# Oversight of The Merit System and The Neutrality of State Civil Apparatus Following The Dissolution of The State Civil Apparatus Commission: An Analysis of Law Number 20 Of 2023

Erica Indah Maulia[1]*, Siti Rifqa Raihani[2], Irsyaf Marsal[3]

[1,2,3]Master of Law Study Program, Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia
[*]Corresponding author:
E-mail: 2510622053@mahasiswa.upnvj.ac.id

***Abstract.***
*Law Number 20 of 2023 on the State Civil Apparatus abolished the State Civil Apparatus Commission (KASN), an independent non-structural body that had supervised the merit system, the code of ethics, and the political neutrality of civil servants since 2014. Its functions were transferred to the Ministry of Administrative and Bureaucratic Reform and the National Civil Service Agency, both of which also formulate and implement civil service policy. This article examines (1) how the law regulates the transfer of merit-system and neutrality supervision after the dissolution of KASN, and (2) what legal implications the dissolution carries for the effectiveness of that supervision within the framework of bureaucratic reform. Using normative legal research with statutory, conceptual, and case approaches, the study finds that the transfer rests on a delegation norm in Article 26 paragraph (2) letter d and a transitional norm in Article 70 paragraph (3), which only mention supervision of the merit system and leave supervision of the code of ethics and neutrality without an explicit statutory basis. The transfer places supervision inside the executive bodies being supervised, weakening independence and creating conflicts of interest, as reflected in the 314 neutrality violations recorded during the 2024 regional elections. Constitutional Court Decision Number 121/PUU-XXII/2024 has declared Article 26 paragraph (2) letter d conditionally unconstitutional and ordered the establishment of an independent supervisory body by October 2027. The article recommends that the revision of the Civil Service Law establish an independent body with binding recommendations, sanctions against non-compliant staffing officials, and structured coordination with the Election Supervisory Agency.*
***Keywords:*** *Civil Service Commission; Independent Supervision; Merit System; Neutrality and State Civil Apparatus.*

## I. INTRODUCTION

A professional and neutral bureaucracy is a prerequisite for the functioning of a democratic state based on the rule of law. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) affirms that Indonesia is a state based on law, while Article 28D paragraph (3) guarantees every citizen equal opportunity in government [1]. Both norms require that positions be filled and the state apparatus be managed on the basis of qualifications, competence, and performance rather than political proximity. Throughout Indonesia's constitutional history, the bureaucracy has repeatedly been drawn into the vortex of political interests, so that the state apparatus has often been positioned as an instrument of power rather than a servant of the public [2].

To break this pattern, Law Number 5 of 2014 on the State Civil Apparatus (Law 5/2014) introduced the merit system as the basis of State Civil Apparatus (*Aparatur Sipil Negara*, ASN) management and established the State Civil Apparatus Commission (KASN). Article 27 of Law 5/2014 positioned KASN as an independent non-structural institution free from political intervention, while Articles 30 and 31 assigned it the function of supervising the implementation of the basic norms, the code of ethics and code of conduct of ASN, the application of the merit system, and the task of safeguarding the neutrality of ASN employees [3]. The existence of KASN reflected an institutional design that separated the policymaker (the Ministry of Administrative and Bureaucratic Reform, Kementerian PANRB), the technical implementers (the National Civil Service Agency, BKN, and the National Institute of Public Administration, LAN), and the external supervisor (KASN). Several studies show that, although its authority was limited to issuing recommendations, KASN played an important role in encouraging the application of the merit system in government agencies [4].

That institutional design changed fundamentally with the enactment of Law Number 20 of 2023 on the State Civil Apparatus (Law 20/2023), which was promulgated on 31 October 2023 and at the same time

repealed Law 5/2014 [5]. The new law no longer regulates KASN. Article 26 paragraph (2) merely lists four areas of presidential authority delegated to ministries and/or institutions, with letter d reading "supervision of the application of the Merit System", while Article 70 paragraph (3) provides that the existing KASN continues to carry out its duties and functions until the implementing regulations are issued [5]. The supervisory function was subsequently placed with Kementerian PANRB and BKN through Presidential Regulation Number 91 of 2024 and Presidential Regulation Number 92 of 2024, as well as Circular Letter of the Minister of PANRB Number 4 of 2024 on the Transfer of the Implementation of Merit System Supervision in ASN Management [6]. Ironically, the legal politics behind the formation of Law 20/2023 was directed toward an agile, professional, and meritocracy-oriented bureaucracy, so the weakening of supervision over the merit system runs contrary to the very objectives of the law itself [7].

This transfer raises a fundamental problem: the institutions that formulate and implement civil service policy now also supervise its implementation. The problem became tangible in the 2024 political year. The Election Supervisory Agency (Bawaslu) recorded 433 reports and findings of alleged violations of ASN neutrality during the 2024 Simultaneous Regional Elections, 314 of which were declared violations and forwarded to BKN. These figures show that neutrality violations are not incidental. In the 2020 regional elections, KASN recorded 917 violations of ASN neutrality, dominated by support for candidate pairs through social media.

The latest development came through Constitutional Court Decision Number 121/PUU-XXII/2024, pronounced on 16 October 2025. The Court declared Article 26 paragraph (2) letter d of Law 20/2023 contrary to the 1945 Constitution and conditionally without binding legal force, insofar as it is not interpreted as supervision of the merit system, including supervision of the application of the principles, basic values, code of ethics, and code of conduct of ASN, carried out by an independent institution. That institution must be established no later than two years after the decision was pronounced [8]. The decision confirms that the supervisory design following the dissolution of KASN suffers from a constitutional defect, and at the same time raises the question of how the replacement institution ought to be designed.

Previous studies have addressed parts of this problem. Barus proposed reformulating and strengthening KASN as an external supervisor while the ASN Bill was still under deliberation [9]. Maysura examined the role of the merit system in bureaucratic reform from the perspective of administrative law [10]. Nur'Aini et al. questioned whether an independent supervisory body would be a step forward for reform or a new burden on the state's institutional structure [11]. Unlike these studies, this article reads three layers of the problem together, namely the vagueness of the transfer norm in Law 20/2023, its impact on the enforcement of ASN neutrality in the 2024 Simultaneous Regional Elections, and the consequences of Constitutional Court Decision Number 121/PUU-XXII/2024, and then formulates a design for a supervisory institution that can inform the revision of the ASN Law before the October 2027 deadline.

Based on this background, the article addresses two research questions. First, how does Law 20/2023 regulate the transfer of the function of supervising the merit system and ASN neutrality after the dissolution of KASN? Second, what are the legal implications of the dissolution of KASN for the effectiveness of supervision of the merit system and ASN neutrality within the framework of bureaucratic reform?

## II. METHODS

This study is normative legal research, that is, research aimed at finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand [12]. It employs a statute approach to examine Law 5/2014, Law 20/2023, and their implementing regulations; a conceptual approach to examine the concepts of the merit system, neutrality, supervision, and independent state institutions; and a case approach to Constitutional Court Decision Number 121/PUU-XXII/2024. Primary legal materials comprise the 1945 Constitution, statutes, government regulations, presidential regulations, and Constitutional Court decisions. Secondary legal materials comprise books, scholarly journal articles, and institutional studies, while non-legal materials consist of official data from Bawaslu and BKN as well as credible media reports. All materials were collected through library research and analysed qualitatively using deductive reasoning to produce prescriptions.

## III. RESULTS AND DISCUSSION

### A. Regulation of the Transfer of Merit-System and Neutrality Supervision after the Dissolution of KASN

1. The Merit System and Neutrality as Basic Norms of ASN Management

Law 20/2023 continues to treat the merit system and neutrality as the foundations of ASN management. Article 1 point 15 defines the Merit System as the administration of the ASN Management system in accordance with the principle of meritocracy, and Article 27 paragraph (2) affirms that ASN Management is carried out on the basis of the Merit System [5]. The obligation to apply the merit system is imposed directly on Staffing Development Officials (*Pejabat Pembina Kepegawaian*, PPK) through Article 29 paragraph (2). Neutrality, in turn, is formulated as one of the principles of ASN policy and management in Article 2 letter f, reinforced by Article 9 paragraph (2), which requires ASN employees to be free from the influence and intervention of all groups and political parties, and made an individual duty in Article 24 paragraph (1) letter d, namely the obligation to maintain neutrality [5].

These two norms are closely intertwined. The merit system protects ASN careers from political intervention, while neutrality prevents ASN from becoming political instruments. Neutrality violations during elections often end in political rewards in the form of promotions, transfers, or demotions once the election is over, so that a neutrality violation frequently serves as the entry point for a merit-system violation. Supervision of the two is therefore conceptually inseparable and requires an institution capable of covering both at once. Sound application of the merit system has itself been shown to require the commitment of agency leaders and consistent supervisory instruments [13].

2. Supervisory Design under Law 5/2014

Under Law 5/2014, supervision of the merit system, the code of ethics, and neutrality was concentrated in KASN. Its position as an independent non-structural institution rested directly on the statute, complete with detailed functions, duties, and powers. KASN was authorised to supervise every stage of the filling of senior executive positions, to receive complaints, to trace data, and to submit supervisory recommendations to the PPK, which were obliged to follow them up. Where a PPK failed to do so, KASN could recommend that the President impose sanctions [3]. With respect to neutrality during elections, KASN was also part of the ASN Neutrality Task Force together with Kementerian PANRB, the Ministry of Home Affairs, BKN, and Bawaslu under Joint Decree Number 2 of 2022 on Guidelines for the Guidance and Supervision of the Neutrality of ASN Employees in General Elections and Regional Elections [14].

This design was not without weaknesses. Because KASN's authority was limited to recommendations, its effectiveness depended on the compliance of the PPK, who in regional government is generally the regional head and therefore also a political actor [11]. That weakness, however, concerns the strength of the institution's powers, not its existence. In other words, criticism of KASN's weakness should have been answered by strengthening its powers, not by abolishing it.

3. Supervisory Design after Law 20/2023

Law 20/2023 shifts the entire architecture. Chapter VII on Institutions consists of a single article, Article 26. Paragraph (1) affirms the President as the holder of the highest authority over policy, professional development, and ASN Management. Paragraph (2) provides that the President delegates part of that authority to ministries and/or institutions carrying out government affairs in the fields of: (a) formulation and determination of strategic policy, as well as coordination, synchronisation, and control of ASN Management policy; (b) technical policy on ASN capacity development and learning; (c) technical policy on ASN Management; and (d) supervision of the application of the Merit System. Paragraph (3) then designates the ministry in field (a) as the coordinator that synchronises and controls the implementation of fields (b), (c), and (d), while paragraph (5) leaves further arrangements to a Presidential Regulation [5].

Three normative observations can be made about this arrangement. First, as to the source of authority, the supervisory function that KASN previously derived by attribution from the statute has become a delegated authority passed from the President to government ministries or agencies. In administrative law

theory, delegation is the transfer of authority from one government organ to another, so the authority remains within a single chain of executive power [15], [16]. Consequently, the supervisor and the supervised fall under the same control. Second, as to scope, Article 26 paragraph (2) letter d mentions only "supervision of the application of the Merit System", without referring to principles, basic values, the code of ethics, the code of conduct, or neutrality, even though Law 20/2023 itself makes neutrality both a principle and a duty of ASN. The result is a normative vacuum of authority: the law requires ASN to be neutral but does not expressly designate who is authorised to supervise that duty. Third, as to the level of regulation, the details of the transfer are left to Presidential Regulations and even to a ministerial circular. The petitioners in the judicial review before the Constitutional Court argued that supervision of the code of ethics, the code of conduct, and ASN neutrality is mentioned only in Circular Letter of the Minister of PANRB Number 4 of 2024 [8]. A circular letter is not a statutory regulation capable of serving as a source of authority, so a highly strategic supervisory function ends up resting on the weakest legal instrument. Matters concerning the powers of an institution ought to be set out in the appropriate type of statutory regulation and harmonised with the parent law, since harmonisation is the means of preventing overlapping rules and of ensuring the quality and legal certainty of the regulations produced [17].

This problem of regulatory level is compounded by delays in the implementing regulations. Article 68 of Law 20/2023 requires the implementing regulations to be issued no later than six months after promulgation, that is, around April 2024 [5]. Yet, as several observers have noted, implementing regulations that comprehensively set out the mechanism for supervising the merit system had still not been issued by the end of 2025 [18]. Meanwhile, Article 70 paragraph (3) ties the end of KASN's duties to the issuance of those implementing regulations. This sequence created an uncertain transition period precisely when Indonesia was holding the 2024 Simultaneous General and Regional Elections.

At the implementation level, Presidential Regulation Number 91 of 2024 places the function of supervising the application of the Merit System with the Deputy for Apparatus Human Resources of Kementerian PANRB, while Presidential Regulation Number 92 of 2024 affirms BKN as the body responsible for formulating technical policy, guidance, service delivery, and control of ASN Management [6]. Enforcement of neutrality in the 2024 regional elections was carried out through Bawaslu's violation-handling mechanism, whose findings were forwarded as recommendations to BKN, with sanctions ultimately imposed by the PPK under Government Regulation Number 94 of 2021 on Civil Servant Discipline [19]. The post-KASN arrangement can therefore be characterised as a fragmented internal supervision model: supervision of the merit system lies with Kementerian PANRB, technical and follow-up functions with BKN, the handling of election-related neutrality violations with Bawaslu, and the imposition of sanctions with the PPK.

**B. Legal Implications of the Dissolution of KASN for the Effectiveness of Merit-System and Neutrality Supervision**

1. Loss of Independence and the Emergence of Conflicts of Interest

The first implication is the loss of supervisory independence. The doctrine of supervision distinguishes internal control, exercised by organs within the government itself, from external control, exercised by organs outside the structure being supervised [20]. Internal control is useful for managerial improvement but inadequate for problems that originate at the top of the structure itself, such as political intervention by officials with the power to appoint and dismiss. When supervision of the merit system is placed in a ministry that also formulates policy and sits directly under the President, it loses the distance needed for objectivity. This situation contradicts the principle of *nemo judex in causa sua*, that no one should be a judge in their own cause.

The need for a supervisory body separate from the branch it supervises is one of the reasons independent state institutions emerged in modern constitutional practice. Ackerman even proposed an "integrity branch" as a distinct branch of power tasked with protecting the integrity of the bureaucracy from political abuse [21]. In the Indonesian context, Jimly Asshiddiqie and Zainal Arifin Mochtar explain that independent state institutions grew after the Reformasi because conventional institutions were considered unable to perform certain functions in a neutral and trustworthy manner [22], [23]. The Weberian ideal

bureaucracy is indeed built on qualification-based recruitment and protected careers, but that protection is meaningful only if there is a mechanism capable of enforcing it against the political will of those in power [24].

The Constitutional Court reached a consistent conclusion. In its legal considerations, the Court held that one of the problems of the civil service in Indonesia is how easily ASN are subjected to political and personal interests, so that a clear separation of functions and powers among the policymaker, the implementer, and the supervisor is needed to prevent overlapping roles and conflicts of interest [8]. This reasoning confirms that the main problem after Law 20/2023 is not merely one of administrative technicality but one of institutional design, with consequences for legal certainty and for the protection of the constitutional rights of ASN.

2. Weakened Enforcement of ASN Neutrality

The second implication is visible in the enforcement of ASN neutrality during the 2024 Simultaneous Regional Elections. By the candidate registration period at the end of August 2024 alone, Bawaslu had received around 400 reports of alleged ASN neutrality violations, and the Chair of Bawaslu ranked ASN neutrality as the third most significant vulnerability in the regional election vulnerability index. By the end of the electoral stages, 314 neutrality violations had been recorded, the most common patterns being expressions of support for candidate pairs, the use of social media to back candidate pairs, the organisation of partisan activities, and participation in campaigns.

The problem lies in the follow-up chain. Bawaslu is authorised only to handle violations and forward recommendations; disciplinary follow-up runs through BKN and ultimately depends on the PPK. In regional elections, the PPK in a region is the regional head, who is not infrequently an incumbent or affiliated with one of the candidate pairs. Without an independent institution able to monitor PPK compliance and press for sanctions against PPK who neglect their duty, recommendations on neutrality violations risk remaining on paper. Empirical research at the regional level likewise finds that low ASN neutrality is driven by weak internal supervision and the lack of firm enforcement of sanctions by the competent agencies [25]. Studies of the neutrality of public officials in elections also show that neutrality cannot be left solely to the personal integrity of officials; it requires institutional supervision and consistent enforcement of ethical codes in order to preserve the fairness and legitimacy of elections [26].

The dissolution of KASN also removed the only institution with dedicated attention to, and historical data on, patterns of neutrality violations. While the revision was being deliberated, former KASN leaders warned that transferring its duties to BKN and Kementerian PANRB would raise problems of transition, human resources, and competence, given the responsibility of safeguarding the neutrality of some 4.3 million ASN. These concerns proved well founded when the institutional transition coincided with the largest simultaneous elections in Indonesia's history.

3. Implications of Constitutional Court Decision Number 121/PUU-XXII/2024

The third implication is constitutional. Constitutional Court Decision Number 121/PUU-XXII/2024, brought by Perludem, KPPOD, and ICW, granted the petition in part. The Court found that the norm in Article 26 paragraph (2) letter d lacked the clarity and completeness of a comprehensive ASN supervision system, so that the phrase "principles, basic values, code of ethics, and code of conduct of ASN" needed to be stated *expressis verbis* [8]. The Court also read the phrase "ministries and/or institutions" in Article 26 lexically as opening the possibility of establishing an independent external institution. Accordingly, the challenge to Article 70 paragraph (3) was declared legally unfounded, since the need for an independent institution had already been accommodated through the interpretation of Article 26 paragraph (2) letter d. Constitutional Justice Anwar Usman delivered a dissenting opinion, reasoning that the transfer of KASN's duties falls within the open legal policy of the legislature [6].

Because decisions of the Constitutional Court are final and binding under Article 24C paragraph (1) of the 1945 Constitution, the legislature is bound to establish an independent supervisory body no later than 16 October 2027. As the final interpreter of the Constitution, the Court's interpretation of a statutory norm binds all state organs, including the legislature [27]. The decision therefore carries two legal consequences. First, from the moment it was pronounced, Article 26 paragraph (2) letter d must be read with its new

meaning, which covers supervision of the principles, basic values, code of ethics, and code of conduct of ASN, so that the normative vacuum regarding the authority to supervise neutrality has been conceptually filled by the Court. Second, until the independent body is established, the supervision carried out by Kementerian PANRB and BKN is transitional in status and constitutionally less than ideal, which places on the government and the House of Representatives (DPR) an obligation to accelerate its establishment.

The legislature has responded to the decision. The Chair of Commission II of the DPR stated that the Court's decision would inform the revision of the ASN Law, which is already on the priority National Legislation Program, while the leadership of the DPR Legislation Body noted that the existence of KASN had been among the most contentious issues during the deliberation of Law 20/2023. However, a member of Commission II also indicated that deliberation of the ASN Bill was still awaiting further study by the DPR Expertise Agency. With the deadline approaching, there is a risk that the new institution will be established in haste or remain merely symbolic. Its institutional design therefore needs to be carefully formulated from the outset.

4. Toward the Design of an Independent Supervisory Body

Based on the foregoing analysis, the independent supervisory body to be established should not simply revive KASN in its old form. KASN's weaknesses, especially the ease with which its recommendations could be ignored, must be remedied. The authors propose five design elements. First, the institution's position should be regulated by attribution in a statute as an independent body free from political intervention, with its own budget. Second, its members should be selected through an open and participatory selection committee, with the requirement that candidates have not been members or officials of a political party for a specified period, following good practice in the selection of other state commissions [28]. Third, the scope of supervision should cover the merit system, principles, basic values, the code of ethics, the code of conduct, and ASN neutrality, in line with the operative part of the Constitutional Court's decision. Fourth, the institution's recommendations should be binding and backed by a clear administrative sanction mechanism against PPK who fail to follow them up, for example the suspension or annulment of personnel decisions that violate the merit system. Fifth, a structured coordination mechanism should be built with Bawaslu, BKN, and the Ministry of Home Affairs, including an integrated and publicly accessible violation database.

Concerns that a new institution would become a burden on the state's institutional structure can be answered with a lean design, for instance by drawing on former KASN personnel and data and by adopting a digital approach to monitoring the merit system [11], [29]. The cost of establishing such an institution must be weighed against the cost of a politicised bureaucracy, whose effects spread to the quality of public services and to public trust. Strengthening the merit system is thus part of implementing the rule-of-law principle in the management of the state apparatus [30].

## IV. CONCLUSION

Based on the foregoing discussion, two conclusions can be drawn. First, the transfer of the function of supervising the merit system and ASN neutrality after the dissolution of KASN rests only on the delegation norm in Article 26 paragraph (2) letter d and the transitional norm in Article 70 paragraph (3) of Law 20/2023, which were subsequently elaborated through Presidential Regulations Number 91 and Number 92 of 2024 and Circular Letter of the Minister of PANRB Number 4 of 2024. This arrangement changes the nature of supervisory authority from attributive to delegated, places it within the executive, does not expressly mention supervision of the code of ethics and neutrality, and produces a fragmented internal supervision model divided among Kementerian PANRB, BKN, Bawaslu, and the PPK.

Second, the dissolution of KASN has resulted in the loss of supervisory independence and the emergence of conflicts of interest, because the bodies that make and implement policy also act as supervisors. This is reflected in the high number of neutrality violations in the 2024 Simultaneous Regional Elections, whose enforcement depends on the PPK. Constitutional Court Decision Number 121/PUU-XXII/2024 has declared Article 26 paragraph (2) letter d conditionally unconstitutional and requires an independent

supervisory institution to be established no later than October 2027, so the supervisory design under Law 20/2023 is transitional and must be corrected promptly.

## V. SUGGESTIONS

The government and the DPR should promptly complete the revision of the ASN Law by establishing an independent supervisory body whose position is regulated by attribution, whose mandate covers the merit system, the code of ethics, the code of conduct, and neutrality, whose recommendations are binding and backed by sanctions against non-compliant PPK, and which is connected in a structured way with Bawaslu. Pending the establishment of that body, Kementerian PANRB and BKN should issue implementing regulations at the level of a government regulation or presidential regulation on the supervision of the code of ethics and neutrality, so that the function no longer rests on a circular letter, and should make data on the handling of neutrality violations available to the public.

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