



Fakultas Hukum Universitas Riau, Jalan Pattimura Nomor 9 Gobah, Kel. Cinta Raja, Kec. Sail, Pekanbaru, Riau,
Kode Pos 28127. Telp: (+62761)-22539, Fax : (+62761)-21695
E-mail: melayunesialaw@lecturer.unri.ac.id
Website: <https://myl.ejournal.unri.ac.id>

Regulation on the Position of the State Civil Apparatus in the General Sorting of Indonesia

Separen^a, Muhammad Zulhidayat^b, Sri Endang Kornita^c

^a Faculty of Law, University of Riau, Indonesia, Email: separen@lecturer.unri.ac.id

^b Faculty of Law, University of Riau, Indonesia, Email: zulhidayat@lecturer.unri.ac.id

^c Faculty of Economics, University of Riau, Indonesia, Email: sri.endangkornita@lecturer.unri.ac.id

Article Info

Article History:

Received : 30-05-2023

Revised : 14-12-2023

Accepted : 23-12-2023

Published : 31-12-2023

Keywords:

ASN

Regulations

Elections

Abstract

This study examines the regulation of the position of the State Civil Apparatus (ASN) in the context of General Elections (Pemilu) in Indonesia. This research uses normative juridical method with qualitative descriptive analysis approach. Regulations on the position of civil servants are very clearly regulated in the legislation on how to regulate civil servants to be more optimal in supporting government activities to benefit the community as much as possible and be fair and always maintain neutrality in elections. Based on the results of the study, there are several regulations governing the position of civil servants in elections in Indonesia, namely the 1945 Constitution, the Civil Service Law, the Election Law, the Corps Life Government Regulation and the Civil Servant Code of Ethics, the Government Regulation on Civil Servant Discipline, and the Circular Letter of the Chairman of KASN concerning the Neutrality of Civil Servants.

INTRODUCTION

The 2024 General Election campaign has started on November 28, 2023. ASN is subject to rules and prohibitions ahead of the 2024 general election, because ASN is a party that must maintain neutrality and not participate in the successful team of Political Parties (Parpol) and participate in campaigning for one of the pairs of presidential and vice presidential candidates, members of the House of Representatives, DPD, Provincial DPRD and District/City DPRD. This has been regulated in Law No. 5 concerning the State Civil Apparatus. According to the NGO Coalition for Election Justice (SINGKAP) consisting of KontraS, Setara Institute, Imparsial, and KPPOD recorded that there were 59 cases of alleged irregularities committed by civil servants ahead of the 2024 elections in the period from May to November 2023. There were 32 cases of violations of the neutrality of civil servants, 24 cases of electoral fraud and 4 cases of professional violations. Meanwhile, according to the culprit, ASN irregularities in the

2024 election are dominated by district government civil servants, namely as many as 10 actions.¹

Elections, as a means of people's sovereignty, are held directly, publicly, freely, secretly, honestly, and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution.² People's sovereignty describes a system within a state that requires the highest power to be held by the people.³ The purpose of this election is to elect the President and Vice President, members of the DPR, DPD, and DPRD. On the other hand, Pilkada is also a means of people's sovereignty used to elect regional heads, both at the Provincial and Regency / City levels. The electoral system is one of several elements in political institutions and has a very important influence, especially regarding broader governance issues.⁴

Elections in Indonesia are held directly every 5 (five) years. In its implementation, there are several institutions that are mandated to manage it. These institutions involve the General Elections Commission (KPU) as the technical organizer of the election, the Election Organizer Honor Board (DKPP) as the election ethics board, and the General Election Supervisory Board (Bawaslu) as the election supervisory agency.⁵

Bawaslu, Provincial Bawaslu, and District/City Bawaslu, including supervisors at the Polling Station (TPS) level, have the duty to oversee the implementation of elections. Preventive supervision strategies are Bawaslu's top priority as a supervisory institution, so that various opportunities and potentials for holding elections, including violations of ethics of the State Civil Apparatus (ASN), can be identified early. Bawaslu also has the authority to issue recommendations to authorized agencies to impose sanctions on civil servants who commit ethical violations in the conduct of elections.⁶

¹ Nabilah Muhamad, "Ada 59 Kasus Dugaan Penyimpangan ASN Jelang Pemilu 2024" <https://databoks.katadata.co.id/datapublish/2023/12/01/ada-59-kasus-dugaan-penyimpangan-asn-jelang-pemilu-2024>.

² Widuri Wulandari, "Netralitas Aparatur Sipil Negara (ASN) dalam Pemilihan Umum Kepala Daerah Serentak Kabupaten Bantul Tahun 2015", *Jurnal Naskah Publikasi*, (2016): 1-13. <http://repository.umy.ac.id/handle/123456789/7593>.

³ Mohamad Faisal Ridho, Kedaulatan Rakyat sebagai Perwujudan Demokrasi Indonesia", *Adalah: Jurnal Ilmu Hukum, Universitas Islam Negeri Syarif Hidayatullah Jakarta* 8, no. 1 (2017): 79.

⁴ Ellya Rosana, "Partai Politik dan Pembangunan Politik", *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam, Universitas Islam Negeri Raden Intan Lampung* 8, no.1 (2012): 146.

⁵ Wahyuni dan Ricky Noor Permadi, "Penggunaan Kode Etik Organisasi dalam Mewujudkan Netralitas ASN", *Jurnal Administrasi Publik* 14, no. 2 (2018): 151-162.

⁶ Nur Hidayah Hasibuan, dkk., "Urgensi Kriteria Politik Uang Dalam Peraturan Perundang-Undangan Atas Pelaksanaan Kampanye Menjelang Pemilihan Umum", *Jurnal Salome: Multidisipliner Keilmuan* 1, no. 5 (2023): 424-428.

The holding of elections has resulted in changes in the culture of its implementation, especially related to the repositioning of bureaucratic relations with politics, focusing on the ethical issues of civil servants in political contestation. ASN ethics in a political context is part of the study of personnel law. Utrecht states that administrative law examines privileged legal relations established to enable officials (amtsdragers) of state administration to carry out their special duties.⁷

On the one hand, ASN is a government apparatus that has the duty to carry out government and provide public services. However, on the other hand, civil servants are also members of society who have political and economic interests related to their choices in elections.⁸ Often, such interests become more dominant, so expectations for honest and fair elections are not met. On the other hand, bureaucratic alignment with one of the forces of the ruling political party can provide opportunities for proliferation of abuse of authority, such as corruption, collusion, and nepotism. The ethics of civil servants⁹ really need to be considered to face executive and legislative elections because of the many cases of civil servants who are caught participating in a series of campaign activities and winning one of the candidate pairs in the election. Therefore, there is a need for a neutrality attitude of civil servants, and considering that the ASN Law must be obeyed and there are sanctions for civil servants who violate it.

The author uses a normative type of juridical legal research research. There are several approaches that are relevant to this research problem, namely the conceptual approach and the statutory approach. Data analysis is used as a technique to analyze data obtained from various sources. The data that has been obtained will be analyzed qualitatively and presented descriptively, which is known as the qualitative descriptive method.

STATE CIVIL APPARATUS (ASN) ETHICS IN ELECTIONS

General elections are often referred to as a democratic party conducted by a country. In a country that adheres to democracy, elections are the key to the creation of democracy. In Indonesia, elections are a concrete manifestation of democracy and a means for the people to express their sovereignty over the state and government. elections are based on Pancasila and

⁷ Sri Hartini, "Penegakan Hukum Netralitas Pegawai Negeri Sipil (PNS)", *Jurnal Dinamika Hukum* 9, no. 3 (2009).

⁸ Mat Zudi, Arief Hidayat, dan Untung Sri Hardjanto, "Netralitas Pegawai Negeri Sipil dalam Pemilihan Kepala Daerah", *Diponegoro Law Jurnal* 1, no. 4 (2012): 1-11.

⁹ Rina Martini, "Netralitas Birokrasi Pada Pilgub Jateng 2013", *Jurnal Ilmu Sosial* 14, no. 1 (2015): 66 – 78. <https://doi.org/10.14710/jis.14.1.2015.66-78>.

the 1945 Constitution of the Republic of Indonesia. Elections are held on the principles of direct, general, free, secret, honest, and fair.¹⁰

General elections are not born without purpose but to elect representatives of the people in order to realize a government of, by, and for the people. The relationship between democracy, representative institutions, and elections will be clearer by quoting Arend Lijphart who say “the literal meanings of democracy-government by people is a probably also the most basic and most widely used definition. The one major amendment that is necessary when we speak democracy at the national level in modern large-scale nation states is that the acts of government are usually performed not directly by the citizens but indirectly by representatives whom they elect on a free and equal basis. Although element of direct democracy can be found even in some democratic states, democracy is usually representative democracy: government by the freely elected representatives of the people”. Based on Liphart's opinion above, we see that democracy, representative institutions, and elections are three concepts that are closely related and inevitable.¹¹

ASN ethics has been contained in a collection of regulations that aim to control a system of common life, both at the level of society, nation, and state, with the aim that it can be obeyed together in order to achieve common goals. The State Civil Apparatus (ASN) is prohibited from providing support to candidates for President and Vice President, House of Representatives, Regional House of Representatives, and Regional Heads by participating as campaign executors, becoming campaign participants using party and ASN attributes, inviting others, and using state facilities. ASN is also prohibited from making decisions that benefit and/or harm one of the candidate pairs during the campaign period. Furthermore, ASN is also prohibited from conducting activities that lead to favoritism towards candidate pairs who are election participants.¹²

Nowadays, the concept of good governance is used in public sector reform. This is done so that ASN provides quality services to the community. The ability of a country to achieve its goals is highly dependent on the quality of its governance, which interacts with civil society. Politics and government bureaucracy are indeed two different things, but they are

¹⁰ Eko Harry Susanto, “Dinamika komunikasi politik dalam pemilihan umum”, *Jurnal Kajian Komunikasi* 1, no. 2 (2013): 163-172.

¹¹ Topo Santoso dan Ida Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*, (Jakarta: Sinar Grafika, 2019), 2-3.

¹² Ismail Nurdin, *Etika Pemerintahan: Norma, Konsep, dan Praktek Etika Pemerintahan*, (Yogyakarta: Lintang Rasi Aksara Book, 2017), 78-79.

inseparable and unavoidable. The government bureaucracy cannot be filled only by bureaucrats without political institutions. It should be underlined that the two must be clearly differentiated in terms of their duties, authority and functions.¹³

The management of the State Civil Apparatus (ASN) is based on the principle of neutrality. The Explanation of the Article means that every ASN employee does not take sides from any form of influence and does not favor the interests of anyone and is inseparable from all forms of problems that occur in the implementation of the elections, one of which is related to the neutrality of ASN. "Bureaucracy that takes sides or is not neutral can give birth to political corruption which actually changes the election process colored by disgraceful actions".¹⁴

REGULATION OF STATE CIVIL APPARATUS (ASN) ETHICS IN GENERAL ELECTIONS IN INDONESIA

ASN ethical regulations are a set of regulations that regulate the permissible and prohibited behavior for every State Civil Apparatus (ASN) in the context of conducting electoral democracy. The regulations governing the ethics of civil servants in elections are as follows:

1. Policy Law of 1945

In the Chapter that regulates Human Rights (HAM), there is a very crucial article, namely Article 28J. Article 28J exists to anticipate and at the same time limit human rights provisions in the 1945 Constitution. Its function is to provide restrictions regulated by law to ensure recognition and respect for the rights and freedoms of others. It is also to meet just demands, in accordance with considerations of morals, religious values, security, and public order in a democratic society. Implicitly, Article 28J regulates restrictions on the freedom of every citizen, including civil servants involved in politics. ASNs are expected to act fairly. Regulations governing the neutrality of civil servants already exist but there is still bias in the field despite appeals.¹⁵

Regional head elections (Pilkada) in addition to the circulation of political elites in the regions is essentially also a form of implementation of the principle of popular

¹³ Undang Undang No. 5 Tahun 2014 Tentang Aparatur Sipil Negara.

¹⁴ Firmansyah Putra dan Cholillah Suci Pratiwi, "Netralitas Aparatur Sipil Negara dalam Pemilihan Kepala Daerah di Provinsi Jambi Tahun 2020", *Jurnal Noken: Ilmu-Ilmu Sosial* 7, no. 2 (2022): 219-233.

¹⁵ Nuswantoro Setyadi Pradono, "Aparatur Sipil Negara dalam Pemilu 2019, Bisa Netralkah?", *Jurnal Analisis Kebijakan* 3, no. 1 (2019): 49.

sovereignty, as stated in Article 1 Paragraph (2) of the 1945 Constitution (UUD 1945). "The principle of popular sovereignty emphasizes that the ultimate power to make decisions lies in the hands of all the people, not in the hands of a few or one of certain people."¹⁶

2. Law No. 5 of 2014 concerning State Civil Apparatus

Regarding the ethics of civil servants, this is regulated in the provisions of Article 2 letter f, which basically states that one of the principles of implementing ASN policies and management is "Neutrality." This principle of neutrality indicates that every civil servant must be impartial from all forms of influence and impartial to anyone's interests. The impartiality of civil servants deserves attention. The partiality of civil servants in elections has affected the quality of election administration and injured the democratic system in Indonesia.¹⁷

Furthermore, it is emphasized that the core of personnel management is more oriented towards the professionalism of ASN employees, who are tasked with providing services to the community honestly, competently, fairly, and equitably in the implementation of state, government, and development tasks. Thus, ASN employees are required to be non-participants and must be neutral; out of all group and political party influences; and non-discriminatory in providing services to the community. To be able to carry out service tasks with such requirements, ASN employees are required to have professionalism supported by abilities, knowledge, skills, global insight, and have high competence.¹⁸

3. Law Number 7 of 2017 concerning General Elections

The law governing General Elections is Law Number 7 of 2017 concerning General Elections (Pemilu). The provisions prohibiting the participation of civil servants in politics during the election period are regulated in Article 282 and Article 283 of the Election Law. In essence, the provision states that civil servants are prohibited from making decisions and/or taking actions that benefit or harm one of the election participants. In addition, they are also prohibited from holding activities that lead to partiality towards election participants

¹⁶ Sabian Usman, *Dasar-dasar Sosiologi Hukum; Dilengkapi Proposal Penelitian Hukum (Legal Reseacht)*, (Yogyakarta: Pustaka Pelajar, 2010), 78.

¹⁷ Nuraida Mokhsen, "Menjaga Netralitas Asn Dalam Pemilu", *Jurnal Bawaslu Provinsi Kepulauan Riau* 1, no. 1 (2019): 50-58.

¹⁸ Endang Komara, "Kompetensi Profesional Pegawai ASN", <http://endangkomarasblog.blogspot.com/2018/11/kompetensi-profesional-pegawai-asn.html> diakses 10 Desember 2023.

before, during, and after the campaign period. Prohibited activities include meetings, invitations, appeals, appeals, or gifts of goods to civil servants within their work units, family members, and the community.¹⁹

4. Government Regulations on Corps Souls and Code of Ethics for Civil Servants

Government regulations governing corps souls and civil servant codes of ethics are Government Regulation Number 42 of 2004 concerning Corps Soul Development and Civil Servant Code of Ethics. Article 11 letter c of the Government Regulation on Corps Souls and the Code of Ethics for Civil Servants states that civil servants must avoid conflicts of interest in personal, group, or groups. Therefore, civil servants are prohibited from committing acts that lead to partiality towards one of the candidates or actions that indicate involvement in practical politics or affiliation with a political party. The letter of the Minister of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia with number B/71/M.SM.00.00/2017 dated December 27, 2017 explains the norm of “must avoid conflicts of interest of individuals, groups, or groups”.

Article 15 paragraph (1) and Article 16 of the Government Regulation on Corps Souls and the Code of Ethics for Civil Servants states that related to violations of the code of ethics, civil servants may be subject to moral sanctions and administrative actions in accordance with laws and regulations, in accordance with the recommendations of the Code of Ethics Assembly.

5. Government Regulation on Civil Servant Discipline

Government Regulation Number 53 of 2010 concerning the Discipline of Civil Servants regulates the discipline of civil servants and serves as a technical regulation of the Civil Service Law. This regulation explains the disciplinary action that can be taken by civil servants and restrictions on civil servants. Article 4 numbers 12 and 13 of the Government Regulation on Civil Servant Discipline prohibit civil servants from participating in campaigns, being campaign participants with party or civil servant attributes, deploying other civil servants for campaigns, and using State facilities in campaigns. Civil servants are also prohibited from providing support to President/Vice Presidential candidates by making decisions or actions that benefit or harm the candidate pair during the campaign period, as well as carrying out activities that show partiality towards the candidate pair before, during,

¹⁹ Analisis tentang Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum, pasal 282 dan pasal 283.

and after the campaign period. This prohibition includes meetings, invitations, appeals, appeals, or gifts of goods to civil servants, their families, and the community.

This prohibition includes meetings, invitations, appeals, calls, or giving goods to civil servants, their families, and the community. The existence of ASN is in the context of implementing the ideals of the nation in order to realize state goals. ASN must also have the value of integrity, be professional, neutral and free from political intervention. Because ASN actually functions as an implementer of public policy, public servant, adhesive and unifier of the nation.²⁰

6. KASN Head's Handout Letter on ASN Ethics

The circular letter of the Chairman of KASN regarding the ethics of civil servants is contained in letter number B2708/KASN/9/2020 regarding the follow-up of the Joint Decision of 5 Ministries/Institutions. This circular was issued on September 18, 2020 with the aim of Ministers, TNI Commanders, Chief of Police, Chief of Prosecutors, Leaders of State Institutions, Non-Ministerial Government Institutions, Non-Structural Institutions, and Regional Heads. Various follow-up provisions of the joint decision have been stipulated in this Circular. There is one interesting thing related to the ethics of civil servants in the letter, namely in point number 3, which states that Regional Agencies are expected to supervise neutrality of honorary workers / contract employees and the like. The imposition of penalties or sanctions on honorary workers / employees who violate neutrality refers to the performance contract agreement and the provisions of the regional head's legal product.

From this provision, it can be concluded that related to the ethics of civil servants in organizing elections and regional elections is not only limited to civil servants as stipulated in Law Number 5 of 2014 concerning civil servants, but this is also extended to honorary workers / contract employees and the like such as Non-Permanent Employees (PTT) and Freelance Daily Workers (THL).

CONCLUSION

Based on the explanation above, it can be concluded that the regulation on civil servants in elections in Indonesia only remains to be implemented properly and correctly by the government and civil servants throughout the country to maintain the neutrality of civil

²⁰ Peraturan Pemerintah Nomor 53 Tahun 2010 Tentang Disiplin Pegawai Negeri Sipil

servants. There are several regulations related to the attitude of civil servants in elections, namely the 1945 Constitution, Law Number 5 of 2014 concerning Civil Servants, and Law Number 7 of 2017 concerning General Elections. Although this regulation stipulates restrictions on the involvement of civil servants in politics in order to be peaceful, fair and productive elections for the Indonesian nation. Because ASN is a state tool that has the power to mobilize the masses in the general election process in Indonesia.

ADDITIONAL SECTIONS

We realize that this paper is still far from perfection, therefore all input and criticism will be received by the author and thank you. Finally, I hope that this article can provide benefits to the world of scientific education for all of us about the ethics of the State Civil Apparatus (ASN) in General Elections in Indonesia. For your attention and help, thank you.

BIBLIOGRAPHY

- Hartini, Sri. “Penegakan Hukum Netralitas Pegawai Negeri Sipil (PNS)”. *Jurnal Dinamika Hukum* 9, no. 3 (2009).
- Hasibuan, Nur Hidayah, dkk. “Urgensi Kriteria Politik Uang Dalam Peraturan Perundang-Undangan Atas Pelaksanaan Kampanye Menjelang Pemilihan Umum”. *Jurnal Salome: Multidisipliner Keilmuan* 1, no. 5 (2023).
- Komara, Endang. “Kompetensi Profesional Pegawai ASN”. <http://endangkomarasblog.blogspot.com/2018/11/kompetensi-profesional-pegawai-asn.html> diakses 10 Desember 2023.
- Martini, Rina. “Netralitas Birokrasi Pada Pilgub Jateng 2013”. *Jurnal Ilmu Sosial* 14, no. 1 (2015): 66 – 78. <https://doi.org/10.14710/jis.14.1.2015.66-78>
- Mokhsen, Nuraida. “Menjaga Netralitas Asn Dalam Pemilu”. *Jurnal Bawaslu Provinsi Kepulauan Riau* 1, no. 1 (2019): 50-58.
- Muhammad, Nabilah. “Ada 59 Kasus Dugaan Penyimpangan ASN Jelang Pemilu 2024”. <https://databoks.katadata.co.id/datapublish/2023/12/01/ada-59-kasus-dugaan-penyimpangan-asn-jelang-pemilu-2024>.

- Nurdin, Ismail. *Etika Pemerintahan: Norma, Konsep, dan Praktek Etika Pemerintahan*. Yogyakarta: Lintang Rasi Aksara Book, 2017.
- Pradono, Nuswantoro Setyadi. "Aparatur Sipil Negara dalam Pemilu 2019, Bisa Netralkah?". *Jurnal Analisis Kebijakan* 3, no. 1 (2019).
- Putra, Firmansyah, dan Cholillah Suci Pratiwi. "Netralitas Aparatur Sipil Negara dalam Pemilihan Kepala Daerah di Provinsi Jambi Tahun 2020". *Jurnal Noken: Ilmu-Ilmu Sosial* 7, no. 2 (2022): 219-233.
- Ridho, Mohamad Faisal. "Kedaulatan Rakyat sebagai Perwujudan Demokrasi Indonesia". *Adalah: Jurnal Ilmu Hukum, Universitas Islam Negeri Syarif Hidayatullah Jakarta* 8, no. 1 (2017).
- Rosana, Ellya. "Partai Politik dan Pembangunan Politik". *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam, Universitas Islam Negeri Raden Intan Lampung* 8, no.1 (2012).
- Santoso, Topo dan Ida Budhiati. *Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan*. Jakarta: Sinar Grafika, 2019.
- Susanto, Eko Harry. "Dinamika komunikasi politik dalam pemilihan umum". *Jurnal Kajian Komunikasi* 1, no. 2 (2013): 163-172.
- Undang Undang No. 5 Tahun 2014 Tentang Aparatur Sipil Negara.
- Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum.
- Usman, Sabian. *Dasar-dasar Sosiologi Hukum; Dilengkapi Proposal Penelitian Hukum (Legal Reseacht)*. Yogyakarta: Pustaka Pelajar, 2010.
- Wahyuni dan Ricky Noor Permadi. "Penggunaan Kode Etik Organisasi dalam Mewujudkan Netralitas ASN". *Jurnal Administrasi Publik* 14, no. 2 (2018): 151-162.
- Wulandari, Widuri. "Netralitas Aparatur Sipil Negara (ASN) dalam Pemilihan Umum Kepala Daerah Serentak Kabupaten Bantul Tahun 2015". *Jurnal Naskah Publikasi*, (2016): 1-13. <http://repository.umy.ac.id/handle/123456789/7593>.
- Zudi, Mat, Arief Hidayat, dan Untung Sri Hardjanto. "Netralitas Pegawai Negeri Sipil dalam Pemilihan Kepala Daerah". *Diponegoro Law Jurnal* 1, no. 4 (2012): 1-11.