

Legal Protection For Honorer Employment Due To Dissolution Of Nonstructural Institutions

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Abstract.

Honorary workers are one of the problems in the staffing aspect in Indonesia. The issuance of Law Number 5 of 2014 concerning State Civil Apparatus (UU ASN) has greatly affected the status and legal protection of honorary workers. This research examines the legal vacuum and legal protection for temporary workers due to the dissolution of the Nonstructural Institution (LNS). The policy of dissolving the LNS resulted in a legal vacuum and required legal protection for temporary workers working at the LNS. The research method used in this research is normative juridical. This research uses the Legislative Regulation approach (Statue Approach) and Conceptual Approach (Conceptual Approach). The legal material used in this study comes from primary, secondary and tertiary sources. Thus the ASN Law and its implementing regulations should be able to provide protection for honorary workers due to the impact of the dissolution of the LNS. The results of this study indicate that temporary workers experience a legal vacuum and need legal protection. Based on these results, honorary workers need regulations that specifically regulate honorary workers affected by the dissolution of the LNS and honorary workers are entitled to legal protection. preventively namely preventing termination of employment and legal protection repressive, namely resolving disputes where there is no common ground between the parties carried out through the courts

***Keywords:** Legal Protection, Honorary Staff and Nonstructural Institutions.*

I. INTRODUCTION

The State of Indonesia is a large country that has a government structure from the center to the regions with an area of 1.905 million km² and with a total population of 270,200,016 people.¹ According to Montesquieu, the institution that runs the wheels of government and implements the law is the executive branch, as is the concept of division of powers (*distribution of powers*)². Executive agencies in carrying out their duties and functions require the prime mover in the implementation of government, namely human resources. Based on the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) in article 27 paragraph 2 it can be interpreted that every citizen is guaranteed by the constitution which is a human right to work and a decent living including to work as a civil servant (hereinafter referred to as PNS) in government. The apparatus development system in government organizations in particular is managed by the government under the auspices of the Ministry of State Apparatus of the Republic of Indonesia through coordination with the State Personnel Agency as the technical manager of the Apparatus or Government Employees of the Republic of Indonesia. According to Ndraha, employees are human resources who are ready, willing and able to contribute to the achievement of organizational goals.³ Regarding the position of the state apparatus in general, it is stated in the Outlines of State Policy (GBHN), among other things⁴: "government apparatus as servants of the State and servants of society, based on Pancasila and the 1945 Constitution. The Ministry of Law and Human Rights promulgated the Law of the Republic of Indonesia Number 5 of 2014 Concerning State Civil Apparatus (hereinafter referred to as the ASN Law) on January 15, 2014.⁵

The ASN Law itself regulates the composition of government employees, which is contained in article 6 of the ASN Law, there are two types of employees, namely PNS and Government Employees with Work Agreements (hereinafter referred to as PPPK). Civil servants and PPPK as elements of the state apparatus have a very strategic role in carrying out general government tasks and national development goals. PNS and PPPK are the main human resources who are key players in providing services to the community. Apart from PNS and PPPK there are also other non-PNS employees such as outsourced employees and there are also employees who are commonly referred to as honorary workers. The issuance of Government Regulation Number 48 of 2005 concerning the Appointment of Honorary Workers to Become Candidates for Civil Servants which provides the term honorary workers, with the issuance of this regulation has encouraged the public's desire to work as honorary workers. As for the definition of honorary worker is a person who is appointed by a staffing officer or other officials in the government to carry out certain tasks in government agencies or whose income becomes a burden on the State revenue and expenditure budget or regional revenue and expenditure budget. Honorary staff in its development aims to help the performance of PNS and PPPK which have experienced being overwhelmed in carrying out the functions of the government, one of which is in terms of public services which is a function of the government itself. Honorary workers play an important role in the implementation of maximum public services for the community, because public services are very directly related to the community so that the public service process must be able to satisfy the community. The reason for enforcing the honorary staff itself is more because the recruitment can be done in a small amount. This is also based on the fact that there are many government agencies that need additional employees as part of the government's efforts to improve public services.

This is based on Law Number 43 of 1999 Concerning Personnel Principles Article 2 paragraph 3 which reads: Apart from civil servants as referred to in paragraph 1, the authorized official may appoint non-permanent employees. These non-permanent employees can be categorized as honorary and contract workers. With the enactment of the ASN Law which states that ASN employees consist of PNS and PPPK, in this case the existence of honorary workers is not regulated, because at the time the ASN Law came into effect implementing regulations from Law Number 8 of 1974 Concerning Personnel Principles as amended by Law Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning the Fundamentals of Personnel is not valid. This regulation contradicts the previous law which provided an opportunity for honorary workers to be appointed as candidates for civil servants. Temporary workers cannot become government employees using PPPK contracts because remembering to become government employees using contracts there must be selection and testing so that the government cannot arbitrarily recruit government employees using contracts and must comply with the needs, bearing in mind that government employees using contracts have the same rights. the same as civil servants, namely in the form of health insurance and others in accordance with labor regulations.⁶ Six years since the promulgation of the ASN Law, it turns out that there are still many employees with honorary status working in government agencies, one of whom is working in Non-structural Institutions, hereinafter referred to as (LNS).⁷ Zoelva defines LNS as an institution that was formed because of the urgency of certain special tasks that cannot be accommodated in government institutions (conventional) with certain uniqueness and has the characteristics of tasks that are urgent, unique, integrated and effective.⁸ On July 20, 2020, President Joko Widodo (Jokowi) issued a policy of dissolving 18 (LNS). The following are 18 LNS institutions that were disbanded.

Table 1. Data on the Dissolution of Nonstructural Institutions in Presidential Regulation Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (Covid-19) and National Economic Recovery.

No	Nonstructural Institutions
1.	Extractive Industry Transparency Team
2.	National Coordinating Agency for Agriculture, Fisheries and Forestry Extension
3.	Committee for the Acceleration and Expansion of Indonesia's Economic Development 2011-

	2025
4.	Sunda Strait Strategic Area and Infrastructure Development Agency
5.	National Coordinating Team for Mangrove Ecosystem Management
6.	Drinking Water System Maintenance Improvement Agency
7.	Steering Committee for the 2019-2019 Electronic-based National Trading System Road Map (e-Commerce Road Map)
8.	Task Force for the Acceleration of Business Implementation
9.	The Monitoring and Evaluation Coordinating Team for the Provision of Guarantees and Interest Subsidies to PDAMs in the context of accelerating the provision of drinking water
10.	Overseas Commercial Loan Team
11.	National Team for Multilateral Trade Negotiations within the framework of the World Trade Organization
12.	PT (Persero) PLN Restructuring and Rehabilitation Team
13.	Financial Sector Policy Committee
14.	Interdepartmental Committee for Forestry
15.	Coordinating Team for Improving Smooth Flow of Export and Import Goods
16.	National Team for Increasing Exports and Increasing Investment
17.	Coordinating Team for the Acceleration of Flats Development in Urban Areas
18.	National Committee for the Preparation of the Implementation of the ASEAN Economic Community

The policy is contained in Article 19 of the Presidential Regulation (hereinafter referred to as Perpres) Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (Covid-19) and National Economic Recovery.⁹ Recalling President Jokowi Widodo's work priorities for 2019-2024, one of which is bureaucratic reform, this is evidenced by the issuance of Presidential Regulation Number 112 of 2020 Concerning the Dissolution of 10 Non-Ministerial Institutions, a rule which was signed on November 26, 2020 and applies immediately when enacted, Thus the state institutions that are included in the Presidential Decree will be disbanded and transferred to the relevant ministries, these state institutions are as follows:

Table 2.Data on the Dissolution of Non-Structural Institutions in Presidential Regulation Number 112 of 2020 Concerning the Dissolution of 10 Non-Ministerial Institutions

No	Nonstructural Institutions
1.	National Research Council
2.	Food Security Council
3.	Surabaya-Madura Regional Development Agency
4.	The National Sports Standardization and Accreditation Agency
5.	Indonesian Hajj Monitoring Commission
6.	National Economic and Industrial Committee
7.	Telecommunications Advisory Board
8.	Seniors Commission
9.	Indonesian Telecommunication Regulatory Body
10.	Indonesian Professional Sports Agency

The policy, which is based on considerations of increasing the effectiveness and efficiency of implementing government affairs, contains that the implementation of the duties and functions of the disbanded LNS will be transferred to the relevant ministries, as well as funding, employees, assets and archives will be transferred. The impact of the dissolution of the LNS for workers who are in LNS, both for civil servants, PPPK and honorary workers. The head of the Bureau of Public Relations, Law and Cooperation of the State Civil Service Agency (BKN) Paryono revealed that employees or honorary staff in 18 bodies, teams or committees that were disbanded by the government were automatically terminated, the dismissal policy was because there were no special provisions regarding the management of honorary staff. institutional downsizing. Until now, BKN is still recording the number of workers affected by the dissolution of the institution.¹⁰ If you look at civil servants in accordance with Government Regulation Number 17 of

2020 concerning Amendments to Government Regulation Number 11 of 2017 concerning Management of Civil Servants, does this regulation provide legal protection regarding the impact of the LNS dissolution policy, as well as PPPK regulated in Government Regulation Number 49 of 2017? 2018 Concerning the Management of Government Employees with Employment Agreements, does this government regulation provide legal protection regarding the impact of the LNS dissolution policy and finally for honorary workers, the issuance of the ASN Law causes honorary workers to become unclear in their regulations. The position of honorary workers became unclear because the term honorary workers was changed to PPPK. Thus indirectly the position of honorary workers is lost because PPPK is not honorary staff, PPPK is an Indonesian citizen who fulfills certain requirements is appointed as an employee with a work agreement by the Civil Service Development Officer (PPK) in accordance with the needs of the agency. Each agency that appoints must propose needs, formation, qualifications, and pass tests. The legal vacuum for honorary workers in the LNS can have legal consequences for the legal protection received by honorary workers after the enactment of the ASN Law, therefore a legal interpretation is needed for this vacancy, to get answers regarding the legal vacuum and protection for workers, especially for honorary workers who worked at the disbanded LNS.

II. METHODS

The research method is the method used in research activities.¹¹ The research method is essentially an attempt made to find, develop, or test the truth with the scientific method that will be used in a study. The scientific method is a combination of approach methods with empirical methods.¹² Legal research (*legal research*) This is done with a method according to the unique character of the science of law (*jurisprudence*) different from the social sciences (*social science*) and natural sciences (*natural science*). This research method includes approach (*approach*) determination of legal material (*legal materials*) and critical analysis (*critical analysis*) to legal materials which are contained in search-oriented thoughts (*explorative*), in-depth study (*inquiry*) and interpretation (*interpretation*).¹³ The research in this thesis uses a normative juridical research type. The nature of the research is analytical descriptive which aims to accurately describe the legal issues to be examined and legal solutions to problems related to the legal vacuum of honorary workers and labor protection against the dissolution of the LNS.

This type of research will be structured using a normative juridical research type. Normative juridical research is research that is focused on examining the application of principles or norms in positive law.¹⁴ In thesis research the object is legal issues, which include research on legal principles, research on legal systematics, and research on the level of legal synchronization.¹⁵ The purpose of this research is to understand the regulation regarding the legal vacuum of honorary workers and labor protection against the dissolution of LNS. Legal materials will be analyzed in stages according to the grouping of problems. The analysis was carried out and outlined in the form of a description (description analysis) which contains activities that are described, studied, systemized, interpreted and evaluated. The next step is to carry out a theoretical analysis of these legal materials in order to find, understand and explain in depth the dynamics of the legal regulatory process relating to the dissolution of community organizations.

III. RESULTS AND DISCUSSION

Diversion of Honorary Workers Due to Dissolution of Nonstructural Institutions

Honorary worker is someone who is appointed by the Personnel Development Officer or other officials in the government to carry out certain tasks in government agencies or whose income becomes a burden on the State Revenue and Expenditure Budget (APBN) or the Regional Revenue and Expenditure

Budget (APBD). This means that temporary workers are people who work in government agencies whose salary is paid by the APBN or APBD. Prior to the enactment of the ASN Law, arrangements regarding honorary workers referred to Law no. 13 of 2003 concerning Manpower.¹⁶ Honorary workers in carrying out their work and duties in assisting PNS and PPPK are carried out by way of work agreements and there are also honorary workers who work based on a Decree from a State Administrative Officer. Both honorary workers who work with an agreement or who work based on a Decree of a State Administrative Officer must receive protection. The consequence of dissolving the LNS is the transfer of tasks and functions, financing, employees, equipment, and/or documents. In terms of the transfer of employees consisting of PNS, PPPK and Honorary Staff. For civil servants, in accordance with Government Regulation Number 17 of 2020 concerning Amendments to Government Regulation Number 11 of 2017 concerning the Management of Civil Servants, in particular, it is regulated in article 241 which states that if there is downsizing of the organization or government policy which results in excess civil servants, then PNS are transferred to other government agencies. , in the event that civil servants cannot be distributed, if the civil servant concerned has reached 50 years and the working period as a civil servant has been 10 years, he will be dismissed and will be honorably and entitled to rights according to laws and regulations.

In the event that civil servants cannot be distributed, before they reach the age of 50 and have worked less than 10 years, they will be given waiting money for a maximum of 5 years. If up to 5 years of waiting has not been distributed, then he will be dismissed with honor and given employment rights in accordance with statutory provisions. At the end of the waiting money for civil servants who are not yet 50 years old, pension benefits for civil servants will be given when they reach 50 years of age. Whereas for PPPK which is regulated in Government Regulation Number 49 of 2018 concerning Management of Government Employees with Work Agreements, this government regulation provides legal protection regarding the impact of the LNS dissolution policy, specifically regulated in article 68 which states that if there is downsizing of government organizations, PPPK whose competence is still needed and the work contract concerned has not expired, it will be transferred to the unit that needs it according to its competence, in the event that there is an excess of PPPK according to the available vacancies, the employment agreement will be terminated with respect and the PPPK will receive severance pay. Regarding honorary workers, the issuance of the ASN Law has caused honorary workers to become unclear in their arrangements. The position of honorary workers became unclear because the term honorary workers was changed to PPPK. However, if it is seen that honorary workers carry out their work and duties by way of a work agreement and there are also honorary workers who work based on a Decree from a State Administrative Officer in accordance with the Manpower Act, then in this case honorary workers and employers will carry out according to the agreement. work or a Decree from the State Administrative Office.

So in the transfer of honorary workers due to the dissolution of the LNS, it depends on the contents of the work agreement and derivative regulations from Presidential Regulation Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (Covid-19) and National Economic Recovery and Presidential Regulation Number 112 of 2020 concerning Dissolution Non-structural Institutions in Presidential Regulation Number 112 of 2020 Concerning the Dissolution of 10 Non-Ministry Institutions which until now have not been issued by the government.

Dismissal of Honorary Workers Due to Dissolution of Nonstructural Institutions

In accordance with the ASN Law in the government, there is no term honorary staff. There are only PNS and PPPK, even though the ASN Law has been in effect since 2014 until now, there are still some even in regions who hire contract or honorary employees and they are paid not from the APBN or APBD but are included in the category of goods and services.¹⁷ The currently identified honorary workers in the government environment cannot be equated with PPPK even though they are appointed for a certain time, because PPPK

has regulations related to determining needs, procurement, performance appraisal, and competency development. While this is not regulated for honorary workers. In fact, in a press release, the Acting Head of the BKN Public Relations Bureau, Paryono, revealed that although there are many honorary workers in government circles, these honorary workers are not recorded at the BKN, only civil servants and PPPK.¹⁸ So in this case the policy of disbanding the LNS will have an impact on the dismissal of honorary workers working at the LNS which is contained in Presidential Regulation Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (Covid-19) and National Economic Recovery and Presidential Regulation Number 112 of 2020 concerning Dissolution of the National Research Council, Food Security Council, Surabaya-Madura Regional Development Agency, National Sports Standardization and Accreditation Agency, Indonesian Hajj Supervisory Commission, National Economic and Industrial Committee, Telecommunication Advisory Board, National Elderly Commission, Indonesian Professional Sports Agency, and Agencies Indonesian Telecommunications Regulations. Regarding honorary workers, the issuance of the ASN Law has caused honorary workers to become unclear in their arrangements.

The position of honorary workers became unclear because the term honorary workers was changed to PPPK. However, if it is seen that honorary workers carry out their work and duties by way of a work agreement and there are also honorary workers who work based on a Decree from a State Administrative Officer in accordance with the Manpower Act, then in this case honorary workers and employers will carry out according to the agreement. work or a Decree from the State Administrative Office. So in the case of dismissal of honorary workers due to the dissolution of the LNS, it depends on the contents of the work agreement and derivative regulations from Presidential Regulation Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (Covid-19) and National Economic Recovery and Presidential Regulation Number 112 of 2020 concerning Dissolution of Non-Structural Institutions in Presidential Regulation Number 112 of 2020 Concerning the Dissolution of 10 Non-Ministry Institutions which until now has not been issued by the government. Legal vacancy for honorary workers due to the dissolution of the LNS, then in accordance with Article 99 of Government Regulation Number 49 of 2018 Concerning the Management of Government Employees with Work Agreements it is explained that honorary workers who work in government agencies or honorary workers affected by the LNS dissolution policy are given the opportunity to register themselves as PNS or PPPK personnel in accordance with applicable requirements. Based on the explanation above, the dismissal of honorary workers due to the dissolution of the LNS allows honorary workers to be dismissed from the LNS which was disbanded according to the presidential regulation based on the work agreement and implementing regulations of the regulation, but referring to Article 99 PPPK regulations provide an opportunity for 5 years for honorary workers to still working on LNS.

Labor Law Protection Due to Dissolution of Nonstructural Institutions

Rights of Honorary Workers Due to Dissolution of Nonstructural Institutions

The regulations governing honorary workers are contained in Government Regulation Number 56 of 2012 concerning the Second Amendment to Government Regulation Number 48 of 2005 concerning Appointment of Honorary Workers to Become Civil Servants but with the enactment of the ASN Law honorary workers are not listed in the regulation, because there are no regulations which specifically regulates LNS honorary workers.

When facing a legal problem like this, a solution is needed by using the principles of prevention which include:¹⁹

a. *The higher law overrides the lower law* This means that laws and regulations with a higher level override the enactment of regulations with a lower level.

b. *A special law overrides a general law* This means that laws and regulations that are specific in nature override the application of laws and regulations that are general in nature.

c. *The latter law derogate from the former law* meaning that the new laws and regulations override the enactment of the old laws and regulations.

Based on the principles of preference above, it is explained that in the absence of regulations that specifically regulate honorary workers, honorary workers are subject to laws and regulations in the field of manpower, namely in Law Number 11 of 2020 concerning Job Creation, amendments to Law Number 13 of 2003 concerning Manpower and related Government Regulations. As one of the constitutional rights of citizens, the 1945 Constitution basically states that every citizen has equal opportunities in government, including the same opportunity to become ASN after fulfilling the requirements determined by laws and regulations. That by realizing quality government and having competitiveness in facing the Asian Economic Community which will result in intense competition in the Asian region, so that there is a need for professional staff in the bureaucracy. The enactment of the ASN Law indicates that government employees have also changed and prioritize professionalism. In anticipating this, PPPK was implemented. PPPK is different from honorary staff, because it has regulations related to determining needs, procurement, performance appraisal, and competency development. In fact, the process for accepting PPPK is almost the same as the process for procuring CPNS from the general public. Based on the publication of the ASN Law, honorary workers are automatically deleted. With the absence of regulations that specifically regulate honorary workers, general laws and regulations serve as the foundation, namely Law Number 11 of 2020 concerning Job Creation, amendments to Law Number 13 of 2003 concerning Manpower.

In the case of dissolving LNS, honorary workers have the rights listed above, especially regarding protection of the right to terminate employment. In Law Number 11 of 2020 concerning Job Creation, changes to Law Number 13 of 2003 concerning Manpower in article 156 paragraph 1 of the UUK which explains that in the event of termination of employment, the entrepreneur or employer is required to pay severance pay and/or award money. years of service and compensation for rights that should have been received. So in this case honorary workers do not need to worry that their constitutional rights will be violated by the enactment of the ASN Law because in fact the ASN Law which relates to the rights of honorary employees still exists and accommodates the rights of honorary workers who currently still exist, this is in line with the considerations of the Constitutional Court Judge in Decision Number 9/PUU-XVIII/2020 concerning the review of the ASN Law, the applicants include 19 temporary workers throughout Indonesia. Judge's considerations agreed with a government expert, namely Eko Prasoj, that PPPK was appointed on the main basis of qualifications, competence, competition and performance. In order to prepare for challenges in facing the Asian Economic Community which has an impact on intense competition in the Asian Region. With the enactment of the ASN Law, honorary workers are automatically removed. The regulation related to the ASN Law which still accommodates honorary workers other than UUK is Government Regulation Number 49 of 2018 Concerning Management of Government Employees with Work Agreements, specifically in Article 99 non-PNS employees or honorary workers who serve at LNS for a maximum period of 5 years can be appointed as PPPK if it meets the requirements as stipulated.

The five-year time limit is as stipulated in the implementing regulations for the ASN Law. For honorary workers, the deadline is to make choices without eliminating the rights of honorary workers who currently still exist. The rights of temporary workers during the spread of Covid-19 The Minister of Manpower issued a Circular of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Worker/Labor Protection and Business Continuity in the Context of Prevention and Mitigation of COVID-19, through the circular letter in Part II SE Menaker 3/2020 for employers or employers who carry out activity restrictions as a result of government policies for the prevention and control of Covid-19, changes to the amount and method of payment of workers' or laborers' wages are made by agreement between the employer and the worker or laborer. In addition to the rights and obligations above, honorary workers as legal subjects of honorary workers are given in the form of good equipment of a nature *preventive* as well as in nature *repressive*, both oral and written. In other words, it can be said that legal protection is a separate picture of the function of the law itself, which has the concept that law provides justice, order, certainty,

benefit and peace. Philipus M. Hadjon stated that in preventive protection the people are given the opportunity to raise objections (*participation*) meaning that legal protection aims to prevent disputes from occurring, while repressive protection aims to resolve disputes. Preventive legal protection is carried out by ensuring that statutory provisions and decisions made by the president do not conflict with the regulations above them.

Apart from that, the provisions and implementation of these provisions do not violate the basic rights of the people, especially the rights of honorary workers. Article 28 D paragraph 2 of the 1945 Constitution states that everyone has the right to work and receive fair and proper compensation and treatment in a work relationship. That this article is the meaning of a worker's constitutional rights, namely that workers are entitled to compensation and treatment that is fair and proper. Thus, workers have the right to compensation that is appropriate and fair and not treated discriminatively. Protection *preventive* in this case, in the event of termination of employment, the parties, namely the employer, honorary workers or workers, trade unions and the government must strive to prevent termination of employment, but in the event that termination of employment cannot be avoided while the intent and reasons for termination of employment have been notified by the employer to the honorary worker, if the honorary worker refuses to terminate employment, negotiations must be carried out between the employer and the honorary worker, this is in accordance with Article 151 of Law Number 11 of 2020 concerning Job Creation, amendments to Law Number 13 of 2003 concerning Employment. So in the event that temporary workers experience termination of employment due to the dissolution of the LNS, the parties, namely employers, temporary workers or workers, trade unions and the government must strive to prevent termination of employment. In the case of honorary workers or workers rejecting the employment relationship, honorary workers and the employer are required to carry out negotiations in order to find a mutually beneficial solution for the parties.

This effort must be carried out because after the publication of the Law on ASN honorary workers their position is not clear because there are no regulations governing them and they need legal protection due to the dissolution of the LNS that occurred. Repressive legal protection is carried out after a dispute or disagreement occurs between the employer and honorary workers, which means that preventive legal protection does not produce results. Repressive legal protection for temporary workers is carried out within the framework of civil law because the law used is labor law. The provisions that apply when a labor dispute occurs are Law Number 2 of 2004 Concerning the Settlement of Industrial Relations Disputes. In this law industrial relations disputes include:

- a. Conflict of rights.
- b. Conflict of interest.
- c. Disputes on termination of employment and
- d. Disputes between unions within one company.

So based on this, disputes that occur between honorary workers and employers, in this case LNS, can be resolved through PPHI.

Legal Remedies for Honorary Workers Due to Dissolution of Nonstructural Institutions

At this time Indonesia and other countries in the world are being hit by the Covid-19 outbreak which has affected all community activities, so that many activities cannot be carried out normally. As a result, many sectors in government are unable to carry out operations and reduce government organizations in order to meet the needs of the community and accelerate the overlapping bureaucratic system. For this reason, the government, through a Presidential Regulation, dissolved the LNS. Termination of employment can occur due to the expiry of the previously agreed time and also due to disputes between workers and employers, death of workers or other causes. Based on Law Number 11 of 2020 concerning Job Creation, changes to Law Number 13 of 2003 concerning Manpower article 1 number 25 Termination of Employment is the termination of rights and obligations between workers/laborers and employers/employers.²⁰ In the case of termination of employment, the parties, namely the employer, honorary workers and the government, must

strive to prevent termination of employment but in the event that termination of employment cannot be avoided, while the intent and reasons for terminating employment have been notified by the employer to honorary workers, if the employee If the honorary refuses to terminate the employment relationship, negotiations must be carried out through the employer and honorary workers, this is in accordance with Article 151 of Law Number 11 of 2020 concerning Job Creation, amendments to Law Number 13 of 2003 concerning Manpower. Based on the study conducted by the author, employers or employers are prohibited from terminating employees or temporary workers with reasons that will be presented in the following table,

Table 4.Concerning Reasons Prohibited by Employers or Entrepreneurs in Termination of Employment for Honorary Workers

No	Provision	Article 153 (Sentence)
1	Is absent from work due to illness according to a doctor's statement as long as the period does not exceed 12 (twelve) months continuously;	a
2	Is unable to carry out his work due to fulfilling obligations to the state in accordance with statutory provisions;	b
3	Carrying out the worship prescribed by his religion;	c
4	Marry;	d
5	Pregnant, gives birth, miscarries, or breastfeeds her baby;	It is
6	Have blood ties and/or marital ties with other workers/laborers in the same company;	f
7	Establish, become a member and/or administrator of a trade/labor union, the worker/laborer carries out trade union/labor union activities outside of working hours, or during working hours with the agreement of the employer, or based on the provisions stipulated in the work agreement, company regulations, or agreement work together;	g
8	Complain the entrepreneur to the authorities regarding the actions of the entrepreneur who commits a crime;	h
9	Different views, religion, political beliefs, ethnicity, skin color, class, gender, physical condition, or marital status; And	i
10	In a state of permanent disability, sick due to a work accident, or sick due to a work relationship which, according to a doctor's certificate, the recovery period is uncertain.	j

Based on the table above, if the LNS or the employer terminates the employment relationship for reasons as stated in the table above, the termination of employment is deemed null and void and the LNS is required to re-employ the honorary worker or worker concerned. The reasons justified by law will be presented in the table below:

Table 5.Concerning Reasons Permitted by Employers in Termination of Employment for Honorary Workers

No	Provision	Article 154 (Sentence)
1	The company merges, consolidates, takes over, or separates the company and the workers/laborers are not willing to continue the employment relationship or the employers are not willing to accept workers/laborers;	a
2	The company carries out efficiency measures followed by company closure or not followed by company closure because the company suffers losses;	b
3	The company is closed because the company has suffered continuous losses for 2 (two) years;	c
4	Company closed due to force majeure (<i>major force</i>).	d
5	The company is in a state of postponement of debt payment obligations;	It is
6	bankrupt company;	f
7	There is an application for termination of employment relations filed by the worker/laborer	g
8	There is a decision of the industrial relations dispute settlement institution stating that the entrepreneur has not committed the act as referred to in letter g regarding the application submitted by the worker/laborer and the entrepreneur has decided to terminate the employment relationship;	h
9	Workers/laborers resign of their own volition	i

Based on the table above, an LNS or an employer can terminate employment for the reasons set out in the table above. In addition to the reasons for terminating employment, other reasons for terminating employment can be stipulated through work agreements and company or agency regulations. When the employer has terminated employment for reasons prohibited by regulations in accordance with the table above. Honorary staff can take legal action through non-litigation and litigation. Non-litigation efforts mean solving legal problems outside the court. Non-litigation efforts are known as alternative dispute resolution which consists of the following:

1. Negotiation or deliberation is an effort to resolve disputes between parties without going through a court process with the aim of reaching a mutual agreement on the basis of more harmonious and creative cooperation.
2. Mediation is an effort to resolve disputes by involving a neutral third party, who does not have decision-making authority, which helps the disputing parties reach a settlement (solution) that is accepted by both parties.
3. Conciliation is a mediating party that will act as a conciliator with the agreement of the parties by seeking an acceptable solution, the conciliator generally has greater authority than the mediator.

Next are the steps that can be taken by honorary workers affected by the dissolution of the LNS through non-litigation legal remedies:

a. Stages of Negotiation or Deliberation

- i. Preparation and planning, in the first part the honorary staff and the employer or LNS clarify what and why the parties want. Clarification of the problem, in this section the parties must explain their interests and convey information that supports the interests of the parties. Negotiate and solve problems, in this section the parties must focus on solving problems that occur together so as to get a mutually beneficial agreement. Closing and implementation, in the last part the parties who have agreed must fully implement the agreement made. In conducting negotiations or deliberations it is completed no later than 30 days after the negotiations are carried out. If an agreement is reached, the parties are obliged to make a collective agreement at the Registrar's Office at the Industrial Relations Court.

b. Mediation Stages

- i. Starting the mediation process, in the initial part the mediator introduces himself and the parties, provides insight into mediation, the role of the mediator, the rules in the negotiation process. Formulating the problem, at this stage the parties identify the general topics of the problems faced. Revealing the hidden interests of the parties, at this stage it can be done directly or indirectly, the mediator directly asks questions directly to the parties, the indirect method is by listening or reformulating the questions raised by the parties and then testing. Developing solution options, at this stage the mediator encourages the parties to be open to each other and find alternative solutions to the problem together. Analyzing settlement options, at this stage the parties analyze the extent to which problem solving can satisfy and meet the interests of the parties, while the mediator assists the parties in evaluating the available options for the problems raised. The process of agreement of the parties, at this stage the parties have seen the meeting point of their interests and are willing to make an agreement. Reaching an agreement, in the last stage the parties draw up an agreement that has been agreed upon with the assistance of a mediator in its formulation. Settlement through mediation begins if the deliberative negotiations fail and within 7 days the parties do not make a choice whether to settle through conciliation or arbitration, as referred to in article 4 paragraph 3 of the PPHI Law. The mediator must complete it no later than 30 days after receiving the dispute delegation.

c. Stages of Conciliation

- i. Starting the conciliation process, in the initial part the conciliator introduces himself and the parties, provides insight into conciliation, the role of the conciliator, the rules in the negotiation process. Formulating the problem, at this stage the parties identify the general topics of the problems faced. Revealing the hidden interests of the parties, at this stage it can be done directly or indirectly, the mediator directly asks questions directly to the parties, the indirect method is by listening or reformulating the questions raised by the parties and then testing. Building settlement options, at this stage the conciliator encourages the parties to be open to each other and look for alternative solutions to the problem together, in this case the conciliator has the right

to provide solutions and be active in the negotiation process. Analyzing settlement options, at this stage the parties analyze the extent to which problem solving can satisfy and fulfill the interests of the parties, while the conciliator assists the parties in evaluating the available options for the problems raised. The process of agreement of the parties, at this stage the parties have seen the meeting point of their interests and are willing to make an agreement. Reaching an agreement, in the last stage the parties draw up an agreement that has been agreed upon with the assistance of the conciliator in its formulation. In the case of conciliation, the conciliator carries out his duties after the parties submit a written request to the conciliator appointed and agreed upon by the disputing parties, within no later than 7 days after receiving the written request, the conciliator holds the case and may summon witnesses to hear their testimony. If the parties reach an agreement, a Collective Agreement is made which is witnessed by the conciliator and registered at the Industrial Relations Court in accordance with Article 23 paragraph 1 of the PPHI Law. If non-litigation efforts cannot produce results, then it can be continued through litigation legal efforts. Litigation is the settlement of legal issues through court efforts. In the litigation process, the parties are mutually opposed to each other, besides that litigation dispute resolution is the final means (*last resort*) after other alternative dispute resolution has not yielded results.

If in civil terms the legal basis for filing a lawsuit is based on default or unlawful acts committed by workers or employers. If in the decision of the employer in dropping the dismissal due to efficiency or violating the law then this cannot be justified. So in civil law workers can file a lawsuit for compensation to the District Court based on article 1365 of the Civil Code, namely: "*Any unlawful act that causes harm to another person, obliges the person because of his mistake to issue the loss, to compensate for the loss*".

From the sound of the article, the following elements can be drawn:

1. there is an unlawful act;
2. There is a mistake;
3. there is a causal relationship between the loss and the act;
4. there is a loss.

Meanwhile, if the employer does not provide wages or salaries as agreed, then in accordance with Article 1243 of the Civil Code, namely: "*Reimbursement of costs, losses and interest due to non-fulfillment of an agreement begins to be required, if the debtor, even though he has been declared negligent, remains negligent in fulfilling the said agreement, or if something that must be given or done can only be given or done within a time that exceeds the allotted time* ."

From the sound of the article, the following elements can be drawn:

- a. There is an agreement by the parties;
- b. There are parties who violate or do not implement the contents of the agreed agreement;
- c. It has been declared negligent but still does not want to carry out the contents of the agreement.

In terms of legal efforts for temporary workers, the author takes a case from the CNBC website entitled will be deleted, the suffering of temporary workers is heartbreaking.²¹ Honorary workers in government circles have become a concern, after the House of Representatives (DPR) and the government agreed to eliminate honorary workers in government circles. It must be admitted that temporary workers in Indonesia still have an unclear status. Starting from the income received every month, to status that is not (PNS) or (PPPK). honorary staff identified in the central and regional government, for example teachers and administrative staff. However, the income they receive cannot be equated with PNS or PPPK. One of the honorary workers at the Ministry of Public Works and Public Housing (PUPR), who did not wish to be identified, does not deny that honorary workers do not have a clear status. In addition to the question of clarity of status, he said that the income he received as an honorary worker was not much. Moreover, when compared with the experience and level of education equivalent to a bachelor's degree. Not only that, some time ago it was even revealed that there were honorary teachers earning Rp. 300,000 per three months. This means that temporary workers only get IDR 100,000 per month. So in cases like the above honorary workers

as legal subjects who have rights and obligations can take legal action through non-litigation efforts (mediation, negotiation, conciliation). If the non-litigation efforts taken do not produce results, then litigation efforts can be pursued by filing a lawsuit based on default or PMH against the employer. These legal efforts can also be carried out by honorary workers who work at LNS affected by the dissolution.

Government Responsibilities for Honorary Workers Due to Dissolution of Nonstructural Institutions

Government can be interpreted in a broad and narrow sense, government in a narrow sense is devoted to executive power according to what is stated in the 1945 Law which states that the government is the President who is assisted by the Vice President and his Ministers.²² In this case, the person carrying out legal or policy actions is the President. Romeijn provides a definition that government action is every action or deed of a state administrative tool (*governing body*) which also includes actions or matters that are outside the field of governance law, such as security, justice, and others with the intention of causing legal consequences in the field of administrative law.²³ The government or state administration is a legal subject or supporter of rights and obligations. As a legal subject, the government, like other legal subjects, carries out various actions and policies. E. Utrecht classifies state administration actions into two major categories, legal actions (*legal acts*) and not a legal act or real action (*actual acts*). Real action is an action that does not cause legal consequences. For state administrative law, only legal actions and groups that are not legal actions are important *irrelevant* (not significant), while government legal actions are all actions taken by the government in the realm of law which have legal consequences or not in the context of carrying out government functions and the public interest.²⁴ Based on this, there are five obligations carried out by the government based on legal instruments, namely:²⁵

1. Obligation to take an action
2. Obligation to produce certain results
3. Duty to respect
4. Duty to protect
5. Obligation to fulfill

Furthermore, in Law Number 39 of 1999 concerning Human Rights, Article 8 stipulates that: the protection, promotion, enforcement and fulfillment of human rights is primarily the responsibility of the government. The contents of the subsection of the article above explain that the government has roles and obligations that are in the lap and owned so that the responsibility in question is the responsibility for carrying out and or not carrying out obligations. In principle, the government must restore conditions to the way they were before there was legal certainty, but if the return to the original position cannot be carried out, then the government is burdened with the obligation to provide compensation as liability.²⁶ The government has an obligation to assume responsibility because of actions or policies that have been made, namely through Presidential Regulation Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (Covid-19) and National Economic Recovery and Presidential Regulation Number 112 of 2020 concerning Dissolution of the National Research Council, Food Security Council, Surabaya-Madura Regional Development Agency, National Sports Standardization and Accreditation Agency, Indonesian Hajj Monitoring Commission, National Economic and Industrial Committee, Telecommunication Advisory Board, National Elderly Commission, Indonesian Professional Sports Agency, and Indonesian Telecommunication Regulatory Body. As a result of this policy, 28 LNS were disbanded which resulted in the loss of jobs for honorary staff working in these agencies.

It was concluded from the explanation above, that underlies a government's responsibility and accountability if the state and government are obliged to guarantee and protect the rights of its citizens, while the underlying principle is compensation by the government if the government takes actions that harm its

citizens. There are exceptions to this principle of compensation, namely the public mission carried out by the government, in another sense the government which carries out policies for the public interest is not burdened with the obligation to provide compensation when the action taken is aimed at carrying out public duties or the public interest in which there are no regulations. legislation that requires the provision of compensation in the implementation of these public tasks. Based on this, the constitution does not provide restrictions or guidance norms in the formation or dissolution of LNS, therefore the constitution gives freedom to the government to form or dissolve LNS as long as it is really needed. The legal basis for forming an LNS is based on what authority or authority is given to the LNS, so if the authority given is at the level of the law, the LNS can only be formed by law. But if it only carries out executive functions, then it is enough for the LNS to be formed with government regulations or presidential regulations or presidential decrees to make it more flexible.

The problem that arises from the policy of dissolving the LNS is the status of honorary workers working at LNS which has an impact on this policy and there are no regulations that specifically accommodate honorary workers after the enactment of the ASN Law, but in this case honorary workers are still accommodated in the implementing regulations of the Law. ASN, namely in Government Regulation Number 49 of 2018 Concerning Management of Government Employees with Work Agreements. Article 99 of the PPPK regulation states that honorary workers serving in government agencies, including those serving in LNS, are given a maximum of 5 (five) years to continue carrying out their duties. Within this period, honorary workers can be appointed as PPPK if they meet the applicable requirements. , and honorary workers are given protection in the form of health insurance benefits, work accident insurance, and death insurance. So in terms of the government's responsibility for honorary workers due to the dissolution of the LNS, the government is obliged to fully implement, namely article 99 of Government Regulation Number 49 of 2018 concerning Management of Government Employees with Work Agreements honorary workers for a period of 5 years from the enactment of PPPK regulations receive protection in the form of health insurance benefits , work accident insurance, and death insurance.

The implementation of the above protection is carried out in accordance with the national social security system, in terms of health insurance contract workers benefit from health insurance that is individual services in the form of health services that include promotive, preventive, curative and rehabilitative services, including medicines and consumable medical materials needed, this is in accordance with Law Number 11 of 2020 concerning Job Creation, an amendment to Law Number 40 of 2004 concerning the National Social Security System which is stated in article 22. Accident insurance that is organized nationally based on the principle of social insurance for temporary workers who experience work accidents is entitled to benefits in the form of health services according to their medical needs and benefits in the form of cash in the event of permanent total disability or death. Death benefits are also based on the principle of social insurance which is organized with the aim of providing death benefits paid to heirs of participants or honorary workers who pass away. The cash death benefit is paid no later than 3 working days after the claim is received and approved.

IV. CONCLUSION AND SUGGESTION

Conclusion

A. The legal vacuum for honorary workers due to the dissolution of non-structural institutions occurred after the enactment of Law Number 5 of 2014 concerning State Civil Apparatuses which abolished the term honorary workers to become Government Employees with Employment Agreements (PPPK). Thus honorary workers who are affected by the dissolution of the Nonstructural Institution (LNS) will have implications for the absence of regulations governing honorary workers who are affected by the dissolution of LNS.

B. Legal protection for honorary workers due to the dissolution of the LNS consists of legal protection *preventive* and legal protection *repressive*. Legal protection *preventive* aims to prevent disputes from happening before termination of employment (PHK) is carried out by the parties, namely honorary workers, employers, trade unions and the government. By negotiating. While protection *repressive* aims to resolve

disputes that have occurred where there is no common ground between the parties. Then legal action can be taken through the court.

Suggestion

The government is expected to give priority to honorary workers, especially honorary workers who have worked for a long time in government agencies to be appointed as PPPK. This is done as a manifestation of the government's efforts to give awards to honorary staff who have served for decades and have not been appointed as CPNS or PPPK.

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