

Neutrality of State Civil Apparatus in General Elections in Indonesia

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Abstract.

This research aims to provide an academic manuscript on the model of the neutrality of the State Civil Apparatus in the personnel system in Indonesia. Therefore, this research departs from the formulation of the problem: What is the model of the neutrality of the State Civil Apparatus in General Elections in Indonesia. To answer the formulation of the maslaah, this study will use secondary data. Namely data obtained from literature studies through primary, secondary and tertiary legal materials. To explore the secondary data, the researcher will conduct field research by conducting interviews with resource persons, namely the Head of the State Civil Service, the Chairman of the General Election Supervisory Agency and Regional Heads. The results of the study show that the neutrality of the State Civil Apparatus has never been realized since the independence period until the present time, this has happened as a result of the intervention of political officials against the State Civil Apparatus. Therefore, the effort as well as the realization of the model of net neutrality of the State Civil Apparatus in general elections is by separating political positions and kearier positions.

Keywords: *State Civil Apparatus, Neutrality and General Elections.*

I. INTRODUCTION

Since the proclamation of the independence of the Republic of Indonesia on August 17, 1945, general elections have been held repeatedly in Indonesia. Starting from the old order period to the kin. One of the interesting discussions in the implementation of the general election is the neutrality of the State Civil Apparatus. In the implementation of general elections, the State Civil Apparatus must be neutral. This is as a result of the position of the State Civil Apparatus as the executor of general duties of government and development, so the State Civil Apparatus must be neutral.

Normatively, according to article 9 paragraph (2) of Law Number 5 of 2014 concerning the State Civil Apparatus, neutrality is defined as being free from the influence and intervention of all political groups and parties. In an effort to maintain the neutrality of the State Civil Apparatus from the influence of political parties and to ensure the integrity, cohesiveness, and unity of the State Civil Apparatus, as well as being able to concentrate all attention, thoughts, and energy on the tasks encumbered, the State Civil Apparatus is prohibited from becoming members and/or administrators of political parties.

During the old order, the neutrality of the State Civil Apparatus was not realized, this was because political parties instilled their influence on the government apparatus and used government officials as the building block of their organization. Political parties have a period of influence and support in each department and dominate the department.

Thus, political intervention in bureaucratic life is very large. Furthermore, during the new order period, Civil Servants were required to be members of Golkar. Civil Servant membership is netted through the mechanism of the Korpri which is affiliated to the Work Group. The involvement of Civil Servants as members and administrators of political parties causes the bureaucratic position to no longer be neutral. The

policy of monoloyalty of civil servants to the government in practice is distorted into a single loyalty to the Work Group. Korpri as the only civil servant organization is an effective tool to bind the political choices of civil servants to the Work Group. Public bureaucracy during the New Order government became an effective instrument for the ruler to maintain his power In the reform era, there were 54 indications of violations of provisions regarding office facilities during the 2009 elections.

Bureaucratic involvement occurred in the form of mobilization of Civil Servants. In the current era, violations of the neutrality of Civil Servants occur not only in the implementation of general elections for President and Vice President, legislative members as well as Regional Heads and Deputy Regional Heads. Data from the State Civil Apparatus Commission shows that during 2018 there was a violation of the neutrality of the State Civil Apparatus,

Based on the above description, the following problems can be formulated: 1. Why is there a violation of the neutrality of the State Civil Apparatus? 2. What is the ideal construction of the neutrality of the State Civil Apparatus in Indonesia? The urgency of this research is that with the arrangement of the ideal construction or model of the neutrality of the State Civil Apparatus in the Indonesian State Civil Service system, violations of the neutrality of the State Civil Apparatus will no longer occur, because the State Civil Apparatus is a government apparatus that is tasked with carrying out government and development tasks so that they must be neutral and professional.

II. METHODS

This research is normative legal research, namely by conducting research on secondary data or literature materials consisting of primary legal materials, secondary legal materials and tertiary legal materials which will then be studied to formulate research results and draw research conclusions in relation to the problem being studied. To complement the secondary data, this research is also empirical in nature, namely by conducting field research through interviews with sources and analysis of the neutrality of the State Civil Apparatus.

The research approach carried out is with a *statue approach* and is combined with historical *approach* and conceptual *approach*. In the legislative approach, this approach is carried out by examining laws and regulations (regeling), policy regulations (beleidsregel) and other government decisions or actions (beshickking) related to the neutrality of the State Civil Apparatus. This research examines more specifically the legal products issued by legislative and executive institutions.

In the historical approach, this approach is used to examine the development of legal products issued by the legislature and executive, from the old order period to the present. There is a long history that follows the birth of legal products or government legal policies in regulating the neutrality of the State Civil Apparatus. An exploration of the history of the development of legal products and their changes in each period of government, will be able to fully explain the background and development of the regulations regarding the issues faced in order to reveal the philosophy and mindset that gave birth to something that has been studied (Marzuki, 2008: 94).

Types of Research Data to answer the first problem uses a normative approach that includes research on legal principles, legal definitions and legal provisions. As a normative research, the focus of research to answer the first problem is literature research through various documents (treatises). Therefore, the data required is secondary data, while this secondary data includes legal materials in the form of laws and

regulations, including: a. Constitution of the Republic of Indonesia of 1945 b. Law Number 18 of 1961 concerning Basic Provisions of Civil Service c. Law No. 8 of 1974 concerning Personnel Matters d.

Law No. 43 of 1999 concerning Amendments to Law No. 8 of 1974 concerning Personnel Matters e. Law No. 5 of 2014 concerning State Civil Apparatus f. Government Regulations, Presidential Decrees, Ministerial Orders and others. Also used were the minutes of the trial for the preparation of Law Number 8 of 1974, Law number 43 of 1999 and Law number 5 of 2014.

In addition, it also uses various books, news, articles and other materials, especially related to the neutrality of the State Civil Apparatus In addition to these primary legal materials, also secondary legal materials in the form of books, scientific articles in scientific journals, news in the mass media related to the Neutrality of the State Civil Apparatus, as well as tertiary legal materials, namely legal materials that support and complement primary and secondary legal materials.

The data analysis used is content analysis, namely by categorizing and finding the concept of neutrality of the State Civil Apparatus. The collected data will then be sorted into qualitative data. Qualitative data will be analyzed by content *analysis* The interpretation of data using theoretical interpretation techniques means that the researcher does not use only one theory in understanding the data but uses several theories as a comparison and this theory functions as a guide for analysis.

III. RESULTS AND DISCUSSION

The discussion of the neutrality of the State Civil Apparatus is inseparable from the debate on the dichotomy between politics and bureaucracy, this debate is the most interesting part of political and government studies. There are basically two views on the dichotomy of politics and bureaucracy, on the one hand, some public administration experts such as Woodrow Wilson, state that the bureaucracy should be neutral from politics.

Wilson began a discussion of the political and bureaucratic dichotomy in 1887 through his scholarly work entitled *The Study of Administration*. This work is the first classical literature that attempts basic theory in an attempt to conceptualize the relationship between politics and administration (Rahman, Muhammad Sayadur, 2015: 6).

Another opinion states that bureaucracy is part of the political process, especially the decision-making process. The process of bureaucratic and political exchange can be avoided, in the sense that they must interact with each other to make policies. If politics is interpreted as policy-making, then it is inevitable to separate politics and bureaucracy. This means that the dichotomy between politics and bureaucracy is irrelevant (Teguh Yuwono, 2017: 339).

In the twentieth century, the Wilsonian was popularized back by Frank J Goodnow, Frank J Goodnow was the first president of the *American Political Science Association*. According to Frank J Goodnow, the state has the function of expressing the will of the people and carrying out that will. The first function for the state is carried out by politics and the second function is carried out by the administration. Regarding this, Max Weber agreed, Weber used the terms action (*action*) and vocation, What is meant by action is the act of a bureaucrat to carry out orders or responses to something based on a rule that has been determined, while a call is an act carried out by politicians at the will of power.

The distinction between political will and administrative will can be achieved if there is neutrality. This idea of neutrality prioritizes the moralistic approach that the bureaucracy should not take sides and

should limit itself to political justification. Neutrality assumes a position that is not at a certain current. Neutral is defined as a clear objective action that must be carried out by bureaucrats.

In the context of general elections, for example, neutrality embodies the ethical attitude of the bureaucracy that does not take sides with certain political interests. The moralism of this neutral attitude develops in the midst of the ambition of positivism which seeks to make social reality like a constant and definite natural reality.

Weber formulated the conception of an ideal type of bureaucracy by matching bureaucracy like a machine. The way the bureaucracy works is assumed to follow the work of the machine to produce certainty of *output*, effectiveness and efficiency. In order to be like a machine, Weber developed the rationalization of administrative activities in three ways: formulation, instrumentalization and legal-rational authority. With rationalization, human work tries to follow machines and it can happen when they are like machines, that is, they do not have desires and wills, so he emphasizes the limitation of this with the concept of neutrality to achieve mechanical rationality (Arief Novianto, 2019: 2-4).

Barbara Geddes (1994: 134-135) stated that in the relationship between political officials and the bureaucracy, there will be a tendency where political officials (politicians) use their power and continuously use the bureaucracy for political interests or political parties to which the political official is affiliated, this is based on 4 factors, namely: first, in the event that someone wins a general election contest, both executive and legislative, the bureaucracy is made an agent distribution of profits to the constituents of the politician. Second, the bureaucracy is used as a source of patronage and profit for other politicians who support *the incumbent* as executive leaders.

In addition to the need to stay in power, *the incumbent* needs the bureaucracy to be able to create new laws and regulations or bari programs that can be used to "buy support" from politicians in the people's representative institutions. Third, the bureaucracy is positioned as a tool to recruit new members of various political organizations who are loyal to *the executive leader* who is a political official. The basis of this action is that the bureaucracy is a creation of *loyal political machine* for the needs of politicians in power. This is often done by placing bureaucracy by people who are considered loyal, both those who come from the bureaucracy and those who are party members of public organizations outside the bureaucracy to occupy strategic positions in the government bureaucracy. Fourth, the bureaucracy is used as an instrument to implement policies that benefit groups or parties to which political officials are affiliated. Both short-term and long-term policies.

Conditions like this are what make it difficult to realize the neutrality of the State Civil Apparatus in Indonesia. Historically, at the beginning of independence, Information X was issued by Vice President Mohammad Hatta in 1945. Since then, political parties have emerged as a means for the people to channel freedom of politics, speech, association and freedom from fear of differing opinions. Furthermore, in 1955, the first general election was held, which resulted in a government and parliamentary system. At that time or during the Old Order, the government bureaucracy was controlled and led by ministers from political parties. The custom at that time was for political parties that led government departments to make government departments the base of influence and support of their party. The neutrality of the government bureaucracy began to be disturbed, the management of Civil Servants in Indonesia at that time became a sub-ordination of political officials and political parties (Miftah Thoha, 2008: 8).

When President Soekarno issued a Presidential Decree on July 5, 1959 which restored the system of government to the Presidential system and the re-enactment of the 1945 Constitution, bureaucratic neutrality did not improve. Civil Servants remain in positions as sub-ordinations of political officials and political parties. This situation continued until the New Order period. During the New Order period, for Civil Servants, monoloyalty was imposed on the Work Group.

Civil Servants are required to win the Golongan Karya in every general election. On the other hand, Civil Servants were prohibited from being members of political parties, which at that time there were two political parties, namely the United Development Party and the Indonesian Democratic Party. During the New Order government, the bureaucracy could not be clearly distinguished between the careers and partisans of the Labour Party.

The career development of a Civil Servant, for example in terms of promotion to a position, will use the consideration of membership or support of political forces (Golongan Karya). The intervention of the Karya Group against the bureaucracy resulted in the emergence of bureaucratic non-neutrality. Bureaucracy is a sub-ordination of the Work Group. During the Reformasi period, the situation was not better. Civil Servants are sub-ordinations of political officials. This happens because political officials, namely the Governor, Regent/Mayor are personnel coaching officials.

Since the enactment of Law Number 5 of 2014, there have been efforts to separate political officials from civil servants. The implementation of the development of the State Civil Apparatus through the Management of the State Civil Apparatus which is an effort to implement the functions of the government professionally. Sofian Effendi said that the importance of fostering the State Civil Apparatus in addition to carrying out government functions to achieve national goals is also to form a state-capable State Civil Apparatus (Sofian Effendi, 2013: 6).

This is stated in Law Number 5 of 2014 which states that in order to achieve national goals as stated in the 4th paragraph of the Preamble to the Constitution of the Republic of Indonesia of 1945 (1945 Constitution), it is necessary for the State Civil Apparatus to be professional, free from political intervention, clean from corruption, collusion, and nepotism practices, able to provide public services for the community and able to carry out their role as the glue of national unity and unity based on Pancasila and the 1945 Constitution.

The national goal as stated in the Preamble to the 1945 Constitution is to protect the entire Indonesian nation and all Indonesian bloodshed, promote public welfare, educate the life of the nation, and participate in implementing a world order based on independence, lasting peace, and social justice. To realize national goals, State Civil Apparatus Employees are needed. State Civil Apparatus Employees are assigned the task of carrying 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 State Civil Apparatus Employees.

The duties of the government are carried out in the context of the implementation of general government functions which include the utilization of institutions, personnel, and administration. Meanwhile, in the context of carrying out certain development tasks, it is carried out through national development (*cultural and political development*) and through economic *and social development* which is directed to improve the welfare and prosperity of the entire community. State Civil Apparatus Employees are held to realize the implementation of government functions in the form of providing services to the community and

fulfilling the needs of the community and not serving themselves (Sirajudin, Didik Sukriono and Winardi, 2011:2).

According to Agung Kurniawan, there are three functions of government, namely: first, the regulatory function which is carried out by making regulations that regulate public relations, second, the empowerment function which is realized by increasing community participation in development and government and the third is the service function (*verzorgen function*) which is directed at the function of meeting the needs of the community as well as efforts to create justice in the community (Agung Kurniawan, 2005: 3-4).

The birth of the State Civil Apparatus Law initially invited the concerns of regional leaders. Those who are members of the Indonesian Sub-district Government Association (Apkasi) basically support the birth of the State Civil Apparatus Law based on professionalism and competence and meet the qualifications in occupying their positions. However, they requested that the one who regulates the appointment of the State Civil Apparatus should be exercised by the district secretary or city secretary. During discussions in parliament, the government often received resistance to the State Civil Apparatus Bill before it was passed into law. Thus, in the enactment of the State Civil Apparatus Law, it is hoped that it can change the mindset for Civil Servants who will change their orientation to become a servant of the state and a servant of the community and not a subordinate of political officials (Mudzalifah Fattah 2016: 121).

The practice of separation between political officials and civil servants can be seen in several countries. For example, the practice carried out in Germany. Germany made a separation between *state, government, administration*. Each of these sub-systems carries out their respective duties and obligations so that they cannot be united. This is different from the situation in Indonesia, that the bureaucracy should not be interfered with by the interests of a group of people or politics, including the implementation of policies and the management of the State Civil Apparatus. The State Civil Apparatus in carrying out their duties and functions is independent and uses the concept of monoloyalty only to the state (Septiani Dwiputrianti, 2018: 95). Another practice can be seen in the United States, where the application of the principle of bureaucratic neutrality is the result of a dichotomy between politics and administration where the policy-making process is different from the execution process (Gema Perdana, 2019: 123).

Any Civil Servant who violates this provision can be dismissed from the position he holds. *No employee of the government can use this official authority or influence for the political purposes. Any person violating the provisions of this Act shall be removed from the position held by him.*

The practice in Taiwan is similar to the practice in the United States. Taiwan's *Civil Service Neutrality Law* is very similar to the one in the United States, and the purpose of this law is to clean up politics as a result of "destructive political activity" during *the New Deal*. This is based on the fact that "destructive political activities" in Taiwan are of a more "destructive" type, because Taiwan was originally a Party State so that the state will utilize or politicize the state machinery to enter society to fulfill party goals, especially those related to social control (Bennis Wai Yip So, 2013: 56).

Civil Servant Neutrality is referred to as "*administrative neutrality*". *Administrative neutrality* is the political neutrality of Civil Servants. There are two dimensions of this term, namely (1) the administrative system, the function of the first dimension is to try to maintain a neutral administrative system in relation to the political process (i.e. political neutrality) (2) about the attitude adopted by Civil Servants in carrying out their official duties. This is to maintain fairness, impartiality and the implementation of administration

according to the law in the administrative process. These two dimensions can then be reduced to "the relationship of political neutrality and administrative neutrality" ((Bennis Wai Yip So, 2013: 56)).

In this regard, political officials do not need to be politically neutral but they need to be administratively neutral because they control administrative resources that have the potential to be channeled for partisan purposes. Administrative neutrality applies to both administrative bodies and their employees (administrators). If the institution must work in a neutral manner, so must its officials. Administrative neutrality is hierarchically superior to political neutrality ((Bennis Wai Yip So, 2013: 56)),

While the practice in Singapore, based on regulations in Singapore has limited the relationship between Civil Servants and political officials through the *Code of Conduct For Ministers* of 2005, in Article 54 of the *Relations with civil servants* section it is stated that:

- 1.1. *A Minister must not use to support the candidature of any person for admission to or promotion within the Singapore Civil Service. However, a Minister may give a person known personally to him awritten testimonial for first appointment to the Singapore Civil Service*
- 1.2. *Where a Minister is familiar with the work of a civil servant and his opinion is sought by the Public Service Commision or Public Service Division for the purposes of appraising the civil servant's performance, the Minister may render his opinionon the matter.*
- 1.3. *A Minister must not direct or request a civil servant to do anything or perform any function that may conflict with the Singapore Civil Service's core values of incorruptibility, impartiality, integrity and honesty. He should respect the duty of civil servants to remain neutral in all political matters and matters of public controversy.*

Based on Article 4 of the *Code of Conduct for Ministers* of 2005, the restriction of relations between Civil Servants and political officials is carried out professionally. This means that there are no loopholes that allow political officials to influence the position of Civil Servants. In other words, there is a prohibition for political officials to direct or ask Civil Servants to do something or functions that are contrary to the values of public service such as corruption, *impartiality*, integrity and honesty. Political officials are also obliged to respect the duty of Civil Servants to remain neutral in all political matters and controversial matters. This practice works well because the Singapore Government implements a merit system that is performance-based and supported by strong leadership ((Bennis Wai Yip So, 2013: 56)).

Practices in other countries are able to realize neutrality as a result of the separation of administration and politics, even if the separation is not carried out firmly, the prerequisites and provisions such as the implementation of personnel development are carried out consequentially. While practice in Indonesia is not able to answer the problem of neutrality, the issuance of Law Number 5 of 2014 as an effort to separate political positions from personnel management turned out to be unable to solve the problem of neutrality of the State Civil Apparatus. The neutral State Civil Apparatus is the one that is impartial, but on the condition that this condition will be fulfilled if it is outside the system and does not provide room for the intervention of interests, while at this time the State Civil Apparatus in Indonesia is in a system that is connected to political interests. In this system, there is a synergistic relationship between the President/Regional Head and his deputy and the State Civil Apparatus in a mutually influential work environment. Moreover, this relationship has implications for the career position of Civil Servants on the basis of the authority of the President and Regional Heads as Personnel Supervisory Officials. This will clearly cause non-neutrality of Civil Servants in carrying out their duties because they are full of interests, so the solution to this neutrality

problem is to revoke the right to vote in general elections and the right to be elected as a state official as part of the restrictions. The basis is the relationship between public services (Tedi Sudrajat and Agus Mulya Karsona, 2016: 92-93).

The public service relationship is basically a legal relationship between the state and Civil Servants which is affirmed by the provisions of restricting the behavior of employees working in government agencies (Tedi Sudrajat and Agus Mulya Karsona, 2016: 90). The implication of the public service relationship is that Civil Servants are obliged to submit and obey the appointment in several kinds of certain positions, which results in that the employee concerned cannot refuse (accept unconditionally) appointment in one position that has been determined by the government, where on the contrary, the government has the right to appoint an employee in a certain position without having to adjust the will of the person concerned. Therefore, Civil Servants will exercise their human rights in full, the government can declare that the person concerned is not a person who needs help from the government (Philipus M Hadjon, 1994: 214).

The enforcement of public service relations will cause restrictions on the Civil Servant through the laws and regulations imposed on him, including fundamental rights. In this regard, although human rights are recognized as a fundamental right that cannot be reduced and deprived of by anyone, nevertheless human rights are not something that can be enjoyed without limits. There is an adage in the law that the enjoyment of a person's rights is limited, namely by the enjoyment of the rights of others. This has the same meaning as John Stuart Mill's statement that an act (enjoyment of rights) does not cause harm to others, so there is no legitimacy of the state to repress the enjoyment of rights. On the other hand, if the enjoyment of rights will indeed disturb others, then restrictions on it are possible. Restrictions do not simply have justifications for the existence of positive laws. Restrictions are intended to ensure proper recognition and respect for the rights and freedoms of others (Tedi Sudrajat and Agus Mulya Karsona, 2016: 92).

There are restrictions on the right to be elected to political positions, namely positions obtained through the general election mechanism for Civil Servants. This means that a Civil Servant who will take part in the election contest, both legislative members and regional heads, must resign. This has been regulated in the Decision of the Court of the Republic of Indonesia Number 12/PUU-XI/2013. According to the Court, when a person has chosen to become a Civil Servant, he has bound himself to the provisions that govern the government bureaucracy, so that when registering himself in a contested political position through the Election mechanism (Regional Representative Council), the law can determine conditions that can limit his rights as a Civil Servant in accordance with the current political and constitutional system. "The obligation to resign according to the law for Civil Servants who will participate in the election of members of the Regional Representative Council is not a violation of constitutional rights".

IV. CONCLUSION

The neutrality of the State Civil Apparatus in Indonesia has been very difficult to realize since the early days of independence until now. This is due to the relationship between political officials and the State Civil Apparatus which places the State Civil Apparatus as subordinate to political officials, as a result of the unsuccessful in implementing the separation between political officials and Civil Servants, Therefore, the solution to this neutrality problem is to revoke the right to vote in general elections and the right to be elected as a political official as part of the restriction of the political rights of Civil Servants. The basis for revoking this voting right is the public service relationship.

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