

IMPLEMENTATION OF LEGAL REMEDIES IN RESOLVING DISPUTES BETWEEN GOVERNMENT EMPLOYEES WITH EMPLOYMENT AGREEMENTS (PPPK) WITH LOCAL GOVERNMENTS

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ABSTRACT

The existence of PPPK in the personnel system in Indonesia is not supported by adequate legal protection arrangements both in Law No. 5 of 2014 and in Government Regulation Number 49 of 2018 concerning the Management of Government Employees with Employment Agreements. The legal protection in question is related to dispute resolution efforts in the event of a dispute between the PPPK and government officials.

Based on this, peneliti is interested in conducting research on the implementation of legal remedies in resolving disputes between PPPK and local governments. To find out directly the application of Article 129 paragraph (1) of Law No. 5 of 2014 related to pppk dispute resolution. The method used is a type of empirical legal research with a descriptive nature of research. The research was conducted at the Buleleng

Regency Personnel and Human Resources Development Agency. Data collection techniques use documentation study techniques and interview techniques, with data analysis using qualitative data analysis.

Legal remedies taken by PPPK in the event of a dispute between PPPK and the Government are through administrative efforts which include a. Attempted Objections: An objection to the KDP Decision can be submitted in writing to the KDP containing the reasons for the objection accompanied by supporting data, while the objection to the Officer's decision can be submitted in writing to the superior of the official who is authorized to punish by containing the reasons for the objection accompanied by supporting data and the copy is submitted to the official. The objection in question is submitted within a maximum of 14 (fourteen) working days from the date the decision submitted by the objection is received by the ASN Employee. B. Administrative Appeals: An administrative appeal is filed against the PPK's action or decision regarding the termination of the employment agreement as a PPPK and submitted in writing to the ASN Advisory Board containing the reasons and/or evidence of the objection and the copy is submitted to the KDP.

Administrative appeals must be filed within a period of no more than 14 (fourteen) working days from the date the KDP Decision filed by the administrative appeal is received by the ASN Employee.

Keywords: legal remedies, PPPK, staffing disputes

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INTRODUCTION

Since the promulgation of Law Number 5 of 2014 concerning the State Civil Apparatus, Indonesia's personnel system has undergone significant changes (French et al., 2020). The drafters of the law want to control the personnel bureaucracy so they must dare to get out of their comfort zone (*out of the box*). What is meant by a comfort zone is the position of Civil Servant (PNS) which has been fixed and after retirement gets a pension (QUASTEL, 2012). To change this comfort zone, Law No. 5 of 2014 included a new form of the employee, namely Government Employees with Employment Agreements (PPPK) (Rosyida et al., 2021), who have the same position as civil servants to be part of the State Civil Apparatus (ASN). The emergence of a new form of staffing system in Indonesia is expected to bring changes to the personnel bureaucratic system in Indonesia.

Based on Article 1 number 4 of Law No. 5 of 2014, "PPPK is an Indonesian citizen who meets certain conditions, who is appointed based on an employment agreement for a certain

period of time in order to carry out government duties". Several reasons for the government to form a new staffing system in the form of PPPK are: 1) building a more professional and high-performance ASN, 2) sorting functions, namely the government policy management function is carried out by civil servants and the basic public service function is carried out by the PPPK, 3) the government is not charged a budget after employees retire, because PPPK does not get pension money, and 4) more flexible ASN structure so that its existence can adjust with existing needs and developments (Remaja, 2016).

However, the existence of PPPK in the personnel system in Indonesia is not supported by adequate legal protection arrangements both in Law No. 5 of 2014 and in Government Regulation Number 49 of 2018 concerning the Management of Government Employees with Employment Agreements. The legal protection in question is related to dispute resolution efforts in the event of a dispute between the PPPK and government officials. PPPK has a legal relationship with the government based on an employment agreement, where the agreement occurs due to the agreement of both parties (Martin et al., 2015). Rights and obligations and legal consequences if one of the parties does not carry out its obligations set forth in the agreement itself (Gürkaynak et al., 2018). In the context of legal theory, such a mechanism is a mechanism in civil law, where generally dispute resolution also uses the mechanics of civil law. But this is not the case in the settlement of disputes between the PPPK and the government. In accordance with Article 129 paragraph (1) of Law No. 5 of 2014, disputes over ASN Employees are resolved through administrative efforts, where PPPK is part of ASN Employees. This means that if there is a dispute between the PPPK and the government, the settlement efforts use administrative efforts which generally in the previous personnel system apply to civil servants because civil servants are subject to the State Administrative Law (Khasna & Diniyanto, 2021).

Based on this, researchers became interested in conducting research on the implementation of legal remedies in resolving disputes between PPPK and local governments. To find out directly the application of Article 129 paragraph (1) of Law No. 5 of 2014 related to pppk dispute resolution.

METHOD

The type of research used in this study is a type of empirical legal research, because researchers want to know the implementation of a rule in legal practice. Empirical legal research serves to see the real law or the working of law in a community environment (Nurhaini Butar-Butar, 2018). This research is descriptive which aims to describe real conditions in society resulting from the application of certain laws (Asikin, 2004).

This research chose a research location at the Buleleng Regency Personnel and Human Resources Development Agency because the regional apparatus organization (OPD) that handles employee discipline is the Personnel and Human Resources Development Agency. Sources and types of data using secondary data from literature research in the form of legal materials and primary data from field research. While the data collection technique used is the Documentation Study Technique is a data collection method that is used together with other methods, such as interviews, observations and questionnaires (Waluyo, 2002) and Interview Techniques, namely "oral question and answer between two or more people directly (Usman & Akbar, 2022).

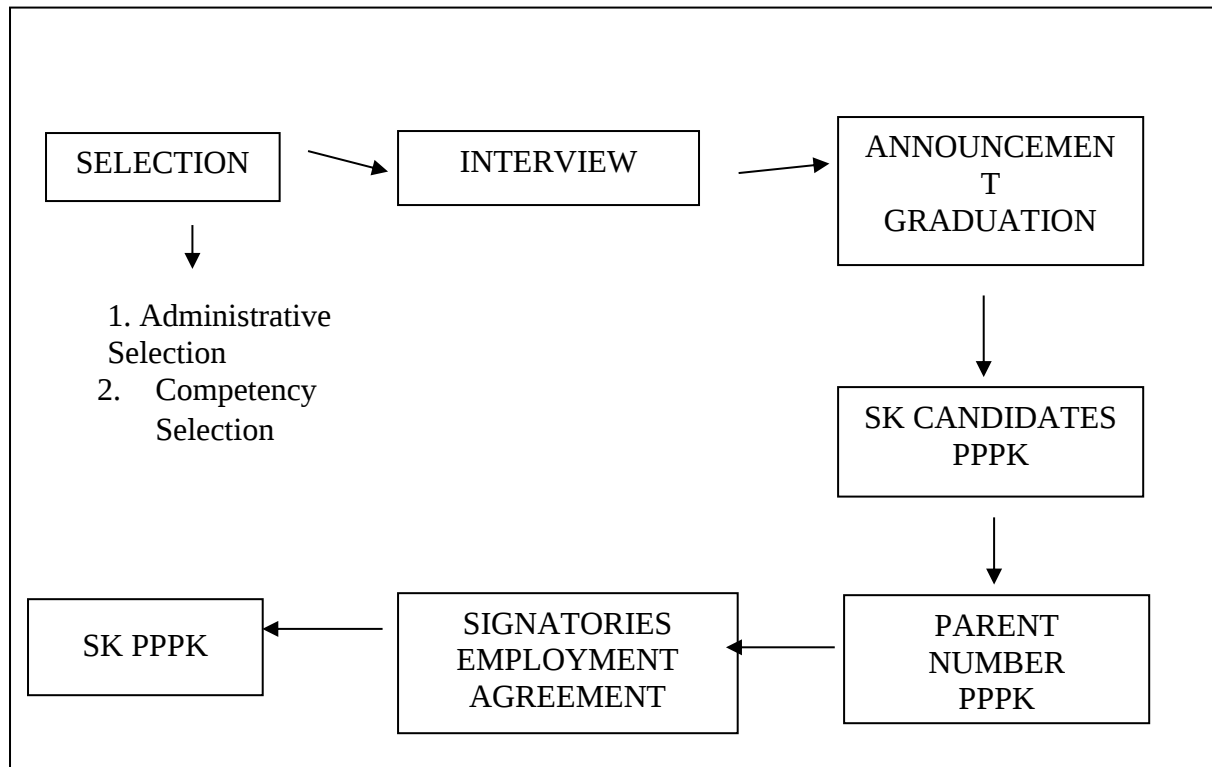
Data processing and analysis is a qualitative data analysis technique carried out by means of all data collected both primary and secondary data, processed and analyzed by systematically compiling data, classified in patterns and thema, categorized and classified, connected between one data and another, carried out analysis data in social situations, and carried out interpretation from the perspective of the researcher after understanding the overall quality of the data. This kind of analysis process is carried out continuously from searching for data in the field and to the analysis stage. After a qualitative analysis, the data will be presented descriptively qualitatively, and systematically.

RESULTS AND DISCUSSION

Enforcement of discipline carried out to the PPPK by authorized officials may cause losses to the PPPK. Therefore, the enforcement of discipline carried out against the PPPK must be accompanied by legal remedies that can be carried out by the PPPK when the enforcement of the discipline is detrimental to the PPPK. In fact, every enforcement of discipline is certain to be detrimental to the PPPK, but legally the PPPK also has the right to defend if the enforcement of the discipline is carried out in a violation manner. That is, authorized officials are given the authority to carry out disciplinary enforcement with the sanctions given, but the enforcement of such discipline must be carried out in accordance with the provisions of laws and regulations. If the enforcement of discipline and the provision of sanctions are carried out not in accordance with the provisions of the laws and regulations, the PPPK has the legal right to pursue legal remedies, in order to defend its legal rights from the actions of arbitrary officials. If it happens like this, it is called a state administrative dispute.

Efforts in resolving this dispute are inseparable from the status of PPPK which can be seen from the PPPK appointment mechanism which begins with a Decree (SK) and continues with the signing of a Work Agreement Letter (SPK). The appointment mechanism will affect the dispute resolution mechanism if there is a dispute between government officials and the PPPK. The PPPK lifting mechanism as regulated in PP No. 49 of 2018 can be described according to the chart below.

Chart 1
PPPK appointment



Source: processed by researchers (according to PP No. 49 of 2018)

Based on the table above, there are 2 (two) legal products produced in the PPPK appointment, namely the PPPK Appointment Decree and the Employment Agreement between the official and the PPPK. If there is a dispute between PPPK and Government Officials, the object of the dispute can be in the form of a PPPK Appointment Decree and an Employment Agreement.

In the clause of the employment agreement in Article 12 concerning the settlement of disputes, it is stated "if in the implementation of this employment agreement there is a dispute, then the First Party and the Second Party agree to resolve the dispute in accordance with the provisions of the laws and regulations". This means that if there is a dispute between PPPK and Government Officials in Buleleng Regency, the legal basis for settlement can use Law No. 5 of 2014 and its derivatives in the form of PP No. 79 of 2021 and Regent Regulation No. 47 of 2021.

Legal remedies that can be taken if government employees have a dispute with state administrative officials as stated in Article 129 paragraph (1) of Law No. 5 of 2014 are dispute resolution through administrative efforts. What is meant by administrative effort is the procedure prescribed in law to resolve Administrative disputes carried out in a self-governing environment (not by a free judiciary) consisting of: a procedure of administrative objections and appeals (Harahap, 2002).

These administrative efforts include administrative objections and appeals (Alexander, 2008) The objection is submitted in writing to the superior of the official who is authorized to punish with the reason for the objection and the copy is conveyed to the official who is

authorized to punish. Meanwhile, an administrative appeal was filed with the ASN advisory body. However, the efforts as referred to in Article 129 paragraph (1) of Law No. 5 of 2014 are efforts that are generally taken by government employees who have the status of civil servants. Dispute resolution through administrative efforts is new for PPPK, but normatively this effort is valid because PPPK is part of ASN Employees. This effort arrangement is also emphasized in Article 2 of PP No. 79 of 2021 which states:

ASN employees who are dissatisfied with the KDP Decision or the Officer's Decision may apply for an Administrative Effort.

Administrative Efforts as referred to in paragraph (1) consist of Administrative Objections and Appeals.

This is also confirmed in the employment agreement between PPPK and the Official stated in Article 12 regarding dispute resolution, namely "if in the implementation of this employment agreement, there is a dispute, then the First Party and the Second Party agree to resolve the dispute in accordance with the provisions of the laws and regulations".

Based on the description above, the legal remedies that can be taken by PPPK if there is a dispute between PPPK and Government Officials as a result of pppk discipline enforcement are to take administrative efforts in the form of administrative objections and appeals.

Objection

Objections are "administrative efforts taken by ASN Employees who are dissatisfied with the PPK Decision other than dismissal as a civil servant or other than termination of employment agreement as PPPK and administrative efforts taken by ASN Employees who are dissatisfied with the Official's Decision", as stated in Article 1 lift 4 PP 79 of 2021. An objection to the KDP Decision can be submitted in writing to the KDP containing the reasons for the objection accompanied by supporting data, while the objection to the Officer's decision can be submitted in writing to the superior of the official who is authorized to punish by containing the reasons for the objection accompanied by supporting data and the copy is submitted to the official.

The objection in question is submitted within a maximum of 14 (fourteen) working days from the date the decision submitted by the objection is received by the ASN Employee. If it exceeds this period, then the KDP or the Official determines that the determination letter cannot be accepted. The non-acceptance of objection submissions that exceed the submission period is due to providing legal certainty to decisions that have been issued by the KDP or officials. It is based on the principle of presumption of *rechtmatic* (*vermoeden van rechtmatigheid* or *praesumptio iustae causa*) which means that every action of the ruler must always be considered correct or *rechtmatic* until a decision overturns it.

KDP or Officer must make a decision on objections raised by ASN Employees within 21 (twenty-one) working days from the date the KDP or Official receives the objection. KDP or Officials to be able to make the right decisions can call and/or ask for information from ASN Employees who raise objections and/or other parties. If within a period of more than 21 (twenty-one) working days, the KDP or the Official does not make a decision, the ASN Employee can file a legal remedy with the State Administrative Court.

Decisions from objection efforts, KDP or Official Superiors can strengthen, lighten, aggravate, change, revoke or cancel decisions submitted by objections, which are determined

through the PPK Decision or Official Superiors. If the ASN Employee is not satisfied with the decision, the ASN Employee can file a legal remedy with the State Administrative Court.

Administrative Appeals

An administrative Appeal is an administrative effort taken by ASN Employees who are dissatisfied with the PPK Decision regarding dismissal as a civil servant or termination of employment agreement as PPPK, as stated in Article 1 number 5 PP 79 of 2021.

As previously explained, the decision of the KDP relating to the termination of the employment agreement as a PPPK cannot be filed for objections based on PP 79 of 2021. On the other hand, in termination of employment it is very possible for PPPK to suffer losses and feel objections, causing a dispute between PPPK and officials. Disputes like this according to Soegeng Prijodarminto include staffing disputes in a broad sense, because based on Law No. 5 of 2014 the current government employees are not only civil servants but also PPPK (Wulan Pri Handini and Danang Risdiarto, 2020: 513). In practice, the termination of labor relations that become decisions or actions of the KDP or government officials may also be carried out inconsistently or contrary to the provisions of laws and regulations. If this happens, the law should provide legal protection to the PPPK which is enforced unfairly or arbitrarily by the KDP or government officials. The form of legal protection is stated in Article 10 of PP No. 79 of 2021 which states: "ASN employees can file an Administrative Appeal against the PPK Decision in the form of:

- Dismissal as a civil servant; and
- Termination of employment agreement as PPPK ".

An administrative appeal is submitted in writing to the ASN Advisory Board containing the reasons and/or evidence of the rebuttal and the copy is submitted to the KDP (Schäfers et al., n.d.). Administrative appeals must be filed within a period of no more than 14 (fourteen) working days from the date the KDP Decision filed by the administrative appeal is received by the ASN Employee. If it passes from that period, the ASN Advisory Board determines that the determination letter is unacceptable. The KDP must respond to the administrative appeal no later than twenty-one (21) working days from the date of receipt of the administrative appeal. If the KDP does not respond within that time frame, then the ASN Advisory Board takes a decision on the administrative appeal based on the available evidence. In order to take the right decision, the ASN Advisory Board is authorized to request additional information and/or data from the ASN Employee concerned, officials and/or other parties. The decision is taken at the hearing of the ASN Advisory Board within a period of not more than 65 (sixty-five) working days from the date of receipt of the administrative appeal.

The decision of the ASN Advisory Board may strengthen, lighten, aggravate, amend or cancel the decision of the KDP. The decision must be carried out by the KDP and if the KDP does not implement the decision of the ASN Advisory Board, it can be subject to administrative sanctions in accordance with the provisions of the laws and regulations. For ASN Employees who are dissatisfied with the decision of the ASN Advisory Board, they can file legal remedies with the High Administrative Court.

The implementation of dispute resolution regulations between government officials and PPPK related to the enforcement of employee discipline needs to consider the following:

The legal basis on which PPPK works with the government is based on a Work Agreement Letter (SPK) which has a certain period of time, namely 1 year, 3 years and 4 years (for

Buleleng Regency), so that it will affect the type of disciplinary punishment that can be given to PPPK who commit violations.

Legal remedy mechanism that can be pursued by PPPK if it feels objectionable to decisions or dispute resolution efforts that have been carried out. If the efforts are equated with civil servants in the form of administrative efforts (objections and appeals) as stipulated in Law No. 5 of 2014 and PP No. 79 of 2021, it will affect the SPK that has been made between PPPK and Government Officials. This is because sanctions in the form of termination of employment are not only caused by disciplinary violations but can be caused by other things that have nothing to do with disciplinary violations. So that if the PPPK is won in the administrative effort, the SPK will not automatically be extended, if other requirements for extending the SPK are not met. This, of course, results in ineffective dispute resolution efforts, because the losses suffered by the PPPK do not get a fair settlement.

Fair dispute resolution in legal relations between government officials and PPPK is not only related to the enforcement of discipline when PPPK commits disciplinary violations but also related to PPPK rights which must also be protected at the time of enforcement of the disciplinary law. Because the legal basis for the appointment of PPPK is 2 (two) namely the PPPK Decree and the Work Agreement Letter, in dispute resolution and / or in the enforcement of discipline it also refers to the 2 (two) legal products. This means that in dispute resolution or discipline enforcement, it must be able to combine mechanisms in state administrative law with mechanisms applicable in civil law. Because the term employment agreement that is commonly used in civil law and also labor law has its own characteristics and character.

A covenant is "an act by which one or more persons bind themselves to one or more persons (Djumadi, 2004: 13)." The term "agreement" when associated with legal science is the legal practices that exist in civil law, because in it each party has the same right to determine the content of the agreement and there is an agreement between the two parties. In that case, the principle of freedom of contract applies, which means "everyone can enter into any agreement and with anyone." The principle of freedom of contract also applies in making employment agreements. Article 1338 of the Civil Code implies that "all valid agreements apply as laws to those who make them."

Although the principle of freedom of contract still applies, in making an employment agreement there is little difference from other agreements. Article 1601a of the Civil Code states "An Employment Agreement is an agreement in which the one party of the laborer, binds himself to under his orders the other party, the employer for a certain time, performs the work by receiving wages." From this understanding, you can find elements that are compulsive requirements in an employment agreement, namely:

The presence of an element of work

The object promised in the employment agreement is work, the work is carried out by the worker who made the agreement himself. These jobs are jobs ordered by the party invited to promise (employer) as promised in the employment agreement letter.

The presence of elements under the command

The word "bind oneself" in the article, indicates in the employment agreement the parties entering into the agreement are not in the same and balanced position, since one party is under the orders of the other party. The worker performing his work is under the order of the employer

in accordance with the employment agreement drawn up. His job must be able to provide benefits to the employer.

The presence of certain time elements

In such an employment agreement must be determined the term of entry into force of the employment agreement. This is to provide legal certainty regarding the length of time the worker performs the promised work. The employer must not arbitrarily hire workers outside the specified time. Even if forced to hire workers outside the specified time, a separate agreement must be made or adjusted to existing laws and regulations, for example by providing overtime pay or something else.

The existence of an element of wages

The worker is entitled to receive wages for the work he has done, the amount of which is in accordance with that promised in the employment agreement. The employer has an obligation to pay wages to the worker.

Meanwhile, Article 1 number 14 of the Law of the Republic of Indonesia No. 13 of 2003 states "An Employment Agreement is an agreement between a worker/laborer and an employer or employer that contains the terms of employment, rights, and obligations of the parties."

CONCLUSION

An objection to the KDP Decision can be submitted in writing to the KDP containing the reasons for the objection accompanied by supporting data, while the objection to the Officer's decision can be submitted in writing to the superior of the official who is authorized to punish by containing the reasons for the objection accompanied by supporting data and the copy is submitted to the official. The objection in question is submitted within a maximum of 14 (fourteen) working days from the date the decision submitted by the objection is received by the ASN Employee.

An administrative appeal is filed against the PPK's action or decision regarding the termination of the employment agreement as a PPPK and submitted in writing to the ASN Advisory Board containing the reasons and/or evidence of the objection and the copy is submitted to the KDP. Administrative appeals must be filed within a period of no more than 14 (fourteen) working days from the date the KDP Decision filed by the administrative appeal is received by the ASN Employee.

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