

**THE LAW PROTECTION ON STATE CIVIL APPARATUS WITH  
STATUS OF GOVERNMENT EMPLOYEES WITH EMPLOYMENT  
AGREEMENT BASED ON STATE CIVIL APPARATUS LAW**

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**ABSTRACT**

The issuance of Law Number 5 of 2014 concerning state civil apparatus (Further will be referred as ASN) provides a new paradigm in the world of employment in Indonesia with the presence of the term Government Employee with a Work Agreement (Further will be referred as PPPK). However, the legal relationship of PPPK is unique because there is a point of contact between public law and private law so that legal protection for PPPK is still very weak. This study discussed how the law position of the PPPK and the law effort that can be taken by the PPPK in the event of a Termination of Employment Contracts (Further will be referred as PHPK). The research method used was normative juridical law research by using a statutory approach and analyzing various statutory regulations that cover it. The results of this study indicated that the law position of PPPK as ASN is felt to be very weak and in the case of PHPK normatively, it also does not provide law certainty for PPPK. In this case, the government and the House of Representatives (Further will be referred as DPR) should make changes or revoke the ASN Law to abolish the regulatory provisions regarding PPPK and also to provide clarity regarding the provisions of the civil service court in the event of PHPK for PPPK. In this case the ASN Law must also be followed by fundamental changes in the provisions of the State Administrative Court and the on Government Administration Law.

**Keywords: State Civil Apparatus (ASN), Government Employees with Work Agreements (PPPK), Termination of Employment Contracts (PHPK), Law Protection.**

## A. INTRODUCTION

### 1. Background of the Research

The long journey of reformation in Indonesia has been going on for quite a long time. One of the events that had a significant impact was the collapse of the New Order era in 1998. The fall of the New Order regime in system theory of Dafid Easton quoted by Kacung Marijan said that the fall of the New Order regime was understood as a result of the government's inability to respond to the demands that develop from society.<sup>1</sup>

One aspect that is also undergoing the reformation in Indonesia is the aspect of government bureaucracy, namely human resource management. This reformation is proven by the amendments to the laws and regulations related to civil servants several times, including Law Number 8 of 1974 concerning the Basics of Civil

Service which was changed by Law Number 43 of 1999, then in 2014 it was replaced by Law Number 5 of 2014 concerning State Civil Apparatus. Law Number 5 of 2014 concerning State Civil Apparatus, which is abbreviated as the ASN Law, then seems to be the answer to various problems that exist within the scope of Civil Servants as state apparatus. The most obvious change is the emergence of new terms in the ASN Law, namely state civil apparatus (ASN) and Government Employees with Work Agreements (PPPK), where the state civil apparatus hereinafter referred to ASN is categorized into two terms, namely Civil Servants hereinafter referred to as PNS and Government Employees with Work Agreements hereinafter referred to as PPPK. The presence of PPPK is also an open space for professionals to become ASN so that it is expected to be able to increase

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<sup>1</sup> Kacung Marijan, 2010, *Sistem Politik Indonesia: Konsolidasi Demokrasi pasca Orde Baru* Kencana, Bandung, Page.5.

the competitiveness and professionalism of the ASN itself.

However, after 8 (eight) years of Law Number 5 of 2014 concerning ASN was issued, it turns out that the number of PPPK personnel is still very small compared to PNS. Based on statistical data from the National Civil Service Agency (Further will be referred as BKN) as of December 2021, there are 3,995,634 civil servants (PNS) in Indonesia with details of 23% being civil servants from central agencies and 77% from regional agencies. Meanwhile, the number of PPKK personnel is 50,553 people with details of 4% coming from central agencies and 96% coming from local agencies. This gap in the number of PNS and PPK indicates there are problems related to the management of PPPK, one of which is regarding law protection for PPPK personnel because the fulfillment of normative rights for PPPKs, both in the ASN Law

and in PPK Management, has not provided law certainty, this is proven by the absence of provisions for payment of pension rights for PPPK as the case for civil servants. Then the regulation regarding the "minimum" time limit of work agreements for the contractual is only for 1 (one) year so that it is possible to be dismissed at any time for certain reasons. This causes the law protection for the PPPK to be unclear. If the PPPK employee objected to the dismissal, It is still unclear whether or not the PPPK employee could file an administrative appeal following provisions of the ASN Law or can follow the provisions of administrative measures in Law Number 30 of 2014 concerning Government Administration and the Law on State Administrative Courts. This indicated that the position of PPPK employees is very weak and is no different from outsourcing.

Based on the above background, the title adopted in writing this thesis is “Law Protection against State Civil Apparatus with the status of Government Employees with an Employment Agreement based on Law Number 5 of 2014 concerning State Civil Apparatus.”

## **2. Identification of the Problem**

Based on the background explained above, the formulation of the problems is as follows:

1. What is the law position of Government Employees with Work Agreements (PPPK) based on Law Number 5 of 2014 concerning State Civil Apparatus ?
2. How is the law protection for Government Employees with a Work Agreement (PPPK) in The Termination of the Employment Agreement ?

## **B. RESEARCH METHOD**

### **1. The Type of The Research**

In explaining what is the problem in this thesis, the author used normative

juridical law research, namely the type of research that functions to provide law arguments when there are vacancies, ambiguities and conflicts of norms. This type of research is also often referred to library research or document study, because this research is conducted or aimed only at written regulations or other law materials.<sup>2</sup>

### **2. The Approach of The Research**

In this research, the researcher used a statutory approach as stated by Soekanto that in this approach what is studied is the legislation of a certain field , in this case is Law Number 5 of 2014 concerning State Civil Apparatus (ASN) which in its hierarchical perspective aiming to reveal the reality to what extent the laws and implementing regulations are

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<sup>2</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Penerbit: Kencana Prenada Media Group, Jakarta, 2010, Page. 93.

horizontally compatible and have compatibility between the laws and regulations both higher and the equivalent regarding the same field, in this case is the field of civil service administration, especially regarding ASN, so that can make recommendations to complement deficiencies, to remove overlapping strengths and to correct existing deviations.

### **3. Law Material Processing**

In this research, the processing of law materials was carried out by re-examining the law materials that have been obtained based on their completeness, suitability, clarity of meaning, and relevance. Then the classification was carried out logically in terms of the relationship between one law material and another. Next it was arranged systematically in accordance with formulation of the problem so

that it is easy to understand and to analyze.

### **4. Law Material Analysis**

In this research, the analysis used is qualitative juridical analysis, namely the analysis of law materials that does not use numbers, but provides a description with sentences on law materials and therefore it prioritizes the substance of law materials, and not quantity by revealing existing problems. This analysis was carried out by interpreting law materials based on statutory provisions, law theories, law concepts and opinions of law experts (doctrine), then compiled systematically and descriptively as answers to problems studied as scientific works.

## **C. RESULTS AND DISCUSSION**

### **1. Law Position of Government Employees With Work Agreements (PPPK) Based on Law**

**Number 5 of 2014  
concerning State Civil  
Apparatus.**

Based on the provisions of Article 6 of the ASN Law, it is stated that PPPK is one type of ASN other than PNS, then in Article 7 paragraph (2) of the ASN Law, PPPK personnel are ASN employees appointed as employees with a work agreement by the Civil Service Supervisor in accordance with the needs of Government Agencies. PPPK has several differences from PNS even though it has the same law status as PNS as ASN. PPPK is not given the right to pension insurance. Regarding law relations, PPPK actually has a contractual law relationship (*private rechtsbetrekking*) so that it has regulations in terms of rights, obligations, types of work, days and hours of work, and so on. Conceptually, the use of PPPK personnel in government agencies is

basically inappropriate if it is a derivative of public law, which in this case is the ASN Law and its implementing regulations, because it comes from the provisions of the work agreement, regarding the criteria for the work to be carried out by PPPK, of course, it has the potential to cause confusion regarding what types of work can be done by PPPK so that it has the potential to deviate from the duties of civil servants. The appointment of PPPK also has the opportunity to cause problems because of the unclear arrangement of the work period for the PPPK. There is an age difference when appointed to the PPPK. In this case, it is possible for the PPPK to be appointed at the age that is old enough so that it will make the PPPK work period shorter. In terms of human resource management, this will have implications for the low

motivation of the PPPK to carry out the main tasks and responsibilities given to him considering the period of the PPPK work agreement is only one (1) year so that it is possible for PPPK to be employed for only one year. In addition, in Presidential Regulation Number 38 of 2020 concerning types of positions that can be filled by PPPK, which is a concern that in addition to be able to occupy Functional Positions, PPPKs can also occupy High Leadership Positions so that it is possible for PPPK to carry out management functions attached to the High Leadership Position, one of which is the authority to issue decrees (*beschikking*). It is worried that this will trigger an inappropriate employee career assessment between PPPK and PNS.

## **2. The Law Protection for Government Employees with A Work Agreement**

### **(Pppk) in The Termination of The Employment Agreement**

Ridwan HR revealed that in order for law relations between law subjects to run harmoniously, balanced and fair in the sense that every law subject gets what is his right and carries out the obligations imposed on him, the law appears as the rule of the game in regulating the law relationship. Law was created as a means or instrument to regulate the rights and obligations of law subjects, so that each law subject can carry out their obligations properly and obtain their rights fairly. For that reason, the law also functions as an instrument of protection for law subjects. When PHPH occurs for PPPK, some arrangements are deemed not to provide law certainty because of the unclear norms in it. In the provisions of Article 53 Number (2) letter

(b) and (c) PP Number 49 of 2018 concerning Management of PPPK which stated that PHPK could be carried out with respect, not at his own request, namely because he had committed a serious violation of the PPPK discipline and did not meet the agreed performance targets in accordance with the work agreement.

Provisions regarding disciplinary violations do not provide law certainty because further provisions in Article 71 of the same Government Regulation, the phrase of this provision changes from the previous : “severe level of disciplinary violation”, to “discipline violation”, only, so that the level of a disciplinary violation for PPPK becomes unclear. The same thing is also found in the regulation regarding PHPK because it does not meet the agreed performance targets in accordance with the work

agreement. The phrase “performance targets that have been agreed in accordance with the work agreement” does not provide the clarity on the size of the performance targets to be met. The format of the work agreement is regulated in Article 3 attachment III of BKN Regulation Number 18 of 2020 concerning Amendments to BKN Regulation Number 1 of 2019 concerning Guidelines of The PPPK procurement technique is not stated clearly and in detail regarding the amount of performance targets that must be achieved so there will be no termination of the employment agreement (PHPK). Moreover, for PPPK this provision is felt to be unclear and has the potential to cause ambiguity and injustice for PPPK, especially in terms of how to fulfill and assess targets performance.



A case when PPPK objects to the PHPH received or when experiencing an administrative dispute in this case a personnel dispute, the provisions regarding the procedure for its settlement also do not provide law certainty. Regarding the provisions on employment disputes in terms of normative termination of employment agreements for PPPK, there are at least 3 (three) laws that regulate them. The three laws namely, Law Number 5 of 2014 concerning ASN, hereinafter referred to the ASN Law, Law No. Number 30 of 2014 concerning Government Administration, hereinafter referred to the AP Law, and Law Number 5 of 1986 concerning the State Administrative Court, Jo. The Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts, Jo.

Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning State Administrative Courts, hereinafter referred to as the Administrative Law, that these three laws have different settlement schemes and procedures.

## **D. CLOSING**

### **1. Conclusion**

- a. Based on The Law Number 5 of 2014 concerning State Civil Apparatus (ASN), the law position for ASN with PPPK status is as an employee who works for a government agency with a contractual law relationship (*private rechtsbetrekking*), such a condition is called a not pure contractual agreement (*gemengd overeenkomst*) but does not meet the requirements of law protection because it does not provide pension guarantees causing a weak

position for PPPK. In addition to other weaknesses, for example the division of workload with civil servants is not clear, the work agreement period is not stated in the initial stages of PPPK procurement vacancies. The format of the work agreement in terms of prohibitions and sanctions are not stated openly and clearly.

- b. Law protection for ASN with PPPK status in the case of termination of employment agreement (PHPK), normatively does not provide law certainty in the case of PHPK respectfully not at their own request because of a serious violation of PPPK discipline, PHPK respectfully not at their own request because it does not meet the agreed performance targets in accordance with the work

agreement, for such PHPK it is normatively unclear on how law remedies can be taken by the PPPK in the event of a PHPK in question, whether through the schemes of the AP Law, the ASN Law or the Administrative Law, which all three have schemes and different dispute resolution procedures.

## **2. Suggestions**

- a. It is suggested to the government to make changes or revoke Law Number 5 of 2014 concerning State Civil Apparatus, to abolish or separate the regulatory provisions regarding ASN with the status of Government Employees with a Work Agreement (PPPK) because it combines aspects of decisions (*beschikking*) with agreements (*overeenkomst*) which creates legal uncertainty

for PPPK. In the future, the legislators can be more careful in changing and also formulating the norm provisions in the new regulations so that they have implications and contribute to legal uncertainty for the parties that have been regulated in the old regulations or regulations.

- b. It is suggested to the government to provide clarity and law certainty regarding the provisions of the civil service court, in this case Law Number 5 of 2014 concerning ASN which must also be followed by fundamental changes in the provisions of the state administrative court, in this case Law Number 5 of 1986 concerning State Administrative Court, Jo. Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986

concerning State Administrative Courts, Jo. Law Number 51 of 2009 concerning the second amendment to Law Number 5 of 1986 concerning the State Administrative Court, which was also followed by harmonization of provisions in Law Number 30 of 2014 concerning Government Administration.

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