

UU No. 5 of 2014 as The Basis for BKN's Collaborative Work with The Ministry of PAN and Bureaucracy in the ASN Context

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Abstract

One area of change in bureaucratic reform can be implemented if there is a competent state civil apparatus. One of the competent civil servants is in the field of human resources, namely employees who have an educational background according to the position given to them. Bureaucratic reform in Indonesia conducted through Law No. 5 of 2014 on State Civil Apparatus has not yet presented its maximum results. The rising cases of buying and selling job promotions by the head of the region is one of the indicators. The purpose of this research is to describe and analyze the relationship between the National Civil Service Agency and the Ministry of State Apparatus Utilization and Bureaucratic Reform based on Law No. 5 of 2014 on State Civil Apparatus. The research used the descriptive qualitative method with normative juridical analysis and data collection is carried out through literature studies. The secondary data collected from documents and texts related to the research topic, be it books, articles journals, or others. The results of this study show that as long as the civil service development officials are still carried out by political. This results of this study show that as long as the oversight task is still carried by political officials, and bureaucracy dependence on politics is simultaneously strong, political neutrality and professional bureaucrats are difficult to be created. While, the negative impact will be received by people as the users of their services. This research recommends that the role of oversight officers is given to bureaucratic career officials through the revision of UU ASN. KASN will consequently have a role to ensure that every bureaucrat will perform its role as the executor of any policy made by political officials. With this revision, thus, ASN will be a professional in carrying out its duties, which needed in making effective governance

I. Introduction

Human resources who work in the public sector or better known as State Civil Servants (ASN) are the most vital element in government agencies. The big responsibility of the bureaucracy in providing services to the community must be supported by professional and competent ASN employees (Rakhmawanto, 2020). The quality emphasized in public servants is the quality of human resources who are able to process technological developments and prioritize knowledge. The challenge facing government institutions in the future is that they need a state apparatus that is professional, visionary, high performing, accountable, free from practices of corruption, collusion and nepotism (KKN), independent from political structures, able to build partnerships with the private sector and oriented towards public services (Kadarisman, 2018). To be able to create an ASN as above, the ASN format must be changed. This format must differentiate political positions in government from ASN positions which must be neutral from political intervention. Civil service administration must regulate and separate state (political) positions from professional positions and prohibit civil servants from becoming administrators and members of political parties (Pio, 2018).

Bureaucratic reform is carried out in order to ensure that the government bureaucracy runs well in accordance with modern management principles. State civil servants are required to be professional and competent in carrying out their duties and obligations at work (Dwiyanto, 2015). The main task of the state civil apparatus is to provide public services, but the lack of competency and skills possessed by ASN is a problem that cannot be resolved (Rostanti et al., 2016). The Ministry of State Apparatus Empowerment and Bureaucratic Reform (KemenPAN-RB) has carried out bureaucratic simplification, one of which is equalizing structural positions to functional positions (<https://www.menpan.go.id/>). Law no. 5 of 2014 concerning State Civil Apparatus explained in article 56 paragraph 1, each central and regional government agency is obliged to prepare requirements for the number and type of civil servant positions based on position analysis and workload analysis. This law explains that employee needs planning must use job analysis (Anjab) and workload analysis (ABK). This analysis guideline has been regulated in KemenPAN-RB Regulation Number 1 of 2020 which is a guideline for job analysis and workload analysis. There are at least 4 (four) institutions that are explicitly mentioned in Law Number 5 of 2014, namely, the Ministry of PAN (Utilization of State Apparatus) and RB (Bureaucratic Reform), KASN (State Civil Apparatus Commission) LAN (State Administrative Institution) and BKN (State Civil Service Agency). From the perspective of constitutional law, the Ministry of PAN (State Apparatus Empowerment) and RB have their position as Ministries, while LAN and BKN have their position as Non-Ministerial Government Institutions (LPNK) is classified as the main state institution (state main organ), while KASN (State Civil Apparatus Commission) is a supporting state institution (state auxiliary organ). Many laws and regulations have changed, as a result, various discussions and disagreements regarding the position and relationship between various state institutions and government institutions have never ended, especially regarding the meaning of the position and relationship between Non-Ministerial Government Institutions (LPNK) and Ministries (Sedarmayanti, 2016).

State Civil Apparatus (ASN) employees are appointed by a civil service development official and entrusted with the duties of a government position and are paid salaries based on statutory regulations. In carrying out their role as public servants provided by the government to the community, ASN is often used as an indicator of the success of government administration (Kanaha, 2019). National reform will be meaningless if public services are still poor. Moreover, to realize good governance, where accountability is one of the principles, it must be prioritized in

aspects of government administration by ASN in an excellent manner that cannot be postponed (Elisa et al., 2022). So far, the level of public trust in ASN tends to be negative, such as laziness, corruption, lack of service, unproductive and the like requiring reform of the mindset that is oriented towards aspects of public service. Bureaucratic reform requires fundamental reforms to be carried out first, namely reforming mindsets that are formed due to past events that leave a deep impression, both positive and negative (Mustafid, 2017).

The problem is a factor in the need to roll out bureaucratic reform namely, there are internal and external problems. The internal problem is the institution government that is still not competitive and effective in carrying out its duties, Human resources are not yet of good quality and government administration is poor not yet oriented towards meeting community needs. Apart from the problems internally, there are also external problems, namely competition between resources humans (Faridl et al., 2019). To be able to solve this problem, reform bureaucracy needs to revise and develop various regulations, modernize various central and regional government management policies and practices, as well as adapting them tasks and functions of government agencies with a new paradigm. Bureaucratic Reform in The Ministry of Law and Human Rights has been launched since the reform started with guided by the regulations and instructions issued by the Minister of Empowerment State Apparatus and Bureaucratic Reform (MENPAN-RB) based on regulations President No. 81 of 2010 concerning the Grand Design of Bureaucratic Reform 2010-2025.

However, currently the management and performance of ASN has improved a lot comprehensive and gradual improvements by prioritizing aspects competence. These improvements are based on the general provisions in UU no. 5 of 2014 concerning Personnel Principles including planning, recruitment, career development, placement, promotion, salary, welfare as well as termination. Apart from performance problems, there are demands for management reform State Civil Servants also come from the public as recipients and objects of service public provided by the government. Service is slow and the service culture is not orientation towards community satisfaction still often occurs and can cause the public is better and happier to deal with the private sector than with government agencies. Factors of community demand for services and implementation. Good governance is a reflection of life and active community participation in the context of realizing good governance and must be immediately responded to by the government through reforming the management of its apparatus (Prasojo & Rudita, 2014).

The existence of an amendment to Law No. 5 of 2014 which replaces the phrase "Honorary" employees with Government Employees with a Work Agreement (PPPK) can facilitate the performance of the State Civil Service Agency and the Ministry of State Civil Apparatus in realizing good government. The aim of this research is to describe and analyze the relationship between the State Civil Service Agency and the Ministry of State Apparatus Empowerment and Bureaucratic Reform based on Law no. 5 of 2014 concerning State Civil Apparatus.

2. Research Method

This research uses descriptive qualitative methods with juridical analysis normative, namely testing and reviewing applicable laws and regulations related to the State Civil Service Agency, Ministry of Apparatus Empowerment State, and Bureaucratic Reform. The primary legal material in this research consists of: basic norms, such as the 1945 Constitution, and statutory regulations

related to research objects. Meanwhile, secondary legal materials, namely related to research topics, such as books, journal articles, and the like. The data analysis method in this study uses a qualitative model method (Miles, Huberman, Saldana, 2014)

Data is collected in a variety of ways (interviews, document digests, recording tape), then processed before it is ready for use through recording, typing, editing or transposing. 1. Data collection is a process of collecting first data or data raw materials collected in research. 2. Data reduction is a selection process, focusing attention on simplifying, abstracting and transforming data emerging from notes written on the field. 3. Data presentation is the process of arranging information in a certain way, so that conclusions are needed. All data is in the form of documentation results analyzed according to theories to give rise to a description of the relationship State Civil Service Agency with the Ministry of Apparatus Empowerment State and Bureaucratic Reform based on Law no. 5 of 2014. 4. The conclusion includes a simplified meaning, the researcher explained conclusions from the researcher's point of view to further emphasize this research

3. Results and Discussion

The ASN Law has regulated institutions, especially in ASN resource management. This aims to overcome overlap or redundancy of authority, duties and functions of existing institutions related to the management of state apparatus, especially civil servants. The ASN Law becomes the legal basis for the formation of a new institution, namely the State Civil Apparatus Committee (KASN) as a non-structural institution that is independent and free of political intervention to create ASNs that are professional, performant, provide services efficiently fair and neutral, as well as being the glue and unifier of the nation. Apart from that, it is also regulated regarding the revitalization of the duties and functions of management-related institutions which have existed so far, include the Ministry of State Apparatus Empowerment and Bureaucratic Reform (Kemenpan-RB), State Administration Institute (LAN) as a non-ministerial government institution that is given the authority to carry out assessment and education and training for ASN and the State Civil Service Agency (BKN) is a non-ministerial government agency given the authority to do so coaching and organizing ASN management nationally.

Based on Article 25 of the ASN Law, the President is the holder government power is the holder of the highest authority on policy, professional development, as well as ASN Management. In order to organize powers, the President delegates some of his powers to the Ministry which carries out government affairs in the field of apparatus utilization state, relating to the authority to formulate and determine policies, coordination and synchronizing policies, as well as monitoring the implementation of ASN policies. KASN is related to the authority to monitor and evaluate policy implementation and ASN management to be able to guarantee the realization of a merit and supervision system regarding the implementation of ASN principles and codes of ethics and behavior codes. Meanwhile LAN related to research authority, ASN Management policy review, coaching, and organizing ASN education and training. BKN is related with the authority to administer, manage ASN, supervise and control implementation of ASN norms, standards, procedures and management criteria (Sarnawa,2017).

Relations between the State Civil Service Agency and the Ministry of Empowerment State Apparatus and Bureaucratic Reform Based on Law no. 5 of 2014 The relationship between BKN and KemenPAN-RB is a functional relationship implemented synergistically in a government

system. This relationship it can be interpreted that between the two of them each carries out affairs governments that are almost the same and are related to each other, namely affairs state apparatus and civil service. Apart from that, between BKN and KemenPAN-RB too have a coordinating relationship. Coordination can be interpreted as cooperation between a government organization that is directed to achieve certain goals that it has set. In the Regulation of the Head of the State Civil Service Agency Number 19 of the Year 2014 concerning the Organization and Work Procedures of the State Civil Service Agency provides clarity that the State Civil Service Agency has Position, Duties, and The functions are listed in articles 1, 2 and 3. KemenPAN-RB is to strengthen the role and responsibility to further optimize the implementation of Bureaucratic Reform as one of the state's strategic agendas. To speed up implementation Bureaucratic reform, policies and work plans are packaged into one package namely the Nine Bureaucratic Acceleration Programs as a simplification of grand bureaucratic reform design. Organizing affairs in the field of utilization state apparatus and bureaucratic reform in order to assist the President in administering state government (Meylani & Sigit, 2018).

At the time of Republic of Indonesia Law no. 5 of 2014 comes into force, in its entirety statutory regulations which are implementing regulations for Law No. 8 of 1974 concerning Personnel Principles (State Gazette Republic of Indonesia 1974 Number 55, Supplement to the State Gazette of the Republic Indonesia Number 3041) as amended by Law Number 43 of 1999 concerning Amendments to Law no. 8 of 1974 concerning Personnel Principles (State Gazette of the Republic of Indonesia 1999 No. 169, Supplement to the State Gazette of the Republic of Indonesia Number 3890) stated still valid as long as it does not conflict and has not been changed based on this Law. By looking at the Regulations of the Head of the Personnel Agency Country No. 19 of 2014 concerning Organization and Work Procedures of Civil Service Agencies State then this Law is the implementing regulations of the Law Staffing Principles. So the position of Republic of Indonesia Law No. 5 of the Year 2014 concerning very strong and strategic State Civil Apparatus (ASN) as well as regulations Head of the State Civil Service Agency Number 19 of 2014 concerning Organizations and State Civil Service Agency Work Procedures regarding the State Civil Service Agency (BKN) still valid as long as it does not conflict with Republic of Indonesia Law Number 5 of 2014 concerning State Civil Apparatus (Asri, 2018).

Relations between the State Civil Service Agency and the Ministry of Empowerment State Apparatus and Bureaucratic Reform

Relations between the State Civil Service Agency and the Ministry of Empowerment State Apparatus and Bureaucratic Reform, namely formulating and determining policies in the fields of reform, bureaucracy, apparatus accountability and supervision, institutions and management, human resources for apparatus, and public services. Coordinate and synchronize the implementation of policies in the field of reform, accountability of apparatus and institutions and management and human resources apparatus and public services. The Ministry of PAN and RB must formulate and establish general policies in the field of State Apparatus and Bureaucratic Reform, while BKN determines the technicalities. Coordination and synchronization carried out by the Ministry of PAN and RB in the field of State Apparatus and Bureaucratic Reform involving BKN as one of the stakeholders in the personnel sector. Coordinate the implementation of tasks and develop and provide support administration to all organizational elements within the State Civil Service Agency and the Ministry of PAN and RB. Coordinate and carry out supervision and supervision of government administration and management of goods state property which is the responsibility of the Ministry of Apparatus Empowerment The State and

Bureaucratic Reform (Noer, 2014). In practice, overlaps and overlaps are often found authority between the Ministry of PAN and RB and BKN on implementation aspects his task. Often the Ministry of PAN and RB takes over the authority of BKN in formulating and establishing technical policies, and often BKN also formulates and establishes policies that are too general in nature. To in the future, the potential for overlapping authority between the Ministries of PAN and RB and BKN continues to occur, if there is no cooperation between the two. Connection between BKN and the Ministry of PAN and RB is a functional relationship implemented synergistically in a government system. Apart from that, between BKN and the Ministry of PAN and RB also has a coordinating relationship. Coordination can be interpreted as cooperation between government organizations directed towards achieve certain goals that have been set. Although in practice, it seems BKN is subordinate to the Ministry of PAN and RB (Budi, 2016).

This impression is obtained when in reality BKN cannot communicate and is accountable for all its activities directly to the President. By Therefore, to correct this wrong impression, you can look at the position again LPNK in government, especially seen from an administrative law perspective country. LPNK cannot be categorized as part of the Ministry or subordinate to a Ministry, then it can be said that BKN does not have structural relationship (subordination) with the Ministry of PAN and RB as in subordinates and superiors, because the position of BKN is directly under the President. Weaknesses in the Relationship between the State Civil Service Agency and the Ministry PAN and RB

Weakness of the relationship between the State Civil Service Agency and the Ministry PAN and RB based on Republic of Indonesia Law no. 5 of 2014 concerning Apparatus State Civil Service is as follows:

a. There are no specific provisions in Law no. 5 of 2014 related

The State Civil Service is considered not to have accommodated the interests of the workforce honorary work so this Law must be immediately revised so that it does not detrimental to workers. Weaknesses of Law no. 5 of 2014 moment This means that there is not a single article or verse that touches on status settlement honorary work, even though he has served for decades. The government asked promised to resolve the problems of honorary staff with the Employee Scheme Government with a Work Agreement (PPPK). On the other hand, hundreds of thousands of honorary temporary employees, contract employees and permanent non-PNS employees are not yet clear his fate. Until now, the status of honorary workers does not have an umbrella law. The DPR leadership has also conveyed this to the president. President Joko Widodo has issued Presidential Letter (Surpres) Number R19/Pres/03/2017 concerning the appointment of representatives from the government to discuss revision of the State Civil Apparatus Law together with the DPR. Constitution The State Civil Apparatus has not yet been fully harmonized with Related laws. For example, in general provisions have not yet spoken in detail who is meant by Civil Servants. In fact, UU previously namely Law no. 43 of 1999 concerning Principles Personnel in Article 2 paragraph 51 (1) states who is included Civil Servant category. This means the State Civil Service Law (ASN) does not pay attention to the clarity of what the content material should be serve as a guide to its preparation.

b. There is overlapping regarding the regulation of regional heads' authority within appointment and dismissal of certain officials. This authority is rigid has been described in Law No.23 of 2014 concerning Government Area. In other words, the provisions related to this matter were not made based on the absence of provisions governing it but precisely has given rise to overregulation. Notes to the Apparatus Act The State Civil Service must return to harmonizing

with the Laws that already exists. However, if these provisions are to be maintained, it is necessary look for logical, juridical, philosophical and sociological reasoning so that you can accepted. Republic of Indonesia Law no. 5 of 2014 concerning State Civil Servants limited to providing an explanation of the requirements for filling higher positions by Government employees. However, it does not fully provide an explanation related to the conditions while occupying the position, as in article Republic of Indonesia Law Number 5 of 2014 only pays attention competency requirements, qualifications, rank, education, training, track record position, and integrity. However, after taking office it has not been explained Rigidly the conditions must be met as a reference so that while in office they are not act arbitrarily.

- c. Provisions of Article 119 of Republic of Indonesia Law Number 5 of 2014 concerning Apparatus The State Civil Service states that high-ranking and middle-ranking officials Pratama high leaders who will run for governor and deputy governor, regent or mayor, or deputy regent or deputy mayor must declare written resignation from the Civil Service since registering as a candidate. Dispute resolution that only comes down to administrative appeal stage where the process is submitted to the consideration body The State Civil Service can certainly cause its own problems. Apart from there Administrative appeal efforts must also include other efforts through mechanisms juridical by being tried by de facto and de jure assigned Judges act and be independent in resolving disputes. Where, deep the provisions of Article 131 of Law of the Republic of Indonesia Number 5 of 2014 have only been replaced The name is Administrative Position, which is equivalent to echelon III in the previous system, supervisors were equivalent to echelon IV 53 in previous system, and implementers equivalent to echelon V and functional common in previous systems. Such a design shows that the provisions of this article can give rise to many interpretations that the article this is a change of name for something that originally used a name Echelon positions were then replaced with supervisors and administrators. So, The provisions of this article are categorized as rubber articles and will be very dangerous if maintained in a law because it provides an opportunity to anyone interpreting it. Provisions of Article 124 of the Republic of Indonesia Law No. 5 of 2014 still opens up opportunities for Civil Servants who do not serving again to become a state official again and become an obstacle in the spirit of regeneration and bureaucratic invigoration. Especially if you are retired The ASN has a bad track record while being an ASN, so that's why It doesn't make bureaucracy better, but quite the opposite. Therefore Therefore, the provisions of this article are worth reviewing and the reasons need to be found if it is maintained.

Advanced Bureaucratic Reform

Looking at the history of the discussion of the ASN Law and the practice of buying and selling positions is still ongoing today, it is clear that the initiators are worried The ASN Bill will be influenced by bureaucracy with political aspects becoming evident. Various efforts were made to avoid political intervention, both in recruitment of CPNS and appointment to positions, such as using information technology, open auctions for positions, as well as various regulations and appeals, remain unable to stem the practice of buying and selling positions within ASN. Strangely, the current ultimate effort to overcome this problem is to delete KASN. The KASN chairman rejected the notion that the institution he leads is ineffective carry out their duties when related to various cases of buying and selling positions by regional heads which has become widespread recently. The practice of buying and selling positions by the head The areas caught by the KPK are related to positions at the supervisory level and administrators who are not in the

realm of KASN. However, KASN admitted that it was true there are still regions that do not implement the recommendations submitted by KASN, making KASN appear less effective in its role in supervising the process appointment of JPT. Bureaucratic Reform Coalition which represents the voice of the community also rejected the proposal to disband KASN.

With the new recruitment system, where civil servants are captured are civil servants quality certainly places the bureaucracy only as an implementer of politicians' policies will create contradictions. On the one hand, bureaucracy is a professional person, professionally recruited. But on the other hand, with all these advantages, the bureaucracy is only placed as subordinates to politicians who are recruited behind closed doors and tends to be full of money politics. It is not surprising that there is cadre formation in political parties. Until now, it still causes problems and tends to produce cadres which is corrupt. If Indonesia wants to move towards performance based bureaucracy in 2019, it is time to eliminate political interference in the bureaucracy..Allowing politics to always intervene in bureaucracy results in bureaucracy Indonesia is weak. This condition maintains a weak bureaucratic situation, no professionalism and taking sides which ultimately harms the people, nation and state. People will receive poor public services, and Indonesia will be trapped in middle-income countries and it is difficult to become a large country.

Therefore, it is precisely eliminating political intervention within the ASN body cannot be done through the dissolution of KASN. KASN should function become a bridge between political officials who produce policies and officials bureaucracy that implements policy. Political officials need not worry whether bureaucratic officials are loyal to implement their policies or not because there is a KASN supervise. On the other hand, the bureaucracy also does not need to worry about its position the focus of the bureaucracy is service to the community, not anymore service to political officials simply to maintain their position. So, the role of PPK can be handed over to bureaucratic career officials, step The next step is to strengthen KASN. Currently, KASN is only supported by HR person. The State Civil Service Agency as KASN secretariat is intended to avoid new recruitment at KASN, as well as to support KASN's duties. Because, KASN often has difficulty ensuring that applicants participate in the auction whether the open position meets the qualifications or not.

In practice, it has happened that the regional head appointed an official administrators who do not meet the qualifications. Forced because of a candidate for office. This is the person chosen by the regional head. However, in this case, BKN usually can take action by locking the data of the prospective official. With Thus, the rights of these officials cannot be accepted. If it violates the provisions, the appointment may be cancelled. This is what happened in the case The Governor of North Maluku dismissed echelon III officials and appointed echelon IV officials without correct procedures. In fact, BKN was able to reprimand him Governor of North Maluku in a case of alleged falsification of mutation and duplicate letters position of Head of the Regional Civil Service Agency of North Maluku Province. If HR KASN has been improved, KASN supervision is not only at JPT but at all existing positions. In such conditions, the auction process will be open eliminated and replaced with a pure merit system as proposed by Kemenpan and RB can be implemented well. However, if the role of PPK is still possible held by political officials, whatever system is issued, it still gets obstacles in the matter of political intervention. Maybe not in the mode like now. This, but with a new, more sophisticated mode

4. Conclusion

The Position of Law No. 5 of 2014 concerning ASN is very strong and strategic and Presidential Regulation Number 58 of 2013 concerning BKN still remains valid as long as it does

not conflict with applicable laws. President and the DPR RI should continue with the next steps in bureaucratic reform by eliminating the role of politics through eliminating the role of PPK by politicians and hand it over to bureaucratic career officials, not by disbanding it KASN. The need for certainty that the bureaucracy will implement policies politicians can be handed over to KASN. KASN will be a connecting bridge between Indonesian politics and bureaucracy so that KASN exists as an institution independent will be able to ensure everything runs smoothly. The effort must be done, namely the immediate enactment of statutory regulations

Arranging Honorary Workers who have served for decades. Constitution Number 23 of 2014 concerning Regional Government, in this case it can be pursued selection is carried out openly and competitively and takes into account the requirements competency, rank qualifications, education, training and position track record and pay attention to it from an integrity perspective. It needs to be regulated through more specific provisions regarding the Republic of Indonesia Law Number 5 of 2014 concerning State Civil Apparatus related to the system coordination between the State Civil Service Agency and the Ministry of PAN and RB, mainly related to regulations regarding the coordination of Honorary Workers. The need for clearer regulations in the form of coordination in the Republic of Indonesia Law Number 5 of 2014 regarding supervision and requirements for a position to be filled and executed. The need for further provisions in Republic of Indonesia Law Number 5 In 2014, the regulation of Honorary Workers was regulated in the form of a SKB.

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