

TYPE: RESEARCH ARTICLE

A Criminalization of Civil Servant in Case of Neutrality Violations in a Regional Head Election

Emmilia Rusdiana¹, Rizkiyah Putri Maharani²

^{1,2} Universitas Negeri Surabaya, Surabaya, Jawa Timur, Indonesia

Corresponding Email: rizkiyah.18082@mhs.unesa.ac.id

Citation

Rusdiana, E., & Maharani, R. P. "A Criminalization of Civil Servant in Case of Neutrality Violations in a Regional Head Election". *IJCLS (Indonesian Journal of Criminal Law Studies)*, 7(1), 99-126.

History of Article

Submitted: 7 January 2022

Revised: 23 February 2022

Accepted: 30 April 2022

About Author(s)

Emmilia Rusdiana is a Lecturer at Universitas Negeri Surabaya (UNESA), Indonesia. Her area of expertise concerning criminal law, criminal procedural law, and law and justice. Some of her works have been published on several journals such as *Tinjauan Yuridis terhadap Penyebaran Foto Porno di Media Sosial (Studi Putusan Nomor: 80/Pid. Sus/2021/PN SDA)* (Novum Jurnal Hukum, 2022), *Pemenuhan Perumusan Dan Penyelenggaraan Hukum Pidana Pada Pelanggaran Pajak Demi Pencapaian Tujuan Peraturan Perundang-Undangan Perpajakan* (Jurnal Suara Hukum, 2022), and *Implementasi Gerakan Anti Korupsi sebagai Upaya Pencegahan Korupsi*

ABSTRACT

This study aims to validate and analyze the accuracy of sentencing the the defendant as the head of the service in fulfilling the elements of the legal subject as a Civil Servant, as well as legal proof of the defendant's actions which are considered beneficial or detrimental to one of the candidate pairs. Legal research with normative juridical, as well as statutory, case, and conceptual approaches and analyzed prescriptively. The accuracy of sentencing the the defendant in Decision Number 147/Pid.Sus/2018/PN.Sdr regarding legal subjects is based that the Panel of a judge s interprets ASN holding certain positions in government as ASN. The judge's considerations did not refer to the Civil Servant Law and the the defendant was a High Pratama Official, belonging to an Echelon 2 position, and this was based on the theory of a criminal responsibility that the actions taken by the the defendant were a burden of personal responsibility not the responsibility of the position. It has nothing to do with the main duties and official functions as Head of the Social, Civil and Population Registration Service, and not as a legitimate job order task. Legal proof of the the phrase "favorable" or

pada Lembaga Anti Korupsi di Propinsi Jawa Timur (Perspektif Hukum, 2020).

Rizkiyah Putri Maharani is an undergraduate law student from Universitas Negeri Surabaya (UNESA), Indonesia. During her study, she involved in many activities including research and internship program, such as Legal Assistance Staff in Pengadilan Negeri Mojokerto, Jawa Timur. One of her publications is *Progresifitas Kebiri Kimia Di Indonesia Dalam Menanggulangi Kekerasan Seksual* (Novum Jurnal Hukum, 2022).

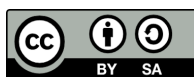
IJCLS (Indonesian Journal of Criminal Law Studies) published by the Faculty of Law, Universitas Negeri Semarang, Indonesia. Published biannually every May and November.

"detrimental" to one of the Candidate pairs is inappropriate, because it is not based on the benefit or harm is a formal offense so it does not need to be proven because there is a potential loss and at the same time the eory of economics analysis of law on the principle of optimization, proving cost-benefit analysis, the principle of balance, and the principle of efficiency.

KEYWORDS

Violation of Neutrality, Criminalization, Civil Servant Criminalization, Punishment, Criminal Sanction

Copyright © The Author(s). See our **Copyright Notice**



This work is licensed under a **Creative Commons Attribution-ShareAlike 4.0 International License**. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

1 INTRODUCTION

Indonesia is the country based on law (*rechtsstaat*), as well mentioned in constitution Article 1 clause (3) UUD 1945. One of the characteristics of an elementary law state is signed with the existence of a democracy system that has people's sovereignty. People sovereignty is realized in democratic party that is called a general election, which function is to choose President and the Vice President, Legislative election and Head Region election.¹

¹ In the context of amendments to the 1945 Constitution of the Republic of Indonesia, then in the Fourth Amendment in 2002, the conception of the State of Law or "*Rechtsstaat*" which was previously only listed in the Elucidation of the 1945 Constitution, is clearly formulated in Article 1 paragraph (3) which states, "Indonesia is a State of Law." In the concept of the rule of law, it is idealized that what should be the commander in the dynamics of state life is law, not politics or economics. Therefore, the jargon commonly used in English to refer to the principle of the rule of law is 'the rule of law, not of man'. What is called government is basically law as a system, not individuals who only act as 'puppets' of the system scenario that governs it. The idea of the rule of law was built by developing the legal instrument itself as a functional and just system, developed by arranging the superstructure and infrastructure of political, economic and social institutions in an orderly and orderly manner, and fostered by building a rational and impersonal culture and legal awareness. in the life of society, nation and state. See Siallagan, Haposan. "Penerapan prinsip negara hukum di Indonesia." *Sosiohumaniora* 18, No. 2 (2016): 122-128; Rokilah, Rokilah. "Dinamika Negara Hukum Indonesia: Antara Rechtsstaat dan Rule of Law." *Nurani Hukum* 2, No. 1 (2020): 12-22; Widiatama,

Head Region election is held to choose Governor and the Vice Governor in Province level as well as Regent or Mayor into second district, that is regularly held every five years.² A general election is a reflection of mechanism for democracy world to choose the best son or daughter of the the country in Province as well as in regency/city. In this election, people deliver their aspirations indirect, general, free and secret way to choose the leader candidates that they support.

Interesting phenomenon that gives color to a general election is about the existence of Civil Servant who needed to always keep their neutrality in it. Considering Civil Servant has a strategic role in a general election especially in supporting a movement for the candidates in a general election. The existence of Civil Servant is susceptible in the practical politic shade to support candidates of the head area who join in the constellation of a general election.³

Civil Servant law has mandated that Civil Servant must be neutral in a general election. Neutral means they are not allowed to be involved in the support movement which is over one of candidates. It is stated in Article 2 letter f, that arrange the clause of "Neutrality" is one of the bases for the performance of policy and management Civil Servant that they are not allowed to stand in any kinds of influences which comes from anyone/anywhere, and they are not taking any side on behalf of anyone especially in a general election.⁴ Some prohibitions that can be said as code of ethics for Civil Servant during a general election phase refer to the rules of law that arrange about a Civil Servant.

The data of National Staffing Agency (BKN) Central, records that any report of complaint tendency for 1.005 Civil Servant or known as Civil Servant that is suspected to do neutrality violation during a general election⁵, then it is found fact from Indonesia general election Supervisor Agency in supervision and socialization division releases any notion about 700 Civil Servant suspected to be involved in the not neutral violation, mainly about neutrality toward the national election held in 2020.⁶ In process of a general election of 2020, BAWASLU (99,5% Neutrality violation

Widiatama, Hadi Mahmud, and Suparwi Suparwi. "Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia." *Jurnal USM Law Review* 3, No. 2 (2020): 310-327.

² Wulandari, Widuri. "Netralitas Aparatur Sipil Negara (ASN) dalam Pemilihan Umum Kepala Daerah Serentak Kabupaten Bantul Tahun 2015." *Thesis*. (Yogyakarta: Universitas Muhammadiyah Yogyakarta, 2016).

³ Fajlurrahman Jurdi. *Pengantar Hukum Pemilihan Umum*. (Jakarta: Kencana, 2018).

⁴ Harahap Abdul Asri. *Manajemen dan Resolusi Konflik Pemilihan Kepala Daerah*. (Jakarta: PT. Pustaka Cidesindo, 2005).

⁵ Poerwadarminta. *Kamus Besar Bahasa Indonesia (Edisi Revisi)*. (Jakarta: Balai Pustaka, 2006).

⁶ Dedi Mulyadi. *Kebijakan Legislasi tentang Sanksi Pidana Pemilu Legislatif di Indonesia dalam Perspektif*

of ASN in the status of officer in local instantiation) has inventoried 1056 cases that need to be suspected as the form of neutrality violence for Civil Servant during the election. Violence statistic shows that the indication is high enough compared with any violence in prior years, 2018 where the range from 2018 only found 491 violence by BAWASLU.

KASN recommendations are sometimes ignored by the Personnel Guidance Officer (PPK). As a result, sanctions for ASN who commit violations become ineffective and do not cause a deterrent effect.⁷ (Saputra, 2020). Data from Civil Servant Commission (KASN) notes that based on metadata made by September 30th, 2020 (KASN Bawaslu Releases ASN Neutrality Supervision Data in 2019 and 2020-PPID KASN, n.d.), and found that 694 people with the status of Civil Servant reported in accusation for doing violence act by ignoring basis of neutrality that must be taken by Civil Servant in the step of implementing election process simultaneously (Rahma Andayani, 2018). While supervision is directly held by people/public, reports that there are 167 cases of violence accusations about neutrality done by a Civil Servant. Public notes that the biggest percentage of neutrality violence is the involvement of Civil Servant in campaigns activity by using social media (Prakoso, 1987).

Action categorized as neutrality violence done by those Civil Servants has been applied staffing penalty refers to government rules state that discipline punishment degree has 3 levels: discipline punishment lighty, discipline punishment medium,

Indonesia. (Jakarta: Gramata Publishing, 2012). One of the criminal provisions in the election is accepting donations of election campaign funds from foreign parties (overseas), donors whose identities are not clear, the results of criminal acts that have been proven based on court decisions that have obtained permanent legal force and/or aim to hide or disguise the results. criminal acts, funds from the central government, regional governments, State-Owned Enterprises (BUMN), and Regional-Owned Enterprises (BUMD) or village governments and village-owned enterprises, shall be punished with imprisonment for a maximum of 3 (three) years and a fine a maximum of Rp. 36 million. *See also* Sastera, I. Gusti Bagus Yoga, I. Made Minggu Widyantara, and Luh Putu Suryani. "Sanksi Pidana Terhadap Pelaku Tindak Pidana Pemilu di Indonesia." *Jurnal Konstruksi Hukum* 1, No. 1 (2020): 192-196; Mulyadi, Dudung. "Analisis Penerapan Bentuk-Bentuk Tindak Pidana Pemilu." *Jurnal Ilmiah Galuh Justisi* 7, No. 1 (2019): 14-28; Firdaus, Aras. "Money Politics dalam Pemilihan Umum oleh Badan Pengawasan Pemilihan Umum: Pengawasan Tindak Pidana Pemilu." *Jurnal Justika* 2, No. 1 (2020): 61-69; Ersyada, Yudhistira Zia. "Pemidanaan Money Politic dalam Penyelenggaraan Pemilihan Umum Calon Anggota DPRD Kota Semarang Tahun 2009." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 1, No. 1 (2012): 71-78; Diniyanto, Ayon. "Election Crime in the Perspective of the Indonesian Democratic State." *Law Research Review Quarterly* 4, No. 2 (2018): 422-429.

⁷ Asbudi, Asbudi. "Pencegahan dan Penindakan Pelanggaran Netralitas Aparatur Sipil Negara (ASN) oleh Bawaslu Kota Palopo Pada Pemilu 2019." *Journal I La Galigo: Public Administration Journal* 3, No. 2 (2020): 9-17.

discipline punishment heavy. Civil Servant neutrality violence includes the penalty has been arranged in regulation that is special for Civil Servant (*lex specialis*). Yet, this problem does not stop there because the reality (fact of law) shows that Civil Servant who is not neutral in the election can also meshed with a criminal penalty.⁸ As what happened in the election of Siddenreng Rappang regent, where the the defendant Syaharuddin Laupe who is a Civil Servant in charge of DinsosdukCapil chief has been sentenced to a criminal penalty of 1 month in jail by the judge with probation of 6 months because of Civil Servant neutrality violation.

The prison sentence dropped through the Verdict Number 147/Pid.Sus/2018/PN.Sdr, assessed that has been proven by de jure to do action against the law/a criminal act "purposely doing an action that prospers one of the Regent candidates in Siddenreng Rappang". One of his actions is doing the ordering and installing a banner/billboard from one of the candidates with content that invites to choose one of the candidates on the banner/billboard.⁹ One of the keys for a judge to decide the prison sentence is the application of formal offense that enforced in not neutrality violence of Civil State Apparatus. The judge sees that the benefit given by the the defendant to one of the candidates is not a real benefit, however it's a potency. As well as the disadvantage emerges for other candidates, it is not a real loss.

This decision is absolutely interesting to have deeper study, especially related to the legal subject of the defendant that is categorized by the judge as Civil Servant like being arranged in Article 71 clause (1) constitution Number 1 of 2015. Whether the the defendant that is a chief of Social, Population and Civil Registration Agency belonging to a legal subject as Civil Servant as the formula of Article 71 clause (1).¹⁰ On the other side what makes the basic consideration of a judge to prove legally that the action of the the defendant judged to have been "*advantaging or disadvantaging one of the candidates*" in the election of the head region in Sidenreng Rappang Regent. The the defendant is accused due to the formula from the indicted a criminal act is

⁸ Yusdianto, Yusdianto. "Identifikasi Potensi Pelanggaran Pemilihan Kepala Daerah (Pemilukada) dan Mekanisme Penyelesaiannya". *Jurnal Konstitusi* 2, No. 2 (2010): 43-58.

⁹ Asmawati, Andi. "Implementasi Kebijakan Pemerintah Terhadap Disiplin Aparatur Sipil Negara Pada Kantor Kelurahan Baranti Kabupaten Sidenreng Rappang." *PRAJA: Jurnal Ilmiah Pemerintahan* 8, No. 1 (2020): 8-17; Fatkhuri, Fatkhuri, and Syahril Syarbaini. "The Neutrality of State Civil Apparatus in Local Election: A Case Study of South Sulawesi Provincial Election in 2018." *JIP (Jurnal Ilmu Pemerintahan): Kajian Ilmu Pemerintahan dan Politik Daerah* 4, No. 2 (2019): 104-118.

¹⁰ Watunglawar, Matias Neis. "Perwujudan Asas Netralitas Birokrasi Dalam Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara." *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 15, No. 1 (2017): 70-88; Sutrisno, Sutrisno. "Prinsip Netralitas Aparatur Sipil Negara Dalam Pemilihan Kepala Daerah." *Jurnal Hukum Ius Quia Iustum* 26, No. 3 (2019): 522-544.

formal offense meaning that no matter the advantage is only a potency or real advantage, still it must be seen as a criminal act.

The purpose of this observation is to validate the defendant as the chief of Social, Population and Civil Registration Agency in Verdict Number 147/Pid.Sus/2018/PN.Sdr, can be stated that legal subject as "Official Civil State Apparatus" by Article 71 clause (1) Constitution of A regional election, and the accuracy of law verification that interpret the phrase "advantaging or disadvantaging one of the candidates" in Article 71 clause (1) Constitution of A regional Election.

Prior observation in 2018, Roganda Sinaga-North Sumatra University, discuss the involvement of Civil Servant in a regional election campaigns, an administrative penalty of Civil Servant involved in a regional election campaign, and role of BAWASLU in giving an administrative penalty to Civil Servant involved in a regional election campaign. Wahyuri-Islamic State University Alauddin Makassar, discuss the form or type of a criminal activity from a regional election in Takalar regency and process of implementation in handling a criminal act for a regional election in Takalar Regency, while observing in 2020, Alif Zahran Amirullah—Hasanudin University, discuss about the qualification of a criminal act for a regional election done by Civil Servant in a criminal act of a regional election with verdict number 147/Pid.Sus/2018/PN.Sdr. Different from the writer's observation, the goal of the writer is analyzing legal subject of the defendant whether it meets the element as legal subject as like meaning in Article 71 clause (1) Constitution of a regional election and verification the phrase "advantaging or disadvantaging one of the candidates".¹¹

2 METHOD

This study used normative juridical, then using the constitutional approach, conceptually it is started as an embryo of idea and doctrine develop into a legal study to find a thought or idea that in final context will create law concepts. Civil Servant Neutrality violence using utilitarian punishment concept that means the punishment is the impact of movement that cause disadvantage for the public. The effort of this

¹¹ Muchtar, Ichsan Ariansyah, and Andi Safriani. "Tindak Pidana Pemilu Yang Dilakukan oleh Kepala Desa di Kabupaten Takalar." *Alauddin Law Development Journal* 2, No. 3 (2020): 270-275; Yamin, Muhammad Halwan. "Netralitas Pegawai Negeri Sipil dalam Pemilihan Umum Kepala Daerah di Kabupaten Takalar." *Thesis*. (Makasar: Universitas Hasanuddin, 2013).

punishment applied in a goal as a way to not happened/repeated another a criminal act in the future. This observation focuses on the literature study with analysis quantitative law substance to find an index that is reviewed from the aspect which the object regarding Civil Servant neutrality, with data analysis grammatical interpretation that evaluates word from language side, word order and or the sound.

3 RESULT AND DISCUSSION

A. Accuracy punishment to the defendant as the chief of Social, Population and Civil Registration in compliance the element legal subject as “Official Civil State Apparatus”

Basic Consideration of a Judge

The defendant is snared with the single indictment against Article 188 Jo Article 71 Clause (1) Indonesia Constitutions Number 10 Year 2016 about second changing of Indonesia Constitution Number 1 Year 2015 about the determination of government rules substitutes the Constitution Number 1 Year 2014 about Governor, Regent, and Mayor Election into Constitution. Article 188 Constitution Number 1 Year 2015 about the determination of government rules substitutes the Constitution Number 1 Year 2014 about Governor, Regent and Mayor Election into Constitution, read : “Every official of the country, official Civil Servant and Village Chief or in other term/Headman who purposely against the provision as meant in Article 71, punished with prison sentenced minimally 1 (one) month or maximally 6 (six) month and/or fine minimally Rp.600.000,00 (six hundred thousand Rupiahs) or maximally Rp.6.000.000,00 (six million Rupiahs)” while Article 71 clause (1) constitution number 10 year 2016, read : “*an official of the country, an official of the region, official civil state apparatus, member of Indonesia Force/Police, and Village Chief or in other term/Headman is forbidden to make a decision and/or action that prospers or harms one of the candidates*”.¹²

As mandated by law, regional heads also become Civil Service Officer (PPK) in their regions. This position has been determined in Government Regulations No. 11

¹² See also Supatno, Feby Setiyo Susilo. "Pemilukada dalam Sistem Demokrasi di Indonesia Menurut Undang-undang No. 1 Tahun 2015 Dengan Perubahan Menurut Undang-undang No. 8 Tahun 2015." *Lex Privatum* 4, No. 2 (2016); Setiawan, Pandu. "Analisis Yuridis Sengketa Penetapan Calon Kepala Daerah Menurut Undang-Undang Nomor 8 Tahun 2015 Perubahan Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014." *Novum: Jurnal Hukum* 2, No. 2 (2015): 116-130.

of 2017 concerning State Civil Apparatus (ASN) Management, and Law No. 5 of 2014 concerning State Civil Apparatus (ASN). As Civil Service Officer (PPK), he has full rights to lift, move, and terminate within his agency. It has resulted in many civil servants who think that to achieve a high career ladder, they must contribute to regional officials or heads' success. Whereas in the regulations, promotion, and placement of State Civil Apparatus (ASN) should not be implemented based on personal relationships (impersonal) but based on considerations of achievement and competence (*merit system*).¹³

Basic consideration of a judge in verdict number 147/Pid.Sus /2018/PN.Sdr can be interpreted as: that Article 71 Clause (1) the elements are:

- 1) Every official of the country, official Civil Servant and Village Chief or in other term/Headman.
- 2) Purposely making decision and/or action that prospers or harms one of candidates.

Both elements are interpreted more detail by the judge as the element "every official of the country, official of region, official civil state apparatus, member of Indonesia Force/Police, and Village Chief or in other term/Headman", means that "civil state apparatus" as Article 1 number 1 Indonesia Constitution number 5 year 2014 about Civil Servant is profession for Civil Servant and government officer with employment agreement to work in government institution, so it means "official civil state apparatus" is a Civil Servant that has position in government institute where he/she works and in charge.¹⁴ (Suharizal, 2011).

Basic consideration of a judge can be said that the element fulfillment of the defendant legal subject as "official civil state apparatus" based on fact with simple construction:

1. The element meant "civil state apparatus" as like Article 1 number 1 Indonesia Constitution Number 5 of 2014 about Civil Servant is profession for Civil Servant and government officer with employment agreement to work in government institution, so it means "official civil state apparatus" is a Civil Servant that has position in government institute where he/she works and in charge.
2. That according to judge fact, the defendant identity who is Civil Servant that

¹³ Sihaloho, N. T. P., & Herlan, H. (2020). The Dilemma in Neutralizing the State Civil Apparatus (ASN) and Alternative Solutions. *Jurnal Bina Praja*, 12(2), 213–224. <https://doi.org/10.21787/jbp.12.2020.213-224>

¹⁴ Suharizal, *Pemilukada, dan Dinamika Regulasi: Konsep Mendatang*. (Jakarta: Raja Grafindo Persada, 2011).

has certain position in government which is the chief of social, population and civil registration agency so it is counted by the judge to be called "official".

Legal subject of Official Civil Servant in Constitution perspective about Civil State Apparatus

Judge has interpreted that the defendant meets the legal subject the element as official Civil Servant in verdict number 147/Pid.Sus/2018/PN.SDR. where the judge simply interprets that a Civil Servant who has certain position in government is called official. It sure creates a question why the judge does not refer to rules related to Civil Servant problem, in this case constitution number 5 of 2014 about civil state apparatus. Considering that only constitution number 5 of 2014 which organizes things related to Civil Servant.¹⁵ The Deputy of Human Resources at the Ministry of State Apparatus Empowerment and Bureaucratic Reform explained that neutrality is a state and attitude of impartiality or independence.¹⁶

Basically, Civil Servant constitution divides into three positions: Administrative position, Functional position and Top leader position. Related to the official category in the constitution, the Civil Servant divides into three clusters (groups) of officials, they are: Administrative official, Functional official and Top primary leader official. On Article 1 a general provision of Civil Servant constitution is explained as follow:

- 1) Top leader officially is a Civil Servant that has the top leader position.
- 2) Administrative official is a Civil Servant that has an administrative position in a government institution.
- 3) Functional official is a Civil Servant that has a functional position in a government institution.

In explanation attachment of Article 19 constitution number 5 of 2014 about Civil Servant is explained details explanation as follow:

- 1) The meaning of "top main leader position" is head of government institution non-ministry.
- 2) The meaning of "top medium leader position" covers secretary a general of

¹⁵ Sudrajat, Tedi, and Agus Mulya Karsona. "Menyoal Makna Netralitas Pegawai Negeri Sipil dalam Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara." *Jurnal Media Hukum* 23, No. 1 (2016); Artisa, Rike Anggun. "Pegawai Pemerintah dengan Perjanjian Kerja (PPPK): Review terhadap UU No. 5 Tahun 2014 Tentang Aparatur Sipil Negara." *Jurnal Pembangunan dan Kebijakan Publik* 6, No. 1 (2017): 33-42.

¹⁶ Muslimin, Husein. "Dinamika Pemilihan Kepala Daerah Berdasarkan Peraturan Perundang-Undangan di Indonesia." *Jurnal Cakrawala Hukum* 10, No. 1 (2019): 40-49; Rahmansyah, Arif. "Analisis Terhadap Netralitas Aparatur Sipil Negara dalam Pemilihan Kepala Daerah Berdasarkan Peraturan Perundang-Undangan." *Limbago: Journal of Constitutional Law* 1, No. 3 (2021).

ministry, secretary ministry, main secretary, secretary a general of secretarial institution, secretary a general of non-structural institution, a general director, deputy, a general inspector, main inspector, head institution, expert staff ministry, secretarial head of president, secretarial head of vice president, military secretary of president, secretarial head of president advisory council, a regional secretary of province, and other equivalent position.

- 3) The meaning of "top primary leader position" covers director, head of bureau, deputy assistant, secretary of directorate general, secretary of inspectorate general, secretary of head institution, central head, inspector, office head, assistant of province secretariat, secretary of regency/city, institution head of province, secretary of A regional People's Representative, and other equivalent position.

Refers to explanation Article 19, correlated by the defendant legal subject in verdict number 147/Pid.Sus/2018/PN.Sdr, that has position as head of social, population and civil registration office, so it can be concluded that the the defendant is in category of "top leader official" with category "primary top position". If it is constructed, then the the defendant includes in legal subject as "official top primary leader". Where the position as head of social, population and civil registration office owned by the defendant is equivalent as secretary of A regional People's Representative (other equivalent position). Being neutral ahead of the Pilkada democracy party, of course it is not shown solely on officials who plan to re-nominate or in other words incumbent.¹⁷ Though the position of head office in a regional level is not mentioned, yet the position is equivalent as secretary of A regional People's Representative that is incidentally Echelon II. It refers to the provision of Article 131 Constitution about Civil Servant that arrange provision as follow:

- 1) Echelon position Ia is head of government institution non-ministry equal as top main leader position.
- 2) Echelon position Ia and Echelon Ib equal as top medium leader position.
- 3) Echelon position II equals as top primary leader position.
- 4) Echelon position III equals administrative position.

Explanation above shows the clear vision that the defendant holds position as head of social, population and civil registration office and is top primary leader, including in echelon II (two) position. Therefore, judge interpretation in context of the

¹⁷ Lestari, Anak Agung Adi. "Pengaturan Birokrasi Aparatur Sipil Negara Yang Netral dan Bebas dari Intervensi Politik." *Kertha Semaya: Journal Ilmu Hukum* 8, No. 12 (2020): 1918-1927. <https://doi.org/10.24843/ks.2020.v08.i12.p09>

defendant legal subject isn't clear or detail, because the judge interprets grammatically that Civil Servant who holds position in government is called official Civil Servant without proofing further of which official Civil Servant he is included in, it shows that interpretation or judge interpretation can be done if the constitution does not arrange it in detail. In conducting a further review of the implementation of ASN Neutrality in the 2020 Pilkada, it is necessary to enforce administrative ethics which includes four main aspects, namely discipline, efficiency, productivity, and moral awareness.¹⁸

A criminal liability theoretical approach

As known that essence of a criminal liability meaning is a parameter to decide whether a suspect or the defendant that does law action can be responsible of a criminal act that has been done (personal responsible as legal subject) (Hanafi, 2015). Considering burden in a criminal liability in principle is responsibility from offender of a criminal act itself (personal responsibility). In context of verdict number 147/Pid.Sus/2018/PN.Sdr that a criminal liability is personal responsibility of the defendant though the the defendant has a status as Civil Servant who holds position as head of social, population and civil registration office. Because the offender done by the the defendant has no correlation with the position or functional main duty carried by the the defendant as Civil Servant which in perspective of constitution number 5 of 2014 about civil state apparatus, the defendant is official top primary leader category Echelon 2 (two).

The action of the defendant doing Civil Servant neutrality violence, with joining political practice world by supporting one of the candidates is purely a personal activity that is not involved at all with position/main duty of institution function where the the defendant works as a servant of the country and society. None of duty related to the defendant action as like mentioned in Article 51 Clause (2) KUHP. Article 51 clause (2) KUHP is: If the one who is ordered, with good intention thinks that order given by authority and, order implementation is inside of working environment of the one who gets ordered, so that the consequence is personal responsibility not the position responsibility. A criminal liability is personal burden to take the responsibility. So, it is logical if defendant's action is accused by prosecutor with accusation of doing violation to Article 188 jo Article 71 clause (1) a regional election constitution.

¹⁸ Larasati, Ayu Shinta, and Musfirah Musfirah. "Analisis Penyelenggaraan Etika Administrasi dalam Netralitas ASN Pada Pilkada 2020." *Dinamika Governance: Jurnal Ilmu Administrasi Negara* 11, No. 1 (2021): 103-116. <https://doi.org/10.33005/jdg.v11i1.2512>

The view of a criminal liability has meaning as the continuity of objective reproach that is exist in a criminal act and subjectively meets the condition to be able getting prisoned by the action (Roeslan Saleh, n.d.). objective reproach is an action done by someone that the action is forbidden, this forbidden action means that the action is obviously against the law which is related to formal law or material law. This formal law context related with the way of maintaining or performing rules and in conflict, this formal law will show the solving way at the court. While material law is explaining about what actions that can be punished and so what the punishments that can be sentenced. Election crimes can be interpreted as all criminal acts related to elections and carried out at the stage of organizing elections, both those regulated in the Election Law and in the Election Crime Act and their settlement outside the election stage through the General Court.¹⁹ (Suhendar & Rachmi Kusumah, 2020).

Subjective reproach refers to the person who does forbidden action or can be said subjective reproach is person who does forbidden action or against the law. If it's correlated with defendant's action in verdict number 147/Pid.Sus/2018/PN.Sdr, can be described that objective reproach done by the the defendant who is a Civil Servant with position as head of social, population and civil registration office is doing violation. Civil Servant neutrality which in concrete spreading banner or billboard to people that the content is to provoke people choosing one of the candidates on the banner, giving groceries through a regional program from the institution along with the spreading of poster to people who get the program where the banner/billboard/poster content is inviting people to choose one of regent candidates in Sidden Rappang Regency. It shows that the action of the defendant is violation to Article 197 Jo Article 71 clause (1) constitution number 10 of 2016 about a regional election. While, related to subjective reproach here is the the defendant as legal subject that has done violation as mentioned before.

Construction orientation of a judge consideration can be observed that the meaning of legal subject "official civil state apparatus" that applied to the defendant doesn't refer to the exist rules of constitution, yet merely based on judge interpretation considers that Civil Servant holds certain position in government automatically called as official. It is different when the judge interprets "civil state apparatus" refers to the provision of constitution rules (positive law occurred) in this case article 1 number 1 a generalclause Indonesia constitution number 5 of 2014 about civil state apparatus.

¹⁹ Suhendar, Suhendar, and Riva Rachmi Kusumah. "Penanganan Pelanggaran Serta Peran Aparatur Sipil Negara (ASN) Sebagai Pencipta Iklim Kondusif Demokrasi dalam Penyelenggaraan Pemilu". *Yustitia* 6, No. 1 (2020): 108–118. <https://doi.org/10.31943/yustitia.v6i1.109>

The meaning of someone stated as "civil state apparatus" in verdict number 147/Pid.Sus/2018/PN.Sdr, doesn't base on rules of constitution but merely based on judge interpretation that see someone in certain position in government is called "official". The the defendant holds position as head of social, population and civil registration office in Sidenreng Rappang government stated by judge as the element "official civil state apparatus", as mentioned in article 188 Jo article 71 clause (1) Indonesia Constitutions number 10 year 2016 about the second changing of Indonesia constitution Number 1 Year 2015 about the determination of government rules substitute constitution Number 1 Year 2014 about governor, regent and mayor election to be constitution. To prove defendant's action in verdict number 147/Pid.Sus/2018/PN.Sdr can be asked a criminal liability personally, so it can be reviewed that the action has met the elements of a criminal liability as like.²⁰

The element of a criminal act existence

This the element is related to a legal foundation of a criminal law that the point is people cannot be punished if they don't do any action forbade by constitution. The principle legalitas nullum delictum nulla poena sine praevia lege poenali means an action isn't punished if there is no rule or constitution that arrange about the forbidden action (Moeljatno, n.d.). in context here, the the defendant has done forbidden actions by a regional election constitution, where official Civil Servant must keep the neutrality during the election, it's not allowed to support in the election. While the defendant noticeable spread banner/billboard/poster whose content is inviting people to choose one of the candidates. This action against article 71 clause (1) a regional election constitution.

a. Able to take responsible

The element that can take responsibility is constantly related to a criminal liability. The ability of taking responsibility later must be proven by a judge in court, whether the defendant meets the element for being able to do the responsibility, so the factor becomes the basis of someone not being able to be asked for a criminal liability over the action. Someone can be said unable to have responsibility that based on Andi Zainal Abidin related the connection of article 44 KUHP that the point is someone cannot be asked a criminal liability because the soul is defective in the body (*gebrekkige ontwikkeling*) or hampered by the disease cannot be punished.

²⁰ Huda, Chairul. "Pola Pemberatan Pidana dalam Hukum Pidana Khusus." *Jurnal Hukum Ius Quia Iustum* 18, No. 4 (2011): 508-524.

Article 44, someone that does a criminal act cannot be asked a criminal liability if they don't have the element of taking responsibility inside of the defective body in growing (*gebrekkige ontwikkeling*) or hampered by a disease. But, related to this element, it shows that the defendant in verdict number 147/Pid.Sus/2018/PN.Sdr can be described that health condition of the defendant is in good condition or healthy, doesn't have any defect in growing or hampered by certain disease such as people with mental illness, so he can take responsible of the action done.

b. Intentionally or omission

A criminal liability has 2 (two) wrong elements in a criminal law, they are: intentionally (*dolus*) and omission (*culpa*).²¹ While laxity is one of form of mistake that appears because the performer doesn't meet the standard decided, laxity happens because the action of the performer itself. Moeljanto stated that omission is a *gecompliceerd* structure which is one side lead to someone's action in concrete while on the other side, leads to mental condition of someone. The the defendant stated to do neutrality violation, essentially done in purpose, the defendant is aware and know that his action is forbidden and can cause any a criminal penalty for him, yet he still does the action (on purpose as meaning, on purpose as certainty, on purpose as possibility). Therefore, the element intentionally also meets the qualification for defendants to responsible a criminal act.

c. There is no reason of forgiving and justification

In doctrine of a criminal law that reason of forgiving and justification can be used as foundation that someone who is proven to do a criminal act yet released from a criminal liability. The reason of forgiving and justification is a reason to remove the quality against the law of action. The reason of justification is a reason "justification" over a criminal act against the law, while the reason of forgiving culminates to "forgiving" over someone although they have done law violation on a criminal act that has done.

Someone can be asked for a criminal liability if there is no reason of justification and forgiving. The reasons of justification are:

- 1) Action done in emergency state (Article 48 KUHP)
- 2) Action done because of forced defense (Article 49 clause (1) KUHP)
- 3) Action to do rules of constitution (Article 50 KUHP)
- 4) Action to do order from legal authority (Article 51 KUHP).

While the reasons of forgiving are:

- 1) Action done by people that can take responsibility (Article 44 KUHP)
- 2) Action done because there is coercion (Article 48 KUHP)

²¹ Andi Zainal Abidin. *Sekelumit Goresan Tentang Penuntut Umum di Indonesia*. (Jakarta: Persaja, 1961).

- 3) Action because of forced defense beyond the limit (Article 49 clause (2) KUHP)
1. Action done to do order from illegal authority (Article 51 clause (2) KUHP)

The conclusion that defendant's action does not have any the element of justification and forgiving which can remove the crime. Defendant's action is purely a criminal act of constitution violation that threatened by a criminal penalty (there is no reason of forgiving and justification). Overall, it can be concluded that the defendant can be asked for a criminal liability over the action (personal responsibility not position responsibility). Because it has already had 4 elements a criminal liability (personally) as explained above: existence of a criminal act, Able to take responsible, Intentionally, there is no reason of forgiving and justification have already fulfilled completely.

A criminal law validate that the defendant is a Civil Servant, but the action done is not because of doing order for legal authority like arranged in Article 51 KUHP. So that burden of a criminal responsibility is responsible for a criminal violation performer itself (personal responsibility). Socializing the importance of clean democracy to the regional government order, it also needs to be improved so that every ASN is the local level realizes the bad impact of a non-neutral political culture something like that.²²

B. Accuracy of Law Verification Over Defendant's Action Considered "Advantaging or Disadvantaging One of Candidates"

Judge consideration foundation

Article 71 clause (1) constitution number 10 of 2016, stated "official of the country, official of region, official civil state apparatus, member of Indonesia Force/Police, and Village Chief or in other term/Headman is forbidden to make decision and/or action that prospers or harms one of candidates". Basic consideration of a judge to the the phrase "advantaging or disadvantaging one of candidates", can be studied in verdict number 147/Pid.Sus /2018/PN.Sdr,. The judge states that: The defendant Drs. H. Syaharuddin Laupe, Head of social, population and civil registration office has legally proven guilty to do a criminal act "on purpose doing act

²² Farida, Ida, and Refl Y. Setiawan. "Political Parties and Party Systems in The Reform Era in Indonesia." *Сравнительная политика* 12.4 (2021): 157-162.

that advantages one of the candidates". The defendant has done provocative action or invitation to people to choose one of the candidates, because it has been a general info that banner or poster showing candidates in a general election is a form of invitation to choose the candidate, moreover banner or poster is one of media for campaigns. Inviting or provoking people to choose one of the candidates means that this action has given advantage to the candidate as like said in this element. Considering that because of formula of a criminal act accused toward the defendant is formal offense so that no matter the advantage is only potency or real advantage.

The defendant is formal offense so that no matter the advantage is only potency or real advantage. It can be seen as a criminal act.²³ In this case, though it has not been sure the candidate that becomes Regent and Vice Regent of Sidrap regency, but it has been an action of the defendant which has potency to advantage one of the candidates, so the action must be seen as a criminal act. Besides, the judge also sees that advantage given by the defendant to one of the candidates isn't real form of advantage, yet it's a merely potency. The defendant is blamed because of the formula from a criminal act accused is formal offense that means no matter the advantage is called a potency or real advantage, yet it is a criminal act.²⁴

In principle, the judge here interprets grammatically that the phrase "advantaging or disadvantaging one of the candidates as mentioned in article 71 clause (1) a regional election constitution is formal offense, so it doesn't need to be proven because advantage or disadvantage here is potential loss, therefore a criminal act has been considered done by the action that is forbidden and threatened with punishment by the constitution. 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.²⁵

²³ Candra, Septa. "Restorative Justice: suatu tinjauan terhadap pembaharuan hukum pidana di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, No. 2 (2013): 263-277. *See also and compare with* Chandra, Septa. "Politik Hukum Pengadopsian Restorative Justice dalam Pembaharuan Hukum Pidana." *Fiat Justisia Jurnal Ilmu Hukum* 8, No. 2 (2014): 255-277; Arief, Hanafi, and Ningrum Ambarsari. "Penerapan Prinsip Restorative Justice dalam Sistem Peradilan Pidana di Indonesia." *Al-Adl: Jurnal Hukum* 10, No. 2 (2018): 173-190; Aji, Wikan Satrio. "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia." *JILS (Journal of Indonesian Legal Studies)* 4, No. 1 (2019): 73-88; Putri, Claudia Carolina Indra. "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, No. 1 (2019): 1-8.

²⁴ Hartini, Sri. "Penegakan hukum netralitas pegawai negeri sipil (PNS)." *Jurnal Dinamika Hukum* 9, No. 3 (2009): 296-305.

²⁵ Sarnawa, Bagus. "Legal Friction of State Civil Apparatus Neutrality in Indonesia". *Indonesian Comparative Law Review* 1, No. 1 (2018): 43-50. <https://doi.org/10.18196/iclr.1105>

Conclusion of basis law proof toward the phrase “advantaging or disadvantaging one of the candidates” isn’t appropriate, because it’s not based on law proof or theory that can prove or strengthen the the phrase advantaging or disadvantaging one of the candidates. The formation of ASN also functions as an effort to form a neutral attitude and free from the intervention of power and political parties.²⁶

Economics Analysis of Law Theory

Ideally, something is said advantaging or disadvantaging must have certain parameter as a measurement, so the meaning of advantaging or disadvantaging becomes more measurable. That there will create any certainty of law in matter of case. The value of certainty that must be available in every law applied so that it can give justice and create discipline in society. Certainty is a special characteristic that cannot be separated from law, mainly in positive law or constitution rules that is valid for now.²⁷ When the supported candidate wins in the election, then usually ASN who previously contributed to support, then get a promotion position in return.²⁸

To bridge how far that advantaging or disadvantaging can be more measurable, one of the methods is doing economics analysis of law approach that is known as Economic Analysis of Law by Legal expert Richard A. Posner.²⁹ Regulation about

²⁶ Novrida Wulandari, Adianto Adianto. “Kinerja Komisi Aparatur Sipil Negara Sebagai Lembaga Pengawas Netralitas Aparatur Sipil Negara”. *Jurnal Humaniora: Jurnal Ilmu Sosial, Ekonomi, dan Hukum* 4, No. 1 (2020): 166-171. [ps://doi.org/10.30601/humaniora.v4i1.601](https://doi.org/10.30601/humaniora.v4i1.601)

²⁷ Zudi, Mat, Arief Hidayat, and Untung Sri Hardjanto. "Netralitas Pegawai Negeri Sipil Dalam Pemilihan Kepala Daerah." *Diponegoro Law Journal* 1, No. 4 (2012).

²⁸ Sutrisno, 2019.

²⁹ Amancik Amancik. *Model Pemilihan Kepala Daerah Berdasarkan UUD 1945*. (Jakarta: Sinar Grafika, 2013). See also Erisanti, Nadia, Amancik Amancik, and Katamelem S. Meiliala. “Efisiensi dan Efektivitas Pemilihan Umum Kepala Daerah Langsung Menurut Undang-Undang No 32 Tahun 2004 Tentang Pemerintahan Daerah”. *Dissertation*. (Bengkulu: Universitas Bengkulu, 2014). Furthermore, it is emphasized that Richard Posner [1973] brought economic analysis of law to the attention of the general legal academy; by the late 1970s, his work had provoked a vigorous controversy. This controversy was both general and doctrinally specific. Posner had claimed generally that the common law was and ought to be efficient. This latter claim provoked a broad controversy about the evaluation of legal rules. More specifically, controversy recurred each time economic analysts of law addressed another doctrinal area. More often than not, the introduction of economic analysis into the study of a doctrine transformed that area of scholarship. For a time, economic analysis dominated the study of private law in the United States; arguably it still dominates, though a healthy resurgence of moral accounts of these areas has recently emerged to challenge economic analysis of private law. Many practitioners and critics alike believe that economic analysis of law offers a comprehensive theory of law. As traditionally understood, a comprehensive theory of law has several components. First, a comprehensive theory of law begins with a characterization of the nature of law. This component distinguishes law not only from other

Neutrality of ASN already relatively enough and clear. However, in level implementation policy still weak. The government system and politic in Indonesia result in bureaucracy still not yet handled totally with professional.³⁰

Posner as Economics Analysis of Law is applying economics principle as rational choices, to analyze the matter of law.³¹ Posner expresses that essentially there are three economics principles in law, besides normative analysis such as: optimization, balance, and efficiency. Posner concept is someone doing analysis of benefit and loss (cost-benefit analysis) in taking decision and acting with hope to achieve biggest advantage as well as it is contained in basic principle of economy.³² Optimizing principle in economy is the least instrument to be used by the judge as consideration to prove incriminating things, because the defendant has intention (*mens rea*) from the beginning to do an action forbade by constitution in little sacrifice yet to get great advantage by breaking the provision arranged in constitution rules.

Balance principle in Economics Analysis of Law, that is punishment balance aspect given to the defendant must be balance or worth with the action done by the the defendant.³³ The element of advantaging or disadvantaging happened can be proven by economy parameter besides optimizing principle also balance principle that can be thing incriminates defendant. Considering the action of the defendant also has other elements that is broken, it is not merely about banner or billboard that provokes people to choose one of candidate that in result advantage or disadvantage one of the candidates. Yet, the misapplication power like the using of car's institution, groceries distribution added by giving poster with picture of one candidate³⁴

normative systems such as morality, religion, and social conventions such as etiquette but also from coercion and politics. *Please also see* Posner, Richard A. *Economic Analysis of Law*. (London: Wolters Kluwer, 2014). Posner, Richard A. "The social costs of monopoly and regulation." *Journal of Political Economy* 83, No. 4 (1975): 807-827; Posner, Richard A. *The Economics of Justice*. (Mass: Harvard University Press, 1983); Marciano, Alain, and Giovanni Battista Ramello. "Law, economics and Calabresi on the future of law and economics." *European Journal of Law and Economics* 48, No. 1 (2019): 65-76.

³⁰ Rubianto, M. Hary, Ardiansyah Ardiansyah, and Bagio Kadaryanto. "The Prohibition of Civil Servant (ASN) in Actions to Benefit Prospective of Regional Head in Public." *Jurnal Daulat Hukum* 5, No. 1 (2022): 20-27.

³¹ Kurnia, Lukmanu. "Penegakan Hukum Netralitas Pegawai Negeri Sipil dalam Pemilihan Umum Kepala Daerah oleh Badan Kepegawaian Daerah Kota Surakarta". *Thesis* (Surakarta: Universitas Sebelas Maret, 2013).

³² Pulungan, Iqbal. "Strategi Badan Kepegawaian Daerah Kota Binjai Dalam Meningkatkan Kinerja Pegawai Negeri Sipil." *Jurnal Administrasi Publik: Public Administration Journal* 1, No. 1 (2011): 82-101.

³³ Silawati, U. Rita. "Penegakan Hukum Disiplin Pegawai Negeri Sipil dalam Sistem Pengelolaan Kepegawaian di Indonesia (Studi Kasus di Lingkungan Pemerintah Kota Singkawang)." *Jurnal Nestor Magister Hukum* 2, No. 2 (2019).

³⁴ Watunglawar, 2015.

Efficiency principle in view is analogous as a criminal act and sentencing in basic concept "efficiency" that in economics often called efficiency Pareto (optimal) related to individual preference satisfactory.³⁵ The condition of efficiency pareto happened if redistribution or source transition happened without disadvantaging other individual. So that's why, Posner states that a criminal act is inefficient action due to force the element of source transition that disadvantage other side, and on the other side advantage for the other.³⁶

The defendant's action that provokes people to choose one of the candidates through the wide spread of billboard, distributing groceries financed by a regional budget accompanied by delivering poster with picture of one candidate is an action that is really forbidden in both a regional election constitution and Civil Servant constitution. Because it is forbidden so there must be legal penalty, so it is obviously offense or a criminal act, in Posner theory it is included in category a criminal act that is not efficient because any human resource transition that advantage and disadvantage for other people, in this case is other candidates battling in a regional election.

Legal evidence bases in interpreting the phrase "*advantaging or disadvantaging one of the candidates*" can use certain parameter or instrument that is one of the alternatives can use economy principle instrument (Economic Analysis of Law). So, between defendant's action and article accused have clear and detail red line. Because in verdict number 147/Pid.Sus/2018/PN.Sdr, Judge doesn't interpret clearly what the the phrase meaning is "*advantaging or disadvantaging one of the candidates*".³⁷

³⁵ Afan Gafar. *Politik Indonesia Transisi Menuju Demokrasi*. (Jakarta: Pustaka Pelajar, 1999).

³⁶ Nurhafifah, Nurhafifah, and Rahmiati Rahmiati. "Pertimbangan Hakim dalam Penjatuhan Pidana Terkait Hal yang Memberatkan dan Meringankan Putusan." *Kanun Jurnal Ilmu Hukum* 17, No. 2 (2015): 341-362.

³⁷ The regulation of election crimes is regulated in Law Number 7 of 2017 concerning General Elections. In these articles there are several articles that mention criminal acts and the imposition of sanctions on perpetrators. In the Supreme Court Decision Number 38/PID.SUS/2019/PN.SON. Related Articles Such as Article 547 which reads that every state official who intentionally makes decisions and/or takes actions that benefit or harm one of the election participants during the campaign period, is sentenced to a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 36,000,000.00 (thirty six million rupiah). However, in the Election Law there are articles that do not contain criminal sanctions such as Article 283 which reads: *First*, state officials, structural and functional officials in state offices and other state civil apparatus are prohibited from holding activities that lead to partiality to election participants before, during, and after the campaign period. *Second*, the prohibition as referred to in paragraph (1) includes meetings, invitations, appeals, calls or giving goods to state civil servants within the work unit, family members, and the community. See also Bara, Yudhistira Anshory Batu. "Tindak Pidana Pada Pemilu Yang Merugikan Salah Satu Pasangan Calon Yang Dilakukan Oleh Pejabat Negara (Studi Putusan Mahkamah Agung Nomor 38/Pid. Sus/2019/Pn. Son)." *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 1, No. 4 (2021); Akram,

Judge does not do any the phrase verification because judge considers it as formal offense where advantage or disadvantage appeared tends to be only a potential loss. Whereas formula in article 71 clause (1) constitution number 10 of 2016 about a regional election related to the phrase “*advantaging or disadvantaging one of the candidates*” tends to be material (material offense) that supposed to be proven in real by the judge. At least there is any measurable verification to strengthen the the phrase verification, so there is any clear causality between defendant’s action and article accused. Economy principles is alternative of rational choice to analyze legal matter, Economic Analysis of Law needs to be applied in helping to solve legal problem through economics approach in order that action done by someone the formula is clearer and punishment sentenced can be more optimal, balance and efficient.

A general principle of good Government

Basic constitution number 30 of 2014 about administrative government in arranging a generalprinciples of good government abbreviated to be AUPB is reference or guidelines that must be used by government officials in doing duty of government management.³⁸ The involvement of ASN in politics is practical for some people because ASN is considered a group that has selling value (social capital) for the political elite.³⁹ AUPB is arranged in article 10 that mention 8 (eight) principles, they are:

- 1) Legal certainty
- 2) Benefit
- 3) Impartiality
- 4) Accuracy
- 5) Not misuse the authority
- 6) Openness
- 7) Public concern
- 8) Good service

A neutral ASN is expected to carry out their profession with a focus on their duties and obligations to run all government programs both at central and regional

Muhammad Dinul. “Tinjauan Yuridis Pembuktian Unsur Menguntungkan Atau Merugikan Salah Satu Pasangan Calon Pada Tindak Pidana Pemilihan Kepala Daerah (Studi Kasus Putusan Nomor. 476/Pid. Sus/2018/PN. Mks)”. *Dissertation*. (Makassar: Universitas Hasanuddin, 2021); Akbar, Alva Zakya. “Penyidikan Terhadap Kepala Desa Yang Dengan Sengaja Melakukan Tindakan Yang Menguntungkan Salah Satu Pasangan Calon Pada Sentra Penegakan Hukum Terpadu (Studi Pada Satuan Reserse Kriminal Kepolisian Resor Pariaman).” *UNES Law Review* 2, No. 4 (2020): 454-465.

³⁸ Darwan Prints. *Hukum Acara Pidana Suatu Pengantar*. (Jakarta: Djambatan, 1989).

³⁹ Fatkhuri & Syarbaini, 2019.

level, in the hustle and bustle of elections.⁴⁰ Eight principles that is in constitution number 30 of 2014 about the administrative government, at least defendant's act has violated principles of impartially and not misuse the authority. In this case, interpretation toward the phrase "advantaging or disadvantaging one of the candidates" has violated a general principles of good government, specifically violating principles of impartially and not misuse the authority.

- 1) Impartially is principle that requires institution and/or government official in assigning and/or doing decision and/or action by considering the concerns all sides and not discriminative (Mandasari, P., 2017). Yet in fact that the defendant takes a side by supporting one of sides that join in constellation of a regional election and acts discriminative towards other candidates. He should be stay in the middle of sides that battling in the election, instead being stuck in political practice by supporting one of the candidates. Moreover, Civil Servant neutrality has been arranged in both Civil Servant and a regional election constitution (Mulyono, 2015).
- 2) Not misuse the authority is principle that oblige every institution and/or government official to not use the authority for personal or other purpose and inappropriate with the goal of the allocation of authority, not overstep, not misuse and/or not mix the authority.⁴¹ If it's compared, this principle and defendant's act, it is obviously that defendant's act is really inappropriate with the goal of authority given, overstep the authority given and mix the office duty with political practice (Dwi Hanata, 2018). Using car's institution to bring billboard or poster that will be spread, distributing groceries by a regional budget accompanied by poster distribution to people that get groceries, appointing staff to help the groceries and poster distribution. Those actions are misuse of authority like has been arranged in AUPB constitution on article 17 which sound as follow:
 - a. Institution and/or government official must not misuse the authority
 - b. Prohibition of misuse authority as mentioned in clause (1) are:
 - Prohibition to overstep the authority
 - Prohibition to mix the authority and/or
 - Prohibition to do something arbitrary

The defendant in this case has been in real misuse the authority such as: overstep authority, mix authority and/or do something arbitrary (as it has been arranged in article 17 constitution about government administration). In increasing the neutrality of ASN there is a need for close supervision. Not only the authorities like KASN which

⁴⁰ Pradono, Nuswantoro Setyadi. "Aparatur Sipil Negara dalam Pemilu 2019, Bisa Netralkah?." *Jurnal Analisis Kebijakan* 3.1 (2019): 48-62

⁴¹ Yusdianto, 2010

carries out the supervision however participate in community roles.⁴²

The phrase overstep authority because it is beyond the territory of the authority itself and it is against the provision constitution rules applied. It is said that mix the authority because of using car's institution for campaigns and distributing groceries along with the poster that has picture of the candidate. Office duty is mixed up with political practice, so that it is misuse authority in this case mix duty and political practice.⁴³ While misuse of authority in form of doing something arbitrary because the act done by the defendant doesn't have any basic of authority given by constitution. Elimination of voting rights and choosing ASN aims to implementation of management policies ASN is based on the principle of Neutrality Absolutely well realized.⁴⁴

Defendant's act in verdict number 147/Pid.Sus/2018/PN.Sdr is the form of violation toward a general principles of good government (AAUPB) especially principle of impartially and not misuse authority. Misuse authority done by the defendant has completed elements that is doing action over the authority given, mixing the authority, and acting arbitrary. Violation toward misuse authority includes in heavy administrative penalty category (as it is arranged in article 80 clause (3) constitution number 34 of 2014 about government administration).

4 CONCLUSION

The accuracy of sentencing the the defendant in Decision Number 147/Pid.Sus/2018/PN.Sdr regarding legal subjects is based on the fact that the Panel of a judge s interprets ASN holding certain positions in the government as being ASN Officials. The consideration of the Panel of a judge s without referring to the applicable laws and regulations, namely the Law on State Civil Apparatus. The the defendant is a High Pratama Official, who belongs to the Echelon 2 position, so the judge's

⁴² Furqon, Eki. "Kedudukan Komisi Aparatur Sipil Negara dalam Menjaga Netralitas Aparatur Sipil Negara pada Pemilihan Umum 2019 Ditinjau dari Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum (Studi Kasus Pada Pemilu 2019 di Provinsi Banten)." *Ajudikasi: Jurnal Ilmu Hukum* 4, No. 1 (2020): 15-28; Sari, Dwi Mustika. "Regulasi Netralitas Aparatur Sipil Negara Pada Pemilihan Kepala Daerah Tahun 2020." *Kemudi: Jurnal Ilmu Pemerintahan* 5, No. 2 (2021): 259-272.

⁴³ Patria, A. "Intervensi Politik dan Netralitas Aparatur Sipil Negara dalam Pemilihan Umum Kepala Daerah Provinsi Lampung Tahun 2014." *Thesis*. (Bandar Lampung: Universitas Lampung, 2015).

⁴⁴ Riyadi, O. Alvin. "Politik Hukum Dalam Mewujudkan Netralitas Aparatur Sipil Negara Berdasarkan Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara dalam Pemilihan Umum". *Jurnal Online Mahasiswa Hukum Universitas Riau* 7, No. 2 (2014): 1-15. <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/29382/28304>

interpretation of the legal subject of the the defendant is not clear or detailed. This is based on the theory of a criminal responsibility that the actions taken by the the defendant as a burden of personal responsibility are not the responsibility of the position. The indicator is that the defendant's actions are not related to the main duties and official functions as Head of the Social, Civil Registration and Population Service, as well as in the duties of a legitimate position order as regulated in Article 51 paragraph (2) of the A criminal Code.

The legal proof of the the phrase "Beneficial or detrimental to one of the Candidate pairs" is declared incorrect, because it is not based on a theory that can prove or strengthen the phrase. The judge interprets grammatically that the the phrase is a formal offense, so it does not need to be proven because the gain or loss that occurs is a potential loss. Based on the Economics Analysis of Law on the optimization principle, the cost-benefit analysis showsthe defendant had the intention (*mens rea*) from the start to take actions that are prohibited by law with small sacrifices but to get big profits. The principle of balance, namely the balance of punishment given to the the defendant is balanced with the actions of the defendant, because there are burdensome for the defendant. The Efficiency Principle shows that the defendant's actions provoked, and this principle was not fulfilled because of the element of human resource transfer that benefits and harms other people for pairs of candidates who are participating in the regional head elections.

5 DECLARATION OF CONFLICTING INTERESTS

Authors declare that there is no conflicting interest in this research and publication.

6 FUNDING INFORMATION

None

7 ACKNOWLEDGEMENT

None

8 REFERENCES

- Afan Gafar. *Politik Indonesia Transisi Menuju Demokrasi*. (Jakarta: Pustaka Pelajar, 1999).
- Aji, Wikan Sinatrio. "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia." *JILS (Journal of Indonesian Legal Studies)* 4, No. 1 (2019): 73-88.
- Akbar, Alva Zakya. "Penyidikan Terhadap Kepala Desa Yang Dengan Sengaja Melakukan Tindakan Yang Menguntungkan Salah Satu Pasangan Calon Pada Sentra Penegakan Hukum Terpadu (Studi Pada Satuan Reserse Kriminal Kepolisian Resor Pariaman)." *UNES Law Review* 2, No. 4 (2020): 454-465.
- Akram, Muhammad Dinul. "Tinjauan Yuridis Pembuktian Unsur Menguntungkan Atau Merugikan Salah Satu Pasangan Calon Pada Tindak Pidana Pemilihan Kepala Daerah (Studi Kasus Putusan Nomor. 476/Pid. Sus/2018/PN. Mks)". *Dissertation*. (Makassar: Universitas Hasanuddin, 2021).
- Amancik Amancik. *Model Pemilihan Kepala Daerah Berdasarkan UUD 1945*. (Jakarta: Sinar Grafika, 2013).
- Andi Zainal Abidin. *Sekelumit Goresan Tentang Penuntut Umum di Indonesia*. (Jakarta: Persaja, 1961).
- Arief, Hanafi, and Ningrum Ambarsari. "Penerapan Prinsip Restorative Justice dalam Sistem Peradilan Pidana di Indonesia." *Al-Adl: Jurnal Hukum* 10, No. 2 (2018): 173-190.
- Artisa, Rike Anggun. "Pegawai Pemerintah dengan Perjanjian Kerja (PPPK): Review terhadap UU No. 5 Tahun 2014 Tentang Aparatur Sipil Negara." *Jurnal Pembangunan dan Kebijakan Publik* 6, No. 1 (2017): 33-42.
- Asbudi, Asbudi. "Pencegahan dan Penindakan Pelanggaran Netralitas Aparatur Sipil Negara (ASN) oleh Bawaslu Kota Palopo Pada Pemilu 2019." *Journal I La Galigo: Public Administration Journal* 3, No. 2 (2020): 9-17.
- Asmawati, Andi. "Implementasi Kebijakan Pemerintah Terhadap Disiplin Aparatur Sipil Negara Pada Kantor Kelurahan Baranti Kabupaten Sidenreng Rappang." *PRAJA: Jurnal Ilmiah Pemerintahan* 8, No. 1 (2020): 8-17.
- Bara, Yudhistira Anshory Batu. "Tindak Pidana Pada Pemilu Yang Merugikan Salah Satu Pasangan Calon Yang Dilakukan Oleh Pejabat Negara (Studi Putusan Mahkamah Agung Nomor 38/Pid. Sus/2019/Pn. Son)." *Jurnal Ilmiah Mahasiswa Hukum [JIMHUM]* 1, No. 4 (2021).
- Candra, Septa. "Restorative Justice: suatu tinjauan terhadap pembaharuan hukum pidana di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, No. 2 (2013): 263-277.
- Chandra, Septa. "Politik Hukum Pengadopsian Restorative Justice dalam Pembaharuan Hukum Pidana." *Fiat Justisia Jurnal Ilmu Hukum* 8, No. 2 (2014): 255-277.
- Darwan Prints. *Hukum Acara Pidana Suatu Pengantar*. (Jakarta: Djambatan, 1989).

- Dedi Mulyadi. *Kebijakan Legislasi tentang Sanksi Pidana Pemilu Legislatif di Indonesia dalam Perspektif Indonesia*. (Jakarta: Gramata Publishing, 2012).
- Diniyanto, Ayon. "Election Crime in the Perspective of the Indonesian Democratic State." *Law Research Review Quarterly* 4, No. 2 (2018): 422-429.
- Erisanti, Nadia, Amancik Amancik, and Katamelem S. Meiliala. "Efisiensi dan Efektivitas Pemilihan Umum Kepala Daerah Langsung Menurut Undang-Undang No 32 Tahun 2004 Tentang Pemerintahan Daerah". *Dissertation*. (Bengkulu: Universitas Bengkulu, 2014).
- Ersyada, Yudhistira Zia. "Pemidanaan Money Politic dalam Penyelenggaraan Pemilihan Umum Calon Anggota DPRD Kota Semarang Tahun 2009." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 1, No. 1 (2012): 71-78.
- Fajlurrahman Jurdi. *Pengantar Hukum Pemilihan Umum*. (Jakarta: Kencana, 2018).
- Farida, Ida, and Refl Y. Setiawan. "Political Parties and Party Systems in The Reform Era in Indonesia." *Сравнительная политика* 12, No. 4 (2021): 157-162.
- Fatkhuri, Fatkhuri, and Syahrial Syarbaini. "The Neutrality of State Civil Apparatus in Local Election: A Case Study of South Sulawesi Provincial Election in 2018." *JIP (Jurnal Ilmu Pemerintahan): Kajian Ilmu Pemerintahan dan Politik Daerah* 4, No. 2 (2019): 104-118.
- Firdaus, Aras. "Money Politics dalam Pemilihan Umum oleh Badan Pengawasan Pemilihan Umum: Pengawasan Tindak Pidana Pemilu." *Jurnal Justia* 2, No. 1 (2020): 61-69.
- Furqon, Eki. "Kedudukan Komisi Aparatur Sipil Negara dalam Menjaga Netralitas Aparatur Sipil Negara pada Pemilihan Umum 2019 Ditinjau dari Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum (Studi Kasus Pada Pemilu 2019 di Provinsi Banten)." *Ajudikasi: Jurnal Ilmu Hukum* 4, No. 1 (2020): 15-28.
- Harahap Abdul Asri. *Manajemen dan Resolusi Konflik Pemilihan Kepala Daerah*. (Jakarta: PT. Pustaka Cidesindo, 2005).
- Hartini, Sri. "Penegakan hukum netralitas pegawai negeri sipil (PNS)." *Jurnal Dinamika Hukum* 9, No. 3 (2009): 296-305.
- Huda, Chairul. "Pola Pemberatan Pidana dalam Hukum Pidana Khusus." *Jurnal Hukum Ius Quia Iustum* 18, No. 4 (2011): 508-524.
- Kurnia, Lukmanu. "Penegakan Hukum Netralitas Pegawai Negeri Sipil dalam Pemilihan Umum Kepala Daerah oleh Badan Kepegawaian Daerah Kota Surakarta". *Thesis* (Surakarta: Universitas Sebelas Maret, 2013).
- Larasati, Ayu Shinta, and Musfirah Musfirah. "Analisis Penyelenggaraan Etika Administrasi dalam Netralitas ASN Pada Pilkada 2020." *Dinamika Governance: Jurnal Ilmu Administrasi Negara* 11, No. 1 (2021): 103-116. <https://doi.org/10.33005/jdg.v11i1.2512>
- Lestari, Anak Agung Adi. "Pengaturan Birokrasi Aparatur Sipil Negara Yang Netral dan Bebas dari Intervensi Politik." *Kertha Semaya: Journal Ilmu Hukum* 8, No. 12 (2020): 1918-1927. <https://doi.org/10.24843/ks.2020.v08.i12.p09>

- Marciano, Alain, and Giovanni Battista Ramello. "Law, economics and Calabresi on the future of law and economics." *European Journal of Law and Economics* 48, No. 1 (2019): 65-76.
- Muchtar, Ichsan Ariansyah, and Andi Safriani. "Tindak Pidana Pemilu Yang Dilakukan oleh Kepala Desa di Kabupaten Takalar." *Alauddin Law Development Journal* 2, No. 3 (2020): 270-275.
- Mulyadi, Dudung. "Analisis Penerapan Bentuk-Bentuk Tindak Pidana Pemilu." *Jurnal Ilmiah Galuh Justisi* 7, No. 1 (2019): 14-28.
- Muslimin, Husein. "Dinamika Pemilihan Kepala Daerah Berdasarkan Peraturan Perundang-Undangan di Indonesia." *Jurnal Cakrawala Hukum* 10, No. 1 (2019): 40-49.
- Novrida Wulandari, Adianto Adianto. "Kinerja Komisi Aparatur Sipil Negara Sebagai Lembaga Pengawas Netralitas Aparatur Sipil Negara". *Jurnal Humaniora: Jurnal Ilmu Sosial, Ekonomi, dan Hukum* 4, No. 1 (2020): 166-171. [ps://doi.org/10.30601/humaniora.v4i1.601](https://doi.org/10.30601/humaniora.v4i1.601)
- Nurhafifah, Nurhafifah, and Rahmiati Rahmiati. "Pertimbangan Hakim dalam Penjatuhan Pidana Terkait Hal yang Memberatkan dan Meringankan Putusan." *Kanun Jurnal Ilmu Hukum* 17, No. 2 (2015): 341-362.
- Patria, A. "Intervensi Politik dan Netralitas Aparatur Sipil Negara dalam Pemilihan Umum Kepala Daerah Provinsi Lampung Tahun 2014." *Thesis*. (Bandar Lampung: Universitas Lampung, 2015).
- Poerwadarminta. *Kamus Besar Bahasa Indonesia (Edisi Revisi)*. (Jakarta: Balai Pustaka, 2006).
- Posner, Richard A. "The social costs of monopoly and regulation." *Journal of Political Economy* 83, No. 4 (1975): 807-827.
- Posner, Richard A. *Economic Analysis of Law*. (London: Wolters Kluwer, 2014).
- Posner, Richard A. *The Economics of Justice*. (Mass: Harvard University Press, 1983).
- Pradono, Nuswantoro Setyadi. "Aparatur Sipil Negara dalam Pemilu 2019, Bisa Netralkah?." *Jurnal Analisis Kebijakan* 3.1 (2019): 48-62
- Pulungan, Iqbal. "Strategi Badan Kepegawaian Daerah Kota Binjai Dalam Meningkatkan Kinerja Pegawai Negeri Sipil." *Jurnal Administrasi Publik: Public Administration Journal* 1, No. 1 (2011): 82-101.
- Putri, Claudia Carolina Indra. "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, No. 1 (2019): 1-8.
- Rahmansyah, Arif. "Analisis Terhadap Netralitas Aparatur Sipil Negara dalam Pemilihan Kepala Daerah Berdasarkan Peraturan Perundang-Undangan." *Limbago: Journal of Constitutional Law* 1, No. 3 (2021).
- Riyadi, O. Alvin. "Politik Hukum Dalam Mewujudkan Netralitas Aparatur Sipil Negara Berdasarkan Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara dalam Pemilihan Umum". *Jurnal Online Mahasiswa Hukum Universitas Riau* 7, No. 2 (2014): 1-15.

- <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/29382/28304>
- Rokilah, Rokilah. "Dinamika Negara Hukum Indonesia: Antara Rechtsstaat dan Rule of Law." *Nurani Hukum* 2, No. 1 (2020): 12-22.
- Rubianto, M. Hary, Ardiansyah Ardiansyah, and Bagio Kadaryanto. "The Prohibition of Civil Servant (ASN) in Actions to Benefit Prospective of Regional Head in Public." *Jurnal Daulat Hukum* 5, No. 1 (2022): 20-27.
- Sari, Dwi Mustika. "Regulasi Netralitas Aparatur Sipil Negara Pada Pemilihan Kepala Daerah Tahun 2020." *Kemudi: Jurnal Ilmu Pemerintahan* 5, No. 2 (2021): 259-272.
- Sarnawa, Bagus. "Legal Friction of State Civil Apparatus Neutrality in Indonesia". *Indonesian Comparative Law Review* 1, No. 1 (2018): 43-50. <https://doi.org/10.18196/iclr.1105>
- Sastera, I. Gusti Bagus Yoga, I. Made Minggu Widyantara, and Luh Putu Suryani. "Sanksi Pidana Terhadap Pelaku Tindak Pidana Pemilu di Indonesia." *Jurnal Konstruksi Hukum* 1, No. 1 (2020): 192-196.
- Setiawan, Pandu. "Analisis Yuridis Sengketa Penetapan Calon Kepala Daerah Menurut Undang-Undang Nomor 8 Tahun 2015 Perubahan Atas Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014." *Novum: Jurnal Hukum* 2, No. 2 (2015): 116-130.
- Siallagan, Haposan. "Penerapan prinsip negara hukum di Indonesia." *Sosiohumaniora* 18, No. 2 (2016): 122-128.
- Sihaloho, N. T. P., & Herlan, H. (2020). The Dilemma in Neutralizing the State Civil Apparatus (ASN) and Alternative Solutions. *Jurnal Bina Praja*, 12(2), 213–224. <https://doi.org/10.21787/jbp.12.2020.213-224>
- Silawati, U. Rita. "Penegakan Hukum Disiplin Pegawai Negeri Sipil dalam Sistem Pengelolaan Kepegawaian di Indonesia (Studi Kasus di Lingkungan Pemerintah Kota Singkawang)." *Jurnal Nestor Magister Hukum* 2, No. 2 (2019).
- Sudrajat, Tedi, and Agus Mulya Karsona. "Menyoal Makna Netralitas Pegawai Negeri Sipil dalam Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara." *Jurnal Media Hukum* 23, No. 1 (2016).
- Suharizal, *Pemilukada, dan Dinamika Regulasi: Konsep Mendatang*. (Jakarta: Raja Grafindo Persada, 2011).
- Suhendar, Suhendar, and Riva Rachmi Kusumah. "Penanganan Pelanggaran Serta Peran Aparatur Sipil Negara (ASN) Sebagai Pencipta Iklim Kondusif Demokrasi dalam Penyelenggaraan Pemilu". *Yustitia* 6, No. 1 (2020): 108–118. <https://doi.org/10.31943/yustitia.v6i1.109>
- Supatno, Feby Setiyo Susilo. "Pemilukada dalam Sistem Demokrasi di Indonesia Menurut Undang-undang No. 1 Tahun 2015 dengan Perubahan Menurut Undang-undang No. 8 Tahun 2015." *Lex Privatum* 4, No. 2 (2016).
- Sutrisno, Sutrisno. "Prinsip Netralitas Aparatur Sipil Negara Dalam Pemilihan Kepala Daerah." *Jurnal Hukum Ius Quia Iustum* 26, No. 3 (2019): 522-544.

- Watunglawar, Matias Neis. "Perwujudan Asas Netralitas Birokrasi Dalam Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipilnegara." *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 15, No. 1 (2017): 70-88.
- Widiatama, Widiatama, Hadi Mahmud, and Suparwi Suparwi. "Ideologi Pancasila Sebagai Dasar Membangun Negara Hukum Indonesia." *Jurnal USM Law Review* 3, No. 2 (2020): 310-327.
- Wulandari, Widuri. "Netralitas Aparatur Sipil Negara (ASN) dalam Pemilihan Umum Kepala Daerah Serentak Kabupaten Bantul Tahun 2015." *Thesis*. (Yogyakarta: Universitas Muhammadiyah Yogyakarta, 2016).
- Yamin, Muhammad Halwan. "Netralitas Pegawai Negeri Sipil dalam Pemilihan Umum Kepala Daerah di Kabupaten Takalar." *Thesis*. (Makasar: Universitas Hasanuddin, 2013).
- Yusdianto, Yusdianto. "Identifikasi Potensi Pelanggaran Pemilihan Kepala Daerah (Pemilukada) dan Mekanisme Penyelesaiannya". *Jurnal Konstitusi* 2, No. 2 (2010): 43-58.
- Zudi, Mat, Arief Hidayat, and Untung Sri Hardjanto. "Netralitas Pegawai Negeri Sipil Dalam Pemilihan Kepala Daerah." *Diponegoro Law Journal* 1, No. 4 (2012).