

# Legal Friction of State Civil Apparatus Neutrality in Indonesia

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## ABSTRACT

The State Civil Apparatus (ASN) is the executor of governmental and development duties. Therefore, ASN must be neutral. According to Law No. 5 of 2014, the neutrality of ASN must be free from the influence and intervention of all groups and political parties. In order to maintain the neutrality of the State Civil Apparatus from the influence of political parties and to ensure the integrity, cohesiveness and unity of the State Civil Apparatus, and to focus all attention, mind and energy on assigned duties, ASN is prohibited from becoming a member and or political party official. Historically, the arrangement of ASN neutrality began during the Old Order period, which the issuance of Presidential Regulation No. 2 of 1959 on the Prohibition of Civil Servants and State Officials in Politi-

cal Parties in that time. Furthermore, this Presidential Regulation is followed up and extended by Circular Letter of the President of the Republic of Indonesia No. 2 of 1959 concerning on Prohibition of Political Party Membership for State Civil Apparatus that implement state obligation outside his position. Furthermore, in the New Order era, Law No. 8 of 1974 on the Principal of Employee Affairs, while in the Reform Order was issued Law No. 43 of 1999, Civil Servants should be neutral from the influence of all groups and parties and not discriminatory in providing services to the community.

*Keywords: Neutrality; Political Parties; State Civil Apparatus*

## 1. INTRODUCTION

As the executor of the general task of government and development, the State Civil Apparatus (ASN) is obliged to apply neutrality among groups and political parties. According to Mifthah Thoha, the neutrality of ASN is interpreted as the stability of Civil Servants (PNS) for not being intervened against political party intervention so that civil servants can focus and concern only on assigned duties. It was conducted by prohibiting civil servants from becoming members and or managers of political parties.

Meanwhile, according to Amin, the neutrality of ASN is an impartial behavior, or not involved which is shown by government bureaucracy during the campaign of regional head candidate in the election, either secretly or openly. The indicators used to measure neutrality are: (a) Not involved, in the sense of not being a candidate's success team during campaign period or being a campaign participant either by using party attribute or civil servant attribute; (b) impartial, in the sense of not assisting in making the decisions and / or actions in favor of one of the candidate pairs, not conducting activities that lead to the alignment of one of the candidate pairs of Regional Heads / Deputy Regional Heads during the campaign period including meetings, solicitation, appeal, or giving of goods to civil servants within the scope of its work unit, family members, and community, and not assisting in the use of state facilities associated with the position in the context of winning one of the candidate pair of Regional Head / Deputy Head of Region during the campaign period.

Normatively, according to Law No. 5 of 2014 on State Civil Apparatus, neutrality is defined as free from the influence and intervention of all groups and political parties. In order to maintain the neutrality of the State Civil Apparatus from the influence of political parties and to ensure the integrity, cohesiveness and unity of the State Civil Apparatus, and to focus all attention, mind and energy on assigned duties, ASN is prohibited from becoming a member and / or party official. Thus, the meaning of neutrality is the free of civil servants from the influence of the interests of certain political parties and impartial for the interests of a particular party or does not play a role in the political process because it is feared that the employee misuses the use of state facilities for the benefit of political parties.

The neutrality of ASN in this article is neutral in term of the implementation of elections, which include: 1) neutral in the implementation of presidential elections; 2) neutral in the election of legislative members and; 3) neutral in the election of the regional head. The neutrality of ASN in the regional head elections is what often causes problems. The problem is the emer-

gence of the practice of bureaucratic politicization by regional heads who are political officials.

*"Today, issue of bureaucracy neutrality this case the civil servants has become an important thing in context the regional area especially in term of regional elections. In that process to vote for the regional government head, bureaucratic position, then asked to be neutral institutionalized. The bureaucracy potentiality to influence voters on a particular candidate as well as desire of candidates to win the election, then meet in the paradoxal where forces important of neutrality. Politicians have the potentiality to utilize the bureaucracy network for their interests in the political arena when that is possible for bureaucrats involve in that arena at least to achieve a higher position or simply to keep this position in the regional government structures. That is becoming inclination which emphasizes important issues of neutrality and the various implications related to the bureaucracy position."*

LIPi's (researcher also shows the same thing that some of the General Election in 2005 found that there were a number of factors that caused the local bureaucracy to participate in politics, namely the strength of personality that imparts influence to the regional employees, the desire of the employees themselves to immediately get a more career ladder fast, the lack of institutional socialization, or multi interpretation or monopoly of interpretation of existing rules, patron-client relationship, and the role of shadow bureaucracy.

Similarly, incumbent regional head intervention cases are running again in the election against ASN, as happened in Bantul District, Yogyakarta City, Gunung Kidul Regency and others. Table 1 below shows an increasing number of ASN neutrality violations from 2015 to 2017.

(Table1) Violations of ASN Neutrality in the election from 2015 to 2017

NO	YEAR	STATUS		TOTAL
		PROCESS	FINSH	
2	2015	0	30	30
3	2016	0	34	34
4	2017	18	35	53

Source: Komisi Aparatur Sipil Negara, 2017

While table 2 and 3 shows the number of ASN neutrality violations in the 2015 and 2017 general election in the Special Region of Yogyakarta.

(Table 2) Violation of ASN Neutrality in the election of Regent, Mayor at the same time in 2015 in Yogyakarta Special Region

NO	CITY/REGENCY	TOTAL
1.	Bantul Regency	4
2.	Sleman Regency	1
3.	Gunung Kidul Regency	1

Source: Badan Pengawas Pemilihan Umum DIY, 2017

(Table 3) Violations of ASN Neutrality in the election of Regent, Mayor at the same time in 2017 in Yogyakarta Special Region

NO	CITY/REGENCY	TOTAL
1	Yogyakarta City	5
2	Kulon Progo Regency	0

Source: Badan Pengawas Pemilihan Umum DIY, 2017

## 2. DISCUSSION

Neutrality rules of the State Civil Apparatus have existed since the issuance of Presidential Regulation No. 2 of 1959 on the Prohibition of Civil Servants and State Officials in Political Parties. This Presidential Regulation was issued to unite Civil Servants who were fragmented due to Nasakom's political policies. Furthermore, this Presidential Regulation is followed up and expanded by Presidential Circular Letter of the Republic of Indonesia No. 2 of 1959 on Prohibition of Political Party Membership for State Officials that Implement State Obligation Outside Position in his lap.

Until the 1960s, many governments issued civil service legislation in the form of government regulations. As a result of the many regulations on staffing, it has made it difficult for the government apparatus to obtain a legal basis for appropriate employment issues. This lies behind the order to formulate employment laws. In 1958, the government established a committee headed by Prajudi Atmosudirdjo to draft an employment law. Finally in 1961, through the legal process was successfully promulgated Act No. 18 of 1961

on the basic provisions of Personnel.

Law No. 18 of 1961 was established to secure the legal status of public servants, and to serve as a basis for the compilation of the State apparatus of power as a tool of national revolution based on the proclamation of independence. This law, although named in the Civil Service Provisions, applies not only to public servants but also to members of the Armed Forces, the State Police and the employees of State enterprises.

In article 10, paragraph (4) of the law, it is mentioned that "for a group of employees and / or an office, which due to its nature or duty requires a ban on entry into a political organization, the provisions on this subject shall be stipulated by a government regulation." In practice, Civil Servants are fragmented into political parties as a result of political and governmental situations. At that time the political parties began to instill influence on the government apparatus and use government officials as their organization's block building. Political parties have periods of influence and support in each department, or even dominate the department. Thus the political intervention in bureaucratic life is enormous. The Vice President's Decree dated November 3, 1945 has resulted in a multi-party system that gives people the freedom to establish political parties in accordance with their aspirations. At that time the first General Election was held. From the result of the election, political parties that win votes are willing to control several ministries. In fact, it is not uncommon for government cabinets to be dissolved just because of the division of ministries that are incompatible with the demands of political parties. Government under the leadership of political parties whose members dominate the House of Representatives. The position of the House of Representatives is very strong. Instead the government institutions are very weak. Civil servants who are supposed to be loyal to the state and nation of Indonesia will in fact be loyalists of political parties.

At that time, civil servants were contaminated with the various ideological differences brought by political parties, many of which occurred where the political party that leads a ministry would be embedded in the ministry's influence, the entire civil servant in the min-

istry was certainly a supporter of the political party, consequently the civil servants become fragmented. Thus the rules of civil servant neutrality on the prohibition to become members or administrators of political parties.

In the early days of the New Order regime, which replaced the Old Order government, Permendagri No. 12 of 1968 issued the obligation of the government apparatus to be loyal to the nation and state and prohibited from becoming a member of a political party. This rule is still the same substance with the rules during the reign of the Old Order. It was not until 1970 that Government Regulation No. 6 of 1970 was issued that required every civil servant to be included in Korp Employees of the Ministry of Home Affairs (Kokarmendagri), then in 1971 based on Presidential Decree No. 82 of 1971 on the Corps of Employees of the Republic of Indonesia (KORPRI), KORPRI as the only form of coaching for Civil Servants outside the official. Later KORPRI became a political vehicle and transparently affiliated to certain political powers.

Furthermore, the government issued Law No. 8 of 1974 on the Principal of Personnel, which in Article 14 states "to further enhance coaching, wholeness and cohesiveness, and in order to ensure the full loyalty and obedience of all Civil Servants to Pancasila, the 1945 Constitution, State and Government, it is necessary to foster and develop the soul of a unified corps among Civil Servants ". This rule is intended to unite Civil Servants in one corps namely KORPRI.

In 1998 when there was a change of power from the New Order to the Reform Order. At this time the regulation of civil servant neutrality is regulated in the Civil Service Act and the Election Law. In 1999, Law No. 43 of 1999 was issued. This law is very important to be published because of the shift in development function and government from central to local (Effendi, 1999: 4). For almost 32 years of the New Order government, the government was very authoritarian and centralized. The point of power is centered on the rulers of the government bureaucracy (Thoha, 2008: 1). Development and government controls are in the hands of the central government.

In this regard, the reforms bring changes marked by

the affirmation of the decentralization of duties and authorities from the government to the regional government in the form of granting autonomy to the regions. The granting of wide-ranging autonomy to the regions is aimed at accelerating the realization of community welfare through improved services, empowerment and community participation. In addition, through broad autonomy, the region is expected to improve competitiveness by taking into account the principles of democracy, equity, justice, privilege and specificity and potential and regional diversity within the system of the Unitary State of the Republic of Indonesia.

At that time, situations such as during the Old Order reoccurred. Political parties are popping. Political parties that coalition and win the General Election of President and Vice President, get prizes to control the Departments, consequently the neutrality of Civil Servants is greatly affected. Therefore Law No. 43 of 1999 Article 3 paragraph (2), regulates the neutrality of Civil Servants, namely:

*"In the positions and duties referred to in paragraph (1), Civil Servants shall be neutral from the influence of all parties and parties and not discriminatory in providing services to the public".*

At that time, also published the Law of 10 Year 2008 on the Election of Members of Parliament, DPD and DPRD, which regulates the neutrality of civil servants. Article 84 paragraph (2) states that campaigners in campaign activities are prohibited from involving Civil Servants, then in Law Number 42 Year 2008 regarding Presidential Election and Vice President also mentioned the same thing, especially in Article 41 paragraph (2) 4) and paragraph (5) stating that Civil Servants are prohibited from being involved and engaged in campaign activities. Also in Law No. 8 of 2012 on General Election, Article 86 paragraph (2) stipulates the prohibition of involvement of civil servants in campaign activities.

Government Regulation No. 14/2009 concerning Procedures for State Officials in Conducting Election Campaigns. "In the conduct of Election Campaigns, State Officials are prohibited: a). using state facilities;

b). mobilize his subordinate apparatus for campaign purposes; c). use and / or utilize funds sourced from the state finance either directly or indirectly; and / or d). using the facilities of State-Owned Enterprises and Regional-Owned Enterprises “.

As the implementation of Law Number 43 Year 1999, issued Government Regulation No. 5 of 1999 on Civil Servants who become Members of Political Parties. Regulations on Civil Servants' neutrality are explicit in articles 3 to 9, the provisions governing among others (1) Civil Servants must be neutral and avoid the use of state facilities for certain classes, (2) Civil Servants who have become members and / or a member of a political party at the time this Government Regulation is stipulated shall be deemed to have relinquished its membership and / or stewardship. (3) Civil Servants who are members and or administrators of political parties shall be dismissed from public office and shall be given a deposit of the last basic salary.

Subsequently published Government Regulation No. 12 of 1999 which amended several articles in Government Regulation No. 5 of 1999, especially Articles 7, 8 and 9. The provisions of those articles, among others, regulate the automatic elimination of membership of Civil Servants from membership and stewardship of political parties.

The government also issued Government Regulation No. 53/2010 on Civil Service Discipline also regulating the neutrality of Civil Servants. This can be seen in article 4 which states that Civil Servants are prohibited from providing support to candidates for President / Vice President, House of Representatives, Regional Representative Council, or Regional People's Legislative Assembly. It is also a prohibition to make decisions and / or actions that benefit or disadvantage one of the candidate pairs during the campaign period and / or conduct activities that lead to the alignment of candidate pairs election participants before, during and after the campaign period including meetings, solicitation, appeals, appeal, or giving of goods to civil servants within the working unit, family members, and community.

In addition, Civil Servants are also prohibited from providing support to prospective members of the Re-

gional Representative Council or candidates for Regional Heads / Deputy Heads of Regions by providing a letter of support accompanied by a photocopy of Identity Card or Certificate of Population Identity in accordance with laws and regulations; and provide support to candidates for Regional Head / Deputy Regional Head, by: a. engage in campaign activities to support candidates for Regional Head / Deputy Head of Region; b. use facilities related to positions in campaign activities; c. make decisions and / or actions that benefit or disfavor one of the candidate pairs during the campaign period; and / or d. conducting activities that lead to the alignment of candidate pairs who become electoral participants before, during, and after the campaign period encompasses meetings, solicitation, appeal, appeal, or delivery of goods to Civil Servants within the working unit, family members and community.

The subsequent rule of the Head of the State Personnel Agency issued the Letter of the Head of the State Personnel Agency Number K.26-17 / V.19-14 / 99 concerning Civil Servants who are members of political parties, stating that the Civil Service must be neutral from the influence of all political parties and parties as well not discriminating in providing services to the public. To ensure the neutrality of Civil Servants, Civil Servants are prohibited from becoming members and or administrators of political parties. In order to maintain the neutrality of Civil Servants from the influence of political parties and to ensure the integrity, cohesiveness and unity of public servants, and in order to focus all their attention, mind and energy on the tasks imposed upon them, the Public Servants are prohibited from becoming members and or administrators of political parties. Therefore, Civil Servants who become members and or administrators of political parties must be dismissed as Civil Servants. Such dismissals may be conducted with respect or not with respect.

With regard to sanctions for Civil Servants who are not neutral then the Minister of Administrative Reform State issued a Circular Letter of the Minister of Administrative Reform of the State Number SE / 18.1 / M.PAN / 5/2004. This circular regulates the criteria for imposing sanctions on non-neutral Civil Servants.

These criteria are a). The punishment of severe discipline consists of a lower rank demotion for a maximum of 1 (one) year for civil servants who are involved in the election campaign of President and Vice President or permit the use of government facilities because of their positions. b). Severe disciplinary punishment in the form of honor without notice at its sole request as a Civil Servant with employment rights in accordance with applicable laws and regulations, for Civil Servants involved in the campaign and domiciled as a successful or similar Team in the presidential election and vice President. c). The punishment of severe discipline in the form of dismissal is not respectful as a Civil Servant, for Civil Servants involved in the election campaign of President and Vice President domiciled as a member or manager of a Political Party or a Success Team or similar in the Presidential and Vice Presidential Election and uses the facility because his position.

In 2014, Law No. 5 of 2014 on State Civil Apparatus to replace Law No. 43 of 1999 is enacted. Article 12 states that State Civil Servant Officers serve as planners, executors, and supervisors in the implementation of general government tasks and national development through the implementation of professional policies and services, free from political intervention, and clean of corrupt, collusion and nepotism practices.

This law was issued due to the politicization of the bureaucracy by officers of staffing. As mentioned in Government Regulation No. 9 of 2003 on the Authority to Raise, Move and Dismiss Civil Servants, the Officer of the civil service has wide authority in Civil Servant management that is overall efforts to improve efficiency, effectiveness and professionalism degree of the task implementation, personnel functions and obligations covering planning, procurement, quality development, placement, promotion, payroll, welfare and dismissal. As a result, personnel officers such as the Head of Region officials often politicize the bureaucracy by affecting Civil Servants in the environment to provide support to political parties that become affiliations of the Regional Head.

Law No. 7 of 2017 also regulates the neutrality of the State Civil Apparatus, in Article 280 paragraph (2) stating "The implementer and / or campaign team in

the Election Campaign activities is prohibited from engaging in the Civil State Apparatus". Then article 283 paragraph (1) which states "other state civil apparatus is prohibited to conduct activities that endanger to the alignment of Election Contestants before, during, and after the campaign period".

## 2. CONCLUSION

Based on the above description, it can be concluded that the rules of ASN neutrality experienced a shift according to the time. During the Old Order period, where the ASN was divided into membership of political parties, the rules of ASN neutrality at that time were a prohibition to become members of political parties in accordance with the provisions of Presidential Regulation No. 2 of 1959 and Circular of the President of the Republic of Indonesia No. 2 of 1959. The New Order, the rule of ASN neutrality, is defined as the whole corps, in an attempt to reunite the divided ASNs in party affiliation, this is in accordance with Government Regulation No. 6 of 1970 and Presidential Decree No. 82 of 1971, besides that there are also rules on the prohibition of civil servants to become members of political parties is in accordance with Permendagri Number 12 of 1968. In the Reform Order era, ASN neutrality is not only a prohibition to become a member of political parties but also in the implementation of legislative elections in accordance with Law 10 of 2008, and in the implementation of elections general President and Vice President in accordance with Und of Law Number 42 Year 2008. Furthermore, in Law No. 5 of 2014 regulates the neutrality of ASN as ASN terbebasnya of political intervention. Demikina is also in Law No. 7 of 2017.

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