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## AFFIRMATIVE ACTION IN SAFEGUARDING DEMOCRACY: REVOKING THE VOTING RIGHTS OF CIVIL SERVANTS IN ELECTIONS

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### ABSTRACT

*This article discusses the importance of maintaining the neutrality of the State Civil Apparatus (ASN) in elections and elections in Indonesia as well as the argument for abolishing ASN's right to vote as a form of affirmative action to maintain the integrity of democracy. Under Law No. 20 of 2023 on ASN, ASN has the right to vote as a citizen, yet neutrality violations are common, with many ASNs engaging in practical politics, either due to pressure from superiors or to advance personal careers. These violations undermine democratic principles that require elections to be conducted honestly, fairly, and without intimidation. In practice, sanctions against violations of ASN neutrality are still weak, which opens space for abuse of authority in politics. For this reason, the author proposes the elimination of ASN's right to vote as \*affirmative action\* to ensure the sustainability of democracy that is clean from political intervention. Although this elimination only has a small impact on the number of Permanent Voter Lists (DPT), it will improve the quality of Indonesian democracy by reducing the potential for manipulation by unscrupulous ASNs. In this context, the debate about the voting rights of non-TNI/Polri ASNs is irrelevant because all ASNs have the potential to violate neutrality. The author supports the discourse on the elimination of ASN's voting rights for the sake of creating elections with better quality and integrity.*

**KEYWORDS** *affirmative action, ASN voting rights, neutrality, democracy, elections, abuse of authority,*



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### INTRODUCTION

In the provisions of Article 1 paragraph (1) of Law Number 20 of 2023 concerning the State Civil Apparatus (ASN Law), the State Civil Apparatus (ASN) is classified into 2 things, namely (1) Civil Servants (PNS) and (2) Government Employees with Work Agreements (PPPK). Civil Servants and PPPK as ASN are appointed by the Personnel Supervisory Officer (PPK) and assigned duties in government positions and paid based on statutory regulations. Based on this, ASN

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can be interpreted as all human resources who run the wheels of government both from the highest level of government to the lowest level of government appointed by PPK (Rahman & Bakri, 2019). Based on the latest data published by the State Personnel Agency, until the end of December 2023 there were 4,465,768 people filling ASN formations both at the center and in various regions in Indonesia.

As a citizen, ASN has the constitutional right to vote in the organization of elections and general elections. This right is stipulated in Article 28 of the 1945 Constitution of the Republic of Indonesia which clearly regulates the rights of citizens (Mahfud, 2020). However, it turns out that this constitutional right is not enjoyed by all ASNs, through Law Number 7 of 2017 concerning General Elections (Election Law) the TNI and Polri are not allowed to exercise their constitutional right to vote in elections and elections. Various reasons are raised from reasons of neutrality, such as reasons to prevent conflicts of interest, to reasons to avoid politicization of the armed forces (Kadarsih & Sudrajat, 2011; Ubaidillah, 2018; Yanuar, 2017).

In contrast to that, other ASNs who are not members of the TNI and Polri are given the constitutional right to vote but with restrictions, namely by maintaining impartiality or neutrality (Prabowoadi & Afandi, 2020). In contrast to neutrality, in practice, the existence of the right to vote of non-Military and Police ASNs in elections and elections is very loaded with partisanship or non-neutrality. The issue of neutrality always arises in the implementation of elections and elections from year to year. Although various regulatory instruments have been made to maintain the neutrality of ASN, as long as ASN is seen as a vital instrument to gather support, the potential for certain elements to find loopholes for support always exists (Regif & Pattipeilohy, 2023).

This continues to happen even though severe sanctions have been established to prevent ASN from engaging in practical politics. Even KASN data reinforces this statement by showing that as many as 50.76% of violations of ASN neutrality occurred due to fraternal ties, while the other 49.72% were carried out with the motivation to obtain or improve careers (Komisi Aparatur Sipil Negara, 2024). The existence of loopholes that allow political officials to use ASN as a tool to maintain or seize power has created space for political intervention which certainly pollutes the country's democratic practices.

Based on the foregoing, the author is interested in elaborating on the issue of ASN not exercising the right to vote in elections and elections through this article entitled "*Affirmative Action in Maintaining Democracy: Abolishing the Voting Rights of the State Civil Apparatus in Elections and Elections*"

### **Problem Limitation**

The author tries to limit the problem so that the discussion becomes focused on the issues raised. The problems raised by the author in this article are (1) How is the Neutrality of ASN in Elections? (2) How does Abuse of Authority Violate ASN Neutrality in Elections? and (3) How is the Application of *Affirmative Action* for the Elimination of ASN Voting Rights in Elections and Elections?

## RESEARCH METHOD

The discussion of this article uses a normative juridical method with a statutory approach and a case approach, using secondary data in the form of legal materials collected through literature studies and analyzed qualitatively.

## RESULT AND DISCUSSION

### Violation of State Civil Apparatus Neutrality in Elections

In every democratic party event, ASN must maintain neutrality and professionalism to run governance and public services effectively. The principle of ASN Neutrality means that every ASN employee does not take sides from any form of influence and does not favor other interests outside the interests of the nation and state. However, it turns out that this is still far different from the reality found in the field, based on data provided by KASN and Bawaslu, it was found that neutrality violations still dominate the Election and Election problems as adapted in the table below.

**Table1: Number of Reports and Violations of ASN Neutrality in Elections and Elections**

Year	Report	Proven Violators (people)
2019	412	528
2020	2034	1596
2024	417	197

Source: KASN and Bawaslu data 2020 - 2024

From the data provided, it appears that violations of ASN neutrality had a fairly high spike during the implementation of the Regional Head Election (Pilkada), where 2,034 ASNs were reported and 1,596 ASNs (78.5%) of them were proven to have violated neutrality. Most violations of ASN neutrality were committed before the campaign period and from the data on recorded cases of violations of violations of ASN neutrality, violations of ASN were dominated by through social socializationmedia, followed by cases of cases of attendance at political party pairs. ASN approaches to partiescases of direct support for candidate (paslon), and cases of village head support for paslon (Regif & Pattipeilohy, 2023).

Cases of violations in elections and voting, which are dominated by cases of violations of civil servant neutrality, certainly have a bad impact on the implementation of democracy in Indonesia. Elections that should be carried out in a Direct, General, Free, Confidential, Honest and Fair manner are violated and disadvantage other candidate pairs who do not have access to civil servants, moreover candidate pairs who have structural positions in the government or incumbent candidate pairs will be benefited because of their access or their powerful relations to civil servants. The state and the general public as users of public services will also be affected given that violations often take place by utilizing state facilities (Prabowoadi & Afandi, 2020). Violations of ASN neutrality

in elections will divide unity and therefore must be stopped for the realization of quality and integrity in Indonesian democracy.

### **Abuse of Authority as a Source of Violation of ASN Neutrality**

The demands of neutrality that must be carried out by civil servants make this a backfire and a dilemma in itself. As we all know, in practice the position of civil servant is very vulnerable, silence is risky and taking sides is even more dangerous. KASN data shows that 50.76% of ASN neutrality violations occur because of brotherhood ties, and another 49.72% are motivated by the desire to obtain or advance in one's career (Komisi Aparatur Sipil Negara, 2024). This shows that there is abuse of authority in various activities carried out by ASNs to win certain candidate pairs, intimidation and intervention of ASNs to elect certain candidate pairs, and even threats to careers if they do not vote for certain candidate pairs ordered by superiors. These things certainly seriously undermine the values of democracy in elections (Kompas, 2024; Negara, 2024; Tempo.co, 2024).

The right to vote for non-TNI-Polri civil servants is indeed part of the constitutional rights protected in various laws and regulations in Indonesia (Yasin, 2022). However, the harsh reality of violations of neutrality caused by the abuse of authority by civil servant officials is also a form of constitutional crime. KASN data shows that abuse of authority in violations of ASN neutrality is carried out by ASN leaders and employees in various forms, namely: (1) Showing partiality to one of the candidate pairs through social media; (2) Creating events that benefit one of the candidate pairs (such as mass gymnastics activities, safety riding, mass circumcision, casual walks, and so on); (3) Mobilizing civil servants to support one of the candidates; (4) Using the budget to support one of the candidates who are speakers at political party events; and (5) Work units that create advertorials in the media to support one of the candidates (Dwiputrianti, 2019).

So, are there any sanctions that will be given to those who abuse their authority? The answer is yes, and there are already many regulations at various levels that govern it (legislation, government regulations, ministerial regulations, joint decrees). The sanctions given are also quite varied, from code of ethics sanctions, administrative sanctions to criminal sanctions that can be applied to civil servants who violate neutrality. However, the application of non-firm sanctions is often an obstacle in enforcing ASN neutrality. The law governing sanctions and penalties for each violator of ASN neutrality in elections is like nonsense; in reality, the written law is not properly enforced.

The application of punishment for violators of neutrality is like a law that is only written on paper, as the adage *Factual Sunt Potentiora Verbis* which means that if there are facts, what is the use of words. Therefore, as long as legal sanctions cannot be enforced to prevent violations of ASN neutrality, it is appropriate to take another, more influential approach. Inappropriate laws must be changed to have a better impact, as the basic concept of progressive legal theory says that the law is for humans, not humans for the law, because allowing violations of ASN neutrality is the same as allowing constitutional crimes to occur before our eyes.

### ***Affirmative Action to Eliminate Elections ASN Voting Rights in and Elections***

The concept of democracy carries the principle of from the people, by the people, and for the people. This is the essence of popular sovereignty, a teaching that views supreme power as residing in the hands of the people, derived from the people, for the benefit of the people and exercised in conjunction with the people (Asshiddiqie, 2014). It is these democratic values that must be upheld so that violations of ASN neutrality must be stopped immediately. Although voting is the basic right of every citizen, it must be carried out without intervention or intimidation from any party. Laws should be made to be a cure; behavior that brings about “disease” should not be maintained and should be destroyed.

Speaking of the total number of Permanent Voter List (DPT) for the 2024 Election, there are 204,807,222 voters. If we subtract the total number of civil servants spread across all regions of Indonesia in 2024, which is 4,282,292, the percentage of DPT obtained from civil servants is only 2%. This certainly does not have a significant effect on reducing the number of DPT compared to the wounds of Indonesian democracy (Sayuti, 2013). For this reason, the author reiterates that if the voting rights of civil servants are abolished, this is affirmative action to maintain democratic values.

The consideration is that if the voting rights of civil servants are maintained, it becomes a dilemma for them because they are given the right to vote but cannot express themselves freely. Moreover, if they violate neutrality, the sanctions will be imposed on the civil servants themselves. The consideration of these risks is not sufficient compared to the damage to democracy that is experienced. The debate over the suffrage rights of non-TNI-Polri civil servants being allowed and TNI-Polri civil servants not being allowed for reasons of the armed forces is no longer relevant. The abolition of TNI-Polri suffrage rights for fear of intimidating voters[4] turns out to have similarities with civil servants who force and are forced to vote for and support one of the candidate pairs. The author agrees with the idea of abolishing the right to vote for civil servants, as once discussed by Commission II of the Indonesian Parliament, to make the position of civil servants equal to that of members of the Indonesian National Armed Forces and Indonesian National Police in elections and voting, namely by abolishing the right to vote for civil servants.[5]

The law should be made for the benefit of the nation and the state, so that the mistakes of a small proportion of voters do not have a broad impact on Indonesian democracy, as Jeremy Bentham's utility theory says, “Greatest Happiness for the Greatest Number of People”. The law should also provide solutions without having to hinder. For the sake of creating an ethical democracy, the achievement of common political interests takes precedence over that of groups. Politics should be the one that submits to the law, not the other way around (*Politiae Legius Non Leges Politii Adoptandae*).

## **CONCLUSION**

Based on the above explanation, the following conclusions can be drawn: First, violations of ASN neutrality in elections have been going on for a long time

and up to now, and have even become the most dominant violation in every election. Violations of ASN neutrality in elections will divide the nation and therefore must be stopped for the realization of a quality democracy with integrity in Indonesia.

Second, violations of neutrality often occur through the abuse of authority by civil servants who use state facilities to support one of the candidate pairs. Moreover, there is also the use of orders and intimidation by superiors through threats and the lure of positions. The application of punishment for civil servants who violate neutrality has not been fully enforced, therefore, to prevent violations of civil servant neutrality that harm democracy, it is appropriate to take another more influential approach.

Third, the removal of ASN suffrage does not significantly affect the number of DPT in elections compared to the wounds to Indonesian democracy. The removal of ASN suffrage is an Affirmative Action that needs to be taken to maintain democratic values. The debate over the difference in voting rights for non-TNI-Polri civil servants and the removal of voting rights for TNI-Polri civil servants is no longer relevant because abuse of civil servant authority occurs in all circles, preventing civil servants from being neutral in elections and voting. Therefore, the law should be made for the benefit of the nation and the state, so that the mistakes of a small proportion of voters do not have a broad impact on Indonesian democracy.

The voting rights of civil servants in elections should be abolished. The author fully supports the government's discourse on abolishing the voting rights of civil servants in elections as proposed by Commission 2 of the Indonesian House of Representatives, namely equalizing the voting rights of civil servants and the Indonesian National Armed Forces and National Police. This is not without reason but based on careful consideration. Speaking of rights, isn't the TNI-Polri also a citizen who has rights? However, for the sake of realizing democracy with integrity, affirmative action to eliminate the right to vote for civil servants in elections is necessary.

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