force in charge of overseeing the management of civil servant in the district, so that the Governor's movement on this matter is very limited. In addition, it should be remembered that the

Regent is not elected by the Governor, but is chosen by the local community so that from the Regent's perspective, he does not feel afraid of the Governor, because the Regent is not appointed by the Governor” (Johan, 2021, a Personal interview)”.

It also happens to the provision of the recommendations of KASN to PPK. According to Trubus, if such recommendations are not implemented by PPK, then KASN cannot provide direct sanctions to PPK. It needs a follow-up from President and the PANRB Ministry. This causes KASN to have no coercive power and powerless (mediaindonesia.com). In addition, the sanctions mentioned by Law No 5/2014 are still general in nature, and there are no technical regulations for their implementation so that in practice they still cannot have an effective impact. Thus, there is an ineffectiveness of supervision in the process of filling positions, especially other than JPT in the regency government. Decision making or policies regarding the promotion, transfer and dismissal of civil servants within the regency government is entirely at the discretion of the local leaders, in this case the regent. Discretion is the use of an official's personal judgment to make policy (Robbins, 2005, 186). The authority of a regent is large and centralized without being balanced by external supervision, both public and other government institutions, making it prone to

abuse which can lead to corruption. In general, corruption depends on discretion; officials who can commit corruption are officials who have the authority to take discretion, but have leeway in regulations and supervision (Glaser and Goldin, 2006: 346).

The weakness side of central government's oversight and social control is only one part of the obstacles in implementing merit system. The system of recruitment, transfer and promotion in the internal environment of government agencies for positions other than JPT is still closed. This causes weak social control from the community and the government itself. On the other hand, the supervision imposed on KASN alone without being accompanied by the granting of authority and power both in terms of rules, finances and the necessary resource, will not be able to support the effective implementation of its duties, authorities and responsibilities.

The lack of regulatory, institutional coordination and the weak power of each related institution also leave a difficult job in fixing the various laws and regulations that apply in Indonesia. On the other hand, the high political costs are also the cause of the mental breakdown of officials who are filled with the desire to find loopholes to return money that they have spent before, which can only be repaired by reforming the political system in Indonesia. The professionalism and quality of officials is also a challenge in itself, which can only be followed up by improving the recruitment

and HR management system of civil servants and prospective officials.

#### **4.2 Efforts to prevent the practice of selling and buying positions in appointing administrative officials within regencies**

Limiting and supervising the authority of regional or local leaders as PPK in managing the management of civil servants under them is one form of prevention that should be carried out by central government. Such limitation can be carried out by providing limitations in the form of more detailed regulations such as government regulations and presidential instructions regarding the appointment, transfer and dismissal of civil servant officials other than the JPT level. In addition, open recruitment and selection is also an effort to implement the principles of equality and fairness in the management of civil servants. Openness will also develop the social control function of the community, which can be a form of supervision of regional heads. The function of community control is expected to be effective considering that in local elections regents are directly elected by the local community.

In addition to limiting authority, it is also necessary to supervise the authority of regional or local leaders either by strengthening KASN or forming supervisory institutions in regions that are not subject to the authority of a regent or a regional secretary. KASN is currently considered inefficient and overlaps with other agencies because KASN is currently only domiciled in the capital city so it is difficult to conduct regional

supervision. Ideally, KASN has a hand in the region either in the form of regional KASN or other institutions that can cooperate with KASN. KASN is also often referred to as a “toothless (powerless) tiger” because it can only issue recommendations to PPK and authorized officials, and provide reports to President so that in practice many PPK and authorized officials still ignore the recommendations of KASN. Strengthening institutions and the power of coercive power of supervision is one of the keys to preventing corruption in the regions or regencies.

In addition to the weaknesses of the rules, supervision and political system, the obstacles to implementing the merit system are also inseparable from community cultural factors. Some people in the region still cult the regional or local leaders so that his subordinates try to please the regional head by following the will (favor) of the regional heads even though this is contrary to the code of ethics and even laws and regulations. There is also a feeling of fear that if you do not follow the will of the regional or local leaders, you will be given a sanction in the form of a transfer to a difficult position or position. Therefore, transfers carried out by PPK are often considered as punishment for officials who do not make a deposit for thanksgiving money or other forms of giving money (gratification).

In addition, the candidates obtained from the selection results may also not match the expectations and needs of the organization, because the selection does not apply the

principles of fairness, equality and openness (McCourt, 2007). Decisions about elected candidates can be biased and unfair due to the influence of political or economic interests (such as the giving of thanksgiving money that has been agreed in advance, in the case of buying and selling positions committed by the Regent of Klaten Sri Hartini. Likewise in the case of giving positions due to retaliatory politics good manners in the local election, there are political interests or factors of kinship and closeness even though the assessment team should have prioritized the principles of neutrality, equality and justice. Incompetent re-elected candidates not only harm the organization but also slow down work and the achievement of national goals. Several candidates are also those who are elected who feel indebted to the regional head or local leaders so that in carrying out their work they are always subject to the orders of the regional head regardless of whether the policy taken by the relevant regional head is true. This will continue until finally it can affect the performance of the organization and the achievement of the goals of the state and nation.

A full and consistent application of merit system will be a solution for good civil servant management. By applying the principles of fairness, openness and equality, it is expected that there will be a natural selection from the start of the candidate selections. If the promotion and transfer processes are carried out openly, then the candidate who dares to register is

certainly a competent candidate. Candidates who have competence according to qualifications will certainly be more confident to participate in a fair selection without having to involve the provision of money or political support. Competent candidates and good performance appraisal by the assessment team should deserve to be awarded (both in the form of positions and facilities) according to their abilities. Candidates feel that they are given an award according to their performance. This is in accordance with the core of the meritocracy system which emphasizes the appropriateness or eligibility of a person to occupy a certain position (McNamee, 2009:25), "Ministry of PANRB in this case seeks to strengthen regulations in filling ASN positions so that there is no possibility of abusing authority by PPK, including strengthening the leadership function and ASN behavior" (an interview with Alex Deni, Kemenpan RB, 2021).

Openness, equality and justice which are the principles of the merit system should be prioritized because openness will automatically be the initial selection for candidates to fill positions. An open system will automatically make candidates who do not meet the requirements "reluctant" to register themselves as candidates if the candidate does not meet the required qualifications.

As long as the merit system efforts in civil servant ASN cannot be fully implemented and its implementation is still selective, then there is still a gap for selling and buying positions to occur by

PPK and/or authorized officials. The application of the merit system cannot be implemented if it is only at the policy level; the implementation and application of the merit system by each government agency is the key to realizing the objectives of the merit system which prioritizes competence, professionalism, openness, fairness and equality. One way to get competent officials is to hold a fair selection or competency test. Regarding this, Tulus (2021) explains that Kudus Regency government is currently trying to make improvements by preparing human resources that meet competency standards through a competency test/talent pool. However, the granting and implementation of authority without supervision will create opportunities for committing corruption. It is revealed that the term 'little kings' for regional or local leaders arises because the regions have too strong of authority, as a result of the widest possible regional autonomy and the rules must be corrected (Helmijaya, Stranas PK, 2021, a personal interview).

## **5 CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Conclusion**

The corrupt practice carried out by Klaten Regent (December 2016) and Kudus Regent (July 2019) through the sale and purchase of positions when viewed from a scientific point of view in Administration and Public Policy is a form of violation in civil servant management in Indonesia which is based on the merit system as

regulated in Law No. 5/2014 regarding Civil Servants. Factors causing the sale and purchase of positions are: (1) the transfer of power from President of the Republic of Indonesia to the regional or local leaders in determining the appointment, transfer and dismissal of officials other than the main and middle high leadership officials, and functional officials with the main expertise to regents in the districts, as regulated in Article 35 of Law No. 5/2014. This means that the regent who is a politician also becomes a bureaucrat at the same time; (2) the appointment of officials other than JPT in a regency is still closed so that social control is weak from the community and the government itself considering that the supervisory process is internal to the regency government without the involvement of external parties, such as supervision from the Governor who is the representative of the central government in the region; and (3) the lack of regulatory, institutional coordination and the weakness of the power of each related institution (such as the Ministry of Home Affairs, Kemenpan RB, and KASN) which are sectoral in nature and leave a difficult job in fixing various laws and regulations that apply in Indonesia.

### **5.2 Recommendations**

Based on conclusions, the authors propose suggestions and recommendations in the form of separating regent's position as politicians and bureaucrats through changes to Law No. 5/2014 and/or the formation of regulations that limit the regent's

authority in the appointment and transfer of civil servant officials within the regency government. In addition to limiting authority, it is also necessary to formulate supervisory authority over regional heads, either by strengthening KASN or establishing supervisory institutions in the regions that are independent from the authority of regent and regional secretary (*Sekda*). The policy of strengthening institutions and the power of coercive power of supervision is one of the keys to preventing corruption in the regions, which is also concrete evidence of the application of the principle of openness in civil servant management. Openness is also one form of effective supervision, considering that openness will make the community an effective social control, considering that regional heads are elected by their local people in local elections.

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