

Questioning The Essence Of Bureaucratic Neutrality

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Submission date: 11-Jan-2020 01:13PM (UTC+0700)

Submission ID: 1240870562

File name: tedi_sudrajat-ICAS_2017.pdf (2.45M)

Word count: 3010

Character count: 16968

Questioning The Essence Of Bureaucratic Neutrality

Dialectical Relationship Between Freedom of Speech and The Impact of Digital Democracy in Indonesia

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Abstract As a constitutional state, Indonesian government has authority to make regulation regarding the rampant issue of freedom of expression from Civil Servants, especially in social media. The limitation in the form of restriction for Civil Servants in expressing their opinion which is contradicted with government policy is an implication of the implementation of public service relation concept as the legal basis in behaving and acting for Civil Servants in Indonesia. The purpose of this paper is to create neutral condition for civil servants and to strengthen institutional function of government to stay solid and professional in providing public services. Actually, neutral condition will be achieved if Civil Servants are outside the system and they do not give the space to interest intervention. Also, they do not only criticize, but also providing the solutions.

Keywords: civil servants; neutrality; freedom of speech; digital democracy

I. INTRODUCTION

It cannot be denied that in the current globalization era of communication, the role of social media is really needed by society to interact with others, include in politics. This phenomenon creates a new model of democracy called digital democracy. Unconsciously, the role of media has created an effect to society in expressing their opinion and maintaining their political choice and behavior. In this context, social media have significant impact in influencing political participation [1]. This condition makes social media used as a political media. Political media is a part of political system which created an easy way for politicians to stay in charge of political issue through communication that can reach its target community. From this perspective, the network society is constituted from autonomous individuals who connect with one another in an ever-opening space within politics. Consequently, nontraditional politicians have affected new forms of consciousness through blogs, twitter, facebook activities and online petitions [2].

Danielle N. Lussier and M. Steven Fish illustrate that if people believe that they can make a difference, they are more likely to take part in political actions to defend their rights, such as participating in protests or helping to build opposition parties. Statistical analysis of the data for Indonesia in the East Asian Barometer backs up this contention. It shows a positive correlation between respondents' sense of political efficacy and their likelihood of participating in campaign work, engaging in acts of contentious politics, and contacting public officials [3].

In Indonesia, political process is a part of democratic process (like the general election). Everyone can be free and actively involved in influencing each other, sharing information and tending to place themselves to one choice. The problem arises when the media users (which is Bureaucracy/civil servant) are potential to reduce the essence of neutrality through various forms of political statement in social media.

The urgency of this paper is to appoint the phenomenon of digital democracy into a format compatible with the legal policy regarding with the existence of bureaucratic neutrality in Indonesia. Until now, the government still has not made a policy yet, whether to allow, restrict or prohibit such activities. On that basis, the government needs to determine a rational attitude to stem the problems that will occur and determine the direction of the policy that matches the needs and the dynamics of democracy. For that reason, this paper want to find the essence of Indonesian bureaucratic neutrality related with the freedom of speech concept and the impact of digital democracy.

II. RESEARCH METHOD

Pressure point in this paper is an explorative which lead to the ideal concept in political neutrality of bureaucracy/civil servants. For that reason, this paper uses legal approach. There are - at least - 2 (two) logical consequences for the use of this approach. First, this paper will always be related to the content of legislation concerning the neutrality of bureaucracy. The content material contains various functions that are understood as the demands of activity that should be in the norm; and Second, this approach provides certain techniques for certain functions that apply on the neutral legal objects. In this approach, there are ideal values that imply the rights and obligations on the nature of bureaucratic neutrality.

Operationally, this approach is oriented to comparison of the concept of democracy, human rights and legal policy of the government where the outcome is the fulfillment of justice for bureaucrat. The policy review will be harmonized with norms, theories and doctrines and other non-legal aspects through the use of multiple interpretation models, both grammatically and systematically.

III. RESULT AND DISCUSSION

In a global context, freedom of expression is guaranteed in Article 19 of Universal Declaration of Human Right stating that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and

to seek, receive and impart information and ideas through any media and regardless of frontiers. Even though there is international guarantee, but the space of freedom is still limited. It means that this freedom must be able to guarantee the recognition and respect for the rights and freedoms of others and to fulfill demands fairly by considering moral judgment, religious values, security and public order in a democratic society [2]. This condition becomes the access for making regulation to limit the legal issues which potentially cause legal consequences. From this perspective, law is the instrument to establish stated through the power it has, then one of the deciding factors in holding power is the norm or law [2].

H.L.A.Hart stated that there are 3 (three) codes of conduct. First, Rule of Recognition, the rule determining codes of conduct that must be obeyed by a legal society; Second, Rule of Change, the rule by which existing codes of conduct can be changed; and Third, Rule of Authority, the rule that determines by whom and through which procedure the codes of conduct are established and how codes of conduct are applied if in the given event, there is obscurity [2]. Seeing these three code of conduct, in the legal relationship between the state and bureaucrat (hereinafter referred to civil servants), there are restrictions on the behavior of officers who work in the state institutions. Conceptually this relationship is called public service relationship (*openbare dienstbetrekking*) in the form of obligation for the officers to obey any appointment in any position and they cannot reject (they accept unconditionally) the appointment in any position determined by government. Furthermore, the government has right to appoint an officer in certain position without adjusting the will of the officer. The implication of public service relationship is the creation of subordinate relationship between subordinates (civil servants) and seniors (government). According to Buys, public service relationship related to the appointment is based on *Contrac Suigeneris* which requires civil servants to be loyal and obedient during serving as civil servants, although they can resign from their job anytime. From Buys' statement, it can be concluded that as long as they become civil servants, they cannot fully conduct their human rights. Therefore, if civil servants expect to fully do their human rights, government can assume that Civil Servants assistance is not needed by the government [4]. From this concept, law which written in the constitution and organic regulations identify the sources, purposes, uses and restraint of public power [4]. It means that to create a professional public relations, government made a restriction of human right freedom for civil servants, in order to create a civil servants which is independent and not influenced by certain political interests.

The aim to create neutrality condition is based on the position of civil servants as a government officer. Position is an element of governmental implementation which have the function to achieve certain goal in terms of work system of an organization. On that basis, the position give an authorized and able to guarantee the continuity of rights and obligations of its position. To carrying out the activities of government, civil servants as an administrative agencies actually personifies them self because of the "position" as a source of authority as a state representation. As legal subjects, automatically the position can take legal actions which have implications of responsibility and accountability of his work [5]. This condition create ideal

conditions for civil servants to be outside of the system and not affected by interests.

On the issue of civil servants participation in political activities in Indonesia, the concept of public service relation is used by government through creating legal policy on civil servants neutrality. Now government has made regulation of neutrality principle in Article 2 letter (f) of Law Number 5 Year 2014 on Civil State Aparatus. The essence of neutrality is civil servants do not tend to any form of influence and interest. Its implementation is restricting civil servants to be the member and/or organizer of political parties.

On the essence of civil servants neutrality, Eko Prasajo and Laode Rudita stated that nowadays neutrality concept still has not been whole-hearted yet since it is to keep civil servants neutrality and to avoid civil Servants from political practice [10]. Law of Civil State Aparatus only prohibits civil servants to be the member or organizer of political parties. Along with the development of democratic system, political intervention is not enough if it is "only" measured from someone's participation as member or organizer of political party [5]. The statement of Eko Prasajo has tight correlation with the weakness of regulation substance concerning neutrality which has double standard. The regulation on civil servants neutrality should be to limit the power of civil servants in order to make them not commit abuse of power [5].

In relation to the essence of neutral, the writer admits that freedom of expression in digital democratic space through updating status, sharing political information and resisting government policy has made a problem on the existence of civil servants neutrality concept. The point of this problem must be responded by government through making the legal policy which is in accordance with politics in Indonesia. As the comparison, Francis Fukuyama stated that many states with relatively high performing governments—China, Japan, Germany, France, and Denmark, for example—created modern "Weberian" bureaucracies under authoritarian conditions; those that subsequently went on to become democracies inherited meritocratic state apparatuses that simply survived the transition. The motive for creating modern governments was not grassroots pressure from informed and mobilized citizens but rather elite pressure, often for reasons of national security [6].

Fukuyama's opinion indicated that government needs strengthening within its internal institution by making policy which limits the role of its officers [12]. It is important because there is harmonization between the policy made by the government and the implementation done by the civil servants. The importance of limitation toward state power/government power is based on Lord Acton's philosophy which stated that power tends to corrupt, but absolute power corrupts absolutely. In the terminology of constitutional law science, abuse of power done by government is called as *onrechtmatige overheidsdaad*.

As a comparison, human rights restrictions on civil servants to support neutrality are also conducted in Singapore and Nigeria. In singapore, effective government was defined by the presence of a strong and neutral merit system to offset political extremism [6]. In Nigeria, the essence of making the civil servant politically neutral is hinged on the fact that since he does not leave with a change in government, he is not expected to

have a strong attachment to any particular government so as to enable him give his best to make government policies succeed irrespective of his personal feelings towards such policies or government. The civil service is responsible for continuity of policy [6].

On the basis of legal restriction concept and practice based on legal comparison in many states, the government has justified reason for limiting the behavior of civil servants in the dynamics of digital democracy. Those reason is based on the considerations that:

1. Administrators must support the law, respect political supremacy, and acknowledge the need for accountability.
2. Administrators are responsible for serving the public and supporting the democratic process.
3. Administrators are independent with the commitment to professional values and competence, and they loyal to the mission of their agency.
4. Administrators are honest in their dealing with elected officials, seek to promote the broadest conception of public interest, and act in an ethical grounded way.
5. Elected officials respect the contribution of professional administrators and integrity of the administrative process [6].

Thus, based on the explanation above, the writer suggests 6 (six) principles which can be used as limitation and criteria in implementing neutrality principle for civil servants, which are:

1. Politics and policies are different from administration. Politics create policies; meanwhile civil servants implement policies.
2. Civil Servants are chosen and promoted based on merit system rather than relationship and political interests also their contribution for political parties.
3. Civil Servants are not bound and not allowed to be involved in every practical political activity.
4. Civil Servants cannot freely state their personal opinion toward policies made by the government.
5. If there is any suggestion regarding the policies, Civil Servants can suggest directly, clearly and objectively to the government.
6. Civil Servants accept and implement decision for every policy, despite their political interests and their personal opinion.

Based on those limitations of policies, hopefully in the future, civil servants should not be affiliated with politics, express political statement against government policies, understood their place in political party and behave far from discrimination to citizens and political parties. Actually, neutral condition will be fulfilled if civil servants are outside of the system and do not give any space for interest intervention and must provide solution instead of only criticizing.

IV. CONCLUSION

Along with the development of digital democracy, on one hand, it provides convenience for politicians and people to

obtain proper political literacy. On the other hand, this convenience also creates a space for everyone to interact in democratic process, including Civil Servants. This phenomenon needs to be addressed by the government through rational consideration which limits Civil Servants in order to stay neutral and keep their work integrity from the government. This shows that every Civil Servants needs to be limited in giving their opinion by not allowing them to freely state their personal perspective toward policies made by the government and when they disagree with government, they should be facilitated by the government to state their opinion directly, clearly and objectively. If there is any violation, the government needs to understand how to overcome and regulate a proper legal implication.

ACKNOWLEDGMENT

Making this academic paper is intended to be obtained argumentation academically through the ideal concept of neutrality for civil servants. The study was support by Faculty of Law, Universitas Jenderal Soedirman is gratefully acknowledged.

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