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### LAW STATUS OF THE GOVERNMENT EMPLOYEE UNDER WORK AGREEMENT ACCORDING TO THE STATE CIVIL ARRANGEMENT OF APPLICATION IN INDONESIA

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#### ABSTRACT

The appointing of an employee must be done based on a classification that is in accordance with the statutory regulations. The appointment must also be accompanied by legal protection. The new concept of hiring employees, known as Government Employees under Work Agreement (PPPK) raises a question in regards to the rights and obligations of the employees that are not the same as ordinary civil servants. Due to this reason, this study was conducted with the aim of examining the legal status of Government Employees under Work Agreements in accordance with the Law on State Civil Apparatus. Normative juridical literature study was applied through two approaches namely the *statute approach* and *conceptual approach*. The results showed that the authority and legal protection of the appointment of the employee is owned by the Personnel Management Officer, where the appointment is carried out through an objective assessment based on competence, qualifications, and needs, causing it to differ from the State Civil Apparatus. Thus it can be concluded that the legal protection and employment rights related to PPPK are not the same as civil servants. Moreover, the existence of PPPK tends to be non-permanent because it is only adjusted to the work agreement within a certain period.

#### INTRODUCTION

Around a decade following the reformation, laws in Indonesia related to new staffing have been revised with the aim of making improvement on the regulation. Through a long review which ended in 2014, the law on the State Civil Apparatus

which are later abbreviated as ASN, finally came into being. The Draft of the Civil Service Law is considered to be a further step taken in realizing the government bureaucratic reform. Especially considering that since the reform era, this issue has become something important, given that the implementation of human resource management is handled by two laws that have different vision (Thoha, 2005). With the enactment of the ASN Law, the central civil servants and regional civil servants are referred to as State Civil Servants, hereinafter abbreviated as ASN employees. ASN employees consist of Civil Servants and Government Employees under Work Agreement which are later abbreviated as PPPK.

According to the ASN Law Article 1 number 3, Civil Servants are Indonesian citizens who meet certain conditions in order to be appointed as one. Each of them is appointed as an ASN Employee on by a staff development officer to occupy a government position. While Government Employees under Work Agreements refer to Indonesian citizens who meet certain conditions, who are appointed based on work agreements for a certain period in order to carry out governmental duties. This certainly becomes something new, where if previously the Work Agreement was known in the Manpower Act which then referred to as a legal agreement.

Various rights from PPPK have been mentioned in the ASN Law. For example regarding payroll and benefits, providing opportunities for competency development, giving awards, and protection for PPPK. According to Mertokusumo (2002) legal protection is the protection provided by law for the rights and obligations of legal subjects, so that the interests of one party do not violate the interests of other parties. This is what has become an urgency in relation to employee protection. In jurisprudence, the problem of protection has a relationship between the employer and his workers (Ewing, 2019). Thus the rights and obligations of the parties that need to be fulfilled arise, so as to create a harmonious relationship between workers and employers (O'Sullivan, 2015). Therefore, the legal status of the Government Employee With the Work Agreement is an interesting topic to be discussed, especially after the enactment of Law No. 5/2014 About the State Civil Apparatus. Due to this reason, this study was conducted with the aim of examining the legal status of Government Employees under Work Agreements in accordance with the Law on State Civil Apparatus.

## RESEARCH METHOD

The research method used in this study is normative juridical literature. Thus this research refers to the legal norms contained in the legislation and customs that are applied in society (Soekanto, 1979). Normative juridical study was chosen to seek out a rule of law, legal principles, and legal doctrines in order to address the legal issues at hand. Later, the focus of this empirical law research is to look at the workings or effectiveness of a law on society. Furthermore, this research was accompanied by *astatute approach* and *conceptual approach*. Both are used to see the validity and relevant things that are happening, hence they are able to provide the prescriptions needed in legal research.

On the other hand, in order to facilitate the analysis, two legal research materials are used, namely primary and secondary. The primary legal materials used are statutory regulations through the 1945 Constitution of the Republic of Indonesia and Law Number 5 of 2014. While secondary legal materials come from various legal books, archives and documents, brochures, papers, and internet sources.

## **RESULTS AND DISCUSSION**

### ***Arrangement of Authority for Appointing Government Employee under Work Agreements***

The existence of Government Employees under Work Agreement is undeniably enough to help complete the work of civil servants in the bureaucracy order. But it must also be acknowledged that its existence also raises several problems. The problem that is often raised is related to the recruitment system which is often tinged with political motives from certain parties. Procurement was carried out without going through a rigorous selection stage, hence those chosen were people with low competence. This is consistent with what was stated by Setyowati (2016) that transparency and objectivity in the selection of employees in these times tends to be ignored. In fact, if explored deeply, an agency will not be able to progress without the help of those who are competent compared to the 'instant' way (Sugiharti, 2017).

Therefore, the ASN Law, in this case, seeks to overcome these problems by rearranging the needs for the number and type of PPPK positions based on job analysis and workload analysis conducted for a period of five years. Each of them is broken down every year based on priority needs. In addition, in Article 97 of the ASN Law, it has been written that the acceptance of a PPPK candidate is returned to the relevant Government Institution in order to make an objective assessment based on competencies, qualifications, needs of government agencies and other required requirements.

After an in depth analysis, is known that the procurement of PPPK, which has been seen as chaotic in the end, has also contributed to the growth in the number of employees with poor performance and behavior. Thus, a review of PPPK needs is considered to be a good step so that the PPPK recruited later have clear positions and tasks. On the other hand, the situation is also expected to be able to form a balance between work needs and the number of PPPKs. The assessment, which took into account employee competencies and qualifications, showed that this law had adopted a merit system in the procurement of PPPK.

The stages in the procurement of PPPK candidates are carried out in accordance with Article 95 Paragraph 2 of ASN, namely through the stages of planning, announcement of vacancies, applying, selection, announcing the results of selection, and appointment to become a PPPK. After being appointed as a PPPK and carrying out its duties, this PPPK does not necessarily automatically be appointed as a Candidate for Civil Servants. Because PPPK still has to follow all

the selection process of prospective civil servants who are carried out simultaneously.

As stated earlier, that PPPK based on Article 1 number 5 PP Number 11 of 2017 are part of Indonesian citizens who fulfill certain conditions, who are appointed based on work agreements for a certain period in order to carry out their duties government. On the other hand, when reviewed in the Law on State Civil Apparatus (UU ASN), the existence of a Government Employee under Work Agreement is a substitute name for a previously recognized honorary employee. Therefore honorary designations no longer exist in the future. However, it should be noted that Government Employees under Work Agreements are different from the honorary arrangements in the previous law (Ariyanti, 2014). In the previous law, the existence of PPPK related to recruitment was only planned for its needs without going through what performance management process was the main focus. Therefore, Article 96 of the ASN Law has been amended, in which the PPPK also manages what performance is under control. The hope is that the government would not only accepts according to quantity but also takes into account quality related to prioritized performance.

Regarding the authority to appoint PPPK, as state on Article 95 Paragraph 2 of the ASN Law it consists of several stages, namely the planning stage, announcement of vacancies, application, selection, announcement of selection results, and appointment to become a PPPK. PPPK is appointed as an ASN employee by the Personnel Management Officer with a work agreement made between PPK as the employer and PPPK as the recipient of the work. On the other hand, according to PP No. 9 of 2003, Civil Service Guidance Officers are divided into three, namely the Central Personnel Development Officers, Provincial Regional Staffing Officers, and Provincial or City Staffing Guidance Officers.

Explored further, it is known that each of these officials has a different authority. Central Personnel Guiding Officers are those who have the authority to appoint PPPK who work in central government agencies. In this case the authority is held by the Minister, the Attorney General, the Head of Secretariat of the Presidential Institution, the National Police Chief, the Head of Non-Ministerial Government Institutions, the Head of the Secretariat of the State Higher Institutions, the Head of the Daily Implementing Agency of the National Narcotics Agency, the Head of the Echelon I Structural Officials, and several other positions. While the Provincial Regional Personnel Guiding Officer is the Governor, in this case the work agreement is signed directly by the Governor with the relevant PPPK. Finally, the Regency/City Regional Personnel Management Officer is the Regent/Mayor who will sign a work agreement with PPPK with the district/city government.

### ***Legal Status and Status of Government Employees under Work Agreements (PPPK)***

Government Employees under Work Agreements (PPPK) are part of the ASN

employees newly recognized in the ASN Law. In connection with PPPK as an employee under work agreement, it is necessary to understand in advance what is meant by an employment agreement. An employment agreement is a legal relationship between someone who acts as a worker/laborer and someone who acts as an employer. This is similar to what was stated by Ujhelyi (2014) that one of the implementation of the democratic process in a country is the emergence of non-permanent employees in the democratic order itself which is then protected by various rules. On the other hand, what is meant by honorary staff is someone who is appointed by the Employee Supervisory Officer or other official in the government to carry out certain tasks at a government agency or whose income is borne by the State Budget or Regional Budget (Tsuneki, 2011). This honorary worker is one of the employees under work agreement that is not part of the civil servants. But one day they can be appointed as civil servants if they meet the needs of certain personnel in a government agency (Article 2 PP 48 of 2005).

The basic difference between honorary employees and PPPK is that PPPK cannot automatically be appointed as a civil servant candidate. Thus if appointed as a candidate for civil servants, the PPPK concerned must follow all the selection process carried out for prospective civil servants in accordance with the provisions of the legislation written in Article 9 Paragraph 22 of the ASN Law.

The existence of PPPK also has its own management, detailed as follows, *first*, the determination of the number of PPPK needs is to be carried out for a period of 5 (five) years detailed per 1 (one) year based on priority needs and determined by ministerial decree. *Second*, in the procurement of PPPK candidates every Indonesian citizen has the same opportunity to apply to become a PPPK candidate. *Third*, PPPK cannot automatically be appointed as a candidate for civil servants. *Fourth*, the performance evaluation of PPPK is carried out by authorized officials who are delegated in stages to the direct supervisor of PPPK. *Fifth*, in the case of remuneration and benefits, PPPK salaries are given based on workload, job responsibilities, and job risk. *Sixth*, PPPK has the right to develop competencies through education and training, seminars, courses and upgrading, which are evaluated by the Authorized Officials and used as a basis for further work agreements. *Seventh*, giving awards that can be in the form of honors, priority opportunities for competency development; and/or opportunities to attend official events and/or state events. *Eighth*, PPPK must comply with the PPPK discipline. *Ninth*, termination of the PPPK work agreement is divided into three types, namely with respect, with respect not at one's own request and not with respect. *Tenth*, in terms of protection, PPPK has the same rights as civil servants, namely old age insurance, health, work accident, death, and legal assistance. With regard to honorary employees, PPPK is certainly different from honorary employees. The advantages possessed by PPPK employees are not age restricted and directly occupy functional positions according to the required formation.

In relation, the ASN Law also distinguishes between the rights held by PNS and those of PPPK. The rights possessed by civil servants according to Article 21 of

Law Number 5 Year 2014 are salaries, benefits, facilities, leave, pension guarantees, old age guarantees, protection, and competency development. While in Article 22 of Law Number 5 Year 2014 concerning State Civil Servants of Government Employees under Work Agreements, the old age pensions are not given.

While in terms of obligations, both civil servants and PPPK tend to have the same obligations. Some are, *first*, loyal and obedient to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia, and the lawful government. *Second*, maintain national unity and integrity. *Third*, implement policies formulated by authorized government officials. *Fourth*, comply with statutory provisions. *Fifth*, carry out official duties with dedication, honesty, awareness, and responsibility. *Sixth*, demonstrate integrity and example in attitudes, behavior, speech and actions to everyone, both inside and outside the agency. Only later it was discovered that in Article 66, the obligations of prospective civil servants were separated, namely that every prospective civil servant is required to take an oath, while PPPK was not obliged to at the time of appointment.

Furthermore, it is known that the ASN Law also regulates PPPK based on salary with workload, job responsibilities, and job risk (Article 101 Paragraph 2 of the ASN Law). The salary for PPPK is charged to the APBN at the central agency while for regional agencies is charged to the APBD (Article 101 Paragraph 3 of the ASN Law). PPPK is also entitled to receive benefits in accordance with statutory provisions (Article 101 Paragraph 4 of the ASN Law). The payment system made at PPPK also seems to have been pursued through a merit system. The benefits received by PPPK based on Article 106 Paragraphs 1 and 2 are integrated with the national social security system. This of course will still create a gap between civil servants and PPPK, where civil servants naturally feel they are in a better class (Artisa, 2015).

Regarding this status, the government in managing PPPK must have a focus on ensuring that the position of PPPK in government agencies continues to gain interest from the community, certainly with a description of the irregular working time span. In this case the Government needs to create the best mechanism for providing benefits to civil servants and PPPK in order to create a sense of justice that also considers the ability of the organization. This is due to the existing conditions tend to lead to potential conflicts that begin with jealousy (Kingsbury, 2009).

Exploring further, in streamlining the performance of PPPK, Article 100 Paragraph 1 of the ASN Law accommodates the rules regarding performance appraisal and competency development for PPPK. Therefore, the ASN Law has an open career development system for employees, where it is intended that each employee can carry out public service tasks, government tasks, and development tasks. On the other hand it is known that the performance appraisal of PPPK is carried out directly by the supervisor or partner of the PPPK concerned. Thus, the performance

appraisal mandated by this Law is based on an assessment from all directions, namely superiors, equals, and subordinates. It is good to maintain the objectivity of performance appraisal, it is hoped that performance appraisal can describe the actual condition so that the results of the performance appraisal can be used as it should.

Besides that, in the ASN Law, there is a decisive step to ensure that the working PPPK really can maintain its professionalism. This is reflected in Article 100 Paragraph 9 of the ASN Law stipulating that for PPPK whose performance has been assessed but cannot achieve the performance targets agreed in the work agreement, it will be terminated from PPPK. However, there is still a need for commitment from the stakeholders. This certainly becomes a challenge to be able to supervise the implementation well. Furthermore, in Article 102 of the ASN Law it was also stated that PPPK was given the opportunity to develop competencies which were carried out through planning by each government agency each year. The development of competencies for PPPK can ultimately provide a breath of fresh air, where the government also cares about PPPK competencies.

Referring to the previous description, it is also realized that there are differences in status between civil servants and PPPK. In this case, the civil servant is appointed as a permanent employee by the Employee Supervisory Officer and has a national employee ID number. While PPPK is an ASN employee who is appointed as an employee with a work agreement by the Staffing Officer in accordance with the needs of Government Agencies, this is in accordance with article 7 of the ASN Law. Through Government Regulation Number 55 of 2012 concerning the second amendment to Government Regulation Number 48 of 2005 concerning the appointment of Honorary Workers to become Prospective Civil Servants, the classification of honorary employees is written as follows; *first*, Honorary Workers' income from the state budget is the basic income which is explicitly stated in the allocation of personnel expenditure. *Second*, Honorary personnel income is not explicitly stated in the allocation of employee expenditure in the state budget. However, it is funded from other budgets, for example, school operational assistance funds, assistance or subsidies for activities/ guidance issued from the state budget/regional budget.

The next important thing to highlight is the legal relationship between PPPK. The existence of rules on PPPK in the ASN Law, thus the existence of PPPK is not regulated in Law No. 13 of 2003 concerning employment. Even though both parties use a certain time agreement system, PPPK tends to be regulated in the public sphere, namely by the ASN Law which will be elaborated into implementing regulations that are still formulated at this time. The law that will regulate PPPK is expected to regulate clearly and firmly related to ASN regulations as well as PPPK so that it will not cause problems later (Garden, 2016).

In connection with the legal relationship of PPPK which is limited to a civil relationship, it is indeed necessary clarity in terms of rules and agreements since

the recruitment took place. In addition, it is also necessary to clearly stipulate the types of work and their rights and obligations (Yerby, 2013). That way there is legal certainty for PPPK. In the ASN Law it was also possible for retired civil servants to move into PPPK with certain conditions such as having the required competence and not exceeding the maximum age limit. The existence of the rules as stated earlier is what tends to cause concern about the inhibition of regeneration in the organization because only those who work in the place are allowed to work there.

## CONCLUSION

Therefore it can be concluded that Law Number 5 of 2014 concerning State Civil Apparatus has provided legal protection for Government Employees under Work Agreements through granting rights for Government Employees under Work Agreements (PPPK). However, this protection tends to be different from the protection of ASN and seems weak.

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