

Neutrality of the State Civil Apparatus in the Democratic Party of Regional Head Election (*Pilkada*)



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ABSTRACT. The General Election Commission of the Republic of Indonesia (*KPU-RI*) has determined 270 regencies / cities to hold simultaneous regional elections in 2020. With the agenda for the registration period of candidate pairs held from 4th September 2020 to 6th September 2020, and Campaign Period Stages to be held from 26th September 2020 to 5th December 2020. The direct implementation of Regional Head Election had brought changes to the culture of government at the regional level in terms of bureaucratic and political relations. The Election Hazard Index (*IKP*) noted that was in Regional Head Election in 2020. The neutrality problem of the State Civil Apparatus became the biggest problem, namely 167 regencies / cities out of 270 regions running the Regional Head Election (*PILKADA*) that was as the role of General Election Supervision (*BAWASLU*) Agency supervised the neutrality of the State Civil Apparatus, members of the Indonesian National Army, members of the Indonesian Police. The factors of the non-neutrality of the State Civil Apparatus were historical and socio-cultural factors, kinship relations, ambitions for career positions, ambiguous regulations (multiple interpretations), weak law enforcement, and low public awareness of legal culture. The government needed to review the Election Law regarding Civil Service Officers that minimized the occurrence of Corruption, Collusion and Nepotism in appointments and transfer of State Civil Apparatus (*ASN*) employees.

KEYWORDS. Neutrality; State Civil Apparatus; Regional Head Election

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Introduction

The General Election Commission of the Republic of Indonesia (KPU-RI) has determined 270 districts / cities to hold simultaneous regional elections in 2020.¹ The 270 regions included 9 gubernatorial elections, 224 regent elections and 37 mayoral elections. from 4th September 2020 to 6th September 2020, and Campaign Period Stages to be held from 26th September 2020 to 5th December 2020. with details of the following activities:²

1. Limited meetings, face-to-face and dialogue, dissemination of campaign materials, installation of campaign props (APK) and other activities (from 26th September 2020 to 5th December 2020)
2. Public / open debate between pairs of candidates (from 26th September 2020 to 5th December 2020)
3. Campaigns through mass, print, and electronic media (from 22nd November to 5th December 2020)
4. Quiet period and campaign props cleaning (6th -8th December 2020)

¹ Hidayat Muhammad/Tempo, "KPU Sebut 270 Daerah Sudah Siap Laksanakan Pilkada 2020," Tempo.co, 2020.

² Rayful Mudassir, "Ini Jadwal Lengkap Tahapan Pilkada Serentak 2020 Terbaru," Bisnis.com, 2020, <https://kabar24.bisnis.com/read/20200624/15/1257129/ini-jadwal-lengkap-tahapan-pilkada-serentak-2020-terbaru>.

The campaign period was a period that has the potential to cause ASN (State Civil Apparatus) to be vulnerable to the influence of regional head candidates so that the professionalism of the Negaraya Civil Apparatus fades³. Regional Head Elections (*Pilkada*) can trigger the use of bureaucracy for political interests in Regional Head Elections (*Pilkada*).

In various regions, the current regional head candidates always mobilize the State Civil Apparatus to win. The bureaucracy must be freed from the influence and linkages of political ties with political power, so that services to the community can be neutral and objective⁴. Partial or non-neutral bureaucracy can lead to political corruption, which can lead to dishonourable acts in Regional Head Elections (*Pilkada*).

Direct general elections are not new in Indonesia, because previously the presidential and vice-presidential elections were also conducted directly⁵. Regional head elections are conducted directly by the people in their respective regions since the implementation of Law Number 32 of 2004 concerning Regional Government⁶. The direct implementation of Regional Head Elections (*Pilkada*) has brought changes to the culture of government at the regional level, in this case the repositioning of the relationship between the bureaucracy and politics, particularly the issue of bureaucratic neutrality towards politics.

The direct and simultaneous regional elections are a different situation, given the amount of regional authority since the introduction of regional autonomy. The regional head has the most role in determining the success of a region's development.

In other words, the community has more hopes for the regional head in improving the existing conditions. Simultaneous Regional Head Elections (*Pilkada*) this year can be held on December 9th, 2020⁷, but there are still many problems. One of the problems that often arise in Regional Head Elections (*Pilkada*) is the neutrality of State Civil Servants which are often

³ Zikrisma Alawiyah, Muhammad Eko Atmojo, "Netralitas Aparatur Sipil Negara Pda Tahap Kampanye Di Pemilihan Kepala Daerah Kabupaten Kulon Progo Tahun 2017," in *Prosiding Simposium Nasional: Tantangan Penyelenggaraan Pemerintahan Di Era Revolusi Industri 4.0*, 2017.

⁴ Nur Putri Jayanti, "Netralitas Peran Aparatur Sipil Negara Dalam Kebijakan Publik Dan Pemilihan Umum," *Jurnal Analis Kebijakan*, 2019.

⁵ Septi Nur Wijayanti, "Hubungan Antara Pusat Dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014," *Jurnal Media Hukum*, 2017, <https://doi.org/10.18196/jmh.2016.0079.186-199>.

⁶ Nopyandri, "Pemiliha Kepala Daerah Yang Demokratis Dalam Perspektif UUD 1945," *Ilmu Hukum*, 2008.

⁷ King Faisal Sulaiman, "Zero Pilkada 2020," *Kedaulatan Rakyat*, 2019.

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doubted and must be monitored. The problem of the neutrality of the State Civil Apparatus (ASN) in the General Election, especially the Pilkada, is not a new thing⁸.

As pointed out by Utrecht, that administrative law examines the special legal relationship that is held to enable state administration officials (*amsdraggers*) to carry out their special duties⁹. Based on the Decree of the 5th National Conference of KORPRI, which is the only civil servant organization outside the official service, states “State Civil Apparatus do not involve themselves in political party activities”. Almost all areas of life are regulated by statutory regulations, through normalization of human behaviour, the law covers almost all areas of human life. Including the regulations in Regional Head Elections (*Pilkada*), there are 3 regulations that govern, namely Law No. 5 of 2014 concerning the State Civil Apparatus, Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors and Government Regulation No. 53 of 2010 concerning Discipline of Civil Servants.¹⁰

In the 2020 Pilkada Election Vulnerability Index (IKP), the neutrality problem of State Civil Servants had become a *tratas* problem, namely 167 districts / cities out of 270 regions running Regional Head Elections (*Pilkada*) This had become a very strategic issue due to the neutrality or partiality of the State Civil Apparatus with certain serial number candidate pairs in supporting and facilitating the participants of Regional Head Elections (*Pilkada*)¹¹. Several cases of violating the neutrality of the State Civil Apparatus in Regional Head Elections (*Pilkada*) included 10 cases of alleged violations of the neutrality of the State Civil Apparatus in West Java. Violations that occur are in the form of approaching or registering with one of the political parties, attending meetings or benefiting prospective

⁸ Gema Perdana, “Menjaga Netralitas ASN Dari Politisasi Birokrasi (Protecting The ASN Neutrality From Bureaucracy Politicization),” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 2019, <https://doi.org/10.22212/jnh.v10i1.1177>.

⁹ Bahder Johan Nasution, “Pemahaman Konseptual Tentang Hukum Administrasi Negara Dalam Konteks Ilmu Hukum,” *Jurnal Demokrasi* 6, no. 1 (2007): 1–18, <http://ejournal.unp.ac.id/index.php/jd/article/view/1129/964>.

¹⁰ Imentari Siin Sembiring Harry Setya Nugraha, Dimar Simarmata, “Politik Hukum Pengaturan Netralitas Aparatur Sipil Negara Dalam Pemilihan Kepala Daerah Tahun 2018,” *Jurnal Justisi Hukum* 3, no. 1 (2018): 20–38, <https://journal.ubpkarawang.ac.id/index.php/IlmuHukum/article/view/504>.

¹¹ Hayati Neni Nur, “Netralitas ASN Dalam Pilkada 2020,” *nasional.kompas.com*, 2020, <https://nasional.kompas.com/read/2020/03/05/17402941/netralitas-asn-dalam-pilkada-2020?page=2>.

candidates, and making declarations or socialization as Regional Head Candidates on billboards¹².

The holding of regional elections during the Covid-19 pandemic at this time is very prone to the politicization of social assistance in the form of groceries and other needs carried out by candidate pairs in order to get support and can even lead to *money politics* (money politics). The neutrality of the State Civil Apparatus needs to be maintained so that ASNs do not abuse their authority and participate in supported candidate pairs' campaigns¹³.

If the government bureaucracy can be kept neutral in the implementation of its functions, the people as a whole can be served well and professionally. A neutral bureaucracy does not prioritize and side with the interests of certain groups of people. Siding with the interests of all the people is the same as implementing democracy¹⁴. Meanwhile, bureaucratic alignments with one of the strengths of the governing political party tend to provide opportunities for the proliferation of abuse of power such as corruption, collusion and nepotism¹⁵.

Method

This research was a juridical normative *statute approach*, which was legal research used an approach by examining all laws. The regulations related to the problems (legal issues) that were being faced, both horizontally and vertically¹⁶. This statutory approach was carried out by studying the consistency or suitability between the Basic Law and the Law, or between one Law and another.

¹² Ranawati Nur Khansa, "Bawaslu Ungkap Pelanggaran Netralitas Pilkada Jabar, ASN Tertinggi," [ayobandung.com](https://ayobandung.com/read/2020/07/18/107869/bawaslu-ungkap-pelanggarannetralitas-pilkada-jabar-asntertinggi), 2020, <https://ayobandung.com/read/2020/07/18/107869/bawaslu-ungkap-pelanggarannetralitas-pilkada-jabar-asntertinggi>.

¹³ Bagong Suyanto, "Politisasi Bansos Jelang Pilkada," [beritasatu.com](https://www.beritasatu.com), 2020, <https://www.beritasatu.com/bagong-suyanto/opini/6905/politisasi-bansos-jelang-pilkada>.

¹⁴ Bagus Sarnawa, "Pergeseran Aturan Netralitas Aparatur Sipil Negara Dalam Pemilihan Umum," *Jurnal Media Hukum*, 2018, <https://doi.org/10.18196/jmh.2018.0113.181-189>.

¹⁵ Novrida Wulandari and Adianto Adianto, "Kinerja Komisi Aparatur Sipil Negara Sebagai Lembaga Pengawas Netralitas Aparatur Sipil Negara," *Jurnal Humaniora : Jurnal Ilmu Sosial, Ekonomi Dan Hukum*, 2020.

¹⁶ Asri Wijayanti, *Strategi Penulisan Hukum* (Bandung: CV Lubuk Agung, 2011).

Neutrality Violations of State Civil Servants

Neutrality is one of the most important principles to be applied. in an effort to create a professional State Civil Apparatus. The neutrality of the State Civil Apparatus is related to impartiality, in which an employee of the State Civil Apparatus must be fair, objective, unbiased, free of influence, free from intervention, free from conflicts of interest, and not taking sides with anyone¹⁷.

The neutrality of the State Civil Apparatus is not only related to political activities, but also in the implementation of public services, policy making, and the management of the State Civil Apparatus. The non-neutrality of the State Civil Apparatus has an impact on the professionalism of the State Civil Apparatus which has a significant effect on the implementation of public services and the effectiveness of government administration¹⁸.

In addition, violations of the principle of neutrality can also encourage State Civil Servants to become involved in corrupt practices. To enforce the neutrality of the State Civil Apparatus, the government has established a number of laws and regulations, including: Law Number 5 of 2014 concerning State Civil Apparatus, Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 regarding the Election of Governors, Regents and Mayors (Pilkada Law) and its amendments, Government Regulation (PP) Number 42 of 2004 concerning Corps Spirit Development and Civil Servant Code of Ethics, and PP Number 53 of 2010 concerning Civil Servant Discipline¹⁹.

However, based on the latest simultaneous regional election data in 2015, 2017, and 2018, there was a relatively high increase in violations of the neutrality of the State Civil Service in 2018, namely as many as 491 complaints related to political neutrality which can be seen in Figure 1. Please note that in 2016 There were no simultaneous regional elections, but complaints were still recorded regarding the neutrality of the State Civil

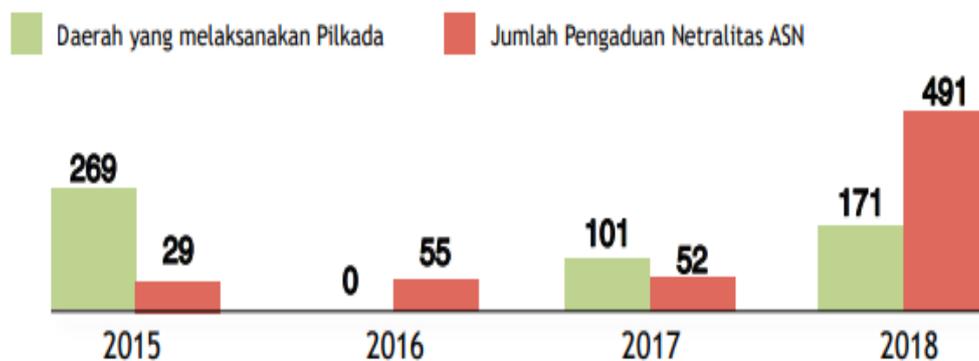
¹⁷ Dewi Sendhikasari Dharmaningtias, "Netralitas Aparatur Sipil Negara," *Info Singkat Bidang Politik Dalam Negeri XII*, no. 17 (2020): 25–29, http://www.academia.edu/download/61888255/PERIHAL_PENYELENGGARAAN_KAMPANYE20200124-1070-1kw8ans.pdf#page=212.

¹⁸ Diasa Inas Wishesa, "Kewenangan Komisi Aparatur Sipil Negara Dalam Pengawasan Sistem Merit," *Jurist-Diction*, 2020, <https://doi.org/10.20473/jd.v3i5.21969>.

¹⁹ Matias Neis Watunglawar, "PERWUJUDAN ASAS NETRALITAS BIROKRASI DALAM UNDANG-UNDANG NOMOR 5 TAHUN 2014 TENTANG APARATUR SIPILNEGARA," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum*, 2017.

Apparatus. The most frequently reported types of violations related to violations of the neutrality principle are the involvement of the State Civil Apparatus in campaigning. These violations included making promotions to build the image of one candidate pair, implementing programs that benefited one of the candidate pairs, as well as mobilizing the masses to campaign and providing financial support for the campaign ²⁰.

FIGURE 1 Complaints on Violation of Neutrality Principle on the State Civil Apparatus



Source: Processed by the System Assessment and Development Division, KASN (From the Complaints and KASN Investigation Sector & online news portal, 2018)

Meanwhile, up to August 19th, 2020, KASN had recorded 490 cases of violation of the neutrality of the State Civil Apparatus in the 2020 simultaneous regional elections²¹. A total of 372 people had been given recommendations for imposing sanctions on neutrality violations by the State Civil Apparatus Commission (KASN). However, the imposition of sanctions from the PPK was only applied to 194 State Civil Servants or 52.2 percent of the total violators. Therefore, KASN urges regional heads as Civil Service Officers (PPK) to take firm action against State Civil Servants who proved not neutral during the Pilkada. The State Civil Apparatus Commission had

²⁰ Nuraida Mokhsen et al., “URGENSI PENEGAKAN NETRALITAS APARATUR SIPIL NEGARA (ASN),” *Komisi Aparatur Sipil Negara* 1, no. 1 (2018): 1–4, https://www.academia.edu/38678842/Urgency_Penegakan_Netralitas_Aparatur_Sipil_Negara_ASN_.

²¹ Putra Ananda, “DPR Wacanakan Hak Pilih ASN Di Pilkada Dihilangkan,” *medcom.id*, 2020, https://www.medcom.id/pilkada/news-pilkada/gNQGzqqk-dpr-wacanakan-hak-pilih-asn-di-pilkada-dihilangkan?lite=true&utm_source=google&utm_medium=googlefeed&utm_campaign=googlepartnership.

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also reported the performance of the Civil Service Officer (*PPK*) to the Minister of Home Affairs and the Minister of State Apparatus Empowerment and State Reform. so that if the PPK's performance is not correct / slow in imposing sanctions, KASN will immediately file a complaint with the President ²².

During the Covid -19 pandemic like this, State Civil Apparatus had abused a lot of authority in providing social assistance (*bansos*) which should have been provided by certain Regional Governments but has instead been accommodated as assistance from candidate pairs who are campaigning to win votes in the simultaneous regional elections.

Quoted from the official online page of the West Java Provincial Government, Director of Global Operations and Strategy of IPRC, Idil Akbar said that his party found various violations related to ASN neutrality, there were 42 cases and found other violations during the field, namely those related to Social Assistance (*Bansos*) where assistance from This government was used by candidate pairs ²³.

A member of the Indonesian ombudsman, Alamsyah Saragih, said that his party received information related to political campaigns in the form of social assistance during the Covid-19 pandemic. One of them was by placing campaign attributes such as paslon photos on social assistance. A campaign in the form of distribution of basic food assistance took place in Klaten, Central Java, with the help of basic necessities a photo of the Regent of Klaten, Sri Mulyani was pinned. However, Sri Mulyani argued that she did not use Covid-19 basic food assistance as a campaign and she did not know that there was a sticker on the hand sanitizer bottle as a result of assistance from the social ministry. The assistance from the Ministry of Social Affairs was combined with basic food assistance which he had prepared with personal funds to be given to Klaten resident. KASN received reports that many State Civil Apparatus signed up to become regional head candidates in the 2020 regional elections. As many as 212 reports were obtained from the period January-April 2020. It was also found that State Civil Apparatus mobilized other state servants to attend activities that led to the incumbents'

²² Kautsar Widya Prabowo, "KASN Tagih Sanksi Untuk ASN Tak Netral," msn.com, 2020, <https://www.msn.com/id-id/berita/other/kasn-tagih-sanksi-untuk-asn-tak-netral/ar-BB18vAe0>.

²³ Berita : Website Resmi Pemerintah Provinsi Jawa Barat, "Netralitas ASN Jelang Pilkada 2020 Serentak," jabarprov.go.id, 2020, <https://jabarprov.go.id/index.php/news/40269/2020/11/21/Netralitas-ASN-Jelang-Pilkada-2020-Serentak>.

alignments. Then use social media to socialize certain prospective candidates. Then, there are also State Civil Apparatus involved in the installation of billboards, banners and props for the socialization of certain prospective candidates²⁴.

The duties and roles of General Election Supervision (*BAWASLU*) of which was in charge of overseeing the neutrality of the State Civil Apparatus, members of the Indonesian National Army, members of the Indonesian Police. General Election Supervision (*BAWASLU*) in collaboration with the State Civil Apparatus Commission as an independent state institution also functions to oversee the implementation of basic norms, code of ethics, and code of conduct for State Civil Apparatus and had the authority to decide whether there was a violation committed by State Civil Apparatus employees and provided recommendations to the relevant PPK to follow up on it.

Regarding KASN recommendations that were not followed up by PPK, because KASN was only authorized in recommendations, while the regional head as PPK had the right to impose sanctions on State Civil Apparatus. Meanwhile, regional heads, especially incumbents who were political officials, often had an interest in the Pilkada, and there was no strict sanction for PPK who does not carry out the recommendation from the KASN.

The role of the community in monitoring the neutrality of the State Civil Apparatus was also very necessary, the public can take advantage of their smart phones through the complaint channel by utilizing digital platforms such as social media that were of great interest to the public at this time.

The factors that affect the neutrality of the State Civil Apparatus in Regional Head Elections (*Pilkada*)

Regional Head Elections (*Pilkada*) directly by the people was a manifestation of the return of the basic rights of the people in choosing leaders in the regions.²⁵ The people had the opportunity and sovereignty to determine regional leaders directly, freely and confidentially without

²⁴ CNN Indonesia, "Ombudsman Terima Info Kampanye via Bansos Tak Cuma Di Klaten.," [cnnindonesia.com](https://www.cnnindonesia.com/nasional/20200429154334-20-498535/ombudsman-terima-info-kampanye-via-bansos-tak-cuma-di-klaten), 2020, <https://www.cnnindonesia.com/nasional/20200429154334-20-498535/ombudsman-terima-info-kampanye-via-bansos-tak-cuma-di-klaten>.

²⁵ Werpen Wenda, "Tingkat Kesadaran Politik Pemilih Pemula Dalam Pilkada; Suatu Refleksi School-Based Democracy Education (Studi Kasus Pilkada Provinsi Banten Jawa Barat)," *JURNAL POLITICO*, 2013.

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intervention²⁶, however, the implementation of Pilkada does not always run ideally.

The State Civil Apparatus as state servants who were obliged to provide public services was often influenced by political interests²⁷. Politicians and regional head candidates who were not statesmen often take advantage of the bureaucracy for their political interests). One of the duties of the State Civil Apparatus organized government and development in an effort to realize national goals.²⁸ This national objective as referred to in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely protecting the entire Indonesian nation and all Indonesian bloodshed and advancing public welfare, educating the nation's life and participating in implementing world order based on independence, eternal peace and social justice.²⁹

In order to achieve national goals, a State Civil Apparatus who was full of integrity, professionalism and obedience to Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, the State Civil Apparatus was integrated, intelligent, efficient, clean and free from intervention of all groups, ethnicities and especially political parties. The State Civil Apparatus according to its function as executor and servant of public policies, public servants, and the glue that unified the nation³⁰. However, the reality that occurred in Regional Head Elections (*Pilkada*), often the State Civil Apparatus was not neutral³¹. Since there were a number of factors that influenced this non-neutrality. The factors of the non-neutrality of the State Civil Apparatus were historical and socio-cultural factors, kinship relations, ambitions for career positions, ambiguous regulations (multiple interpretations), weak law enforcement, and low public awareness of legal culture.

²⁶ Nurus Zaman, "Implementasi Nilai-Nilai Demokrasi Dalam Menentukan Arah Politik Hukum Negara Tentang Pemilihan Umum Di Indonesia," *Seminar Nasional Hukum Universitas Negeri Semarang*, 2018.

²⁷ Hamirul, M Ariyanto, and Elsyra Nova, "Profesionalisme Aparatur Sipil Negara Dalam Rangka Mengatasi Patologi Pelayanan Publik," *Jurnal Marketing*, 2018.

²⁸ Jones Tompodung Meity Asmita Tamar, Sofia Pangemanan, "Etika Pemerintah Dalam Meningkatkan Aparatur Sipil Negara," *Jurnal Jurusan Ilmu Pemerintahan* 2, no. 2 (2017): 1–12, <https://ejournal.unsrat.ac.id/index.php/jurnaleksektif/article/view/17427/16960>.

²⁹ MPR, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Amandemen Ke IV," Jaringan Dokumentasi dan Informasi Hukum, 2002.

³⁰ "Kompetensi Profesional Pegawai ASN (Aparatur Sipil Negara) Di Indonesia," *Kompetensi Profesional Pegawai ASN (Aparatur Sipil Negara) Di Indonesia*, 2019, <https://doi.org/10.17509/mimbardik.v4i1.16971>.

³¹ Jayanti, "Netralitas Peran Aparatur Sipil Negara Dalam Kebijakan Publik Dan Pemilihan Umum."

1. Factor of Loyalty on State Civil Apparatus in Bureaucracy

The Loyalty factor of the State Civil Apparatus in the government bureaucracy also influenced the attitude of the State Civil Apparatus in the implementation of Regional Head Elections (*Pilkada*), especially during the campaign period³². Since a long time ago, the Head of Region (Governor and Regent / Mayor) had the highest authority in determining the position of a structural official in a bureaucracy under his leadership. Meanwhile, the Regional Secretary as the highest government administration official and the highest leader of the State Civil Apparatus in the regions must obey and be loyal to the wishes of their leaders (Regional Heads)³³. In fact, it was not uncommon for the sub-district head to provide hundreds of nine basic necessities (*SEMBAKO*) packages to support regional head candidates whether they were incumbent candidates and the new candidates they support in the regional head elections³⁴.

The issue of transfer of positions was also in the spotlight as a means of controlling the compliance and loyalty of the State Civil Apparatus to regional heads, if the State Civil Apparatus does not totally support and chooses to be neutral, then the State Civil Apparatus will be transferred³⁵. The factors of professionalism and integrity today were more side-lined, and the personal closeness factor (personally) was also a factor or measure of the loyalty of the State Civil Apparatus to regional heads to control structural and functional officials in seeking political sources of votes and support in exchange for a structural position. and functional in certain offices / services³⁶. The culture of bureaucratic loyalty between superiors and subordinates as well as the drive for power to gain bureaucratic benefits, had

³² Muhammad Eko Atmojo Zikrisma Alawiyah, "Netralitas Aparatur Sipil Negara Pada Tahap Kampanye Di Pemilihan Kepala Daerah Kabupaten Kulon Progo Tahun 2017," in *Prosiding Simposium Nasional: Tantangan Penyelenggaraan Pemerintahan Di Era Revolusi Industri 4.0*, 2020.

³³ Wahyu Widodo, "Pelaksanaan Pilkada Berdasarkan Asas Demokrasi Dan Nilai-Nilai Pancasila," *Civis*, 2015.

³⁴ Tatang Sudrajat, "NETRALITAS PNS DAN MASA DEPAN DEMOKRASI DALAM PILKADA SERENTAK 2015," *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu Dan Praktek Administrasi*, 2015.

³⁵ Mega M. Mawuntu, "Tinjauan Yuridis Netralitas Aparatur Sipil Negara Pada Pemilihan Kepala Daerah Perspektif Hak Asasi Manusia Di Indonesia," *Lex Administratum*, 2017.

³⁶ Budiono Budiono, "Asas Netralitas Aparatur Sipil Negara Pada Pemilukada (Studi Penerapan Pasal 2 Huruf F UU RI Nomor 5 Tahun 2014 Tentang Netralitas ASN Di Kabupaten Tulungagung)," *MIZAN, Jurnal Ilmu Hukum*, 2019, <https://doi.org/10.32503/mizan.v8i2.680>.

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resulted in neutrality rules that are often violated by State Civil Apparatus who support the incumbent³⁷. Demands to be loyal to superiors (regional heads) were often used as an excuse, when in fact the State Civil Apparatus was trapped in the political game of regional heads who were currently running for the next term.

2. Family relation

The familial relationship between the State Civil Apparatus and regional head candidates certainly greatly affected neutrality³⁸. This was very influential in determining the political attitude of civil servants. If civil servants had relatives who were involved in the nomination of regional heads, of course they cannot allow their citizens to fight alone in achieving their aspirations to be elected as regents / mayors.

3. Career and Position Ambitions

Direct elections can lead to community groups that were supportive and unsupportive and there were also community groups who were volunteers or not volunteers. The State Civil Apparatus was also divided into several groups. One of the groups was a group of bureaucrats who firmly or secretly place themselves in the group of one of the candidates for regional head³⁹. This group tend to provide support for regional head candidates by mobilizing bureaucratic manpower and resources. The State Civil Apparatus tried to cultivate services to candidates with the hope of economic interests, securing positions and obtaining higher positions if the candidates they support are successfully elected⁴⁰. When a candidate who was supported wins in the election, usually the State Civil Apparatus who previously contributed to support then get a promotion in return.

³⁷ Riris Katharina, "Reformasi Manajemen Aparatur Sipil Negara: Evaluasi Peran Pejabat Pembina Kepegawaian Dan Komisi Aparatur Sipil Negara," *Jurnal Spirit Publik*, 2018.

³⁸ Herdi Salioso, "ASN, OTDA, POLITIK PILKADA SERENTAK DAN KORUPSI DI INDONESIA," *SISI LAIN REALITA*, 2016, [https://doi.org/10.25299/sisilainrealita.2016.vol1\(1\).1408](https://doi.org/10.25299/sisilainrealita.2016.vol1(1).1408).

³⁹ F Firman, "MERITOKRASI DAN NETRALITAS APARATUR SIPIL NEGARA (ASN) DALAM PENGARUH PILKADA LANGSUNG," *The Indonesian Journal of Public ...*, 2017.

⁴⁰ Wawanuddin and Rohidin Sudarno, "Pelaksanaansistem Merit Dalam UU ASN, Wewenang KASN Dan Analisis Peraturan Perundang-Undangan Yang Berpengaruh Terhadap Wewenang KASN," *Jurnal Mozaik*, 2018.

4. Regulation that has multiple interpretations

Article 2 letter f of Law No.5 of 2014 concerning State Civil Servants, stipulates that the implementation of policies and management of State Civil Apparatus was based on the principle of neutrality. The explanation of the article states that the “principle of neutrality” was that every apparatus did not take sides from any form of influence and did not take sides with the interests of anyone ⁴¹.

On the other hand, Article 1 point 2 of Law No. 5/2014 concerning State Civil Servants confirms that ASN which was part of the State Civil Apparatus other than government employees with a work agreement still has the right to vote in General Elections and Pilkada ⁴².

Article 53 of Law No. 5/2014 concerning State Civil Servants also raised a very crucial issue, regarding the authority of regents / mayors as Civil Service Officers to determine the appointment, transfer, and dismissal of officials in their territory. This provision often triggers civil servants to be non-neutral in the implementation of regional elections because of the element of loyalty from subordinates to their superiors so that they override the rules ⁴³.

Confusion was also contained in the Regulation of the Minister for Administrative Reforms of the State Apparatus and Bureaucratic Reform July 22 2015, Number: B/2355/M.PANRB/07/2015 concerning the Neutrality of the State Civil Apparatus and the prohibition on the use of government assets in the simultaneous Regional Head Election⁴⁴. This circular contained provisions that were multiple interpretations, that every State Civil Apparatus was prohibited from providing support to regional heads / deputy regional heads by “being involved in campaign activities to support candidates for regional head / deputy regional head”. This sentence had multiple interpretations because it can be interpreted that the State Civil Apparatus may join the candidate's campaign as long as it did not provide

⁴¹ Deddy Mursanto, “SANKSI PIDANA BAGI PEGAWAI NEGERI SIPIL (PNS) YANG TIDAK NETRAL DALAM PEMILIHAN KEPALA DAERAH (PILKADA) KOTA BAUBAU BERDASARKAN UNDANG-UNDANG APARATUR SIPIL NEGARA,” *Jurnal Hukum Volkgeist*, 2018, <https://doi.org/10.35326/volkgeist.v2i2.89>.

⁴² Mega M. Mawuntu, “Tinjauan Yuridis Netralitas Aparatur Sipil Negara Pada Pemilihan Kepala Daerah Perspektif Hak Asasi Manusia Di Indonesia.”

⁴³ Watunglawar, “PERWUJUDAN ASAS NETRALITAS BIROKRASI DALAM UNDANG-UNDANG NOMOR 5 TAHUN 2014 TENTANG APARATUR SIPILNEGARA.”

⁴⁴ Syaefullah, “DAMPAK PELANGGARAN ASN ATAS SE Menteri PANRB NO. B/2355/M.PANRB/07/2015 DALAM LAYANAN BIROKRASI,” *Jurnal Jatiswara*, 2019, <https://doi.org/10.29303/jatiswara.v34i1.188>.

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support. The State Civil Apparatus may argue that their presence in the campaign was limited to knowing the figure, vision and mission of the candidate. Therefore, it was very difficult to determine whether the State Civil Servants who participated in the campaign gave support or not.

5. Weak law enforcement

Indonesia was a state of law (*rechtsstaat*) and a state of law upholds adherence to the prevailing laws and regulations with the aim of protecting the entire Indonesian nation and all Indonesian blood, realizing a prosperous, orderly, safe, peaceful and peaceful and just life of the people of the nation and state. social. As a consequence, the state must place the law as commander in chief and make it the only tool to solve all problems. The reality was that State Civil Apparatus supporters of incumbent regional head candidates were not subject to legal sanctions according to the recommendations of the related institutions.

The handling of neutrality violations was still not clearly regulated, so there was a tendency between institutions to release responsibility for each other if a violation occurs. Handling of violations was conveyed by the Chairman of General Election Supervision (*BAWASLU*) of the Republic of Indonesia at the National Coordination Meeting in the Context of Strengthening the Implementation of the 2014 Presidential and Vice-Presidential Election in Jakarta on 4 June 2014 as a series of processes which included forwarding findings, receiving reports, collecting evidence, clarifying, reviewing and / or providing recommendations, as well as forwarding the results of studies on findings or reports to the authorized agency for follow-up⁴⁵.

With the report, the election supervisors followed up by conducting an assessment and filing as well as completing evidence of violations. Then a plenary meeting was held, whether the reports and findings of these violations were included in the realm of not violations, administrative violations or are criminal offenses⁴⁶.

⁴⁵ Sutrisno Sutrisno, "Prinsip Netralitas Aparatur Sipil Negara Dalam Pemilihan Kepala Daerah," *Jurnal Hukum Ius Quia Iustum*, 2019, <https://doi.org/10.20885/iustum.vol26.iss3.art5>.

⁴⁶ Nurmalita Ayuningtyas Harahap, "PENGUATAN KEDUDUKAN DAN PERAN KOMISI APARATUR SIPIL NEGARA DALAM MEWUJUDKAN REFORMASI BIROKRASI," *Jurnal Panorama Hukum*, 2016, <https://doi.org/10.21067/jph.v1i2.1418>.

If the offense was included in a criminal offense, then it was processed by providing recommendations to the police to be followed up in accordance with the applicable law. Then the Police as Investigators coordinate with the Prosecutor's Office as Public Prosecutors. The institutions that handled election violations had actually been regulated in Law Number 1 of 2015. Jo. Law Number 8 of 2015. jo. Law Number 10 of 2016 concerning Regional Head Elections (*Pilkada*) in accordance with the criteria for legal issues, among others ⁴⁷ :

- a. The General Election Commission (*KPU*) handles types of violations against election administration provisions, namely violations other than violations in the TPP category (election criminal acts) and violations of the election code of ethics.
- b. Sentra Gakumdu (Integrated Law Enforcement) whose members consisted of a combination of three institutions, among others, the Police, the Attorney General's Office and General Election Supervision (*BAWASLU*). This centre handled the types of provisions for election criminal offenses.
- c. The Election Organizer Honorary Council (*DKPP*), handles provisions on violations of the election code of ethics, mechanisms, procedures, procedural guidelines and their design.
- d. The Constitutional Court (*MK*), handles disputes over election results, procedural procedures and ways of resolving them.
- e. The State Civil Apparatus Commission (*KASN*) was a non-structural institution that was independent and free from political intervention to create professional and performing State Civil Apparatus (*ASN*) employees, provide fair and neutral services, and become the glue and unifier of the nation. Its duties include maintaining the neutrality of State Civil Apparatus (*ASN*) employees and conducting supervision and professional development.

6. Public Awareness

The public tended to ignore if they know about violations of ASN persons, so that many cases of violations of neutrality were not handled by

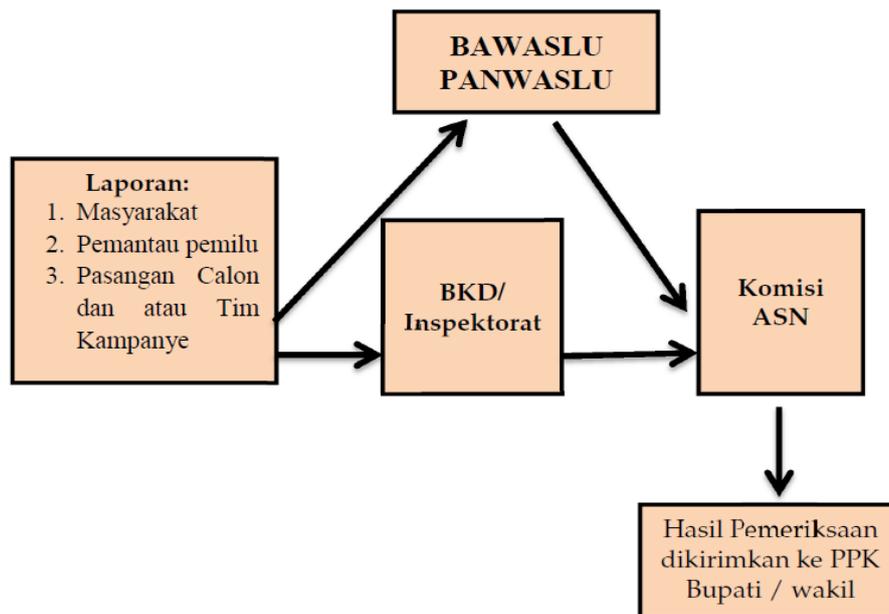
⁴⁷ Yuliyanto Yuliyanto, "Transformasi Model Pelaksanaan Pemilihan Kepala Daerah Serentak," *Jurnal Penelitian Hukum De Jure*, 2017, <https://doi.org/10.30641/dejure.2017.v17.57-73>.

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law enforcers⁴⁸. The public did not want to take care of it or did not care, because to report State Civil Apparatus (ASN) involved in the campaign must show evidence to the Regional Head Elections (*Pilkada*) Supervisory Committee in the form of photos, videos and others.

FIGURE 2 Flowchart of Reporting Follow-up to the Commission of State Civil Apparatus (ASN)



Source: Sutrisno (2017), The Principle of Neutrality of State Civil Servants in Regional Head Elections, IUS QUIA IUSTUM Legal Journal No. 3 VOL. SEPTEMBER 26, 2019: p. 539

Conclusion

The rise of non-neutrality of the State Civil Apparatus prior to the Regional Head General Election (*Pilkada*) showed that the political influence in a bureaucracy was still closely related to the process of government administration. The State Civil Apparatus as the driving force of the government in terms of service and implementer of public policies of the regional head can change as a political tool for the leader (Regional Head) in power. The non-neutrality of the State Civil Apparatus in the *Pilkada* is also influenced by several factors, namely the factor of kinship, career ambition, ambiguous regulations (multiple interpretations), weak law enforcement, and

Kementrian Pendidikan dan Kebudayaan Pusat Pendidikan dan Pelatihan Pegawai, "Manajemen ASN," in *Modul Pelatihan Dasar Calon PNS*, 2017.

low public awareness of legal culture. The neutrality of the State Civil Apparatus in Regional Head Elections (*Pilkada*) can be realized by optimally involving the roles of several related institutions, including the State Civil Apparatus Commission (*KASN*), Bureaucratic Leaders, the General Election Commission (*KPU*), and the General Election Supervision (*BAWASLU*). Therefore, the government needed to review the Election Law concerning Civil Service Officers and appoint Civil Service Officers from the highest career officials, namely the regional secretary (*Sekda*). The problem of bureaucratic neutrality was also influenced by the hierarchical structure of the bureaucracy. In reality, the bureaucracy was often used as a political machine to mobilize support for the ruling regime to perpetuate its power. The government also needed to improve the merit system in the management of the State Civil Apparatus. It minimized the occurrence of Corruption, Collusion and Nepotism in appointments such as promotions and transfers of State Civil Apparatus (*ASN*) employees.

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