

## LEGAL REVIEW OF THE NEUTRALITY OF STATE CIVIL APPARATUS IN ELECTIONS

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### ABSTRACT

This study examines the legal aspects of Civil Service Neutrality in Indonesian general elections. Civil service neutrality represents a fundamental principle in democratic governance with integrity. Through a normative juridical approach, this research analyzes the regulatory framework governing civil servant neutrality, common forms of violations, and the effectiveness of existing supervision mechanisms and sanctions. The findings indicate that despite Indonesia having comprehensive legislation regarding civil service neutrality, its implementation still faces various challenges, including diverse interpretations of the boundaries of civil servants' political activities, weak law enforcement, and lack of awareness and understanding among civil servants themselves. This research recommends strengthening collaborative oversight mechanisms between institutions, clarifying the boundaries and definitions of civil servants' political activities, and enhancing education and socialization regarding civil service ethics in the context of electoral democracy.

**Keywords:** Civil Service Neutrality, General Elections, Bureaucratic Integrity, Law Enforcement

### INTRODUCTION

The neutrality of the State Civil Apparatus (ASN) in general elections (elections) is a crucial aspect in realizing democratic, professional, and integrity-based governance. As state administrators who have the authority to implement public policies, ASN are required to be neutral and not side with any political group. This principle of neutrality is an important pillar to ensure a bureaucracy that is fair in providing services to the entire community, without discrimination based on political affiliation.

The urgency of maintaining ASN neutrality is increasingly apparent in the context of Indonesia's increasingly competitive electoral political dynamics. Elections as a formal democratic mechanism for contesting political power are often the momentum where ASN neutrality is tested. In the last few election cycles, the phenomenon of bureaucratic politicization and violations of ASN neutrality have remained significant issues. The Election Supervisory Agency (Bawaslu) noted that during the 2019 Election, there were 1,096 cases of alleged violations of ASN neutrality reported, while in the 2020 simultaneous regional head elections (pilkada), there were 162 ASN who were given sanctions by the State Civil Service Commission (KASN) because they were proven not to be neutral.

The regulatory framework regarding ASN neutrality in Indonesia is actually quite comprehensive. Law Number 5 of 2014 concerning State Civil Apparatus explicitly states

that ASN must be free from the influence and intervention of all groups and political parties. This neutrality is reinforced through various derivative regulations, including Government Regulation Number 42 of 2004 concerning the Development of the Corps Spirit and the Civil Servant Code of Ethics, and Government Regulation Number 53 of 2010 concerning Civil Servant Discipline. However, the implementation of these regulations still faces challenges, both in terms of interpretation of the limits of ASN political activities, and in enforcing sanctions against violations that occur.

Violations of ASN neutrality in elections have broad and systemic impacts. In addition to potentially causing injustice in electoral competition because it uses state resources and authority for certain political interests, this practice also threatens professionalism and meritocracy in the bureaucracy. Mobilizing ASN for political purposes can create a culture of loyalty to individuals or parties rather than to the state and the constitution, which in turn has an impact on the quality of public services and the resulting policies.

Studies on ASN neutrality have been conducted by many previous researchers. Firnas (2016) in his research on politics and bureaucracy highlighted the complexity of maintaining bureaucratic neutrality in the context of political decentralization in Indonesia. He found that the patron-client relationship between political officials and bureaucrats is still strong, so that political intervention in the bureaucracy is difficult to avoid even though formal regulations prohibit it. In line with this, Nugraha (2018) in his study on ASN neutrality in regional elections identified a gap between the ideal regulatory framework and practices in the field, especially due to ambiguity in the interpretation of regulations and weak oversight mechanisms.

In the institutional context, Sudrajat and Karsona (2016) in their analysis of the role of the State Civil Service Commission in maintaining ASN neutrality highlighted the importance of strengthening independent supervisory institutions. This study shows that the effectiveness of KASN in enforcing ASN neutrality is still constrained by limited authority, resources, and coordination with other law enforcement agencies. Meanwhile, Sari (2020) in his research on the challenges of implementing ASN neutrality policies in the context of regional autonomy identified a greater structural challenge, namely the meeting between bureaucracy and politics at the local level which creates space for political intervention in career mechanisms and bureaucratic decision-making.

Based on these various studies, it is clear that although there is a legal framework governing ASN neutrality, there are still gaps in its implementation. This indicates the need for further studies on legal review of ASN neutrality in elections, with a focus on a comprehensive analysis of existing regulations, identification of forms of violations of ASN neutrality, and evaluation of applicable monitoring and law enforcement mechanisms.

## **RESEARCH METHODS**

This study uses a normative legal research method with a normative legal approach that focuses on a comprehensive analysis of legal norms governing the neutrality of State Civil Apparatus in general elections. This approach was chosen because the study aims to review and analyze the existing regulatory framework, identify implementation gaps, and evaluate the effectiveness of the monitoring and law enforcement mechanisms related to ASN neutrality in the context of elections in Indonesia.

## DISCUSSION

### **Legal Framework Governing ASN Neutrality in Elections in Indonesia and the Effectiveness of Its Implementation**

The legal framework related to ASN neutrality in elections in Indonesia has undergone significant development since the reform era. Regulations regarding ASN neutrality are a response to the practice of bureaucratic instrumentalization for political interests that was common during the New Order era. The following is a comprehensive analysis of the existing legal framework and the effectiveness of its implementation:

#### **1. Constitutional Basis and Main Legislation**

Constitutionally, ASN neutrality is a manifestation of the principle of people's sovereignty as regulated in Article 1 paragraph (2) of the 1945 Constitution. This principle is then translated into various laws and regulations, including:

##### **a) Law Number 5 of 2014 concerning State Civil Apparatus**

The ASN Law is the main foundation that explicitly regulates the principle of ASN neutrality. Article 2 letter f states that the implementation of ASN policies and management is based on the principle of "neutrality". Then Article 9 paragraph (2) emphasizes that "ASN employees must be free from the influence and intervention of all groups and political parties". Furthermore, Article 12 explains that ASN plays a role as "planners, implementers, and supervisors of the implementation of general government tasks and national development through the implementation of professional public policies and services, free from political intervention, and free from corrupt practices, collusion, and nepotism".

##### **b) Law Number 7 of 2017 concerning General Elections**

The Election Law strengthens the principle of neutrality in the context of holding elections. Article 280 paragraph (2) letter h prohibits the involvement of state/regional state-owned enterprise officials, ASN, members of the Police, and members of the TNI in campaign activities. This provision aims to prevent the mobilization of bureaucracy and state resources in election-related activities.

##### **c) Government Regulation Number 53 of 2010 concerning Civil Servant Discipline**

This PP regulates more technically the prohibition for civil servants in political activities. Article 4 numbers 12 to 15 prohibit civil servants from providing support to legislative candidates, regional head/deputy regional head candidates, or presidential/vice presidential candidates either by being involved in the campaign, using facilities related to the position, making decisions that benefit or harm one of the candidate pairs, or holding activities that lead to partisanship.

##### **d) Regulation of the State Civil Service Commission Number 5 of 2019**

This regulation regulates the procedures for determining violations of neutrality for ASN employees. Article 2 paragraph (2) describes in detail the forms of violations of neutrality, including announcements of political preferences on social media, involvement in campaigns, use of state facilities for political activities, and various other forms of partisanship.

## **2. Effectiveness of Implementation of the Legal Framework**

Although the legal framework governing ASN neutrality is quite comprehensive, its implementation still faces various challenges:

### **a) Non-uniform Interpretation of the Limits of ASN Political Activities**

A study conducted by Sudrajat and Karsona (2016) showed that there were differences in interpretation among ASN regarding what activities were categorized as violations of neutrality. For example, whether attendance at an event organized by a political party or a particular candidate, but not explicitly stating support, is a violation or not. This ambiguity is often exploited as a "grey space" to carry out covert political activities.

### **b) Weak Socialization of ASN Neutrality Regulations**

In Ardilafiza's research (2021), it was identified that there are still many ASN who do not understand in detail the limitations in the neutrality provisions. This is especially the case in areas with limited access to information. This lack of understanding makes ASN vulnerable to being involved in violations of neutrality, both consciously and unconsciously.

### **c) Structural and Cultural Factors in Indonesian Bureaucracy**

According to Dwiyanto's analysis (2015), Indonesia's hierarchical bureaucratic structure and strong patronage culture are challenges in implementing ASN neutrality. The dependence of ASN careers on political officials, especially in the era of regional autonomy, creates pressure for ASN to demonstrate political loyalty. This situation is exacerbated by the still weak implementation of the merit system in ASN management in several regions.

### **d) Inconsistency in the Application of Sanctions**

The State Civil Service Commission in its 2020 Performance Report noted significant variations in the application of sanctions for violations of ASN neutrality between regions. Several similar cases received different sanctions, depending on the local political context and the effectiveness of supervision. This inconsistency reduces the deterrent effect of existing sanctions.

### **e) Empirical Data on ASN Neutrality Violations**

Based on Bawaslu data, during the 2019 Election, 1,096 cases of alleged violations of ASN neutrality were recorded. Meanwhile, in the 2020 simultaneous regional elections, KASN imposed sanctions on 162 ASN who were proven not to be neutral. These figures show that violations of ASN neutrality are still a significant phenomenon in the

implementation of elections in Indonesia, even though there is a comprehensive legal framework.

A comparative study conducted by Nugraha (2018) shows that the effectiveness of the implementation of ASN neutrality in Indonesia is still lagging behind compared to countries with more established merit systems such as Singapore and South Korea. In both countries, the principle of bureaucratic political neutrality is upheld through a combination of a clear legal framework, a strong merit system, and a culture of professionalism in the bureaucracy.

### **Supervision and Law Enforcement Mechanisms for Violations of ASN Neutrality in Elections and Challenges in Its Implementation**

Supervision and law enforcement mechanisms are crucial components in ensuring the implementation of ASN neutrality. The following is an analysis of existing mechanisms and the challenges in their implementation:

#### **1. Institutional Architecture for ASN Neutrality Supervision**

Supervision of ASN neutrality in elections involves several institutions with different authorities:

##### **a) State Civil Service Commission (KASN)**

KASN has the authority to supervise the implementation of the principles, code of ethics, and code of conduct of ASN, including the principle of neutrality. Based on the ASN Law Article 32 paragraph (1), KASN has the authority to receive reports of violations of ASN neutrality and can recommend sanctions to related agencies. In the context of elections, KASN usually issues circulars containing appeals and guidelines for ASN to maintain neutrality.

##### **b) Election Supervisory Body (Bawaslu)**

Bawaslu as an election supervisory institution has the authority to supervise and take action against election violations, including violations involving ASN. Based on the Election Law Article 93 letter h, Bawaslu has the authority to receive reports of alleged violations of ASN neutrality and forward them to the relevant agencies.

##### **c) Inspectorate at Central and Regional Level**

The Inspectorate as an internal government oversight institution has the task of supervising ASN behavior, including in terms of political neutrality. Based on PP No. 60 of 2008, the Inspectorate has the authority to conduct audits and examinations of alleged ASN disciplinary violations, including violations of neutrality.

##### **d) Personnel Development Officer (PPK)**

PPK, both at the central and regional levels, has the authority to impose administrative sanctions on ASN who violate the neutrality provisions. This authority is regulated in PP No. 53 of 2010 concerning Civil Servant Discipline.

## **2. Monitoring and Enforcement Mechanism**

The monitoring and enforcement mechanism for violations of ASN neutrality in elections is carried out through several channels:

### **a) Report-Based Supervision**

Both KASN and Bawaslu receive reports from the public regarding alleged violations of ASN neutrality. Reports received by Bawaslu will be processed through the integrated law enforcement center (Gakkumdu) if they are indicated as election crimes, or forwarded to KASN or PPK if they are administrative violations.

### **b) Proactive Supervision**

Bawaslu and KASN also conduct proactive supervision through social media monitoring, field surveys, and coordination with inspectorates at various levels of government. Bawaslu specifically has a Participatory Supervision Center that involves the public in election supervision, including supervision of ASN neutrality.

### **c) Enforcement and Sanctions Process**

The process of taking action against violations of ASN neutrality involves stages of verification, clarification, and recommendation. KASN can recommend administrative sanctions to PPK, ranging from written warnings to dismissal. Meanwhile, violations that are also election crimes will be handled through criminal law.

## **3. Challenges in Implementing Supervision and Law Enforcement Mechanisms**

Although there are fairly comprehensive monitoring and law enforcement mechanisms in place, their implementation still faces various challenges:

### **a) Fragmentation of Authority between Institutions**

Supervision of ASN neutrality involves several institutions with overlapping authorities. Sari's research (2020) identified that coordination between KASN, Bawaslu, and the inspectorate often does not run optimally, causing delays in handling cases and inconsistencies in the application of sanctions. This situation is exacerbated by the still limited understanding regarding the technical definition of a neutrality violation.

### **b) Complex Proof Process**

Sudrajat and Karsona (2016) identified that proving violations of ASN neutrality is often complex, especially in cases where there is no physical evidence or when the violation is

committed in a covert manner. For example, bureaucratic mobilization carried out through verbal instructions or the use of certain codes is difficult to prove as a formal violation.

c) Disparity in the Application of Sanctions

There is significant variation in the application of sanctions for violations of ASN neutrality. The 2020 KASN report shows that of the 162 ASN recommended for sanctions because they were proven not to be neutral, only around 70% were actually sanctioned by the PPK according to the recommendations. This indicates that there are still political factors and power relations that influence law enforcement.

d) Capacity and Resource Limitations

KASN as the main institution that oversees ASN neutrality still faces resource limitations, both in terms of personnel and budget. With the number of ASN reaching more than 4 million people and spread throughout Indonesia, KASN's capacity to carry out proactive supervision is still very limited. This situation causes supervision to be more reactive to incoming reports.

e) Lack of Protection for Whistleblowers

The reporting-based monitoring mechanism is still hampered by the lack of protection for reporters, especially if the reporter is a fellow ASN. Firnas (2016) noted that ASN who report violations of neutrality by their superiors or colleagues are at risk of retaliation, either directly through transfer or dismissal, or indirectly through social isolation and career obstacles. This situation reduces the effectiveness of participatory supervision from within the bureaucracy.

f) Challenges of Supervision in the Digital Era

The development of technology and social media creates new challenges in supervising ASN neutrality. The use of anonymous accounts, closed groups, or encrypted communication platforms makes it difficult to detect violations of neutrality in the digital space. Ardilafiza (2021) noted that violations of neutrality through social media are a new trend that requires a more adaptive supervisory approach.

A study conducted by Asmara (2022) identified that the effectiveness of law enforcement against violations of ASN neutrality is greatly influenced by three main factors: (1) political commitment from regional heads or heads of institutions, (2) independence and capacity of supervisory institutions, and (3) active involvement of civil society in supervision. In areas with these three factors being strong, the level of ASN neutrality violations tends to be lower.

Efforts to address the challenges in supervision and law enforcement have been carried out through various initiatives. KASN and Bawaslu have built an online reporting system to make it easier for the public to report alleged violations of neutrality. The two institutions have also signed a memorandum of understanding to strengthen coordination in handling cases of violations of ASN neutrality in elections. At the local level, several regions have formed special task forces involving the inspectorate, regional Bawaslu, and civil society organizations to oversee ASN neutrality during the election period.

## CONCLUSION

Based on the legal review that has been conducted, it can be concluded that the regulatory framework regarding ASN neutrality in elections in Indonesia is actually quite comprehensive, reflected in various laws and regulations ranging from the ASN Law, PP on Civil Servant Discipline, to technical regulations from related institutions such as KASN, KPU, and Bawaslu. However, the implementation of the legal framework has not been optimal due to several factors, including: non-uniform interpretation of the limits of ASN political activities, weak socialization of regulations, and the influence of structural and cultural factors in the Indonesian bureaucracy which is still influenced by patron-client relations between political officials and bureaucrats.

The mechanism for monitoring and enforcing the law against violations of ASN neutrality in elections still faces significant challenges, especially related to the fragmentation of authority between various supervisory institutions (KASN, Bawaslu, Inspectorate, and law enforcement institutions), the complex process of proving cases of violations of neutrality, disparities in the application of sanctions, and the lack of effective protection for reporters of cases of violations of neutrality. Strengthening inter-institutional coordination, harmonization of regulations, and increasing investigative capacity are crucial to addressing these challenges. Systemic reforms in ASN management that strengthen the merit system and reduce the space for political intervention are also needed to strengthen the culture of neutrality in the long term. To realize effective ASN neutrality in elections, a comprehensive approach is needed that includes not only aspects of regulation and law enforcement, but also the transformation of bureaucratic culture through internalization of the values of professionalism, public ethics, and integrity.

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