

**THE EFFECTIVENESS OF PANRB MINISTER'S NUMBER  
B/71/M.SM.00.00/2017 EPISTLE WITH REGARD TO NEUTRALY  
FOR STATE CIVIL APPARATUS IN GENERAL ELECTION**

**(Study in Bawaslu of Malang City)**

THESIS

By:

Ajeng Aodina

NIM 15230074



**CONSTITUTIONAL LAW DEPARTMENT**

**SHARIA FACULTY**

**THE STATE ISLAMIC UNIVERSITY**

**MAULANA MALIK IBRAHIM MALANG**

**2019**

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**THE STATE ISLAMIC UNIVERSITY  
MAULANA MALIK IBRAHIM MALANG**

**STATEMENT OF THE AUTENCITY**

In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the writer declares that the thesis entitled:

**THE EFFECTIVENESS OF PANRB MINISTER'S NUMBER  
B/71/M.SM.00.00/2017 EPISTLE WITH REGARD TO NEUTRALY  
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**(Study in Bawaslu of Malang)**

Is truly the writer's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, May 20<sup>th</sup>, 2019

Author,  
  
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Student ID Number 1230074

## APPROVAL PAGE

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FOR STATE CIVIL APPARATUS IN GENERAL ELECTION**

**(Study in Bawaslu of Malang City)**

The supervisor states that this thesis has met the scientific requirement to be proposed  
and to be tested by the Thesis Board of Examiners Malang,

20<sup>th</sup> of May 2019

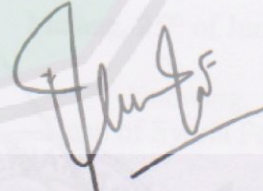
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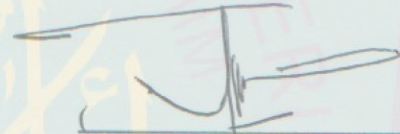
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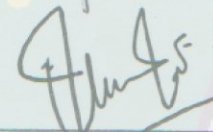
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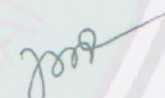
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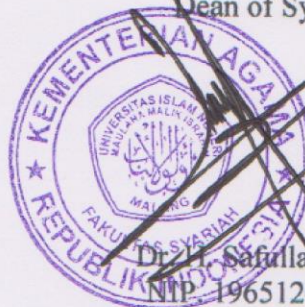
  
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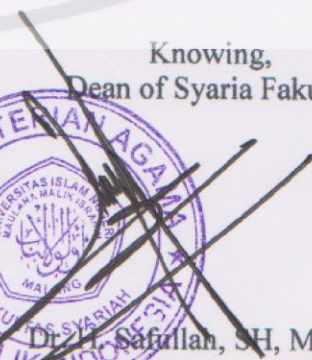
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## MOTTO

إِنَّ حُسْنَ عِلَاقَتِكَ بِاللَّهِ أَكْبَرُ مِنْ عَوَامِلِ نَجَاحِكَ

Hubungan baikmu dengan Allah merupakan factor terbesar keberhasilanmu



## ACKNOWLEDGMENT

All Praise due to Allah, the Cherisher and Sustainer of all the worlds. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled, “The Effectiveness of PANRB Minister’s No B/71/M.SM.00.00/2017 Epistle With Regard to Neutrality for Civil Servant In General Election (study case in Malang city)” could be completed, and also with His benevolence and love, peace and tranquility of the soul. Peace be upon the Prophet Muhammad SAW who had brought us from the darkness to the lightness, in this life. May we be together with those who believe and receive intercession from Him in the day of Judgement. Amin

With all support and help, discussion, guidance and directions from all parties involved during the process of completing this thesis, the Writer wishes to express his utmost gratitude to the following :

1. Prof. Dr.H. Abdul Haris, M.Ag as the Rector of Maulana Malik Ibrahim State Islamic University of Malang
2. Dr. Saifullah, S.H, M.Hum, as the Dean of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University
3. Dr. M.Aunul Hakim, S.Ag.,M.H, as the head of Constitutional Law Departement of Sharia Faculty

4. Dra. Jundiani, S.H., M.Hum, Dr. M.Aunul Hakim, S.Ag.,M.H, and Iffaty Nasyi'ah, M.H, as thesis board examiners, *Jazakumullah khairan*, thanks for giving many suggestions and criticism for this thesis.
5. Iffaty Nasyi'ah, M.H, as the supervisor and examiner. The writer expresses her gratitude for the guidance and directional motivation given in this course until this thesis had been successfully completed. May Allah SWT bless her and her family with
6. Iffaty Nasyi'ah, M.H, as supervisory lecture during the writer's study in Constitutional Law Department of Sharia Faculty of Maulana Malik Ibrahim State Islamic University of Malang
7. All lecture of Sharia Faculty who have developed, educated and provided useful knowledge to writer.
8. The write's beloved to my Parents for the endless prayer, they who had raiser, thought, prayer, loved and supported until the end of this study.
9. Staff of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University. The writer expresses gratitude for all their support and co-operation during the course of completing this thesis
10. All of people who involved for helping this thesis, thanks for All kind of helping, supporting and motivation.

With the completion of the scientific research in the form of this thesis, the writer realized that there are many errors that exist in his thesis, therefor

suggestions, criticism and constructive feedback is needed in this thesis for improvement and perfection of this thesis.

Finally, May Allah SWT replied all the kindness and give His blessing to all those who have provided assistance in the completion of this thesis, and hopefully this thesis can provide benefits for writer, readers, and for those who study and learn.

Malang, 20<sup>th</sup> of May 2019

Writer,

Ajeng Aodina  
NIM 15230074

## TRANSLITERATION GUIDANCE

### A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

### B. Consonants

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	'
ص	Sh	ي	Y

ض	DI		
---	----	--	--

The hamzah (ء) which is usually represented by an alif, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a comma facing upwards (´), as oppose to a comma (,) which replaces the “ع”.

### C. Vocal, Long-pronounce, and Diftong

In every written Arabic text in the latin form, its vowels fathah is written with “a”, kasrah with “i”, and dlommah with “u, whereas elongated vowels are written such as:

Elongated (a) vowel = â for example قال beomes qâla

Elongated (i) vowel = î for example قيل becomes qîla

Elongated (u) vowel = û for example دون becomes dûna

Specially for the pronouncing of *ya' nisbat* (in association), it cannot be represented by "i", unless it is written as "iy" so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after fathah it is written as "aw" da "ay". Study the following examples:

Diftong (aw) = و for example قول becomes qawlun

Diftong (ay) = ي for example خير becomes khayrun

### D. Ta' Marbûthah (ة)

*Ta' marbûthah* is transliterated as “t” if it is in the middle of word, but if it is *Ta' marbûthah* at the end of word, then it is transliterated as “h”. For example الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word for example فى رحمة الله becomes *fi rahmatillah*.

#### **E. Auxiliary Verb and Lafadh Al-Jalâlah**

Auxiliary verb “al” (لا) written with lowercase form, except if it located at the beginning of word, while “al” in lafadh jalâlah which located in the middle of two words or being or become *idhafah*, it removes from writing. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. MasyâAllâhkânawamâ lam yasya” lam yakun.
4. Billâhi,, azzawajalla.

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## ABSTRAK

Aodina, Ajeng, 15230074, 2019, Efektivitas Surat Menteri PANRB No/B.71/M.SM.00.00/2017 Tentang Pelaksanaan Netralitas Aparatur Sipil Negara Dalam Penyelenggaraan Pemilu (Studi di Bawaslu Kota Malang). Skripsi, Jurusan Hukum Tata Negara, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Iffaty Nasyi'ah, M.H

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**Kata Kunci :** Efektivitas, Netralitas Aparatur Sipil Negara, Surat Menteri PANRB,

Menjelang Pemilihan Umum (Pemilu) tahun 2019, menteri PANRB mengeluarkan surat himbauan kepada ASN agar selalu menjaga netralitasnya. Bawaslu sebagai badan pengawas penyelenggara pemilu memiliki kewenangan untuk menjaga kenetralitasan ASN khususnya dalam Pemilu. Karena salah satu kerawanan pelanggaran ASN terdapat pada netralitasnya. Yang mana tugas pokok ASN sebagai pelayan masyarakat, maka ASN harus melayani masyarakat tanpa melihat golongan manapun, partai atau pendukung calon kandidat. ASN tidak boleh membeda-bedakan dan harus melayani secara adil, bertanggungjawab dan profesional. Atas dasar itulah maka dibuat judul skripsi “Efektivitas Surat Menteri PANRB No/B.71/M.SM.00.00/2017 Tentang Pelaksanaan Netralitas Aparatur Sipil Negara Dalam Penyelenggaraan Pemilu (Studi di Bawaslu Kota Malang)”.

Jenis penelitian yang digunakan adalah penelitian yuridis empiris dengan pendekatan yuridis sosiologis, pendekatan penelitian yang digunakan dalam penelitian ini adalah dengan menggunakan pendekatan Yuridis Sosiologis. Data yang dikumpulkan berupa data primer hasil dari wawancara langsung dari Bawaslu kota Malang sebagai Badan Pengawas Pemilu dan ASN yang memiliki relevansi dari penelitian ini. Dan data sekunder yakni buku-buku, undang-undang, yang kemudian data tersebut diedit, diperiksa, dan disusun sedemikian rupa kemudian dianalisis

Hasil penelitian skripsi *pertama*, bahwa surat himbauan netralitas Aparatur Sipil Negara dalam pemilihan umum yang dikeluarkan menteri PANRB dikota Malang sudah cukup efektif, ditinjau dari minimnya pelanggaran yang ditemukan oleh Bawaslu kota Malang dan upaya pengawasan Bawaslu dan dari beberapa lembaga terkait pengawasan netralitas ASN. *kedua*, netralitas menurut prinsip keadilan dalam Islam menjelaskan bahwa aparatur Negara sebagai penyelenggara Negara harus bersikap adil karena keadilan merupakan asas dalam menjalankan system suatu pemerintahan. Pengawasan yang dilakukan oleh Bawaslu terhadap netralitas ASN sudah dijalankan dengan baik sebagaimana diatur dalam Undang-Undang. Dan Pemahaman dan penerapan netralitas Aparatur Sipil Negara yang di atur didalam Surat Menteri PANRB diimplementasikan dengan baik oleh ASN dengan tujuan untuk menyelenggarakan kebijakan pemerintahan secara professional, jujur dan adil sebagaimana prinsip keadilan dalam Islam.

## ABSTRACT

Aodina, Ajeng, 15230074, 2019, The Effectiveness Of PANRB Minister's Number B/71/M.SM.00.00/2017 Epistle With Regard To Neutrality For State Civil Apparatus In General Election (Study in Bawaslu of Malang). Thesis, Department of Constitutional Law, State Islamic University of Maulana Malik Ibrahim Malang. Advisor: Iffaty Nasyi'ah, M.H

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Keywords: Effectiveness, Neutrality of State Civil Apparatus, Minister of PANRB Letter,

Ahead of the General Election (Election) in 2019, the PANRB minister issued an appeal letter to the ASN to always maintain its neutrality. Bawaslu as an election organizing supervisory institution has the authority to maintain the neutrality of the ASN, especially in elections. Because one of the vulnerabilities of ASN violations is its neutrality. Which is the main task of ASN as a public servant, then the ASN must serve the community without looking at any group, party or potential candidate supporters. ASN must not discriminate and must serve fairly, responsibly and professionally. On this basis, the title of the thesis was made "The Effectiveness of the Letter of the Minister of PANRB No/B.71/M.SM.00.00/2017 concerning the Implementation of Neutrality of the State Civil Apparatus in the Implementation of Elections (Study in Bawaslu Malang City)".

The type of research used is juridical empirical research with a sociological juridical approach, the research approach used in this study is to use a sociological juridical. While the data collected in the form of primary data results from interviews directly from ASN that have relevance from this study. And secondary data, namely books, laws, then the data is edited, examined, and arranged in such a way and then analyzed.

The results of this thesis study *the first* is that the appeal letter for the neutrality of the State Civil Apparatus in the general election issued by the PANRB minister in Malang city was quite effective, in terms of the minimum violations found by Bawaslu in Malang city and Bawaslu's supervision efforts and from several institutions related to the supervision of ASN neutrality. *second*, neutrality according to the principle of justice in Islam explains that the state apparatus as the state administrator must be fair because justice is the principle in carrying out a system of government. Supervision carried out by Bawaslu on the neutrality of the ASN has been carried out properly as stipulated in the Act. And the understanding and application of the neutrality of the State Civil Apparatus set in the PANRB Minister's Letter is well implemented by the ASN with the aim of carrying out government policies professionally, honestly and fairly as the principle of justice in Islam.

## المستخلص البحث

أجبع أوينا، 2019، رقم القيد 15230074، فعالية خطاب وزير PANRB الرقم B/71/M.SM.00.00/2017 فيما يتعلق بتنفيذ حياد الجهاز المدني للدولة في الانتخابات العامة، بحث جامعي، قسم السياسة، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: عفتي النشبية، الماجستير

### الكلمات الدلالية: فاعلية ، حياد الجهاز المدني للدولة ، رسالة وزير PANRB

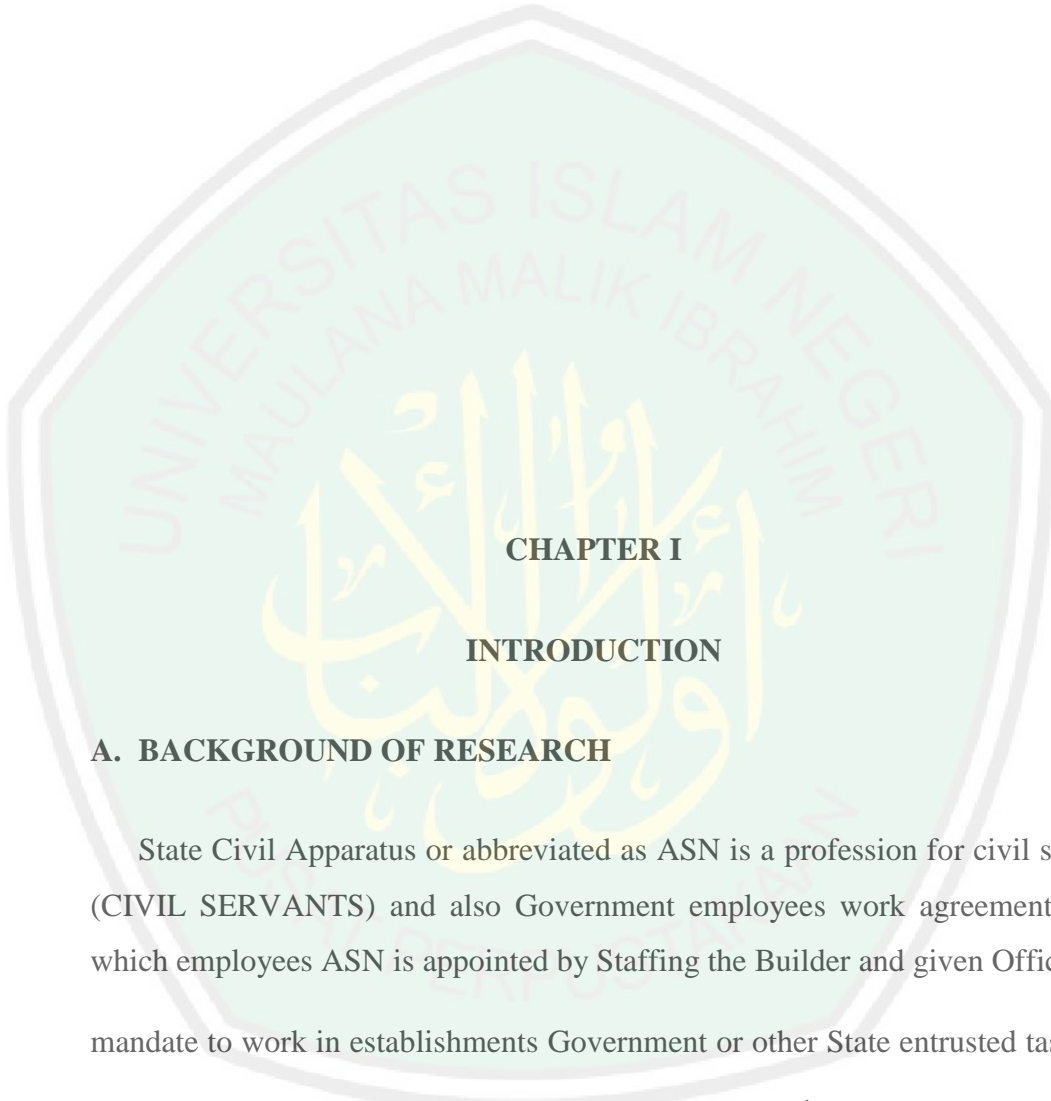
قبل الانتخابات العامة (الانتخابات) في عام 2019 ، أصدر وزير PANRB رسالة نداء إلى جهاز الدولة المدني (ASN) للحفاظ على حيادها دائماً. تتمتع هيئة مراقبة الانتخابات (باواسلو) بصفتها هيئة الإشراف على تنظيم الانتخابات بسلطة الحفاظ على حيادية الجهاز المدني للدولة ، وخاصة في الانتخابات. لأن إحدى من نقاط الضعف في الجهاز المدني للدولة هو حيادها. التي هي المهمة الرئيسية للجهاز المدني بالولاية كموظف عام ، يجب على الجهاز المدني بالولاية أن يخدم المجتمع بغض النظر عن أنصار أي مجموعة أو مرشح أو مرشح. يجب ألا يميز الجهاز المدني للدولة ويجب أن يخدم بشكل عادل ومسؤول ومهنيًا. على هذا الأساس ، تم وضع عنوان الأطروحة "فعالية خطاب وزير PANRB رقم B.71 / M.SM.00.00 / 2017 بشأن تنفيذ حيادية الجهاز المدني للدولة في تنفيذ الانتخابات (دراسة في باواسلو مدينة مالانج)

نوع البحث المستخدم هو البحث التجريبي القانوني مع النهج القانوني الاجتماعي ، والنهج البحثي المستخدم في هذه الدراسة هو استخدام النهج الاجتماعي الفقهي. في حين أن البيانات التي يتم جمعها في شكل بيانات أولية ناتجة عن المقابلات مباشرة من هيئة الإشراف على الانتخابات في مدينة مالانج والجهاز المدني للدولة الذي له صلة من هذا البحث. والبيانات الثانوية ، أي الكتب والقوانين ، ثم يتم تحرير البيانات وفحصها وترتيبها بهذه الطريقة ثم تحليلها

أظهرت نتائج هذه الدراسة الأولى أن نداءات حياد الجهاز المدني للدولة في الانتخابات العامة التي أصدرها وزير PANRB في مدينة مالانج كانت فعالة للغاية ، من حيث الحد الأدنى من الانتهاكات التي خلصت إليها هيئة الإشراف على الانتخابات في مدينة مالانج والجهود المبذولة للإشراف على باواسلو ومن العديد من المؤسسات المتعلقة بالإشراف على حيادية الخدمة المدنية بالدولة ، ثانياً ، يوضح الحياد وفقاً لمبدأ العدالة في الإسلام أن جهاز الدولة بصفته مسؤول الدولة يجب أن يكون عادلاً لأن العدالة هي مبدأ تنفيذ نظام الحكم. وخلصت هذه الدراسة إلى أن الإشراف الذي قامت به باواسلو على حياد الجهاز المدني للدولة قد تم تنفيذه بشكل صحيح على النحو المنصوص

عليه في القانون. إن فهم وتطبيق حيادية الجهاز المدني للدولة المنصوص عليه في خطاب وزير PANRB يتم تنفيذه جيداً من قبل الجهاز المدني للدولة بهدف تنفيذ سياسات الحكومة بشكل احترافي وصادق ونزيه كمبدأ للعدالة في الإسلام.





## CHAPTER I

### INTRODUCTION

#### A. BACKGROUND OF RESEARCH

State Civil Apparatus or abbreviated as ASN is a profession for civil servants (CIVIL SERVANTS) and also Government employees work agreement (P3K) which employees ASN is appointed by Staffing the Builder and given Official mandate to work in establishments Government or other State entrusted tasks and ASN are hired based on legislation that has been set.<sup>1</sup> One of the principles of implementing ASN policies and good ASN management is neutrality.<sup>2</sup> This

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<sup>1</sup> Article 1 of Law No. 5 of 2014 concerning the State Civil Apparatus

<sup>2</sup> Article 2 of Law no 5 tahun 2014 concerning the State Civil Apparatus

neutrality of the ASN intends to safeguard the ASN from the influence of group or political intervention, the ASN must not take sides from any form of influence and does not take sides for anyone's interests. The aim is to maintain cohesiveness, integrity, and unity of the ASN in order to focus the mind, attention and energy on the tasks of the state that have been charged to ASN, namely tasks as public services, tasks as a function of government and development tasks. And ASN employees may not be members and / or administrators of political parties.

Ahead of the 2019 General Election, ASN is encouraged to always maintain its neutrality. Because ASN generally has the right to vote in elections unlike the TNI and Polri, however, the professionalism of the ASN is demanded to be always neutral, impartial and impartial to the interests of candidates. In the main task of ASN, namely as a public servant, the ASN must serve the community without looking at any group, party or potential candidate supporters. ASN must not discriminate and must serve fairly, responsibly and professionally. On that basis, the ASN must be free from the influence and intervention of all groups and political parties as stipulated in Law No. 5 of the 2014 ASN Article 9 paragraph (2).<sup>3</sup>

Referring to the basics of Islamic Qur'an and Hadith that professionalism is those who contribute their soul and energy to the good of themselves, family, society and the state without intending to harm others and always be honest.

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<sup>3</sup> Article 9 paragraph (2) of Law No. 5 of 2014 concerning State Civil Apparatus

Then the verse relating to professionalism at work is at Q.S at-Taubah (9) 105, which reads:

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

وَقُلْ اَعْمَلُوا فَسَيَرَى اللّٰهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ وَسَتُرَدُّونَ اِلَىٰ عِلْمِ الْغَيْبِ وَالشَّهَادَةِ  
فَيُنبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ

*The mean : "Work (righteousness): soon will Allah observe your work, and His Messenger and the Believers: soon will ye be brought back to the knower of what is hidden and what is open: then will He show you the truth of all that ye did." (At-Taubah:19)*

Islam teaches people to always be fair, one of which is fair in carrying out a mandate in a government. Because justice is one of the principles in a government system and a goal to be achieved, both among the Muslims themselves. With justice, heaven and earth can be upright. Justice is the principle of power. However, tyranny and tyranny are the path to the destruction of civilization and the disappearance of power.<sup>4</sup> Fair is meant because Justice is a basic thing and is one of the official benchmarks of an order of life in a society, nation and state. Because of this, guarantees for justice are equally important. The principle of justice in running a wheel of government is the same as the principle of neutrality, that the State Civil Apparatus as the organizer of a government must be fair must not benefit any group which will have an impact on the professionalism and performance of the State Civil Apparatus as public servants.

<sup>4</sup> Prof. Wahbah Az-Zuhaily, *Fiqh Islam Wa Adillatuhu*, Jilid 8, (Gema Insani:Jakarta,2011) h.333

Therefore, Islam upholds the fundamentals of justice to maintain the survival of society.

Allah SWT said :

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَايَ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ  
يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

The meaning :

*”Allah commands justice, the doing of good, and liberty to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.” (An-Nahl:90)*

Towards this 2019 Election, ASN is encouraged to always maintain its neutrality. One of the calls for ASN neutrality is the circular letter of the Ministry of Administrative Reform and Bureaucratic Reform of the Republic of Indonesia (PANRB). The PANRB Ministry is the Indonesian Government ministry in charge of the affairs of the utilization of state apparatus and bureaucratic reform. The PANRB Ministry is headed by the Minister of PANRB. The PANRB Ministry has the task of carrying out affairs in the field of Utilization of State Apparatus and Bureaucratic Reform to assist the President in organizing state government in carrying out his duties. And for one

of the functions of the PANRB Ministry is to supervise the performance of the state apparatus.<sup>5</sup>

Some of the things that become a ban on the ASN contained in the contents of the PANRB minister's letter are:

- Prohibited from approaching political parties regarding plans for proposing themselves or other people as prospective regional heads / deputy regional heads;
- It is prohibited to put up banners / billboards that promote themselves or other people as candidates for Regional Heads / Deputy Regional Heads;
- It is forbidden to declare itself as a prospective Regional Head / Deputy Regional Head;
- It is prohibited to attend the declaration of candidates for the Regional Head / Deputy Regional Head with or without using the attributes of the candidate pairs / political party attributes;
- It is prohibited to upload, respond to (likes, shares, comments and the like) or disseminate images / photos of prospective candidates for the Regional Head through online media and social media;
- Do not take photos together with prospective Regional Head / Deputy Regional Head by following the hand symbol / movement that is used as a form of partiality;

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<sup>5</sup>[https://id.wikipedia.org/wiki/Kementerian\\_Pendayagunaan\\_Aparatur\\_Negara\\_dan\\_Reformasi\\_Birokrasi\\_Republik\\_Indonesia](https://id.wikipedia.org/wiki/Kementerian_Pendayagunaan_Aparatur_Negara_dan_Reformasi_Birokrasi_Republik_Indonesia) (accessed: 2<sup>nd</sup> of february 2019)

- It is prohibited to be a speaker / speaker at political party meeting activities.<sup>6</sup>

And to guarantee the effectiveness of the PANRB ministerial letter, all Ministries / agencies and local governments to supervise the ASNs in their respective environments. Ministries / Agencies and local governments establish further instructions on how to maintain, guarantee the neutrality and professionalism of ASN in their environment in accordance with the law.

Bawaslu as a institution that oversees the administration of elections has a duty, one of which is to oversee the neutrality of the State Civil Apparatus.<sup>7</sup> Because one of the vulnerabilities of ASN is in its neutrality, Bawaslu has the duty to supervise the neutrality of ASN by receiving and following up on reports of alleged violations which are then recommended to the relevant agencies regarding the results of monitoring of ASN neutrality.

In the 2019 Election, Malang Election Supervisory Board has found 3 violations related to ASN neutrality and there have been sanctions, namely:

1. HA, as ASN at the State Islamic University of Maulana Malik Ibrahim Malang, position as Head of the General Sub-Administration of the Faculty of Psychology.

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<sup>6</sup> Minister's Letter of PANRB No B/71/M.SM.00.00/2017 on the implementation of neutrality by the ASN in local elections in 2018, legislative elections in 2019, and the election of the President and Vice President in 2019

<sup>7</sup> Article 93 letter f of Law No. 7 of 2017 concerning General Elections

2. ESS, ASN in Malang City Government in Malang Trade Office, position as market manager of UPT Oro-Oro Dowo
3. BS, ASN at Malang City Government in Malang Housing and Settlement Service Office, position as head of the Development and Maintenance section.

The existence of an appeal from the Minister's letter which has been issued by the Minister of PANRB and the rules mentioned therein should have been a solution to the absence of ASN violations related to neutrality. However, there are still many violations found in various regions before the General Election conducted by ASN related to violations of neutrality.<sup>8</sup>

In the implementation of good government management, supervision is one of the most important parts, especially the supervision of the neutrality of the State Civil Apparatus. Supervision regarding violations of ASN in direct elections is under the authority of Bawaslu.<sup>9</sup> And the regional government is obliged to provide all forms of assistance and facilities for the Election Supervisory Board regarding the form of supervision.

It can be concluded that with the violation of ASN neutrality, it can be seen that ASN neutrality is still very weak, because there are still many violations related to the neutrality of ASN in the election. Therefore the purpose of this paper is to find out how the Effectiveness of the PANRB

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<sup>8</sup> <https://bawaslu.go.id/id/berita/bawaslu-tingkatkan-pengawasan-terkait-netralitas-asn>  
(Accesed: 12 February 2019)

<sup>9</sup> Election Supervisory Agency Regulation Number 28 of 2018 Article 42

Minister's Letter on the Neutrality of the State Civil Apparatus in the Implementation of Elections and What is the form of Bawaslu's supervision of the neutrality of State Civil Apparatus in elections especially in Malang City.

## **B. STATEMENT OF PROBLEM**

1. How is the effectiveness of the PANRB Minister's Letter Number B/71/M.SM.00.00/2017 concerning the implementation of the Neutrality of the State Civil Apparatus in the implementation of the Election?
2. How is neutrality according to the principle of justice in Islam?

## **C. OBJECTIVE OF RESEARCH**

1. To determine the effectiveness of the Minister of PANRB letter Number B/71/M.SM.00.00/2017 concerning the implementation of the Neutrality of the State Civil Apparatus in the implementation of the Election
2. To find out how neutrality according to the principle of justice in Islam

## **D. OPERATIONAL DEFINITION**

Operational definitions are intended to avoid misunderstandings and differences in interpretation related to the terms in the thesis title. So the author describes the operational definition used in this study:

- a. Effectiveness

The word effectiveness comes from English, namely effective. The meaning of the word is: "having the intended or expected effect; serving the purpose". Thus, the effectiveness of the law can be interpreted by the legal ability to create or give birth to a situation or situation as desired or expected by law.

Effectiveness is a condition that contains an understanding of the occurrence of an effect or desired effect, if someone does an action with a specific purpose that is indeed desired. So that person is said to be effective if it raises or has the intention as desired.<sup>10</sup>

b. Neutrality

Circumstances and neutrality (free and impartial). That is, every ASN employee does not take sides from any form of influence and does not take sides with anyone's interests.<sup>11</sup>

Article 2 letter f of Law Number 5 of 2014 states that one of the principles for implementing ASN policies and management is "Neutrality". This principle of neutrality means that every ASN employee does not take sides in any form of influence and is not in the interests of anyone.

c. Supervision

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<sup>10</sup> Winarno yudho dan Heri Tjandrasari, "Efektivitas Hukum Dalam Masyarakat," *Jurnal Hukum dan Pembangunan*, 1, (1987), 59

<sup>11</sup> Indonesian Dictionary version online, <https://kbbi.web.id/netral>, (accessed : 13 februari 2019 pukul 10:40 WIB)

The process of setting performance measures and taking actions that can support the achievement of expected results in accordance with the predetermined performance.<sup>12</sup>

## E. SIGNIFICANCE OF RESEARCH

The benefits of the research expected by the author are divided into two views, namely:

1. Theoretical benefits,

The results of this study are expected to be able to add scientific knowledge regarding the neutrality of the state civil apparatus that has been regulated in laws and government regulations and to add insight into the performance of bawaslu supervision on ASN neutrality in elections.

2. Practical benefits,

This research is expected to be useful for legal practitioners, the results of the study may be an alternative reference, guidance for future researchers with a sustainable theme. Particularly it can be used as a reference to directly know the neutrality of the state civil apparatus, and the forms of supervision carried out by the Election Supervisory Body.

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<sup>12</sup> <https://malikazisahmad.wordpress.com/2012/01/13/pengertian-pengawasan/> (accessed : 12<sup>th</sup> of February 2019)

## F. SYSTEMATIC DISCUSSION

In order to make it easier for readers to understand the writer's writings, the systematics of writing is organized into five chapters and each consists of sub chapters which the author will describe below.

The first is **CHAPTER I** which is an introduction. This chapter will discuss the background of the research problem, namely the Effectiveness of the PANRB Minister's Letter Number B/71/M.SM.00.00/2017 on the Neutrality of the State Civil Apparatus. Then the author will present the research problem formulation which consists of 2 problem formulations. Next, it will explain the purpose of the research and finally the operational definition which is defining words that are poorly understood in the title of the research.

Next is **CHAPTER II** regarding library research. The literature review will discuss previous studies and theoretical frameworks. Where previous research provides information that has been done by previous researchers who have a connection with this research. Then the theoretical framework contains theories that have relevance to the title of the research that the author raises, with the aim that it can be used to help analyze the data obtained.

Then proceed with **CHAPTER III** which discusses the research method that serves to direct a research process. This research method includes the type of research used by researchers to uncover a problem, research approach, data sources to be used by researchers, data collection methods, and data processing methods that will become a guide for researchers in the process of examining

the effectiveness of PANRB Minister's Letter Number B/71/M.SM.00.00/2017 against the Neutrality of the State Civil Apparatus in Organizing elections in Malang Regency.

Then **CHAPTER IV** which will discuss the results of research that has been obtained through data sources and will be processed using data processing techniques that have been contained in the research method in the previous chapter. In this chapter the author will analyze and make a sub-section of the problem based on the formulation of the problem that has been stated in the introduction.

The last is the closing which is located in **CHAPTER V**. This chapter will cover the entire series of discussions which contain conclusions and suggestions for the research discussed.



## CHAPTER II

### LITERATURE REVIEW

#### A. PREVICIOUS RESEARCH

Journal, Widuri Wulandari 2015<sup>13</sup>. Neutrality of the Civil Service Apparatus (ASN) in the elections of Regional Heads simultaneously Bantul Regency in 2015. Examining similarities in terms of the neutrality of the state civil apparatus (ASN) in elections, discussion in the study only on the neutrality of ASN in regional head elections.

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<sup>13</sup> Widuri Wulandari, Journal, *“Netralitas Aparatur Sipil Negara Dalam Pemilihan Umum Kepala Daerah Serentak Kabupaten Bantul Tahun 2015”*, University of Muhammadiyah Yogyakarta department of governmental science, 2016

The difference in research found in violations by ASN, is that non-neutral ASN's support prospective incumbents who have campaigned before the campaign period.

The results of the study detailed the types of violations that have been carried out by ASN in Bantul Regency and it can be concluded that the number of State Civil Apparatus in district of Bantul does not yet understand that the principle of ASN neutrality must be maintained. has not entered the campaign period. According to ASN rules that must remain neutral long before the campaign period, during, and after the campaign period.

Thesis, Winda Dwiastuti Herman,<sup>14</sup> Bureaucratic neutrality in Regional General Elections in district of Way Kanan in 2015. Similarities in examining bureaucratic neutrality in elections, but more discussion on regional head elections. This discussion also refers to the Minister's circular letter for efficient State Apparatus Reform Bureaucracy (PANRB).

Differences in research are more focused on bureaucratic factors that are not neutral when regional elections, and researchers emphasize bureaucratic neutrality by using Max Weber's theory, namely bureaucrats must be apolitical and impartial in political parties or political forces. In this study no detailed efforts were made by the Government to prevent ASN violations during general elections

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<sup>14</sup> Winda Dwiastuti Herman, Thesis, "*Netralitas Birokrasi Pada Pemilihan Kepala Daerah di Kabupaten Way Kanan Tahun 2015*", University of Lampung faculty of social and political science, 2016

The results of this research show that the bureaucracy that is not neutral when the election of the head of the region caused by internal and external factors that make use of the bureaucracy as a political machine. Politicking against bureaucracy conducted by the incumbent and non-incumbent partner. The pair of incumbent intervenes by forming the bureaucracy work program “Praja Binaan Kampung” that involves bureaucracy down to the village with the goal of mobilizing the community to support the political spouse the incumbent. The intervention of a non incumbent namely by engaging in political campaigns through the bureaucratic approach of kinship by political parties and the political elite.

Thesis, Sunarti Sudirman<sup>15</sup>. The neutrality of the civil State Apparatus in the Election Districts in the city of Pare-Pare. Equation in researching in neutrality ASN in the election, but the discussion is more on the election of the head of the region.

The difference in this study is that this study further explains the purpose of knowing and understanding the neutrality of civil servants in the election of regional heads in the city of Parepare and also aims to know and understand the implementation of the mechanism of punishing the State civil apparatus who are not neutral in the election of Regional Heads in Parepare .

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<sup>15</sup> Sunarti Sudirma, Thesis *“Netralitas Aparatur Sipil Negara Dalam Pelaksanaan Pemilihan Kepala Daerah Kota Pare-Pare”* Universitas of Hasanuddin Makassar Faculty of Law, 2018

The results of this study found that many ASNs were not neutral because of potential incumbents, even though they had prevented ASN violations when the general election was conducted by PANWASLU (Election Committee) and BKPSDMD (Staffing Area and human resource development). The mechanism for implementing the ASN sanction in the city of Pare-Pare was ineffective because the ASN Commission did not fully respond when giving sanctions for all violations committed by ASN reported from PANWASLU as many as 50 who violated.

NO	Title and Author	Equations	Difference
1	Journal, the neutrality of the State Civil Apparatus in the simultaneous regional elections in Bantul Regency in 2015,  By Widuri Wulandari, Muhammadiyah University of Yogyakarta Department of Government of the year 2016	Researching equations in terms of the neutrality of the State Civil Apparatus (ASN) in general elections, the discussion in the study was only on the neutrality of the ASN in regional head elections.	The difference in this research is that of the violations committed by ASN, that the non-neutral ASN supports prospective incumbents who have campaigned before the campaign period.
2	Thesis, Bureaucratic Neutrality in the Regional Head elections in district of way kanan in 2015  By: Winda Dwiastuti Herman, Lampung University Faculty of social sciences and political sciences year 2016	Equation in researching in bureaucratic neutrality in the election, but the discussion is more on the election of the head of the region. The discussion also refers to the circular letter of the Minister for the efficient State apparatus Reform Bureaucracy (PANRB).	The differences in this study are more focused on the non-neutrality factor in bureaucracy when regional head elections, and researchers emphasize bureaucratic neutrality by using Max Weber's theory, namely bureaucrats must be apolitical and not take sides with political parties

			or political forces. In this study no detailed efforts were made by the Government to prevent ASN violations during elections.
3	<p>thesis, Neutrality of the State Civil Apparatus in regional head election in Pare-Pare</p> <p>By: Sunarti Sudirma Makassar Hasanuddin University Faculty of law, the year 2018</p>	Equation in researching in neutrality ASN in the election, but the discussion is more on the election of the head of the region.	The difference in this study is that this study further explains the purpose of knowing and understanding the neutrality of the State civil apparatus in the election of regional heads in the city of Parepare and also aims to know and understand the implementation of punishment mechanisms for non-neutral civil servants in the election of regional heads bitter melon

(Table 1 - Equations and Differences in Prior Research)

## B. Literature Review

### 1. Theory of Legal Effectiveness

#### a. Definition

The word effective comes from English, which is "effective" which means success, or something done works well. Effectiveness also means the accuracy of use, results of use or supporting goals. It can be concluded that effectiveness is a success in achieving the targets or objectives that have

been set. This achievement is the achievement of goals by carrying out actions to achieve this, so as to cause an effect or desired effect.<sup>16</sup>

While the effectiveness of the law in society, namely discussing how the working power of the law regulates and / or forces the community to obey the law. Therefore, if you want to know the effectiveness of a law, it can be measured by the extent to which the legal rules are adhered to or not adhered to. If a legal rule is adhered to by most of the targets that are targeted by obedience, we will say that the legal rule in question is effective. However, even though it can be said that the adhered rules are effective, we can still question the degree of effectiveness.

A person obeys or not a rule of law depends on his interests. If the obedience of most people to a rule of law is only due to an element of fear of sanctions or punishments, then the degree of obedience can be said to be very low, because this requires continuous monitoring of the community without the lawful awareness of the community itself. different if obedience to a rule of law with the element of internalization, namely obedience because according to him the legal rules really fit in with the intrinsic value they adhere to, then it can be said that the degree of obedience is high.<sup>17</sup>

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<sup>16</sup> Zainuddin ali, *Sosiologi Hukum*, (Jakarta, Sinar Grafika, 2006), h.62

<sup>17</sup> Achmad Ali, *Menguk Teori Hukum dan Teori Peradilan Vol 1* (Jakarta:Kencana , 2010), h.375

## **b. The Theory of Law Effectiveness Lawrence M. Friedman**

The effectiveness of legislation according to Lawrence M Friedman's Theory of Effectiveness of Law is strongly influenced by three factors, where the three factors are :

- a) Substance (Legal Substance), namely the essence of the contents contained in the statutory regulations. The substance covers all legal rules, both written and unwritten, such as material law (substantive law), formal law (procedural law), and customary law. In this legal substance that determines whether or not a law is implemented. This substance also includes living laws, which are not only the rules in the law. It is this law that lives in the community that is used as a reference in building justice laws.<sup>18</sup> The legal substance here covers the contents of legal norms along with their formulation and events to enforce them that apply to law enforcers and justice seekers. The structure includes the container or form of the system which for example covers the order of the institutions, their rights and obligations, and so on. Legal culture (System) basically covers the values that underlie applicable law, values which are abstract conceptions of what is considered good (so that it is followed) and what is considered bad (so avoided).

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<sup>18</sup> Marwan Mas, Pengantar Ilmu Hukum, (Cet II; Bogor: Ghalia Indonesia, 2011), h.121

- b) Structure (Legal Structure), namely the level or legal structure, law enforcement, justice, legal institutions and law makers. Regarding the legal structure that determines whether or not the law is implemented properly.<sup>19</sup> The legal structure is law enforcement. Law enforcers are those who directly engage in law enforcement. Those included as law enforcers are those who are in charge of the judiciary, prosecutors, police, lawyers, and prisons.<sup>20</sup> In the functioning of the law, the mentality or personality of law enforcement officers plays an important role. If the regulations are good but the quality of the officers is not good, there is a problem. Therefore, one of the keys to success in law enforcement is a law enforcement mentality or personality.<sup>21</sup>
- c) Legal Culture. Legal culture is how the attitude of the legal community in the place of law is carried out. If public awareness to comply with established regulations can be applied, the community will become a supporting factor. However, if the public does not want to comply with existing regulations, the community will be the main inhibiting factor in enforcing the regulations in question.<sup>22</sup>

## 2. Positivism Legal Theory

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<sup>19</sup> Dudu Duswara Machmudin, *Pengantar Ilmu Hukum*, (Cet II; Bandung: PT Refika Aditama, 2003), h.74

<sup>20</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, (PT Raja Grafindo Persada:Bandung,2007), h.19

<sup>21</sup> Dr.Ishaq, *Dasar-Dasar Ilmu Hukum*, (Sinar Grafika:Jakarta,2015), h.300

<sup>22</sup> Winarno yudho dan Heri Tjandrasari, "Efektivitas Hukum Dalam Masyarakat," *Jurnal Hukum dan Pembangunan*, 1, (1987), 60-61

The leading legal positivism thinker was John Austin (1790-1859) who held that law was an order from the authorities. The nature of the law itself according to Austin lies in the element "command" (command). Law is seen as a system that is fixed, logical, and closed. Positivism is a school of legal philosophy which assumes that the legal theory only has to do with positive law. Law does not discuss whether positive law is good or bad. The leading legal positivism thinker was John Austin (1790-1859) who held that law was an order from the authorities. The nature of the law itself according to Austin lies in the element "command" (command).

Through positivism, the law is viewed from the perspective of a juridical positivist in an absolute sense and legal positivism is often seen as a flow of law that separates law from moral and religion. Not even a little discussion of positivism law comes to the conclusion, that in the eyes of positivism there is no other law except the command of the ruler (law is command from the law givers), the law is identical with the law. That the emergence of the positivism movement affected many thoughts in various fields of science about human life. Positivism as a school of philosophy that states natural science as the only true source of knowledge and rejects activities related to metaphysics. There is no speculation, all based on empirical data. Indeed this school rejects the existence of theoretical speculation as a means of gaining knowledge.

According to Austin law is a regulation that contains commands, which are intended for beings who are intelligent and made by intelligent beings

who have power over them. So, the basis of the law is "power from the authorities". Austin considers law as a system that is logical, fixed and closed (closed logical system), where legal decisions that are correct / right can usually be obtained with logical tools from predetermined legal regulations without regard to values good or bad. The most important legal characteristic according to Austin lies in its imperative character. Law is understood as a command from the ruler. However, not all orders by Austin are considered as law, in his view only by general orders which require someone or people to act to obey the law.<sup>23</sup>

### **3. Neutrality Of The State Civil Apparatus**

#### **a. Definition**

Neutrality comes from the word "neutral" which means it does not take sides (does not participate or help one party). Definition of neutrality according to the Big Dictionary of the Indonesian Language online version is "a state and neutral attitude (impartial or free)". So that someone can be declared neutral if he does not side with two or more people or side with the organization or institution in determining something such as a political party organization.

Besides that neutral words can also be interpreted as:

- a. The attitude is impartial and does not favor one group or group.

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<sup>23</sup> [https://www.academia.edu/34116070/TEORI\\_POSITIVISME\\_DAN\\_TEORI\\_HUKUM\\_MURNI](https://www.academia.edu/34116070/TEORI_POSITIVISME_DAN_TEORI_HUKUM_MURNI) (accessed: 20<sup>th</sup> of May 2019)

b. Not discriminatory.

c. Sterile from group interests

d. Not affected by the interests of political parties.<sup>24</sup>

Neutrality comes from a neutral word that means pure. Pure in this case equated with impartiality. While one of the ASN policies and management is "neutrality". the principle of neutrality is that every employee of the state civil apparatus does not take sides from any form of influence and does not take the interests of anyone.<sup>25</sup>

#### **b. Neutrality of the State Civil Apparatus According to ASN Law Number 5 of 2014**

In Article 1 paragraph (1) of the ASN Law No. 5 of 2014 states that the State Civil Apparatus, hereinafter abbreviated as ASN, is a profession for civil servants and government employees with work agreements that work for government agencies. In Article 1 paragraph (3), it is explained that Civil Servants, hereinafter abbreviated as PNS, are Indonesian citizens who meet certain requirements, are appointed as ASN Employees permanently by staffing officials to occupy government positions. Whereas Government Employees with Employment Agreements, here in after abbreviated as PPPK, are Indonesian citizens who meet certain conditions, which are

<sup>24</sup> Sunarti Sudirma, Thesis *"Netralitas Aparatur Sipil Negara Dalam Pelaksanaan Pemilihan Kepala Daerah Kota Pare-Pare"* University of Hasanuddin Makassar Faculty of Law, 2018

<sup>25</sup> article 2 letter f of Law No. 5 of 2014 concerning State Civil Apparatus

appointed based on work agreements for a certain period of time in the context of carrying out government duties.

ASN employees as elements of the State Apparatus<sup>26</sup> must implement the policy set by the head of the Government Agency.<sup>27</sup> Government agencies as explained in Article 1 paragraph (15) that government agencies are central and regional agencies. Central agencies are ministries, non-ministerial government institutions, secretariat of state institutions, and secretariat of nonstructural institutions (Article 1 paragraph 16). Whereas Regional Agencies are provincial and district / city apparatus which include the regional secretariat, regional legislative secretariat, regional offices, and regional technical institutions (Article 1 paragraph 17).

In article 2 letter f of the ASN Law No. 5 of 2014, it is explained that the implementation of ASN policies and management is based on the "principle of neutrality". What is meant by neutrality in this ASN Law is that every ASN employee must not take sides from any form of influence and does not take sides with anyone's interests.

In article 28 letter "d" states that one of the objectives of the State Civil Apparatus Commission (KASN) is to "realize the ASN employees who are neutral and do not distinguish the people served based on ethnicity, religion, race, and class". In the main task of ASN, namely as a public servant, the

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<sup>26</sup> ASN Law No. 5 of 2014 Article 8

<sup>27</sup> ASN Law No. 5 of 2014 Article 9 paragraph (1)

ASN must serve the community without looking at any group, party or potential candidate supporters. ASN must not discriminate and must serve fairly, responsibly and professionally.

In article 9 paragraph (2) it reads "ASN must be free from the influence and intervention of all groups and political parties". To maintain a high degree of professionalism, competence, performance and discipline that is able to strengthen and enhance the image of the bureaucracy, the ASN must be free from intervention from all groups and politics.<sup>28</sup> Another purpose of a neutral word is that if an ASN employee becomes a member of a political party and plays an active role in it and / or an ASN employee becomes a member of the legislature, then he must resign. Thus, the bureaucracy in the government will be stable. Because there will be no concern arising from ASN employees who abuse state facilities for the benefit of parties or groups.

**c. Neutrality of the State Civil Apparatus in the PANRB minister's letter**

In the framework of holding simultaneous regional elections in 2018, the legislative elections in 2019, and the election of president and vice president in 2019, the minister of Administrative Reform and Bureaucracy (PANRB) appeals to all Civil Service Officials and all State Apparatus to pay attention to the laws governing about ASN neutrality in elections. One

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<sup>28</sup> Article 9 paragraph 2 of Law No. 5 of 2014 concerning State Civil Apparatus

of the objectives of the PANRB ministerial letter is calling on all ASN employees to always maintain the togetherness and soul of the corps in responding to the existing political situation and not being affected to carry out activities that lead to partiality / indication of non-neutrality.

Some of the things that become a ban on the ASN contained in the contents of the PANRB minister's letter are:

- Prohibited from approaching political parties regarding plans for proposing themselves or other people as prospective regional heads / deputy regional heads;
- It is prohibited to put up banners / billboards that promote themselves or other people as candidates for Regional Heads / Deputy Regional Heads;
- It is forbidden to declare itself as a prospective Regional Head / Deputy Regional Head;
- It is prohibited to attend the declaration of candidates for the Regional Head / Deputy Regional Head with or without using the attributes of the candidate pairs / political party attributes;
- It is prohibited to upload, respond to (likes, shares, comments and the like) or disseminate images / photos of prospective candidates for the Regional Head through online media and social media;

- Do not take photos together with prospective Regional Head / Deputy Regional Head by following the hand symbol / movement that is used as a form of partiality;
- It is prohibited to be a speaker / speaker at political party meeting activities<sup>29</sup>

Some forms of sanctions for violating ASN employees are explained in the PANRB ministerial letter which refers to the Republic of Indonesia Government Regulation Number 53 of 2010 concerning Discipline of Civil Servants. Republic of Indonesia Government Regulation Number 53 of 2010 concerning Discipline of Civil Servants, states that civil servants who violate the provisions of articles 4 and 14, are sentenced to discipline according to article 12 points 8 and 9 and article 13 number 13 as follows:

- 1) Medium-level disciplinary punishment, for civil servants who provide support to candidates for regional heads / deputy regional heads by providing support in the form of providing letters of support as well as photocopies of KTPs or KTP certificates in accordance with legislation. And for civil servants who provide support in the form of being involved in participating in campaign activities in support of regional head candidates / deputy regional

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<sup>29</sup> Minister's Letter of PANRB No B/71/M.SM.00.00/2017 on the implementation of neutrality by the ASN in local elections in 2018, legislative elections in 2019, and the election of the President and Vice President in 2019

heads and holding activities that lead to alignments with pairs of candidates who participate in the election before, during and after the campaign period.

Penalties in the form of:

- a. postponing periodic salary increases for one year
  - b. one-year postponement
  - c. lower level demotion for one year
- 2) Severe disciplinary punishment. For civil servants who provide support to regional head candidates / deputy regional heads, by using facilities related to positions in campaign activities, and making decisions and / or actions that benefit or harm one of the candidates during the campaign period.

Penalties in the form of:

- a) lower level demotion for three years
- b) transfer in the context of lowering the level of position
- c) exemption from office
- d) or a respectful discharge not at your own request as a civil servant

**d. Neutrality of the State Civil Apparatus according to Election Law Number 7 of 2017**

In the 2017 Election Law No. 7, it does not explain in detail the ASN neutrality, both prohibitions and sanctions for non-neutral ASNs. But in this Act it describes the form of supervision of the election supervisory agency (Bawaslu) towards the neutrality of the ASN. Besides the neutrality of the ASN, Bawaslu also oversees the neutrality of members of the Indonesian National Army (TNI) and the neutrality of members of the Indonesian National Police.<sup>30</sup>

Bawaslu has the authority to recommend to the relevant agencies regarding the results of supervision of the neutrality of the state civil apparatus, the neutrality of members of the Indonesian National Army, and the neutrality of members of the Indonesian National Police.<sup>31</sup> If the results of supervision carried out by the Election Supervisory Agency are found in violations related to ASN neutrality, the Bawaslu has the authority to recommend violations of ASN to the State Civil Apparatus Commission (KASN) to be followed up on sanctions to be obtained by the ASN.

After the Bawaslu reports the findings of the violation of ASN neutrality to the relevant agency, then the Bawaslu must also keep an eye on the implementation of decisions / decisions consisting of decisions of the competent authorities for violations of the neutrality of the ASN. In article 93 letter g it reads "Bawaslu also supervises the implementation of decisions / decisions consisting of decisions of authorized officials for violations of

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<sup>30</sup> Law Election number 7 of 2017 Article 93 letter f

<sup>31</sup> Law Election number 7 of 2017 Article 95 letter e

the neutrality of the State civil apparatus, the neutrality of members of the TNI, and the neutrality of members of the Indonesian republican police".

In the Election Law explaining the duties and authorities of Bawaslu both at the Provincial, Regency / City level, the Election Supervisory Committee (Panwaslu) at the sub-district level and the Foreign Panwaslu regarding the form of oversight of neutrality.

No	Implementing Agencies	Task	Authority
1	Provincial Bawaslu	Tasked with overseeing the neutrality of all parties who are prohibited from participating in campaign activities as stipulated in the Election Law  <b>(Article Article 97 letter d)</b>	Recommending the results of supervision in the province to violate the neutrality of all parties that are prohibited from participating in campaign activities as stipulated in the Election Law.  <b>(Article 99 letter d)</b>
2	District / City Bawaslu	<ol style="list-style-type: none"> <li>1. The task is to oversee the neutrality of all parties that are prohibited from participating in campaign activities as stipulated in the Election Law <b>(Article 101 letter d)</b></li> <li>2. The task is to supervise the implementation of decisions / decisions in the regency / city area, which consist of</li> </ol>	Recommend to the relevant agency regarding the results of supervision in the district / city area towards the neutrality of all parties that are prohibited from participating in campaign activities as stipulated in this election law.  <b>(Article 103 letter d)</b>

		<p>the decision of the competent authority for violations of the neutrality of all parties who are prohibited from participating in campaign activities as stipulated in the Election Law.</p> <p><b>(Article 101 letter e number 5)</b></p>	
3	Sub-District Bawaslu	<ol style="list-style-type: none"> <li>1. Duty to supervise the neutrality of all the parties are prohibited from participating in campaign activities as stipulated in the Electoral Law <b>(Article 105 letter d)</b></li> <li>2. oversees the implementation of decisions / decisions in the district / city, consisting of the competent authority's decision on violations neutrality of all the parties are prohibited from participating in campaign activities as stipulated in the electoral law. <b>(Article 105 letter e number 5)</b></li> </ol>	<p>Sub-district Election Supervisory Committee has the authority to recommend to the relevant agencies through Regency / City Bawaslu regarding the results of supervision in the sub-district towards the neutrality of all parties who are prohibited from participating in campaign activities as stipulated in this electoral law.</p> <p><b>(Article 106 letter c)</b></p>
4	Village Panwaslu	<p>Tasked with overseeing the neutrality of all parties who are prohibited from participating in campaign activities as stipulated in this</p>	

		Act in the area of the kelurahan / desa  <b>(Article 108 letter c)</b>	
5	Panwaslu Abroad	Tasked with overseeing the neutrality of all parties who are prohibited from participating in overseas campaign activities as stipulated in the Law <b>(Article 111 letter c)</b>	Authorized to recommend to the relevant agency regarding the results of supervision of the neutrality of all parties that are prohibited from participating in campaign activities as stipulated in this Act  <b>(Article 112 letter f)</b>

(Table 2 - Tasks and Authorities of Bawaslu and Panwaslu)

#### 4. The Principle of Justice in Islam

##### a. Understanding of Justice in Islam

Islam commands every human being to be fair, both in all behaviors and actions committed. Fair means realizing equality and balance between rights and obligations. Human rights must not be reduced due to their obligations. Therefore, the rights of everyone must be given accordingly. Happiness is only felt by humans if their rights are guaranteed in society, the rights of every person are respected, and strong groups protect the weak.

Wahbah Zuhayli, in interpreting and stating in As-Shura verse 14 that justice is one of the teachings carried out by each apostle, even the concept of justice has not changed from the generation of an apostle to the next generation of apostles, and ended in Muhammad. The Prophet Muhammad

as the last bearer of the message of Allah, also has the teachings of justice. If the Qur'an and Al-Hadith are agreed upon as the two main and main sources and teachings of Muhammad, the Muslims have a strong grip on exploring and understanding the concept of justice which can then be applied in their individual and social lives.

Al-Qur'an as the main source of Islamic teachings, mentions a lot of justice. The word al-Adl, in its various forms, is mentioned 28 times, the word al-Qisth in its various verses is referred to as 27 times, and the word al-Mizan which contains the meaning relevant to both is called 23 times. The number of verses of the Qur'an that discuss justice shows that Allah SWT is a source of justice and ordered to uphold justice in this world to His apostles and all His servants. Although there is not a single verse of the Qur'an that explicitly shows that al-Adl is the nature of God, many verses explain His justice. Therefore, in the study of al-Asma al-Husna, al-Adl is one of Allah's asma, precisely the 30th asma of 99 al-Asma al-Husna.

Knowing the nature of justice God has a purpose to be more confident and get closer to Him. Furthermore, encouraging human beings to be virtuous in their abilities with the just nature of Allah, and encourage them to strive earnestly to achieve in accordance with their ability to be fair, to decorate themselves, and to have an attitude towards justice.<sup>32</sup>

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<sup>32</sup> Journal Tamyez Dery, "Keadilan Dalam Islam", E Jurnal UNISBA, XVIII, (2002), 338-339

## b. The Principle of Justice in Islam

Justice is a general goal and the ultimate goal of Islamic government. Lawmakers and observers of state / political issues are not as often as Islamic law scholars in discussing the meaning of justice, along with the urgency of the commitment of the authorities to cling to and implement them, including State apparatuses related to the public interest. The command to carry out justice is found explicitly in the Qur'an. The verses of the Qur'an tell us to be fair and God himself makes justice a goal of a government administration. Many of the Prophet's hadith also explain the importance of carrying out justice in government. Among them Allah says:<sup>33</sup>

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

The Meaning: “Allah doth command you to render back your Trusts to those to whom they are due; and when ye judge between people that ye judge with justice: verily how excellent is the teaching which He giveth you! for Allah is He who heareth and seeth all things.” (An-Nisa:58)

In the letter of As-Shura verse 14 Allah says.

<sup>33</sup> Dhiauddin Rais, *Teori Politik Islam*, (Gema Insani Press:Jakarta, 2001), h.265

### بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

وَمَا تَفَرَّقُوا إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَعِيًا بَيْنَهُمْ وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ إِلَىٰ أَجَلٍ مُّسَمًّى لَّفُضِيَ بَيْنَهُمْ وَإِنَّ الَّذِينَ أُورِثُوا الْكِتَابَ مِنْ بَعْدِهِمْ لَفِي شَكٍّ مِّنْهُ مُرِيبٍ

The meaning: *And they became divided only after knowledge reached them— through selfish envy as between themselves. Had it not been for a Word that went forth before from thy Lord, (tending) to a Term appointed, the matter would have been settled between them: but truly those, who have inherited the Book after them are in suspicious (disquieting) doubt concerning it.* (As-Syura: 14)

The deviation from justice is a deviation from the Sunna of Allah. Allah created this nature, of course not to cause chaos and chaos in human society, such as breaking up the relationship of love for fellow human beings, embedded in the human heart revenge, hatred, envy, envy and so on. All of that will actually lead to hostility towards destruction. As for the deviation from justice, it is a deviation from the Sunna of Allah. Allah created this nature, of course not to cause chaos and chaos in human society, such as breaking up the relationship of love for fellow human beings, embedded in the human heart revenge, hatred, envy, envy and so on. All of that will actually lead to hostility leading to destruction.

Justice Principles according to A.Hasjmy, justice needs to be treated for all people without distinguishing their origin, race, ethnicity, and religion. If a justice has been carried out by the implementation of the State, it will eliminate all forms of discrimination such as law, social, and economy in society. This principle of justice will also eliminate the abuse of power.

Therefore, A.Hasjmy wants justice to require justice to be a handle in all things and time.





### CHAPTER III

#### RESEARCH METHOD

##### A. Type Of Research

In this study, the author uses a type of empirical juridical research. Empirical research is research related to the behavior and opinions of community members in the relationship of community life. Empirical legal research aims to determine the extent to which law works in society. This empirical legal research emphasizes the aspect of observation. This is related to the objective and empirical nature of science itself, including the knowledge of empirical law that seeks to observe the facts of law that apply in the midst of society, where this requires knowledge to be observed and proven openly. The

starting point of observation lies in the reality or social facts that exist and live in the midst of society as a culture of community life.<sup>34</sup>

The aim of the author is to use juridical empirical research to determine the extent to which law works in people's lives, as for the starting point to be examined in this study, namely in the circular appeal of the Letter of the Minister of Administrative Affairs concerning the Neutrality of State Civil Apparatus in Elections.

### **B. The Approach of Research**

The research approach is a form of method or method of conducting research so that researchers get information from various aspects to find the issue the answer is seeking. In this study, the approach used in this study is sociological juridical. This approach is usually carried out by conducting research directly in the field, namely by looking at the application of laws or regulations relating to the neutrality of the State Civil Apparatus (ASN).

According to Soerjono Soekanto, what is meant by a sociological juridical approach is that a legal system is a reflection of a social system, therefore a law will apply if the law is formed through certain procedures and by certain institutions and the law can be imposed on the community affected by the law.<sup>35</sup>

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<sup>34</sup> Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008) h. 123-125

<sup>35</sup> Soerjono soekanto, *Pokok-Pokok Sosiologi Hukum*, (Cet VII; Jakarta: PT rajagrafindo Persada, 1994), h.151

### C. Research Sites

The research location is a place that researchers use to conduct research to obtain the desired data. The location of the research chosen by researchers is at:

1. Election Supervisory Board (BAWASLU) Malang Regency
2. General Election Commission Office (KPU)
3. Malang City Government Office in the Personnel Agency
4. Office of Civil Servant and Legal Section of UIN Maliki Malang
5. Lecturer in Constitutional Law, UIN Maliki Malang

### D. Sampling Method

The sample is a set of parts or parts of the population.<sup>36</sup> The type of sample used in this study is Purposive Samples called aiming samples. It means choosing a sample based on a certain assessment, the elements chosen are considered to have represented the population.<sup>37</sup>

In this study the samples taken were the population of the State Civil Apparatus of Practitioners and Academics, which consisted of :

1. The State Civil Apparatus of practitioners, namely:
  - Malang City Civil Service Agency, as an institution that oversees the performance of the State Civil Apparatus, one of which is to guarantee the neutrality of existing State Civil Apparatus in the city of Malang

<sup>36</sup> Bahder Johan N, *Metode Penelitian Ilmu Hukum*, (Bandung: CV. Mandar Maju, 2008) h.147

<sup>37</sup> Bahder Johan N, *Metode Penelitian Ilmu Hukum*, (Bandung: CV. Mandar Maju, 2008) h.159-160

- The Civil Service and Legal Section of Maliki UIN Malang, namely the institution that oversees the performance of the State Civil Apparatus, one of which is to guarantee the neutrality of the State Civil Apparatus in the Islamic University of Malang.
  - The General Election Commission, regarding neutrality is not only carried out by the State Civil Apparatus, but the KPU as an EMB must implement its neutrality as an election organizer in the contestation of democracy.
  - Malang City Election Supervisory Agency, which oversees the administration of elections. Especially in monitoring the neutrality of the State Civil Apparatus in elections and having full authority to follow up on violations of the State Civil Apparatus who committed violations related to neutrality
2. State Civil Apparatus from academics namely :
- The Constitutional Law Lecturer at UIN Maliki Malang, as an academic who has an understanding regarding the policy on the neutrality of the State Civil Apparatus

#### **E. Data Types and Sources**

The type of data used by the authors in this study are primary data and secondary data:

- a. Primary data, is data obtained directly from the source. The primary data obtained by the authors in this study is the results of interviews with members of Malang Election Supervisory Body to explore information

and data on ASN violations in Malang city ahead of the 2019 Election and ASN Staff in Malang City to find out information about ASN's understanding and compliance with its neutrality in elections.

b. Secondary data, namely data obtained from official documents, books relating to the object of research, results of research in the form of reports, theses, theses, dissertations, and legislation. The secondary data can be divided into:

1) Primary Law Material

Primary Law Materials are binding legal materials consisting of laws and regulations related to the object of research

2) Secondary Legal Material

Secondary Legal Materials are legal scientific books and writings related to the object of this research.

3) Tertiary Legal Materials

Tertiary legal materials are instructions or explanations regarding primary legal material or secondary legal material derived from dictionaries, encyclopedias, magazines, newspapers, etc.<sup>38</sup>

## F. Data Collecting Technique

One important aspect of research is data. Data functions to answer various problems in research. Therefore, data collection can be reached by the following methods:

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<sup>38</sup> Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2009), h.106

- a. Interview is a verbal communication that is a conversation that aims to obtain information.<sup>39</sup> The interview used by researchers is structured interviews, ie researchers ask freely according to questions that have been prepared beforehand. This method is used to obtain answers and community responses regarding the formulation of the problem above.
- b. Documents are data that can be obtained from library materials. This is done by collecting data that has a relationship or relevance to the object under study.

#### **G. Data Analysis Technique**

After the data is collected, the next step is to analyze the research data that has been collected. Data analysis is an activity and process of integrating data, sorting data, open coding, compilation and so on so that it becomes new data that becomes a reference for research. The raw data obtained from respondents cannot simply be concluded as the results of the study. The next stage is by processing data, one of which is by collaborating raw data with selected variables so that the right conclusions can be drawn. The following are the stages in the technical analysis of this research data:<sup>40</sup>

- a. *Editing Process*. Editing is an activity carried out after collecting data in the field. This process is important because of the fact that data collected sometimes does not meet the expectations of researchers, some of which

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<sup>39</sup> Burhan Ashofa, *Metode Penelitian Hukum*, (Jakarta:Rineka Cipta, 2004) h. 59

<sup>40</sup> Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta : Raja Grafindo Persada,2006) h.167

are not even missed. The editing process can be done by reducing data, namely the process of simplifying data by selecting data from the field and concentrating on a word. Reducing data that is not in accordance with the theme that is being meticulous. So that you will get detailed and significant data.

- b. *Data classification process.* In order for this study to be more systematic, the interview data are classified according to certain categories, namely based on questions in the formulation of the problem, so that the data obtained actually contains the information needed in this study.
- c. *Data Verification Process.* Data verification is checking back from the data that has been collected to find out the validity of the data whether it is really valid and in accordance with what the researcher expected. So in this process, a researcher verifies data, proves the data obtained from the interviews that have been conducted in the field, matches the data and guarantees the validity of the data, namely meeting the source and subject with data to be answered whether the data obtained from the respondent is appropriate or not . Besides that, for some data the researcher verified it by triangulation, that is to match (cross-check) between the results of the interview with the one subject with the opinions of other subjects, so that it can be concluded proportionally.
- d. *Data Analysis Process.* Data analysis is the process of organizing and sorting data into patterns, categories and basic description units so that

themes can be found and working hypotheses can be formulated. Qualitative data analysis is an effort carried out by working with data, organizing data, and sorting it into manageable units, censoring them, finding and finding patterns, discovering what is important and what is learned, and discovering what can be told to people other. As well as presenting data and expressing information that will be written systematically. So that it becomes a more effective form and makes it easier to draw conclusions.<sup>41</sup>

- e. *Conclusion Process*. Conclusion is the process of bringing together the steps above to perfect this research, namely the last step in analyzing the entire data. In this step, the author writes conclusions from the data obtained from the interview, observation, and documentation process. As an answer to the formulation of the problem raised in this study.

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<sup>41</sup> LKP2M, Research Book For LKP2M, (Malang, Universitas Islam (UIN) Malang, 2005), h.60



## CHAPTER IV

### RESEARCH RESULTS AND DISCUSSION

#### A. General Description of Malang City Election Supervisory Agency

##### 1. History of Election Supervisory Institution

In the history of elections in Indonesia, the term electoral supervision actually emerged in the 1980s. In the implementation of the General Election which was first held in Indonesia in 1955 the term election supervision was not yet known. In that era, trusts were built in all participants and citizens about the holding of elections which were intended to form a parliamentary institution which was then called the Constituent Assembly.

The Election Supervisory Institution only appeared in the 1982 Election, under the name of the Election Implementation Supervisory Committee (Election Panwaslak). At that time distrust began to emerge towards the implementation of elections which began to be co-opted by the power of the ruling regime. The formation of the Election Panwaslak in the 1982 Election was based on protests over the many violations and vote counting manipulations carried out by election officials in the 1971. Election. In the reform era, demands for the formation of independent Election organizers free from co-optation of the authorities intensified. For this reason an independent Election organizing institution was formed which was named the General Election Commission (KPU). This is intended to minimize the interference of the authorities in the implementation of the election considering the previous election organizers, namely LPU, are part of the Ministry of Home Affairs (formerly the Ministry of Home Affairs). On the other hand the election supervisory institution also changed the nomenclature of the Election Panwaslak to become the Election Oversight Committee (Panwaslu).

Fundamental changes related to the Election Supervisory institution have only been carried out through Law Number 12 of 2003. According to this law an oversight institution is formed in the implementation of Election oversight regardless of the KPU structure consisting of the Election Supervisory Committee, Provincial Election Supervisory Committee, Regency Election Supervisory Committee / City, and District Election Supervisory Committee. Furthermore, Election Supervisory Institutions are strengthened through Law

Number 22 of 2007 concerning Election Organizers with the establishment of a permanent institution called the Election Supervisory Body (Bawaslu). The Bawaslu apparatus in the implementation of supervision is at the village / village level with the order of the Provincial Election Supervisory Committee, Regency / City Election Supervisory Committee, District Election Supervisory Committee, and Field Election Supervisors (PPL) at the kelurahan / village level.

But then based on the Constitutional Court Decision on judicial review conducted by Bawaslu against Law Number 22 Year 2007, the recruitment of election supervisors is entirely the authority of Bawaslu. The main authority of the Election Supervisor according to Law Number 22 Year 2007 is to oversee the implementation of the stages of the election, receive complaints, and handle cases of administrative violations, violations of electoral crimes, and codes of ethics.<sup>42</sup>

## **2. Vision and Mission of Malang Election Supervisory Agency**

The vision of Bawaslu in Malang city is the realization of Bawaslu as the Trusted Guidance Institution in the Implementation of Democratic, Dignified and Quality Elections

The mission of Bawaslu in Malang city is :

- a. Build apparatus and institutions for election supervisors that are strong, independent and solid;

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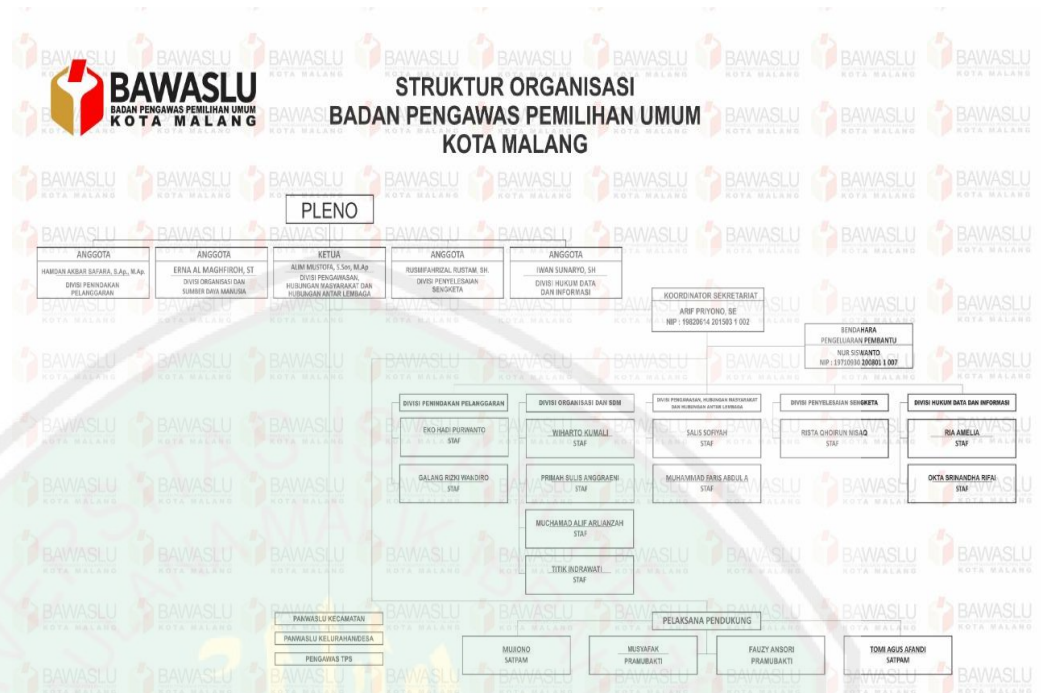
<sup>42</sup> [https://id.wikipedia.org/wiki/Badan\\_Pengawas\\_Pemilihan\\_Umum](https://id.wikipedia.org/wiki/Badan_Pengawas_Pemilihan_Umum) (accesed: 17 May 2019)

- b. Develop effective and efficient patterns and methods of supervision;
- c. Strengthening the national control system in a structured, systematic and integrative technology-based supervision management;
- d. Increasing community involvement and election participants, as well as increasing institutional synergy in participatory election supervision ;
- e. Increase public trust in the quality of supervision performance in the form of prevention and repression, as well as dispute resolution in a fast, accurate and transparent manner;
- f. Build Bawaslu as a learning center for electoral supervision for both domestic and foreign parties.

### **3. Location of Malang City Election Supervisory Office**

The Malang Election Supervisory Agency office is located on Teluk Cendrawasih No.01 Arjosari, Malang. Phone Number 081249010974

Organizational Structure of Malang City Election Supervisory Board



## B. Effectiveness of the PANRB minister's letter on the implementation of the Neutrality of the State Civil Apparatus in the Implementation of Elections

### 1. Efforts of Malang City Election Supervisory Agency on the Neutrality of the State Civil Apparatus in Elections

In the Election Law Number 7 of 2017, it is explained that Bawaslu is an election organizing body which is tasked with overseeing the implementation of elections throughout the territory of the Republic of Indonesia. One form of supervision carried out by Bawaslu is the supervision of the neutrality of the State Civil Apparatus. That the neutrality of the ASN in the elections must be maintained as explained in the appeal issued by PANRB Number B / 71 / M.SM.00.00 / 2017 concerning the implementation of ASN neutrality in elections.

The form of supervision carried out by Malang Election Supervisory Body is to have socialized it to city government agencies, universities and several media (radio RRI Malang, Malang TV). Mr. Rusmi Fahrizal, a Bawaslu member who served as Coordinator of the Election Dispute Resolution division said that:<sup>43</sup>

*“Bawaslu sudah berusaha semaksimal mungkin mengantisipasi ASN agar selalu bersikap netral. Kami sudah melakukan sosialisasi di berbagai tempat. Seperti di beberapa perguruan tinggi, kami sosialisasikan juga di radio RRI Malang, TV Malang, membuat slogan terkait netralitas ASN dan menyebarkannya di media sosial seperti facebook, bahkan kami juga diundang langsung oleh pemerintah kota Malang untuk mensosialisasikan terkait netralitas ASN.”*

In the theory of law effectiveness of Lawrence M. Friedman, one of them is the legal substance, that the substance of law here covers the contents of legal norms along with their formulations and events to enforce them that apply to law enforcement and justice seekers. Legal substance related to the contents of PANRB ministerial letter Number B / 71 / M.SM.00.00 / 2017 Regarding the implementation of ASN neutrality that in the letter of the Minister of PANRB bawaslu was given the authority to supervise the Election in accordance with the Law governing the Election Law. And in the Election Law explaining the supervision of Bawaslu on ASN neutrality is considered to be quite effective, the content contained in the Election Law on its Substance has covered living laws. It is this law that lives in the community that is used as a reference in building justice laws.<sup>44</sup>

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<sup>43</sup> Interview with Mr. Rusmi Fahrizal, a member of the Election Supervisory Body, a position as Coordinator of the election dispute resolution division. May 3, 2019 at 11.00

<sup>44</sup> Marwan Mas, Pengantar Ilmu Hukum, (Cet II; Bogor: Ghalia Indonesia, 2011), h.121

And it is considered effective because the Election Supervisory Body has carried out all forms of supervision regulated in the Law to enforce the rules for law enforcement and justice seekers

Based on Law Number 5 of 2014 concerning ASN Article 87 paragraph (4) letter b, states that civil servants will be disrespected if they become members and / or administrators of political parties. And based on the provisions of Article 119 and Article 123 paragraph (3) as has been tested and has been decided based on the Constitutional Court Decision number 41 / PUU-XIII / 2014 dated July 6 2015 so that it is interpreted, "Civil servants who nominate themselves or are nominated to become Governor / Deputy Governor , Regent / Deputy Regent, Mayor / Deputy Mayor must declare his resignation in writing as a PNS since being determined as a candidate for the election of the Governor / Deputy Governor, Regent / Deputy Regent, Mayor / Deputy Mayor ". Civil servants who do not carry out these provisions are subject to disciplinary sanctions.

*“Dikota Malang ini terkait ASN yang ingin mencalonkan diri menjadi Gubernur/wakil Gubernur, Walikota/wakil Walikota, Bupati/wakil Bupati saya rasa mereka sudah mentaati aturan yang ada. Bahwa mereka harus menyatakan pengunduran diri sebagai ASN apabila ingin mencalonkan diri*

*mereka. Karena selama ini Bawaslu tidak menemukan pelanggaran terkait itu.”<sup>45</sup>*

In government regulation Number 42 of 2004 concerning the Development of the Soul Corps and the Code of Ethics for Civil Servants. Based on Article 11 letter C states that in terms of ethics towards oneself civil servants must avoid personal, group or group conflicts of interest. So civil servants are prohibited from carrying out actions that lead to partiality of one candidate or act that indicates involvement in practical politics / affiliation with political parties, such as :

- 1) Prohibited from approaching political parties related to plans for proposing themselves or other people as prospective regional heads / deputy regional heads;
- 2) It is prohibited to put up banners / billboards that promote themselves or other people as candidates for Regional Heads / Deputy Regional Heads;
- 3) It is prohibited to declare itself to be a prospective Regional Head / Deputy Regional Head;
- 4) Do not attend the declaration of candidates for Regional Heads / Deputy Regional Heads with or without using the attributes of prospective political party candidates;

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<sup>45</sup> Interview with Mr. Rusmi Fahrizal, a member of the Election Supervisory Body, a position as Coordinator of the election dispute resolution division. May 3, 2019 at 11.00

- 5) It is prohibited to upload, respond to (likes, shares, comments and the like) or disseminate images / photos of prospective candidates for the Regional Head through online and social media;
- 6) Do not take photos together with prospective Regional Head / Deputy Regional Head by following the hand symbol / movement that is used as a form of partiality;
- 7) It is prohibited to be a speaker / speaker at political party meeting activities<sup>46</sup>

Bawaslu has found 3 violations related to the neutrality of the ASN which violate government regulations Number 42 of 2004 concerning the Development of the Soul Corps and the Code of Ethics for Civil Servants, as stated by Mr. Yusmifahrizal:

*“Kami menemukan 3 pelanggaran terkait netralitas ASN yang di kota Malang, yang mana pelanggaran tersebut merupakan hasil dari aduan langsung masyarakat,. Bahwa ketiga ASN ini melakukan pelanggaran melalui media sosial yang mana mereka mengupload atau menshare foto/video salah satu pasangan calon yang mereka dukung”<sup>47</sup>*

In the statement of the finding letter of the violation of HA, which is an ASN at the Maliki UIN Malang which served as the administrative staff of the Psychology faculty, Facebook posted a social media account on behalf of HA, who allegedly violated ASN Neutrality because there was an element of alignment with one of the Presidential and Vice President

<sup>46</sup> Minister’s Letter of PANRB No B/71/M.SM.00.00/2017 on the implementation of neutrality by the ASN in local elections in 2018, legislative elections in 2019, and the election of the President and Vice President in 2019

<sup>47</sup> Interview with Mr. Rusmi Fahrizal, a member of the Election Supervisory Body, a position as Coordinator of the election dispute resolution division. May 3, 2019 at 11.00

candidates post status, videos or re-share other people's posts that have elements in favor of one of the candidate candidates for 2019 President. Alleged violations are based on Law Number 5 of 2014 concerning State Civil Apparatus Article 1 paragraph (1), and Article 2 letter (f) which states that the implementation of ASN policies and management is based on the principle of neutrality.<sup>48</sup>

The second violation was ESS, who was an employee of Malang City Government in Malang Trade Office, who held the position of market manager of UPT Oro-Oro Dowo. The discovery of the violation of ESS, from the posting of a Facebook account owned by Hadi Sulistijo which posted a photo of Ibu Titik Soharito and a woman allegedly in the name of ESS in a side position and hands showing the symbol of two fingers. And the statement of the Facebook account owner Hadi Sulistijo acknowledged that the post was true that what he uploaded was Soharito and Endang Sri Sundari who were ASN. ESS was given a written reprimand sanction by the head of the Malang City Trade Service as his superior. The legal basis for violations is based on Law Number 7 of 2017 concerning Elections, Law number 5 concerning State Civil Apparatus, Bawaslu regulations Number 6 of 2018 concerning Supervision of the Neutrality of ASN, TNI, Indonesian National Police and Bawaslu Regulation number 7 of 2018 concerning Handling of Findings and Election Abuse Reports.

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<sup>48</sup> the finding letter in the attachment

The third violation was found by the Election Supervisory Board, namely BS, which was an ASN in the Malang City Government in the Housing and Settlement Area of Malang City, which was the head of the Development and Maintenance section. The discovery of the violations committed by BS, on November 4, 2018 was found posted on Facebook in the name of BS's account owner, the post re-shared the posts from Ahmad Alkaf's Facebook account containing which lists the candidates for national and regional campaign teams Prabowo Sandi, 001 SBY, 002 Sohibul Imam, 003 Zulkifli Hasan, 004 Ahmad Muzani, 005 Ustadz Abdul Somad. (and below it is accompanied by a picture of Prabowo Sandi, a presidential candidate, under the picture there is a writing, choose Prabowo Sandi's partner). Next there is also a post that contains the neutrality of ASN in a Facebook post on July 30, 2018 which contains "The Mayor has changed, now is the time to build # 2019 to replace the president", also found a post containing the non-neutrality of ASN in a Facebook post on July 30, 2018 has not been banned from shouting # Change President Allahu Akbar ". Of the various types of Bambang Setiono's posts it is clearly a violation related to ASN neutrality.

The legal basis that governs BS's violation problems is namely:

1. ASN Law Number 5 of 2014

- a. article 2 letter f,
- b. article 3 letter b,
- c. article 4 letter d,

- d. article 5 verse (2) letter d, letter e, letter h, letter i
- e. article 9 verse (2)
- f. article 39 verse (1)
- g. article 86 verse (1), verse (2), verse (3)

2. Peraturan Pemerintah Nomor 53 tahun 2010 tentang disiplin PNS

- a. article 1 number 3
- b. article 3 number (1), number (2), number (4), number (5), number (7)

3. Government Regulation Number 42 of 2004 concerning Coaching of the Soul Corps and the Code of Ethics for the Code of Conduct for Civil Servants

- a. article 1 number (2), number (4), number (6), number (11)

Referring to the provisions of article 32 paragraph (2) of Law Number 5 of 2014 which states that in carrying out the supervisory duties of basic values, codes of ethics and codes of conduct of ASN employees, KASN has the authority to decide violations of the code of ethics and code of conduct of ASN Employees, then KASN recommend to Deputy Mayor of Malang to impose disciplinary sanctions on BS whose implementation refers to the provisions of Government Regulation Number 53 of 2010 concerning civil servant discipline. KASN recommendations for violations of ASN neutrality are accepted by Malang mayors by imposing disciplinary penalties in the form of postponing promotions for 1 (one) year and then issuing a decree of Mayor of Malang Number X.997.3 / 03 / 35.73.403 /

2019 concerning Delay of Promotion for 1 (one) year on behalf of BS, Because the concerned person has committed an act that violates the provisions of Article 4 point 13 letter b of Government Regulation Number 53 of 2010 concerning discipline of PNS.

The implementation of the medium sentence, namely the postponement of promotion for 1 (one) year imposed on Bambang Setiono as written in the letter of the Minister of PANRB Number B / 71 / M.SM.00.00 / 2017 concerning the implementation of ASN neutrality has been quite effective. in it explains about Law Number 53 of 2010 concerning discipline of civil servants that civil servants who violate the provisions of article 4 number 14 and number 15 namely.

Number 14 reads: Every civil servant is prohibited from giving support to prospective Regional Representative Council members or candidates for Regional Heads / Deputy Regional Heads by giving a letter of support accompanied by photocopies of Citizens' Identity Cards or Resident Identification Certificates in accordance with legislation; and

Number 15 reads: every civil servant is prohibited from providing support to prospective Regional Heads / Deputy Regional Heads by:

- a) involved in campaign activities to support candidates for Regional Heads / Deputy Regional Heads;
- b) use facilities related to positions in campaign activities;

- c) make decisions and / or actions that benefit or harm one candidate pair during the campaign period; and / or
- d) conduct activities that lead to partisanship toward pairs of candidates who are participants in the election before, during, and after the campaign period, including meetings, solicitation, appeals, appeals, or giving goods to civil servants in the work unit environment, family members, and the community.

Then will be sentenced to discipline according to article 12 point 8 and number 9 and article 13 number 13.

## **2.Actions of the Election Supervisory Agency in Dealing with the Findings of Violations of the Neutrality of the State Civil Apparatus in Elections**

Responding to violations found by Bawaslu related to the neutrality of the ASN which is the principle in the implementation of ASN policies and management. This principle is explained in the ASN Act number 5 of 2014. Every State Civil Apparatus may not take sides in any form of influence and may not be in favor of anyone's interests.

*“Terkait pengertian netralitas ASN itu sendiri kami dari Bawaslu berpatokan kepada Undang-Undang Pemilu dan Undang-Undang ASN, bahwa pada intinya ASN harus bersikap netral tidak boleh berpihak maupun menguntungkan kepada kepentingan golongan manapun dan juga salah satu calon”<sup>49</sup>*

The results of interviews with Malang Election Supervisory Body meant that the Malang Election Supervisory Body had found and considered the

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<sup>49</sup> Interview with Mr. Rusmi Fahrizal, a member of the Election Supervisory Body, a position as Coordinator of the election dispute resolution division. May 3, 2019 at 11.00

violating decision process carried out by the State Civil Apparatus regarding Neutrality. Malang Election Supervisory Board found 3 agree, namely:

1. ESS, ASN in Malang City Government in Malang Trade Office, position as market manager of UPT Oro-Oro Dowo
2. BS, ASN in Malang City Government in the Housing and Settlement Area of Malang City, position as section head of Development and Maintenance.
3. HA, as ASN at the State Islamic University of Maulana Malik Ibrahim Malang, position as Head of the General Sub-Administration of the Faculty of Psychology.

The violation data was obtained directly from Malang Election Supervisory Body, the results of interviews conducted with Mr. Rusmi Fahrizal, a Bawaslu member who served as Coordinator of the Election Dispute Resolution Division who said that:<sup>50</sup>

*“setiap pelanggaran yang dilakukan ASN baik yang ditemukan oleh bawaslu sendiri ataupun masyarakat, maka wajib dilaporkan ke bawaslu, dan untuk kewenangan Bawaslu wajib memproses pelanggaran tersebut dengan merekomendasikan ke Komisi Aparatur Sipil Negara untuk ditindaklanjuti mengenai sanksi yang akan diberikan oleh ASN yang melanggar”.*

In the Election Law Number 7 of 2017 the Election Supervisory Body has the authority to recommend to the relevant agencies regarding the results of oversight of the neutrality of the state civil apparatus, the neutrality of members of the Indonesian Armed Forces, and the neutrality of members of

<sup>50</sup> Interview with Mr. Rusmi Fahrizal, a member of the Election Supervisory Body, a position as Coordinator of the election dispute resolution division. May 3, 2019 at 11.00

the Indonesian National Police.<sup>51</sup> If the results of supervision carried out by the Election Supervisory Body are found in violations related to ASN neutrality, the Bawaslu has the authority to recommend violations of ASN to the State Civil Apparatus Commission (KASN) to be followed up on sanctions to be obtained by the ASN.

After the Bawaslu reports the findings of the violation of ASN neutrality to the relevant agency, then the Bawaslu must also keep an eye on the implementation of decisions / decisions consisting of decisions of the competent authorities for violations of the neutrality of the ASN. In article 93 letter g reads "Bawaslu also supervises the implementation of decisions / decisions consisting of decisions of authorized officials for violations of the neutrality of the State civil apparatus, the neutrality of members of the TNI, and the neutrality of members of the police of the Republic of Indonesia".<sup>52</sup>

3 (three) violations related to ASN neutrality that have been found by Bawaslu do not rule out the possibility that ASN in Malang city is not included in the neutral category, in the PANRB minister's letter calling on the ASN to be neutral according to his statement it was included in the effective category as explained by Yusmifahrizal:

*“menurut saya ASN dikota Malang ini sudah netral dan cukup paham terkait netralitas ASN yang dijelaskan di surat himbauan Menteri PANRB, dengan alasan kami hanya menemukan 3 pelanggaran dari ribuan pegawai*

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<sup>51</sup> Election Law No. 7 of 2017 Article 95 letter e

<sup>52</sup> Election Law No. 7 of 2017

*ASN yang ada dikota Malang. Dari sekian banyak upaya yang Bawaslu lakukan dalam bentuk sosialisasi dan hasil kerjasama dengan berbagai instansi pemerintah maupun perguruan tinggi yang mana tujuannya untuk menjamin netralitas ASN dan mengantisipasi pelanggarannya kami rasa itu juga telah berhasil.*

*Dan untuk terkait keefektifan surat himbauan yang dikeluarkan menteri PANRB, saya rasa pun juga telah efektif. Semua ASN paham dan telah menerapkannya dalam menghadapi kontestasi pemilu di tahun ini, begitupun kami dari Badan Pengawas Pemilu yang diberikan amanah untuk mengawasi segala bentuk pelanggaran yang terjadi dalam pemilu yakni salah satunya pelanggaran terkait netralitas ASN, kami sudah menjalankan hak dan kewenangan kami dengan sebaik mungkin sebagaimana dijelaskan di peraturan perundang-undangan.*

It can be concluded from his statement, that the ASN in Malang city includes Neutral, and the PANRB minister's letter calling on ASN to be neutral in the election is quite effective. because ASN in the city of Malang, on average, has obeyed the existing rules regarding their obligation to be neutral and impartial.

In the theory of Lawrence M. Friedman's effectiveness, that a law is said to be effective one of which is viewed from the legal culture of society, society becomes one of the supporting factors in the effectiveness of a law, with understanding or awareness of a law and being able to realize a rule. 3 violations found by Bawaslu did not rule out the possibility that all ASNs in Malang city did not understand and did not realize the rules governing neutrality.

### **3. Analysis of the Implementation of Neutrality of State Civil Apparatus in Malang City**

In this chapter the researcher analyzes the implementation of the Neutrality of the State Civil Apparatus in the city of Malang. To conclude

whether ASN in Malang city has understood and applied the principles of neutrality in the election.

In the theory of the effectiveness of law Lawrence M. Friedman, to see the effectiveness of a law from a perspective that can be seen from its legal culture. Which is the Law Culture is how the attitude of the legal community in the place of law is carried out. If public awareness to comply with established regulations can be applied, the community will become a supporting factor. However, if the community does not want to comply with existing regulations, the community will be the main inhibiting factor in enforcing the regulations in question.

KPU as the election organizer, whose implementation members are not entirely ASN but explained in Article 7 paragraph (3) of Election Law Number 7 of 2017 that in conducting elections, the KPU must be free from the influence of any party relating to the implementation of its duties and concluded from the article that the KPU as the organizer of the election must be neutral.

From the results of interviews with Mr. Fajar Santosa, SH at the General Election Office in Malang, which served as part of the division of Law and Supervision, Mr. Fajar Santosa explained that the notion of neutrality or understanding of ASN neutrality in elections:<sup>53</sup>

*“Menurut saya bahwa netralitas itu tidak berpihak, tidak menunjukkan eskpresinya untuk berpihak ke salah satu calon maupun suatu golongan karena itu suatu tindakan yang menguntungkan. Ya sebagaimana diatur di*

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<sup>53</sup> interview with Mr. Fajar Santosa, SH as ASN at the Malang City General Election Office in the Legal and Supervision division, at the KPU office in Malang, on April 12, 2019, at 3:00 p.m.

*Undang-Undang Aparatur Sipil Negara bahwa Aparatur Sipil Negara harus bersikap netral, tidak boleh memihak kepada kepentingan siapapun. bahkan untuk petugas KPU sendiri pun dituntut untuk selalu netral karena disini tidak seluruh petugas KPU merupakan ASN, anggota KPU yang bukan ASN mereka terikat kode etik untuk bersikap netral karena KPU merupakan penyelenggara dalam pemilu.”*

In Article 7 paragraph (3) of Election Law No. 7 of 2017 that in holding elections, the KPU must be free from the influence of any party relating to the implementation of its duties and authorities, in this case that KPU members as State Civil Apparatus and Non-State Civil Apparatus must maintain neutrality by not taking sides against a group. Because KPU members who are not ASN are bound by a code of ethics to be neutral.

Explanation of article 7 paragraph (3) of the Law concerning elections that the KPU as the organizer of the election must be free from the influence of any party relating to the implementation of its duties and authorities. In explaining the law, KPU members, both ASN and non-ASN in Malang city, were quite neutral, as stated by Mr. Fajar Santosa as KPU member in Malang city who served as the legal and supervisory division.<sup>54</sup>

*“Untuk kenetralitasan anggota KPU baik ASN maupun yang bukan ASN dikota Malang ini saya rasa sudah cukup netral, karena tidak adanya pelanggaran terkait netralitas yang terjadi dari anggota kami selama pemilu, anggota KPU yang berstatus ASN saya rasa sudah paham mengenai UU ASN. Bahkan anggota KPU yang bukan ASN terikat kode etik untuk bersikap netral.”*

From the results of the interview, it can be concluded that the KPU as the election organizer has been very understanding and has applied

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<sup>54</sup> interview with Mr. Fajar Santosa, SH as ASN at the Malang City General Election Office in the Legal and Supervision division, at the KPU office in Malang, on April 12, 2019, at 3:00 p.m.

neutrality in the administration of elections, by not seeing the violations that occurred in the General Election Commission of Malang City.

According to UIN Malang State Law Law lecturer Mr. Irham Bashori Hasba gave an explanation and understanding regarding ASN neutrality, said that:<sup>55</sup>

*“Negara Indonesia sebagai negara yang demokratis yaitu setiap warga negara memiliki hak politik memilih dan dipilih, akan tetapi hak dipilih tidak dapat dimiliki oleh ASN, TNI dan Polri. Oleh karena itu setiap ASN, TNI, maupun polri harus menjaga netralitasnya karena mereka sebagai pelayan masyarakat yang mana harus melayani masyarakat secara profesional, jujur dan adil.. Menurut saya netralitas ASN merupakan keberpihakan, seorang ASN tidak boleh memihak terhadap suatu golongan tertentu, karena keberpihakan terhadap suatu golongan memiliki konsekuensi terhadap kinerja ASN.”*

In Government Regulation No. 42 of 2004 concerning fostering the Soul Corps and the Code of Ethics for Civil Servants, based on Article 11 letter C, states that in terms of ethics towards oneself civil servants must avoid conflicts of personal, group or group interests. Then civil servants are prohibited from carrying out actions that lead to partiality of one candidate or act that indicates involvement in practical politics / affiliation with political parties.

In Article 11 letter C Government Regulation Number 42 of 2004 concerning fostering the Soul Corps and Civil Servants Code of Ethics and article 2 letter f of Law No. 5 of 2014 concerning State Civil Apparatus, has

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<sup>55</sup> Interview with Mr. Irham Bashori Hasba, lecturer in Constitutional Law, on May 9, 2019 at 19.45

been implemented and / or implemented by Mr. Irham Bashori Hasba, as stated he conveyed:<sup>56</sup>

*“saya merasa diri saya sudah netral, walaupun saya memiliki hak politik untuk memilih, akan tetapi hak politik saya untuk memilih calon kandidat tidak saya sebar luaskan, saya tidak pernah mengupload ataupun memprovokasikan teman, saudara maupun mahasiswa saya untuk memilih paslon sesuai dengan pilihan saya, karena saya sadar dan paham bahwa itu melanggar kenetralitasan saya sebagai PNS”*

From the information presented by Mr. Irham Bashori Hasba, it is sufficient to explain that the person really understands the neutrality of ASN, and has applied it to be neutral according to the appeal of the PANRB minister's letter on the neutrality of the State Civil Apparatus in the Implementation of Elections.

According to information and explanation by the mother of Umi Hanik, SE ASN employees with status as PNS serving as head of the Civil Service and Legal organization section of UIN Maliki Malang gave an explanation regarding understanding neutrality.<sup>57</sup>

*“menurut saya netralitas itu tidak memihak, tidak memihak kepada kepentingan suatu golongan”*

In the letter of the Minister of PANRB described in it concerning Article 2 letter f of ASN Law No. 5 of 2014 that one of the principles of implementing ASN policy and management is "neutrality". And in Article 11 letter C of Government Regulation Number 42 of 2004 concerning

<sup>56</sup> Interview with Mr. Irham Bashori Hasba, lecturer in Constitutional Law, on May 9, 2019 at 19.45

<sup>57</sup> The results of interviews with Ms. Umik Hanif, SE as head of the Civil Service and Legal organization section of Maliki UIN Malang, on Tuesday, May 14, 2019 at 8:30

fostering the Soul Corps and the Code of Ethics for Civil Servants and article 2 letter f of Law Number 5 of 2014 concerning the State Civil Apparatus, it has been implemented and / or implemented by Ms. Umik Hanif, SE as PNS served as head of the Civil Service and Legal organization section of Maliki UIN Malang. As the information he gave:

*“iya, saya sudah menerapkannya. Karena saya paham dan sudah tau mengenai netralitas ini. Saya memiliki hak pilih dalam pemilu akan tetapi hanya pribadi saya saja yang tau tidak perlu disebarluaskan ke orang lain”*

Mrs. Umik Hanif, SE as PNS serving as head of the Civil Service and Legal organization section of UIN Maliki Malang provided information regarding ASN neutrality at UIN Malang that :

*“Jumlah ASN di UIN Malang total keseluruhan 1.113. dengan jumlah PNS 605 dan non PNS 208. Dan menurut saya, tidak seluruhnya paham terkait detail penjelasan netralitas. Akan tetapi mereka mencoba untuk bersikap profesional dengan tidak memihak, walaupun telah ditemukan 1 pelanggaran yang ditemukan bawaslu. Kami sebagai bagian organisasi kepegawaian dan hukum telah berupaya untuk menjamin netralitas ASN di UIN Malang yaitu mengadakan sosialisasi melalui website kami untuk menghimbau kepada ASN di UIN Malang untuk berlaku Netral terutama dalam Pemilu”*

According to the statement stated by Ms. Hanik, it can be concluded that the ASN at UIN Maliki Malang has maintained its neutrality as an ASN impartially, even though it was found 1 (one) violation committed by ASN UIN Malang, but it was only 1 (one) compared to 1,113 employees ASN in this Malang UIN.

According to the explanation and information which was then given by Roos A Ratna as a civil servant who served as the Head of Discipline and

Award at the Regional Civil Service Office of the City of Malang, giving an understanding of neutrality .<sup>58</sup>

*”menurut saya netralitas itu seperti tidak memberikan dukungan, maupun tidak memihak terhadap suatu golongan dari partai maupun pasangan calon pemilu.”*

In the letter of the Minister of PANRB described in it concerning Article 2 letter f of ASN Law No. 5 of 2014 that one of the principles of implementing ASN policy and management is "neutrality". and And in Article 11 letter C of Government Regulation Number 42 of 2004 concerning fostering the Soul Corps and the Code of Ethics for Civil Servants. Whereas Roos A Ratna gave information regarding his neutrality as a civil servant :

*“saya jelas sudah menerapkan terkait netralitas sebagai PNS, yaitu dengan tidak memposting di media sosial pasangan calon yang akan saya pilih. Karena tugas saya pribadi memberikan contoh dan teladan kepada ASN yang lain untuk bersikap netral.”*

According to the opinion which was then given by Roos A Ratna as a civil servant who served as Head of Discipline and Awards at the Regional Civil Service Office of the City of Malang, related to the neutrality of ASN employees in the city of Malang, namely:

*” kami sudah melakukan sosialisasi terkait netralitas ASN bersama SKPD lainnya. Upaya yang telah kami lakukan dengan harapan tidak banyak ditemukan pelanggaran oleh pegawai ASN, walaupun telah ditemukan 2 pegawai ASN yang melanggar yang sebelumnya telah ditemukan oleh Bawaslu. Kami berharap tidak ditemukannya lagi pelanggaran. Dan saya rasa netralitas ASN dikota Malang dapat*

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<sup>58</sup> The results of the interview with Ms. Roos A Ratna as civil servants who served as the Head of Discipline and Awards at the Regional Civil Service Office of the City of Malang, May 15, 2019, at 10:00

*diterapkan dengan baik oleh ASN itu sendiri, karena dari jumlah total pegawai PNS struktural, fungsional, maupun pelaksana yang berjumlah 7139 hanya ditemukan 2 pelanggaran saja dan sisanya sudah menerapkannya dengan baik.”*

From the information given by Roos A Ratna, it can be concluded that ASN in Malang has understood ASN neutrality and has implemented it well from the total structural, functional, and implementing civil servants totaling 7139 only found 2 violations and the rest have implemented it with well.

From the results of a joint interview with ASN it can be concluded that the intent of neutrality understood by ASN refers to the governing law. As in the theory of positivism law, the law is understood as an order from the authorities. Which law is seen as a system that is permanent, logical, and closed. Positivism is a flow in the philosophy of law which assumes that the legal theory only has to do with positive law.

Table of legal effectiveness

NO	ASPECT OF LEGAL EFFECTIVENESS	MEASURING ELEMENTS OF LEGAL EFFECTIVENESS
1	Legal Substance	<ul style="list-style-type: none"> <li>- Regulations written in the PANRB ministerial letter are quite systematic, and hierarchically synchronous</li> <li>- The regulations contained in PANRB's ministerial letter are in accordance with the existing juridical requirements</li> <li>- Regulations written in the PANRB ministerial letter regulate fields that are sufficient, so as not to cause a legal vacuum because there are no regulatory regulations.</li> </ul>

2	Law enforcer	<p>In the functioning of a law, the personality of law enforcement officers plays an important role. Because one of the keys to success in law enforcement is a law enforcement mentality or personality.</p> <ul style="list-style-type: none"> <li>- Bawaslu as the election supervisor has supervised the enforcement of the law stipulated in it, one of which is to monitor and follow up the violations committed by the ASN properly as stipulated in the Act.</li> <li>- The State Civil Apparatus Commission in following up on violations committed by ASN has exercised its authority properly by imposing penalties on violating ASN</li> </ul>
3	Legal Culture	<ul style="list-style-type: none"> <li>- Influenced by the awareness of the community to comply with the regulations set to be implemented, the community will become a supporting factor.</li> <li>- ASN in Malang city is aware of and understanding regarding the existing regulations regarding neutrality in the election, one of them is the letter from the PANRB minister's appeal. Because of the total number of thousands of ASNs in Malang city, only 3 violations related to neutrality were found.</li> <li>- ASN in Malang city obeys and is aware of the law regarding the existing regulations regarding the neutrality of the ASN because the Sanctions set out in the Law written in the PANRB ministerial letter cause</li> <li>- It is an obligation as the ASN must behave professionally because it is a basic value in carrying out the mandate, especially in government agencies that act as public servants.</li> </ul>

(Table 3 - Table of Effectiveness of the Laws of ASN Neutrality in Elections)

#### **4. Neutrality According To The Principle Of Justice In Islam**

Islam commands every human being to be fair, both in all behaviors and actions committed. Fair means realizing equality and balance between rights and obligations. Human rights must not be reduced due to their obligations. Therefore, the rights of everyone must be given accordingly. Humans are said to be happy if their rights are guaranteed in society, the rights of every person are respected, and strong groups protect the weak.

In Ibn Taymiyyah's thought that every public affairs must be based on the principle of justice, therefore, it is said that Allah upholds a just State even though the country is infidels, and will not uphold an unjust State even though the Islamic State (*innallaha yuqimu ad-daulah al-wa wa kanat kafirah wa la yuqimu ad-daulah azh-zhalimah wa in kanat muslimah*). It is also often said that "the world will not be destroyed because of the existence of justice and disbelief, while the world will be destroyed if there is a fit of Islam and tyranny. It can be concluded that when world affairs are upheld by justice, uphold the world, even though the inhabitants will be infidels and the hereafter will get nothing. Conversely, if world affairs are not upheld by

justice, the world will be destroyed, even though its inhabitants have faith and can receive the reward of the faith.<sup>59</sup>

In terms of neutrality, the principle of justice has represented that the state apparatus must be fair, not allowed to intervene in any group because the state apparatus is given a mandate by the government to carry out the State's duties as a public servant. Justice is the system principle in running a government. Justice is the principle of power. If a State organizer can be fair, it will eliminate something that is discriminatory against the law, social, or in the form of economy. And if the state administrators cannot be fair and commit injustice, the destruction of a civilization and the disappearance of power can be destroyed.<sup>60</sup>

In letter Nahl verse 90 explains that Islam upholds the basics of justice to maintain the survival of society

Allah *Subhanahu wa Ta'ala* said:

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ  
يَعْظُمُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

*Artinya: "Sesungguhnya Allah menyuruh (kamu) berlaku adil dan berbuat kebajikan, memberi kepada kaum kerabat, dan Allah melarang dari perbuatan*

<sup>59</sup> Muhammad Akram Khan, *Tugas Negara Menurut Islam*, (Pustaka Pelajar:Yogyakarta, 2004). h.128

<sup>60</sup> Prof. Wahbah Az-Zuhaily, *Fiqh Islam Wa Adillatuhu*, Jilid 8, (Gema Insani:Jakarta,2011) h.333

*keji, kemungkaran dan permusuhan. Dia memberi pengajaran kepadamu agar kamu dapat mengambil pelajaran.” (QS An-Nahl : 90).*

The special features and characteristics of Islam in the aspect of the command to uphold justice that the justice ordered is absolute justice involving all leaders, people, and humanity. Fair is compulsory in government, administration, enforcement of taxpayers, collection of assets, and tasharufs for the benefit of humanity in the distribution of rights and obligations as well as enforcement of social justice, in testimony, court, law enforcement, enforcement of hudud and qisas, in words and writings, within the scope of the family towards wives and children, in education and ownership, in views, thoughts, and actions.<sup>61</sup>

Therefore, neutrality in the principle of justice in Islam explains that each State organizer or organizer of a government must be neutral / be fair by not taking sides against a group. Because the community basically has the right to get justice if the state administrators cannot be fair, it will have an impact on the decline of the professionalism of the state administrators as public servants.

Basically in Islam requires humans to be fair / neutral in the administration of government. Fair is the nature of the Prophet in leading the government. Because fairness is a command of Allah which is contained in the Qur'an to organize a government. If a country is upheld by justice, then the State is established and the people will live peacefully and happily because they get

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<sup>61</sup> Prof. Wahbah Az-Zuhaily, *Fiqh Islam Wa Adillatuhu*, Jilid 8, (Gema Insani:Jakarta,2011) h.334

their rights to justice. But if a country is not enforced by justice, it will destroy the country by damaging the conscience of the people due to the tyranny of government officials.





## CHAPTER 5

### CLOSING

#### A. CONCLUSION

Based on the description discussed in the previous chapter, conclusions can be taken as follows:

1. That the PANRB minister's letter Number B / 71 / M.SM.00.00 / 2017 concerning the Implementation of Neutrality of the State Civil Apparatus in the Implementation of Elections is considered effective which measures the effectiveness of ASN neutrality in Malang city based on Lawrence M. Friedman's law effectiveness theory, that a law said to be effective seen from the substance of the law, the legal structure (law enforcement), and the legal culture of society.
2. Neutrality according to the principle of justice in Islam explains that the state apparatus must be fair, must not intervene in any group

because the state apparatus is given a mandate by the government to carry out the State's duties as a public servant. Justice is the system principle in running a government. Justice is the principle of power. If a State organizer can be fair, it will eliminate something that is discriminatory against the law, social, or in the form of economy. And if the state administrators cannot be fair and commit injustice, the destruction of a civilization and the disappearance of power can be destroyed.

#### **B. RECOMMENDATION**

1. Supposedly in the ministerial letter PANRB included the Election Law as a basic reference for explanation regarding ASN neutrality in the administration of elections.
2. Further researchers are expected to be able to conduct further research regarding the application of neutrality in the broadest possible scope. Not only neutrality towards the ASN, but also the neutrality of the members of the TNI, as well as the Indonesian National Police. Because many other sides of this study are related to neutrality that is not possible to be examined simultaneously

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**APPENDIX**  
**RECAPITULATION OF PNS GOVERNMENT IN MALANG CITY**  
**APRIL 2019**

NO	UNIT KERJA	TOTAL
1	Sekretariat Daerah	1
2	Staff Ahli Bidang Ekonomi dan Keuangan	1
3	Staff Ahli Pembangunan, Kesejahteraan Rakyat dan Sumberdaya Manusia	1
4	Asisten Pemerintahan dan Kesejahteraan Rakyat	1
5	Asisten Perekonomian	1
6	Asisten Administrasi Umum	1
7	Bagian Hubungan Masyarakat	18
8	Bagian Kesejahteraan Rakyat dan Kemasyarakatan	17
9	Bagian Pemerintahan	13
10	Bagian Layanan Pengadaan Barang/Jasa	17
11	Bagian Pengembangan Perekonomian	11
12	Bagian Sumber Daya Alam dan Pengembangan infrastruktur	8
13	Bagian Hukum	14
14	Bagian Keuangan dan Perlengkapan	30
15	Bagian Organisasi	11
16	Bagian Umum	54
17	Inspektorat	44
18	Badan Kepegawaian Daerah	47

19	Badan Kesatuan Bangsa dan Politik	25
20	Badan Pelayanan Pajak Daerah	99
21	Badan Penanggulangan Bencana Daerah	23
22	Badan Pengelola Keuangan dan Aset Daerah	59
23	Badan Perencanaan, Penelitian dan Pengembangan	40
24	Dinas Kebudayaan dan Pariwisata	27
25	Dinas Kepemudaan dan Olahraga	68
26	Dinas Kependudukan dan Pencatatan Sipil	62
27	Dinas Kesehatan	743
28	Dinas Komunikasi dan Informatika	43
29	Dinas Koperasi dan Usaha Mikro	26
30	Dinas Lingkungan Hidup	729
31	Dinas Pekerjaan Umum dan Penataan Ruang	110
32	Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk dan Keluarga Berencana	55
33	Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu	56
34	Dinas Pendidikan	131
35	Dinas Perdagangan	272
36	Dinas Perhubungan	130
37	Dinas Perindustrian	28
38	Dinas Perpustakaan Umum dan Arsip Daerah Daerah	45
39	Dinas Pertanian dan Ketahanan Pangan	73
40	Dinas Perumahan dan Kawasan Permukiman	208
41	Dinas Sosial	27

42	Dinas Tenaga Kerja	28
43	Satuan Polisi Pamong Praja	129
44	Sekretariat DPRD	41
45	Kecamatan Blimbing	121
46	Kecamatan Kedungkandang	134
47	Kecamatan Klojen	115
48	Kecamatan Lowokwaru	127
49	Kecamatan Sukun	125
50	Sekretariat KPU	6
51	TK (Taman Kanak-Kanak)	56
52	SD (Sekolah Dasar)	1870
53	SMA (Sekolah Menengah Pertama)	934
54	DPK (Dipekerjakan)	84
<b>TOTAL</b>		<b>7139</b>

(Appendix 1- of Recapitulation of Number of Civil Servants in Malang City)

STRUKTURAL	: 785
FUNGSIONAL GURU	: 2818
FUNGSIONAL LAIN	: 710
PELAKSANA	: 2826
JUMLAH TOTAL	: 7139

## Appendix 2- to the findings of the Herli Antoni violation

**FORMULIR TEMUAN**

Nomor	: 011/TM/PP/KOTA/16.06/III/2019
Nasional	: INDONESIA
Provinsi	: JAWA TIMUR
Kabupaten/Kota	: KOTA MALANG
Kecamatan	:
Desa/Kelurahan	:

1. Data Pengawas Yang Menemukan

a. Nama	: Rusmifahrizal Rustam, SH
b. Jabatan	: Anggota BAWASLU Kota Malang
c. Alamat	: Jln. Teluk Cendrawasih No 1 Malang

2. Peristiwa yang ditemukan

a. Peristiwa	: postingan akun media sosial facebook atas nama Herli Antoni yang diduga melanggar Netralitas ASN karena terdapat unsur keberpihakan kepada salah satu Paslon Presiden dan Wakil Presiden
b. Tempat Kejadian	: Kota Malang
c. Waktu Kejadian	:
d. Hari dan Tanggal ditemukan	: 23 Februari 2019
e. Terlapor	: pegawai ASN atas nama Herli Antoni, S. Ag
f. Alamat Terlapor**	: Jalan Raya Mulyoagung 108 Jetis RT 003 RW 010 Kec Dau Kab Malang.
g. No.Telp/HP Terlapor	:

3. Saksi –saksi

1. Nama	: Hamdan Akbar Safara, S.Ap.M.Ap
Alamat ***	: Jl. Teluk Cendrawasih No.1 Malang
No.Telp/Hp	:
2. Nama	: Iwan Sunaryo, SH.
Alamat ***	: Jl. Teluk Cendrawasih No.1 Malang
No.Telp/Hp	:

4. Bukti-Bukti:

a.	Screen Shoot postingan facebook bukti terlampir
b.	Surat Keterangan PNS dari Universitas Islam Negeri Maulana Ibrahim Kota Malang
c.	Akun Facebook atas nama Herli Antoni

tingkat kejadian:

Bahwa tanggal 23 Februari 2019 telah ditemukan dugaan pelanggaran Netralitas Aparatur Sipil Negara pada postingan Akun media Sosial atas nama Herli Antoni, yang memposting status, video ataupun menshare ulang postingan orang lain yang terdapat unsur memihak salah satu Paslon Presiden 2019. Dugaan pelanggaran terhadap postingan diatas adalah :

1. Undang – Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara pasal 1 ayat (1).
2. Undang – Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara Pasal 2 huruf (f) yang berbunyi penyelenggaraan kebijakan dan manajemen ASN berdasarkan pada asas netralitas.
3. Peraturan Komisi Pemilihan Umum Republik Indonesia Nomor 23 Tahun 2018 tentang Kampanye Pemilihan Umum Pada pasal Pasal 70

Malang, 5 Maret 2019

Bawaslu Kota Malang

Hamdan Akbar Safara, S.Ap., M.Ap.  
Kordiv. Penindakan Pelanggaran

PEMBERITAHUAN TENTANG STATUS LAPORAN/TEMUAN

Berdasarkan hasil penelitian dan pemeriksaan terhadap laporan/temuan yang masuk dan hasil kajian Pengawas Pemilu, diberitahukan status laporan/temuan sebagai berikut:

NO	NAMA PENEMU*/PENGAWAS PEMILU DAN TERLAPOR/PELAKU	NOMOR LAPORAN/TEMUAN	STATUS LAPORAN/TEMUAN	INSTANSI TUJUAN/ALASAN
1	Penemu : Rusmifahrizal Rustam, SH  Terlapor : Herli Antoni, S.Ag	011/TM/PP/KOTA/16.06/III/2019	Bahwa Terlapor An. Herli Antoni, S.Ag dinyatakan melanggar Netralitas ASN berdasarkan fakta yang didapat, adapun ketentuan-ketentuan yang dilanggar pada Undang-undang 7 Tahun 2017 Tentang Pemilu ; Undang-Undang 5 Tahun 2014 Tentang ASN; dan Perbawaslu 6 Tahun 2018 Tentang Netralitas ASN.	Disampaikan kepada Komisi Aparatur Sipil Negara KASN.

Catatan:

1. Ditindaklanjuti ke instansi tujuan:
  - a. Instansi lain\*\*.

Diumumkan : Malang, 22 Maret 2019

 Bawaslu Kota Malang  
 Ketua


Alim Mustofa, S.Sos., M.AP

FORMULIR MODEL B.2

**FORMULIR TEMUAN**

Nomor	:	011/TM/PP/KOTA/16.06/III/2019
Nasional	:	INDONESIA
Provinsi	:	JAWA TIMUR
Kabupaten/Kota	:	KOTA MALANG
Kecamatan	:	
Desa/Kelurahan	:	

## 1. Data Pegawai Yang Menemukan

a. Nama	:	Rusmifahrizal Rustam,SH
b. Jabatan	:	Anggota BAWASLU Kota Malang
c. Alamat	:	Jl. Terusan Kayan A-6 RT.06/RW.18

## 2. Peristiwa yang ditemukan

a. Peristiwa	:	Postingan akun media sosial facebook atas nama Herli Antoni yang diduga melanggar Netralitas ASN karena terdapat unsur keberpihakan kepada salah satu Paslon Presiden dan Wakil Presiden.
b. Tempat Kejadian	:	Kota Malang
c. Waktu Kejadian	:	
d. Hari dan Tanggal ditemukan	:	23 Februari 2019
e. Terlapor	:	pegawai ASN atas nama Herli Antoni, S. Ag
f. Alamat Terlapor**	:	Jalan Raya Mulyoagung 108 Jetis RT 003 RW 010 Kec Dau Kab Malang.
g. No.Telp/HP Terlapor	:	

## 3. Saksi –saksi

1. Nama	:	Hamdan Akbar Safara,S.Ap.M.Ap
Alamat ***	:	Jl. Teluk Cendrawasih No.1 Malang
No.Telp/Hp	:	
2. Nama	:	Iwan Sunaryo, SH.
Alamat ***	:	Jl. Teluk Cendrawasih No.1 Malang
No.Telp/Hp	:	

## 4. Bukti-Bukti:

a.	Screen Shoot postingan facebook bukti terlampir
b.	Surat Keterangan PNS dari Universitas Islam Negeri Maulana Ibrahim Kota Malang
c.	Akun Facebook atas nama Herli Antoni

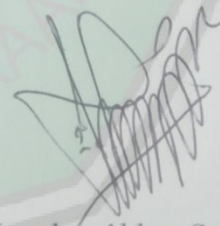
## 5. Uraian singkat kejadian:

Bahwa tanggal 23 Februari 2019 telah ditemukan dugaan pelanggaran Netralitas Aparatur Sipil Negara pada postingan Akun media Sosial atas nama Herli Antoni, yang memposting status, video ataupun menshare ulang postingan orang lain yang terdapat unsur memihak salah satu Paslon Presiden 2019. Dugaan pelanggaran terhadap postingan diatas adalah :

1. Undang – Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara pasal 1 ayat (1) yang berbunyi Aparatur Sipil Negara yang selanjutnya disingkat ASN adalah profesi bagi pegawai negeri sipil dan pegawai pemerintah
2. Undang – Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara Pasal 2 huruf (f) yang berbunyi penyelenggaraan kebijakan dan manajemen ASN berdasarkan pada asas netralitas.

Malang , 5 Maret 2019

Bawaslu Kota Malang



Hamdan Akbar Safara, S.Ap.,M.Ap  
Kordiv. Penindakan Pelanggaran

## Appendix 3- to the findings of the Sri Sundari violation

FORMULIR MODEL B.2

**FORMULIR TEMUAN**

Nomor : 09/TM/PP/KOTA/16.06/2019

Nasional : Indonesia

Provinsi : Jawa Timur

Kabupaten/Kota : Kota Malang

1. Data Pengawas yang menemukan

a. Nama : Iwan Sunaryo, SH.

b. Jabatan : Anggota BAWASLU Kota Malang

c. Alamat : Jalan Teluk Cendrawasih No 1 Malang

2. Peristiwa yang ditemukan

a. Peristiwa : Diduga ASN turut serta berkampanye di Media Sosial

b. Tempat Kejadian : Pasar Oro-oro Dowo

c. Waktu Kejadian : 08.00 WIB

d. Hari dan Tanggal ditemukan : Kamis, 29 Januari 2019

e. Terlapor : Endang Sri Sundari, S.Sos

f. Alamat Terlapor\*\* : Jalan Letjen S Parman 3 A/4 RT 06 RW  
18 Kelurahan Tulusrejo

g. No.Telp/HP Terlapor :

3. Saksi –saksi

a. Nama : Alim Mustofa, S.Sos.,M. Ap.

Alamat \*\*\* : Jl. Teluk Cendrawasih No.1 Kota Malang

No.Telp/Hp :

b. Nama : Rusmifahrizal Rustam,SH

Alamat \*\*\* : Jl. Teluk Cendrawasih No.1 Kota Malang

No.Telp/Hp :

c. Nama : Hamdan Akbar Safara, S. Ap., M. Ap.

Alamat \*\*\* : Jl. Teluk Cendrawasih No.1 Kota Malang

No.Telp/Hp :

4. Bukti-Bukti:

a. Screen Shoot postingan facebook bukti terlampir

b. Surat Keterangan PNS dari Kantor BKD Kota Malang

Tanggal 22 Januari 2019 pukul 08.12 WIB, Bawaslu Kota Malang mendapatkan informasi di Facebook terkait postingan akun facebook atas nama HADI SILSTIJO di akun <http://www.facebook.com/hadi.sulistijo> tanggal 20 Januari 2019 pukul 10.04 WIB, dengan status *" tugas mengawal ibu titik soeharto di Pasar oro -Oro Dowo Malang Selesai (Ibu Titik Soeharto Bersaam Ibu Endang Kepala Pasar Oro oro Dowo)"* dan foto Titik Soharto dan seorang perempuan diduga atas nama Endang dengan posisi berdampingan dan tangan menunjukkan simbol dua jari.

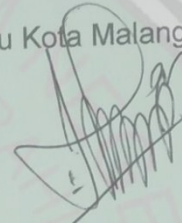
Mendapat informasi tersebut Tim PHL Bawaslu Kota Malang melakukan penelusuran terhadap akun facebook tersebut. Hasil penelusuran diperoleh informasi sebagai berikut:

1. Bahwa akun facebook yang dimaksud adalah atas nama Hadi Sulistijo, wallpaper FB tersebut adalah bergambar pasangan calon nomor urut 02 (Prabowo) dan Foto atas nama Hadi Sulistijo Caleg DPRD Kota Malang Dapil.Lowokwaru.
2. Isi dari status FB tersebut adalah status *" tugas mengawal ibu titik soeharto di Pasar oro -Oro Dowo Malang Selesai"* (Ibu Titik Soeharto Bersaam Ibu Endang Kepala Pasar Oro oro Dowo) dan foto Titik Soharto dan seorang perempuan diduga atas nama Endang ) dengan posisi berdampingan dan tangan menunjukkan simbol dua jari.
3. Terdapat status yang menulis .... Ibu Endang (Kepala Pasar Oro-oro dowo).
4. Terdapatnya kalimat Ibu Endang Kepala Pasar Oro-oro Dowo diduga yang bersangkutan adalah berstatus Aparatur Sipil Negara.
5. Selanjutnya Bawaslu Kota Malang, membentuk tim Investigasi untuk melakukan penggalan informasi .
6. Hasil investigasi memperoleh informasi sebagai berikut :
  - a. Investigasi dilakukan ke Badan Kepegawaian Daerah (BKD) Pemerintah Kota Malang.
  - b. Dugaan seseorang atas nama Endang Sri Sundari S.Sos, Jabatan Pengelola Pasar UPT Pasar Oro-oro Dowo , Unit kerja Dinas Perdagangan. Data terlampir.
  - c. Bahwa akun facebook tersebut adalah milik Hadi Sulistijo dengan alamat facebook <http://www.facebook.com/hadi.sulistijo>.
  - d. Bahwa pemilik tersebut mengakui kebenaran postingan dalam status facebook nya *" tugas mengawal ibu titik soeharto di Pasar oro -Oro Dowo Malang Selesai "* (Ibu Titik Soeharto Bersaam Ibu Endang Kepala Pasar Oro-oro Dowo) dan foto Titik Soharto dan seorang perempuan diduga atas nama Endang ) dengan posisi berdampingan dan tangan menunjukkan simbol dua jari.
  - e. Bahwa Hadi Sulistijo mengakui bahwa yang mengambil foto tersebut adalah dirinya sendiri.
  - f. Bahwa Hadi Sulistijo mengetahui bahwa atas nama Endang adalah Kepala Pasar Oro-oro Dowo adalah dari orang sekitarnya.
  - g. Bahwa Hadi Sulistijo mengakui bahwa wanita atas nama Titik Suharto adalah pengurus partai berkarya pusat.

h. Bahwa Hadi Sulistijo mengakui jika postingan foto dalam face book tersebut adalah Titik Suharto dan Endang Kepala Pasar Oro-oro Dowo dengan kode dua jari adalah hasil potretanya.

Malang , Tanggal 31 Januari 2019

Bawaslu Kota Malang



Hamdan Akbar Safara, S. Ap., M. Ap.  
Kordiv. Penindakan Pelanggaran



**KAJIAN DUGAAN PELANGGARAN**

Nomor : 09/TM/PP/KOTA/16.06/1/2019

**I. Pokok Masalah (Kasus Posisi)**

Informasi Dugaan Pelanggaran Netralitas Aparatur Negeri Sipil Pemerintah Kota Malang melalui pose foto yang diduga menunjukkan dukungan kepada Peserta pemilu pada akun Facebook.

**II. Data**

- |                      |   |
|----------------------|---|
| 1. Penemu            | : 1. Alim Mustofa, S.Sos, M.AP<br>2. Iwan Sunaryo, SH   |
| 2. Pekerjaan/Jabatan | : 1. Koordinator Divisi Pengawasan<br>2. Koordinator Divisi Hukum   |
| 3. Alamat            | : 1. Jalan Simpang Sulfat Selatan III/22 , Malang<br>2. Jalan Sudimoro No. 21, Malang                     |
| 4. Terlapor/Pelaku   | : Endang Sri Sundari, S.Sos   |
| 5. Pekerjaan         | : Pegawai Negeri Sipil Pemkot Malang  |
| 6. Alamat            | : Jalan Letjen Suparman 3A/4 , Malang   |
| 7. Tanggal Temuan    | : 22 Januari 2019   |
| 8. Tanggal Peristiwa | : 22 Januari 2019   |
| 9. Bukti-Bukti       | : - Screen Shoot unggahan di Facebook terlampir<br>- Data Endang Sri Sundari, S.Sos. dari BKD Kota Malang |

**III. Kajian****1. Dasar Hukum :**

- 1) Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum;
- 2) Undang-Undang Nomor 5 Tahun 2014 tentang ASN
- 3) Peraturan Bawaslu Nomor 6 Tahun 2018 tentang Pengawasan Netralitas ASN, TNI, dan Polri Republik Indonesia; dan
- 4) Peraturan Badan Pengawas Pemilihan Umum Nomor 7 tahun 2018 tentang Penanganan Temuan dan Laporan Pelanggaran Pemilihan Umum

**2. Fakta**

- 1) Bahwa pada hari minggu Tanggal 20 januari 2019 bertempat di Jalan Guntur no 20 , Pasar Oro Oro Dowo berlangsung Kegiatan blusukan Ibu Titiek Suharto ke Pasar Oro Oro Dowo. Dimulai pada pukul 08.00 sampai dengan pukul 09.30 WIB dan ditutup dengan kegiatan foto bersama.

- 2) Bahwa Berdasarkan dari Pengawasan Media Sosial ditemukan akun media Sosial Facebook atas nama Hadi Sulistijo telah mengunggah foto Titiek Suharto bersama dengan Endang Sri Sundari, S.Sos dengan bertuliskan "tugas mengawal Ibu Titik Soeharto di Pasar Oro Oro Dowo Malang selesai (Ibu Titik Soeharto bersama Ibu Endang Kepala Pasar Oro Oro Dowo)"
- 3) Bahwa Selanjutnya Bawaslu Kota Malang membentuk Tim Investigasi dengan tugas melakukan penggalian data dan informasi ke Kantor BKD (Badan Kepegawaian Daerah) Kota Malang.
- 4) Bahwa Tim Investigasi yang terbentuk terdiri dari Komisioner dan staf Bawaslu Kota Malang. (Surat Tugas Terlampir dengan nomor 28/K-JI.34/PM.00.04/I/2019) Berikut tim Investigasi Bawaslu Kota Malang adalah Rusmifahrizal Rustam, SH. (Kordiv Divisi Sengketa) dan Ria Amelia, SH ( Staf Hukum).
- 5) Bahwa Pada tanggal 22 Januari 2019 pada pukul 09.00 WIB Tim Investigasi Bawaslu Kota Malang melakukan investigasi ke Kantor BKD Kota Malang untuk mendapatkan informasi.
- 6) Bahwa Tim Investigasi bertemu dengan Pegawai Kantor BKD Kota Malang atas Nama Wahyu dan diperoleh informasi bahwa benar pihak Terlapor memang Seorang Pegawai ASN Kota Malang. Data diri terduga pelanggaran Netralitas ASN atas nama Endang Sri Sundari, S.Sos dengan NIP 196410172007012008 bertempat Tugas di Dinas Perdagangan ; Jabatan Pengelola Pasar UPT Pasar Oro Oro Dowo ; Alamat Rumah Jalan Letjen S Parman 3 A/4 RT 06 RW 18 Kelurahan Tulusrejo
- 7) Bahwa Isi dugaan pelanggaran Netralitas Aparatur Sipil Negara tersebut Dalam foto yang beredar di akun Media Sosial atas nama Hadi Sulistijo , foto Endang Sri Sundari, S.Sos yang sedang berfoto dengan Titik Soeharto terdapat unsur memihak salah satu paslon Calon Presiden 2019 yaitu dengan berpose simbol tangan Paslon tersebut.
- 8) Bahwa berdasarkan pemeriksaan (sidang klarifikasi) yang dilakukan Bawaslu Kota Malang terhadap Terlapor (An. Endang Sri Sundari, S.Sos) maka dapat ditarik dalam beberapa poin berikut (tertuang dalam Berita Acara Klarifikasi terlampir) :
  - a) Bahwa Terlapor membenarkan dirinya sebagai PNS Pemerintah Kota Malang sebagai pengelola Pasar Oro-oro Dowo Malang;

- b) Bahwa hubungan Terlapor dengan pemilik akun facebook An. Hadi Sulistijo tidak terdapat hubungan apapun ,baik hubungan keluarga maupun pertemanan;
- c) Bahwa Terlapor tidak terlibat aktif dalam kegiatan kampanye dengan metode tatap muka (blusukan) yang dilakukan Ibu Titiek Suharto sebagai Tim Kampanye Paslon Presiden dan Wakil Presiden tertentu. Dikarenakan menurut keterangan terlapor, dari pihak pengelola pasar Oro-oro Dowo tidak memberikan perlakuan khusus terhadap kegiatan kampanye di Pasar tersebut;
- d) Bahwa dalam pengakuan Terlapor terkait Pose Foto (foto terlampir) tidak ada unsur kesengajaan dan bukan berarti menunjukkan dukungan terhadap Paslon Peresiden dan Wakil Presiden tertentu. Dan dalam pengakuannya terbawa ajakan serta terbawa suasana atas pose foto yang diduga tidak netral tersebut;
- e) Bahwa Terlapor menyadari tindakan berpose foto bersama Ibu Titiek Suharto dengan Pose yang mencerminkan ketidak-netralan (ASN) merupakan kesalahan. Sehingga terlapor mengakui kesalahan tersebut kepada atasannya yakni Kepala Dinas Perdagangan Kota Malang; dan
- f) Bahwa Terlapor sudah diberikan sanksi berupa teguran tertulis oleh Kepala Dinas Perdagangan Kota Malang selaku atasannya (terlampir).

### 3. Analisis

- a) Tentang Temuan/Laporan :  
Bahwa hasil temuan yang didapat oleh Sdr, Alim Mustofa, S.Sos dan Sdr. Iwan Sunaryo, SH selaku Kordiv. Pengawasan dan Kordiv. Hukum Bawaslu Kota Malang pada tanggal 22 Januari 2019 yang kemudian dimasukkan dalam Form-A pengawasan.
- b. Tentang Penemu/Pelapor :  
Bahwa temuan berdasarkan hasil laporan pengawasan yang tertuang dalam formulir B2 (Temuan) oleh Bawaslu Kota Malang berdsarkan Perbawaslu 7 tahun 2018 tentang Penanganan Pelanggaran Pemilu.
- c. Tentang Terlapor :  
Bahwa Terlapor dugaan pelanggaran Netralitas ASN ialah atas nama Endang Sri Sundari, S.Sos. PNS pada Dinas Perdagangan Kota Malang yang menjabat sebagai pengelola Pasar Oror-oro Dowo Malang, NIP.

196410172007012008. Dan merupakan Subjek Pengawasan Bawaslu Kota Malang dalam Perbawaslu 6 tahun 2018 tentang Pengawasan Netralitas ASN, TNI, dan Polri.

d. Tentang Waktu Temuan/Laporan :

1. Bahwa peristiwa dugaan ketidak-netralan ASN (PNS) Pemerintah Kota Malang melalui pose foto ditemukan pada tanggal 22 Januari 2019.
2. Bahwa peristiwa yang ditemukan oleh Anggota Bawaslu Kota Malang pada tanggal 22 Januari 2019. Sesuai dengan Perbawaslu 7 Tahun 2017 pasal 9 Ayat 3 huruf c Menyebutkan "*Syarat formal sebagaimana dimaksud adalah waktu pelaporan tidak melebihi ketentuan paling lama 7 (tujuh) hari sejak diketahuinya dan/atau ditemukannya dugaan pelanggaran Pemilu.*" Maka dengan demikian temuan dimaksud masih bisa ditindak lanjuti.

e. Tentang dugaan pelanggaran :

1. Bahwa sesuai fakta Terlapor merupakan Pegawai Negeri Sipil di lingkungan Pemerintah Kota Malang tergolong dalam ASN (Aparatur Sipil Negara). Sebagaimana didefinisikan menurut Peraturan Perundang-undangan, sebagai berikut : Undang – Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara pasal 1 ayat (1) yang berbunyi Aparatur Sipil Negara yang selanjutnya disingkat ASN adalah profesi bagi pegawai negeri sipil dan pegawai pemerintah dengan perjanjian kerja yang bekerja pada instansi pemerintah.
2. Bahwa yang termuat dalam Subab fakta di atas, Terlapor An. Endang Sri Sundari, S.Sos melakukan tindakan yang diduga mencerminkan dukungan terhadap salah satu Peserta Pemilu 2019 yakni Pas Presiden dan Wakil Presiden Tertentu bersama tokoh Partai dan Tim Kampanye Paslon Presiden dan Wakil Presiden tertentu yakni Ibu Titik Soeharto. Tindakan tersebut melalui pose foto bersama dengan Tokoh Parpol dan Timpaslon Presiden dan Wakil Preseiden tersebut (bukti foto terlampir), maka tindakan tersebut melanggar dan dilarang dalam ketentuan perundang-undangan :

- a) Pasal 283 Undang-undang 7 tahun 2018 tentang Pemilihan Umum yang berbunyi (1) Pejabat negara, pejabat struktural dan pejabat fungsional dalam jabatan negeri serta aparatur sipil negara lainnya dilarang mengadakan kegiatan yang mengarah kepada keberpihakan terhadap Peserta pemilu

sebagaimana dimaksud pada ayat (1) meliputi pertemuan, ajakan, imbauan, seruan atau pemberian barang kepada aparatur sipil negara dalam lingkungan unit kerjanya, anggota keluarga, dan masyarakat;

b) Pasal 2 huruf (f) Undang - Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara yang berbunyi penyelenggaraan kebijakan dan manajemen ASN berdasarkan pada asas netralitas; Asas Netralitas ini berarti bahwa setiap pegawai ASN tidak berpihak dari segala bentuk pengaruh manapun dan tidak memihak kepada kepentingan siapapun;

c) Pasal 4 Peraturan Badan Pengawas Pemilu yang berbunyi (1) huruf (b) pengawas pemilu melakukan pengawasan Netralitas Pegawai ASN, Anggota TNI, dan Anggota Polri terhadap Kegiatan yang, mengarah kepada keberpihakan terhadap peserta pemilu sebelum, selama, dan sesudah masa kampanye. (2) Larangan sebagaimana dimaksud pada ayat (1) meliputi pertemuan, ajakan, imbauan, seruan atau pemberian barang kepada aparatur sipil negara dalam lingkungan unit kerjanya, anggota keluarga, dan masyarakat;

3. Bahwa berdasarkan hasil pemeriksaan sidang klarifikasi yang dilakukan oleh Bawaslu Kota Malang dan di bawah sumpah sesuai prosedural yang berlaku dalam penanganan dugaan pelanggaran Badan Pengawas Pemilu. Sehingga menghasilkan keterangan yang didapat dari terlapor sesuai pengungkapan pada Subab fakta di atas pada **angka 8 huruf a,b,c,d,dan f**. Maka analisis kasus ini terhadap tindakan Terlapor **memenuhi unsur pelanggaran** yang disebutkan dalam peraturan perundang-undangan yang mengatur netralitas Aparatur Sipil Negara, yakni larangan ASN untuk tidak melakukan kegiatan yang menunjukkan keberpihakan kepada peserta pemilu. Tindakan tersebut baik berupa pertemuan, ajakan, imbauan, seruan atau pemberian barang. Dalam hal ini dapat dikategorikan dalam kategori pertemuan.

#### IV. Kesimpulan :

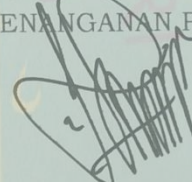
Bahwa dari hasil fakta-fakta dan analisis pada bagian di atas, Terlapor Endang Sri Sundari, S.Sos dinyatakan melanggar **Netralitas ASN** berdasarkan fakta yang didapat. Adapun pasal-pasal yang dilanggar pada Undang-undang

Tahun 2017 Tentang Pemilu ; Undang-undang 5 Tahun 2014 Tentang ASN; dan Perbawaslu 6 Tahun 2018 Tentang Netralitas ASN. Dengan melakukan tindakan menghadiri pertemuan yang diimbui pose foto yang tidak sepatasnya dilakukan oleh seorang ASN.

**V. Rekomendasi :**

Meneruskan Penanganan Pelanggaran Netralitas ASN ini kepada Komisi Aparatur Sipil Negara (KASN) agar menindaklanjuti dan memberikan hukuman/Sanksi sebgaimana mestinya dalam menegakkan demokrasi yang bermartabat dan berdasarkan asas keadilan.

Malang, 11 Februari 2019  
BAWASLU KOTA MALANG  
DIVISI PENANGANAN PELANGGARAN



**HAMDAN AKBAR SAFARA, S.AP, M.AP**

## Appendix 4 to the findings of the Bambang Setiono violation

FORMULIR MODEL B.2

**FORMULIR TEMUAN**

Nomor : 04/TM/PP/KOTA/16.06/XI/2018  
 Nasional : INDONESIA  
 Provinsi : JAWA TIMUR  
 Kabupaten/Kota : KOTA MALANG

1. Data Pengawas Yang Menemukan

a. Nama : ALIM MUSTOFA, S.Sos., M.AP  
 b. Jabatan : ANGGOTA BAWASLU KOTA MALANG  
 c. Alamat : JL. TELUK CENDRAWASIH NO.1 MALANG

2. Peristiwa yang ditemukan

a. Peristiwa : KAMPANYE DALAM POSTINGAN AKUN FACEBOOK YANG DIDUGA ASN YANG BEKERJA DI PEMKOT MALANG  
 b. Tempat Kejadian : KOTA MALANG  
 c. Waktu Kejadian : 21.40 WIB  
 d. Hari dan Tanggal ditemukan : 7 NOVEMBER 2018  
 e. Terlapor : BAMBANG SETIONO, SE., MH.  
 f. Alamat Terlapor\*\* : JL. KEDAWUNG 8B NO.3 MALANG  
 g. No.Telp/HP Terlapor : -

3. Saksi –saksi

1. Nama : RUSMIFahrizal RUSTAM, SH  
 Alamat \*\*\* : JL. TELUK CENDRAWASIH NO.1 MALANG  
 No.Telp/Hp : 08155511525

2. Nama : HAMDAN AKABAR SAFARA, S.AP., M.AP.  
 Alamat \*\*\* : JL. TELUK CENDRAWASIH NO.1 MALANG  
 No.Telp/Hp : 085233112803

3. Nama : IWAN SUNARYO, SH  
 Alamat \*\*\* : JL. TELUK CENDRAWASIH NO.1 MALANG  
 No.Telp/Hp : 081233294141

4. Bukti-Bukti:

a. AKUN FACEBOOK ATAS NAMA BAMBANG SETIONO  
 b. SCREEN SHOOT POSTINGAN  
 c. SURAT KETERANGAN DISPERKIM NOMOR : 800/3710/35.74.304/2018

5. Uraian singkat kejadian:

- Tanggal 4 November 2018 pukul 21.40 Bawaslu Kota Malang mendapat informasi melalui Whatsapp dari warga masyarakat tentang dugaan Pelanggaran Netralitas Aparatur Sipil Negara (ASN) atas nama Bambang Setiono yang memposting di akun facebook ,dalam postingan tersebut cenderung mendukung salah satu capres.
- Isi dugaan pelanggaran Netralitas Apratur Sipil Negara tersebut di posting di Face Book atas nama Bambang Setiono, postingan tersebut menshare ulang postingan dari akun facebook Ahmad Alkaf berisi *DAFTAR NAMA CALON TIM/JURU KAMPANYE NASIONAL & DAERAH PRABOWO-SANDIAGO ,001 SBY, 002.SOHIBUL IMAM ,003. ZULKIFLI HASAN, 004. AHMAD MUZANI , 005. USTADZ ABDUL SOMAD...(DAN DIBAWAHNYA DISERTAI GAMBAR CAPRES PRABOWO DAN SANDIAGA UNO, DIBAWAH GAMBAR ADA TULISAN PILIH PAS 'PRABOWO SANDI')* foto terlampir.
- Berikutnya juga terdapat postingan yang berisi ketidak netralan ASN dalam postingan facebook pada tanggal 30 juli pukul 19.57. *(WALIKOTA SDH GANTI SEKARANG SAATNYA MEMBANGUN #2019 GANTI PRESIDEN)*
- Berikutnya juga terdapat postingan yang berisi ketidak netralan ASN dalam postingan facebook pada tanggal 30 juli pukul 18.43..*(MUMPUNG BELUM KENA CEKAL MO TERIAK #GANTI PRESIDEN-ALLAHUAKBAR)* foto terlampir.
- Berikutnya juga terdapat postingan Bambang Setiono pada tanggal 24 okt 21.36 2018 yang menshare postingan dari akun facebook 2019 ganti presiden yang berisi ketidak netralan ASN dalam postingan facebook tersebut *(SEMAKIN BANYAK PROJO BERTAUBAT DAN BALIK MENDUKUNG PARABOWO SANDI)* yang disertai Video.

Malang, 9 November 2018

**BAWASLU KOTA MALANG**  
**DIVISI PENINDAKAN PELANGGARAN**



**HAMDAN AKABAR SAFARA, S.AP.,M.AP**



KOMISI APARATUR SIPIL NEGARA

Indonesian Civil Service Commission

Nomor : B- 60 /KASN/1/2019 Jakarta, 4 Januari 2019  
 Sifat : Segera  
 Lampiran : -  
 Perihal : Rekomendasi atas Pelanggaran  
 Netralitas ASN a.n. Sdr. Bambang  
 Setiono, SE.,MH

Yth.,  
**Wakil Walikota Malang**  
 (sebagai Pejabat Pembina Kepegawaian)  
 di  
 Malang, Provinsi Jawa Timur

Dengan hormat,

Sesuai dengan Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara, Pasal 30 KASN berfungsi mengawasi pelaksanaan norma dasar, kode etik dan kode perilaku ASN, serta penerapan sistem merit dalam kebijakan dan manajemen ASN pada instansi pemerintah. Selanjutnya Pasal 31 ayat (1) huruf a, KASN bertugas menjaga netralitas pegawai ASN. Pasal 32 ayat (1) huruf d dan huruf e, KASN berwenang untuk memeriksa dokumen, meminta klarifikasi dan/atau dokumen yang diperlukan dari instansi pemerintah untuk pemeriksaan laporan terkait pelanggaran norma dasar, serta kode etik dan kode perilaku pegawai ASN. Pasal 32 ayat (2), dalam melakukan pengawasan sebagaimana dimaksud pada ayat (1) huruf b, KASN berwenang untuk memutuskan adanya pelanggaran kode etik dan kode perilaku pegawai ASN.

Bersama ini diberitahukan bahwa Komisi Aparatur Sipil Negara (KASN) telah menerima laporan dari Badan Pengawas Pemilihan Umum (BAWASLU) Kota Malang Nomor: 503/BAWASLU-PROV.JI-34/PM.05.06/XI/2018/27/11/2018, Hal Penerusan Pelanggaran di Luar Perundang-Undangan Pemilu oleh Aparatur Sipil Negara yang diduga dilakukan oleh ASN atas nama Sdr. Bambang Setiono, SE.,MH terkait unggahan yang bersangkutan di media sosial yang isinya berupa ajakan/seruan untuk mendukung salah satu calon Presiden dan Wakil Presiden Republik Indonesia. Terkait dengan laporan dimaksud, dengan ini kami sampaikan hal-hal sebagai berikut:

1. Berdasarkan hasil kajian laporan Bawaslu Kota Malang Nomor: 04/TM/PP/KOTA/16.06/XI/2018 tanggal 9 November 2018, diperoleh informasi sebagai berikut:

- a. Bahwa terdapat ASN yang diduga melanggar asas Netralitas dengan cara membuat unggahan di media sosial *facebook* yang isinya berupa

ajakan/seruan untuk mendukung calon Presiden dan Wakil Presiden Republik Indonesia (Nomor Urut 2).

b. Bahwa terdapat bukti berupa *screen shoot* profil *facebook* yang bersangkutan yang isinya berupa ajakan untuk mendukung calon Presiden dan Wakil Presiden (Nomor Urut 2).

c. Sesuai fakta, keterangan dan hasil klarifikasi yang diperoleh Bawaslu Kota Malang, diperoleh informasi sebagai berikut:

- 1) Bahwa terlapor atas nama Sdr. Bambang Setiono, SE.,MH merupakan ASN yang masih aktif dan menjabat sebagai Kepala Seksi Pemeliharaan di Dinas Perumahan dan Permukiman Kota Malang.
- 2) Bahwa terlapor mengaku sebagai pemilik akun *facebook* tersebut namun yang bersangkutan sudah menghapus akun tersebut.
- 3) Bahwa terlapor mengaku telah mengunggah status di media sosial *facebook* yang bertuliskan "WALIKOTA SDH GANTI SEKARANG SAATNYA MEMBANGUN #2019GANTIPRESIDEN".

2. Pokok-pokok Peraturan terkait Netralitas ASN dan Nilai Dasar, Kode Etik dan Kode Perilaku ASN terkait Netralitas ASN pada kasus yang sedang ditangani, sebagai berikut:

a. Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara,

- 1) Pasal 2 huruf f, Penyelenggaraan kebijakan dan manajemen ASN berdasarkan pada asas netralitas yang berarti bahwa setiap pegawai ASN tidak berpihak dari segala bentuk pengaruh manapun dan tidak memihak kepada kepentingan siapapun.
- 2) Pasal 3 huruf b, ASN sebagai profesi berlandaskan prinsip kode etik dan kode perilaku.
- 3) Pasal 4 huruf d, menyebutkan bahwa Nilai Dasar meliputi menjalankan tugas secara profesional dan tidak berpihak.
- 4) Pasal 5 ayat (2), menyebutkan bahwa Kode Etik dan Kode Perilaku berisi pengaturan perilaku agar Pegawai ASN :

Huruf d, melaksanakan tugasnya sesuai ketentuan Peraturan Perundang-Undangan.

Huruf e, melaksanakan tugasnya sesuai dengan perintah atasan atau Pejabat yang Berwenang sejauh tidak bertentangan dengan ketentuan Peraturan Perundang-Undangan dan etika pemerintahan.

Huruf h, menjaga agar tidak terjadi konflik kepentingan dalam melaksanakan tugasnya.

Huruf l, melaksanakan ketentuan Peraturan Perundang-Undangan mengenai disiplin Pegawai ASN.

- 5) Pasal 9 ayat (2), menyebutkan bahwa Pegawai ASN harus bebas dari pengaruh dan intervensi semua golongan dan partai politik.
- 6) Pasal 39 ayat (1), Setiap calon PNS pada saat diangkat menjadi PNS wajib mengucapkan sumpah/janji.

7) Pasal 40,

Sumpah/janji sebagaimana dimaksud dalam Pasal 39 berbunyi sebagai berikut: "Demi Allah, saya bersumpah: bahwa saya, untuk diangkat menjadi pegawai negeri sipil, akan setia dan taat sepenuhnya kepada Pancasila, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, negara, dan pemerintah; bahwa saya, akan mentaati segala Peraturan Perundang-Undangan yang berlaku dan melaksanakan tugas kedinasan yang dipercayakan kepada saya dengan penuh pengabdian, kesadaran, dan tanggung jawab; bahwa saya, akan senantiasa menjunjung tinggi kehormatan negara, pemerintah, dan martabat pegawai negeri sipil, serta akan senantiasa mengutamakan kepentingan negara daripada kepentingan saya sendiri, seseorang, atau golongan; bahwa saya, akan memegang rahasia sesuatu yang menurut sifatnya atau menurut perintah harus saya rahasiakan; bahwa saya, akan bekerja dengan jujur, tertib, cermat, dan bersemangat untuk kepentingan negara".

8) Pasal 86 Ayat (1), (2), (3)

Ayat (1) Untuk menjamin terpeliharanya tata tertib dalam kelancaran pelaksanaan tugas, PNS wajib mematuhi disiplin PNS.

Ayat (2) Instansi Pemerintah wajib melaksanakan penegakan disiplin terhadap PNS serta melaksanakan berbagai upaya peningkatan disiplin.

Ayat (3) PNS yang melakukan pelanggaran disiplin dijatuhi hukuman disiplin.

b. Peraturan Pemerintah Nomor 53 Tahun 2010 tentang Disiplin PNS:

- 1) Pasal 1 angka 3, Pelanggaran disiplin adalah setiap ucapan, tulisan, atau perbuatan PNS yang tidak mentaati kewajiban dan/atau melanggar ketentuan disiplin PNS, baik yang dilakukan di dalam maupun di luar jam kerja

2) Pasal 3, menyebutkan bahwa Setiap PNS wajib:

- a) Angka 1, mengucapkan sumpah/janji PNS;
- b) Angka 2, mengucapkan sumpah/janji jabatan;
- c) Angka 4, menaati segala ketentuan Peraturan Perundang-Undangan;

- d) Angka 5, melaksanakan tugas kedinasan yang dipercayakan kepada PNS dengan penuh pengabdian, kesadaran, dan tanggung jawab;
- e) Angka 7, mengutamakan kepentingan negara daripada kepentingan sendiri, seseorang, dan/atau golongan;

### 3) Pasal 4

- a) Angka 1, PNS dilarang menyalahgunakan wewenang.
  - b) Angka 2, PNS dilarang menjadi perantara untuk mendapatkan keuntungan pribadi dan/atau orang lain dengan menggunakan kewenangan orang lain.
  - c) Angka 6, melakukan kegiatan bersama dengan atasan, teman sejawat, bawahan, atau orang lain di dalam maupun di luar lingkungan kerjanya dengan tujuan untuk keuntungan pribadi, golongan, atau pihak lain, yang secara langsung atau tidak langsung merugikan Negara.
  - d) Angka 11 menghalangi berjalannya tugas kedinasan.
- c. Peraturan Pemerintah Nomor 42 Tahun 2004 tentang Pembinaan Jiwa Korps dan Kode Etik Kode Perilaku PNS
- 1) Pasal 1 angka 2, Kode Etik Pegawai Negeri Sipil adalah pedoman sikap, tingkah laku, dan perbuatan Pegawai Negeri Sipil di dalam melaksanakan tugasnya dan pergaulan hidup sehari-hari.
  - 2) Angka 4, Pelanggaran adalah segala bentuk ucapan, tulisan atau perbuatan Pegawai Negeri Sipil yang bertentangan dengan butir-butir jiwa korps dan kode etik.
  - 3) Pasal 6 huruf h, Nilai-nilai Dasar yang harus dijunjung tinggi oleh Pegawai Negeri Sipil meliputi : profesionalisme, netralitas, dan bermoral tinggi.
  - 4) Pasal 9 huruf a, Etika dalam berorganisasi meliputi melaksanakan tugas dan wewenang sesuai ketentuan yang berlaku.
  - 5) Pasal 11 huruf c, Etika terhadap diri sendiri meliputi menghindari konflik kepentingan pribadi, kelompok, maupun golongan.

### 3. Analisis dan Kesimpulan

Setelah mempelajari dan melakukan pemeriksaan terhadap dokumen hasil kajian laporan yang disampaikan oleh Panwaslu dimaksud, disampaikan beberapa hal sebagai berikut:

- a. Sesuai dengan ketentuan Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara dalam Pasal 2 huruf d disebutkan bahwa dalam penyelenggaraan kebijakan dan manajemen ASN berdasarkan asas netralitas yang dimaknai bahwa setiap pegawai ASN tidak berpihak dari segala bentuk

pengaruh manapun dan tidak memihak kepada kepentingan siapapun. ASN merupakan profesi yang berlandaskan antara lain pada prinsip nilai dasar dan kode etik, kode perilaku sebagaimana tertuang dalam Pasal 4 dan 5 Undang-Undang Nomor 5 tahun 2014 dan Peraturan pelaksanaannya yang masih berlaku sampai saat ini yaitu Peraturan Pemerintah Nomor 42 Tahun 2004 dan Peraturan Pemerintah Nomor 53 Tahun 2010.

- b. Sesuai penjelasan Surat Komisi Aparatur Sipil Negara Nomor B-2900/KASN/11/2017 tanggal 10 November 2017 dan Surat Menteri Pendayagunaan Aparatur Sipil Negara dan Reformasi Birokrasi Nomor B/71/M.SM.00.00/2017 tanggal 27 Desember 2017, bahwa ASN dilarang melakukan kegiatan yang mengarah pada keberpihakan atau berpolitik praktis/berafiliasi dengan partai politik. Karena perbuatan dimaksud merupakan pelanggaran kode etik dan kode perilaku dan dikenakan sanksi moral yang pelaksanaannya mengacu pada ketentuan Peraturan Pemerintah Nomor 42 Tahun 2004 dan atas rekomendasi Majelis Kode Etik dijatuhi sanksi administrasi sesuai Ketentuan Peraturan Perundang-Undangan.
- c. Terkait dengan pelanggaran yang dilakukan oleh Sdr. Bambang Setiono, SE.,MH terkait unggahan yang bersangkutan di media sosial yang isinya berupa ajakan/seruan untuk mendukung salah satu calon Presiden dan Wakil Presiden Republik Indonesia. Tindakan dimaksud merupakan tindakan berpolitik praktis dan PNS dilarang untuk melakukannya sebagaimana disebutkan dalam Surat Edaran Komisi Aparatur Sipil Negara dan Menteri Pendayagunaan Aparatur Negara dan Reformasi Birokrasi. Sdr. Bambang Setiono, SE.,MH, selaku ASN yang masih aktif seharusnya sudah memahami bahwa tindakannya berpotensi melanggar ketentuan Peraturan perundangan dan seharusnya menjadi contoh bagi ASN lainnya untuk tidak melakukan perbuatan berpolitik praktis. Pegawai yang bersangkutan sudah mengetahui bahwa tindakannya dapat dipersepsikan keberpihakannya pada salah satu bakal Paslon.

Mengacu pada ketentuan Pasal 32 ayat (2) Undang-Undang Nomor 5 Tahun 2014 yang menyatakan bahwa dalam melakukan tugas pengawasan nilai dasar, kode etik dan kode perilaku pegawai ASN, KASN berwenang untuk memutuskan adanya pelanggaran kode etik dan kode perilaku Pegawai ASN, maka kami merekomendasikan kepada Saudara Wakil Walikota Malang untuk:

1. Memberikan **sanksi hukuman disiplin sedang** kepada ASN atas nama **Sdr. Bambang Setiono, SE.,MH** yang pelaksanaannya mengacu pada ketentuan Peraturan Pemerintah Nomor 53 Tahun 2010 tentang Disiplin PNS.
2. Melakukan pengawasan dan menghimbau segenap ASN di lingkungan kerja Saudara untuk tetap menjaga netralitas dalam berbagai kegiatan/aktivitas politik atau mengarah pada keberpihakan atau konflik (benturan) kepentingan dalam

melaksanakan tugas dalam Pemilihan Legislatif Tahun 2019, dan Pemilihan Presiden dan Wakil Presiden Tahun 2019.

3. Memberikan tindakan tegas terhadap ASN yang melakukan pelanggaran kode etik dan kode perilaku serta netralitas ASN yang proses pelaksanaannya mengacu kepada ketentuan Peraturan Perundang-Undangan.

Demikian rekomendasi ini disampaikan dan kami mengharapkan agar dapat segera dilaksanakan dan dilaporkan pelaksanaan tindaklanjutnya kepada KASN dalam waktu paling lambat 14 (empat belas) hari sejak diterimanya rekomendasi ini. Berdasarkan Pasal 33 Ayat (1) Undang-Undang Nomor 5 Tahun 2014 bahwa Berdasarkan hasil pengawasan yang tidak ditindaklanjuti sebagaimana dimaksud dalam Pasal 32 ayat (3), KASN merekomendasikan kepada Presiden untuk menjatuhkan sanksi terhadap Pejabat Pembina Kepegawaian dan Pejabat yang Berwenang yang melanggar prinsip Sistem Merit dan ketentuan Peraturan Perundang-Undangan. Atas perhatian Saudara Wakil Walikota Malang, kami mengucapkan terima kasih.



Ketua,  
Serafin Effendi

Tembusan Yth.:

1. Menteri Dalam Negeri;
2. Menteri Pendayagunaan Aparatur Negara dan Reformasi Birokrasi;
3. Kepala Badan Kepegawaian Negara;
4. Ketua Badan Pengawas Pemilihan Umum Republik Indonesia;
5. Ketua Badan Pengawas Pemilihan Umum Provinsi Jawa Timur; dan
6. Ketua Badan Pengawas Pemilihan Umum Kota Malang.



WALIKOTA MALANG  
PROVINSI JAWA TIMUR

KEPUTUSAN WALIKOTA MALANG  
NOMOR : X. 887.3/03/35.73.403/2019

TENTANG

PENUNDAAN KENAIKAN PANGKAT SELAMA 1 (SATU) TAHUN  
ATAS NAMA BAMBANG SETIONO, SE., MH

WALIKOTA MALANG,

- Menimbang : a. bahwa berdasarkan surat Ketua Komisi Aparatur Sipil Negara Nomor : B.60/KASN/1/2019 tanggal 4 Januari 2019 perihal Rekomendasi atas Pelanggaran Netralitas ASN a.n. Sdr. Bambang Setiono, SE., MH, hasil kajian laporan Bawaslu Kota Malang Nomor : 04/TM/PP/KOTA/16.06/XI/2018 Tanggal 9 Nopember 2018 yang bersangkutan telah melakukan pelanggaran terkait unggahan di media sosial yang isinya berupa ajakan / seruan untuk mendukung salah satu Presiden dan Wakil Presiden Republik Indonesia sehingga Komisi Aparatur Sipil Negara merekomendasikan kepada Pejabat Pembina Kepegawaian Kota Malang memberikan sanksi hukuman disiplin sedang untuk yang bersangkutan ;
- b. bahwa berdasarkan Surat Keputusan Kepala Dinas Perumahan dan Kawasan Permukiman Kota Malang Nomor : 800/3692/35.73.304/2018 Tanggal 6 Nopember 2018 tentang Penundaan Kenaikan Gaji Berkala Selama 1 (Satu) Tahun atas nama Bambang Setiono, SE., MM, yang bersangkutan dijatuhi hukuman disiplin karena melanggar ketentuan Pasal 3 angka 3 Peraturan Pemerintah Nomor 53 Tahun 2010 tentang Disiplin Pegawai Negeri Sipil ;

- c. bahwa perbuatan tersebut sebagaimana huruf a melanggar Pasal 4 angka 13 huruf b Peraturan Pemerintah Nomor 53 Tahun 2010 Tentang Disiplin Pegawai Negeri Sipil;
- d. bahwa berdasarkan pertimbangan sebagaimana pada huruf a, huruf b dan huruf c perlu menetapkan Keputusan Walikota tentang Penundaan Kenaikan Pangkat Selama 1 (Satu) Tahun Atas Nama BAMBANG SETIONO, SE., MH;

Mengingat : 1. Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara;

2. Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah sebagaimana telah diubah kedua kalinya dengan Undang - undang Nomor 9 tahun 2015;

3. Peraturan Pemerintah Nomor 53 Tahun 2010 tentang Disiplin Pegawai Negeri Sipil;

4. Peraturan Pemerintah Republik Indonesia Nomor 11 Tahun 2017 tentang Manajemen Pegawai Negeri Sipil ;

5. Peraturan Kepala Badan Kepegawaian Negara Nomor 21 Tahun 2010 tentang ketentuan Pelaksanaan Peraturan Pemerintah Nomor 53 Tahun 2010 tentang Disiplin Pegawai Negeri Sipil

6. Peraturan Walikota Nomor 49 Tahun 2010 tentang Pedoman Teknis Pelaksanaan Penegakan Disiplin Pegawai Negeri Sipil di Lingkungan Pemerintah Kota Malang;

MEMUTUSKAN :

Menetapkan : KEPUTUSAN WALIKOTA TENTANG PENUNDAAN KENAIKAN PANGKAT SELAMA 1 (SATU) TAHUN ATAS NAMA BAMBANG SETIONO, SE., MH

KESATU : Menjatuhkan hukuman disiplin sedang berupa Penundaan  
Kenaikan Pangkat Selama 1 (Satu) Tahun kepada:

Nama : BAMBANG SETIONO, SE., MH

NIP : 19750507 199601 1 003

Pangkat /Gol : Penata Tingkat I (III/d)

Jabatan : Kepala Seksi Pembangunan dan

Perangkat Pemeliharaan

Daerah : Dinas Perumahan dan Kawasan  
Permukiman Kota Malang

Karena yang bersangkutan telah melakukan perbuatan  
yang melanggar ketentuan Pasal 4 angka 13 huruf b  
Peraturan Pemerintah Nomor 53 Tahun 2010.

KEDUA : Keputusan ini mulai berlaku pada tanggal ditetapkan.

KETIGA : Keputusan ini disampaikan kepada yang bersangkutan  
untuk dilaksanakan sebagaimana mestinya

Ditetapkan di MALANG

Pada tanggal 25 Januari 2019

WALIKOTA MALANG,





**PEMERINTAH KOTA MALANG**  
**BADAN KEPEGAWAIAN DAERAH**  
 Jl. Tugu No. 1 Telp. 328829 – 353837  
**MALANG**

KODE POS 65119

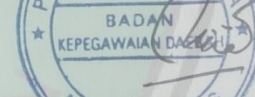
Nomor : 800/ 698/35.73.403/2019  
 Sifat : Penting  
 Lampiran : 1 (satu) berkas  
 Hal : Penyampaian Data Penerapan Sanksi ASN

Malang, 06 MAR 2019  
 Kepada  
 Yth. Ketua Badan Pengawas Pemilihan Umum (BAWASLU) Kota Malang  
 di  
 MALANG

Menindaklanjuti Surat Badan Pengawas Pemilihan Umum (BAWASLU) Nomor 35/K.JI-34/HM.02.00/II/2019 tanggal 25 Pebruari 2019 Perihal Permintaan Data Penerapan Sanksi dari Komisi ASN, maka bersama ini disampaikan bahwa Sdr. Bambang Setiono SE., MH telah dijatuhi Hukuman disiplin berupa Penundaan Kenaikan Pangkat Selama 1 (Satu) Tahun sebagaimana terlampir.

Demikian untuk menjadikan periksa.

PEMERINTAH KOTA MALANG  
 KEPALA BADAN KEPEGAWAIAN DAERAH



Dra. ANITA SUKMAWATI  
 Pembina Utama Muda  
 Nip. 19601217 198603 2 010

TEMBUSAN :  
 Yth. Sdr. Inspektur Kota Malang.

## Appendix 5 - Photos

**Interview With Election Supervisory Institution****(Friday, 3 of May 2019)****Interview in General Election Commissions Malang City with Mr. Fajar****(Friday, 12 of April 2019)**

**Interview with Lecture Constitutional Law Mr. Irham**

**(Thursday, 9<sup>th</sup> of May 2019)**



**Interview with Mrs. Umi Hanik in the Personnel and Legal Section UIN  
Malang**

**(Tuesday, 14<sup>th</sup> of May 2019)**



**Interview with Mrs. Roos A Ratna  
at the Regional Civil Service Agency of Malang City  
(Wednesday, 15<sup>th</sup> of May 2019)**



### PROOF OF THESIS CONSULTATION

Name Student : Ajeng Aodina  
 Number : 15230074  
 Department : Constitutional Law Department  
 Supervisor : Iffaty Nasyi'ah, M.H  
 Thesis Title : THE EFFECTIVENESS OF PANRB MINISTER'S NUMBER B/71/M.SM.00.00/2017 EPISTLE WITH REGARD TO NEUTRALY FOR STATE CIVIL APPARATUS IN GENERAL ELECTION (Study in Malang)

NO	DAY/DATE	Subject Of Consultation	Signature
1	Friday, 8 of February 2019	Proposal	
2	Friday, 15 of February 2019	Proposal	
3	Monday, 14 of March 2019	Review Proposal	
4	Monday, 25 of March 2019	Chapter 1 and 2	
5	Thursday, 2 of April 2019	Review Chapter 1 and 2	
6	Friday, 12 of April 2019	Chapter 3 and 4	
7	Monday, 22 of April 2019	Review Chapter 3 and 4	
8	Friday, 3 of May 2019	Chapter 5 and Abstract	
9	Friday, 17 of May 2019	Review Chapter 5 and Abstract	
10	Friday, 20 of May 2019	Review All Chapter	

Malang, 21 Mei 2019

Act Knowledge by,

o.b Dean

Head of Constitutional Law

Department



Dr. M. Anul Hakim, S.Ag., M.H

NIP 196509192000031001

## CURICULUM VITAE

**Name** : Ajeng Aodina  
**Birth Date/Place** : Dili, 18<sup>th</sup> of March 1996  
**Religion** : Islam  
**Address** : Jl Jatisiwur RT: 25 RW:07, Demangan,  
 kecamatan Taman, kota Madiun  
**Cell Phone** : 081275493335  
**Gmail** : ajengaodina@gmail.com  
**Nama wali**  
     **Father** : Drs Adi Winarto, M.Si  
     **Mother** : Indrawati Fadhilah

### Formal Education

School	Place	Year	Ket
SDN 01 Demangan	Demangan, Madiun	2008	Pass
PMD Gontor Putri 3	Widodaren, Ngawi	2009-2014	Pass
UIN Maulana Malik Ibrahim Malang	Jl. Gajayana No.50 Malang	2019	Pass