

Guarantee of Legal Protection Against the Neutrality of Civil Servants in Regional Head Elections

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Abstract : One of the fundamental steps of bureaucratic reform, the Government has established a new policy infostering Civil Servants (PNS) as part of Civil Servants, which in principle directs the political attitude of PNS from those who previously had to support certain political groups to be neutral or impartial, hereinafter commonly referred to as the policy of political neutrality of civil servants. But the phenomenon is when Civil Servants are required to be neutral in every political moment, but the other side of the government is actually in the opposite position, namely not being neutral. Whereas when it is not possible to prove that the actions of the Civil Servant as the reason for being transferred or non-employed by the Head of the Region, then the actions of the Head of the Region are arbitrary. Based on the description as stated, the problem to be examined is What is the nature of the neutrality of civil servants in regional head elections? What is the form of the guarantee of protection against the neutrality of civil servants in regional head elections. This research is a *normative juridical research* , namely a research in the field of law that examines positive legal provisions, legal principles, legal principles and legal doctrine in order to answer the legal issues at hand. The results of the study show the neutrality nature of civil servants point is on the actions of every civil servant impartiality of all any form of influence and not take sides to the interests of anyone , as referred to in Article 2 of Law Number 5 of 2014 concerning the State Civil Apparatus. The basic values of the state civil apparatus include carrying out their duties in a professional and impartial manner and creating a non-discriminatory work environment. The code of ethics and code of conduct stipulates that civil servants of the State carry out their duties in accordance with the provisions of the laws and regulations , according to orders from superiors or authorized officials, as long as they do not conflict with laws and government ethics. Ensure that there is no conflict of interest and implement the disciplinary provisions of the state civil apparatus.

Keywords : *freedom , equality , justice*

1. INTRODUCTION

Democracy was originally an idea about a pattern of life that emerged as a reaction to inhumane socio- political realities in society. The reaction certainly comes from people who think idealistically and wisely. There are three ideal values that support democracy as an idea of life, namely *freedom , equality and justice* . In real life, this idea is realized through the embodiment of symbols and the essence of the basic values of democracy that really represent or are lifted from the realities of life which are commensurate with the values themselves ¹.

One form of democracy is general elections to choose leaders in a country by involving the participation of people who have met the requirements to determine their leaders. It can be stated in other words , in determining the leader of a country, sovereignty is really in the hands of the people. This is only found in countries that adhere to democracy. The manifestation of democracy is general elections which are held to elect leaders of the nation by involving the participation of the people in exercising their rights to choose leaders who are liked by the people. This shows that in general elections, sovereignty is really in the hands of the people in the sense that it is the people who have the right to choose a leader to lead themselves within a predetermined time frame in accordance with the constitution of a country.

Neutrality is the state and attitude of being neutral (impartial, free). One of the fundamental steps of bureaucratic reform, the Government has established a new policy in fostering Civil Servants (PNS) as part of the Civil Service, which in principle directs the political attitude of PNS from previously having to support

¹Sanit. *Indonesian Political Representative*, Yogyakarta: CV. Eagle. 1985, page 83

certain political groups to being neutral or impartial, which in turn commonly called the political neutrality policy of civil servants.

In carrying out their duties, authorities and responsibilities as state apparatus and public servants, it is important for Civil Servants (PNS) to have freedom from external influences (such as the influence of certain political parties). The absence of external influence is intended so that Civil Servants can carry out their duties and responsibilities in a more democratic manner so that the results of carrying out their work do not benefit any particular party. This is also intended to further clarify the line of accountability of the Civil Service itself. In order to be free from external influences, functionally and organizationally civil servants must have their political rights guaranteed, for example in determining the choice of political parties in general elections or regional head elections (Pilkada). However, it needs to be limited if the person concerned participates actively in the management of a political party either directly or indirectly. The neutrality of Civil Servants is the character and form of service provided by Civil Servants to any political official, whether from the party in power or from the party that is not in power.

The existence of a neutral Civil Servant ideally will not reduce the quality of providing special services to all political officials from any ruling political party. To ensure the realization of a neutral civil servant, it is necessary to have:

1. Stability, which ensures that every Civil Servant does not need to worry about the future and is calm in pursuing a career;
2. Appropriate remuneration to ensure the welfare of Civil Servants and their families, so that the desire to commit corruption, both official corruption and property corruption, is reduced;
3. Systematic and transparent promotions and transfers, so that every Civil Servant can predict his future career and can measure personal abilities.

Meanwhile, Regional Head Elections (Pilkada) are an integral part of the political system reform that is being implemented by the Republic of Indonesia. This is based on Law Number 23 of 2014 concerning Regional Government, this general election is carried out with the aim of obtaining local leaders who are the people's choice, no longer elected by the Regional People's Representative Council (DPRD). This election system is recognized as a big leap in the democratic system implemented in Indonesia. However, its implementation still raises many problems. One of the things that emerges and is interesting to observe is the link between the promotion mechanism for career officials and the processes of mutation that occur in the bureaucracy and regional elections which have created a new pattern of non-neutrality in the current reform era.

As a mechanism for directly electing regional leaders by the people, if the candidate pair for Regent and Deputy Regent who is contesting is not currently holding the position of regional head/deputy regional head (*incumbent*), of course this issue of neutrality will not occur. Problems arise when the *incumbent leader* returns to fight in the regional elections to maintain his leadership in the second five years, the *incumbent leader* can use the regional bureaucratic machine to smooth his steps to become a leader for the second time. Therefore, according to the mandate of the Election Law, regional heads who are still in office (*incumbent*) are required to take leave during the campaign period with the aim that those concerned do not use state facilities, including not mobilizing civil servants to carry out campaigns to support the *incumbent*.

Looking further, it turns out that regional heads have the authority to appoint and dismiss Civil Servants (PNS) who are considered disloyal to themselves. This is where the dilemma experienced by Civil Servants (PNS) to uphold its neutrality. Civil Servants (PNS) are being held hostage by Pilkada activities. Civil Servant (PNS) must choose whether to remain neutral and not side with the regional head (*incumbent*) who is a candidate for post-conflict local election contestation, or Civil Servant (PNS) must be involved in practical politics by supporting the *incumbent*. Consequently, if the candidate he supports wins, it means that his Civil Servant career will go up and if he loses, then his Civil Servant career will end.

On the other hand, there is a phenomenon when Civil Servants are required to be neutral in every political moment, but on the other hand, the government is in an inverted position, that is, it is not neutral. Whereas when it is not possible to prove that the actions of the Civil Servant as the reason for being transferred or non-employed by the Head of the Region, then the actions of the Head of the Region are arbitrary. This phenomenon was evident in the 2017 Regional Head Elections in Ambon City and the 2002 Regional Head Elections in South Buru Regency. In the election of the regional head, one example of a case of reciprocity from the partiality of Civil Servants against the *incumbent candidate* in South Buru Regency was found in the form of promotion due to partiality, but not a few were transferred because they did not vote or sided with the *incumbent* and we can find in the regional head elections in Ambon city in 2017, and in almost all regions where the participants in the political competition were *incumbents* and newly elected candidate pairs. Even though according to the logic of the position structure, this cannot be done quickly without going through a process and assessment of the criteria and stages of staffing. This reality shows that there is regulatory ambiguity in the non-neutrality of civil servants (PNS) in regional head elections in Ambon City and South Buru Regency. This often happens at every moment of regional head elections due to the lack of supervision carried out by supervisory agencies and the absence of strict sanctions against all actions of regional heads who carry out arbitrary

mutations and non-jobs against Civil Servants. Whereas it turns out that the arbitrariness of the regional head's actions is usually without being accompanied by valid evidence but only based on likes and dislikes and personal conclusions because of the emotional closeness of unscrupulous civil servants (PNS) with the opposing pair of regional head and deputy regional head candidates.

Even though there is weak supervision and there are no sanctions for actions taken by regional heads, the problems of promotion and transfer of civil servants (PNS) that occur as a result of supporting candidates *incumbents* and new candidate pairs in regional head elections are also interesting to observe. In fact, the issue of personnel management, especially the issue of promotion and transfer of civil servants (PNS) is not affected by the political process that is taking place. However, in reality, regional head elections where the *incumbent regional head* and a new pair of candidates nominate themselves as participants can create a dilemmatic situation for civil servants (PNS). According to Law Number 23 of 2014 concerning Regional Government and Menpan Circular Letter (SE) that civil servants (PNS) must be neutral in the implementation of regional head elections, but on the other hand PP Number 9 of 2003 states that the career fate of civil servants (PNS) is largely determined by the elected Regional Head, which is a political position and not an administrative position ²

Neutral here means that civil servants have voting rights to choose a pair of candidates in the general election, it's just that they are not allowed to be involved in supporting and siding with one of the candidate pairs, including the *incumbent pair*. One of the fundamental steps of bureaucratic reform, the government has established a new policy in fostering the State Civil Apparatus (ASN) as part of the civil service, which in principle directs the political attitudes of Civil Servants or State Civil Apparatus from previously having to support certain political groups to becoming neutral or impartial, hereinafter commonly referred to as the political neutrality policy of the State Civil Apparatus.

In article 2 letter f of Law Number 15 of 2014 concerning the State Civil Apparatus that every civil servant must be neutral in behaving and working in public agencies. At the concept level, these rules have been made very well. The neutrality of civil servants in every regional head election is "mandatory". With the existence of this neutrality rule, it is very possible that the quality of the regional head elections will be better. Civil Servants, KPU, Bawaslu, Polri, TNI and other stakeholders are the main instruments in holding neutral regional elections.

The legal relationship between the state and its employees is called the *Openbare Dienstbeterking relationship* (public service relationship). The essence of public service relations is the obligation for the employee concerned to be subject to appointment in certain types of positions so that the employee concerned does not refuse (unconditionally accept) his appointment in a position determined by the government.

Anticipating the problems as previously stated and maintaining the neutrality of civil servants and protecting the political rights of civil servants (PNS) in providing public services, the government issued Government Regulation Number 53 of 2010 concerning Civil Servant Discipline which introduces the need for employee neutrality. Civil Servants in carrying out their duties, functions and obligations as the State Civil Apparatus (ASN).

On the other hand, the facts show that based on the results of preliminary observations in regional head elections in Ambon City and in South Buru Regency as research locations, it indicates that there are several cases where there is no legal protection for the political rights of civil servants as Indonesian citizens, namely to elect regional heads who according to conscience, and the consequence of this action is that civil servants (PNS) elect regional heads when the *incumbent* wins or a new pair of candidates, mutations must be carried out both in areas that are far from and/or remote, for civil servants whose choices differ.

2. RESEARCH METHOD

Research is a scientific activity that is systematic, directed and purposeful. For this reason, the data or information collected must be relevant to the problem at hand. This means that the data is related, relevant and precise. A method is a way of working or working procedures to be able to understand the object that is the target of the knowledge concerned. The method is a guideline for how a scientist learns and understands the steps faced.³

A. Research Type

This research is a *normative juridical research*, namely a research in the field of law that examines positive legal provisions, legal principles, legal principles and legal doctrine in order to answer the legal issues

²Jhony P Lengkong, *Neutrality of Civil Servants in the 2017 General Election of Regional Heads of Gorontalo Province*, article, page 30

³Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Brief Overview*, Raja Grafindo, 2017, Jakarta, page 6

at hand.⁴ Research on the neutrality of civil servants in regional head elections was carried out in order to analyze and find answers about how the model of legal protection for civil servants is required to remain in a neutrality concept in regional head elections but then becomes the object of arbitrary action from the government (regional heads) who are considered to have different political preferences.

B. Problem Approach

The research approach used in this study is the statutory approach *and* the conceptual approach.⁵ The main approach in this research is the statutory approach *and* the conceptual approach, this is considering the statutory approach as the legal basis for analyzing the problems in this research which is strengthened by the conceptual approach. (*conceptual approach*) to obtain legal arguments in answering the problem.

C. Legal Materials

Sources of legal materials in this study come from library research, where library research uses primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are materials whose contents are binding because they are issued by the government or institutions that have authority. Furthermore, secondary legal sources are materials in the form of books and other printed materials, as well as *software*, namely by accessing a number of data via the internet (*downloading*) various books, scientific journals and research results, and tertiary legal materials are legal materials that support primary legal materials and secondary legal materials.

In this study the legal material collection techniques used included:

- a. Primary legal materials, namely binding legal materials, which consist of:
 1. The 1945 Constitution of the Republic of Indonesia
 2. Law Number 5 of 2014 concerning State Civil Apparatus
 3. Law Number 23 of 2014 concerning Regional Government as amended by Law Number 2 of 2015
 4. PP No. 9 of 2004 concerning the Authority to appoint, transfer and dismiss civil servants
 5. Government Regulation 94 of 2021 concerning Discipline for Civil Servants
 6. BKN Regulation Number 21 of 2010
- b. Secondary legal materials, namely legal materials that provide an explanation of primary legal materials, namely:
 1. Various library materials related to the Neutrality of Civil Servants in Regional Head Elections.
 2. Research results, seminars and comments from legal experts relating to the problem.

D. Analysis of Legal Materials

Analysis of the materials used in the study was carried out in a qualitative and comprehensive analysis.⁶ Qualitative analysis is describing legal materials in a quality manner in the form of sentences that are orderly, coherent, logical and do not overlap effectively so as to facilitate interpretation of legal materials and understanding of the results of the analysis. While comprehensive means that the analysis is carried out in depth and from various aspects according to the scope of the research.

Analysis of legal material in this study was carried out using descriptive techniques because the results of this study are expected to be able to provide or describe a systematic, detailed and comprehensive picture of the neutrality of civil servants in regional head elections.

1. RESULTS AND DISCUSSION

Forms of Legal Protection Guarantee Against the Neutrality of Civil Servants in Regional Head Elections

1. State Civil Apparatus Code of Ethics

To realize the national goals, civil servants are needed as state civil servants. Employees of the state civil apparatus to carry out public service duties, government duties and certain development tasks, public service duties are carried out by providing services for goods, services and or administrative services provided by employees of the state civil apparatus. The government tasks are carried out in the context of implementing

⁴Peter Mahmud Marzuki, *Legal Research*, Pranada Media, Cet.I, Jakarta, 2005, page 35

⁵Ibid, Peter Mahmud Marzuki, page 93

⁶ Ibid., page 146

general government functions which include institutional utilization, staffing and management. Whereas in the context of implementing certain development tasks it is carried out through national development (*cultural and political development*) as well as through economic and social development (*economic and social development*) which is directed at increasing the welfare and prosperity of the whole community.

Be able to explain the duties of public service, government duties, and certain development tasks for civil servants in the state, apart from having a profession, competence, they must also have moral integrity and manifest commendable behavior (good behavior), not disorganized behavior (deviant behavior). In an effort to maintain the professionalism, competence and integrity of the state civil apparatus, in this case civil servants, hereinafter abbreviated as PNS and government employees with a work agreement, are Indonesian citizens who meet certain requirements, are appointed as state civil servants on a permanent basis by the civil service supervisor to occupy the position of government of the state civil apparatus as a profession that has the obligation to manage and develop itself and is obliged to be accountable for its performance requires a code of conduct in the form of a "code of ethics" in order to carry out duties and obligations and avoid all prohibitions prohibited by laws and regulations.

Right is an authority or power granted by law, an interest protected by law, both private and public. Can be interpreted that the right is something that deserves or deserves to be received. In order to be able to carry out their duties and responsibilities properly, to increase productivity, ensure the welfare of ASN and be accountable, every ASN is given rights. The rights of PNS and PPPK regulated in the ASN Law are as follows:

- 1) Salary, benefits and facilities;
- 2) Paid leave;
- 3) Pension and old age security;
- 4) Protection; and
- 5) Competency development While PPPK has the right to receive: 1) Salary and allowances; 2) Leave; 3) Protection; and 4) Competency development

In addition to the rights mentioned above, based on article 70 of the ASN Law it is stated that every ASN employee has the right and opportunity to develop competence. Based on Article 92 of the ASN Law, the Government is also required to provide protection in the form of: 1) Health insurance; 2) Work accident insurance; 3) death guarantee; and 4) Legal assistance.

While the obligation is a contractual burden or responsibility. In other words, obligation is something that should be given. The obligations of ASN employees as stated in the ASN Law are:

- 1) Loyal and obedient to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and the legitimate government;
- 2) Maintaining the unity and integrity of the nation;
- 3) Implement policies formulated by authorized government officials;
- 4) Comply with the provisions of laws and regulations;
- 5) Carry out official duties with full dedication, honesty, awareness, and responsibility;
- 6) Demonstrate integrity and exemplary attitude, behavior, words and actions to everyone, both inside and outside the official office;
- 7) Keeping office secrets and can only reveal office secrets in accordance with the provisions of the laws and regulations; and
- 8) Willing to be placed throughout the territory of the Unitary State of the Republic of Indonesia.

1.1. ASN Professional Ethics

Civil servants and government employees as state civil servants and as professions who have the knowledge, skills and behavior needed by a state civil servant in carrying out their duties, namely upholding their integrity and expertise in carrying out official duties both in the form of public service duties, government duties and development task. The code of ethics is the foundation for the state civil apparatus, in which the code of ethics includes several prerequisites that need to be used as guidelines for behavior and behavior, among others, in carrying out public service duties in an ethical context, it should provide services to the public that are oriented to the needs and satisfaction of service recipients, so that can increase competitiveness in the provision of goods and services.

In the professional ethics of carrying out the duties of serving civil servants in a professional manner, they must behave and uphold the principles of service, namely transparency, accountability, conditional, participatory, equal rights in the sense of non-discrimination, distinguishing ethnicity, race, religion, class, gender and economic status, balance of rights and obligation. The professional ethics of state civil servants in carrying out government duties is to uphold their integrity and expertise in carrying out government activities including creating efficiency and effectiveness so that government tasks can be right on target in accordance with the wishes and expectations of the community as owners of government, integrity is manifested in the form of honesty, fairness, responsibility, commitment to governance that is clean from corruption, collusion and nepotism. The professional ethics of state civil servants in carrying out development tasks in order to improve

people's welfare and solve various problems faced by society as the subject of development, not the object of development.

Civil servants and government employees with work agreements as state civil servants who violate the code of ethics stipulated by regulations made by institutions regarding the code of ethics may be subject to moral sanctions, both in writing and in private and stated by the personnel supervisor, moral sanctions in the form of closed statement or public statement. In imposing moral sanctions on state civil servants who violate the code of ethics, the types of code of ethics violations committed by state civil servants must be stated. State civil servants in the framework of enforcing the code of ethics are subject to moral sanctions as well as being subject to administrative actions in accordance with laws and regulations on the recommendation of the Code of Ethics Council.

Therefore, in upholding the code of ethics for state civil servants in an institution, including local government institutions, it is necessary to establish a code of ethics council. The code of ethics assembly can carry out the following tasks:

- 1) Make a decision after examining state civil servants who have violated the code of ethics.
- 2) Make a decision after the relevant civil servants are given the opportunity to defend themselves.
- 3) The decision of the code of ethics council is taken by consensus.
- 4) In the event that consensus deliberations do not reach an agreement, decisions are taken by majority vote.
- 5) The decision of the code of ethics council is final. The Code of Ethics Council is obliged to convey the decision of the results of the assembly session to the authorized official as material in imposing moral sanctions and other sanctions on the state civil apparatus.

1.2. Violation of the ASN Code of Ethics

State civil servants who are carrying out their official duties both in public service duties, governmental tasks and development tasks, intentionally and unintentionally are often caught up in violations of the code of ethics. Allegations of violations of the code of ethics are usually obtained from written complaints or the findings of the superiors of the state civil apparatus. Written complaints about alleged violations of the code of ethics submitted by the public or the findings of the leadership require a clarification by the code of ethics assembly and are obliged to examine to obtain data and information whose validity can be accounted for before providing recommendations regarding moral sanctions to the state civil apparatus, results of clarification and results of research on Alleged violations of the code of ethics can be used as a basis for imposing moral sanctions, superiors of state civil servants who are suspected of having violated the code of ethics in a hierarchical manner are obliged to formulate them to higher officials.

1.3. Sanctions for Violating the ASN Code of Ethics

Civil servants and government employees with work agreements as state civil servants based on reports from the public and findings from institutional leaders or the results of supervision of internal government reports on state civil servants suspected and even proven based on the results of an examination of the code of ethics council formed by regional institutions of violating the code ethics can be subject to sanctions. Sanctions for violating the code of ethics include:

- a. Apologies, set forth in a letter of apology.
- b. Statement of regret, set forth in a statement of regret.
- c. A statement of attitude is prepared to be subject to discipline based on the provisions of the applicable laws and regulations, if it repeats the act or commits other violations of the code of ethics set forth in the attitude statement.
- d. Sanctions are submitted in writing and stamped to the authorized official, the authorized official can announce sanctions openly through official meeting forums such as at flag ceremonies, bulletin boards, mass media and or other forums deemed necessary, and can also be carried out in a closed room and known only by the civil servants of the country concerned who are subject to sanctions for violating the code of ethics.

2. Legal Protection for Civil Servants Who Are Transferred After Regional Head Elections

The development of conceptions of thought and recognition of human rights has emphasized the existence of sovereignty in the hands of the people.⁷ With the recognition of human rights, freedom emerges which is also

⁷Subandi Al Marsudi, *Pancasila and the 1945 Constitution in the Reform Paradigm*, (Jakarta: RajaGrafindo Persada, 2001), p. 81.

the hallmark of a democratic culture. This is as stated by Robert A. Dahl who considers that democracy focuses on aspects of political freedom as divided into five criteria, including:⁸

First, effective participation. Before a policy is made by the state, the people must have the opportunity to express their views effectively.

Second, the sound equation. Everyone must have an equal and effective opportunity to vote and all votes must be counted equally.

Third, an enlightening understanding. Every citizen must be given the opportunity to study relevant alternative policies. Fourth, oversight of the agenda. Various state policies are always open to change if the people want it. Fifth, the inclusion of adults. In this case, all or at least most adults who are permanent residents should have the full nationality rights implied by the previous four criteria.

The characteristics of a country that adheres to democracy are marked by the holding of elections on the one hand, and on the other hand also the growth and development of political parties as a forum for the people to articulate their wishes. Democracy is also commonly interpreted as a representative, freely elected government representing the people. Democracy can also be defined not only as government by the people but also in the famous formulation of Abraham Lincoln, namely government for the people that democracy as government is in accordance with the people's choice.⁹

The management or management of the State Civil Apparatus is basically the policies and practices in managing human aspects or human resources in organizations including in this case the procurement, placement, transfer, promotion, development, assessment and appreciation. Law No. 5 concerning State Civil Apparatus mentions in detail the management of these employees for both Civil Servants and PPPK as stated in the Merit section of the system. State Civil Apparatus Management, consisting of Civil Servant Management and PPPK Management, Management of Higher Leadership Positions, Organizations and Information Systems.

Management of Civil Servants includes preparation and determination of needs, procurement, rank and position, career development, career patterns, promotions, transfers, performance appraisal, payroll and benefits, awards, discipline, dismissal, pension and old age benefits, and protection. The management of civil servants at central agencies is carried out by the central government in accordance with statutory provisions. Civil servant management at regional agencies is carried out by local governments in accordance with statutory provisions.

The neutrality of Civil Servants in general elections or local elections does not actually cause a loss of political rights either to run as a candidate or to vote. ASN neutrality is more likely for limited involvement of the bureaucracy in socializing or campaigning for certain candidates or political parties. This is intended to make ASN still able to separate its position as ASN which has an important position as a state administration officer. Considering that ASNs are carrying out their duties to serve the needs of the community in relation to certain parties, including in elections or local elections, this has the potential to influence or even pressure the community to follow the direction of support. Apart from that, of course there are concerns about prohibiting support for the opposing party. For this reason, ASN must place its neutrality properly. With neutrality as stipulated in existing regulations, ASN is endeavored not to take advantage of its position to mobilize support for certain parties. This will be interpreted as non-neutrality in the election because it is considered to have the potential to benefit certain parties.

Normatively, the ASN Law classifies ASN Employees into 2 (two) types, which consist of:

a. Government employees; and

Civil servants are ASN employees who are appointed as permanent employees by the Personnel Development Officer and have a national employee registration number.¹⁰ In following up on orders/mandates under Article 17, Article 18 paragraph (4), Article 19 paragraph (4), Article 20 paragraph (4), Article 57, Article 67, Article 68 paragraph (7), Article 74, Article 78, Article 81, Article 85, Article 86 paragraph (4), Article 89, Article 91 paragraph (6), Article 92 paragraph (4), and Article 125 of the ASN Law, the Government issued Government Regulation Number 11 of 2017 concerning Management of Civil Servants Civilian (hereinafter written PP Management PNS). This implies that PP Management Civil Servants, is a legal basis and guidelines in the framework of the management of civil servants in Indonesia.

b. Government Employee with Employment Agreement

The definition of PPPK, normatively, has been formulated in the provisions of Article 1 number 4 of the ASN Law, namely as follows:

⁸Robert A. Dahl, *Regarding Democracy Briefly Exploring Theory and Practice of Democracy*, (Jakarta: Yayasan Torch Indonesia, 2001), p. 52-53.

⁹Arend Lijphart, *Democracies Patterns of Majoritarian and Consensus Government in Twenty-One Countries* in Satya Arinanto, *Legal Politics 1: Collection of Reading Materials for Legal Politics Lectures*, (Jakarta: Faculty of Law, University of Indonesia, 2001), p. 25.

¹⁰Article 7 paragraph (1) Law Number 5 of 2014 concerning State Civil Apparatus

"Government Employees with Work Agreements, hereinafter abbreviated as PPPK, are Indonesian citizens who meet certain requirements, who are appointed based on work agreements for a certain period of time in order to carry out government tasks".

PPPK is essentially an ASN Employee who is appointed as an employee with a work agreement by the Civil Service Development Officer in accordance with the needs of Government Agencies and the provisions of the ASN Law.¹¹ In line with the demands and needs for regulation regarding PPPK, and in order to implement the provisions of Article 107 of the ASN Law, in 2018 the Government issued Government Regulation Number 49 of 2018 concerning Management of Government Employees with Work Agreements (hereinafter written PPPK Management).

When viewed from a normative aspect, based on the understanding of PNS and PPPK as stated above, there are several differences between PNS and PPPK, namely as follows:¹²

- a. Civil servants are ASN employees who are appointed as permanent employees by the Civil Service Development Officer and have a National Employee Identification Number to occupy government positions. Whereas PPPK is an ASN employee who is appointed as an employee with a work agreement by the Civil Service Development Officer for a certain period of time in order to carry out government duties in accordance with the needs of government agencies and the provisions of the ASN Law;
- b. The rights of civil servants are salary, benefits and facilities, leave, pension and old age benefits, protection and competency development. While PPPK rights are salary, benefits, leave, protection, and competency development.
- c. The basis for dismissing civil servants is dismissal at their own request, dismissal for reaching the retirement age limit, dismissal due to Downsizing Organizations or Government Policies, Dismissal for being physically and/or spiritually incapable, Dismissal for Death, Death, or Disappearance, Dismissal for committing a crime/ irregularities, dismissal due to disciplinary violations, dismissal due to running for or being nominated for president and vice president, chairman, deputy chairman and members of the People's Representative Council, chairman, deputy chairman and member of the regional representative council, governor and deputy governor or regent/mayor and Deputy Regent/Deputy Mayor, Dismissal for Being a Member and/or Management of a Political Party, Dismissal for not Serving as a State Official, Dismissal for Other Matters, such as civil servants who have finished taking leave outside the state's responsibility not carrying out their obligations to report at RI in writing to the parent agency no later than 1 (one) month after completing leave outside the state's responsibility. While the dismissal of the PPPK is based on Termination of the Employment Agreement, namely Termination of the Employment Agreement with Respect, due to the Expiration of the Term of the Employment Agreement, Death, at Your Own Request, Downsizing of the organization or Government Policy Resulting in a Reduction of PPPK, Physical and/or Spiritual Inadequacy ; Termination of an Employment Agreement with Respect Not at His Own Request, due to being sentenced to prison based on a court decision that has permanent legal force for committing a crime with a minimum imprisonment of 2 (two) years and the crime was committed without planning, committing a disciplinary violation PPPK level is severe, or does not meet the agreed performance targets in accordance with the work agreement; Disrespectful termination of the PPPK work agreement, due to violation of Pancasila and the 1945 Constitution of the Republic of Indonesia, is punishable by imprisonment or confinement based on a court decision that has permanent legal force for committing a crime of office or a crime committed has anything to do with public office and/or criminal offenses, being a member and/or administrator of a political party, or being sentenced to prison based on a court order that has permanent legal force for committing a crime punishable by imprisonment for a minimum of 2 (two) years or more and the crime was committed with a plan.

Meanwhile, ASN Employees have a position as an element of the state apparatus, where ASN Employees carry out policies set by the leadership of Government Agencies, and ASN Employees must be free from the influence and intervention of all groups and political parties.¹³

Referring to the State Civil Apparatus Law, if a worker has the status of a Civil Servant, then the person concerned can only be dismissed with respect on the following grounds:

- a. die;
- b. at own request;

¹¹ Article 7 paragraph (2) of Law Number 5 of 2014 concerning State Civil Apparatus.

¹² Law Number 5 of 2014 concerning State Civil Apparatus, Government Regulation Number 11 of 2017 concerning Management of Civil Servants, and Government Regulation Number 49 of 2018 concerning Management of Government Employees with Work Agreements.

¹³ Article 8 and Article 9 of Law Number 5 of 2014 concerning State Civil Apparatus.

- c. reach the retirement age limit;
- d. downsizing government organizations or policies that result in early retirement; or
- e. incapable so that they cannot carry out their duties and obligations.¹⁴

Civil servants can also be dismissed with respect not at their own request for committing serious civil servant disciplinary violations. ¹⁵Dismissal is carried out dishonorably if civil servants:¹⁶

Devising Pancasila and the 1945 Constitution of the Republic of Indonesia; b. sentenced to imprisonment or confinement based on a court decision that has permanent legal force for committing a crime of office crimes or crimes related to office and/or general crimes; c. become a member and/or administrator of a political party; or d. sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime with a minimum imprisonment of 2 (two) years and a crime committed with premeditation.

ASN is in a dilemma position due to political interests. On the one hand, they are employees who are appointed, placed, and transferred and dismissed by personnel development officials (PPK) who are political officials. Conditions like this make their careers often associated with the political interests of KDP. On the other hand, ASN must be neutral to maintain professionalism in carrying out governance and public services. As policy implementers and holders of power and authority in managing budgets and resources within the bureaucracy, ASN is very likely to be used as a "tool" for political officials to be able to maintain/gain their authority and power. Neutrality is an important principle in the implementation of public duties and services, government tasks and development tasks.

WGF Hegel ¹⁷argues that the government bureaucracy is a bridge that connects the state (the state) with society/people (the civil society). Within the domain of this society there are various special interests that carry the interests of professionals and entrepreneurs, while the state represents the general interest. In his conception, because the bureaucracy is an intermediary that is in the middle between two interests, then he must be in a neutral position. Meanwhile, according to Karl Max, the state cannot be neutral but must side with the dominant class. According to the concept, the state does not represent the public interest, but represents the special interests of the dominant class. Thus, in the view of the Marxists, bureaucracy is an instrument in which the dominant class exercises its domination over other social classes.

In essence, the neutrality of civil servants in political activities cannot be separated from the dichotomous paradigm between administration and politics developed by Woodrow Wilson. According to Wilson, state administration or civil servants have the function of carrying out political policies that administration or civil servants are outside political studies, and administrative issues are not in the realm of politics. ¹⁸Wilson's concept was reinforced by Frank Good now who taught that there are two main functions of government that are very different from each other, namely politics and administration. Politics is the party that is obliged to make and formulate policies, while administration is related to the implementation of these policies.¹⁹

Based on this, what is meant by a neutral definition is a condition of a person who is impartial and does not have a certain attitude towards other people or certain parties, or it can also be called a condition of a person who is not influenced by any party outside of himself. Referring to the essence of neutrality, it can be stated that in neutrality civil servants are only directed to carry out their duties and functions in administering government, development and serving the community, without participating in political (apolitical) *activities*.

This means that neutrality does not stand in a vacuum, but correlates with the essence of objectivity, because the nature of objectivity always boils down to neutral conditions, it is clear that neutral substances are impartial. In fact, impartial conditions will be met if they are outside the system and do not provide room for interest intervention.²⁰ The intervention of political parties in bureaucratic institutions disrupts bureaucratic work procedures which should be based on the principles of sound, rational, and law-based government management. If this is done, the employee development system will be damaged, because the appointment of

¹⁴Law Number 5 of 2014, Op.cit, see Article 87 paragraph (1).

¹⁵Law Number 5 of 2014, Op.cit, see Article 87 paragraph (2).

¹⁶Law Number 5 of 2014, Op.cit, see Article 87 paragraph (4).

¹⁷Tatang Sudrajat, " *PNS Neutrality and the Future of Democracy in the 2015 Simultaneous Regional Elections* ", Journal of Administrative Sciences, Vol. XII No. 3 of 2015, p. 358.

¹⁸Warsito Utomo, *Indonesia's New Public Administration: Paradigm Change from State Administration to Public Administration*, Yogyakarta: Student Library, 2006, p. 6.

¹⁹Ibid

²⁰Tedi Sudrajat and Agus Mulya Karsona, " *Questioning the Meaning of Neutrality for Civil Servants in Law Number 5 of 2014 concerning State Civil Apparatus* ", Journal of Media Hukum, Vol. 23, No. 1 of 2016, p. 93.

officials is only based on the principle of *like and dislike* in the context of political interests, not based on consideration of ability, capacity and work experience.²¹

The desire to bring a neutral bureaucracy to politics is intended to avoid abuse of *power* against the bureaucracy. This is because institutions or institutions led by bureaucrats have a function in order to provide services to the community, not merely to be able to meet the needs of certain individuals and/or groups. The things that become problematic in the politicization of ASN which should be neutral are the placement of positions within the bureaucracy. This is a problem because the superiors of ASN are public officials who are closely related to politics.

An official may not use the facilities attached to him for political gain, may not make policies that benefit or harm certain parties, and may not mobilize ASN with or without making certain promises to ASN. The success of bureaucratic reform is very dependent on the role of a leader or high-ranking official in the bureaucracy. Political power is used as an instrument in formulating a policy that aims solely for the interests of the nation and the state, so that ASN as part of the executor can comply and implement it properly in the framework of realizing *good governance*.

Rulers and politicians may change every time there is a change of regime and general elections are held, but the bureaucracy must remain in its position, and be sterile from the influence of the authorities and politicization. The basic principle of bureaucratic political neutrality includes two important principles, namely:

- 1) Bureaucratic institutions must be free from favoring certain groups and free from the use of bureaucratic facilities and infrastructure for the benefit of certain parties or groups even though they are in the majority. The bureaucracy is an administrative institution that works professionally based on statutory regulations.
- 2) The concept of neutrality is intended so that the bureaucracy is free from the interference of political parties in the recruitment and placement of bureaucratic officials. Bureaucratic officials are appointed and positioned in certain positions solely on the basis of professionalism, fit *and* proper, not because of political interests.

Eko Prasjo explained that in Germany there is a separation between state, government, and administration, these three things are big sub-systems in running the country and have their respective tasks, so they cannot be combined. This shows that conditions in Indonesia are different from what should have happened. The bureaucracy should not be intervened by the interests of a group of people or politics, including in implementing policies and managing the state civil apparatus. ASN in carrying out their duties and functions is independent, and uses the principle of monoloyalty only to the state.

In implementing ASN neutrality, each country in the world has its own way. As an example of the neutrality of ASN in the United States, which is the result of a dichotomy between politics and administration, where the policy-making process is different from the execution process. In England, politics and administration collaborate in the Whitehall System, ASN is expected to maintain neutrality when there is a change in parliament and not participate in political debates even though they have the right to do so. This is because there is mutual trust between politicians and ASN itself.

The principle of bureaucratic neutrality will work well if all elements of government, whether executive, legislative, judiciary, and all independent, independent, and non-ministerial institutions, are able to work together to carry out all the rules as stipulated in laws and regulations. By regulation, arrangements regarding ASN neutrality already exist, but synergy is needed between stakeholders, in this case officials, not to intervene or provide loopholes for ASN. It is appropriate for legislators to stipulate that a person who deliberately causes or directs the state apparatus not to be neutral must be subject to sanctions. Thus, not only are ASNs who are required to act professionally with neutrality, but other parties who deliberately direct them not to be neutral can be subject to sanctions, because this is the beginning of non-neutrality.

Whereas the responsibility to protect the legal rights of ASN after the election is due to their neutrality, among others:

1. Legislative

The legislature in terms of greatly influencing efforts to protect the rights of ASN itself, by means of having to be able to make limits on the use of the authority of apparatus and bureaucratic officials through various regulations, and strictly supervise the implementation of regulations. The law must also set limits on the authority of bureaucratic officials and provide sanctions for violations of that authority. The power asset to act on behalf of the state must be strictly defined, so that the bureaucratic apparatus cannot act arbitrarily. This tightening is intended so that legislatures with different backgrounds from different political parties can carry out the oversight function of each other, thus minimizing the politicization of the bureaucracy by those in power.

²¹Budi Setiyomo, *Bureaucracy in Political & Administrative Perspective*, Third Edition, Bandung: ScholarlyNuances, 2016, p. 77.

Strict restrictions and supervision also need to be carried out by all elements, especially the press agency in carrying out its control function.

2. KSN

KSN in realizing the neutrality of an ASN. Neutrality is the spirit in the ASN law. One aspect that is very important in upholding ASN neutrality is the aspect of supervision. An effective ASN supervision system is urgently needed to ensure that ASNs in carrying out their duties comply with applicable laws and regulations, in order to create a professional and accountable bureaucracy.

As an integral part of efforts to realize *good governance* and bureaucratic reform is the establishment of a non-structural institution as stipulated in Law No. 5 of 2014 concerning the State Civil Apparatus, namely the existence of the State Civil Apparatus Commission (KASN). 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 fair and neutral services, and become the glue and unifier of the nation.²²

One of the objectives of establishing KASN as Article 28 letter (d) of the ASN Law is to create neutral ASN employees. The biggest foundation for KASN is to be in charge of maintaining the dignity and dignity of ASN to always act neutrally in the interests of the state. Of course, this is not something that is easy for KASN, but the authority has been given by the legislators of the law. Great hopes are pinned on this new institution to be able to consistently enforce various laws and regulations to create a neutral ASN.

ASN are often afraid to avoid intervention from their superiors, because there is concern about their future in the government bureaucracy, because the incumbent is a regional personnel supervisor. With the KASN, all ASN policies and management are always monitored so that a person is not easily demoted (demotion) or promoted (promotion) without a clear basis and in accordance with the criteria. This is because ASN management uses a merit system, as Article 1 point (22) of the ASN Law states that the merit system is an ASN management policy that is based on qualifications, competence and performance in a fair and reasonable manner regardless of political background, race, skin color, religion, origin, gender, marital status, age or condition of record.

This is a solution, which is expected to be able to eliminate the paradigm of nepotism in the process of filling positions so that an ASN does not need to fear political intervention from any party whose intent and purpose clearly has an impact on state losses. The existence of KASN is expected to be a stronghold for ASN which has so far upheld the spirit of ASN neutrality over bureaucratic politicization that is detrimental to the state. Conversely, if an ASN practices politics or is loyal to parties that are detrimental to the state, KASN can recommend sanctions to staffing officials and authorized officials for follow-up. This is as stipulated in Article 32 paragraph (3) of the ASN Law. There are 3 main tasks of KASN, namely:

- (a) maintain the neutrality of ASN employees;
- (b) supervise the professional development of ASN;
- (c) report on monitoring and evaluating the implementation of ASN management policies to the President.

If referring to the ASN Law, in the framework of the process of filling high leadership positions starting from the formation of the selection committee, announcement, implementation, proposal, determination, and inauguration there must be supervision involvement from KASN. The existence of KASN is considered strategic to oversee the practice of buying and selling or nepotism in filling positions.

In carrying out supervision, KASN has the authority to decide whether there is a violation of the code of ethics and code of conduct for ASN employees. The results of supervision are submitted to the staffing supervisor and authorized officials for follow-up. For personnel development officials who do not follow up on decisions resulting from KASN supervision, KASN recommends to the President to impose sanctions on personnel development officials and authorized officials who violate the merit system principles and provisions of laws and regulations.

Whereas when this is the case, if on the contrary ASN which turns out to be not proven by KSN has violated the ASN code of ethics, or in other words there is no practical political involvement in the holding of regional head elections but is transferred by the elected regional head. The results of a finding if no violations are found against an ASN, the authority of the KSN is limited to issuing recommendations to be carried out by the regional head. But the power to force the KSN to order the contents of the recommendations to be carried out to the regional head does not exist, because it is only a recommendation and that means it can be done or not. We can see this in one of the transfer events carried out by the Mayor of Ambon in 2017 for ASNs in the Ambon City environment.²³

²² Article 27 Law No. 5 of 2014 concerning State Civil Apparatus.

Regarding the above, in order to realize a sense of legal justice for ASN after the election, it is necessary to give more authority to KSN so that the decision is not a recommendation but an order to carry out. The word recommendation is only returned to the principle of *self-respect* or the awareness of officials or regional heads to carry out decisions from the KSN.

4. CONCLUSION

That the form of protection against the neutrality of civil servants in an effort to overcome the problems of civil servant courts after the election of regional heads must certainly get the attention of all parties, especially the central government and the legislature by formulating regulations that protect civil servants so they do not become victims of the courts. civil servant In other words, the government must provide protection to Civil Servants so that they do not become victims in every political moment, both before and after the regional head elections.

REFERENCES

1. Arend Lijphart, 2001. Democracies Patterns of Majoritarian and Consensus Government in Twenty-One Countries in Satya Arinanto, Legal Politics 1: Collection of Reading Materials for Legal Politics Lectures, (Jakarta: Faculty of Law, University of Indonesia, 2001), p. 25. [in Indonesia]
2. Article 27 Law No. 5 of 2014 concerning State Civil Apparatus.
3. Article 7 paragraph (1) Law Number 5 of 2014 concerning State Civil Apparatus
4. Article 8 and Article 9 of Law Number 5 of 2014 concerning State Civil Apparatus.
5. Budi Setiyomo, 2016. *Bureaucracy in Political & Administrative Perspective*, Third Edition, Bandung: Scholarly Nuances, 2016, p. 77.
6. Jhony P Lengkong, 2017. *Neutrality of Civil Servants in the 2017 General Election of Regional Heads of Gorontalo Province*, article, page 30 [In Indonesia]
7. Kartini Kartono and Marzuki, Research Methodology, 1st edition, UII Press, Yogyakarta, page 55
8. Law Number 5 of 2014 concerning State Civil Apparatus, Government Regulation Number 11 of 2017 concerning Management of Civil Servants, and Government Regulation Number 49 of 2018 concerning Management of Government Employees with Work Agreements.
9. Peter Mahmud Marzuki, 2005 *Legal Research*, Pranada Media, Cet.I, Jakarta, 2005, page 35
10. Robert A. 2001. *Dahl, Regarding Democracy Briefly Exploring Theory and Practice of Democracy*, (Jakarta: Yayasan Torch Indonesia, 2001), p. 52-53.
11. Sanit. 1985. *Indonesian Political Representative*, Yogyakarta: CV. Eagle. 1985, page 83
12. Soerjono Soekanto and Sri Mamudji, 2017 *Normative Legal Research A Brief Overview*, Raja Grafindo, 2017, Jakarta, page 6
13. Subandi Al Marsudi, 2001. *Pancasila and the 1945 Constitution in the Reform Paradigm*, (Jakarta: Raja Grafindo Persada, 2001), p. 81.
14. Tatang Sudrajat, 2015. *PNS Neutrality and the Future of Democracy in the 2015 Simultaneous Regional Elections*, Journal of Administrative Sciences, Vol. XII No. 3 of 2015, p. 358.
15. Tedi Sudrajat and Agus Mulya Karsona, 2014. " *Questioning the Meaning of Neutrality for Civil Servants in Law Number 5 of 2014 concerning State Civil Apparatus* ", Journal of Media Hukum, Vol. 23, No. 1 of 2016, p. 93.

16. Warsito Utomo, 2006. *Indonesia's New Public Administration: Paradigm Change from State Administration to Public Administration*, Yogyakarta: Student Library, 2006, p. 6.

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