

# Neutrality of State Civil Apparatus in Regional Head Elections

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**Abstract:** The results of this study conclude that the neutrality of the State Civil Apparatus in the Implementation of Regional Head Elections has not been implemented properly. There are still many ASNs who are not neutral; this is due to the existence of Article 53 of Law No. 4 of 2014 concerning ASNs, which states that the President, as the holder of the highest authority in ASN development, can delegate the authority to determine the appointment, transfer, and dismissal of officials other than the main and middle high-ranking officials. The main functional expertise is the regent/mayor in the district/city (PPK), so with this, the incumbent candidate can use the authority they have to pressure ASN ahead of the Pilkada. Several efforts have been made by the government, such as through laws and joint decrees of the Minister of State Civil Apparatus Empowerment and Bureaucratic Reform, Minister of Home Affairs, Chairperson of the State Civil Apparatus Commission, and Chairperson of the General Elections Supervisory Body. However, in reality, the loyalty factor between superiors and subordinates is an obstacle to creating a neutral position in the implementation of the Regional Head Election because there are still many ASNs who participate in practical politics. This research is a type of Normative Juridical research with a statutory approach method. The nature of this research is descriptive analysis, which intends to provide a systematic factual and accurate picture or painting of the facts, nature, and relationships between the phenomena investigated on how neutrality in ASN in the election of Regional Heads

## 1. Introduction

The Republic of Indonesia as a state of Law (rechtstaat) as stated in the fourth paragraph of the Opening of the 1945 Constitution of the Republic of Indonesia, which reads, "Then from that to form a government of the state of Indonesia that protects the entire nation and all of Indonesia's blood." This is then also stated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads, "Indonesia is a state of law." This provision becomes a constitutional basis and, at the same time, confirms that the State of Indonesia as a state of Law (rechtstaat) always goes hand in hand and cannot be separated from the sovereignty of the people where state power is based on the mandate given by the people to the Government through a democratic process. This

is also in line with Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states, "Sovereignty is in the hands of the people and is carried out entirely by the People's Consultative Assembly." Regarding the history of democracy in Indonesia, it adopted many government systems at the beginning. However, of all the systems of Government, the one that has survived from the 1998 reform era until now is the democratic system of Government. However, there are still some shortcomings and challenges here and there. One of the implementations of democracy in Indonesia is marked by the holding of Regional Head Elections (hereinafter referred to as PILKADA).

The change of power holders or the entry of a new regime into power has influenced the implementation of PILKADA so far. Since the era after independence, PILKADA has been divided into three eras. The first was in the Old Order era, where the legal product that underlies the implementation of the regional government system in the Old Order was the Law. The first Law issued during the independence era was Law Number 1 of 1945 concerning Regulations Concerning the Position of the Regional National Committee, which, in essence, Law intends to change the nature of the Regional National Committee into a Regional People's Representative Body chaired by the Regional Head. In its explanation, it also states that the Regional Head is also a Regional National Committee that intends to become a Legislative Body. In addition, a regional head must carry out the function of a representative of the Regional People's Representative Body, which, in essence, in the Law, states that the regional head sits in the executive and legislative institutions. In the old order era, there were changes to the laws governing regional elections until the formation of Law Number 18 of 1965 concerning the Principles of Regional Government, where with the enactment of the Law, the regional head was still elected by the DPRD whose appointment was carried out by the President in the regional level I region.

Then, entering the New Order era, Law Number 5 of 1974 concerning the Principles of Regional Government was formed, which became the legal basis for implementing the election of regional head candidates in Indonesia. Since the enactment of Law Number 5 of 1974, the provisions of the PILKADA have not changed significantly because the DPRD holds the command in implementing the election and nomination of regional heads. The legal products born in this era contain the mechanism for selecting Regional Head candidates, which in this case are still carried out by the DPRD. However, their appointment and dismissal are different in terms of hierarchy.

Until then, entering the reform era until now, the regulations on PILKADA have experienced changes. This is very natural because the law always follows the development of society and its political developments until in 2004, as a form of a state that upholds the sovereignty of the people, PILKADA was implemented directly, which is a means of realizing the sovereignty of the people which gave birth to a democratic regional government according to the mandate of the constitution. The certainty of direct regional elections is contained in Law Number 32 of 2004 in the explanation section number 4, "Regional Government," which reads as follows: "The Regional Head is the Head of the Regional Government who is democratically elected. The democratic election of the Regional Head, bearing in mind that the duties and authorities of the DPRD according to Law Number 22 of 2003 concerning the Composition and Position of the People's Consultative Assem-

bly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, states among other things that the DPRD does not have the duty and authority to elect the Regional Head and Deputy Regional Head, then the democratic election in this law is carried out directly by the people."

Direct regional elections by the people can be said to be a democratic process that moves in a more democratic direction.<sup>1</sup> Therefore, direct regional elections must guarantee the implementation of quality elections that run well. For this reason, support from all parties is needed to realize democratic regional elections and always maintain neutrality. In this case, neutrality means not siding with anyone and being independent of one's choice without being interfered with by any interest tendencies.<sup>2</sup> In addition, in Government Regulation Number 53 of 2010 concerning Civil Servant Discipline, Article 4 number 14, "where every civil servant is prohibited from providing support accompanied by a photocopy of their KTP or Resident Identity Certificate."

The provisions regarding the prohibition or not being allowed for ASN employees to participate in the implementation of the PILKADA directly are also regulated in Government Regulation Number 42 of 2004 concerning the Development of Corporal Spirit and the Civil Servant Code of Ethics, Article 11 letter c. Various regulations that the government has made are part of an effort to maintain the neutrality of ASNs from the influence of political parties and limit the relationship of ASNs with practical political activities.<sup>3</sup> ASNs, as state servants, must maintain their neutrality in the PILKADA because they hold civilian positions. Different from the TNI and POLRI. Further explained in Law Number 2 of 2000 concerning the Indonesian National Police, Article 28 paragraph (1) states that: "The Indonesian National Police is neutral in political life and does not engage in practical political activities. Paragraph (2) emphasizes that members of the Indonesian National Police do not exercise the right to vote and be elected."

In Law Number 34 of 2004 concerning the Indonesian National Army, Article 39, paragraph (2) states that Soldiers are prohibited from being involved in practical political activities.

Thus, the neutrality held by the TNI and POLRI is complete neutrality in the sense that they have no right to vote and choose at all. Meanwhile, Law Number 5 of 2014 concerning State Civil Apparatus Article 9 paragraph (2) states that ASN employees must be free from the influence and potential of all political party groups. This means that ASN still has the right to vote but remains within the neutrality area so that ASN's voting rights are still protected. Concerns regarding ASN neutrality have clear reasons or logic. They have a strategic enough position to become a political machine for winning candidate pairs because they can gain votes. In fact, the strength of ASN can defeat the solidarity of the supporting political parties.

<sup>1</sup> Suyatno Suyatno, "Pemilihan Kepala Daerah (Pilkada) Dan Tantangan Demokrasi Lokal Di Indonesia," *Politik Indonesia Indonesian Political Science Review* 1, no. 2 (July 15, 2016): 212, <https://doi.org/10.15294/jpi.v1i2.6586>.

<sup>2</sup> Mochamad Riyanto, Agus Widodo, and Rini Retnowinarni, "Netralitas Aparatur Sipil Negara (ASN) Dalam PILKADA Untuk Mewujudkan Good Governance," *Syntax Idea* 6, no. 1 (November 28, 2023), <https://doi.org/10.46799/syntax-idea.v5i11.2690>.

<sup>3</sup> Eki Furqon, "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 (July 30, 2020): 15-28, <https://doi.org/10.30656/ajudikasi.v4i1.2157>.

However, the reality is that the implementation of the merit system requires a strong commitment from the Personnel Development Officer (PPK). Regional heads and political officials hold PPK in the regions. The function of regional heads as PPK and political officials will create a conflict of interest, especially in the run-up to the Regional Head Election. Political officials are politicians who find it difficult to separate themselves from their personal interests and political parties. This is what creates a conflict of interest and leads to the politicization of bureaucracy.

In the 2020 PILKADA Election Vulnerability Index (IKP), ASN's non-neutrality is at the top, namely 167 districts/cities out of 270 regions. In Bawaslu's findings, there were 427 legal violations related to ASN neutrality, of which, from the overall data that has been clarified, most were ASNs who provided their support through social media. This is certainly a strategic issue regarding the government apparatus' support in supporting and facilitating Pilkada participants.<sup>4</sup>

Based on Article 2 letter f of Law Number 5 of 2014 concerning State Civil Apparatus, it has provided regulations regarding the implementation of ASN policies and management, which must be based on the principle of neutrality so that ASN should in any condition be required always to maintain their partisanship to remain neutral and not provide support to any party, especially in the PILKADA agenda. However, in practice, the implementation of Article 2 letter f of Law Number 5 of 2014 concerning State Civil Apparatus is also hampered by the existence of Article 53 of Law Number 5 of 2014 concerning State Civil Apparatus, which reads: "The President, as the holder of the highest authority in ASN development, can delegate the authority to determine the appointment, transfer, and dismissal of officials other than the main and middle-ranking high-ranking officials and the main functional expertise officials."

Article 53 of Law Number 5 of 2014 concerning State Civil Apparatus seems to be a tendency for ASN to be unable to maintain its neutrality because it can be used as a tool for regional leaders who will nominate themselves again (incumbents) to influence their subordinates, namely ASN through the authority they have so that ASN who are in their government management at least provide an attitude of support to the Regional Leader. On the other hand, in Article 2 Letter f of the Law concerning State Civil Apparatus, ASN must be required to continue to uphold neutrality in the PILKADA. Because ASN is the backbone of the nation in implementing governance and development, as well as implementing bureaucracy to serve the community, so this strategic position requires a professional ASN.

## 2. Method

This study employs a normative legal research method with a statute approach. Normative legal research is a methodology used to analyze legal norms, principles, and regulations related to the neutrality of civil servants in regional head elections. The statute approach is applied to examine the relevant laws and regulations governing the conduct of civil servants. The research focuses on identifying, interpreting, and analyzing the provisions that establish, regulate, and enforce the principle of neutrality among civil servants. Additionally, this study examines the extent of compliance with these regulations and explores potential gaps or challenges in their implementation

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<sup>4</sup> Muhammad Emir Al-Azkiya and S. Agus Santoso, "FENOMENA POLITISASI BIROKRASI DILIHAT DARI SUDUT Pandang ADMINISTRASI PUBLIK (Studi Pada Ketidaknetralan Aparatur Sipil Negara Di Indonesia Saat Pemilu Dan Pilkada);" *Ojs.Unigal.Ac.Id*, May 29, 2024, <https://doi.org/10.25157/moderat.v10i2.3721>.

during regional head elections. By employing this approach, the study aims to provide a comprehensive understanding of the normative framework supporting the neutrality of civil servants and offer insights for strengthening its implementation in the context of regional head elections.

### 3. Neutrality of State Civil Apparatus in Regional Head Elections

The direct implementation of regional elections has brought changes to the government culture at the regional level, in this case, the repositioning of bureaucratic relations with politics, especially the issue of bureaucratic neutrality towards politics.<sup>5</sup> However, various problems are still found, one related to the neutrality of the State Civil Apparatus (ASN). It is widely known that violations of ASN neutrality in general elections, especially regional elections, are not new because they have often occurred.<sup>6</sup>

Based on the latest data from the State Civil Apparatus Commission (KASN) for simultaneous regional elections in 2015, 2017, and 2018, there was a relatively high increase in violations of ASN neutrality in 2018, namely 491 complaints related to political neutrality which can be seen in Figure 1.32. It should be noted that in 2016, there were no simultaneous regional elections, but complaints about ASN neutrality were still recorded. The type of violation that was most often reported related to violations of the principle of neutrality was the involvement of ASN in organizing campaigns. These violations include the creation of advertorials to build the image of one of the candidate pairs, implementing programs that benefit one of the candidate pairs, mobilizing the masses to campaign, and providing financial support for the campaign.<sup>7</sup>

The violations occurred when approaching or registering with a political party, attending a gathering or benefiting prospective candidates, and making a declaration or socialization as a prospective regional head candidate on a billboard.

ASN is expected to be able to maintain its neutrality to provide the best service to the public. Still, in reality, there are coercion or threats that ASN must accept to ignore neutrality and professionalism to help smooth the efforts of the incumbent.

This is inseparable from the existence of an article that provides a loophole for every leader with the authority they have to show the power of leaders to carry out a single policy in prioritizing the authority they have. The article is Article 53 of Law No. 5 of 2014 concerning ASN, which reads:

“The President as the holder of the highest authority in fostering ASN can delegate the authority to determine the appointment, transfer, and dismissal of officials other than the main and middle high-ranking officials, and the main functional expertise officials to: a). Ministers in ministries; b) Heads of institutions in non-ministerial government institutions; c). Secretary generals in the secretariats of state institutions and non-structural institutions; d). Governor in the province; and e). Regent/mayor in the district/city.”

<sup>5</sup> Ni'matul Huda, “HAK POLITIK TENTARA NASIONAL INDONESIA DAN KEPOLISIAN NEGARA REPUBLIK INDONESIA PASCA REFORMASI,” *JURNAL HUKUM IUS QUIA IUSTUM* 21, no. 2 (April 1, 2014): 203–26, <https://doi.org/10.20885/iustum.vol21.iss2.art3>.

<sup>6</sup> Hanifah Sadikin, Subhilhar Subhilhar, and Heri Kusmanto, “Netralitas Aparatur Sipil Negara Dalam Pemilihan Umum Kepala Daerah Kabupaten Asahan Tahun 2020,” *PERSPEKTIF* 11, no. 1 (January 3, 2022): 355–71, <https://doi.org/10.31289/perspektif.v11i1.5639>.

<sup>7</sup> Dwi Mustika Sari, “Regulasi Netralitas Aparatur Sipil Negara Pada Pemilihan Kepala Daerah Tahun 2020,” *KEMUDI Jurnal Ilmu Pemerintahan* 5, no. 02 (March 21, 2021): 259–72, <https://doi.org/10.31629/kemudi.v5i02.2806>.

This verse is one of the fundamental factors why ASN submits to all defense directives even though it violates neutrality, namely the position of the regional head as the Personnel Development Officer (PPK). PPK has the authority to appoint, transfer, and dismiss ASN. This is what then becomes the beginning of the problem in forming the character of an ASN, so that the goal of ASN, which has independence, objectivity, and transparency in public services, becomes difficult or even impossible to achieve.

According to Mahfud MD, the Regional Head Election can trigger the use of bureaucracy for political interests in regional elections in various regions; incumbent regional head candidates almost always mobilize ASN to win themselves. The bureaucracy should be free from the influence and intertwining of political ties with political forces so that the service to the community provided by the neutral bureaucracy is impartial and objective. 42A bureaucracy that takes sides or is not neutral can give birth to political corruption, which changes the regional election process to be colored by reprehensible actions.<sup>8</sup>

The problem of neutrality violations is the slow response of the Civil Service Development (PPK) officials and even reluctance to follow up on KASN recommendations. This condition indicates a conflict of interest in the PPK, so ASN employees tend to commit violations continuously. Incumbents have experience controlling power in their regions, so the opportunity to win is more open. This condition will create a position of bureaucracy that takes sides and causes problems; first, the services provided become unfair because there is a tendency to prioritize groups of people who have the same political stream, the nature of the service is not objective, and does not want to be controlled.

Based on the results of the study of the Civil Service Commission (KASN) System Assessment and Development field, several factors cause violations of ASN neutrality, including: a. Motives for Obtaining/Maintaining Position; b. Family/kinship relationships with candidates; c. Lack of understanding of regulations related to Neutrality; d. Other factors include pressure from superiors and the low integrity of ASNs.

Community participation in terms of playing a role in monitoring the PILKADA is a very important thing in the democratic party process in Indonesia. Community political participation in elections can be seen as community control over a government. So that the people not only exercise their right to vote but also have the right to aspire to elections with integrity. Therefore, it is necessary to open as much space as possible for the wider community to monitor the election process from start to finish.

Law is a political product, and political power influences the face of the law, which is only limited to the law in the context of Legislation. Therefore, a product of Law cannot be denied that political substance will be packaged. The product of Law is used as a tool of government engineering to expand the authority of the ruler at the central and regional levels. The product of Law should produce an intelligent article substance that can limit the meanings of the article as well as explanations that have social value and guarantee justice for the implementer itself.

The pattern of subordinate-superior relationships in the government bureaucracy is vulnerable to abuse. Likewise, the President can include and place "his people" in the ranks of the bureau-

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<sup>8</sup> Sutrisno Sutrisno, "Prinsip Netralitas Aparatur Sipil Negara Dalam Pemilihan Kepala Daerah," *JURNAL HUKUM IUS QUIA IUSTUM* 26, no. 3 (September 1, 2019), <https://doi.org/10.20885/iustum.vol26.iss3.art5>.

cracy. The same thing happens in the regional government environment. As a result, in various regions, Regional Heads act like kings who act freely towards the bureaucracy. Regional Heads (Regents and Mayors) can “play” the bureaucracy by carrying out mutations, recruiting and installing trusted people, and utilizing all bureaucratic instruments for short-term political interests.

Strauss and Sayles expressed their opinions on several benefits of delegation of authority, including the fact that delegation will provide regional heads with personal freedom. However, the delegation of authority given to regional heads to carry out their functions as actors in solving problems and managing their regional households cannot run as efficiently as possible.

Bureaucracy in Indonesia has not been effective until now. This is because, among other things, the bureaucracy has long been used as a tool for political mobilization for the ruling party to perpetuate power. After all, in this era of reform, changes in political officials at the national and regional levels are driven by political parties. Political officials who occupy leadership carry out major overhauls of bureaucratic formations, including mutations of officials considered to have poor performance.

Based on Article 51 of Law No. 5 of 2014 concerning ASN, ASN Management is based on the Merit System. The merit system is a concept in managing human resources by applying objectivity to the entire ASN management process by considering each individual’s potential, abilities, and achievements in carrying out their work. However, the reality is that implementing the merit system requires a strong commitment from the Personnel Development Officer (PPK). PPK in the regions is held by the regional head, who is also a political official. The function of the regional head as PPK and political official will cause a conflict of interest, especially ahead of the regional head election.

#### **4. Efforts to Realize the Neutrality of State Civil Apparatus in Regional Head Elections**

The State Civil Service Commission (KASN) plays an important role in realizing ASN neutrality so that ASN performance can be properly supervised. Law of the Republic of Indonesia Number 5 of 2014 concerning State Civil Apparatus Article 1 paragraph (19) states that the ASN Commission, hereinafter abbreviated as KASN, is a non-structural institution independent and free from political intervention. Establishing KASN in Article 28 letter (d) of the ASN Law aims to realize neutral ASN employees.

Let’s look at the development of ASN performance now. The supervision system carried out by KASN is still moving in the action (repressive) aspect, where supervisory actions are carried out after an incident of rule violation by ASN employees occurs. Supervision in the form of prevention (preventive) has not been carried out properly. Preventive activities are better than mitigation activities.<sup>9</sup>

In addition, supervision can also be equated with *Das Sollen*, which must be in accordance with *Das Sein*. According to Saiful Anwar, supervision is control over the actions of government

<sup>9</sup> Siti Hasanah and Sri Rejeki, “Wewenang Badan Pengawas Pemilu Terhadap Pelanggaran Pemilu Oleh Aparatur Sipil Negara Dalam Pemilu Kepala Daerah,” *CIVICUS Pendidikan-Penelitian-Pengabdian Pendidikan Pancasila Dan Kewarganegaraan* 9, no. 2 (September 30, 2021): 43, <https://doi.org/10.31764/civicus.v9i2.7795>.

officials, which is necessary so that the implementation of assigned tasks can achieve their goals and avoid deviations.<sup>10</sup>

Regarding violations of ASN employee neutrality, KASN has collaborated with Bawaslu in MoU Number 4/PKS/KASN/6/2020. The implementation of supervision by KASN is carried out through: 1) Continuing the recommendations submitted by Bawaslu regarding alleged violations of ASN neutrality. 2) Submitting the analysis results or studies related to recommendations for handling ASN neutrality to Bawaslu. 3) Submitting data and information to Bawaslu regarding follow-up recommendations implemented by PPK.

In addition, according to Law No. 15 of 2011, Bawaslu is an election-organizing institution tasked with supervising the implementation of elections throughout the territory of the Unitary State of the Republic of Indonesia (NKRI). Based on Article 3 of Bawaslu Regulation Number 6 of 2018, Bawaslu supervises the compliance of all parties involved in the implementation of the Presidential Election, Legislative Election, and Regional Election, including the neutrality of State Civil Apparatus, the neutrality of Members of the Indonesian National Armed Forces, and the neutrality of Members of the Indonesian National Police. Bawaslu has the authority to issue recommendations to authorized agencies to impose sanctions on parties who commit violations.

Regarding neutrality violations by ASN employees, Bawaslu has made an MoU Number: 0155/K/.BAWASLU/HM/02.00/VI/2020. With KASN, Ministry of Home Affairs, BKN, and KemenPANRB. The implementation of supervision by Bawaslu is carried out through: a) Making a study of alleged violations of each finding and report of alleged violations of neutrality. b) Conducting verification and investigation of existing violation cases. c) Forwarding recommendations for alleged violations of each finding and report of alleged violations of ASN neutrality to KASN for follow-up.

However, in practice, the applicable regulations are still very weak, according to the duties of Bawaslu, namely, to supervise the neutrality of ASN, Polri, and TNI in organizing and/or regional elections. Bawaslu can only submit recommendations to the State Civil Apparatus Committee (KASN). Next, KASN will review it again so it can only issue recommendations to the regional government if there is a lack of ASN neutrality. This will not be very effective in imposing sanctions because the regional head is in a political position.

On the other hand, the Ministry of PANRB's neutrality supervision is more focused on policy formulation and determination. Efforts that the Ministry of PANRB has made are as follows: a) Memorandum of Understanding (MoU) between the Ministry of PANRB, Bawaslu, Ministry of Home Affairs, KASN, and BKN regarding Neutrality Supervision, Core Values, ASN Code of Ethics in the implementation of the Election of Governors, Regents, and Mayors. The MoU was implemented in Jakarta on October 2, 2015. This MoU is intended to: (1). Realize the basis for cooperation in neutral Supervision. (2). Form a forum for coordination, synchronization, and communication of neutral Supervision. (3). Formulate and encourage follow-up steps on the results of Supervision that have been carried out.

b) Circular Letter (SE) of the Ministry of PANRB Number 06/M.PANRB/11/2016 Dated November 28, 2016, Regarding the Implementation of Neutrality and Discipline Enforcement and

<sup>10</sup> Saiful Anwar et al., "PENEGAKKAN ETIKA DAN DISIPLIN TENAGA KESEHATAN SEBAGAI APARATUR SIPIL NEGARA," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 6, no. 3 (July 16, 2022), <https://doi.org/10.58258/jisip.v6i3.3469>.



Sanctions for ASN in the Simultaneous Election of Governor and Deputy Governor, Regent, and Deputy Regent, and Mayor and Deputy Mayor in 2017. wherein this SE states that: (1). Violations of ASN Neutrality can also be in the form of violations of the code of ethics or violations of discipline. (2). Sanctions for violations of the code of ethics in the form of moral sanctions can also be subject to administrative sanctions in the form of disciplinary sanctions. (3). Supervision of violations of neutrality is forwarded to KASN, then submitted to PPK for follow-up. (4). The Minister of PANRB has the authority to impose sanctions on KASN recommendations that are not followed up.

c). Circular Letter of the Ministry of Administrative and Bureaucratic Reform Number: B/71/M.SM.00.00/2017 Concerning the Implementation of Neutrality for ASN in the Implementation of the 2018 Simultaneous Regional Elections, the 2019 Legislative Elections, and the 2019 Presidential and Vice Presidential Elections. where in this Circular Letter it states: (1). For civil servants who provide support for candidates for Regional Head/Deputy Regional Head by being involved in campaign activities to support candidates for Regional Head/Deputy Regional Head and holding activities that lead to siding with candidate pairs who are participants in the PILKADA before, during and after the campaign period, they will be given a medium-level disciplinary penalty in the form of a 1-year delay in salary increase, a 1-year delay in rank, and a demotion of one level 1 year lower; (2). For civil servants who provide support to candidates for Regional Head and Deputy Regional Head by using facilities related to their positions and campaign activities, they will be subject to severe disciplinary sanctions in the form of demotion to a lower rank for 3 years, transfer to demotion to a lower position, dismissal from office, or dishonorable dismissal. (3). Disciplinary action is carried out by the procedures stipulated in Government Regulation 53 of 2010 concerning Civil Servant Discipline and State Civil Service Agency Regulation Number 21 of 2010 concerning Provisions for Implementation of Government Regulation Number 53 of 2010 concerning Civil Servant Discipline.

Based on the general provisions of Law Number 5 of 2014, the State Civil Service Agency (BKN) is a non-ministerial institution tasked with carrying out government duties in state civil service management. Regarding the supervision of ASN neutrality, BKN can not play a direct role. However, the results of KASN recommendations to PPK regarding violations of neutrality committed by ASN employees are submitted to BKN and become input for BKN in supervising and controlling the implementation of norms, standard procedures, and ASN management criteria.

Suppose the PPK does not implement the recommendations that KASN has set regarding violations of the principle of neutrality committed by its subordinates. In that case, BKN can ask the PPK and the Authorized Official (PyB) to implement them immediately. When there is an act of neglect by the PPK or PyB against violations of the principle of neutrality by ASN employees, BKN can block the data of the PNS who committed the breach. The consequence is that the employee cannot process the promotion by the Regulation of the State Civil Service Agency Number 2017 concerning Guidelines for Blocking Civil Servant Data in National Civil Service Data.<sup>11</sup>

Then the latest effort that has been made by the current Government to supervise the neutrality of ASN is through a Joint Decree (SKB) issued by the Government through the State Civil

<sup>11</sup> Putra Perdana Ahmad Saifulloh, "REKONSTRUKSI PENGATURAN HAK DIPILIH PEGAWAI NEGERI SIPIL DALAM PEMILIHAN UMUM LEGISLATIF MENURUT UUD 1945," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 11, no. 2 (August 31, 2022), <https://doi.org/10.33331/rechtsvinding.v11i2.920>.

Service Agency (BKN), the Ministry of Empowerment of State Apparatus and Bureaucratic Reform (PANRB), the Ministry of Home Affairs, the State Civil Service Commission, and the General Elections Supervisory Agency which regulates the neutrality of State Civil Apparatus (ASN) during the Pilkada. Number 05 of 2020 Number 800-2836 of 2020 Number 167 / KEP / 2020 Number 6 / SKB / KASN / 9/2020 Number 0314 Concerning Guidelines for Supervision of the Neutrality of State Civil Apparatus in the Implementation of Simultaneous Regional Head Elections in 2020.

According to the Minister of Empowerment of State Civil Apparatus and Bureaucratic Reform, establishing the SKB is a guideline for Government Agencies in maintaining the neutrality of ASN Employees. This is especially true in implementing the 2020 Simultaneous Regional Elections, building synergy, increasing effectiveness and efficiency in supervising the neutrality of ASN Employees, and realizing legal certainty in handling violations of the principle of neutrality of ASN Employees.

The existence of KASN is expected to be a fortress for ASNs, who have upheld the spirit of ASN neutrality against the politicization of bureaucracy that is detrimental to the state. Referring to Article 27 of the ASN Law, it is stated that KASN is a non-structural institution that is independent and free from political intervention to create professional and high-performing ASN employees, provide services fairly and neutrally, and become the glue and unifier of the nation.<sup>12</sup>

However, the problem with the provisions regarding KASN lies in the principle that the explanation of the ASN Law does not explain at all the importance of establishing a non-structural institution, compared to, for example, the implementation of the duties, functions, and authority of supervision and imposition of sanctions that have been carried out by the ministry in charge of empowering state apparatus. Thus, the existing duties and authorities have not been running well. So, the solution is not to build a new institution but rather, first of all, to strengthen and improve the performance of coordination and accountability of the ministry.

## 5. Conclusion

ASN neutrality in the Regional Head Election is inevitable if Indonesia's political and bureaucratic systems are not improved, moreover, for ASN in regions that are weak against political power, especially political intervention by incumbents who run in the PILKADA. This cannot be separated from the position of the regional head as the Civil Service Development Officer (PPK), who has the authority and power to influence the position of ASN in the bureaucracy. Within the framework of consistency with the principles of Article 2 letter f of the ASN Law regarding the realization of the principle of neutrality in the bureaucracy and to answer the issue of political intervention, the legislature should revise Article 53 of the ASN Law regarding the delegation of authority given to regional heads to appoint, dismiss, and transfer ASN because it has a great opportunity to be politicized ahead of the PILKADA. In the process of regional head elections, the increasing number of violations of ASN neutrality shows that the politicization of bureaucracy is still closely related to the practice of governance, especially ahead of the PILKADA. The position of ASN as a driving machine for the bureaucracy can change into a political machine for the authorities. This impacts the professionalism of ASNs in government administration.

<sup>12</sup> Nurwita Ismail, "MERIT SYSTEM DALAM MEWUJUDKAN TRANSPARANSI PEMBINAAN KARIER APARATUR SIPIL NEGARA," *Al-Adl Jurnal Hukum* 11, no. 1 (June 26, 2019): 33, <https://doi.org/10.31602/al-adl.v11i1.2023>.

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