
Old-Age Security Protection for Government Employees with Work Agreements Is Reviewed According to The National Social Security System

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Abstract

Government Employees with Work Agreements are required to provide public services, improve professionalism and competence, and performance in government agencies. For that, the government must provide protection. Based on the preceding, the authors will conduct research that includes the safety of government employees with work agreements and old-age insurance arrangements for government employees with work agreements. The research method used is a normative juridical method with descriptive-analytical research specifications and analyzed using qualitative juridical methods. Everyone has the right to social security to fulfill the basic needs of a decent life and increase his dignity towards the realization of a prosperous, just. For those Government Employees with a Work Agreement, Prosperous Indonesian society is given protection by the government in old-age insurance, health insurance, accident insurance, employment, death insurance, and legal aid. There needs to be an arrangement to protect old-age security as long as the contract is regulated based on a national social security system that is in line with the Employment Social Security Organizing Agency to provide welfare both during the employment relationship and after the termination of the employment relationship.

Keywords: Old age security, protection; government employees with employment agreement.

I. INTRODUCTION

Guarantee of human rights is one of the characteristics of a state of the law with Human Rights (HAM) because human rights are a universal value. Every human being has the right to work, a decent living, to be respected and treated fairly in his life, because humans as creatures of God have human rights that anyone must respect, as has been mandated in Article 28 D of the 1945 Constitution of the Republic of Indonesia: (1) Every people are entitled to the recognition of guarantees, protection, and fair legal certainty as well as equal recognition before the law; (2) Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship. (Naskah Akademik tentang RUU perubahan UU no. 5 tahun 2014 tentang ASN, <https://www.dpr.go.id/dokakd/dokumen/RJ1-20200226-060425-8543.pdf>)

Bureaucratic reform is an effort that must be made to support bureaucratic reform efforts. (Sodiq, 2012). Law Number 5 of 2014 concerning State Civil Apparatus (ASN) explains that the State apparatus is a profession including Civil Servants (PNS) and Government Employees with Work Agreements (PPPK). Civil servants are Indonesian citizens who meet specific requirements, are appointed as permanent ASN employees by staffing officers to occupy government positions. Furthermore, PPPK is an Indonesian citizen who meets particular needs, who is selected based on a work agreement for a certain period to carry out government duties.

Management of Government Employees with Keda Agreements is the management of government employees with work agreements to produce government employees with professional work agreements, having fundamental values, professional ethics, free from political intervention, corrupt practices, collusion, and nepotism. To be able to carry out public service tasks, government duties, and specific development tasks, PPPK must have a professional and PPPK Management based on the Merit System or a comparison between the qualifications, competencies, and performance required by the position with the capabilities, competencies, and performance possessed by the situation. Candidates in recruitment, appointment, and placement in line with good governance.

Article 3 PP No. 49 of 2018 concerning KDP Management includes a. determination of needs; b. procurement; c. performance assessment; d. payroll and benefits; e. competency development; f. awards; g. discipline; h. termination of the employment agreement; and i. protection. The PPPK position is needed to carry out public services, improve professionalism and competence, and performance in government agencies quickly. Presidential Regulation No. 38 of 2020 concerning Positions That PPPK Can fill states that the positions that PPPK can fill include 147 available parts and High Leadership Positions (JPT), which only consist of certain Main JPT and certain middle JPT. It is hoped that someone who occupies an available position will focus more on improving the quality of public services by increasing competence and professionalism. This functional competence has been regulated in the regulation regarding the formation of available positions. It applies nationally to be more organized than the competence of different administrative roles in each agency. Based on the above, the author will conduct research that includes protecting government employees with work agreements and old-age insurance arrangements for government employees with work agreements.

II. METHOD

The research method used is a normative juridical method with descriptive-analytical research specifications. The types and sources of data used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials accompanied by interviews. Furthermore, from the data that was collected in this study, both primary and secondary data were analyzed using qualitative juridical methods.

III. RESULTS AND DISCUSSION

Protection of Government Employees with Work Agreements (PPPK)

The definition of employee, is an appointed official, so the understanding does not include those who hold representative positions such as members of parliament, presidents, and so on. Logemann, using material criteria, looks at the relationship between the state and civil servants by providing an understanding of civil servants as every official who has official relations with the state. The quality of staffing correlates with the quality of the bureaucracy in a country where personnel reform is an absolute prerequisite to ensure the implementation of professional governance management.¹ At the practical level, the effort to implement the Government Regulation in question did not run smoothly. Instead, it led to polemics and rejections, one of which came from non-permanent employees who had existed before the ASN Law and had the status as honorary. Employees who have the status as honorary in a Ministry/Agency (K/L) cannot immediately change their status to PPPK in that K/L. The filling of PPPK positions in government agencies is very dependent on the needs of the said agency. In addition, to fill the PPPK position, you must first go through a selection that is open to the public (Prasojo, 2010).

Legal protection can also be linked to preventive government actions to prevent disputes, so the government needs to be careful in making decisions. PPPK also gets protection for old-age insurance, health insurance, work accident insurance, and legal assistance obtained by civil servants as stated in Article 22

and Article 106 of Law no. 5 of 2014 and Article 75 of PP No. 49 of 2018 concerning First Aid Management.

Minister of Finance Sri Mulyani has stipulated PMK Number: 66/PMK 02/2021, which regulates the old-age savings program, work accident insurance (JKK), and death insurance (JKM) for state civil servants (ASN), TNI soldiers, and members of the National Police (<https://www.jpnn.com/news/pppk-juga-asn-seharusnya-mendapatkan-jaminan-hari-tua>.)

In-Law Number 5 of 2014 concerning State Civil Apparatus, there are two types of workers: the first State Civil Apparatus (ASN) and the second Government Employees with Work Agreements (PPPK). Where the ASN is appointed as a permanent employee by the supervisory official in implementing the work agreement, it must have a National Personnel ID and employee identification number. At the same time, the PPPK is an ASN employee appointed as an employee with a work agreement by the Personnel Guiding Officer following the needs of Government Agencies under the provisions of the Act. -Law Number 5 of 2014 concerning State Civil Apparatus (Artisa, 2015). In simple terms, PPPK is an ASN employee appointed and employed with a contract agreement according to a set period. So, if the specified contract period has been completed, the PPPK's working period may end or be extended as needed with the following criteria:

1. The working agreement period is at least one year.
2. And can be extended as required.
3. Based on performance appraisal.

UU no. 5 of 2014 explains that PPPK has the following rights: 1) Salary and allowances; 2) Leave; 3) Protection; 4) Competency development. In carrying out the tasks of the state, government, and the development of the state apparatus, they must comply with public legal norms or government norms (bestuursnorm) such as the obligation to base public actions based on applicable laws and regulations (legaliteitsbeginsel), ways to use authority and account for it, rules for making and issuing decisions, exercising discretion, and so on. Deviations from government norms are categorized as unlawful acts (onrechtmatig) (Ridwan, 2016).

Sudikno Mertokusumo, the law, serves as the protection of human interests. For human interests to be protected, the law must be implemented. Implementing the law can usually take place peacefully, but it can also occur due to law violations. Violation of the law occurs when certain legal subjects do not carry out obligations that should be carried out or because they violate the rights of other legal matters. Legal issues whose rights are violated must receive legal protection (Ridwan, 2016)

State Civil Apparatus Employees, from now on referred to as ASN Employees, are employees who function as implementers of public policies, public servants, and the glue and unifier of the nation, as stated in Article 10 of Law of the Republic of Indonesia Number 5 of 2014 concerning State Civil Apparatus (UU ASN) Mike, M. d.,2018, *AL IMARAH vol 3 No. 1*, h.46-59.) Article 97 of Law Number 5 of 2014 states, "The acceptance of PPPK candidates is carried out by Government Agencies through an objective assessment based on competence, qualifications, needs of Government Agencies and other requirements needed in positions. The appointment of PPPK Candidates is determined by the decision of the Personnel Guidance Officer. The minimum period of work agreement is 1 (one) year and is extended as needed and based on performance appraisal. With Law Number 5 of 2014, PPPK is expected to get a decent and fair salary. Salary is given based on workload, job responsibilities, and job risk. In addition to salary, PPPK can receive allowances following the provisions of the legislation. PPPK is given the opportunity for competency development, which is planned annually by Government Agencies. The development of these competencies must be evaluated by the authorized official and used as the basis for the following work agreement. PPPK who have shown loyalty, dedication, skill, honesty, discipline and work performance in carrying out their duties can be given an award. The awards are in the form of 1) Honors; 2) Priority opportunities for competency development; 3) Opportunity to attend official events or state events.

On the other hand, PPPK can also be subject to disciplinary punishment if it violates discipline. It can also be subject to termination of the employment agreement, whether the termination of the employment agreement is carried out with respect, the termination of the employment agreement is carried out respectfully, not at his request, or the termination of the employment agreement is carried out dishonorably.

Complementing the PPPK arrangement in the ASN law, in 2018, PP Number 49 of 2018 was issued concerning Management of Government Employees with Work Agreements which regulates merit system-based management and is expected to produce PPPK that can carry out public service tasks, government duties, and duties specific development. The concept of the PPPK arrangement in these two regulations offers equality in opportunity, the opportunity to work with apparatus with the status of civil servants, of course, with some minor exceptions. (Risdiarto, 2020).

During its working period, PPPK also gets protection as stated in Article 75 Paragraph (1) of PP Number 49 of 2018, namely that: The government is obliged to provide security in the form of a) Old age guarantee; b) Health insurance; c) Work accident insurance; d) Death insurance; and e) Legal assistance.

As an element of the State Apparatus, PPPK has the rights and obligations that have been regulated in the law. The privileges obtained by Government Employees with Work Agreements (PPPK) are held in Article 22 of the ASN Law; these rights are in the form of 1) Salaries and benefits: given by the government based on workload, position responsibilities, and job risks; 2) Leave; 3) Protection: provided by the government in the form of health insurance, work accident insurance, death insurance, legal aid; 4) Competency development: held annually by government agencies.

PPPK is also given obligations that must be carried out based on the legislation. These obligations are regulated in Article 23 of Law Number 5 of 2014 concerning ASN as follows: 1) Loyal and obedient to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and the legitimate government; 2) Maintain national unity and integrity; 3) Implement policies formulated by authorized government officials; 4) Obey the provisions of laws and regulations; 5) Carry out official duties with complete dedication, honesty, awareness, and responsibility; 6) Demonstrate integrity and exemplary in attitude, behavior, speech, and action to everyone, both inside and outside the service; 7) Keep office secrets and can only disclose job secrets following the provisions of the legislation; and 8) Willing to be placed throughout the territory of the Republic of Indonesia.

The quality and quantity of employees play an essential role in the proper implementation of government affairs. Especially in the reform era marked by a critical public, employees in the government environment are required to be more professional. (Setioko, 2018). Everyone has the right to social security to fulfill the basic needs of a decent life and increase his dignity towards the realization of a prosperous and prosperous Indonesian society. To provide comprehensive social security, the state develops a National Social Security System for all Indonesian people, a social security system. The national program is a state program that aims to provide certainty of protection and social welfare for all people. To realize the objectives of the national social security system, it is necessary to establish an organizing body in the form of a legal entity based on the principles of cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, mandated funds, and the results of the management of social.

Arrangement of Old Age Security for Government Employees with Employment Agreement

According to Henny Nuraeny, Indonesia as a state of the law is stated in Article 1 paragraph (3) of the third amendment to the 1945 Constitution of the Republic of Indonesia, which states that Indonesia adheres to the principle and the concept of Pancasila preserved in the Preamble to 1945 Constitution. (Henny Nuraeny & Tanti Kirana Utami, 2015, *Jurnal Dinamika Hukum*, Vol.15 No.2, h. 174.) The values of Pancasila and the 1945 Constitution are the main frameworks of a legal system of relations in Indonesia and determine the direction of the actors in the process of producing goods and services to achieve prosperity for all parties. Because Pancasila and the 1945 Constitution are the main framework of an industrial relations legal system, based on the content of the rules, industrial relations law is included in the category of Public Law Rules (Vide Articles 102 to 135 UUK (Ahmad Hunaeni Zulkarnaen, 2018). Old Age Security (JHT) is a social security program held nationally based on the principle of social insurance or mandatory savings to ensure that participants receive cash when entering retirement, experience permanent total disability, or death. The principles of social insurance include 1) cooperation between the rich and the poor, the healthy and sick, the old and young, and the high and low risk; 2) mandatory and non-selective participation; 3) contributions based on the percentage of wages/income; 4) is non-profit. Furthermore, the equity principle

is equality in obtaining services according to their medical needs, which is not related to the number of contributions that have been paid. The focus of mandatory savings in JHT is based on the consideration that the benefits of JHT come from the accumulation of contributions and the results of their development (<https://www.djsn.go.id/sjsn/program-sjsn/jaminan-hari-tua>).

The basic thoughts that underlie the preparation of the National Social Security System for the implementation of social security for all citizens are: a) The implementation of the National Social Security System is based on human rights and the constitutional rights of everyone; as stated in the 1945 Constitution of the Republic of Indonesia Article 28H paragraph (3) stipulates, "Everyone has the right to social security that allows his full development as a useful human being"; b) The implementation of SJSN is a form of state responsibility in the development of the national economy and social welfare; as stated in the 1945 Constitution of the Republic of Indonesia Article 34 paragraph (2) stipulates, "The state develops a social security system for all people and empowers the weak and incapable in accordance with human dignity"; c) The social security program is intended to enable everyone to be able to fully develop themselves as a helpful human being; as in the 1945 Constitution of the Republic of Indonesia Article 28 H paragraph (3), "Everyone has the right to social security that allows his full development as a useful human being."

In this regard, it is deemed necessary to develop an SJSN capable of synchronizing the implementation of various forms of social security carried out by several organizers to reach a wider membership and provide more significant benefits for each participant.

The National Social Security System (SJSN) is a procedure for administering social security programs by several Social Security Administering Bodies (BPJS). SJSN is held based on 3 (three) principles, namely the principle of humanity, the focus of benefit, and the principle of social justice for all Indonesian people. Humanity principles are related to respect for human dignity. The principle of honor is an operational principle that describes effective and efficient management. The focus of justice is ideal. These three principles are intended to ensure the continuity of the program and the rights of participants.

SJSN is a state program that aims to provide certainty of social protection and welfare for all Indonesian people. SJSN seeks to guarantee the basic needs of a decent life for each participant or family member. Through this program, every resident is expected to meet the basic needs of a decent living if things happen that can result in loss or reduced income due to illness, accident, loss of job, entering old age, or retirement.

SJSN is held based on 9 (nine) principles: a) Mutual cooperation; the principle of togetherness among participants in bearing the burden of social security costs, which is realized by the obligation of each participant to pay contributions according to the level of salary, wages or income; b) Non-profit; the principle of business management that prioritizes the use of proceeds from the development of funds to provide the maximum benefit to all participants; c) Openness; the principle of facilitating access to complete, correct and transparent information for each participant; d) Prudence; principles of careful, thorough, safe and orderly fund management; e) Accountability; principles of program implementation and accurate and accountable financial management; f) Portability; the principle of providing continuous guarantees even if the participant changes jobs or places of residence within the territory of the Unitary State of the Republic of Indonesia; g) Participation is mandatory; the principle that requires all residents to become participants in social security, which is implemented in stages; h) Trust fund; that the contributions and their development are deposited funds from the participants to be used as much as possible for the benefit of the social security participants; i) The results of the management of the Social Security Fund (DJS) are used entirely for program development and for the most significant benefit of the participants; that dividends from shareholders returned for the benefit of social security participants.

Currently, the management of social security programs for PPPK is regulated by three laws, namely the ASN Law and Law No. 40 of 2004 concerning the National Social Security System (SJSN) and Law No. 24 of 2011 concerning BPJS. The presence of the BPJS Law itself is a continuation of the SJSN Law. This law and its derivative products have weaknesses, especially from the aspect of regulatory synchronization. First, the regulation on ASN itself seems less consistent in regulating the implementation of the PPPK social security program. The ASN Law regulates PPPK social security in article 106. That

article states that the PPPK social security program is implemented according to the national social security system. The implementation of the social security program refers to the regulations regulated in the SJSN Law and the BPJS Law. (https://djsn.go.id/files/dokumen/Dokumen%20Kajian/202109011427KA%20PPNPN_Rev2.pdf)

Based on Presidential Instruction number 21 of 2021 concerning Optimizing the Implementation of the Jamsosnaker Program, point 4 b explains that the Minister of Home Affairs is to encourage the Governor and Regent/Mayor so that all workers, including government employees with Non-State Civil Apparatus status in their territory, become active participants in the Employment Social Security Program. Furthermore, Point 24b explains the Governors to take steps so that all workers, both wage earners and non-wage recipients, including government employees with Non-State Civil Apparatus status, and election administrators in their territory, are registered as active participants in the Employment Social Security Program and Point 25b explained that the Regents/Mayors to take steps so that all workers, both wage earners and non-wage recipients, including government employees with Non-State Civil Apparatus status, and election administrators in their territories are registered as active participants in the Employment Social Security Program.

BPJS Law and Presidential Regulation 109 of 2013, Non-ASN Government Employees as workers who are not part of PT Taspen and PT Asabri participants should be BPJS Employment participants since July 1, 2015. PP number 49 of 2018, Article 99 of PP 49/2018 states that the status of non-government employees ASN is given until 2023 before switching to PPPK. During this period, social security protection is provided as a benefit for PPPK (JKN, JKK, and JKM) and is regulated by PermenPAN-RB. Article 2 Permanaker number 5 of 2021, Wage Recipient Participants include a. Workers who work for state administrators; and b. Workers who work for employers other than state officials. (2) Workers who work for state administrators as referred to in paragraph (1) letter a in this Ministerial regulation include a. non-civil servant government employees; b. State officials non-state civil servants; and c. Non-state civil servant employees at high state institutions or state institutions. (https://djsn.go.id/files/dokumen/Dokumen%20Kajian/202109011427KA%20PPNPN_Rev2.pdf)

Referring to the description above, there is a vertical disharmony that requires regulatory synchronization. Synchronization of regulation on the participation of Non-ASN Government Employees in Jamsosnaker according to Presidential Instruction 2/2021. The government compiles and issues PP JKK, JKM, and JHT for Non-ASN Government Employees, while at the same time aligning the provisions of Article 99 paragraph (3) & (4) PP 49 of 2018. Completing Minister of Manpower Regulation 5 of 2021 by including PP JKK, JKM, and JHT in the Preamble Remembering and returning the participation of State Officials following the laws and regulations. Non-ASN Government Employees who become PPPK follow the provisions of PP 70 of 2015 or PP 102 of 2015, while those who do not become ASN Employees remain participants of BPJS Employment. (https://djsn.go.id/files/dokumen/Dokumen%20Kajian/202109011427KA%20PPNPN_Rev2.pdf)

The implications of this policy include further arrangements for JP. JHT PPPK can be combined with RPP JP and JHT PNS as mandated by the ASN Law in Article 91 Paragraph (6). The Government is more flexible in determining the management of the JP and JHT program but can be following existing regulations in the SJSN. For example, suppose the PPPK is not extended to become a PPPK. In that case, the accumulated contributions managed by the program manager can be transferred to BPJS Employment and continued participation if the person concerned is working again in the private sector so as not to harm the PPPK who has stopped/discontinued the employment relationship—previously served in government agencies.

Pension insurance for civil servants that has been structured and adequate. Civil servants receive the amount of the pension security deposit from the contributions allocated from the income they receive each month. "Pay as you go, so no matter how small the donation is, the amount of pension received is not sufficient, and this will burden the state budget. So, this system is changed to fully funded. Entirely funded, civil servants will contribute equally to a presentation of their take-home pay so that the pension money it receives will be better. PPPK may receive a pension through a fundamental change from a pay-as-you-go pension scheme or defined benefit to fully funded (definite contribution), which is currently being

discussed in a draft government regulation that will soon be enacted.

IV. CONCLUSION

During the contract/employment relationship, the Government Employee with the Employment Agreement gets protection as stated in Article 75 Paragraph (1) PP Number 49 of 2018, namely that: The government is obliged to provide security in the form of Old-age insurance, health insurance, work accident insurance, Life insurance; and legal aid. For this reason, the Government can determine the Old Age Security program manager following the existing laws and regulations in the National Social Security System and BPJS Employment so that it does not harm the PPPK who has stopped/dropped out of employment.

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