

# Legal Problems Concerning on Transfer of The Central State Civil Apparatus (ASN) to The National Archipelago Capital Region (IKN)

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## ABSTRACT

ASN employees consist of Civil Servants (PNS) and Contract Government Employees (PPPK). The role of Central State Civil Apparatus (ASN) as enforcers of public order, as civil servants, and as a liaison and unifier of the nation is contained in Law Number 5 year 2014 concerning the Central State Civil Apparatus (ASN). The government requires the Central State Civil Apparatus (ASN) to move to the National Archipelago Capital Region (IKN) in East Kalimantan. Currently, the government is gradually carrying out preparations and careful studies of the Central State Civil Apparatus (ASN) transfer process. In general, there are four assessment criterium for Central State Civil Apparatus (ASN). The plan is for State Civil Apparatus (ASN) to be transferred to IKN in 2024-2045 to reach 100,023 Central State Civil Apparatus (ASN). In detail, there are 956 state officials, 3,264 high leadership positions, and 95,803 functional positions. Legal Policy related to the Transfer of ASN to the National Archipelago Capital Region (IKN Nusantara) Law number 3 year 2022 concerning the State Capital, and Law Number 5 year 2014 concerning Central State Civil Apparatus (ASN). Presidential Regulation Number 63 year 2022 regarding on Details of the Archipelago Capital City Master Plan, and Presidential Regulation Number 94 year 2021 concerning Discipline for Civil Servants, also Decree from the Ministry of Transferring ASN (still in the discussion stage). Disciplinary punishment for civil servants is carried out by authorized officials. Officials authorized to punish are officials authorized to impose disciplinary punishment as regulated in Article 7 of Government Regulation Number 53 year 2010.

Keywords: ASN employees, the National Archipelago Capital Region (IKN) in East Kalimantan, Law number 3 year 2022

## Introduction

The role of ASN as enforcers of public order, as civil servants, and a liaison and unifiers of the nation is contained in Law Number 5 year 2014 concerning the State Civil Apparatus (ASN). Employees are civil servants. The duties of the State Civil Apparatus (ASN) are carried out with full responsibility and accountability to the community. This function covers many things in various fields of life, such as government administration services, education, social welfare, health, and others. Each coverage area has an integrated implementing unit, starting from the smallest unit to the largest unit with national coverage.

The State Civil Apparatus is servant of the state for the community and has an important role, because civil servants are elements of the apparatus that can run the wheels of government to achieve national goals. Development of country can be done if it has planning in advance. The transfer of the State Civil Apparatus is one of the policies that is considered effective in administering government, functions as the deployment of ASN which is considered good in the life of the National Capital City (IKN) of the Archipelago, this is done in order to be able to train and make the State Civil Apparatus more professional in carrying out their duties.

The government requires the State Civil Apparatus (ASN) to move to the State Capital in East Kalimantan. Currently, the government is gradually carrying out preparations and careful studies of the ASN transfer process. In general, there are four assessment criteria for ASN. The plan is for ASNs to be transferred to IKN in 2024-2045 to reach 100,023 ASNs. In detail, there are 956 state officials, 3,264 high leadership positions, and 95,803 functional positions.

ASNs who will move to the national capital (IKN) will only receive several facilities. The facilities that are certain to be obtained are official houses or official houses in the Central Core Area

of the IKN Administration. The second facility that ASN gets is an overpriced allowance. This overpriced allowance is paid according to the level of overpriced based on the price index that applies in each area. As a special region, IKN has special regional costs. The next or third facility is a moving fee according to applicable regulations. Then the last or fourth facility is the flexible facility arrangement which is tailored to the needs of each ASN.

State Civil Apparatus (ASN) who refuse to be transferred to the Archipelago Capital (IKN) will be subject to disciplinary punishment referring to Government Regulation Number 94 of 2021 concerning Discipline for Civil Servants. In Article 3 letter H, it reads that Civil Servants are also obliged to be willing to be placed throughout the territory of the Unitary State of the Republic of Indonesia.

Soerjono Soekanto said that in every process of change there will always be factors that cause change, both from within and from outside. This can be the background for changes in law and society. For that society has an important role in the process of social change. Circumstances that can determine changes in society and law are commonplace in a society that continues to develop, for this reason anticipation towards legal control is urgently needed so that social conflicts do not occur in society. How does it affect legal change? In its first form, change results from demands for social change, or in other words, legal change lags behind social change. In this case, law is seen as an instrument to maintain stability or as an instrument of social control. An example is the colonial inheritance law that was still in effect when Indonesia became independent. These changes are known as "implementation changes". The second form of change occurs to change the social structure, namely social change lags behind legal changes. In this case, law can be considered as an instrument of social planning. An example is the enactment of the 1945 Constitution after Indonesia's independence which fundamentally changed the order of life and the order of Indonesian society. Legislative changes that are considered social manipulation are referred to as "legal reforms".

Anderson understands policy as a series of actions taken by an actor or a number of actors related to the problem at hand. Policy deals with action. Suskind, a writer close to George W. Bush's white house officials, "when we take action means we have created a reality and when we take new actions, we also create a new reality". According to Hans Kelsen, justice is a certain social order in which the search for truth can more develop. Because, according to him, justice is justice for freedom, justice for peace, justice for democracy – justice for tolerance. In Indonesia justice is described in Pancasila as the basis of the state, namely social justice for all Indonesian people. The five precepts contain values which are the goal of living together. This justice is based on and imbued with the essence of human justice, namely justice in the relationship between humans and themselves, humans and other humans, humans and society, nation and state, as well as the relationship between humans and GOD.

## Methods

The implementation of this research is Doctrinal. The doctrinal approach in question is research based on statutory provisions (statute approach). According to Tety Hutchinson, as quoted by Peter Mahmud Marzuki defines that doctrinal legal research is as follows "doctrinal research: research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rule, explains areas of difficulty and perhaps, predicts future development". The statutory approach is carried out by examining all laws and regulations related to the legal issues being handled. In this case the author will construct and link between the statute approach and relevant legal theories used in determining research results, which are carried out by examining laws that will be used as material for studying the legal issues being handled. Sources of doctrinal material were obtained through books, e-books as well as from legal theory, legal principles, legal journals and legal articles which are the references of this research.

## Findings and Discussion

### 1. Position and Role of ASN

Article 1 (1) Law Number 5 year 2014 is a profession for civil servants and government employees with work agreements who work in government agencies. Employees of the State Civil Apparatus are civil servants and government employees with work agreements who are appointed by the civil service supervisor and are entrusted with other State duties and are paid according to statutory

regulations.

ASN employees consist of Civil Servants (PNS) and Contract Government Employees (PPP) by its type. ASN officials have the status of state apparatus who carry out policies set by the heads of state institutions and must be free from the influence and interference of any political group and party. ASN positions are central, regional and international. In Law Number 5 year 2014 concerning ASN states that ASN as a profession is based on a code of ethics and code of conduct. ASN's code of ethics and code of conduct aims to maintain ASN's dignity and honor.

## 2. Legal Policy for the Transfer of State Civil Apparatuses to the Archipelago National Capital Region (IKN).

Legal policy is an action that requires further and in-depth considerations, which contains the rules contained in a policy. Wisdom is deep thought/consideration to become the basis (foundation) for policy formulation, policy is a set of decisions taken by political actors in order to choose goals and ways to achieve goals.

Based on Article 9 ASN Employees carry out policies set by the leadership of Government Agencies. ASN employees must be free from the influence and intervention of all groups and political parties. And it was added again in article 11 of Law 5/2014 that ASN employees are in charge of: carrying out public policies made by Civil Service Development Officials in accordance with statutory provisions.. And added again in article 11 of Law number 5 year /2014 ASN employees are in charge of:

- a. implementing public policies made by Personnel Development Officials in accordance with statutory provisions, provide professional and quality public services; and
- b. strengthening the unity and integrity of the Unitary State of the Republic of Indonesia.

The government and parliament agreed and approved the legal basis that stipulates the transfer of the State Capital, namely Law Number 3 year 2022 concerning the State Capital, which is the legal basis for the transfer of IKN from the Province of the Special Capital Region of Jakarta to the new IKN which was formed by the authority under the name Nusantara . The transfer of State Civil Apparatus is regulated in Chapter VI of Law number 3 year 2022 concerning the State Capital, in which state institutions will move positions and carry out their duties, functions and roles gradually in the Archipelago's Capital.

In Law Number 3 year 2022 it is explained that the essence of relocating IKN to Kalimantan is the relocation of the center of government which consists of the executive, legislative and judiciary. In this regard, the transfer of IKN is inseparable from the transfer of state officials to become employees in state agencies.

Legal Policy related to the Transfer of ASN to IKN Nusantara: Law number 3 year 2022 concerning the State Capital, Law Number 5 year 2014 concerning State Civil Apparatuses, Presidential Regulation Number 63 year 2022 concerning Details of the Archipelago Capital City Master Plan, Presidential Regulation Number 94 of 2021 regarding Discipline for Civil Servants, Decree from the Ministry that transferred ASN (still in the discussion stage).

In the presentation document from the Director of Regional Development of the Ministry of PPN/BAppenas in Public Consultation II on the Draft Regulations for Implementing Law Number 3 year 2022 concerning IKN, the transfer of ASN and TNI/Polri to IKN Nusantara will be carried out in stages from 2022 to 2045 the stages of transfer are as follows:

- a. Stage 1 (2022-2024): Relocation of 60 thousand ASN and 5,760 TNI/Polri included
- b. Phase 2 (2024-2029): The transfer of ASN was completed and the transfer of 23,841 TNI/Polri
- c. Stage 4 (2035-2039): Transfer of 22,785 TNI/Polri
- d. Stage 5 (2040-2045): Displacement of 14,051 TNI/Polri

From these data it is known that the transfer of ASN will be completed in 2029, the first priority for moving ASN to IKN Nusantara is state institutions, secretariats of state institutions, state apparatus, state secretariat, and cabinet secretariat, the second priority is the ministry whose nomenclature (nomenclature) referred to in the constitution, the scope/business is stated in the constitution, and in the framework of sharpening, coordination and synchronization, and the third

priority is non-ministerial government agencies (LPNK) and non-structural institutions (LNS).

3. Legal Problems of Transferring State Civil Apparatuses to the National Capital (IKN) of the Archipelago

The issuance of the legal basis for relocating the State Capital through Law Number 3 year 2022 concerning the State Capital, becomes a reference for the State Civil Service Agency (BKN) which is given the mandate to carry out assessments of the State Civil Apparatus (ASN), which will be transferred to the Archipelago Capital or IKN, namely ASN Ministries/Agencies whose duties and offices are in the Capital City Region (DKI) Jakarta and its surroundings.

The government will provide additional allowances to State Civil Apparatus (ASN) who move to the National Capital City (IKN) of the Archipelago. It has been set out regulations of facility allowances . The facility allowances that ASN get are not much different from those that have so far been in accordance with Law Number 5 year 2014 concerning the State Civil Apparatus, but there is a slight difference. Number 5 year 2014 concerning the State Civil Apparatus article 80 paragraph 4 "expensive allowances are paid according to the level of overpriced based on the price index that applies in their respective regions".

The legal issue that can be seen from the transfer of the central State Civil Apparatus is what will happen to the State Civil Apparatuses in the area who also have competence which may be higher than ASN from the center, which can be employed in the State Capital area (IKN) archipelago. Basically the right to defend legal interests is a form of human rights owned by a person/group of people. The right to defend legal interests, especially in relation to TUN Decisions, is included in Article 53 paragraph (1) of Law Number 51 year 2009 concerning the Second Amendment to Law Number 5 year 1986 concerning State Administrative Court, that civil persons or legal entities who feel their interests have been harmed by a TUN decision has the right to submit a written claim to the competent court containing demands so that the disputed TUN decision is declared null and void, with or without being accompanied by demands for damages and/or rehabilitation.

4. Sanctions for State Civil Apparatuses Who Refuse to be Moved to the National Capital City (IKN) of the Archipelago

The State Apparatus is an element of the State apparatus, State Servants and Community Servants whose job is to carry out government and development tasks, in other words the success of government and development tasks depends a lot on the will and ability of the state civil apparatus. It is said that the position and role of the state civil apparatus is very important and decisive, the state civil apparatus is domiciled as a servant of the state who has the duty to serve the will of the state as stated in the preamble to the 1945 Constitution, paragraph 4.

The discipline of an employee is an important factor that greatly influences the success of an institution. The morale of civil servants must have satisfaction in the individual. Satisfaction refers to the general attitude of an individual towards his work. Job satisfaction is a positive feeling towards his work which is the result of an evaluation of each job characteristic.

Based on article 1 number 1 of Government Regulation Number 53 year 2010 concerning Discipline for Civil Servants, discipline for Civil Servants is the ability of Civil Servants to comply with obligations and avoid prohibitions stipulated in statutory regulations and/or official regulations which, if not complied with or violated sentenced to discipline. In article 7 of presidential regulation number 53 year 2010 it is explained that the types of disciplinary punishment that can be imposed for a disciplinary violation. This is intended as a guideline for officials authorized to punish and provide certainty in imposing disciplinary punishment. As far as possible, the resolution of employment disputes is carried out within the work unit within the agency that issues disciplinary punishment decisions by leaders or staffing supervisors, both at the central and regional levels. If all procedures have been taken, but the party concerned is still not satisfied, then the matter can be submitted to the TUN court as stipulated in Article 53 of Law Number 51 year 2009.

The provisions of Article 86 paragraph (4) of the Law on the State Civil Apparatus (ASN) Number 5 year 2014 state that the discipline of PNS is still regulated by Government Regulation which in fact still refers to Government Regulation Number 53 year 2010 concerning the PNS Disciplinary Code. Official discipline according to Article 1 Paragraph 1 of Government Regulation Number 53

year 2010 is: Discipline is the ability of officers to carry out their duties and avoid prohibitions regulated in the articles of association and/or government orders that are not complied with or violated by disciplinary sanctions.

Article 14 Government Regulation Number 53 year 2010 concerning Civil Servant Discipline Regulations, civil servant discipline is a regulation that regulates obligations, prohibitions, and sanctions if obligations are not fulfilled or officials who violate prohibitions carry out the provisions of State Institution orders Number 21 year 2010 concerning Provisions for Implementing State Council Decree Number 53 year 2010 regarding the employee discipline code, civil status.

Based on Article 8 of Government Regulation Number 53 year 2010 concerning Employee Discipline, disciplinary sanctions are penalties imposed on employees for violating the Employee Discipline Regulations. Against officials as ASN employees Against sanctions (sanctions) for violations of obligations based on laws and regulations in accordance with their actions.

The Ministry of PANRB emphasized that ASNs currently working in ministries or institutions must be ready to move to IKN Nursantara, ASNs do not have the right to refuse the transfer if it has been decided then the law is mandatory. The transfer of State Civil Apparatuses to the new State Capital raises pros and cons, State Civil Apparatuses have obligations that must be obeyed which are regulated in Article 3 of Government Regulation Number 94 year 2021 concerning Civil Servants Discipline, which states that "willing to be placed throughout the territory of the State Unity of the Republic of Indonesia".

State civil servants who do not obey the applicable provisions will be subject to disciplinary punishment, there are three levels of disciplinary law, namely: light disciplinary punishment, moderate disciplinary punishment, and severe disciplinary punishment. In article 10 letter G Government Regulation Number 94 year 2021 concerning Discipline for Civil Servants, it states "willing to be placed throughout the territory of the Unitary State of the Republic of Indonesia as referred to in Article 3 letter h, if the violation has a negative impact on the institution concerned", if the violation will have an impact negative for the institution concerned.

5. Relation between Transfer of State Civil Servants and Public Services in the Archipelago's National Capital Region (IKN).

Competence is one of the main elements in ASN management, this is in accordance with the Regulation of the Minister of Administrative Reform and Bureaucratic Reform Number 38 year 2017 concerning Position Competency Standards that there are 3 (three) competencies that ASN must have, namely Technical Competence, Managerial Competence and Socio-Cultural Competence. Technical competence is knowledge, skills and attitudes/behavior that can be observed, measured and developed that are specific to the technical field of the position. Furthermore, Managerial Competence is knowledge, skills, and attitudes/behaviors that can be observed, measured, developed to lead and/or manage organizational units. While Socio-Cultural Competence is knowledge, skills, and attitudes/behaviors that can be observed, measured, and developed related to the experience of interacting with a pluralistic society in terms of religion, ethnicity and culture, behavior, national insight, ethics, values, morals, emotions and principles, which must be met by each position holder in order to obtain work results in accordance with the role, function and position.

As defined in Law Number 25 year 2009 concerning Public Services that public services are activities related to fulfilling service needs according to statutory regulations for every citizen and resident related to goods, services, and/or administrative services provided. provided by the public. The service provider must be provided. The principles of good public services to provide excellent services are inclusive, transparent, responsive, non-discriminatory, simple and affordable, effective and efficient, easily accessible, accountable and fair.

Public service for the community and being able to carry out its role as an adhesive for the unity and integrity of the nation based on Pancasila and the 1945 Constitution. The national goal as stated in the Preamble to the 1945 Constitution is to protect the entire Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life, and participate in implementing world order based on freedom, eternal peace, and social justice. In terms of ASN Public Service functions, duties and roles to provide professional and quality public services. Public

services are activities in the framework of fulfilling service needs in accordance with statutory regulations for every citizen and resident for goods, services and/or administrative services provided by public service providers with the aim of customer satisfaction. The glue and unifier of the ASN Nation functions, has a duty and plays a role in strengthening the unity and unity of the Unitary State of the Republic of Indonesia. ASN is always loyal and fully obedient to Pancasila, the 1945 Constitution, the state and the government. ASN always upholds the dignity of ASN and always prioritizes the interests of the State over self, individual and group interests.

To implement the national goals, ASN employees are needed. ASN employees are entrusted with the task of carrying out certain public service tasks, government tasks, and development tasks. Public service duties are carried out by providing services for goods, services, and/or administrative services provided by ASN employees. The tasks of government are carried out in the context of implementing general government functions which include institutional utilization, staffing, and management. Meanwhile, in the context of implementing certain development tasks, it is carried out through national development (cultural and political development) as well as through economic and social development (economic and social development) which is directed at increasing the welfare and prosperity of the whole community.

Considering that IKN Nusantara has a vision as a world city and is built with the concept of smart, green, beautiful, and sustainable, Fulfillment of smart categories in a country must be able to encapsulate 6 (six) dimensions, including smart economy, smart people, smart governance, smart mobility, smart environment, and smart living. In the smart people category, one of the scopes in it is the willingness to continuously learn for life, while in the smart governance category, one of the scopes in it is public services. The categories of smart people and smart governance in this case relate to society, the State Civil Apparatus (ASN) and public services. In an effort to improve the quality of public services, civil servants are needed who have the ability and capability to carry out their duties. It is predicted that the transfer of personnel from the central State Civil Apparatus to the National Capital (IKN) of the Archipelago will improve the process of public service in running a good government bureaucracy. Regarding public services in the National Capital Region (IKN), public services have been transformed into electronic public services (e-services), strengthening community control over the functionality of public services, strengthening innovative ecosystems and strengthening services.

6. The Role of Ministries/Institutions in the Transfer of ASN to the Archipelago National Capital Region (IKN)

With the issuance of Law Number 3 year 2022 concerning the State Capital, the State Civil Service Agency (BKN) has obtained the mandate to carry out assessments of Civil Servant Apparatuses, this assessment functions to find out how well the performance is produced by the ASN, this assessment is carried out on ASNs who will transferred to the Capital City of the Archipelago or IKN, at this stage it is carried out at ASN Ministries/Agencies in charge of the Special Capital City Region (DKI) Jakarta and its surroundings. In carrying out Article 5 (1) In the framework of the effective implementation of the preparation, development and transfer of the State Capital, as well as the administration of the Special Regional Government for the Archipelago Capital, the elements in the apparatus of the Archipelago Capital Authority as referred to in Article 4 paragraph (4) are filled out by ASN Employees.

The delegation of ministries/institutions (K/L) that can support the role of IKN as the center of government pays attention to the structure of government institutions in the 1945 Constitution of the Republic of Indonesia, Law Number 39 year 2008. Ministries and administrative effectiveness at the central level are divided into five clusters. There are several institutions that are not planned to be transferred, because they consider roles, tasks and functions that are more optimal to be carried out if they are not transferred to IKN, namely as follows:

- a. Cluster 1
  - i. President and Vice President
  - ii. High State Institutions (MPR, DPR, DPD, MA, MK, KY, BPK)
  - iii. Coordinating Ministry (Coordinating Ministry for Economic Affairs, Coordinating Ministry for Political, Legal and Security Affairs, Coordinating Ministry for Human

- iv. Development and Culture, Coordinating Ministry for Maritime Affairs and Fisheries Ministry of "Triumvirate" (Ministry of Home Affairs, Ministry of Foreign Affairs, Ministry of Defense) as Plt. Presidency if the president and vice president are unable to carry out their duties simultaneously
  - v. Ministries/Institutions that directly support the work of the President – Vice President
  - vi. Ministries/Institutions that support the budget planning process and development performance (KemenPPN/Bappenas, Ministry of Finance, KemenPANRB, BPKP)
  - vii. Ministries that support the preparation of basic infrastructure in New IKN (Kemenkominfo, KemenPUPR, KemenATR/BPN)
  - viii. Defense and Security Equipment and Ministries/Institutions that support law enforcement (TNI Headquarters, TNI-AD, TNI-AL, TNI-AU, Polri Headquarters, Paspampres, BIN, BSSN, Attorney General's Office, Kemenkumham, KPK)
- b. Cluster 2
- i. Ministries that support the development of the IKN area (Ministry of Transportation, KLHK, Ministry of BUMN)
  - ii. Ministries that support the delivery of basic services, human development, and culture (Ministry of Religion, Ministry of Health, Ministry of Education and Culture, Ministry of Social Affairs, Ministry of Village PDIT, Ministry of PPPA, Ministry of Youth and Sports)
- c. Cluster 3
- Ministries that support economic development and investment (Ministry of Trade, Ministry of Industry, Ministry of Cooperatives and Small and Medium Enterprises, Ministry of Manpower, Ministry of Agriculture, Ministry of Energy and Mineral Resources, Ministry of Maritime Affairs and Fisheries, Kemenprektar, Baparektar, Ministry of Industry/BPKM)
- d. Cluster 4
- Non-Ministerial Government Institutions (LPNK), BPS, BKN, LAN, BKKBN, BNN, BNPB, BNPT, Basarnas, BIG, Bakaria, Lemhannas, Wartannas, LKPP, BRIN, BPOM.
- e. Cluster 5
- KPU, Bawaslu, DKPP, PPATK, ORI, KASN, BPIP, BNPP, KIP, KKIP, DPOD

Apart from these five clusters, there are also institutions that have not been transferred, including ANRI, BSN, BMKG, Bapeten, National Library of Indonesia, KPPU, Komnas HAM, Komnas Perempuan, KPAL, LPSK, SKK Migas, BP Batam, BKPRN, BP2MI, Bamas, Consumer Protection Agency National, Committee for the Profession of Public Accountants, Health Advisory Board, Hospital Oversight Board, Film Censorship Institute, Indonesian Academy of Sciences, Indonesian Medical Council, Indonesian Council of Health Workers, Indonesian Nursing Council, National Water Resources Council.

The transfer of ASN to the new IKN is an encouragement to implement effective and efficient governance that deviates from the condition of IKN which was built with the vision of becoming a "world city for all". Institutional and bureaucratic reforms are also part of one of the pillars of Indonesia's development in Indonesia's Vision 2045, namely "Strengthening Resilience and National Governance". The aim of developing the machinery sector is to create good, clean and authoritative government based on law and a professional and neutral bureaucracy.

## Conclusion

The transfer of the Central State Civil Apparatus to the National Capital Region (IKN) of the Archipelago, there are still many problems that occur as a result of the issuance of the policy of transferring the IKN which has an impact on the composition of the central ASN to the Archipelago IKN Region. There are several considerations that must be decided on the ASN whose name will be included in the transfer of ASN to IKN, but this policy will later be mandatory and may not be objected

to by the ASN concerned. The legal problem that can be seen from the transfer of the central State Civil Apparatus is what will happen to the State Civil Apparatuses in the area who also have competence which may be higher than ASN from the center, which can be employed in the State Capital area (IKN), the archipelago.

The policy of moving the central ASN to IKN Nusantara, has a good goal for the life of the State Capital which will move to East Kalimantan, the governance paradigm that will be implemented in IKN leads to the concept of smart management that is efficient and effective as an alternative, because of its characteristics so far is at the core of realizing smart cities by taking advantage of opportunities to carry out value-based bureaucratic reforms. Transparency and efficiency both in decision making, in the administration of public services and in the administration of government in general.

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