



Legal Review of Dismissal of State Civil Apparatus Involved in Corruption by the Regional Personnel Agency of the Samarinda City Government

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Abstract

This study aims to analyze the procedure for dismissing State Civil Apparatus (ASN) involved in corruption based on laws and regulations in Indonesia, as well as the policy of dishonorable dismissal at the Regional Civil Service Agency (BKD) in the Samarinda City government. Identifying the legal and social impacts of the dismissal action on the integrity and public trust in the government. The research method used is a normative legal approach by examining relevant laws and regulations. The results of the study indicate that the procedure for dismissing ASN involved in corruption is carried out by applicable laws and regulations, including the stages of collecting evidence, internal investigations, and issuing dismissal decisions. This action is an important step in law enforcement and efforts to eradicate corruption in the government environment. This study recommends the need for ongoing strategic steps to improve the supervision system and provide education to ASN regarding the importance of integrity in carrying out their duties, as well as maintaining the integrity and transparency of the government.

Keywords:

State Civil Apparatus, Dismissal, Corruption, Regional Personnel Agency, Public Trust.

How to cite: Aisyiah Ismail, R., Syahriar, I., Isnawati, I., & Putri, T. (2025). Legal Review of Dismissal of State Civil Apparatus Involved in Corruption by the Regional Personnel Agency of the Samarinda City Government. *GPH-International Journal of Social Science and Humanities Research*, 8(6), 01-10. <https://doi.org/10.5281/zenodo.15753650>



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1. INTRODUCTION

A state is an organization that includes territory, and several people and has sovereign power. In the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3) it is stated that the State of Indonesia is a state of law. Law is the entirety of rules or norms that must be followed in various actions and behaviors in social life. As state apparatus working in government agencies, Civil Servants (PNS) are bound by laws and regulations in carrying out their authority, duties, and functions, and even the process of appointment and dismissal must be based on applicable legal regulations [1]. One of the violations committed by the State Civil Apparatus (ASN) against the basic principles of clean and authoritative governance can occur through corruption.

Corruption as a fraudulent (tig bedorven) and dishonest (oneerlijk) act with such a pattern of action is most easily stimulated to be imitated and spread in the community. Corruption is very detrimental to state finances or the country's economy and hinders national development. Corruption is classified as an extraordinary crime (extraordinary crime), not only because of the systematic mode and technique, the consequences of corruption are parallel and damage the entire system of life, both in the economy, politics, socio-culture, and even the point of moral and mental damage to society [2].

One of the handling steps that is the focus of attention is the dismissal of State Civil Apparatus involved in corruption cases. The State Civil Service Agency (BKN) has an important role in preventing corruption for ASN in Indonesia, as an institution that has the authority to monitor and control the implementation of ASN administrative standards, norms, procedures and criteria, employee personnel, organizing training and developing through the field of human resource management as well as inspection of implementation control [3]. The Samarinda City Regional Civil Service Agency (BKD) has the responsibility to ensure that ASN involved in criminal acts of corruption are processed by applicable legal provisions. The Samarinda City Government, through the Regional Civil Service Agency (BKD), plays an important role in supervising and implementing the policy of dismissing ASN involved in corruption cases. The dismissal is not only a form of administrative punishment but also a form of moral and legal responsibility for ASNs who abuse their authority. The BKD must ensure that the dismissal process is carried out by applicable legal provisions and based on the principles of transparency and accountability [4]. The Samarinda City Government through the Samarinda Mayor Regulation Number 23 of 2023 concerning the Enforcement of State Civil Apparatus Discipline in the Regional Government environment states that the Mayor holds the highest structural position in the regional government at the city level, and has the authority in more specific regulatory policies related to the enforcement of ASN discipline, including the procedure for dishonorable dismissal of ASN [5].

The problem that arises is what is the procedure for dismissing State Civil Apparatus (ASN) based on Law Number 20 of 2023 concerning State Civil Apparatus (ASN)? and What is the policy for dismissing State Civil Apparatus (ASN) involved in corruption by the Regional Personnel Agency (BKD) of the Samarinda City Government?

The purpose of the study was to determine the procedure for dismissing State Civil Apparatus (ASN) related to corruption, and the policy for dismissing State Civil Apparatus (ASN) involved in corruption in the Samarinda City Government Environment.

2. BASIC THEORETICAL FRAMEWORK

2.1. Good Governance Theory

A clean and good government is highly desired by every citizen, especially in Indonesia, so that problems in industrial governance in Indonesia can be resolved properly. The process of political and government democratization not only demands professionalism and the ability of the apparatus in public service, but fundamentally demands the realization of good, clean governance, and free from corruption, collusion, and nepotism (good governance and clean government). The United Nations Development Program (UNDP) in a policy document entitled "Governance for sustainable human development", defines governance as follows: governance is the implementation of authority/power in the economic, political, and administrative fields to manage various state affairs at all levels and is an instrument for creating conditions of welfare, integrity, and social cohesion in society[6]. The concept of good governance includes the decision-making process, government actions, and how to manage resources that aim to create an efficient, transparent, participatory, accountable, equitable, and sustainable environment.

2.2. Personnel Theory

According to the Big Indonesian Dictionary (KBBI), personnel are anything related to employees [7]. Personnel are an aspect related to human resources that must be present in every cooperative effort [8].

According to the Basic Law on Personnel Number 43 of 1999 concerning amendments to Law Number 8 of 1974 concerning the Basic Principles of Personnel, according to [9], the definition of personnel was:

- a. Civil servants are elements of the state apparatus, state servants, and public servants who, with loyalty and obedience to Pancasila and the 1945 Constitution, the state and government, carry out government and development tasks.
- b. Civil servants are those who have fulfilled the requirements stipulated in the applicable laws, are appointed by an authorized official, and are entrusted with duties in a state position or other state duties stipulated based on laws and regulations and are paid according to the applicable laws and regulations.

2.3. Accountability Theory

Accountability in English is usually called accountability or accountable which means "can be accounted for". Accountability is the obligation to provide accountability to answer and explain the performance of a person, legal entity, and/or leader of an organization to a party who has the right or authority to receive and request information or accountability[10].

Accountability is the responsibility for managing resources and implementing policies that have been entrusted to an entity to achieve predetermined goals. According to [11], accountability consists of two types, namely vertical accountability and horizontal accountability. The purpose of accountability is not only to find mistakes but to answer for someone's responsibility based on what happened so that it can be immediately corrected if an error occurs.

2.4. Progressive Law

Progressive law is an approach to law that emphasizes social change and justice. Focuses on individual rights, equality, and improving the quality of life in the community. Progressive law recognizes that law must adapt to social change and values that develop in society.

According to [12], progressive law is a series of radical actions, by changing the legal system (including changing legal regulations if necessary) so that the law is more useful, especially in raising self-esteem and ensuring human happiness and welfare. The law aims to create justice and welfare for all people.

2.5. Definition of State Civil Apparatus

Article 1 number 1 of Law Number 5 of 2014 states that State Civil Apparatus is a profession for civil servants and government employees with work agreements who work in government agencies [13]. ASN carries out public duties to support the running of government and public services. The definition stated in Law Number 20 of 2023 concerning State Civil Apparatus, explains that ASN includes basic values, a code of ethics, public services, responsibility, and moral integrity. The ASN profession is divided into two types of employees, namely Civil Servants (PNS) and Government Employees with Work Agreements (PPPK). Article 10 of Law Number 5 of 2014 states that ASN are employees who function as implementers of public policy, public servants, and unifiers and unifiers of the nation.

2.6. General Overview of Corruption

Corruption comes from another word "corruptio" or "corruptus" which means damage, badness, depravity, dishonesty, can be bribed, and immoral sanctity. In English and French "corruption" means abusing one's authority, to benefit oneself. According to Andi Hamzah, corruption is defined as rottenness, crime, dishonesty, bribery, immorality, deviation from sanctity, and insulting or slanderous words [14]. Corruption is generally defined as an act involving the abuse of power for personal gain. Corruption is a behavior that deviates from formal duties as a public employee to gain financial gain or increase status. In addition, material, emotional, or symbolic benefits can be obtained [15].

In the theory put forward by Jack Bologne often called the Gone Theory quoted [16] that the factors that cause corruption include:

- a. Greeds (greed) related to the existence of greedy behavior that potentially exists in every person.

- b. Opportunities (opportunities) related to the state of the organization or agency or society that is such that there is an opportunity for someone to commit fraud.
- c. Needs (needs) related to factors needed by individuals to support their normal lives.
- d. Exposures (disclosure) related to actions or consequences faced by the perpetrator of fraud if it is known that they have committed fraud.

2.7. General Review of the Civil Service Agency

The State Civil Service Agency is an Indonesian Non-Ministerial Government Institution tasked with carrying out government duties in the field of state personnel management. BKN as a central institution tasked with organizing state personnel management, has an important role in efforts to prevent corruption for ASN [17].

BKN has the task and function of planning personnel development by the President's policies, planning laws and regulations in the field of personnel, organizing personnel administration and pension administration, organizing supervision, coordination, and guidance on the implementation of laws and regulations in the field of personnel and pensions in departments and state institutions or non-departmental government institutions [18].

In addition to BKN, there is an institution that plays an important role in personnel development, namely the Regional Civil Service Agency (BKD). BKD has authority in the field of personnel through the transfer of personnel affairs from the central government to the regional government by regulations and developments in regional autonomy [19]. The function of the BKD is to formulate technical policies in the field of regional personnel by the strategic plan that has been determined by the Regional Government [20].

In state administrative law and constitutional law, this principle is known as the term *wetmatigheid van het bestuur*, which means that every government action must have a legal basis in a statutory regulation.

3. RESEARCH METHOD

This research is compiled using a normative legal research type, namely research that focuses on the study of the application of rules or norms in positive law. Normative Legal, namely an approach using a concept that views law as identical to written norms made and promulgated by authorized institutions or officials [21]. According to [22] the normative legal research method or library law is a method or method used in legal research which is carried out by examining library materials.

The data sources used come from primary legal materials, namely Law Number 5 of 2014 concerning State Civil Apparatus, and secondary legal materials (secondary sources) are legal materials that are not binding but explain primary legal materials which are the results of processing the opinions and thoughts of experts or experts. The data collection technique is through document studies or library materials which are library research, supported by other

materials, such as: reviewing court decisions, laws, and regulations relating to sanctions for dishonorable dismissal for civil servants, collected through document studies collected from documents sourced from books on law, especially criminal law, various writings or papers, journals or other internet.

4. RESULTS AND DISCUSSION

4.1. Procedure for Dismissal of State Civil Apparatus Based on Law Number 20 of 2023

The State Civil Apparatus (ASN) in government must provide public services to the community. ASN must fulfill their obligations to comply with the code of ethics and work discipline that apply in government. ASN who violate the rules or code of ethics must be subject to sanctions by applicable laws. The sanctions that can be applied to ASN who violate the rules are Dishonorable Dismissal (PTDH). Dishonorable dismissal can be carried out after going through a predetermined legal process, taking into account aspects of justice and the rights of the dismissed ASN.

One of the violations that is rampant in government for ASN is corruption, corruption has become a disturbing issue for the community because it damages the values of justice. Dishonorable dismissal of ASN is stated in Law Number 20 of 2023 Article 52 Paragraph (3) concerning State Civil Apparatus:

- a. committing a violation of Pancasila and the 1945 Constitution of the Republic of Indonesia;
- b. committing a serious disciplinary violation;
- c. being sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime with a minimum imprisonment of 2 (two) years; and
- d. being sentenced to imprisonment or confinement based on a court decision that has permanent legal force for committing a crime of office crime or a crime related to office.

Article 4 states that the Dismissal of ASN Employees for reasons as referred to in paragraph (3) letters a, g, i, and j is categorized as dishonorable dismissal. Based on Law Number 20 of 2023 concerning the State Civil Apparatus. ASN who commits a criminal act of corruption will be dishonorably dismissed. The procedure for dishonorable dismissal of ASN must follow the applicable legal provisions of the ASN Law and related regulations.

The following is the procedure for dishonorable dismissal of ASN [23], namely:

1. Notification Letter

The process of granting a dishonorable dismissal sanction begins with several examinations of the ASN concerned who are suspected of having committed an ethical violation or violating applicable legal provisions. The examination can be carried out by an authorized government agency such as the State Civil Service Commission (KASN), the State Civil Service Agency, or the agency that employs the ASN. The authorized government agency provides a notification letter to the ASN concerned regarding the plan for dishonorable dismissal and the underlying reasons.

2. Initial Examination

The authorized government agency conducts an initial examination of the reports and evidence related to violations committed by ASN. It is important to provide an opportunity for ASN to provide clarification on the accusations addressed to them[24]. If there is evidence, this initial examination will be the basis for determining whether or not a disciplinary hearing is necessary[25].

3. Disciplinary Hearing

The ASN concerned are allowed to defend themselves in a disciplinary hearing held by the government agency. In a disciplinary hearing, ASN can present their defense or evidence. ASN has the right to be accompanied by legal counsel during the hearing process[26].

4. Dismissal Decision

After going through the examination process and disciplinary hearing, the authorized government agency will decide whether or not the ASN concerned deserves to be dishonorably dismissed. This decision must be based on several pieces of evidence that can be supported and accounted for[27]. Law Number 20 of 2023 Article 69 concerning State Civil Apparatus stipulates that the decision to dismiss must be submitted in writing to the ASN concerned, accompanied by clear reasons.

5. Dismissal Decision Letter

After the decision of dishonorable dismissal is taken, the authorized government agency will issue a letter of decision of dishonorable dismissal to the ASN concerned. Based on Law Number 20 of 2023 Article 70 concerning State Civil Apparatus, the letter emphasizes that the decision letter must be signed by an authorized official and submitted to the ASN concerned and the relevant agency. This decision must contain the reasons for the dismissal and the effective date of the ASN's dismissal.

6. Submission of Appeal

After an examination is carried out and sufficient evidence is found, the ASN concerned will be allowed to defend themselves. The defense process can be carried out through an administrative trial mechanism or other mechanisms determined by the authorized government agency. Based on Law Number 20 of 2023 Article 71 concerning State Civil Apparatus, the ASN concerned can submit an appeal against the decision of dishonorable dismissal to a higher agency within 14 days after receiving the letter of decision of dismissal.

7. Dismissal Executor

If after the defense process, it is found that the ASN has committed an ethical violation or violated applicable legal provisions, then a dishonorable dismissal sanction can be given. This sanction is given by an authorized official, such as the head of a government agency or the minister responsible for the ASN. After the appeal process is complete and has permanent legal force (*Inkracht*) requiring dishonorable dismissal, the authorized government agency can carry out the dismissal. Based on Law Number 20 of 2023 Article 72 concerning the State Civil Apparatus, the implementation of dismissal must be carried out by paying

attention to the rights of ASN, such as severance pay and allowances that may be entitled to be received.

After being dishonorably dismissed, the ASN concerned will lose their rights and obligations as an ASN as well as access to other benefits, such as the loss of pension rights, allowances, and the opportunity to be reappointed as an ASN in the future. In addition, these sanctions can also affect the career and reputation of the ASN in the community. Therefore, the dishonorable dismissal process must be carried out carefully and objectively so as not to cause discrimination or injustice to the ASN concerned[28].

4.2. Policy for Dismissal of ASN Involved in Corruption at the Regional Civil Service Agency of the Samarinda City Government

The policy for dismissal of ASN involved in corruption is the main step taken by the government to uphold integrity and accountability in the implementation of government within the Regional Civil Service Agency of the Samarinda City Government. Based on Samarinda Mayor Regulation Number 23 of 2023 Article 2 Concerning Enforcement of Discipline of State Civil Apparatus within the Regional Government. The regulation aims to be a technical guideline for officials and ASN who are interested in implementing ASN discipline. to regulate so that there are no violations of integrity that are detrimental[29]. This policy is to clean up the Samarinda city government institution from individuals who harm the state and society. As well as, damaging the Samarinda city government institution. This policy realizes a Good Governance government and avoids the prohibitions stipulated in laws and regulations. The implementation of this policy is carried out by ASN within the Samarinda City Government.

To realize good governance, authorized officials are required to support what is ordered by the BKN and carry out their duties with integrity. Dishonorable dismissal for ASN is an administrative sanction as a follow-up to criminal sanctions, by applicable legal provisions[30]. Thus, consistent and sustainable law enforcement, accompanied by internal reform efforts, is the key to ensuring that the positive impact of dismissing ASN involved in corruption can be achieved and felt by the community in Samarinda City.

5. CONCLUSION AND SUGGESTIONS

5.1. Conclusion

1. The procedure for dismissing ASN involved in criminal acts of corruption is regulated in the applicable laws and regulations, especially in Law Number 20 of 2023 Article 52 Paragraph (3) concerning State Civil Apparatus. This procedure includes: summons via summons letter, initial examination, disciplinary hearing, dismissal decision, dismissal decision letter, appeal submission, and implementation of dismissal of ASN involved in corruption.
2. Policy on Dismissal of ASN Involved in Corruption in the Regional Civil Service Agency (BKD) of the Government This policy is based on Samarinda Mayor Regulation Number

23 of 2023 concerning Article 2 concerning Enforcement of Discipline of State Civil Apparatus in the Regional Government Environment as a technical guideline as officials and ASN who are interested in implementing ASN discipline. To cleanse the Samarinda city government institution of individuals who harm the state and society. As well as, damaging the Samarinda city government institution. Improve the government's image and demonstrate commitment to creating a clean and transparent government.

5.2. Suggestions

1. The procedure for dismissing ASN involved in corruption, is carried out effectively and by the law. Must ensure that administrative sanctions against ASN involved in corruption can be implemented promptly and by procedures, to increase public trust in the integrity of government officials and create a good governance government.
2. To prevent corruption in the Samarinda City Government, it is necessary to increase socialization and anti-corruption education for ASN so that they better understand the importance of integrity and the legal consequences of corruption. Efforts to reduce the risk of corruption in the Samarinda City Government.

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