



The Problem Of The Neutrality Of The Civil Service In Local Head Elections: A Constitutional Law Perspective

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ABSTRACT

The neutrality of the State Civil Apparatus in local democratic contests, particularly Regional Head Elections, constitutes a fundamental principle for the realization of a clean, professional, and democratic system of governance. As an integral component of the state apparatus, ASN plays a strategic role in public administration and service delivery, thereby requiring impartiality and freedom from practical political interests. Nevertheless, empirical realities indicate that violations of ASN neutrality during Pilkada remain prevalent, manifesting in both direct and indirect political involvement, misuse of state resources, and administrative actions that favor certain candidate pairs. This condition reflects a persistent gap between normative legal frameworks and their practical implementation. This article aims to examine the challenges surrounding ASN neutrality in Pilkada by analyzing regulatory arrangements, implementation practices, and supervisory mechanisms from a constitutional law perspective. Employing a normative juridical approach, this study reviews statutory regulations, legal doctrines, and findings from relevant national scholarly journals. The analysis reveals that although the legal framework governing ASN neutrality is relatively comprehensive, the effectiveness of law enforcement and oversight mechanisms continues to face significant obstacles. These include weak inter-institutional coordination among supervisory bodies, political pressures exerted on the bureaucracy, and a limited level of legal awareness among certain segments of ASN. From the standpoint of constitutional law, breaches of ASN neutrality have serious implications for the quality of democracy, the realization of good governance principles, and the legitimacy of local governments produced through Pilkada. Therefore, strengthening legal policies, enhancing supervisory capacity, and reinforcing bureaucratic ethics development are essential measures to ensure the consistent enforcement of ASN neutrality in every local democratic process.

INTRODUCTION

Regional Head Elections constitute a central mechanism for the exercise of local democracy in Indonesia. Through Pilkada, citizens are constitutionally empowered to directly elect their regional leaders, reflecting the principle of popular sovereignty as mandated by Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Within a democratic state governed by the rule of law, the organization of Pilkada must not only safeguard electoral freedom but also ensure fairness, neutrality, and equal treatment for all candidates and voters. One of the most decisive factors influencing the quality of local democracy in this context is the political neutrality of the State Civil Apparatus.

ASN occupies a strategic position within the governmental system, functioning as the executor of public policies, provider of public services, and a unifying force of the nation. This pivotal role places civil servants in a vulnerable position amid competing political interests, particularly during electoral periods such as Pilkada. Consequently, the principle of ASN neutrality is essential for maintaining bureaucratic professionalism and preventing the abuse of state power for partisan political purposes (Adil et al., 2023). ASN neutrality should not be perceived merely as an administrative ethical standard but rather as a constitutional principle intrinsically linked to democracy, justice, and good governance.

Within Indonesia's positive legal framework, the obligation of ASN neutrality has been explicitly regulated through various statutory instruments, including Law Number 5 of 2014 on the State Civil Apparatus, Law Number 10 of 2016 on Regional Head Elections, as well as implementing regulations and supervisory guidelines issued by institutions such as the State Civil Apparatus Commission. These regulations clearly prohibit civil servants from engaging in practical politics, endorsing specific candidate pairs, or utilizing state facilities for electoral interests. Nevertheless, the existence of a relatively comprehensive regulatory framework has not been fully reflected in empirical practice.

Empirical evidence indicates that violations of ASN neutrality remain a recurrent issue in almost every Pilkada cycle. Reports from the General Election Supervisory Agency and KASN reveal that ASN involvement in electoral processes occurs in various forms and degrees, ranging from minor infractions to serious violations that substantially affect the fairness of political competition (Rahmansyah & Irwandi, 2021). Such violations include the presence of civil servants at campaign events, the dissemination of political endorsements via social media, bureaucratic mobilization to support particular candidates, and discriminatory administrative policies. These patterns demonstrate that the problem of ASN neutrality extends beyond individual misconduct and reflects deeper structural issues within Indonesia's constitutional and regional bureaucratic systems.

The complexity of ASN neutrality issues is further exacerbated by power relations between incumbent regional heads and subordinate bureaucratic officials. In many instances, civil servants face a dilemma between adhering to neutrality obligations and responding to political pressure from superiors who exercise authority over career advancement, transfers, and promotions (Susilowati, 2023). This hierarchical dependency creates fertile ground for the politicization of the bureaucracy, thereby eroding the principle of neutrality in favor of pragmatic political interests.

From a constitutional law perspective, such conditions raise serious concerns, as they contradict the fundamental principles of a democratic state that positions bureaucracy as an instrument of the state rather than a tool of political power. A non-neutral bureaucracy undermines the system of checks and balances, compromises electoral justice, and diminishes the legitimacy of regional governments produced through Pilkada. Accordingly, violations of ASN neutrality do not merely affect administrative governance but also generate constitutional implications for the quality of local democracy and public trust in state institutions (Saleh et al., 2025).

Furthermore, the issue of ASN neutrality is closely intertwined with the effectiveness of supervisory mechanisms and law enforcement. Although institutions such as KASN and Bawaslu are mandated to oversee and address neutrality violations, inter-agency coordination often encounters significant challenges. Limited sanctioning authority, overlapping regulatory frameworks, and insufficient political commitment to uphold bureaucratic neutrality hinder the effectiveness of enforcement efforts (Nurul, 2025). As a result, many violations are inadequately addressed or resolved through mild administrative sanctions that fail to produce a deterrent effect.

In this regard, the issue of ASN neutrality should be positioned within the broader agenda of bureaucratic reform and the consolidation of constitutional democracy. Neutrality is not solely a matter of legal compliance but also concerns the cultivation of a legal culture and bureaucratic ethics oriented toward public interest. Without neutrality, the bureaucracy risks becoming an instrument of political domination, thereby undermining fairness and equality in local democratic contests (Adil et al., 2023).

Although numerous studies have examined ASN neutrality in the context of Pilkada, most have focused on administrative law or public management perspectives. Research that specifically addresses this issue through a constitutional law lens remains relatively limited. This gap is significant, given that violations of ASN neutrality possess strong constitutional dimensions related to popular sovereignty, electoral democracy, and the legitimacy of regional authority. Therefore, a more comprehensive constitutional law analysis is necessary to understand both the root causes and systemic implications of these violations.

This article seeks to address this gap by analyzing the issue of ASN neutrality in Pilkada from a constitutional law perspective. The study focuses on three main aspects: the legal framework governing ASN neutrality, the forms and underlying causes of neutrality violations in Pilkada, and the challenges faced in supervision and law enforcement. Using a normative juridical approach, the article examines the alignment between prevailing legal norms and empirical practices, while also identifying legal loopholes and institutional weaknesses that contribute to recurring violations of ASN neutrality.

Ultimately, this discussion is expected to contribute academically to the development of constitutional law scholarship and to serve as a critical reference for policymakers and stakeholders in formulating strategies to strengthen ASN neutrality. The consistent enforcement of this principle is anticipated to enhance the quality of local democracy, promote integrity in regional governance, and uphold the dignity of the bureaucracy as a professional and equitable public service institution.

RESEARCH METHOD

This study adopts a normative juridical approach, which conceptualizes law as a set of norms governing the conduct of state officials in the administration of Regional Head Elections. This approach is selected because the research primarily focuses on analyzing positive legal provisions, constitutional law principles, as well as legal doctrines and theories related to the neutrality of the State Civil Apparatus within the framework of local democratic processes. A normative juridical method enables a critical examination of the coherence between prevailing legal norms and their application in the governance and implementation of regional elections (Adriaman, 2024).

The type of research employed is doctrinal legal research, which relies predominantly on library-based study. The legal materials utilized in this research are classified into primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 2014 concerning the State Civil Apparatus, Law Number 10 of 2016 on Regional Head Elections, as well as other statutory regulations relevant to the regulation of ASN neutrality. Secondary legal materials consist of national scholarly journals, textbooks on constitutional law and administrative law, prior empirical and normative studies, and expert opinions addressing issues of ASN neutrality and local democracy. Tertiary legal materials serve as supporting references, such as legal dictionaries, encyclopedias, and other sources that assist in clarifying legal terminology and concepts.

The collection of legal materials is conducted through document study by reviewing, identifying, and systematically compiling statutory instruments and academic literature relevant to the research object. All collected legal materials are subsequently categorized according to their relevance and analytical significance in addressing the research problem.

The analysis of legal materials is carried out qualitatively using a descriptive-analytical method. Classified materials are examined through normative interpretation of legal provisions, cross-referencing related statutory regulations, and comparing legal norms with empirical practices as documented in previous studies and reports issued by supervisory institutions. To achieve a comprehensive understanding of the principle of ASN neutrality from a constitutional law perspective, this study employs both the statute approach and the conceptual approach.

Through this methodological framework, the research aims to provide a systematic and in-depth analysis of the challenges surrounding ASN neutrality in Pilkada, as well as its implications for democratic governance and the implementation of the rule of law.

DISCUSSION

The Legal Framework of State Civil Apparatus Neutrality from a Constitutional Law Perspective

The neutrality of the State Civil Apparatus constitutes a fundamental principle within Indonesia's constitutional system, which is grounded in the concepts of the rule of law and constitutional democracy. In a state governed by law, all governmental actions must be subject to legal norms and oriented toward the public interest rather than partisan or group-based political agendas. Accordingly, as an integral component of the state apparatus, ASN is required to perform governmental functions in a professional, objective, and impartial manner, free from practical political interference, particularly during periods of political contestation such as Regional Head Elections.

Normatively, the legal framework governing ASN neutrality is comprehensively regulated under Law Number 5 of 2014 concerning the State Civil Apparatus. This statute defines ASN as the executor of public policy, provider of public services, and a unifying force of the nation. Such a role implicitly necessitates political neutrality, as involvement in practical politics risks undermining principles of fairness, professionalism, and public trust in the bureaucracy (Putra & Pratiwi, 2022). Moreover, ASN neutrality is an integral component of the merit system, which aims to ensure that personnel management is based on qualifications, competencies, and performance rather than political loyalty.

From a constitutional law perspective, the regulation of ASN neutrality cannot be separated from the principles of democracy and popular sovereignty. Pilkada, as a mechanism for realizing the people's sovereign will, requires fair and equal political competition. When civil servants who possess access to administrative authority and state resources align themselves with specific candidates, such alignment distorts the principle of electoral fairness. This situation threatens the legitimacy of Pilkada outcomes and contradicts the core values of constitutional democracy (Saleh et al., 2025).

In addition to the ASN Law, neutrality obligations are reinforced by Law Number 10 of 2016 on Regional Head Elections, which expressly prohibits civil servants from participating in campaign activities or engaging in political actions that advantage or disadvantage particular candidate pairs. These prohibitions are designed to prevent the politicization of the bureaucracy and the misuse of public office. Within the framework of constitutional law, such restrictions reflect the state's commitment to maintaining a clear demarcation between bureaucratic administration and the domain of electoral politics.

Despite the explicit normative framework, the practical implementation of ASN neutrality continues to encounter significant challenges. One of the primary issues lies in the existence of multiple interpretations

regarding the boundaries of neutrality, particularly in distinguishing between civil servants' political rights as citizens and their professional obligations as state officials. Constitutionally, ASN retains fundamental political rights, including the right to vote. However, in practice, the distinction between the legitimate exercise of personal political rights and actions that constitute neutrality violations often becomes blurred (Susilowati, 2023).

This ambiguity has been further intensified by the rapid development of information technology and social media platforms. Digital activities undertaken by ASN such as liking, commenting on, or sharing political content frequently raise debates over whether such actions amount to neutrality violations or merely reflect personal expressions of opinion. This phenomenon indicates that existing regulations have not fully adapted to the dynamics of contemporary political engagement, thereby creating regulatory gaps that complicate enforcement and classification of violations (Panjaitan & Martua, 2021).

From a constitutional law standpoint, the lack of clear boundaries regarding ASN neutrality undermines legal certainty, which is a cornerstone of the rule of law. Legal norms that are ambiguous or insufficiently precise tend to result in inconsistent enforcement and expose law enforcement processes to subjective interpretation. Ultimately, such conditions may generate injustice, both for civil servants accused of neutrality violations and for the public, whose democratic rights may be compromised by a partial or politicized bureaucracy.

Forms of Violations of State Civil Apparatus Neutrality in Regional Head Elections

Violations of the neutrality principle of the State Civil Apparatus in Regional Head Elections constitute a recurring phenomenon, indicating the persistent weakness in the internalization of bureaucratic professionalism within local democratic practices. Broadly, breaches of ASN neutrality may be categorized into several primary forms, including active participation in campaign activities, misuse of state facilities and authority for political purposes, and partisan administrative decision-making that favors particular candidate pairs.

Active involvement of civil servants in political campaigns represents one of the most frequently identified forms of neutrality violations. Such involvement may occur directly, for instance through attendance at campaign events, participation in campaign teams, or the public expression of support for specific candidates. Indirect forms of involvement are also prevalent, particularly through social media activities, such as disseminating political symbols, narratives, or content that implies partisan alignment. These practices clearly contravene the principle of ASN neutrality, as they possess the potential to influence public political preferences and create unequal conditions in the Pilkada competition (Murti & Rizkika, 2023).

Another significant form of violation involves the use of state facilities and public resources for electoral interests. Civil servants who exploit official vehicles, government budgets, public infrastructure, or bureaucratic networks to support certain candidates abuse the authority entrusted to them by the state. From a constitutional law perspective, such conduct not only violates bureaucratic ethics but also undermines the principles of accountability and fairness in public administration. Partisan utilization of state resources generates unjust advantages for particular candidates and disrupts the principle of equal competition in Pilkada (Adil et al., 2023).

Beyond campaign involvement and misuse of public resources, violations of ASN neutrality are also manifested in biased administrative decision-making. In this context, civil servants may exercise discretionary authority to issue policies, provide services, or make administrative decisions that indirectly benefit or disadvantage certain candidates. Although such practices are often difficult to substantiate due to their formal presentation as routine administrative actions, their impact on democratic fairness and public trust in the bureaucracy is substantial (Soenmandjaja & Susilowati, 2023).

Empirical data and findings from the General Election Supervisory Agency demonstrate that violations of ASN neutrality during Pilkada remain relatively widespread across various regions. Analyses of Bawaslu reports in several studies reveal that civil servants frequently engage in practical political activities, either voluntarily or as a result of structural pressure from superiors or incumbent regional leaders (Sutrisno, 2019). This situation suggests that neutrality violations cannot be viewed solely as individual misconduct but are closely linked to power relations within regional bureaucracies, where civil servants often occupy subordinate positions and are vulnerable to political intervention.

Violations of ASN neutrality not only damage the image of the bureaucracy as a professional and public-oriented institution but also raise serious concerns regarding the effectiveness of neutrality regulations themselves. When such violations occur repeatedly and on a large scale, they reflect systemic weaknesses in supervision and law enforcement mechanisms. From a constitutional law standpoint, this condition has the potential to erode the legitimacy of local democracy, as the outcomes of Pilkada may be perceived as influenced not purely by the free will of the electorate but by bureaucratic intervention that should, in principle, remain politically neutral (Saleh et al., 2025).

Challenges in Supervising and Enforcing the Neutrality of the State Civil Apparatus

Supervision and law enforcement concerning the neutrality of the State Civil Apparatus in Regional Head Elections represent one of the most critical yet problematic aspects in safeguarding the quality of local democracy. Although supervisory institutions with mandates to ensure ASN neutrality such as the State Civil Apparatus Commission (KASN) and the General Election Supervisory Agency have been formally established, the effectiveness of their oversight remains constrained by various structural and institutional challenges. These obstacles indicate that the existence of legal regulations and supervisory bodies alone has not been sufficient to guarantee consistent compliance with neutrality principles in practice.

One of the primary challenges in monitoring ASN neutrality lies in weak inter-institutional coordination among supervisory bodies. KASN is authorized to oversee the implementation of the merit system and the neutrality of civil servants, while Bawaslu is responsible for supervising all stages of Pilkada, including potential violations involving ASN. In practice, however, the division of authority between these institutions often results in overlapping responsibilities or, conversely, regulatory gaps particularly in determining binding sanctions (Irawan et al., 2024). This fragmented institutional arrangement frequently leads to delayed and ineffective handling of neutrality violations.

In addition to coordination issues, limitations in enforcement authority pose a serious challenge to the effectiveness of legal action. Recommendations issued by KASN regarding neutrality violations are generally administrative in nature and heavily dependent on follow-up by regional personnel management authorities. In numerous cases, such recommendations are inadequately implemented due to conflicts of interest, especially when the PPK has political affiliations with certain candidates or is an incumbent regional head (Kamaly, 2025). This dependency reveals a structural weakness within the enforcement mechanism of ASN neutrality regulations.

Another significant challenge concerns disparities in institutional resources and capacity. Both KASN and Bawaslu face constraints related to human resources, budget allocations, and supervisory infrastructure, particularly in regions characterized by vast territories and complex political dynamics. These limitations reduce the intensity of monitoring activities and slow responses to reports of neutrality violations (Adil et al., 2023). Consequently, many violations remain undetected at early stages or are not thoroughly addressed.

Beyond institutional factors, insufficient legal awareness and understanding of neutrality obligations among civil servants themselves constitute a substantial obstacle. Some ASN members continue to perceive political involvement as a normal practice or merely as an expression of loyalty to superiors. Such perceptions suggest that the values of neutrality and bureaucratic ethics have not been fully internalized within the organizational culture of regional governments (Soenmandjaja & Susilowati, 2023). Without sustained guidance and continuous education, law enforcement efforts are unlikely to achieve optimal outcomes.

Political pressure exerted by regional elites, particularly incumbent regional heads, further undermines the effectiveness of neutrality oversight. Civil servants occupying structural positions often face a dilemma between complying with legal norms and following political directives from superiors who exercise significant control over their career progression and appointments. From a constitutional law perspective, this situation reflects an unhealthy power relationship between politics and bureaucracy, ultimately weakening the principle of bureaucratic independence and eroding the foundations of good governance (Saleh et al., 2025).

4. Implications of Violations of State Civil Apparatus Neutrality for Constitutional Law and the Principles of Good Governance

Violations of the neutrality principle of the State Civil Apparatus in Regional Head Elections generate broad and fundamental implications for Indonesia's constitutional system. From a constitutional law perspective, ASN neutrality constitutes a crucial prerequisite for the operation of democratic, just, and rule-based governance. When civil servants become involved in practical politics or demonstrate partisan alignment with specific candidates, the core function of the bureaucracy as a state instrument dedicated to serving the public interest in an objective and professional manner is fundamentally distorted.

One of the most significant consequences of ASN neutrality violations is the erosion of good governance principles. Core elements of good governance such as accountability, transparency, effectiveness, and fairness are heavily dependent on the professionalism and independence of the bureaucracy. A politicized bureaucracy tends to produce public policies that are biased and oriented toward narrow political interests rather than the broader public good. In this context, public policy and service delivery risk being transformed into political instruments for maintaining or expanding the power of particular groups, thereby undermining the principles of justice and equality (Saleh et al., 2025).

From the standpoint of substantive democracy, the involvement of civil servants in Pilkada also threatens the principle of popular sovereignty. Democracy should not be understood merely as an electoral procedure, but as a process that guarantees free political choice without coercion or undue influence. When civil servants occupying strategic positions within regional governments openly or covertly support certain candidates, citizens may feel influenced or even intimidated in exercising their political preferences. Such conditions diminish the quality of political participation and weaken the legitimacy of Pilkada outcomes (Adil et al., 2023).

Another important implication concerns the disruption of fairness in regional governance. A non-neutral bureaucracy is prone to discriminatory practices in public service provision, either explicitly or implicitly. For example, groups perceived as politically opposed may experience unequal access to government programs or administrative services. From a constitutional law perspective, such practices violate the principle of equality before the law and government, which is a fundamental pillar of the rule of law (Soenmandjaja & Susilowati, 2023).

Violations of ASN neutrality also contribute to a decline in public trust in regional governments. Public trust represents a critical form of social capital for governmental effectiveness and political stability. When citizens perceive the bureaucracy as aligned with specific political interests, the legitimacy of regional authorities is undermined. This erosion of trust may lead to political apathy, reduced civic participation, and heightened social tensions in the aftermath of Pilkada (Irawan et al., 2024).

These dynamics demonstrate that breaches of ASN neutrality cannot be regarded merely as administrative infractions, but rather as constitutional issues that require serious and systematic responses from the state. Accordingly, there is a pressing need for a more comprehensive reconstruction of legal policies aimed at strengthening bureaucratic neutrality. Such reforms should include clearer normative formulations, enhanced authority for supervisory institutions, and the consistent application of firm and proportional sanctions against civil servants who violate neutrality obligations (Saleh et al., 2025).

From a constitutional law perspective, reinforcing ASN neutrality forms an integral part of maintaining a proper balance between political power and administrative governance. A neutral and professional bureaucracy enables the effective realization of good governance principles, supports the substantive functioning of local democracy, and contributes to the restoration and sustainability of public trust in regional government institutions.

CONCLUSION

The neutrality of the State Civil Apparatus in Regional Head Elections constitutes a fundamental principle within Indonesia's constitutional system, aimed at safeguarding democratic quality, bureaucratic professionalism, and the legitimacy of regional governance. Based on the analysis conducted in this study, it can be concluded that, at the normative level, the legal framework regulating ASN neutrality has been relatively comprehensively established through various statutory instruments. Nevertheless, the practical implementation of these norms continues to encounter structural, institutional, and cultural challenges.

Violations of ASN neutrality during Pilkada occur in multiple forms, ranging from involvement in campaign activities and misuse of state facilities to partisan administrative decision-making. These patterns reflect the persistent politicization of the bureaucracy at the regional level, exacerbated by power relations between political officeholders and civil servants. Such conditions not only undermine the professionalism of the state apparatus but also compromise the principles of fairness and equality in local democratic competition.

From a constitutional law perspective, breaches of ASN neutrality generate serious implications, including the erosion of good governance principles, the weakening of substantive democracy, and declining public trust in regional governments. A non-neutral bureaucracy is prone to producing discriminatory public policies that deviate from the public interest. Furthermore, weaknesses in supervision and law enforcement particularly due to limited authority and inadequate coordination among oversight institutions contribute to the persistence of repeated neutrality violations.

Therefore, strengthening ASN neutrality in Pilkada requires firm legal and political commitment through clearer normative regulation, more effective supervisory mechanisms, and the consistent application of strict and proportionate sanctions. These efforts must be accompanied by continuous development of bureaucratic ethics and organizational culture oriented toward professionalism and public service, so that ASN neutrality can be sustainably upheld in order to reinforce democracy and governance based on the principles of the rule of law.

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