

Authority to Appoint Non-Permanent Employees by Personnel Management Officers or Other Officials

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Abstract

This thesis examines and describes the dynamics of the existence of Non-Permanent Employees (PTT) after the enactment of the ASN Law and PP 49 of 2018. The nomenclature of Honorary Employees or Non-Permanent Employees (PTT) is no longer recognized in the ASN Law and PP 49 of 2018. This research aims to analyze the authority of Civil Service Development Officials in the Regions or other Officials in appointing Non-Permanent Employees (PTT) and analyzing the legal implications for the appointment of Non-Permanent Employees (PTT) after the promulgation of PP 49 of 2018. In this study using normative research types, namely normative legal research (legal research). The results of the research are: First, the ASN Law only recognizes a limited nomenclature of government employees, namely PNS and PPPK, then it is emphasized in PP 49 of 2018 which prohibits PPK or other officials from appointing non-PNS and/or non-PNS employees, from the aspect the authority of the PPK or other officials does not have authority in procuring PTT within the scope of the government agency under its auspices, previously PP 49 of 2018 procuring PTT could be carried out through the discretionary authority of each PPK. Second, the legal implications that can occur are, first, for PPK or other officials who still appoint PTT after the enactment of PP 49 of 2018 as a form of defiance of clear rules governing prohibitions and orders.

Keywords: Non-Permanent Employees, Civil Service Officials, State Civil Apparatus, Authority

INTRODUCTION

The enactment of Law No. 5/2014 on State Civil Apparatus, hereinafter referred to as the ASN Law, is part of structuring uniform personnel management through the establishment of clear norms, standards and procedures in the implementation of personnel management. Refinement of the implementing regulations as a whole within the framework of a unitary state is also needed to create uniformity in the implementation of norms, standards and procedures for personnel administration. With this uniformity, it is expected to create a uniform quality of state civil apparatus throughout Indonesia.¹

This change in the form of personnel regulations has also brought changes in the substance of the regulations, one of which is that Civil Servants (PNS) has changed into a profession and Civil Servants has changed into the State Civil Apparatus, the Law on professions for Civil Servants (PNS) and Government Employees with Work Agreements (PPPK).²

One of the major changes made by the government through the ASN Law is the change in the division of types of employees. The ASN Law divides the types of employees who work in government agencies into two, namely Civil Servants (PNS) and Government Employees with Work Agreements (PPPK) in Article 1 paragraph (1) and article 6. Normatively, everyone who works in government agencies as government apparatus/tools to carry out components of government policies or regulations in order to realise national goals.³ Government agencies according to the ASN Law are central agencies and regional agencies. Central agencies are ministries, non-ministerial government agencies, secretariats of state institutions, and secretariats of non-structural institutions, while regional agencies are provincial regional apparatus and district / city regional apparatus which include regional secretariats, secretariats of regional legislative councils, regional offices and regional technical institutions.⁴

That in the context of public services for the smooth running of government administration tasks, it is necessary to have human resources apparatus / ASN employees who are responsible for carrying out their duties as public service providers for the community, in the form of providing services for goods, services, and / or administrative services. ASN employees have an obligation to serve the community related to basic rights, such as access to education, health, and licensing, effectively and efficiently. Unfortunately, the level of public satisfaction as service users is still low. In addition to the large number of public complaints, the competence and professionalism of human resources as service providers are also still questionable.

Competency problems can be seen from the level of education level of the majority of ASN employees who are still low, according to Menpan RB from 4,475,997 ASN civil servants, 64% of them only work as administrative officers' administration. The problem of ASN performance can be seen from the output where there are still many public complaints about the slow pace of public services.⁵

The data above shows that the professionalism of the human resource apparatus in organizing services has not yet been realised. in providing services has not yet been realized. The public society is longing for good public services, which are oriented towards accountability. Responsibility (accountability) must be given to the people served. Who is served?

¹ Sri Hariningsih. 2009. *Ketentuan Peralihan dalam Peraturan Perundang-undangan*. Jurnal Legislasi Indonesia. Vol.6 No.4

² Miftah Thoha. 2014. *Manajemen Kepegawaian Sipil di Indonesia*. Edisi kedua. Yogyakarta: Kencana.

³ Sri Hartini & Tedi Sudrajat. *Op.Cit.*4

⁴ Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara Pasal 1 ayat (16) dan ayat (17)

⁵ Ajib Rakhmawanto, *Mengukur Indeks Profesionalitas ASN: Analisis Tujuan dan Kemanfaatan*, Jurnal Policy Brief Nomor: 006-April 2017 ISSN: 2541-4267.

The reality that occurs in many government agencies, the number of civil servants to carry out public services is felt to be insufficient (there are 4.7 million bureaucrats compared to the 270 million population served), so that the shortage is covered by the recruitment of non-civil servants and / or Non-PPK (honorary / contract employees), hereinafter referred to as Non-Permanent Employees (PTT). This happens because the procurement of civil servant candidates is not proportional to the number needed by government agencies. Therefore, the availability of human resources is also an important factor to fulfil the demands of the community for fast, precise and professional public services.

The ASN Law promulgated on 15 January 2014 requires the existence of Implementing Regulations, one of which already exists and is currently in effect is PP Number 49 of 2018, in Chapter XIII of PP Number 49 of 2018 it regulates the prohibition for PPK or Personnel Supervisory Officials and other officials within government agencies to fill ASN positions. Pasal 96 ayat (1) menyebutkan : “PPK dilarang mengangkat pegawai non-PNS dan/atau non-PPPK untuk mengisi jabatan ASN” .

Article 96 paragraph (2) states: "The prohibition as referred to in paragraph (1) shall also apply to other officials within government agencies who make appointments of non-civil servants and/or non-PPPK employees".

The definition of non-civil servants and/or non-PPPK employees according to the Elucidation of Government Regulation Number 49/2018 Article 96 paragraph (1) states that what is meant by non-civil servants and non-PPPK employees include employees currently known as honorary workers or other designations.

PPK and other officials who continue to appoint non-civil servants and/or non-PPPK employees to fill ASN positions are subject to sanctions in accordance with statutory provisions. Unfortunately, it is not further explained what sanctions will be received by PPK and other officials who continue to appoint non-civil servants and/or non-PPPK employees and what regulations apply to those who violate them.

Article 96 paragraph (3): "PPK and other officials who appoint non-PNS and/or non-PPPK employees to fill ASN positions are subject to sanctions in accordance with statutory provisions".

The definition of other officials within government agencies is contained in the Explanation of Government Regulation No. 49/2018 article 96 paragraph (3), which means that other officials within government agencies are officials other than PPK who are authorised to appoint non-civil servants and non-PPPK employees non PPPK.

In connection with the foregoing, the Government of Indonesia through the Ministry of State Apparatus Empowerment and Reform Bureaucracy (Kemenpan RB) is implementing Bureaucratic Reform, which is an effort to reform and fundamentally change the bureaucratic system. Is an effort to renew and fundamentally change the system of government administration, especially concerning aspects of institutional (organisational), management, and management. System of government administration, especially concerning aspects of institutional (organisational), management and human resources of the apparatus.

Human resource management of the apparatus will support the implementation of government bureaucracy in line with the demands of society, one of which is by issuing PP 49/2018 a quo, which is related to the existence of honorary employees in many government agencies which are still needed to support the smooth running of government administration. However, the addition of human resources from non-permanent employees (PTT) is not without problems, given the large number of honorary employees which will certainly have implications for the burden of expenses, in addition to their demands, especially honorary employees who have served for a long time to be appointed as civil servants. From the data of

the Ministry of Administrative Reform and Bureaucratic Reform, the number of honorary staff until June 2021 totalled 410,010 people.⁶

The presence of Non-Permanent Employees (PTT) is in addition to the "policy" of the Regional Head by appointing honorary staff in local government agencies. However, after the enactment of Law Number 5 of 2014 concerning State Civil Apparatus which stipulates that the State Civil Apparatus, hereinafter ASN, is a profession for Civil Servants (PNS) and Government Employees with Work Agreements (PPPK).⁷ Through this Law, the House of Representatives and the Government agree in the future to ensure that there are no more employee statuses working in government agencies other than PNS and PPPK. Related to this, the Regional Head as the Personnel Supervisory Officer and other Officials within government agencies in the regions are prohibited from appointing Non-Civil Servant and/or Non PPPK employees. Through PP 49/2018 on Management of Government Employees with Work Agreements, the Government hopes that there will be no more appointment of new honorary workers. However, this contradicts the facts on the ground, the Regional Head as PPK, as well as the Head of SKPD still appoints Non-Permanent Employees (PTT) which is allegedly contrary to Article 96 of PP 49/2018.

RESEARCH METHODS

The type of research conducted in this thesis research is normative legal research (legal research), which is carried out by examining library data, namely legal principles, legal systematics, the level of legal synchronisation, and legal comparisons relating to the authority in the appointment of Non-Permanent Employees (PTT) in Local Government agencies. Normative legal research is research that examines legal issues from the point of view of legal science in depth on the norms formed by the law.⁸

The typology of this research is prescriptive, namely by describing how the appointment of non-permanent employees (PTT) in local government agencies should be and how the design should be related to the format of the appointment of non-permanent employees (PTT) in local government agencies. Relating to the format of appointment of Non-Permanent Employees (PTT) in Local Government agencies. Prescribing what should be is the essence of legal research, because that is what the research is for.⁹

In this legal research, the author takes several approaches in order to obtain information from various aspects regarding the issues to be solved in this research. Some of these approaches are:

- a. Statute Approach, which is an approach carried out by examining all laws and regulations related to the legal issues being addressed.¹⁰
- b. Conceptual approach, which is an approach that departs from the views and doctrines that develop in legal science that give birth to legal notions, legal concepts and legal principles that are relevant to the issues at hand.¹¹

⁶ <https://www.cnbcindonesia.com/news/20220126115659-4-310555/honoror-jangan-sedih-ada-peluang-jadi-pns-begini>

caranya#:~:text=Dari%20catatan%20Kemenpan%20DRB%20hingga,yang%20bekerja%20di%20instansi%20pemerintah. Diakses tanggal 15 September 2022

⁷ UU No. 5 Tahun 2014 tentang Aparatur Sipil Negara

⁸ Hadin Muhjad dan Nunuk Nuswardani. *Penelitian Hukum Indonesia Kontemporer*. 2012. Yogyakarta: Genta Publishing. hlm. 9

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta : Pranamedia Group, 2014), hlm.251

¹⁰ *Ibid.* hlm. 133

¹¹ *Ibid.* hlm. 95

This research is prescriptive in nature, namely a study that aims to explain and analyse further the position and concept of appointment of Non-Permanent Employees (PTT) in Local Government agencies.

The source materials used in this research include primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials are classified as follows :

a. Primary Legal Materials

Primary legal materials in this study use laws and regulations related to this research, which consist of:

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) Law Number 12 Year 2011 on the Formation of Legislation;
- 3) Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation;
- 4) Law Number 5 of 2014 concerning State Civil Apparatus;
- 5) Law Number 23 of 2014 concerning Regional Government;
- 6) Law Number 30 of 2014 concerning Government Administration;
- 7) Government Regulation Number 49 of 2018 concerning Management of Government Employees with Work Agreements.

b. Secondary Legal Materials

Secondary legal materials used in this research consist of books related to the principle of authority, good governance, other literature such as journals, papers, articles, or other materials that support the research process of this thesis.

c. Tertiary Legal Materials

It is a material that provides guidance or explanation of primary and secondary legal materials, such as Legal Dictionaries, Encyclopedias, Big Indonesian Dictionaries, and others.

To obtain the necessary legal materials, legal materials were collected using library research with the following procedures:

- a. To obtain primary legal materials, an inventory of laws and regulations that have relevance to the issues discussed is carried out;
- b. To obtain secondary legal materials, an inventory of the literature is carried out and then qualification is carried out, which is not related to the problem discussed.
- c. To obtain tertiary materials, an inventory of dictionaries that provide clues and explanations to the problems discussed is carried out.

RESULT AND DISCUSSION

Authority of Regional Personnel Development Officers or Other Officials in Appointing Non-Permanent Employees (Ptt) After the Promulgation of PP 49 of 2018

Government administration as a procedure in making decisions and/or actions by government agencies/officials is needed in the implementation of government functions, in the form of regulatory, service, development, empowerment, and protection functions. This can be done if supported by a reliable bureaucracy, in the form of human resources (HR) of the State Civil Apparatus (ASN) with integrity and responsibility in carrying out these government functions. The realisation of the availability of human resources is an important factor in fulfilling the demands of the community for fast and professional public services so that the wheels of government can run optimally according to the demands and expectations of the community. The availability of Civil Servants (PNS) as human resources of the Apparatus is still lacking, with this condition in the midst before the issuance of PP 49/2018 made government officials who had the authority to exercise discretionary authority use this authority to meet the shortage through the recruitment of Non-Permanent Employees (PTT). This is possible because the procurement of civil servant candidates is not proportional to the number

needed by government agencies. Therefore, it cannot be denied that the existence of non-permanent employees (PTT) has an important contribution to fill the shortage of civil servants in the delivery of public services. For this reason, regulations are needed in the arrangement of existing non-permanent employees (PTT) which are very large.

The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) states that: "The State of Indonesia is a state of law." As a state of law, every administration of government affairs must be based on applicable law. State power and the exercise of that power in all its forms are carried out under the rule of law. In a state of law, the law is placed as the rule of the game in the administration of state, government and society, while the purpose of the law itself, among others "opgelegd om de samenleving vreedzaam, rechtvaardig, en doelmatig te ordenen".

This means that the goal of the rule of law is the creation of state, government, and community activities that are based on justice, peace, and usefulness, or meaningfulness. In the rule of law, the existence of law is used as an instrument in organising the life of state, government and society.¹²

Law Number 5 Year 2014 on State Civil Apparatus (hereinafter referred to as the ASN Law) promulgated on 15 January 2014 mandates the existence of implementing regulations, namely 19 Draft Government Regulations, 4 Presidential Regulations and 1 Permenpan and RB. One of the Implementing Regulations that has existed and is currently in effect is Government Regulation of the Republic of Indonesia number 49 of 2018 concerning Management of Government Employees with Work Agreements (PPPK) promulgated on 28 November 2018 does not contain the term honorary personnel or Non-Permanent Employees (PTT) hereinafter referred to as PP 49 of 2018.

The term Tenaga Honorer appeared after 4 (four) years of the enactment of the ASN Law, namely in the Implementation Regulation or its derivative, namely Government Regulation of the Republic of Indonesia number 49 of 2018 concerning Management of Government Employees with Work Agreements (PPPK). Chapter XIII Prohibition states that PPK or Personnel Supervisory Officials and other officials within government agencies who have the authority to appoint non-PNS and/or non-PPPK employees are prohibited from appointing non-PNS and/or non-PPPK employees to fill ASN positions.

Article 96 paragraph (1) 14: "PPK is prohibited from appointing non-civil servants and/or non-PPPK to fill ASN positions" Article 96 paragraph (2) 15: "The prohibition as referred to in paragraph (1) also applies to other officials within government agencies who make appointments of non-civil servants and/or non-PPPK employees".

According to the Elucidation of PP 49/2018 article 96 paragraph (1), what is meant by non-civil servants and/or non-PPPK employees include employees currently known as honorary workers or non-permanent employees (PTT).

PPK and other officials who continue to appoint non-civil servants and/or non-PPPK employees to fill ASN positions are subject to sanctions in accordance with statutory provisions. Unfortunately, it is not further explained what sanctions will be received by PPK and other officials who continue to appoint non-civil servants and/or non-PPPK employees and what regulations apply to those who violate them.

Article 96 paragraph (3): "PPK and other officials who appoint non-PNS and/or non-PPPK employees to fill ASN positions are subject to sanctions in accordance with statutory provisions".

The definition of other officials within government agencies is contained in the Explanation of Government Regulation of the Republic of Indonesia Number 49 of 2018 concerning Management of Government Employees with Work Agreements article 96

¹² Ridwan H.R. (2014). *Hukum Administrasi Negara*. Jakarta: Raja Grafindo Persada

paragraph (3) which means that other officials within government agencies are officials other than PPK who are authorised to appoint non-PNS and Non-PPPK employees.

Article 99 paragraph (1) of the ASN Law reads: "When this government regulation comes into force, non-civil servants serving in government agencies including employees serving in non-structural institutions, government agencies that apply the financial management pattern of public service agencies/regional public service agencies, public broadcasting institutions, and new state universities based on Government Regulation Number 10 of 2016 concerning lecturers and education personnel at new state universities before the promulgation of this Government Regulation, shall continue to carry out their duties for a maximum of 5 (five) years".

Article 99 paragraph (2) states that¹⁸: "Non-civil servants within a maximum period of 5 (five) years as referred to in paragraph (1) may be appointed as PPPK if they fulfil the requirements as stipulated in this Government Regulation."

These two articles are contained in Chapter XIV Transitional Provisions. According to the Annex to Law Number 12/2011 on the Formation of Legislation, point 127 states that transitional provisions contain adjustments to the regulation of legal actions or legal relationships that already exist based on the old laws and regulations to the new laws and regulations, which aim to :

- 1) avoiding legal vacuum;
- 2) guarantee legal certainty;
- 3) provide legal protection for parties affected by changes in the provisions of laws and regulations, and
- 4) regulate matters that are transitional or temporary.

In addition, there are also honorary or non-permanent employees (PTT) whose job is to assist civil servants in carrying out their duties. The difference between outsourced employees and honorary or non-permanent employees (PTT) lies in the person in charge. Outsourced employees are not handled directly by the bureaucracy because they are provided by labour service providers, while honorary or non-permanent employees (PTT) are handled directly by the bureaucracy/government from recruitment, payroll to dismissal.¹³

In the life of a state, the government is an organ (institution) that organises the implementation of the State and becomes a tool of the people / society in achieving the ideal goals as aspired to in the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia, namely protecting the entire Indonesian nation and all Indonesian blood spills, advancing public welfare, educating the nation's life and participating in implementing world order based on independence, eternal peace and social justice. To be able to carry out the function of achieving the ideal goals aspired to by the community in a country, the government bureaucracy has at least 3 (three) main tasks, namely:¹⁴

- 1) Providing routine public services to the community, such as licensing, document production, protection, maintenance of public facilities, maintenance of health, and provision of security for the population.
- 2) Empowering the community to achieve progress in a better life, such as providing guidance, mentoring, consultation, providing capital and business facilities, and conducting education.
- 3) Organising development in the community, such as building infrastructure for transport, telecommunications, trade and so on.

¹³ Rike Anggun Artisa, 2015. Pegawai Pemerintah dengan Perjanjian Kerja (PPPK), Jurnal Pembangunan dan Kebijakan Publik, 6(1), hal. 33

¹⁴ Budi Setiono, Jaring Birokrasi Tinjauan dari Aspek Politik dan Administrasi, (Bekasi: Gugus Press, 2002), hlm. 72-73

This step is also followed by making changes to the employment arrangements in Law Number 8 of 1974 concerning Civil Service Principles as amended by Law Number 43 of 1999 which are no longer considered in accordance with the spirit of the development of the life of the nation, state and government at this time and in the future. The demand for a need that cannot be postponed anymore to organise the human resources of the state apparatus that is professional, politically neutral, has capacity and productivity, and has high integrity has led to the birth of Law Number 5 of 2014 concerning State Civil Apparatus.

Based on the data, the number of civil servants as of June 2020 was 4,121,176 people, spread across 3,174,570 regional agencies (77%) and 946,606 people (23%) in central agencies. This number has decreased by 1.62% when compared to the number of civil servants in December 2019, which was 4,189,121 people. This decline has occurred since 2016 because the government set a moratorium in 2015 and 2016. Of the 4,121,176 people, as many as 147,524 employees will retire in 2020. The number of civil servants who have decreased shows the reality that occurs in many government agencies, that the number of civil servants to carry out public services is still insufficient because there are only 4.2 million bureaucrats available compared to the 270 million population served.

The ASN Law has a paradigm that the State apparatus is a profession. The State apparatus, which originally consisted of civil servants and non-permanent employees under the old law, was categorised into civil servants and Government Employees with Work Agreements (PPPK) by the ASN Law. Civil servants are Indonesian citizens who meet certain requirements, appointed as ASN employees permanently by the civil service officials to occupy government positions.¹⁵ Meanwhile, 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. The existence of this PPPK arrangement replaces the arrangement regarding non-permanent employees.¹⁶

PPPK is predicted to be a new solution both for non-permanent personnel who have worked for the government before this law and to attract professionals to serve as ASN without worrying about the gap in treatment with civil servants. Complementing the PPPK regulation in the law, in 2018 PP 49/2018 was issued concerning Management of Government Employees with Work Agreements which regulates merit-based management and is expected to produce PPPKs that can carry out public service tasks, government tasks and certain development tasks.

PP No. 49/2018 is considered not to provide legal certainty regarding the working period of PPPK. The PP only regulates the minimum limit of the work agreement period, which is 1 (one) year, thus it is possible for a PPPK to become a contract employee for life as long as the contract concerned continues to be extended because his energy is needed. On the other hand, if they disagree with the regional head, they can be dismissed at any time with the reason made as if it is a fatal mistake.¹⁷

In particular, for teachers with honorary K2 status, this PP is considered tricky. The minimum work agreement period of 1 (one) year makes Honorer K2's position very weak. This is also supported by the terms of termination of employment related to the fulfilment of targets and the needs of the institution.

Institution. It is possible that in the following years his position will be dropped without clear reasons or because the agency is no longer needed. PPPK is like an outsourced worker who can be fired at any time.¹⁸

¹⁵ Indonesia, UU Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara, LN Tahun 2014 Nomor 6 , TLN Nomor 5494. Lihat Pasal 1 angka 3

¹⁶ *Ibid*, Lihat Pasal 1 angka 4.

¹⁷ *Ibid*

¹⁸ <https://nasional.kompas.com/read/2018/12/10/08173131/pp-p3k-dinilai-jebak-tenaga-honorer>

Legal Implications Regarding The Appointment Of Non-Permanent Employees (Ptt) After The Provision Of Pp 49 Of 2018

The ASN Law is the basis for civil service arrangements in Indonesia. The law revokes and declares invalid Law No. 8/1974 on Civil Service Principles as amended by Law No. 43/1999. The two laws have fundamental differences in terms of arrangements regarding the types of employees and other provisions.

Article 1 point 1 of the ASN Law states that ASN is a profession for civil servants and PPPK who work in government agencies. Based on this, the types of ASN employees consist of civil servants and PPPK. The difference between civil servants and PPPK is that civil servants are ASN employees who are appointed permanently, while PPPK are ASN employees who are appointed based on a work agreement for a certain period of time. Both have a position as an element of the state apparatus that carries out government duties.

This is different from the types of employees regulated in Law Number 43 Year 1999. Article 2 paragraph (3) states that in addition to civil servants, authorised officials may appoint non-permanent employees (PTT), who are appointed for a certain period of time to carry out government and development tasks of a professional technical and administrative nature in accordance with the needs and capabilities of the organisation. Non-permanent employees (PTT) do not have the status of public servants. This provision is the basis for the appointment of Non-Permanent Employees (PTT) to be employed in government agencies by government officials using discretionary authority with the intention that urgent employee needs can be met. This is done so that government functions can run, because if you rely on the availability of civil servants, the implementation of government functions will experience obstacles. Therefore, the policy of appointing non-permanent employees (PTT) depends on the discretion of government officials. Discretion in governance should be situational or according to the right circumstances. Discretion is a power that contains a very special sense, which is an exception to the normal situation where the demands regarding the actions that must be taken by the government are covered by the provisions of the legislation. In a normal situation, the type of power that applies to the government is the power or authority bound by the law.¹⁹

Non-permanent employees (PTT) are widely used and spread across government agencies both at the central and local levels. They have worked for many years based on contracts that are renewed annually, and their workload is relatively the same or even more than that of civil servants, but their income is different. Currently, there are 438,590 honorary workers. Of these, 157,210 or 35.84% are teachers. Honorary staff working in government agencies consist of several types, namely: category 1 (K1) honorary staff, category 2 (K2) honorary staff, and non-category honorary staff.

The issue surrounding the settlement of non-permanent employees (PTT) is problematic. Since 2014 until now, of the 438,590 Non-Permanent Employees (PTT) entered in the database of the State Personnel Agency (BKN), only about 59,000 people have been resolved. In detail, around 8,000 people were appointed as civil servants through tests and 51,000 people passed the PPPK (Government Employees with Employment Agreements) selection.²⁰

Article 4 of Presidential Regulation No. 38/2020 states the criteria for JF that can be filled by PPPK, namely as follows:

- a. Positions whose competence is not available or limited among civil servants;
- b. Positions that are needed to accelerate organisational capacity building;
- c. Positions that are needed to accelerate the achievement of national strategic goals;
- d. Positions that require technical certification from professional organisations;

¹⁹ Darumurti, K. (2016). *Diskresi Kajian Teori Hukum*. Yogyakarta: Genta Publishing.

²⁰ Jambiexpres. (2020). Penjelasan Kepala BKN soal Honorer K2 dan Nonkategori, Lengkap! *Jambiexpres*. Jambi.

- e. not Positions in the fields of state secrets, defence, security, management of the state apparatus, state secretariat, natural resource management, state financial management, and foreign relations; and
- f. not positions that according to the provisions of the Law, Government Regulations, and Presidential Regulations must be filled by civil servants.

The appendix of Presidential Regulation Number 38 of 2020 states that there are 147 types of functional positions that can be filled by PPPK. This provision was followed up by the issuance of Minister of PAN and RB Regulation (PerMenPAN RB) Number 72 of 2020 which amended PerMen PAN RB Number 2 of 2019 concerning PPPK Procurement for Teachers, Lecturers, Health Workers and Agricultural Extension Workers. Thus, for the filling of JF PPPK, while only 4 types of JF out of 147 types of JF that can be filled by PPPK have been followed up through regulations.

The significant impact of the enactment of PP Number 49 Year 2018 can be seen that since 28 November 2018 the Personnel Supervisory Officer (PPK) or other officials other than PPK are prohibited from appointing non-PNS and/or non-PPPK employees to fill ASN positions. The prohibition also applies to appointments in order to replace non-PNS and/or non-PPPK employees who quit/dismissed.

Provisions on the prohibition of the appointment of honorary employees have actually also been contained in Government Regulation No. 48 of 2005 which states that since the enactment of Government Regulation No. 48 of 2005, all Personnel Supervisory Officers and other officials within the agency are prohibited from appointing honorary employees or the like, unless stipulated by Government Regulation. The prohibition of the appointment of Non-Permanent Employees (PTT)/Non-Civil Servants or honorary staff or similar personnel has consequences for central and regional organisational units not to appoint Non-Permanent Employees (PTT).

One of the factors is the unclear and/or incomplete applicable legal rules that form the basis for every action and/or decision that must be taken by Government Officials in supporting the success of development programmes. In this condition, Law Number 30 of 2014 concerning Government Administration (Government Administration Law) as amended by Law Number 11 of 2020 concerning Job Creation provides a way out for Government Officials to continue to be able to issue decisions and/or actions in order to support the smooth implementation of Government programmes as long as they provide public benefits and are in accordance with the General Principles of Good Government (AUPB), namely issuing discretion.

Legal protection of government legal actions against Non-Permanent Employees (PTT) is seen from 2 (two) aspects, namely preventive legal protection and repressive legal protection. Philipus M. Hadjon argues that legal protection is divided into 2 (two) types, namely preventive legal protection and repressive protection. In preventive protection, people are given the opportunity to submit objections (*inspraak*) or opinions before a government decision gets a definitive form. This means that preventive legal protection prevents disputes from occurring, while repressive protection aims to resolve disputes. Preventive legal protection is particularly important against government actions that are based on the basis of.²¹

1) Preventive Legal Protection

Preventive Legal Protection Preventive legal protection is carried out to ensure that the provisions of laws and regulations and decisions made by the government do not conflict with the regulations above them. The provisions and implementation of these provisions do not violate the basic rights of the people. In discussing preventive protection for Non-Permanent

²¹ Philipus M. Hadjon, dkk. 2008. *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administratif Law)* Yogyakarta: Gajah mada University Press.

Employees (PTT), the constitutional foundation on which every citizen is based to work and receive fair and appropriate remuneration and treatment is contained in Article 28D paragraph (2) "Everyone has the right to work and receive fair and appropriate remuneration and treatment in labour relations". This article clearly and unequivocally mandates that all people have the right to work, receive fair and decent remuneration and treatment in the employment relationship. This article forms the basis of a person's constitutional right to work and to be rewarded for their work and to be treated fairly and properly (non-discriminatory) when carrying out their work. . Article 21 states that civil servants have the right to obtain:

- a. salary, allowances and facilities;
- b. leave
- c. pension and old age security
- d. protection and
- e. competence development.

2) Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Court and Administrative Court in Indonesia falls into this category of legal protection. The principle of legal protection against government action rests on and stems from the concept of recognition and protection of human rights, the birth of concepts of recognition and protection of human rights is directed at limiting restrictions and laying obligations on society and government.

Justice is shaped by right thinking, being done fairly and honestly and taking responsibility for one's actions. A sense of justice and law must be upheld based on Positive Law to uphold justice in law in accordance with the realities of a society that wants to achieve a safe and peaceful society. Justice must be built in accordance with the ideals of law (*Rechtidee*) in a state of law (*Rechtsstaat*), not a state of power (*Machtsstaat*). Law functions as the protection of human interests, law enforcement must pay attention to 4 elements:

- a) Legal certainty;
- b) Legal benefits;
- c) Legal justice;
- d) Legal guarantee.²²

CONCLUSION

The availability of human resources is an important factor in fulfilling the public's demand for fast, precise and professional public services. This is important in facilitating the implementation of government administration, but because the number of human resources for civil servants is still insufficient, Government Officials use discretion by recruiting Non-Permanent Employees (PTT). However, based on Government Regulation No. 49/2018 on PPPK Management, Government Officials can no longer use discretion in recruiting Non-Permanent Employees (PTT). With the enactment of PP Number 49 of 2018 concerning PPPK Management in Article 96, since 28 November 2018 the Personnel Supervisory Officer (PPK) is prohibited from appointing non-PNS and/or non-PPK employees to fill ASN positions.

The Government Administration Law regulates the conditions for the emergence of discretion, one of which is the unclear and/or incomplete applicable legal rules that form the basis for every action and/or decision that must be taken by Government Officials in supporting the success of development programmes. However, the prohibition on the appointment of Non-Permanent Employees (PTT) to fill ASN positions has been expressly regulated in the provisions of Article 96 paragraph (1) of PP 49 of 2018 which prohibits PPK or Personnel

²² Ishaq. *Dasar-dasar Ilmu Hukum*. (Jakarta. Sinar Grafika. 2009), hal. 43

Supervisory Officials and other officials within government agencies from filling ASN positions.

REFERENCES

Legislation:

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
 Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara
 Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan
 Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja
 Peraturan Pemerintah Nomor 49 Tahun 2018 tentang Manajemen Pegawai Pemerintah Dengan Perjanjian Kerja.

Book:

Abdul Khakim. 2003. *Pengantar Hukum Ketenagakerjaan Indonesia, Berdasarkan Undang-Undang Nomor 13 Tahun 2003*. PT. Citra Aditya Bakti.
 Budi Setiono, 2002. *Jaring Birokrasi Tinjauan dari Aspek Politik dan Administrasi*, Gugus Press, Bekasi.
 Darumurti, K. 2016. *Diskresi Kajian Teori Hukum*. Yogyakarta: Genta Publishing.
 Hadin Muhjad dan Nunuk Nuswardani. 2012. *Penelitian Hukum Indonesia Kontemporer*. Yogyakarta: Genta Publishing.
 Ishaq. 2009. *Dasar-dasar Ilmu Hukum*. Jakarta. Sinar Grafika.
 Miftah Thoha. 2014. *Manajemen Kepegawaian Sipil di Indonesia*. Edisi kedua. Yogyakarta. Kencana.
 Philipus M. Hadjon, dkk. 2008. *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative Law)* Yogyakarta: Gajah mada University Press.
 Ridwan H.R. (2014). *Hukum Administrasi Negara*. Jakarta: Raja Grafindo Persada.
 Rike Anggun Artisa, 2015. Pegawai Pemerintah dengan Perjanjian Kerja (PPPK), Jurnal Pembangunan dan Kebijakan Publik.
 Soerjono Soekanto, 1974. *Beberapa Masalah Hukum Dalam Kerangka Pembangunan Indonesia*, UI Pers, Jakarta.
 Soerjono Soekanto, 1995. Lihat pula Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Raja Grafindo Persada, Jakarta. dan Bahder Johan, *Metode Penelitian*.
 Peter Mahmud Marzuki, 2014. *Penelitian Hukum*, Jakarta: Pranamedia Group.
 Sri Hartini, et al, 2014, *Hukum Kepegawaian di Indonesia*, Jakarta: Sinar Grafika,

Journal Article:

Ajib Rakhmawanto, *Mengukur Indeks Profesionalitas ASN: Analisis Tujuan dan Kemanfaatan*, Jurnal Policy Brief Nomor: 006-April 2017 ISSN: 2541-4267.
 Henny Juliani, 2021. Imbas Peraturan Pemerintah Nomor 49 Tahun 2018 dalam Penataan Pegawai di Instansi Pemerintah, Fakultas Hukum Universitas Diponegoro, 2021
 Sri Hariningsih. 2009. *Ketentuan Peralihan dalam Peraturan Perundang-undangan*. Jurnal Legislasi Indonesia. Vol.6 No.4

Internet:

Cnbcindonesia. <https://www.cnbcindonesia.com/news/20220126115659-4-310555/honor-jangan-sedih-ada-peluang-jadi-pns-begini-caranya#:~:text=Dari%20catatan%20Kemenpan%20DRB%20hingga,yang%20bekerja%20di%20instansi%20pemerintah.> Diakses tanggal 15 September 2022
 Merdeka.com Faqir, A. Al. 2020. Pemerintah Catat Saat ini Ada 438.590 Pegawai Honorer, 35 Persennya Guru. *Merdeka.Com*. Diakses pada tanggal 03 Desember 2022.

Jambiekspres. (2020). Penjelasan Kepala BKN soal Honorer K2 dan Nonkategori, Lengkap!

Jambiekspres. Jambi. Diakses pada tanggal 03 Desember 2022.

<https://nasional.kompas.com/read/2018/12/10/08173131/pp-p3k-dinilai-jebak-tenaga-honorer>. Diakses pada tanggal 03 Desember 2022.