

Neutrality Of The Government Apparatus's Stance In Simultaneous Regional Elections On The Constitutional State Law

Rian Sacipto¹, Binov Handitya², Eta Yuni Lestari³

¹Universitas Ngudi Waluyo, ²PDIH Unissula Semarang ³Universitas Negeri Semarang

Rian.sacipto@gmail.com

Abstract

The Unitary State of the Republic of Indonesia is based on a constitutional basis (Rechstaat The Rule of Law), which is explained in Article 1 paragraph (3) of the 1945 Constitution. As a consequence of the rule of law, all implementation of the government system including its policies already has rules that must be implemented. The manifestation of a rule of law through the implementation of a form of democracy, namely Simultaneous Regional Elections or what is known as Direct Regional Head Elections (PEMILUKADA) based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This policy is used in the autonomous regional system, which is a region covering Provinces and Regencies / Cities to run Regional Government through a process of changing leadership using the direct general election system. The development of the revolution in the digital era makes all information and media sources on the dynamics of the implementation of Simultaneous Regional Elections, causing polemic in the community over the involvement of the Bureaucracy / State Civil Apparatus in the practice of implementing the General Elections of Regional Heads. Seeing news and rumors in digital media that can be absorbed immediately and no longer makes a secret that the bureaucracy provides support to candidates for Regional Head / Deputy Regional Head in Pemilukada is a prohibition that is contrary to Law No. 5 of 2014 concerning the State Civil Apparatus, Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors, Law No. 7 of 2017 concerning General Elections and Government Regulation No. 53 of 2010 concerning the discipline of the State Civil Apparatus to be neutral and not to be involved directly or indirectly in providing support to candidates for Regional Head / Deputy Regional Head. As a means of publishing research results in scientific papers for lecturers or it is hoped that they can be used as a source and reference material that the specific objectives of this research are to 1) analyze the principle of democratic neutrality of government officials in the implementation of the General Election of Regional Heads in Central Java; 2) realizing good and neutral government administration for government officials in the administration of democracy in accordance with the constitutional state of the Indonesian rule of law. The research was carried out using an empirical juridical approach, in the areas of several cities / regencies that will carry out regional elections by sampling and data collection techniques which were analyzed and then observed the problems observed and continued with direct interviews in the field. The publication

*of this scientific paper is a research conducted based on data collected and processed and analyzed using quantitative analysis, so that researchers know *das sein* and *das sollen*, to find out the facts and dynamics that occur in the condition of this research problem, whether it is in accordance with policy or the prevailing laws and regulations are based on the constitutional state of the Indonesian rule of law.*

Keywords : Neutrality, Civil Servants, Democracy, Constitutional, State Law

1. INTRODUCTION

Implementation of Simultaneous Regional Elections is a process of changing the leadership of Provincial and Regency / City governments which reflects the implementation of democracy in an autonomous region. Referring to Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, it states that; “Governors, Regents and Mayors respectively as heads of provincial, regency and city governments are elected democratically.” It is known that the creation of a noble democracy is sovereignty in the hands of the people which must be implemented in accordance with the mandate of the Indonesian constitution which refers to the principle of the rule of law. Implementation of regulations and various policies to implement Regional Head General Elections (PEMILUKADA) which involve elements of the state, namely the rights of the people directly, making the electoral system more likely to implement democratic principles compared to the representative system or indirect democracy in previous times. The spirit of implementing democracy is directly reflected in the desire the public as voters who wish to vote directly according to their will and conscience without intermediaries, in electing the Regional Head and Deputy Regional Head. The spread of news or issues and rumors on social media and the reality in the field related to the neutrality of the bureaucratic system in terms of involvement in the implementation of the Regional Head General Election is a manifestation of injured and paralyzed principles of democracy and people’s sovereignty which are not respected.

The implementation of a democratic party in determining direct regional head election, must experience a delay based on government policy due to the global pandemic around the world due to Covid-19 which began in early 2020 in Indonesia. This certainly does not eliminate the content in the context of the state to carry out post-conflict local election contestation with the form of democracy and people’s sovereignty in which, each region is expected to be able to carry out smoothly and according to the wishes of the Regional Government, the Regional General Election Commission (KPUD) and also the community itself, where As many as 21 districts and cities in Central Java which will be used as sampling and data collection in this study include 1) Semarang Districts, 2) Kendal Districts, 3) Semarang City, which will participate in the Regional Head Election in 2020 which is planned to be held simultaneously according to schedule which had been determined in September and was finally pushed back on December 9, 2020.

Seeing and reflecting on the implementation of Simultaneous Regional Elections in previous years, several findings of the Bureaucracy were involved and contributed to supporting regional leadership candidates who participated in Pemilukada contestants in various regions. This occurs because the vulnerability in politics is practically influenced by the involvement of ASN in the success of one of the incumbent regional head candidate pairs based on the lure of promotion to ASN which is a tradition and habit that has existed since the era of the Indonesian New Order regime.

The vulnerability of civil servants in practical politics is influenced by the involvement of civil servants in the success of one of the incumbent regional head candidate pairs based on the lure of promotion (Tedy, 2019; 88) This is supported by the existence of Government Regulation Number 9 of 2003 concerning

the Authority of Appointment, Transfer and Dismissal Civil Servants are in the President's position as Central Level Personnel Development Officers, the Governor as Provincial Officers, and the Regent / Mayor as District / City Civil Service Officers, an indication that this authority could be misused by Regional Heads and Deputy Regional Heads certainly occupy position as a Civil Service Officer when elected later.

Historically, the issue of ASN neutrality in democratic parties has actually occurred since the first General Election (Election) in 1955. The issue of ASN neutrality has become increasingly real and complex when there is no comprehensive legal instrument capable of dealing with this problem. Until finally, Law Number 8 of 1974 concerning the Neutrality of State Personnel was presented, which in fact is the first civil service law. The actions and implementation of the damaged local elections and not in accordance with the principles of democracy have made the perspective imprecise that Indonesia is a state of law, which should have played a decisive role or become a central role in the life of society, nation and state in Indonesia (Mahfud MD, 2009). And it can be seen that in the implementation of general elections in the State of Indonesia, which declares itself as a democratic rule of law must be based on general principles of good governance (Rian Sapiro, 2018).

The regulation regarding Bureaucrats / ASN is contained in Law Number 5 of 2014 concerning State Civil Apparatus or referred to as the ASN Law, this is in accordance with the mandate of the Preamble of the 1945 Constitution of the Republic of Indonesia in the context of implementing the ideals of the nation and realizing the goals of the state. Indonesia. "According to (Mardiasmo, 2005) states that the orientation of state development is to create good governance, where the basic meaning is good governance". Learning from the experiences of the post-conflict local elections that have been held in various regions in the previous year, there are facts in the field that ASN has proven to be one of the "commodities" for incumbents to raise their votes and safeguard their chances of being elected. This reason is because it also has an interest, namely to continue and launch many work programs that have been prepared previously and made with the aim of improving the welfare of ASNs. From there it can be seen that the principle of neutrality held and the independence of the ASN employees will be tested.

The Unitary State of the Republic of Indonesia as a constitutional state (Rechtsstaat The Rule of Law), which is explained in Article 1 paragraph (3) of the 1945 Constitution has consequences for carrying out the implementation of the government system including policies in the realization of a rule of law through implementation, one of which is reflected in the form of democracy, namely Simultaneous Regional Elections or what is known as Direct Regional Head Elections (PEMILUKADA) based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Taking into account the complexity of the problems that arise, the framework can be used in realizing bureaucratic transparency (Peter Eigen, 2012), in implementing post-conflict local elections. which should be carried out as well as possible and full of honesty in accordance with what has been included in neutrality as seen from the point of view of ASN (State Civil Service) or Civil Servant (ASN/PNS) as contained in Article 2 letter (f) of Law Number 5 Year 2014 that the administration to policy and management of ASN / PNS based on the principle of neutrality. Neutrality can also be interpreted by being impartial towards anything. The manifest context of neutrality is defined as the non-involvement of the bureaucracy or the subject in terms of the state civil apparatus in the election of regional heads, both actively and passively. Some of the problems that have occurred so far related to the neutrality of the bureaucracy from politics are almost impossible, because if a political party is unable to provide an alternative development and mobilization program for support, the bureaucracy will carry out its tasks itself and seek political support outside the political parties that can help it. In formulating political policies, there is a political support that occurs through three sources, namely; 1) In the outside community, 2) In the legislature, and 3) In the bureaucracy itself (executive branch)

The implementation of the simultaneous regional election which was postponed on December 9, 2020, is expected to be able to be carried out smoothly, as desired by the election organizers and also the community. Based on the background description, in the discussion of this scientific article it is referred to as research on “*Neutrality Of The Government Apparatus’s Stance In Simultaneous Regional Elections On The Constitutional State La*”w aims to provide urgency regarding:

1. Maintain the principle of government employees/ASN neutrality in the implementation of politics in Indonesia.
2. Realizing good state democracy in accordance with the 1945 Constitution.
3. Ward off rumors and rumors that are not true in the community regarding the participation of the bureaucracy in organizing Simultaneous Regional Election.

II. **METHOD**

The author conducted this research using several literary support sources which are used as references from the Guidelines for Monitoring the Neutrality of State Civil Servants to analyze the current ASN surveillance system. In addition, an analysis of the concepts of bureaucratic neutrality was carried out, the researchers conducted interviews and interview techniques in order to obtain answers to problems in the field. This legal study analysis is based on an empirical juridical approach that is empirical research studies to find theories about the legal process of work in society. Data processing is taken from primary data sources, namely data or facts obtained directly through field research including information from respondents regarding the object of research.

III. **RESULTS AND DISCUSSION**

The Unitary State of the Republic of Indonesia as a constitutional state, which is explained in Article 1 paragraph (3) of the 1945 Constitution has consequences for carrying out the implementation of the government system including policies in the realization of a rule of law through implementation, one of which is reflected in the form of democracy. Taking into account the complexity of the problems that arise, the framework can be used in realizing bureaucratic transparency (Peter Eigen, 2012), in implementing post-conflict local elections. which should be carried out as well as possible and full of honesty according to what has been included in neutrality seen from the perspective of ASN (State Civil Service) or Civil Servant (PNS) as contained in Article 2 letter (f) of Law Number 5 Year 2014 that the implementation ASN policy and management based on the principle of neutrality.

Derived from the word “neutral” to neutrality, according to the Big Indonesian Dictionary (KBBI), the word “neutral” means “not taking sides (not helping one party)”. Meanwhile, Neutrality means a condition where a person is sterile from interests, in terms of determining certain things. With a person’s attitude like this, he can be declared to have been neutral. The principle of neutrality based on Law Number 5 of 2014 is that every ASN employee does not take sides from any form of influence and does not take the interests of anyone. According to (Yamin, 2013) Neutrality can also be interpreted by being impartial to anything. In this context neutrality is defined as not involving ASN in regional head elections either actively or passively. According to Rouke in (Watunglawar, 2015), saying that the neutrality of the bureaucracy from politics is almost impossible, because if a political party is not able to provide alternative development programs and mobilization of support, the bureaucracy will carry out the tasks itself and seek political support outside the political party. who can assist him in formulating political policies. According to Rouke, this political support was obtained from three sources, as follows is :

- 1) In the outside community
- 2) In the legislature
- 3) And in the bureaucracy itself (Executive Brauch)

The legal subject of human resources in the field of employment is the State Civil Apparatus. Based on Article 1 number 1 of the Law. No. 5 of 2014, the State Civil Apparatus is a profession for ASN and Government Employees with Work Agreements in Government agencies (Hartini & Tedy, 2017). In accordance with article 2 of Law Number 5 of 2014 concerning ASN, that the implementation of ASN policy and management is based, among others, on the principle of neutrality. The purpose of “the principle of neutrality” is that every ASN employee does not take sides from any form of influence and does not take the interests of anyone “. Daniel Lev: 2017 in his scientific paper said that all government agencies at the national and local levels were functionally weakened during the New Order era. This is not just a practice of problems, but and is more deeply an ethos problem, a re-orientation away from responsibilities as legally defined (especially towards the public) and closer to the convenience, giving or opportunity that comes from the hook of political problems.

Simultaneous Regional Elections are a process carried out to determine people to fill political leadership positions at the regional level and are carried out through direct elections. Election is a mechanism for selecting and delegating or transferring sovereignty to trusted political party people or organizations. Another definition of general election is a means or means of finding out what the people want about the direction and future policies of the state. There are at least three kinds of general election objectives, that is :

- a. Allows a change of government safe and orderly
- b. To exercise people’s sovereignty
- c. In order to implement the human rights of citizens.

The fact of the implementation of the form of democracy, namely the Concurrent Election, the community found that there were ASN employees who did not act neutral, so that the public had to be brave to report the ASN to the personnel supervisor, inspectorate, bureau or division assigned to supervise the ASN where the ASN worked and also report to Bawaslu as an institution given the task of supervising and prosecuting the implementation of the Election. This research is a development of scientific papers and theses / theses in the previous period to find the state of the art against any principles in order to realize the Neutrality of ASN in the General Election which will be presented in the discussion of research on data processing techniques obtained. Several observations and references from researchers obtained, that ASN is strictly prohibited from participating in political activities, including providing support to the candidate for the Regional Head contestant, but has failed to change thoughts and behavior that are no longer a secret in the general public. A deeper research discussion is expected to bring about an implementation and renewal for the change and progress of the country in realizing a noble and more dignified democracy.

IV. **CONCLUSION**

The Indonesian state based on law in its regulation and constitution is the maker of various regulations or policies, one of which is to regulate the integrity, professionalism and neutrality of ASN for the realization of democratic Simultaneous Regional Elections as mandated by Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

The formation of laws and various government regulations must be well aware that the implementation of the General Election does not stand alone to realize the principles of a democratic state. ASN must understand very well that the implementation of the principle of neutrality is maintained even though it

has not yet entered the campaign period for the General Election of the General Election on December 9, 2020. Regulations on the rules for ASN to be neutral are constantly emphasized to always be carried out and carried out by various actions and socialization by Election organizers and the pillars who must sustain him. In this context, the integrity, professionalism and neutrality of ASN is one of the important pillars that are absolutely needed to realize one of them is Good Governance and democratic governance in order to prevent abuse of power

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