

**GOVERNMENT OFFICERS WITH WORK AGREEMENTS:
LEGAL PROTECTION MEASURES AGAINST TERMINATION OF
EMPLOYMENT BY THE GOVERNMENT**

*Non-ongoing employee:
Legal Protection Against Termination Of Employment By The Government*

Firna Novi Anggoro

Badan Pusat Statistik Provinsi Lampung

anggorofirna@gmail.com

ABSTRACT

The presence of PPPK is expected to become professional employees who are recruited as collaborative and competitive partners who occupy similar positions in the civil bureaucracy, but unfortunately, the *Undang-Undang No. 5 Tahun 2014* regarding the State Civil Apparatus and the *Peraturan Pemerintah No. 49 Tahun 2018* on the management of PPPK still weakens the position of the PPPK in terms of working relations with the government (the agency that employs the PPPK) so that it is prone to abuse of authority and arbitrary actions by the government (the agency providing the PPPK) to terminate the PPPK employment relationship, such as the reason for a serious violation of the PPPK discipline, not achieving performance targets, as well as adjustments to agency needs. These various problems need to be anticipated, considering that the sustainability of the problem of PPPK that is disadvantaged due to PHPK can hinder the achievement of bureaucratic reform programs, especially related to efforts to realize a merit system in ASN management. This study will discuss how to protect the PPPK who was harmed by the decision of the Civil Service Supervisor because it was carried out by PHPK. The research method used is a normative juridical method with the problem approach used is a statutory approach and a conceptual approach. Base on the *Undang-Undang No. 5 Tahun 2014* regarding the State Civil Apparatus and the *Peraturan Pemerintah Nomor 79 Tahun 2021*, the PPPK can make administrative efforts, namely administrative appeals submitted to the ASN Advisory Board (BPASN). If the PPPK is still dissatisfied with the BPASN's decision, the PPPK can file a legal action through the State Administrative High Court.

Keywords: *Non-ongoing employee, Legal Protection, Against Termination of Employment By The Government*

A. PRELIMINARY

The issuance of the *Undang-Undang Nomor 5 Tahun 2014* concerning the State Civil Apparatus (ASN) is the basis for reforming the management of Human Resources (HR) of the apparatus in Indonesia. Through the ASN Law, the formula for state employment in the civil bureaucratic area which has been dominated by Civil Servants (PNS) has experienced a shift, namely the emergence of a new term called Government Employees with Work Agreements (PPPK). Article 1 point 4 of the ASN Law states that PPPK is an Indonesian citizen who meets certain requirements, who is appointed based on a work agreement for a certain

period of time in order to carry out government duties. PPPK was initiated as a professional employee recruited as a collaborative and competitive partner who occupies a similar position in the civil bureaucracy. Its existence is seen as a new hope in encouraging the acceleration of bureaucratic reform (LAN RI, 2019: 1).

PPPK is expected to be a new solution for both non-permanent workers who have worked for the government before the ASN Law and to attract professionals to serve as ASN without worrying about the treatment gap with civil servants. Complementing the PPPK arrangement in the ASN Law, in the *Peraturan Pemerintah Nomor 49 Tahun 2018* concerning Management of Government Employees with Work Agreements (PP Management PPPK) which regulates management based on a merit system and is expected to be able to produce PPPK that can carry out public service tasks, government duties and certain development tasks. The concept of the PPPK arrangement in the two regulations offers equality in opportunity, the opportunity to work with apparatus with the status of civil servants, of course with some minor exceptions (Handini & Risdiarto, 2020, 503).

Nevertheless, the position of PPPK in the management of human resources of the Apparatus is not without problems. One example is when the government (the agency that employs the PPPK) terminates the employment agreement (PHPK) against the PPPK. Considering that the basis of the PPPK's work is a work agreement, it is very possible to have a dispute where the PPPK feels that the PHPK decision was not made as it should be, for example due to inappropriate termination reasons that can cause losses to the PPPK.

The ASN Law and the PPK Management PP have explicitly regulated the reasons for terminating the PPPK work agreement, but these arrangements still have loopholes and can potentially harm the PPPK. The gaps in the reasons include, firstly, the reason for violating discipline will be very burdensome for the PPPK considering that when the PPPK does not comply with its obligations or violates the prohibitions contained in the work agreement, it can immediately be subject to serious disciplinary violations that lead to PHPK. This arrangement is very different from that applied to civil servants, where violations of obligations and prohibitions are still divided into mild, moderate, severe categories which do not directly lead to dismissal for civil servants. Second, the reason for not meeting the performance target is not accompanied by an explanation of the parameters not meeting the target. This arrangement is also different from civil servants who apply grading for the percentage of not achieving performance targets (Handini & Risdiarto, 2020: 517).

Actually, it is not a problem if the status distinction has no consequences. The problem is that the difference in status has consequences for the difference in rights as well as the difference in the relationship system and work bond agreements. When the difference in status has such an impact, it can be said that this regulation actually shows the state is unable to carry out positive obligations. In accordance with this principle, the state has an active or positive obligation not only to create equality through procedures or guarantee non-discriminatory treatment. However, the state must also implement the basic values of socio-cultural economic rights in the field of work such as guaranteeing the independence of every worker for their rights in the field of work, which in this

case can be interpreted as the state's obligation not only to provide equal and non-discriminatory treatment to PNS and PPPK, but also provide security guarantees for the continuity of work for KDP (Tobroni, 2020: 225).

These various problems need to be anticipated, considering that the sustainability of the problem of PPPK that is disadvantaged due to PHPK can hinder the achievement of bureaucratic reform programs, especially related to efforts to realize a merit system in ASN management. A legal protection is needed for PPPK related to PHPK issues. Based on the description above, this paper seeks to answer how the form of legal protection for PPPK is in terms of PHPK decisions that are detrimental to PPPK.

B. METODE

The research method used is the normative juridical method, namely research conducted on legal principles, legal rules in terms of values (norms), concrete legal regulations and legal systems in relation to the material being studied. The problem approach used is a statutory approach, namely an approach through reviewing all laws and regulations related to the issues discussed and a conceptual approach, namely an approach through examining the views or concepts of experts related to the discussion.

C. RESULT AND DISCUSS

PPPK's Weak Position

The discussion of PHPK for PPPK becomes an interesting study because it is closely related to the aspect of legal certainty for the PPPK profession itself. The presence of PPPK does provide legal certainty for the profession of non-PNS government employees, which so far have an unclear legal basis. Before the ASN Law was issued, there was already the *Undang-Undang Nomor 8 Tahun 1974* jo. the *Undang-Undang Nomor 43 Tahun 1999* concerning the Basics of Employment which recognizes the existence of non-permanent employees, however, this provision does not regulate the rights, obligations, mechanisms of appointment and dismissal, causing confusion and various practices of using non-permanent employees by the government.

However, even after the issuance of the ASN Law, in the context of the working relationship between the PPPK and the government (the agency that employs the PPPK), there is still a problem. This is indeed a logical consequence of the contract status of the PPPK profession which is very limited and for a certain period of time. PPPK Management stipulates that the PPPK work agreement has a minimum duration of 1 year and can be extended thereafter. The extension is based on performance achievement, competency suitability, and agency needs after obtaining PPK approval. This of course can potentially cause losses for PPPK. In contrast to the provisions in the management of civil servants, which consistently regulates ratings for the percentage of not achieving performance targets, this is not the case for PPPK. PPPK that does not meet the performance target can directly be proposed for PHPK, while in PP the management of PPPK does not meet the performance target without an explanation of how the size of not meeting the performance target is.

On the one hand, PPPK Management implies that PPPK competency development is also related to aspects of performance appraisal. Meanwhile, on the other hand, there is not a single clause in the legislation related to ASN and its derivatives that explicitly talks about the form of competency development for PPPK. There is one general competency development provision in the ASN Law which states that competency development for ASN can be carried out, among others, through education and training, seminars, courses, and upgrading. Meanwhile, PPK Management does not mention what forms of competency development can be applied to PPPK (LAN RI, 2019: 6-7).

PPPK can still be said to be a profession that is vulnerable to being politicized. Personnel Development Officers (PPK) in the agency may prioritize the people closest to them to be recruited into PPPK. On the other hand, if there is a disagreement with the PPK/regional head, PHPK can be executed at any time with the reason for the termination as if there was a big mistake made by the PPPK. Moreover, as explained earlier that PHPK requirements can be carried out related to the non-fulfillment of performance targets and related to the organizational needs of a government institution. It is possible to remove the position in the following year without a clear reason or because it is no longer needed by a government agency.

Although PPPK can occupy functional positions and high leadership positions, the work agreement system that applies to PPPK actually causes them to be unequal and experience non-discriminatory conditions. The employment agreement system is contractual in nature and although it can be renewed, this does not guarantee that the PPPK can reach the highest position because the PPPK is highly dependent on whether or not their work agreement is extended. On the other hand, the productivity of PPPK does not make the agency burdened to have to extend the contract. The contract extension matters will be adjusted to the agency's circumstances, and may be constrained by problems such as organizational streamlining, employee proportionality and workload and other factors. Such a system of work agreements does not guarantee the security of continuing work for PPPK. In fact, this guarantee of security for sustainability is part of the right that is inseparable from the right to work, as well as the implementation of the right to work also depends on it (Tobroni, 2020: 235).

PPPK Legal Protection

The regulation of PHPK for PPPK in the ASN Law and PPK Management can be said to be much better than the previous regulation. However, there are still weaknesses for the PPPK position so that it is prone to abuse of authority and arbitrary actions carried out by the PPK, the agency providing the PPPK work to terminate the PPPK employment relationship, such as reasons for serious violations of PPPK discipline, not achieving performance targets, or agency needs. On this basis, PPPK requires legal protection, especially against PHPK problems.

We can equate the position of PPPK as a citizen so that there are several important reasons why this citizen (PPPK) needs legal protection, firstly, in various cases, citizens and civil legal entities depend on government decisions. Therefore, citizens and civil legal entities need to get legal protection, especially

to obtain legal certainty and security guarantees, which are life-determining factors for the lives of these citizens and the life of the business world. Second, the relationship between the government and citizens is not in an equal position, citizens are the weaker party than the government. Third, the various disputes between citizens and the government are related to decisions, as a government instrument that is one-sided in intervening in the lives of citizens (Ridwan, 2019: 75).

The dispute that arises between the PPPK and the government (the agency that employs the PPPK) as a result of the government's decision to issue a PHPK decision is part of the employment dispute. Basically, the cause of employment disputes is the existence of a State Administrative Decree (KTUN) issued by a government official (PPK) which is considered to be a loss for the employee (PPPK). With regard to personnel disputes (ASN employee disputes), Article 129 of the ASN Law provides that disputes over ASN employees are resolved through administrative efforts, namely administrative objections and appeals.

The ASN Law does not provide a clear definition of administrative measures. But theoretically, according to Ridwan, legal protection through administrative efforts is intended to provide legal protection for citizens who are harmed by the actions of state administration, as well as for the state administration itself in carrying out its duties and functions correctly in accordance with the law. Based on this information, it appears that in administrative efforts there is an element of internal control, namely supervision carried out by a body that is organizationally/structurally still included in the environment of the government itself (*toezicht door en tegen de overhead* -Dutch), a-posteriori because it is carried out after the issuance of a government decision, and its supervision covers legal aspects (*rechtmatigheid* -Dutch) and policy aspects (*doelmatigheid* -Dutch). On the other hand, in administrative efforts there is also a judicial element, namely the existence of an abstract legal rule that binds the general public, which can be applied to a problem, there is a concrete legal dispute, and there are at least two parties. However, the administrative effort is called impure administrative justice (*quasi rechtsspraak* or pseudo justice) because its judicial function (*rechterlijk* -Dutch) is not carried out by judges (*rechter* -Dutch) but by the government (*bestuur* -Dutch) and not only examines legal aspects (*rechtmatigheid* -Dutch) but also policy aspects (*doelmatigheid* -Dutch). Thus, administrative effort is a function and task of government oversight and at the same time part of the judicial function (*rechtpraak* -Dutch) which is not pure or quasi-judicial (Ridwan, 2019: 127-128).

Regarding PHPK for PPPK, based on the *Peraturan Pemerintah Nomor 79 Tahun 2021* concerning Administrative Efforts and the ASN Advisory Body which was just promulgated on August 10, 2021, the administrative effort carried out by PPPK is an "administrative appeal" to the PPK decision. This administrative appeal is submitted by the PPPK in writing to the ASN Advisory Board (BPASN) where the BPASN decision can strengthen, alleviate, aggravate, change or cancel the PPK decision. The BPASN decision is binding and must be implemented by all parties concerned. Then, if the PPPK is not satisfied with the

BPASN's decision, then the PPPK can file a legal action to the State Administrative High Court.

D. CONCLUSION

The regulation of PHPK for PPPK in the ASN and PP Laws The management of PPPK still has weaknesses for the PPPK position so that it is prone to abuse of authority and arbitrary actions by the government (the agency providing PPPK work) to terminate the PPPK employment relationship, such as reasons for serious violations of PPPK discipline, not achievement of performance targets, as well as agency needs. On this basis, PPPK requires legal protection. Legal remedies that can be taken by a PPPK who feels aggrieved as a result of the issuance of the PPK's decision on his PHPK can be carried out with an "administrative effort" mechanism, namely an administrative appeal submitted to BPASN. If the PPPK is still dissatisfied with the BPASN's decision, then the PPPK can file a legal action to the State Administrative High Court.

Considering that the provisions regarding administrative measures for ASN employee disputes were only promulgated on August 10, 2021, it is necessary to continue socialization to all ASN. Good socialization through scientific meetings such as seminars, workshops is very necessary for ASN so that they are able to understand and internalize the substances related to the rules relating to ASN management and PPK management in general and especially for PPPK who experience ASN employee disputes due to PHPK. For legislators, it is necessary to review the ASN Law and the PP on PPPK Management in particular to improve the PPPK bargaining position in working relations with the government (agencies that employ PPPK).

REFERENCES

- Handini, W. P. & Risdiarto, D. (2020). Problematika Perlindungan Hukum Pegawai Pemerintah Dengan Perjanjian Kerja Dalam Pemutusan Hubungan Kerja Oleh Pemerintah. *Jurnal Legislasi Indonesia*, 17(4), 501-518.
- Lembaga Administrasi Negara. (2019). *Model Pengembangan Kompetensi PPPK*. Jakarta: Pusat Inovasi Manajemen Pengembangan Kompetensi ASN Lembaga Administrasi Negara.
- Ridwan. (2019). *Urgensi Upaya Administratif di Indonesia*. Yogyakarta: FHUII Press.
- Tobroni, Faiq. (2020). Tinjauan HAM dalam Regulasi PPPK dengan Intertekstualitas Teks Hukum. *Jurnal HAM*, 11(2), 219-238.