

Change of Employee Status to Civil Servants in Indonesia (Comparative Legal: Village Secretary, Contract Employees, KPK Staff and BRIN Employees)

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Abstract

The transition of status from employee of public institution to civil servant in Indonesia often occurs and always raises legal and social problems. The legal system for the transition of status is not patterned. There are differences on the level of law/arrangements, conditions and methods, as well as the consequences of dismissal. Even the special nature of status transfer laws is the einmaligh and lex specialist, that should not give rise to social problems, discrimination and legal uncertainty. Therefore, in the future it is necessary to formulate an ideal pattern that can achieve the achievement of employment goals while providing proper protection to employees who are citizens. For this reason, this paper will compare the existing legal arrangements for the transition of status that have existed to draw a line of problems that will be followed by a solution. This writing is normative legal research. There are at least four legal provisions for the transition of employment status that will be compared, namely the Village Secretary, staff of Corruption Eradication Commission as anti-corruption agency in Indonesia, and workers who switch to employees of the National Research and Innovation Agency.

Keywords

employee; change status; civil servants.



I. Introduction

The transfer of employment status of a public institution to become a Civil Servant in Indonesia is a common occurrence. For example, the appointment of the Village Secretary to become a Civil Servant as regulated in Government Regulation Number 45 of 2007 concerning Requirements and Procedures for Appointing Village Secretaries to Become a Civil Servant. There are also contract employees who are made Civil Servants as per Government Regulation Number 48 of 2005 concerning Appointment of Honorary Personnel to Candidates for Civil Servants. Before the Logistics Affairs Agency returned to being a Public Company, it had become a government agency under the name of the Logistics Affairs Agency. This change also changed the status of its employees to become civil servants, based on Presidential Decree No. 51 of 1995 concerning the Appointment of Employees of the Logistics Affairs Agency to become Civil Servants. The last update is the transition of the Indonesian Institute of Sciences (LIPI) staff, the Agency for the Assessment and Application of Technology (BPPT) staff, the National Nuclear Energy Agency (Batan) staff, the National Institute of Aeronautics and Space (LAPAN) staff as an implication of institutional unification based on Presidential Regulation Number 78 of 2021 about the National Research and Innovation Agency (BRIN). Despite repeated occurrences, it turns out that almost every transition has caused public controversy, as well as legal problems.

Such is the case with the employee turnover controversy that occurred with the Employees of the Corruption Eradication Commission (KPK), which is an Indonesian anti-corruption agency. After 17 (seventeen) years, Law Number 30 of 2002 concerning the Corruption Eradication Commission underwent significant changes based on Law Number 19 of 2019 (KPK Act). One of the impacts of this law is the change in the status of KPK Staff to Aparatur Sipil Negara (state civil servants). From the previous staffing management under the KPK itself as mandated by Article 36 of the United Nations Convention Against Corruption (UNCAC), it became under the guidance of the President as the ASN personnel management system regulates. The revision of the KPK Law was rejected by the public because it was considered to be weakening. Meanwhile, the government continues to claim that the revision of the KPK Law is a reinforcement (Ratna Puspita, 2019). Pros and cons left in passing. Article 69C of the revised KPK Law has determined that employees must change their status to ASN within a maximum period of 2 (two). As a result, no less than 57 employees were declared unsuccessful and dismissed from their employment status (Aditya Budiman, 2021). Ironically, among those dismissed were Novel Baswedan, a senior investigator who was quite popular, to a structural official who had received the Satyalancana Wira Karya from the President (Syailendra Persada, 2021).

Likewise, regarding the appointment of Contract Employees to become CPNS. The Ministry of Empowerment of State Apparatus and Bureaucratic Reform (Kemenpan-RB) has stated for a long time that the appointment of temporary workers has caused problems that have occurred since 2005. The appointment of Contract Employees to become civil servants is based on Government Regulation Number 48 of 2005 concerning the Appointment of Honorary Personnel to Candidates for Civil Servants. Interestingly, this Government Regulation policy is not based on a legal norm. But what is certain is that government agencies should since then be prohibited from hiring Contract Employees and the like again (Fadhly Fauzi Rachman, 2020).

Controversy also occurred over the appointment of the Village Secretary to become a civil servant. Although this is a mandate from Law Number 32 of 2004 concerning Regional Government. Some people think there is a conflict between the concepts of filling and lifting. Until public doubts about the appointment policy are linked to the goal of improving village administration if those people are appointed again (Marudu Napitulu, 2007).

The latest and perhaps not the last one is the transition of employee status in several public research bodies to BRIN as an implication of institutional unification based on Presidential Regulation Number 78 of 2021 concerning the National Research and Innovation Agency. Several BPPT employees with the status of non-civil servant government employees (PPNPN) who usually get work contract extensions every year lose their jobs without being accompanied by severance pay. There was a crew of the Baruna Scientific Research Ship who was also dismissed without severance pay. 70% of Eijkman's LBM staff with honorary status are in danger of not being able to work for the government anymore. Even though the merger includes no less than 38 other institutions and has the potential to lose non-civil servant researchers up to 1,500-1,600 people (Nur Hidayat, 2022). Until the Ombudsman stated that there had been maladministration in the form of procedural irregularities in the transfer of assets and personnel. Administrative and normative rights of employees are also not fulfilled so that various rights to welfare benefits, class promotions, ranks and careers are problematic (Robert Na Endi Jaweng, 2022).

In every organizational management, including in this case public service institutions, requires Human Resources in the main role. Human resources in government agencies place civil servants, in carrying out their duties and functions as public servants (Novi Savarianti Fahrani). So, all conditions that cause volatility, uncertainty, complexity and ambiguity (Firman Syah & Fahrani, 2019) will have a direct impact on the function of public services. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). The success of leadership is partly determined by the ability of leaders to develop their organizational culture. (Arif, 2019).

About the status transfer process, the Law Number 5 of 2014 concerning State Civil Apparatus only recognizes the appointment of Civil Servant through Procurement with the mechanism of Prospective Civil Servants and Prospective Government Employees with Work Agreements. There are no settings at all with regards to switching this state. The status transfer policy is always partial and separate from the broad framework of national policy for empowering state apparatus. There is no main standardized mechanism in dealing with affected employees. So, it is worth paying attention to the discussion of this legal issue:

1. What are the differences of rules level, terms of appointment, methods and implications?
2. What are the patterns and characteristics of the law of transition of status?

From the findings of these similarities and differences, this study aims to conduct advanced analysis to obtain solutions to problems from the implications of transitioning public agency employment status to State Civil Servant.

II. Research Method

This writing is normative legal research (Soerjono Soekanto) carried out by document studies (Kenneth D. Bailey) by studying books, newspapers, scientific papers, laws and regulations to other relevant reading materials. The activity is the process of discovering the laws that govern activities in human society, which involves state rules and comments that explain or analyze the rules (Morris L. Cohen & Kent, 2009). This involves various rules imposed by the state by conducting an explanation and analysis of these laws/rules. Because it adapts to the context of this writing, the approach is carried out selectively, namely the law and comparison approach. Legal materials are obtained and collected through literature study. The material is then analyzed and then described in a descriptive-qualitative manner. The information obtained is arranged systematically based on the suitability of the object under study. The data and information that have been systematized are then replicated, which is described and explained according to the object under study. Furthermore, the implied data and information are evaluated and assessed based on the law in order to obtain conformity or discrepancy. Furthermore, appropriate data and information are collected for further development/exploration.

III. Result and Discussion

Under normal circumstances, the appointment of employees is carried out in an open and competitive system which is in line with good governance. The system used in the management of the State Civil Apparatus is a merit system. The system is a human resource policy based on the principles of fairness, ability, achievement, and performance as the basis for the process of recruitment, salary, development, promotion, retention,

discipline, and employee retirement. Appointment of ASN is one of the processes in ASN management, namely an ASN management activity to produce ASN employees who are professional, have basic values, professional ethics, are free from political intervention, are free from practices of corruption, collusion, and nepotism (Tri Hayati, 2021). The State Civil Apparatus itself consists of 2 (two) types, namely Civil Servants and Government Employees with Work Agreements. Basically, every Indonesian citizen has the same opportunity to apply to become a candidate for Civil Servants and Government Employees with a Work Agreement. The flow of procurement stages includes planning, announcement of vacancies, application, selection, announcement of selection results, and appointment.

The problem is that the State Civil Apparatus law does not regulate the transfer mechanism and how to deal with problems that arise afterwards. The status transfer policy is always partial and separate from the broad framework of policies for empowering state apparatus. There is no main standardized mechanism in dealing with employees who are negatively affected, starting from a decrease in income or even worst causing the employee concerned to be dismissed.

3.1 Rule Level Difference

The legal basis for the transfer to become a Civil Servant from the Village Secretary, Contract Employees, and KPK Staff has the same thing, namely using a legal instrument in the form of a Government Regulation. Meanwhile, BRIN employees use a legal instrument in the form of a Presidential Regulation which receives a delegation from Law Number 11 of 2020 concerning Job Creation which has amended Law Number 11 of 2019 concerning the National System of Science and Technology. Appointment of Village Secretary through Government Regulation Number 45 of 2007 which is a delegation of Law Number 32 of 2004 concerning Regional Government. Meanwhile, KPK Staff through Government Regulation Number 41 of 2020 which are delegates of Law Number 30 of 2002 concerning the Corruption Eradication Commission as has been amended several times, most recently by Law Number 19 of 19 9 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. It's just that for the appointment of Honorary Personnel, Government Regulation Number 48 of 2005 as amended several times, most recently with Government Regulation Number 56 of 2012 concerning the Second Amendment to Government Regulation Number 48 of 2005 concerning the Appointment of Honorary Personnel to Candidates for Civil Servants as the legal basis is not has a master law that provides direct orders for the preparation of government regulations regarding the appointment of honorary workers to become civil servants as contained in the appointment of Village Secretaries and KPK Staff. In the explanation of Government Regulation Number 48 of 2005, it is stated that the establishment of this Government Regulation is a special regulation and excludes several articles in Government Regulation Number 98 of 2000 concerning Procurement of Civil Servants as amended by Government Regulation Number 11 of 2002.

The content of the Presidential Regulation is to regulate what is ordered by law, government regulation, or material to carry out the administration of government power. Meanwhile, Government Regulations are legal instruments to carry out laws as they should (UUD 1945). This means that a Government Regulation arises because of the existence of another higher or equivalent Legislation that instructs it. Regarding the characteristics of this Government Regulation, Prof. Attamimi said that a Government Regulation could not be enacted before the main law was enacted (Maria Farida, 2007). This is reinforced by the opinion of Prof. Jimly Asshiddiqie where the purpose of the Government Regulation issued by the President is to implement laws and the stipulation of the Government

Regulation must be based on orders or authority delegated from the law (legislative delegation of rule-making power) (Jimly Asshiddiqie, 2013). Therefore, if there is no delegation of authority in the formation of statutory regulations (delegate legislation) as implementing regulations of the law, there should be no formation of such Government Regulations.

3.2 Differences in Terms of Appointment

In the appointment of the Village Secretary, Contract Employees and KPK Staff to become civil servants, there are differences between the three. In the appointment of village secretaries and KPK Staff, both require elements of position qualification, competence, integrity and morality. This is different from the appointment of Contract Employees, which only requires age and working years and does not require job qualifications, competence, integrity and morality. Whereas in the unification of BRIN there should be no appointment through status transfer because the Integration clause in Article 65 paragraph (2) only transfers civil servants of institutions to become civil servants of BRIN.

Civil servants as elements of the state apparatus, state servants, and public servants are required to be able to carry out their duties properly, therefore they must have loyalty, full obedience to Pancasila, the 1945 Constitution, the State and the government so that they can focus all attention and thoughts and mobilize all their efforts and energy to carry out government and development tasks in an efficient and effective manner (Sri Hartini, 2008). As a public servant, civil servants who are one element of the government must provide the best service to the community, because the government is an institution established by the community whose function is to fulfill everything that is needed by the public (society) (Suman Kurik, 2009). As public servants, civil servants should have competence, professionalism and integrity and good morals, this is related to realizing a clean and authoritative government system (good governance), as well as realizing good, efficient, effective and quality public services, of course. need to be supported by the existence of civil servants who are professional, responsible, fair, honest, and competent in their fields. In other words, ASN employees in carrying out their duties must of course be based on professionalism and competence, according to the qualifications in their field of knowledge (Endang Komara, 2019).

3.3 Differences in Appointment Method

There are differences in the process of appointing the Village Secretary, Contract Employees, and KPK Staff to become civil servants. The appointment of the Village Secretary does not go through a Civil Servant Candidate first so that he is immediately appointed as a PNS. Likewise, for KPK Staff who pass the test, they are immediately appointed as PNS, followed by PNS orientation. As for the Honorary Personnel, first through the CPNS mechanism.

That the procedure of appointment that deviates from the appointment under normal circumstances as the norm of the State Civil Apparatus Law is basically understandable. It's just important to push for a transparent and accountable system. This is to ensure the absence of subjective elements from the Decision Making Officials and to avoid discrimination and violations of rights Human Rights. This is important to maintain bureaucratic reform in the field of personnel, namely Civil Servants who have integrity, are professional, neutral and free from political intervention, are free from practices of corruption, collusion, and nepotism, and are able to provide public services for the

community and are able to carry out their roles as elements of unity. and national unity (Tiffany Wulan Sumakul, 2021).

3.4 Fired Implications

The provisions for the transfer of status for Honorary Personnel, Village Secretaries, and KPK Staff, have different implications for employees who are declared unsuccessful. Only the regulation of the Village Secretary that regulates the technical consequences of employees not meeting the requirements. Regulations on Honorary Personnel and KPK Staff do not regulate the implications of not graduating employees. Meanwhile, the Presidential Regulation on BRIN does not regulate this in detail at all.

The Government Regulation on the Appointment of Honorary Personnel to become CPNS does not regulate in detail the consequences of Contract Employees who do not pass the exam. However, it was stated that the Minister of Administrative and Bureaucratic Reform was called a member of the opportunity for Contract Employees who did not pass the CPNS test to take the PPPK test. If they still do not pass either the CPNS or PPPK, these honorary workers are still given the opportunity to work in government agencies as long as the staff is still needed, with the amount of wages according to their respective UMR (Anisa Indraini, 2021). Similarly, Contract Employees in the field of education who do not pass the CPNS are still given the opportunity to take part II and III selection tests to become ASN teachers of the PPPK type (Lizsa Egeham, 2021).

The provisions for the Village Secretary to become a Civil Servant are specifically regulated in Chapter IV with the title Village Secretary who is Not Appointed as a Civil Servant. Article 10 determines that the Village Secretary who is not appointed as a civil servant shall be dismissed from the position of the Village Secretary by the Regent/Mayor. The dismissed Village Secretary is given a compensation allowance with the Regional Budget and Revenue (APBD). The calculation of the amount of the compensation allowance is calculated by the formula:

- a. Village Secretary with a working period of 1 (one) to 5 (five) years is set at Rp. 5,000,000.00 (five million rupiah);
- b. The Village Secretary with a tenure of more than 5 (five) years is calculated at Rp. 1,000,000.00 (one million rupiah) per year, with the provisions that the cumulative maximum is Rp. 20,000,000.00 (twenty million rupiah).

Furthermore, the determination of the amount of compensation allowance for each The Dismissed Village Secretary is determined by the Decree of the Regent/Mayor.

Meanwhile, in the regulation on the transfer of the status of KPK Staff to ASN, there are no regulations or any words related to dismissal, both in the Law on Amendment to the KPK Law, Government Regulations on Status Transfer, and KPK Regulations on Status Transfer. In fact, KPK Staff were immediately relieved of their duties since the announcement of the test (Fadhilah, 2021). A total of 75 (seventy-five) employees were released based on the Decree of the Chairperson of the KPK dated May 7, 2021 (Syailendra Persada, 2021). There were 18 (eighteen) employees who did not pass the TWK given the opportunity for education and training at the Ministry of Defense, who were later also appointed as civil servants on June 1, 2021 (Syailendra Persada, 2021). A few months later, 57 (fifty-seven) of the disabled were fired (Aditya Budiman, 2021). The names that were dismissed include Novel Baswedan, a senior investigator who is quite popular as well as structural officials who have received the Satyalancana Wira Karya from the President (Syailendra Persada, 2021), several strategic structural officials, several high-profile investigators and case investigators, as well as civil servants. employees with other important roles.

So the impact is much different for employees when compared to the transfer of Honorarium Personnel status who still has the opportunity in 2 (two) selections and it is possible to continue to work as honorarium staff. It is also different from the Village Secretary who was not appointed as a civil servant because he still received compensation (golden shake hand) from the APBD. Even when comparing it with workers' rights according to labor law, workers who have been terminated are still more fortunate because they are still entitled to severance pay and/or gratuity and compensation. KPK Staff who were dismissed because they did not pass this status transfer even became difficult to find new jobs (Eko Ari Wibowo, 2021) because they were red labeled and could not be fostered (Adhi Wicaksono, 2021).

3.5 Einmalig and Exceptionally Characteristics

First, the three forms of expenditure above are essentially exempt from the general civil service procurement mechanism. The appointment of the Village Secretary and the Appointment of Honorary Personnel is an evaluation of Government Regulation Number 98 of 2000 concerning the Procurement of Civil Servants as amended by Government Regulation Number 11 of 2002. Because as in Government Regulation Number 98 of 2000 it does not regulate other management mechanisms through selection civil servant. Likewise, the administration of the KPK is a special and interesting arrangement of several articles contained in Law Number 5 of 2014 concerning State Civil Apparatus and Government Regulation Number 11 of 2017 concerning the Management of Civil Servants. This is because of the logistical consequences of other laws that are specific in nature, so it applies as *Lex Specialist Derogat Legi Generali*. A new rule overrides the old rule, as long as it is equal. However, here there is a special note to explain the status of honorarium normatively not made in advance by the Act in advance. It seems that the President as the highest staffing supervisor took the policy initiative, which in the course of its implementation continues with the DPR.

Second, all the provisions on the transition of status being compared are one-time (*einmalig*) in nature. Contrary to regulations that are continuously regulating (*dauerhaftig*), then legal norms that apply once-completely (*einmalig*) are legal norms that apply only once and after that, the purpose of the regulation is achieved. After the transition process is complete, where all employees who are within the scope of the arrangement have been appointed (and/or dismissed), then the regulation is completed so that it is not used as a basis for setting the locus and/or other staffing place (*tempus*).

3.6 Law of Transfer Status is Unpattern

Based on the analysis of the comparison results as described above, it can be said that the transfer of employee status to ASN in Indonesia is unpattern. Of the all indicators, none of them have similarities in terms of the type of legal umbrella, requirements, mechanisms and how to reward employees who do not change status. These different and unpattern arrangements can create legal uncertainty, tend to be discriminatory and have a high chance of causing violations of human rights. Concerns about the arbitrariness of policy makers, both from the legislative and executive elements, are inevitable. Therefore, the legislators should make clear arrangements for the mechanism of appointment outside of this CPNS appointment. In our opinion, this provides more legal certainty, legal protection for various parties and respect and appreciation for citizens.

The appointment of ASN through this status transfer mechanism also needs to accommodate the legal remedy mechanism. This is important to provide space for parties who feel dissatisfied or disadvantaged, for example because it results in being stopped

from work, or the rights they deserve. For example, the rebuttal mechanism made by the State Civil Service Agency which applies to the procurement of CPNS based on Law Number 5 of 2014 concerning State Civil Apparatus and Government Regulation Number 11 of 2017 concerning the Management of Civil Servants.

On the other hand, the legal product of the law in reality needs to be realized that it is a political product. Dialogically it can be stated that political entities result from legal activation, or at least are regulated by law. Hypothetically, it can be stated that changes to a law that leave its stability should be in the public interest. Although de facto is not always for the benefit of humans or society. Subjectively it could be just the fruit of opportunist thoughts from political entities. Hans Kelsen has warned that “a political bias can affect the definition of law” (Somardi, 1995). Nonet and Selznick have also long stated that the correlation between politics and law creates a configuration of mutual influence, between being affected or having influence. Assuming that the law is a political product, then politics will determine the law. The political configuration of a country will determine the character of its legal products. In a country with a democratic political configuration, the legal product will be responsive/populistic. On the other hand, countries with authoritarian political configurations will give orthodox/conservative/elitist legal products (Moh. Mahfud MD, 2017).

IV. Conclusion

In the process of appointing the Village Secretary, Contract Employees and KPK Staff, the form of employee transfer has the same thing as excluding it from the general civil servant procurement mechanism. Thus, the basic nature of the transfer of status is to exclude (exceptionally) from the provisions of the normal procurement of employees. All provisions on the transition of status being compared are one-time or also called *einmalig*. Incompatibility with the procurement mechanism in general can be understood as a logical consequence of the orders of other laws that are specific in nature, so that the *Lex Specialist Derogat Legi Generali* principle applies. Meanwhile, the nature of the regulation is one time (*einmalig*) because it cannot be applied to the basis of action at the place (*locus*) and/or time (*tempus*) of other staffing.

Different and unpatterned arrangements of law will create legal uncertainty, tend to be discriminatory and cause major disturbances to cause human rights violations. In the future, policy makers should in deciding the transfer of status also need to arrange a mechanism that also provides proper and proper protection to employees. Among them, such as providing compensation or alternative distribution of labor that is equal or better. This is necessary to not only help achieve the objectives of the transfer of status, but also to provide legal certainty, minimize discrimination and provide protection of human rights for citizens.

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