



Coherence of the Government's Policy Agenda in the Elimination of Regional Honorary Teachers (Critical Review of the Laws of the Republic of Indonesia Number 5 of 2014 Concerning State Civil Apparatus)

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Abstract. Teachers in the scope of history in educating the nation's life have been known as unsung heroes. Therefore, teachers are placed as the front line to foster and teach the next generation of science that will be the provision for the future. The predicate of the teacher as an unsung hero has become a social reality with the welfare of honorary teachers who are still far from worthy. This is also exacerbated by the policy agenda for the elimination of honorary teachers in the coming years due to the Law of the Republic of Indonesia Number 5 of 2014 concerning the State Civil Apparatus (UU ASN) which does not recognize the term honorary teacher and only accommodates civil servants (PNS.) and Government Employees with Work Agreements (PPPK). Therefore, it can be said that the ASN Law from the beginning was intended as a legal basis to abolish honorary teachers but did not provide a solution in its future implementation. This research is categorized into normative legal research type, it is based on the issues and/or themes raised as research topics using a philosophical and analytical research approach which is analyzed descriptively analytically. The results of the study show that the legislative ratio of the ASN Law is intended for the efficiency of government employees and is regulated by good administration. The ASN Law does not accommodate teachers in the honorary category because the recruitment system is considered poor and prone to nepotism. However, what needs to be underlined is the recruitment and need for honorary teachers due to the lack of education personnel. In addition, the ASN Law does not have flexibility because it does not provide a regulatory space for honorary category teachers.

Keywords: Policy · Elimination · Honorary Teacher

1 Introduction

The right of students to receive education is limited to the context of public rights and is largely a problem. While state-sponsored education has historically been a local issue,

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by the 1970s, nearly all countries in the world had adopted education clauses in their constitutions, compulsory education laws, school curricula, and state funding frameworks. Similar funding schemes: local taxes because the state does not limit the amount that local districts can contribute, wealthier communities make greater contributions to schools and differential inequality is common.

As an independent and sovereign country, Indonesia has the ideals and goals as well as the basis for state administration as stated in the 1945 Constitution. One of the national goals stated in the fourth paragraph of the Preamble to the 1945 Constitution is to establish an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia, to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice. To achieve this goal, a government was formed with various instruments so that the ideals and goals contained in the 1945 Constitution could be achieved in order to realize a just and prosperous Indonesia.

The government has duties to the community by implementing an environmental policy in the form of authority, namely juridical power over private individuals, legal entities and giving it to subordinate civil servants the rights and obligations that they can and can hold according to law. Obligations are carried out by state apparatus which are distributed to state offices. Apparatus who carry out the rights and obligations of the state called legal subjects are civil servants.

Teacher evaluation is an important way to identify teacher performance and improve teacher quality, improve teacher and school performance. With the power of pull-driven education reform and teacher professional development theory, and as the Government's efforts to improve teacher construction, combined with social awareness and public education support, the role of teachers is undergoing positive changes in the general effect of various internal and external forces. Therefore, teacher evaluation is also one of the hot issues in academia and domestic education today.

Human rights standards do not specify specific actions that States should take to implement the right to education. On the other hand, States are given the freedom to decide for themselves the most appropriate way to fulfill their obligations and realize the right to education. International law, however, requires States to adopt various measures to progressively realize the right to education. This includes the rights of honorary teachers as one of the educators who are recognized as one of the front line in realizing an advanced and competitive Indonesian education.

Provisions governing civil servants are regulated in Law Number 5 of 2014 concerning State Civil Apparatus. In Article 1 point (1) it is stated that what is called the state civil apparatus or abbreviated as ASN is a profession for civil servants and government employees with a work agreement, then in Article 1 point (2) further explained, namely employees of the state civil apparatus, hereinafter referred to as employees. ASN is a civil servant and government employee with a work agreement who is appointed by a staffing officer and assigned tasks in a government position or entrusted with other state duties and is paid according to the laws and regulations.

Even though PNS and PPPK are both state civil servants, there are differences between the two. According to Article 1 point (3) UUNo. 5 of 2014, civil servants are Indonesian citizens who meet certain requirements, are appointed as permanent ASN

employees by civil servants to occupy government positions. Meanwhile, according to Article 1 point (4) of Law no. 5 of 2014, government employees with work agreements are Indonesian citizens who meet certain requirements, who are appointed based on work agreements for a certain period of time in order to carry out government duties. The most basic difference between the two is related to status, civil servants are permanent employees while government employees with work agreements are employees who work with work agreements who only work for a certain period of time. Then also between the two there are differences in rights.

In addition to civil servants and government employees with work agreements, there are honorary workers who work in the administration of government both at the center and in the regions. Article 1 number (1) Government Regulation Number 56 of 2012 concerning the Appointment of Honorary Personnel to Candidates for Civil Servants provides the definition of honorary staff, namely "Honorary staff is someone who is appointed by a staffing officer or other official in the government to carry out certain tasks in government agencies or whose income becomes a burden. State revenue and expenditure budget or regional revenue and expenditure budget".

The uneven distribution of PNS teachers in the regions has resulted in a shortage of teachers in several regions in Indonesia, so schools in these areas have to hire non-PNS teachers to teach in these places with honorariums from the school's funds. The low welfare of teachers in Indonesia is caused by inadequate salaries to meet their needs, resulting in teachers experiencing a financial deficit and will have an impact on how they teach. In 2018, the number of applicants for teacher formation was around 190,804 applicants.

This is because currently there are still honorary staff in government agencies, especially in the regions. In fact, this has been mandated for a long time in Law Number 5 of 2014 concerning the State Civil Apparatus (UU ASN). Likewise, their payments use a budget that is included in the category of goods and services, no longer human resources, and this is not compatible with the ASN Law.

In the completion of honorary staff through the selection of CPNS and PPPK admissions, the central and regional governments must be really careful in preparing formations based on the workload in their respective agencies. So far, the problem of honorary staff is also inseparable from the existence of staffing problems that occur in Indonesia. This is because the fulfillment of the needs of the apparatus is still not balanced with the workload contained in each government bureaucracy, especially in the regions.

Meanwhile, the agreement on the abolition of the status of honorary workers turned out to give rise to different perceptions among some people. The perception that arises is that with the abolition of the status of honorary workers, honorary workers will be fired or laid off. This can lead to polemics, especially for honorary staff, even though what is meant by the above agreement is that later there will be no longer permanent employees, temporary employees, or honorary staff, because all of them must be appointed as civil servants and PPPK. So it's not removed by being fired or laid off. The problem of honorary staff has actually been around for a long time, but so far it has not been able to be resolved properly. This paper is to examine the policy of eliminating the status of honorary workers and their impact on the current honorary workers.

2 Method

This research is categorized into normative legal research type, it is based on the issues and or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational, critical analytical and philosophical views, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined.. It will also be analyzed using a descriptive analytical method, namely by describing the applicable laws and regulations related to legal theory and positive law enforcement practices related to the problem.

3 Result and Discussion

3.1 The Position of Honorary Teachers in the Education System in Indonesia

According to Government Regulation Number 48 of 2005 concerning Appointment of Honorary Personnel to Candidates for Civil Servants, honorary staff is someone who is appointed by the Civil Service Supervisory Officer or other officials in the government to carry out certain tasks in government agencies or whose income becomes the burden of the State Revenue and Expenditure Budget (APBN) or Regional Revenue and Expenditure Budget (APBD). The categories of honorary workers based on funding sources include: K1 honorary staff, namely APBN honorarium, Provincial APBD honoraria, Regency/City APBD honorarium, and K2 honorary staff, namely Non APBN/APBD honorarium. Non-State Budget/Regional Budget Honorary consists of honorary teachers in public schools and private schools, and honorary staff in central/regional government agencies. The problem of honorary workers has actually been going on for a long time, especially related to status demands to be appointed as civil servants and welfare that is still not feasible.

The presence of honorary staff is due to the lack of personnel resources, namely civil servants in government agencies, especially in the regions. The honorary staff appears to assist the running of the public service bureaucracy in the midst of the minimal number of existing civil servants. In addition, if the procurement of CPNS is carried out, it also requires a large employee budget. Moreover, a moratorium on CPNS acceptance has also been carried out, namely in 2011–2012 and 2015–2017 in the context of structuring the needs of civil servants and evaluating the effectiveness of the number and performance of existing civil servants at that time. In addition, the presence of honorary staff is also inseparable from the political policies made by regional heads by appointing honorary staff in local government agencies.

According to Letor as quoted in Dwiyanto (2015), public policy management experts who are filled with the spirit of bureaucratic reform argue that any solution to the problem of temporary workers, must continue to support the achievement of the desired ideal conditions, namely a lean, professional, responsive, clean and serving bureaucracy. This is believed to be possible through the implementation of a more transparent, fair and non-discriminatory recruitment system and a series of well-planned institutional management processes or policy support. Although many honorary workers are recruited according to their competencies, it cannot be denied that the recruitment process for honorary staff that has occurred so far is mostly through the political process and not through the merit

system. The unclear position of honorary teachers in the Indonesian education system has had a massive impact on the welfare of honorary teachers.

The merit system according to the conception of scientific discipline is a personnel management system that emphasizes the basic considerations of competence for candidates who will be appointed, placed, promoted, and retired according to the applicable law. The competence of the candidate means that the candidate must have the expertise and professionalism according to the needs of the position to be held. Competence, expertise and professionalism of the candidate are the main considerations. Meanwhile, the competence of the existing honorary staff is still in doubt. Therefore, honorary staff must continue to go through a clear selection with a merit system if they want to become CPNS.

3.2 Implications for the Abolition of Honorary Teachers in the Law of the Republic of Indonesia Number 5 of 2014 Concerning State Civil Apparatus

In the perspective of Indonesia Teacher Welfare Regional Honors are still very low, this is due to the impact of policies on honorary teachers who do not yet have legal certainty both at the level of legislation, especially the ASN Law to the implementing regulations. This in principle has an impact on the position of honorary teachers who are half-heartedly acknowledged by the government. As such, the impact is the discourse on the elimination of honorary teachers in Indonesia on the grounds that the ASN Law only recognizes two types of employees, namely employees with work agreements (P3K) and State Civil Apparatuses (ASN).

The policy to abolish the status of honorary workers will have an impact on the existence of honorary workers who still exist today. Especially in the regions. There are regions that agree with this policy, for example the Bandung City Government. According to the Head of the Bandung City Personnel Information Data Planning (BKPP) Division, Rachmat Satiadi, he assessed that the PP Number 49 of 2018 concerning the Management of PPK to remove honorary employees until 2023 had a negative impact. The negative impact is that in the regulation the selection made must be measurable with the standard method and passing grade set. In addition, there is a possibility of a conflict of interest between existing non-civil servants and new non-civil servants.

The provision for the appointment of honorary staff is a continuation of the prohibition against government officials from appointing honorary workers to become ASN. In PP Number 49 of 2018, Article 96 states that staffing officers including other officials are prohibited from appointing non-PNS and/or non-PPPK employees to fill ASN positions. In fact, if the provisions are violated, the KemenPAN-RB together with the relevant ministries will impose sanctions. However, this cannot be confirmed regarding honorary staff who do not pass the CPNS selection until past the time limit will be dismissed or not. The transition period basically aims to tidy up honorary workers in Indonesia. After that, KemenPAN-RB together with the Ministry of Education and Culture, the Ministry of Finance, and the Ministry of Home Affairs will evaluate the regulation.

In 2014 the Civil Service Law was repealed, replaced by the ASN Law. In the ASN Law there is no term regarding Honorary Personnel, there are PNS and PPPK, which

means that the ASN Law does not recognize the existence of Honorary Personnel, Honorary Personnel are abolished. The absence of provisions regarding Honorary Personnel in the ASN Law means that Honorary Personnel do not have any status and position in the employment system, Honorary Personnel are not included in ASN Employees, but the fact is that in the field Honorary Personnel are still employed.

Although the ASN Law does not recognize Honorary Personnel, in fact there are still many Honorary Teachers who are still employed. The status of honorary teachers needs to be clarified and legal certainty guaranteed. The unclear status of the Honorary Teacher is very much contrary to the 1945 Constitution of the Republic of Indonesia in Article 28D Paragraph 2 which states that everyone has the right to recognition, guarantee of protection and fair legal certainty and equal treatment before the law. From the description above, it can be seen that there is no clarity regarding the status of Honorary Teachers after the enactment of the ASN Law. Due to this lack of clarity, there is a legal confusion over the status of the Honorary Teacher. Therefore, a legal interpretation of the ambiguity is needed to obtain answers regarding the status of Honorary Teachers after the promulgation of the ASN Law.

Thus, the status of honorary teachers becomes unclear, they do not get a clear legal status and position as regulated in the law or other derivative regulations. It is necessary to carry out a legal interpretation to find out how the position of Honorary Teachers in the ASN Law is, this interpretation is related to the PTT, Honorary, and PPKK concepts. Through legal interpretation, it can be seen that honorarium is not the same as PPPK, so Honorary Teachers cannot automatically be appointed as PPKK. Due to the absence of regulation regarding Honorary Teachers in the legislation, during their work Honorary Teachers become their Appointment Decree as their basis or basis in carrying out their work duties. The Decree on the Appointment of Honorary Teachers includes the State Administrative Decree (KTUN), where one of the principles of the KTUN is *presumptio iustae causa*, which means that the KTUN must always be considered true and valid before there is a permanent legal decision stating that the decision is not valid. Based on this principle, the SK held by the Honorary Teacher is still declared valid.

With this fact, there is uncertainty regarding the status of the Honorary Teacher, therefore it is necessary to carry out legal interpretation. In this case, the interpretation is grammatical and historical. Grammatical interpretation is carried out by looking for the elements contained in the meaning in accordance with the laws and regulations.⁴ Viewed from the definition of Non-Permanent Employees (PTT) in the Elucidation of Article 2 Paragraph 3 of the Personnel Law, it can be seen that the elements attached to PTT are a certain period of time, government duties (in this case working in government agencies), not as civil servants.

Based on the definition of Honorary Personnel in PP 48, the elements attached to Honorary Personnel are those who are appointed by the Personnel Guidance Officer or other officials in the government, work in government agencies, and are paid from the APBD/APBN. The definition of PPPK is contained in Article 7 Paragraph (2) of the ASN Law, PPPK is an ASN Employee who is appointed as an employee with a work agreement by the Personnel Development Officer in accordance with the needs of Government Agencies and the provisions of this Law. The elements attached to the

PPPK are ASN employees, appointed with a work agreement by the Personnel Guiding Officer.

Judging from the interpretation, it can be concluded that PTT and Honorary are in the same concept, although not explicitly. The similarity of the concepts of PPT and Honorary can be seen from the elements attached to each. However, for PPPK it is clear that it cannot be equated with PTT and Honorary, both in an express sense, as well as the inherent elements. The difference is that PPPK is appointed based on a work agreement and is included in the ASN Employee, while PTT and Honorary are based on appointment which in this case uses a Decree and is not included as a Civil Servant.

In connection with the description above, it can be concluded that Honorary is different from PPPK. The basic thing that distinguishes PPPK from Honorary Personnel is that PPPK cannot be automatically appointed as CPNS, in contrast to honorary staff who can be appointed as CPNS through special honorary lines in accordance with the provisions in PP No. 48 of 2005 in conjunction with PP No. 43 of 2007 in conjunction with PP No. 56 In 2012. With the change of the Employment Law into the ASN Law, Honorary Personnel cannot automatically become PPPK. Honorary teachers who are currently still working cannot be considered or automatically appointed as PPK, so their status remains as Honorary. The regulation regarding PPPK in the ASN Law cannot be applied to Honorary Teachers, this is because Honorary is not PPK. The status of honorary teachers at work is not explained in the ASN Law.

4 Conclusion

The position of honorary teachers in the education system in Indonesia in principle no longer has a legal basis as a result of the presence of the ASN Law which only recognizes First Aid and Civil Servants as ASN. This is as a result of the policy formulation in the ASN Law which removes honorary teachers as state-recognized employees, both permanent and non-permanent employees.

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