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LEGAL ANALYSIS OF THE PROHIBITION ON MANAGERIAL POSITIONS FOR GOVERNMENT EMPLOYEES WITH EMPLOYMENT AGREEMENTS BASED ON LAW NUMBER 20 OF 2023 CONCERNING STATE CIVIL APPARATUS

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ABSTRACT

This study discusses the differences in status and authority between Civil Servants (PNS) and Government Employees with Work Agreements (PPPK) within the national civil service system based on Law Number 20 of 2023 concerning the State Civil Apparatus (ASN). The main focus of the study is the prohibition for PPPK employees to hold managerial positions, which is considered to create inequality in relation to the principles of equality and professionalism within the ASN system. In a state governed by law, every employment policy must be based on the principles of legality, legal certainty, and the merit system; therefore, it is important to conduct a juridical analysis of the foundation and implications of such a policy. This research employs a normative juridical method with a descriptive qualitative approach, analyzing legislation, theories of administrative law, and academic literature. Data were obtained from primary, secondary, and tertiary legal sources. The results show that the prohibition on PPPK employees from occupying managerial positions is grounded in the principles of legality and authority theory, as strategic positions can only be held by permanent officials (PNS) who have legal responsibility and ensure the continuity of public policy. However, this policy creates a gap in the ASN career system. Therefore, legal reforms are needed to be more adaptive by opening opportunities for highly competent PPPK employees to occupy certain positions based on the merit system. The study concludes that improvements in ASN regulations must balance legal certainty, justice, and professionalism to create a more inclusive and performance-oriented national civil service system.

Keywords: State Civil Apparatus, Government Employees with Work Agreements, Managerial Positions.

INTRODUCTION

The Republic of Indonesia, as a state based on the rule of law (*rechtsstaat*), as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, establishes law as the foundation for every aspect of governmental administration. One of the fundamental principles in a state governed by law is the principle of legality, which implies that all actions taken by government officials must be based on clear and written legal provisions. In the context of public administration, this principle serves as a benchmark for the legitimacy of all forms of appointment, placement, and dismissal of public officials.[1]

As the paradigm shift in Indonesia's civil service system has become one of the key forms of bureaucratic transformation toward a government that is professional, accountable, and responsive to public demands, the State Civil Apparatus (ASN) as the main executor of public policy and public services is expected to work professionally without being influenced by political, group, or personal interests. This reform of the civil service system was later realized through Law Number 20 of 2023 concerning the State Civil Apparatus (ASN Law 2023), which replaced Law Number 5 of 2014 on the same matter.

One of the significant aspects reformed under the ASN Law 2023 is the regulation concerning Government Employees with Work Agreements (PPPK). PPPK constitutes one of the main components of ASN, differing from Civil Servants (PNS) primarily in terms of employment relationship, legal status, and career rights. The ASN Law 2023 stipulates that PPPK are ASN appointed under a work agreement for a specific period to carry out governmental duties. However, in practice, differences in treatment between PNS and PPPK have sparked considerable debate, particularly regarding the prohibition against PPPK occupying managerial positions within government institutions.

This prohibition is reflected in several provisions stating that managerial positions, such as senior leadership, administrative, and supervisory roles, may only be held by ASN employees with PNS status. Such provisions explicitly limit career opportunities for PPPK, even though they may possess qualifications, experience, and performance levels equal to those of PNS. In fact, the spirit of bureaucratic reform demands a merit-based system that places individuals in positions based on competence rather than employment status.

Article 1 paragraph (4) of the 2023 ASN Law explains that Government Employees with Work Agreements, hereinafter abbreviated as PPPK, are Indonesian citizens who meet certain qualifications and are appointed based on a work agreement for a specified period to carry out

[1] Wulandari, I. A.P., Ibrahim, R., & Suadirta, I. K. "Kedudukan Pegawai Pemerintah dengan Perjanjian Kerja (PPPK) Berdasarkan Pada Undangundang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara". Tesis. Universitas Udayana, 2019, hlm. 5.

governmental duties and/or hold governmental positions. PPPK represents a component of the bureaucratic reform mandated by the 2023 ASN Law. The PPPK scheme is intended as a mechanism for recruiting professional employees needed for specific positions, both technical and managerial, through a contractual, performance-based employment relationship. PPPK differs fundamentally from Civil Servants (PNS), particularly in terms of employment duration, legal status, and employment rights.[2]

This bureaucratic reform has driven significant changes in the management of state apparatus resources, particularly through the establishment of a more adaptive, professional, and accountable civil service system. The 2023 ASN Law serves as a new legal foundation that regulates the status, position, rights, and obligations of state civil apparatus, including both Civil Servants (PNS) and Government Employees with Work Agreements (PPPK).[3]

The existence of PPPK as part of the ASN aims to expand flexibility in employee recruitment while upholding the principles of meritocracy and organizational needs. However, the 2023 ASN Law establishes certain limitations, one of which is the prohibition for PPPK employees to hold managerial positions. This provision has sparked debate among practitioners, academics, and government employees, particularly concerning issues of fairness, organizational effectiveness, and compliance with the principle of non-discrimination in employment law.[4]

Managerial positions within the context of state bureaucracy are strategic roles responsible for planning, organizing, controlling, and evaluating the performance of work units. The prohibition against PPPK employees occupying such positions implies a limitation on their career advancement and potential contributions to national development. This raises the question of whether the restriction is based on strong juridical grounds or merely on political and administrative considerations that may lead to unequal treatment among members of the State Civil Apparatus (ASN).[5]

This regulation raises questions regarding equality and justice within the national civil service system. The principle of equality before the law, as guaranteed in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, affirms that every citizen is entitled to equal status under the law and in government. Therefore, the restriction of managerial positions

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[2] Parkher, J. A. A., & Radjab, D. "Pengaturan Pegawai Pemerintah dengan Perjanjian Kerja dalam Sistem Kepegawaian Berdasarkan Peraturan Perundang-undangan". Lombago: *Journal of Contitusional Law*, Volume. 1. Nomor. 3. 2021, hlm. 481- 501.

[3] Bahsan Mustafa, *Pokok-Pokok Hukum Administrasi Negara*, Citra Aditya Bakti, Bandung, 1990, hlm. 72.

[4] Artisa, R. A. Pegawai Pemerintah dengan Perjanjian Kerja: Review terhadap Undang-undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara. *Jurnal Pembangunan dan Kebijakan Publik*, Volume. 6. Nomor. 1, 2017, hlm. 33-42.

[5] Handini, W.P. Problematika Aspek Perlindungan Hukum Pegawai Pemerintah dengan Perjanjian Kerja dalam Pemutusan Hubungan Kerja Oleh Pemerintah. *Jurnal Legislasi Indonesia*, Volume. 17. Nomor. 4. 2020, hlm. 501-518.

exclusively to Civil Servants (PNS) may be considered a form of juridical discrimination against Government Employees with Work Agreements (PPPK), especially when viewed in light of their equal functions and contributions to governmental administration.

Sociologically, the implementation of the PPPK system serves as a response to the need for efficiency and flexibility in managing human resources within the civil service, particularly to address the issue of honorary workers. However, the existence of such position restrictions for PPPK may instead create dualism and structural inequality within the ASN, where PNS remain the more dominant group in terms of career progression and legal standing. This situation can lead to internal resistance, decreased motivation, and hinder the overall goals of bureaucratic reform.

From a legal-political perspective, lawmakers have certain normative reasons for restricting managerial positions for PPPK, such as maintaining organizational stability and the continuity of administrative responsibilities. Nevertheless, when viewed from the principles of efficiency, effectiveness, and fairness in public administration, such restrictions need to be re-evaluated to ensure they do not contradict the principles of meritocracy and non-discrimination, which form the core of a modern civil service system.

As a result, the provisions governing the positions that PPPK may occupy remain overlapping and open to multiple interpretations. On one hand, the ASN Law provides space for PPPK to fill certain roles; on the other hand, several technical regulations limit their scope, particularly in holding structural or functional positions involving public authority. Therefore, an in-depth juridical study is needed to determine the extent to which legality serves as the basis for appointing PPPK as public officials, as well as the legal implications that may arise if deviations from this principle occur.[6]

From the perspective of administrative law, any restriction on the authority and positions of civil servants must have a clear, proportional legal basis and align with the objectives of legislative formation. Therefore, a juridical review of the prohibition against PPPK employees holding managerial positions under the 2023 ASN Law is crucial not only to understand its normative foundation but also to assess its implications for the national civil service system and the principles of good governance.

The urgency of this study also lies in the importance of maintaining the integrity of the civil service legal system to prevent legal uncertainty, particularly concerning the status and authority of PPPK employees who are not permitted to occupy managerial roles. In the long term, this uncertainty may lead to imbalances within the bureaucratic structure, potential employment

[6] Pasal 13 Jabatan Asn Terdiri Atas: A. Jabatan Manajerial; Dan B. Jabatan Nonmanajerial. Undang.Undang Republik Indonesia Nomor 20 Tahun 2023 Tentang Aparatur Sipil Negara.

disputes, and even a decline in public trust toward the government. Therefore, examining the legal principle underlying the prohibition of PPPK employees from holding managerial positions is essential for strengthening democratic and equitable governance. Given the significance of ASN and public officials within the governmental structure, a juridical study on the legitimacy and legality of appointing PPPK employees who concurrently hold public positions is necessary.

Thus, it is important to conduct a juridical analysis of the prohibition on managerial positions for PPPK based on Law Number 20 of 2023 concerning the State Civil Apparatus. This analysis aims to examine the legal basis, rationale, and implications of this policy, both for the national civil service system and for the rights of PPPK employees as part of the ASN. The study also seeks to determine whether this prohibition aligns with the principles of justice, legal certainty, and equality as mandated by the Indonesian Constitution and prevailing laws. With this focus, the research is expected to contribute to the development of legal science particularly administrative law and serve as valuable input for policymakers in improving ASN regulations in the future. Therefore, the author is interested in conducting this research entitled "Juridical Analysis of the Prohibition of Managerial Positions for Government Employees with Work Agreements Based on Law Number 20 of 2023 concerning the State Civil Apparatus."

RESEARCH METHOD

Based on the background of the problem described above, the formulation of the problems in this journal are as follows: (a) How is the legal regulation concerning the position and authority of Government Employees with Work Agreements (PPPK) stipulated in Law Number 20 of 2023 concerning the State Civil Apparatus? (b) What is the juridical basis underlying the prohibition of PPPK employees from occupying managerial positions within the national civil service system? (c) What are the legal and administrative implications of the prohibition on managerial positions for PPPK employees with regard to the principles of equality and legal certainty within government bureaucracy? (d) What are the possible legal policy alternatives that can be implemented to achieve equality and professionalism between PPPK and Civil Servants (PNS) in occupying managerial positions?

This research employs a normative juridical method, which focuses on the analysis of legal theories and norms relevant to the research topic. Data are collected from legal sources such as legislation, court decisions, expert opinions, journals, and textbooks to identify the principles, rules, and legal doctrines related to "Juridical Review of the Principle of Legality in the Appointment of Government Employees with Work Agreements (PPPK) Who Concurrently Serve as Public Officials."

The approach used is a statutory and qualitative descriptive approach, aimed at providing an in-depth understanding of legal phenomena based on normative data in the form of doctrines,

principles, and existing regulations. The objective is to comprehensively understand legal issues and offer appropriate solutions to the matters being examined.[7]

This research is descriptive-analytical in nature, providing a comprehensive overview of "The Juridical Analysis of the Prohibition of Managerial Positions for Government Employees with Work Agreements Based on Law Number 20 of 2023 concerning the State Civil Apparatus."

The data sources consist of secondary data obtained through library research, including primary legal materials (the 1945 Constitution and Law No. 20 of 2023 on the State Civil Apparatus), secondary legal materials (books, journals, theses, and previous studies), and tertiary legal materials (dictionaries and encyclopedias).[8]

Data analysis is conducted using a normative juridical and qualitative approach, without relying on numerical data, but rather through interpretation of legal regulations and doctrines to draw objective conclusions regarding "The Prohibition of Managerial Positions for Government Employees with Work Agreements Based on Law Number 20 of 2023."

RESULTS AND DISCUSSION

A. Legal Regulation Regarding the Position and Authority of Government Employees with Work Agreements (PPPK) in Law Number 20 of 2023 concerning the State Civil Apparatus

1. Concept and Position of PPPK in the State Civil Apparatus System

Government Employees with Work Agreements (PPPK) are one of the essential components of the State Civil Apparatus (ASN) that play a significant role in the implementation of governmental functions. Based on Law Number 20 of 2023 concerning the State Civil Apparatus (ASN), the ASN consists of two categories: Civil Servants (PNS) and Government Employees with Work Agreements (PPPK). The establishment of PPPK is intended to strengthen the flexibility of the national civil service system and to accommodate the demand for professional personnel in certain dynamic and specialized fields. This system allows the government to recruit experts and professionals from various sectors according to specific needs and the complexity of public services, ensuring that public administration operates more efficiently and responsively to societal developments.[9]

Article 6 of the 2023 ASN Law affirms that the State Civil Apparatus (ASN) is a profession for both Civil Servants (PNS) and Government Employees with Work Agreements

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[7] Soerjono Soekanto. *Pengantar Penelitian Hukum*. UI-Press, Jakarta, 2006, hlm. 40.

[8] Zainal Ali. *Metode Penelitian Hukum*. Sinar Grafika, Jakarta, 2009, hlm. 37.

[9] M. Aditya Mulana Rangkut, dkk. "Tinjauan Yuridis Mengenai Perlindungan Hukum Pada Pegawai Pemerintah Dengan Perjanjian Kerja (PPPK) Berdasarkan Undang-Undang Nomor 5 Tahun 2014." Jurnal Ilmiah Wahana Pendidikan, Universitas Negeri Semarang, Vol. 9, No. 11, Juni 2023. https://jurnal.unwahas.ac.id

(PPPK) who work in government institutions. The legal status of PPPK is explicitly regulated in Article 7, which states that PPPK are part of the ASN appointed under a work agreement for a specific period to carry out governmental duties. Thus, the position of PPPK is not that of a permanent employee like PNS but rather that of a state contractual employee whose legal relationship is of a civil-administrative nature. Nevertheless, PPPK remain subject to the prevailing laws and regulations governing the national civil service system.[10]

According to the theory of civil service, the status of the State Civil Apparatus (ASN), including Government Employees with Work Agreements (PPPK), is regulated to ensure the professionalism, neutrality, and accountability of government personnel in carrying out public service, policy, and administrative functions. PPPK hold a strategic position in implementing public policies, particularly in areas that require specific competencies, such as education, healthcare, and other technical professions. However, unlike Civil Servants (PNS), who possess permanent employment status and long-term career guarantees, PPPK are bound by a fixed-term contract based on a work agreement with the respective government agency.

Theoretically, the position of PPPK can also be viewed through the Theory of Authority (Bevoegdheidstheorie) in administrative law. According to H.D. van Wijk, authority is a form of public legal power granted by law to a governmental organ or official to act within the field of public law. In this context, PPPK derive their authority delegatively from the authorized staffing officer (Pejabat Pembina Kepegawaian or PPK), rather than possessing attributive authority. This means that PPPK perform governmental duties and functions based on assignments given by officials who hold primary authority. Consequently, the scope of PPPK's authority is limited by the terms of the work agreement and the applicable legal regulations.[11]

2. Legal Regulation of the Position and Authority of PPPK in Law Number 20 of 2023

The regulation of Government Employees with Work Agreements (PPPK) in Law Number 20 of 2023 reflects a significant reform compared to the previous regulation (Law Number 5 of 2014). The new law emphasizes that PPPK have an equal standing with Civil Servants (PNS) in terms of recognition, protection, and employment rights, even though they differ in employment structure and legal status.[12]

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[10] Rike Anggun Artisa. "Pegawai Pemerintah dengan Perjanjian Kerja (PPPK): Review terhadap UU No. 5 Tahun 2014 tentang ASN." *Jurnal JPKP (Jurnal Kajian Pemerintahan dan Pelayanan Publik), Universitas Garut, Vol. 8, No. 2, 2021. https://journal.uniga.ac.id/index.php/JPKP/article/download/214/pdf

[11] Sahya Anggara. *Administrasi Kepegawaian Negara*. Bandung: Pustaka Setia, 2019.

[12] Nourismi Hamada & Erlina."Kedudukan Pegawai Pemerintah dengan Perjanjian Kerja (PPPK) Paruh Waktu dalam Sistem Kepegawaian." Jurnal Kewargaan dan Studi (JKS), Universitas Muhammadiyah Palu, Vol. 8, No. 5, 2023. https://jurnal.unismuhpalu.ac.id.

Article 12 of Law Number 20 of 2023 stipulates that the State Civil Apparatus (ASN), including Government Employees with Work Agreements (PPPK), functions as the implementer of public policies, provider of public services, and unifier of the nation. This indicates that PPPK do not merely serve administrative functions but also carry the same social and national responsibilities as Civil Servants (PNS).

Articles 56 to 61 explain the position of PPPK as employees appointed based on a work agreement determined by the authorized staffing officer (Pejabat Pembina Kepegawaian or PPK). The work agreement outlines the rights and obligations of the employee, the duration of the contract, and performance evaluations. PPPK are entitled to salaries, allowances, rewards, social security, and competency development, as guaranteed under Articles 70 to 73 of the ASN Law.

However, in terms of authority, PPPK do not possess full managerial powers like PNS, especially in structural positions that are strategic in nature or involve direct public policy decision-making. This is confirmed in Article 55 paragraph (2), which states that ASN positions consist of high leadership positions, administrative positions, and functional positions, where high leadership positions may only be occupied by PNS, while PPPK are primarily directed toward functional roles.

Thus, although PPPK may hold certain positions according to their competencies, their authority remains limited and does not extend to strategic or policy-determining powers within institutions. The authority granted to PPPK is more operational and technical in nature, carried out based on directives and applicable legal provisions.

3. Theoretical Analysis of the Position and Authority of PPPK

From the perspective of administrative law theory, Government Employees with Work Agreements (PPPK) possess a unique legal relationship characterized by two dimensions: a public dimension and a civil (private) dimension. The public dimension is reflected in their status as part of the State Civil Apparatus (ASN), which subjects them to administrative law, while the civil dimension arises from the employment agreement that forms the legal basis of their relationship with government institutions.[13]

According to Philipus M. Hadjon, in administrative law, there exists a hierarchical public legal relationship between the government and its apparatus, in which all authority must originate from statutory regulations. PPPK derive their position from the ASN Law and hold the same legal responsibility in the implementation of government functions. However, due to the fixed-term nature of their employment agreement, PPPK do not possess permanent career or transfer rights as enjoyed by Civil Servants (PNS).

[13] Suhardi Mukhlis. *Administrasi Kepegawaian*. Yogyakarta: LeutikaPrio, 2020, hlm. 77.

Based on Gustav Radbruch's theory of legal justice, justice for PPPK must consider a balance between legal certainty, fairness, and utility. In this regard, Law Number 20 of 2023 provides protection for the rights of PPPK to prevent discrimination in terms of welfare and administrative treatment, while still limiting their authority in accordance with contractual boundaries and the principle of professionalism.[14]

The results of legal research indicate that the limitation of PPPK authority is essentially a form of strengthening the merit system principle, whereby strategic and policy-making positions are held only by officials with permanent career status (PNS), while PPPK are focused on functional positions that require specific technical competencies. This approach is intended to maintain bureaucratic stability and prevent potential conflicts of interest between public officials and contractual state employees.

4. Normative Analysis and Legal Implications

Normatively, the regulation of the position and authority of PPPK in Law Number 20 of 2023 reflects efforts to reform the ASN system toward greater inclusivity and professionalism. The inclusion of PPPK as part of the ASN affirms the state's recognition of the contributions made by contractual employees in the administration of government, while the limitation of their authority demonstrates the application of prudence within the bureaucratic system.

The legal implication is that every government institution is obligated to provide fair treatment to PPPK regarding their rights, protection, and career development in accordance with their employment agreements. However, PPPK cannot automatically occupy managerial or strategic positions, as such roles involve public responsibilities requiring legal continuity and long-term policy consistency.

From the perspective of civil service law, Law Number 20 of 2023 clearly stipulates that PPPK are entitled to receive recognition, allowances, social security, and legal protection equivalent to those of PNS during the period of their work agreement. This provision aligns with the principle of equality before the law, which places all ASN personnel in an equal position in carrying out public service functions, despite differences in their employment status.

B. Juridical Basis Underlying the Prohibition for Government Employees with Work Agreements (PPPK) to Hold Managerial Positions in the National Civil Service System

1. Juridical and Philosophical Foundations

The prohibition for Government Employees with Work Agreements (PPPK) from occupying managerial positions within the national civil service system is grounded in strong

[14] Syamsir & Nika Saputra. *Administrasi Kepegawaian*. Padang: Eureka Media Aksara, 2021, hlm. 27.

juridical principles and rests upon the core foundations of bureaucratic governance namely the principle of legality, professionalism, and the merit system. Under Law Number 20 of 2023 concerning the State Civil Apparatus (ASN), PPPK are classified as part of the ASN alongside Civil Servants (PNS). However, the fundamental distinction between the two lies in their employment status and the nature of their legal relationship with the state.

According to Article 7 paragraph (2) of the ASN Law, PPPK are employees appointed under a work agreement for a specific period to carry out governmental duties, while PNS are permanent employees with a continuous employment status. From the perspective of administrative law, only state officials or public administrators possessing attributive authority that is, authority derived directly from statutory law are permitted to occupy strategic positions and make public decisions that legally bind the state and its citizens.

Because PPPK are employed under a contractual (civil-administrative) relationship, the scope of their authority is inherently limited. Legally, PPPK cannot hold managerial or high leadership positions (Jabatan Pimpinan Tinggi/JPT) that require attributive authority and direct public accountability for state policies.

From a philosophical standpoint, this restriction aims to maintain stability, accountability, and continuity in public policy implementation. Managerial positions, such as high leadership roles (JPT), require officials who possess a permanent legal relationship with the state to prevent inconsistencies in the execution of governmental functions. This principle aligns with the concept of continuity of public administration, whereby bureaucratic stability is preserved through career officials who demonstrate institutional loyalty and long-term responsibility to the state.[15]

2. Legal Basis in Positive Law under Law Number 20 of 2023 concerning the State Civil Apparatus

Normatively, the prohibition against Government Employees with Work Agreements (PPPK) holding managerial positions is explicitly stated in several provisions of Law Number 20 of 2023 concerning the State Civil Apparatus (ASN). Article 55 paragraph (1) stipulates that ASN positions consist of:

a) High Leadership Positions (Jabatan Pimpinan Tinggi / JPT);

b) Administrative Positions; and

c) Functional Positions.

Article 55 paragraph (2) further emphasizes that high leadership positions may only be occupied by Civil Servants (PNS), while PPPK may only occupy functional or certain administrative positions as specified in their employment agreements.

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[15] Rully Indrawan & Harsono. *Administrasi Kepegawaian Negara*. Jatinangor: Al-QA Press, 2018, hlm. 23.

From these provisions, it is evident that the legislators have explicitly limited PPPK from holding strategic positions that involve high-level public policy decision-making. High leadership positions include roles at both national and regional levels such as secretary-general, director-general, head of department, head of agency, and equivalent positions which play a vital role in determining the direction of institutional policy.

In addition to the ASN Law, this provision is reinforced by Government Regulation (PP) Number 11 of 2017 on Civil Servant Management, as amended by PP Number 17 of 2020, which states that high leadership positions may only be filled by PNS. Meanwhile, the management of PPPK is specifically regulated under Government Regulation Number 49 of 2018 on PPPK Management, which in Article 20 paragraph (3) stipulates that PPPK may occupy functional and specific positions according to their work agreement, but not high leadership positions.

Thus, from the perspective of positive law, this restriction is normative and binding, as it is directly regulated within the higher hierarchy of legal norms specifically laws and government regulations that govern the structure and management of the state civil apparatus.

3. Analysis Based on the Theory of Authority and Administrative Law

According to the Theory of Authority (Bevoegdheidstheorie), every government official may only perform public legal actions if such authority has been attributively granted by law. Government Employees with Work Agreements (PPPK), as contractual employees, do not possess attributive authority; rather, they exercise authority only through delegation or mandate from officials who hold primary authority, namely the authorized staffing officer (Pejabat Pembina Kepegawaian or PPK).

Consequently, PPPK do not have a legal basis to make administrative decisions or public policies that are directly binding. Their role is limited to implementing tasks and responsibilities assigned to them under the scope of their employment agreement and applicable administrative regulations. This limitation ensures that only officials with permanent legal authority (PNS) are responsible for decisions that have long-term legal and political implications for the state.[16]

From the perspective of Administrative Law, every action taken by a government official must have a clear legal basis, in accordance with the principle of legality. Managerial officials who hold high leadership positions such as director-general, head of department, or regional secretary possess the authority to formulate policies, issue decisions, and sign official state documents. Because these positions are strategic in nature and involve public legal responsibilities, only officials with permanent employment status (PNS) may occupy them.

[16] Moekijat. *Administrasi Kepegawaian Negara Indonesia*. Bandung: Mandar Maju, 2016, hlm. 61.

This restriction can also be explained through the theory of official responsibility (ambtelijke verantwoordelijkheid). According to this theory, public officials must be legally, administratively, and morally accountable for the exercise of their authority. PPPK, being bound by fixed-term contracts, do not have continuous and inherent legal responsibility comparable to that of PNS. Therefore, they cannot be entrusted with authority to lead institutions or strategic work units that require long-term accountability and institutional stability.[17]

4. Legal Implications and Objectives of the Prohibition on Managerial Positions for PPPK

The prohibition against Government Employees with Work Agreements (PPPK) from occupying managerial positions is not a form of discrimination, but rather a component of the merit system and good governance framework. The primary objectives of this restriction are as follows:

a) To ensure bureaucratic continuity, as high leadership positions require permanent officials who can guarantee the consistent implementation of public policies.
b) To uphold the principles of professionalism and loyalty among civil servants, ensuring that those in strategic positions have both moral and legal commitments to the state over the long term.
c) To prevent potential conflicts of interest, since PPPK, being contract-based employees, could be vulnerable to external influence or dependency if granted full decision-making authority.
d) To maintain ASN neutrality, in accordance with Article 9 of the ASN Law, which requires every civil servant to remain neutral and free from political or personal interference.

Therefore, the limitation of PPPK's authority represents a logical and proportional legal measure designed to preserve the integrity of the national civil service system. The ASN Law positions PPPK as professional members of the civil apparatus who play essential roles in technical and public service functions, but not as policymakers or holders of strategic leadership positions.

C. Legal and Administrative Implications of the Prohibition on Managerial Positions for PPPK in Relation to the Principles of Equality and Legal Certainty in Government Bureaucracy

The prohibition on Government Employees with Work Agreements (PPPK) from holding managerial positions, as stipulated in Article 55 paragraph (2) of Law Number 20 of 2023

[17] *Ibid,* hlm. 61.

concerning the State Civil Apparatus (ASN), carries significant legal and administrative implications for the national civil service system.

From a legal standpoint, this restriction reinforces the differentiation in status between PPPK and Civil Servants (PNS) based on the principle of legality and the theory of authority within administrative law. Only officials who possess attributive authority and permanent employment status are entitled to perform managerial functions and make strategic decisions in government administration. Consequently, PPPK, whose employment relationship is contractual in nature, cannot be granted full authority to formulate or determine public policies with broad legal or societal impact.

This distinction is designed to ensure that the exercise of state power remains within the hands of officials who have enduring legal responsibility and institutional accountability, thereby upholding the stability, integrity, and continuity of public administration.[18]

From a legal perspective, this restriction reflects the state's effort to maintain legal certainty (rechtssicherheit) within the government bureaucracy. Legal certainty is essential to ensure that the structure of positions and the distribution of authority among civil servants are clear, non-overlapping, and firmly grounded in normative legal principles. By enforcing this limitation, the government guarantees that the authority over strategic positions remains in the hands of career officials who hold long-term responsibility toward the state and society.[19]

However, from the perspective of administrative implications and the principle of equality before the law, this restriction poses certain challenges. Although PPPK (government employees with a work agreement) are recognized as part of the civil apparatus with rights and obligations almost equivalent to those of permanent civil servants (PNS), structurally they do not have the same access to high leadership positions. This has the potential to create a perception of inequality within the civil service career system. Nevertheless, this distinction is rational and proportional, as it is based on differences in legal status and job responsibilities.

Overall, the prohibition of managerial positions for PPPK has a dual implication. On one hand, it reinforces legal certainty and bureaucratic stability; on the other hand, it requires reforms in civil service management to ensure fairness and equal administrative treatment for PPPK in terms of employment rights, recognition, and competency development. Therefore, this regulation

[18] Winda Kusuma, dkk. "Anomali Kehadiran Pegawai Pemerintah dengan Perjanjian Kerja (PPPK) dalam Birokrasi Modern." Jurnal Cepalo, Universitas Lampung, Vol. 6, No. 2, 2023. [https://jurnal.fh.unila.ac.id](https://jurnal.fh.unila.ac.id/index.php/cepalo/article/download/1979/1624)

[19] *Ibid*

reflects the state's effort to balance legal certainty, bureaucratic efficiency, and the principle of substantive justice in a modern civil service system.[20]

1. Analysis of the Reasons for Prohibiting PPPK from Holding Managerial Positions in the State Civil Apparatus System

The prohibition for Government Employees with Work Agreements (PPPK) from holding managerial positions in government bureaucracy is not a form of discrimination but rather a legal policy grounded in the principles of legality, authority, and the specific nature of the PPPK employment relationship. According to Law Number 20 of 2023 on the State Civil Apparatus (ASN), PPPK are appointed through a fixed-term work agreement. This legal relationship is contractual in nature, not a permanent civil service relationship like that of Permanent Civil Servants (PNS).

From a juridical perspective, managerial positions (such as High Leadership Positions and other strategic roles) entail attributive authority derived directly from law, where officeholders are responsible for public policy, state financial management, and administrative decision-making that has a broad impact on society. According to the Theory of Authority (Bevoegdheidstheorie) proposed by H.D. van Wijk and Willem Konijnenbelt, attributive authority can only be granted to permanent officials (in this case, PNS) because it involves public responsibility that cannot be delegated to contract employees. PPPK do not have a legal basis to receive such authority, as their work contracts are civil-administrative in nature and oriented toward task execution, not policy formulation.

Moreover, Article 55 paragraph (2) of the 2023 ASN Law explicitly stipulates that high leadership positions can only be filled by PNS, while PPPK can only occupy certain functional or administrative roles. Normatively, the lawmakers have thus restricted the scope of PPPK from entering managerial areas that are strategic and political. This serves as an implementation of the principles of legal certainty and ASN professionalism, where positions requiring continuity and long-term responsibility can only be held by employees with permanent civil service status.

From an administrative and organizational perspective, this prohibition is also intended to maintain bureaucratic stability and the neutrality of the apparatus. Managerial positions play a significant role in planning, supervising, and implementing public policies, requiring officials with long-term institutional loyalty to the state, rather than merely to a work contract. Allowing PPPK to hold managerial positions could lead to legal uncertainty, potential conflicts of interest,

[20] Hendrawan, A., & Lestari, I. “Pengembangan Kompetensi Pegawai Pemerintah dengan Perjanjian Kerja (PPPK): Tantangan dan Peluang.” Jurnal Kewidyaiswaraan (LAN), Vol. 5, No. 3, 2022. [https://jurnalwi.lan.go.id](https://jurnalwi.lan.go.id/index.php/jurnalkewidyaiswaraan/article/download/268/87)

and disruption of policy continuity, as their tenure is limited and dependent on contract evaluations.[21]

From the perspective of administrative law theory, this prohibition reflects the principle of "administrative responsibility and continuity of public service," which emphasizes ongoing responsibility for public service delivery. Managerial positions require accountability and policy continuity across government periods. Since PPPK are temporary, long-term responsibility for public policy cannot be fully guaranteed.

Thus, from juridical, administrative, and theoretical perspectives, the prohibition for PPPK to hold managerial positions is based on:

a) The contractual legal status of PPPK, which does not allow them to possess attributive authority.
b) The principle of legality and the theory of authority, which assert that managerial authority can only be granted to permanent officials (PNS).
c) The principle of bureaucratic stability and policy continuity, to ensure that public policies remain consistent and are not disrupted by employee contract terms.
d) Efforts to maintain the neutrality and accountability of ASN, so that strategic positions are not influenced by work contracts or short-term interests.

On this basis, the restriction on managerial positions for PPPK is a proportional and rational legal measure aimed at strengthening the merit system, ensuring continuity in government administration, and guaranteeing legal certainty within the state bureaucracy.

D. Alternative Legal Policy Solutions to Achieve Equality and Professionalism Between PPPK and PNS in Holding Managerial Positions

1. Background and Urgency of ASN Policy Reform

The difference in legal status between Permanent Civil Servants (PNS) and Government Employees with Work Agreements (PPPK) remains a crucial issue within the state civil apparatus system. Although Law Number 20 of 2023 on the State Civil Apparatus (ASN) affirms that both are part of the ASN with nearly equal rights and obligations, in practice there is still a gap regarding access to managerial positions, career development, and administrative treatment. PPPK are still limited to certain functional and administrative positions, whereas high leadership positions (JPT) can only be held by PNS as stipulated in Article 55 paragraph (2) of the ASN Law.

[21] Diana Puspita & Rinaldi. "Perbandingan Hak dan Kewajiban Pegawai Negeri Sipil (PNS) dan Pegawai Pemerintah dengan Perjanjian Kerja (PPPK)." Jurnal Inovatif, Universitas Lampung, Vol. 7, No. 4, 2022. [https://j-innovative.org](https://j-innovative.org/index.php/Innovative/article/view/14527)

While this policy aims to maintain bureaucratic stability, it has drawn criticism from various parties for being inconsistent with the principles of equality, justice, and the merit system that underlie ASN reform. Therefore, alternative legal policy solutions are needed to create a balance between the need for civil servant professionalism and fairness for all ASN members, including PPPK.[22]

2. Alternative Legal Policy Solutions

The first solution is a limited revision of Article 55 paragraph (2) of the ASN Law to open opportunities for highly competent PPPK with a proven professional track record to hold certain managerial positions. This mechanism can be regulated through a Government Regulation or Presidential Regulation that sets strict criteria, such as minimum experience, performance evaluation results, and recommendations from the supervising agency.

Thus, PPPK who have demonstrated outstanding performance in functional positions can be given the opportunity to occupy managerial roles, especially in technical sectors such as education, health, and research. A competency-based approach like this will strengthen the merit system and reduce structural discrimination within the ASN.

The second alternative is the implementation of an integrated career scheme between PNS and PPPK. Currently, the ASN career system is dualistic, where PPPK career paths are limited by contract duration. The government can design mechanisms for periodic performance evaluation and automatic contract extension for high-performing PPPK to ensure continuity in their careers.

PPPK who have worked for a certain period and consistently demonstrated good performance can be given the opportunity to convert to PNS status through a special merit-based selection mechanism. This approach not only promotes professionalism but also ensures career certainty and loyalty to the institution. Similar models have been applied in countries such as Japan and South Korea, where contract-based government employees can transition to permanent positions based on performance and organizational needs.

The third solution is to grant PPPK a limited managerial mandate. This scheme allows PPPK to occupy managerial positions in technical units or strategic projects with defined time frames and responsibilities, without violating the principle of legality. For example, PPPK leading development projects, research, or public services can be given managerial authority within the context of program implementation but remain under the supervision of the civil service supervisory officer (PPK). This approach maintains a balance between managerial flexibility and

[22] Rahman, Yulia, & Mukhlis. "Kedudukan PPPK dalam Sistem ASN Indonesia Berdasarkan Prinsip Keadilan Hukum." Jurnal Hukum dan Kebijakan Publik, Universitas Malikussaleh, Vol. 5, No. 1, 2023. https://ojs.unimal.ac.id

legal certainty, while providing opportunities for PPPK to play an active role in technical leadership.

In addition to structural reforms, the government also needs to strengthen ASN performance assessment mechanisms that are objective, transparent, and competency-based. An integrated performance evaluation system for both PNS and PPPK will create professional equality, as achievements are measured based on results rather than employment status. This evaluation can be regulated in a Minister of PAN-RB Regulation setting professionalism indicators, such as managerial competence, public service innovation, and ethical leadership. With uniform standards, PPPK will have equal opportunities for recognition in terms of rewards, promotions, and career development.

3. Theoretical and Juridical Analysis

Theoretically, these alternative policies are grounded in Gustav Radbruch's Theory of Legal Justice, which emphasizes three main values of law: justice, certainty, and utility. An absolute prohibition on PPPK holding managerial positions may ensure legal certainty, but it risks reducing substantive justice and administrative utility if it excludes competent employees. Therefore, a flexible policy reform that still adheres to the principle of legality provides a rational middle ground. Furthermore, according to the Merit System Theory, every state apparatus should be appointed, promoted, and granted authority based on competence, integrity, and performance, rather than employment status. Implementing this principle can enhance ASN professionalism and improve public service quality. Policy revisions would also strengthen public trust in the bureaucracy, as career opportunities are offered fairly and proportionally.

4. Positive Implications of Implementing Solution-Oriented Policies

If the above alternative solutions are implemented, several positive impacts on the national civil service system can be expected, including:

(a) Increased ASN professionalism, as managerial positions are filled by individuals with competence and proven track records, regardless of employment status.

(b) Realization of legal and administrative equality, in accordance with Article 28D of the 1945 Constitution regarding the right to equal treatment under the law and government administration.

(c) Enhanced motivation for PPPK, as more open and merit-based career opportunities become available.

(d) Strengthened bureaucratic flexibility, allowing government institutions to place the best employees according to organizational needs without being constrained by differences in legal status.

Thus, legal policy reform that opens opportunities for ASN equality based on competence and performance represents a strategic step toward a professional, adaptive, and highly-integrity bureaucracy.

CONCLUSION

Based on the discussion above, it can be concluded that Government Employees with Work Agreements (PPPK) hold a position as part of the State Civil Apparatus (ASN) and play an important role in government administration, but their contractual legal status limits their authority. The prohibition on PPPK holding managerial positions, as stipulated in Law Number 20 of 2023 on ASN, is based on the principle of legality, the theory of authority, and the principle of bureaucratic stability to ensure that strategic positions are held by officials with permanent legal responsibility, namely PNS. Nevertheless, this restriction presents challenges to the principles of equality and professionalism within ASN, necessitating adaptive, competence-based legal policy alternatives. Regulatory reforms, an integrated career system, and objective performance evaluations can provide solutions to achieve fairness and efficiency in bureaucracy. Consequently, equality and professionalism between PPPK and PNS can be realized without compromising legal certainty and the merit system principle in good governance.

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