LEGAL REVIEW ON STATE UNIVERSITY WITH LEGAL ENTITY STATUS IN INDONESIA (PTN-BH): HISTORY, CAUSE, EFFECT, AND RISKS

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ABSTRACT

This research aims to dissecting the existence of PTN-BH in Indonesia which includes historical aspect, causal aspect, impact aspect and risk aspect which would be analysis by Indonesian law. Hopefully, this article would thoroughly examine the problematics existence of PTN-BH in Indonesia and will find the harmony or the conflict among PTN-BH existence and Indonesian law. This article would be uses the doctrinal research or normative legal research to explicate the PTN-BH phenomenon in Indonesia relatedly to history, causes, impact, and risks. There are at least four research result accordance in to the research problem formulation as follows. First, the history of PTN-BH can be traced firstly in 2000 when Indonesian government establish four state university in Indonesia such as Universitas Indonesia, Universitas Gadjah Mada, Institut Pertanian Bogor, and Institut Teknologi Bandung as State-Owned Legal Entity that called Badan Hukum Milik Negara (BHMN), then continue to the establishment of Law Number 12 of 2012 on Higher Education as well as supported by special regulations up to Indonesia totally has 22 PTN-BH in nowadays. Second, the cause of PTN-BH emergence was influenced by four things such as imitedness grant for higher education from government, enhancement the quality of higher education, and create social justice in higher education. Third, the effect of PTN-BH status for state university includes two things namely academic and non-academic affairs. The impact that occurs in academic affairs encompass full authority from PTN-BH to expose and seal the study program. Meantime, the impact that ensue in non-academic affairs covers tuition fees, finance, and human resources. Fourth, the risk of PTN-BH status for state university covers two things scilicet legal risks and non-legal risks. Legal risks include the risks that related to incompatibility of internal regulations with the higher legal norms, whereas non-legal risks comprise that absolutely has no legal issues but causes a stir among academic community or this risk related to campus arbitrariness in policy making and create a chaos on campus environment.

Keywords*:* Legal Review, State University, PTN-BH

INTRODUCTION

The history of higher education in Indonesia can be traced before Indonesian independence. The existence of higher education in Indonesia was marked by the emergence of Sekolah Tinggi Islam (STI) in 18 July 1945, or one month before Indonesian independence. After Indonesian independence, STI transformed into Universitas Islam Indonesia (UII) in 3 November 1947 with the status as private university.[1] The appearance of UII was triggering Indonesian government to establish several state university in Indonesia as proven by the establishment of Universitas Gadjah Mada (UGM) in 19 December 1949, the establishment of Universitas Indonesia in 2 February 1950, the establishment of Universitas Airlangga (UNAIR) in 10 November 1954, the establishment of Universitas Hasanudin (UNHAS) in 10 September 1956, the establishment of Universitas Padjajaran (UNPAD) in 11 September 1957, the establishment of Institut Teknologi Sepuluh Nopember (ITS) in 10 November 1957, the establishment of Institut Teknologi Bandung (ITB) in 2 March 1959, and the establishment of Universitas Diponegoro (UNDIP) in 3 December 1961.[2]

These days, there are many universities in Indonesia with the total amount 4.523 universities with a diversity 184 state universities and 4.339 private universities.[3] In a simple context, state university is a higher education as managed by government and private university is a higher education as managed by legal entity that called badan hukum (Yayasan).[4] It means, state university have a financial resources, human resources, and other resources from the government. Whereas, private university have a financial resources, human resources, and other resources from the legal entity which is managed independently.[5] In its development, Indonesian government classify state university into three types such as state university with work unit status that called Perguruan Tinggi Negeri Satuan Kerja (PTN-Satker), state university with public service agency status that called Perguruan Tinggi Negeri Badan Layanan Umum (PTN-BLU), and state university with legal entity status that called Perguruan Tinggi Negeri Badan Hukum (PTN-BH).[6]

[1] A. Rezky Nurhidaya S, Azaz Akbar, Ashar, Ince Prabu, and Syarifuddin Odeng, Perkembangan Perguruan Tinggi Islam di Indonesia, *Al Urwatul Wutsqa: Kajian Pendidikan Islam*, Vol. 2, No. 1, (2022).
[2] Maskuri et al, *Membangun Jejaring Alumni Universitas Islam Malang: dari NU untuk Indonesia dan Peradaban Dunia*, (Malang: Intelegensia Media, 2016), pp. 140-142.
[3] A. Yoesdiarti, Analisis Perilaku Siswa/I SMA/Sederajat di Wilayah Tengah Kabupaten Bogor dalam Pengambilan Keputusan Pemilihan Perguruan Tinggi, *Jurnal Sosial Humaniora*, Vol. 9, No. 1, (2018).
[4] Kholida Atiyatul Maula and Suhono, Analisis Perbandingan Kinerja pad Perguruan Tinggi yang Beralih Status: Studi pada Universitas Singaperbangsa Karawang, *Jurnal Unsika*, Vol. 3, No. 2, (2018).
[5] Meita Santi Budiani, Perbandingan Pengolaan Sumber Daya Manusia dalam Organisasi Pemerintah dan Non Pemerintah, *Jurnal Psikologi: Teori dan Terapan*, Vol. 1, No. 2, (2011), pp. 88-95.
[6] Muhammad Farhan Azis and Gugus Irianto, Tranformasi Universitas Brawijaya dari Perguruan Tinggi Negeri Badan Layanan Umum Menuju Badan Hukum: Strategi pada Masa Transisi dalam Aspek Keuangan, *Jurnal Ilmiah Mahasiswa FEB Universitas Brawijaya*, Vol. 9, No. 2, (2021).

Briefly, PTN-Satker is a work unit of Ministry Education, Cultural, Research, and Technology that called Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi (Kemendikbudristek), it means PTN-Satker is the Kemendikbudristek executor in the field of higher education. Meanwhile, PTN-BLU is a work unit under Kemendikbudristek as if PTN-Satker, but PTN-BLU have a freedom in financial management. Furthermore, PTN-BH is a work unit under Kemendikbudristek as though PTN-Satker and PTN-BH, however PTN-BH has a status as legal entity such as corporate, foundation and firm. As though legal entities in the general overview, PTN-BH status has the consequences in the form of autonomy both academic and non-academic affairs.[7] The existence of PTN-BH subsequently raised a several questions from public, specifically related the difference among PTN-BH and private university. By reason of the PTN-BH practice act as private university which charge high tuition fee under the pretext of campus autonomy that coerce campus to hunt the income generating for campus development interest. With the result that, at a first glance there is no different between PTN-BH and private university as they both set high tuition fee and the worst thing is that PTN-BH tuition fee more expensive than private university. Accordingly, it can be said that PTN-BH actually distance state university from the substance as the university which is affordable for society.[8]

According to the problem above, the author interest to dissecting the existence of PTN-BH in Indonesia which includes historical aspect, causal aspect, impact aspect and risk aspect which would be analysis by Indonesian law. Hopefully, this article would thoroughly examine the problematics existence of PTN-BH in Indonesia and will find the harmony or the conflict among PTN-BH existence and Indonesian law. Therefore, this article would be presented with the theme **"Legal Review on State University with Legal Entity Status in Indonesia (PTN-BH): History, Cause, Effect, and Risks".**

RESEARCH METHOD

This article would be uses the doctrinal research or normative legal research to explicate the PTN-BH phenomenon in Indonesia relatedly to history, causes, impact, and risks. It means, this article would be investigate and discuss the history, causes, impact, and risks of PTN-BH by the view of Indonesian legal system namely 1945 Indonesian Constitution, Law Number 20 of 2003 on National Education System, Law Number 12 of 2012 on Higher Education, Government Regulation Number 4 of 2014 on Implementation of Higher Education and Management of Higher Education, Ministerial Education and Culture Regulation Number 88 of 2014 on State University Transformation to State University with Legal Entity Status, Ministerial Education and Culture Regulation Number 4/2020 on Amendment of Ministerial Regulation of Education and Culture Number 88 of 2014 on State University Transformation to State University with Legal Entity Status, Government Regulation Number 26 of 2015 on Forms and Mechanism of Funding for State University with Legal Entity Status, and Ministerial Finance Affairs Regulation Number 108/ 2017 on Procedures for Determining the Value of Assets Beginning of State University with Legal Entity Status. Hopefully, the result of this article can clarify the history, the causes, the impact, and the risks of PTN-BH in Indonesia, so as can contribute the ideas for future developments of PTN-BH.[9]

DISCUSSION

1. The History of PTN-BH

The history of PTN-BH can be traced firstly in 2000 when Indonesian government establish four state university in Indonesia such as Universitas Indonesia, Universitas Gadjah Mada, Institut Pertanian Bogor, and Institut Teknologi Bandung as State-Owned Legal Entity that called Badan Hukum Milik Negara (BHMN) through Government Regulation Number 152 of 2000 on Establish of Universitas Indonesia as State Owned Legal Entity, Government Regulation Number 153 of 2000 on Establish of Universitas Gadjah Mada as State Owned Legal Entity, Government Regulation Number 154 of 2000 on Establish of Institut Pertanian Bogor as State Owned Legal Entity, and Government Regulation Number 155 of 2000 on Establish of Institut Teknologi Bandung as State Owned Legal Entity. [10] Briefly, the existence of PTN-BHMN has full autonomy in managing the general affairs and finance as if a company, foundation, and firm.[11]

In its development, the term of PTN-BHMN was removed and replaced with new term namely Legal Entity Education that called Badan Hukum Pendidikan (BHP) through Law Number 9 of 2009 on Legal Entity Education. However, after a while, the law was cancelled by Constitutional Court Decision Number 11-14-21-126-136/PUU-VII/2009 for unconstitutional argument.[12] Consequently, Indonesian government bring back the status of Universitas Indonesia, Universitas Gadjah Mada, Institut Pertanian Bogor, and Institut Teknologi Bandung as State University as managed by Indonesian government through Government Regulation Number 66 of 2010 on Management and Administration of Education.[13] The status return of state university ex PTN-BHMN was not long lasting, inasmuch as, afterwards the government establish Law Number 12 of 2012 on Higher Education. As a consequence, state university ex PTN-BHMN as if Universitas Indonesia, Universitas Gadjah Mada, Institut Pertanian Bogor, and Institut Teknologi Bandung automatically transforms into PTN-BH.[14]

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[7] Dhyah Setyorini, Rr. Indah Mustikawati, and Indarto Waluyo, Kesiapan Pengelolaan Aset UNY dalam Rangka Optimalisasi Income Generating untuk Mendukung PTNBH UNY, *Jurnal Pendidikan Akuntansi Indonesia*, Vol. 20, No. 2, (2022), pp. 198-208.

[8] Khanan Saputra, Dampak Kebijakan Perguruan Tinggi Negeri Badan Hukum (PTN-BH) yang Mengakibatkan Munculnya Komersialisasi Pendidikan, *Jurnal on Education*, Vol. 5, No. 4, (2023), pp. 11943-11950.

[9] Kornelius Benuf dan Muhamad Azhar, Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer, *Jurnal Gema Keadilan*, Vol. 7, No. 1, (2020).

[10] Sulardi, BHMN PT: Menuju Kapitalisme Pendidikan, *Jurnal Ilmiah Bestari*, No. 37, (2008), pp. 39-42.

[11] Joko Susilo, Neoliberalisasi Pendidikan Tinggi, Restrukturalisasi Institusi dan Perlawanan Gerakan Mahasiswa Kini, Studi Pasca PTN-BH, Skripsi S1 DMKP FISIPOL UGM, (2021).

[12] Muhammad Akbar Nur Sasmita, Penghidupan Kembali Badan Hukum Pendidikan Tinggi Pasca Putusan MK Nomor 11-14-21-126-136/PUU-VII/2009, *Jurnal Bina Mulia Hukum*, Vol. 5, No. 2, (2021).

[13] Arif Suryono, Rahmad Santosa, and Haryadi, Implementasi Peraturan Pemerintah Nomor 66 Tahun 2010 terhadap Pemberdayaan Dewan Pendidikan dan Komite Sekolah, *Jurnal Dinamika Hukum*, Vol. 13, No. 2, (2013).

[14] Kartika Widya Utama, Otonomi Pengelolaan Sumber Daya Manusia PTN-BH, *Masalah-Masalah Hukum*, Vol. 46, No. 1, (2017), pp. 92-99.

Since the Law Number 12 of 2012 on Higher Education enacted, there are several special regulations that address the management and administration of PTN-BH such as Government Regulation Number 4 of 2014 on Implementation of Higher Education and Management of Higher Education, Ministerial Education and Culture Regulation Number 88 of 2014 on State University Transformation to State University with Legal Entity Status, Ministerial Education and Culture Regulation Number 4 of 2020 on Amendment of Ministerial Regulation of Education and Culture Number 88/2014 on State University Transformation to State University with Legal Entity Status, Government Regulation Number 26 of 2015 on Forms and Mechanism of Funding for State University with Legal Entity Status, and Ministerial Finance Affairs Regulation Number 108 of 2017 on Procedures for Determining the Value of Assets Beginning of State University with Legal Entity Status.[15]

Nowadays, Indonesia totally has 22 PTN-BH namely Institut Teknologi Bandung, Institut Pertanian Bogor, Universitas Gadjah Mada, Universitas Indonesia, Universitas Pendidikan Indonesia, Universitas Sumatera Utara, Universitas Airlangga, Universitas Padjajaran, Universitas Diponegoro, Universitas Hasanudin, Institut Teknologi Sepuluh Nopember, Universitas Islam Internasional Indonesia, Universitas Sebelas Maret, Universitas Andalas, Universitas Brawijaya, Universitas Negeri Padang, Universitas Negeri Malang, Universitas Negeri Yogyakarta, Universitas Negeri Semarang, Universitas Negeri Surabaya, Universitas Syiah Kuala, and Universitas Terbuka. The PTN-BH status was obtained through Government Regulation Number 65 of 2013, Government Regulation Number 66 of 2013, Government Regulation Number 67 of 2013, Government Regulation Number 68 of 2013, Government Regulation Number 15 of 2014, Government Regulation Number 16 of 2014, Government Regulation Number 30 of 2014, Government Regulation Number 51 of 2015, Government Regulation Number 52 of 2015, Government Regulation Number 53 of 2015, Government Regulation Number 54 of 2015, Government Regulation Number 23 of 2019, Government Regulation Number 56 of 2020, Government Regulation Number 95 of 2021, Government Regulation Number 108 of 2021, Government Regulation Number 114 of 2021, Government Regulation Number 35 of 2022, Government Regulation Number 36 of 2022, Government Regulation Number 37 of 2022, Government Regulation Number 38 of 2022, Government Regulation Number 39 of 2022.[16]

2. The Cause of PTN-BH Emergence

The extensive dynamics of PTN-BH arises for several main reasons for instance limitedness grant for higher education from government, enhancement the quality of higher education, and create social justice in higher education.[17] Several of these reasons have the explanations that would be explicated in the next paragraph.

The first argument that is the basis of PTN-BH implementation is the limitedness grant for higher education from government, this argument stems from the fact that allocation of government funds to higher education specifically for subsidize the tuition fee was too large, meanwhile the subsidize for elementary school, junior high school, and senior high school actually neglected. Subsidize of discrimination among higher education with elementary school, junior high school, and senior high school require Indonesian government to reallocated budget posture in the realm of education. Eventually, Indonesian government reallocated budget posture of education with measure to increase elementary school, junior high school, including senior high school budget reached 56% and reduce the higher education budget attain 26%.[18] As a consequences of budget reduction of higher education, the higher education should be hunt out a lot of income generating through another provenience to recover campus operational funds which previously depended on government budget. Nevertheless, the faith of campus to increase the income generating was obstacles by the regulations, forasmuch as a whole management and administration of the state university in the past completely organized by government accordance to Law Number 2 of 1989 on National Education System and Government Regulation Number 60 of 1999 on Higher Education.[19] Therefore, the new regulations are obligatory to make state university unimpeded in policy making, especially to forage the income generating aside from state budget.[20]

The second reason as foundation of the appearance of PTN-BH is to enhancement the quality of higher education, this sentenced means that higher education conditions after the budget was reduced by government also reduced the quality of higher education. Wherefore, lowering of higher education budget from government compel the campus to reduce the expenses in a several side, one of them is lecturer salaries as make the direct impact to decreased performance of lecturer and degradation of educational services for students. With the result that, the necessary is determine strategic act to enhance the quality of higher education which is affected by budget reduction of higher education. In view of the second reason of PTN-BH emergence is a consequence of first reason as discussed previously namely limitedness grant for higher education from government, so the solutions that address are the same, scilicet create the new regulations to make state university unimpeded in policy making, especially to forage the income generating aside from state budget. So as the quality of higher education continues to increase, even though the campus experience budget reduction by government.[21]

The third cause of PTN-BH emergence is create social justice in higher education, this reason means that higher education before Law Number 12 of 2012 on Higher Education enacted was not represent social justice as contained in Pancasila. Because higher education in the past specifically in the era of Orde Baru was apply the same tuition fees for all students without considering the student's economic background. For instance, in 1980s, a whole student that studying at state universities pay only IDR. 3000 per semester, whether they are rich or poor, they are the same. Those logic was certainly unfair, because in each university there are must be rich students and poor students. Therefore, the policy of tuition fees in state university should be more

[15] Lia Sutini, Akibat Hukum PTN-BH yang Tidak Memenuhi Evaluasi Kinerja, *Jurist-Diction*, Vol. 2, No. 5, (2019), pp. 1765-1786.
[16] Number of PTN-BH in Indonesia, https://sinta.kemdikbud.go.id/ptnbhanalytics/v2/affiliations/ptnbh, Accesed June 1 2024.
[17] Adam and Mulyanto Lanontji, Kebijakan Otonomi Perguruan Tinggi sebagai Dampak Refomasi Keuangan dalam Bidang Pendidikan di Indonesia, *Journal of Education and Teaching*, Vol. 2, No.1, (2021).
[18] Naskah Akademik Rancangan Undang-Undang Badan Hukum Pendidikan
[19] Safei and Hudaidah, Sistem Pendidikan Umum pada Masa Orde Baru (1968-1998), *Jurnal Humanitas*, Vol. 7, No. 1, (2021), pp.1-13.
[20] See Constitutional Court Decision Number 11-14-21-126-136/PUU-VII/2009. The annotation of Rizal Z. Tamin as Professor of Project Management from Institut Teknologi Bandung and Government Witnesses in Constitutional Court Trial on Judicial Review Law Number 12/2012.
[21] Kalihputro Fachriansyah and Endang Sulastri, *Evaluasi Pengembangan PTN-BH sebagai Pusat Unggulan (Centre of Exellence)*, (Jakarta: BAPPENAS, 2019), pp. 9.

proportional by increasing tuition fees for the rich students and reducing tuition fees for the poor students, in that the poor students might not be able to pay tuition fees even though it is cheap by government view.

Accordingly, the enactment of Law Number 12 of 2012 on Higher Education be regarded a solution to address injustice in Higher Education. Because Law Number 12 of 2012 on Higher Education not only contain the clause related the freedom of higher education to modulate tuition fees, but also contain affirmative action by requiring state university allocated 20% quota for poor students. Furthermore, it can be said that Law Number 12/2012 on Higher Education represent social justice, because it can be a foundation for government and state universities to modulate tuition fees more proportional according to economic capabilities.[22]

3. The Effect of PTN-BH Status for State University

The emergence of PTN-BH absolutely produces significant impact either academic and non-academic affairs. The impact that occur in academic affairs encompass full authority from PTN-BH to expose and seal the study program, there is dissimilar with PTN-Satker and PTN-BLU which do not have the authority to unfasten and fold the study program. Meantime, the impact that ensue in non-academic affairs covers tuition fees, finance, and human resources which would be explicated as follows.[23]

Be related to tuition fees, PTN-BH has a discretion to determine the tuition fees, however should be preceded by consultation to Ministry and should be referring to the Ministry's guidelines. As for related to finance affairs, PTN-BH has a freedom to manage the income independently which diverse with PTN-Satker and PTN-BLU where the income managed by government. As yet in finance affairs, the campuses that already have PTN-BH status can own the assets that obtained from their business, while the land as occupied by PTN-BH remains the state property. Furthermore, PTN-BH has a latitude to manage human resources through determination, appointment, coaching, and dismissal independently accordance to Government Regulation Number 4/2014 on Implementation of Higher Education and Management of Universities, it means that PTN-BH have no obligate to follow the employee mechanism as civil servant as though take place on PTN-Satker and PTN-BLU.[24]

4. The Risk of PTN-BH Status for State University

Apart the history of PTN-BH, the cause of PTN-BH emergence, and the effect of PTN-BH status for state university, another side that importantly to discuss is the risk side. In that apart of the independency in academic and non-academic affairs, PTN-BH status likewise impacts the risk that would be accepted by campus in the future. According to the research that has been conducted, there are at least two risks that would be facing PTN-BH namely legal risks and non-legal risks. Legal risks include the risks that related to incompatibility of internal regulations with the higher legal norms, so that several internal regulations being challenged in administration court that called Pengadilan Tata Usaha Negara (PTUN). For example when university create discretion regarding human resources management, determining tuition fees, and expose new study program but do not refer to higher regulations and principle of good governance.[25] Whereas, non-legal risks comprise that absolutely has no legal issues but causes a stir among academic community, supposed that the student's resistant regarding to university policy tuition fees because considered too expensive dan affected to discontinuity study of poor student's. As well as supposed that the campus workers union staged a demonstration because the campus fired the lecturer who criticized campus policies, in other words there is a stifling of academic freedom.[26] Still in the discussion of non-legal risks, in essence, this risk related to campus arbitrariness in policy making and create a chaos on campus environment.[27]

CONCLUSION

According to the result of description above, there are at least four conclusions accordance in to the research problem formulation as follows. **First,** the history of PTN-BH can be traced firstly in 2000 when Indonesian government establish four state university in Indonesia such as Universitas Indonesia, Universitas Gadjah Mada, Institut Pertanian Bogor, and Institut Teknologi Bandung as State-Owned Legal Entity that called Badan Hukum Milik Negara (BHMN), then continue to the establishment of Law Number 12 of 2012 on Higher Education as well as supported by special regulations up to Indonesia totally has 22 PTN-BH in nowadays. **Second,** the cause of PTN-BH emergence was influenced by four things such as imitedness grant for higher education from government, enhancement the quality of higher education, and create social justice in higher education. **Third,** the effect of PTN-BH status for state university includes two things namely academic and non-academic affairs. The impact that occur in academic affairs encompass full authority from PTN-BH to expose and seal the study program. Meantime, the impact that ensue in non-academic affairs covers tuition fees, finance, and human resources. **Fourth,** the risk of PTN-BH status for state university covers two things scilicet legal risks and non-legal risks. Legal risks include the risks that related to incompatibility of internal regulations with the higher legal norms, whereas non-legal risks comprise that absolutely has no legal issues but causes a stir among academic community or this risk related to campus arbitrariness in policy making and create a chaos on campus environment.

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[22] See Constitutional Court Decision Number 11-14-21-126-136/PUU-VII/2009. The annotation of Ade Armando as Associate Professor of Communication Science from Universitas Indonesia and Government Experts in Constitutional Court Trial on Judicial Review Law Number 12/2012.

[23] Rafika Suryani, Sunarmi, Rosnidar Sembiring, and Mahmul Siregar, Penyertaan Modal Universitas Sumatera Utara sebagai Perguruan Tinggi Berbadan Hukum pada Badan Usaha, *Locus Journal of Academic Literature Review*, Vol. 3, No. 1, (2024).

[24] Muhammad Munadi, *Privatisasi Perguruan Tinggi Negeri: Antara Pengingkaran Kewajiban Konstitusi Kebebasan Akademik dan Tuntutan Pasar*, (Surakarta: UIN Raden Mas Said, 2023), pp. 10.

[25] Endang Rokhmati, Andita Agustin Puspitasari, and Niswah Nafi'at, *Pedoman Pengelolaan Risiko di Lingkungan ITS*, (Surabaya: Institut Teknologi Sepuluh Nopember, 2022), pp. 55.

[26] Diana Sekar Anggraini, Eksitensi Perguruan Tinggi Negeri Badan Hukum terhadap Penyelenggaraan Pendidikan Tinggi, *Jurnal Ilmiah Hukum dan Keadilan*, Vol. 6, No. 2, (2019), pp.33-52.

[27] Leni Rohida, Implementasi Jabatan Fungsional pada Manajemen Sumber Daya Manusia serta Dampaknya pada Komitmen Organisasi (Studi Empirik di PTNBH), *Jurnal Kebijakan dan Manajemen PNS*, Vol. 3, No. 1, (2019).

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