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Law, Politics, and The Neutrality

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ABSTRACT. Neutrality ASN (Aparatur Sipil Negara) is one of the most important part in the politics of this. But in fact during these many ASN that is not neutral because of weak laws that can ensnare ASN and because Bawaslu and Panwaslu cannot reach the whole activity of the ASN leads to neutrality. To that end, the necessary optimal synergy between law enforcers in order to enforce the law firmly of the ASN that is not neutral in order to achieve a healthy democratic party and based on the principle of *luberjurdil* which have mandated in the legislation.

KEYWORDS. *Capital Punishment; Justice; Fairness; Human Rights*

I. INTRODUCTION

Indonesia is known for its democratic form of Government, where with the traits that popular sovereignty which had supreme power, which also determines the way the Government, and the purpose of what will be achieved. The people's power was delegated to the representatives of the people to exercise sovereignty on behalf of the people. In order to make the people's representatives may act on behalf of the people then the people's representatives shall be determined by the people themselves, and for determining the electoral institution is using.

The general election is a way performed by the people to choose the representatives of the people as an executor of the sovereignty. The general election is the absolute rights are owned by the people, so the Government must hold elections to full fill the human rights of the people, and it is an offence if the Government did not hold elections, as the election the public is an absolute requirement for the country's democracy, to exercise the sovereignty of the people. But this election could not be done without the instruction in line, according to the election could be made only in certain times, because people's opinions are not always the same in a long time, it is also to anticipate with the increase of the population that has the right in general elections, its own general election in Indonesia was conducted once every five years and the general election is going to do next is the year 2019.

The year is 2018 and 2019 year political year for Indonesia where pilkada (*pemilihan kepala daerah*) and general elections or pemilu (*pemilihan umum*) was implemented in 2017 years ago, until now, society at large and the political people in particular are already busy-busy discussing the question of the elections and the elections for the Democratic Party to prepare the Summit will take place in the year 2019 were conducted Pemilu of the President and Vice President.

Surely this political year a great many interesting things that ought to be addressed in order to create a healthy democratic party and certainly based on the principle of *luberjurdil* (*langsung, bebas, jujur, rahasia, dan*

adil) already mandated in the legislation. In addition, Prof. Mahfud M.D. also stated that one of the major issues of this nation in the life of a country is a question of civil service neutrality because it is theoretically difficult theoretical grounding that can gives true reason for it is possible civil servants to be involved in practical political activities (Mahfud, 1988).

One of the things that can determine healthy or whether elections is neutrality ASN (Aparatur Sipil Negara) or commonly called by PNS (Pegawai Negeri Sipil). According to Muhammad Yamin Halwan, when the discussion is limited to "be aware of the role of CIVIL SERVANTS in the Simultaneous Election 2018" which takes place on the campus of Gadjah Mada University (UGM), Yogyakarta, Thursday (01/03/2018) stated that as long as this level of ASN or neutrality of PNS is still difficult to be maintained due to the low level of implementation of legal sanctions against the ASN. In addition to other causes of weak neutrality ASN is due during this Panwaslu Bawaslu and still hard to reach all activities pertaining to the ASN neutrality. So, the required synergy or of good cooperation between the law enforcement authorities to be able to drop the strict sanctions for ASN that are not neutral and can give rise to a sense of wary.

Apparatus of the State itself is a Civilian Government employees who work with time, function, job title, and the Administration has been determined. The civilian apparatus of State membership was made through staffing Government officials with his duties according to laws in force.

II. THE NEUTRALITY OF ASN: PROBLEMS AND CHALLENGES

ASN (Civil State Apparatus) is a profession for civil servants and Government employees with a work agreement and began work on

government agencies (article 1 point 1 of the Act No. 5 of the year 2014 of the civil State Apparatus).

His graduate thesis ASN according to Act No. 5 of the year 2014 Article 8-9 is free from the influence and intervention Rukan group and political party. Then the B.A. final project ASN as the party red IDR or impartial on any party is free to refuse the intervention and influence. Neutrality can also be defined by being impartial toward anything.

In addition, according to article 4 of the Government Regulation Number 53 of the year 2010 are set about a ban on civil servants, some restrictions for the ASN of which are:

- 1) Provide support to candidate for President/Vice President, House of representatives, the regional representative Council, Regional representatives or by way of:
 - a. participate as implementation of the campaign;
 - b. became the participants of the campaign by using the attribute or attribute party of Civil Servants;
 - c. as a participant of the campaign by exerting other Civil Servants; and/or;
 - d. as a participant of the campaign by either using the facilities of the citizens;
- 2) Provide support to potential President/Vice President by means of:
 - a. make decisions and/or actions that benefit or harm one of the candidates during the campaign period;
 - b. conduct that leads to partisanship against the candidate who became the participants of the election before, during, and after the campaign period covering the meeting, call, call, cry, or awarding goods to PNS in the environment member of unit works family, and the community.
- 3) Provide support to the members of the regional representative Council or would-be head of region/Deputy Head of the area by means of:

- a. provide a letter of support accompanied the population sign card duplication according rules of law regulations; and
- 4) Provide support to potential Regional Heads/representatives of the area by means of:
 - a. engaging in activities to support the campaign prospective regional Head/Deputy Head of the region;
 - b. use the facilities associated with the position in the campaign activities;
 - c. make decisions and/or actions that benefit or harm one of the candidates during the campaign period, and/or;
 - d. conduct that leads to partisanship against the candidate who became the participants of the election before, during, or after the campaign period covering the meeting, call, call, shout or awarding goods to CIVIL SERVANTS in the environment unit works, Member of the families, and the community.

The reason why ASN should be neutral is due to ASN is a state apparatus which provides services to the community as a professional, honest, just and equitable in implementing the tasks of the State, governance and development. That is why when an ASN demonstrate in favour of one candidate, then it most likely happens he will provide excellent service to the candidates it supports, rather than other parties. So, the circumstances like this would cause injustice in the society. Neutral the lack of it, usually occurs when the candidate promising the promotion to the ASN, or it could be because the ASN is a member of the family of the candidate so that there is a call to demonstrate support for the candidate. For this there are also candidates who have close family as ASN, even the wife or husband of the candidate himself. Even so, the ASN must still maintain a code of ethics and can put itself as a party that is free of any intervention.

The case of neutrality ASN have occurred at the time of the new order. When it formed the Government of independence, which is a container for the civil servant who is very strategic and give a share to the

Government of the new order. The Government issued Government Regulation No. 26-year 1970 concerning the membership of civil servants in political parties and in The Work. The essence of government regulation in particular of article 2 of this Regulation with regard to permission for civil servants in the political parties. Then reinforced with the ACT. No. 3 Year 1985 on political parties. and the Paper, article 8 paragraph (2) which States that:

- 1) PNS can be members of political parties and Groups Work with the knowledge of the competent authority;
- 2) PNS who hold certain offices cannot be members of political parties and the work of, except with the prior written permission of an authorized officer.

Thus, civil servant during the new order despite the limiting of PNS in political parties, but the normative still provide an opportunity of PNS in political parties. This is the politics of law and order for PNS by the Government legalised as a man of the State must obey the will of the ruler. These provisions it can be seen that the role of PNS no longer significantly as the State apparatus, the man of the State and of society, but as a means to achieve the victory of Golkar every election, and this applies to elections in 1997.2 this as stated by Afan Gafar that: 3 the presence of bureaucracy as an instrument of power can be manifested in the form of giving direct support to the work on every time elections are held. At the 1977 general election, PNS vote make Golkar. If it is then coupled with the voice of the family, such as spouses, or children who are already eligible, Golkar would get about 10 million votes from PNS and their families. Then enter at the time of the Reformation beginning with the reign of Habibie who strives to be reform in all fields, in the framework of political reform toward a more democratic political life. The effort to create good governance, authoritative and clean, including about the position of civil servants in the political life of the party when his already reviewed.

ASN is often the target candidate for support, according to the (Ancient, 2010: 135-136), there are several reasons why ASN involved in

elections or bureaucratic utilized by some of the parties caused by the following:

- 1) Bureaucracy often easily exploited as the personification of the State. Rural communities are groups of citizens or voters who are so easy to manipulate the choice in the election. By involving the bureaucracy or the bureaucrats in the elections, becoming the team's success, became participants of the campaign or the other, they can on behalf of the institution of the State to woo or even intimidate citizens. Compliance with the citizens to do what has to be done by them on the orders of bureaucracy/bureaucrat during the new order, it indicates on the prospective candidate participants of the elections that brought this institution into the political scene is an advantage. Therefore, this is one reason why they easily engaged or invited to be involved in the elections.
- 2) Bureaucracy necessary utilized because holding access to information in the region. Cannot be denied that the success of bureaucracy is its ability to gather information from and to the territory of the Community (territory). Any institution, whether legislative, judiciary, private institutions or non-profit does not have the luxury of access to information as the bureaucracy have, then the bureaucracy is regarded as a source of power that is not detailed candidates by election. Difficult to let in the bureaucracy was not invited in the political scene of the region because of the bureaucracy has a bunch of data about the quantity of voters, the party's mass base, novice picker (early voters), group Golput, etc that can be exploited by would-be rulers, especially the incumbent.
- 3) Likely utilized the technical expertise possessed by the bureaucrats in the bureaucracy is another reason why they deserve to be involved in the political contests in the area. technical expertise in the formulation and implementation of policies.
- 4) To the internal factors in the form of participating interests for mobility. The existence of a vested interest in the form of interest-another and

improve the position of career/job title be the reason some bureaucratic politicking in the election. And from then on, most bureaucrats from politics to speculate with the hope that if candidates supported win, then the bureaucrats will have a more important position in the future.

- 5) Still strong cultural patron-client causes a loyal SERVANT and will defend an all-out better who was a candidate in the elections. In addition, there is also the pull of the interests of business and politics ' chain ' of the shadow government in bureaucracy.
- 6) Minister of State for Administrative Reform and reform of the Bureaucracy (Youth RB) in late December 2017, then issued a circular letter (SE) number B/71/m. BC 00.00/2017 about implementation Neutrality for conducting Simultaneous Elections ASN 2018 2019 Pileg Presidential election and 2019. One of the key points outlined in the Youth this is RB SE article 11 letter c Government Regulation (PP) number 42 Year 2004 About Coaching the soul of the Corps and the CIVIL SERVANTS code of ethics, which States that "*in terms of ethics against yourself. Civil Servants are obliged to avoid conflicts of interest, group or faction.*" There are 7 form the ban for the ASN that try was constructed by the Government based on PP 42 of 2004:
 - a. PNS are prohibited from putting up banners/billboards that promote himself or others as prospective candidates Head region/Deputy Head of Area
 - b. PNS are prohibited from declaring himself as prospective candidates Head region/Deputy Head of the region.
 - c. PNS are prohibited from attending the regional declaration of prospective candidates Head/Deputy Head of the area with or without the use of candidate would attribute/attribute of a political party.
 - d. PNS are prohibited from uploading, responding to or disseminate images/photos of prospective candidates/candidate would Head the region through social media or online media.

- e. PNS are prohibited from doing the photo along with the prospective candidates Head region/Deputy Head of the area by following the movements of the hands/symbol is used as a form of partisanship.
- f. PNS are barred from becoming speaker/speaker meeting on the activities of political parties.
- g. PNS are prohibited from approaching the Centre associated with proposing himself or any other person to become a candidate

That's an explanation on neutrality ASN. From the explanation above we know that ASN neutrality is urgently needed to create the atmosphere of the election and the elections. During this ASN is not too despite sanctions that can ensnare them when they show the attitude of neutrality because in practise law enforcers still less assertive in meting out sanctions for ASN. Sumarsono, Director-General of the autonomous region (Dirjen Otda) Ministry of the Interior said that neutrality ASN on the elections in the year 2018 greatly tightened and his actions were shortened. Himself declared the elections in the year 2018 in contrast to Government Regulation (PP) number 53 of the year 2010 about the discipline of civil servants which the ASN must be called orally, if the question is not present then summoned in writing. In the year 2018 if ASN violate neutrality, the trial is finished, then laid off while.

III. LAW ENFORCEMENT AND THE NEUTRALITY OF ASN IN POLITICAL PRACTICES

The role of law enforcement in monitoring the neutrality ASN is indispensable for creating a democratic election and elections. There are several agencies that oversee the neutrality of the elections and elections

ahead of the ASN. Those institutions are a Bawaslu, Panwaslu, the ASN which can then rise to court if need be. The following are the duties and authorities of Panwaslu, Bawaslu, and commissions related to the ASN neutrality:

1) Task of Bawaslu

Overseeing the civilian apparatus of State neutrality, neutrality, the Indonesia national army members and members of the Police of Republic of Indonesia neutrality; as well as overseeing the implementation of the decision of the competent authority for infringement of civil apparatus of State neutrality, neutrality, the Indonesia national army members and members of the Police of Republic of Indonesia neutrality (Act No. 7 of the year 2017 about The General Election).

2) Task of Panwaslu

Oversee all stages of organizing the elections, received reports of violations, resolve disputes arising in the conduct of the election, and forward findings and reports that cannot be resolved to the relevant authorities.

3) Task of ASN's Commission

Supervise and evaluate the application of the fundamental, basic values and the code of ethics and code of conduct Employees ASN, request information from employees ASN and the community about reports of violations of basic norms, ethics and code of conduct Employees ASN, checking related documents violation of basic norms, ethics and code of conduct Employees ASN, and asked for clarification and/or required documents from government agencies for examination of reports of violations of basic norms, ethics and code of conduct Employees ASN. (Article 32 of the Law No. 5 of 2014).

This is where the importance of the role of the law enforcement in monitoring the neutrality ASN because it is they who have authority. There is already a clear sanction that have been set up in the Act, the Director General of Regional Autonomy (Dirjen Otda) Ministry of the Interior has

also been supporting the actions of ASN way shortened, law enforcers (Bawaslu, Panwaslu, ASN, and the Commission courts) just need to reassert his authority and strengthen cooperation with each other, both in terms of gathering evidence or give a verdict decisively in the judicial environment. When cooperation is maintained properly, then it can further strengthen the authority of the law enforcement in cracking down on ASN. Bawaslu Pawaslu and should be able to reach out to the activities of the ASN by way of adding to the scrutiny of the more observant and make itself as an institution that is truly independent. In addition, if any party to a neutral for ASN during the campaign never rejected the intervention of the candidate, then going against demotion ASN neutral by the candidate once elected these without any apparent reason, then very ASN It is recommended to sue to court TUN does not occur loss against the true ASN already carry out its obligations as a neutral party.

IV. CONCLUSION

Neutrality is one of the obligations that must be implemented by the ASN. This has been set up in various legislation and there is already a clear sanction for those who violate the ASN. ASN neutrality is very important so that ASN can be professional in providing service to the public and can certainly create a healthy democracy party for Indonesia. Do not let the misappropriation of neutrality ASN utilized the regime to win one of the parties. There have been sanctions for ASN that are not neutral, besides the Director General of Regional Autonomy (Dirjen Otda) Ministry of the Interior also improves the tightness against neutrality ASN on the elections in the year 2018 and the actions shortened. There are already efforts from the Government to be more rigorous in supervising the neutrality ASN. Law enforcers only need to strengthen their cooperation and reaffirm its competence in reporting, collecting evidence to give sanctions ASN seriously. Compactness of the law enforcers are indispensable in this regard. Law enforcers must also be free from any influence so that it can

apply in a fair and professional community as expected. In addition, the ASN has ever felt he was influenced by the candidate, then after it suffered a demotion for no apparent reason by candidates who have been elected, then ASN must also dare to report it to the Court with The State to protect his rights. Do not let the ASN that already carry out its obligations, a victim of political interests.

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