
| RESEARCH ARTICLE

The Principle of Legal Certainty in Dismissal of Civil Servants who have Reached the Retirement Age Limit and are Undergoing the Corruption Criminal Court Process

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| ABSTRACT

Civil Servant (PNS) is any government official who is part of the State Civil Apparatus (ASN) and has a working relationship with the state. The relationship is that civil servants are obliged to work in a government position and get protection and fulfillment of their rights. As *ius constitutum*, regulation of civil servants in Indonesia is regulated in Law Number 5 of 2014 concerning State Civil Apparatuses, which regulates retirement guarantees. In its implementation, obstacles arise if there are civil servants who have reached the Retirement Age Limit but at the same time are undergoing a corruption trial process that has not been *inkracht*. These Obstacles are the impact of the absence of the principle of legal certainty. The purpose of this study is to find out the legal regulations/norms regarding the dismissal of civil servants who have entered the retirement age limit and are currently undergoing a criminal justice process for corruption and the obstacles to its implementation from the aspect of the principle of legal certainty. The type of research used in this article is normative legal research. The results of the study, based on positive legal, show that the dismissal of civil servants who have reached the Retirement Age Limit has been regulated in Law Number 5 of 2014 concerning State Civil Apparatuses and their implementing regulations. However, there is still a void in legal norms governing civil servants who enter the Retirement Age Limit but at the same time undergo a trial process for criminal acts of corruption. This situation that the principle of legal certainty was not fulfilled and hampered the process of law enforcement in the state administration. For this reason, local governments are advised to immediately change or add to the legal norms contained in the Laws and Regulations, which specifically regulate civil servants who have entered the Retirement Age Limit but at the same time are undergoing a criminal justice process, so as to provide legal certainty and not create obstacles of the law of state administration.

| KEYWORDS

Civil Servants, The Principle Of Legal Certainly, State Administrasi Law

| ARTICLE INFORMATION

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1. Introduction

The National Goals of the Republic of Indonesia are expressly stated in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, "to protect the entire Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace, and social justice". In order to realize these national goals, a good Indonesian State Administration System was formed based on the principles of people's sovereignty and the rule of law. This means that all decisions and/or government administration actions must be based on people's sovereignty and law, which is a reflection of Pancasila as the state ideology.

The preamble of the 1945 Constitution of the Republic of Indonesia contains the concept of the rule of law. This concept wants to achieve prosperity and welfare for all people, as it reads, "Subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve

public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice".¹

The achievement of a good Indonesian State Administration System requires performance support from Civil Servants. According to Dr Johann Heinrich Adolf Logemann, Civil Servant, hereinafter abbreviated as PNS, is any government official who has a working relationship with the state. The relationship in question is that every official who does a job in a government position will get a salary in the form of rewards and other benefits.²

Civil Servants are part of the State Civil Apparatus. The law concerning Civil Servants in Indonesia is Law Number 5 of 2014 concerning State Civil Apparatuses. Civil Servants are entitled to salary, benefits, facilities; paid leave; pension and old age security; protection; and competency development. With these rights, it encourages the performance of Civil Servants so that they always carry out their duties properly, professionally and responsibly. The protection and fulfillment of the rights of Civil Servants are important for achieving a decent standard of living. The government has an obligation to realize this right as well as possible.

To implement Law Number 5 of 2014, Government Regulation Number 11 of 2017 concerning the Management of Civil Servants was issued. The scope of Management of Civil Servants referred to in the regulation is contained in Article 2, which is about dismissal, retirement benefits and old age benefits. Then in article 350, paragraph (5), which reads, "*Further provisions regarding procedures for the retirement preparation period are regulated by a Regulation of the Head of BKN* ", used as a basis or a more technical legal basis for issuing Regulation of the Republic of Indonesia Civil Service Agency Number 2 of 2019 Concerning Procedures for Retirement Preparation Period.

The Law concerning Civil Servants above contains the legal norms that become *ius constitutum* in Indonesia. Every regulation must be enforced, which is none other than its effective implementation. Law is a set of rules that are normative in statutory regulations.³ In the development of its implementation, the application of the law on laws and regulations concerning the Dismissal of Civil Servants has encountered obstacles. These obstacles occur because there is still a void in legal regulations that have an impact on fulfilling aspects of legal certainty. The vacancy in legal regulation occurs when a Civil Servant (PNS) who has reached the Retirement Age Limit (BUP) is about to be dismissed, but at the same time, the Civil Servant (PNS) is being detained or becomes a suspect in a criminal act of corruption.

Obstacles due to the absence of the principle of legal certainty regarding the dismissal of civil servants who have reached the Retirement Age Limit (BUP) and who are being detained or have become suspects in a criminal act of corruption have occurred in the Government of Magetan. The impact is the emergence of uncertainty about the employment status of the civil servant, whether dismissed or still holding the status of a Civil Servant when the person concerned has actually entered the Retirement Age Limit (BUP). As a result of this legal event, the civil servant who felt disadvantaged filed a State Administrative Dispute Lawsuit against the Head of the Surabaya State Administrative Court; it was registered at the Registrar's Office of the Surabaya State Administrative Court on February 24 2021, Register Number: 24/G/ 2021/PTUN. SBY. According to him, the object of the dispute (decree) issued by the Government of Magetan was deemed to have violated the General Principles of Good Governance (AAUPB), which is considered to have violated the Principle of Legal Certainty.

From the descriptions of the legal issues above, there are legal issues about obstacles to the implementation of legal rules because there is still a vacuum in legal regulations that have an impact on fulfilling aspects of legal certainty. The author also assumes that if these regulations are not immediately reviewed, changed, or additions to legal norms are made. It is possible that the same problems will occur and have the potential to hinder law enforcement.

¹ Hartini, S. (2011). Upaya Keberatan Terhadap PNS yang Dijatuhi Hukuman Pemberhentian Tidak Dengan Hormat. *Jurnal Dinamika Hukum*, 11 (2), 358-365.

² Wyasa, L. R. (1993). *Hukum Sebagai Suatu Sistem*. Bandung: Remaja Rosdakarya, hal. 20.

³ Hartini, S. (2009). Penegakan Hukum Netralitas Pegawai Negeri Sipil (PNS). *Jurnal Dinamika Hukum*, Vol 9 No 3. Dipetik Juni 2, 2023, dari <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/237/201>

2. Method

Research is a principal tool in the development of science and technology. This is because the research aims to reveal the truth in a systematic, methodological, and consistent manner.⁴ The type of research method used in this article is normative legal research, namely research conducted by examining various formal legal rules such as laws, regulations and literature containing theoretical concepts, then linked to the writing of this article. The nature of the legal research used by the author is descriptive and analytical research, which aims to explain and analyze the Regulations Concerning the Dismissal of Civil Servants Who Have Retired Age Limits and Are Undergoing a Corruption Crime Trial Process from the perspective of the principle of legal certainty.

The approach method used is the statutory approach. The data used in this research comes from secondary data with primary legal materials coming from the 1945 Constitution of the Republic of Indonesia and its amendments, Law Number 5 of 2014 concerning State Civil Apparatus, Law Number 30 of 2014 concerning Government Administration, Government Regulation Number 11 of 2017 concerning State Civil Apparatus Management and other implementing regulatory instruments, including Regulation of the Republic of Indonesia Civil Service Agency Number 2 of 2019 concerning Procedures for the Retirement Preparation Period. Secondary legal materials come from various journals, scientific papers, articles, data from the internet, and other literature relevant to the legal issues to be researched.

3. Results and Discussion

3.1 Laws Regarding Dismissal of Civil Servants Who Have Retired Age Limits (BUP) in Indonesia.

Good governance means the implementation of the principle of people's sovereignty and the rule of law. It means that all decisions and/or government administrative actions must be based on people's sovereignty and law, which are reflections of Pancasila as the state ideology. Good governance is not only based on the principles of good governance itself but the legality and actions of the government have relevance to applicable law.⁵ Thus all government administrative actions should be based on positive legal arrangements or in accordance with existing laws and regulations in the State of Indonesia so that the administration of state government runs in an orderly, smooth, ideal manner which then leads to achieving the ideals of nation building.

Civil Servants (PNS) are part of the State Civil Apparatus (ASN). The law concerning Civil Servants (PNS) in Indonesia is Law Number 5 of 2014 concerning State Civil Apparatuses. Civil Servants (PNS) are entitled to salary, benefits, facilities; paid leave; pension and old age security; protection; and competency development. The existence of these rights encourages the performance of Civil Servants so that they always carry out their duties properly, professionally and responsibly. The protection and fulfillment of the rights of Civil Servants are important for achieving a decent standard of living. The government has an obligation to realize this right as well as possible.⁶ These rights are ideally guaranteed by the state because Civil Servants have an important role and are the backbone of the government in carrying out national development.⁷

To implement Law Number 5 of 2014, Government Regulation Number 11 of 2017 concerning the Management of Civil Servants was issued. The scope of Management of Civil Servants referred to government regulation is contained in Article 2:

"a. preparation and determination of needs; b. procurement; c. rank and position; d. career development; e. career pattern; f. promotion; g. mutation; h. performance assessment; i. payroll and benefits; j. award; k. discipline; l. dismissal; m. pension and old age security; and n. protection."

For Civil Servants who enter the Retirement Age Limit (BUP), Government Regulation Number 11 of 2017 is regulated in Article 350:

"(1) PNS who will reach the Retirement Age Limit as referred to in Article 239, before being honorably discharged as Civil Servant (PNS) with retirement rights, may take a retirement preparation period and be released from the State Civil Apparatus (ASN) Position.

(2) The retirement preparation period, as referred to in paragraph (1), is for a maximum period of 1 (one) year.

(3) During the retirement preparation period, as referred to in paragraph (2), the civil servant concerned receives pension preparation period money every month in the amount of 1 (one) time the last civil servant salary received.

⁴ Prof. Dr. Soerjono Soekanto, S. M. (2015). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, hal. 1.

⁵ Dr. H. Yusri Munaf, S. M. (2016). *Hukum Administrasi Negara*. Pekanbaru: Marpoyan Tujuh, Prolog.

⁶ Etwar Hukunala, J. M. (2022). Perlindungan Hukum Bagi Pegawai Honorar Setelah Berlakunya Undang-Undang Nomor 5 Tahun 2014. *Tatohi Jurnal Ilmu Hukum*, Vol. 2 No. 3, 295. Dipetik Nopember 30, 2022, dari <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/download/922/562>

⁷ Daud, A. N. (2022). Hukum Kepegawaian Dan Hak-Hak Kepegawaian Non PNS. *Jurnal Inovasi Hukum*, Vol 1 no 1. Dipetik Juni 3, 2023, dari <https://jurnalinovasihukum.com/index.php/jih/article/view/1>

(4) In the event that there is a reason for urgent service interests, the application for a civil servant retirement preparation period may be rejected or postponed.

(5) Further provisions regarding procedures for the retirement preparation period are regulated by a Regulation of the Head of BKN.

The provisions of Article 350 paragraph (5) above are used as the legal basis for issuing the Republic of Indonesia Civil Service Agency Regulation Number 2 of 2019 concerning Procedures for the Retirement Preparation Period, which technically regulates:

"a. Retirement Preparation Period; b. Authority for Determining the Granting of a Retirement Preparation Period; c. Procedures and Requirements in Determining Granting, Rejecting, or Suspension of the Retirement Preparation Period; and e. Rights and Obligations of PNS During Retirement Preparation Period."

Government Regulation Number 11 of 2017, Concerning the Management of Civil Servants, also regulates the Termination of Civil Servants. One of the grounds for dismissal regulated in this government regulation is dismissal for committing a crime/misconduct, which is regulated in Article 250:

"Civil servants are dismissed dishonorably when:

- a. Commit deviations from Pancasila and the 1945 Constitution of the Republic of Indonesia;
- b. Sentenced to imprisonment or confinement based on a court decision that has permanent legal force for committing a criminal act of occupational crime or a criminal offense related to the office and/or general crime;
- c. Become a member and/or administrator of a political party; or
- d. 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 a crime committed with premeditation.

The law concerning Civil Servants above contains the legal norms that become *ius constitutum* in Indonesia. As a state based on law, every state action must be based on law, which is a reflection of Pancasila as the state ideology. The statement regarding the constitutional state is clearly stated in the General Explanation of the 1945 Constitution concerning the Government System, namely, "Indonesia is a state based on the law (*rechtstaat*) and not on the basis of power itself (*machstaat*).

The rule of law theory has been announced by several legal experts and philosophers in the world. In the Anglo-Saxon regions, the concept of the rule of law is called "*rule of law*", while in the jurisdiction of Continental Europe, it is named "*rechtsstaat*".

Freidrich Julius Stahl presented the concept of thinking about "*rechtsstaat*" by suggesting the elements of the rule of law, consisting of⁸ : recognition of the basic rights of citizens; their separation or division of state power to guarantee human rights or what is commonly known as "*Trias Politica*"; governance based on rules (*wetmatigheid van bestuur*); and the existence of administrative justice in disputes. According to Scheltema, *rechtsstaat* is a rule of law theory that applies in Continental European countries; the elements of the rule of law are⁹ legal certainty; equality; democracy; public service government.

J.B.J.M. ten Berge put forward the principles of the rule of law, namely: a) the principle of legality, which is interpreted as a restriction on the freedom of citizens (by the government) must be found in the law, which is a general regulation. Laws, in general, must provide guarantees (to citizens) from arbitrary (government) actions, collusion, and various kinds of wrong actions. The exercise of authority by government organs must be based on written laws (formal laws); b). Protection of human rights; c). The government is bound by law.; d). Government coercion monopoly to ensure law enforcement. The law must be upheld when the law is violated. The government must guarantee that in the midst of society, there are juridical instruments for law enforcement. The government can coerce someone who breaks the law through the country's justice system. Enforcing public law is principally the duty of the government; e). Oversight by independent judges. Legal superiority cannot be displayed if legal rules are only implemented by government organs. Therefore, in every rule of law are necessary to supervise by an independent judge.¹⁰

As the same formulation, H.D. van Wijk/Willem Konijnenbelt presented the principle *rechtsstaat* are as follows: a) Governance based on law; the government only has the authority expressly granted by the Constitution or other laws; b) Human rights, meaning that there are very fundamental human rights that must be respected by the government; c) Distribution of powers; government authorities may not be concentrated in one institution, but must be divided into different organs so that they supervise each other

⁸ Dr. Nany Suryawati, S. M. (2020). *Hak Asasi Politik Perempuan*. Gorontalo. Dipetik Desember 12, 2022, dari <http://repositori.ukdc.ac.id/524/>

⁹ *Ibid.* hal. 14

¹⁰ *Ibid.* hal. 8

which is intended to maintain balance; d). supervision of judicial institutions; the implementation of government power must be able to be assessed on its legal aspects by an independent judge.¹¹

Mochtar Kusumaatmadja interprets a state based on the law in consequence that in state administration, power must be respected before the law, and everyone shall be equal before the law. So, every act committed by the citizens and the governments must be legally accountable without the slightest exception.¹²

From the various expert opinions regarding the rule of law and the rule of law principles, it can be interpreted that as a state based on the law (a rule of law), when running the country, the government shall be formed and based on the applicable laws and regulations. Including the dismissal of civil servants in Indonesia, as it ruled in Law Number 5 of 2014 concerning State Civil Apparatus, which was derived in implementing regulations in the Government Regulation Number 11 of 2017 concerning State Civil Apparatus Management. Then translated into Regulations of the Head of the Personnel Agency Republic of Indonesia Number 2 of 2019 concerning Procedures for the Retirement Preparation Period.

3.2 The Principle of Legal Certainty in Regulations Concerning Dismissal of Civil Servants Who Have Retired Age Limits (BUP) and Are Undergoing Corruption Criminal Court Processes in Indonesia.

The rule of law concept always upholds justice and the protection of human rights. The law is expected to be a norm that must be obeyed and respected by every citizen, which is usually stated in national goals. In the development of its implementation, the application of the law on laws and regulations concerning the Dismissal of Civil Servants (PNS) has encountered obstacles. This obstacle occurs because there is still a vacuum in regulating legal norms, which has an impact on fulfilling aspects of legal certainty. The vacancy in legal regulation occurs when a Civil Servant (PNS) who has reached the Retirement Age Limit (BUP) is about to be dismissed, but at the same time, the Civil Servant (PNS) is being detained or becomes a suspect in a criminal act of corruption.

Legal arrangements regarding the dismissal of Civil Servants (PNS) are actually contained in Law No. 5 of 2014 concerning State Civil Apparatuses and their derivative regulations, as shown in the table below:

Table 1

List of related laws and regulations with Dismissal of Civil Servants

No	Legal / Regulatory Products	Concerning
1	The 1945 Constitution of the Republic of Indonesia	Along With Amendments I, II, III, IV
2	Law Number 5 of 2014	State Civil Apparatus
3	Law Number 30 of 2014	Government administration
4	Government Regulation Number 11 of 2017	Civil Servants Management
5	Regulation of the Republic of Indonesia State Civil Service Agency Number 2 of 2019	Procedures for Retirement Preparation Period
6	Regulation of the Republic of Indonesia State Civil Service Agency Number 3 of 2020	Technical Instructions for Dismissal of Civil Servants

Law Number 5 of 2014 concerning State Civil Apparatus regulates the rights of civil servants. Article 90 of Law Number 5 of 2014 concerning State Civil Apparatus states that the Retirement Age Limit for Civil Servants is 58 (fifty eight) years old for Administrative

¹¹ *Ibid*, hal. 10

¹² Dr. Nany Suryawati, S. M. *Op.Cit.* hal. 12

Officers; 60 (sixty) years old for high-ranking officials; in accordance with the provisions of laws and regulations for functional officials. Civil servants are given a pension guarantee in the event of death, at their own request with age and a certain period of service, reaching the retirement age limit, downsizing organizations or government policies that result in early retirement because of incapacitated physically and/or spiritually, so that they cannot carry out their duties and obligations.¹³

As described in detail in Government Regulation Number 11 of 2017 Concerning the Management of the State Civil Apparatus, Article 239 paragraph (1) states that Civil Servants who have reached the Retirement Age Limit honorably retire as Civil Servants. Then Article 350, paragraph (1) states that civil servants who will reach the retirement age limit, as referred to in Article 239, before honorably retiring as civil servants with retirement rights, civil servants can take a retirement preparation period and be released from the ASN position. However, in Article 239, paragraph (4) it is stated that in the event that there is an urgent service interest, the application for retirement for Civil Servants can be rejected or postponed and paragraph (5) mandates that further provisions regarding procedures for retirement preparation be regulated by a Regulation of the Head of the State Civil Service Agency.

Article 6 paragraph (1) letter b of Regulation of the Head of the State Personnel Agency Number 2 of 2019 regulated that the determination of the granting of a retirement preparation period proposed by a Civil Servant can be processed if the person concerned is not currently in the judicial process because of become suspected of having committed a crime. Then Article 7, paragraph (1) letter b, states that the stipulation of rejection of the retirement preparation period submitted by a Civil Servant can be processed if the Civil Servant concerned is in the process of being tried for being suspected of committing a crime.

The regulations contain the dismissal of civil servants who have reached the retirement age limit and the rejection/suspension of applications for retirement. However, the specific legal norms that regulated the dismissal of civil servants who have reached the retirement age limit while at the same time being detained or suspected of corruption have not been explicitly regulated. This legal issue occurred in the Government of Magetan in 2019. One of the civil servants with the rank of Trustee class IV/a has entered the Retirement Age Limit as of October 1 2019. At the same time, that person concerned holds the status of a suspect because of being suspected of having committed acts of corruption and abuse of power.

The Government of Magetan feels confused about determining the employment status in question, whether it is dismissed at the Retirement Age Limit or still waiting for the suspect's legal status to become *inkracht*. The Government of Magetan took steps to consult with the State Personnel Agency Regional Office II Surabaya and, on June 5, 2020, received a reply letter while waiting for the criminal case court process to have permanent legal force (*inkracht*). The result of the unclear regulations is that Civil Servant status became unclear, and there is no legal certainty given to the person concerned. So the Civil Servant took the legal act to obtain justice by filing a state administrative dispute lawsuit against the Head of the Surabaya State Administrative Court, which is registered at the Registrar's Office of the Administrative Court State Enterprises of Surabaya on 24 February 2021, Register Number: 24/G/2021/PTUN.SBY.

The definition of state administrative disputes, contained in "Article 1 number 10 of Law Number 51 of 2009 concerning Administrative Disputes, states that Administrative Disputes are disputes about state administrative between people or civil law agencies and state administration bodies or officials at the central and regional levels, as a result of the issuance of a state administration decision."¹⁴

The existence of legal problems because of the absence of legal certainty is contrary to the rule of law concept. Indonesia, which is a rule of law, is reflected in the presence of law as an instrument to maintain order in the life of the nation and society. This aspect of the laws and regulations contains legal norms that are clear, certain and binding because the legal system in Indonesia is heavily influenced by the civil law system, which promotes legal positivism. In the context of legal positivism, the aspect of certainty is the main aspect of implementing law enforcement and maintaining legal authority.

The Principle of Legal Certainty is a central principle of the General Principles of Good Governance (AUPB) that must be implemented by the Government before making a Decision. The principle of legal certainty is a principle in a rule of law that prioritizes the basis of statutory provisions, propriety, constancy and justice in every government administration policy.

Based on the doctrine of administrative law, the principles contain two meanings, the principle of legal certainty in the material sense and in the formal sense. In a material sense, this principle requires legal certainty, meaning: First, respect for the rights that

¹³ Atika, T. A., & Tarigan, U. (2014). Prosedur Penerbitan Surat Keputusan Pensiun Pegawai Negeri Sipil pada Badan Kepegawaian Daerah Deli Serdang. *Jurnal Ilmu Pemerintahan dan Sosial Politik UMA*, Vol 2 No 1, 18-29. doi:10.31289/jppuma.v2i1.578

¹⁴ Akbar, R., & Putra, D. N. (2021). Kewenangan Peradilan Tata Usaha Negara Terhadap Pegawai Negeri Sipil Yang Diberhentikan Secara Tidak Hormat. *Jurnal Kertha Wicara*, Vol 10 No 2, 151-162. doi:KW.2021.v10.i02.p05

have been obtained by a person based on an official decision, and the decision will not be revoked even if the decision contains deficiencies. Second, a decision that has been issued by an official may not be applied retroactively to a particular object or situation, especially to things that are burdensome and detrimental. In a formal sense, this principle requires that State Administrative Decisions must be made based on laws and regulations that are clear, strong and do not violate the law. This means that the provisions in State Administrative Decisions must be prepared with clear words or not multi-interpreted/unclear.¹⁵

Gustav Radbruch wrote in his book entitled "Introduction to Law" explaining in general that there are three basic value aspects regarding the law, namely justice (*Gerechtigkeit*), expediency (*Zweckmassigkeit*) and certainty (*Rechtssicherheit*)¹⁶. Gustav Radbruch explained that legal certainty is a basic value as well as part of the purpose of the law. Legal certainty, in essence, requires that the law is clear and certain.

In theory, put forward by Gustav Radbruch, there are 4 (four) things that underlie a close relationship in interpreting legal certainty, namely:

1. Law is a positive thing, which means that positive law is legislation.
2. The law came from a fact, meaning that the law is made based on reality.
3. The facts contained and stated in the law must be formulated in a clear way so that it will avoid mistakes in terms of meaning or interpretation and can be easily implemented.
4. A positive law cannot be easily changed.

From Gustav Radbruch's point of view, the law is a positive thing to regulate the interests of every human being in society. The law must be obeyed even though the positive law seems unfair. Furthermore, legal certainty is a definite condition, terms and conditions. In essence, the law must be certain and fair. A definite law is a guideline for conduct, and fair is a guideline for behavior that must support order and be judged reasonably. Only by being certain and fair, then the law is carried out in accordance with the function it has.¹⁷

Sudikno Mertokusumo has the point of view that the law can be implemented properly if there is a guarantee regarding legal certainty. Legal certainty has become an inseparable part of written legal norms because certainty itself is essentially the main goal of the law.¹⁸ Legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed.¹⁹

Quoted from Cammack, Meeryman said that the principle of legal certainty is a legal conception that is recognized in all legal systems. "While some conception of legal certainty is recognized in all legal systems, the concept plays a particularly significant role in national legal systems that trace their origins to France and Germany" (Merryman 1969, 48).²⁰

4. Conclusion

As *ius constitutum*, regulations concerning the dismissal of civil servants who have entered the retirement age limit in Indonesia have been regulated in Law Number 5 of 2014 concerning State Civil Apparatuses, Government Regulation Number 11 of 2014 concerning State Civil Apparatus Management and Regulation of the Head of the State Civil Service Agency Number 2 of 2019. In

¹⁵ Syam, F., Helmi, & Fitria. (2020). Pengujian Keputusan Pemberhentian Tidak Dengan Hormat Sebagai Pegawai Negeri Sipil Di Peradilan Administrasi. *Jurnal Penelitian Hukum De Jure*, 49-70. Dipetik Juni 3, 2023, dari <https://doi.org/10.30641/dejure.2020.V20.49-70>

¹⁶ Julyano, M., & Sulistyawan, A. Y. (2019). Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum. *Jurnal Crepido*, Vol 1 No 1, 13-22. Dipetik Juni 2, 2023, dari https://webcache.googleusercontent.com/search?q=cache:3WhC3bH_7YIj:https://ejournal2.undip.ac.id/index.php/crepido/article/download/6325/3197&cd=2&hl=jv&ct=clnk&gl=id

¹⁷ Rato, D. (2010). *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*. Yogyakarta: Laksbang Pressindo, hal. 59.

¹⁸ Ridwansyah, M. (2016). Mewujudkan Keadilan, Kepastian dan Kemanfaatan Hukum dalam Qanun Bendera dan Lambang Aceh. *Jurnal Konstitusi*, Volume 13 Nomor 2, 285. Dipetik Januari 2023, 4, dari <https://media.neliti.com/media/publications/113189-ID-mewujudkan-keadilan-kepastian-dan-kemanf.pdf>

¹⁹ Cammack, M. (2023). Legal Certainty in the Indonesian Constitutional Court A Critique and Friendly Suggestion. Dipetik Juni 2, 2023, dari <https://ssrn.com/abstract=4458134>

²⁰ Cammack, M. (2023). Legal Certainty in the Indonesian Constitutional Court A Critique and Friendly Suggestion. Dipetik Juni 2, 2023, dari <https://ssrn.com/abstract=4458134>

the implementation, obstacles arise when there are Civil Servants who have reached the Retirement Age Limit but at the same time are undergoing a criminal justice process for corruption that has not yet been *inkracht*. So, the civil servant status is unclear; on one side, he has retired, but on the other side, his retirement is rejected, and also, he is not terminated due to the fact that he is still waiting for a court decision that is permanent and binding. These obstacles are the impact of the absence of a legal certainty principle that is specifically regulated in Indonesian Laws and Regulations.

In the future, the government is obliged to change or add legal norms to existing laws and regulations. Amendment or addition of legal norms which is intended to answer the legal vacuum or fulfill the principle of legal certainty in the State of Indonesia, which adheres to the concept of the rule of law to avoid the arbitrariness of government administrative actions. This research is limited, and its relevance applies to the territory of Indonesia. Research in other countries is very likely to give different results. The results of research in this journal can be used as a comparison material for further studies on other advanced countries. This research received no external funding, and the authors had no conflict of interest.

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