








LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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Restriction of Political Rights of State Civil Apparatus in Practical Politics

Jaharatul Aropah

Faculty of Law, Social and Political Sciences, University of Mataram

Email: jaharatularopah123@gmail.com

M. Galang Asmara

Faculty of Law, Social and Political Sciences, University of Mataram

Email: galang_alkawoi@yahoo.com

Rusnan

Faculty of Law, Social and Political Sciences, University of Mataram

Email: rusnan74@yahoo.co.id

ABSTRACT

The purpose of this study is to find out the reasons why the political rights of State Civil Apparatus in practical politics are limited, to find out the forms of restrictions on the political rights of State Civil Apparatus in practical politics, and to find out the consequences for State Civil Apparatus involved in practical politics. The type of research used is normative legal research. The results of the study show: (1) The reason for limiting the political rights of State Civil Apparatus in practical politics is to prevent unprofessional ASN, prevent abuse of power and to prevent conflicts of interest. This is because ASN are state servants and public servants whose duties concern the public interest, so that ASN in carrying out their duties can ensure that public services run as well as possible; (2) The Forms of restrictions on the political rights of State Civil Apparatus in practical politics are: Restrictions on the right to be elected, Restrictions on becoming a member and/or administrator of a political party, Prohibition on participating in campaign activities, and Prohibition on holding activities that lead to partisanship towards election participants before, during, and after the campaign period; (3) The consequences for State Civil Apparatus involved in practical politics are that they will be subject to disciplinary sanctions as regulated in Government Regulation Number 94 of 2021 concerning Civil Servant Discipline, because it is a violation of Civil Servant discipline. In addition, the involvement of ASN in practical politics is subject to moral sanctions because it is a violation of the code of ethics related to ethics towards oneself as regulated in Article 11 letter c of PP No. 42 of 2004 concerning the Development of the Corps Spirit and the Code of Ethics for Civil Servants. ASN involved in practical politics are also threatened with criminal sanctions as regulated in Article 494 of Law Number 7 of 2017 concerning General Elections.

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1. INTRODUCTION

The National Goals as stated in paragraph IV (fourth) of the preamble of the 1945 Constitution of the Republic of Indonesia, namely to protect the entire Indonesian nation and the entire homeland of Indonesia and to advance the general welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice. These national goals can certainly be achieved through national development. The smooth administration of government and the implementation of national development depend on the perfection of the State Civil Apparatus (ASN) as servants of the State.

The State Civil Apparatus has been specifically regulated in the Law. Undang-Undang yang berkaitan dengan Aparatur Sipil Negara (ASN) telah diganti beberapa kali, mulai dari Undang-Undang Nomor 21 Tahun 1952 tentang Menetapkan Undang-Undang Darurat tentang Hak Pengangkatan dan Pemberhentian Pegawai-Pegawai Republik Indonesia Serikat (Undang-Undang Darurat Nomor 25 Dan 34 Tahun 1950) Sebagai Undang-Undang Republik Indonesia, Undang-Undang Nomor 28 Tahun 1957 tentang Penetapan Undang-Undang Darurat No. 13 Tahun 1957 (Lembaran-Negara Tahun 1957 Nomor 58) tentang Menambah Undang-Undang No. 21 Tahun 1952 (Lembaran-Negara Tahun 1952 No. 78) on Establishing the Emergency Law on the Right to Appoint and Dismiss Employees of the Republic of Indonesia of the United States of America (Emergency Laws No. 25 and 34 of 1950) as a Law of the Republic of Indonesia, Law No. 17 of 1961 on Amending Law No. 21 of 1952 on the Right to Appoint and Dismiss Civil Servants, and Law No. 18 of 1961 on Basic Civil Service Provisions, revoked by Law No. 8 of 1974 on Basic Civil Service. Then, Law Number 8 of 1974 concerning Civil Service Principles was amended by Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning Civil Service Principles

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as Law, which was then revoked by Law Number 5 of 2014 concerning the State Civil Apparatus. Furthermore, most recently, Law Number 5 of 2014 concerning the State Civil Apparatus has been revoked by Law Number 20 of 2023 concerning the State Civil Apparatus.

Law Number 5 of 2014 on the State Civil Apparatus (State Gazette of the Republic of Indonesia of 2014 Number 6, Supplement to State Gazette of the Republic of Indonesia Number 5494), is revoked and declared invalid when Law Number 20 of 2023 on the State Civil Apparatus comes into force. The repeal of Law Number 5/2014 on the State Civil Apparatus is certainly not without reason. The revocation of Law Number 5 of 2014 concerning the State Civil Apparatus is an effort by the government to adjust the development of the functions of the State Civil Apparatus and the needs of society. The main materials in Law Number 20 of 2023 concerning the State Civil Apparatus, namely:

- 1) Strengthening Merit System oversight;
- 2) Determination of the needs of Civil Servants (PNS) and Government Employees with Work Agreement (PPPK);
- 3) Welfare of civil servants and PPPK;
- 4) Arrangement of honorary workers; and
- 5) Digitalization of ASN Management includes the transformation of ASN Management components.

Article 1 Point 1 of Law Number 20 of 2023 concerning the State Civil Apparatus, reads that "State Civil Apparatus, hereinafter abbreviated as ASN, is a profession for Civil Servants and government employees with work agreements who work in government agencies." Law Number 20 Year 2023 on State Civil Apparatus, emphasizes the principle of neutrality of the State Civil Apparatus (ASN) in politics, including the impermissibility of involvement in practical politics.

As State servants, the State Civil Apparatus should have the same rights in government, especially political rights. This can be seen in Article 27 paragraph (1) of the 1945 Constitution, which regulates the rights of every citizen in government. Article

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27 paragraph (1) of the 1945 Constitution, which stipulates "All citizens are equal before the law and government and shall uphold the law and government with no exception". In addition, equality in government is also regulated in Article 28D paragraph (3) of the 1945 Constitution, which stipulates "every citizen is entitled to equal opportunity in government". In addition, the State Civil Apparatus has the right to non-discriminatory treatment or fair treatment. This is because everyone is entitled to non-discriminatory treatment or fair treatment. This is in accordance with the mandate of Article 28D paragraph (1) of the 1945 Constitution which stipulates "everyone has the right to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law", and Article 28I paragraph (2) of the 1945 Constitution which stipulates "everyone has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment".

Affirmations related to political rights are contained in several articles of Law Number 39 of 1999 concerning Human Rights, as follows:

- a. Article 23
 - (1) Everyone is free to choose and have their political beliefs;
 - (2) Everyone is free to have, issue, and disseminate opinions according to their conscience, orally and or in writing through print and electronic media with due regard to religious values, decency, order, public interest, and the integrity of the nation.
- b. Article 24
 - (1) Everyone has the right to assemble, meet and associate for peaceful purposes.
 - (2) Every citizen or community group has the right to establish a political party, non-governmental organization or other organization to participate in the course of government and the administration of the State in line with the demands for the protection, enforcement and promotion of human rights in accordance with the provisions of laws and regulations.
- c. Article 25, which stipulates "everyone has the right to express opinions in public, including the right to strike in accordance with the provisions of laws and regulations.
- d. Article 43 paragraph (1) of Law No. 39/1999 on Human Rights, which stipulates "every citizen has the right to be elected and to vote in general

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elections based on equal rights through direct, public, free, secret, honest and fair voting in accordance with the provisions of laws and regulations."

Based on the description of the Articles above, it can be seen that equal position in government is a constitutional right of citizens and is a human right that must be respected and upheld. Therefore, it is fitting that the right to equal position in government is given to every Indonesian citizen without exception, even to the State Civil Apparatus (ASN).

Apart from being regulated in the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 concerning Human Rights, political rights are also regulated in international arrangements stipulated in the *International Covenant on Civil and Political Rights* (ICCPR). The purpose of regulating political rights in the ICCPR is to strengthen the principles of human rights in the civil and political fields. On October 28, 2005, Indonesia ratified the *International Covenant on Civil and Political Rights* (ICCPR) through Law Number 12 of 2005 concerning the Ratification of the *International Covenant on Civil and Political Rights*. The regulation of political rights in practical politics in the International Covenant on Civil and Political Rights can be found in the following Articles:

- a. Article 19, which stipulates "The right of people to hold opinions without interference from others and the right to freedom of expression."
- b. Article 21, which provides for "Recognition of the right to peaceful assembly."
- c. Article 22, which reads "The right of everyone to freedom of association."
- d. Article 25, which stipulates "the right of every citizen to take part in the conduct of public affairs, to vote and to be elected, and to have access on equal terms to public office in his State".

Although the political rights of everyone have been regulated in such a way, it seems that the political rights of the State Civil Apparatus in the government, especially practical political rights, have been limited by laws and regulations related to the regulation of the State Civil Apparatus. We can find this in Law Number 20 of 2023 concerning the State Civil Apparatus, especially in the following Articles:

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- 1) Article 2 letter f of Law Number 20 of 2023 concerning State Civil Apparatus, which stipulates that "every ASN employee is impartial from all forms of influence and does not favor other interests outside the interests of the nation and the State".
- 2) Article 9 paragraph (2), which stipulates "ASN employees must be free from the influence and intervention of all groups and political parties.
- 3) Article 12, which stipulates "ASN employees play a role as planners, implementers, and supervisors of the implementation of the general duties of government and national development through the implementation of professional policies and public services, free from political intervention, and clean from the practices of corruption, collusion, and nepotism.
- 4) Article 52 paragraph (3) letter j, which stipulates "dismissal not at their own request for ASN Employees is carried out if: j. becomes a member and/or administrator of a political party.
- 5) Article 59, which stipulates "ASN employees who run for or are nominated as president and vice president, members of the House of Representatives, members of the Regional Representative Council, governors and deputy governors, regents / mayors, and deputy regents / deputy mayors must declare their resignation in writing from ASN since they are determined as candidates.

In addition, restrictions on the political rights of the State Civil Apparatus in practical politics can be found in Law Number 7 of 2017 concerning General Elections, in several Articles as follows:

- 1) Article 182 letter k, which stipulates "Individuals as referred to in Article 181 can become Election Participants after fulfilling the following requirements: k. resign as regional head, deputy regional head, Village Head and village officials, Village Consultative Body, State civil apparatus, members of the Indonesian National Army, members of the Indonesian National Police, directors, commissioners, supervisory boards and employees at State-owned enterprises and/or regional-owned enterprises and/or village-owned enterprises, or other bodies whose budgets are sourced from State finances, which are stated in an irrevocable letter of resignation."
- 2) Article 280 paragraph (2) letter f, which stipulates "Implementers and/or campaign teams in Election Campaign activities are prohibited from including: f. State civil apparatus."
- 3) Article 283 paragraph (1), which stipulates "State Officials, structural officials and functional officials in public positions and other State civil apparatus are prohibited from conducting activities that lead to favoritism towards election Participants before, during and after the Campaign period."

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Restrictions on the political rights of the State Civil Apparatus (ASN) in practical politics can also be found in Article 5 letter n of Government Regulation Number 94 of 2021 concerning Civil Servant Discipline, which stipulates as follows:

"Civil servants are prohibited from: n. providing support to candidates for President/Vice President, candidates for Regional Head/Vice Regional Head, candidates for members of the House of Representatives, candidates for members of the Regional Representative Council, or candidates for members of the Regional People's Representative Council by means of:

1. Join the campaign;
2. Become a campaign participant by using party attributes or civil servant attributes;
3. As a campaign participant by mobilizing other civil servants;
4. As a campaign participant using state facilities;
5. make decisions and/or actions that benefit or harm one of the candidate pairs before, during, and after the campaign period;
6. conduct activities that lead to favoritism towards candidate pairs who are election participants before, during, and after the campaign period including meetings, invitations, appeals, calls, or providing goods to civil servants within their work units, family members, and the community; and/or
7. provide a letter of support accompanied by a photocopy of the Identity Card or Certificate of Identity.

Although restrictions on the political rights of the state civil apparatus in practical politics have been regulated in legislation, empirical facts show that in the 2024 General Election (Pemilu), there are still many State Civil Apparatus involved in practical politics. For example, in West Nusa Tenggara (NTB) Province, the PJ Governor of NTB revealed that there were 20 ASNs reported to the State Personnel Agency (BKN) for alleged violations of neutrality (Suryansyah, 2024). Cases of violations of ASN neutrality ahead of the 2024 elections in West Nusa Tenggara are rampant in East Lombok district. There were 2 cases of election crimes, and four alleged violations of the neutrality of the State Civil Apparatus (NTBSatu, 2024). The East Lombok Personnel and Human Resources Development Agency (BKPSDM) admitted that it had only taken action against one ASN who was proven to have violated neutrality in the

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2024 Lotim Pilkada. The person concerned was given a written warning (S. & Qila, 2024).

The involvement of the State Civil Apparatus (ASN) in practical politics, results in the ASN concerned being subject to sanctions. The sanctions imposed on ASNs involved in practical politics are disciplinary sanctions as regulated in Government Regulation Number 94 of 2021 concerning Civil Servant Discipline. The phenomenon of limiting the political rights of the State Civil Apparatus in practical politics shows a very significant difference in treatment between other Indonesian citizens and the State Civil Apparatus. The political involvement of the State Civil Apparatus in practical politics in question can no longer be proven by attending the campaign of one of the candidates, even a finger pose will indicate that a person supports a particular candidate. Finger poses or emphasis on certain numbers and numbers which are then uploaded to social media will get various responses and various responses and even various sanctions if indicated to support certain candidates.

The involvement of the State Civil Apparatus in practical politics raises pros and cons. The cons or those who do not support the involvement of the State Civil Apparatus in practical politics view that the involvement of ASN in practical politics can have an impact on professionalism and the quality of public services. This is because ASN as a servant of the State should work professionally, independently, and objectively in the public interest. Meanwhile, those who support the involvement of ASN in practical politics reflect the spirit of inclusion and democratic spirit. Those who support the involvement of ASN in practical politics view that ASN as part of civil society, has the same political rights as other citizens, including the right to express opinions and participate in the political process. Restriction of ASN's political rights in practical politics is a form of restriction on freedom of opinion and organization, which are human rights. Freedom of expression has been regulated in Article 28E paragraph (3) of the 1945 Constitution, which stipulates "everyone has the right to freedom of

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association, assembly, and expression". Thus, everyone without exception has the freedom of opinion that has been guaranteed by the constitution, even the State Civil Apparatus.

The restriction of the political rights of the State Civil Apparatus (ASN) in practical politics as regulated in Law Number 20 of 2023, Law Number 7 of 2017 concerning General Elections, is certainly contrary to Article 27 paragraph (1), Article 28D paragraph (3), 28E paragraph (3), and Article 28I paragraph (2) of the 1945 Constitution, as previously described.

2. RESEARCH METHODS

This type of research uses normative research. Normative legal research or library research is research that examines laws and regulations that are related to the problem under study (Amiruddin & Asikin, 2006). In conducting a research, guidelines are needed to study, analyze and understand the problems that occur in order to obtain results that are in accordance with the problems studied. The approach used in this research is a statutory approach, namely an approach using legislation and regulation (Marzuki, 2011). The statutory approach is carried out by examining all laws and regulations related to the legal issues being addressed (Muhaimin, 2020). Based on the description above, it can be seen that the statutory approach is an approach that is carried out by examining or reviewing all laws and regulations related to the problem under study.

Furthermore, the historical approach is carried out by examining the background of what is studied and the development of arrangements regarding the issue at hand (Muhaimin, 2020). Then the comparative approach, this approach is carried out by comparing the legal system or laws of a country with laws from one or more other countries on the same matter, including court decisions (Muhaimin, 2020). Comparisons are made to find out the similarities and differences of each.

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In addition, there is also a conceptual approach, which departs from the views and doctrines that develop in legal science (Amiruddin & Asikin, 2006). By studying the views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles relevant to the issue at hand (Fajar & Achmad, 2015). Understanding these views and doctrines is the basis for researchers in building a legal argument in solving the legal issue at hand (Ali, 2009). Finally, the case approach is carried out by examining cases related to the issue at hand and has become a decision that has permanent legal force (Efendi, 2016).

3. DISCUSSION

Restriction of Political Rights of State Civil Apparatus in Practical Politics

Practical politics can be defined as politics with its various definitions implemented in the field based on what is contained in the theory (Setiawan, 2014). The definition of practical politics explicitly means that all political actions have an impact on society and government. Practical politics is the implementation of political behavior carried out by individuals or groups to fulfill their rights and obligations as citizens (Sumarta, 2022).

As for this paper, what is meant by practical politics is an activity that shows participation in a series of elections and political participation, namely participating in political parties, and following a series of campaigns. The concept of political *participation* is usually understood as the participation of citizens in political processes voluntarily (Adiah & Intan, 2022). Participation in political processes is basically an effort to respond, suggest, or express aspirations or demands regarding public resources (Adiah & Intan, 2022).

In Law Number 20 of 2023 concerning the State Civil Apparatus, we can find arrangements related to restrictions on ASN's political rights in practical politics, specifically in the following Articles:

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- 1) Article 2 letter f, which stipulates that "every ASN employee is impartial from all forms of influence and does not favor other interests outside the interests of the nation and state".
- 2) Article 9 paragraph (2), which stipulates "ASN employees must be free from the influence and intervention of all groups and political parties.
- 3) Article 12, which stipulates "ASN employees play a role as planners, implementers, and supervisors of the implementation of the general duties of government and national development through the implementation of professional policies and public services, free from political intervention, and clean from the practices of corruption, collusion, and nepotism.
- 4) Article 52 paragraph (3) letter j, which stipulates "dismissal not at their own request for ASN Employees is carried out if: j. becomes a member and/or administrator of a political party.
- 5) Article 59, which stipulates "ASN employees who run for or are nominated as president and vice president, members of the House of Representatives, members of the Regional Representative Council, governors and deputy governors, regents / mayors, and deputy regents / deputy mayors must declare their resignation in writing from ASN since they are determined as candidates.

Restrictions on the political rights of the State Civil Apparatus in practical politics can also be found in Law Number 7 Year 2017 concerning General Elections, in several Articles as follows:

- 1) Article 182 letter k, which stipulates "Individuals as referred to in Article 181 can become Election Participants after fulfilling the following requirements: k. resign as regional head, deputy regional head, Village Head and village officials, Village Consultative Body, state civil apparatus, members of the Indonesian National Army, members of the Indonesian National Police, directors, commissioners, supervisory boards and employees at state-owned enterprises and/or regional-owned enterprises and/or village-owned enterprises, or other bodies whose budgets come from state finances, which are stated in an irrevocable letter of resignation."
- 2) Article 280 paragraph (2) letter f, which stipulates "The executor and/or campaign team in the Election Kamparrye activities are prohibited from including: f. state civil apparatus."
- 3) Article 283 paragraph (1), which stipulates "State officials, structural officials and functional officials in state positions and other state civil apparatus are prohibited from conducting activities that lead to favoritism towards election participants before, during and after the Campaign period."

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Based on the description of the Articles in Law Number 20 of 2023 concerning the State Civil Apparatus and Law Number 7 of 2017 concerning General Elections relating to restrictions on the political rights of the State Civil Apparatus in practical politics, it can be seen that the forms of restrictions on the political rights of the State Civil Apparatus in practical politics are as follows:

a. Restriction of the right to be elected

The right to be elected is the right of every citizen to become a candidate in general elections and gain support from the public to represent them in legislative or executive institutions (Nuraisyah et al., 2024) . The right to be elected in general elections as part of political rights recognized by the 1945 Constitution of the Republic of Indonesia, which at the international level can be found in Article 21 paragraph (1), paragraph (2), and paragraph (3) of the *Universal Declaration of Human Rights*, hereinafter referred to as UDHR, which stipulates that:

- (1) Everyone has the right to take part in the government of his country, directly or through freely elected representatives.
- (2) Everyone is entitled to equal opportunity to be appointed to the government of his or her country.
- (3) The will of the people must be the basis of governmental power; this will must be expressed in periodic and genuine elections, by general and equal suffrage, by secret ballot or by any other procedure that guarantees the freedom to vote.

Restrictions on ASN's right to be elected can be seen in Article 59 of Law No. 20 of 2023 concerning the State Civil Apparatus, which reads "ASN employees who run for or are nominated as president and vice president, members of the House of Representatives, members of the Regional Representatives Council, governors and deputy governors, regents/mayors, and deputy regents/deputy mayors must declare their resignation in writing from ASN since they are determined as candidates."

In addition, restrictions on ASN's right to be elected can be seen in Article 182 letter k of Law No. 7 of 2017 concerning General Elections, which stipulates

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"Individuals as referred to in Article 181 may become Election Participants after fulfilling the following conditions: k. resign as regional head, deputy regional head, Village Head and village officials, Village Consultative Body, state civil apparatus, members of the Indonesian National Army, members of the Indonesian National Police, directors, commissioners, supervisory boards and employees at state-owned enterprises and/or regional-owned enterprises and/or village-owned enterprises, or other bodies whose budgets are sourced from state finances, which are stated in an irrevocable letter of resignation."

b. Prohibition to become a member and/or administrator of a political party

The prohibition of ASN to become members and/or administrators of political parties can be seen in Article 52 paragraph (3) letter j of Law No. 20 of 2023 concerning the State Civil Apparatus, which stipulates "dismissal not at their own request for ASN Employees is carried out if: j. becomes a member and/or administrator of a political party."

c. Prohibition to participate in campaign activities

Based on Article 1 Number 35 of Law Number 7 Year 2017 concerning General Elections, it reads that "Election campaigns are activities of election participants or other parties appointed by election participants to convince voters by offering the vision, mission, program and/or self-image of election participants."

Based on the description above, we can define campaign activity as an activity carried out to convince voters by offering the vision, mission, program and/or self-image of election participants. The prohibition of ASN to participate in campaign activities can be seen in Article 280 paragraph (2) letter f of Law No. 7/2017 on General Elections, which stipulates "Implementers and/or campaign teams in Election Campaign activities are prohibited from including: f. state civil apparatus."

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d. Prohibition to hold activities that lead to favoritism towards election participants before, during, and after the campaign period

The prohibition of ASN to hold activities that lead to favoritism towards election participants before, during, and after the campaign period can be seen in Article 283 paragraph (1) of Law No. 7/2017 on General Elections, which stipulates "State officials, structural officials and functional officials in public positions and other state civil apparatus are prohibited from holding activities that lead to favoritism towards election participants before, during, and after the Campaign period."

In principle, in Law Number 20 of 2023 concerning the State Civil Apparatus, ASN is required to uphold the principle of neutrality. as for what is meant by neutrality in Law Number 20 of 2023 concerning the State Civil Apparatus, is that every ASN employee does not take sides from any form of influence and does not favor other interests outside the interests of the nation and state.

According to Nuraida Mokhsen, ASN neutrality implies *impartiality*, namely interest-free, intervention-free, influence-free, fair, just, objective, and impartial (Mokhsen, 2020). Meanwhile, according to Marbun, neutrality is the freedom of Civil Servants (PNS) from the influence of the interests of certain political parties or not taking sides in the interests of certain political parties or not playing a role in the political process (Mokhsen, 2020).

Based on the description above, what needs to be underlined is that neutrality is impartial. However, ironically, in Law Number 20 of 2023 concerning the State Civil Apparatus, civil servants are limited in their right to be elected but not ASN's right to vote is not limited. by not limiting ASN's right to vote, isn't that an opportunity for ASN to provide support for election participants? If the government wants a neutral ASN, why doesn't the government limit ASN's right to vote? If the reason is to uphold the value of democracy, isn't the meaning of democracy from the people, by

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the people, and for the people? However, in this paper, according to the author, both the right to be elected, the right to vote, and other rights which are the rights of ASN in practical politics are human rights that must be fulfilled, respected, and protected. Restriction of the right to be elected or other practical political rights to ASN is a violation of human rights.

The restrictions as described above, researchers will examine further with reference to the theory of justice. Justice is a morally ideal condition regarding something, whether it concerns objects or people. John Rawls, an American philosopher who is considered one of the most prominent political philosophers of the 20th century, stated that "justice is the first *virtue* of social institutions, as is truth in the belief system". John Rawls in his book *A Theory of Justice* (1971) explains the theory of social justice as *the difference principle* and *the principle of fair equality of opportunity*. The essence of the *difference principle*, namely social and economic differences must be arranged so as to provide the greatest benefit to those who are most disadvantaged (Wignjosoebroto, 2011).

Furthermore, John Rawls asserts that justice enforcement programs with a populist dimension must pay attention to two principles of justice, namely: *First*, providing equal rights and opportunities for equal freedom for everyone. *Second*, being able to reorganize the socio-economic gap that occurs so that it can provide *reciprocal benefits* for everyone, both those who come from lucky and disadvantaged groups (Wignjosoebroto, 2011).

Meanwhile, Amin Mudzakir in his writing "When the Law Injures Justice", said that justice is a noble policy idea, talk about justice is closer to ethical and moral discourse. While legal discussions are closer to political discourse, about power, which contains elements of self and self-position in the social environment (Wignjosoebroto, 2011).

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Based on the description of the theory of justice, if it is related to the issue of limiting the political rights of the State Civil Apparatus in practical politics, it can be said that the limitation of the political rights of the State Civil Apparatus in practical politics is an injustice to the State Civil Apparatus. This form of injustice can be seen with the limitation of ASN's political rights in practical politics, ASN does not have the same opportunities in government as other citizens. Whereas basically, political rights in practical politics are one of the human rights that must be respected (*to respect*), protected (*to protect*), and fulfilled (*to fulfill*). Moreover, Indonesia is a state of law as stipulated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia. as for one of the characteristics of a state of law, namely the protection of human rights. Both the contents of the preamble and the body of the 1945 Constitution which expressly mentions the principle of democracy and the recognition and protection of human rights is evidence that Indonesia adheres to the principle of the rule of law (MD, 2012).

Manfred Nowak explains that the principles of human rights include universal values, wholeness, interdependence, and the principle of interconnectedness (Manfred Nowak in Junaidi et al., 2023). While Rhona K.M. Smith added another, namely equality and nondiscrimination (Junaidi et al., 2023). Basically, justice is the mandate of the values of Pancasila as the state philosophy. related to justice is contained in the 2nd precept which regulates "just and civilized humanity" and the 5th precept which regulates "social justice for all Indonesian people". the 2nd precept is evidence that the Indonesian state values humans and treats humans fairly and civilized. The 5th precept refers to equal treatment for all people. 5th precept is symbolized by rice and cotton which are symbols of food and clothing which implies the meaning that the main requirement for a just country is one that can achieve prosperity for its people equally.

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In addition, justice is also a mandate of the opening of the 1945 Constitution in the first paragraph, second paragraph, third paragraph, and fourth paragraph, which stipulates:

1. The first paragraph, which stipulates "That freedom is the right of all nations and for this reason, colonialism on earth must be abolished, because it is not in accordance with humanity and justice". In essence, the first paragraph upholds humanity and justice.
2. The second paragraph, which stipulates "And the struggle for Indonesia's independence movement has come to a happy moment by safely delivering the Indonesian people to the front gate of the independence of the Indonesian state, which is independent, united, sovereign, just and prosperous". In essence, paragraph II shows that Indonesia is an independent, united, sovereign, just and prosperous country.
3. The third paragraph, which stipulates "By the grace of God Almighty and driven by a noble desire to live a free national life, the people of Indonesia hereby declare their independence". In essence, the third paragraph proves that the Indonesian state recognizes and protects human rights, namely free national life.
4. The IVth paragraph stipulates:
"Therefore, in order to form a Government of the Republic of Indonesia that protects the entire Indonesian nation and the entire Indonesian blood spill and to advance the general welfare, educate the nation's life, and participate in implementing world order based on independence, lasting peace and social justice, the Indonesian National Independence is compiled in an Indonesian Constitution, which is formed in an arrangement of the Republic of Indonesia which is people's sovereignty based on : One God, a just and civilized humanity, Indonesian unity, and a democracy led by wisdom in deliberation/representation, and by realizing a social justice for all Indonesian people."

In essence, the fourth paragraph proves that Indonesia recognizes and protects human rights in all fields, namely the political, legal, social, cultural, economic and educational fields.

The restriction of the political rights of the State Civil Apparatus as regulated in the legislation is a deviation from the enforcement of human rights and the principle of justice as mandated by Pancasila as the philosophy of the Indonesian

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state and the 1945 Constitution of the Republic of Indonesia which is the constitution of the Indonesian state. Therefore, based on the principle of legal preference, namely *lex superiori derogate legi inferiori* which means that higher legislation overrides lower legislation. Based on the theory put forward by Hans Kelsen, namely *Stufenbau Theory*, it states that "the basis for the validity and legality of a regulation lies in a higher regulation, and the higher regulation applies based on higher regulations, and finally reaches the highest regulation, namely the *grundnorm* (basic norm)".

Based on the description above, it can be seen that according to the theory put forward by Hans Kelsen, namely *Stufenbau Theory*, the validity of a regulation is based on higher regulations based on the hierarchy of laws and regulations. Based on Article 7 paragraph (1) of Law Number 12/2011 concerning the Establishment of Legislation, the hierarchy of laws and regulations in Indonesia is as follows:

1. Constitution of the Republic of Indonesia Year 1945;
2. Decree of the People's Consultative Assembly ("MPR");
3. Law / Government Regulation in Lieu of Law;
4. Government Regulation;
5. Presidential Regulation;
6. Provincial Regional Regulations; and
7. District/City Regional Regulation.

Based on the description of the hierarchy of laws and regulations above, it shows that the Constitution of the Republic of Indonesia occupies a higher position than the Law. that is, the 1945 Constitution of the Republic of Indonesia is a higher regulation than the Law. Therefore, if we refer to the principle of legal preference, namely *lex superiori derogate legi inferiori*, which means that higher laws and regulations override lower laws and regulations, and the theory put forward by Hans Kelsen, namely *Stufenbau Theory*, then it is appropriate that several Articles governing restrictions on ASN political rights in practical politics in Law Number 20

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of 2023 concerning the State Civil Apparatus be revised because they conflict with the 1945 Constitution of the Republic of Indonesia as a higher regulation.

4. CONCLUSION

The forms of restrictions on the political *rights* of the State Civil Apparatus in practical politics based on the description of Articles in Law Number 20 of 2023 concerning the State Civil Apparatus and Law Number 7 of 2017 concerning General Elections relating to restrictions on the political rights of the State Civil Apparatus in practical politics, including restrictions on the right to be elected, restrictions on becoming members and/or administrators of political parties, prohibitions on participating in campaign activities, and prohibitions on holding activities that lead to favoritism towards election participants before, during, and after the campaign period.

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