

# The Construction of Legal Protection Arrangement on Governmental Employees with Work Contract in Indonesian Governance Reforms Staffing

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## Abstract

Governmental Employee with Work Contract (PPPK) is new employee model arranged in staffing law that is the Law Number 5 of 2014 on Civilian State Apparatus. There are some norms in this Law considered resulting in norm ambiguity related to legal protection of PPPK, in line with the position of PPPK, authority limitation of PPPK, and mechanism of dispute resolution of PPPK. In this arrangement, the law maker synchronizes the existence of PPPK and PNS the name of ASN employees. In fact, PNS and PPPK are two different models of employees, though both of them are ASN employees. Therefore, the writer is interesting in conducting study on: How the Construction of Legal Protection Arrangement of Governmental Employee with Work Contract in the Reforms of Staffing Governance is in the Future. This study is normative legal research, using approaches of philosophy, statute, history and conceptual. The data collecting technique uses literature study using Snowball technique and the analysis technique is Perspective one. The construction of legal protection arrangement of Governmental Employee with Work Contract in conducting local government in the future is revising of the Law Number 5 of 2014 by separating the existence of PPPK and PNS, thus PPPK becomes independent employee, and having certain ability and skill through arrangement of staffing governance in line with philosophical, sociological and juridical consideration as well as covering the society participation.

**Keywords:** Legal Construction, Legal protection, PPPK

## A. Introduction

By issuing the Law Number 5 of 2014 on Civilian State Apparatus, it results in new face of the staffing system in Indonesia. In Act 6 of the Law, it states “The ASN employees cover: a. PNS; and b. PPPK.” The existence of Governmental Employee with Work Contract (PPPK) refers to something new in staffing system arrangement in Indonesia that has never existed in the previous staffing arrangement.

Some considerations becoming the reason of the government to accommodate PPPK in the Law No. 5 of 2014 are:

*First;* spirit of “develop state apparatus who are professional, free from political intervention, clean from Corruption, Collusion and Nepotism practices, having high integrity and having ability and high working motivation<sup>5</sup>.” In order to obtain the goal, it needs employees who are independent and free from any kinds of intervention. The system developed is to appoint employee using system of work contract that the working relation between the government and the employee purely based on the work contract being made and signed. Each party will conduct their duty and obtain their rights in line with the contract constructed together, in certain period of time. When the time ends means the work relation between government and PPPK ends, thus there is no influence or intervention one another.

*Second;* in the future governmental development, it needs selection of governmental apparatus function, that is policy management function of state government and function of fundamental public service. In line with Academic Paper of The Statute Plan on Civilian State Apparatus, the implementation of policy management function state governmental is conducted by PNS, whereas implementation of fundamental public service function comes to PPPK. The public services cover: education, health service, and additional of state policy management.

*Third;* to be more flexible of the ASN structure that it is always able to follow the dynamics of development in the society, nation and state, PPPK (contract government employees) is the choice, by implementing standard and norm of appropriate consideration in Private Company. The implementation of the system has made the government has no relation to the employee’s living that should be covered whole life such as the PNS. When PPPK is no longer productive to work and its work contract ends, the government can do layoffs without considering retirement fee for the employee, thus in one side it gives benefit to the state financial. Other benefit is that PPPK employed is guaranteed its productive power thus the working productivity maximally obtains.

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<sup>5</sup> The Academic Paper of the Statute Plan on the Civilian State Apparatus, p. 2

*Fourth*; the staffing management system applied in the Law number 5 of 2014 is “the position based personal management system as the replacement of the career based personal management system<sup>1</sup>.” This system brings consequence that employee appointment and position placement are no longer based on career, where the new employee recruitment is based on formation decided every year. However, the appointment and placement of position are based on the vacant position, thus the vacant position becomes the reason of needing employee appointment and placement. This system gives chance toward employee appointment using system of work contract such as PPPK, because appointment and retirement are more flexible in line with the vacant position.

Based on the above reasons, it is clear that PPPK stated in the Law number 5 of 2014 is focused to give new environment in staffing system in Indonesia in order to construct the Civilian State Apparatus to more modern management as applied in the developed countries. However, the purpose of PPPK construction as explained before is not followed by good arrangement, especially in line with legal protection of PPPK. The arrangement of PPPK legal protection in the Law No. 5 of 2014 is vague. The law maker has not placed PPPK as employee who has different position from PNS yet. If in the arrangement of legal protection of PPPK happens norm ambiguity, the law certainty of legal protection guarantee of PPPK will be difficult to obtain. In fact, the guarantee of legal protection is one of absolute rights obtained by PPPK in order to conduct its duty and function well, thus the existence of PPPK becomes more benefit toward itself and its family and also for the government.

There are some norms in the Law number 5 of 2014 resulting norm ambiguity in line with legal protection of PPPK, namely the position of PPPK, the limit of PPPK position, and dispute resolution mechanism of PPPK. In its arrangement, the law maker considers the same between PPPK and PNS in calling ASN employee. The fact is that PNS and PPPK are two different models of employees, though both are ASN employees.

Based on the above explanation, the writer is interested to do study on: How the Construction of Legal Protection Arrangement of Governmental Employee with Work Contract in the Reforms of Staffing Governance is in the Future.

## **B. Research Purpose**

This study purpose to understand and find out the Construction of Legal Protection Arrangement of Governmental Employee with Work Contract in the Reforms of Staffing Governance is in the Future.

## **C. Research Method**

The research method is one of method or way in developing science, technology and art, because the study purposes to “reveal the truth systematically, methodologically and consistently<sup>2</sup>.” This study is Normative Legal Research because the problem is in its legal norm level. According to Abdulkadir Muhammad “the normative legal research studies law concerted as norm or guidance applied in the society<sup>3</sup>.”

The approaches used cover Philosophical, Statute and Conceptual Approaches. The Primary Legal Material are: the Law No. 5 of 2014, the Law No. 5 of 1986 jo the Law No. 9 of 2004 jo the Law No. 51 of 2009, the Law No. 13 of 2003, the Law No. 30 of 2014, Academic Paper of The Statute Plan on Civilian State Apparatus, the Paper of Meeting on the Law Plan Discussion of ASN, Code of Civil Law, and Work Contract Letter between the Governmental officer and PPPK. The data collecting technique uses literature study and Snowball technique. The Analysis technique of Legal Material is Perspective, means that it analyzes the legal materials obtained by related them to the legal purpose, justice values, legal rule validity, legal concepts and legal norms, and thus it obtains what the law is and how the norm should be.

## **D. Discussion**

The staffing system applied in the Law No. 5 of 2014 has produces 2 (two) forms of staffing that are Civilian State Personnel (PNS) and the Governmental Employee with Work Contract (PPPK). The existence of PPPK becomes form of reformation in the previous staffing system, where the recruitment system is based on agreement of two parties through contract applied in Letter of Work Contract. This recruitment mean is the new one arranged in the Law No. 5 of 2014, and having not been found in the prior staffing law yet. Though in practice this way has been applied in implementing local government in 2005, however, it has not been based on the provision.

The appearance of PPPK arrangement in the Law number 5 of 2014 of course results in significant change in staffing governance in Indonesia, where this system hopefully gives positive change toward staffing reforms in Indonesia to give the best service for the society. The reforms means to change the employee

<sup>1</sup> *Ibid*, hlm 7

<sup>2</sup> H. Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2011), hlm 17

<sup>3</sup> Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: PT Citra Aditya Bakti, 2004), hlm 51

mindset from mindset “being served” becomes “to serve”. The Civilian State Apparatus (ASN) is state apparatus employed to be able to conduct duty of public service, governmental and developmental tasks, as stated in the General Explanation of the Law No. 5 of 2014:

“In order to conduct public service task, governmental task and developmental task, ASN Employee should have profession and Management of ASN based on Merit System or comparison between qualification, competition and performance needed by the position with qualification, competition, and performance of the candidate in recruitment, appointment, placement and promotion of the position conducted openly and competitively, in line with good governance.”

However, the writer believes that the government seems to be half-hearted to conduct change in the staffing system in Indonesia, especially in line with PPPK in Indonesian staffing system. The arrangement of PPPK in the Law No. 5 of 2014 shows dualism of governmental interest, as if it only gave benefit to the government. The dualism means in one hand the government wants to show freedom for PPPK to make agreement together on right and duty in conducting job through contract stated in the Letter of Work Contract, but in other hand, the government ties PPPK to obey the governmental order through appointment of PPPK Candidate using decree, as stated in Act 98 verse (1) the Law No. 5 of 2014. In the Draft Government Regulation on the Management of PPPK, Act 23 verse (1) states that “PPPK appointed as stated in Act 22 has to sign work contract with Officials of Trustees Personnel” In act 2 verse (2) of the RPP, it states that “The work contract as stated in verse (1) is conducted between the Officials of Trustees Personnel as work employer and PPPK as work receiver resulting in relation of public law between two parties.” The word “resulting in relation of public law” in this act means that the contract created by the government and PPPK is in the public law and thus it follows the public law. It theoretically contradicts to the term “work contract” in the realm of civil law and it follows private legal, not public one. In act 3 verse (2) RPP, it states forbidden for PPPK to do the strike action and demonstration to the Government. It means there is restraint toward PPPK’s rights to give aspiration, as its position as job seekers using mechanism of work contract

The writer thinks that if the government has commitment to recruit professional employee through mechanism of work contract, the government should be able to place the PPPK as labor who has autonomy, independence and pure to work together with the government based on agreement made together. In its position as PPPK, PPPK should have bargaining power toward job conducted, because PPPK is labor with certain ability and skill to conduct operational technique jobs, as the jobs positioned to work. To achieve that, the arrangement or regulation made should focus on the fact, thus it will create PPPK as independent and professional labor in its field.

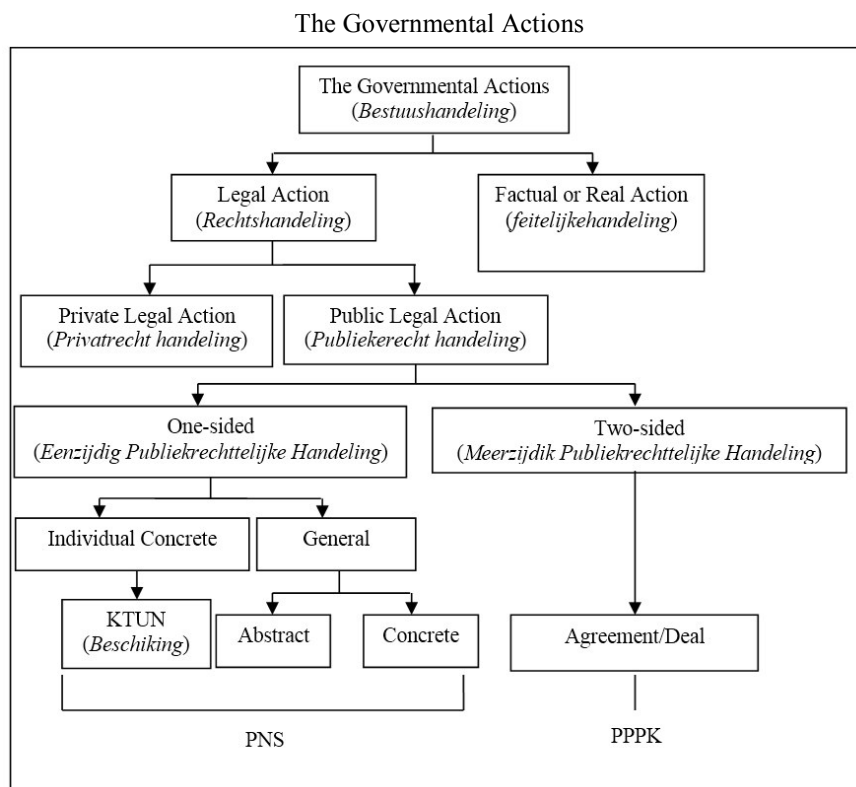
Theoretically, the government’s action (*bestuurshandeling*) is “action or behavior of governmental instrument tool (*bestuursorgaan*) to conduct governmental function (*bestuursfunctie*)<sup>1</sup>.” The governmental actions are classified into 2 (two):

1. Legal based actions (*rechtshandeling*), are governmental actions that able to create certain legal effect to produce right and duty. These action relates to authority got or attaches to its position.
2. Fact/Riil based actions (*feitelijkehandeling*), are governmental actions indirectly related to its authority that it does not result in legal effect. For example: the government gives aid, bridge formal ceremony and others<sup>2</sup>.

The government legal action (*rechtshandeling*) may result in private legal action (*privatrecht handeling*) and public legal action (*publiekrecht handeling*). The private legal actions are legal actions conducted by the government and private party in line with implementing governmental tasks, for example conducting contract in developing physical infrastructure, conducting purchasing certain goods and many others. Whereas the public legal actions are governmental legal actions in form of one-sided legal action (*eenzijdig publiekrechtelijke handeling*) and two-sided legal action (*meerzijdig publiekrechtelijke handeling*). One-sided legal action is legal action conducted by government unilaterally, resulting concrete individual or general decisions. Whereas, two-sided legal action is legal action conducted by government with desire of the two parties related to the legal action. The following chart gives description more clearly:

<sup>1</sup> Sadjijono, *Memahami Beberapa Bab Pokok Hukum Administrasi*, (Yogyakarta: LaksBang Pressindo, 2008), hlm 79

<sup>2</sup> *Ibid*, hlm 80



Source: The writer's analysis taken from book with title "Memahami Beberapa Bab Pokok Hukum Administrasi"

Based on the above chart, it describes that PPPK having relation with the government through agreement or treaty then applied in Letter of Work Contract is in the area of the two-sided governmental legal action. It happens because the two parties agree to work together to do certain jobs as the willing of them. In this fact, PPPK is not only obey to the Public Legal but also protected by the Private Legal. Obey to the Public Legal or State Administrative Legal is related to its position as the governmental employee who conducts public functions. Obey to private Legal or Civic Law is related to its position as worker tied with the work contract.

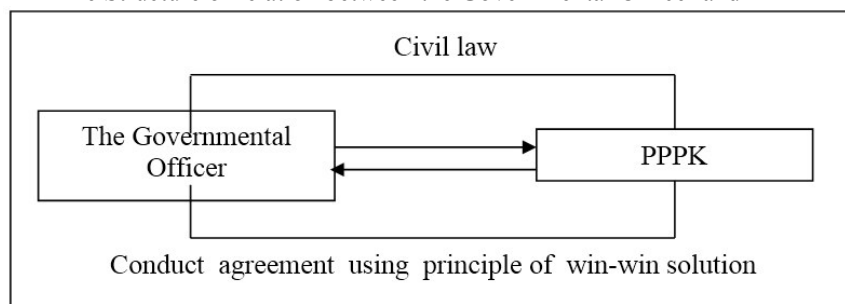
The position as work searcher mengikatkan diri to the government by letter of work contract and follow the Civic Law becomes consideration that should be placed rightly by the government. For in this position, PPPK has civil rights that should be protected by the government. It becomes difference between the position of PPPK and PNS, though both of them are the governmental employees. PPPK is more independent and has right to claim for compensation to the governmental officer, if the action of the governmental officer considered merugikan in material for PPPK using mechanism of civil law. PPPK has more bargaining power than PNS related to appropriate rewards given to him based on work type and ability of PPPK. These points result in professional and independent labors (free from any intervention and influence) and if it cannot be fulfilled, the government has right to dismiss the one concerned disserve using more simple mechanism than PNS, when the contract ends.

The work relation between the Governmental Officer and PPPK based on the Lettere of Work Contract is purely relation of civil law, though in certain case it follows the same State Administrative Legal as other society, for example there is any decision or action of the Governmental Officer considered disserve then PPPK has right to claim the officer using mechanism of State Administrative Legal. Related to work relation conducted based on work contract as a legal action, it cannot follow two different laws, in other words, it cannot be mixed between State Administrative Legal and Civil Law, because each law has different tool and mechanism. It becomes a problem if the two different laws are placed in one same legal action, as the writer describes in one life, there are two different breath thus the life will not run well.

In line with the fact above, the position of PPPK in staffing system should be different from PNS whether in aspect of structure, authority or function, therefore, it also gives effect to the right and duty of PPPK.

1. Structurally, the governmental officer having work relation to PPPK through work contract has the equal position and follows the Civil Law. Here is more clearly explanation:

The Structure of relation between the Governmental Officer and PPPK



Source : the writer's analysis

2. PPPK has duty and function to do function of fundamental public service and additional function of governmental policy management, in line with the main purpose of PPPK's recruitment as stated in the Academic Paper and debates in discussion of Statute Plan on ASN issued in Minutes of Hearing.
3. Having duty and function in operational technical characteristic needing certain ability and skill, PPPK can only pose functional positions.
4. The public authority to do governmental tasks is obtain by PPPK through delegating authority as mandate.

To achieve the above purposes, it needs construction of legal protection arrangement of PPPK in form of renewal the Law No. 5 of 2014 especially related to acts discussing the position and limitation of authority of PPPK as well as its mechanism of dispute resolution.

1. The Position of PPPK

PPPK in the Law No. 5 of 2014 refers to fill vacant functional position needing certain ability and skill or operational technical jobs, especially for certain times and not permanent. Thus, when the jobs end, the employee can be stopped in line with its contract period without giving them pensions. Principely, the government gives job to the individual through work contract, because the government needs ability, expertise and skill of the individu to support the governmental tasks. When the need of the job finishes, it finishes too the work relation between the government and PPPK as stated in its letter of work contract. However, if the need of job has not finished yet and the employee's work contract ends, the government may give new contract to the related employee. In this case, the government is more flexible in deciding the work period of the employee, in line with the job needing the employee's ability and skill.

In line with the fact, the mechanism of PPPK appointment is work contract system in certain period of time, as the two-sided public legal action and follow civil law. Therefore, there is no legal doubt of PPPK position, for it will give effect to other legal protection toward PPPK.

In conducting two-sided public legal action, the government becomes legal subject who can do legal relation to other party as other legal subjects. Two-sided public legal action means the action conducted by the governmental officer in implementing the government, to make work relation to other party based on agreement of the two parties. The work relation based on agreement together is in line with principle of contract freedom. The agreement ties as the provision for the two parties<sup>1</sup>, based on requirements as stated in Act 1320 the Code of Civic Law<sup>2</sup>.

The work contract in certain period of time is different from work contract in uncertain or fixed times. Certain time means in the contract stated clearly when the time of the contract end. The period of time or period of contract for PPPK as stated in Act 98 verse (2) of the Law No. 5 of 2014 is minimum 1 (one) year and it can be lengtened in line with the need and work estimation of PPPK. The decision of minimum period considered to be very short may result in restlessness of the employee.

Therefore, it needs to consider more ideal period of time that the willing and needs of the two parties fulfill. The government get what it wants and needs of professional labor to do the governmental tasks in

<sup>1</sup> Act 1338 the Code of Civic Law states "All agreements made in line with the statute apply as statute for them who make. The agreement cannot be withdrawn unless using agreement of the two parties, or because of reasons stated in the statute. The agreement should be conducted with goof purpose." In Act 1339 the Code of Civic Law, it states that "The agreement does not only tie what clearly stated in it, but also any agreement in line with its characteristic claimed based on the justice, habit, or statute."

<sup>2</sup> Act 1320 the Code of Civic Law states that in order to obtain official agreement, it needs to fullfill four requirements;

1. Their agreement ties themselves;
2. Proficiency to make a relation;
3. A certain main problem;
4. An allowed reason.



operational technical ways and when the tasks finish, the employee may be fired using more flexible mechanism. The employee obtains his willing and needs to get appropriate job that he can fulfill himself and his family.

More ideal period of time is obtained by deciding period of contract about 3 (three) years, when its ends but the government still needs PPPK, the government may make new contract related to the needs and previous estimation work. In the period of 3 (three) years, the employee may not worry of his job, for in the 3 years he can plan his life better. If his contract ends, he should have enough financial to plan his next job. Thus, he should not worry of his family life.

For the government, period of 3 (three) years are used to give more objective estimation on the employee working. Giving estimation on someone cannot be done in period of 1 year, because generally in the beginning of working the employee still needs time to make adaptation, toward his job or environment of working. Thus, it is not objective to do estimation in this condition.

Other thing in the future statute renewal, it is necessary to arrange the employee position using previous Work Contract as stated in the Law Number 5 of 2014. Nevertheless, they have worked for long time in the governmental institution with less people. Therefore, the government has responsibility to give legal protection to them. The guarantee of legal protection can be given if only it is stated in legislation. When they no longer needed because of not appropriate to the needs of the government, the government should make mechanism of retirement. However, if they still have chance to keep working or continuing with certain requirements, it needs to arrange the mechanism of changing and the requirements in the new law. Thus, their status and position become clear and they get appropriate legal protection.

## 2. Limit of PPPK authority

According to F.P.C.L Tonner, "the governmental authority in this case refers to ability to do positive law, and therefore, it results in legal relation between the government and the citizen<sup>1</sup>." An authority may tie and give effect toward those who conduct and those who are tied in the authority, for that reason according to Philipus M. Hadjon, authority should have elements explains as follow:

- a. Influence; is that the usage of authority meant to control the behavior of legal subject
- b. Legal Base; is that authority should always have legal base; and
- c. Legal Conformity; has meaning of standard authority, general standard (any kinds of authority) and special standard (certain authority)<sup>2</sup>."

In line with the Academic Paper of Law Plan on ASN, the limit of PPPK authority is clear, that it relates to the function of basic public service and supporting function of governmental policy management. The basic public service in the Academic Paper covers education, health service and others. In the debates of discussion toward Statute Plan for ASN in II Commission of Representative Board shows that PPPK is purposed to functional labor that conduct the operational technical tasks of the government.

In line with the fact, it is impossible that PPPK automatically has public positions that conducting management function of the governmental policy, whereas the function in the Academic Paper becomes the function of PNS. In other words, the limit of authority between PNS and PPPK as the ASN employees has existed in the Academic Paper of The Law Plan related to ASN. Moreover, how the authority are put in a legal regulation that it becomes attaching principle. It becomes one of considerations that revision on the law Number 5 of 2014 is necessary to conduct, because the law maker has forgotten to put this important thing in the Academic Paper as norm of the Law related to limit of PPPK authority.

The Academic Paper emerged from academic research including the philosophical, sociological and juridical fundamentals of the regulation cannot be legal norm if it is not put in the legislation. Ideally, the formulation of regulation draft focuses on its Academic paper.

While the authority to do the governmental tasks by PPPK is the governmental officer giving the authority through mandate mechanism, called mandate authority. In this authority based on mandate authority, PPPK does only the authority while the responsibility of the authority comes to the authority giver or the governmental officer, thus when there are disadvantaged parties of the authority, the governmental officer becomes the one of defendant, the one who gave the authority to PPPK. Thus, PPPK also has public authority to conduct the governmental functions.

In line with the fact above, the limit of PPPK authority lies on the position limit obtained by PPPK or functional position to do function and task of basic public service and supporting function of the governmental policy management, as the reason of why PPPK creates in the staffing system. Thus, it is necessary to revise Act 20 verse (1) of the Law Number 5 of 2014 stating that "The position of ASN is taken from ASN Employees". This act clearly states that PPPK can only get Functional Position, of 3 positions stated in Act 13 of the Law Number 5 of 2014, namely Administrative, Functional and Main Head Positions. Also, it needs to revise the function and task stated in Act 10 and 11 of the Law Number 5 of 2014. These acts should include clear

<sup>1</sup> Ridwan HR. *Hukum Administrasi Negara*. (Jakarta: PT Rajagrafindo Persada, 2006), hlm 100

<sup>2</sup> Philipus M. hadjon, *Penataan Hukum Administrasi*, (Surabaya: Fakultas Hukum Unair, 1998), hlm 2

devisiion between function and task of PNS and PPPK, thus there will no overlapping in conducting the function and task.

### 3. Mechanism od Dispute Resolution

In thery of legal protection from Philipus M. Hadjon based on the governmental authority, the society must obtain right to do control or apply claim on the governmental action (*bestuurshandeling*) considered being disserve for them. The control is conducted in line with giving preventive legal protection to prevent the dispute that may happen, where the society have chance to apply objection (*inspraak*) or opinion, before the government takes decision or policy in definite way. Whereas, the claim may be applied to any governmental desicions considered to be disserved for the society. The claim is purposed to give represive legal protection to resolve the dispute.<sup>1</sup>

The claim can be apply toward the governmental action such as legal action, that considered disserved someone or civil law board. The legal action results in several things:

1. The change of previous right, duty and authority
2. The change of someone legal position
3. Certain right, task and authority.

When the governmental officer in conducting legal action as his position authority againts to the law or provision and finally disserve someone, it results in legal conflict called administrative dispute or dispute of State Administration. This dispute should be resolved by institution having authority to resolve it. The Law Number 5 of 1986 jo the Law No. 9 of 2004 jo the Law No. 51 of 2009 states that institution given authority to resolve the administrative dispute includes 2 inatitutions, namely the Administrative Court as the judicial board and the Governmental Institution in line with staffing that follows Administrative Effort. It is stated in Act 75 and 76 of the Law No. 30 of 2014 explained that princplely the dispute of Tata Usaha Negara may be resolved in two ways that are administrative and court ways.

The Administrative Court is administrative court, functioning to give protection and resolution of the dispute of State Administration happening between the government and someone or board of civil law who disserved by the legal action of the government. therefore, the administrative court may be called the institution to control and prevent the posibility of action againts the law of the government (*onrechtmatige overheidaad*).

The Administrative Court is the court having competence in resolving dispute between the government and citizen as result of the governmental legal action. The competence in the Black Law Dictionary is called *competence*, meaning as “ The capacity of an official body to do something<sup>2</sup>.” The competence of Administrative Court is to check, decide, and resolve problem or dispute happening in State Administration, including staffing dispute<sup>3</sup>.

Related to PPPK, the problem may happen because one of the parties default toward the content of agreement having agreed by the two parties. In this case, the object of dispute is the letter of work agreement that made by the governmental officer and PPPK. Because the contract follows the civil law, the mecanism of resolution uses mechanism of civil law<sup>4</sup> and the Court having authority is the General Court (State Court). The word “someone” in the sentence “.....oblige someone causing the losses .....” in Act 1365 the Code of Civil Law is considered to be the legal subject. The governmental officer making the relation with other party using mechanism of agreement or kontrak place himself or his position as legal subject. As legal subject, the government may ask for responsibility if his action has disserved other party or the government does default toward the agreement being agreed. Thus, if there is any problem between the governmental officer and PPPK as result of one party has default, the resolution follows the general court and follows the mechanism of civil law. It results from the letter of work contract that cannot become claim object in the The Administrative Court because it is civil law, as stated in Act 2 number 1 of the Law No. 9 of 2004 stating that “It is not included in the definition of the Decision of State Administration according to the Law : 1. the decision of State Administration considers being action of civil law.”

In the Law No. 13 of 2003 on the Labor, it rules on dispute resolution happened in a work relation based on the work contract. However, the work relation stated in the law is “the relation between employer and employee/labor based on work contract, having elements of work, payment and order”, as stated in Act 1 point 15 of the Law No. 13 of 2003. The term of employer in the act in simple meaning refers to those who have private company but in wider meaning, they refer to the one who give the job. Therefore, the governmental

<sup>1</sup> Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, (Surabaya: Bina Ilmu, 1997), hlm 2

<sup>2</sup> Bryan A. Garner, *Black's Law Dictionary*, (ST. Paul Minn: West Group, 1999), hlm 278

<sup>3</sup> Act 1 point 10 of the law No. 51 of 2009 states that Dispute of State Administration is dispute appearing in field of State Administration between someone or civil law board and Board or Officer of State Administration, whether in center or in Local, as result of issuing the decision State Administration, including staffing dispute based on applied provision.

<sup>4</sup> Act 1365 the Code of Civil Law states that “Any behavior againts the law and bring someone suffer, forces the person creating the loss because of his fault to pay the loss.” In Act 1366 the Code of Civil Law, it adds that “anyone is responsible, not only for the loss of his deeds, but also the loss of his negligence or recklessness.”

officer who gives the job to PPPK may be called as employer in the wider meaning. While the term of worker in this act including PPPK, because PPPK works in the governmental institution using work contract.

The effort of dispute resolution in the Law No. 13 of 2003 are called as dispute resolution of industrial relation arranged in Act 136<sup>1</sup> and the institution to resolve is Dispute Resolution Board of Industrial Relation. The Industrial Relation<sup>2</sup> includes 3 (three) parties; employer, worker/labor, and the government. thus, the government has its own position different from the employer. In line with work relation between the government and PPPK, if the government refers to the employer in wider meaning, it means that the government has two position in industrial relation, as the employer and the government. These positions of course imply to its role and function in the relation, when the government places itself in two different positions in one relation, then, how they do the task and function in proper way.

The government function in the industrial relation is decide policy, give service, do controlling and do action as stated in Act 102 verse (1)<sup>3</sup> the law No. 13 of 2003. Whereas the employer function is to create partnership, develop business, widen the job field, and give welfare to the worker/labor in open, democratic and justice ways as stated in Act 102 verse (3)<sup>4</sup> the Law No. 13 of 2003.

Based on the function, it will not be objective if the government places itself as the employer, especially related with its function to do controlling and action based on prosecution. The question will be how come the government does controlling and prosecution toward itself. Therefore, the writer thinks that the dispute resolution between the government and PPPK cannot resolve through mechanism of dispute resolution on industrial relation.

Thus, the most appropriate mechanism to resolve the problem if there any between the Governmental Officer and PPPK with work contract is mechanism of civil law based on Act 136<sup>5</sup> the Code of Civil Law, using mechanism arranged in work contract and/or apply claim to State Court/General Court.

Based on the fact, it is possible to resolve ASN problem using court way, to avoid doubt of ASN Employee in solving their problem. doubt of objectivity and independence in staffing dispute resolution through administrative effort may appear, because the board or officer issuing the Decision of Administrative Board is from the governmental institution and also the one given authority to resolve the problem using administrative way is the governmental institution. If there is any doubt and the relate employee does not feel to get justice in the resolution using the administrative way, there is other mechanism to follow that is court way, PTUN for PNS or General Court for PPPK related to the work contract.

In line with the consideration, the writer believes that the two ways, administrative and court ways, should be offered as a mechanism in dispute resolution for the employee, nowadays called dispute of Civilian State Apparatus. Offering for the two mechanism should be included in the legislation.

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<sup>1</sup> Act 136 of the Law No. 13 of 2003 states:

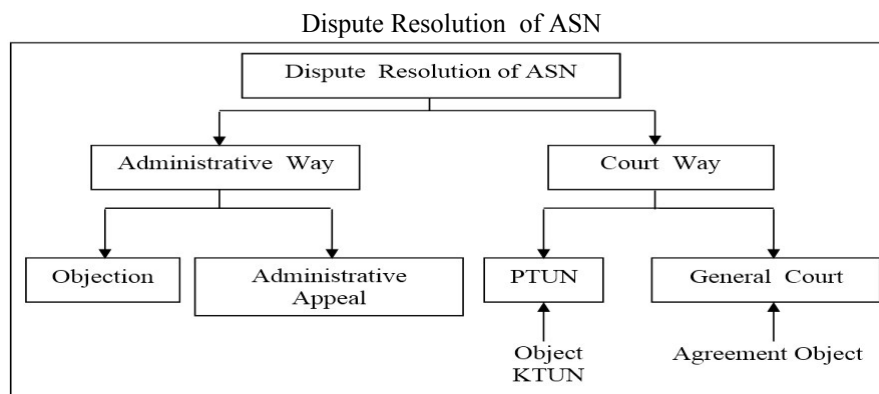
- (1) The dispute resolution of industrial relation must be conducted by employer and worker/labor or worker/labor union by deliberation and consensus.
- (2) If the dispute resolution by deliberation and consensus as stated in the verse (1) is not obtained, the employer and worker/labor or worker/labor union resolve the problem of industrial relation using procedure of dispute resolution on industrial relation based on the statute.

<sup>2</sup> Act 1 point 16 the law No. 13 of 2003 states "The Industrial Relation is a relation system created between the actors in process of goods and/or service production consisted of employer, worker/labor, and the government based on the values of Pancasila and The Fundamental Statute of Indonesian Republic of 1945."

<sup>3</sup> Act 102 verse (1) the Law No. 13 of 2003 states "In conducting the industrial relation, the government has function to decide policy, give service, do controlling, and do prosecution toward violence of labor legislation."

<sup>4</sup> Act 102 verse (3) the Law No. 13 of 2003 states " In conducting the industrial relation, employer and its organization have function to create partnership, develop business, widen job vacancy, and give welfare to the worker/labor openly, democratic and justice."





Source: the Writer's Analysis

To achieve the purpose, it is necessary to revise Act 129 the Law No. 5 of 2014 arranging the Dispute Resolution, for this act only arrange mechanism of dispute resolution of ASN through administrative effort, thus it needs to add mechanism of the resolution through court way. In the Academic Paper of the Statute Plan of ASN, it has recommended the dispute resolution of ASN by 2 (two) efforts, that are administrative and court ones, meaning that the claim to Administrative Court<sup>1</sup>. It clearly stated in debates happen in Meeting of the Working Committee of Commission II DPR discussing on the Civilian State Apparatus that court mechanism should exist in dispute resolution between the governmental officer and ASN Employee<sup>2</sup>.

### E. Summary

Based on the discussion and analysis of legal content in this paper, the writer makes conclusion: the construction of legal protection arrangement of the Governmental Employee using Work Contract in implementing local government in the future is to revise the Law No. 5 of 2014 by mean of separating the existence of PPPK and PNS, thus PPPK becomes free, Independent employee and having certain expertise and skill through arrangement of staffing governance by focusing consideration of phylosopy, sociology and judicial as well as including the society participation.

### BIBLIOGRAPHY

- Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung: PT Citra Aditya Bakti, 2004
- Bryan A. Garner, *Black's Law Dictionary*, ST. Paul Minn: West Group, 1999
- H. Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2011
- Philipus M. hadjon, *Penataan Hukum Administrasi*, Surabaya: Fakultas Hukum Unair, 1998
- Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, Surabaya: Bina Ilmu, 1997
- Ridwan HR, *Hukum Administrasi Negara*, Jakarta: PT Rajagrafindo Persada, 2006
- Sadjijono, *Memahami Beberapa Bab Pokok Hukum Administrasi*, Yogyakarta: LaksBang Pressindo, 2008
- Kitab Undang-Undang Hukum Perdata
- Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 6, Tambahan Lembaran Negara Republik Indonesia Nomor 5494)
- Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 292, Tambahan Lembaran Negara Republik Indonesia Nomor 5601)
- Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan ( Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39, Tambahan Lembaran Negara Republik Indonesia Nomor 4279)
- Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara (Lembaran Negara Republik Indonesia Tahun 1986 Nomor 77, Tambahan Lembaran Negara Republik Indonesia Nomor 3344), sebagaimana diubah dengan Undang-Undang Nomor 9 Tahun 2004 tentang Perubahan atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara ( Lembaran Negara Republik Indonesia Tahun 2004 Nomor 35) dan diubah lagi dengan Undang-Undang Nomor 51 Tahun 2009 tentang Perubahan Kedua atas Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 160, Tambahan Lembaran Negara Republik Indonesia Nomor 5079)
- Naskah Akademis Rancangan Undang-Undang tentang Aparatur Sipil Negara
- Risalah Sidang Rapat Kerja Komisi II DPR RI dengan Pembicaraan Tingkat I Pembahasan Rancangan Undang-Undang tentang Aparatur Sipil Negara, tanggal 23 November 2011

<sup>1</sup> Naskah Akademik Rancangan Undang-Undang tentang Aparatur Sipil Negara, hlm 22

<sup>2</sup> Risalah Sidang Rapat Kerja Komisi II DPR RI dengan Pembicaraan Tingkat I Pembahasan Rancangan Undang-Undang tentang Aparatur Sipil Negara, tanggal 23 November 2011