

# Legal and Human Rights Protection to Non Permanent Employees Pursuant to Law No. 5 Year 2014 About State Civil Apparatus

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## ABSTRACT

With the enactment of Law No. 5 of 2014 on Reform of Civil State, where the non permanent employees no longer found it with their study / research can give you a government employee, non permanent employees particularly non permanent employee regarding the status and legal certainty to acquire rights in accordance with the obligations carried in providing the community for the better services. With the issuance of Minister Regulation Of State Utilization And Apparatus - Bureaucratic Reform (PAN-RB) No. 36 Year 2018 dated August 27, 2018 will be very unlikely for the non permanent employee power to obtain a more important opportunities protection and human rights. Government employees with employment agreements (PPPK) stipulated in the Act is intended to answer the problem needs non permanent employee who can not afford to be accommodated, but in Government Regulation No. 49 Year 2018 on Management of Government Employees to Work Agreement positions available as government employees with employment agreements is functional and Head of High employee-which requires a qualification which is certainly worthy and good, it is yet to be found a solution for the fate of non permanent employees numbering in the thousands in all over Indonesia. By measuring the needs and capabilities of an agency or regional organizations in carrying out the duties and functions of running a government is necessary to do the assessment that the appointment of non permanent employees can be mapped to more concrete that the utilization of resources through non permanent employees can be absorbed and running properly.

**Keywords:** *Legal, human rights, non permanent employees*

## 1. INTRODUCTION

Referring to the current unemployment figures, the numbers over 600,000 people for graduates based on data from the Ministry of Research, Technology and Higher Education (Kemristekdikti).<sup>1</sup>In 2018 alone, the unemployment rate dropped significantly, namely in figure 5.34% of the total working force of 131 million people. However, the decline was the contribution of the community with education below high school level.<sup>2</sup> That is, the working force that absorbed only for unskilled workers and the middle class, while many similar scholar graduates yet to get a job in Indonesia. Being a civil servant until recently was still the one option that is in high demand job seekers. Certainty of rights that would be gained by becoming a State Civil Apparatus is most highly ideals job for job seeker. By becoming an honorary be the first step for non permanent employee to break the chain of unemployed who lived after completing education at school or college. Absorption of non permanent employee during

this time, the tendency of the local government, but then contract officers charged issue to the central government. Many regional head raised honorarium for their closeness, family relationships or remuneration against political activities that have been done in the past.

Appointment of Non permanent employee in units of central and local government one of those is in order to increase the service to the community. The need for non permanent employee deemed necessary due to limited human resources Civil Servants who are in an organization. The existence of non permanent employee is not uncommon to spearhead the public service itself, Anwar Supriyadi, Minister of Administrative Reform and State (2001) states that seffectively, the appointment of non permanent employee by the head of the area was a violation.<sup>3</sup>Governments need to take legal action against this offense, so that the officers could understand that the action raised the honorarium was wrong. If this continues, he said, would weaken the

authority of the government, and the purpose of bureaucratic reform is difficult to achieve.

## 2. BACKGROUND

Apparatus State Civil hereinafter referred to as Civil State Apparatus is a profession for civil servants and government employees with employment agreements that work in government agencies.<sup>4</sup> Law of Civil State Apparatus comes to replace Law No. 8 of 1974 on the Fundamentals of Employment as amended by Act No. 43 of 1999 on Amendments to the Law No. 8 of 1974 on the Fundamentals of Employment because it does not comply with national requirements and global challenges.

In the Law on Civil State Apparatus recognize the existence of two States, namely Civil Servants of Administrative Civil Servants (ASN) and the Government Employees with Working Agreement (PPPK). Government employees with a working agreement are Indonesian citizens who meet certain requirements, appointed under a work agreement for a specified period in order to carry out the tasks of the government. In non employee government bureaucracy known by sharing the title, among others, the Government Employees with Working Agreement, honorary, contract employees and others. In Act Civil State Apparatus mention about the various rights of Government Employees to Working Agreement, for example regarding payroll and benefits, providing the opportunity for the development of competence, rewards and protection for the Government Employees with Working Agreement. Additionally Law No. 5 of 2014 on Civil State Apparatus also regulates the enforcement of discipline for Government Employees with Working Agreement and the termination of employment between government agencies and the Government Employees with Working Agreement (PPPK). More on Government Employees to Working Agreement stipulated in Government Regulation No. 49 Year 2018 on the Management of Government Employees with Working Agreement.

Definition of non permanent employee contained in article 1, paragraph 1 of Government Regulation No. 48 Year 2005, Appointment of non permanent employee become a Civil Servant, namely non permanent employee is a person appointed by the Officer Trustees Personnel or other officials in the government to carry out specific tasks in government agencies or the income of a burden budget of the State or Regional budget. Government employees with the working Agreement and non permanent employee in two laws governing staffing essentially have the same position, but there is a different treatment. In Act Civil State Apparatus, Government employees with a working agreement have clear mechanisms and certainty in his capacity as a government employee while the presence of non permanent employee after the enactment of the Civil State Apparatus be lost. In the Government Regulation

No. 48 Year 2005 regarding the Appointment into the Civil Service appointment of non permanent employee was conducted between 2005 to 2009 and Officer Trustees Personnel are prohibited to lift the non permanent employee again. Therefore, the appointment of non permanent employee by government policy often refer to the applicable legislation because it does not take into account the quantity and quality of non permanent employee will be appointed according to the number, ability and organizational skills required. This resulted in an increase in the number non permanent employee and tend to exceed the needs of the organization and the mismatch between the qualifications of non permanent employees with job titles held in each work unit. Non permanent employee, they demanded that the government issued a new policy for the sake of clarity and well-being of their employment status as a reward for their dedication and advance the nation's life. Non permanent employee appointment mechanism like K-2 as civil servants creates problems for example many of them, the data discrepancies non permanent employee itself, inequality regarding government contract officers, and the lack of availability of budget.

First, the problem is no less complicated faced by non permanent employee with the Act Civil State Apparatus is welfare non permanent employee still far from expectations. At stake livelihood of non permanent employee with a salary that is fairly insufficient to meet their welfare. Second, the process of appointment of non permanent employee become candidates for Civil Servants creates uncertainty because collided with the age limit specified by the Ministry of State for Administrative Reform and-Reforms No. 36 of 2018 concerning Criteria Needs Determination and Implementation of Civil Servants Civil Servants Candidate Selection 2018 when faced with non permanent employee who have decades served but does not go get certainty. 438.590 contract officers of category II (K-2) which are eligible to be appointed to be a civil servant only 13.345 people, therefore the government should be able to provide protection and legal certainty given the non permanent employee helped the duties and functions of running a government.

## 3. METHOD

Forms of this research is normative juridical research. Namely solving problems existing laws by reviewing existing norms. The data used in this research is secondary data, especially data that is not obtained directly from the field but through the library materials consisting of primary legal materials from namely materials legally binding. Primary legal materials used in this study consisted of legislation, namely the Law of the Republic of Indonesia Number 5 Year 2014 About the Civil State Apparatus, Act No. 8 of 1974 on the Fundamentals of Employment as amended by Act No.

43 1999 on Amendments to the Law No. 8 of 1974 on the Fundamentals of Employment, Government Regulation No. 48 year 2005 Appointment of Non Permanent Employee Being Civil Servants, Law No. 39 of 1999 on Human Rights and the legislation of other, secondary law on the books, journal the results of research related to materials research and tertiary legal materials through legal encyclopedias. Further their interviews with employees of Trustees of personnel and temporary employees.

#### **4. DISCUSSION**

##### ***A. Comparison of Non Permanent Employee and Government Employees to Work Agreement in Regulation***

In Act - Act No. 43 of 1999 on the Principals of Civil Servants mentioned in Article 2:

- 1) Servant consists of:
  - a. Government employees;
  - b. Members of Indonesian national army; and
  - c. Members Indonesian National Police
- 2) Civil Servants referred to in paragraph (1) letter a, consists of:
  - a. Center Civil Servants; and
  - b. Regional Civil Servants
- 3) In addition to the servants referred to in paragraph (1), the competent authority may appoint non permanent employees.

Non permanent employee above can be categorized as non permanent employee and contract workers. Non permanent employee have the sense that a person appointed by the Trustees Personnel Officer or other officials in the government to carry out specific tasks in government agencies or whose earnings burden the State Budget / Regional Budget. Non Permanent Employee then divided into two categories, namely non permanent employee K1 and K2 categories. Non Permanent Employee category 1 (K1) is a group of honorary category of non permanent employee directly financed by the Budget of the Regional or State Budget. Non permanent employee who entered into the list of Category 1 represents the employees in accordance with the Regulation of the Minister of PAN-RB No. 5 of 2010, the non permanent employee who work in government agencies from the date (TMT) 1 January 2005, continuously. Non Permanent Employee K1 has the opportunity immediately appointed as civil servants. For Non Permanent Employee group 2 (K2), this category are appointed non permanent employee by January 01, 2005, but the difference is they do not receive wages from the state/regional budget like Non Permanent Employee group K1. For the second category of non permanent employee who want to appointed civil servant, he must take the test or selection first.<sup>5</sup>

Application of - Act No. 5 of 2014 On the State Civil Apparatus made Non Permanent Employee position is lost. This occurs because the provisions of

the Act No. 5 of 2014 defines the term Government Employees With Working Agreement (PPPK). Government employees with a working agreement are Indonesian citizens who meet certain requirements appointed as an employee with a working agreement by the Trustees Personnel Officer in accordance with the needs of Government Agencies under the agreement work for a certain period of time in order to carry out the duties of the Government.

Therefore automatically position of non permanent employee be lost and replaced by the Government Employees with Working Agreement (PPPK). Government employees with the Working Agreement and Non permanent employee in two laws governing staffing essentially have the same position, but there is a different treatment. In Act Civil State Apparatus clearly stated rights of Government Employees with Working Agreement, namely, salaries and allowances, leave, protection, and development of competence. In Government Regulation No. 49 Year 2018 on the Management of Government Employees Working Agreement with the detail described the recruitment process, selection, hiring, to termination of the performance agreement with the various criteria. Government employees with a working agreement can fill two positions, namely the State Civil Administrative, Functional and High Leadership Position. Mentioned in Article 37 of Government Employees with Working Agreement years of services at least 1 (one) year and may be extended. Not only that, the salaries and allowances of Government Employees to Work Agreement applies in accordance with the laws and regulations applicable to civil servants (Article 38, paragraph 2). In Article 101 paragraph {3} of Law No. 5 of 2014 salaries of Government Employees with Working Agreement imposed on the State Budget for central agencies and Budget Revenue and Expenditure for local agencies.

##### ***B. Protection and human rights for Non Permanent Employee***

Human Rights are the rights of human beings simply because he is human. Human beings have not since given to him by the public or by positive law, but solely based on their dignity as human beings.<sup>6</sup> Human Rights is a set of rights attached to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law, government, and everyone for the respect and protection of human dignity.<sup>7</sup>

Guarantees for human rights is one of the characteristics of state law for human rights as a universal value. Every human being is entitled to a job, a decent living, valued and treated fairly in his life, for human beings as God's creatures have rights that must be respected by anyone as stated in the Constitution of the Republic of Indonesia Article 28 D.

Categorization generation human rights such as to follow the famous slogan of the French Revolution, namely: freedom, equality, and fraternity. The spirit of the first generation of rights, freedom, reflected in the civil rights and political. The spirit of second generation rights, equality, reflected in the rights of economic, social, and cultural. While the spirit of third-generation rights, brotherhood, like the looks on the rights and group solidarity. The following sections describe the character and distinction of the third-generation rights.

a. First Generation Rights

Civil and political rights is referred to as first generation rights. Rights in this generation among them the right to life, physical integrity, the right to freedom of movement, the right of asylum from oppression, protection of property rights, freedom of thought, religion and belief, freedom of assembly and states of mind, freedom from arbitrary detention and arrest liberty, freedom from torture, freedom from retroactive laws, and the right to a fair trial. Clumps of this right is called negative rights which require the absence of interference of the state in the realization of rights. The first generation rights require the absence of intervention by outside parties both State and other social force against the sovereignty of the individual.<sup>8</sup>

Civil and Political rights departing from the traumatic experience seizing the West over rights and freedoms in the dark times of medieval and three world wars of the 20th century, however, the context of the Third World countries which are victims of colonialism also colored the formulation of the International Covenant on Civil and Political Rights (ICCPR).<sup>9</sup> Rights to self-determination, for example, a controversial issue post-UDHR. The countries of Asia, Africa, and the Arabian determined to fight this issue in the Asian-African Conference in Bandung in 1955. They argued that the right to self-determination is a fundamental precondition for the fulfillment of all human rights and colonialism is considered as a form of human rights violations.<sup>10</sup>

b. Second Generation Rights

Economic, social and cultural rights is referred to as the second generation. ESC rights is the contribution of socialist countries who come first meeting the welfare needs of its citizens. The rights included in clumps rights, among others, the right to a job and a decent wage, the right to social security, right to education, right to health, right to food, right to housing, land rights, and the right environment healthy.<sup>11</sup> This rights is referred to as positive rights, which requires the active role of the state in fulfillment.<sup>12</sup> Because of that, the rights of the second generation is formulated in positive language: "a right" ("right to") and not in negative language: "free from" ("freedom from"). Basically, this second generation rights are the demands for

social equality. Some of the main principles of state obligation in fulfillment of these rights, including the progressive realization, the maximum resources possible, nonretrogressi, the principal obligation is minimal, non-discrimination, equal, participation, accountability, effective recovery and care to vulnerable groups. In the generation of this right, is a cultural object that rights can be claimed.

c. Third Generation Rights

Clumps third generation rights called the rights of solidarity or collective rights.<sup>13</sup> Group this right is a demand of developing countries or the Third World on more equitable international order. The rights include this family, including the right to development, right to peace, the right to own natural resources, the right to a good environment, and the right to their own cultural heritage. Rights groups, such as immigrants, indigenous and tribal peoples (indigenous people), and minorities must be protected by the state. Rights group re-bore theorization on human rights as human rights groups put the rights of the third generation rights. Claims culture, traditions, language, religion, ethnicity, locality, ethnicity, or race an element of the Carib in the thought processes of contemporary human rights.

d. The fourth generation rights

A generation is carried by Jimly Ashiddique, where he says in his book Constitutional Law and Pillars of Democracy (pp. 209-228) first to the third generation of human rights is only the concept of human rights from the perspective of vertical, ie the relationship between the people and the authorities. While the rights of the fourth generation is the conception of human rights from the perspectives that are horizontal. According to him, look at the times it occurs three power groups horizontally, the power of the state on the one hand, economic power (global capitalism / multinational companies on the other, and the power of civil society on the other hand again. In short, there are three groups of power are mutually influential ie state , market, and civil society, including nongovernmental organization (NGO / LSM). thus,<sup>14</sup>

According Satjipto Raharjo defines legal protection is to give shelter to human rights are harmed others and the protection given to the public so that they can enjoy all the rights conferred by law.<sup>15</sup> By Philip M. Hadjon argues that legal protection is the protection of the dignity of going to, and recognition of human rights that are owned by the legal subject under the provisions of the law of arbitrariness.<sup>16</sup> Meanwhile, according Setiono, legal protection is an act or an attempt to protect the public from arbitrary actions by the authorities are not in accordance with the rule of law, to bring order and peace so as to enable people to enjoy dignity as human beings.<sup>17</sup>

According Hadjon legal protection for people consists of two things, namely:<sup>18</sup>

- 1) Preventive Legal Protection, which forms the legal protection where the people are given the opportunity to raise objections or opinions prior to a government decision received a definitive form;
- 2) Repressive Legal Protection, the state of law where the protection is addressed in the settlement of disputes.

Upon receipt of a non permanent employee in an agency based on the Workload Analysis, where his job was to fill the positions that are not in a structural position of course that can assist the duties and functions of civil servants.

The protection and the rights acquired by the non permanent employee in an agency vary depending on the capabilities and how officials in the staff development process and foster the existing permanent employees underneath. In an agency still found on salaries that do not match the local minimum wage standards. This is the problem of permanent employees today, where the ratio of salary given is not comparable to the task given especially to provide protection and other rights. So far in protecting the dignity of non permanent employee working in government agencies, which they have received so far is only the basic salary that is far from the Regional Minimum Wage and in the form of allowances. The combination of both forms of wages in certain agencies may not necessarily reach the local minimum wage standards. Other rights received by non permanent employee are in the form of health insurance from Health Security Agency (BPJS). As mentioned above, the non permanent employee consists of KI and K2. K2 non permanent employee to become the Civil Service examinations and procedures must undergo the same appointment as a civil servant, then this right should be fought fiercely K2 non permanent employee in order to bias the protection and legal certainty in order to become a civil servant status can be realized.

### ***C. Concrete steps the Government in Ensuring Justice and Human Rights Protection for non permanent employee***

In the Law on Civil State Apparatus no longer mentioning clauses regarding honorary staff, all forms of protection and rights that must be granted by the state are completely lost. Therefore we need concrete rules on how to solve the problems of all aspects related with non permanent employee. In effect the settlement offered by the government through the acceptance of the Government Employees Bargaining Agreement does not necessarily solve the problem, because it is clearly stated position of the Government Employees Working Agreement that can be simply divided into two, namely High leadership positions, and functional positions. It is

of course not accommodate all non permanent employee in government both central and regional agencies.

Head of Public Relations Bureau of the Civil Service Agency (BKN) Mohammad Ridwan said the government is targeting a non permanent employee problem was completed in 2023. It is expected that, in that there is no longer an employee are non permanent.<sup>19</sup>In the end, non permanent employee will be directed to make the Government Employees to Work Agreement with getting priority. In addition to getting the priority to be into Working Agreements Government Employees with other schemes prepared by the Government is the appropriate remuneration regional minimum wage. Such a scheme the government agreed that attended the Ministry of Administrative Reform and Bureaucratic Reform, the National Civil Service Agency (BKN), Ministry of Education and Culture (Kemendikbud), as well as other relevant ministries and institutions.

Non permanent employee who was appointed by the Government Employees Working Agreements will get financial rights equivalent to civil servants (PNS). In addition, the Government Employees Bargaining Agreement can be contracted until the age of 65 years or in accordance with a limit on the retirement age of civil servants. The government has also prepared other schemes if non permanent employee that do not qualify for selection by the Government Employees with Working Agreement. Namely, scheme to provide adequate welfare in accordance with the minimum wage in each region. This is becoming unrest for non permanent employee, in Government Regulation No. 49 Year 2018 vagueness fate with the Government Employees with Working Agreement for the financial rights they became the responsibility of the local budget. then the fears of downsizing the organization or government policies that result in the reduction of Government Employees with Working Agreement. Governmental organizations evolve and change with the regional autonomy made non permanent employee dilemma and lead to uncertainty for the continuation of their status.

For that reason in the Legal Plan of State Apparatus Civil required special article concerning non permanent employees.

## **5. CONCLUSION**

Legal protection and human rights, especially the problem of salaries and working rights protection for non permanent employee remain unaddressed. It is due to the lack of clear rules related to salaries and working rights protection for non permanent employees. Expected Regulatory non permanent employee forum is a change in the Law of Civil State Apparatus. With that change, open opportunities for non permanent employee to become a candidate for Civil Servants (CPNS). Scheme of Government Employees to Work Agreement

offered by the government does not solve the problem, because they are still employees contract status (within a certain period and can be stopped and terminated at any time). If paid by the region, the forum non permanent employee worry their position depending on the financial condition of the area. That is, any time the contract may be terminated, if the area is no longer able to provide salaries.

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<sup>6</sup>Jack Donnelly in Rhona KM Smith et. al., op.cit, p. 11

<sup>7</sup>Article 1 paragraph 1 of the Act of the Republic of Indonesia Number 39 Year 1999 on Human Rights, the State Gazette of the Republic of Indonesia Number 165 of 1999, Supplement to the State Gazette of the Republic of Indonesia No. 3886. Basic formation of the Act is to protect, maintain, and enhance human dignity, required the recognition and protection of human rights, because without it people will lose the nature and dignity, so as to push the man

into a wolf to another man (homo homini lupus); d. because humans are social beings, then human rights are a human rights are limited by the other, so that the freedom or human rights are not limitless; e. Human rights must not be destroyed by anyone and under any circumstances; f. every human rights entail the obligation to respect the human rights of others, so that in the human rights are the basic duty; g. Human rights must really be respected, protected and enforced, and for the government, the state apparatus, and other public officials have the duty and responsibility of ensuring the respect, protection and promotion of human rights

<sup>8</sup>Rhona KM Smith et. al., Human Rights Law, Pusham UII, Yogyakarta, 2008, p. 15

<sup>9</sup> Asep Mulyana SIP, MA, Development of Human Thought, Elsam, Jakarta, Articles

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<sup>11</sup> Michelin R. Ishay, Ibid.

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