

# LEGAL PROTECTION OF HONORARY STAFF IN THE REGENCY/CITY OF WEST SUMATERA PROVINCE AFTER THE APPLICATION OF LAW NUMBER 5 OF 2014 CONCERNING STATE CIVIL APARATURE

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**Abstract:** *The State Civil Apparatus that carries out government duties is still lacking, this causes Government agencies to hold honorary staff. The use of honorary staff was carried out prior to the Law on the State Civil Apparatus. After the enactment of the Law on State Civil Apparatuses all officials of the Staffing Supervisors and officials within the Government institutions are prohibited from recruiting honorary staff. However, the ban was still ignored by officials within the Government agency, as was the case with the Padang City Government and Padang Pariaman District Government. The position of honorary staff in the Regency/City of West Sumatra Province after the enactment of the Law on State Civil Apparatuses is lost, because in the Law on State Civil Apparatus it only regulates Government Employees and Government Employees with Work Agreements. The absence of regulation regarding honorary staff makes loss of position and creates legal uncertainty regarding the protection of honorary staff. At present there are still honorary staff employed in the City Government of Padang and Padang Pariaman, with the form of honorary workforce attachment is done in the form of a work agreement, which of course this is contrary to the implementation of the Law on State Civil Apparatus. Legal Protection of honorary staff in West Sumatra Province City/regency after the enactment of the Law on State Civil Apparatus has not met with certainty, because the government has not been able to provide good guarantees for the lives of honorary staff. Salaries given to honorary staff have also not been able to fulfill the lives of honorary staff. No protection is obtained by honorary staff and salaries are still below the Provincial Minimum Wage. The employment relationship is carried out in the form of a work agreement, as a form of agreement that the honorary staff may not demand for salary increases or be appointed as Government Employees.*

**Key Words:** *Legal Protection, Honorary Staff, State Civil Apparatus.*

## 1. INTRODUCTION:

Government has three main functions, namely public services, implementation of development and society protection.[1] The implementation of this governmental function is carried out by the state apparatuses which will be the key to the successful implementation of this function. The state apparatus is divided into Civil Apparatus, Police Apparatus and Indonesian National Army apparatus. The State Civil Apparatus is regulated in Law Number 5 of 2014 concerning State Civil Apparatus.

The State Civil Apparatus that carries out governmental tasks, both at the Central Government and Local Government institutions, is currently insufficient to carry out all government tasks, so to overcome the shortage of employees, the Central Government and Local Government agencies hold honorary staff. The use of honorary staff has been carried out prior to the enactment of the Law on State Civil Apparatus, but the Law on State Civil Apparatus does not regulate honorary staff because in the Law on State Civil Apparatus, the State Civil Apparatus is divided into two types namely Government Employees and Government Employees with The Work Agreement is a disappointment for the honorary staff because it causes uncertainty about their position and rights in the government.

There is no rule of law that protects temporary workers at this time also accompanied by problems experienced by honorary staff during their tenure. One of the biggest problems experienced by honorary staff is regarding wages. Wages received by honorary and non- government employees in the city of Padang, West Sumatra are still below decent values. The amount of wages received is not humane, because from the data obtained there are still honorary staff and Non Local Employees who receive wages of only Rp.950,000 (nine hundred fifty thousand rupiah)/month.[2] The salary

received by honorary staff under Rp.950,000 (nine hundred fifty thousand rupiah) is not enough to meet the needs of decent living for humanity at this time and is far below the Minimum Wage in West Sumatra Province 2019 which is Rp.2.289.228 (two million two hundred eighty nine thousand two hundred twenty eight rupiah).[3]

## 2. CONCEPTUAL FRAMEWORK:

### a. Legal Protection

Legal protection is a protection given to legal subjects in the form of law both preventive and repressive, both written and unwritten. Legal protection as an illustration of the legal function that is the concept of law can provide a justice, order, expediency and peace.

### b. Honorary Staff

Honorary staff in Article 1 Government Regulation Number 48 of 2005 concerning Appointment of Honorary Staff to Become Prospective Government Employees is someone who is appointed by the Employee Trustees Officer or other officials in the government to carry out certain tasks at government institutions or whose income is a burden State Revenue and Expenditure Budget or Local Revenue and Expenditure Budget.

### c. State Civil Apparatus

State Civil Apparatus in Article 1 number 1 of Law Number 5 of 2014 concerning State Civil Apparatus is a profession for Government Employees and Government Employees with work agreements working for government institutions.

## 3. THEORITICAL FRAMEWORK:

### a. Legal Protection Theory

The law functions as a protection of human interests so that humans are protected, the law must be implemented. Law enforcement can take place normally, peacefully, but violations of the law can also occur. Violations occur when certain legal subjects do not carry out their obligations that should be carried out or because they violate the rights of other legal subjects. Legal subjects whose rights have been violated must get protection.[4]

### b. Legal Certainty Theory

Bachsan Mustofa explained that Legal Certainty has three meanings, namely: "First, it must be about the legal regulations governing certain abstract government issues. Second, certainly regarding the legal position of the subject and the object of law. Third, preventing the possibility of arbitrary actions (*eigenrechting*) from any party, as well as actions from the government."[5]

### c. Agreement Theory

According to A. Ridwan Halim, a labor agreement is an agreement entered into between the worker and the employer where they bind themselves to each other to work together where the worker promises to carry out the employer's orders as his work properly and the employer will bear the life of the worker (and his family) well too, in accordance with their abilities and agreements.[6]

## 4. LITERATURE REVIEW:

The classification of the State Civil Apparatus is contained in Article 6 of the State Civil Apparatus Law, namely:

### a. Government Employees

Government Employees in Article 1 number 3 of the State Civil Apparatus Law are Indonesian citizens who meet certain conditions, are appointed as employees of the State Civil Apparatus on a permanent basis by official development officers to occupy government positions.

### b. Government Employees with a Work Agreement

Government Employees with a Work Agreement in Article 1 number 4 of the State Civil Apparatus Law are Indonesian citizens who meet certain conditions, who are appointed based on a work agreement for a certain period of time in order to carry out governmental duties.

The classification of honorary staff, namely:

- a. Local honorary staff, Decree issued by the Governor, Mayor or Regent.
- b. Official honorary staff, Decree issued by the Head of Department or Head of Government Institutions.
- c. Casual daily laborers, such as workers or laborers do not have a Decree to work.

Based on the source of salary received by honorary staff, it is classified into two categories, namely:

- a. Category I  
Honorary staff whose income is financed from the State Revenue and Expenditure Budget or Local Revenue and Expenditure Budget with criteria designated by the authorized official to work in government institutios.
- b. Category II  
Honorary staff whose income is funded not from the State Revenue and Expenditure Budget or from the Local Revenue and Expenditure Budget by criteria, appointed by the authorized official, works in a government institutions.

Planning for recruitment of human resources from honorary staff is carried out in three steps:[7]

- a. Determination of vacant positions  
This is related to the existence of employees who resigned, retired, died and due to the expansion/expansion of the organization.
- b. Determination of position requirements  
Includes expertise, knowledge, skills and experience needed to do work.
- c. Determination of recruitment methods and requirements  
Determination of the methods and requirements for recruitment of Government Employees from Honorary Staff based on Government Regulation Number 48 of 2005 as amended several times, the latest by Government Regulation Number 56 of 2012.

The appointment mechanism of honorary staff is an activity to fulfill the needs of certain agencies which is carried out through the stages of planning, announcement of vacancies, applying, selection, announcing the results of selection and appointment to become an honorarium staff. Furthermore, these honorary staff can be appointed as Prospective Government Employees by following all the selection processes carried out for Prospective Government Employees and in accordance with regulations.[8] Honorary staff can be appointed as Prospective Government Employees if they have fulfilled the requirements specified in Government Regulation Number 4 of 2005, honorary staff must pass several administrative stages before they can be declared eligible or not to be appointed as Prospective Government Employees.[9] The implementation of the data collection of honorary staff and its processing is carried out in the local coordinated by the local head and the processed data is then submitted to the Minister of Administrative Reform and Bureaucratic Reform and the State Employee Intitution.[10]

## 5. METHOD:

The method used in this research is Empirical juridical, another term used is sociological legal research and can also be referred to as field.[11] The research data were obtained from the Padang City Human Resources and Human Resources Development Institution and the Padang Pariaman Human Resources and Human Development Institution.

## 6. DISCUSSION:

The regulation of the State Civil Apparatus regulated by Law Number 5 of 2014 concerning State Civil Apparatus. The State Civil Apparatus Law replaces the provisions in Law Number 8 of 1974 concerning Employees Principles as amended by Law Number 43 of 1999 concerning Amendment to Law Number 8 of 1974 concerning Employees Principles. The promulgation of the Employees Principles Law in 1974 was intended to provide legal certainty for the state apparatus so that the interests of the state apparatus were not violated.

In addition to Central Government Employees and Local Government Employees, authorized officials based on the provisions of Article 2 paragraph (3) of the Employees Principle Law may appoint non-permanent employees. In the explanation of Article 2 paragraph (3) of the Employees Principle Law, temporary employees are not appointed for a certain period of time to carry out administrative and development tasks that are of a professional technical and administrative nature in accordance with the needs and abilities of the organization. The provisions in article 2 paragraph

(3) of the Employees Principle Law provide an opportunity for Central and Local Government Institutions to appoint non- Government Employees to assist agencies in carrying out their duties and functions.

Allowing Central and Local Government Institutions to accept non-permanent employees results in the number of non-permanent employees working in Central and Local Government Institutions. Temporary employees who work in Central or Local Government Institutions are called by honorary staff. The use of non-permanent employees by these government institutions is not protected by clear legal rules, because in the Employees Principle Law does not regulate the rights and procedures for appointing temporary employees, thus resulting in legal uncertainty regarding future rights and clarity for temporary employees.

Many government institutions that use non-permanent employees who have been employed for a long period of time, then based on Article 2 paragraph (3) of Law Number 43 of 1999 concerning Employees Principle, the government issues Government Regulation Number 48 of 2005 concerning Appointment of Honorary Staff Becomes a Prospective Government Employees. The Government Regulation aims to provide certainty for temporary employees, which in this government regulation are referred to as honorary staff and provide opportunities for honorary staff to be appointed as Government Employees.

Honorary Staff have no status as Government Employees, the provision of honorary staff is carried out on the grounds to assist the work of Government Employees and meet the shortage of the number of employees available in government institutions. The government is fully responsible for the procurement of honorary staff, because honorary staff work to assist the workload of Government Employees which is not balanced with the procurement of Government Employees themselves. The appointment of honorary staff to become Prospective Government Employees is carried out with consideration:

- a. The highest age is 46 years old and the lowest is 19 years old
- b. The length of service of honorary staff is at least one year continuously

After the enactment of the Law on State Civil Apparatus, the State Civil Apparatus is only divided into two namely Government Employees and Government Employees with Work Agreements. The State Civil Apparatus Law no longer allows the appointment of temporary employees. This resulted in the loss of the position of honorary staff as one of the elements of the state apparatus. Thus, honorary staff should no longer be able to be used but the Government, especially the Local Government, still uses and opens up the recruitment of honorary staff. Commission II of the Indonesian Parliament and the Minister of Empowerment of the State Apparatus and Bureaucratic Reform along with the Head of the State Employee Institution have discussed the removal of honorary staff. The results of the discussion prohibit government institutions from recruiting or using honorary staff to assist with the work carried out by Government Employees. However, this cannot be done immediately, because the local government still needs the honorary staff to help with the work, because in a work position, for example in one part of the Local Apparatus Organization has one Government Employees, while as many as three are needed, then from the relevant Local Apparatus Organization still needs assistance from the honorary staff.

Previously, the existence of honorary staff was supported by Government Regulation Number 48 of 2005 concerning Appointment of Honorary Staff to Become Prospective Government Employees, but after the enactment of the Law on State Civil Apparatuses in 2014, the result was that no longer could Honorer staff be appointed as Prospective Government Employees if not participate in the selection of procurement of Government Employees. There is no statutory regulation governing honorary staff resulting in unclear status of honorary staff who are still working at the moment, besides the Local Government which still only appoints honorary staff without any consideration of how much amount is needed by government institutions.

Government in West Sumatra, including the Local Government that uses honorary staff to assist the implementation of government functions and tasks. Honorary Staff in the Government of the City of Padang, contained in the Decree of the Mayor of Padang Number 382 of 2019 concerning the Second Amendment to the Decree of the Mayor of Padang Number 107 of 2018 Regarding the Type of Work, Number and Amount of Honorarium of Honorary Staff and Contract Workers in the City of Padang Government 209 honorary staff working in the Padang City Government Environment. A total of 209 honorary staff were distributed to the Department in the City of Padang. Padang Pariaman Regency still has honorary staff who assist their work of the Government Employees to complete their duties as many as eight honorary staff. The eight honorary staff members at the Employees and Human Resources Development Institution are divided into sections in the Employees and Human Resources Development Institution and also as administrative assistants.

Workers' protection including honoraru staff is found in work agreements between workers and employers (in this case the government). A work agreement that is a condition of the employment relationship, in the work agreement there are rights and obligations of workers and employers. The employment agreement is the most important thing for every worker, because with the employment agreement, workers can legally guide their rights to the employer in the

event of abuse or violation of workers' rights by the employer. In the work agreement, stipulated regarding the salary provided by the institution concerned, health insurance borne by the Government Institution.

## 7. ANALYSIS:

Honorary staff who work for government institutions whose job is to carry out government functions should also get protection for their rights from the government. But at present there are no regulations that provide legal protection for honerers. Previously the existence of honorary staff was regulated by Government Regulation No. 48 of 2005 concerning the Appointment of Honorary Staff to be Candidates for Government Employees, but after the enactment of the Law on State Civil Apparatuses in 2014, it can no longer lead to honorary staff being nominated for Government Employees if they do not participate in the selection of procurement of Government Employees. There is no statutory regulation governing honorary staff resulting in unclear status of honorary staff who are still working at the moment, besides the Local Government which still only appoints honorary staff without any consideration of how much amount is needed by government institutions.

The enactment of the State Civil Apparatus Law does not directly invalidate Government Regulation Number 48 of 2005, Government Regulation 43 of 2007 and Government Regulation 56 of 2012, because in Article 139 of the Law on State Civil Apparatus states, when the Law on State Civil Apparatus applies the statutory regulations of the old Principle Employees Law still remain in force , while not in conflict with the provisions contained in the Law on State Civil Apparatus. Judging from the provisions of Government Regulation Number 56 of 2012 which regulates the appointment of Prospective Government Employees from honorary staff which is only done by examining administrative documents, this is not meant by the Law on the State Civil Apparatus which regulates that every appointment of the State Civil Apparatus must be done by means of procurement which includes the planning process, announcement of vacancies, application, selection in the form of Computer Assisted Test (CAT), announcement of selection, probation period , and appointment to become a Government Employees. Differences in the way such appointment results in Government Regulation Number 48 of 2005, Government Regulation Number 43 of 2007 and Government Regulation Number 56 of 2012 no longer apply.

There is no legal certainty for honorary staff at present causing injustice for those honorary staff who work at Government Institutions who assist the work of Government Employees. Legal uncertainty for honorary staff makes it possible for arbitrary acts from any party including the government to be very difficult to minimize, because the legal certainty of honorary staff is not explained by the Government in the form of statutory regulations. Statutory regulations that should provide legal protection for the society and provide protection for human rights harmed by others and the protection is given to the society in order to enjoy all the rights provided by law. The government should provide protection for the people, especially for those honorary staff who are still working to help the work of the Government Employees, but do not get legal protection in the form of rights as they should have

Regarding work agreements, work agreements that constitute self-engagement between workers and employers for which the agreement contains an employer's order that must be carried out by the worker and the employer will bear the life of the worker (and his family) well, in accordance with ability and agreement they each. The existence of an employment agreement is very good for the honorary staff, because if every work relationship is based on a work agreement, then the rights and obligations of both parties will be protected. Employment agreements can be used by honorary staff in the event of violations of rights or fulfillment of obligations by employers.

## 8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- a. The State Civil Apparatus Law has an impact on the decision on the position of honorary staff as one of the state apparatuses because the State Civil Apparatus Law implies the enactment of Government Regulation Number 48 of 2005, Government Regulation Number 43 of 2007 and Government Regulation Number 56 of 2012, In Article 139 The Law on the State Civil Apparatus states that the compilation of the State Civil Apparatus Law applies the old Employee Principle Law, which still applies, but does not conflict with the provisions contained in the State Civil Apparatus Law. The enactment of the Government Regulation regarding the appointment of honorary staff to become Prospective Government Employees results in that there is no certainty about the future of the existing honorary staff at this time. Honorary staff should no longer exist, but the Government, especially Local Governments, still use and open recruitment of honorary staff.
- b. Protection of honorary staff is currently found in work agreements between workers and employers, in the employment agreement, the contract worker is entitled to get a salary and get health insurance. In the work agreement, honorary staff cannot sue to become a Government Employees and cannot demand a raise.

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- a. The government must clarify the position of honorary staff who are still working in government institutions or offices, because at this time the position of honorary staff is in the absence of statutory regulations that clearly make the position of honorary staff unclear. If indeed there will be no statutory regulations it again, the government will indeed eliminate honorary staff working for government institutions.
- b. Local governments should issue local regulations or local head's decision to clarify the protection that should be obtained by honorary staff who are still working for the local government.

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