



The policy of severe disciplinary punishment enforcement to civil servant in Indonesia

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Abstract

Good governance principle will be realized if it is supported by the clean and competent state apparatuses having good personality. To realize the principle, Indonesian government develops employee policy that is Government Regulation No. 53 of 2010 about the Discipline of Civil Servants now amended with the Government Regulation No.94 of 2021. One of changes in the material of discipline breach has an implication to the enforcement of severe-category disciplinary punishment, because the regulation no longer accommodates the category of disrespectful dismissal and generates problem in its implementation. This article used juridical normative approach with qualitative analysis through grammatical and systematical interpretation. In this article a fact is found that the change of severe category-disciplinary punishment policy gives the Civil Servant an opportunity of committing any breaches having an implication to disrespectful dismissal and in the future inhibiting the implementation of good governance and clean government in governmental institution. Normatively, the content material of Government Regulation No. 94 of 2021 is not synchronous with Civil Servant Law, thereby needing revision.

Keywords: policy, personnel/employee, disciplinary punishment, severe breach

Introduction

A clean and prestigious government is an ideal of reformation movement in Indonesia, characterized with the fall of New Order regime in 1998. Thereafter, the reformation order was implemented, bringing the change into all aspects of community life, including the reform in the implementation of personnel management.

In this reformation era, there is a change of employee policy as governed in Law Number 5 of 2014 about State Civil Apparatus also governing the breach of severe disciplinary punishment in Article 84 stating that “the personnel right will be deprived from the Civil Servants imposed with severe-level administrative sanction in the form of disrespectful dismissal”. It emphasizes that to achieve good governance, the government has regulated firmly that if the Civil Servants do severe disciplinary breach, they can be dismissed disrespectfully.

The regulation of Civil Servants is the legal product as a means of evaluating and supervising performance to prevent the breach or deviation. If some breaches are done, sanction will be imposed in the form of severe disciplinary law enforcement. It is in line with Article 7 number (4) of Government Regulation Number 53 of 2010 about Civil Servant Discipline, stating that the type of severe disciplinary punishment consists of:

- a. Demotion to a lower level for 3 (three) years;
- b. displacement in the attempt of the degradation of rank to the lower level;
- c. dismissal from position (function)
- d. disrespectful dismissal not on own request as the Civil Servants;
- e. disrespectful dismissal as Civil Servants

However, due to a change of employee policy, there is currently a new regulation as included in the Government Regulation No. 94 of 2021 about Civil Servant Discipline stating that the severe disciplinary punishment consists of:

- a. degradation of position to a level lower for 12 (twelve) months;
- b. and demotion to a level lower for 12 (twelve) months;
- c. disrespectful dismissal not on own request as Civil Servant

The problem arising is “will the change of disciplinary punishment policy for Civil Servant affect the performance of Civil Servant in employee division.

Theoretical Concept

A Study on Civil Servants and Administrative Law

Indonesia is a constitutional state. As a constitutional state, Indonesia puts law to be the base of state power and any form of power administration is undertaken under the legal power. A constitutional law confirms the position of government that is subjected to law, rather than otherwise^[1]. In a constitutional state, legal substance is made an instrument binding in the organization of state, government and community's life, including civil servants' law.

Civil servants law usually called Administrative Law Study is the one concerning legal subject in administrative field, in which they have public service relation in the employee status, while the employees of private companies not having public service relation become a distinctive study field, such as Labor Law or Work Contract Law as governed in Civil Code^[2].

A study on civil servants' law is an administrative legal study investigating the relationship between civil servants' law and administrative law, including:

1. The Object of Administrative Law is governmental rule;
2. The organization of government is largely done by Civil Servants;
3. Duty and authority of Civil servant include public service as mentioned in the State Civil Apparatus stating that Civil Servants serve as the element of state apparatus in charge of providing service to the public professionally, honestly, justly, and equally in organizing the State, government, and development.
4. The relationship between Civil Servants and stat in public service relation;
5. Conflict of employee is the Administrative Conflict^[3].

Considering this, the object of administrative law is governmental rule and the authority which implemented by civil servants, and the law enacted to civil servants who work in administrative division as the civil servants.

Public Service Relation and Discipline Enforcement in Civil Servants

The presence of public service relation shows that Civil Servant is the employees that should be subjected to government^[4]. Public service relation, according to Logemann, public service relation is when an individual bind him/her self to be subjected to the government's instruction to do something or some types of position for which he/she is appreciated with salary and other benefits. It means that the essence of public service relation is the obligation for the corresponding employees to be subjected to his/her assignment in a number of certain positions leading the corresponding employees to receive (unconditionally) his/her assignment in one position that has been determined by the government in which the government otherwise is entitled to assign an employee in a certain position regardless the corresponding employee's desire. In this case, such relation generates "an agreement", due to the presence voluntary agreement (vrye verdrag) between employees and government^[5]. Considering the modern bureaucracy conception, public service relation has underlain administrative pattern in government sector and the pattern gives the legal authority a power to undertake governmental function rationally. It is this system that is called employee administrative system in governmental institutional field. Employee administration is a management of human resource with Civil Servant status, teaching the targeted policy and its building process.

In the context of law enforcement over the breach of rule on employee management, there is a meaning of public service relation to the disciplinary regulation of civil servant, in which civil servants should firmly obey obligation, prohibition, and disciplinary punishment that can be imposed to those who have evidently broken the rule. The criteria of Civil Servants who break discipline are that they break the prohibition and leave their obligation as a civil servants'.

Methods

The method used in this article is a normative legal research with statute and conceptual approaches. The use of both approaches is intended to identify and to inventory the relevant rule in civil servants' law field, to be analyzed and dialogued then according to its legal norm, concept, data, and event. The collection of law materials was conducted by means of documenting primary law materials including legislation in employee law field. Meanwhile, the analysis of law material was conducted using normative qualitative method. The interpretation models used were grammatical and systematical interpretations.

Discussion

In legal study, the amendment to regulation is expected to exert a better effect, including the change in employee field. Considering this, the civil servants' law should meet the feelings of certainty, justice, and usefulness in its implementation. Certainty, according to Van Apeldoorn, can be defined as the clarity and firmness of the enactment of a law within society^[6]. Henry Campbell Black states that justice is a constantly and continuously sharing to give right to everyone^[7]. John Rawls argues that justice is the main focus of legal and justice systems that cannot be sacrificed because there are two principles, viewed from his books. Firstly, *each person is to have and equal right to the most extensive basic liberty compatible with a similar liberty for others*. Secondly *social and economic inequalities are to be arranged so they are both a, reasonably expected to be everyone advantage and, b. attached to positions and offices open to all*^[8]. Meanwhile, usefulness is the main point of a legal objective. To discuss legal objective, there should be first knowledge on what does the objective means and the one having objective is human beings only. Law is not the human's objective but it is only a means of achieving an objective in living within society and state. Legal objective can be seen from its function to protect human

interest. Serving the function of protecting human interest, law has some targets to be achieved ^[9]. Meanwhile, the legal usefulness is the principle accompanying the principles of justice and law certainty. In implementing these principles, usefulness principle should be taken into account ^[10]. In relation to the law enforcement based on law certainty, justice, and usefulness aspects in civil servants' law, the government regulation Number 94 of 2021 about Discipline of Civil Servant is a new policy that expectedly can explain the employee problems in Indonesia. Therefore, there are some reasons of employee policy:

1. The basis of the issuance of old regulation has changed; thus, some adjustment is needed.
2. Law Number 6 of 2014 about Village, Civil Servants assigned to be Head of Village should also obey the provision of Civil Servant Disciplinary Regulation obligatorily.
3. Discipline enforcement can encourage Civil Servants to be more productive based on career system and work performance system.

For that reason, Government Regulation Number 94 of 2021 is a new policy that expectedly will be a better policy. Therefore, the application or the use of policy regulation should consider the following points ^[11]:

1. Matching and compatible to the objective of law providing space for the freedom to act (*beoordelingsvrijheid*);
2. Compatible to the common legal principles enacted such as:
 - a. Equality of treatment before the law;
 - b. Properness and fairness;
 - c. Balance;
 - d. Fulfillment of need and expectation; and
 - e. Feasibility considering anything relevant to public and community member interests.
 - f. Compatible and useful to the objective to be achieved.

In its implementation, Civil Servant discipline is a part of management in the function of controlling in organization; thus, Civil Servant discipline should be able to control the governmental employees better. This condition is in line with Ahmad Gufron stating that a variety of governmental organizations do all governmental activities either broadly or narrowly, a governmental organization is inseparable from the role of civil servants as the executor of national development. The quality of a governmental organization is dependent on the stakeholders or the rule authorized to undertake an authority. Consequently, the role and the position of civil servants are highly dependent on the performance of a governmental organization. In this case, the position of civil servants becomes very important because the smooth government and state development is inseparable from the role and participation of civil servants ^[12].

If a Civil Servant breaks obligation and prohibition, he/she will be punished according to the disciplinary regulation governing. Level and type of disciplinary punishment as governed in Government Regulation No. 53 of 2010 about Disciplinary Punishment are explained below.

Level and Type of Disciplinary Punishment include:

1. Level of Disciplinary Punishment consists of:
 - a. Mild disciplinary punishment;
 - b. Moderate disciplinary punishment; and
 - c. Severe Mild disciplinary punishment.
2. Type of Mild Disciplinary Punishment consists of:
 - a. Oral reprimand;
 - b. Written reprimand; and
 - c. Written statement of dissatisfaction.
3. Type of moderate disciplinary punishment consists of:
 - a. The periodical delay of salary raises for 1 (one) year;
 - b. Delay of promotion for 1 (one) year; and
 - c. Demotion to a lower level for 1 (one) year.
4. Type of severe disciplinary punishment consists of
 - a. Demotion to a lower level for 3 (three) years;
 - b. Displacement in the attempt of degradation of position to a lower level
 - c. Relief from position;
 - d. Disrespectful dismissal not on own request as Civil Servant; and
 - e. Disrespectful dismissal as Civil Servant

The change of disciplinary punishment level and type as governed in Government Regulation No.94 of 2021 as follows:

1. Level of disciplinary punishment consists of:
 - a. Mild disciplinary punishment;
 - b. Moderate disciplinary punishment; and
 - c. Severe disciplinary punishment.
2. Type of mild disciplinary punishment consists of:
 - a. Oral reprimand;

- b. Written reprimand; or
- c. Written statement of dissatisfaction.
3. Type of moderate disciplinary punishments:
 - a. Twenty five percent's cut in performance allowance for 6 (six) months;
 - b. Twenty five percent's cut in performance allowance for 9 (nine) months; and
 - c. Twenty five percent's cut in performance allowance for 12 (twelve) months.
4. Type of severe disciplinary punishment as mentioned in clause (1) letter c consists of:
 - a. degradation of position to a lower level for 12 (twelve) months;
 - b. the relief from current position to executive position for 12 (twelve) months; and
 - c. disrespectful dismissal not on request as Civil Servant

Table 1: The fundamental change can be presented in the chart below.

No	Government Regulation No 53 of 2010	Government Regulation No 94 of 2021
	Type of Severe Disciplinary Punishment	Type of Severe Disciplinary Punishment
1	Demotion to a lower level for 3 (three) years;	Demotion to a lower level for 12 (twelve) months
2	Displacement in the attempt of demotion to a lower level;	The relief from current position to the executive position for 12 (twelve) months; and
3	Relief from position;	Disrespectful Dismissal not on own request as Civil Servant
4	Disrespectful Dismissal not on own request as Civil Servant; and	
5	Disrespectful dismissal as Civil Servant	

The amendment to disciplinary punishment for Civil Servant in Government regulation No.53 of 2010 with the Government Regulation No.94 of 2021 is the change from severe disciplinary punishment type and level into the milder ones. It should be underlined that bureaucratic reform policy is the reflection of Civil Servant performance. Considering the normative analysis on the employee reform based on good governance principle is directed to improve the performance of competitive Civil Servant. Thus, it can activate and spur the development in the aspect of state life. Considering the analysis on governmental policy, the output expected by the author is the realization of bureaucratic reform spirit supporting the smooth integrated implementation of task and function of state governance and development to deal with globalization challenge in the format of global administrative governance as suggested by National Development Planning Agency of Indonesia.

The amendment to the disciplinary regulation, when analyzed using good governance principle, concerning the reduction and the change of severe disciplinary punishment relieving the punishment for those breaking disciplinary punishment will inhibit the achievement of good governance objective that has been mandated by the government. Bureaucracy should be able to encourage the development of good governance practice in public service. Such reduction of disciplinary punishment gives the Civil Servants an opportunity of doing breach, and therefore leads to the difficulty of realizing good governance.

Employee Management, according to Felix A Nigro and Liloyd G Nigro, includes assignment and selection, and development activities involving in-service training for promotion and dismissal^[13].

Dismissal is one of management elements regulated in the Law Number 5 of 2014 about State Civil Apparatus (Indonesian: Aparatur Sipil Negara, thereafter called ASN) as mentioned further in the Government Regulation Number 94 of 2021 about Civil Servant Discipline substituting for the Government Regulation No.53 of 2010. The new Government Regulation, in addition to governing the change of disciplinary punishment type, also governs the followings:

1. The addition of provision prohibiting Civil Servants from collecting any levies beyond the provision. Furthermore, "levy beyond provision" is the imposition unduly cost or the authority abuse to get money, commodity, or other forms for personal or others' interest conducted individually or collectively.
2. No longer governing the penal provisions; thus, the Civil Servants who breach discipline containing criminal element will be handled according to the provisions of penal legislation over the corresponding civil servant.
3. There is a change in the types of moderate and severe disciplinary punishments.
4. The simplification of authority distribution for the officer authorized to impose punishment
5. The establishment of investigating team is optional for the putative moderate breach of Disciplinary Punishment and is obligatory for the putative severe breach of Disciplinary Punishment. Previously the Government Regulation 53/2010 mentions that for the disciplinary breach with moderate and severe punishment threat, an Investigating Team can be established (optionally).
6. Direct superior neither calling nor investigating the Civil Servants putatively breaking the discipline and/or reporting the result of investigation to the Official authorized to punish will be imposed with severer Disciplinary Punishment.
7. In the case of the officials authorized to punish does not impose Disciplinary Punishment to the Civil Servants who breach the discipline, does not impose Disciplinary Punishment according to the Breach of Discipline committed by Civil Servants, they will be imposed with severer Disciplinary Punishment.

Previously, Government Regulation No.53 of 2010 states the officials aforementioned will be imposed with the type of disciplinary punishment equal to the one imposed to the Civil Servants who break the discipline.

8. Civil Servants breaking the provision about the permit of marriage and divorce for Civil Servants can be imposed with one of severe Disciplinary Punishment types according to the provision of Government Regulation No.94 of 2021.
9. Further provision on the obligation of Civil Servants to go to work and to comply with the provision of work hour will be regulated in the Minister of State Apparatus Utilization and Bureaucratic Reform's Regulation.
10. This provision of Government Regulation implementation will be regulated further in National Civil Service Agency.
11. Legislation constituting the implementation of legislation about the Discipline of Civil Servant existing before this enactment of Government Regulation remains to be effective as long as it is not in contradiction with and has not been amended based on Government Regulation.

The amendment to government regulation, viewed from civil servants law, exerts an effect on the pension right of Civil Servants as regulated in Article 21 of Law Number 5 of 2014 about State Civil Apparatus, stating that Civil Servants deserve: (a) salary, benefit, and facility; (b) furlough; (c) pension and old day insurances; (d) protection; and (e) competency development.

In employee field, to get pension a Civil Servant should meet certain requirements as regulated in the Law Number 11 of 1969 about Employee Pension and Employee Widow/Widower Pension. The requirements to get pension are as follows:

1. Dismissed respectfully
2. At least 20 year-tenure
3. At least 50 year-age

Considering the normative analysis on the pension right of Civil Servant, if a Civil servant is dismissed respectfully will get pension but if he/she is dismissed disrespectfully he/she will lose his/her pension right. Therefore, Civil Servant deserving pension is the one dismissed respectfully. And the civil servant dismissed disrespectfully will lose the pension right of civil servant.

Following the issuance of Government Regulation Number 94 of 2021 about Civil Servant Discipline, the type of severe disciplinary punishment changes as mentioned in Article 8 number (4), that sentence "the disrespectful dismissal not on own request as civil servant" is removed. The change of sentence brings an effect to the pension right of Civil Servant. Before the amendment to the regulation, there is a sentence "disrespectful dismissal", in the new regulation, the word *disrespectful* is removed and changed into a phrase *disrespectful dismissal not on own request* as the civil servant. The new Policy of Civil Servant discipline based on Government Regulation benefits the Civil Servants, because the removal of the word "disrespectful" every civil servant will get pension. Thus, all civil servants dismissed, either due to pension or due to breaking discipline, will get pension right.

Conclusion

The policy of the amendment to the regulation about the enforcement of disciplinary punishment exerts some effects. Firstly, the enforcement of severe disciplinary punishment imposes milder sanction because the type of Civil Servant disrespectful dismissal is removed. This condition gives the Civil Servants an opportunity of breaking the discipline that can inhibit the achievement of good governance. Secondly, with the removal of phrase "sanction of disrespectful dismissal", the Civil Servants imposed with disciplinary sanction will remain to get pension right. This condition has reduced the essence of building over the violation and does not give a building model containing reparatory principle in the civil servants' law.

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