

The Legal Status of Non-Civil-Servant Employees Appointed by Rectors at State Universities with Legal Entity Status: Between the Labor Law and Civil State Apparatus Regimes

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ABSTRACT

This article examines the legal status of non-civil-servant employees appointed by rectors at Indonesian State Universities with Legal Entity Status (Perguruan Tinggi Negeri Badan Hukum, PTN-BH). The issue is legally significant because PTN-BH institutions are autonomous public legal entities that perform state functions in higher education while simultaneously exercising managerial authority comparable to that of employers in ordinary employment relationships. Using normative legal research with statutory, conceptual, and prescriptive approaches, this study analyses whether rector-appointed non-civil-servant employees should be governed by the Civil State Apparatus (Aparatur Sipil Negara, ASN) regime or by Indonesian labor law. The analysis shows that these employees fall outside the formal scope of Law Number 20 of 2023 on the Civil State Apparatus because the ASN regime recognizes only Civil Servants (PNS) and Government Employees under Employment Agreements (PPPK), both of whom are appointed through the national civil-service management system. By contrast, the relationship between PTN-BH and rector-appointed employees contains the cumulative elements of an employment relationship under Indonesian labor law: work, wages, and command or subordination. The article argues that the problem is not a direct conflict between two statutes, but a regulatory vacuum arising from the hybrid institutional position of PTN-BH. Pending the enactment of a specific statutory framework, labor law provides the most coherent legal basis for protecting these employees' rights, including remuneration, social security, termination protection, and industrial dispute settlement. The article recommends regulatory harmonization to clarify their legal status while preserving the institutional autonomy of PTN-BH.

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Keywords: PTN-BH; non-civil-servant employees; labor law; civil state apparatus; employment relationship; legal certainty; regulatory vacuum

INTRODUCTION

Legal certainty is a core requirement of a state governed by law. In employment matters, legal certainty is not merely a formal ideal; it determines the source of rights, the standards of protection, the competent forum for dispute resolution, and the legal remedies available to workers. In the Indonesian constitutional context, the rule-of-law principle requires public institutions to exercise authority on the basis of clear legal norms and predictable institutional arrangements. This requirement becomes particularly important when public institutions enter into employment relationships that combine public-law and private-law characteristics (Hart, 2012; Fadli & Hadi, 2023).

State Universities with Legal Entity Status (Perguruan Tinggi Negeri Badan Hukum, hereinafter PTN-BH) occupy a distinctive position in Indonesian higher education governance. They are public legal entities established to perform state functions in higher education, yet they are granted extensive autonomy in academic, financial, organizational, and human-resource management. This autonomy is rooted in the national higher education framework and is intended to make universities more flexible, accountable, and competitive while preserving their public-service mandate

(Republic of Indonesia, 2012; Government of Indonesia, 2014; Pradhana, 2021; Nurhanifah & Kusdarini, 2022).

One of the most legally sensitive implications of PTN-BH autonomy is the authority to recruit, appoint, manage, and dismiss personnel independently. In practice, PTN-BH may employ lecturers, researchers, education personnel, administrative staff, and technical support workers who are not Civil Servants (Pegawai Negeri Sipil, PNS) and are not Government Employees under Employment Agreements (Pegawai Pemerintah dengan Perjanjian Kerja, PPPK). These employees are often appointed by rectors through internal university mechanisms and are commonly referred to as non-civil-servant employees or non-ASN employees (Utama, 2017; Sudrajat, 2024).

The legal problem arises because Indonesian positive law has not provided a comprehensive and explicit regime for this category of employees. On the one hand, PTN-BH institutions are public legal entities that perform public functions in the field of higher education. This public-law character may suggest proximity to the Civil State Apparatus (Aparatur Sipil Negara, ASN) regime. On the other hand, the working relationship between PTN-BH and rector-appointed employees commonly involves work, remuneration, managerial control, performance evaluation, disciplinary procedures, and termination mechanisms. These features resemble an employment relationship under labor law rather than an administrative appointment within the civil-service system (Soepomo, 2003; Darma, 2017; International Labour Organization, 2006).

This duality creates practical and doctrinal uncertainty. If these employees are treated as ASN personnel, their rights and obligations would be determined by public employment law, including merit-system recruitment, civil-service status, career management, and administrative dispute mechanisms. If they are treated as workers under labor law, their rights would derive from employment agreements, wage protection, social security, occupational protection, termination safeguards, and industrial dispute settlement. The determination of the applicable legal regime therefore has direct implications for legal protection, institutional accountability, and Good University Governance (Bovens et al., 2014; Busroh et al., 2024).

Previous studies have examined PTN-BH autonomy, higher education governance, civil-service reform, labor-law protection, and regulatory harmonization. However, the specific legal position of rector-appointed non-civil-servant employees in PTN-BH remains under-theorized. This article therefore addresses the following research questions: first, whether rector-appointed non-civil-servant employees at PTN-BH fall within the scope of the ASN regime; second, whether their relationship with PTN-BH satisfies the elements of an employment relationship under labor law; and third, what legal framework should be applied to ensure legal certainty and adequate protection. The article contributes to Indonesian administrative and labor-law scholarship by conceptualizing the issue as a regulatory vacuum rather than a simple conflict between the ASN Law and labor law.

Literature Review and Conceptual Framework

1. Legal Certainty and the Rule of Law

Legal certainty requires that legal subjects be able to identify the applicable legal norms, the authority that governs their legal relationship, and the remedies available when rights are violated. In legal theory, certainty is associated with clarity, consistency, accessibility, and non-arbitrariness of legal norms. Hart's distinction

between primary and secondary rules is useful in this context because the legal status of employees depends not only on substantive rights but also on the secondary rules that identify competent authorities and valid legal sources (Hart, 2012). In Indonesian legal scholarship, legal certainty also functions as a foundation for the predictability of administrative action and the protection of individuals from arbitrary decision-making (Fadli & Hadi, 2023; Afifah & Warjiyati, 2024).

The uncertainty surrounding PTN-BH non-civil-servant employees affects both individual and institutional dimensions of legal certainty. Individually, employees may be uncertain about wages, career pathways, social security, termination procedures, and dispute settlement. Institutionally, PTN-BH may face uncertainty in designing internal employment regulations, determining budgetary obligations, and managing accountability to stakeholders. A legal framework that leaves workers between public employment law and labor law therefore risks weakening both employee protection and university governance.

2. PTN-BH Autonomy and Good University Governance

PTN-BH autonomy represents a shift from a highly bureaucratic model of higher education administration toward a more flexible public-entity model. Under the Higher Education Law and its implementing regulations, PTN-BH have authority over academic affairs, institutional organization, finance, and human resources. The purpose of autonomy is not to detach universities from public responsibility, but to enable them to achieve quality, responsiveness, and institutional innovation within a public-service framework (Republic of Indonesia, 2012; Government of Indonesia, 2014; Nurhanifah & Kusdarini, 2022).

Good University Governance requires autonomy to be balanced by accountability, fairness, transparency, responsibility, and legal compliance. In public-sector governance theory, accountability is a structural requirement by which public institutions explain and justify their decisions to those affected by them (Bovens et al., 2014). In the PTN-BH context, this means that universities may manage human resources autonomously, but the legal status and protection of employees must remain normatively clear. Autonomy without a clear employment regime may create managerial flexibility, but it also creates risks of unequal protection, inconsistent employment standards, and arbitrary institutional discretion (Pradhana, 2021; Maskur et al., 2024).

3. Civil State Apparatus, Labor Law, and Employment Relationship

The ASN regime is a public-employment regime. Law Number 20 of 2023 on the Civil State Apparatus recognizes ASN employees as consisting of PNS and PPPK. These categories are integrated into a national civil-service management system and are appointed by competent personnel management officials in accordance with statutory procedures (Republic of Indonesia, 2023b). Civil-service law therefore emphasizes public authority, administrative appointment, merit-based recruitment, career management, and state personnel administration (Mahfud, 1988; Hartini et al., n.d.; Yusriadi, 2020).

Labor law, by contrast, regulates employment relationships characterized by work, wages, and command or subordination. Indonesian labor law defines an employment relationship as a relationship between an employer and a worker based on an employment agreement that contains the elements of work, wages, and orders. This formulation is broadly consistent with the protective rationale of labor law and with the

International Labour Organization's emphasis that the existence of an employment relationship should be determined by the actual performance of work and the worker's dependence or subordination, rather than merely by the formal title used by the parties (Republic of Indonesia, 2003; International Labour Organization, 2006; Darma, 2017; Kaharudin, 2023).

The conceptual distinction is therefore clear: ASN status arises from a public-law appointment within a statutory civil-service system, whereas worker status arises from the substantive elements of an employment relationship. The difficulty in the PTN-BH context lies in the fact that the employer is a public legal entity, while the relationship with non-civil-servant employees is commonly structured through contractual and managerial mechanisms.

4. Regulatory Vacuum and Harmonization of Norms

Indonesian legal reasoning commonly applies principles such as *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, and *lex posterior derogat legi priori* to resolve normative conflicts. However, these principles apply most clearly when two norms regulate the same legal subject in inconsistent ways. Where one statute does not regulate a particular legal subject at all, the problem is better described as a legal gap or regulatory vacuum rather than a direct conflict of norms (Soeprapto, 2007; Istanto, 2024).

Regulatory harmonization is necessary when institutional developments create legal subjects that do not fit neatly within existing categories. The transformation of state universities into autonomous public legal entities has created precisely such a situation. PTN-BH human-resource autonomy has expanded faster than the statutory framework governing employees appointed through internal university mechanisms. This gap requires interpretive and legislative solutions that secure legal certainty without undermining institutional autonomy (Chandranegara, 2019; Busroh et al., 2024).

METHOD

This study uses normative legal research. The object of analysis is not empirical behavior in a particular university, but the normative status of rector-appointed non-civil-servant employees within Indonesia's legal system. Normative legal research is appropriate because the research questions concern the interpretation, systematization, and prescriptive evaluation of legal norms, legal concepts, and legal principles (Marzuki, 2005; Charda, 2021).

The study applies three approaches. First, the statutory approach examines the Constitution of the Republic of Indonesia, the Higher Education Law, the Manpower Law as amended by the Job Creation framework, the Civil State Apparatus Law, the Industrial Relations Dispute Settlement Law, and implementing regulations governing higher education management. Second, the conceptual approach analyses the concepts of legal certainty, public legal entity, employment relationship, employer, worker, civil-service appointment, regulatory vacuum, and legal harmonization. Third, the prescriptive approach formulates the most appropriate legal construction for protecting rector-appointed non-civil-servant employees at PTN-BH.

The legal materials consist of primary legal materials, including statutes and government regulations, and secondary legal materials, including books, journal articles, and legal scholarship on civil-service law, labor law, PTN-BH autonomy, and

regulatory harmonization. The materials are analysed through legal interpretation, systematization, and prescriptive legal reasoning. The analysis proceeds by identifying the scope of the ASN regime, testing the elements of an employment relationship under labor law, and determining whether the issue constitutes normative conflict or regulatory vacuum.

RESULTS AND DISCUSSION

4.1. PTN-BH as Autonomous Public Legal Entities

PTN-BH are autonomous public legal entities within the Indonesian higher education system. Their legal status gives them a degree of institutional autonomy that differs from ordinary ministerial work-unit universities and public-service-agency universities. This autonomy includes the capacity to manage internal organization, financial resources, academic policy, and human resources. In personnel management, PTN-BH may establish internal employment arrangements that support institutional needs, including the recruitment of non-civil-servant employees (Republic of Indonesia, 2012; Government of Indonesia, 2014; Utama, 2017).

This autonomy is central to the PTN-BH model, but it creates a hybrid institutional structure. PTN-BH remain part of the public higher education system and continue to perform state functions in education. At the same time, their legal-entity status gives them managerial authority similar to independent legal entities. The result is a public institution that is not identical to an ordinary state administrative unit and not identical to a private employer. This hybridity is the root of the legal ambiguity examined in this article (Pradhana, 2021; Nurhanifah & Kusdarini, 2022; Maskur et al., 2024).

The authority to appoint personnel is especially important. When a rector appoints an employee through internal university procedures, the appointment is not automatically equivalent to a civil-service appointment. It may be an exercise of university autonomy rather than an exercise of statutory civil-service appointment authority. This distinction is decisive because ASN status is not created merely by working for a public institution; it is created by appointment into legally recognized ASN categories through procedures and authorities established by the ASN regime.

4.2. Rector-Appointed Non-Civil-Servant Employees under the ASN Regime

Law Number 20 of 2023 on the Civil State Apparatus recognizes ASN employees as consisting of PNS and PPPK. Both categories are integrated into the national civil-service management system. PNS status is associated with permanent civil-service appointment, while PPPK status is based on a government employment agreement within the ASN framework. The law does not create a third category of ASN employees for rector-appointed non-civil-servant employees of PTN-BH (Republic of Indonesia, 2023b).

For this reason, rector-appointed non-civil-servant employees cannot be classified as PNS unless they are appointed through the legally required civil-service recruitment and appointment mechanisms. They also cannot be classified as PPPK merely because they work in a public university, because PPPK status requires appointment through the government system and by competent personnel management authorities. Internal university recruitment may create an institutional employment relationship, but it does not by itself confer ASN status (Hartini et al., n.d.; Sudrajat, 2024).

The rector's authority must therefore be distinguished according to its legal basis. A rector may have authority under PTN-BH internal governance to recruit and appoint institutional employees. However, that authority is not the same as the authority to create ASN status under national civil-service law. Consequently, the fact that PTN-BH performs public functions in higher education does not transform all persons working within it into ASN personnel. Public function and public employment status are related but not identical legal concepts.

This conclusion is reinforced by the protective structure of the ASN regime. ASN law is designed to regulate personnel who are incorporated into state personnel administration, including merit-based recruitment, career development, performance management, disciplinary responsibility, and state-funded welfare arrangements. Non-civil-servant employees appointed internally by PTN-BH do not necessarily enter this system. Their exclusion from ASN status therefore creates a protection problem, but it does not justify artificially classifying them as ASN in the absence of statutory basis (Yusriadi, 2020; Wahyudin et al., 2023).

4.3. The Labor Law Character of the PTN-BH Employment Relationship

The relationship between PTN-BH and rector-appointed non-civil-servant employees aligns more closely with labor law. Article 1 point 15 of the Manpower Law defines an employment relationship as a relationship between an employer and a worker based on an employment agreement that contains the elements of work, wages, and orders. These three cumulative elements are generally present in the PTN-BH relationship with non-civil-servant employees (Republic of Indonesia, 2003).

First, the element of work is present because these employees perform duties required by the university, such as administration, academic support, technical services, laboratory assistance, information technology, finance, student services, or other institutional functions. The work is not merely incidental; it supports the regular operation of the university as a public higher education institution.

Second, the element of wages is present when employees receive remuneration, honoraria, salaries, allowances, or other compensation in exchange for their services. The legal label of the payment is not determinative. What matters is that the employee receives economic compensation for work performed under the institution's authority. This aligns with the protective rationale of labor law, which treats remuneration as evidence of dependence and as a basis for wage protection (Soepomo, 2003; Kaharudin, 2023).

Third, the element of orders or subordination is present when employees are subject to the managerial direction of PTN-BH authorities. They may be required to follow work schedules, job descriptions, internal rules, performance standards, supervision, evaluation, and disciplinary procedures. This managerial control is the clearest indicator that the relationship is not an independent civil arrangement but an employment relationship. The ILO similarly emphasizes that the determination of employment status should consider factual performance, dependency, and subordination rather than merely the contract's formal designation (International Labour Organization, 2006).

PTN-BH can also be understood as an employer for the purposes of labor law. As a legal entity, PTN-BH can recruit personnel, provide compensation, issue internal rules, supervise work, impose discipline, evaluate performance, and terminate employment. These are typical employer functions. The public legal-entity character

of PTN-BH does not remove the applicability of labor law when the substantive elements of an employment relationship are fulfilled.

4.4. Regulatory Vacuum Rather than Direct Normative Conflict

The relationship between the ASN regime and labor law in this context should not be framed as a direct conflict of norms. A direct conflict would exist if the ASN Law and labor law regulated the same legal subject in incompatible ways. Here, however, the ASN Law does not expressly regulate rector-appointed non-civil-servant employees of PTN-BH as ASN employees. It recognizes only PNS and PPPK. Therefore, the ASN Law does not provide a complete legal basis for their status, rights, or remedies (Republic of Indonesia, 2023b).

Conversely, labor law applies broadly to employment relationships that contain work, wages, and orders. Where those elements exist, labor law provides a general protective framework. The application of labor law to PTN-BH non-civil-servant employees therefore does not contradict the ASN Law, because these employees are not within the ASN Law's defined personnel categories. The better characterization is that Indonesian law contains a regulatory vacuum concerning employees who work for autonomous public legal entities but are not incorporated into the civil-service system.

This regulatory vacuum reflects a gap between institutional reform and legal regulation. The state has granted PTN-BH extensive autonomy, including personnel autonomy, but has not simultaneously created a comprehensive statutory regime for employees recruited through internal PTN-BH mechanisms. As a result, a category of workers has emerged that contributes to public service delivery but lacks clear statutory classification. This condition undermines legal certainty and risks unequal protection among persons performing comparable work within public higher education (Soeprapto, 2007; Chandranegara, 2019; Busroh et al., 2024).

Traditional principles such as *lex specialis* and *lex posterior* are therefore insufficient. The ASN Law may be *lex specialis* for ASN personnel, but it is not *lex specialis* for persons whom it does not regulate. Labor law, while more general, is applicable because it regulates the substantive relationship that actually exists. Until a specific statute is enacted for PTN-BH non-civil-servant employees, labor law functions as the most coherent residual and protective framework.

Table 1. Normative differentiation between the ASN regime and the labor-law regime for rector-appointed PTN-BH employees

Analytical criterion	ASN regime	Labor-law regime	Implication for PTN-BH non-civil-servant employees
Legal basis	Law No. 20 of 2023 on Civil State Apparatus	Law No. 13 of 2003 on Manpower, as amended, and related industrial-relations legislation	ASN applies only if the employee is legally appointed as PNS or PPPK; otherwise labor law should be examined.
Legal subject	PNS and PPPK	Workers/laborers in an employment relationship	Rector-appointed employees are not a third ASN category under the current statute.
Mode of creation	Public-law appointment through competent civil-service authority	Employment agreement or factual employment relationship containing work, wages, and orders	Internal rectoral appointment more closely resembles institutional employment unless it follows ASN appointment procedures.
Institutional character	State personnel administration	Employer-worker relationship	PTN-BH public status does not exclude labor law when

			employment elements are fulfilled.
Protection and remedies	Civil-service management and administrative remedies	Labor rights, social security, termination protection, and industrial dispute settlement	Labor law is the current protective framework pending specific PTN-BH employment legislation.

Source: Author's legal analysis based on Indonesian ASN and labor-law frameworks.

4.5. Legal Consequences of Applying Labor Law

Applying labor law to rector-appointed non-civil-servant employees has several legal consequences. First, their employment relationship should be grounded in a clear written employment agreement or internal employment instrument that specifies job duties, remuneration, term of employment, working time, performance obligations, social security registration, disciplinary procedures, and termination mechanisms. Clarity at the contractual level is essential to prevent unilateral and arbitrary managerial practices.

Second, these employees should receive labor-law protection concerning wages, equal treatment, occupational safety and health, leave, social security, and protection against unlawful termination. The exact content of these rights depends on the applicable statutory provisions, employment agreement, and institutional regulations, but PTN-BH should not use legal ambiguity to reduce minimum worker protection. The protective purpose of labor law is especially relevant because employees are structurally subordinate to the university's managerial authority (Soepomo, 2003; Darma, 2017; Kaharudin, 2023).

Third, disputes arising from the employment relationship should generally be resolved through industrial-relations mechanisms, unless a specific statute provides otherwise. Law Number 2 of 2004 on Industrial Relations Dispute Settlement provides mechanisms for resolving disputes concerning rights, interests, termination, and disputes between labor unions in one enterprise. Where the dispute concerns wages, contract performance, termination, or other employment rights, labor-law dispute settlement is more appropriate than administrative civil-service remedies because the employees are not ASN personnel (Republic of Indonesia, 2004).

Fourth, PTN-BH internal regulations should be harmonized with national labor-law standards. Autonomy permits universities to design employment policies suited to institutional needs, but autonomy cannot function as a justification for evading statutory labor protection. Institutional rules should therefore specify the categories of PTN-BH employees, recruitment procedures, employment agreements, career pathways, performance evaluation, sanctions, social security, and termination procedures. Such internal regulation would support both employee protection and Good University Governance.

4.6. Toward Regulatory Harmonization

Although labor law currently provides the most appropriate framework, reliance on general labor law alone is not a perfect long-term solution. PTN-BH are public legal entities with public mandates, public accountability obligations, and institutional features that differ from private corporations. Their employees may perform functions that directly support public education. A future regulatory framework should therefore recognize the hybrid nature of PTN-BH employment.

Regulatory harmonization should address at least five issues. First, legislation should define the category of PTN-BH non-civil-servant employees and distinguish it from PNS, PPPK, outsourced workers, and independent contractors. Second, it should

clarify the appointment authority of rectors and the legal effects of rectoral appointment. Third, it should establish minimum employment rights, including remuneration, social security, occupational protection, career development, and termination safeguards. Fourth, it should determine the competent forum for resolving employment disputes. Fifth, it should align PTN-BH autonomy with national labor standards and higher education governance principles (Utama, 2017; Busroh et al., 2024).

The policy objective should not be to eliminate PTN-BH autonomy, but to make autonomy legally accountable. A clear statutory framework would protect employees, assist universities in managing human resources predictably, and reduce disputes arising from unclear status. It would also prevent the emergence of parallel employment categories that perform public functions without adequate legal protection.

CONCLUSION

Rector-appointed non-civil-servant employees at PTN-BH occupy an ambiguous legal position within Indonesia's public employment framework. Although they work in public legal entities that perform state functions in higher education, they do not fall within the formal scope of the ASN regime under Law Number 20 of 2023. The ASN regime recognizes only PNS and PPPK, both of which require appointment through the national civil-service system and competent personnel management authorities. Internal appointment by a PTN-BH rector does not by itself confer ASN status.

At the same time, the relationship between PTN-BH and rector-appointed non-civil-servant employees generally contains the elements of an employment relationship under labor law: work, wages, and orders or subordination. These elements indicate that labor law provides the most appropriate current legal basis for protecting their rights. Accordingly, they should receive protection concerning remuneration, social security, occupational protection, termination safeguards, and access to industrial-relations dispute settlement.

The core problem is not a direct normative conflict between the ASN Law and labor law, but a regulatory vacuum created by the hybrid position of PTN-BH as autonomous public legal entities. Indonesian law has granted universities personnel autonomy without establishing a comprehensive statutory framework for employees appointed through internal PTN-BH mechanisms. Pending legislative reform, labor law should function as the primary protective framework. In the long term, regulatory harmonization is required to define the status, rights, obligations, and remedies of PTN-BH non-civil-servant employees while preserving university autonomy and strengthening Good University Governance.

Recommendations

First, the government should issue a specific legal framework governing non-civil-servant employees at PTN-BH. The framework should clarify their legal status, appointment mechanism, employment rights, social security protection, and dispute settlement forum.

Second, PTN-BH institutions should review and harmonize their internal employment regulations with national labor-law standards. Internal autonomy should be used to strengthen institutional professionalism, not to create uncertain or inferior employment protection.

Third, rectoral appointment instruments should clearly state the legal basis, employment category, duration, remuneration, duties, evaluation mechanism, and termination procedure. This would reduce disputes and increase legal certainty for both employees and universities.

Fourth, further empirical socio-legal research should examine how different PTN-BH institutions regulate non-civil-servant employees in practice, including variations in contracts, remuneration, social security, career development, and dispute handling. Such empirical research would complement this article's normative analysis.

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