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## The Construction of Law Neutrality of State Civil Apparatus in the Simultaneous Local Election in Indonesia

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### Abstract

This article will examine and explore the urgency of the state's civil apparatus to be neutral in the simultaneous local election. State civil apparatus is an apparatus that works to serve the public interest rather than serve a particular group. That is why the need for the construction of constitutional law in an effort to create regulations in order the state civil apparatus has to be neutral. The construction by progressive constitutional law is by looking for new ways or role breaking and innovative breakthroughs, if the normal way and normative unable to immediately realize the objectives of the simultaneous local elections. There are three ways: First, to revoke the right to vote of state civil apparatus in the general election. Second, models political apointee bureaucracy in the local government. Third, change the model of career guidance state civil apparatus fom government regional autonomy to the central government by rank or class.

**Keywords:** Neutrality; State Civil Apparatus; Construction of Law; Local Election.

### Introduction

Since year 2015 direct local election has been changing from a system not simultaneously to simultaneously accordance with changes legal policy in Indonesia after the enactment of Law No. 8 Year 2015 concerning Election of Governors, Regents and Mayors on 16 February 2015 and then changing the Law No. 10 Years 2016 concerning Election of Governors, Regents and Mayors. Purposes of local election simultaneously is done directly by the people and simultaneously on the same day, date, month, and year. Although the significance of the election is gradually timed for 542 autonomous regions consisting of 34 provinces; 415 districts, and 93 cities. Local election is simultaneously divided into three waves, the first wave election in 2015, the second wave election of 2016 and the third wave election in 2018. The simultaneously elections in Indonesia: local and nasiona will be held in 2024.

One of the advantages of simultaneous elections is to strengthen and expand people's participation in the region to choose the desired political leader. According to Larry Daimond, the widespread political participation of the people is the essence of democratic practice in Indonesia after the New Order.<sup>1</sup> Simultaneous election will increase voter participation and at the same time eliminate the political saturation of the people in the election, because the direct election tradition introduced since 2004 has led the type of election in Indonesia most in the world.<sup>2</sup> Even the most complex in the world.<sup>3</sup> At least in five years the people can participate in the election five times, namely Legislative Election, President Election, Governor Election, Regent or Mayor Election. And almost every day people are treated to the phenomenon of elections in Indonesia. That is why people's participation in local election tends to decline every time.<sup>4</sup> This direct local election system is still hampering bad practices that will potentially reverse the direction of local democracy (point to return), namely the election of regional heads who lack adequate regional leadership capacity and poor moral footprint. As a result the chosen ways to win the competition in local election simultaneously by justifying any means to achieve the ambition of political power.

Debate on dichotomy between politics and bureaucracy has long been an interesting part in the study of politics and governance.<sup>5</sup> One of the bad ways that is often practiced by the candidate of the head of region, especially the incumbent is to utilize the position of the regional head to influence the neutrality of the State Civil Apparatus (SCA) in the region. This is similar to the politicization of SCA which resulted in the decline of morale and the loss of public confidence in bureaucratic apparatus.<sup>6</sup>

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<sup>1</sup> Larry Daimond, 'Indonesia's Place in Global Democracy' in Edward Aspinall and Marcus Mietzner (ed) (Institute of South East Asian Studies Press 2010).[21-52].

<sup>2</sup> Slamet Efendi Yusuf, 'Pemilihan Umum Serentak Nasional' in Khairul Fahmi dkk (ed) (Rajawali Press 2015).[3-12]; R. Siti Zuhro, 'Urgensi Pemilihan Kepala Daerah Serentak' in Khairul Fahmi dkk (ed) (Rajawali Press 2015).[352-369].

<sup>3</sup> Chusnul Mar'iyah, 'Politik Institusionalisasi Penyelenggara Pemilu Di Indonesia, Studi Model Komisi Pemilihan Umum Pasca Reformasi' in Andy Ramses dkk (ed) (MIPI Press 2010).[238-280].

<sup>4</sup> Agus Riwanto, 'Pemilu Serentak' *Republika* ( Jakarta , 22 February 2015).[6].

<sup>5</sup> Vasudha Chhotray dan Gerry Stoker, *Governance Theory and Practice: A Cross-Disciplinary Approach* (Palgrave Press 2009).

<sup>6</sup> Sofian Efendi, *Reformasi Tata Pemerintahan, Menyiapkan Aparatur Negara Untuk Mendukung Demokratisasi Politik Dan Ekonomi Terbuka* (Gadjahmada University Press 2012).[77].

In the first round elections of 2015, which took place in 269 districts, cities and provinces, the incumbent candidate in the elections in 2015 reached 82.5 percent of these, the majority of the incumbent won the contestation. So the incumbent won elections with a comparison of 57.9 percent and 42.1 percent of the non-incumbent.<sup>7</sup> In the second round of elections in 2017 took place in 101 areas consisting of 7 provinces, 76 districts, and 18 cities. It has become a common phenomenon, the incumbent candidate who reigns one period, return to fight in elections. Data collected by the Voter Education Network for People (JPPR) states, from 101 districts, there are 67 districts (66 percent) with the head of the region re-nominating (incumbent candidate) with a total of 90 candidate pairs. There are 37 incumbent regional heads who won elections in 2017 from a total of 61 regional heads berIncumbent or reach 60.65 percent.<sup>8</sup>

The number of winners in the 2015 and 2017 elections dominated by the incumbent candidate is suspected because of the strong use of bureaucratic local government bureaucratic machinery<sup>9</sup> and unprofessional SCA tend to drift in the practical political vortex supporting incumbent candidates.<sup>10</sup> Frequent practices by incumbent candidate, for example, abuse of authority, such as issuing rules requiring campaigns to subordinates, fundraising for certain candidates, granting of business licenses with support demands to certain candidates, use of government assistance for campaigns, changing official travel expenses, and forcing subordinates to finance candidate campaigns from the state budget.

One of the factors driving the Incumbent to make use of Regional Revenue

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<sup>7</sup> Wawan Sobari, 'Reckoning Informal Politics: Expands the Logic of Survival and Failure of Regional Heads' (2018) 3 Politik Indonesia: Indonesian Political Science Review.[106].

<sup>8</sup> Indonesia Satu.co, 'Calon Incumbent Dominasi Pilkada' (*PT Veritas Dharma Satya*, 2017) <<http://indonesiasatu.co/detail/calon-incumbent-dominasi-pilkada-2017--ini-datanya>> accessed 1 January 2018.

<sup>9</sup> M. Mas'ud Said, *Birokrasi Di Negara Birokratis, Makna, Masalah Dan Konstruksi Birokrasi Indonesia* (UMM Press 2007).[28].

<sup>10</sup> Putra Ananda, 'Birokrasi Jadi Mesin Pemenangan Incumbent' (*Media Indonesia*, 2015) <<http://www.mediaindonesia.com/news/read/18892/birokrasi-masih-jadi-mesin-pemenangan-incumbent/2015-08-06>> accessed 1 January 2018. dan Putra Ananda, 'PNS Masih Jadi Mesin Pemenangan' (*Media Indonesia*, 2015) <<http://mediaindonesia.com/news/read/6116/pns-masih-jadi-mesin-pemenangan/2015-08-07>> accessed 1 January 2018.

and Expenditure Budget (APBD) and SCA budgets to contribute to victory in local elections is the high cost of elections. Not worth the cost incurred and the salary earned by the candidates after becoming head of the region.<sup>11</sup> This resulted in the tactical efforts of the incumbent to maintain power by exploiting the budget of APBD to cover the high cost of local election.

The factor of regional bureaucratic style that is still long-standing inherited from the New Order that tend to be irrational and not rational-modern, but patrimonial characteristic, where the position and behavior in the whole hierarchy is based more on personal relationships and relationships “father-son” or patron-client -relationship is another factor that drives SCA un-neutrality.<sup>12</sup> The characteristic of this patrimonial bureaucracy is very close to the concept of political culture which in our society has very strong roots with Javanese culture influenced by the “father” relationship. In this “father” system, in principle, the “father” or patron bears the fulfillment of social, material and spiritual needs for his “subordinates” or clients. The “boys” get all the protection with all the loyalty and volunteer to fulfill all the “father” orders. The most decisive factor in this factor is indebtedness, which raises the high respect of the “men” to the “father”. In this case civil servants and bureaucracies may never oppose their superiors, even if they are clearly not true.

At this point, it is necessary to have a projective thinking to understand and explore more broadly about the factors that encourage the incoherence of local bureaucracy apparatus in simultaneous local election and the construction of constitutional law in order to prevent bureaucratic apparatus remain neutral in order to achieve impartially the public services, as well as to promote the realization of the political objectives of the system regional autonomy, namely the people’s welfare and public civilization.

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<sup>11</sup> Agus Riwanto, ‘Pilkada Biang Korupsi’ *Suara Merdeka* (Jakarta, 2010).[6].

<sup>12</sup> Mohtar Mas’ud dan Colin Mac Andrews, *Perbandingan Sistem Politik* (Gadjah Mada University Press 2008).[342].

### Urgency Neutrality of Civil State Apparatus

The essence of the political choice of regional autonomy is the change of the electoral system from indirectly to the direct. According to the Stufenbau Theory which among others remind the highest legal norms of the constitution is the highest abstract guidelines underlying all policies under the hierarchy.<sup>13</sup> In this case the 1945 Constitution is the highest legal norm, then the 1945 Constitution becomes a reference policy of legal politics in hierarchy in Indonesia. under the provisions of Article 6A of the 1945 Constitution, the president and vice president shall be elected directly, hence the normative and hierarchical heads of regions which are executive positions in the same region as the presidential office at the center shall also be elected directly, though Article 18 Paragraph (4) no declaration directs the regional head to be elected directly, but democratically elected.<sup>14</sup>

The two strategic positions of central executive (president) and local executive (head of the region) are the same political leaders who lead the execution of public policy for the welfare of the people. For compiling this policy these two executions are aided by bureaucratic and structured state bureaucratic systems and civil servants. The bureaucracy and the apparatus thus have a vital role for the executive path. Without the professional bureaucracy and its professionalism with adequate skills, it is impossible for the government to be effective because the bureaucracy is not neutral and tends to side with certain political interest groups.<sup>15</sup>

That is why the executive is very dependent on the bureaucracy and its apparatus in executing the policies contained in the vision, mission and work program. Similarly, bureaucracies and civil apparatus also rely on top leader executive (president and head of region) because job ranking, promotion and rotation of bureaucratic posts are determined by the executive. This is where

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<sup>13</sup> Hans Kelsen, *General Theory of Law and State* (Rusel and Rusel 1971).[121].

<sup>14</sup> Sulardi, 'Pilkada Dan Makna Demokratis' (*Republika.co.id*, 2014) <<http://www.republika.co.id/berita/koran/opini-koran/14/09/15/nbxhun34-local-election-dan-makna-demokratis>> accessed 3 July 2016.

<sup>15</sup> Michael Chibba, *Governance and Development: The Current Role of Theory, Policy and Practice* (10th–2nd edn, World Economics 2009). [79-108].

the problem of relationships between executives, bureaucracy and SCA is very strong and interdependent. Inevitably, in the theory of rational choice both have the potential to use it to gain political economy and power.<sup>16</sup> The incumbent executives who want to fight in the elections require bureaucracy and SCA through strategic policies that will boost the image of politics and popularism that will vote on the local election, while SCA also requires executive hand in the form of a desire to obtain strategic Echelon positions and/or retain the Echelon positions in his grip.

This mutualist-symbiotic relation promotes the presence of various ways and styles to influence the neutrality of SCA in elections. Whereas professionalism is known in SCA is the key word of success in public service and runs the functions of government for the welfare of the people. If the SCA is easily undermined by its professionalism in the supporting vortex of Incumbent candidates not only in daily stance, but also the strategic policies of regional bureaucracy, it is certain that the regional bureaucracy has failed to assume the people's mandate not to utilize public positions as tools to perpetuate the political power of the incumbent in local election.<sup>17</sup>

SCA neutrality in politics can be interpreted as impartial to group / group, not discriminative in service and not influenced by the interest of certain political party.<sup>18</sup> The Urgency of SCA neutrality in elections is to realize a fair and democratic competition model. Because the SCA behavior that supports the Incumbent is a poison of democracy that makes the map of power not rolled to everyone, but only spins in the ring of political elites. Even this model would have the potential to give rise to discriminatory politics, because it encourages politically those who have had political privileges before competing in local elections.<sup>19</sup>

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<sup>16</sup> Kacung Marijan, *Sistem Politik Indonesia, Konsolidasi Demokrasi Pasca-Orde Baru* (Kencana Prenada Media Group 2010).[222].

<sup>17</sup> Ahmad Yamin, 'Politicization Bureaucracy in the Implementation of Regional Chief Election' (2017) 3 International Journal of Innovation and Economic Development.[52-58].

<sup>18</sup> Miftah Thaha, *Birokrasi Dan Politik Di Indonesia* (Rajagrafindo Persada 2003).[168].

<sup>19</sup> Agus Riwanto, 'Mahkamah Konstitusi Tak Progresif' *Kompas* (Jakarta, 201).[6].

## **Non-neutral Factors of SCA**

Indeed there are a number of factors that encourage non-neutral SCA in Indonesia's elections in two mutualist-symbiotic perspectives: Incumbent and SCA's own perspective.

### **1. Incumbent Perspective**

From an incumbent perspective there are a number of weaknesses that allow the shooters to use bureaucracy and SCA to support their election in the elections. Firstly, the weakness of direct election system selection with expensive cost, for example for the candidate of governor cost Rp 20 billion-Rp 100 billion, whereas the salary received per year ' ' only ' ' Rp 510 million-Rp 600 million; regent/mayor candidates Rp 0.3 billion-Rp 10 billion, while the salary earned ' ' only ' ' Rp 300 million-Rp 420 million/year.<sup>20</sup> This resulted in the tactical efforts of the Incumbent to maintain power by utilizing the regional bureaucracy budget to cover the high cost of elections. Although this issue is tried to be answered by Law No.8/2015 on Local election that change the campaign model of the cost borne by candidates and party supporters to the cost borne by the state through APBD funds grafted into the budget election at the regional Election Commission.

The Corruption Eradication Commission (KPK) released the latest research results on June 29, 2015 against 286 candidates who lost in 2015 simultaneous elections resulted in the finding that the total candidate campaign fund is greater than the cost of organizing the election, the biggest expenditure being the dowry to the political party. With a count based on the price of one seat set Rp.250 million, if the political party has a seat 10 in the DPRD of an area, then the dowry to be paid candidates is, Rp, 2.5 billion.

However, it can not change the corrupt traditions of Incumbent in the utilization of APBD budgets to finance local election campaigns in various forms. Among other things: issuing rules requiring campaigns to subordinates, fundraising for a particular candidate, granting a business license with support

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<sup>20</sup> Agus Riwanto, 'Pilkada Biang Korupsi' (n 12).*Loc.Cit.*[6]

demands for the shoot, use of government assistance for campaigns, changing the cost of official travel, and forcing subordinates to finance candidate campaigns from the state budget, service facilities (cars, protocol budget, official houses, etc.) for the benefit of Incumbent. Even did not rule out the Incumbent ask echelon officials to arrange populist work programs that allow rise popularity and the political image of the Incumbent.

Second, the advantages possessed by SCA is used to be a weakness for the Incumbent to be used to support the victory in the election competition. For example, one of the advantages of SCA is to have a structural network from the district/city to the village/kelurahan. This tends to be used by Incumbent to become a funnel for agitation and socialization of populist Incumbent programs in order to gain sympathy from the people in stages. Next SCA excess has adequate human resources jutru utilized by Incumbent to bureaucracy systematically and structured to arrange budget of APBD and work program that seem side by side to the people, but true of political interest to be binding people to choose candidate from deviation. No wonder 1-2 years before the elections many APBD are found and the work program of the head of the region that is charitable social assistance that is poured into the people in the area in creative forms, such as cheap surgery, fertilizer assistance, paving roads, until death benefits.<sup>21</sup>

Thirdly, the farmers tend to use threat ammunition and provocation to SCA to support their victory in the election. Not infrequently the Incumbent use strong people (gangsters) either from the activist elements of the political party advocates incumbent or by using strong local figures to influence potential SCAs to support the victory of the incumbent.<sup>22</sup> Even these strong stalwarts will

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<sup>21</sup> Michele Valsecchi, 'Local Elections and Corruption during Democratization: Evidence from Indonesia' (*International Household Survey Network*, 2012) <[https://lir.gu.se/digitalAssets/1457/1457696\\_130130\\_mv\\_corruption.pdf](https://lir.gu.se/digitalAssets/1457/1457696_130130_mv_corruption.pdf)> accessed 17 April 2018.

<sup>22</sup> Ian Wilson, *The Rise and Fall of Political Gangster in Indonesia Democracy* (Edward Aspinall and Marcus Mietzner ed, Problem of, Institute of South East Asian Studies Press 2010). [199-218].



often transform into shadow government in local governments that collaborate on triangle between local head, local strogment and local busines to manage local government, ranging from organizing projects and placement of positions in related offices.<sup>23</sup> This method is relatively able to break the self-defense of SCA to loyal to the Incumbent. Hence the practice of providing support to SCA framing often occurs due to these threat and provocation factors, such as donations of money and covert campaign attributes, to attending campaign activities using official clothing and accessories.

## 2. Civil State Apparatur Perspective

While from the perspective of SCA there are a number of weaknesses of bureaucratic system and culture that allows SCA's to participate in the support of candidates especially incumbent in local election. First, the remaining culture of the 32 years of the New Order's ruling government that puts SCA as the main engine of its sustaining power. At that time, the neutrality of SCA was never enforced. Instead, the position of SCA is used as Golkar's political machine in elections. The effectiveness of this political machine is guaranteed by linking SCA's career with its support of and activity in Golkar.<sup>24</sup> Therefore, the appearance of bureaucracy at that time (1968-1998) even up to now (1998-2016) is characterized by: very strong centralization, high rate of uniformity in bureaucracy structure, delegation of obscure authority and difficulty in preparing job descriptions and job analysis.<sup>25</sup>

Herein lies the reason why it is so difficult for civil servants to refuse orders from superiors or "fathers" to elect themselves (incumbent) in elections. Not excessive because most of his subordinate officials already

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<sup>23</sup> Leo Agustiono, *Local Election Dan Redistricting: Dinamika Politik Lokal Dalam Politik Indonesia Terdemokrasi* (Pamong Praja 2010).[24].

<sup>24</sup> Ian Chalmers, 'Rolling Back Democracy In The Late Soeharto Era: Some Implications For Indonesia's Political Culture' (1997) 21 *Asian Studies Review*. [53-66].

<sup>25</sup> Priyo Budi Santosa, *Birokrasi Pemerintah Orde Baru: Perspektif Kultural Dan Struktural* (Rajawali Pers 1997).[161].

have long-lasting emotional and structural relationships. Not infrequently the appointment of echelon officials in the local government is always associated with the service politics of the boss. So that it can be possible when his boss (Incumbent) is fighting to keep his power in the elections, of course everything will be sought including asking “repayment” for services provided by the boss to the boss.<sup>26</sup>

Secondly, the lack of regulation on the need for neutrality of SCA in the local election and seriously practicing politics and impartiality make SCA often keeps playing with the elections. Whereas there have been enough rigid miscellaneous regulations to ensure that SCA's are neutral in politics. See, a number of rules: (1) Law no. 5 Year 2014 Concerning Civil State Apparatus; (2) of Law No.23 of 2014 on Regional Autonomy; (3) PP No.53 Year 2010 on Civil Government Discipline; (4) Law No.8 Year 2015 on Local election; (5) SE Menpan RB No. B/2355/M.PANRB/07/2015 About SCA Neutrality; and (6) SE Minister of Home Affairs No.270/4211/SJ/2015 on SCA Neutralization and Prohibition on Use of Local Government Facilities during Campaign Period of Regional Head Election.

In the history of the local election, there was only one case of non-neutrality of SCA in supporting the incumbent candidate punishable, namely in case Suhariyanto Camat Sambirejo, Sragen District who supported the candidate also of regent Agus Fatur Rahman (incumbent), in the form of orders to the subdistrict secretary and a number of staff to put sticker candidate pair number two on the package of basic needs which is wrapped in the sub-district office to be distributed to the citizens can not be justified.

The concerned criminal sentence of 1 month in prison and required to pay a fine of Rp1, 5 million rupiah with subsider one month by the judge Court of District. Sragen. While this is a good precedent, it does not seem to be deterring SCA to keep

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<sup>26</sup>Anders Uhlin, ‘Toward an Integration of Domestic and Transnational Dimensions of Democratisation, Regime Transition in Indonesia’ (*European Consortium for Political Research*, 2000) <<https://ecpr.eu/Events/PaperDetails.aspx?PaperID=15023&EventID=46>> accessed 17 April 2018.

playing with the Incumbent. Thirdly, SCA is swept up by the political promises of Incumbent and political parties advocating the Incumbent to divide the positions of the echelons of the SCA who are willing to help the Incumbent. This method is relatively capable of destroying the independence of SCA in working given the strong authority possessed by the regional head in filling the strategic positions in the region. Although for echelon II positions have been conducted auctions of office with independent selection team, but penentunya finally remain in the hands of the regional head. as well as for the strategic position of the Secretariat should be with the approval of the Governor, but the unavoidable reality of the political interests associated with repayment with the more dominant Incumbent rather than professional and meritocratic considerations.

There are strong evidences that bureaucrats also take advantages by getting involved in political struggle for power in the local election. The bureaucrats are hoping to be promoted because of supporting the Incumbent in the prior local election process. This is similar to mutual political cooperation that the both sides have positive effects from this position.<sup>27</sup>

### **The Legal Construction of Neutrality State Civil Apparatur**

The problem of non-neutrality of SCA in the localelection will continue to be a problem in the elections because there is an increasing tendency and is difficult to avoid, as there are a number of regulations that regulate the neutrality of SCA, but it is not effective enough to prevent SCA non-neutral behavior. This is where the legal policy of law is required 'legal policy', or official (policy) line about the law which will be applied either by the creation of new law or with the replacement of the old law, in order to achieve the purpose of the state.<sup>28</sup> While the meaning of progressive is (1) to the progress; and (2) to the improvement of circumstances.<sup>29</sup>

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<sup>27</sup> Teguh Yuwono, 'Government Ethical Problems: Political Neutrality of Bureaucracy in Local Election' (2016) 84 *Advanced in Social Science, Education and Humanities Research*. [341].

<sup>28</sup> Mahfud MD, *Politik Hukum Di Indonesia*, (Rajawali Pers 2010). [225].

<sup>29</sup> Kamus Besar Bahasa Indonesia, 'Progresif' (*Badan Pengembangan dan Pembinaan Bahasa, Kemdikbud*, 2012) <<https://kbbi.web.id/progresif>> accessed 19 June 2016.

This is in line with Satjipto Rahardjo's notion of progressive law, that is to direct the law that is capable of following the development of the times, to be able to answer the problems that develop in the society, and be able to serve the society by relying on the aspect of morality.<sup>30</sup> The political strategy of constitutional law in order to prevent SCA from being non-neutral in the elections is to seek new ways (breaking role) and innovative breakthroughs, if normal and normative ways are not able to immediately realize the objectives of the elections.

One of the basic messages of progressive law, is to keep the law from being tied to a rigid, stagnant, and serbaformal machine. Thus, it can accommodate the heterogeneity, originality, and creativity that grows in the community. This message should be accepted as a shift in enthusiasm in the management of constitutional law. A progressive feature of constitutional law is more democratic and more responsive. Progressive law puts people first, devotes to the welfare and happiness of the people. The ideal constitutional law should set up systems that satisfy as many people as possible, hear more, understand more. That is, accommodate a more democratic system.<sup>31</sup> The operationalization of the idea of preventing SCA from being neutral in elections is through two ways, (1) removing SCA voting rights in elections and (2) designing a bureaucratic Political appointee model in provincial and district/city governments and (3) altering the SCA Center career pemba and Area by rank/class.

### **Law Construction Revokes the Electoral Rights of SCA in Elections.**

The idea of removing SCA's right to vote is based on the argument that SCA is a state servant and public servant based on an attitude of impartiality without discrimination. Therefore, in the SCA apparatus, the state's spirit and politics are reflected, ie, prioritizing the public interest on behalf of the state above the personal interests of certain groups, groups and political parties.

Keeping SCA from being interfered by political leaders (presidents and regional heads) who are in charge of a particular political regime is an ensemble

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<sup>30</sup> Satjipto Rahardjo, *Membedah Hukum Progresif* (Buku Kompas 2008).[ix-x].

<sup>31</sup> Bambang Sadono, 'Hukum Tata Negara Yang Progresif' *Suara Karya* (Jakarta, 2010).[6].

of professionalism. It is difficult to understand if the SCA side is prosecuted by professionals, non partisan and politicized only on behalf of the state which is handled by systematic, structured bureaucracy, management of state budget and public policy execution, but on the other hand SCA Act is still given the right to vote in election/election according to aspiration. How difficult it is to be fair to SCA when banned from politics, but still have the right to vote. There is a contradiction between subjective inner attitudes as citizens who have the right to vote that is certain to side with a particular candidate/party with an objective attitude in the execution of public policy as a state servant. Mixing between political subjectivity and policy objectivity at any given time will always give birth to the SCA's ambivalence. It is a very difficult torture for SCA. Many facts indicate that the non-neutrality of SCA in the local election is more due to compulsion because the fate of the echelon position of an SCA is determined by the head of the region. especially if those who will fight in the elections are Incumbent which is their direct superior, if they do not give political support to the Incumbent ascertained that the echelon position bearing SCA will be lost when the Incumbent lose in local election.<sup>32</sup>

Similarly, many facts show that the non-neutrality of SCA in the elections is also caused by gambling factors, namely SCA's attitude in favoring Incumbent candidates based on the assumption that the year of his career will skyrocket when the Incumbent win in the elections, but if the incumbent lost in the echelon elections held SCA will float to be replaced by another SCA that does not support a particular candidate or otherwise passive.<sup>33</sup> Therefore, the active and passive attitude of SCA in the elections is equally difficult. To overcome the delimitation problem for the SCA, the constitutional law must seek a progressive breaking role, namely the need to revoke the right to vote and be elected to SCA. Although in the tradition of state administration SCA is classified as a part of civil society who has the right to vote,

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<sup>32</sup> Metro Bali, 'Sekda Se-Bali Desak Cabut Hak Pilih PNS' (*Metro Bali*, 2015) <<http://metroballi.com/2015/09/30/sekda-se-bali-desak-cabut-hak-pilih-pns/>> accessed 3 July 2016.

<sup>33</sup> Falcao Silaban, 'Dilema Netralitas PNS Masih Jadi Perdebatan' (*Bawaslu*, 2015) <<https://bawaslu.go.id/en/berita/dilema-netralitas-pns-masih-jadi-perdebatan>> accessed 3 July 2016.

only SCA is a civil apparatus that is mandated to implement public policy with certain positions. In fact, the embryonic abrogation of the right of SCA not to be elected in political office has begun through the provisions of Articles 119 and 123 Paragraph (3) of Law no. 5 Year 2014 on SCA, which prohibits SCA not to run for regional head or deputy head of region, except to resign from office. This clause should be upgraded to the removal of suffrage in elections to further encourage the neutrality of SCA in the political arena of power.

In political practice in many countries that do not exercise the right to vote in the general election is a military element as a representation to maintain the sovereignty and integrity of the state, while civil society including SCA still exercises the right to vote. However, political practice compounds with the traditions and needs of a country. All the legal policy of the state is a choice based on the political objectives of the state.<sup>34</sup> This means that a political policy can be reviewed at any time in accordance with political aspirations and state policies.<sup>35</sup>

In the history of social politics in Indonesia, both SCA and Indonesian national army (TNI) or Police of the Republic of Indonesia (Polri) have ups and downs their involvement in practical politics, both in the right to vote and the right to be elected in accordance with the choice of legal policy of the state. In the New Order era, for example, the TNI/Polri was not neutral in politics, it became the main pillar of the New Order power with the jargon of “Dwi Fungsi” ABRI has placed ABRI position as the most strategic tool of the New Order’s power, besides as the state sovereignty and also employed as a political player most reliable.<sup>36</sup> Similarly, civil servants in the New Order era may become politicized by becoming members of Golkar and elected in the election as long as they get the permission of their superiors.<sup>37</sup>

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<sup>34</sup> Sri Hartini, ‘Penegakan Hukum Netralitas PNS’ (2009) 9 *Dinamika Hukum*. [258-259].

<sup>35</sup> Martino Maggetti dan Fabrizio Gilardi, ‘Problems (and Solutions) in the Measurement of Policy Diffusion Mechanism’ (2016) 36 *Journal of Public Policy*. [87-107].

<sup>36</sup> Stefen Eklof, *Indonesian Politics in Crisis, The Long Fall of Suharto 1996-1998* (Nordic Institute of Asian Studies Press 1999). [1-22].

<sup>37</sup> Benedict R.O’G Anderson, *Violence and State in Suharto’s Indonesia* (Southeast Asia Program Press 2001). [9-19].

The social and political history of civil servants and TNI teaches that the pendulum of political power can change the tradition in a world where the neutral military in politics becomes not neutral in Indonesia. Due to political demands by the Reformation movement in 1998, this dual function of TNI was revoked and TNI returned to the barracks and had neither the right to vote nor the right to be elected neutral. Thus, when the present main problem of unfair competition in the elections is due to the fact that the politics of non-neutrality of SCA in the elections, the choice of legal policy of the state to withdraw voting rights and elected SCA in the election is not taboo and even becomes an undeniable necessity, when there is no longer the most effective way of cutting the chain of non-neutrality traditions of SCA in the elections.

The revocation of SCA's right to vote also does not contradict Article 28 of the 1945 Constitution which places every citizen with the right to associate and argue, since the basic principles of the implementation of human rights regulations in Indonesia are not absolute but relative or restrictive - restrictions. There are a number of decisions of the Constitutional Court which states that the practice of human rights in Indonesia is not absolute as in the Western tradition.<sup>38</sup> Therefore, the legal policy in human rights regulation in Indonesia is very open for the restrictions in accordance with the state's political will or open legal policy.

### **Construction of Bureaucracy of Local Government Political Apointee**

The next attempt to prevent SCA from playing politics with regional heads in the local election from the aspect of progressive law is the need to design a model of local government bureaucracy from conventional to political apointee model. Political appointees are subject to more ethics restrictions than regular executive branch employees. For purposes of this discussion, the term 'political

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<sup>38</sup> Pan Mohamad Fais, 'Embrio Dan Perkembangan Pembatasan HAM Di Indonesia' (*Pan Mohamad Faiz.com*, 2007) <<https://panmohamadfaiz.com/2007/11/19/pembatasan-hak-asasi-manusia-di-indonesia/>> accessed 4 July 2016. dan Agus Riwanto, 'Ekspirementasi Hukuman Mati' *Media Indonesia* (Jakarta, 21 September 2012).[6].

appointee' refers broadly to any employee who is appointed by the President, the Vice President, or agency head.

Political Apointee is a model of government that places people from political elements as bureaucratic apparatus in government. Besides, there are also bureaucratic apparatus that come from career elements, and are permanent or civil servants. This model is successfully run in the practice of local government bureaucracy in the states in the United States.<sup>39</sup> In three states in the USA, Missouri, Texas and Winconsin a Governor were granted the right by the constitution to appoint political apointee officials to strengthen his government. The establishment requires the approval of the state senate.

The main auxiliary group of the state head which is the political apointee is playing a role as the cabinet that assists the head of the region in governing. The political apointee officer is personally elected by the head of the region. The title for those in office is the Secretary. This state cabinet works under the coordination of the secretary of states. Their task is to assist the governor in formulating and overseeing the implementation process of the regional head's policies and programs.

All these apointee political officers are consolidated and work within the Executive Office of Governor and are non-permanent. They are paid and facilitated by the state by the senate. The period of his duty is equal to the task of the regional head. The existence of two elements of employees in the regional bureaucracy in the US, namely Civil Servants and Political Apointee can actually strengthen the system of bureaucratic service to the public because it allows each employee to control each other's behavior. In fact, usually political party officials (political apointee) are more powerful in the implementation of bureaucratic programs, because they are a support team of elected regional heads whose level of loyalty is undoubtedly in favor of regional heads.<sup>40</sup>

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<sup>39</sup> Pablo T Spiller dan Santiago Urbiztondo, 'Political Appointees Vs. Career Civil Servants: A Multiple Principals Theory Of Political Bureaucracies' (1994) 10 *European Journal of Political Economy*. [465-497].

<sup>40</sup> Pan Suk Kim, 'A Case for Performance Management for Political Appointees' (2009) 38 *Public Personnel Management*.



US political appointee officials are usually assigned to lead an important institution, agency and agencies in local government that can be a benchmark of the success of running local governments whose influence can be felt by the local public. Creating a political appointee model in local government in post-election local election is a very possible idea to answer the public disappointment because the Incumbent always intervene and influence the regional SCAs to support it in the elections as a consequence the SCA apparatus is not neutral in the local election.

The political appointee model in the bureaucracy in the regional government is also intended to work in the heads of the regions to be assisted by non-career professionals who have been working with local heads since before the elections. So that the heads of regions quickly in running the program, its visions.<sup>41</sup> The pluralists known to elected regional heads in the elections are mostly not from career bureaucrats, but from entrepreneurs, politicians, social workers and even artists. It's hard to expect them to quickly work because they do not have a loyalist team. Not infrequently the head of this region must adjust to regional bureaucracy SCA within 1-2 years of new work.

The people who are allowed to be mandated to become political appointee officials are influential people who are often asked for advice by the head of the county and successful teams whose public accountability is undoubted. In this case the elected head of state may appoint a personal political appointee, that is, those who are political officers from outside the ranks of the career bureaucracy to be placed as regional heads and supervisors of the public bureaucracy system at various agencies, agencies and agencies in the LG. If it applies the US model in managing the local bureaucracy in Indonesia, it is hoped that in time there will be two civil servants: First, the civil servant/state official (PNP) who is a political appointee appointed by a political official with a period of work following the political officer who appoints him. Second, civil servants who are non-partisan

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<sup>41</sup> David E. Lewis, 'Testing Pendleton's Premise: Do Political Appointees Make Worse Bureaucrats?' (2011) 12 *Journal of Politics*. [1-42].

career/professional bureaucrats.<sup>42</sup>

Placing political apointee in the local government bureaucracy will at least be able to increase the prestige of SCA because it is not always subject to command orders of the regional head, since the regional head has a core team that will assist conceptual and technical works through political apointee. Thus there is at least a balance of roles between bureaucrats originating SCA careers and non-career political apointees. Is not it true that in reality the local government practice is actually the head of the region in the work has been determined by the local strogman, as in the practice of local government in Jambi Province, only determined by the strong man initials “HR”, he who plays an important role, among others: 1). determining who should be promoted to regional officials; 2). as an executive representative when negotiating with employers, and even serves to filter out the levers that will compete in project bids in Jambi; 3). acting as mediator actor between NGO and governor; 4). acts as an intermediate between the governor and the political party.<sup>43</sup>

Therefore, in fact, placing political apointee has long been in existence in the local bureaucracy practice in Indonesia, has only not been defined defact by defacto. Placing this political Apointee is a way that will put SCA to be more honorable and dignified. SCA position is not just as subordination and implementing engine, but comparable or co-equality with the executive. Thus the bureaucracy is a politic but hinghly politized force. In other words, the bureaucracy is by no means partisan politics, but because its expertise has the power to make professional policies.<sup>44</sup> The idea needs to design the bureaucracy of this local government to be shaded through the system of legislation, the concrete step is to revise Law No. 5 of 2014 on SCA

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<sup>42</sup> Agus Riwanto, ‘Mencermati Kinerja Kepala Daerah Pasca Pilkada Langsung Dalam Mengendalikan Pemerintah Daerah Dan Menjamin Mensejahterakan Rakyat, Upaya Mencari Sebab Buruknya Kinerja Dan Tawaran Solusi’ (2008) 31 Unisia.[18-19].

<sup>43</sup> Syarif Hidayat, *Bisnis Dan Politik Di Tingkat Lokal : Pengusaha, Penguasa Dan Penyelenggara Pemerintahan Daerah Pasca Pilkada / Oleh Penyunting Syarif Hidayat* (Lembaga Ilmu Pengetahuan Indonesia 2006).[161]. dan Syarif Hidayat, ‘Pilkada Money Politics and The Danger of “Informal Governance” Practice’ in Maribeth Erb and Priyambudi Sulistiyono (ed) (ISEAS Press 2006).[125-146].

<sup>44</sup> Carl Dahlstrom and Mikael Holmgren, ‘The Politics of Political Appointments, Working Paper Series’ (*University of Gothenburg*, 2015) <[https://qog.pol.gu.se/digitalAssets/1517/1517594\\_2015\\_4\\_dahlstr--m\\_holmgren.pdf](https://qog.pol.gu.se/digitalAssets/1517/1517594_2015_4_dahlstr--m_holmgren.pdf)> accessed 17 April 2018.

to include a new clause on two types of regional bureaucratic apparatus consisting of career SCA and non-career political apointee.

### **Construction of Law Changes SCA Development Center and Region**

To further strengthen this idea, a progressive law of progressive law is required by altering the SCA career coaching model, for SCA regions class IV-b to the promotion of careers, promotion and rotation by the Ministry of Home Affairs (MoHA) so that they can be qualified to the central SCA or National SCA. While SCA areas classified IV-b under career pembinaam, promotion and rotation can be done by the head of the region. This argument about the choice of groups IV-b up and down is based on the assumption that SCAs that are often intervened by heads of regions are those with echelon II positions whose average starts from group IV-b and above. With the sharing of central and regional SCAs based on these groups will be able to nurture regional SCA careers as it will be able to provide SCA opportunities for a tour of duty in their careers in all bureaucratic lines, and at the same time be able to rank SCA human resources throughout Indonesia as well as potentially SCA accumulation in suatau area.

### **Conclusion**

Factors that can encourage the non-neutrality of SCA in local election can be seen from two perspectives from the perspective of local heads of Incumbent: 1). the choice of direct model local election costly is not proportional to the salary that can be when elected to head region, looking for shortcuts to utilize APBD and apartaur SCA funds to support the nomination; 2). the traffickers tend to benefit from the advantages of SCA which has a network of structures down to the village become a disadvantage as a tool for socialization and promotion of election activities; 3). SCAs are suppressed by strong people in the area (gangster/local strogmen) to support prospective Incumbent. What are the factors of SCA itself; 1). patrimonial and patron-client bureaucratic culture; 2). the non-enforcement of SCA neutrality regulation in politics; 3). SCA is swept up by sweet pledge of Incumbent that will divide the post cake on post-elected SCA in elections.

The construction of constitutional law in the effort to prevent SCA from being neutral in the elections is to seek new ways of breaking and innovative breakthroughs, if normal and normative methods are not able to immediately realize the goals of the elections, this is in line with the idea of progressive law, among others: 1). the need to revoke SCA's election in the election so that SCA focuses more on the performance of impartiality for the state servant and not easily intervened by the regime of political power; 2). the need to change the model of the local government bureaucracy from convention to political appointee, as in some states in the United States, namely, Missouri, Texas and Wisconsin. By applying two models of regional SCA apparatus: career and non-career; 3). to change the model of SCA Central and Regional Development based on rank/class.

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