



The Regulation of ASN Neutrality and Political Rights in Regional Head Elections: Legal Challenges and Solutions

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Abstract. The issue of violations of neutrality among State Civil Apparatus (ASN) has sparked public discourse about revoking ASN's political rights. A 2020 survey by the Election and Democracy Syndicate (SPD) revealed that 28% of respondents supported revoking ASN's political rights, similar to the restrictions applied to the military and police (TNI/Polri). This proposal is seen as a solution to address persistent violations of ASN neutrality, as ASN are currently allowed to vote in regional head elections but prohibited from expressing political preferences publicly. This study aims to analyze the regulation of ASN voting rights in regional head elections, using normative legal research with a statute and case approach. It examines laws and regulations relevant to ASN neutrality and reviews cases of neutrality violations in regional elections. The findings reveal that ASN neutrality is regulated under Article 2 letter f of the Regional Election Law, emphasizing that ASN must remain impartial and avoid influence. Articles 119, 123, and 70 reinforce restrictions on political involvement by requiring resignation for those running for office. These regulations ensure legal certainty, efficiency, and justice by preventing power abuses stemming from personal interests. Strengthening these provisions is critical to uphold democratic integrity in regional elections.

Keywords: Neutrality Violations, Political Rights, Regional Head Elections, State Civil Apparatus (ASN).

1. INTRODUCTION

The Republic of Indonesia is a country based on law; this has been stated in the 1945 Constitution of the Republic of Indonesia, where Article 1 paragraph (3) states that "The Republic of Indonesia is a country based on law", on the other hand the Republic of Indonesia has stated that the country is run with a democratic system, as stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Sovereignty lies in the hands of the people and is implemented according to the Constitution." The democracy developed in Indonesia is a democracy that refers to the normative values of the constitution, as stated by Miriam Budiardjo: "The characteristic of constitutional democracy is the idea that a democratic government is a government whose power is limited and is not allowed to act arbitrarily towards its citizens" (Budiardjo, 2003).

The rule of law is a mechanism for running a country. This concept is rooted in the theory of legal sovereignty, which states that the highest power in a country is the law. Therefore, all state apparatus, including citizens, must submit to, obey, and uphold the law without exception (Handoyo, 2020).

The rule of law and democracy are related in relation to that Jimly Asshiddiqie stated that democracy without legal regulations in a country will not run stably and will lose its form and direction, conversely law without a democratic system will lose its meaning because in a country based on law it requires constitutional supremacy, apart from being a consequence of the rule of law, constitutional supremacy is the implementation of democracy because the constitution is the highest form of social agreement. (Jimly Asshiddiqie, 2021).

Democracy gives rise to the understanding that the people are the source of power, and the people create regulations that will benefit and protect their rights. The right to vote, as one of the forms of democracy, empowers the people to determine their destiny and choose their leaders in their respective regions. On the other hand, the sovereignty of the people, as defined in the General Dictionary of the Indonesian Language, signifies the highest power or the right of sovereignty over the government of a state (Hakim *et al.*, 2024).

According to A. Pangerang Moenta, democracy has five elements: equality, people's position as policymakers in the State, freedom, decisions based on the principle of majority, and periodic elections for the determination of people's representatives (Mansyur *et al.*, 2021).

Based on Article 18 paragraph (4) of the 1945 Constitution, it states that the Governor, Regent and Mayor, each as head of the provincial, district and city regional government, are elected democratically. The regional head elections require people who have fulfilled the criteria as voters to use their votes. voting rights to elect the Governor, Regent and Mayor, respectively, as heads of provincial, district and city regional governments.

Political participation is an integral part of the running of a democracy, where democracy can be measured by the high or low level of public participation in its participation in celebrating the democratic party. Political participation greatly influences the legitimacy of society for the elected candidate or pair of candidates. Also, it evaluates and controls the community towards leaders or governments (Saputra, 2020). People who have met the criteria as voters have the right to vote to determine who their leaders are. The right to vote is also held by people who have become State Civil Apparatus (ASN) because using the right to vote in politics is part of exercising the political rights held by ASN. The siding of ASN with one of the new contestants can only be justified in the voting booth. Before using the right to vote in the ballot box, ASN must remain neutral to

maintain professionalism in governance and public services (Siregar, 2020).

Apparatus means tools, the leading equipment of the State covering the institutional, administrative, and personnel fields which are responsible for implementing the government wheel every day. While the meaning of civil means relating to the population or people (not the military). As the formulation can be, We understand that Apparatus State Civil Servants (ASN) are Indonesian residents /people appointed or placed as tools for the State's completeness, including the institutional, administrative, and personnel fields that have responsibility for the implementation of the government (Paratama *et al.*, 2025).

The principle of Neutrality is regulated in Government Regulation Number 94 of 2021 concerning civil servant discipline, Article 5 of the provision explicitly states that ASN are prohibited from providing support to regional head or deputy regional head candidates by: participating in campaigns, becoming campaign participants using party attributes or civil servant attributes, as campaign participants by mobilizing other civil servants, as campaign participants using state facilities, making decisions and/or actions that benefit or harm one of the candidate pairs before, during and after the campaign period, holding activities that lead to siding with candidate pairs who are election participants before, during and after the campaign period including meetings, invitations, appeals, appeals or giving goods to civil servants in their work unit environment, family members, and the community and/or providing letters of support accompanied by photocopies of their ID cards or resident identification certificates. Bureaucratic institutions and the people who work in them do not side with any election participants; all candidates must be treated equally, without any difference. This impartiality also applies to providing state facilities for their use, especially if the candidate is incumbent. The Neutrality of the State Civil Apparatus must be continuously maintained and supervised so that election events can run honestly (fair play) (Manuruki *et al.*, 2023).

The general explanation of Law Number 5 of 2014 concerning State Civil Apparatus emphasizes that to maintain the Neutrality of ASN from political parties and ensure the integrity, solidarity and unity of ASN and be able to focus all attention, thoughts, and energy in carrying out their duties, ASN are prohibited from becoming members and/or administrators of political parties. Law Number 5 of 2014 concerning State Civil Servants, the explanation of Article 2 letter (f) also explains that the "principle of neutrality" means that every ASN employee does not side with any form of influence and does not side with anyone's interests.

However, sometimes there are ASN individuals who are carried away by the political current or even forced to be non-neutral because they are afraid of being transferred or demoted; there are also ASN individuals who are involved in making one of the candidates pairs a success because they get a promotion if the candidate they support wins the election and succeeds in occupying the regional head. Indeed, ASN individuals widely use the Pilkada event to change their fate for the better. The issue of ASN neutrality is one of the legal issues that intersects with the essence of freedom of association. This is as stated by SF Marbun and M. Mahfud MD that one of the major problems of this nation in state life is the issue of civil servant neutrality because, theoretically, it is difficult to find a basis that can justify allowing civil servants to be involved in practical political activities (Marbun, 2012).

ASN neutrality, according to Law Number 5 of 2014, as explained in Article 2 letter (f), means that every ASN employee is impartial and free from any form of influence and does not side with anyone's interests. ¹The State Civil Service Commission explains that Neutrality is one of the very important principles to implement in an effort to realize a professional ASN. This concept is related to four things, including political activities, public service delivery, policy-making, and ASN management (Negara, 2018).

The principle of Neutrality means that the limitation of ASN's role in the political process is closely correlated with the concept of bureaucracy, which is oriented towards legitimacy, authority, and rationality (Sudrajat & Karsona, 2016). To maintain ASN's Neutrality from the influence of political interests to ensure the integrity, compactness and unity of ASN, and to be able to focus all attention, thoughts and energy on the tasks assigned to them, then every ASN activity must be based on the principle of Neutrality.

The issue of ASN neutrality is then regulated and followed up with various laws and regulations. These laws and regulations include Law Number 5 of 2014 concerning State Civil Apparatus, specifically in Article 2 Letter f, which states that ASN must be neutral in general elections. Government Regulation Number 94 of 2021 concerning Civil Servant Discipline, Government Regulation Number 42 of 2004 concerning Development of the Corps Spirit and Code of Ethics of Civil Servants, Circular Letter of the State Civil Apparatus Commission Number B.2900/KASN/11/2017 dated November 10, 2017, concerning Supervision of the Neutrality of State Civil Apparatus Employees in the 2018 Simultaneous Regional Elections.

Circular Letter of the Minister of State Civil Service Empowerment and Bureaucratic Reform Number B/94/M.SM.00.00/2019 dated March 26, 2019, concerning the Implementation of State Civil Service Neutrality in the Implementation of the Presidential and Vice Presidential Elections and the 2019 Legislative Elections and Joint Decree of the Minister of State Civil Service Empowerment and Bureaucratic Reform, Minister of Home Affairs, Head of the State Civil Service Agency, Chairperson of the State Civil Service Commission, and Chairperson of the General Elections Supervisory Body Number 05 of 2020, Number 800-2836 of 2020, Number

¹Law Number 5 of 2014 concerning State Civil Apparatus.

167/KEP/2020, Number 6/SKB/KASN/9/2020, Number 0314 dated September 10, 2020 concerning Guidelines for Supervision of State Civil Service Employee Neutrality in the Implementation of the 2020 Simultaneous Regional Head Elections (Hamzah, 2018).

Currently, the ASN position is in a system connected to political interests. This system has a synergistic relationship between the President/Regional Head and his deputy with ASN in a mutually influential work environment. Moreover, this relationship raises implications for ASN career positions based on the President's and Regional Head's authority as Personnel Development Officials. This condition will result in ASN's non-neutrality in carrying out their duties because they are full of interests. The relationship between ASN and practical politics is a problem that always occurs when interpretation is ambiguous and the merging of political aspects in the government environment. ASN is often used as a social symptom that influences the community environment as a respected and respected private figure. In this position, ASN is placed as a strategic media in influencing and recruiting the masses who are suspected of being vulnerable points for ASN so that they become non-neutral and vulnerable to violations (Sudrajat & Karsona, 2016).

In addition, another level of vulnerability of ASN is the existence of various cases of buying and selling ASN positions that have occurred in several regions, which is one indication that ASN can become part of a commodity that is always used for political interests. Although efforts to direct ASN to enter the world of politics occurred during the New Order with the obligation to support certain political parties, in the current era of reform, ASN is directed by the constitution and laws to return to being professional, integrity-based and independent state servants and free from political intervention. A neutral attitude from political influence possessed by ASN is a must in ASN. ASN should provide direct public services and interact with the community as the government apparatus closest to the community. (Wahyudi, 2005).

Provisions on ethics and norms related to ASN neutrality in general elections relate to attitudes, behaviour and actions in carrying out daily tasks, as well as what should not be done, what should be done and what may be done. Through the Letter of the Minister of State Apparatus Empowerment and Reform. Bureaucracy on the Implementation of Neutrality for ASN in the implementation of the 2018 simultaneous regional elections, the 2019 Legislative Elections and the 2019 Presidential Elections and the Joint Decree of the Minister of State Apparatus Empowerment and Bureaucratic Reform, the Minister of Home Affairs, the Head of the State Civil Service Agency, the Chairperson of the State Civil Service Commission, and the Chairperson of the General Elections Supervisory Body Number 05 of 2020, Number 800-2836 of 2020, Number 167/KEP/2020, Number 6/SKB/KASN/9/2020, Number 0314 dated September 10, 2020, concerning Guidelines for Supervision of the Neutrality of State Civil Apparatus Employees in the Implementation of the 2020 Simultaneous Regional Head Elections.

Based on the regulation, ASN participation in the campaign is not prohibited; in other words, the presence of ASN in the campaign of candidate pairs is permitted with several notes: ASN may not be a committee in the campaign activities, not campaign for candidate pairs, not use attributes, not be involved in mobilization and mobilization of the masses, not take pictures together with candidate pairs, not upload photos of candidate pair campaign activities to online media and social media and other activities that indicate support for candidate pairs. However, the prohibition provisions still exist.

In addition, based on Government Regulation (PP) Number 42 of 2004 concerning the Development of the Corps Spirit and the Code of Ethics of Civil Servants (PNS), ASN are prohibited from carrying out actions that lead to the partisanship of one candidate or actions that indicate involvement in practical politics/affiliation with a political party. It is a dilemma; however, ASNs have the right to vote but are not given the freedom to express their support for a particular candidate even though voting means supporting and supporting is essentially accompanied by the desire to express that support.

Some parties consider the neutrality of ASN voting rights in general elections, both presidential and vice presidential elections, legislative elections, and regional head elections, to be difficult to achieve. Based on information from the Regional Autonomy Implementation Monitoring Committee (KPPOD), ASN involvement is massive in the five-yearly contest even though it has been legally prohibited.²

Based on KPPOD research data, there were 80 cases of civil servant involvement in the 2018 regional election process. Campaigns on social media were the most frequent cases with 24 cases. The second most frequent violation, 20 cases, was when civil servants participated in the declaration of regional head candidates. Other forms of violations were civil servants participating in campaigns, taking pictures with candidates, connecting with political parties, becoming campaign teams, installing campaign equipment, appointing volunteer teams and socialization. Around 219 civil servants were temporarily dismissed because they were proven not neutral. The number of civil servants who have received the first and second warning letters has reached more than one million.³

Then, Bawaslu Member Ratna Dewi Pettalolo compared the level of violations in the 2018 Pilkada in 171 regions in 17 Provinces in 115 Regencies and 39 Cities with the 2020 Pilkada in 270 regions for 9 Provinces, 224 Regencies and 37 Cities. Although the number of alleged violations decreased, according to her, the level of

²Supriatin. 2018. <https://www.merdeka.com/besar/Pemogen-disarankan-cabut-hak-politik-pns.html>, accessed on 01 November 2020.

³Lalu Rahadian. 2018. "KPPOD: Civil Servants' Political Rights Should Be Revoked", <https://tirto.id/cMW6>, accessed on November 1, 2020.

handling of violations has increased, so it is necessary to provide protection to reporters who may receive terror threats from the reported party. She also added that, according to her, there are similarities in the form of violations, such as the installation of campaign equipment not in accordance with procedures, which still dominate administrative violations. Then, the partisanship of ad hoc organizers also still dominates violations of the code of ethics, the partisanship of village heads also dominates election crimes, and ASN posts their partisanship on social media, which is still a lot. In conclusion, Bawaslu Member Ratna Dewi Pettalolo emphasized that based on the number of alleged violations, the 2018 Pilkada was more than the 2020 Pilkada. However, the 2018 electoral districts were fewer, there was an increase in ASN Neutrality violations in the 2020 Election.⁴

Violations of Neutrality by ASN were also conveyed by the State Civil Service Commission (KASN), Agus Pramusinto in online media said that 283 PNS had been given recommendations for sanctions for violations of Neutrality by KASN and 99 PNS who had been followed up by the Personnel Development Officer (PPK). ASN who was found to have violated the most served as Senior Leaders at 36 per cent, Functional Positions at 17 per cent, Administrator Positions at 13 per cent, Executive Positions at 12 per cent, and Regional Head Positions (Camat/Lurah) at seven per cent.⁵

According to Agus Pramusinto in his statement, ASN who campaigned a lot on social media were 27 per cent and approached political parties regarding their nomination or others as prospective candidates were 21 per cent. Then, of those who put up banners or billboards promoting themselves or others as prospective candidates 13 p, 13 per cent declared themselves as prospective candidates nine per cent and attended the declaration of candidate pairs four per cent.⁶

There is a general potential for ASN abuse in regional elections, especially by incumbent regional heads. First, civil servants are often used two years before the regional elections to implement regional programs and activities. All work and achievements of civil servants considered successful during that period are claimed as the incumbent's success. Second, civil servants become the team that drafts the vision and mission of the regional head. Third, there is a high possibility that civil servants will facilitate the campaign team and incumbents in carrying out political work. Finally, civil servants can be seen providing direct support to the incumbent through their presence during the campaign or by giving specific comments and signs on social media.⁷

The ongoing cases of violations of ASN neutrality have led to the discourse of revoking political rights for ASN emerging in the public. A survey conducted by the Election and Democracy Syndicate (SPD) in 2020 stated that 28 per cent of respondents agreed that ASN's political rights should be revoked, like the TNI/Polri. If cases of Neutrality continue to occur and become public consumption, the number of people agreeing with the revocation of political rights could continue to increase. This is in line with the results of another SPD Survey where 84 per cent of the public agreed that ASN should be neutral in the election.

The revocation of political rights is considered to overcome the problem of violations of ASN neutrality. In addition, it is important because ASN's position is considered confusing. On the one hand, ASN can still choose regional head candidates; on the other hand, they are prohibited from expressing their political preferences in the public space, so the revocation of political rights is a breakthrough that should be taken in the future.

Bureaucracy must be neutral because it is a professional institution that must provide the same public services to everyone. In his statement on online media, Deputy Chairman of the Corruption Eradication Committee Nurul Ghufroon said that when in the field, ASN often hesitates to maintain its Neutrality amid the regional election. According to him, neutral ASNs are considered not to support the incumbent; supporting is considered risky if the incumbent loses. Meanwhile, if ASN is silent and does not take action, it can also impact career obstacles in the agency.

The issue of revoking political rights for ASN has become a polemic, especially among ASN. Various parties have expressed their approval and rejection of the breakthrough. So, it is interesting for prospective researchers to conduct a comprehensive study on the problem, considering that revoking ASN voting rights will make ASN more neutral. Based on the description of the background of the problem above, the author can limit the problems to be studied by formulating them as follows. How is the Voting Rights of State Civil Apparatus Regulation in the Implementation of Regional Head Elections?

2. RESEARCH METHODS

The type of research used is normative legal research (Irwansyah, 2020). Normative legal research is legal research that places law as a building of a favourable legal norm system. The norm system concerns the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings) that are logically connected to the philosophical construction regarding the regulation of the Voting Rights of State Civil

⁴Hendi Purnawan, 2020. https://www.bawaslu.go.id/id/berita/jumlah-penanganan-pelanggaran-pilkada-2020-meningkat-dewi-harap-pelapor-dilindungi-dari-tero_r, accessed on March 29, 2022.

⁵Ramadhan, 2020. "Polemic of Elimination of ASN/PNS Voting Rights". https://asumsi.co/post/polemik-penghapusan-hak-suara-pns_, accessed on November 1, 2020.

⁶ *Ibid.*

⁷Lalu Rahadian, (2018). KPPOD: Civil Servants' Political Rights Should Be Revoked. <https://tirto.id/cMW6>. Accessed on November 1, 2020.

Apparatus in the Regional Head Election. ⁸The statute approach *is* used to examine all provisions of laws and regulations related to the object of the problem (legal issue). The case approach *is* carried out by examining cases related to *violations of Neutrality in the implementation of regional head elections* carried out by state civil servants. Legal materials are analyzed by means of descriptive exploration/description of a condition or position of legal or non-legal propositions related to the Neutrality of ASN in regional head elections by referring to primary and secondary materials.

3. RESEARCH RESULTS AND DISCUSSION

Bureaucratic Neutrality believes that the government is positioned as a public service provider that is not influenced by political power. Basically, ASN neutrality only directs ASN to carry out its duties and functions in organizing government, development, and services to the community without participating in practical political activities.⁹ The Neutrality Apparatus of the State Civil Service (ASN) in the implementation of the General Election (Pemilu) and Election Regional Head (Pilkada) is one of the issue crucial. As an effort to guard ASN neutrality from influencing party politics and to ensure the integrity, solidarity and unity of ASN, as well as to centralize all attention, thoughts and energy to the assigned tasks, ASN is prohibited from becoming members and/or administrators of party politics, as well as nominate yourself with the conditions specified determined by regulation legislation.¹⁰

Law Number 5 of 2014 concerning Apparatus Civil State hints that Civil Servants and Employees of The Government with the Work Agreement are Indonesian citizens. The position of ASN as an Indonesian citizen (WNI) has consequences, as ASN also has constitutional rights protected by the 1945 Constitution. The rights in question are political rights, as explained in Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia that "everyone has the right to freedom of association, assembly and expression of opinion".

The ASN Law has regulated ASN rights in the election. Article 2 Letter f states that "the implementation of ASN policies and management is based on the principle of neutrality". The principle of Neutrality implies that every ASN employee is not biased from any form of influence and does not side with anyone's interests. ASN neutrality is related to political rights in theory, which are rights that every person legally has to achieve power, position and/or wealth that is beneficial to a citizen. One form of political rights regulated by the 1945 Constitution of the Republic of Indonesia is the right to vote and be elected in the Election and Regional Election as explained in Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which at the international level is contained in the Universal Declaration of Human Rights (UDHR) in Article 21 paragraph (1), (2), and (3). The concept of political rights to vote and be elected in elections, according to the UDHR, is a form of human rights to hold public office, which shows that freedom has been achieved for the people in a country to implement their political and civil rights.

The rights described in Article 1 paragraph (1) are then clarified in Article 21: "The right to peaceful assembly must be recognized. No restrictions may be imposed on the exercise of this right except those determined by the law. Which are necessary in a democratic society in the interests of national security and public political safety, or public order, protection of public health or morals, or protection of the rights and freedoms of others". In terms of the implementation of existing citizen rights, the 1945 Constitution of the Republic of Indonesia provides a mandate in accordance with Article 28J paragraph (2) "In exercising their rights and freedoms, everyone must submit to the restrictions established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands in accordance with moral considerations, religious values, religion, and public order in a democratic society".

The right of an ASN to elect and be elected, as regulated in the ASN Law, there is a monitoring system that is very much needed to ensure that ASN in carrying out their duties comply with applicable laws and regulations, in order to create a professional and accountable bureaucracy and as an inseparable part of efforts to realize *good governance* and bureaucratic reform. Through these efforts, a non-structural institution was formed, namely the State Civil Service Commission (KASN).

Referring to Article 27 of the ASN Law, it is stated that "KASN is a non-structural institution that is independent and free from political intervention to create professional and high-performing ASN employees, provide services fairly and neutrally, and become a glue and unifier of the nation". One of the objectives of the establishment of KASN based on Article 28 letter d of the ASN Law is to create neutral ASN employees. One of the biggest focuses for KASN is to maintain the dignity and honor of ASN to always act neutrally for the interests of the State.

One form of ASN political neutrality policy has been stated in several regulations, which can be seen in the following table:

⁸ *Ibid.*

⁹H Sanjaya, R Yulianti, F Habibi, Neutrality of State Civil Apparatus in the 2019 General Election in Banten Province, Vol 11 No 1, 2020, p. 19.

¹⁰Abdhy Walid Siagian, *Neutrality Apparatus Civil State Reviewed from the Right to Vote and the Right to be Elected in General Elections*, National Legal Analysis and Evaluation Center, National Legal Development Agency, Ministry of Law and Human Rights Humans, Jakarta: 2022. <https://rechtsvinding.bphn.go.id/?page=artikel&berita=599>

Table 1: Regulation Neutrality Apparatus Civil Servants in Elections.

Constitution	Governing Articles
Invite Law Number 5 of 2014 Concerning Apparatus State Civil Servant (ASN)	Article 2 letter f, states that one of principle organization ASN policy and management is "Neutrality". This principle of Neutrality means that every ASN employee is impartial from any form of influence and does not side with anyone's interests. Article 119 states that senior middle-level officials and senior pratama officials who will nominate themselves as governor and deputy governor, regent/mayor, and deputy regent/deputy mayor are required to declare their resignation in writing from the civil service upon registering as candidates. Article 123 paragraph (3) states that ASN employees from PNS who nominate themselves or are nominated to become President and Vice President; chairman, deputy chairman and members of the People's Representative Council; chairman, deputy chairman and members of the Regional Representative Council; governor and deputy governor; regent/mayor and deputy regent/deputy mayor are required to state their resignation in writing as PNS from the time they register as candidates.
Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law.	Article 70 paragraph (1) letter b; states that candidate pairs are prohibited from involving State Civil Apparatus, Members of the Republic of Indonesia National Police and Members of the Indonesian National Armed Forces. Article 71 paragraph 1 states that state officials, regional officials, state civil apparatus officials, members of the TNI/POLRI, and Village Heads or other titles/Lurah are prohibited from making decisions and/or actions that benefit or harm one of the candidate pairs.
Law Number 7 of 2017 Concerning General elections	Article 240 paragraph (1) letter k, states that resign as head area , deputy head area , apparatus civil servant , member Indonesian National Army , members The Republic of Indonesia National Police , directors , commissioners , supervisory board and employees of business entities state- owned and/or business entities owned by region , or other agency whose budget sourced from state finances , which are stated in a letter irrevocable resignation withdrawn ;
Government Regulation Number 42 of 2004 Concerning the Development of the Corps Spirit and the Code of Ethics for Civil Servants	Article 11 letter c states that in terms of ethics towards themselves, civil servants are required to avoid personal, group or class conflicts of interest.
Government Regulation Number 53 of 2010 Concerning Civil Servant Discipline	Article 4 Paragraph (12) states that civil servants are prohibited from providing support by participating as campaign implementers for candidates for President/Vice President, the People's Representative Council, the Regional Representative Council, or the Regional People's Representative Council.
Regulation Government Regulation Number 11 of 2017 Concerning Management Government employees	Article 254 paragraph (1) Civil servants are required to resign as a civil servant when appointed as a candidate for President and Vice President , Chairman, Deputy Chairman and Member of the People's Representative Council , Chairman, Deputy Chairman and Member of the Regional Representative Council , Governor and Deputy Governor , or Regent / Mayor and Deputy Regent /Deputy Mayor by the institution in charge carry out election general

Source: Abdhy Walid Siagian , 2022.

The table above explain points ASN neutrality in the Election , namely to participation in elections , both in terms of rights choosing and rights elected . If ASN wants to run in the election, then the person concerned must resign first. This regulation implies that ASN may not participate in the campaign against one of the candidate pairs, and ASN is prohibited from approaching political parties.

The existence of regulations related to ASN neutrality aims to provide a form of legal certainty, efficiency and justice, in order to limit power against the possibility of power movements based on personal interests and leading to *abuse of power* . And to optimize public services in order to realize *good governance* is to maximize and optimize ASN performance, this is included as an implementing element which is the most important and inseparable part of the ASN Law. ¹¹In the dictum of the ASN Law, it is stated that it is necessary to build an ASN that has integrity, is professional, neutral and free from political intervention, is free from corrupt practices, collusion and nepotism, and is able to provide public services for the community and is able to carry out its role as an element of national unity based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

3.1. The Concept of Neutrality of State Civil Apparatus (ASN) in Regional Head Elections

Neutrality from the perspective of the State Civil Apparatus (ASN) as stated in Article 2 letter (f) of Law Number 5 of 2014 that the implementation of ASN policies and management is based on the principle of Neutrality. According to the explanation of Article 2 letter f, what is meant by "principle of neutrality" is that every ASN employee is impartial from any form of influence and does not side with anyone's interests. ¹²The Regional Head Election (Pilkada) can trigger the use of bureaucracy for political interests in the Pilkada. In

¹¹ Abdhy Walid Siagian , *Neutrality Apparatus Civil State Reviewed from the Right to Vote and the Right to be Elected in General Elections* , National Legal Analysis and Evaluation Center, National Legal Development Agency , Ministry of Law and Human Rights Humans , Jakarta: 2022. <https://rechtsvinding.bphn.go.id/?page=artikel&berita=599>

¹²Regulation Attachment Commission Republic of Indonesia General Election Number 15 of 2019 concerning Stages , Programs, and Implementation Schedule Election Governor and Deputy Governor , Regent and Deputy Regent , and/or Mayor and Deputy Mayor in 2020

various regions, incumbent regional head candidates almost always mobilize ASN to win themselves. The bureaucracy should be free from the influence and intertwining of political ties with political forces, so that the services to the community provided by the neutral bureaucracy are impartial and objective. A bureaucracy that takes sides or is not neutral can give birth to political corruption which actually changes the regional election process to be colored by reprehensible actions.

Direct elections are not new to the Indonesian people because previously direct elections for President and Vice President were also held (MD, 2012). Direct elections for regional heads by the people in the regions have been carried out since the enactment of Law Number 32 of 2004 concerning Regional Government. The implementation of direct regional elections has brought changes to the culture of government at the regional level, in this case the repositioning of bureaucratic relations with politics, especially the issue of bureaucratic Neutrality towards politics (Dalim, 2010). Direct and simultaneous regional elections are a different situation, considering the large authority of the regions since the implementation of regional autonomy. Regional heads play the most important role in determining the success of a region's development. In other words, the community has more hope for regional heads to improve existing conditions.

The issue of ASN neutrality still often arises in the Pilkada. ASN neutrality in political contestation is a study of civil service law. As stated by Utrecht, administrative law examines the special legal relationship that is established to enable state administrative officials (amsdraggers) to carry out their special duties (Hartini, 2009). On the one hand, ASN is a government apparatus that is required to carry out government duties to provide public services, while on the other hand, PNS is also a member of society who has political and economic interests concerning their choices in the Pilkada. Often these interests are more dominant so that what is expected as an honest and fair election is not fulfilled.

In the reform era, one of the attitudes of the 5th KORPRI National Conference Decision, which is the only civil servant organization outside the civil service, stated that "civil servants do not involve themselves in political party activities". Almost all areas of life are regulated by laws and regulations, through the normative nature of human behavior, the law covers almost all areas of human life (Warassih, 2014). Including regulations in the Pilkada, there are 3 regulations that regulate, namely Law No. 5 of 2014 concerning State Civil Apparatus, Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors and Government Regulation No. 53 of 2010 concerning Civil Servant Discipline (Nugraha *et al.*, 2018).

Article 9 paragraph (2) of Law Number 5 of 2014 concerning State Civil Apparatus (ASN Law) stipulates that ASN employees must be free from the influence and intervention of all political groups and parties, while Article 12 states that ASN employees act as planners, implementers, and supervisors of the implementation of general government and national development tasks through the implementation of professional public policies and services, free from political intervention, and free from corrupt, collusive and nepotistic practices.

If the government bureaucracy can maintain its Neutrality in carrying out its functions, then the people as a whole can be served well and professionally. A neutral bureaucracy does not prioritize and side with the interests of a particular group of people. Participating in the interests of all people is the same as implementing democracy. While the bureaucracy's partisanship towards one of the ruling political party forces tends to provide opportunities for the proliferation of abuse of authority such as corruption, collusion and nepotism.

3.2. Comparison of TNI/Polri Neutrality with State Civil Apparatus (ASN)

One of the demands of the 1998 reforms was the elimination of KKN and the dual function of the ABRI, but it turned out that the political rights granted to Civil Servants did not change as the political rights granted to them during the New Order. Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning the Principles of Civil Servants and the last updated Law Number 5 of 2014 concerning State Civil Apparatus, apparently did not change or reduce the political rights of State Civil Apparatus to become State Officials as regulated in the Article without losing their status as Civil Servants, so that when ASN has completed their term of office as a public official, they can return to being Civil Servants.

The demand for civil servants to be neutral in political parties is increasingly being voiced. This demand is reasonable considering that during the New Order, the Republic of Indonesia Civil Servant Corps (KORPRI) played a role as Golkar's political machine, where the majority of the party's membership were civil servants (Sri, 2010). In relation to this, various types of regulations have been drafted and stipulated by the government and legislative institutions, with the aim of creating a neutral and impartial bureaucratic situation in terms of political activities. These regulations are drafted hierarchically starting from statutory products to government regulations. In relation to the involvement and management of civil servants in political activities, during the reform era, this problem was regulated in PP No. 5/1999 concerning Civil Servants Who Become Members of Political Parties, however, along with the development of government in Indonesia, this PP has been amended and also adjusted into PP No. 37/2004 concerning the Prohibition of Civil Servants from Becoming Members of Political Parties which is still in effect today.

The regulation was made with the main target so that civil servants are able to act neutrally and not show bias in providing services to the community. The essence of the meaning of the principle of Neutrality contained in the PP is that civil servants as bureaucratic apparatus have the main task of providing services to the public as

a whole, upholding existing competence and credibility by not using state facilities in the practical activities of certain political parties.

To emphasize the prohibition of civil servant involvement in political activities, in the provisions of Article 2 of PP No. 37/2004, it is emphasized that there is a threat of dismissal for civil servant members who become administrators in a political party. Considering the possibility of civil servant members being involved and switching from government service functions to political activities, therefore, in the provisions of PP No. 37/2004, it also clearly regulates the dismissal of civil servant members who wish to be involved in the management of a political party, either honorably or dishonorably. This PP regulates in principle the procedures for resignation and dismissal of the civil servant members concerned.

Currently, the problem of civil servant neutrality tends and has the potential to occur during the General Election and Regional Election, this phenomenon is not a strange thing in the world of Indonesian politics and bureaucracy. Starting from the ratification of Law No. 32/2004 concerning Regional Government in Indonesia, now the election of government officials is carried out directly, thus triggering an increase in the number of violations of the principle of Neutrality among the bureaucracy (MD, 2012).

Through indirect regional elections, bureaucratic Neutrality is relatively guaranteed, because in the implementation process of course it does not require a successful team consisting of state apparatus such as civil servants. Efforts to realize Neutrality in the bureaucracy must be attempted at the central and regional government levels. Based on the provisions of Article 67 letter c of the Regional Government Law, one of the main tasks of a regional head is to develop democratic life in the community. One form of implementation of this article is by not mobilizing state apparatus including civil servants to side with certain political camps and the victory of certain parties.

Another government effort to realize the spirit of Neutrality of civil servants so as not to be carried away by political influences and entanglements and to limit political activities in the bureaucratic environment is by issuing regulations in the form of Law No. 5 of 2014 concerning State Civil Apparatus which replaces the position of Law No. 43 of 1999 concerning the Principles of Civil Service. The regulation regarding the principle of Neutrality is expressly stated in this regulation in Article 2 letter f which determines that one of the principles underlying the implementation of ASN Policy and Management is the "principle of neutrality". In the Explanation section, it is explained that the principle of Neutrality is a condition where the bureaucratic apparatus does not take sides in any form and to anyone's interests. Article 9 paragraph (2) of the ASN Law also determines that ASN employees must be free from the impression and interference of a group and political party, with the main aim of preventing discriminatory attitudes in serving the administrative needs of the community.

Chapter II of the ASN Law also regulates the code of ethics and basic values of the behavior of a civil servant who must implement the principle of Neutrality. The provisions issued in the ASN Law also emphasize the rules that have been stated in Article 4 of PP No. 53/2010 concerning Civil Servant Discipline, this section emphasizes the prohibition of civil servants from entering the political arena and showing partisanship and support for certain candidates in ways such as, participating in the implementation of campaigns using state facilities and symbols/identities of parties or civil servants, directing other civil servants as campaign participants, and also carrying out all kinds of activities that lead to partisanship for candidates for office holders who are participants in the election event.

Bureaucracy should be free from political influence and entanglement, so that public services are neutral, impartial, and objective. The emergence of partisanship from state apparatus has given rise to political corruption where the implementation of regional elections is no longer based on the principles of democracy but rather on reprehensible actions. The presence of a direct election system has had an impact on the culture of government, specifically the birth of relations between the scope of administration/bureaucracy and politics, which ultimately has an impact on the Neutrality of the bureaucracy itself. If the bureaucratic apparatus can maintain Neutrality in carrying out its functions, then the people as a whole can be served well and professionally. A neutral bureaucracy does not prioritize and side with the interests of certain groups of people. If a violation of discipline and code of ethics is found by a civil servant member, then according to the provisions contained in the laws and regulations, the civil servant concerned will be subject to sanctions. (Sudrajat & Karsona, 2016).

The formation of the rights of State Civil Apparatus to become State officials is reflected in Article 119 and Article 123 paragraph (3) of Law No. 5 of 2014 concerning State Civil Apparatus as far as the terms "Chairman, Deputy Chairperson, and Members of the Regional Representative Council; Governor and Deputy Governor, Regent/Mayor and Deputy Regent/Deputy Mayor. Article 59, paragraph (5a) of Law No. 12 of 2008, reads .¹³Individual candidates at the time of registration are required to submit a statement of willingness to resign from office if elected as regional head or deputy regional head in accordance with statutory regulations. A statement of resignation from state office for candidates who come from civil servants, members of the Indonesian National Army, and members of the Indonesian National Police.

Article 9 of the ASN Law, reads: ¹⁴Civil Servants implement policies set by the leadership of Government Agencies. Civil Servants must be free from the influence and intervention of all groups and political parties.

¹³Republic of Indonesia. Law No. 12 of 2008. Second Amendment to Law No. 2004 concerning Regional Government. Article 59 paragraph (5a).

¹⁴Republic of Indonesia. Law No. 5 of 2014. Law on Civil Service Civil State. Article . 9.

Article 119 of the ASN Law, reads: ¹⁵Middle-ranking high-ranking officials and first-ranking officials who will nominate themselves as governor or deputy governor, regent/mayor, and deputy regent/mayor are required to declare themselves in writing from civil servants since registering as candidates. Article 123, paragraph (3) of the ASN Law, reads: ¹⁶Civil servants from civil servants who nominate themselves or are nominated as President and Vice President; chairman, deputy chairman, and members of the People's Representative Council; chairman, deputy chairman, and members of the Regional Representative Council; Governor and Deputy Governor; Regent/Mayor and deputy regent/deputy mayor are required to declare their resignation in writing as civil servants since registering as candidates for Civil Servants.

Based on these conditions, the political elite who drafted the applicable laws and regulations preventing ASN from occupying public positions are limited in such a way by requiring ASN who will become regional head candidates or certain state officials to resign from their status as ASN. TNI Neutrality in Elections and The regional elections can refer to the TNI Commander's Instruction Number: Ins/1/VIII/2008 concerning the TNI Neutrality Guidelines in Elections and Regional Elections, which explains three main points: TNI neutrality is a mandate in the implementation of TNI internal reform according to Law of the Republic of Indonesia Number 34 of 2004 concerning the TNI. TNI soldiers who will participate in elections and regional elections must make a statement of resignation from active service (retirement) before the election and regional election implementation stage (based on the TNI Commander's Telegram Letter Number: STR/546/2006/ dated August 22, 2006). Implementation of TNI Neutrality in Elections and Regional Elections, such as:

- a) Securing the implementation of general elections and regional elections in accordance with the duties and functions of TNI and Polri assistance;
- b) Neutral by not taking sides and providing support to one of the election and regional election contestants;
- c) TNI units/individuals/facilities are not involved in a series of election and regional election activities in any form outside the duties and functions of the TNI;
- d) TNI soldiers do not exercise their right to vote either in general elections or in regional elections;
- e) Specifically for TNI soldiers (wives/husbands/children of TNI soldiers), the right to vote is an individual right as a citizen, institutions or units are prohibited from giving direction in determining the implementation of this right. (Farchan, 2021) .

Concerning concerns about the TNI institution being dragged into TNI neutrality, the TNI Commander has also issued an official telegram letter since 2004. This telegram letter is generally given to the Pangdam, Pangarmabar, Pangarmatim, Pangkoops I and II. The entry of TNI retirees into political activities is certainly feared to be able to drag the military network into politics. From an electoral perspective, the vote-raising within the TNI extended family does not seem to have a big impact. However, in terms of forming public perception, the presence of retirees can indeed provide a positive public perception so that it can boost the vote acquisition of presidential candidate pairs (Soesilo, 2015) .

The professions of ASN, TNI and Polri each have their own provisions in their neutral attitude in regional elections. Such as the neutral attitude of ASN regulated in article 9 paragraph 2 of law no. 5 of 2014 concerning the State Civil Apparatus that, "ASN employees must be free from the influence and intervention of all groups and political parties". Then the rules of the TNI contained in article 39 paragraph 2 of law no. 34 of 2004 concerning the TNI, namely "soldiers are prohibited from being involved in practical political activities". Likewise, the neutral attitude of the Polri regulated in regulation article 28 of law no. 2 of 2002 concerning the Polri, that "The Polri is neutral in political life and does not involve itself in practical political activities and does not use the right to vote and be elected". Those are some of the regulations related to Neutrality in regional head elections that are intended for members of each ASN, TNI and Polri Institution.

3.3. Ideal Formulation of Regulation of State Civil Apparatus Neutrality in Regional Head Elections

The political Neutrality of the State Civil Apparatus (ASN) is an important pillar in the continuity of good governance, successful and effective. ASN is a profession for Civil Servants (PNS) and Government Employees with Work Agreements (PPPK) who work in government agencies appointed by the Personnel Development Officer (PPK), namely the Minister/Governor/Regent/Mayor and assigned duties in a government position or assigned other state duties and paid based on laws and regulations. Civil Servants, hereinafter abbreviated as PNS, are Indonesian citizens who meet certain requirements, appointed as permanent ASN employees by the personnel development officer to occupy government positions. (Rahmansyah & Irwandi, 2021) .

Based on Law Number 20 of 2023 concerning State Civil Apparatus Article 2 letter f, it is stated that the implementation of ASN policies and management is based on the principle of Neutrality, which means that every ASN employee does not side with any form of influence and does not side with anyone's interests. In addition, there is Article 9 Paragraph (2) which states that ASN employees must be free from the influence and intervention of all groups and political parties. While Article 12 states that ASN employees act as planners, implementers, and supervisors of the implementation of general government tasks and national development

¹⁵Ibid., Article 119.

¹⁶Ibid., Article 123 paragraph (3).

through the implementation of professional policies and public services, free from political intervention, and free from corrupt practices, collusion and nepotism.

Supervision carried out in relation to the Neutrality of State Civil Apparatus (ASN) in the regional elections is carried out by the Civil Service, Education and Training Agency (BKPP) and Bawaslu. Within the BKPP there is an ASN Neutrality Task Force Team formed before the Regional Elections, within this Team there are also no reports received regarding ASN who are not neutral. If there are members of the public who find ASN who are not neutral, they can report to the BKPP. The form of prevention from the BKPP in implementing the principle of Neutrality of Civil Servants in the simultaneous regional head elections in 2017, one of which is through Circular Letter Number: SE/06/M.PAN-RB/11/2016 concerning the Implementation of Neutrality and Discipline Enforcement and Sanctions for State Civil Apparatus (Maulana *et al.*, 2024).

In the Simultaneous Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor (Pilkada). The regional inspectorate functions as an internal government auditor who carries out general supervision activities of the regional government and other tasks assigned by the regional head. This institution is a supervisory institution within the regional government. The regional Inspectorate plays a vital role for the progress and success of the regional government and regional apparatus in organizing government in the region. The district/city inspectorate is a functional supervisory apparatus that is under and responsible to the regent/mayor. The regional Inspectorate is an important institution in creating a clean government. Many things can be achieved if this institution is able to carry out supervisory and prevention tasks (Watunglawar, 2017).

The Inspectorate has the authority if it finds ASN who are suspected of not being neutral in the regional head election, the Inspectorate will follow up by conducting an examination, collecting information and evidence or witnesses that lead to the alleged case. If after that sufficient initial evidence is found related to ASN who are not neutral, the Regional Inspectorate will report this to the Regent as the Personnel Development Officer, then the Regent will report again to the State Civil Service Commission (KASN) (Negara, 2017).

KASN based on Article 19 of Law No. 5 of 2014 is a non-structural institution that is independent and free from political intervention. Then its existence is strengthened again in Article 25 paragraph (2) letter b that in order to exercise power, the President delegates part of his power to KASN related to the authority to monitor and evaluate the implementation of ASN management policies to ensure supervision of the implementation of principles and codes of ethics and codes of conduct for ASN. KASN after receiving a report from the Regent, KASN will examine and then provide recommendations. The recommendations will be followed up by the Regional Inspectorate by conducting further examinations and imposing sanctions. (Yamin, 2013).

The sanctions referred to are light sanctions, moderate sanctions and severe sanctions. The imposition of sanctions refers to Government Regulation Number 53 of 2010 concerning Civil Servant Discipline, Regulation of the Head of the State Civil Service Agency Number: 21 of 2010 concerning Provisions for the Implementation of Government Regulation Number 53 of 2010 concerning ASN Discipline, and Circular Letter of the Minister of State Apparatus Empowerment and Bureaucratic Reform Number: SE/06/M.PAN-RB/11/2016 concerning the Implementation of Neutrality and Discipline Enforcement and Sanctions for State Civil Apparatus in the Simultaneous Election of Governor and Deputy Governor, Regent and Deputy Regent (Rahmansyah & Irwandi, 2021). The level and type of sanctions are regulated in Article 7, paragraphs (1) to (4) of PP No. 53/2010, where the Level of Disciplinary Punishment consists of light, moderate, and severe disciplinary sanctions.

Regarding which sanctions will be imposed, it is based on the level of violation. Suppose it is classified as moderate or severe. In that case, the Regency/City Disciplinary Enforcement Team consisting of the Regional Inspectorate, BKPP, and the Legal Section will clarify to the ASN concerned as a consideration for the Mayor to give disciplinary sanctions. For light sanctions, they will be given by the direct superior. In addition to the Panwaslu, which can directly recommend to the Regional Inspectorate, the Panwas can also report to the Regent and then the Regent, who will recommend to the Regional Inspectorate.

4. CONCLUSION

Regulations on the Voting Rights of State Civil Apparatus in the Implementation of Regional Head Elections in Article 2 letter f explain the principle of neutrality that ASN must not side with any form of influence and not take sides with interests wherever. Then, Article 119 states that ASN who want to be involved in political practicals For running for office as governor, deputy governor, regent/mayor city, and deputy regent /deputy mayor must state their resignation as a civil servant. Likewise, Article 123 paragraph (3) states that ASN employees from PNS who are running as president /vice president, chairperson, deputy chairman, member dpr as well as governor, deputy governor or regent/mayor, deputy regent, deputy/deputy mayor must resign as a civil servant. Next, article 70, paragraph (1) letter b states that candidate pairs involving ASN, Polri, and TNI are prohibited. Several regulations related to ASN neutrality aim to provide a form of legal certainty, efficiency, and justice to limit power against the possibility of power movements based on personal interests that could lead to *abuse of power*.

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