

Discontinuation Of State Civil Registrators Of Criminal Or Official Criminal Actions Based On Law Number 5 Of 2014 Concerning State Civil Services In West Sumatera

¹ Suci Fitriany, S.H., M.H., ² Dr. Yuslim, S.H., M.H., ³ Dr. Suharizal S.H., M.H

¹Master Of Law Student, ²Master Of Law Lecture, ³Master Of Law Lecture

Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia

Email – ¹sfitriany06@gmail.com

Abstract: *State Civil Service employees in carrying out their duties have obligations, a code of ethics and a code of conduct that must always be obeyed and implemented. The obligations and code of ethics and code of conduct constitute a code of conduct and conduct within and outside the service of State Civil Service employees whose aim is none other than to form State Civil Service employees who are clean from all legal problems. But in practice there are still civil servants who violate the law. In Article 6 PP No. 53 of 2010 concerning Civil Servant Discipline states that "by not overriding the provisions in the criminal law, State Civil Service committing disciplinary violations will be subject to disciplinary action." With regard to disciplinary enforcement of State Civil Service employees related to criminal cases, the State Civil Service Law has also prepared rules of the game for State Civil Service employees who have committed criminal offenses, as stated in article 87 paragraph (2), paragraph (4) letter b and letter d. In fact, the dismissal of State Civil Service involved in criminal cases was carried out differently by authorized officials, causing legal uncertainty.*

Key Words: *Dismissal, State Civil Service, Crime.*

1. INTRODUCTION:

Civil Servants are elements of the State Apparatus, State Servants and Community Servants who are tasked with organizing governance and development. In this case, the position of Civil Servants is very important because the smooth and non-smooth running of the government and state development cannot be separated from the role and participation of Civil Servants. [1] The position and role of Civil Servants in every government organization is very decisive, because PNS is the backbone of the government in implementing national development.

Civil Servants as State Apparatus are tasked with assisting the President as Head of Government in administering Government, the task of implementing laws and regulations is obeyed by the community. In implementing laws and regulations in general, civil servants are assigned official duties to be carried out as well as possible. [2] In order for these official duties to be carried out as well as possible by these civil servants, these civil servants must be loyal and obedient to Pancasila and the 1945 Constitution.

Provisions concerning Civil Servants are regulated in the law concerning employment, including Law Number 5 of 2014 concerning State Civil Servants (hereinafter referred to as the ASN Law) as a substitute for Law Number 8 of 1974 concerning the Principles of Employment as amended. with Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning Personnel Principles. The amendment of the Law on Human Resources to Law Number 5 of 2014 is a manifestation of good governance, which is carried out through the management of civil servants.

In Indonesia to date, the prevailing statutory provisions relating to criminal acts still use provisions in the Criminal Code (KUHP), in addition to criminal provisions as well as those regulated in other special laws. In these statutory provisions, the term criminal planning is not known, except for only one article in the Criminal Code, namely Article 340 concerning premeditated murder. So that if we return to the formulation of norms in article 87 paragraph (2) and paragraph (4) letter d, which contains the criteria for a criminal act concerning a planned or unplanned crime, it becomes ambiguous because the crime committed is not planned is not an element of the act. formulated in an offense so that the form is not written and is not included in the judge's decision. This is a problem in implementing sanctions against ASNs who commit criminal acts by Civil Service Officers, namely when the Civil Service Officers, ASNs who commit these crimes are not dismissed, dismissed with respect or disrespectfully discharged. Whereas in Article 5 letter f of Law Number 12 Year 2011 concerning the Formation of Legislation, it is stated that in forming statutory regulations must be carried out based on the principle of forming good statutory regulations such as the principle of clarity of formulation.

The Regional Government in the West Sumatra Province has certainly implemented the imposition of sanctions against ASNs who have committed criminal acts. However, if we return to the description that the author explained earlier, it does not rule out the possibility that in the area of West Sumatra Province the Civil Service Officers also experience differences in understanding the legal construction in Article 87 paragraph (2) and paragraph (4) letters b and d of the ASN Law.

2. CONCEPTUAL FRAMEWORK:

a. Dismissal

According to Heidjrachman Ranupandojo and Suad Husnan in their book, Personnel Management, defines dismissal as termination of employment and the reasons commonly put forward in dismissal are because these employees are deemed unable to work in the organization properly and because of the deteriorating condition of the company. Termination is the last part of the employee management process, where all activities end here. [3]

b. State Civil Apparatus or ASN

According to Article 1 letter a of Law Number 5 of 2014 concerning State Civil Apparatus, which is meant by State Civil Apparatus, hereinafter abbreviated as ASN, is a profession for civil servants and government employees with a work agreement who works for government agencies.

c. Perpetrators of Criminal Action

According to Vos, a criminal act is a human behavior that is punishable by law regulations, so a behavior is generally prohibited with the threat of punishment. [4]

3. THEORITICAL FRAMEWORK:

a. Theory Good Governance

Definition of governance according to Kooiman in Sedarmayanti is a series of processes of social and political interaction between the government and society in various fields related to the interests of society and government intervention on these interests. [5]

b. Legal Concern Theory

According to Van Apeldoorn, legal certainty is the clarity of behavior scenarios that are general and binding on all citizens, including the legal consequences. [6]

4. LITERATURE REVIEW:

Before the issuance of Law No. 5 of 2014 concerning State Civil Servants (ASN), the State Civil Servants were formerly known as Civil Servants. Etymologically, Civil Servants (PNS) consist of 3 (three) words, namely employees which mean employees or people who work within the provisions of the prevailing laws, the meaning of civil servants is not made in a generally accepted formula, but only constitutes a special formulation that applies in relation to the relevant regulations. [7]

In article 6 of Law Number 5 Year 2014 concerning State Civil Servants, it is determined the types of ASN Employees, namely:

- a. Civil Servants are ASN Employees who are appointed as permanent employees by Civil Service Officers and have national employee identification numbers; and
- b. PPPK (Government Officials with Work Agreements) are ASN Employees who are appointed as employees with an agreement by the Civil Service Officer in accordance with the needs of Government Agencies and the provisions of Law Number 5 of 2014 concerning ASN.

The position of the State Civil Apparatus in public law, is tasked with assisting the President in administering the government so that the State Civil Apparatus is charged with the obligations that must be carried out and for these obligations the State Civil Apparatus must also be given whatever is the right of the State Civil Apparatus. .

The last part of employee management is layoffs. Because with the termination all activities end. Dismissal as a Civil Servant is a discharge which causes the person concerned to no longer be a Civil Servant

Based on article 1 number 1 of Government Regulation Number 53 of 2010 concerning Civil Servant Discipline, PNS Discipline is the ability of PNS to comply with obligations and avoid prohibitions found in the Laws and / or official regulations which if not obeyed or violated are subject to disciplinary punishment.

5. METHOD:

The method used in this research is normative-empirical (combined). According to Abdulkadir Muhammad, what is meant by normative-empirical legal research (applied law research) is research that uses normative-empirical legal case studies in the form of legal behavior products. [8]

6. DISCUSSION:

Civil servant management is the management of civil servants to produce civil servants who are professional, have basic values, ethics, profession, free from political intervention, free from corruption, collusion and nepotism. This civil servant management is based on a merit system, namely ASN policies and management based on qualifications, competence and performance that are fair and reasonable without distinguishing their background, politics, race, skin color, religion, origin, gender, marital status, age, or a disability condition.

If seen, dismissal is also part of the civil servant management. This means that the issue of dismissal is also tied to the Merit system. So that in implementing policies and management dismissal is carried out fairly and fairly without discrimination based on background, politics, race, color, religion, origin, gender, marital status, age or disability conditions.

Termination is included in the last part of the ASN management process which means that all activities end at termination. The issue of terminating ASN is stated in Article 87 of Law Number 5 of 2014.

Article 87 can also be seen that it also specifically regulates the dismissal of civil servants who are involved in criminal acts. This is because ASN is a profession based on principles that uphold basic values, code of ethics, code of conduct, commitment, moral integrity and responsibility and professionalism of office, so that an ASN is required to obey and carry out all obligations and avoid prohibitions in laws and regulations and / or official regulations. So that if an ASN commits a criminal act, the ASN dismissal is a sanction or legal consequence for the criminal act committed by ASN based on a court decision that has been inkraacht.

In Article 6 PP No. 53 of 2010 concerning Civil Servant Discipline regulates the provisions of ASN who commit criminal acts, which states that "by not overriding the provisions in the criminal laws and regulations, ASNs who commit disciplinary violations are subject to disciplinary action." Then in the explanation it was stated that "ASN violating the provisions of civil servant discipline will be subject to disciplinary action and if the act contains a criminal element, the ASN may be subject to criminal penalties." Arrangements for enforcement of sanctions against ASN who commit criminal acts have been regulated since Law Number 8 of 1974 concerning Personnel Principles, namely in Article 23 paragraph (3) letter b where civil servants who commit criminal acts carry a maximum sentence of 4 imprisonment. (four) years or more severe threats can be dishonorably discharged. If you look at these provisions, the rules of the game against civil servants who commit criminal acts are quite simple, namely only seen from the number of punishments for the criminal acts committed by the civil servants. If the criminal act committed by a civil servant is punishable by a sentence of 4 (four) years or more, the civil servant will be dishonorably discharged, whereas if the criminal act committed is less than 4 (four) years, the civil servant is not dismissed as a civil servant. With regard to sanctions against ASN employees related to criminal cases, the ASN Law has also prepared rules of the game for ASN employees who have committed criminal offenses, as stated in article 87 paragraph (2), paragraph (4) letter b and letter d. Article 87 paragraph (2) of the ASN Law states that:

"Civil servants can be dismissed with respect or not dismissed because they are sentenced to imprisonment based on a court decision that has permanent legal force for committing a criminal offense with a minimum imprisonment of 2 (two) years and crimes committed without planning"

To prove the ASN act violates Article 87 paragraph (4) letter b of the ASN Law, especially the point d element, namely committing a general criminal crime, it can be concluded that the criminal act committed even though there is no criminal element related to occupation, is punishable by a minimum of 2 years or sentenced to less than two years, or only sentenced to imprisonment, then it must be dishonorably discharged. The confusion of the provisions of article 87 paragraph (4) letter b is related to point d with the issuance of the Constitutional Court decision Number 88 / PUU-XVI / 2018 which eliminates the phrase "committing a general criminal crime". So that the purpose of the article is only related to criminal acts of occupational crime. So that regardless of the punishment, as long as it is a criminal offense, the ASN will be dishonorably discharged.

The provisions for the imposition of ASN sanctions for criminal acts of occupation in the form of disrespectful dismissal are also strengthened by the Joint Decree of the Minister of Home Affairs Number 183/6597 / SJ, the Minister of Administrative Reform and Bureaucratic Reform Number 15 of 2018 and the Head of the State Civil Service Agency 153 / KEP / 2018 concerning Law Enforcement Against Civil Servants Who Have Been Sentenced Based on a Court Decision with Permanent Legal Strength for Committing Criminal Acts of Occupational Crimes or Criminal Actions Related to Position. With the existence of the SKB, the Personnel Development Officer as

the party imposing sanctions on ASN who commits a crime of bondage position. So that the staffing officer cannot impose sanctions other than disrespectful dismissal.

Dismissal as a civil servant is a discharge which results in the person concerned losing his / her status as a Civil Servant. Regarding the dismissal of civil servants, it is known that there are several types of dismissals. The first is the discharge with respect, the second is the discharge with disrespect and the third is the temporary dismissal. [9]

7. ANALYSIS:

A. Arrangements for the Dismissal of State Civil Servants Who Commit Criminal Acts or Occupational Crimes

The rule of law theory emphasizes that the government in carrying out all its actions must be based on applicable law or often heard on the principle of legality. [10] Based on this principle, that the government in running the government must be based on both written law and unwritten law. In the concept of a rule of law there is also another important thing, namely the existence of equality before the law. [11]

Dismissal as a civil servant is a dismissal which results in the person concerned losing his / her status as a Civil Servant. Regarding the dismissal of civil servants, it is known that there are several types of dismissals. First is discharge with respect, second is dismissal with disrespect and third is temporary dismissal. [12]

ASN is an element of the State Apparatus, State Servant and Community Servant so that it must be a good role model so that in doing something it must be guided by the obligations according to the laws and regulations and not do any actions prohibited by the laws and regulations. However, ASNs are also human beings or citizens so that in practice there are still several ASNs who have committed criminal acts or criminal acts.

Dismissal of civil servants, which is part of the management of PNS, makes the dismissal of ASNs also treated by a merit system. The merit system and its relationship with ASN management that is not motivated by differences in political background, race, color, religion, origin, gender, marriage status, age and disability conditions, means that this also applies to the termination of ASN for committing a criminal act. .

Dismissal of ASN is also related to ASN who is sentenced to prison or imprisonment based on a court decision that has permanent legal force for committing a criminal act of occupation or a criminal offense related to office, this is because the position given to an ASN is the trust of the state. which must be done as well as possible. If an ASN is sentenced to imprisonment or imprisonment based on a court decision that has permanent legal force because of committing a criminal act of office or a criminal act related to his position, the ASN must be dishonorably discharged because it is related to the ASN. abuse the trust placed in him.

The process of accelerating the dismissal of ASNs who have been convicted of committing criminal acts of occupational crime or criminal acts related to the position where the verdict against the ASN who committed the crime has permanent legal force through the SKB 3 this minister has received resistance from ASN who feel that their interests are harmed so that filed a lawsuit against article 87 paragraph (2) and paragraph (4) of the ASN Law to the Constitutional Court. And it turns out that the result of the verdict was that the Constitutional Court decided to accept some of the applications and to reject other applications. The petition that was granted was stating the phrase and / or general punishment "in article 87 paragraph (4) letter b Undnag-Undnag Number 5 of 2014 concerning the State Civil Apparatus contradicts the 1945 Constitution and does not have permanent legal force.

B. Implementation of the Termination of ASN Guilty of Committing Crime or Criminal Offenses of the Department in West Sumatra

In implementing the provisions in Article 212 paragraph (1) of Law Number 23 of 2014 concerning Regional Government and Article 3 Paragraph (1) of Government Regulation Number 18 of 2016 concerning Regional Apparatus, regions even in West Sumatra have stipulated their respective Regional Regulations. respectively related to the formation and composition of the respective regional apparatus and related to the implementation of personnel affairs carried out by the Personnel and Human Resources Development Agency (BKPSDM).

Related to the implementation of the imposition of disciplinary sentences against civil servants who commit criminal acts is closely related to the duties and functions of the Human Resources Development Sector. This field is closely related to the implementation of policy formulation preparation, policy implementation, and evaluation and reporting in the field of human resource development.

Imposing punishment is an urgent matter in every statutory regulation so that the adage often heard "in cauda venenum" is (which means there is poison at the end), which means that at the end of a rule of law there are always sanctions because sanctions are necessary to ensure the enforcement of the law. included in administrative law. [13]

8. CONCLUSION:

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

- Whereas the provisions concerning the imposition of ASN penalties for committing criminal acts have been regulated since the old Civil Service Law but when Law no. 5/2014 concerning ASN, one of the qualifications for the imposition of ASN disciplinary sentences related to the criminal act committed by ASN was carried out with planning or not planning. Where if the criminal act of ASN is committed with a plan, the disciplinary punishment is disrespectful dismissal, whereas if the ASN criminal act is committed not with a plan, the ASN can be terminated or not terminated. Meanwhile, with regard to the imposition of a disciplinary sentence for ASN who commits criminal acts of occupational crime, since the beginning of the enactment of the Employment Law, absolutely disciplinary punishment for ASN who did it was dishonorable dismissal.
- Whereas the ASN Law does not clearly and explicitly explain the provisions of what is meant by "planning and not planning" so that in practice there is a disparity in the sentencing of ASNs who commit these general crimes, where those ASNs are sentenced to be dismissed by respect and others are dishonorably discharged.

9. SUGGESTIONS

The suggestions given by researchers are as follows:

- Seeing the importance of legal certainty in the imposition of a sentence for ASN who commits a criminal act, the Examiner and MPP team in charge of providing recommendations regarding the form of ASN disciplinary punishment for committing the crime, it is necessary to thoroughly observe and understand the provisions of Article 87 of Law No.5 2014 on ASN so that there are no different interpretations in the imposition of disciplinary sentences for ASN who commit the crime..
- In order not to cause different tafsiran related to the form of punishment of ASN for committing the general crime by the Examination Team or the MPP, it is necessary that a Technical Guidance be prepared by BKN which explains the qualifications regarding planned and unplanned criminal acts.

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