

REGULATION OF THE PROFESSIONALISM OF ASN (THE STATE CIVIL APPARATUS) IN THE FRAMEWORK GOOD GOVERNANCE TO REALIZE PUBLIC SERVICES

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Abstract

So far, Law Number 5 Year 2014 concerning State Civil Apparatuses has not clearly regulated, especially those governing the management system of State Civil Apparatus Management, which is a conflict of norm, in fact the rules do not work well because there are some unclear articles will have the opportunity to cause different interpretations so that they need to be regulated further, so that the expected (ideal) rule can be formed. The formulation of the problem is the value that underlies the regulation of the professionalism of the State Civil Apparatus in the framework of Good Governance to realize public services, and the regulation of the professionalism of the State Civil Apparatus in the framework of Good Government to realize public services.

Keywords: State Civil Apparatus, Good Governance, Professionalism, Regulation, Management

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INTRODUCTION

The sensitivity of the State Civil Apparatus as a government apparatus in serving the interests of the community is manifested in the form of public services. For public services to be realized the employees of the State Civil Apparatus must be professionals, professionals must be based on the principle of Good Governance. Efforts to embody public services in the direction of Good Governance can be started by building a foundation for the democratization of state administration and efforts to improve governance, especially improving the management of its ASN HR, so that good governance [1, p. 186] can be realized, therefore employees ASN is demanded by professionals to carry out their duties. The concept of 'governance' is not new. That's as old as the government itself. The two terms are derived respectively, from the words of ancient French *governance* and *gouvernement*. Initially their meaning is very close, referring to the actions or ways of the government.[2]

This will affect the quality of government administration, especially those relating to services. ASN is actually a public servant who is obliged to provide the best public services to the community as customers. Low ASN performance results in low quality public services. Therefore, changes in regulations in developing HR management systems must always be done to obtain HR capable of producing professional ASNs based on the principle Good Governance, so that it can realize the desired civil servant HR for the people served.

Professionalism includes one of the general principles of state administration [3, p. 242], the general principles of state administration constitute living and developing ethical values within the State Administrative Law environment, and constitutes the administration of a clean, orderly, orderly, flawless and authoritative government, because it is a follow-up to realize good governance (good governance) by actualizing effectively [3]. Fitzsimmons said the satisfaction of people who need service can be interpreted by comparing how the views between the services received with expectations are expected. [4, p. 98] But in reality the ASN HR management system is not well implemented. Giving rise to the low performance of civil servants who work in these regional agencies. The performance of ASN that is most often and easily assessed and felt by the public is having an impact on the quality of public services provided by ASN employees, the proper system of public service delivery [5, p. 70] in accordance with the general principles of state administration.

Therefore, legal certainty is very much needed, therefore a clear regulation is needed regarding the development of the ASN HR management system, because so far Undang-undang Number 5

of 2014 concerning ASN has not clearly stipulated, specifically governing the ASN HR management system starting from planning, ASN procurement and retirement, it is a conflict of norm, meaning that in reality the rule does not work well because there are some unclear articles that will have the opportunity to cause different interpretations so it needs to be regulated further, so that the expected rules can be formed (ideal).

In addition to these rules it is not clear that there are rules that are inconsistent with other rules of the same position, namely between Undang-undang Number 5 of 2015 concerning ASN and Undang-undang Number 25 of 2009 concerning public services, in Undang-undang Number 25 of 2009 concerning The public service does not regulate values, whereas the Law on ASN regulates values, the values that underlie the principles of professionalism based on the principles of Good Governance, in developing the ASN HR management system in realizing public services.

These two rules are the rules that govern the professional ASN management system based on the principles of Good Governance in an effort to realize public services. Value is a condition that we can know, but it is abstract. In a legal situation, the value is reduced again in the form of choices that are given the name of the legal principle, so that this value becomes the basis of the existence of the legal principle. (the value of merupakam results of human considerations is the main benchmark for the realization of the principles of law). [6, p. 49]

The principles of law are abstract conceptions of how they should be the main elements in the formation of the contents of legal norms, legal norms are the concretization of benchmarks which become an option, and those formulated in the rule of law become guidelines in acting and behaving in life according to law. [6] Therefore between values, principles, norms, and attitudes of action are one unit, because the "values" that underlie the existence of the principle, the "principle" is then formulated in the form of "Rules" (Das Sollen) for example, Laws or Regional Regulations, and these rules are then manifested in the form of "attitude or behavior" (Das Sein).

We can find out whether the rules formulated in a form have been effective or not, or are contradictory or not, must first be enforced in the community within a few years, if there is a conflict of norm, for example the rules are contradictory, inconsistent, or the rules are not clear, there needs to be a solution, but we must know what causes them to cause a conflict of norm.

Poor public services reflect low-performing ASN employees, the factor is that the HR management system is not properly implemented starting from employee planning, procurement, and termination so that the ASN HR management is incompetent, therefore it is necessary to improve the management of the ASN HR management system, so ASN as a bureaucracy must realize that they work not only for individuals, the state and the nation, but also for the benefit of the community, namely excellent service.

METHOD

This research is a type of normative legal research, namely legal research conducted by examining library material. Normative legal research includes research on legal principles, research on legal systematics, research on the extent of legal synchronization, research on the history of law, and comparative research on law[7, p. 25]. The purpose of this research is to study and discover the values that underlie ASN's professionalism principles in the framework of Good Governance to realize public services, and to identify, analyze and develop ASN professionalism legal arrangements within the framework of Good Government to realize public services. Types and sources of research legal materials are primary legal materials, secondary legal materials, and not legal materials.[8, p. 30]

RESULTS AND DISCUSSION

The Values that Underlie ASN's Professionalism Regulations in The Framework of Good Governance to Realize Public Services

The validity of the State rules that some say that because the State is a neutral institution, does not take sides, stands above all groups of people, and serves the public interest[9, p. 1]. In Indonesian literature, the term Negara Hukum is a direct translation of rechtsstaat, based on the opinion of Azhary, quoted by Ni'matul Huda[10, pp. 72-73]. The rule of law (rechtsstaat) basically mainly aims to provide legal protection for the people. Similar to the opinion of Philip Hadjon, Hadjon also said that legal protection for the people against government actions is based on two principles, namely the principle of human rights and the rule of law. In contrast, in a totalitarian state there is no place for human rights[11, p. 71].

Thus all government actions must be based on applicable law as a characteristic of the rule of law, and must also be able to provide legal protection for the public interest so that justice can be realized for the people. Justice is serving based on these goals and striving to pursue excellence[12, p. 246].

Civil servants in work that have an impact on public services require the concept of certain values to be implemented by the regional employees in a professional manner at work. Values relate to hopes, ideals, desires and all things internal (inner) human considerations. In order for values to be more useful in guiding human attitudes and behavior, values need to be concreted and formulated to be more objective so as to facilitate the translation of concrete behaviors[13]. The concrete manifestation is the norm, where these values and norms will then relate to morals and ethics. The values that underlie the existence of the above principles are the basic values which should also be contained in the legal values that will be reflected in the legal principles and legal methods governing the administration[13] of public services by employees.

Ethics comes from the Greek ethos which means habit[14, p. 13]. A code of ethics is a set of principles, values, and norms, which serve as guidelines for members of certain professional groups in behaving, behaving and carrying out activities as members of that professional group[15, p. 48]. The principle of the code of ethics is a guideline for attitudes, behavior and actions in carrying out their duties and relationships in daily life[15, p. 50]. The values that underlie these principles are basic values that should also be contained in the legal values that are reflected in the legal principles, and then formulated into the legal norms / rules governing the public service of employees.

The principle of law is basically in the form of general principles, so it cannot be operationalized yet. To be concreted in society, the principle of law (the process of becoming) is formulated into legal norms known as legal regulations[6]. From there we can see that this legal principle is the foundation for the existence of norms in the form of legal regulations. According to Satjipto Rahardjo's opinion quoted by Erwin that "The legal principle forms the content of the legal norms formulated in the law of law, without the principle of law, the legal norm will lose its binding power. Without knowing the principles of law, it is impossible to understand the nature of the law.[6, p. 50]

Pancasila values as the basis of Indonesian state philosophy are essentially a source of basic law, objectively an outlook on life, awareness and legal ideals as well as noble moral ideals which encompass the mental atmosphere and character of the nation, which on the 18th August 1945 was compacted and abstracted by the country's founders to be the basis of the state philosophy of the Republic of Indonesia[16].

Pancasila which consists of five precepts is essentially a philosophical system, the system is a unit of interrelated parts, working together for one specific purpose and as a whole is a unified whole. Pancasila as a philosophical system will give special characteristics that are not found in other philosophical systems. Pancasila values are a moral ethical foundation in state life. This is confirmed in the fourth point of view which states that the state is based on an almighty divinity based on just and civilized humanity[16]. This implies that the life of the state must be based on ethical morals which are based on the values of the Pancasila[17] as outlined in this fourth point of view is a fundamental basis in aspects of state life[16].

Pancasila as the basis of state philosophy, as a guide to the life of the Indonesian nation, is the crystallization of the values, customs, culture, religion of the Indonesian nation itself which has been possessed since time immemorial, which is engrained in the hearts of the nation's inherent people in Indonesia[16]. Pancasila in the sense of often called the basis of state philosophy. Filosofische Grondslag from state, ideology of the state, staatsidee. In this case the Pancasila is used as the basis for regulating the government of the country, or in other words the Pancasila is used as the basis for regulating the administration of the state[18].

Regarding Pancasila as the foundation of this country, Notonagoro quoted by Darji in his essay entitled "News of the scientific mind about the way out of difficulties regarding Pancasila as the basis of the Republic of Indonesia, among other things stated, among the basic elements of fundamental state rules, the spiritual principle of Pancasila is to have a special position in life the state and law of the Indonesian people. In another part he said, "the basic legal norms and the so-called fundamental principles[19] of the state in law have the nature and position that is permanent, strong and unchanging for the state formed, in other words by the way the law cannot be changed[18].

What a function and position of the Pancasila as the fundamental principle of the state. This is very important because the constitution, both written and unwritten must be sourced and under the fundamental principles of the state[18]. Pancasila position in the opinion of Hans Kelsen is on the highest ladder. In this case the Pancasila must be placed as a basic principle, Grundnorms or the source of all sources of law which are the basis for the coming into effect of the 1945 Constitution[20].

The public service system, which is regulated in Law No. 25 of 2009 concerning public services should reflect the values of Pancasila, both in the context of the structure, substance and legal culture that forms the law as a legal umbrella for the practice of public service delivery. Not all of these values have direct relevance to the existence of equality of functions as a basis for developing public service delivery. The related values

are human values and social justice values. The meaning of human values and social justice are:

- 1) Fair and civilized human values embody human values. This value contains meaning, including: 1) Recognition of the people and human dignity with all their rights and obligations; 2) Fair treatment of fellow human beings, themselves, the environment and God; and 3) Human civilized or cultured beings who have the power of creativity, taste, intention, and belief[17].
- 2) The value of social justice for all Indonesian people contains meaning, including: 1) Fair treatment in all fields of life, especially in the political, economic, and socio-cultural fields; 2) The realization of social justice covers all the people of Indonesia; 3) Balance between rights and obligations; 4) Respecting the property of others; 5) The ideals of a just and prosperous society that is evenly material and spiritual for all Indonesian people; and 6) Love for progress and development[17].

Various Types According to Prof. Notonegoro namely: 1) Material value is anything that is useful for human physical life or human physical needs; 2) Vital value is anything that is useful for humans to be able to hold activities or activities; and 3) Spiritual values are all things that are useful to human spirituality[21].

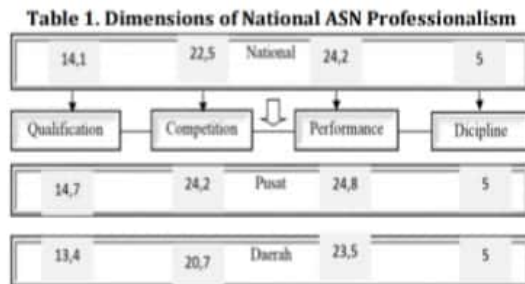
Various Types According to Waber G.Everet, namely: 1) Economic values (economic values), the values associated with the economic system. This means that these values follow market prices; 2) Recreational values (recreation values) are the values of the game at leisure, so that it contributes to the welfare of life and provides physical and spiritual freshness; 3) Values of association (association values) are values that include various forms of human union and friendship of family

life, up to the international level; 4) Physical values (values) that are values related to one's physical condition; and 5) Character values that include all challenges, personal and social mistakes including justice, willingness to help, liking the truth, and willingness to control oneself[21].

The values of public services that underlie the birth of the professionalism of regional employee HR management systems: 1) Value of moral goodness which is based on the elements of human will (gevoels, and aesthetics); 2) The value of truth / reality, which is based on the elements of human reason (ratio, mind, creation)[17]; 3) The value of beauty or aesthetic value derived from the element of feeling human; and 4) Character values that include all challenges, personal and social mistakes including justice, willingness to help, liking the truth, and willingness to control oneself.

ASN Regulation of Professionalism within The Framework of Good Government to Realize Public Services

Even though the recruitment system has been regulated in government regulations as an effort to capture competent civil servant human resources, its implementation has not met the needs that can support the success and professionalism of civil servant human resources. The process of civil servant recruitment procedures so far according to opinion that develops in the community, tends to be colored by practices, collusion, regionalism, resulting in low quality of civil servant human resources[21]. Whether or not a competent civil servant has an impact on public services, if the civil servant is not competent, it will lead to low quality public services, PNS empowerment is not optimal, the results of the national ASN professional index measurement, central, and regional showed low competence. Overall results can be seen in Table 1 below:



Source: State Personnel Agency (Badan Kepegawaian Nasional)[22]

- a. Viewed at the national level, the qualification dimension shows that the formal education of ASN employees is above the D3 level but below the S1 / D4 level, while the competency dimension generally shows a relatively "low" effort to develop employee competency.
- b. At the central agency level, the qualification dimension shows that most civil servants have formal education above the D3 level but below the S1 / D4 level, while the

- competency dimension is generally still "low" in their development efforts.
- c. At the level of regional agencies, the qualification dimension shows that most civil servants have an average formal education qualification below the S1 / D4 level, while in the competency dimension the competency development program is still classified as "low"[22].

Table 2. National ASN Professional Index Measurement Results

No.	Department	Total of PNS	Response	Percentage	Dimensi				Score	Category
					Qualification	Competition	Performance	Discipline		
1	2	3	4	5	6	7	8	9	10	11
1	Center Institution	937.664	327.429	34,9%	14,7	24,2	24,8	5,0	68,7	Low
	a. Ministry	769.999	294.484	38,2%	14,2	23,2	24,3	5,0	66,7	Low
	b. Institution	167.665	32.945	19,6%	15,1	25,2	25,4	5,0	70,7	Medium
2	Local Institution	3.232.712	1.229.885	37,7%	13,4	20,7	23,5	5,0	62,7	Low
	a. Province	561.853	222.195	39,6%	14,2	21,7	24,2	5,0	63,1	Low
	b. District City	2.671.857	897.690	33,3%	12,7	19,8	22,9	5,0	60,4	Low
	The Score of National ASN	4.170.376	1.547	37,1%	14,1	22,5	24,2	5,0	63,7	Low

Source: State Personnel Agency (Badan Kepegawaian Nasional)[22]

The State Personnel Agency (BKN) as a government agency responsible for the management of the state staff has a function

as a policy formulator in the field of staffing, it is expected to create professional[23], accountable, honest and fair Civil

Servants so that they can carry out their duties efficiently and successfully in order to go through a recruitment system that can meet the demands of the quality of civil servant human resources[24]. ASN's professionalism regulations in the framework of Good Government to realize public services consist of:

Planning (Planning)

Is the whole process of thinking and determining the things that will be done in the future in order to achieve predetermined goals[15]. Planning is the first organic function, the reason being that there is no plan, there is no basis for carrying out certain activities in order to achieve goals. To determine good planning, further research is needed.

Referring to Schuler's opinion, it can be concluded that there are four important stages in the HR planning process, namely: 1) Gathering, Analyzing, and Forecasting Supply and Demand Data; 2) Establishing Human Resource Objectives and Policies; 3) Human Resource Programming; and 4) Human Resource-Planning-Control and Evaluation[25].

Procurement

PNS Procurement is a process of activities to fill vacancies, from planning, announcements, applying, screening, appointment of CPNS to appointment to become PNS[26]. In principle, procurement is carried out in accordance with organizational needs and emphasizes quality over quantity. Procurement of civil servants using the zero growth approach in which the procurement of civil servants is based to replace retired civil servants.

The procurement process basically includes activities: 1) Identify the need for procurement; 2) Identify work requirements; 3) Define candidate sources; 4) Selecting candidates; 5) Notifying the results to the candidates; and 6) Appoint candidates who passed the selection[15].

Agencies that determine the number of CPNS to be recruited, namely the State Employment Agency (BKN) and Menpan with due regard to the balance of the minister of finance, because it is related to the budget that still bears all PNS salaries. The authorized agency for recruitment to the central government is the bureau / staffing department of each agency, while the area responsible is BKD[15].

Placement

Principles of Placement According to A.W Widjaja is the right man on the right place (the placement of the right people in the right place). To be able to implement the principle properly, there are two things that need to be considered, namely: 1) There is a good job analysis, an analysis that describes the scope and nature of the tasks carried out by an organizational unit and the conditions that must be held by officials who occupy positions in the organizational unit; and 2) There is an assessment of the implementation of work (employee skills) of each employee who is well maintained and constantly. With the existence of this work assessment can be known about the nature, skills, discipline, work performance, etc. of each employee[15].

Dismissal

The last stop of the employee management process is the stop where all activities end here. Relationships between the department and former civil servants or pension recipients are limited to family relationships. Except if it is related to the rights of pension recipients as stipulated in the legislation[27].

Dismissal has the purpose of: Dismissal as a civil servant is a dismissal resulting in the loss of status as a civil servant as a public office is a dismissal resulting in the person not working again in a state organization unit, but still having the status of a civil servant

According to Article 87 of Law Number 5 Year 2014 concerning ASN[27]. That is :

- 1) Civil servants are honorably terminated because: a) Die; b) At your own request; c) Reaching the Retirement Age Limit. The retirement limit for civil servants is 58 years for administrative officials, 60 years for high-ranking officials; d) Streamlining organizations or government policies that result in early retirement or changes in state organizational units sometimes result in over staff; and e) Not physically and / or spiritually capable so that they cannot carry out their duties and obligations.
- 2) Civil servants can be honorably dismissed or not dismissed because of imprisonment based on a court decision that has permanent legal force for committing a crime with a minimum sentence of imprisonment of 2 (two) years and a sentence made not planning.
- 3) Civil servants are honorably dismissed at their own request because they have committed severe violations of PNS discipline
- 4) Civil servants are dishonorably discharged because: a) Perverted Pancasila and the 1945 Constitution of the Republic of Indonesia; b) Sentenced to prison or confinement based on a court decision that has permanent legal force for committing a criminal offense of office or a criminal offense that is related to the office and / or general crime; c) Become a member and / or administrator of a political party; and d) Sentenced to prison based on a court decision that has permanent legal force for committing a crime with a minimum jail sentence of 2 (two) years and a criminal committed with a plan.

CONCLUSIONS AND RECOMMENDATIONS

Based on the discussion about the principle of professionalism as the basis for reformulation of the development of the PNS HR management system in realizing public services, it can be concluded as follows: *first*, the values that underlie ASN's professionalism regulation in the framework of Good Governance are to realize public services are human values and social justice, then reduced to truth values, good values, truth values and character values, these values are the values of public services that underpins the birth of the principle of professionalism of the PNS HR management system. *Second*, ASN Professionalism Regulation in the framework of Good Government to realize public services, namely Planning, Procurement, Placement, and Termination.

Can be recommended from this research as follows: *first*, the House of Representatives as the legislator who has the function of changing both in part and in whole to perfect the law, which later is expected to formulate the values that underlie the existence of legal principles, including the principle of professionalism into legal methods in changing ASN law (staffing) in the future. *Second*, For ASN as a state apparatus in carrying out its duties must be professional in accordance with the principle of professionalism to realize public services, and the state apparatus so that in the future can be wise in addressing their functions and duties professionally in their duties serving the community, so that people feel satisfied with the services provided by ASN.

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