

Relations between the State Civil Apparatus and Regional Heads in the Indonesian State Civil Service System

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DOI: <https://doi.org/10.31603/variajusticia.v18i3.8363>

Submitted: October 2022 Revised: November 2022 Accepted: December 2022

ABSTRACT

Keywords:
*Elections; Civil
Servant;
Neutrality*

The purpose of this study is to ascertain the civil servant's general election neutrality model. This study used secondary data or library resources that included primary, secondary, and tertiary legal materials to accomplish its goals. This study interviewed practitioners such as the National Civil Service Agency, the State Civil Apparatus Commission, and the Election Supervisory Board of the Republic of Indonesia in order to gather secondary data on personnel legislation and general elections. In this study, a statutory method was paired with a conceptual, historical, and comparative perspective. The outcomes demonstrated that civil servants' impartiality in general elections has never occurred from the start of independence till the present. This is a result of the system of subordination (unequal relations) between civil servant and political official. To balance positions between the two, it is therefore vital to separate civil servants from political officials. As a result, it is required to amend Law Number 5 of 2014 Concerning State Civil Apparatuses in order to control the separation of positions of Civil Servants and political authorities.

1. INTRODUCTION

Since 1945, Indonesia has held several elections to elect a President/Vice President as well as members of the central, provincial, and district/city House of Representatives. One of the interesting discussions related to the holding of general elections is the neutrality of civil servants.

Research on the neutrality of Civil Servants has been carried out by previous researchers, among others, Christine Agius and Karen Devine,¹ Bennis Wai Yip So,²

¹ Karl-Heinz Ladeur and Ino Augsberg, "The Myth of the Neutral State: The Relationship between State and Religion in the Face of New Challenges," *German Law Journal* 8, no. 2 (2007): 143–52, <https://doi.org/10.1017/s2071832200005472>.

² Bennis Wai Yip So, "Civil Service Neutrality in Taiwan: Is It Neutrality with or without Dichotomy?," *Issues and Studies* 49, no. 1 (2013): 39–70.

Sudiman,³ Arif Novinato,⁴ Kernaghan,⁵ and Muhammad Sayadur Rahman.⁶ These previous studies focused more on the pattern of relations between political officials and the bureaucracy (civil servants), resulting in the practice of non-neutral civil servants in general elections. In contrast, this research focuses on how the neutrality of Civil Servants should be or the neutrality model of Civil Servants in general elections in Indonesia.

Civil Servants are Indonesian citizens who meet certain requirements and are appointed as State Civil Apparatus employees permanently by staffing supervisor officials.

According to Article 9 paragraph (2) of Law Number 5 of 2014 concerning the State Civil Apparatus, neutrality is free from the influence and intervention of all political groups and parties. To maintain the neutrality of the State Civil Apparatus from the influence of political parties to guarantee the integrity, cohesiveness, and unity of the State Civil Apparatus, and to be able to focus all attention, mind, and energy on the tasks assigned, the State Civil Apparatus is prohibited from becoming a member and/or administrator political parties.

In every general election, presidential/vice presidential election, members of the People's Legislative Assembly, and regional head/deputy regional head elections, the practice of non-neutral civil servants always occurs. A study conducted by Indonesia Corruption Watch (ICW), together with networks in four regions, Jakarta, Semarang, Surabaya, and Yogyakarta, found 54 indications of violations of provisions regarding office facilities during the 2009 elections. The involvement of the bureaucracy occurred in the form of the mobilization of Civil Servants.⁷

The State Civil Apparatus Commission data shows that in 2018 there was a violation of the neutrality of the State Civil Apparatus, as shown in Table 1.

Table 1. Data on Violations of the Neutrality of the State Civil Apparatus in 2018

NO	PROVINCE	AMOUNT
1	South Sulawesi	117
2	Southeast Sulawesi	112
3	Lampung	31
4	North Maluku	30

³ Wojciech Tomasz Modzelewski, "The Breaking down of Contemporary State Neutrality: The Case of Sweden's Non-Alliance," *The Copernicus Journal of Political Studies*, no. 1 (2019): 99, <https://doi.org/10.12775/cjps.2019.006>.

⁴ Arif Novianto, *Mempertanyakan Netralitas Birokrat Dalam Pemilu: Antara Sistem Sosial, Kekuasaan, & Budaya Patron-Client*, vol. 1, 2019.

⁵ Bouke De Vries, "Against Hands-on Neutrality," *Politics, Philosophy and Economics* 19, no. 4 (2020): 424–46, <https://doi.org/10.1177/1470594X20924679>.

⁶ Muhammad Sayadur Rahman, "Politics-Bureaucracy Relations, Governance and Development in Bangladesh: The Case of Local Government" (Jahangirnagar University, 2015).

⁷ Dimitry Kochenov and Martijn van den Brink, "Secessions from EU Member States: The Imperative of Union's Neutrality," *European Papers - A Journal on Law and Integration* 1, no. 1 (2016): 67–92, <https://doi.org/10.15166/2499-8249/6>.

5	West Java	23
6	Riau	20
7	Central Java	20
8	South Sumatra	13
9	North Sulawesi	13
10	East Nusa Tenggara	11
11	South Kalimantan	11
12	West Sulawesi	10
13	North Sumatra	9
14	Jambi	9
15	East Kalimantan	9
16	East Java	8
17	West Sumatra	7
18	Gorontalo	7
19	West Kalimantan	6
20	West Nusa Tenggara	5
21	Bali	4
22	Central Kalimantan	4
23	Banten	3
24	Papua	3
25	Another region	6

Source: State Civil Apparatus Commission, 2018

The table above shows that violations of the neutrality of the State Civil Apparatus are evenly distributed in most provinces in Indonesia. Thus, the neutrality of the State Civil Apparatus is a severe issue in efforts to realize the professionalism of the State Civil Apparatus in this country.

The types of violations that occurred in the 25 provinces above can be seen in Table 2 below:

Table 2. Types of Violations of State Civil Apparatus Neutrality in 2018

No	Types of Violations	Amount
1	Campaign and outreach on social media (post, share, comment, like)	216
2	Attend candidate declaration	159
3	Participate as campaign committee/executor	142
4	Join campaigns with or without the ASN attribute	127
5	Attend political party events	94
6	Photo with the candidate pair	64
7	Attend the presentation of political party support to candidate pairs	41
8	Participated in a campaign with state facilities	28
9	Attend activities leading to partiality (making solicitations, appeals, giving goods)	27
10	Approach to political parties related to the candidacy of himself or someone else	16
11	Make decisions that benefit or harm the candidate pair or candidates	12
12	Provide support to candidates for legislative members or independent candidates for regional heads by providing ID cards	11
13	Nominate without resigning	7

14	Become a member or administrator of a political party	5
15	Deploy civil servants to join the campaign	1
16	Being a resource person or speaker at a political party event	1

Source: State Civil Apparatus Commission, 2018

Meanwhile, Bawaslu data as of April 2019 shows that there were 227 violations of the neutrality of the State Civil Apparatus in 24 provinces. The most violations of the neutrality of the State Civil Apparatus were in Central Java Province, with 43 cases. West Java Province had 33 cases. South Sulawesi Province had 29 cases, and so on. The violation of the neutrality of the State Civil Apparatus is related to (1) nominating himself as a member of the legislature but has not resigned as a State Civil Apparatus, (2) attending campaign activities, (3) using the attributes of general election participants, (4) distributing campaign props, (5) getting involved in a supportive team toward general election participants and others.

The data relating to the number of complaints in the regions that carried out simultaneous local elections can be seen in Table 3 below.

Table 3. Number of Complaints of Violation of the Neutrality of the State Civil Apparatus and Number of Simultaneous Local Elections

No	Year	Regions Carrying Out Regional Head Elections	Number of Complaints of Violation of the Neutrality of the State Civil Apparatus
1	2015	269	29
2	2016	0	0
3	2017	101	52
4	2018	171	491

Source: Working Group for System Assessment and Development (processed from various sources) Data as of December 2018

Table 3 above shows that the trend of complaints of violations of the neutrality of the State Civil Apparatus has increased yearly. It is interesting to see that the number of regions that carried out regional elections in 2018 was not as much as in 2015, but the number of complaints that came in was even higher in 2018.

Based on the description above, the problem can be formulated, "How is the neutrality of Civil Servants in the general election that should be in Indonesia?" This research aimed to determine the neutrality of civil servants in general elections or the neutrality model of civil servants in general elections in Indonesia.

2. RESEARCH METHOD

This normative legal research focused on secondary data or library materials consisting of primary, secondary, and tertiary legal materials, which were investigated to formulate research results and draw conclusions. To collect the secondary data, this field research was conducted through interviews with informants and analysis of the neutrality

of the State Civil Apparatus. Also, the statutory approach was applied and combined with a historical, conceptual, and comparative approach.

3. RESULTS AND DISCUSSION

3.1. The Neutrality of the State Civil Apparatus

The neutrality of civil servants can be interpreted as not being affected by political party intervention so that civil servants can focus all their attention, mind, and energy on the tasks assigned to them, and this is done by prohibiting civil servants from becoming members and or administrators of political parties.⁸ Thus Civil Servants will behave impartially or not be involved in practical political activities, such as during the campaign period for regional head candidates in post-conflict local election events either secretly or openly.⁹

The indicators used to measure the neutrality of Civil Servants include (a) Not involved, in the sense of not being part of the candidate's success team during the campaign period or being a campaign participant either by using party attributes or Civil Servant attributes. (b) Not taking sides, in the sense of not helping in making decisions and/or actions that benefit one pair of candidates, not holding activities that lead to partiality towards one of the candidate pairs for Regional Head/Deputy Regional Head during the campaign period including meetings, solicitations, appeals, or giving goods to Civil Servants within the scope of their work units, family members, and the community, as well as not assisting in using state facilities related to positions in the framework of winning one of the candidates for the Regional Head/Deputy Regional Head pair during the campaign period.¹⁰

Another opinion states that the neutrality of civil servants is that civil servants are free from the influence of the interests of certain political parties and are impartial to the interests of certain parties or do not play a role in the political process because it is feared that the employee will misuse the use of state facilities for the interests of political parties.¹¹

3.2. Power Relations

Power of the State Civil Apparatus refers to the relationship between the bureaucracy and political officials. Discourses about bureaucratic and political relations should always move between the 'politics-administration dichotomy' and the 'politics-

⁸ Miftah Thoha, *Manajemen Kepegawaian Sipil Di Indonesia* (Jakarta: Jakarta Prenada Media Group, 2005).

⁹ La Ode Muh Amin, *Netralitas Birokrat Pemerintahan Pada Dinas Pendidikan Kota Makassar Dalam Pemilukada Di Kota Makassar (Pemilihan Walikota Makassar Tahun 2008)* (Makassar: Universitas Hasanuddin : Fak ISIPOL, 2013).

¹⁰ Amin.

¹¹ Sri Hartini and Tedi Sudrajat, *Hukum Kepegawaian Di Indonesia* (Jakarta: Sinar Grafika, 2017).

administration continuum.' Whether the bureaucracy will become a neutral and professional bureaucracy or just a tool of power more or less depends on the political order that supports it. A political order that leads to democratic values will tend to view bureaucracy from the perspective of the liberal theory, which views bureaucratic subordination as an ideal normative order for bureaucratic apparatus. The politics-administration dichotomy lays the ethical basis for bureaucracy as a 'public servant' or public policy implementer subject to political leaders' authority.¹²

The study of the relationship between the bureaucracy and politicians in Indonesia (employee neutrality) has been known since the very beginning of the development of the bureaucratic conception. The polemic between Karl Marx and Hegel highlighting the concept of bureaucratic neutrality in the form of a model of the relationship between bureaucracy and politics in Indonesia can be presented here. Karl Marx was the first person to question neutrality by analyzing and criticizing Hegel's philosophy of the state. The Hegelian analysis describes bureaucracy as a medium or bridge between the state and society.¹³

There are several models of relations between political officials and the bureaucracy, including the opinion of Ledivina Carino, which states that there are 2 models, (1) executive ascendancy. In this model, the leadership of political officials is based on the belief that the supremacy of the mandate obtained by political leaders comes from God, the people, or the public interest. (2) bureaucratic sublation, a model which states that the government bureaucracy does not only function as an implementing machine. Bureaucratic officials who are professionally trained have their strengths as permanent officials. Officials like this by themselves have a long career record compared to the political officials who become leaders. Therefore, its position should be subordinate, executing machine, and equal or co-equality with the executive. The bureaucracy is not partisan politics that has the power to make professional policies¹⁴ because of its expertise.

Thus, executive ascendancy is a relationship that shows a relationship of subordination. This subordinated position will be vulnerable to political officials' exploitation in implementing general elections. The practice of bureaucratic politicization appears contrary to the principle of neutrality of the State Civil Apparatus. Career positions require political support in carrying out the public policies they stipulate. Meanwhile, politicians need a bureaucracy as the executor or executor of public policy.

¹² Sri Yuliani, "Netralitas Birokrasi: Alat Politik Atau Profesionalisme?," *Jurnal Dinamika* 3, no. 2 (April 2003): 38–49.

¹³ Kristin Henrard, "Duties of Reasonable Accommodation in Relation to Religion and the European Court of Human Rights: A Closer Look at the Prohibition of Discrimination, the Freedom of Religion and Related Duties of State Neutrality," *Erasmus Law Review* 5, no. 1 (2019): 59–77, <https://doi.org/10.5553/elr221026712012005001005>.

¹⁴ Miftah Thoha, *Birokrasi & Politik Di Indonesia* (Jakarta: Rajawali Pers, 2010).

Thus, clarity is needed to regulate the scope of political positions and career positions, authority, and relationship patterns between the two to develop mutually supportive and beneficial interactions for the public interest.¹⁵

The relationship between the bureaucracy and political officials (political leadership) is a constant relationship between control and domination functions, and there are two primary forms of alternative solutions, whether bureaucracy is subordinate to politics (executive ascendancy) or bureaucracy parallel to politics (bureaucracy sublation).¹⁶

3.3. Election Justice

A country is said to be a democratic country if it fulfils the following elements:

1. Freedom to form and become a member of an association
2. Freedom to express opinions
3. The right to vote in voting
4. Opportunity to be elected or occupy various government or state positions
5. The right of political activists to campaign in order to gain support or votes
6. There are various sources of information
7. Free and fair elections
8. All institutions formulating government policies must depend on the people's will.

Based on the elements of a democratic country above, elections are necessary for a democratic country. In a representative democracy, building the principle of the rule of law is an absolute requirement, especially in elections to elect people's representatives. For the people's representatives to act on behalf of the people, the people's representatives must be determined by the people who, in practice, usually use electoral institutions.¹⁷

Regarding general elections, it shows a relationship between those who vote and those who are elected. Instead, general elections imply a relationship between those elected and those responsible for those who vote. According to Miriam Budiardjo, the people choose someone to represent them in the context of people's participation in state government administration. At the same time, they are a series of political activities to accommodate the interests or aspirations of the people. In the context of humans as individual citizens, general elections mean temporarily handing over their political rights to the people's representatives. Since it is a sovereign right to run the state's administration,¹⁸ it is called by Hans Kelsen by a political right. It is the right to participate in the formation of the will of the state. The essence of democratic elections is the freedom

¹⁵ Ikhwan Ratna, "Reformasi Birokrasi Terhadap Penataan Pola Hubungan Jabatan Politik Dan Karir Dalam Birokrasi Di Lingkungan Pemerintah Provinsi Riau," *Jurnal Sosial Budaya* 9, no. 1 (2012): 14–40.

¹⁶ Ratna.

¹⁷ Yordan Gunawan, *Introduction to Indonesian Legal System* (Yogyakarta: UMY Press, 2021).

¹⁸ Refly Harun, *Pemilu Konstitusional: Desain Penyelesaian Sengketa Pemilu Kini Dan Ke Depan*, PT Raja Grafindo Persada (Jakarta, 2016).

to choose. This can be interpreted that the main political right is the right to vote or participate in general elections, the election of legislature members. Political rights are the rights of a citizen to vote in general elections in a democratic country.¹⁹

The concept of general election justice is not limited to enforcing the legal framework but is an essential factor in the entire electoral process. The fairness of elections affects the behaviour of stakeholders in the process. Effective and timely electoral fairness is a critical element in maintaining the credibility of the electoral process.²⁰

Every action, procedure, or decision in the general election process that does not follow the law can be prevented through the general election justice system. This system is an important instrument for upholding the law and guaranteeing the application of democratic principles. The principle of general election justice was developed to prevent and identify irregularities as well as to become a means of correcting and imposing sanctions on perpetrators.²¹

Regarding general elections, the critical thing from the paradigm of general election justice is the guarantee of voting rights. If general election participants manipulate citizens' voting rights, then the general election justice system must restore them. Even if the holding of general elections needs to accommodate the right to vote, there is no reason not to restore the right to vote itself.²²

The electoral justice system prevents irregularities leading to disputes and guarantees free, fair, honest elections. The purpose of running general election justice is to ensure that the general election process is more credible and has high legitimacy. If general election justice does not work, then the credibility of the general election will decrease and result in voters doubting or even rejecting the final results of the general election, meaning that an effective and timely general election justice system is the key to maintaining the credibility of the general election process.²³

3.4. The Neutrality of Civil Servants in General Elections from Time to Time

Civil Servants were scattered and compartmentalised into various political parties at the beginning of independence up to the Old Order mas. At that time, they numbered dozens due to the ease with which they formed political parties, according to Notice X from the Vice President.

Civil Servants are supposed to be loyal to the state and nation of Indonesia but are loyalists to political parties.²⁴ Many civil servants during the Old Order government were

¹⁹ Harun.

²⁰ Jesus Orozco Henriquez, *Keadilan Pemilu*: (Jakarta: International IDEA, 2013).

²¹ Jesus Orozco Henriquez.

²² Ni'matul Huda and M Imam Nasef, *Penataan Demokrasi & Pemilu Di Indonesia Pasca-Reformasi* (Yogyakarta: Kanisius, 2017).

²³ Huda and Imam Nasef.

²⁴ Thoha, *Birokrasi & Politik Di Indonesia*.

recruited to become members of political parties. This was due to the potential of Civil Servants as a group that, on average, was educated and had a better social position than most people at that time. Civil Servants are expected to be able to become vote collectors to win General Elections. Vice versa, Civil Servants also have interests in career positions, so they are willing to cooperate with political parties. At that time, what was known as the seizure of Civil Servants by political parties occurred. Civil Servants ended up being compartmentalized into various party camps that were ideologically different. The government administrator's main task is often left only to serve the party's interests. The function of serving the public was defeated, and what is no less great is the possibility that they will also use state facilities to serve the party's interests.²⁵

The politicization of the bureaucracy occurs because, through politicization, a bureaucracy can be led to become a support base for the minister's party (concurrently party officials) in the upcoming general elections. Based on the experience of half a century, it can be described that there are three types of politicization of the bureaucracy in Indonesia: First, open politicization. It is said openly because efforts are made directly, and there is nothing to cover up. This type of open politicization took place during the Parliamentary Democracy period (1950-1959), where during this time, leaders of political parties competed for the position of a minister who directly led a ministry. After occupying the ministerial chair, the minister will try his best to show his leadership and the policies he pursues so that employees in the ministry are interested in entering and becoming members of the minister's party. Under such conditions, it was eventually found that several ministries became the basis or were dominated by a political party. For example, PNI dominated the Ministry of Home Affairs and the Ministry of Agriculture, the Ministry of Religion was alternately dominated by NU or Masyumi, and PSI and PNI alternately dominated the Ministry of Foreign Affairs. The second is semi-open politicization. The leaders of political parties carried out this type of politicization during the Guided Democracy period. It is said to be semi-open because the politicization of the bureaucracy is only reserved for political parties representing the Nationalist, Religious and Communist (Nasakom) groups. However, this latter group, on the one hand, formally has the right to place several leaders or figures into the cabinet and then politicize the bureaucracy.²⁶

During the New Order government, the government bureaucratic corps was unified. This is a response to the division of the Civil Servants unit during the Old Order period. Besides that, the New Order realized that civil servants must be allowed to

²⁵ AE Manihuruk, 2012, *Pegawai Negeri Sipil Di Awal Kemerdekaan dan Era Reformasi*, Seri Kertas Kerja, Special Edition, 53th Anniversary, Badan Kepegawaian Negara, Jakarta, Puslitbang BKN, May 2001, p. 25

²⁶ Rina Martini, "Politisasi Birokrasi Di Indonesia," *Jurnal Ilmu Politik* 22, no. 1 (2017).

associate with political parties. Based on these reasons, it is necessary to have guidance regulated in clear regulations for organizing civil servants in a corp form.

This began in 1966 with the formation of the Ministry of Home Affairs Employee Corps (Kokar Mendagri) as the forerunner of the Republic of Indonesia Employee Corps (KORPRI). The institution was designed for the political interest of winning Golongan Karya in the 1971 election. Kokar Minister of Home Affairs' success in the absolute winning of Golongan Karya in the 1971 election encouraged the government to expand its membership to all government bureaucratic apparatus from various departments or agencies, both at the central and regional levels area.

In subsequent developments based on Presidential Decree No. 82 of 1971 concerning Korpri, the civil bureaucracy was unified into one organization by establishing the Indonesian Republican Civil Service Corps. Thus, Korpri became the only vessel that accommodated the aspirations of government bureaucratic employees. The politics of uniformity is enforced within the government bureaucracy. The aspect of bureaucratic organizational life that first became the target of the political policy was the development of the spirit of the corps of the government bureaucratic apparatus. The loyalty of the government bureaucracy apparatus is directed to the state and government, not to political parties. This rule is still the same in substance as the rules during the Old Order government.

In order to unify the corps, one of the policies issued by the government is Government Regulation No. 26 of 1970 concerning the Membership of Civil Servants in Political Parties and Groups of Work. The essence of the Government Regulation is in Article 2, relating to Permits for Civil Servants in political parties. The legal politics regarding granting permits for Civil Servants in Political Parties was an attempt to recruit Civil Servants to strengthen the power of the New Order government.²⁷

During the Reformation era, there was an attempt to depoliticize Civil Servants. This effort was raised in anticipation of the political attitudes during the New Order era. The policy of prohibiting civil servants from engaging in politics was based on the tendency of disintegration and anticipation after the 1999 General Election, which predicted that there would be a coalition cabinet. Law 43 of 1999 prohibits Civil Servants from being members of political parties but is still given the right to vote.²⁸

Changes in staffing arrangements, especially the neutrality of Civil Servants from the New Order to the Reform era, were caused by a shift in development and government functions from the centre to the regions.²⁹ During nearly 32 years of the New Order

²⁷ Gema Perdana, "Menjaga Netralitas ASN Dari Politisasi Birokrasi (Protecting The ASN Neutrality From Bureaucracy Politicization)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 10, no. 1 (2019): 109–28, <https://doi.org/10.22212/jnh.v10i1.1177>.

²⁸ Muhammad Abdul Aziz and Tomy Michael, "Netralitas Gubernur Dalam Pemilihan Umum," *Adalah* 4, no. 3 (2020): 49–62, <https://doi.org/10.15408/adalah.v4i3.16215>.

²⁹ Aziz and Michael.

government, the government was very authoritarian and centralized. The point of power is centred on the rulers of the government bureaucracy.³⁰ Control of development and government is in the hands of the central government.³¹ In this regard, reforms have brought about changes marked by affirming the decentralization of tasks and authorities from the government to regional governments by granting autonomy to the regions. The granting of broad autonomy to the regions is directed at accelerating the realization of social welfare through service improvement, community empowerment, and participation. In addition, through broad autonomy, the regions are expected to be able to increase competitiveness by taking into account the principles of democracy, equity, justice, privileges, and specificities, as well as the potential and diversity of regions within the system of the Republic of Indonesia (NKRI).

The implementation of regional autonomy has further implications in various fields. One of them is in the field of staffing. The implication is the decentralization of authority to the Regent or Mayor to manage civil servants in their environment. This implication was later answered with the issuance of Law Number 43 of 1999 concerning Amendments to Law No. 8 of 1974 concerning the Fundamentals of Civil Service. Miftah Thoha stated that this change was inseparable from a paradigm shift, from a centralized to a decentralized paradigm, from authoritarian to egalitarian and democratic, from state sovereignty to people's sovereignty, from large to slender organizational forms, from state power-oriented to competence-oriented and attention to the role of the market.³²

Currently, attempts to separate political and career positions are by issuing Law Number 5 of 2014 concerning State Civil Apparatuses. This law is a milestone in the Indonesian bureaucracy's reform stage.

Law Number 5 of 2014 concerning the State Civil Apparatus was issued to replace Law Number 43 of 1999. The paradigm built in the State Civil Apparatus Law is managing human resources for the State Civil Apparatus. This is a step forward in efforts to carry out bureaucratic reform by the government, so it is no exaggeration to say that the birth of this law is a milestone in the success of reform and also the starting point for upholding the professionalism and acceptability of the State Civil Apparatus.

With the State Civil Apparatus Law, all Civil Servants have turned into professionals, and regional heads no longer have the right to interfere with and regulate staffing appointments. Thus, the regional head's authority is not unlimited. The reason for the need for the State Civil Apparatus Law is that the government views fundamental

³⁰ Thoha, *Manajemen Kepegawaian Sipil Di Indonesia*.

³¹ Syaekani, Afan Gaffar, and Ryaas Rasyid, *Otonomi Daerah Dalam Negara Kesatuan* (Yogyakarta: Pustaka Pelajar, 2004).

³² Thoha, *Birokrasi & Politik Di Indonesia*.

human resources problems within the bureaucracy/civil service must be addressed as soon as possible.³³

The challenges facing the Indonesian nation in the future require a state apparatus that is professional, visionary, able to forge partnerships with the private sector, high-performing, accountable, free from KKN practices, independent from the political structure of the state government, and oriented towards public services. To create such a State Civil Apparatus, it is necessary to make adjustments in the format of the State Civil Apparatus by strictly separating political positions in the three branches of government from the positions of the State Civil Apparatus, which must be neutral from political intervention. The Republic of Indonesia's personnel administration needs to regulate the separation of the two positions between state (political) positions and professional positions in the three branches of government, as well as prohibiting civil servants from becoming administrators and members of political parties.³⁴

While deliberating the State Civil Apparatus Bill (RUU), some of the bill's initiators included Prof. Sofian Efendi, Prof. Miftah Thoha, Prof. Eko Prasajo, and Prof. Priyono. These four actors are well aware that the role of politicians in the bureaucracy has threatened civil servants' neutrality and professionalism. Therefore, it is proposed that the parties involved in managing the State Civil Apparatus be handed over to the highest career officials in their respective agencies.

However, during the discussion stage of the RUU with the DPR RI, the DPR RI rejected the proposal. Members of the DPR RI believe that as political officials who issue policies, regional heads as heads of government agencies must ensure that bureaucrats in the field carry out all of their policies. In order to ensure that, political officials who govern an agency/institution must play a role in the employee management process.

Considering that the discussion on the bill at that time was very tough, and the Indonesian Parliament had approved several other essential matters, Prof. Eko Prasajo as deputy minister who represented the President in deliberating the bill, approved Prof. Sofian Efendi to use the term staffing supervisor whom political officials carry out as head of agencies in ministries/agencies/provincial/district/city governments. The definition of civil service supervisor is finally approved and directed as a political official. With the civil service supervisor (PPK) approval in the State Civil Apparatus Law, in practice, it is similar to what was implemented during the New Order era. The bureaucracy is placed as a "subordinate" to political officials to carry out policies made by politicians.³⁵

³³ Muzdalifah Fattah, "Implikasi Hukum Atas Pegawai Negeri Sipil Setelah Berlakunya Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara," 2014, 119–26.

³⁴ Fattah.

³⁵ Fattah.

PPK, according to Law Number 5 of 2014, is an official who has the authority to appoint, transfer, and dismiss employees of the State Civil Apparatus and foster the management of the State Civil Apparatus in government agencies under statutory provisions. The role of PPK in practice has shown a considerable role for PPK in managing the State Civil Apparatus. The initial goal of ensuring that State Civil Apparatus employees implement the policies drawn up by the PPK has become land for profit-making. The role of PPK has been misused because the role of regional heads as PPK is enormous in managing regional civil servants, especially in terms of appointment, transfer, and dismissal of regional Civil Servants. This enormous role has an impact on bringing the bureaucracy into the realm of politics. As a result, employee professionalism is low, and the aftereffect is poor public service. Ironically, the abuse of authority in appointing officials or transfers is not only carried out in small numbers.

3.5. The Neutrality Model of Civil Servants in General Elections

The superior-subordinate relationship pattern between politics and bureaucracy is prone to abuse. The regional head can issue any policy on the bureaucracy, which becomes the bureaucracy's work area. A regional head can include and place his people in the ranks of the bureaucracy. Even regional heads can play the bureaucracy by carrying out mutations, installing and subordinating people they trust, and utilizing all bureaucratic instruments for short-term political interests.

This fact was confirmed by Berhanu Mengistu and Elizabeth Vogel³⁶ as well as Kenneth Meier and Laurence O'Toole,³⁷ who stated that the separation absence of politics and bureaucracy would result in the influence of the bureaucracy by politics so that the neutrality of the bureaucracy would not be realized.

Barbara Geddes stated that in the relationship between political officials and the bureaucracy, there would be a tendency for political officials (politicians) to 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 four factors³⁸: First, if someone wins a general election contestation, both executive and legislative, the bureaucracy is used as an agent for spreading profits to the politician's constituents. Second, the bureaucracy is used as a source of patronage and profits for other politicians who support the incumbent as an executive leader. Apart from the need to remain in government, the incumbent needs bureaucracy in order to be able to make new legislation or new programs

³⁶ Pedro Ivo Sebba Ramalho and Delia Rodrigo, "Interests and Influence: Stakeholder Participation in the Regulatory Process," *Open Journal of Political Science* 12, no. 04 (2022): 626–51, <https://doi.org/10.4236/ojps.2022.124034>.

³⁷ Mario C. Chavarria Suarez, "The National Anticorruption System in Mexico: Democracy and Efficient Governments 2016-2022," *Open Journal of Political Science* 12, no. 03 (2022): 402–22, <https://doi.org/10.4236/ojps.2022.123024>.

³⁸ Genevieve Lakier, "A Counter-History of First Amendment Neutrality," *The Yale Law Journal Forum* 86, no. 1976 (2022): 85–86.

that can be used to "buy support" from politicians in people's representative institutions. Third, the bureaucracy has a position as a tool to recruit new members from various political organizations loyal to the executive leader, a political official. The basis of this action is that the bureaucracy is a loyal political machine (creation of a loyal political machine) for the needs of politicians in power. This is often done by placing the bureaucracy people considered loyal, both those from the bureaucracy and those who are party members from public organizations outside the bureaucracy, to occupy strategic positions within the government bureaucracy. Fourth, the bureaucracy is used to implement policies that benefit groups or parties to which political officials are affiliated in both short-term and long-term policies.

Conditions like this make it challenging to realize the neutrality of the State Civil Apparatus in Indonesia. Historically, at the beginning of independence, Deputy President Mohammad Hatta issued the Declaration of X in 1945. From then on, political parties emerged as a means for the people to channel political freedom, voice, association, and freedom from fear of having a different opinion. Furthermore, in 1955 the first general election was held, resulting in a government and a 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 that political parties leading government departments made government departments the basis of their party's influence and support. The neutrality of the government bureaucracy began to be disrupted, and the management of civil servants in Indonesia at that time became a subordination of political officials and political parties.³⁹

When President Soekarno issued a Presidential Decree dated July 5, 1959, which returned the government system to a presidential system and the re-enactment of the 1945 Constitution, the neutrality of the bureaucracy could have improved. Civil Servants remain in positions as subordinate to political officials and political parties. This situation continued until the New Order era. During the New Order era, mono loyalty was imposed on civil servants for the Golongan Karya. Civil Servants are required to win Golongan Karya in every general election.

On the other hand, civil servants were prohibited from becoming members of political parties. At that time, there were two political parties, Partai Persatuan Pembangunan and Partai Demokrasi Indonesia. During the New Order government, the bureaucracy needed to differentiate between the careerists and the partisan forces of the Golongan Karya. The career development of a Civil Servant, for example, in terms of promotion, will use considerations of membership or support for political power (Golongan Karya). The Golongan Karya's intervention against the bureaucracy resulted in the emergence of bureaucratic non-neutrality. The bureaucracy becomes a

³⁹ Thoha, *Manajemen Kepegawaian Sipil Di Indonesia*.

subordination of the Golongan Karya. Even during the Reformation, the situation was the same. A civil servant is a sub-ordination of political officials. This happens because political officials, such as Governors, Regents, and Mayors, are staffing supervisors.

Since the enactment of Law Number 5 of 2014, there have been efforts to separate political officials from civil servants. The implementation of developing the State Civil Apparatus through the Management of the State Civil Apparatus is an effort to implement government functions professionally. Sofian Effendi said the importance of fostering the State Civil Apparatus and carrying out government functions to achieve national goals is also to form a World-capable State Civil Apparatus.⁴⁰ This is stated in Law Number 5 of 2014, which states that in order to achieve the national goals as stated in paragraph 4 of the Preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution), a professional State Civil Apparatus is needed, free from interference political, free from corruption, collusion and nepotism practices, capable of providing public services for the community and capable of carrying out its role as an adhesive for national unity based on Pancasila and the 1945 Constitution.

When compared to the practice in Taiwan, in Taiwan there is the Civil Service Neutrality Law (Taiwan's Civil Service Neutrality Law). The purpose of this law is to clean up politics as a result of "destructive political activity" during the New Deal period. This is based on the fact that "destructive political activity" in Taiwan is a more "destructive" type because Taiwan was originally a Party State, so the state would exploit or politicize the state machine to enter into society to fulfill party goals, especially those concerning social control.⁴¹

The neutrality of civil servants is referred to as "administrative neutrality." Administrative neutrality is the political neutrality of civil servants. Consequently, there are two critical dimensions of this term, (1) the administrative system, the function of the first dimension is trying to maintain a neutral administrative system with respect to the political process (i.e., political neutrality), and (2) regarding the attitude adopted by Civil Servants in carrying out their official duties, which is to maintain fairness, impartiality, and administration implementation according to the law in the administration process. These two dimensions can then be reduced to "the relation between political and administrative neutrality."⁴²

In this regard, a political officer does not need to be politically neutral. However, he needs to be administratively neutral because he controls administrative resources that have the potential to be channelled for partisans. Administrative neutrality applies to both administrative bodies and their employees (administrators). If the institution has to work

⁴⁰ Sofian Effendi, "Godot Dan Reformasi Birokrasi," *Kompas*, April 2013.

⁴¹ So, "Civil Service Neutrality in Taiwan: Is It Neutrality with or without Dichotomy?"

⁴² So.

neutrally, so should its officials. Administrative neutrality is hierarchically superior to political neutrality. See Table 4 below:

Table 4. The Implication of Administrative Neutrality in Taiwan⁴³

	Partisan/political Behavior	Administrative behavior
Political officials	No restriction	Neutral (administration by the law and fair enforcement of the law)
Career officials	Prohibited while on duty limited while off duty	Neutral (administration by law and fair enforcement of the law)

While the practice in Singapore, based on regulations in Singapore, has limited the relationship between civil servants and political officials through the 2005 Code of Conduct for Ministers, Article 54 of the Relations with civil servants section states 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 a written testimonial for his 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 Commission or Public Service Division to appraise the civil servant's performance, the Minister may render his opinion on 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, relations between Civil Servants and political officials are limited professionally. This means that no loophole allows 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 function that is contrary to public service values, such as corruption, impartiality, integrity, and honesty. Political officials are also required to respect the duty of civil servants to remain neutral in all political matters and controversial matters. This practice is going well because the Government of Singapore implements a merit system that is performance-based and supported by strong leadership.⁴⁴

Practices in other countries can realize neutrality due to the separation of administration and politics. Even if the separation is carried out sparingly, the

⁴³ So.

⁴⁴ Tedi Sudrajat and Sri Hartini, "Rekonstruksi Hukum Atas Pola Penanganan Pelanggaran Asas Netralitas Pegawai Negeri Sipil," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 29, no. 3 (2018): 445, <https://doi.org/10.22146/jmh.26233>.

prerequisites and conditions, such as the implementation of personnel development, are carried out consistently. While practice in Indonesia cannot answer the neutrality issue, the issuance of Law Number 5 of 2014 to separate political positions from personnel management cannot resolve the neutrality of the State Civil Apparatus. A neutral State Civil Apparatus is impartial, but with the condition that this condition will be fulfilled if it is outside the system and does not provide room for interest intervention, while currently, the State Civil Apparatus in Indonesia is in a system that is connected with political interests. Within this system, a synergistic relationship exists between the President/Regional Head and his deputy and the State Civil Apparatus in a work environment that influences each other. Moreover, this relationship has implications for the career positions of Civil Servants based on the authority of the President and Regional Heads as Civil Service Development Officials. This very clearly will lead to 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 amend laws and regulations relating to the separation of political and administrative positions, especially Law Number 5 of 2014 concerning State Civil Apparatuses.

4. CONCLUSION

The practice of civil servant neutrality in general elections in Indonesia since the beginning of independence until now has never been realized due to power relations between political officials and civil servants. Therefore, to realize the neutrality of the State Civil Apparatus in Indonesia, it is necessary to separate political positions from career positions, such as by amending the provisions of Law Number 5 of 2014 concerning State Civil Apparatus

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