

# Conflict of Non-Civil Servant Health Worker Policy With Laws and Regulations

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## Abstract

Conflicts of norms in employment policies in the health sector arise due to the conflict between Law Number 20 of 2023 concerning State Civil Apparatus and Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 79 of 2018 concerning Regional Public Service Agency. This research aims to analyze the normative conflict and examine its implications for legal certainty for non-Civil Servant health workers. The method used was normative juridical with a conceptual and legislative approach. Data collection techniques were carried out through literature studies and then analyzed qualitatively using the theory of the hierarchy of laws and regulations and the theory of legal certainty. The results of the research indicated that there was disharmony of legal norms, where the State Civil Apparatus Law stated that State Civil Apparatus only consisted of Civil Servants and Government Employees with Work Agreements, while Regulation of the Minister of Home Affairs Number 79 of 2018 gives authority to Regional Public Service Agency to appoint non-Civil Servant workers permanently or on contract. This condition created legal uncertainty regarding the status and legal protection for non-Civil Servant health workers. The resolution of this norm conflict could be done through the principle of *lex superior derogat legi inferiori*, so the provisions in the State Civil Apparatus Law must be prioritized. Therefore, the active role of the regional government is needed in collecting data and proposing that non-Civil Servant workers be transferred to Government Employees with Work Agreements or Civil Servants in accordance with applicable provisions.

**Keywords:** Konflik Kebijakan; Tenaga Kesehatan Non PNS; Aparatur Sipil Negara.

## Abstract

*Konflik norma dalam kebijakan ketenagakerjaan sektor kesehatan muncul akibat pertentangan antara Undang-Undang Nomor 20 Tahun 2023 tentang Aparatur Sipil Negara (ASN) dan Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 79 Tahun 2018 tentang Badan Layanan Umum Daerah (BLUD). Penelitian ini bertujuan untuk menganalisis konflik normatif tersebut serta mengkaji implikasinya terhadap kepastian hukum bagi tenaga kesehatan Non-PNS. Metode yang digunakan adalah yuridis normatif dengan pendekatan konseptual dan perundang-undangan. Teknik pengumpulan data dilakukan melalui studi kepustakaan, kemudian dianalisis secara kualitatif dengan menggunakan teori hierarki peraturan perundang-undangan dan teori kepastian hukum. Hasil penelitian menunjukkan*

*bahwa terdapat disharmonisasi norma hukum, di mana UU ASN menyatakan bahwa ASN hanya terdiri dari PNS dan PPPK, sementara Permendagri No. 79 Tahun 2018 memberikan kewenangan kepada BLUD untuk mengangkat tenaga Non-PNS secara tetap atau kontrak. Kondisi ini menciptakan ketidakpastian hukum mengenai status dan perlindungan hukum bagi tenaga kesehatan Non-PNS. Penyelesaian konflik norma ini dapat dilakukan melalui asas *lex superior derogat legi inferiori*, sehingga ketentuan dalam UU ASN harus diutamakan. Oleh karena itu, diperlukan peran aktif pemerintah daerah dalam melakukan pendataan dan pengusulan tenaga Non-PNS untuk dialihkan menjadi PPPK atau PNS sesuai ketentuan yang berlaku.*

**Keywords:** *Policy Conflicts; Non-Civil Servant Health Workers; State Civil Apparatus.*

## Introduction

Indonesia is one of 57 countries experiencing a crisis in human resources (HR) for health in the world.<sup>1</sup> The problems of health workers that occur in Indonesia are the number of workers that are still lacking, uneven distribution, and poor quality. The problem of health workers is increasingly felt in certain areas where access to the area is very difficult and the retention of health workers is low. Various studies showed that health workers contribute to the success of health development by up to 80%.<sup>2</sup> However, a common problem faced by many countries is the shortage and maldistribution of health workers and this is a challenge in improving health levels.<sup>3</sup> The results of the health sector research also stated that Health Human Resources (HHR) is one of the strategic issues in strengthening the health system, especially related to the problem of HHR shortages in primary and secondary health care facilities, uneven distribution, and the quality of HR and educational institutions.<sup>4</sup>

Indonesia is one of 57 countries in the world experiencing a health worker crisis. This problem not only includes a shortage of health workers, but also includes uneven distribution and uneven quality across regions, especially in remote, outermost, and underdeveloped areas. In addition, the retention of health workers in these areas is still low.<sup>5</sup> Difficult access, limited facilities, and high workloads make many health workers reluctant to be placed in remote areas. In conditions, the presence of non-Civil Servant health workers is an alternative

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<sup>1</sup> Sri Pajriah, "Peran Sumber Daya Manusia Dalam Pengembangan Pariwisata Budaya Di Kabupaten Ciamis," *Jurnal Artefak* 5, no. 1 (2018): 25–34, <https://doi.org/10.25157/ja.v5i1.1913>.

<sup>2</sup> Elza Fitriyah, "Gambaran Situasi Sumber Daya Manusia Kesehatan (SDMK) Di Propinsi Jawa Timur," *Jurnal Ilmiah Kesehatan Media Husada* 7, no. 1 (2018): 31–40, <https://doi.org/10.33475/jikmh.v7i1.31>.

<sup>3</sup> Nurul Hikmah B, Harpiana Rahman, and Ayu Puspitasari, "Membandingkan Ketimpangan Ketersediaan Tenaga Kesehatan Puskesmas Di Wilayah Indonesia Timur," *Window of Public Health Journal* 1, no. 1 (2020): 31–37, <https://doi.org/10.33096/woph.v1i1.8>.

<sup>4</sup> Ascobat Gani and Meiwita P. Budiharsana, "Laporan Konsolidasi Kajian Sektor Kesehatan 2018" (Jakarta, 2019), [https://drive.google.com/file/d/1G05lsQGG-KpClyC\\_pOz4bzLahqE5g2QW/view](https://drive.google.com/file/d/1G05lsQGG-KpClyC_pOz4bzLahqE5g2QW/view).

<sup>5</sup> Asep Hermawan, "Analisis Distribusi Tenaga Kesehatan (Dokter Perawat Dan Bidan) Di Indonesia Pada 2013 Dengan Menggunakan Gini Index," *Buletin Penelitian Sistem Kesehatan* 22, no. 3 (2019): 200–207, <https://doi.org/10.22435/hsr.v22i3.1304>.

solution that has been implemented so far, either through contract workers, honorary workers, Non-Permanent Employees, or through special assignments.

The government's efforts to meet the need for health workers have been carried out through various mechanisms, such as direct recruitment of Civil Servants, recruitment of central and regional Non-Permanent Employees, and recruitment of contract workers through the Regional Public Service Agency mechanism.<sup>6</sup> One of the forms of government intervention in supporting the optimization of health services at the level of basic service facilities such as public health centers is by implementing the Regional Public Service Agency system.<sup>7</sup> This system provides flexibility to public health centers in managing the budget, including in terms of recruiting non-Civil Servant contract workers to meet HR needs. Regulation of the Minister of Home Affairs Number 61 of 2007, which was later updated by Regulation of the Minister of Home Affairs Number 79 of 2018 concerning Regional Public Service Agencies explicitly gives authority to public health centers to recruit non-Civil Servant workers directly through a contract system.

The policy emerged as a response to the limited Civil Servant Candidate formation, the moratorium on Civil Servant recruitment in recent years, and the increasing burden of health services, especially since the implementation of the National Health Insurance. In practice, public health centers that implement the Regional Public Service Agency pattern can appoint non-Civil Servant employees either permanently or on contract. However, the existence of these non-Civil Servant health workers raises legal issues when associated with the latest regulations governing the national personnel system.

In 2023, the government issued Law Number 20 of 2023 concerning State Civil Apparatus, replacing Law Number 5 of 2014. The law emphasizes that State Civil Apparatus only consists of two types of employees, namely Civil Servants and Government Employees with Work Agreements. With the enactment of this law, the status of Regional Public Service Agency contract workers and other non-Civil Servant workers who are not included in the Civil Servant and Government Employees with Work Agreements categories are legally not recognized in the State Civil Apparatus system. This gives rise to a normative conflict between

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<sup>6</sup> Abd Khalik, "Peranan Badan Kepegawaian Dan Diklat Daerah Dalam Rekrutmen Calon Pegawai Negeri Sipil Di Kabupaten Polewali Mandar Sulawesi Barat," *MITZAL (Demokrasi, Komunikasi Dan Budaya): Jurnal Ilmu Pemerintahan Dan Ilmu Komunikasi* 1, no. 1 (2019): 1–16, <https://doi.org/10.35329/mitzal.v1i1.255>.

<sup>7</sup> Andi Umardiono, Andriati Andriati, and Nanang Haryono, "Peningkatan Pelayanan Kesehatan Puskesmas Untuk Penanggulangan Penyakit Tropis Demam Berdarah Dengue," *JAKPP (Jurnal Analisis Kebijakan & Pelayanan Publik)* 4, no. 1 (2018): 60–67, <https://doi.org/10.31947/jakpp.v4i1.5905>.

the policy of managing health workers by Regional Public Service Agency-based public health centers and national regulations regarding State Civil Apparatus.

This norm conflict is very significant because it concerns legal certainty and protection of the status of health workers who have contributed greatly to health services, especially in the regions. This problem not only touches on aspects of personnel administration but also has an impact on the sustainability of health services themselves. When the existence of non-Civil Servant workers is legally questioned, concerns will arise regarding their rights as workers, such as social security, employment protection, and the continuity of their service. In the context of constitutional law and administrative law, conflicts between regulations at the level of laws and ministerial regulations, such as Regulation of the Minister of Home Affairs Number 79 of 2018, must be resolved by referring to the principle of the hierarchy of laws and regulations as stated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. The principle of *lex superior derogat legi inferiori* (higher law overrides lower law) is a guideline for resolving this conflict. Thus, the validity of the Regulation of the Minister of Home Affairs, which gives authority to public health centers to appoint non-Civil Servant workers must be adjusted and subject to the provisions of the current State Civil Apparatus Law.

This is where the importance of this research lies, to comprehensively examine how policy conflicts regarding non-Civil Servant health workers can be reviewed from the perspective of positive Indonesian law. This research also aims to offer a legal solution that can be applied by policymakers in formulating harmonious steps between real needs in the field and normative provisions in the national legal system. This research not only contributes to the development of state administrative law studies but also has important practical implications for workers' governance in the health sector.

In previous studies, the issue of non-Civil Servant workers was more studied from the perspective of employment and HR management but rarely highlighted the aspect of legal conflict between regulations in depth. This research is different because it places the conflict within the framework of normative legal analysis, with a statutory and conceptual approach. Through this approach, it is hoped that solutions can be found that are not only in accordance with legal principles but also answer practical needs in the field. Thus, workers' policies in the health sector can run effectively, and efficiently, and remain within the applicable legal corridor.

This research aims to comprehensively examine and analyze the norm conflict that occurs between the provisions of Law Number 20 of 2023 concerning State Civil Apparatus and Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 79 of 2018 concerning Regional Public Service Agencies, especially in relation to the policy of appointing non-Civil Servant health workers in regional health service facilities. This conflict arises due to differences in regulations regarding employee status, where the State Civil Apparatus Law explicitly states that the State Civil Apparatus consists of Civil Servants and Government Employees with Work Agreements, while Regulation of the Minister of Home Affairs Number 79 of 2018 opens up space for Regional Public Service Agency to appoint non-Civil Servant employees, both permanently and on contract.

## Research Method

This research used a normative legal approach, which was a type of legal research conducted by examining secondary legal materials as a basis for analysis. As explained by Soerjono Soekanto, the normative legal approach aimed to examine legal norms contained in laws and legal literature as a basis for answering the legal problems being studied. Thus, the data analyzed in this research were not in the form of empirical data or social facts, but rather legal materials containing normative rules and principles.<sup>8</sup>

The focus of this research was on the analysis of norm conflicts that occurred in the policy of managing non-Civil Servant health workers when associated with the national legal system, especially the laws and regulations applicable in the health and personnel sectors. In its implementation, this study used two approaches, namely the statute approach and the conceptual approach. The statute approach was used to trace, inventory, and analyze regulations governing non-Civil Servant health worker policies, both national and sectoral. Meanwhile, the conceptual approach was used to examine the understanding, principles, and legal concepts that were relevant to understanding the legal position and legitimacy of the existence of non-Civil Servant health workers.<sup>9</sup>

The theories used in this research included the theory of the hierarchy of legislation and the theory of legal certainty. The theory of the hierarchy of legislation was used as a basis

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<sup>8</sup> Agung Hidayat, "Critical Review Buku 'Penelitian Hukum' Peter Mahmud Marzuki Penelitian Hukum Ad Quementang Norma," *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum* 7, no. 2 (2021): 117–25, <https://doi.org/10.33319/yume.v7i2.109>.

<sup>9</sup> Noor Muhammad Aziz, "Urgensi Penelitian Dan Pengkajian Hukum Dalam Pembentukan Peraturan Perundang-Undangan (Legal Research and Assessment of Urgency The Establishment of Legislation)," *Jurnal RechtsVinding Media Pembinaan Hukum Nasional* 1, no. 1 (2012): 18–19.

for analyzing conflicts between one regulation and another, while the theory of legal certainty was used to examine the extent to which existing regulations could provide clarity, protection, and guarantees for the legal status of non-Civil Servant health workers.<sup>10</sup>

The legal materials used in this research consisted of three types, namely primary, secondary, and tertiary legal materials. Primary legal materials included laws and regulations that formed the legal basis for health worker policies. Secondary legal materials included legal literature, expert opinions, and previous research results. Meanwhile, tertiary legal materials included legal dictionaries and legal encyclopedias that were used as a complement to support the analysis of primary and secondary legal materials.<sup>11</sup>

## Results and Discussion

### 1. Policy Regulations Regarding Non-Civil Servant Health Workers in Indonesian Laws and Regulations

Employment issues in the health sector in Indonesia have become an urgent strategic issue, especially regarding the legal status of non-Civil Servant health workers working in government-owned healthcare facilities. Their existence is needed to cover the shortage of medical personnel, especially in remote and underdeveloped areas. However, since the enactment of Law Number 20 of 2023 concerning the State Civil Apparatus, the state civil service system now only recognizes two types of employee status, namely Civil Servants and Government Employees with Work Agreements, which means eliminating the existence of non-Civil Servant workers in the formal Indonesian civil service legal system.<sup>12</sup>

"The percentage of Non-Permanent Employees is greater because, since 2005, the appointment of Non-Permanent Employees has been prioritized for personnel who have not served due to the long waiting period. In addition, recruitment of Non-Permanent Employees is voluntary without implementing a queue/waiting list system"<sup>13</sup> The Non-Permanent Employees policy also follows developments with the issuance of Regulation of the Minister of Home Affairs Number 7 of 2013, where the central and regional governments can appoint Non-Permanent Employees (article 2). The assignment period of Non-Permanent Employees

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<sup>10</sup> Jimly Asshiddiqie and M. Ali Safa'at, "Teori Hans Kelsen Tentang Hukum," *Mahkamah Konstitusi RI*, no. Jakarta (2016): 15.

<sup>11</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Mandar Maju, 2008).

<sup>12</sup> Presiden Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 20 Tahun 2023 Tentang Aparatur Sipil Negara," no. 202875 (2023): 1–44.

<sup>13</sup> Badan Perencanaan Pembangunan Nasional, "Laporan Kajian Kebijakan Perencanaan Tenaga Kesehatan" (Jakarta, 2005).



doctors can be extended for a maximum of 1 assignment, while for midwives it is 2 times. "Factors that influence the extension of the assignment period include personnel factors, regional environment/infrastructure, and work environment/independent practice"<sup>14</sup>

The policy for honorary workers follows the applicable laws and regulations, namely Law Number 20 of 2023 concerning State Civil Apparatus and Government Regulation Number 32 of 1996 concerning Health Workers. Most honorary workers have been appointed as civil servants. "The inhibiting factor for not yet appointing honorary workers/Non-Permanent Employees could be due to the limited formations set by the government and budget constraints."<sup>15</sup>

The special assignment policy has also changed along the way following developments, namely the issuance of Minister of Health Regulation No. 9 of 2013 concerning special assignments of health workers with diploma III education (nurses, midwives, sanitarians, nutritionists, and analysts) in Underdeveloped, Border and Island Areas and Health Problem Areas, which was later amended by Minister of Health Regulation No. 80 of 2015. In the same year, in supporting the Nusantara Sehat program, the Ministry of Health issued a special assignment policy for team-based health workers with the issuance of Minister of Health Regulation No. 23 of 2015, known as the Nusantara Sehat Tim (NST), which was later revoked by Minister of Health Regulation No. 16 of 2017 concerning Special Assignments of Health Workers in Supporting the Nusantara Sehat Program. The types of workers given special assignments are only 9 types, namely doctors, dentists, nurses, midwives, public health workers, environmental health workers, pharmacists, nutritionists, and analysts. The percentage of special assignment workers is still small. "This may be related to the heavy workload in Underdeveloped, Border and Island Areas compared to non-underdeveloped, border and Island areas as well as limited access to transportation, information, and other government facilities."<sup>16</sup>

The recruitment of volunteers is not regulated by government regulations, which is the policy of the head of the agency/public health center. This can happen because the need

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<sup>14</sup> Soleman Kermo Imanuel Jermias Kolimon, Laksono Trisnantoro, and Dwi Handono Sulisty, "Kebijakan Insentif Dokter Umum Dan Dokter Gigi Berdasarkan Beban Kerja Di Kabupaten Alor Tahun 2011: Time Dan Motion Study," *Jurnal Kebijakan Kesehatan Indonesia* 1, no. 4 (2012): 215–23, <https://doi.org/10.22146/jkki.v1i4.35808>.

<sup>15</sup> Parulian Sirait, "Tinjauan Yuridis Terhadap Pengangkatan Bidan Desa Dari Pegawai Tidak Tetap Menjadi Pegawai Negeri Sipil Berdasarkan Undang-Undang Nomor 5 Tahun 2014 Di Kota Tebing Tinggi" (Universitas Sumatera Utara, 2018).

<sup>16</sup> Gurendro Putro and Iram Barida, "Analisis Implementasi Kebijakan Pendayagunaan Sumber Daya Manusia Kesehatan Di Puskesmas Daerah Tertinggal, Perbatasan, Dan Kepulauan (DTPK)," *Media Penelitian Dan Pengembangan Kesehatan* 28, no. 1 (2018): 15–24, <https://doi.org/10.22435/mpk.v28i1.7357.15-24>.

for workers in public health centers increases, but is not met by the government. Volunteers usually have a contract agreement with the public health center, including not demanding a salary or becoming a Civil Servant and their salary is not standard. "Health workers who become volunteers because of the desire to work after graduating. Their motivation to become volunteers includes increasing knowledge, gaining new experiences, choosing to become volunteers rather than not working, and getting new friends."

Health Operational Assistance (HOA) contract workers are health workers recruited by public health centers based on technical provisions for the use of Health Operational Assistance (HOA) funds. This recruitment refers to the Minister of Health Regulation No. 3 of 2019 concerning Technical Instructions for the Use of Non-Physical Special Allocation Funds in the Health Sector in 2019, which in letter A number 5 letter j states that HOA funds can be used to provide health promotion workers, sanitarians, nutritionists, other community health workers, and financial management assistants, with a maximum of four people per public health center through a work agreement system.

The problem becomes complex when several sectoral regulations still provide room for the recruitment of non-Civil servants. For example, Regulation of the Minister of Home Affairs Number 79 of 2018 concerning Regional Public Service Agency authorizes regional health facilities to recruit employees with non-Civil Servant status on a contract basis. This normatively creates a legal conflict with the State Civil Apparatus Law in 2023. In the legal principle, *lex superior derogat legi inferiori* emphasizes that lower laws and regulations must not conflict with higher ones.<sup>17</sup> However, practice in the field shows a dualism of policies that have the potential to cause maladministration of personnel.

Empirically, data from the Ministry of Health shows that around 30-40% of health workers in various public health centers in Indonesia are non-Civil Servants, either with honorary status, Regional Public Service Agency contracts, Non-Permanent Employees, or volunteers.<sup>18</sup> Many of them have served for more than five years without clear legal status and welfare guarantees. This phenomenon not only disrupts the stability of health services but also causes social unrest and reduces the work motivation of health workers. This situation clearly contradicts the principle of justice and the right to work guaranteed in Article 28D paragraph (2) of the 1945 Constitution.

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<sup>17</sup> Jimly Asshiddiqie, "Pengantar Ilmu Hukum Tata Negara Jilid 1," *Buku Ilmu Hukum Tata Negara 1* (2006): 200.

<sup>18</sup> Profil Kesehatan Indonesia, *Profil Kesehatan Indonesia*. Kementerian Kesehatan Republik Indonesia, Jakarta, 2017.



Based on these problems, this study is important to evaluate and analyze the conflict of non-Civil Servant health worker policies with laws and regulations, and to find common ground between the needs of the health service system and legal justice for personnel. This study will use a normative and conceptual approach by examining the theory of legal hierarchy and the principle of legal certainty to provide constructive solutions that are in accordance with actual conditions in Indonesia.

## **2. Conflict of Non-Civil Servant Health Worker Policy with Laws and Regulations**

With the enactment of Law Number 20 of 2023 concerning State Civil Apparatus, all employees working in government agencies are officially classified as State Civil Apparatus, which consists of two categories, namely Civil Servants and Government Employees with Work Agreements. Consequently, the status of non-Civil Servant employees such as honorary workers, Non-Permanent Employees, Regional Public Service Agency contracts, and other forms no longer have a legal basis in the State Civil Apparatus system. This shows the government's efforts to simplify employee status and strengthen the bureaucratic system based on the principles of legality and professionalism.

However, in its implementation, there are still inconsistencies between the main regulations and other technical policies, such as Government Regulation Number 49 of 2018 concerning Government Employees with Work Agreements Management and Regulation of the Minister of Home Affairs No. 79 of 2018 concerning Regional Public Service Agency. This regulation allows public service units such as Public Health Centers with Regional Public Service Agency status to appoint non-Civil Servant employees either on a contract or permanent basis. This policy practically provides flexibility for the Public Health Center in meeting the needs of health workers, especially in areas experiencing a shortage of human resources. However, this regulation has the potential to conflict with the State Civil Apparatus Law which has normatively eliminated the non-Civil Servant status within government agencies.

The disharmony between ministerial-level policies and national laws has given rise to norm conflicts that have a direct impact on the legal certainty of non-Civil Servant health workers in Public Health Centers. According to the legal principle of *lex superior derogat legi inferiori*, higher laws and regulations (in this case the State Civil Apparatus Law) must be used as the main reference, so that the existence of provisions in the Regulation of the Minister of Home Affairs or Government Regulation that conflict with it should not be enforced. This condition has caused confusion in the practice of personnel management in the public service

sector, especially in the aspects of appointment, rights, and legal guarantees for non-Civil Servant health workers.

Therefore, it is necessary to synchronize and harmonize regulations between laws and technical policies for their implementation. Reformulation of health workforce policies must consider the sustainability of public services without ignoring legal principles that guarantee certainty and justice. The preparation of consistent and integrated policies will strengthen State Civil Apparatus governance, provide legal protection for health workers, and ensure the sustainability of quality health services in the regions, especially within the framework of Regional Public Service Agency-based public services.

The principle of *lex superiori derogate legi inferiori* means that a higher law (norm/legal rule) negates the validity of a lower law (norm/legal rule).<sup>19</sup> In the Indonesian legal system, the validity of a legal norm is determined by its position in the hierarchy of laws and regulations. This principle is based on the basic assumption that in a state of law, all legal norms must be arranged systematically and hierarchically.<sup>20</sup> The application of the norm hierarchy aims to ensure consistency and legal certainty, where lower regulations must not conflict with higher regulations.

This is expressly regulated in Article 7 and Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation. Article 7 establishes the hierarchical order of regulations, starting from the 1945 Constitution, followed by Laws/Government Regulation in Lieu of Laws, Government Regulation, Presidential Regulation, and Regional Regulation. Meanwhile, Article 8 recognizes the existence of other types of legislation stipulated by state institutions, as long as they are ordered by higher legislation.

In legal practice, when there is a conflict between regulations, the lower regulation must be adjusted or even declared invalid if it conflicts with the higher regulation. This principle is known as the principle of *lex superior derogat legi inferiori*, which states that a higher legal norm cancels the validity of a lower norm if there is a conflict between the two.

The statement conceptually describes the basic principle in the normative legal system known as the theory of the hierarchy of legal norms, as developed by Hans Kelsen. In this

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<sup>19</sup> Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 16, no. 3 (2020): 305–25, <https://doi.org/10.54629/jli.v17i3.711>.

<sup>20</sup> Abdullh Fikri and Clarissa Ayang Jelita, "Pemenuhan Dan Perlindungan Hak Keberagamaan Penyandang Disabilitas: Studi Terhadap Maqasid Syariah Dan Peraturan Konstitutif Indonesia," *The Indonesian Conference on Disability Studies and Inclusive Education* 3 (2023): 85–110, <https://conference.uin-suka.ac.id/index.php/icodie/article/view/1237>.

framework, the validity of a legal norm is determined by its existence in a normative system that is structured in stages. Each norm derives its binding power from a higher norm, and the peak of the entire legal order is based on the postulated basic norm (*grundnorm*).

The principle of *lex superior derogat legi inferiori* is not only a formal principle but also has substantive rationality because it ensures that every norm is subject to the legitimacy of the norm above it in the legal structure. A norm can only be declared valid if it is proven to originate from or be based on, a higher norm in the system. This allows the legal system to run regularly and consistently, prevents conflicts between norms, and maintains the integrity and integration of the national legal system.

In the context of policy or regulatory assessment, testing the validity of a norm must be done by tracing the source of its legality. If the norm conflicts with a higher norm or does not have a valid legal basis, then the norm has no legitimacy in the legal order and can be declared invalid. This understanding is very important in criticizing policies or regulations issued by government agencies, especially in terms of employment arrangements or other public policies.<sup>21</sup>

When associated with the provisions regarding non-Civil Servant health workers, the regulation that should be the main reference is Law Number 20 of 2023 concerning State Civil Apparatus, which expressly states that all employees in government agencies are part of State Civil Apparatus and consist of only two categories, namely Civil Servants and Government Employees with Work Agreements. Therefore, the existence of non-Civil Servant workers such as honorariums, Regional Public Service Agency contracts, and volunteers in government health service units, including health centers, is normatively no longer in accordance with the applicable legal framework.

In this context, the role of local governments is very crucial, especially in conducting accurate data collection on all non-Civil Servant workers who are still active in government-owned healthcare facilities. This data collection is an important basis in the process of proposing appointment as State Civil Apparatus through the Government Employees with Work Agreements or Civil Servants scheme, in accordance with the recruitment and formation provisions set by the central government. Orderly and principled implementation of these regulations will also help create legal certainty, bureaucratic efficiency, and legal protection and welfare for health workers who have served in the public sector.

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<sup>21</sup>Hans Kelsen, 1991, *"General Theory of Norms"*, translated by Michael Hartney. Oxford: Clarendon Press, hlm. 161.

## Conclusion

The regulation of non-Civil Servant health workers in Indonesia still causes regulatory inconsistency. A conflict of norms arises between Law Number 20 of 2023 concerning State Civil Apparatus, which stipulates that all employees in government agencies consist of only Civil Servants and Government Employees with Work Agreements, with Regulation of the Minister of Home Affairs No. 79 of 2018 concerning Regional Public Service Agency, which allows the appointment of non-Civil Servant workers by Regional Public Service Agency health service facilities, either permanently or on a contract basis. This conflict causes legal uncertainty regarding the status of non-Civil Servant health workers, who in practice are still needed by health facilities, especially in the regions. To resolve this conflict of norms, the study uses the approach of the *lex superior derogat legi inferiori* principle, namely that higher regulations override lower regulations. Therefore, the provisions of the State Civil Apparatus Law must be used as the main reference, and the Regulation of the Minister of Home Affairs of Regional Public Service Agency needs to be harmonized so as not to cause legal chaos in the management of health workers.

This study also emphasizes the importance of the role of local governments in recording and proposing active non-Civil Servant workers to be transferred to the State Civil Apparatus scheme, either as Government Employees with Work Agreements or Civil Servants. This step is needed to ensure legal protection, certainty of employee status, and the continuity of quality public health services, especially in remote areas and areas lacking in health human resources.

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