

Constitutional Rights of the State Civil Apparatus in Politics in Indonesia

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Keywords	Abstract
Constitutional political rights, State Civil Apparatus, Bureaucratic Neutrality, Limitation of Rights.	The guarantee of the political rights of the State Civil Apparatus (<i>Aparatur Sipil Negara</i> or ASN) in the 1945 Constitution is further regulated in Law Number 20 of 2023 concerning the State Civil Apparatus (ASN) and various derivative regulations. This research aims to answer a fundamental question: how are the constitutional rights of the State Civil Apparatus (ASN) regulated in Indonesian politics, and what is their neutrality concerning the potential conflict between the constitutional guarantees of political rights in the 1945 Constitution and the restrictions on political activities imposed on the State Civil Apparatus (ASN) by legislation? This study employs a descriptive-normative method, utilizing both legislative and conceptual approaches. The findings indicate that the lack of synchronization between regulations and the unclear boundaries between active and passive political activities have generated normative tensions. These tensions arise between the constitutional rights of the State Civil Apparatus (ASN) and their obligation to maintain bureaucratic neutrality. Overly broad restrictions may violate the principle of proportionality and create legal uncertainty for the State Civil Apparatus (ASN). Additionally, this situation allows for varying interpretations among different agencies, leading to inconsistencies in the application of the principle of neutrality in practice. Consequently, it may undermine the political rights of the State Civil Apparatus (ASN) as citizens.



INTRODUCTION

Democracy, as a modern system of government, holds the sovereignty of the people as the highest source of legitimacy for state administration. In this framework, every citizen has the right to participate in political life, as outlined in Article 28E, paragraph (3) of the 1945 Constitution. This article states that everyone has the right to freedom of association, assembly, and the expression of opinions. These guarantees are part of fundamental political human rights and are inherent to all citizens without exception, including those employed in the State Civil Apparatus (ASN) (Batubara, 2024). These political human rights are recognized globally by countries that uphold democratic values (Siagian et al., 2022). Therefore, as citizens, members of the State Civil Apparatus (ASN) possess the constitutional right to express their opinions, access political information, and exercise their right to vote within the Indonesian democratic system.

According to Article 1, number 1 of Law Number 20 of 2023 concerning the State Civil Apparatus, the State Civil Apparatus (ASN) consists of civil servants and government employees with employment contracts who work for government agencies. State Civil

Apparatus (ASN) occupy a dual role within the government that brings its own complexities. They are citizens entitled to participate in politics, yet they are also public service providers required to maintain neutrality to ensure the objectivity and professionalism of the bureaucracy. This dual role creates an inherent tension, as the exercise of State Civil Apparatus (ASN)'s political rights as individuals may conflict with their institutional obligations as part of the state apparatus. The main challenge, therefore, is to protect State Civil Apparatus (ASN)'s political rights without compromising bureaucratic integrity or fostering political partisanship in the execution of government duties (Luhukay, 2024).

The principle of neutrality of the State Civil Apparatus (ASN) is closely linked to public trust in the democratic process. Numerous studies have shown that a lack of neutrality within the ASN directly affects the legitimacy of elections and leads to a decline in public confidence in government administration (Montheza et al., 2024). This situation presents a dilemma and remains a persistent problem, highlighting the need for restrictions and oversight of all State Civil Apparatus (ASN) activities in the public sphere. However, these restrictions must adhere to the principle of proportionality and should not be interpreted as a removal of rights (Ansyari et al., 2022). Article 28J of the 1945 Constitution allows for restrictions on rights, but such restrictions must be implemented through law, be rational, necessary, and not excessive.

The interpretation of the principle of neutrality is often broad, which can restrict the private space of State Civil Apparatus (ASN) members concerning citizens. A range of regulations—including laws, government regulations, regulations from the State Civil Service Agency (BKN), rules from the General Election Supervisory Agency (Bawaslu), and the Joint Decree (SKB) on State Civil Apparatus (ASN) neutrality, along with ministerial circulars—create a complex regulatory environment that is not always consistent. This inconsistency often leads to differing interpretations between agencies (Harahap, 2024). The varying interpretations complicate the application of neutrality principles, particularly because these rules are frequently enforced without a suitable framework for proportionality (Perdana, 2012). Additionally, the definitions of active and passive political actions remain unclear, and the inconsistent boundaries that are applied in practice put State Civil Apparatus (ASN) members in a precarious position. It is not uncommon for seemingly passive actions—such as attending public events or accessing political information—to be regarded as violations of neutrality.

This situation highlights a significant normative issue: the inability of regulations to proportionately differentiate between the constitutional rights of the State Civil Apparatus (ASN) and actions that could lead to bias in their official duties. When restrictions are applied too broadly, they can encroach upon the private lives of citizens, potentially surpassing the limits set by Article 28J of the 1945 Constitution. Therefore, restrictions on the political rights of State Civil Apparatus (ASN) should be considered exceptional; their application must be clear, necessary, and proportional.

Broad restrictions on all forms of political involvement can impede the constitutional rights of State Civil Apparatus (ASN) as citizens. Numerous studies have indicated that the primary issue lies not in the obligation of neutrality itself, but rather in the inconsistent interpretation and the vague boundaries between actions that threaten bureaucratic integrity and those that fall within the realm of individual private rights (Ningtyas, 2021). Consequently, it is essential to reconstruct the neutrality regulations governing the State Civil Apparatus (ASN). Such reconstruction should ensure that restrictions on rights are applied in a clearer, measurable, proportional, and consistent manner, maintaining a balance between bureaucratic integrity and the constitutional rights of the State Civil Apparatus (ASN) as citizens.

Given the identified issues, it is essential to conduct a study on the constitutional rights of the State Civil Apparatus (ASN) in relation to politics. This analysis should not only consider positive legal perspectives but also incorporate constitutional viewpoints and human rights theories. The research aims to clarify the boundaries of restrictions on the political rights of the State Civil Apparatus (ASN) that can be legally justified and to evaluate whether the current regulations regarding bureaucratic neutrality align with constitutional principles. Therefore, this study focuses on the fundamental question of how the regulation of the constitutional rights of the ASN in politics in Indonesia addresses the potential conflict between the guarantee of political rights for the State Civil Apparatus (ASN) outlined in the 1945 Constitution and the legislative restrictions imposed on their political activities.

METHOD

This research employed a descriptive-normative method, focusing on legal research that analyzed written legal norms as the foundation for examining the studied issues. This approach was selected because the research primarily investigated the constitutional rights of the State Civil Apparatus (*Aparatur Sipil Negara* or *ASN*) as outlined in the 1945 Constitution, as well as the limitations on neutrality established in Law Number 20 of 2023 concerning the State Civil Apparatus (*ASN*) and its derivative regulations.

The research utilized several approaches, including a statutory approach to assess the consistency and hierarchy of norms found in the 1945 Constitution, laws, government regulations, and other technical regulations. Additionally, a conceptual approach was applied to describe theoretical concepts concerning constitutional rights, the neutrality of the State Civil Apparatus (*ASN*), and the principles of rights limitations as articulated in the constitution. The sources of legal materials included primary legal materials, such as laws and regulations; secondary legal materials, consisting of literature, scientific journals, textbooks, and expert opinions; and tertiary legal materials, such as legal dictionaries and encyclopedias. Analysis was conducted using a qualitative method, which aimed to interpret, compare, and systematically construct legal arguments to address the problem formulation and draw conclusions.

RESULT AND DISCUSSION

The Position of Political Rights of State Civil Apparatus in the Constitutional Framework

The position of the State Civil Apparatus (ASN) within the Indonesian constitutional system is distinct. On one hand, ASNs are tasked with implementing public policy, and they are expected to be neutral, professional, and free from political influence. On the other hand, they retain their status as citizens with full political rights, as guaranteed by the constitution. Article 28E, paragraph (3) of the 1945 Constitution states, "Everyone has the right to freedom of association, assembly, and expression of opinion." The term "everyone" reflects the principle of non-discrimination in the granting of constitutional rights, which includes State Civil Apparatus (ASN). Thus, while ASNs do not lose their political rights, there are certain limitations placed on them to maintain bureaucratic neutrality.

According to Jimly Asshiddiqie, the human rights outlined in the 1945 Constitution are inherent and not granted by the state. This means that the state cannot arbitrarily revoke or diminish these rights, except for legitimate reasons defined by the Constitution (Asshiddiqie, 2015). Consequently, any restrictions on the political rights of State Civil Apparatus (ASN)

must be interpreted strictly and proportionately to ensure that the essential rights of citizens are not undermined. Furthermore, Bagir Manan contends that every public official, including the ASN, retains their status as a citizen with political rights. Public office does not negate a person's citizenship rights unless explicitly restricted by law (Manan, 2004). This perspective reinforces the notion that the ASN, while performing government functions, remains part of the populace that holds sovereignty.

Article 28F of the 1945 Constitution guarantees that "every person has the right to communicate and obtain information in order to develop their personality and social environment, as well as the right to seek, obtain, possess, store, process, and convey information using all available channels" (Loamena & Fitrah, 2023). This provision is particularly important for the State Civil Apparatus (ASN) regarding their use of social media, access to political information, and participation in the digital public sphere. Extensive restrictions on access to political information could violate the civil rights of ASN and foster a bureaucracy that is indifferent to democratic development.

According to the principle of equality, Article 28D, paragraph (3) of the 1945 Constitution states that "every citizen has the right to equal opportunities in government" (Kambu, 2021). This provision highlights the rights of the State Civil Apparatus (ASN) as citizens entitled to equal treatment in public life. Equal opportunities in government encompass the right to participate in the political process, fair access to public office, and protection against discrimination based on political beliefs. This perspective aligns with the universal human rights principle outlined in Article 25 of the Law of the Republic of Indonesia Number 12 of 2005, which ratifies the International Covenant on Civil and Political Rights (ICCPR). This article affirms that every citizen has the right and opportunity to participate in the administration of public affairs (Indonesia, 2005).

Universal recognition of human rights is highlighted in the Preamble to the Universal Declaration of Human Rights (UDHR). The declaration outlines international principles based on rights that cannot be removed or revoked, known as non-derogable rights, as well as rights that can be limited or restricted by the state under specific circumstances, referred to as derogable rights. Non-derogable rights are absolute and are always protected, with no exceptions. Article 28I paragraph (1) of the 1945 Constitution includes provisions for these non-derogable rights, which encompass the right to life, the right to be free from torture, the right to freedom of thought and conscience, the right to practice one's religion, the right not to be enslaved, the right to legal recognition as a person, and the right to not be prosecuted based on retroactive laws. In contrast, derogable rights are those that can be suspended during emergencies. For example, political rights, such as the freedom of expression, fall into the category of derogable rights, meaning they can be limited but not entirely revoked (Kaligis, 2006).

The author argues that restrictions on the political rights of the State Civil Apparatus (ASN) can be implemented, but only to maintain professionalism and public trust in the bureaucracy. These restrictions must adhere to the principles of constitutionality and proportionality, as outlined in Article 28J, paragraph (2) of the 1945 Constitution. According to Aharon Barak, the principle of proportionality requires that any restriction on rights be evaluated using three criteria: suitability, necessity, and balancing. Restrictions are considered legitimate only if they represent the least intrusive and most balanced means of achieving

legitimate goals (Barak, 2012). Applying this principle means that the prohibition on the political activities of the State Civil Apparatus (ASN) should only pertain to active political actions that could compromise the independence of the bureaucracy. It should not extend to passive activities, such as gathering political information or expressing personal opinions in private.

In addition, Grant Huscroft and Bradley W. Miller argue that the principle of proportionality in modern public law is "the central measure of constitutional reasonableness." This principle ensures that any restrictions on citizens' rights are not arbitrary (Huscroft, 2014). Consequently, if limitations placed on the political rights of State Civil Servants (ASN) do not meet the proportionality test, they can be deemed a violation of the rule of law.

From the author's perspective, the State Civil Apparatus (ASN) holds constitutional rights that must be respected. Bureaucratic neutrality should be understood as an obligation to refrain from using public office and authority for political purposes, rather than as a complete ban on personal political rights. The enforcement of neutrality must be guided by the framework of human rights protection and the principle of proportionality to ensure it does not become an instrument of excessive restriction.

Regulations on the Neutrality of State Civil Apparatus (ASN) in Legislation

The regulation of the neutrality of the State Civil Apparatus (ASN) is a crucial aspect of maintaining bureaucratic professionalism and ensuring that public services remain unaffected by political interests. The State Civil Apparatus (ASN) Law clearly establishes the principle of neutrality as one of the ethical foundations for implementing ASN policies. Article 2, letter f of the law emphasizes that the management of the State Civil Apparatus (ASN) must be based on the principle of neutrality, meaning it must be impartial to any form of influence and should not favor any interests beyond those of the nation and the state (Erwin et al., 2024).

In the author's opinion, the current formulation of the norm does not clearly define the extent to which the involvement of the State Civil Apparatus (ASN) in political activities can be considered a violation of neutrality. This lack of a clear boundary may lead to overly broad interpretations and create opportunities for misuse. Philipus M. Hadjon states that one of the characteristics of a state governed by the rule of law is the presence of legal certainty and constraints on government power through well-defined and measurable legal norms (M. Hadjon, 1987). Therefore, when the prohibition on neutrality lacks a specific formulation, the State Civil Apparatus (ASN) may become subject to uncertainty and administrative injustices.

In addition to the State Civil Apparatus (ASN) Law, the principle of neutrality is regulated in various derivative regulations, such as Government Regulation No. 11 of 2017 concerning Civil Servant Management (jo. Government Regulation No. 17 of 2020) and Government Regulation No. 94 of 2021 concerning Civil Servant Discipline. These government regulations outline specific violations of neutrality and the corresponding types of sanctions.

However, as the author points out, there is no clear distinction made between active political actions (such as serving as a party official, campaigning, or using one's position for political gain) and passive political actions (like attending political events without partisan attire or expressing neutral opinions on social media). This lack of differentiation contradicts the principle of proportionality in rights restrictions, as emphasized by Aharon Barak (2012),

which states that any restrictions on citizens' rights must be necessary and proportionate to the intended goal. Restrictions that fail to take into account the level of involvement will lead to substantive injustice and undermine legal legitimacy.

The inconsistency became even more apparent with the 2022 Joint Decree (SKB) from five ministries and institutions regarding the guidelines for the development and supervision of state civil apparatus (ASN) neutrality in elections. This decree expanded the scope of prohibitions to include non-intentional or passive actions, such as "liking" political posts, taking photos with political figures, or attending public events where regional head candidates are present. However, Maria Farida Indrati argues that regulations set under the law cannot add to or subtract from norms already established by law, as this would exceed the limits of legitimate delegation (Indrati, 2018). Consequently, the Joint Decree (SKB) lacks the legal authority to impose additional prohibitions beyond those defined by law or government regulations.

From a regulatory hierarchy perspective, the Joint Decree (SKB) and circular are merely administrative coordinating products, not statutory regulations as stipulated in Law Number 12 of 2011 concerning the Formation of Legislation (jo. Law Number 13 of 2022). Therefore, these administrative products cannot be used as a basis for limiting citizens' constitutional rights. This view aligns with Hans Kelsen's theory of norm hierarchy, which states that lower norms must not contradict higher norms (the principle of *lex superior derogat legi inferiori*) (Kelsen, 1949).

In this context, the restriction of the political rights of the State Civil Apparatus (ASN) through the Joint Decree of five Ministers can be classified as administrative overreach. This reflects an unwarranted expansion of administrative authority without a valid legal basis. The author argues that such an expansion not only contradicts the principle of constitutionality but also undermines the rule of law, as described by Lon L. Fuller. According to Fuller, good law should provide clear and consistent behavioral guidelines for citizens (Fuller, 1969). When the State Civil Apparatus (ASN) is uncertain about the boundaries of permissible behavior, the law fails to serve its purpose as a moral and normative guideline.

In practice, various technical regulations, such as Bawaslu Regulation No. 6 of 2018 regarding the Supervision of the Neutrality of State Civil Apparatus (ASN) and National Civil Service Agency (BKN) Regulation No. 6 of 2022 concerning the Performance Assessment of State Civil Apparatus (ASN), tend to interpret neutrality too strictly. For instance, indicators of violations include passive digital activities, such as posting comments or reactions on social media. However, such actions do not necessarily indicate active political partisanship.

The ethics of State Civil Apparatus (ASN) should be distinguished from the political morality of citizens. As civilians, State Civil Apparatus (ASN) have civil rights that cannot be entirely revoked (Tjandra, 2018). If all forms of personal political expression are categorized as violations of neutrality, the state is imposing excessive restrictions (overregulation), which contradicts Article 28J, paragraph (2) of the 1945 Constitution. From a human rights perspective, this type of restriction does not meet the criteria of the limitation clause outlined in the International Covenant on Civil and Political Rights (ICCPR). According to the ICCPR, restrictions can only be imposed if they are necessary to protect the public interest, proportional, and established by law (Razqi & Widodo, 2023). This implies that restrictions

arising from Joint Decrees (SKB) or technical regulations do not constitute constitutional restrictions.

The author argues that the reconstruction of neutrality regulations for the State Civil Apparatus (ASN) should clearly differentiate between active politics and passive politics. Active politics includes activities such as campaigning, serving as a party official, and using public office for political purposes, while passive politics involves seeking political information or engaging in public discussions without the intention of providing support. This distinction aligns with K.C. Wheare's perspective that modern democracy requires a balance between individual rights and the public interest (Wheare, 1975). Therefore, the regulations governing the neutrality of the State Civil Apparatus (ASN) should not aim to eliminate political rights. Instead, they should focus on regulating bureaucratic behaviors that could undermine the objectivity of public services. By enforcing the principle of proportional neutrality, the professionalism of the State Civil Apparatus (ASN) can be enhanced without infringing upon their constitutional rights as citizens in a democratic society.

Normative Rigidity between Constitutional Rights Guarantees and Limitations on the Neutrality of State Civil Apparatus (ASN)

The tension between the political rights of the State Civil Apparatus (ASN) and the obligation to maintain bureaucratic neutrality arises from the interaction between the constitutional guarantees outlined in the 1945 Constitution and the administrative restrictions established in the State Civil Apparatus (ASN) Law, along with its technical regulations. Article 28E, paragraph (3) of the 1945 Constitution guarantees the rights of association, assembly, and expression for every citizen, including members of the State Civil Apparatus (ASN). Similarly, Article 28F provides the right to information, and Article 28D, paragraph (3) ensures equal opportunities in government. These guarantees confirm that the State Civil Apparatus (ASN) does not lose its political rights; rather, they remain entitled to constitutional rights while fulfilling their public functions, which require professionalism and objectivity (Asshiddiqie, 2015).

The State Civil Apparatus (ASN) Law imposes specific restrictions on public servants. These include requirements to be free from political influence and intervention (Article 9, paragraph 2, and Article 12), a prohibition on membership in or serving as administrators of political parties (Article 52, paragraph 3), and an obligation to maintain neutrality while performing official duties (Article 24). Although the ASN Law emphasizes the principle of neutrality, it fails to clearly define the extent of allowed political involvement for public servants. The law does not use the term "practical politics" or any similar phrases, which leaves the distinctions between active political participation, passive political engagement, social interaction, and information consumption ambiguous at the normative level.

The ambiguity in the regulations was addressed through a series of layered technical regulations, including Bawaslu Regulation Number 6 of 2018, BKN Regulation Number 6 of 2022, and the 2022 Joint Decree (SKB) of Five Ministers, which provides guidelines for the development and supervision of State Civil Apparatus (ASN) neutrality. These technical instruments introduced the term "activities leading to partisanship" and categorized seemingly passive actions, such as liking political posts or simply attending a political gathering, as violations of neutrality, as reflected in the Joint Decree (SKB). However, implementing

regulations should not expand or alter the substance of statutory norms, as doing so contradicts the principle of the hierarchy of statutory regulations.

In the context of constitutional law, this broad interpretation presents significant issues, as the Joint Decree (SKB) and technical regulations are not statutory regulations that can restrict citizens' constitutional rights. The principle of *lex superior derogat legi inferiori* states that regulations subordinate to the law must not conflict with regulations that have a higher authority. Therefore, restricting the political rights of State Civil Apparatus (ASN) through technical regulations and circulars exceeds the limits of administrative authority and can be regarded as a form of administrative overreach.

The author highlights that any restrictions on the political rights of the State Civil Apparatus (ASN) must be evaluated according to the principle of proportionality. Aharon Barak argues that restrictions on human rights are only legitimate if they meet three criteria: suitability, necessity, and balancing. This means that such restrictions must align with specific objectives, not be excessive, and strike a balance between public interest and the protection of individual rights (Barak, 2012). Broad restrictions on the passive actions of State Civil Apparatus (ASN) clearly fail to meet these conditions, as not all passive actions negatively affect bureaucratic neutrality.

Moreover, it's important to recognize that the State Civil Apparatus (ASN) is distinct from the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri). Unlike the military and police, the ASN does not operate within a hierarchical command structure and does not perform state defense or security functions. Consequently, imposing overly stringent restrictions on the ASN effectively places them in a position similar to military personnel, who forfeit certain civil rights. Satjipto Rahardjo asserted that the law must accurately reflect social reality and should not impose normative standards that are inconsistent with the realities of society (Rahardjo, 2000). Therefore, regulations governing the neutrality of the State Civil Apparatus (ASN) should not strip them of their civil identity and political rights as citizens.

This situation also raises concerns about legal certainty. State Civil Apparatus (ASN), like all citizens, has the right to understand the boundaries of acceptable and prohibited behavior. When various technical regulations apply inconsistent standards, it creates legal uncertainty, which contradicts the principle of *lex certa* and the rule of law as outlined in Article 1, paragraph (3) of the 1945 Constitution. Philipus M. Hadjon emphasized that a rule of law requires not only the existence of laws but also that they be definite, clear, and predictable (M. Hadjon, 1987).

Therefore, I believe that any restrictions on the political rights of State Civil Apparatus (ASN) should be enacted through laws, rather than through technical regulations or administrative decisions. These restrictions must be proportional and should only apply to active political actions that clearly disrupt the independence and professionalism of the bureaucracy. If restrictions are imposed on passive actions in the private sphere, this would violate constitutional principles and human rights, as stated in Article 28J of the 1945 Constitution and the International Covenant on Civil and Political Rights (ICCPR).

The normative tension between the constitutional rights of the State Civil Apparatus (ASN) and the limitations on neutrality cannot be resolved solely through administrative law enforcement. There is a need for regulatory reconstruction that places the principle of neutrality

within the framework of protecting the constitutional rights of the ASN as citizens. Mahfud MD stated that the law's role is not only to regulate power but also to protect the rights of the people from state arbitrariness (Mahfud, 2010). This principle should serve as the foundation for reformulating the neutrality policy of the ASN, ensuring it aligns with constitutional values, the principle of proportionality, and substantive justice within a democratic legal system.

CONCLUSION

This research uncovers a normative conflict between the political rights of State Civil Apparatus (*Aparatur Sipil Negara* or *ASN*) members as citizens—guaranteed by the 1945 Constitution, including freedoms of association, expression, and access to information—and their duty to uphold bureaucratic neutrality under Law Number 20 of 2023 and derivative regulations. Regulatory misalignment and unclear distinctions between active and passive political activities foster legal uncertainty, overly broad restrictions that breach proportionality, and inconsistent enforcement across institutions, potentially undermining public service objectivity. The study advocates clarifying the legal framework to balance these rights without equating neutrality with their elimination, through measures like defining activity boundaries, reviewing overreaching technical rules, and prioritizing guidance over punishment. For future research, scholars could empirically examine enforcement practices across Indonesian provinces via case studies or surveys of *ASN* members, assessing real-world impacts on political participation and bureaucratic performance to inform targeted legislative reforms.

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