

The Urgency of Revoking the Voting Rights of Civil Servants to Ensure Neutrality in General and Regional Elections

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Abstract

This study aims to examine the urgency of revoking the voting rights of civil servants (ASN) as a legal-political solution to address the persistent issue of neutrality violations in general and regional elections in Indonesia. The research employs a normative legal method using a statute approach, conceptual approach, and analytical approach. Legal sources such as the 1945 Constitution, Law No. 20 of 2023 on Civil Servants, and Constitutional Court Decision No. 22/PUU-XII/2014 are analyzed alongside theoretical perspectives, particularly John Rawls's *difference principle*, to construct a solid argument for restricting voting rights under certain public service roles. The findings indicate that education, supervision, and law enforcement mechanisms have been largely ineffective in deterring neutrality violations by civil servants. The study argues that the existence of voting rights for ASN creates a conflict of interest that facilitates bureaucratic politicization and transactional politics, especially given that civil service careers are influenced by elected officials through the Civil Service Supervisory Officials (PPK) system. The study concludes that revoking voting rights for civil servants, similar to the policy applied to TNI and POLRI members, is constitutionally justified and effective in promoting impartiality. Legal reform is necessary to amend election laws, restructure PPK appointments, and strengthen merit based systems in civil service management.

Keywords: Civil Servants; Voting Rights; Electoral Neutrality

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Introduction

The implementation of democratic systems in Indonesia continues to face various complex challenges, one of which is the issue of violations of civil servant neutrality.¹ From a formal legal perspective, Article 2 letter f of Law No. 20 of 2023 on Civil Servants stipulates that the administration of civil service policies and management must be based on the principle of neutrality. Furthermore, Article 24 paragraph (1) letter d mandates that civil servants are obligated to maintain neutrality in performing their duties and functions. The concept of neutrality as defined in the law refers to the behavior of civil servants who must not take sides and/or

express political preferences in general and regional elections.² The purpose of this concept is to preserve the professionalism and impartiality of civil servants in fulfilling their role as public servants.

Despite Indonesia's legal framework mandating civil servant neutrality in elections, its implementation remains problematic. In practice, civil servants frequently violate neutrality in various forms. According to a report by the Civil Service Commission (KASN), 197 civil servants were found to have breached neutrality regulations during elections, out of a total of 417 reports received. KASN has even predicted a surge in neutrality violations during the 2024 simultaneous

¹ Furqon, E. (2020). Kedudukan Komisi Aparatur Sipil Negara dalam Menjaga Netralitas Aparatur Sipil Negara pada Pemilihan Umum 2019 Ditinjau dari Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum (Studi Kasus Pada Pemilu 2019 di

Provinsi Banten). *Ajudikasi: Jurnal Ilmu Hukum*, 4(1), 15-28.

² Thamrin, A., Achmad, D., & Fachreza, A. R. (2022). Penindakan atas Pelanggaran Netralitas ASN di Provinsi Sulawesi Selatan.

regional elections.

The widespread violation of civil servant neutrality is considered a negative consequence of granting voting rights to civil servants. These voting rights are often politicized by certain groups, thereby compromising the neutrality of civil servants in both general and regional elections.³ In response, the Executive Director of the Regional Autonomy Implementation Monitoring Committee (KPPOD) proposed in 2018 the revocation of civil servants' voting rights as a means to ensure their professionalism and neutrality. However, this proposal has sparked considerable debate and controversy within society.

In the author's view, the revocation of voting rights for civil servants should be followed up through legal-political measures as an alternative approach to resolving the persistent issue of neutrality violations among civil servants. The idea of revoking the voting rights of civil servants is not a populist argument in the context of a democratic system and a rule-of-law state that upholds the fulfillment of human rights. Rather, the *a quo* proposal is urgently needed as a legal necessity to realize justice, utility, and legal certainty in the administration of elections.

Research Methodology

This research employs a normative legal research method, which focuses on examining legal norms, principles, and regulations as the primary source of analysis. Normative legal research aims to identify, interpret, and evaluate the existing legal framework relevant to the issue at hand in this case, the revocation of civil servants' voting rights in the context of ensuring electoral neutrality.⁴ The study utilizes three approaches: the statute approach, the conceptual approach, and the analytical approach.

The statute approach is used to analyze various legal instruments, including the 1945

Constitution of the Republic of Indonesia, Law No. 7 of 2017 on General Elections, Law No. 10 of 2016 on Regional Elections, and Law No. 20 of 2023 on Civil Servants. The conceptual approach is employed to explore legal and philosophical concepts such as voting rights as a form of human rights, civil servant neutrality, conflict of interest, and legal politics. Meanwhile, the analytical approach is used to assess data from secondary sources such as Constitutional Court decisions, KASN reports, academic literature, and expert opinions. This research relies on primary legal materials (statutes and court rulings), secondary legal materials (books, journals, legal commentaries), and tertiary legal materials (legal dictionaries and encyclopedias). The collected data is analyzed qualitatively to construct legal arguments and propose progressive legal solutions.

Analysis and Discussion

The widespread violations of neutrality committed by civil servants during general and regional elections reflect the ineffectiveness of existing efforts such as education, supervision, and even legal enforcement in addressing this persistent issue. Despite the extensive efforts undertaken by both political superstructures and infrastructures, vertically and horizontally,⁵ violations continue to occur. Therefore, progressive legal measures are required to resolve the issue of civil servant neutrality violations. One such measure is the implementation of voting rights revocation, similar to the existing policy for members of the military and police (TNI/POLRI).

The proposal to revoke civil servants' voting rights is primarily aimed at minimizing neutrality violations that stem from conflicts of interest, which often lead to the politicization of the bureaucracy.

³ Gunanto, D. (2020). Politisasi birokrasi dalam pelaksanaan pilkada di Indonesia. *INDEPENDEN: Jurnal Politik Indonesia dan Global*, 1(2), 87-94.

⁴ Masidin, S. H. (2023). *Penelitian Hukum Normatif: Analisis Putusan Hakim*. Prenada Media.

⁵ Ansyari, I., Yazid, M., & Putra, R. (2022). Hak Politik Dan Hukum Aparatur Sipil Negara Perspektif Mashlahah Mursalah. *Ijtihad*, 38(1), 81-90.

Conceptually, revoking the right to vote can reduce personal and/or group interests within the civil service that are linked to electoral processes, thereby lowering the risk of neutrality breaches.⁶ This is because the problem of bureaucratic politicization, which culminates in neutrality violations, is rooted in political liberalization that merges the interests of politicians with those of bureaucrats in every election cycle.⁷ A pattern of mutual symbiosis arises in this relationship: politicians require the resources of civil servants to secure electoral victory, while civil servants rely on politicians to secure and maintain positions within the bureaucratic hierarchy.

The voting rights held by civil servants inevitably become a tool for political transactions aimed at preserving or advancing their bureaucratic positions. This justification is reinforced by legal loopholes within the civil service management system, particularly because the Civil Service Supervisory Officials (Pejabat Pembina Kepegawaian or PPK) are appointed through general and regional elections.⁸ According to Article 1 point 10 of Law No. 20 of 2023 on Civil Servants, PPKs are vested with the authority to appoint, transfer, and dismiss civil servants. Meanwhile, Article 29 paragraph (1) stipulates that the President holds supreme authority over civil service development. In this regard, the President may delegate such authority to: (a) ministers within ministries; (b) heads of non-ministerial government institutions; (c) heads of secretariats within state institutions and non-structural agencies; (d) governors at the provincial level; and (e) regents/mayors at the district/municipal level.

This regulatory structure grants PPKs significant authority over the careers of civil servants. Moreover, PPK positions are occupied by elected officials namely the President, governors, and regents/mayors whose mandates originate from electoral processes. At the same time, other PPKs,

such as ministers, agency heads, and secretariat leaders, maintain a power dependent relationship with the President, since their authority is derived through presidential delegation. This framework creates a negative consequence for civil servants, whose voting rights can be politicized to support specific political actors. Civil servants may feel compelled to align their political preferences with those in power, as their career prospects are heavily influenced by the outcomes of general and regional elections.

Under such conditions, civil servants are faced with a conflict of interest between maintaining neutrality and securing their positions through participation in general and regional elections (Sarjiyati et al., 2021). The involvement of civil servants in practical politics becomes increasingly difficult to avoid, and as a result, their voting rights are often leveraged in exchange for political favors. This justification is supported by a 2018 survey conducted by the Civil Service Commission (KASN), which revealed the following findings:

Reason for Civil Servants' Lack of Neutrality	Percentage
To maintain their position	43%
Familial relations	15%
Lack of understanding	12%
Pressure from superiors	8%
Lack of integrity	5%
Neutrality violations are considered normal	5%
Weak sanctions	3%
Others	2%
No response	7%

The data above clearly demonstrate that most violations of civil servant neutrality are driven by efforts to maintain bureaucratic positions, often at the expense of voting rights and professional integrity. The reason "to retain one's position"

⁶ Salsabila, M. (2023). Hak Memilih TNI Dan POLRI dalam Perspektif Hukum Positif dan Hak Asasi Manusia. *Birokrasi: JURNAL ILMU HUKUM DAN TATA NEGARA*, 1(4), 01-12.

⁷ Efriza. (2012). *Political explorer: sebuah kajian ilmu politik*. Alfabeta.

⁸ Mokhsen, N. (2019). Menjaga netralitas ASN dalam pemilu. *Jurnal Bawaslu Provinsi Kepulauan Riau*, 1(1), 50-58.

accounts for a significantly higher percentage compared to other cited motivations. Another issue that arises is that civil servants are frequently viewed as a vote bank due to their considerable numbers, especially considering that each civil servant also has family members who possess voting rights. This reality ultimately hinders the realization of civil servant neutrality in both general and regional elections.

Moreover, according to a 2020 KASN survey, 51.16% of civil servants agreed with the proposition that their voting rights should be revoked. This approval is based on the perception that the right to vote creates conflicts of interest, which in turn lead to the politicization of the bureaucracy. Therefore, revoking the voting rights of civil servants appears to be a logical solution, given that such rights are frequently used as bargaining chips in patronage politics aimed at securing or advancing bureaucratic positions.

From a formal legal perspective, the revocation of voting rights for civil servants does not conflict with the constitutional conception of citizens' rights fulfillment or the principle of popular sovereignty as mandated by the Constitution. This is because political rights have long been revoked for other categories of state apparatus, namely members of the military and police (TNI/POLRI). The Constitutional Court, as the protector of citizens' rights and guardian of democracy, ruled in Decision No. 22/PUU-XII/2014 that the revocation of voting rights does not violate the Constitution. According to the Court, the voting rights of citizens may be restricted through legal instruments pursuant to Article 28J(2) of the 1945 Constitution of the Republic of Indonesia. Furthermore, the Court considered that voting rights are *derogable rights*, meaning they may be limited or revoked by the state in the interest of the

public good.⁹ In fact, the Court itself supports the revocation of voting rights as a legal-political measure to ensure the professionalism and neutrality of state apparatus.

The legal reasoning used by the Constitutional Court justices in this ruling can certainly be rationalized in the context of revoking civil servants' voting rights. This is because civil servants are likewise required to maintain professionalism and neutrality in both general and regional elections.¹⁰ Moreover, civil servants are categorized as state apparatus,¹¹ and thus the constitutional arguments presented above are equally applicable to them. The juridical rationalization for revoking their voting rights is also supported by Article 28J of the 1945 Constitution and Article 70 of Law No. 39 of 1999 on Human Rights, both of which regulate the concept of rights limitation. The legal justification for such restrictions lies in the interest of maintaining public order within a democratic society. This is particularly relevant given that the exercise of civil servants' voting rights has, in practice, contributed to disruption and instability in the democratic process.

Theoretically, John Rawls in his *Theory of Justice* emphasizes that, under certain conditions, justice must be grounded in the *difference principle*, which justifies differential treatment among individuals based on the functions and powers attached to their roles.¹² In this context, civil servants and members of the military and police (TNI/POLRI) may justifiably be treated differently from ordinary citizens, given the institutional roles and authorities vested in them, which can influence public political preferences. Therefore, revoking the voting rights of civil servants should be regarded as an element of justice, aimed at realizing

⁹ Nuswantoro, I. A. (2016). *Hak Memilih Anggota Tentara Nasional Indonesia dan Anggota Kepolisian Republik Indonesia dalam Perspektif Hak Asasi Manusia Pasca Putusan Mahkamah Konstitusi No. 22/PUU-XII/2014* (Doctoral dissertation, Universitas Airlangga).

¹⁰ Salim, A., & Susilowati, T. (2024). Surat Keputusan Bersama (SKB) Sebagai Langkah Penguatan Netralitas

ASN Menuju Pemilu 2024. *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, 2(1), 77-84.

¹¹ Hartini, S. (2008). Hukum kepegawaian di Indonesia.

¹² Rawls, J. (2017). A theory of justice. In *Applied ethics* (pp. 21-29). Routledge.

elections that are inclusive, fair, and free from political interference.

A fundamental question that must be addressed is whether the revocation of civil servants' voting rights is effective in ensuring neutrality during elections. The effectiveness of such a measure can be observed in the case of TNI/POLRI personnel. Empirical evidence shows that the rate of neutrality violations among military and police members is significantly lower than that of civil servants. In fact, during the 2024 elections, there were no reported neutrality violations committed by TNI/POLRI personnel, despite their historical record as institutions previously vulnerable to politicization. This fact strongly suggests that revoking voting rights is effective in reducing neutrality violations in both general and regional elections.

The legal solution framework proposed by the author to address civil servant neutrality violations includes: (1) amending the Election Law by adding a clause that prohibits civil servants from exercising their voting rights in general and regional elections; (2) ensuring that Civil Service Supervisory Officials (PPK) are appointed from the highest-ranking civil servants within their respective institutions to avoid conflicts of interest, as implemented in Australia; and (3) optimizing the implementation of a merit-based system in civil service management, grounded in two core elements: integrity (concerning morality and ethics) and competence (related to skills and knowledge in specific fields).

Conclusion

The proposal to revoke civil servants' voting rights is grounded in several key arguments: (1) efforts in education, supervision, and law enforcement have proven ineffective in addressing ongoing violations of civil servant neutrality; (2) the voting rights of civil servants create conflicts of interest that result in the politicization of the bureaucracy; and (3) these voting rights are frequently used as political bargaining tools for career advancement. The issue is further exacerbated by the fact that Civil Service

Supervisory Officials (*Pejabat Pembina Kepegawaian* or PPK) are appointed through general and regional elections namely the President and regional heads who hold the authority to determine civil servants' career trajectories. Consequently, politicization of voting rights among civil servants becomes difficult to avoid.

This situation calls for progressive legal reform through the revocation of civil servants' voting rights, alongside measures such as appointing the highest-ranking civil servant within each institution as PPK and optimizing the implementation of a merit-based civil service management system. The legal-political strategy of voting rights revocation can be implemented without violating the principles of human rights fulfillment or popular sovereignty, as affirmed by the Constitutional Court in Decision No. 22/PUU-XII/2014.

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Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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