

## REGULATORY AMBIGUITY AND ITS IMPLICATIONS FOR THE NEUTRALITY OF THE STATE CIVIL APPARATUS IN THE VORTEX OF PRACTICAL POLITICS

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### ABSTRACT

Violations of the neutrality of the State Civil Apparatus (ASN) in public spaces in the simultaneous Regional Head Elections (Pilkada) in 2020 became an actual and factual phenomenon. In the Election Insecurity Index (IKP) for the simultaneous regional elections in 2020, violations of ASN neutrality are at the top of the rankings, which occur in 167 districts/cities out of 270 regions that implement them. Regulations to maintain the neutrality of the ASN in the political maelstrom are practically readily available, but explicitly, there are legal loopholes that allow for violations to occur. The study results show that the breach of ASN neutrality in the simultaneous regional elections in 2020 is substantially rooted in the ambiguity of regulations that place regional heads who are, in fact, political officials as executors of coaching and cracking down on violations of ASN neutrality. The implication of the ambiguities of the regulation is the establishment of a negative stigma against the professionalism of ASN as a public official, regional heads as Civil Service Supervisory Officers in the regions do not follow up on recommendations for sanctions from KASN, and the massive violations. Based on the result, regulatory reforms are urged to ensure that the development and enforcement of breaches of ASN neutrality are not controlled by political officials but by career officials.

**Keywords:** regulatory weaknesses; ASN neutrality; simultaneous regional elections (Pilkada)

### ABSTRAK

Pelanggaran netralitas aparatur sipil negara (ASN) oleh masyarakat dalam pemilihan kepala daerah (pilkada) serentak tahun 2020 telah menjadi fenomena nyata dan aktual. Indeks Kerawanan Pemilu (EPI) Pilkada serentak 2020 menempati urutan teratas pelanggaran netralitas ASN, terjadi di 167 kabupaten/kota dari 270 daerah yang melaksanakannya. Ada ketentuan untuk menjaga netralitas ASN dalam pusaran praktik politik, tetapi ada celah eksplisit dalam undang-undang yang memungkinkan pelanggaran. Hasil kajian menunjukkan bahwa pelanggaran netralitas ASN pada Pilkada serentak 2020 bersumber dari ketidakjelasan mendasar aturan yang mengatur pimpinan daerah, yang sebaliknya pejabat politik yang memerintahkan dan memantau pelanggaran netralitas ASN. Konsekuensi dari ketidakjelasan peraturan ini adalah akumulasi stigma negatif terhadap profesionalisme ASN. Pengelola daerah sebagai pejabat di daerah yang tidak mematuhi rekomendasi sanksi penangguhan KASN dan pelanggaran massal. Hasil kajian menunjukkan bahwa reformasi regulasi sangat dibutuhkan untuk memastikan bahwa pengembangan dan penindakan pelanggaran netralitas ASN didorong oleh pejabat karir daripada agen politik.

**Kata Kunci:** kelemahan regulasi; netralitas ASN; pilkada serentak

### BACKGROUND

The 2020 simultaneous regional elections (Pemilihan Kepala Daerah/Pilkada

-red) are a major political celebration in the pandemic era. In 2020, regional elections were held in 270 regions (provincial and

regency/city), namely nine elections for Governor and Deputy Governor, 224 for Regent and Deputy Regent, and 37 for Mayor and Deputy Mayor. The 2020 elections have differences and similarities with the simultaneous elections in 2018, 2017, and 2015. The difference is that the 2020 simultaneous regional elections are carried out under abnormal conditions, namely in the atmosphere of the COVID-19 pandemic, so it must implement standard health protocols. (Rakhmawanto, 2020).

Meanwhile, the number of violations of ASN neutrality is similar to the 2020 simultaneous regional elections and the previous simultaneous regional elections. (Perdana, 2019). ASN neutrality is still an essential issue in the Pilkada momentum (Firman, 2017).

The result of bureaucratic politicization blurs the role and function of state institutions. The state bureaucracy becomes a practical political interest that ignores the ethics of state administration and administrative ethics so that it cannot be separated from the political and career duties of the state civil apparatus (ASN). (Nadjib et al., 2022). As a result of the unclear political positions and career positions it has an impact on the ASN bureaucratic apparatus development system. (Sarjiyati et al., 2022).. An ASN training system emerged where ASN trainers were not professional ASN officials but political officials (ministers, governors, heads of government, and mayors) from political parties (Lionardo et al., 2021). (Lionardo et al., 2021). As a result of the inappropriate ASN coaching system, a "dilemma" arises in the administrative structure, where ASN loyalty is locked in two ways on the one hand, as officials must

be loyal to the government on the other hand. They must be loyal to the government and their leaders, who come from political parties that control the government. This model causes ASNs to become compartmentalized and not focus on their duties as officers; even their relationships with each other are usually discordant and distrustful of each other.

The involvement of ASN in efforts to defeat candidates participating in the Pilkada continues to be emphasized. Legally and formally, ASN may not carry out supporting activities in supporting regional director candidates. Assimilation with regional head candidates can only occur at the polling station, revocation of voting rights (Indiahono, 2022). Although the 2020 simultaneous regional elections were carried out in an atmosphere of concern due to the COVID-19 pandemic, it did not discourage some unscrupulous ASNs from violating neutrality in the election process. ASN neutrality is one of the crucial issues in the implementation of Pilkada or General Election. (Afala, 2017). Bawaslu's monitoring results in the 2019 Election showed 1,096 legal violations related to the neutrality of ASN, TNI, and Polri. (Perdana, 2019).

The fourth round of simultaneous elections in 2020 continued some violations of ASN neutrality. Data as of September 30, 2020, shows that violations showed an upward trend. Namely, 694 ASNs were reported to have violated neutrality. Of these, 492 people have been given recommendations for sanctions (KASN, 2020). Complete data on the upward trend in violations of ASN neutrality from the

2015 simultaneous regional elections to 2020 can be seen in the following table:

**Table 1.** Number of violations of ASN neutrality in simultaneous regional elections

Number	Election Year	Number of Regions	Number of Violations
1	2015	269	29
2	2017	101	52
3	2018	171	491
4	2020	270	694

Source: KASN (2020)

Referring to KASN data as of August 19, 2020, the types of positions that most often experience injuries are senior management positions (27.1%), operational positions (25.5%), executive officials (14.9%), implementers (12%) and regional managers, namely sub-district heads/village (9%) (KASN, 2020). The number of violations of ASN neutrality by High Leadership Positions and Regional Heads shows that this phenomenon has become a latent danger in organizing quality Pilkada and realizing professional ASN. This brief paper aims to explain three things. First, the violations of ASN neutrality in the Pilkada include the distribution of violations areas that are often violated and factors causing violations. Second, regulatory ambiguity is the primary source of the problem of violations of ASN neutrality in the Pilkada. Third, the implications of regulatory ambiguity for ASN neutrality in the Pilkada.

## METHOD

The type of research used in this study is qualitative. The qualitative method is a research technique that produces descriptive data through written or spoken words or measurable behavior. The qualitative method used in this study provides a total picture of the perception of

reality that is systematically examined rather than measuring part of reality (Bursztyn et al., 2020). (Bursztyn et al., 2020).. Qualitative research is conducted by comparing and providing credible information that can be obtained (Moleong, 1993). This research aims to provide a more comprehensive understanding of current issues. Entman's framing analysis examines framing along two main dimensions: Gathering and assessing the issue or importance of some aspect of reality/thing (Eriyanto, 2002).

The data in this study were collected through the documentation method, retrieving data from news media and journals in 2020 related to ASN neutrality in Indonesia. Then, through Nvivo 12 Plus software analysis, It was analyzed internet-based qualitative data was encoded and tested for validity and reliability, and the results of data analysis. Nvivo 12 Plus analysis analyzes qualitative data to produce more professional results (AlYahmady & Al Abri, 2013).

## RESULTS AND DISCUSSION

### The Phenomenon Of Violation Of Civil Servant Neutrality In Regional Elections

In the Big Indonesian Dictionary, Impartiality means impartiality or

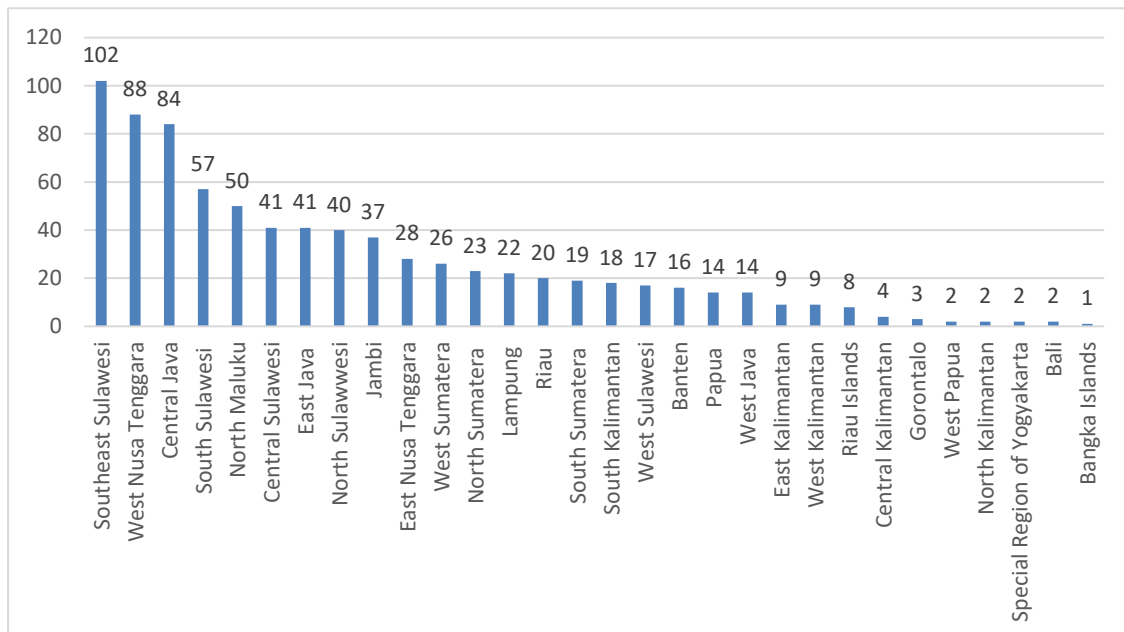
independence. Impartiality means impartiality, that is, impartial, non-interfering, impartial, fair, objective, and impartial. (Lionardo et al., 2021). Conceptually, according to Amin in Cordana's research (2021), impartiality is the action of a government organization that does not take sides covertly or overtly to a political candidate pair. Right. Dimansyah (2021). states that ASN neutrality is a mechanism that shapes the government bureaucracy's professionalism so that it consistently provides services without political involvement.

ASN must have and respect neutrality because it plays an essential role in official relations with politicians Sadikin (2021). Article 9, paragraph 2, Law Number 5 of 2014 concerning ASN explains that every ASN must be free from all forms of influence and intervention from all groups, whether related to political or other interests. According to Rafi (2021), there are several essential reasons why ASN must be neutral. ASN has a strategic function as a public servant, access to government data and essential information, obedience to the rule of law, professionalism, and a culture that places ASN as a role model. Although it has been emphasized in the law, violations of

ASN neutrality in practical politics still occur. The following will explain the distribution of ASN violations in the 2020 simultaneous regional elections, areas violated, trends in violations, and factors causing violations.

### **Distribution And Areas Of Violation Of Civil Servant Neutrality In The 2020 Simultaneous Regional Elections**

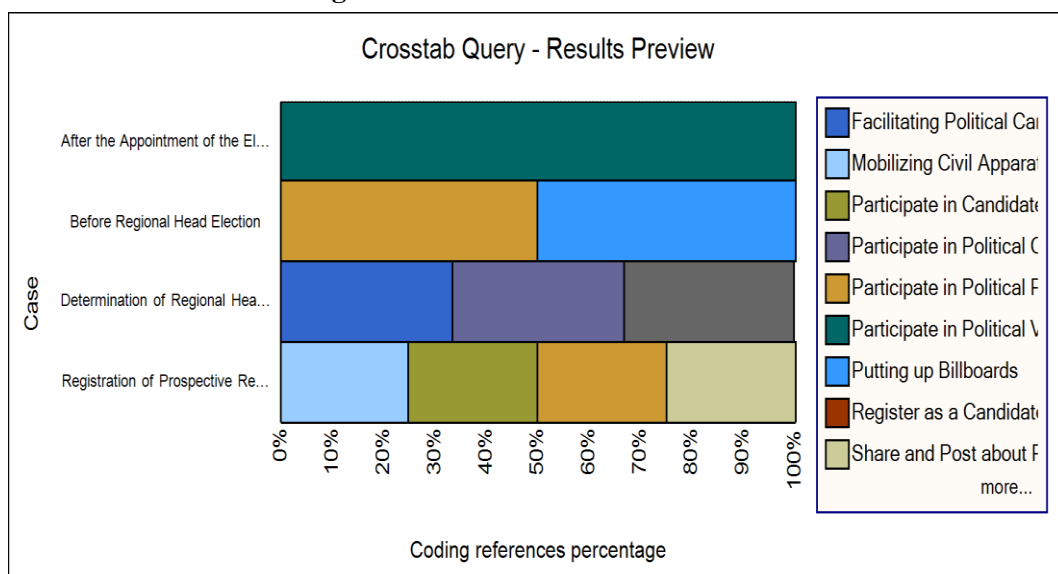
In the 2020 Regional Election Vulnerability Index, violations of ASN neutrality were at the highest level. They occurred in 167 districts/cities out of 270 regions implementing the elections, consisting of 9 provinces, 224 districts, and 37 cities (KASN, 2020). The number of neutrality violations is classified into three parts, namely low (range of cases between 1 to 9), medium (range of cases between 14 to 230), and high (range of cases 26 to 102). Areas with low violations occurred in 10 provinces, moderate in 9 provinces, and high in 11 provinces. The highest violation was in Southeast Sulawesi province, with 102 cases, and the lowest was in Bangka Belitung Islands province, with 1 case. Data on the distribution of violations of ASN neutrality by province can be seen in the following figure:

**Figure 1.** Distribution of ASN Neutrality Violations in the 2020 Pilkada

Source: (KASN, 2020), processed by researchers

Violations of ASN neutrality occurred at all stages of the Pilkada. The areas violated by ASN start from the stages before the implementation of the Pilkada stages, the registration stage, the

determination, and after the determination of the elected regional head. Data on the types of violations at each stage in detail can be seen in the following figure:

**Figure 2.** Areas that ASN often violates

Source: processed by researchers using Nvivo 12 Plus

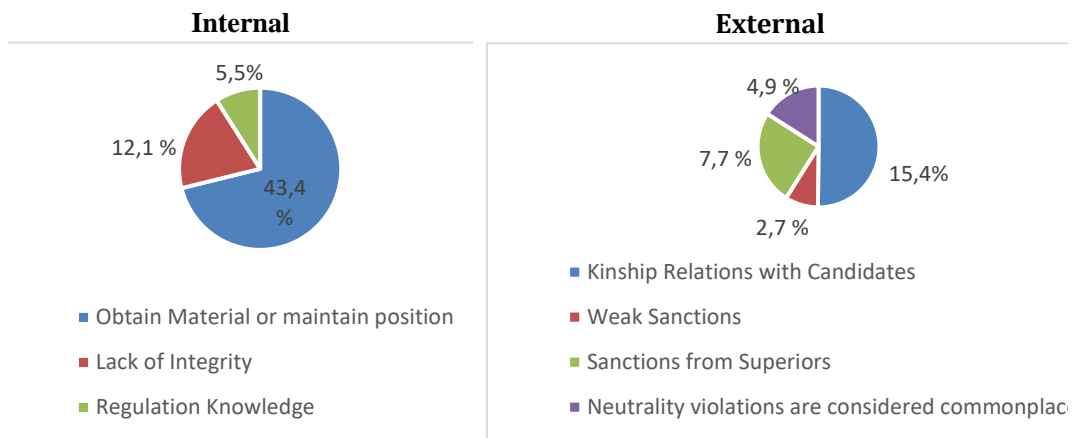
Some of the areas violated reflect the dilemmatic position of ASN, namely forward hit, backward hit, and neutral hit. According to Panjaitan (2021), ASN is very vulnerable to being involved in the action of supporting Regional Head candidates, especially in regions that have defense candidates. ASN support for one of the regional head candidate pairs in the Pilkada and their campaign through uploads on social media is an inevitable phenomenon, along with advances in information technology. Based on this, it is understandable that supporting Regional Head Candidates through social media has become the highest trend of violations in the 2020 Pilkada, namely a total of 403 cases. Given this, social media is a means widely used by the public, including officials, to convey their wishes or interests. According to a study published by We Are Social and Hootsuite, 160 million of Indonesia's 272.1 million population use social media.

Support for candidates in the elections through social media is substantially an activity that is prohibited in Law Number 10 of 2016 concerning Pilkada and Law Number 5 of 2014 concerning ASN. The prohibition of ASN from posting, communicating, sharing, and

liking related to support for Pilkada candidates is also regulated in the Joint Decree of the Minister in charge of Administrative Reform and Bureaucratic Forms, Minister of Home Affairs, Head of the State Personnel Agency, President of KASN and President of Bawaslu RI on Policies for Supervision and Enforcement of Impartiality of Civil Servants. The six decrees concern ASN's obligation not to influence actions that lead to neutrality or impartiality. At the same time, Appendix 1 of the joint decree concerns violations on social media.

### **Regulatory Ambiguity As The Main Source Of Problems In Violating The Neutrality Of Civil Servants In Regional Elections**

Discussions about the neutrality of ASN in practical politics are always interesting. ASN must be neutral in the Pilkada to facilitate the realization of quality and integrity choices and the image of a professional government bureaucracy. According to Furqon (2020), the factors causing violations of ASN neutrality can be divided into internal and external factors, as shown in the following table:

**Table 4.** Factors Causing Internal and External Violations of ASN Neutrality

Source: processed by researchers

Regarding violations of ASN neutrality in Pilkada, Raden Muhammad Mihradi, in his writing reported by Sari (2021), explains that there are two interesting phenomena. First is the spread of patronage among regional managers and their subordinate structure officials: patronage, namely the unlimited authority of regional managers to develop relationships with their subordinates as customers. Meanwhile, one of the client cultures is the tendency of civil servants to submit and obey their patrons, namely regional managers. In this case, ethnic similarity and indigenous relations become the basis of the adhesive. The patron-client network in the regional elections has contributed significantly to the increase in violations of ASN neutrality in the regional elections.

Second, ASN's dilemma is due to existing regulations. Conversely, as a public official, ASN must be neutral and not take a stand. On the other hand, ASN must also take a political stance or take sides, especially if defense returns to function.

This dilemma stems from Government Regulation No. 11/2017 on Civil Servant Management, which states that the Regional Director (as authorized by the President) is the Supervisor of PNS/ASN who can appoint, transfer, and dismiss civil servants—in contrast, based on Article 71, Article 2 of Pilkada Law No. 10 of 2016, which prohibits regional heads from replacing officials six months before the date of determination of candidate pairs until the end of the mandate period (unless written permission will be obtained. Ministry), it turns out that many key areas are violated, and there are no sanctions.

Several ASN regulations explicitly provide "legal loopholes" that involve ASN practices in the political vortex. Article 53 of the ASN Law No. 5/2014 appoints provincial governors and administrative heads/mayors of municipalities and municipalities who have left political office as supervising officials of civil servants (PPK) in the regions. The President authorizes them to decide on appointing, transferring, and dismissing middle and

subordinate officials and operational directors. In addition, Article 54 explains that provincial and administrative district/city secretaries, as authorized officials, are only given authority related to fostering ASN management based on a performance-based system and are still required to consult with the governor. . and senior administrative officials/mayors regional PPK. This provision is multi-interpretive or ambiguous and ambiguous. This regulatory ambiguity is the primary source of violations of ASN neutrality.

During the pandemic, the massive client patron culture and weak supervision have contributed to increasing violations of ASN neutrality in Pilkada. The large amount of assistance in handling COVID-19 triggered the politicization of assistance by politicians contesting the Pilkada by involving ASN in its implementation. Virtual spaces that are massively used in the pandemic era can also be used as a medium by ASN to campaign for incumbents or candidates they support directly or

indirectly. Meanwhile, the supervision space is increasingly ineffective because it oversees violations of ASN neutrality and the implementation of health protocols by Pilkada contestants.

### **Implications Of Regulatory Ambiguity On The Neutrality Of Civil Servants In Regional Elections**

The lack of clarity of regulations on ASN, governors, governing bodies, and mayors such as PPK in the regions often do not follow recommendations for sanctions from KASN when ASN neutrality in Pilkada is violated. Observing the case in the 2015 simultaneous regional elections in Lampung Province is interesting. It was noted that eight regencies/cities in Lampung Province re-nominated incumbent regional heads, both governors and mayors, to avoid a leadership vacuum. Under the rules, the Acting Director has limited authority and is prohibited from taking strategic actions and conducting promotions and mutations of bureaucratic officials.

**Table 2.** Regencies/Cities in Lampung Province that Organized the 2015 Regional Elections

No.	District/City	Description
1	Metro City	Appointed Acting Mayor
2	Bandar Lampung City	Appointed Acting Mayor
3	Way Kanan Regency	Appointed Acting Regent
4	East Lampung Regency	Appointed Acting Regent
5	South Lampung Regency	Appointed Acting Regent
6	Central Lampung Regency	No Acting Regent Appointed
7	Pesawaran Regency	No Acting Regent Appointed
8	West Coast Regency	No Acting Regent Appointed

Source: Regional Secretariat of Lampung Province 2015

However, some regional administrators (governor/mayor) whom the governor appointed before the Pilkada at the same time did not comply; one of them is the acting mayor of Metro. They have different interpretations of the existing regulations.

The officer promotes and mutates ASN in his region. After being appointed by the Decree of the Minister of Home Affairs No. 131.18-4766 of 2015, dated August 7, 2015, the Metro Mayor made 7 (seven) decisions on mutation, appointment, and dismissal in



and out. The structural positions are as follows:

**Table 3.** Decisions, Appointments, and Dismissals of Metro City Structural Assignments

No.	Decree of PJ Mayor	Subject
1	821.22/731/LTD-3/03/2015 Dated October 19, 2015	Appointment and mutation of Echelon II b Structural positions within the administration of Metro City (8 people)
2	821.22/729/LTD-3/03/2015 Dated October 19, 2015	Dismissal of Echelon II b development tasks around Metro City Hall (1 person).
3	821.27/732/LTD-3/03/2015 Dated October 19, 2015	Appointment in the structural position of Echelon III (Sub-District Head) within Metro City Government (1 person)
4	821.23/730/LTD-3/3/2015 Dated October 19, 2015	Dismissal from Echelon III Structural Position in Metro City Government (3 people)
5	821.29/734/LTD-3/03/2015 Dated October 19, 2015	Appointment in Echelon IV Structural Position (Head of Village) in Metro City Government (1 person)
6	821.24/735/LTD-3/03/2015 Dated October 19, 2015	Appointment in Echelon IV Structural Position in Metro City Government Environment
7	821.23/77.1/LTD-3/03/2015 Dated October 21, 2015	Amendment to the Decree of Metro Mayor Number 821.23/733/1.LTD-3/03/2015 on Appointment and Mutation in Echelon III Structural Position in Metro City Government (13 people)

Source: Regional Secretariat of Lampung Province 2015

Acting as a city administrator, according to the law, the Metro is only authorized to make transfers, appointments, and dismissals in structural positions and positions with the written approval of the Minister of Home Affairs following Article 132A of Government Regulation No. 49 of 2008. Third Amendment to Government Regulation No. 6/2005 on the Election, Inauguration, Appointment, and Dismissal of Regional Directors and Deputy Regional Directors. It was confirmed in the letter of the President of the State Development Commission (KASN) No. B-1145/KASN/10/2015 dated October 19, 2015, the head of the State Development

Office KASN/10/2015, dated October 19, 2015, the letter of the Head of the Public Service Agency (BKN) No. K. 26-30/V.100-2/99 dated 19/10/2015 and the Instruction of the Minister of Home Affairs No. 820/ 6040/SJ dated 26/10/2015. (Hanifah Sadikin et al., 2022).

## CONCLUSION

Violations of ASN neutrality in simultaneous regional elections both before and during the COVID-19 pandemic show that the expectations of various ASN neutrality regimes have not been met. ASN politicization is still an internal feature of Pilkada practices. Violations of ASN

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neutrality arise from the vagueness of the orders that make regional directors (notabene political officials) enforce and handle violations of ASN neutrality. The consequence of the vagueness of this regulation is the accumulation of a negative stigma against the professionalism of ASN regional managers as officials in the regions

who do not comply with the recommendations for KASN suspension sanctions and mass violations. The study results show that regulatory reform is urgently needed to ensure that career officials rather than political officials drive treatment and prosecution of violations of ASN neutrality.

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