



# Revoking of Civil Servants' Voting Rights Violates The Principles of Democracy and Human Rights in Indonesia

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## ABSTRACT

The purpose of this study is to assess the impact of revoking State Civil Servants' voting rights (ASN) on the quality of democracy in Indonesia. This study employs a normative research method, drawing on primary legal materials such as the 1945 Constitution, the General Election Law, and the International Convention on the Protection of Human Rights, as well as secondary legal materials such as books, articles, scientific works, or research findings relevant to the subject of study. The findings of this study show that revoking ASN voting rights is an undemocratic action that harms the interests of the entire community because it is fundamentally contrary to democratic principles, violates constitutional provisions, and restricts citizens' political rights. To improve this situation, it is recommended that the government evaluate the policy and consider restoring ASN voting rights, as well as formulating a more effective mechanism to maintain bureaucratic neutrality.

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## INTRODUCTION

General elections are considered a symbol and benchmark of democracy in many democratic countries. Article 28E paragraph (1) of the 1945 Constitution provides a constitutional basis for the implementation of elections that are carried out directly, generally, freely, secretly, honestly, and fairly every five years. This election is carried out to achieve the goals of the state as stated in the Preamble to the 1945 Constitution, namely to protect all Indonesian people and all Indonesian territory, advance general welfare, and improve the life of the nation. According to Article 1 number 34 of Law Number 7 of 2017 concerning General Elections, voters are an important part of the implementation of general elections (Kartoni, 2022).

According to A. Hamid S. Attamimi, it is said that the elements of the Indonesian legal state are the recognition and guarantee of human rights. In Indonesian Positive Law, one of the guaranteed human rights guarantees is the Right to Vote in General Elections (Pemilu). The

guarantee of the Right to Vote in Indonesian Positive Law is guaranteed in Article 43 Paragraph (1) of Law (UU) No. 39 of 1999 concerning Human Rights which states: "Every citizen has the right to be elected and to vote in the General Election based on equal rights through direct, general, free, secret, honest, and fair voting (luber and jurdil) in accordance with the provisions of the law." Although the right to vote is regulated by law, it does not mean that the right to vote is not part of the Human Rights or Constitutional Rights of Citizens (HKWN) which are guaranteed in the 1945 Constitution. Given that the Constitutional Court (MK) as the sole interpreter of the constitutions stated in its Decisions that the Right to Vote is a HKWN which is guaranteed and based on Article 27 Paragraph (1) of the 1945 Constitution. The Right to Vote in Elections is Part of Civil and Political Rights (Hak Sipil) which is the first generation of Human Rights. Jimly Asshidiqie said that the right to vote and be elected in the framework of a people's representative institution is part of the HKWN which is guaranteed by the 1945 Constitution. In a democratic system, the right to vote and be elected should be a right that cannot be reduced, let alone revoked (Saifulloh, 2022).

Article 28C paragraph (2) of the 1945 Constitution states that everyone has the right to advance themselves by collectively fighting for their rights to build their society, nation and country, which means that the state guarantees human rights in their entirety, starting from the right to life, the right to have a family, and so on.

The revocation of the voting rights of State Civil Apparatus (ASN) has an impact on legitimacy. In addition to reducing public trust and weakening the legitimacy of election results, the revocation of ASN voting rights can also hinder the process of democratic consolidation, which can reduce the participation of intellectuals in ASN in determining their leaders as has happened in several countries, namely China, Myanmar and Egypt, where the three countries have a democracy index far below Indonesia (Human Rights Watch, 2005).

The implications for Indonesia if the policy of revoking ASN voting rights is implemented in Indonesia, it can hinder the ongoing democratization process and weaken the legitimacy of the government. This can trigger public dissatisfaction and potentially trigger social conflict, and will result in less participation of intellectuals in choosing a leader. (S, 2024) because basically many intellectuals are from ASN circles, and basically most ASN know the atmosphere in formulating policies and are skilled in implementing policies, this knowledge can be a reference in determining choices. If assessed objectively and ignoring personal interests, ASN will get a lot of political information than other people to assess the quality of the right candidate. Based on this reference, the choice of 4.2 million civil servants throughout Indonesia is a great opportunity to get the best selected candidate (Jaenudin, n.d.). This is what made the author interested in raising this issue with the title Revocation of Voting Rights of State Civil Apparatus Violates the Principles of Democracy and Human Rights in Indonesia.

This study aims to analyze the impact of the revocation of the voting rights of state civil servants (ASN) on the quality of democracy in Indonesia. (S, 2024). By understanding the impact of this policy, it is hoped that it can contribute to the development of thinking about the importance of political participation and strengthening the democratic system in Indonesia.

Formulation of the problem :

1. How does the revocation of the voting rights of State Civil Apparatus (ASN) violate the democratic principles of the rights of Indonesian citizens?
2. How does the revocation of the voting rights of State Civil Apparatus (ASN) violate the human rights of Indonesian citizens?

## METHOD

This research uses a normative research method using primary and secondary legal materials. (J. Ibrahim, 2005). The primary legal materials referred to consist of: the 1945 Constitution, the General Election Law, International Conventions on the Protection of Human Rights, and so on.

While secondary legal materials are materials that provide explanations regarding primary legal materials such as: books, articles, scientific works or research results that are relevant to the object of this research and writing, and are then explained descriptively (exposition).

## **RESULT AND DISCUSSION**

### **Civil Service (ASN) Voting Rights**

The right to vote is a right given to citizens in determining the leader of their country in a general election, the right to vote in an election upholds the right to freedom of citizens based on the 1945 Constitution Article 28C paragraph 2 which states that everyone has the right to advance themselves in fighting for their rights collectively to build their society, nation and country, and Article 28D paragraph 3 which states that every citizen has the right to obtain equal opportunities in government. The right to vote is the right of citizens to determine their representatives in a general election. Citizen participation in a general election is a series of activities to make decisions whether or not to vote in a general election or in determining a leader in a country (Surbakti, 2007).

The Right to Vote in General Elections The right of citizens to participate in general elections is called the right to vote, which consists of active voting rights (the right to vote) and passive voting rights (the right to be elected).

a. Right to vote (active right to vote)

The right to vote is the right of citizens to choose their representatives in a general election. Citizen participation in a general election is a series of decision-making activities, namely whether to vote or not to vote in a general election. (Surbakti, 2007). The political sovereignty of a nation will be seen in the hands of the people who vote through general elections. (Gusdur in Khoirudin, 2004: 9).

b. Right to be elected (passive right to vote)

The right to be elected is the right of citizens to be elected as a member or candidate for member in a legislative or executive body in a general election. (A. T Sugeng Priyanto, 2008)

ASN is a profession for civil servants and government employees with work agreements who work in government agencies. One of the principles that is the basis for implementing ASN policies and management is the principle of neutrality. This principle has an explanation, namely not taking sides from any form of influence and not taking sides with anyone's interests. For this reason, it can be seen that the principle of impartiality in the State Administration Law has a different terminology, but the same meaning in the State Civil Apparatus Law, namely the principle of neutrality. This principle is one of the foundations for the bureaucracy to be able to carry out good governance (S, 2021).

The State Civil Apparatus as the implementer of government bureaucracy must apply the principle of neutrality in every action in carrying out its authority. No exception for neutrality from political influences that can disrupt bureaucratic performance. However, in the State Civil Apparatus Law, which regulates political neutrality, it only states that civil servants are prohibited from becoming members or administrators of political parties. Even explicitly dismissed from the State Civil Apparatus (ASN) dishonorably if they become members of a political party. This is in an effort to maintain the neutrality of ASN from the influence of political parties and to ensure the integrity, solidarity and unity of ASN and can focus all attention, thoughts and energy on the tasks assigned. Meanwhile, the political rights of ASN to vote in general elections are still guaranteed, unlike the Indonesian National Army (TNI) and the Police who do not have the right to vote (Jamaluddin, 2021).

State Civil Apparatus (ASN) has the right to vote in general elections (elections) as part of the political rights guaranteed by the constitution. However, in its implementation, ASN is required to maintain neutrality and not be involved in practical political activities, such as

campaigning or openly supporting one of the candidates. This aims to ensure a professional bureaucracy that is free from political intervention, so that public services can run well and fairly.

Several studies have discussed the neutrality of ASN in elections and its implications for their voting rights. For example, Roni Sulistyanto Luhukay in his article entitled "Neutrality of State Civil Apparatus in the Perspective of Human Rights" stated that although ASN have the right to vote, they must maintain their neutrality to avoid conflicts of interest and maintain professionalism in public service. (Luhukay, 2024). Regulations on the Neutrality of State Civil Apparatus in General Elections According to Law No. 5 of 2014 concerning State Civil Apparatus emphasize that ASN are required to maintain neutrality by not being involved in practical political activities, although they still have the right to vote in elections. (Sutiani, 2024).

Thus, although ASN have the right to vote, they are expected not to use their voting rights demonstratively or show political preferences that can affect their neutrality and professionalism in carrying out their duties as public servants. As citizens, ASN have political rights, including the right to vote in general elections. However, ASN neutrality is a fundamental principle that must be maintained to ensure that the bureaucracy remains professional and free from political intervention. ASN neutrality means that they do not side with any political party or candidate in the general election. This is regulated in Law Number 5 of 2014 concerning the State Civil Apparatus, which emphasizes that ASN must be free from the influence and intervention of all groups and political parties. However, ASN still have the right to cast their votes as voters in the general election (Sutiani, 2024).

In maintaining its neutrality, the position of ASN is vulnerable to politicization, especially when the Civil Service Development Officer (PPK) is held by a regional head with political affiliations. This situation can cause a conflict of interest and threaten the neutrality of ASN. Therefore, it is recommended that there be a revision of the ASN Law to transfer the authority of the PPK to the State Civil Service Agency (BKN) in order to avoid a conflict of interest. (Ramadhani et al., 2024). Although ASN are required to be neutral, they still have the right to vote as citizens. However, restrictions related to neutrality often lead to injustice and politicization, especially when political interests enter the bureaucracy. Synergy is needed between BKN and the Election Supervisory Agency (Bawaslu) in maintaining ASN neutrality and optimizing reporting forums for ASN who are intimidated in using their voting rights. (Ramadhani et al., 2024).

### **The revocation of the voting rights of State Civil Apparatus (ASN) violates the democratic principles of the rights of Indonesian citizens.**

The early history of democracy shows that democracy consists of two Greek words, "demos", meaning "the people", and "cratein", or "Cratos", meaning "power" or "sovereignty"(Pamungkas & Arifin, 2019a)(Jamaluddin, 2021). According to Pamungkas and Arifin (Pamungkas & Arifin, 2019a), democracy is a system that involves everyone. As a result, the execution and characteristics of implementation will differ from country to country. Democracy has some differences, such as differences in public opinion.

The revocation of voting rights for State Civil Apparatus (ASN) is a complex issue in the context of democracy and human rights in Indonesia. The right to vote and be elected is a basic right guaranteed by the Indonesian constitution, as stated in Article 27 paragraphs (1) and (2), Article 28, Article 28D paragraph (3), and Article 28E paragraph (3) of the 1945 Constitution. These articles emphasize that every citizen has the right to receive equal opportunities in government and has the freedom to vote and be elected in general elections.(Firmansyah, 2018).

The principle of democracy is very important and must be achieved in the general election process to uphold justice and individual freedom in determining choices. Democracy to identify the right democracy, and foster justice in democracy. However, not only freedom of expression (democracy) is needed, it also needs to have sufficient power or competence to carry out justice.

(Tohari, 2023). General elections must embody the principles of democracy so that people feel they have the right to choose a candidate. (Alifia Silvi Fatiha et al., 2022).

Democracy can serve as an example of good governance and direct state policies on the right path. (Triana. H.S et al., 2023a). This means that in order to build a nation, the government must give its citizens the freedom to determine their own destiny. Almost every country in the world has adopted a democratic system of government. (Geddes et al., 2018).

From the people's perspective, general elections are a tool to realize people's sovereignty with the aim of establishing a legitimate government and articulating the interests and desires of the people. (Alifia Silvi Fatiha et al., 2022). In the election law, the basic principles of general elections are direct, general, free, secret, honest and fair. (Ofis Rikardo, 2020). Furthermore (Pamungkas & Arifin, 2019b), elections must be carried out democratically by considering elements of both normative and empirical approaches to democracy which should be carried out by voters and election organizers. (Triana. H.S et al., 2023b).

This means that the revocation of ASN's voting rights is an undemocratic act and is contrary to the basic principles of democracy. This act violates human rights and harms the interests of the entire community. Therefore, it is important to maintain and protect the voting rights of all citizens, including ASN, so that democracy can run well and in line with the values of justice and equality.

However, ASN is expected to maintain neutrality in carrying out its duties. Law Number 5 of 2014 concerning State Civil Apparatus emphasizes that ASN employees must be free from the influence and intervention of all groups and political parties. This aims to ensure that public services are carried out professionally and impartially. (Aryandani, 2024). However, restrictions on the political rights of ASN, such as the revocation of voting rights, can be considered to violate the principles of democracy and human rights. In the journal "Revocation and Restriction of Citizens' Political Rights in Elections: A Form of Human Rights Violation" by Sinapoy, it is stated that the right to vote and be elected is a basic citizen's right that must be respected and protected. Restrictions on this right must be based on legitimate and proportional reasons, and must not be carried out arbitrarily. (Sinapoy & Sanib, 2019).

Revocation of political rights can only be carried out based on a court decision that has permanent legal force, and is usually applied as an additional punishment for perpetrators of serious crimes, such as corruption. The application of revocation of political rights without a clear legal basis and without going through a fair trial process can be considered a violation of human rights. (Firmansyah, 2018). Therefore, although ASN neutrality is important to maintain professionalism and public trust, revoking ASN voting rights without a strong legal basis and without going through a fair trial process can violate the principles of democracy and human rights guaranteed by the Indonesian constitution. (S, 2022).

The revocation of ASN voting rights without a legitimate and proportional procedure is contrary to the main principles of democracy which emphasize equality and the right to political participation of every citizen. As part of constitutional democracy, the right to vote and be elected is a fundamental aspect protected in many international agreements that Indonesia has ratified, such as the International Covenant on Civil and Political Rights (ICCPR) which guarantees the right of everyone to participate in government and in a free and fair election process. (Saifulloh, 2022).

If the government or regulations arbitrarily revoke ASN's voting rights, there are several significant impacts that can affect the democratic order and human rights in Indonesia:

1. Violation of Constitutional Rights: Any attempt to revoke the voting rights of ASN without a clear legal basis violates the provisions of Article 28D paragraph (3) of the 1945 Constitution, which guarantees the right of every citizen to obtain equal opportunities in government. (Simamora, 2013).
2. The decline of democracy depends on the inclusive participation of all citizens. Limiting the political rights of certain groups creates a bad precedent that is detrimental to political justice and inclusivity. (Nuna & Moonti, 2019).

3. Socio-Political Impact: ASN who lose their right to vote may feel marginalized, thus affecting their work morale as well as the relationship between the government and the wider community. (Jamaluddin, 2021).

Fair law enforcement, in accordance with the principle of due process of law, must be the basis if there are restrictions on political rights. Without such a process, any form of revocation can be categorized as a discriminatory act that is contrary to the spirit of democracy

### **The revocation of the voting rights of State Civil Apparatus (ASN) violates the human rights of Indonesian citizens.**

Human rights are a universal issue. This issue has always existed as long as humans exist. The struggle for human rights in the homeland emerged when there was oppression during the colonial era, which was basically a violation of human rights. The emergence of the struggle to gain government was also basically to obtain human rights. According to the opinion of several experts:

1. Mariam Budiardjo Human rights are rights owned by humans that have been obtained and brought with them along with their birth and presence in society. These rights exist in humans without distinguishing between nation, race, religion, class, gender, therefore they are basic and universal. The basis of all human rights is that everyone must have the opportunity to develop according to their talents and ideals. (Budiardjo, 1998).
2. Thomas Jefferson Human rights are basically human freedoms that are not granted by the State. This freedom comes from God which is inherent in the existence of individual humans. The government was created to protect the implementation of human rights. (Goldman, 2015).
3. Universal Declaration of Human Rights In the book of this declaration it is stated that human rights are rights obtained by every human being thanks to the gift of God Almighty, in fact cannot be separated from the nature of human beings. Therefore every human being has the right to obtain a decent life, freedom, safety and personal happiness. (Goldman, 2015).
4. Human Rights Article 43 of the Human Rights Law explains that: "Every citizen has the right to be elected and to vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with the provisions of laws and regulations. Therefore, if the revocation of ASN voting rights is implemented in Indonesia, this is very much against the 1945 Constitution, Article 28c paragraph.

The right to vote and be elected in general elections is one of the fundamental rights guaranteed by the constitution and international human rights instruments. However, under certain conditions, this right can be limited or revoked based on legitimate legal considerations. In the Indonesian legal system, revocation of voting rights can be imposed as an additional penalty against individuals who are proven to have committed serious crimes, such as corruption. Article 38 of the Criminal Code (KUHP) stipulates that the revocation of certain rights, including the right to vote and be elected, can be imposed as an additional penalty. In addition, Law Number 31 of 1999 concerning the Eradication of Corruption also regulates the possibility of imposing additional penalties in the form of revocation of political rights for perpetrators of corruption. The right to participate in government through general elections is recognized as part of human rights, as stipulated in Article 43 paragraph (1) of Law Number 39 of 1999 concerning Human Rights. However, this right is not absolute and can be limited based on a court decision that has permanent legal force. The Constitutional Court in Decision Number 4/PUU-VII/2009 stated that the revocation of political rights as an additional criminal penalty does not conflict with the constitution as long as it is applied proportionally and based on the law. Several studies have analyzed the application of the revocation of voting rights in the context of corruption and its

implications for human rights. For example, in the article "Legal Analysis of the Imposition of Additional Criminal Penalties for the Revocation of the Right to Vote and to be Elected in Public Office for Djoko Susilo" by Aji Lukman Ibrahim, it is discussed that the revocation of political rights must be carried out by considering human rights principles and must not be applied arbitrarily (A. L. Ibrahim, 2014).

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The revocation of voting rights for State Civil Apparatus (ASN) also has significant social and political impacts. ASN is an important part of the government bureaucracy that is expected to be neutral and professional in carrying out state duties. However, the revocation of voting rights can raise various problems and questions related to the principle of ASN neutrality in the context of democracy. The revocation of ASN voting rights can create the perception that ASN should not be involved in practical politics, which can conflict with their political rights as citizens. On the other hand, this restriction aims to keep ASN focused on their professional duties without being influenced by certain political affiliations (D, 2021). However, if this revocation occurs due to political factors or for unclear reasons, this can trigger distrust of government institutions and reduce healthy political participation among ASN.

From a human rights perspective, the revocation of voting rights can be considered a restriction on civil liberties. Even though there is a legal basis that regulates the revocation of voting rights for ASN involved in criminal acts (Amrullah, 2019), this remains a sensitive issue, because freedom of choice is a right guaranteed by the constitution. These restrictions could also potentially be used in a discriminatory manner against certain groups who are not fully processed fairly in court.

Revocation of ASN voting rights can reduce the level of political participation in general, especially among ASN who should be role models in society. Granting ASN the right to vote is one way to ensure inclusiveness in the democratic process, but revocation of voting rights will close one of the channels of participation for them.

Revocation of voting rights for ASN can be considered a violation of human rights if carried out without a clear legal basis and without going through a fair trial process. However, in cases of serious crimes such as corruption (S et al., 2024), revocation of voting rights as an additional criminal penalty has been recognized in the Indonesian legal system and is considered not to be contrary to human rights principles (Sinapoy & Sanib, 2019), as long as it is applied

proportionally and based on a valid court decision. Therefore, it is important to ensure that any act of revocation of voting rights is carried out in accordance with applicable legal procedures and by considering the protection of human rights.

So that the revocation of ASN voting rights does not violate human rights principles (Khairunnisa, 2018), there are several alternative approaches that can be considered by policy makers:

1. Proportional and Balanced Approach: Revocation of voting rights must be applied proportionally. If ASN is involved in a crime, such as corruption, then revocation of voting rights as an additional criminal penalty can be imposed, but it must be based on a valid trial process and prioritize the principle of justice. This is important so that there is no abuse of authority or discrimination in the legal process.
2. Political Counseling and Education: Alternatively, the government can provide counseling to ASN regarding the importance of political participation in accordance with their role as citizens. This will strengthen their understanding of neutrality in working in government, without having to lose their political rights as citizens (Gultom & S, 2023).
3. Evaluation of the Voting Rights Revocation Policy: To ensure that this policy does not violate human rights, there needs to be a periodic evaluation of its impact on human rights and the integrity of ASN. Transparent and accountable implementation will minimize the risk of abuse of authority by the competent authorities in revoking voting rights.

Based on the analysis above, it can be concluded that the revocation of ASN voting rights in Indonesia is a violation of the human rights of Indonesian citizens. This action is contrary to the principles of democracy, violates constitutional provisions, and limits the political rights of citizens. The revocation of ASN voting rights as an additional criminal penalty can be considered legitimate under Indonesian law, especially in cases of serious violations such as corruption. However, this action must still be carried out with caution and prioritize the principles of justice, transparency, and accountability. In addition, it should be remembered that the revocation of voting rights also has the potential to violate human rights if it is not carried out on a clear legal basis and a fair process. Therefore, this policy needs to be implemented in a balanced manner, ensuring that there is no violation of the constitutional rights of Indonesian citizens, especially ASN, in exercising their voting rights.

## CONCLUSION

From this study it can be concluded that in principle the right to vote is the right of freedom of citizens in determining leaders, to realize a good government (Good Government) then participation from all levels of society is certainly expected in determining the leader who will lead the country for a long time, The number of intellectuals who come from ASN and ASN knowledge of the atmosphere of political progress in Indonesia makes ASN votes very influential in elections in Indonesia, in principle democracy the involvement of each group is very much needed to express differences in the choice of leaders so that Homo Economicus does not occur in the Indonesian political process. As ASN has a very important role in government, ASN in choosing to know candidates based on personal preferences and maintaining their voting rights secretly and independently, ASN can determine better leaders.

Every citizen in Indonesia has the right to live, the right to express opinions and also has the right to determine who the leader will be chosen to lead this country in a better direction. If the ASN's right to vote is revoked, this is also very much against human rights (HAM) in the 1945 Constitution article 28C paragraph 2.

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