



## THE LIMITS OF DISCRETION IN CIVIL SERVANT TRANSFER POLICY: A MAQASHID AL-SHARIAH PERSPECTIVE

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### Abstract

The transfer (mutation) of civil servants (ASN) in Indonesia is ideally governed by meritocratic principles, yet in practice such authority is frequently exercised through the discretion of personnel management officials, whose boundaries often blur with abuse of power. Administrative law scholarship has generally confined discretion within the General Principles of Good Governance (AUPB) but has yet to integrate the maqashid al-shariah perspective as an ethical-normative evaluative instrument. This study aims to analyze the normative limits of discretion in ASN transfer policy and to formulate boundary criteria grounded in maqashid al-shariah. The research questions addressed are: first, how discretion of personnel management officials in ASN transfers is regulated and limited under Indonesian administrative law; second, how such limits can be reconstructed through the lens of maqashid al-shariah (al-dharuriyyat al-khamsah). This study employs a normative juridical method with statutory, conceptual, and case approaches, supported by qualitative analysis of primary and secondary legal materials as well as Islamic legal sources. The findings indicate that although constrained by AUPB, discretion in ASN transfers still leaves room for subjectivity due to the absence of clear operational parameters; integrating maqashid al-shariah strengthens the framework for testing the validity of discretionary decisions by emphasizing *maslahah* and rejecting *mafsadah*. The study concludes that an integrative model combining AUPB and maqashid al-shariah is necessary as a comprehensive parameter to prevent the abuse of discretion in civil servant transfers.

**Keywords** *Discretion, Civil Servant Transfer, Maqashid al-Shariah, General Principles of Good Governance, Meritocracy*

## INTRODUCTION

Bureaucratic reform in Indonesia establishes the merit system as the foundation for the management of the Civil Service (ASN), including in policies regarding employee transfers, as stipulated in Law No. 20 of 2023 on the Civil Service. Article 26(2)(d) of the aforementioned law stipulates that all human resource management—including employee transfers—must be based on competence, performance, and organizational needs. However, empirical findings from various regions indicate that this normative ideal is often far removed from actual practice on the ground. A study in South Central Timor Regency, for example, revealed that civil servant transfers are more often determined by post-election political affiliations, kinship ties, and patronage networks rather than objective competency assessments, while the Position and Rank Advisory Board (Baperjakat) functions merely in an administrative capacity and does not serve as an independent decision-making mechanism (Tulle et al., 2026). A similar pattern was also found in administrative disputes over civil servant transfers in the Makassar City Government, which arose from a process that lacked transparency, was not based on objective performance evaluations, and tended to be influenced by political interests or the subjectivity of personnel management officials (Ago et al., 2025). Even when regulations

are normatively quite clear—such as the policy on the reassignment of civil servants’ work areas in Balikpapan—implementation on the ground continues to face limitations in institutional capacity and coordination among work units, leaving room for inconsistent decisions (Nurhayanti et al., 2026).

The root of this problem lies in the discretionary nature of the authority held by civil service officials. Discretion is essentially necessary to enable the bureaucracy to respond flexibly to complex governmental situations, but its nature—not being fully bound by fixed rules—makes it susceptible to abuse in the form of collusion, corruption, and nepotism (Ishak, 2019). This vulnerability is not unique to Indonesia. Research on government procurement of goods and services shows that administrative discretion is correlated with corrupt practices, especially when accompanied by restrictions on competition (Decarolis et al., 2020). Meanwhile, studies of bureaucrats have even documented in specific detail how the threat of transfer is used by politicians as a means of coercion to get bureaucrats to facilitate corrupt practices (Brierley, 2020). These findings reinforce the suspicion that civil service transfers, as one of the most concrete forms of personnel discretion, are structurally prone to becoming a tool of power rather than an instrument of human resource development. From a normative perspective, Indonesian administrative law has sought to limit such discretion through the General Principles of Good Governance (AUPB), but a comparative study of the scrutiny of discretion in Indonesia and the Netherlands shows that scrutiny in Indonesia focuses on abuse of authority and compliance with the AUPB, in contrast to the “reasonableness test” in the Netherlands, which assesses the reasonableness of the exercise of authority in a more substantive manner—a difference that implies that the AUPB parameters in Indonesia may not be detailed enough to close the loophole of subjectivity (Suparto et al., 2024).

This gap between the normative framework and actual practice raises the question of whether the AUPB alone is sufficient as an instrument for testing the validity of discretion, or whether additional substantive ethical parameters are necessary. Some studies on civil servant transfers in Indonesia even indicate that transfers are often used as “indirect sanctions” against employees deemed problematic—a practice that contradicts the principle of due process of law, even though it is formally cloaked in legitimate administrative authority (Yukey Anggraini & Arya Dwi Bramantio, 2024). Legal protection through the Administrative Court (PTUN) is indeed available and has successfully overturned transfer decisions that violated procedures—as was the case with the transfer of an employee of the Ministry of Human Rights—but this type of litigation is reactive and does not eliminate the possibility of subjectivity at the initial decision-making stage (The Conversation, 2026). Meanwhile, the idea of integrating principles of Islamic law into the review of state administrative decisions is actually not new—*maslahah mursalah*, for example, has been proposed as a complement to the AUPB in evaluating administrative decisions in general (Yusdiansyah, 2023)—However, this idea has not yet been specifically elaborated upon to address the issue of discretion in civil service transfer policies. It is at this point that *maqashid al-shariah*—specifically the concept of *al-dharuriyyat al-khamsah*—has the potential to serve as an ethical-normative evaluative instrument that

fills this gap, as this framework is explicitly oriented toward upholding *maslahah* and rejecting *mafsadah* as the criteria for the validity of a policy.

Based on the above discussion, this study formulates two main research questions. First, how are the regulations and limitations on the discretion of civil service officials in civil servant transfer policies viewed from the perspective of Indonesian administrative law, specifically through the framework of the General Principles of Good Governance (AUPB)? Second, how can these limits on discretion be reconstructed or strengthened through the perspective of *maqashid al-shariah*, particularly the concept of *al-dharuriyyat al-khamsah* (protection of religion, life, reason, lineage, and property), so that more comprehensive criteria can be formulated to prevent the abuse of authority in the practice of civil servant transfers?

This study aims to analyze the normative limits of the discretion exercised by civil service officials in civil servant transfer policies based on Indonesian administrative law, while also formulating criteria for those limits of discretion using the *maqashid al-shariah* perspective as an ethical-normative evaluative instrument. Through this study, it is hoped that an integrative model can be developed that combines the AUPB and *maqashid al-shariah* as comprehensive parameters for testing the validity of civil servant transfer decisions, so that transfer policies can once again function as instruments for the development of human resources that are fair, objective, and free from the abuse of authority.

Studies on discretion and its limitations in public administration law are well-established as a field of doctrinal study. Ishak emphasizes that the discretion of local government officials must always be grounded in the principle of legality (*wet matigheid van bestuur*) and monitored through internal oversight mechanisms, given its vulnerability to collusion, corruption, and nepotism (Ishak, 2019). A comparative study by Suparto deepens this understanding by comparing the review of discretionary decisions in Indonesia and in the Dutch Administrative Court, and concludes that the review in Indonesia places greater emphasis on compliance with the AUPB and the prohibition against abuse of authority, while the Netherlands applies a reasonableness test that assesses the substantive reasonableness of the decision (Suparto et al., 2024). International literature also enriches our understanding of the dark side of discretion: Decarolis empirically demonstrated that discretion in government procurement in Italy is associated with corruption, particularly when competition is restricted (Decarolis et al., 2020). Meanwhile, Brierley points out that in Ghana, the threat of transfer is used by politicians as a means of coercion against noncompliant bureaucrats—a finding that is directly relevant to the subject of this study because it confirms that personnel transfers are one of the forms of discretionary power most easily politicized (Brierley, 2020).

In the domestic context of Indonesia, a number of empirical studies have revealed a consistent pattern regarding the gap between the fairly clear regulations governing civil servant transfers and their implementation on the ground. Tulle documents how civil servant transfers are dominated by post-election political interests and patronage networks, rather than by competency evaluations (Tulle et al., 2026). Ago found a similar pattern in transfer disputes within the Makassar City Government (Ago et al., 2025),

meanwhile, Nurhayanti points out that even when policies on job transfers are regulated in detail, institutional capacity constraints still leave room for subjectivity in their implementation. The phenomenon of using job transfers as an “indirect sanction” that goes beyond formal disciplinary authority is also highlighted as a form of misconduct that violates the principle of due process of law (Nurhayanti et al., 2026). Although legal remedies through the Administrative Court have successfully overturned procedurally flawed transfer decisions on several occasions, their reactive nature indicates that the underlying issue—namely, the broad scope for subjectivity in the decision-making process—has not been resolved by the AUPB framework alone.

On the other hand, the use of *maqashid al-shariah* as an evaluative tool in public law and state administration is a developing area of study, although it has not yet specifically addressed the issue of discretion in civil servant transfers. Theoretically, Auda laid the foundation for a systems-based approach to *maqashid al-shariah*—including the concept of *al-dharuriyyat al-khamsah*—as a philosophical framework for Islamic law oriented toward justice and the public interest (Jasser Auda, 2007). In the Indonesian context, Yusdiansyah has proposed that administrative decisions be reviewed not only based on the AUPB but also on the principle of *maslahah mursalah*, while concrete applications of the *maqashid al-shariah* approach in other areas of public administration are also beginning to emerge (Yusdiansyah, 2023). For example, in the protection of the personal data of participants in structural leadership training (Sandiza et al., 2024), Public safety policies in urban governance (Janiah, 2025), Reform of Administrative Law from the Perspective of *Fiqh Siyasah* (Adzanah Mariska Salsabila, 2025), as well as public policies spanning the education, health, and economic sectors (Muhammad Fayiz Ardyansyah et al., 2025). These studies consistently show that *maqashid al-shariah* can serve as an ethical evaluative lens for assessing a policy’s alignment with the public interest; however, none have specifically linked it to the limitation of discretion in civil service transfer policies—a gap that forms the basis for the originality of this research.

## METHODS

This study is a normative-prescriptive legal study employing a statutory approach (Law No. 20/2023 on Civil Servants, Law No. 30/2014 on Government Administration, Government Regulation No. 11/2017 as amended by Government Regulation No. 17/2020, BKN Regulation No. 15/2021), a conceptual approach (discretion, AUPB, *maqashid al-shariah*), and a case approach based on Administrative Court (PTUN) rulings regarding disputes over civil servant transfers. Secondary legal materials, such as journals and previous research findings, were used as outlined in the Literature Review, while Islamic legal sources were drawn from the literature on *al-dharuriyyat al-khamsah* and the application of *maslahah mursalah* in state administrative decisions. Legal materials were collected through a literature review and analyzed using descriptive-qualitative methods, incorporating grammatical, systematic, and teleological interpretations to map the extent to which the principles of AUPB (diligence, legal certainty, prohibition of abuse of authority, justice, and proportionality) have limited the discretion of civil service officials

in civil servant transfers, while also identifying areas of AUPB that remain open-textured and prone to subjectivity.

To address the reconstructive research question, the AUPB–maqashid al-shariah integrative analytical framework was used, consisting of three steps: (1) extracting each AUPB principle into operational indicators; (2) cross-mapping each indicator against the five elements of al-dharuriyyat al-khamsah (hifz al-din, al-nafs, al-'aql, al-nasl, al-mal) to test whether fulfilling an AUPB principle also prevents mafsadah in one of those elements, with the results organized into a combined criteria matrix; and (3) an illustrative application of this matrix to one or two Administrative Court (PTUN) rulings to assess whether the combined criteria explain the grounds for annulling a transfer more comprehensively than the AUPB alone.

The combined criteria matrix from the second step constitutes the primary analytical output of this study and is presented in the Results and Discussion section. This procedure can be replicated as long as other researchers use the same primary legal sources and the same operational definition of al-dharuriyyat al-khamsah (Auda, 2008), since the transparency of the mapping criteria in the second step is key to the replicability of this method.

## **DISCUSSION**

### **Regulations and Limits on the Discretion of Civil Service Supervisors in Civil Service Transfer Policies**

Discretion is a concise term for “discretionary power,” which is synonymous with “freies Ermessen.” “Freies Ermessen” derives from the word “freis,” meaning free, unbound, and independent, and “Ermessen,” meaning to consider, assess, estimate, and evaluate. In other words, “freies Ermessen” refers to a person who has the freedom to assess, estimate, and consider something. In other words, discretion is the authority—or one of the means—that provides leeway for government officials or administrative bodies to take action without being fully bound by the law (Marcus Lukman, 1996).

Given that discretion is a form of authority, it is advisable to first examine the characteristics of authority. Ridwan, in “Hukum Administrasi Negara”, states that authority has several alternative characteristics (Ridwan HR, 2014). The first characteristic is that it is bound, which occurs when the underlying regulations specify when and under what circumstances the authority may be exercised, or when the underlying regulations more or less determine the content of the decision that must be made. In other words, bound authority occurs when the governing regulations specify the content of the decision that must be made in detail. Second, discretionary authority occurs when the relevant administrative body or official is not required to exercise its authority or still has some degree of choice, even if that choice can only be exercised in specific cases or circumstances as determined by the governing regulations. Third, discretionary authority occurs when the underlying regulations grant the relevant administrative body or official the freedom to determine the content of the decision to be issued, or when the underlying regulations provide a scope of discretion to the relevant administrative official.

Normatively, discretion in Indonesian administrative law is explicitly defined in Article 1, item 9, of Law No. 30 of 2014 on Government Administration (Government Administration Law) as a decision and/or action taken by a government official to address a specific issue when laws and regulations provide options, are absent, incomplete, unclear, and/or when governmental stagnation occurs. This definition directly affirms that discretion is fundamentally functional and corrective in nature and is granted not as unlimited, unfettered authority, but as an instrument to fill legal gaps so that the administration of government does not come to a halt in situations not covered by written norms. This functional character is essential for responding to organizational needs that cannot be fully and rigidly formulated in technical regulations and positions the discretion regarding civil servant transfers as not intended to create subjective preferences on the part of personnel management officials (PPK).

The lack of discretion in civil servant transfers can also be seen in the regulations at the technical level. The legal basis for the transfer of Civil Servants (PNS) is governed by Article 190 of Government Regulation No. 11 of 2017 on Civil Servant Management, as amended by Government Regulation No. 17 of 2020, specifically in paragraph (4), which stipulates that civil servant transfers are conducted based on the alignment of an employee's competencies with: (i) position requirements; (ii) position classification, and (iii) career paths, while taking into account (iv) organizational needs. Paragraph (5) further stipulates that civil servant transfers must be conducted in accordance with the principle prohibiting conflicts of interest. This provision grants the Appointing Authority (PPK) the authority to approve transfers, yet simultaneously limits that authority through three cumulative parameters: competencies, organizational needs, and the prohibition on conflicts of interest. Normatively, this framework should already provide a sufficiently clear safeguard against arbitrariness. However, the absence of detailed operational indicators for the phrases "organizational needs" and "alignment of competencies" creates a loophole that allows discretion to shift from its corrective function to becoming an instrument of the PPK's personal power. This concern has been raised in discussions regarding the revision of the ASN Law, where issues of abuse in transfers are often directly linked to the behavior of the PPK, rather than to the ASN being transferred (Antara: Kantor Berita Indonesia, 2025).

This type of discretionary authority is consistent with the nature of discretion, which is described as an authority that is inherently necessary for local government officials to respond to the dynamic needs of public services, but which must always be grounded in the principle of legality (*wetmatigheid van bestuur*) and subject to oversight by internal oversight bodies (Ishak, 2019). This principle is directly relevant to civil servant transfers because the PPK's authority to assess "competency suitability" essentially involves an area of evaluation that is difficult to fully quantify, making internal and external oversight a balancing factor that cannot be ignored. Therefore, to ensure that discretion does not turn into arbitrariness, the AP Law requires that every exercise of authority, including discretion, must be based on the General Principles of Good Governance (AUPB) as stipulated in Article 8(2) and reaffirmed in Article 9(3) of the AP Law. The aforementioned provision states that the absence or lack of clarity of regulations does not prevent

government officials from acting, provided that their actions serve the public interest and are in accordance with the GPGPs. Article 10(1) of the AP Act sets forth the eight principles of the GPGPs: legal certainty, public benefit, impartiality, diligence, non-abuse of authority, transparency, the public interest, and good service—with Article 10(2) allowing for other principles to be recognized as part of the GPG as long as they have been used as a basis for a judge’s consideration in a final and binding decision. This final provision is important because it demonstrates that the AUPB in Indonesia is open-textured and evolves through case law, rather than being a closed list set forth in the law.

In the context of civil servant transfers, four principles are most relevant as criteria for review, namely: (i) the principle of due diligence; (ii) the principle of legal certainty; (iii) the principle of non-abuse of authority; and (iv) the principle of impartiality. The principle of due diligence requires the Appointing Authority to base decisions on accurate data and considerations, not on assumptions or partisan interests. The principle of legal certainty, as explained in Article 10(1) of the Civil Service Law, encompasses a legal basis, propriety, consistency, and fairness. The principle of non-abuse of authority—or the prohibition against *détournement de pouvoir*—refers to the use of transfer authority for purposes beyond the intent for which such authority was granted, such as a tool for political retaliation or covert disciplinary action. Furthermore, the principle of impartiality prohibits transfers based on personal connections or political affiliations. As an additional requirement for the exercise of discretion, Article 24(f) of the AP Law also requires good faith, which, according to the explanatory notes to that article, entails motives of honesty and conformity with the AUPB.

On the surface, the normative framework described above appears adequate. However, findings from the legal materials reviewed indicate that this normative gap is not merely a theoretical possibility but rather a recurring pattern in practice. An analysis of the misuse of transfers by personnel management officials against civil servants identifies three patterns of misconduct that consistently emerge in various administrative disputes: transfers used as a disguised administrative sanction, transfers arising from personal conflicts of interest between personnel management officials and the transferred employees, and transfers that are substantively inconsistent with laws and regulations even though they are formally issued as valid administrative decisions (Shafira Dinda Ariefi & Hendry Julian Noor, 2022). A similar pattern was found in a legal analysis of transfer disputes within the Makassar City Government, which concluded that transfer decisions often result from processes that lack transparency and are not based on objective performance evaluations (Ago et al., 2025), as well as in a study in South Central Timor Regency that documented the dominance of post-election patronage networks in transfer decisions, while the Position and Rank Advisory Board served only an administrative function and did not act as an independent decision-making mechanism (Tulle et al., 2026). Even in the implementation of transfer policies that have been regulated in detail—such as the policy on the transfer of civil servants’ work areas in Balikpapan—limitations in institutional capacity still leave room for inconsistencies in decision-making at the implementation level (Nurhayanti et al., 2026).

The phenomenon of transfers as “indirect sanctions” that go beyond the scope of formal disciplinary authority has also been highlighted as a form of misconduct that specifically violates the principle of due process of law, because employees who are transferred for such reasons are not given the opportunity to defend themselves, as is customary in disciplinary proceedings (Yukey Anggraini & Arya Dwi Bramantio, 2024). This kind of vulnerability is consistent with the general thesis that the discretion of government officials, without adequate internal oversight, is structurally prone to collusion, corruption, and nepotism (Ishak, 2019). This is a vulnerability that, in the context of civil servant transfers, becomes more difficult to detect because transfer decisions generally do not require as rigorous a demonstration of cause and effect as the imposition of formal disciplinary sanctions, making it easier for hidden motives to be concealed behind seemingly legitimate administrative justifications.

From this series of findings, we can conclude the answer to the first research question: that the discretion of civil service officials in civil servant transfer policies has been normatively limited by the AUPB, specifically through the prohibition against abuse of authority as stipulated in Law No. 30 of 2014 and reinforced by the expansion of the Administrative Court’s (PTUN) absolute jurisdiction to review such cases. However, these restrictions are currently effective only in addressing apparent deviations in procedural and formal aspects of the validity of authority, while operational parameters for assessing the substantive objectivity of decisions—particularly open-ended phrases such as “organizational needs” and “employee competence”—are not yet sufficiently available. As a result, the scope for subjectivity at the initial decision-making stage remains wide open, and the corrective mechanism only functions reactively through litigation in the Administrative Court (PTUN) after the transfer decision has been issued and has impacted the employee in question. It is this gap at the *ex ante* stage that serves as the basis for the need for additional substantive parameters, as will be elaborated upon through the *maqashid al-shariah* approach in the following subsection.

### **Reconstructing the Boundaries of Discretion through Maqashid al-Shariah**

The previous subsection concluded that the AUPB effectively addresses procedural and formal irregularities regarding the validity of authority, but does not yet provide parameters for assessing the substantive impact of transfer decisions on the employees concerned. It is this gap that the concept of *al-dharuriyyat al-khamsah* within the *maqashid al-shariah* seeks to fill. Conceptually, the objectives of Sharia, as viewed by al-Ghazali and al-Shathibi, are directed toward achieving benefits (*jalb al-mashalih*) and averting harm (*dar’ al-mafasid*) through the preservation of the five essential elements of human life: religion (*hifẓ al-din*), life (*hifẓ al-nafs*), reason (*hifẓ al-’aql*), lineage (*hifẓ al-nasl*), and wealth (*hifẓ al-mal*) (Afridawati, 2011). These five elements are grouped into four strata of needs—primary (*dharuriyyat*), secondary (*hajiyyat*), complementary (*tahsiniiyyat*), and supplementary (*mukammilat*)—which distinguish the severity of the impact: in the *dharuriyyat* stratum, the failure to meet these needs directly threatens the existence of the protected element, while in the strata below it, the impact is limited to causing difficulty or reducing comfort (Ibnu Amin et al., 2024). This distinction between levels is important for this study because it

provides criteria for distinguishing between the effects of civil service reforms that are merely unpleasant and those that truly threaten one of the fundamental aspects of employees' lives.

Auda makes an important contribution by positioning the al-dharuriyyat al-khamsah not merely as a category in classical fiqh, but as a systematic framework (system approach) that can be applied to evaluate contemporary public policies—including those not explicitly based on sharia, provided their impacts can be mapped against these five fundamental elements. This approach is in line with previous proposals that administrative decisions in Indonesia should also be evaluated through the principle of *maslahah mursalah*, not just AUPB (Yusdiansyah, 2023). However, *maslahah mursalah*, as a single principle, tends to be general in nature and difficult to operationalize into indicators that can be systematically examined. Al-dharuriyyat al-khamsah offers additional precision because it breaks down the concept of *maslahah* into five categories of more concrete impacts that can be traced one by one against the facts of a case—a characteristic that makes it more suitable as a testing matrix than the general application of *maslahah mursalah*.

In the context of civil servant transfers, these five elements can be interpreted as follows. *Hifz al-nafs* is violated when a transfer causes excessive psychological stress or threatens an employee's livelihood without objective justification. *Hifz al-'aql* is violated when a transfer places an employee in a position that is clearly incompatible with their competencies, thereby undermining their professional judgment and scholarly integrity. *Hifz al-nasl* is violated when a forced relocation disrupts the employee's family stability, their children's education, or their domestic relationships. *Hifz al-mal* is violated when a transfer results in a reduction in income or benefits without a valid basis in performance evaluation. *Hifz al-din* is relevant in more specific cases, such as when a transfer prevents an employee from engaging in religious practices that were previously possible in their original work environment.

Following the second step of the analytical framework outlined in the Research Methods section, each operational indicator of the AUPB is cross-referenced against the five elements of al-dharuriyyat al-khamsah. This mapping was compiled based on patterns of irregularities in civil servant transfers, particularly transfers used as a form of covert punishment, transfers resulting from conflicts of interest, and transfers that violate laws and regulations. The following matrix represents the primary analytical output of this study's integrative framework.

| AAUPB    | Operational Indicators       | The Five Essential Elements (al-Dharuriyyat al-Khamsah) That Are Potentially at Risk of Being Compromised | Substantive Testing Indicators                 |
|----------|------------------------------|-----------------------------------------------------------------------------------------------------------|------------------------------------------------|
| Accuracy | Transfer decisions are based | Preservation of the Intellect;                                                                            | Does carelessness lead to job assignments that |

| AAUPB                             | Operational Indicators                                                                                                                                                                      | The Five Essential Elements (al-Dharuriyyat al-Khamsah) That Are Potentially at Risk of Being Compromised | Substantive Testing Indicators                                                                                                                                              |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   | comprehensive and verified competency and performance data                                                                                                                                  | Preservation of the Self                                                                                  | undermine employees' professional judgment or cause them psychological stress?                                                                                              |
| Prohibition on Abuse of Authority | The rationale for the decision is consistent with the normative purpose of granting the authority to transfer employees (organizational needs, not as a punishment or for personal revenge) | Hifz al-nafs; Hifz al-mal                                                                                 | Does the hidden motive behind the transfer cause actual harm to the livelihood or dignity of the employee that is disproportionate to the organization's claimed interests? |
| Legal certainty                   | The procedures and legal basis for transfers are clear and can be anticipated in advance by employees                                                                                       | Hifz al-'aql; Hifz al-nasl                                                                                | Does procedural uncertainty cause ongoing disruption to employees' family stability or career planning?                                                                     |
| Proportionality                   | The impact of transfers (distance, position, benefits) is proportional to the organization's objectives                                                                                     | Hifz al-nasl; Hifz al-mal                                                                                 | Do the effects of the transfer on employees' families and income exceed reasonable limits compared to the benefits gained by the organization?                              |
| Justice                           | Transfer decisions are non-discriminatory and are applied consistently to employees in similar situations                                                                                   | Hifz al-din; Hifz al-'aql                                                                                 | Is there any unjustified differential treatment of certain employees, including treatment based on their beliefs or affiliations?                                           |

The logic behind this matrix is that every principle of the AUPB, when violated, not only gives rise to administrative issues but also has the potential to cause concrete harm to one or more fundamental aspects of an employee's life. The test of the validity of discretion no longer stops at the question "were the procedures followed?", but continues with the question "does the violation of those procedures, if it occurred, cause tangible substantive harm to the employee?" It is this last column in the matrix that serves as the

bridge between the formal AUPB test and the substantive “reasonableness test” as applied in the Netherlands (Suparto et al., 2024), however, based on the ethical-normative arguments of *maqashid al-shariah*, rather than solely on the secular doctrine of reasonableness.

The application of the combined criteria matrix above can be illustrated in Decision No. 4/G/2024/PTUN.PBR, filed by Dola Triana, S.Si, against the Regent of Bengkalis. The plaintiff argued that the transfer decision issued lacked a clear legal basis, was not based on an assessment of organizational needs, and failed to consider the plaintiff’s competencies or the impact on both the plaintiff and the work unit she was leaving. The panel of judges granted the petition, affirming that a transfer issued without an objective assessment and without considering the employee’s competencies and performance constitutes an abuse of authority that violates the principles of justice and legal certainty; consequently, the transfer decision was declared legally flawed, and the plaintiff was reinstated to her original position (Lidia Salma Sagala et al., n.d.). Based solely on the AUPB review, the argument for annulment stops there: the decision is flawed because it is not based on an objective assessment and violates the principles of justice and legal certainty.

The application of a combined criteria matrix reinforces this argument rather than replacing it. Under the headings of “diligence” and “legal certainty,” additional substantive test indicators raise the question of whether such negligence results in an assignment that undermines the employee’s professional judgment or causes psychological stress due to unpredictable transfers. The fact that the transfer decision was issued without an assessment of organizational needs and without considering its impact on the plaintiff—as the plaintiff himself argued in this case—indicates a potential violation of *hifz al-'aql* (the plaintiff’s professional judgment and competence were simply disregarded in the decision-making process) and *hifz al-nafs* (psychological stress resulting from a non-transparent and unpredictable transfer). In the analyzed decision, the plaintiff did indeed raise the argument regarding the impact on the employee; however, the judge’s *ratio decidendi* still relied on the absence of an objective assessment and the violation of the principles of justice and legal certainty as the primary legal grounds, without explicitly quantifying the extent of the substantive harm suffered by the plaintiff. The combined criteria matrix fills this gap by making the measurement of this substantive impact a standalone test criterion, rather than merely a supporting argument for the lawsuit that happened to be mentioned.

By way of comparison, a similar pattern was also evident in the case involving the transfer of a civil servant for the purpose of demotion, which was the subject of Judgment No. 13/G/2013/PTUN.Mdo, in which the transfer of an employee to a lower-ranking position was classified as a form of abuse of authority (Muh Sadli Sabir, 2019). Unlike the Bengkalis case, which emphasized the potential harm to *hifz al-'aql* and *hifz al-nafs* resulting from the absence of an objective review, the demotion in this case directly resulted in a reduction in position-based allowances, thereby highlighting the potential harm to *hifz al-mal*. A comparison of these two cases shows that the specific elements of *al-dharuriyyat al-khamsah* that are infringed upon may vary depending on the nature of the abuse of the transfer process; however, both cases underscore that conventional AUPB

reviews tend to focus solely on procedural and motivational issues without systematically assessing the substantive dimensions of the harm.

Based on the discussion in the three subsections above, an explicit answer to the second research question can be formulated: the limits of the discretion of personnel management officials in civil servant transfer policies can be reconstructed by adding a layer of substantive review based on *al-dharuriyyat al-khamsah* after the formal AUPB review has been satisfied. This reconstruction does not replace the AUPB but rather complements it through a combined criteria matrix that maps each principle of the AUPB against potential harm to the five fundamental aspects of a civil servant's life, so that the validity of a transfer decision is assessed not only based on procedural compliance but also on the extent to which the decision avoids disproportionate substantive harm to the affected civil servants.

## CONCLUSION

Based on the discussion in the Discussion section, this study concludes two key points that address each of the research questions.

First, the discretion of civil service officials in civil servant transfer policies has been normatively limited by the General Principles of Good Governance (AUPB), specifically through the prohibition against abuse of authority as stipulated in Law No. 30 of 2014 on Government Administration and reinforced by the expansion of the absolute jurisdiction of the Administrative Court (PTUN) to review such cases. However, these restrictions are currently effective only in addressing procedural and formal deviations regarding the validity of authority, while operational parameters for assessing the substantive objectivity of decisions—particularly open-ended phrases such as “organizational needs” and “employee competence”—remain insufficiently defined. As a result, the scope for subjectivity in the initial decision-making stage remains wide open, and the corrective mechanisms only function reactively through litigation after the transfer decision has been issued and has impacted the employee in question, as clearly illustrated in both Decision No. 4/G/2024/PTUN.PBR and Decision No. 13/G/2013/PTUN. The Mdo examined in this study.

Second, the boundaries of such discretion can be reconstructed by adding a layer of substantive review based on *al-dharuriyyat al-khamsah* after the formal AUPB review has been satisfied. This reconstruction does not replace the AUPB but rather complements it through a combined criteria matrix that maps each principle of the AUPB (diligence, prohibition against abuse of authority, legal certainty, proportionality, and justice) against potential harm to the five essential elements of an employee's life (*hifz al-din*, *al-nafs*, *al-'aql*, *al-nasl*, and *al-mal*). An illustrative application of this matrix to the two reviewed decisions shows that the *dharuriyyat* elements that are infringed upon may vary depending on the nature of the abuse of authority in the transfer—in Decision No. 4/G/2024/PTUN.PBR, the potential harm was more pronounced in *hifz al-'aql* and *hifz al-nafs* due to the absence of an objective assessment, whereas in Decision No. 13/G/2013/PTUN.Mdo, the potential harm was more pronounced in *hifz al-mal* due to the reduction in position allowances. The similarity between the two cases is that the

conventional AUPB test focuses solely on procedural and motivational issues without systematically measuring the substantive dimensions of the losses actually suffered by the employees.

Thus, it can be concluded that the AUPB and *maqashid al-shariah* (*al-dharuriyyat al-khamsah*) are not two mutually exclusive frameworks, but rather two complementary layers of scrutiny: AUPB ensures the formal-procedural validity of a transfer decision, while *al-dharuriyyat al-khamsah* ensures the substantive validity of the decision's impact on the affected employees. The integration of both is necessary so that civil servant transfer policies truly function as instruments for equitable human resource development, rather than merely being procedurally valid decisions that potentially entail immeasurable substantive harm to the employees subject to them.

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