

NEUTRALITY OF THE STATE CIVIL APPARATUS IN REGIONAL HEAD ELECTION BASED ON JUSTICE VALUES

Gunarto
JawadeHafidz
Sutrisno

ABSTRACT

This study aims to examine the weaknesses of neutrality of the State Civil Apparatus and to formulate the neutrality of ASN (State Civil Apparatus) in the regional head election based on justice values. This research is a non-doctrinal legal research/socio legal research that is legal research that obtains data from primary and secondary data sources by using statute approach and case approach in Regional Election in Surakarta, Sragen and Bantul Regency. The nature of this research is descriptive analysis that intends to provide an overview of the existing condition of neutrality settlement of state civil apparatus related to the work of law in society. It used primary data of interviews and observation. Secondary data includes literature study and documents. The results showed that in Surakarta, Sragen, and Bantul, some Civil Servants are not neutral with several factors. One factor is that they have a better career leap when the supported candidates win. This is related to Article 53 of Law no. 5 Year 2014 where the Regent/Mayor as Officer Personnel who has the authority to determine the appointment, transfer and dismissal of the State Civil Apparatus. So that ASN who feel struggled to support the candidate who wins his career will increase. This article needs to be reconstructed so ASN can act professionally and neutrally in every election based on justice.

Keywords: Reconstruction of ASN Neutrality, Regional Head Election, Justice

A. INTRODUCTION

The regional head election sparked bureaucratic politicization. In many areas, the regent who re-runs for the election almost always involves the mobilization of civil servants, whether ordinary officials, sub-district heads, heads of offices, head of villages and others to win him. Whereas in a democracy, the bureaucracy should be freed from the influence and binding of political ties with political forces so that it is hoped that the service to the society given by neutral bureaucracy is impartial and objective. A neutral or neutral bureaucracy gives rise to political corruption that alters the process of election is colored by actions that are not commendable.¹

On 20 January 2015, the plenary session of the House of Representatives officially approved Perpu No. 1 of 2014 on Amendment to Law Number 22 Year 2014 on the Election of Governors, Regents and Mayors into law. The endorsement is then established by the government as Law Number 1 Year 2015 or often referred to as the Regional Head Election Law. Shortly enacted, the Act was revised to be revised by the issuance of Law No. 8 of 2015 on Amendment to Law Number 1 Year 2015 on the enactment of Government Regulation in lieu of Law Number 1 Year 2015, regarding the election of Governors, Regents and Mayors into law, enacted and enacted on March 18, 2015. Not long after revised by the issuance of Law No. 10 year 2016.

Since the issuance of the Regional Election Law, the General Elections Commission (KPU) has been conducting a regional head election simultaneously both governors, mayors and district heads on 9 December 2015. One of the most significant changes with the coming into effect of this Law is regarding the Regional Election heads conducted simultaneously or in conjunction with both the date and the day.

Direct election is nothing new for the people of Indonesia, since the Presidential and Vice Presidential election, it had been held directly. Direct Regional Election heads by the people in the regions has been implemented since the enactment of Law Number 32 Year 2004 regarding Regional Government.

The implementation of direct Regional Head Election has brought changes to the culture of government at the regional level, in this case the repositioning of bureaucratic relations with politics that is about the issue of bureaucratic neutrality towards politics.² However, the direct Regional Election heads is done first and it is something different, considering the magnitude of regional authority since the rolling out of regional autonomy. Regional heads are most instrumental in determining the success of

¹Moh Mahfud MD, *Evaluasi Pemilu dalam Perspektif Demokrasi dan Hukum. Dalam Demokrasi Lokal Evaluasi Pemilu di Indonesia*, Konstitusi Press, Jakarta, 2012, p.12

²Sudiman Dalim, *Politikasi Birokrasi Netralitas dan Mobilitas PNS dalam Regional Election*, Titian Pena Abadi, Jakarta, 2010, p. 5

a region's development. In other words, people expect more to the head of the region in improving the conditions that already exist.

The regional head elections for Central Java in 2015 were held simultaneously in 21 districts/municipalities. For the Soloraya region includes, Solo, Boyolali, Sukoharjo, Wonogiri, Sragen and Klaten. Results from 6 (six) regions conducting the Regional Election according to data from the 5 (five) regional Panwaslu (the election supervisory committee), there are some non-neutral civil servants involved in the election, except Sukoharjo District which is declared clear from the case of civil servant neutrality.

For the year 2017 Regional Election in Central Java implemented in 7 cities/regencies including Salatiga, Jepara, Pati, Batang, Brebes, Banjarnegara and Cilacap. In order to the regional election run well and produce qualified regional heads according to the expectations of the community, required system, management, law enforcement and actors³ for the success of the Regional Election heads cannot be separated from the role of the apparatus, Regional Election Commission and its staff, Panwaslu, Panwascam, District (PPK) to the Voting Committee (PPS). Professional, competent and neutral officers will be able to realize the Head Regional Election honestly and fairly.

However, in every Regional Election, neutrality of civil servants or the State Civil Apparatus is questionable. It can be seen from indications of non-neutral of the State Civil Apparatus in Regional Secretary area, as well as several agencies, offices, institutions and others. This is understandable given the history of Indonesia's bureaucracy which for more than 32 years was made a political ride by the ruling class to maintain its power.

On the one hand, the Civil Service is a government apparatus that is professionally prosecuted and neutral in carrying out its duties, the other hand they are also members of the public who have political and economic interests as to who will be elected. Often these interests are more dominant so that what is expected as an honest and fair election can be threatened.

Various interests play a role in threatening the neutrality of the apparatus, especially those who are civil servants, this is not a new thing. The neutrality of Civil Servants has been distorted since the middle of the Old Order government. At that time the three political parties of the nationalist (PNI), religion (Masyumi) and communist (PKI) vied to instill influence on bureaucratic apparatus and use bureaucratic officials as their organization's block building.

These three major parties have mass influences and mass supporters in every department, or even dominate a department. As an example PNI, the party had a mass organization politically affiliated to the PNI in almost every government agency or, in other words, the PNI became a major force because it was supported by bureaucracy. Likewise with the PKI, the PKI even had many mass organizations including government agencies such as Labor Union of the Ministry of Defense, Labor Union of the Department of Hunting and many other trade unions. It reflected the magnitude of the intervention of political interests in the life of the bureaucracy at the time. The law cannot always be seen as the guarantor of legal certainty, the enforcers of the rights of the community or the guarantor of justice. Lots of blunt legal rules do not work to cut off arbitrariness, unable to uphold justice and cannot present itself as a guideline to follow in solving cases that the law should be able to answer. In fact many legal products are more colored by the political interests of dominant power holders.⁴

In general, the political changes in the Guided Democracy era did not provide a change in the map of political power which is characterized by three contexts: First the role of political party marginalized as an actor in the political system. The second prominence of President Soekarno was as the patron of power. Third, the official inclusion of military power was in political scene. According to Mahfud M.D. the circumstances of the Guided Democracy were also influenced by the current legal product⁵. Every legal product is a product of political decisions so that law can be seen as the crystallization of political thoughts interacting among politicians⁶. Although from the point of view of *das sollen* there is the view that politics should be subject to the rule of law, but empirically *das sein* said that the law in reality is determined by the political configuration.

The birth of the New Order under President Soeharto was no better than before. Civil servants served as a means to win certain political parties through the enforcement of mono-loyalty to superiors, namely the government in power and accompanied by the obligation to win the dominant party at that time. The more intensive the relationship between bureaucracy and political power raised the term mono-loyalty or single loyalty. This single loyalty implies that the bureaucracy should and only support the new order government, and channel its political aspirations into the Working Group. This mono-loyalty principle is compulsory for all Civil Servants so that employees are prohibited from becoming members of a political party.

To support Golkar in the 1971 election, an interest group was formed which brought together all Civil Servants from all departments, non-departmental government agencies, and state enterprises. This new organization, called *Korps Pegawai Republik Indonesia* (KORPRI), was established under Presidential Decree No. 82/1976. The Indonesian Corps of Employers (KORPRI) is the only authorized container for Civil Servants, and its membership is mandatory. Therefore we see that the actual political activity in fact never subsided at all with the increasingly fierce development activities, meaning that

³Didik Supriyanto, *Penataan Kembali Sistem Pemilihan dalam Pemilukada. Dalam Demokrasi Lokal*, Konpress, Jakarta, 2012, p. 211

⁴Moh Mahfud. MD. *Politik Hukum di Indonesia*. Rajawali Pers. Jakarta. 2009., h. 9

⁵Mahfud.M.D., *Pergulatan Politik dan Hukum di Indonesia*, Gema Media, Yogyakarta, 1999, p.59

⁶*Ibid.*, p. 4

politics remained as commander in the New Order era. However, the political clutter of the New Order era shifted from the hands of the parties to the Armed Forces (especially the army), which means that since the new order of ABRI has become a very decisive political force⁷.

The presence of bureaucracy in politics was stronger when Golkar placed bureaucracy into one of its political channels, namely line B, in addition to the other two lines, namely line A (ABRI) and line G (from Golkar itself). The supremacy of Golkar in the political bureaucracy can be seen in the political order designed by the New Order regime. Golkar can intervene and take control of bureaucratic networks from the center to the district, even to the sub-district level⁸. The President acted as Chairman of the Board of Trustees of Golkar, and the ministers and their subordinates became Golkar coaches in their respective departments. Such political arrangements did not stop at the central level, but also to the local level, where the governors and regents/mayors became the Chair of the Golkar Advisory Council in their respective territories. Through these political arrangements, ultimately the performance of ministers, governors, regents/mayors, and sub-district heads and village heads/villages were measured by their success or failure to win Golkar in every election.

The bureaucratic alignment to one of the political forces of the New Order era has dragged the country into an authoritarian regime. During that time, the bureaucracy is not much who has the courage to really enforce a fair state bureaucracy in neutrality and neutrality in justice. This is because the bureaucracy has been trapped in the behavior and morality that gives more privilege to the subjective interests of certain political forces, rather than the interests of the larger state and nation.

The existence of political changes after the New Order has changed the position of bureaucracy in the political constellation in Indonesia, because the Civil Servants are required to change their political attitude. The attitude demanded by Civil Servants was to be in favor of Golkar, to be neutral in any political power. In the context of any discussion including elections whose names of problems can arise either of a predictable or abrupt nature. In general understanding the problem arises because there is a gap between expectation and reality⁹.

In the reform era, the professionalism and neutrality of Civil Servants was still a question mark. There were various laws and regulations that form the basis of the law of the neutrality of civil servants, including Law No. 5 of 2014 on State Civil Apparatus (ASN), Law Number 43 Year 1999 on the Principles of Personnel, Government Regulation Number 53 Year 2010 on Discipline Civil Servants, Law Number 10 Year 2008 regarding the General Election of Members of DPR, DPD and DPRD, PP No. 5 and 9 of 1999 and replaced by Government Regulation Number 37 Year 2004, regarding the prohibition of civil servants into members of political parties, Circular of Minister of Administrative Reform Number: SE / 08 / M.PAN / 3/2005, regarding the neutrality of civil servants in the Regional Election Head, Letter of Head of National Personnel Agency Number K.26-17 / V.19.14 / 99 concerning civil servants who become members of political parties.

Letter of the Chairman of General Election Commission (KPU) Number 1077/15 / VI / 2004, and also one of the attitude of the 5th National Conference of KORPRI which is the only civil service organization outside the official, stated "civil servant does not involve themselves in political party activities". Almost all areas of life are governed by the laws of law, through the recognition of human behavior this law traces almost all areas of human life.¹⁰ It includes electoral arrangements. However, there are still many cases where civil servants became a team of successful certain parties. Similarly, in the implementation of Regional Election which for the first time conducted in mid-2005 until now it found many elements who become supporters of one candidate for governor or regen /mayor in Regional Election.

In Law No. 5 of 2014, Article 9 Paragraph (2) states that ASN Officers must be free from the influence and intervention of all political parties and parties, while Article 12 states that ASN Officers serve as planners, executors and supervisors of the general administration of duties and national development through the implementation of policies and professional public services, free from political intervention, and clean of corruption, collusion and nepotism practices.

The previous law was Law Number 43 Year 1999 Article 3 paragraph (2) mentioned that civil servants should be neutral from the influence of all political parties and parties and not discriminatory in providing services to the public. While in paragraph (3) it is mentioned that to ensure the neutrality of civil servants as referred to in paragraph (2), public servants are prohibited from becoming members and / or managers of political parties.

Penalties against civil servants who violate neutrality, namely the imposition of disciplinary punishment is the delay of periodic salary increase for 1 (one) year, postponement of promotion for 1 (one) year, lower rank demotion for 1 (one) year.

The imposition of severe disciplinary punishment is a lower rank demotion for 3 (three) years, transfer in the case of lower-level job descent, exemption from office, dismissal with respect not on his own request as a civil servant, and dismissal with respect as civil servants. Related to this, SatjiptoRahardjo argued that the main factor for the working of a rule of law is human, because the rules/laws are created and implemented man, the law should make happy¹¹. Furthermore, for law enforcement there are several

⁷Mahfud M.D, *Demokrasi dan Konstitusi di Indonesia*, Rineka Cipta, Jakarta, 2000, p. 75

⁸SudimanDalim, *op cit.*, p.52

⁹Moh. Mahfud MD. *Op cit.*, p. 5

¹⁰Esmi Warassih, *Pranata Hukum Sebuah Telaah Sosiologis*, Pustaka Magister, Semarang, 2014, p. 71

¹¹SatjiptoRahardjo, *MembedahHukumProgresif*, Kompas Media Nusantara, Jakarta, 2007,

factors that influence it, among others; legal factors, law enforcement factors, facilities or facilities that support law enforcement, community factors and cultural factors.¹²

Looking at the history of Indonesia's bureaucracy, the neutrality of the bureaucracy unaffected by political power has never been realized. In fact, to create a democratic governance order, a government bureaucracy which is neutral from party interests and political forces is needed. If the government bureaucracy is made neutral, then the people as a whole will be served by the government bureaucracy, because the bureaucracy does not prioritize and favor one of the interests of certain groups of people. The favor to the whole people is the same as implementing democracy. While the bureaucratic partisanship of one of the forces of a ruling political party tends to provide opportunities for the infertility of corruption such as corruption, collusion and nepotism.

Since the beginning of its implementation, elections have always been colored by engineering, money politics, public lies, and other frauds due to the intervention of political interests against the bureaucracy. In many areas, many civil servants are used as instruments to win the election with promise and expectation if win or election will be given something appeals to the apparatus including the position, not least the Regional Head Election, especially if one of the candidates is the head of the previous period/incumbent. Civil servants are faced with a dilemma between neutrality and loyalty to the boss/superiors.

The law should be able to keep up with the times, be able to answer the changing of time with all the basic in it, and able to serve society by relying on the aspect of morality of human resources of law enforcer itself.¹³

Underlying the above issues, it is interesting to examine in depth the factors that affect the neutrality and weaknesses and the neutrality of ASN justice.

B. RESEARCH METHODS

This research is a non-doctrinal legal research/socio legal research that is legal research that obtains data from primary and secondary data sources using statute approach and case approach in Regional Election in Surakarta, Sragen and Bantul Regency. The nature of this research is descriptive analysis that intends to provide an overview of the existing condition of neutrality settlement of state civil apparatus related to the work of law in society. This research used Primary data of interviews and observation. Secondary data included literature study and documents.

The authors took this neutrality research in 3 (three) areas, covering Surakarta City, Sragen Regency, and Bantul Regency of DIY. The reason why the authors chose the location, because the Regional Election held on December 9, 2015, there were several heads of the Regional Device Work Unit (SKPD)/Organization of Regional Devices, Heads of Fields, Heads villages involved in Regional Election due to the influence of one candidate for regional heads coming from incumbent. This invited the assumption that there were allegations of intervention from the head of the region or team success against the State Civil Apparatus especially Civil Servants.

C. RESEARCH RESULT AND DISCUSSION

Weaknesses of State Civil Apparatus Neutrality in the Regional Election

1. The Ambiguity Weakness of the Rule of Law

Article 2 Sub-Article f of the ASN (State Civil Apparatus) Law states that the organizers of policy and management of civil state apparatus are based on the principle of neutrality. In its explanation, it is stated that the principle of neutrality is that every apparatus is impartial from any form of influence and is impartial to any interests. On the other hand, the Law asserts that civil servants who are part of the ASN are still given the right to vote in the election of the president, the governor or the regent/mayor. Here has emerged a double meaning.

Article 53 of the ASN Law also creates a very crucial matter in which the Regent/mayor is mentioned as the Civil Service Officer who has the authority to determine the appointment, transfer and dismissal of officials residing in his territory. This article often becomes the trigger of the apparatus to do not neutral in the implementation of elections because of the element of subordinate loyalty to superiors so as to rule out the rules. This Article can be aligned with Article 122 paragraph (5) and explanation of the number 8 of Law no. 32 of 2004 on Regional Government, where as a regional staff manager is the Secretary of Regions not the regent / mayor. Regent/Mayor is a supposed political official as a staffing officer is the highest career official in the area of the regional secretary. This is so that political officials do not intervene in employment policies.

Asynchronous overlaps also occur between ASN Law Articles 119 and 123, requiring that civil servants from registering as candidates for regent/mayor should withdraw from civil servants. Conversely in Law no. 8 of 2015 and the Regulation of the

General Elections Commission (KPU), determines otherwise, the new civil servant resigns once determined by the KPU as a candidate, and no later than 60 days must meet the requirements. This proves that there is no synchronization of rules with each other. This case occurred in Surakarta, Head of Women's Empowerment Agency for Child and Family Planning Protection, Drs. AnungIndroSusanto, M.M., nominated by several political parties under the name of the Solo Bersama Coalition (KSB) has not resigned as a civil servant before it is determined by the KPU.

The regulatory ambiguities that give rise to legal loopholes to regulate the neutrality of civil servants are also found in SE Menpan RB, dated July 4, 2014. Number: B / 2677 / M.PAN-RB / 7/2014. About Civil Service Neutrality addressed to the Ministers of United Indonesia Cabinet, Cabinet Secretary, Attorney General, Military Commander, Chief of Police, Heads of Government Institutions of Non-department, Secretaries of State Institutions, Heads of Secretariat of Commission/Council/Board, Governors and Regents/Mayor. Emphasize that ASN employees must be free from the influence and intervention of all political parties and parties so that civil servants are prohibited from providing support by being a participant of the campaign by using the attributes of parties or civil servants attributes. In this provision raises multiple interpretations, PNS may follow the campaign as long as he/she does not use the attributes of parties or civil servants attributes.

The confusion also occurs in SE Menpan RB dated June 22, 2015. Subject ASN neutrality and prohibition of the use of government assets in the Regional Head Election simultaneously. In this letter, there is also a multi-interpretation clause, that every civil servant is prohibited from providing support to the regional head/deputy head of the region by engaging in campaigning to support candidates for regional heads/representatives. This sentence is understood by the civil servant that it may follow the campaign of the candidate of origin does not provide support, it is very difficult to understand whether the civil servants are giving support or not.

2. The Weak of Law Enforcement Rules

The constitutional system in Indonesia is a state of law (*rechtsstaat*) and not a state of power (*maachsstaat*), the state of law aims to protect the entire nation of Indonesia and the entire blood of Indonesia, realizing the life of a peaceful and prosperous nation and nation mandated in the 1945 Constitution. The logical consequence of a constitutional state is that the state must place law as commander and make it the only means to solve all problems.

The rules of law and legislation used are formal, normatively the provisions therein constitute a positive law binding on all citizens. Based on this constitutional basis, the life of the nation, the state and all the policies determined must be implemented under the laws of the state in the form of legislation. The positive law seeks to organize almost all the joints of life, therefore the law looks powerful.¹⁴

Powerful law in addition to having a real meaning, it can be interpreted substantially as legal centralism, ie the law of the country applies uniformly to all people who are in jurisdiction territory. Thus there is only one law imposed in a country, namely the state law established by state institutions authorized to make the legal institutions. When a problem arises or there is a misunderstanding between the state's positive law and other legal institutions, whether it is customary, ethical, or custom, the state is entitled to force the settlement of the matter by using the applicable positive law in that country.

Related to law enforcement in the Regional Election, Election Organizing Body The General Elections Commission (KPU) has regulated the code of ethics with a joint decision between the KPU, the Election Supervisory Board (Bawaslu) and the Election Organizing Committee (DKPP) number 13/2012, number 11/2012 and number 1/2012 Code of Conduct for General Election Organizer. The procedure of guidance is regulated by the Regulation of the Board of General Election Organizer (DKPP).¹⁵

In the Implementation of general elections including elections of regional heads as regulated by law recognize some provisions of violations namely first, types of violations of administrative provisions of elections, namely violations other than violations in the category of electoral crimes and violations of the code of ethics election. The procedure for settlement becomes the authority of the KPU. The second is the types of criminal violation provisions election. The processes and procedures for settlement are handled by the Center of Integrated Law Enforcement (Gakumdu) whose members consist of a combination of 3 (three) institutions namely the Attorney, Police and Bawaslu/Panwaslu. The third is the provisions of violations of the code of conduct of elections. Mechanisms, procedures, guidelines and settlement are done by the General Elections Administrator's Council (DKPP). The four disputes of Election Result Dispute (PHP) where the procedure of law and its completion become the authority of the Constitutional Court (MK).

Solo Public Daily Post, Tuesday, November 14, 2015. Loading a photo selfie was quite phenomenal, because the photo consists of several village heads who in fact as community figure and State Civil Apparatus (ASN), as well as the chairman of the Voting Committee (PPS) did not allegedly neutral. Murjioko Chairman of KDP Jebres posed with two fingers placed with two fingers Aria Bima, a politician member of the House of Representatives (DPR) PDIP faction which is the party of pioneer candidates FX HadiRudyatmo and H. Ahmad Purnomo. Meanwhile, the three urban village heads are Jebres Ari DwiDaryanto. Tegalharjo Urban Village Ahmad Khoironi, and LurahMangkubumenAgungWijayanto with several poses where one of them held up two fingers also tails allegedly not neutral.

¹⁴Agus Sulistyono, *Netral Saja Tidak Cukup* dalam Solo Ramah Demokrasi, KPU Surakarta, Surakarta, 2015, p. 33

¹⁵*Ibid*, p.38

As public figures and Civil State Officials, they were summoned by the Mayor and Vice Mayor Supervisory Committee to be clarified. Subsequent results of clarification by Panwaslih were recommended for guidance and further processing by authorized officers in accordance with applicable legislation. While Murjioko as Chairman of PPK Jebres by Panwaslihwererecommended to the Election Commission of Surakarta City to be dismissed as chairman until the end of elections implementation on December 9, 2015. KPU followed up by calling for clarification and assessment before taking a decision. After conducting the clarification, it further studied set out in plenary at the KPU of Surakarta with the decision to give written warning.

The basic consideration of the KPU handed down a written warning decision, among others:

- a. Violation of the code of ethics is one of the election violations which is the authority of the Election Organizing Committee (DKPP), in which the mechanism of reporting and guidance is regulated by DKPP regulation. KPU Solo had followed up the recommendation of Panwaslih with the stage calling the Chairman of PPK jebres.
- b. The position of the Chairman of the PPK in accordance with PKPU No. 3/2015 on the working procedures of the KPU, Provincial KPU, Regency / Municipal KPU, PPK, PPS and KPPS, stipulates that to appoint a PPK chairman to a plenary session to appoint one member of the PPK to the chairman.
- c. Based on existing evidence that a photo with two fingers stuck with two fingers Aria Bima raised multi interpretation and cannot be categorized as partisan action in favor of one particular candidate pair.
- d. Up to 10 days before the election of December 9, 2015, based on the results of clarification, assessment, information collected and performance appraisal. Chairman of PPK Jebres performs duties, responsibilities and performance well, he was in carrying out his duties can maintain neutrality.¹⁶

Responding to this, according to the author's opinion, it is fine if KPU only give punishment in the form of written warning. However, the KPU should consider that they should be intelligent in relation to matters that are vulnerable to the alignment of certain candidates. Why so, it because they are together with the three heads of urban villages who are supposed to maintain neutrality anywhere, anytime, as mandated in the laws and regulations that bind them.

In connection with the head of Jebres Village, Tegalharjo and Mangkubumen, Panwaslih recommended Pj. Mayor and Regional Personnel Agency to follow-up coaching and processing in accordance with applicable legislation about ASN rules that violate the neutrality. In reality the three heads of villages are not subject to any action, that the act according to the BKD study is not or yet can be categorized as violating the neutrality, so it is not subject to any sanctions¹⁷. This is an indication of the weakness of law enforcement, those who are considered to have alleged violations of neutrality that support the incumbent never be penalized.

External factors Law enforcement that has not been well implemented also occurred in Bantul District. As featured in Solopos.com¹⁸. Provisional Officials (Pjs) of Bantul Regent took time to impose sanctions on 15 civil servants officials who declared the State Personnel Board (BKN) to violate the rules regarding ASN's neutrality. A number of activists who joined the Bantul Democracy Survey Forum on Wednesday, January 20, 2016 went to the regent's office. They made allegations to the Regent of Bantul Sigit Supto Rahardjo because he considered stalling the time in imposing sanctions on the 15 civil servants. Clearly BKN through official letter has declared 15 officials ranging from Sekda (regional secretary) to sub-district have violated the discipline of civil servants as regulated in Government Regulation (PP) no. 53/2010 article 4, paragraph 15 letter a regarding the prohibition of involvement in campaign activities in favor of candidates for regional head. The civil servants are caught in the declaration of the incumbent candidate of Bantul regent Sri Surya Widati and Vice Regent of Misbakhul Munir, on the day of June 14, 2015 at Trirenggo Field, Bantul District, Bantul regency, from 14.00 - 17.00. Several other officials attended the celebration ceremony related to SP3 Idham Samawi who is the husband of the regent candidate, at the PDI-P DPC Office. Whereas in accordance with article 12 PP can be categorized cases of involvement of civil servants in the regional head campaign is a form of violation is. Article 7, paragraph 3, of the Regulations governing the violation of discipline is in the form of punishment of postponement of periodic salary increase for one year, postponement of rank for one year and lower rank demotion for one year. But in reality the punishment is not implemented, this is one of the factors that make the PNS not deterrent to participate in practical politics in elections because law enforcement is not implemented in accordance with the laws and regulations that bind him.

Other problems were the violation committed by the District Head Jebres and Head of Pucangsawit village, Sub-District Jebres. The right to take action was the direct superior or the Regional Personnel Board (BKD) or the Inspectorate may also be the Regional Secretary as the highest structural official in the ranks of the City Government. Unfortunately the three institutions also have partiality to the incumbent. Head of Region as an apparatus coach has an interest with the civil servants as one of its political instruments. Therefore they cannot be supervisors in controlling the neutrality of their apparatus. Herein lies the weakness of the head of the region as the Officer of Civil Service, the supervisory institution in the bureaucratic body becomes castrated and deliberately left to malfunction.¹⁹

¹⁶Interview with the head of KPU Kota Surakarta. Agus Sulisty, 7 March 2017

¹⁷Interview with the head of Panwaslu Kota Surakarta, Sri Sumanta, 11 March 2017

¹⁸Solopos.com. 23 January 2016, accessed on 12 April 2017

¹⁹Interview with Sri Sumanta, S.H., Ketua Panwaslu Kota Surakarta Tahun 2015, 11 Maret 2017, Jam 10 Wib.

In the meeting of the Ministry of PANRB²⁰, which was attended by representatives of Commissioner of State Civil Apparatus Commission, Ministry of Home Affairs, Regional Personnel Board, General Election Commission and Election Supervisory Board Led by Deputy Human Resources Apparatus of the Ministry of PANRB SetiawanWangsaatmaja, this meeting was to escort Civil Servant Neutrality. It said that in the elections of 2015, there were still many violations of neutrality, but many Civil Service Officers (PPK) or Authorized Officials (PyB) did not want to impose sanctions as recommended by KASN.

3. The Weak Institution.

The third weakness is the institutional factor. It is undeniable that the handling of violations of neutrality has not been clearly regulated, so there is a tendency among agencies to relinquish responsibility in the event of a violation.

The handling of the offenses described by the Chairman of the Election Supervisory Board of Muhammad is as a series of processes that include forwarding the findings, receiving reports, gathering evidence, clarifying, reviewing and/or recommending, and passing on the findings or reports to agencies authorized for follow-up²¹. With the report, it is followed up by the election supervisor by conducting assessment and filing and completing the evidence of violation. Plenary sessions are then conducted, whether the reports and findings of such violations fall into the realm of non-infringement, administrative violation or a criminal offense.²²

If the violation is included in a criminal offense, then it is processed by giving recommendation to the police to be followed up in accordance with applicable law. Then the Police as the Investigator coordinate with the Public Prosecutor as the Prosecutor. This case occurred in Sragen regency with perpetrators of the Criminal Offense of a Sambirjo District Camat who was found guilty by the Sragen District Court sentenced to 1 month imprisonment and a fine of 1.5 million.

Institutions dealing with electoral offenses are actually regulated in the law on several violation provisions, among others:

- a. The General Election Commission (KPU) deals with violations of election administration provisions, namely violations other than violations in the category of election crimes and violations of the electoral code of ethics.
- b. Sentra Gakumdu (Integrated Law Enforcement) whose members consist of a combination of three institutions namely Police, Attorney and Bawaslu/Panwaslu. This center deals with the types of criminal offense provisions of election.
- c. The Electoral Organizing Officers Council (DKPP), handles violations of the election code of ethics, mechanisms, procedures, guidelines and settlement.
- d. The Constitutional Court (MK), handles disputes over election disputes, procedural procedures and how to solve them.
- e. The State Civil Service Committee (KASN) is an independent and non-structural institution free from political intervention to create professional and performing ASN Officers, providing fair and neutral service, and becoming glue and a unifying nation. His tasks include maintaining the neutrality of ASN Employees and supervising and coaching ASN profession.

The case of 15 Civil Servants in Bantul District, among the institutions as if there was an impression of lack of coordination. The first case was two Government Officials who attended the SP3 IdhamSamawi related celebration ceremony at the PDI-P DPC Office, namely the Head of BKD and the Chief Inspectorate. The steps taken by Panwaslih wrote to PjRegent of Bantul. It was about the alleged infringement, transmitted to the Chairman Bawaslu DIY, Governor of Yogyakarta, Chairman Bawaslu RI, Menpan RB and KASN²³. The second case of alleged violation of the involvement of 14 officials gave support to the candidate petahana in a declaration made by the PDIP on Sunday, June 14, 2015 in Trirenggo Field, Bantul District, Bantul regency. From the study conducted Panwaslih concluded that the action taken by SKPD, head of sub-district, head of village was not an electoral violation because of unfulfilled material elements about the candidacy and campaign, because the incident occurred before the stage of nomination and campaign. Opinions from other institutions namely the National Personnel Agency (BKN) stated that the act is a violation of the discipline of civil servants and asked the Regent of Bantul to follow up the violation. The Regent official objected to the recommendation of the BKN.

The issue in Bantul is one of the external factors affecting the neutrality of civil servants because agencies dealing with violations tend to use different regulatory analyzes. So the civil servants consider sanctions against them by Pj. The Regent is not implemented because the Regent's Officer is also a person who is loyal to the Regent of Petahana.

4. The WeakCommunity

The last weakness of the neutrality of civil servants is a community factor that tends to let if knowing there is a violation by unscrupulous civil servants, so many cases of violation of neutrality cannot be handled by law enforcement. In the author

²⁰Rapat Kementerian PANRB, Kamis, 06 Oktober 2016. Diakses Senin, 11 Sept. 2017

²¹the head of Bawaslu dalam *Rapat Koordinasi Nasional* dalam Rangka Pemantapan Pelaksanaan Pemilu Presiden dan Wakil Presiden Tahun 2014, Jakarta, tanggal 4 June 2014

²²Interview with Supardi, Ketua Panwaslu Tahun 2015 Kabupaten Bantul, DIY, Tuesday, 26 Sept. 2017

²³Interview with Ibu Harlina, Devisi Penindakan Pelanggaran, Panwas Kabupaten Bantul, Tuesday, 26 Sept 2017, at 11.30 Wib

interview with one of the office secretaries²⁴, "Actually the case of neutrality of civil servants in Sragen regency not only Sambirejosubdistrict and Agus Tri laksono head of the Regional Planning Board (Bappeda). But there are many Civil Servants who support one of the candidates for the head of the region in secret and there is open, but people are reluctant or not concerned with the action ". Apparently this also happens in other areas. People do not want to take care, because to report this violation, they need to show the evidence to the Election Supervisory Committee in the form of photos, videos and others.

State Civil Apparatus Neutrality in the Regional Election Based on Justice Value

Justice problems occur in almost every human life. The absence of justice in society leads to disappointment, dissatisfaction, apathy and the like. The issue of justice in law enforcement is closely related to the legal culture of judges, meaning how the values, attitudes, perceptions and views of judges about justice itself. Because understanding of justice is inseparable from moral ethics and justice should refer to matters of character.²⁵

Formulating the concept of justice in progressive legal thinking is how to create substantive justice rather than procedural justice. Progressive justice is not justice that emphasizes procedure but substantive justice.

The damage and decline of justice in law is due to a procedural game that causes a question of whether the court is seeking justice or victory. In order to make substantive justice the core of the courts, the Supreme Court plays a very important role. As the apex of the judiciary in Indonesia, he has the power to encourage courts and judges to bring about progressive justice.

According to SatjiptoRaharjo quoted by Suteki²⁶, there are three ways to do a new path of rule breaking in the law, namely First, using spiritual intelligence to wake up from the depravity of the law provides an important message for us to dare to find a new path (rule breaking) and not let ourselves confined long, run the old and traditional law that clearly more hurts the sense of justice. Second, the search for deeper meaning should be a new measure of law and law. Each party involved in the law enforcement process is encouraged to ask the conscience of a deeper legal meaning. Third, the Law should be executed not according to the principle of logic alone, but with feeling, caring and involvement (compassion) to the weak group.

The judge becomes an important factor in deciding, that the courts in Indonesia were not a game to seek win and lose. Rather seek justice and truth. The handling of fair and just violations against the apparatus is evidence of the protection of the people's sovereignty from acts that could injure the electoral process and results. Obligations for supervisors and election organizers and law enforcers to ensure that all election violations that occur can be resolved fairly and consistently there is no like and dislike elements.

In the fifth principle of Pancasila, Social Justice for all Indonesian people is a state paradigm that philosophizes to justice. The most noble and great justice is the justice of God, who gives blessings to all His creatures without choosing feathers and sorting out on any basis and for any reason. Therefore, if the fifth precept which is meant is social justice for all Indonesian people, it means that justice is not distinguished by the social status, economic status and culture contained in Republic of Indonesia State.²⁷

In the settlement of a case of justice-based neutrality especially point 2 and point 5, it should also be equitable oriented in common life in Indonesian society and nation, this is in accordance with the theory of justice in A Theory of Justice "all the social values of freedom and opportunity, income, and wealth, and self-esteem should be distributed equally and equitably. An unequal distribution of social values is only allowed when it is beneficial to everyone."²⁸

Justice for the apparatus cannot be separated from the legal system Lawrence M. Friedman in his book *The Legal System A Social Science Perspective*, states that the legal system consists of legal structures (legal institutions), legal substances (laws and regulations) and legal or legal culture. All three elements must function optimally.

In realizing the Neutrality of the State Civil Apparatus, especially from the element of civil servants in a fair way, humanizing human beings according to the 2nd Precepts and social justice as point 5, hence the role of the apparatus or institution that handles the violation of the neutrality of civil servants can perform their duties professionally. Do not let the real civil servants do not have the intention of supporting or favoring candidates for regional head/deputy of the region caught up in the problem of neutrality because it is trapped by political opponents. Therefore, Law number 5 of 2014 needs to be reconstructed especially the provisions of Article 9 and Article 53 as follows:

1. Article 9 of Law Number 5 Year 2014,

²⁴Interview with Ir. Agus Sumanto., Sekretaris Kantor Perumahan Daerah Kabupaten Sragen. Saturday, 23 September 2017, jam 19.30

²⁵Esmi Warasih, *Monograf Ilmu Hukum*, Deepublish, Yogyakarta, 2014., p.,27

²⁶Suteki. *Masa Depan Hukum Progresif*.Thafa Media., Yogyakarta. 2015., p., 10

²⁷Dedi Ismatullah dan Beni Ahmad Saebani, *Hukum Tata Negara Refleksi Kehidupan Ketatanegaraan di Negara RI*,Pustaka Setia, Bandung, 2009., p. 176

²⁸Andre Ata Ujan, *Keadilan dan Demokrasi*, Kanisius, Yogyakarta, 2007, p., 72

- (1) ASN employees shall implement policies stipulated by the heads of Government Agencies
 - (2) ASN employees should be free from the influence and intervention of all political parties and parties
2. Article 53 of Law Number 5 Year 2014, the President as the supreme authority holder of ASN coaching may delegate the authority to determine the appointment, transfer and dismissal of officials other than the top and middle-ranking senior officials, and functional officers of the main expertise to:
 - a. Minister at the Ministry;
 - b. Leaders of institutions in non-ministerial government institutions;
 - c. Secretary-General in the secretariat of state institutions and non-structural institutions;
 - d. Governor of the province; and
 - e. Regent/mayor in the district/city

D. CONCLUSION

1. The weaknesses of the Neutrality of the State Civil Apparatus in the Regional Elections

- a. Ambiguity of the Rule of Law. The absence of synchronization between the laws and regulations that one with others that regulate the implementation of regional head election
- b. Weak Law Enforcement Rules. Weak rule of law enforcement so that many legal loopholes can be breached.
- c. Weak Institutional. In addressing the violation of ASN neutrality there is a tendency among agencies that have the authority to release responsibility in case of violation.
- d. Community Weakness. Communities that tend to let in case of violation by unscrupulous civil servants, so many cases of neutrality violation that is not handled by the authorized institution.

2. ASN Neutrality in the Regional Election Based on Justice

In realizing the Neutrality of the State Civil Apparatus, especially from the element of civil servants in a fair way, humanizing human beings according to the 2nd Precepts and social justice as point 5, hence the role of the apparatus or institution that handles the violation of the neutrality of civil servants can perform their duties professionally. Do not let the real civil servants do not have the intention of supporting or favoring candidates for regional head/deputy of the region caught up in the problem of neutrality because it is trapped by political opponents. Therefore, Law number 5 of 2014 needs to be reconstructed specifically the provisions of Articles 9 and 53.

REFERENCES

Gunarto
Lecturer Faculty of Law Sultan Agung Islamic University
Email: gunarto@unissula.ac.id

JawadeHafidz
Lecturer Faculty of Law Sultan Agung Islamic University
Email: Jawade@unissula.ac.id

Sutrisno
Student of Doctoral Program in Law Science, Unissula