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**Implementation of Law Against Criminal Actions of State Civil Servants In The Election  
of Governor North Maluku**

**Hasmiah Hamid**

Universitas Nuku, Tidore Maluku Utara

**Email: [hasmiahhamud02.@gmail.com](mailto:hasmiahhamud02@gmail.com)**

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**Abstract:**

This study aims to describe the application of the law to criminal acts in the general election for the Governor and Deputy Governor of North Maluku by the State Civil Apparatus (ASN). Based on the data that the author has obtained in one of the areas of the Tidore Islands City Election Supervisory Agency, it can be concluded that the application of the law to the crime of election for the Governor and Deputy Governor of North Maluku through the recommendations of the findings of the Tidore Islands City Election Supervisory Agency, Number: 13 / TM / PG / Kot / 32.02 / X / 2018, it is appropriate to use Article 80 with reference to the Pilkada criminal sanctions as stipulated in Article 116 paragraph (4), Law No. 32 of 2004 concerning Regional Government which reads: Every state official, structural and functional official in a state office and a village head who deliberately violates the provisions referred to in article 80 shall be punished with imprisonment for a minimum of 1 (one) month or a maximum of 6 (six). month and / or a fine of at least Rp. 600,000 or a maximum of Rp. 6,000,000. In addition, there are several law enforcement officers who are not ready to be professional and committed to implementing regulations related to criminal acts related to regional head elections committed by the State Civil Apparatus.

**Keyword:** Application, Law, Pemilu, ASN

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**INTRODUCTION**

In a democratic perspective, the election of Regional Heads and Deputy Regional Heads is expected to be able to get leaders who are of higher quality and in accordance with the wishes of the majority of the people and are the hope of the people in the regions.

Normatively, based on democratic standards, direct Regional Head Elections offer a number of benefits as well as hope for the growth, deepening and expansion of local democracy. First, the direct democracy system through the direct election will open a wider

space for citizens to participate in the democratic process and determine political leadership at the local level compared to the representative democracy system, which puts more power to determine political recruitment in the hands of a few people in the DPRD. Second, in terms of political competition, direct post-conflict local elections allow the emergence of a wider range of competing candidates and allow each candidate to compete in a more open space compared to the closure that often occurs in representative democracy. Third, the direct election system will provide an opportunity for citizens to actualize their political rights better without having to be reduced by the interests of political elites as can be seen in a representative democracy system. At least, through direct democracy, residents in the regions will have the opportunity to obtain some kind of political education, political leadership training and at the same time have an equal position to be involved in political decision making. Fourth, the direct regional head election will increase the hope of getting a leader figure who is aspirational, competent and legitimate. Because through direct Pemilukada, the elected Regional Head will be more citizen-oriented than the elite in the DPRD. Fifth, Regional Heads who are elected through direct Pemilukada will have strong political legitimacy so that there will be considerations of strength in the regions between the Regional Head and the DPRD. This balance of power will minimize the abuse of power. Thus, the Pemilukada has a number of benefits, related to improving the quality of local government responsibilities to citizens, which in turn will bring regional heads closer to the community.

Even though the Law has explained the prohibitions and criminal sanctions related to the involvement of state civil servants in regional head elections, in reality there are still many state civil servants who are involved, even without being afraid to directly participate in the series of regional head elections, according to the regulations. Regulations that have a criminal threat are no longer a weapon that can frighten several state civil servants because the implementation of sanctions for the state civil apparatus is not running optimally, the evidence is that there are still many state civil servants who should be subject to criminal sanctions are still hanging around casually in their institutions. Even though the non-neutral attitude carried out by the state civil apparatus seriously injures the democratic journey of a nation, especially regions that are conducting Regional Head elections, therefore this shows that the state civil apparatus is one of the objects that has the potential to commit criminal acts of regional head elections.

The independence of the state civil apparatus is very much needed in regional head elections, so it must be noted that sometimes the state civil apparatus gets carried away by the political currents either forced or not compelled to side with one party. This non-neutrality of the state civil apparatus can also be seen when there is a candidate for regional head who comes from his family, so that there is a shift in values that should be upheld so that it is not surprising that there are several political processes in the case of regional head elections being injured due to involvement. direct state civil apparatus in regional head elections.

## **RESEARCH METHODS**

In order to process primary and secondary data, an analysis technique known as aanalysis is needed, *descriptive juridical* namely by describing the real situation regarding the election crime committed by the State Civil Apparatus. Then based on the results of interviews and literature studies obtained, the data is then processed and analyzed qualitatively to produce descriptive data.

## **RESULTS AND DISCUSSION**

### **1. State civil apparatus**

In Law no. 5 of 2014, the State Civil Servant (ASN) is a profession for Civil Servants and Government Employees with a work agreement working for government agencies, then Civil Servants are Indonesian citizens who meet certain conditions, appointed as ASN employees

permanently by officials Personnel coaches to occupy government positions while government employees with a Work Agreement (PPK) are Indonesian citizens who meet certain conditions based on a work agreement for a certain period of time in the context of carrying out government duties.

In addition, the definition of civil servants was also put forward by Kranenburg, which gave the understanding that civil servants are: appointed officials, so this definition does not include those who hold positions representing representatives such as members of the Parliament, President and so on.

Then by Mafud MD, in Sri Haritini, Setiajeng Kadarsih (2010: 31) the definition of civil servants is divided into two definitions, namely stipulative definition and extensive definition:

1) Stipulative

Definition The stipulative definition reads in full as follows:

Article 1 point 1: civil servants are every citizen of the Republic of Indonesia who has fulfilled the stipulated requirements, is appointed by an authorized official and assigned to a state office, or assigned to other state duties and is paid based on the prevailing laws and regulations.

Article 3 paragraph (1): Civil servants have the position of state apparatus assigned to provide services to the public in a professional, honest, fair and equitable manner in carrying out state, government and development tasks.

2) Extensive Understanding.

The definition of extensive is found in: The

provisions contained in Articles 415-437 of the Criminal Code regarding occupational crimes. According to these articles, a person who commits a crime of office is one who commits a crime which is compatible with his duties as a person entrusted with a public office, either permanent or temporary. So, a person who is entrusted with a public office is not necessarily a civil servant according to the stipulative understanding if he commits a crime in his quality as a public office holder, he is considered and treated the same as a civil servant, especially for the crimes he has committed.

Based on the opinion of the experts and reviewing the related Law on the definition of the state civil apparatus, it can be concluded that a person who is called a civil servant must meet the following elements:

1) Those who have fulfilled the specified requirements are regulated in Government Regulation Number 11 Year 2002 Article 6 paragraph (1) which is written as follows:

- a. Indonesian citizens.
- b. Age at least 18 (eighteen) years and a maximum age of 35 (thirty five) years.
- c. Have never been sentenced to prison or imprisonment based on a court decision that has permanent legal force, for committing a criminal act
- d. Never been dismissed with respect, not at his own request or not with respect as a state civil servant or dishonorably dismissed as a private employee.
- e. Not domiciled as a candidate / civil servant.
- f. Have the education, skills, expertise and skills required.
- g. Good behavior.
- h. Physically and mentally healthy.
- i. Willing to be placed throughout the territory of the Republic of Indonesia or other countries determined by the government.
- j. Other terms specified in the terms of the position.

## **2. Regional Head Election**

According to Krisna Harahap (2007: 80), it is stated that matters relating to regional head elections are stated in the 1945 Constitution Article 18 paragraph (4) which reads thus: Governors, Regents and Mayors respectively as heads of provincial government, regencies and cities are elected democratically

According to Suharizal (2012: 30). According to Suharizal (2012: 30), the meeting of the Ad Hoc I committee in the 2000 annual session which discussed amendments to Article 18 of the 1945 Constitution, outlined the reason behind the inclusion of the word "democratically elected". PPP explicitly mention the importance of direct elections, among others, reads as follows: The

Governor, the Regent and the Mayor's chosen directly by the people, which in turn is governed by the Act, it is in line with our desire for the election of the President is also elected directly

Due The president is directly elected, so even in regional government the governors, regents and mayors are elected directly by the people. The law will be related to the regional autonomy law itself.

Then the understanding of regional head elections also comes from PP No. 6 of 2004 Article 1 paragraph (1) (Arkanudin 2010) which explains the definition like this:

Pilkada is a means of implementing the people's sovereignty in the province and / or district / city based on Pancasila and Law Basic of the Republic of Indonesia in 1945

Thus the political conditions in Indonesia related to the election or recruitment of Regional Heads and Deputy Regional Heads have begun to run democratically since the enactment of Law No. 32 of 2004, the public has been able to enjoy direct regional head and deputy regional head elections.

## **3. Regional Head Election Criminal ActionsRegional Head**

There are several definitions of general election crimes related to the Election Crime, one of which is the definition of (Kanytakahfi 2009) which reads thus: What is meant by pilkada crime is a series of criminal acts specifically regulated in laws governing the pilkada.

Almost the same as the description above, the definition of the Criminal Act of Regional Head General Election is also described by (Syaroh: 2011) in his blog which reads as follows:

Article 252 of the Election Law regulates election crimes as election violations that contain criminal elements. This violation constitutes an act which under the Election Law is punishable by criminal sanctions.

In addition, according to Topo Santoso (2006: 3) states that the definition of Election Crime, Election Crime by stating thus: Any person, legal entity or organization that deliberately violates the law, disrupts, obstructs or disrupts the course of general elections which are held according to the Act.

Then the definition of Election Crime is also briefly described by Topo Santoso (2006: 6) in his book entitled Election Crime, which reads as follows: Election Crime, namely Crime related to Election which is regulated in the Election Law, including in Election Crime Act.

From the description of the definition of Regional Head General Election Crime which is explained from several sources above, the writer can conclude that Regional Head Election Crime is a criminal act against the law which has been regulated in a statutory regulation which is carried out either intentionally or unintentionally starting from The preparation process until the end of the Regional Head General Election, and Regional Head General Election Crime can be carried out by anyone.

#### **4. The Legal Position and Political Rights of the State Civil Apparatus**

Regarding the Legal State Civil Apparatus in terms of politics it is regulated in several laws and regulations regarding civil servants, political rights and the legal position of the state civil apparatus deliberately regulated in a statute this is because so that civil servants as one of the important instruments in the process of running the wheels of government are given limitations in exercising their political rights, therefore efforts to impose political restrictions on the state civil apparatus are set forth in the form of a Law so that it does not affect the running of the wheels. government.

**1. Law No. 43 of 1999 concerning Amendments to Law No. 8 of 1974 concerning Personnel Principles**

in Article 3 of Law No. 43 of 1999 concerning Amendments to Law no. 8 of 1974 concerning Civil Service Principles affirms the legal position and limitations of the political rights of the state civil apparatus which reads thus.

Paragraph (1) "Civil servants have the position of elements of the state apparatus assigned to provide services to the public in a professional, honest, fair and equitable manner in carrying out state, government and development tasks".

Paragraph (2) "In the position and duties referred to in paragraph (1), Civil Servants must be neutral from the influence of all groups and political parties and not be discriminatory in providing services to the community".

Paragraph (3) "To ensure the neutrality of Civil Servants as referred to in paragraph (2), Civil Servants are prohibited from becoming members and / or administrators of political parties.

So because the elements of the state civil apparatus as the state apparatus are in charge of providing services to the community, the state civil apparatus must be neutral and free from the influence of political parties and other groups, so as to guarantee the neutrality of the state civil apparatus as state officials who are not allowed to discriminate in provide services for the community, then Article 3 paragraph (3) of Law no. 43 of 1999 affirms that the state civil apparatus is prohibited from becoming members and / or administrators of political parties.

**2. Government Regulation No. 37 of 2004 concerning the Prohibition**

of State Civil Apparatus Becoming Members of Political Parties However, the clause which regulates the prohibition of state civil servants from becoming members of political parties is still in the middle, as in Article 2 paragraph (2) Government Regulation No. 37 of 2004 concerning the Prohibition of State Civil Apparatus Becoming Members of Political Parties, states that: Paragraph (2) "Civil servants who become members and / or administrators of political parties are dismissed as Civil Servants".

In addition, in the editorial, Article 3 paragraph (1) and paragraph (2) Government Regulation no. 37 of 2004, reads thus.

Paragraph (1) "Civil servants who will become members and / or administrators of political parties are required to resign as Civil Servants."

Paragraph (2) "A civil servant who resigns as referred to in paragraph (1) shall be honorably discharged as a state civil servant."

This rule seems to show that this state civil apparatus can easily join as a member of a political party by resigning as the state civil apparatus, then resigning what is meant in the regulation is being dismissed with respect as the state civil apparatus.

Apart from that, the political rights of state civil society in terms of direct or indirect involvement in the election of regional heads and deputy regional heads as success teams or as campaigners are not allowed by the prevailing laws and regulations, this is due to the consideration that he will make use of state facilities for his / her interests, unless the person concerned is willing to leave his position as the state civil apparatus and then becomes involved

in the regional head election, then this does not become a problem and is considered as something that is legal.

## **5. Legal Position, Crime of Regional Head Election Conducted by State Civil Apparatus.**

### **1. Law No. 32 of 2004 concerning Regional Government**

Article 79 paragraph (1) and paragraph (4) of Law 32 of 2004 outlines the prohibition on the involvement of elements of civil servants including civil servants in both structural and functional positions which reads thus:

Paragraph (1) . In the campaign, it is prohibited to involve:

- a. judge at all courts.
- b. BUMN / BUMD officials.
- c. structural and functional officials in state positions.
- d. village head.

Paragraph (4):

Candidate pairs are prohibited from involving civil servants, members of the Indonesian National Army, and members of the Indonesian National Police as campaign participants and campaigners in regional head and deputy regional head elections.

The involvement of state civil servants in the election of Regional Heads and Deputy Regional Heads, either directly or indirectly, is not allowed, this is because the involvement of state civil servants can interfere with the democratic process, siding with state civil servants as state apparatus serving the community without discrimination is very dangerous to the political conditions of a region the place where the election is taking place. Considering that the partisanship of the state civil apparatus can disrupt the stability of the wheels of government, therefore the state civil apparatus is considered to be one of the components that has the potential to commit criminal acts in regional head elections.

So that Article 80 of Law Number 32 of 2004 concerning Regional Government states thus: State officials, structural and functional officials in government positions and village heads are prohibited from making decisions and / or actions that benefit or negate one of the pairs of candidates during the campaign period.

Article 80 above refers to the Pilkada criminal sanction as stipulated in article 116 paragraph (4), which reads as follows:

Every state official, structural and functional official in a state office and village head who deliberately violates the provisions referred to in article 80 shall be punished with imprisonment at the most. as short as 1 (one) month or a maximum of 6 (six) months and / or a fine of at least Rp. 600,000 or a maximum of Rp. 6,000,000.

### **2. Provisions of the Criminal Law (KUHP)**

Then in the Criminal Code also describes several regulations that can be related to criminal acts of regional head elections, namely in Articles 148, 149, 150, 151 and 152 concerning Crimes Against Performing State Rights Obligations, according to R. Soenarto Soerodibroto (2005: 93) these five Articles can be done by anyone so that the state civil apparatus becomes one of the parties that can potentially commit crimes in these Articles. Actions prohibited in these Articles.

namely:

Article 148: Anyone at an election based on general rules, by force or threat of violence, deliberately prevents a person from exercising his right to vote freely and without being disturbed, shall be punished by a maximum imprisonment of one year and four months.

Article 149: 1) Any person who during an election based on general rules, by giving or promising something, bribes someone so that he does not exercise his right to vote or to

exercise said right in a certain way, shall be punished by a maximum imprisonment of nine months or a maximum fine. a lot of four thousand five hundred rupiah. 2) The same penalties are applied to voters who, by accepting gifts or promises, want to be bribed.

Article 150: Any person who, at the time of an election based on general rules, engages in deception so that the vote of a voter becomes worthless or causes someone other than the appointed voter intended, shall be punished by a maximum imprisonment of nine months.

Article 151: Anyone who deliberately uses the name of another person to participate in an election based on general regulations, is punishable by a maximum imprisonment of one year and four months.

Article 152: Whoever at an election is held based on general rules deliberately foils the voting that has been held or engages a deception which causes the voting decision to be different from that which should have been obtained based on the voting cards that were entered legally or based on votes. votes cast legally, punishable by a maximum imprisonment of two years.

### **1. Application of Law to Crime in the Election of North Maluku Governor and Deputy Governor by State Civil Apparatus.**

The Election Supervisory Agency (Bawaslu) carries out supervision of all stages of the election for the Governor and Deputy Governor of North Maluku, in this supervision it has been found that there are elements of crime committed by the State Civil Apparatus as stated in the Bawaslu Study of the City of Tidore Islands on Alleged Violations Number: 13 / TM / PG / Kot / 32.02 / X / 2018, with a study that: On 18 October 2018, a member of ASN within the scope of the Tidore Islands City Government who was involved in the convoy activity or the AGK-YA Team victory parade carried out by one of the candidates for the Governor and Deputy Governor of North Maluku.

Based on the overall facts of examination as well as analysis and study as described in the previous description, the supervisory agency for the City of Tidore Islands argues: Every “State Officials, Structural and Functional Officials in government positions and village heads are prohibited from making decisions and / or actions that benefit or disadvantage one of the candidate pairs. during the campaign period”.

On this basis, the Bawaslu of the City of Tidore Islands issued a verdict to the investigator (ASN), with Article 80 as stated in Article 116 paragraph (4), which reads that:

"Every state official, structural and functional official in a state office and a village head who deliberately violates the provisions referred to in article 80 are punishable by imprisonment for a minimum of 1 (one) month and a maximum of 6 (six) months and / or a fine of at least Rp.600,000 or a maximum of Rp.6,000,000”, this decision proves that:

a. The suspect was proven to have committed violations related to the neutrality of ASN in the General Election.

b. The actions of being investigated following the victory parade of one of the candidates for governor and deputy governor on behalf of Abdul Gani Kasuba and Al Yasin Ali were interpreted as a form of political alignment.

c. With reference to the provisions of Article 32 paragraph (2) Perbawaslu Number 14 of 2017 concerning Handling Reports of Election Violations for Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors which states that "the results of the study which are categorized are not allegations of Election Violation but include allegations of violation of other statutory regulations, shall be forwarded to the competent agency”, therefore the sanctions for the Act of Investigation refer to the results of further studies from the competent authority, in this case the State Civil Apparatus Commission (KASN).

## CONCLUSION

The application of the law by the Bawaslu of the City of Tidore Islands against the criminal act of the election of the Governor and Deputy Governor of North Maluku by one of the State Civil Apparatus in the City of Tidore Islands is correct by using Article 80 and Article 116 point (1) of Law No. 32 of 2004 concerning Regional Government as amended several times, the latest by Law No. 12 of 2008 concerning the Second Amendment to Law No. 32 of 2004 concerning Regional Government.

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