

## Legal Protection for Government Employees with Work Agreements (PPPK) from a Human Rights Perspective in Indonesia

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**Abstract:** ASN Law changes the categorization of the State Apparatus into Civil Servants (PNS) and Government Employees with Work Agreements (PPPK). If we associate with the form of appointment of PPPK is a work agreement for a certain period of time, then the PPPK position is implicitly a government employee who has legal force in the employment agreement. The employment agreement for PPPK is a binding legal relationship between Non-PNS government employees and the government agencies that employ it. The entry of Government Employees with Work Agreements (PPPK) as part of ASN is expected to be an accelerator in efforts to realize ASN professionalism. Some treatments to PPPK in ASN Law are not in accordance with human rights, namely principles of equality, non-discrimination, interrelation, interdependence and state responsibility. The regulation on PPPK shows the country's setback in formulating indicators for fulfillment of the right to work

**Keywords:** The Legal Position, Legal Reform of Human Rights, PPPK

## INTRODUCTION

Pancasila as the Basis of the State of the Republic of Indonesia is the ideal foundation in drafting legislation in Indonesia. Legislation is the legal basis for achieving and realizing Indonesia's national ideals and goals. This goal is stated in the Preamble to the 1945 Constitution of the Republic of Indonesia paragraph IV, namely Protecting the entire nation and all Indonesian bloodshed, Promoting public welfare, Educating the life of the nation, Participating in implementing a world order based on independence, lasting peace and social justice.

In order to achieve Indonesia's national goals, a law and regulations are needed that regulate the state civil apparatus. "Laws and regulations are every written decision made, determined and issued by

authorized state institutions and/or officials, is a state regulation both at the central and regional levels.”<sup>1</sup> Based on the above juridical facts, according to Helmi, “the State has a strong foundation so that it is able to regulate and organize its government mechanism”.<sup>2</sup>

Employment law is a written law that accommodates employees in carrying out their duties, including in understanding the history of employment law and the constellation of employment law in the legal system in Indonesia. “In a broader context, the state has a national goal to be achieved , namely to create a just and prosperous society that is equitable and balanced materially and spiritually in the field of state apparatus.”<sup>3</sup>

The first personnel regulation has existed since Indonesia's independence. Originally regulated in Law No. 8 of 1974 concerning Personnel Matters promulgated in Statute Book of 1974 No. 55. “Law No. 18 of 1961 and several other laws and regulations related to it were declared invalid, after the promulgation of Law No. 8 of 1974”.<sup>4</sup> This law is expected to be a strong foundation for the improvement of the development of

Civil Servants which can be used as a legal basis, the hope includes:

- 1.Improving and simplifying laws and regulations in the field of personnel,
- 2.Carrying out the development of Civil Servants on the basis of the career system and the work performance system,
- 3.Allowing the determination of the same policy for all Civil Servants, both central and regional Civil Servants, Enabling efforts to cultivate the spirit of the corps and fostering the integrity and cohesiveness of all Civil Servants.
- 4.Enabling efforts to fertilize the spirit of the corps and fostering the integrity and cohesiveness of all Civil Servants.<sup>5</sup>

Finally, in 1999, the Law was felt to be incompatible with the current developments regarding personnel. The Law underwent changes with the promulgation of Law Number 43 of 1999 concerning Personnel Principles. The basis for the promulgation of Law Number 43 of 1999 concerning Personnel Principles, was the 1945 Constitution before the amendment. After amendments to the 1945 Constitution and the development of the Indonesian nation in the midst of the development of nations in the world, the existing Civil Service Law can no longer be applied in a government system that is improving itself towards good governance.

<sup>1</sup> Sukamto Satoto, *Pengaturan Eksistensi & Fungsi Badan Kepegawaian Negara*, HK Offset, Yogyakarta, 2004, hlm. 3.

<sup>2</sup> Helmi, *Hukum Perizinan Lingkungan Hidup*, Sinar Grafika, Cet. 2, Jakarta, 2013, hlm. 17.

<sup>3</sup> Seperti Yang Diungkapkan Oleh Aristoteles Dalam Buku *Politica* Bahwa Negara Merupakan Suatu Persekutuan Yang Mempunyai Tujuan Tertentu, Dimana Negara Hanya Dapat Mencapai Kebahagian Yang Sempurna di Dalam Karena Adanya Persekutuan Tersebut. Lihat Soehino, *Ilmu Negara*, Yogyakarta, Liberty, 2000, hlm. 24.

<sup>4</sup> *Ibid.*, hlm. 5.

<sup>5</sup> Soedibyo Triatmodjo, *Hukum Kepegawaian (Mengenai Kedudukan Hak dan Kewajiban Pegawai Negeri Sipil)*, Ghalia Indonesia, Jakarta, 1983, hlm. 18.

The implementation of *good governance* can be used as part of efforts to implement democratic principles that reflect the upholding of aspects of the fulfillment of people's rights by the rulers, the upholding of the values of justice and social solidarity, and the enforcement of Human Rights (HAM) in various aspects of State life, for example by upholding the principle of *rule of law* or the rule of law in various aspects of State life. "*The principle of fair play* which is one of the general principles of good governance".<sup>6</sup>

In order to realize good governance, bureaucratic reform is needed, especially in the field of personnel. The realization of bureaucratic reform requires a state civil apparatus law, namely the State Law of the Republic of Indonesia Number 20 of 2023 concerning the State Civil Apparatus (ASN Law) as a replacement for Law Number 5 of 2014.

This law has the ideals and objectives of realizing civil servants who have integrity, professionalism, neutrality and are free from political intervention, clean from corruption, collusion and nepotism, and are able to provide public services for the community and are able to carry out their role as an adhesive element of national unity and unity based on Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>7</sup>

The long journey of the bureaucracy which is full of obstacles with various weaknesses is actually a bureaucratic challenge so that the discourse regarding the way out is one of the goals of bureaucratic reform in Indonesia. It is undeniable that the negative image and poor performance of the bureaucracy greatly affect various aspects of development and make public trust in the bureaucracy low. "At this point, improvements and improvements in efforts to reform the bureaucracy become strategic steps that must be taken by the Government as the highest authority holder as a form of responsibility to restore the loss of public trust (*distrust*)".<sup>8</sup>

Law Number 20 of 2023 replaces Law Number 5 of 2014 concerning the State Civil Apparatus in Article 1 number 1 states "State Civil Apparatus, hereinafter abbreviated as ASN, is a profession for civil servants and government employees with employment agreements working for government agencies". Furthermore, Article 1 number 2 states that "ASN employees are civil servants and PPPK who are appointed by personnel supervisory officials and assigned tasks in a government position or assigned other state duties and salaries based on laws and regulations".

The interesting thing in the ASN Law is the existence of PPPK. Before knowing PPPK, Indonesia was familiar with the term non-permanent employees in the bureaucracy, for example *outsourced employees*

<sup>6</sup> *Fair Wage*, Diartikan Sebagai Upah Yang Layak Sering Ditemui Dalam Istilah Hukum Ketenagakerjaan. Hal Yang Sama Dikemukakan Dalam Konsep Keadilan Aristoteles Yang Disebutnya Dengan "Fairness in Human Action" Yang Diartikan Bahwa Keadilan Adalah Kelayakan Dalam Tindakan Manusia. Lihat Bahder Johan Nasution, *Negara Hukum dan HAM*, Cet. 5, CV. Mandar Maju, Bandung, 2018, hlm. 98.

<sup>7</sup> Republik Indonesia, *Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara*, Menimbang, hlm. 1.

<sup>8</sup> Rike Anggun Artisa, *Pegawai Pemerintah dengan Perjanjian Kerja (PPPK): Review Terhadap Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara*, Jurnal Pembangunan dan Kebijakan Publik 6, No. 1, 2015, hlm. 33.

who handle cleanliness and environmental safety issues of the organization. These *outsourcing employees* are not directly related to the core work of the organization but as supporters of operational activities. In addition, it is also known as honorary employees or Non-Permanent Employees (PTT) whose job is to assist civil servants in carrying out their duties. The difference between *outsourced* employees and honorary employees or PTT lies in the person in charge. "Outsourcing employees are not handled directly by the bureaucracy because the provision is carried out by a worker service provider, while honorary personnel or PTT are handled directly by the bureaucracy/government from recruitment, payroll to dismissal".<sup>9</sup>

Changes in the elements of employees contained in the laws that have been in force in Indonesia. We can see these changes in the table below:

**Tabel Perubahan Unsur-Unsur Pegawai di Birokrasi**

Law No. 43 of 1999	UU No. 43 Tahun 1999	State Civil Apparatus Law (ASN Law)
Civil Servants consist of:	Civil Servants consist of:	ASN employees consist of:
1. PNS	1. PNS	1. PNS
2. Members of the ABRI	2. Members of the TNI	1. PPPK
Civil servants consist of:	3. Members of the National Police	
1. Central Civil Servants	Civil servants consist of:	
2. Regional Civil Servants	1. Central Civil Servants	
1. Other civil servants designated by PP	2. Regional Civil Servants	
	3. Non-permanent employees	

The presence of PPPK in the personnel system in Indonesia *mutatis mutandis* abolishes the existence of non-permanent employees or honorary employees who were previously known in laws and regulations regarding the State Apparatus. "The presence of PPPK which is part of ASN Employees is actually part of the bureaucratic reform agenda which is allegedly able to accommodate superior and professional human resources".<sup>10</sup> The presence of PPPK in the personnel system in Indonesia is not a "joke", starting from the determination of needs, procurement, performance assessment, rights and obligations, salaries and benefits, competency development, awarding, discipline, termination of employment, to various protections will be given to PPPK and summarized in a PPPK management.

<sup>9</sup> *Ibid.*, hlm. 37.

<sup>10</sup> Dodi Faedluloh, *Kerja Dalam Kesetaraan: Studi PPPK Dalam Proyeksi Konfigurasi Aparatur Sipil Negara di Indonesia*, Jurnal Civil Service 9 No. 2, 2015, hlm. 13.

"If you follow the logic of thinking in the State Civil Apparatus Law, then the presence of PPPK in the personnel system in Indonesia is really prepared for the selected people".<sup>11</sup> There are specificities, privileges, and priorities that indicate that PPPK is not only a forum that will be filled automatically by non-permanent employees or previous honorary employees but must still meet the requirements and follow a series of selection processes and recruitment mechanisms that have been determined in the State Civil Apparatus Law and its implementing regulations, namely Government Regulation Number 49 of 2018 concerning PPPK Management as a translation of *on the merit system*.

The paradigm of the State Civil Apparatus Law which adheres to *the merit system* to get competent and professional employees that is directly proportional between the qualifications, competencies, and performance required by the position with the qualifications, competencies, and performance possessed by the employees.<sup>12</sup> Currently, to apply to become a PPPK in a Functional Position, Article 16 letter f of the Government Regulation on PPPK Management requires the possession of competencies that must be proven by certain skills certifications that are still valid.

Among the most common principles of Human Rights in the Universal Declaration of Human Rights relevant to "analyzing the issue of the right to work is the principle of *interdependence* and interdependence (*interrelated*)"<sup>13</sup> "as a principle needed by every individual in carrying out the social function of his or her community".<sup>14</sup> The existence of PPPK regulations that are not in accordance with human rights principles should not happen, considering that respect for the right to work has become a legal personality of Indonesia. The legal personality as embedded in the Indonesian Constitution already contains aspects of human rights that should be used for PPPK management regulations. Therefore, to internalize the mandate of the Constitution and other human rights law products into PPPK regulations. The State Civil Apparatus Law has ignored the principle of human rights in the regulation of a job, the state through government agencies as the employer should be the party responsible for human rights, in which case the state must ensure the operation of justice, legal protection and state accountability to its workers. The state also ignores the basic rights of its citizens, namely the right to work. In this case, the recognition of the right to work as a human right has become an *inherent awareness* in the preamble to the 1945 Constitution of the Republic of Indonesia.

## DISCUSSION

<sup>11</sup> Legina Nadhila Qomarani, *Anomali Kehadiran Pegawai Pemerintah dengan Perjanjian Kerja (PPPK) Dalam Cakrawala Kepegawaian Di Indonesia*, Jurnal Cepalo Volume 4, Nomor 2, 2020, hlm. 100.

<sup>12</sup> Henny Juliani, *Diskresi Dalam Rekrutmen Pegawai Non Pegawai Negeri Sipil Setelah Pemberlakuan Peraturan Pemerintah Nomor 49 Tahun 2018 Tentang Manajemen Pegawai Pemerintah dengan Perjanjian Kerja*, Administrative Law and Governance Journal 2 No. 2, 2019, hlm. 322., DOI: 10.14710/alj.v2i2.314%20-%20325.

<sup>13</sup> Eko Riyadi, *Hukum Hak Asasi Manusia: Perspektif Internasional, Regional Dan Nasional*, Rajawali Press, Jakarta, 2018, hlm. 25-28.

<sup>14</sup> Reko Dwi Salfutra, *Hak Asasi Manusia Dalam Perspektif Filsafat Hukum*, Jurnal Hukum Progresif: XII, No. 2, 2018, hlm. 2146–2158.

## Legal Position and Function for Government Employees with Employment Agreements (PPPK) in the Personnel System in Indonesia

Position is defined as a person's place or position in a social group. "A person is said to have several positions because a person usually plays a role in various life patterns".<sup>15</sup> In general, society develops 3 (three) types of positions, namely *ascribed status*, *achieved status*, and *assigned status*. This type of position in this context is included in the *achieved status* because of the position of Government Employees with Employment Agreements (PPPK) as one of the government organizers who meet certain conditions. The statement is in accordance with the provisions of Article 1 number 4 of the ASN Law, "Government Employees with Employment Agreements are Indonesian citizens who meet certain conditions, appointed with a work agreement within a certain period of time to carry out duties from the government".

The law was created so that justice can be implemented in the legal community. If there is a legal subject who does not obey in his or her obligation to perform legal obligations or has violated the legal rights of other subjects. Subjects who disobey the obligations and violate those rights will be given responsibility and demands to restore or restore the rights that they have violated. The subject of law is a person, a legal entity or a government.

According to Soedjono Dirdjosisworo, there are 3 (three) legal functions, namely:

1. The function of law is to order and regulate society, because the nature and disposition of the law itself has provided guidelines and instructions for behavior in society. Through its norms, it has been shown which is good and what is bad.
2. The function of law to provide advice as a form of realizing social justice is born within. One of the nature and disposition of the law is binding for physical and psychological reasons.
3. The function of law is to drive development, one of which is because the law is binding and coercive. To encourage the community to be more advanced, the law can be used as a means of mobilizing development.<sup>16</sup>

The formulation of the position of ASN is based on the main points of mind that the government not only carries out the general functions of the government, but must also be able to carry out the functions of development or in other words the government must not only carry out the order of government, but must also be able to move and facilitate development for the benefit of the people.<sup>17</sup>

The State Civil Apparatus Law has made fundamental changes in the regulation of state civil servants, hereinafter referred to as ASN employees. The State Civil Apparatus Law divides the management of ASN into Civil Servant Management (PNS) and Management of Government Employees with Employment Agreements (PPPK). In the general provisions of the State Civil Apparatus Law, it is explained that civil

<sup>15</sup> Soerjono Soekanto, *Sosiologi Suatu Pengantar*, Rajawali Pers, Jakarta, 2012, hlm. 210.

<sup>16</sup> Ridwan HR, *Hukum Administrasi Negara*, PT. Raja Grafindo Persada, Jakarta, 2014, hlm. 322.

<sup>17</sup> C.S.T. Kansil, *Pokok-Pokok Hukum Kepegawaian Republik Indonesia*, Pradnya Paramitha, Jakarta, 1979, hlm. 38.

servants are Indonesian citizens who meet certain conditions, appointed as ASN Employees on a permanent basis by personnel supervisory officials to occupy government positions, while PPPK are Indonesian citizens who meet certain conditions, who are appointed based on a work agreement for a certain period of time in order to carry out government duties. With this division, the State Civil Apparatus Law not only recognizes government employees as permanent employees, namely civil servants, but also begins to introduce a new personnel system based on a fixed-time work agreement/contract, namely PPPK.

PPPK is presented to meet the potential of capable and competent human beings whose capabilities have been lacking in civil servants. As for the background, PPPk is considered an accomplished worker who is seen as shrewd in doing work that requires the right skills. When the obligations carried out by PPPK are completed, the PPPK employment agreement contract also ends. In this case, the government no longer has a legal relationship in bearing the apparatus. "In principle, the purpose of creating PPPK in addition to civil servants as ASN employees is to recruit the best people who administratively meet the requirements to become civil servants, especially in terms of age. The other purpose is to provide temporary employees for short-term government projects. So in essence, the purpose of creating PPPK is so that the staffing strategy is in accordance with the needs of the government".<sup>18</sup>

"The term temporary employee is an employee or worker who is recruited for a job based on a contract and is limited by a certain time".<sup>19</sup> The next opinion comes from Kirk and Belcovics: "Non-permanent employees are defined as individuals who are directly recruited or through a labor agency and then employed by an organization to fill a position or job for a specific or limited period of time".<sup>20</sup>

The State Civil Apparatus Law does not provide the type and nature of work for PPPK, it is possible that someone with PPPK status will later become a contract employee but for a job that is actually permanent. Because both can be applied to jobs that are permanent (not temporary), what determines whether someone will become a civil servant or PPPK employee depends on their luck. If he is lucky, he can become a civil servant, while if he has bad luck, he will become a PPPK. Of course, this is not a good system. From a philosophical perspective, the change of the personnel system to civil servants and PPPK, has basically violated several principles of ASN implementation embraced by the State Civil Apparatus Law itself, namely the principles of legal justice and legal certainty, because of the unfair treatment of PPPK compared to civil servants.

The State Civil Apparatus Law philosophically, sociologically and juridically has many problems that actually distance the state from the goal of the state of law itself. "The State Civil Apparatus Law turns out to be not in favor of the national ideals contained in the Preamble to the 1945 Constitution of the Republic of Indonesia which is the goal of the state of law itself.

<sup>18</sup> Indra Budi Sumantoro, *Kategori PNS dan PPPK dalam Undang-Undang Nomor 5 Tahun 2014 Tentang ASN Ditinjau Dari Sudut Pandang Transisi Kepegawaian*, Jurnal Bisnis Darmajaya 4 Nomor 2, 2018, hlm. 27-33.

<sup>19</sup> Anang P Purwoko, *Pegawai Tidak Tetap: Tinjauan Literatur sebagai Perbandingan dengan Praktek pada Organisasi Publik di Indonesia*, Jurnal Kebijakan dan Manajemen PNS Vol. 7, No. 2, November 2013, hlm. 12-23.

<sup>20</sup> Simanungkalit, *Penataan Pegawai Tidak Tetap di Lingkungan Instansi Pemerintah*, Jurnal Kebijakan dan Manajemen PNS Vol. 7, No. 2, November, 2013, hlm. 40-43.

The government is an organ (institution) that organizes the implementers of the State and becomes a tool of the people/society in achieving ideal goals as aspired in the 4th paragraph of the 1945 Constitution of the Republic of Indonesia, namely "protecting the entire Indonesian nation and all Indonesian bloodshed, advancing public welfare, educating the life of the nation and participating in implementing a world order based on independence, lasting 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:

1. Providing routine public services to the community such as providing licensing services, document making, protection, maintenance of public facilities, health maintenance, and provision of security guarantees for residents.
2. Empowering the community to achieve progress in a better life, such as providing guidance, consulting, providing capital and business facilities and carrying out education, and
3. Organizing development in the community, such as developing transportation infrastructure, telecommunications, trade and so on.<sup>21</sup>

Based on Article 1 number 4 of Law Number 20 of 2023, PPPK is an Indonesian citizen who meets certain conditions, who are appointed based on a work agreement for a certain period of time in order to carry out government duties. The fundamental difference between the terms Civil Servant and PPPK is as follows:

1. Duration of the work implementation.

Civil Servants are appointed on a permanent basis. The term "fixed" refers to the career level of employees until the retirement deadline or until the Civil Servant stops. Meanwhile, PPPK has a certain time according to the work agreement and the needs of the government agency that employs it.

2. The workload assigned.

Civil Servants are given positions to carry out government positions. This means that Civil Servants have positions and it contains authorities that correlate with responsibilities and responsibilities for the administration of government. The PPPK only carries out government duties that tend to be operational, functional and on the basis of instructions from Civil Servants. This means that the terms "office" and "administrative duties" have different legal implications.<sup>22</sup>

When examined in the aspect of employment law, the legal status of PPPK is in 2 (two) different legal domains, namely employment law and employment law. When viewed from the object of the work environment, the application of government duties and the application of disciplinary sanctions, PPPK is

<sup>21</sup> Budi Setiono, *Jaring Birokrasi Tinjauan dari Aspek Politik dan Administrasi*, Gugus Press, Bekasi, 2002, hlm. 72-73.

<sup>22</sup> Sri Hartini, Setiajeng Kadarsih, dan Tedi Sudarajat, 2014, *Hukum Kepegawaian di Indonesia*, Sinar Grafika, Jakarta, hlm. 41-42.

in the realm of personnel law. However, if you look at it from the perspective of *a certain kortverband contract* (short contract agreement law), the legal status is regulated in labor law.

Furthermore, in the implementation of PPPK appointments by the government, it is not based on a work agreement. The work agreement between non-civil servant ASN is carried out after the selection process has been completed. This is different from the employment agreement that applies to workers who are subject to the Labor Law. In the Labor Law, an employment agreement is the basis of a binding agreement between workers and companies to exercise their civil rights and obligations in accordance with the content of the agreement.

The extension of the employment agreement relationship for PPPK according to Government Regulation Number 49 of 2018 can be given a maximum of 5 (five) years for PPPK who occupy High Leadership Positions (JPT) both main and intermediate. For PPPK that does not occupy JPT, Government Regulation Number 49 of 2018 does not explain it. The absence of arrangements for the extension of employment agreements for PPPK who do not occupy JPT can result in unclear PPPK employment status after the extension of the employment agreement relationship. This ambiguity is the legitimacy of the PPK to terminate the employment agreement relationship with the PPPK after the extension period of the employment agreement relationship ends.

In short, the period of the employment agreement relationship for PPPK needs to be the government's attention in providing protection for the fulfillment of PPPK rights. Government Regulation Number 49 of 2018 article 75 mandates the government to provide protection in the form of: old-age guarantees; health insurance; occupational accident insurance; death insurance; and legal aid. For old age insurance, health insurance and work accident insurance, as well as death insurance are carried out according to the national insurance system.

### **Legal Reform in the Protection of Human Rights (HAM) for Government Employees with Employment Agreements (PPPK) According to the Personnel System in Indonesia**

The essence of a constitutional state of law is the protection of human rights. Therefore, the content of each constitution can be explained as follows, the state is an organization of power based on the sovereignty of the people, so that this power is not wild, it needs to be controlled by being arranged, divided and limited, and supervised both by independent and independent supervisory institutions and by citizens, so that there are no violations of human rights. If this guarantee of human rights is eliminated from the constitution, then the drafting, division, limitation, and supervision of state power is not necessary because there is nothing more to guarantee and protect. Since the essence of every constitution is the protection of human rights, it demands the equality of every human being before the law.

The absence of similarities will cause one party to feel superior to the other, so that it will lead to the domination of the higher party to the lowest. With such a situation being the initial form of the growth of arbitrariness that causes the violation of human rights, this means that the protection of human rights contained in every constitution becomes meaningless or loses meaning. The existence of equality between people in a country will allow the birth of active participation from everyone. So that participation by the

people of a country is important in a country that has a constitution, so that the content of the constitution as a basic law is the core of the desires and will of most of the people of a country. Public participation in a country is also a form of a country that upholds democratic culture.

The internalization of Human Rights (HAM) in the management regulations of Government Employees with Employment Agreements (PPPK) in the renewal of the State Civil Apparatus Law and Government Regulation Number 49 of 2018 concerning the Management of Government Employees with Employment Agreements (PPPK Management PPPK) which is expected to be a spirit to build the state apparatus to be more effective and successful in carrying out their duties in accordance with the spirit of reform. The presence of PPPK is the fruit of the spirit of bureaucratic reform. Apart from the fact that the PPPK recruitment is based on the merit and professionalism system, the career path of PPPK is better than that of honorary contract employees as a product of the previous legal regime.

PPPK is one type of State Civil Apparatus (ASN) along with Civil Servants (PNS). However, even though the regulation states the same position for civil servants and PPPK as State Civil Apparatus, there are several provisions in the regulation that are not in accordance with the principles of Human Rights. For example, the existence of a distinction in status and system of employment ties between PPPK and civil servants has the implication of creating problematic relations in human rights principles.

The abandonment of the principle of Human Rights in the regulation of a job is certainly an irony. Especially if the neglect of human rights principles occurs in the type of work that involves government agencies as employers. The state through the government should be the party responsible for human rights, in which case the state must ensure the operation of justice, protection and state accountability to workers. Ironies like this should not happen again if the state consistently implements human rights principles in regulations to regulate workers' rights.

The spirit of recognizing the right to work as a Human Rights has become an *inherent awareness* in the preamble to the 1945 Constitution of the Republic of Indonesia. This can be correlated with the purpose of the establishment of the Indonesian state, one of which is to advance the general welfare. "To realize this goal, the state must ensure the implementation of all things that are a means to lead the Indonesian people to equality as their basic rights, one of which is the fulfillment of the right to work".<sup>23</sup>

The government as the implementing representative of the presence of the state is actually the party responsible for guaranteeing human rights from the right to work. The state's treatment of PPPK is not solely a reflection of how the state implements human rights principles in its regulations. This is also an indicator of how the state consistently fulfills its duties as a human rights stakeholder in protecting workers' rights.

For Indonesia, the enforcement of human rights is a principle that is always upheld. As a nation that has experienced colonialism, the founder of our republic is aware of the meaning of human rights in state

<sup>23</sup> Winsherly Tan dan Dyah Putri Ramadhani, *Pemenuhan Hak Bekerja Bagi Penyandang Disabilitas Fisik di Kota Batam*, *Jurnal HAM* 11, No. 1, Batam, 2020, hlm. 27–37.

activities. This can be seen from the placement of these most fundamental principles and rights in the 1945 Constitution of the Republic of Indonesia which was born before the *Universal Declaration of Human Rights*. In addition, the idea of a democratic state of law where human rights are recognized, respected and protected has been put forward by the pioneers of the independence of the Republic of Indonesia.

The ASN Law not only recognizes government employees as permanent employees, namely civil servants, but also begins to introduce a new personnel system based on a fixed-time work agreement/contract, namely PPPK. The lack of clarity on the basis of the division of personnel management into the management of civil servants and PPPK further leads to implications for the emergence of different treatment of employees in the PPPK system, namely:

1. The PPPK system does not recognize contract time limits. The ASN Law only states that the period of the employment agreement is at least 1 (one) year and can be extended as needed and based on performance assessment. This provision shows that a person can be made a government contract employee for life. This clearly shows that the ASN Law actually facilitates job uncertainty for government employees.
2. The PPPK system does not recognize promotion, career development, or promotion. This means that a person can be contracted for the same rank and job for the rest of his life. Since these ranks and jobs will ultimately be related to benefits and salary, the person can earn the same benefits and salary (without increases) for the rest of his life. More than that, no matter how well a PPPK employee works, it will not affect his career and promotion, because PPPK is not entitled to promotion, career development, and promotion. Thus, the merit system, which is the backbone of ASN management, does not apply to PPPK employees.
3. There are certain positions, namely high leadership positions, which can basically only be filled by civil servants. Non-civil servant employees, including PPPK, can only fill certain high positions and after obtaining the President's approval. In this case, the ASN Law states that the filling of primary, intermediate, and primary high leadership positions is carried out openly and competitively among civil servants. Thus, basically this position is only intended for civil servants. Non-civil servants can only fill certain major and intermediate high positions, the filling of which must first be approved by the President, and carried out openly and competitively and stipulated in the Presidential Decree.
4. The PPPK system does not recognize the existence of pension guarantees like civil servants. If a civil servant is entitled to pension and old age guarantees, then PPPK employees are only entitled to old age guarantees, which is also regulated in a subtle manner and depends on the national social security system.

The fact that civil servants have public service relationships and require mono loyalty. PPPK has a legal relationship that is civil in nature or a legal relationship that is contractual. Thus, what distinguishes civil servants and PPPK is the legal relationship. With the difference in legal relations, of course the rules that

apply to civil servants do not mean that they also apply to PPPK. In relation to the legal relationship of PPPK which is limited to a civil relationship, clarity is indeed needed in terms of rules and agreements from the time of recruitment to how the employment relationship ends. In addition, it is also necessary to clearly establish from the beginning about the type of work and its rights and obligations. That way there is legal certainty for PPPK.

"The existence of the PPPK regulation does not fully represent the presence of the state through the government as a stakeholder of human rights obligations. In accordance with this principle, the state is the obligatory to respect, protect and respect human rights".<sup>24</sup> It is the role of the state through the government that has the responsibility to respect PPPK, protect PPPK from unequal treatment and discrimination with other employees, and fulfill PPPK in order to obtain security guarantees for the sustainability of work as applicable to civil servants.

The ASN Law and the Government Regulation on PPPK Management, which provide provisions on the reasons for PPPK dismissal, have basically provided preventive legal protection to PPPK. With the regulation of the reasons for the dismissal of PPPK, it is hoped that there will be no arbitrariness from the government institution where the PPPK works to dismiss arbitrarily without a clear reason, so that to be able to dismiss PPPK, it must be based on the reasons that have been arranged. Even so, the researcher feels that the provisions for dismissal of PPPK are still not optimal and can still be used as arbitrary material, such as in the case of dismissal because they are accused of committing serious disciplinary violations or because performance targets are not achieved.

Legal protection is not enough only to be given preventively, there must be repressive efforts as a form of real protection. In the event of termination of employment against PPPK which causes a dispute because PPPK feels that the decision was not made as it should have caused losses for PPPK as a result of the decision to terminate employment by the government. The dispute caused by the decision to terminate the employment relationship is part of a personnel dispute. In this case, it is hoped that legal reform in the ASN Law and PP on PPPK management will be carried out.

## CONCLUSIONS

In conclusion, the position of Government Employees with Employment Agreements (PPPK) as part of the State Civil Apparatus (ASN) system reflects the government's effort to reform bureaucracy by introducing a performance-based employment mechanism. However, despite its intention to enhance efficiency and professionalism, the PPPK system still raises significant issues in terms of legal certainty, justice, and human rights protection. The dualism between Civil Servants (PNS) and PPPK creates inequality, particularly regarding tenure, promotion, pension rights, and career development. This inequality contradicts the constitutional principles of justice and equality before the law as mandated by the 1945 Constitution. From a legal perspective, PPPK exists in a hybrid realm between public and private law,

<sup>24</sup> Muhammad Ashri, *Hak Asasi Manusia; Filosofi, Teori dan Instrumen Dasar*, Social Politic Genius, Makassar, 2018, hlm. 84-92.

resulting in ambiguity regarding rights and obligations. The absence of clear regulations on contract renewal and job security leaves PPPK vulnerable to arbitrary dismissal. Therefore, the government, as the main guarantor of human rights, must ensure that PPPK employees receive fair treatment, equal protection, and access to justice. Legal reform should emphasize preventive and repressive protections to prevent potential human rights violations. The essence of bureaucratic reform must align with the state's constitutional mission to promote welfare and uphold justice. Strengthening the legal foundation of PPPK management will not only enhance the credibility of the civil service system but also ensure that the spirit of equality and professionalism truly manifests within the apparatus. Ultimately, the fulfillment of PPPK rights represents a reflection of the state's commitment to uphold human dignity and the rule of law in governance..

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