

Article Title

**The Neutrality of the State Civil Apparatus in General Elections:
A Study of Law Enforcement**

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How to cite:

Mawuntu, J. R., Sondakh, J., & Regar, P. C. (2023). The Neutrality of the State Civil Apparatus in General Elections: A Study of Law Enforcement. *Al-Ishlah: Jurnal Ilmiah Hukum*, 26(1), 1-14. <https://doi.org/10.56087/aijih.v26i1.374>



ABSTRACT

This study aims to analyze law enforcement related to ASN Neutrality in the elections at the national and regional levels based on laws and regulations. This study uses a normative juridical method. The collection of primary, secondary, and tertiary legal materials is carried out using literature study techniques. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach. The results show that the law enforcement related to ASN Neutrality in the elections at the national and regional levels consists of Law No. 5 of 2014, Law No. 7 of 2017, Law No. 6 of 2020, and Government Regulation No. 94 of 2021. Servants proven to have committed violations related to ASN neutrality will be imposed disciplinary and criminal punishment. In this case, the disciplinary punishment levels consist of moderate or severe. At the same time, the most severe criminal punishment is imprisonment for 24 (twenty-four) months and/or fines of IDR 1,000,000,000.00 (one billion rupiahs). In contrast, if ASN Servants are proven to have committed violations but are not followed up, then KASN recommends to the President to punish PPK/Executors/Officials and Authorized Officials by the provisions of laws and regulations. Therefore, it is recommended that the ASN Servants Neutrality Supervising Task Force monitors and evaluates the follow-up results of KASN recommendations. Furthermore, it is necessary to impose strict punishment on Servants who violate the provisions regarding the neutrality of ASN to make the bureaucracy clean from abuse of authority during future elections.

Keywords: Elections; Neutrality; Punishment; Servants; State Civil Apparatus.

INTRODUCTION

Neutrality is one of the essential principles in the implementation of public service tasks, government tasks, and development tasks (Fitrah et al., 2021). As public service administrators, State Civil Apparatus/*Aparatur Sipil Negara* (ASN) must be neutral and professional in carrying out their duties (Wiredarme & Muttaqin, 2022). In upholding neutrality, the Government has enacted many laws and regulations regarding restrictions on ASN activities (Perdana, 2012). The formation is intended to obtain legal certainty, benefit, and justice. In this case, to limit the possibility of maneuvering on one's instincts which leads to abuse of power (Muzakkir et al., 2021). This formation also means that the limitation of power is closely correlated with efforts to limit the behavior of the authorities.

However, the issue of ASN's involvement in practical politics is one of the potential vulnerabilities in holding elections at the national and regional levels (Ajiprasetyo & Sarnawa, 2020). One aspect of the vulnerability of ASN involvement can be seen from the high indicators of using state facilities in campaigns. At least these vulnerability indicators are consistently seen starting from the 2018, 2019, to 2020 Elections.

On the other hand, the issue of ASN's involvement in political contestation is a study of officialdom law. As Utrecht (1990) stated, state administrative law examines the unique legal relationship between Executive/Legislative authorities and ASN officials. In this case, the unique relationship causes ASN officials to take specific actions outside their duties as public service administrators. Therefore, the

involvement of ASN can cause partiality or injustice in implementing public services, which will ultimately cause harm to society in general (Wahyuni & Irawan, 2021).

In addition, ASN involvement has the potential to occur due to the existence of an incumbent candidate. Even though ASN non-neutrality can occur even though there is no incumbent candidate, the tendency will be greater if there are incumbent candidates in the Elections and Regional Elections. The abuse of power through ASN can be seen from the implementation of activities for the benefit of the incumbent using a budget sourced from the Regional Budget Revenue and Expenditure (Faizal & Tanjung, 2021). For example, socialization activities and distribution of necessities to attract the people's sympathy and benefit the incumbent's position ahead of the Regional Elections. Another phenomenon is the ASN's involvement in preparing vision and mission or campaign materials to be used by incumbents in Regional Elections. Bearing in mind that ASN knows all the potential in their region.

Therefore, it is the joint duty and responsibility of all elements of society to oversee the behavior of ASN violations related to the elections (Husen et al., 2022). In this case, the community understands the provisions regarding ASN neutrality. With this understanding, people who find ASN neutrality violations can easily report the type and model of the violation to the authorities.

Based on the description above, this study aims to analyze law enforcement related to ASN Neutrality in the elections at the national and regional levels based on laws and regulations.

METHOD

This study uses a normative juridical method with a statute approach (Qamar, 2021). The approach analyzes legal problems by referring to and originating from legal norms (Sampara & Husen, 2016). The types of data used are legal materials, including:

1. Primary legal materials include Law No. 5 of 2014, Law No. 7 of 2017, Law No. 6 of 2020, Government Regulation No. 94 of 2021, and other laws and regulations;
2. Secondary legal materials that explain primary legal include books, articles, and online materials that discuss related to ASN Neutrality in the elections; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The collection of primary, secondary, and tertiary legal materials is carried out using literature study techniques. The collected legal material is then analyzed using qualitative data analysis methods with a statute approach to analyzing problems and answer study purposes (Qamar & Rezah, 2020).

RESULTS AND DISCUSSION

A. ASN Neutrality Violations in the Elections at the National and Regional Levels

Supervising the neutrality of ASN should depart from and align with the legal ideas of state administration through a merit system approach (Noors, 2019). In this case, developing a career path is only based on quality human resources following the work performance of each ASN servant. In addition, this idea can also support ASN servants in upholding the principles of professionalism and neutrality. Furthermore, increasing the capacity to understand regulations related to aligning between related institutions is also very much needed in building ASN neutrality. In this case, this understanding can reduce the space for ASN involvement in elections to align with bureaucratic reform in achieving sustainable development.

On the other hand, the Government has enacted many laws and regulations regarding ASN neutrality. For example, Law No. 5 of 2014¹, Law No. 7 of 2017², and Law No. 6 of 2020³. One of the reasons for establishing this provision is to ensure that ASN servants have integrity, are professional, neutral, free from political intervention, and free from corruption, collusion, and nepotism. In addition, ASN servants can carry out public services and carry out their role as an adhesive element for the unity and integrity of the nation based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Furthermore, ASN neutrality based on Article 2 point f of Law No. 5 of 2014 regulates that *“the implementation of ASN policies and management is based on the principle of neutrality.”*

This principle is essential because it maintains the neutrality of ASN from the influence of political parties. In this case, Article 9 section (2) of Law No. 5 of 2014 regulates that *“ASN Servants must be free from the influence and intervention of all groups and political parties.”* Furthermore, Article 11 point c of Government Regulation No. 42 of 2004⁴ regulates that *“ethics towards oneself include avoiding conflicts of personal and group interests.”* While Article 5 point n of Government Regulation No. 94 of 2021⁵ regulates that:

¹Law of the Republic of Indonesia Number 5 of 2014 on the State Civil Apparatus.

²Law of the Republic of Indonesia Number 7 of 2017 on General Election.

³Law of the Republic of Indonesia Number 6 of 2020 on Enactment of Government Regulation in Lieu of Law Number 2 of 2020 on the Third Amendment to Law Number 1 of 2015 on Enactment of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governor, Regent, and Mayor Into Law Into Law.

⁴Government Regulation of the Republic of Indonesia Number 42 of 2004 on Development of Corps Spirit and Code of Ethics for Civil Servants.

⁵Government Regulation of the Republic of Indonesia Number 42 of 2004 on Development of Corps Spirit and Code of Ethics for Civil Servants.

“Civil Servants are prohibited from providing support to candidates for President/Vice President, candidates for Regional Head/Deputy Regional Head, candidates for members of the House of Representatives, candidates for members of the Regional Representative Council, or candidates for members of the Regional House of Representatives by: 1. join the campaign; 2. become a campaign participant using party attributes or Civil Servants’ attributes; 3. as campaign participants by deploying other Civil Servants; 4. as campaign participants using state facilities; 5. make decisions and/or actions that are beneficial or detrimental to one pair of candidates before, during, and after the campaign period; 6. Organize activities that lead to the partiality of candidate pairs who participate in the election before, during, and after the campaign period, including meetings, solicitations, encouragement, appeals, or giving goods to civil servants within their work units, family members, and the community; and/or 7. provide a letter of support accompanied by a photocopy of the Resident’s Identity Card or Certificate of Resident Identity.”

Article 280 section (2) point f of Law No. 7 of 2017 regulates that *“executors and/or campaign teams in General Election Campaign activities are prohibited from involving state civil apparatus.”* Furthermore, Article 280 section (3) of Law No. 7 of 2017 regulates that *“everyone as referred to in section (2), is prohibited from participating as an executor and General Election Campaign team.”*

Article 71 section (1) of Law No. 6 of 2020 regulates that:

“State officials, regional officials, state civil apparatus officials, members of the TNI/POLRI, and heads of villages/urban villages or other terms are prohibited from making decisions and/or actions that are beneficial or detrimental to one pair of candidates.”

From the provisions above, it can be understood that ASN may not intersect with practical political activities, such as supporting candidates in elections. In addition, provisions related to ASN neutrality are an integral part of efforts to realize democratic elections. ASN neutrality is also in line with Article 7 section (2) point t of Law No. 6 of 2020, which regulates that:

“Candidates for Governor and Candidates for Deputy Governor, Candidates for Regent and Candidates for Deputy Regent, as well as Candidates for Mayor and Candidates for Deputy Mayor as referred to in section (1), must fulfill the following requirements: declare in writing their resignation as members of the Indonesian National Armed Forces, the State Police of the Republic of Indonesia, and Civil Servants as well as Village Heads or other terms since they were determined as pairs of candidate participants in the Election.”

In addition to these regulations, there are laws and regulations formed by Ministries and Institutions related to ASN and the Regional Head Election. The

State Civil Apparatus Commission/*Komisi Aparatur Sipil Negara* (KASN) is a state institution whose duty is to maintain the neutrality of ASN Servants. Meanwhile, the General Election Commission/*Komisi Pemilihan Umum* (KPU) and the Election Supervisory Board/*Badan Pengawas Pemilu* (Bawaslu) are state institutions that have the authority to make elections successful at the national and regional levels.

Furthermore, the Bawaslu duties in supervising, preventing, and enforcing ASN neutrality is an attributive implementation of laws and regulations. In this case, Article 93 point f of Law No. 7 of 2017 regulates that:

“Bawaslu is on duty supervising the neutrality of the state civil apparatus, the neutrality of members of the Indonesian National Armed Forces, and the neutrality of members of the State Police of the Republic of Indonesia.”

The provisions above are further elaborated more specifically through Bawaslu Regulation No. 6 of 2018⁶. In addition, the authority of the Bawaslu in handling ASN neutrality can be seen from the formal legal aspect (law of procedure) and the supervisory function of Bawaslu. In this regard, Bawaslu Regulation No. 6 of 2018 and Bawaslu Regulation No. 8 of 2020⁷ can be used as references. Article 3 of Bawaslu Regulation No. 6 of 2018 regulates that:

“The neutrality of ASN Servants, TNI Members, and Polri Members can become the object of supervision by Bawaslu, Provincial Bawaslu, and Regency/Municipal Bawaslu if the actions of ASN Servants, TNI Members, and Polri Members have the potential to violate the provisions as regulated in the provisions of laws and regulations regarding General Elections and/or Elections and violates the code of ethics and/or discipline of each institution/agency.”

Article 2 section (1) of Bawaslu Regulation No. 6 of 2018 regulates that:

“Prevention, supervision, and fostering the Neutrality of ASN Servants, TNI Members, and Polri Members remain the responsibility of the authorized officials from their respective institutions/agencies in stages.”

From the provisions above, the Bawaslu authority in handling ASN neutrality is not only in law enforcement an-sich (*pro-justitia*) but also in the context of conducting supervision (Abiyasa, 2019). In other words, the entrance to the Bawaslu authority in handling ASN neutrality can be through the supervisory and law enforcement functions. As a result of these two functions piling up on Bawaslu, its authority has expanded in handling ASN neutrality. Moving on from this, Article

⁶Regulation of Election Supervisory Board of the Republic of Indonesia Number 6 of 2018 on Neutrality Supervising of Servants of the State Civil Apparatus, Member of the Indonesian National Armed Forces, and Member of the State Police of the Republic of Indonesia.

⁷Regulation of Election Supervisory Board of the Republic of Indonesia Number 8 of 2020 on Handling Reports of Violations in the Election of Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors.

5 of Bawaslu Regulation No. 6 of 2018 regulates that:

“In supervising the Neutrality of ASN Servants, TNI Members, and Polri Members, Election Supervisors carry out the following: a. identification of potential abuse of authority, use of budget, and use of facilities; b. identification of potential involvement of ASN Servants, TNI Members, and Polri Members; c. coordinate with the Indonesian National Armed Forces and the State Police of the Republic in stages, as well as KASN; and d. cooperate with election observers, the mass media, and the public to supervise.”

The results of supervisory work can be in the form of findings and reports from the community as an entry point for law enforcement. In conducting a review of findings or reports, Bawaslu also has the authority to request the presence of the Reporter, Reported Party, Parties suspected of being the Perpetrators of Violations, Witnesses for clarification, or Experts to hear their statements under oath. The results of the study may consist of several assessments. *First*, the violation of ASN neutrality specified in Law No. 7 of 2017 and its implementing regulations. *Second*, violation of ASN neutrality as determined by other laws and regulations. *Third*, it is not a violation of ASN neutrality.

When a violation of ASN neutrality is in the form of an election crime violation, based on Article 35 section (1) of Bawaslu Regulation No. 8 of 2020 regulates that:

“Reports or Findings of alleged Election Crimes are forwarded by Bawaslu, Provincial Bawaslu, or Regency/Municipal Bawaslu to Investigators of the State Police of the Republic at integrated law enforcement centers according to its level.”

Article 36 section (1) of Bawaslu Regulation No. 8 of 2020 regulates that:

“In the event that the results of the review are categorized as not an alleged election violations but include alleged violations of other provisions of laws and regulations, it will be forwarded to the competent authority in accordance with Form Model A.16.”

In contrast, Article 9 section (6) of Bawaslu Regulation No. 6 of 2018 regulates that:

“In the event that the review referred to in section (1) is not a violation against the provisions for ASN Servants, TNI Members, and Polri Members, the handling of the alleged violation is stopped and not followed up.”

Article 36 section (5) of Bawaslu Regulation No. 8 of 2020 regulates that:

“Results of the review are categorized as not Election violations and are not violations against other laws provisions, are stopped or not followed up.”

From the provisions above, it is understood that violations of the code of ethics and/or the discipline of each institution/agency can also become the object of Bawaslu supervision. Furthermore, the alleged violations committed by ASN Servants will be forwarded by Bawaslu to KASN so that they are followed up based on Law No. 5 of 2014. In addition, Bawaslu members stated 85 reports and 894 findings of violations of ASN neutrality in the 2019 General Elections. Meanwhile, KASN members stated that 1,596 ASN Servants were proven to have violated ASN neutrality in the 2020 Governor, Regent, and Mayor Elections (Ardianto, 2022).

On the other hand, the Head of KASN (2022) on the official website mentioned that there were many violations committed by ASN ahead of the Regional Head Elections. Meanwhile, ASN's involvement in the Regional Election is because the incumbent is the Head of Government and serves as the Civil Service Development Officer/*Pejabat Pembina Kepegawaian* (PPK) within the ASN work unit (Sadikin et al., 2022). Various forms of ASN involvement ahead of the Regional Head Election: carrying out campaigns/socialization of candidate pairs, attending declarations of candidate pairs, carrying out support activities on social media, conducting mass mobilization for support, putting up billboards of support, using party attributes, and involvement in other violations (Susanti & Fahmi, 2022).

B. Law Enforcement Sanctions against ASN Neutrality Violations in the Elections at the National and Regional Levels

Every servant suspected of violating ASN neutrality will be summoned and examined by the authorized official. The initial inspection results then become recommendations and are forwarded to the Regional Inspectorate to be followed up and produce a decision. One of these decisions is imposing sanctions on ASN Servants who are proven to have committed violations related to ASN neutrality (Jamaluddin, 2021).

These sanctions are applied based on Article 8 section (1) points b and c of Government Regulation No. 94 of 2021, which regulates "*the level of disciplinary punishment: moderate or severe.*" In this case, Article 13 point g of Government Regulation No. 94 of 2021 regulates that:

"Moderate Discipline Punishments, as referred to in Article 8 section (1) point b, are imposed on Civil Servants who violate the prohibition provisions ... as referred to in Article 5 point n number 2."

Meanwhile, Article 14 point i of Government Regulation No. 94 of 2021 regulates that:

“Severe Discipline Punishments, as referred to in Article 8 section (1) point c, are imposed on Civil Servants who violate the prohibition provisions ... as referred to in Article 5 point n number 3, number 4, number 5, number 6, and number 7 ...”

In addition to the level of punishment from the provisions above, ASN Servants will also be subject to the type of disciplinary punishment: moderate or severe. In this case, Article 8 section (3) of Government Regulation No. 94 of 2021 regulates that:

“Types of moderate Disciplinary Punishment, as referred to in section (1) point b, consisting of: a. performance allowance deduction of 25% (twenty-five percent) for 6 (six) months; b. performance allowance deduction of 25% (twenty-five percent) for 9 (nine) months; or c. performance allowance deduction of 25% (twenty-five percent) for 12 (twelve) months.”

Meanwhile, Article 8 section (4) of Government Regulation No. 94 of 2021 regulates that:

“Types of severe Disciplinary Punishment, as referred to in section (1) point c, consisting of: a. demotion to a lower level for 12 (twelve) months; b. exemption from his/her position to implementer position for 12 (twelve) months; and c. dismissal with respect not at his/her request as a Civil Servant.”

In addition to the disciplinary punishment described above, ASN Servants proven to have committed violations related to neutrality can also be imposed criminal punishment. This case is regulated in Article 494 of Law No. 7 of 2017, Article 180, Article 187 section (6), and Article 188 of Law No. 6 of 2020. The most severe criminal punishment is based on Article 187 section (6) of Law No. 6 of 2020, which regulates that:

“Any person who intentionally receives or gives Campaign funds from or to prohibited parties as referred to in Article 76 section (1) and/or does not fulfill the obligations referred to in Article 71 shall be punished with imprisonment for a minimum of 4 (four) months or a maximum 24 (twenty-four) months and/or fine of at least IDR 200,000,000.00 (two hundred million rupiahs) or a maximum of IDR 1,000,000,000.00 (one billion rupiahs).”

At the same time, the Minister of State Apparatus Empowerment and Bureaucratic Reform, Minister of Internal Affairs, National Civil Service Agency, State Civil Apparatus Commission, and Election Supervisory Board made the Joint

Decision of 2020.⁸ In this case, the Joint Decision on Guidelines for Monitoring the Neutrality of State Civil Apparatus Servants in the Implementation of Simultaneous Regional Head Elections in 2020. If ASN Servants are proven to have committed violations but are not followed up, then based on Sub-Chapter D point 1 of the Annex of the Joint Decision of 2020 regulates that imposing punishment as well as monitoring and evaluation includes:

- 1) KASN recommends to the President to punish PPK/Executors/Officials and Authorized Officials who do not follow up on the results of supervision by the provisions of laws and regulations;
- 2) PPK which does not follow up on the recommendations of KASN as referred to in number 1) before being recommended to the President, the problems are discussed and evaluated by the ASN Servants Neutrality Supervising Task Force to make decisions regarding the imposition of punishment by the provisions of laws and regulations;
- 3) The ASN Servants Neutrality Supervising Task Force monitors and evaluates the results of the follow-up on KASN recommendations;
- 4) Data and information regarding ASNs that are proven to have violated the neutrality principle and PPK that did not follow up on the KASN recommendations as referred to in number 2) are prepared and reported by the BKN to the ASN Servants Neutrality Supervising Task Force; and
- 5) For Executing Officials/Acting Heads of Regions as PPK who do not implement KASN recommendations, punish them by the provisions of laws and regulations.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the law enforcement related to ASN Neutrality in the elections at the national and regional levels consists of Law No. 5 of 2014, Law No. 7 of 2017, Law No. 6 of 2020, and Government Regulation No. 94 of 2021. Servants proven to have committed violations related to ASN neutrality will be imposed disciplinary and criminal punishment. In this case, the disciplinary punishment levels consist of moderate or severe. At the same time, the most severe criminal punishment is imprisonment for 24 (twenty-four) months and/or fines of IDR 1,000,000,000.00 (one billion rupiahs). In contrast, if ASN Servants are proven to have committed violations but are not followed up, then KASN recommends to the President to punish PPK/Executors/Officials and Authorized Officials by the provisions of laws and regulations. Based on the description of these

⁸Joint Decision of Minister of State Apparatus Empowerment and Bureaucratic Reform, Minister of Internal Affairs, National Civil Service Agency, State Civil Apparatus Commission, and Election Supervisory Board Number 05 of 2020, Number 800-2836 of 2020, Number 167/Kep/2020, Number 6/SKB/KASN/9/2020, and Number 0314 on Guidelines for Monitoring the Neutrality of State Civil Apparatus Servants in the Implementation of Simultaneous Regional Head Elections in 2020.

conclusions, it is recommended that the ASN Servants Neutrality Supervising Task Force monitors and evaluates the follow-up results of KASN recommendations. Furthermore, it is necessary to impose strict punishment on Servants who violate the provisions regarding the neutrality of ASN to make the bureaucracy clean from abuse of authority during future elections.

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