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Harmonization of PPPK Principal Appointment Regulations : Normative Legal Perspective

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Abstrac: This research aims to analyze the potential legal conflicts arising from the mismatch between the employment contract of Government Employees with Work Agreements (PPPK) and the applicable regulations related to the appointment of school principals. The method used in this research is normative legal research with a statutory approach to examine related regulations. Data collection consists of primary legal materials from laws, secondary materials from legal journals, and tertiary materials as supporting references. The analysis used a qualitative normative method to interpret the data in a comprehensive legal context. The results show significant legal uncertainty regarding the status and rights of PPPK in strategic positions, especially in the school principal position. The inconsistency of regulations regarding tenure and legal protection for PPPKs creates potential conflicts that can affect their career stability and performance. Recommendations regarding legal harmonization and clearer regulations are proposed to ensure legal certainty and protection for PPPKs in strategic positions.

Key Words: Legal Uncertainty; PPPK; Principal of the school

1. INTRODUCTION

Legal uncertainty is often a challenge in the implementation of public policies, including in the governance of the State Civil Apparatus (ASN). In the context of Government Employees with Work Agreements (PPPK), this issue is even more crucial because the position of PPPK is at the boundary between rights as ASN and restrictions as contract workers. Although in the Civil Code (BW) article 1233 it has been explained that an obligation is born by agreement or law, in practice legal uncertainty arises for PPPK. Legal certainty is the most important thing in an employment agreement where the rights and obligations arising from the employment relationship must be carried out under the existing provisions. Baharun emphasized that a work agreement should include clarity on working conditions, and wages, along with procedures for termination of employment. This important principle aims to provide protection to workers but also safeguard the interests of employers. In the case of PPPK, legal certainty is very important because workers are often disadvantaged due to the agreement model resembling a specific time work agreement (PKWT).

¹ Baharun, "Penerapan Perlindungan Hukum Terhadap Buruh Ekspedisi Yang Bekerja Tidak Berdasarkan Perjanjian Tertulis Di Kota Kendari," *Arus Jurnal Sosial Dan Humaniora* 4, no. 1 (2024): 163–174.

This legal uncertainty covers various aspects, from work agreements, rights, and obligations, to the appointment of PPPKs in strategic positions, such as school principals. Recent regulations, such as Law No. 20/2003 on the State Civil Apparatus, Minister of State Apparatus Empowerment and Bureaucratic Reform (PANRB) Regulation No. 29/2021, and Directorate General of Teachers and Education Personnel (Dirjen GTK) Decree No. 4338/B.B1/HK.03.01/2024, attempt to regulate this mechanism. However, harmonization between these regulations still faces various obstacles, especially in ensuring legal certainty for PPPK. This is in line with what Pohan said, as vagueness and violations of the provisions stipulated in PKWT can create legal uncertainty for workers.² In the context of PPPKs, which resemble the PKWT agreement model, this dynamic is even worse due to changes in regulations that are often not or late socialized

PPPK was introduced as part of bureaucratic reform to increase government flexibility in meeting the needs of professional personnel. As a non-civil servant, PPPKs are given the right to occupy strategic positions, including school principals, but legal dynamics arise regarding the determination of the working period, selection mechanism, and performance evaluation of PPPKs appointed as school principals. This raises various questions and potential legal uncertainty that can have an impact on bureaucratic stability and professionalism in education. According to Sari et al. (2020) explain that disputes will occur in the future if the legal relationship between employers and employees is not regulated straightforwardly and firmly in PKWT. The same provisions also apply in PPPK, overlapping regulations will potentially become a legal conflict between workers and employers. What easily happens is the issue of different interpretations of the obligations and rights of school principals who serve through the PPPK mechanism, for example in administrative authority, performance, and tenure. Fatimah's findings show that disputes arising from uncertainty in labor relations will end up in court. This will cost the disputing parties money, energy, and time.

As professionals, school principals have a very important role in improving the quality of education through effective leadership, accountable management, and efficient

² Muhammad R Pohan, "Perlindungan Hukum Terhadap Pekerja Dalam Perjanjian Kerja Waktu Tertentu: Menurut Hukum Ketenagakerjaan," *MLJ Merdeka Law Journal* 1, no. 2 (2020): 60–71.

^{3 3} Ni Putu Nita Erlina Sari, I N P Budiartha, and Desak G D Arini, "Perlindungan Hukum Terhadap Pekerja Dalam Perjanjian Kerja Waktu Tertentu Menurut Undang-Undang No 13 Tahun 2003," *Jurnal Analogi Hukum* 2, no. 1 (2020): 124–128.

^{4 4} Yani N Fatimah, "Penyelesaian Perselisihan Hubungan Industrial Di Pengadilan Hubungan Industrial Dalam Pemenuhan Hak Pekerja/Buruh Yang Di Putus Hubungan Kerja," *Pandecta Research Law Journal* 10, no. 2 (2015): 215.

management of educational resources. Thus, with the increasing need for competent teachers and school managers, the role of PPPK as an alternative for ASN in strategic positions, such as Principals, requires legal clarity that supports the professional and sustainable implementation of their duties. This is urgent because the number of PPPK teachers continues to grow along with the implementation of national education policies. At the same time, there needs to be clear legal certainty for Principals who come from PPPK elements.

2. THEORITICAL REVIEW

Some of the main regulations governing PPPK show inconsistencies in governance and clarity of their rights and obligations. According to Firdaus, there should be a principle of balance in work agreements, which includes legal protection for both workers and employers.⁵ This principle should be the main guide for designing regulations and policies related to PPPK. Inconsistent regulations include:

- a. Law Number 20 Year 2023 on ASN:
 - 1) PPPKs are recognised as part of ASN and have the same rights and obligations as civil servants, but their limited length of service is often a barrier to strategic positions such as principal.
 - 2) This regulation has not fully addressed the contract extension mechanism for PPPKs who are appointed in certain positions, such as school principals.⁶
- b. PANRB Ministerial Regulation Number 29 of 2021:
 - Regulates the selection and appointment of PPPKs for certain positions, but still
 does not emphasise aspects of long-term performance management or
 procedures for dismissing PPPKs in managerial positions such as school
 principals.
- c. Decree of the Director General of GTK Number 4338/B.B1/HK.03.01 of 2024:
 - 2) Provides technical guidance on the appointment of school principals, including through a meritocracy-based system and data integration. However, the existence of PPPKs in these positions often leads to different interpretations regarding their legal status and equality with civil servants.

⁵ Rico A Firdaus, "Asas Keseimbangan Dalam Perjanjian Antara PT. PLN (Persero) Dengan Konsorsium PT. Bangun Mega Pertiwi Pasca Pandemi COVID-19," *Neoclassical Legal Review Journal of Law and Contemporary Issues* 2, no. 2 (2023): 27–32.

⁶ Undang – Undang Nomor 20 Tahun 2023 tentang ASN

Based on this regulation, there are legal uncertainty in the appointment of Principals from among PPPK which includes several important aspects, such as:

a. Term of Office and Contract Extension:

If the school principal from among PPPK is appointed with a limited contract working period. The absence of explicit guidelines in the ASN Law and Permen PANRB creates concerns about the stability of their positions. So that the principal does not feel comfortable or anxious when making policies.

b. Rights and Welfare:

Although Law No. 20 of 2023 states that PPPKs are entitled to social security, including pensions, implementation is often challenging especially when it comes to principal positions that require long-term continuity of service.

c. Selection System and Meritocracy:

The meritocracy-based principal selection system stipulated in the Decree of the Director General of GTK still faces technical obstacles in data alignment between the central and local governments. This process may lead to unsynchronised PPPK appointments. These legal uncertainties can lead to a variety of negative impacts, for example:

- 1) Disruption to Education Stability: The lack of legal clarity may reduce the performance of PPPKs who feel they have no long-term career security.
- 2) Decreased Leadership Quality: If the principal position is unattractive to PPPKs due to limited tenure and lack of rewards equal to civil servants, the quality of leadership in education units may suffer.
- 3) Potential Legal Disputes: PPPKs who are dismissed before the end of their contracts or face discrimination in promotions may file lawsuits, which will exacerbate bureaucratic tensions.

Based on this background, it is important to conduct a more in-depth study on the legal uncertainty of PPPK labour agreements in relation to the appointment of school principals.

From the background exposure above, the researcher wants to raise the problems, among others, as follows:

- a. What potential conflicts could arise due to the mismatch between the PPPK work contract and the applicable regulations in the appointment of the Principal?
- b. What is the legal protection mechanism that should be given to PPPKs who are subject to status uncertainty in the appointment of school principals?

c. What are the recommendations to harmonise the PPPK employment contract with the principal appointment policy to help ensure legal certainty?

3. METHOD

The research method used in this paper is normative law, with emphasis on the study of legal materials as the main focus. It uses descriptive analysis to describe the prevailing legal situation related to PPPK and the appointment of school principals, as well as normative analysis to evaluate the compatibility between existing rules and practices in the field. Through this method, the research seeks to provide a comprehensive picture of the legal conflicts that arise.

This research uses legislative approach (statute approach), which studies and analyses the applicable legal regulations related to the employment agreement of Government Employees with Work Agreements (PPPK). This approach is important because the research focuses on the legal provisions governing PPPK and the appointment of school principals, including how they are harmonised.

Primary legal data is gathered from relevant laws and regulations, such as Law No. 20/2003 on ASN, Minister of State Apparatus Empowerment and Bureaucratic Reform Regulation No. 29/2021, and Decree of the Director General of GTK No. 4338/B.B1/HK.03.01/2024, which regulates the appointment of school principals from PPPK. Meanwhile, secondary legal data is in the form of legal literature, legal journals, articles, and comments from legal experts relevant to the research topic. This data provides theoretical insights to support the research analysis. Then tierary legal data are supporting materials such as legal dictionaries, legal encyclopedias, and guides that assist in understanding legal terms and related concepts used in this research.

Data analysis in this research is carried out hermeneutically, namely by interpreting legislation and relevant legal literature. The results of the analysis are expected to provide an appropriate legal solution regarding the uncertainty of PPPK's legal status in the appointment of school principals.

This research uses several relevant legal theories, among others: Legal Certainty Theory, which explains that legal rules must be clear, consistent, and predictable, as stated by Fuller in his work 'The Morality of Law'. And Legal Protection Theory, which emphasises the legal rights of workers, including PPPK, to obtain justice and protection

similar to Civil Servants (PNS), as outlined by Baharun in his study on employment agreements and workers' rights.

4. DISCUSSION

Potential Conflicts Arising Due to Legal Uncertainty

A work agreement is the first phase where the employer and employee create an agreement that creates an understanding before carrying out the work that has been agreed upon. There are different perspectives from experts about work agreements.

According to Subekti, a work agreement is an agreement in which the worker states his willingness to work for the employer by receiving a certain wage, and the employer states its willingness to employ the worker in an employment relationship. This opinion emphasises the element of a working relationship that is based on the agreement of both parties. This is in line with the principle of freedom of contract in Article 1338 of the Civil Code. So that the employment contract between PPPK and the authorised official is in accordance with Article 1338 of the Civil Code, but because the system adopted is meritocratic, there are certain clauses in the employment contract that are not in line with Article 1338 of the Civil Code.

Meanwhile, Setiono states that an employment agreement is a contract that stipulates the rights and obligations of workers and employers, which includes the main elements of work, wages, and employment relationships. In this case, Setiono highlights the three main elements of a work agreement which are also defined in Article 56 of Law Number 6 of 2023 replacing Law Number 02 of 2022 on Omnibus Law. These elements are crucial to determine whether a relationship can be categorised as a formal employment relationship or not.

Employment agreements are closely related to administrative law, which is the basic instrument to oversee the use of government power, which in this case is related to duties and authorities. The object of state administrative law is government power, which in this power is mostly carried out by civil servants. So that in the work agreement on PPPK there are elements of civil servants who in this case represent the government in authorising how long this PPPK is still contracted. According to Abdul Rokhim, the

 $^{^{7\,7}}$ Subekti, (2003) Hukum Perikatan , Jakarta : Intermasa

^{8 8} Sri Hartini dan Tedi Sudrajat. 2017. Hukum Kepegawaian di Indonesia (edisi Kedua). Jakarta : SInar Grafika

⁹ Ibid

authority here is the authority of a state administrative official who is appointed to be able to take the necessary legal actions in accordance with applicable laws and regulations. ¹⁰ So every action taken must be in accordance with applicable laws and regulations.

When rules have been set by the government but there is no harmony between stakeholders, this will lead to potential legal conflicts that can result in a mismatch between the employment contract of Government Employees with Work Agreements (PPPK) and the applicable regulations related to the appointment of Principals. This can be described as follows:

Undefined Rights and Obligations

Government Employees with Work Agreements (PPPK) are part of the State Civil Apparatus (ASN) as stipulated in Law Number 20 of 2023 concerning ASN. PPPK is expected to be a solution to improve the quality of public services through the recruitment of professionals without having to go through the Civil Servant (PNS) route. However, in practice, the rights and obligations of PPPKs are often not well-defined, creating legal uncertainty that impacts their welfare and work effectiveness.

As a normative matter, PPPK has several rights that are regulated in the ASN Law and its regulations, among others:

- a. Salary and Benefits PPPKs are as equal as civil servants who have similar positions. However, there are often differences in the calculation of allowances such as family, position, or performance allowances provided by position holders from the PPPK element.¹¹
- b. The right to training and competency development is often not implemented due to budget constraints and regional policy priorities.¹²
- c. PPPKs have the right to legal protection in carrying out their duties. However, this protection is often inconsistent across agencies and needs clear legal efforts to resolve.¹³

 $^{^{\}rm 10}$ Abdul Rokhim . 2013. Kewenangan Pemerintah dalam Konteks Negara Sejahtera (Welfarestate). Jurnla Dinamika Hukum. Vol XIX (36). Hlm 6

¹¹ Aulia Zahra, Meyzia Akila A, Raisya F Humaira. Analisis Kesejahteraan Pegawai Pemerintah dengan Perjanjian Kerja (PPPK) Sebelum dan Sesudah UU Nomer 20 Tahun 2023. Journal of Economic , Business dan Accounting, Vol 7 No.02 Januari-Februari 2024

¹² Ibid

¹³ Yudit Aditya Putra, Yati Nurhayati, Istiana Heriani.Perlindungan Hukum Pegawai Pemerintah dengan Perjanjian Kerja yang diputus hubungan kerja oleh pemerintah.Jurnal Peneggak Hukum Indonesia. Vol 4, Issue 2 Juni 2023

PPPK Obligations: Same Obligations, Different Treatments

As ASN, PPPK's obligations are equal to those of civil servants, which are regulated in the ASN Law number 5 of 2014 which includes:

- a. PPPK has to follow all ASN-related regulations, including work discipline and code of ethics.
- b. PPPK has to perform their duties professionally to achieve the performance targets as stipulated in the work contract.
- c. In Performance Evaluation is often used to determine contract extension, but the mechanism and criteria for evaluating PPPK performance are often unclear, creating potential conflicts.¹⁴

So when the term Government Employees with Work Agreements (PPPK) appears, it results in uncertainty in the PPPK Regulation. It is very closely related to:

- a. Limited Period Contracts with PPPK working relationships are based on specific time contracts (PKWT), which means they do not have the same long-term career security as civil servants.¹⁵ Therefore, when a Principal from the PPPK element takes office, there is no legal certainty that the Principal as a managerial of a school can be extended or terminated.
- b. Although the ASN Law states the equality between civil servants and PPPK in basic rights, in reality there are many differences in implementation in the field, this is reinforced by the work agreement in article 5 regarding obligations and prohibitions in the work agreement that researchers obtained from one of the PPPK teachers who had entered into a work agreement with the Head of the Regional Personnel Agency of East Java Province in this case representing BKD East Java.
- c. Non-uniform Implementation: Policies related to PPPK are often dependent on local governments and depending on the position held by the PPPK, which results in different treatment for PPPK Indonesia. 16

It can result in a decrease in work motivation due to uncertainty about career guarantees and financial rights, thus reducing PPPK morale. Not only this but also the

¹⁴ Aulia Zahra, Meyzia Akila A, Raisya F Humaira. Analisis Kesejahteraan Pegawai Pemerintah dengan Perjanjian Kerja (PPPK) Sebelum dan Sesudah UU Nomer 20 Tahun 2023. Journal of Economic, Business dan Accounting, Vol 7 No.02 Januari-Februari 2024

¹⁵ Ibid

¹⁶ Aulia Zahra, Meyzia Akila A, Raisya F Humaira. Analisis Kesejahteraan Pegawai Pemerintah dengan Perjanjian Kerja (PPPK) Sebelum dan Sesudah UU Nomer 20 Tahun 2023. Journal of Economic, Business dan Accounting, Vol 7 No.02 Januari-Februari 2024

potential for legal disputes, PPPKs who feel their rights have been violated tend to file lawsuits, which can cause administrative tension. Thus, public trust in the government as a fair employer will decrease.¹⁷

Policy Recommendations to Harmonise Employment Contracts

Some concrete steps in the making of policies to resolve legal uncertainty and harmonise PPPK employment contracts by using an integrated approach for the greater and better common good in the future, the author recommends the following steps:

a. Preventive Attempt

The first step to be taken immediately is to strengthen the legal basis for the appointment of school principals. As stated by Arnazaye (2023), a strong and legally clear basis is an important element to ensure the effectiveness and transparency of public appointment policies. ¹⁸ In this context, it is necessary to harmonise the regulations issued by the Directorate General of GTK and the Permen of PANRB. Harmonisation can be achieved through revision and redrafting of regulations that aim to eliminate overlaps and ensure clarity of procedures. For eg, the objective establishment of criteria, transparent selection procedures, and evaluation mechanisms that are accessible to all stakeholders need to be prioritized. Clear regulations will help reduce ambiguity, which has been a source of legal uncertainty.

In the same way, Juwita (2024) pointed out that competency evaluation and career path development of school principal candidates can be a useful method to ensure that they are ready to face the challenges of the job. ¹⁹ According to her, the policy that should be implemented for the appointment of PPPK principals should focus on improving the competence of prospective principals. Needs-based training programmes such as school management, leadership, and the law related to PPPK can help prospective principals carry out their responsibilities. Moreover, this training programme can help prospective principals understand the rights and obligations stipulated in the PPPK employment agreement, thus reducing the possibility of legal conflicts in the future.

¹⁷ ibid

¹⁸ Furaihan K A Arnazaye, "Efektivitas Pengangkatan Penjabat Kepala Daerah Dalam Perspektif Demokrasi Dan Teknokrasi," *Jurnal Publik* 17, no. 01 (2023): 29–39.

¹⁹ Ratna Juwita, "Mengukur Kompetensi Coaching: Mengevaluasi Kompetensi Calon Kepala Sekolah Dan Meretas Jalur Pengembangannya," *Edukatif Jurnal Ilmu Pendidikan* 6, no. 1 (2024): 551–562.

principals' capabilities, and how it has impacted school performance. Therefore, to ensure that the results of this periodic evaluation are in line with the situation on the ground, it should involve various stakeholders.

b. Conclusion

This paper discusses the legal protection mechanism for Government Employees with Work Agreements (PPPK) who serve as Principals, a relevant issue in improving bureaucratic efficiency and the quality of education in Indonesia. Based on the analysis, several important points can be concluded as follows:

- Legal Uncertainty: PPPKs who serve as principals face uncertainty in terms of tenure, employment contracts, and social rights protection. This uncertainty is caused by the difference in treatment between PPPK and civil servants, even though both statuses are within the ASN framework.
- 2) The Need for Meritocratic Evaluation: A meritocracy-based evaluation system is an essential protection mechanism. This system can ensure that decisions regarding contract extension and promotion are based on objective performance, not on subjective factors.
- 3) Social Protection and Retirement Rights: PPPKs should be given pension rights and social protection equal to that of civil servants, especially for those in strategic positions such as principals. This will increase their sense of security and work motivation.
- 4) Resolution of Disputes: A clear dispute resolution and grievance mechanism, either through administrative channels or state administrative courts, is essential to protect PPPKs from decisions that are unfair or violate their rights.
- 5) Policy Recommendations: Harmonisasi regulasi antara pemerintah pusat dan Policy Recommendations: Harmonisation of regulations between central and local governments, strengthening of supervisory bodies, and socialisation of PPPK rights and obligations are steps that support more comprehensive legal protection..

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