



Constitutionalising Functional Independence: Constitutional Court Decision 121/PUU-XXII/2024 and the Future of Indonesia's Civil Service Oversight

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ABSTRACT

This article examines how Constitutional Court Decision Number 121/PUU-XXII/2024 reconfigures the constitutional limits of legislative discretion in designing oversight of Indonesia's State Civil Apparatus (ASN) following Law Number 20 of 2023. Employing doctrinal legal research through statutory, case-law, conceptual, and functional comparative approaches, it analyses the judgment alongside civil-service oversight arrangements in the United States, the United Kingdom, and Australia. The study finds that the 2023 reform did not abolish merit-system supervision, but reallocated it to executive institutions involved in ASN policy or administration, thereby reducing the institutional distance between policy-making, personnel management, and compliance review. The Court did not constitutionalise the former State Civil Apparatus Commission (KASN) as the only permissible model. It instead required institutionally separate oversight capable of securing functional independence. Open legal policy therefore continues to govern the supervisory institution's name, organisational form, legal position, composition, and detailed allocation of powers, but no longer permits the elimination of substantive supervisory independence. The judgment may be characterised as a prospective institutional remedy with limited structural implications because it prescribes an independent institution and an implementation deadline while leaving its detailed design to the law-making authorities. The article conceptualises independent ASN oversight as horizontal accountability within the administrative state and develops an evaluative framework combining institutional independence, supervisory effectiveness, coordination, and democratic accountability. This framework distinguishes substantive implementation from the merely formal creation of a new supervisory body.

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1. Introduction

Constitutional Court Decision Number 121/PUU-XXII/2024, delivered on 16 October 2025, marks an important development in the constitutional architecture of civil-service oversight in Indonesia. The Court held that Article 26(2)(d) of Law Number 20 of 2023 on the State Civil Apparatus was conditionally unconstitutional insofar as it was not interpreted to require that supervision of the merit system, including its governing principles, fundamental values, code of ethics, and code of conduct, be entrusted to an independent institution. It further required the law-making institutions to establish such a body within two years.¹ The constitutional significance of the judgment lies not in an order to reinstate the former State Civil Apparatus Commission (*Komisi Aparatur Sipil Negara*, KASN) in its previous organisational form, but in the Court's transformation of independent civil-service oversight from a matter of legislative and administrative preference into a minimum constitutional requirement.

The judgment arose from a fundamental restructuring of the institutional architecture governing Indonesia's State Civil Apparatus (*Aparatur Sipil Negara*, ASN). Law Number 5 of 2014 had established the State Civil Apparatus Commission (KASN) as an independent non-structural body responsible for overseeing the implementation of the merit system, safeguarding the political neutrality of the ASN, and monitoring compliance with the core values, code of ethics, and code of conduct governing the civil service.² This institutional arrangement was fundamentally altered by Law Number 20 of 2023. Pursuant to Article 26(2)(d) and Article 70(3), the Law no longer recognised KASN as an independent supervisory institution within the statutory framework and reassigned its supervisory functions to the Ministry of Administrative and Bureaucratic Reform and the National Civil Service Agency (*Badan Kepegawaian Negara* - BKN). Consequently, KASN ceased to form a permanent component of Indonesia's civil-service governance structure. The reform did not abolish supervision of the merit system. Rather, it integrated supervisory responsibilities into an institutional configuration situated within the executive branch, particularly in institutions that simultaneously exercise responsibility for civil-service policy formulation and personnel administration.

The constitutional problem therefore extends beyond the continued existence or abolition of KASN. As a general principle, the legislature enjoys considerable discretion to create, consolidate, redesign, or dissolve administrative institutions. Constitutions rarely prescribe the name, composition, or organisational structure of every body exercising supervisory authority. Such discretion, however, becomes constitutionally problematic

¹ Mahkamah Konstitusi Republik Indonesia, "Putusan Mahkamah Konstitusi Nomor 121/PUU-XXII/2024," *Mahkamah Konstitusi Republik Indonesia*, 2024.

² M U As'ad et al., "Benchmarks of authority in Suruhanjaya Perkhidmatan Awam and the commission of state civil services (KASN)," *International Journal of Innovation, Creativity and Change* 8, no. 8 (2019): 351–62, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85076512551&partnerID=40&md5=390f0d926cb1bce24f8f08ee116decf1>.

when policy formulation, personnel administration, and compliance review are concentrated within the same structure of authority. This concentration may generate institutional conflicts of interest, weaken the objectivity of supervision, and expose civil servants to political interference in recruitment, promotion, transfer, dismissal, and disciplinary proceedings. The central question raised by Decision Number 121/PUU-XXII/2024 was thus not whether KASN had to be preserved as an institution, but whether supervision situated within the executive hierarchy could provide the degree of independence necessary to protect the merit system and bureaucratic neutrality.

The practical importance of this question is illustrated by the persistence of neutrality violations within the Indonesian bureaucracy. Evidence presented during the constitutional proceedings indicated that 2,299 reports of alleged ASN neutrality violations were recorded between 2020 and 2023, of which 1,711 were found to be substantiated.³ The reported conduct included participation in political campaigns, expressions of support for electoral candidates, the use of public office and administrative resources for partisan purposes, and other forms of political alignment.⁴ These figures do not prove that the existence of an independent supervisory institution would eliminate all neutrality violations, nor do they establish the failure of any single institutional model. They nevertheless demonstrate that bureaucratic politicisation constitutes a structural governance risk that any credible system of civil-service oversight must be capable of addressing.⁵ That risk becomes particularly acute when career advancement is influenced by politically interested officials while the mechanisms for reviewing their decisions remain located within the same administrative environment.⁶

ASN neutrality is not merely a question of professional ethics or personnel management. It is closely connected to the rule of law, equality of access to public office, continuity of public administration, and the integrity of democratic government. Civil servants exercise state authority, implement public policy, deliver essential services, and maintain institutional continuity across changes in political leadership.⁷ The merit system

³ Republik Indonesia, “Putusan Mahkamah Konstitusi Nomor 121/PUU-XXII/2024,” 188–89.

⁴ A Nadjib, O M Bafadhal, dan A D Santoso, “Social Capital, Bureaucratic Neutrality, and Regional Head Election in Indonesia,” *Studia Regionalne i Lokalne* 87, no. 1 (2022): 37–50, <https://doi.org/10.7366/1509499518703>.

⁵ A Nadzirin dan R M Sukmariningsih, “Does the State Civil Apparatus Violate Neutrality During Elections?,” *Journal of Sustainable Development and Regulatory Issues* 3, no. 2 (2025): 400–433, <https://doi.org/10.53955/jsderi.v3i2.112>.

⁶ D S Kartini, “Civil servant neutrality on 2019 general election in Indonesia,” *Central European Journal of International and Security Studies* 13, no. 4 (2019): 1–14, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85081909417&partnerID=40&md5=ce3aef30d8b14a356a2dfca5b8cdd8e7>; W Berenschot, “Incumbent bureaucrats: Why elections undermine civil service reform in Indonesia,” *Public Administration and Development* 38, no. 4 (2018): 135–43, <https://doi.org/10.1002/pad.1838>.

⁷ B Sarnawa dan F M Khaer, “Historical Study of the Neutrality Arrangements of the State Civil Apparatus in General Elections in Indonesia,” *Jurnal Media Hukum* 31, no. 2 (2024): 262–79, <https://doi.org/10.18196/jmh.v31i2.22618>.

therefore serves purposes that extend beyond administrative efficiency. It seeks to prevent recruitment and career progression from being determined by political loyalty, patronage, personal proximity, or arbitrary relations of power.⁸ From this perspective, independent oversight constitutes a mechanism of horizontal accountability within the administrative state. Its function is to maintain sufficient separation between the institutions that formulate policy, exercise personnel authority, and determine whether administrative conduct complies with merit, ethical, and neutrality standards.

Functional independence in this context does not require the supervisory body to be completely detached from the state or insulated from all forms of democratic control.⁹ It requires an institutional capacity to reach objective determinations, obtain relevant information, receive and investigate complaints, review personnel decisions, and pursue violations without improper direction from the authorities subject to supervision.¹⁰ Independence must therefore be distinguished from institutional isolation. A supervisory institution may remain accountable through statutory mandates, transparent appointment procedures, financial auditing, reporting obligations, ethical regulation, legislative scrutiny, and judicial review. The constitutional challenge lies in reconciling such accountability with the institutional distance necessary to prevent the supervised authorities from controlling the process or outcome of supervision.

Decision Number 121/PUU-XXII/2024 brings this tension into direct interaction with the doctrine of open legal policy. The majority regarded external and independent supervision as necessary to ensure that the merit system was applied objectively and remained protected from political intervention. At the same time, the Court did not prescribe the institution's name, composition, internal organisation, or complete catalogue of powers. The judgment consequently contains two related but distinct propositions: independent supervision is constitutionally required, while the detailed institutional form through which that requirement is realised remains primarily within the authority of the law-making institutions. The dissenting opinion, by contrast, treated the transfer of supervisory functions to executive institutions as a permissible legislative choice and questioned whether persistent neutrality problems were sufficient to establish the constitutional invalidity of the new arrangement. The disagreement reveals a broader doctrinal conflict over the point at which legislative discretion in designing public administration becomes limited by constitutional requirements of impartiality, legal certainty, and protection against conflicts of interest.

⁸ G Perdana dan R Lestari, "REALIZING THE NEUTRALITY OF GOVERNMENT EMPLOYEES FROM POLITICAL INTERVENTION," *Hamdard Islamicus* 43 (2020): 126–33, <https://doi.org/10.57144/hi.v43iSpecialIssue.229>.

⁹ OECD, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, OECD Publishing (Paris, 2014), <https://doi.org/https://doi.org/10.1787/9789264209015-en>.

¹⁰ R Ramadani dan M Y Arifin, "THE INDEPENDENT STATE COMMISSION IN INDONESIA: A COMPARATIVE REVIEW OF ITS INSTITUTIONAL ASPECTS," *Jurnal Al-dustur* 6, no. 2 (2023): 124–38, <https://doi.org/10.30863/aldustur.v6i2.4942>.

The judgment also raises a related question concerning the permissible scope of constitutional remedies.¹¹ By declaring the provision conditionally unconstitutional and requiring the establishment of an independent institution within two years, the Court did more than invalidate or reinterpret an isolated statutory phrase. It imposed a prospective institutional obligation while leaving the detailed design to the law-making institutions.¹² This remedial structure can be understood as a limited structural remedy: the Court identified the constitutional deficiency, prescribed the minimum institutional outcome necessary to cure it, and established an implementation period, but refrained from designing the institution itself.¹³ The legitimacy of this intervention therefore depends on maintaining a distinction between constitutionalising the principle of functional independence and judicially determining the technical organisation of the supervisory body.

Existing scholarship on Indonesian civil-service governance has made important contributions to the study of bureaucratic neutrality, merit-based administration, KASN's institutional performance, and the consequences of its abolition. One strand of literature has examined the persistence of political intervention in civil-service appointments and career management.¹⁴ Another has assessed the effectiveness of the merit system and the institutional role historically performed by KASN.¹⁵ More recent studies have criticised the removal of KASN or advocated the restoration of an independent supervisory mechanism.¹⁶ These approaches illuminate significant aspects of the problem, but they do not fully explain the constitutional transformation produced by Decision Number 121/PUU-XXII/2024. In particular, the literature has not sufficiently integrated four interrelated questions: how the Court converted functional independence into a minimum

¹¹ P J Yap, *Constitutional Remedies in Asia*, *Constitutional Remedies in Asia*, 2019, <https://doi.org/10.4324/9780429435485>.

¹² Meri Yarni dan Khofifah Rizki Amanda, "Conditional Unconstitutionality Arrangements in the Authority of Formal Judicial Review of Laws Against the Constitution," *Jurnal Konstitusi* 21, no. 4 (2024): 635–55, <https://doi.org/10.31078/jk2146>; Rosalind Dixon dan Po Jen Yap, "Responsive judicial remedies," *Global Constitutionalism* 14, no. 2 (2025): 323–48, <https://doi.org/DOI: 10.1017/S2045381724000200>.

¹³ T A S Negara et al., "The Confrontational Role of the Constitutional Court's Decisions in the Legislative Process," *International Journal of Criminal Justice Sciences* 17, no. 1 (2022): 185–98, <https://doi.org/10.5281/zenodo.4756099>.

¹⁴ Sangyub Ryu dan Naufal Virindra, "Impaired Neutrality : A Propensity That Occurs Among Indonesian Bureaucrats in the Election," *Policy & Governance Review* 7, no. 1 (2022): 38–53, <https://doi.org/https://doi.org/10.30589/pgr.v7i1.622>; Perdana dan Lestarini, "REALIZING THE NEUTRALITY OF GOVERNMENT EMPLOYEES FROM POLITICAL INTERVENTION."

¹⁵ Meysa Silvia Putri dan Zulfa Harirah MS, "Implementasi Sistem Merit Dalam Manajemen Aparatur Sipil Negara di Mahkamah Konstitusi Republik Indonesia," *Journal of Public Administration and Local Governance* 7, no. 1 (2023): 19–32, <https://doi.org/10.31002/jpalg.v7i1.7434>; D Andarwati, S Andri, dan O Karneli, "Merit System Implementation and Employee Performance in Pekanbaru City Government," *Feminist Encounters* 10, no. 2 (2026), <https://doi.org/10.20897/femenc/18748>.

¹⁶ Salma Nayla Ayunda Kurniawan, Tsabita Moeldi Salsabila, dan Wahyu Mahendra, "Menimbang Dampak Pembubaran Komisi Aparatur Sipil Negara (KASN) Terhadap Netralitas ASN pada Pemilu 2024," *Jurnal Ilmiah Wahana Pendidikan* 10, no. 13 (2024): 709–20, <https://doi.org/https://doi.org/10.5281/zenodo.12806896>.

constitutional standard; how that standard limits, but does not eliminate, open legal policy; how the judgment should be situated within the Court's remedial authority; and how a future supervisory institution can remain both independent and democratically accountable. Without such an integrated analysis, the decision may be misconstrued either as a judicial order to restore KASN in its former form or as an intervention that entirely displaces legislative discretion.

Comparative analysis is relevant to this inquiry not because foreign jurisdictions provide a ready-made institutional template for Indonesia, but because they illustrate different constitutional and administrative approaches to allocating civil-service oversight functions that may otherwise generate institutional conflicts of interest. The United States, the United Kingdom, and Australia each adopt distinct institutional configurations for protecting the merit system, overseeing recruitment, investigating alleged misconduct, reviewing personnel decisions, and resolving employment disputes.¹⁷ Although these arrangements differ in organisational structure and legal design, they share a common principle: the avoidance of concentrating policy-making, personnel administration, and supervisory review within a single institutional authority. Their experience demonstrates that functional independence does not depend upon the adoption of any particular organisational model, but upon whether the institutional framework adequately separates those responsible for formulating and administering personnel policy from those entrusted with supervising compliance, investigating alleged violations, and reviewing personnel decisions, while ensuring sufficient authority, procedural safeguards, and mechanisms of public accountability. Comparative analysis therefore provides a constitutional benchmark for evaluating the adequacy of Indonesia's future supervisory framework, not by identifying an institutional model to be transplanted,¹⁸ but by identifying the minimum constitutional conditions necessary to secure impartial and independent oversight of the civil service.

Against this background, this article examines the extent to which Constitutional Court Decision Number 121/PUU-XXII/2024 transforms independent ASN oversight from an issue of legislative policy into a constitutional requirement. It also considers how that requirement can be reconciled with the authority of the law-making institutions to determine the organisation of public administration and with the need to preserve democratic accountability. Employing doctrinal legal research through statutory, case-based, conceptual, and functional comparative approaches, the article argues that the Court did not constitutionalise KASN as a specific institution. Rather, it constitutionalised functional independence as a minimum condition for the legitimate supervision of the merit system and ASN ethical standards. Legislative discretion accordingly remains

¹⁷ OECD, *Government at a Glance 2025*, OECD Publishing (Paris, 2025), <https://doi.org/https://doi.org/10.1787/0efd0bcd-en>.

¹⁸ Michel Rosenfeld dan András Sajó, ed., "The Oxford Handbook of Comparative Constitutional Law" (Oxford University Press, 17 Mei 2012), <https://doi.org/10.1093/oxfordhb/9780199578610.001.0001>.

available in relation to institutional form, legal position, composition, and allocation of powers, but no longer extends to the elimination of substantive supervisory independence.

The article makes three related contributions. First, it reframes independent ASN oversight as a mechanism of horizontal accountability within the administrative state rather than as a conventional form of interbranch checks and balances. Second, it clarifies the boundary between open legal policy and constitutional limitation by demonstrating that institutional form may remain discretionary even when functional independence has become constitutionally mandatory. Third, it develops an evaluative framework in which the future supervisory institution must reconcile institutional and functional independence, supervisory effectiveness, and democratic accountability. The constitutional promise of Decision Number 121/PUU-XXII/2024 will therefore not be fulfilled merely by establishing a formally separate body. Its implementation must be assessed by whether the resulting institution possesses sufficient autonomy, authority, and accountability to protect the merit system from conflicts of interest and political interference. Otherwise, institutional reform may produce only symbolic compliance rather than a substantive reconstruction of horizontal accountability in Indonesia's bureaucratic governance.

2. Legal Materials and Methods

This study employs doctrinal legal research to examine the constitutional foundations, reasoning, and institutional implications of Constitutional Court Decision Number 121/PUU-XXII/2024.¹⁹ The inquiry is not confined to assessing the desirability of establishing an independent supervisory body for the State Civil Apparatus (ASN). It addresses three interrelated questions: the extent to which the Court transformed independent ASN oversight from a matter of legislative policy into a minimum constitutional requirement; the relationship between that requirement, the doctrine of open legal policy, and the limits of the Court's remedial authority; and the institutional conditions necessary to reconcile supervisory independence, effectiveness, and democratic accountability. The research is document-based and relies on primary and secondary legal materials to reconstruct and critically evaluate the relevant legal arguments.

The primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 2014 on the State Civil Apparatus, Law Number 20 of 2023 on the State Civil Apparatus, the implementing regulations governing the allocation of authority in ASN management and supervision, and Constitutional Court Decision Number 121/PUU-XXII/2024. The analysis of the judgment under review covers its operative order, the majority's legal reasoning, relevant submissions advanced during the proceedings, and the dissenting opinion. Other Constitutional Court decisions were selected on the basis of their relevance to the independence of state institutions, the

¹⁹ S Theil, "Carefully Tailored: Doctrinal Methods and Empirical Contributions," *Oxford Journal of Legal Studies* 45, no. 4 (2025): 1047–75, <https://doi.org/10.1093/ojls/gqaf029>.

doctrine of open legal policy, conditionally unconstitutional decisions, and the Court's authority to prescribe institutional consequences for the legislature and the executive. The secondary materials consist primarily of peer-reviewed journal articles, academic monographs, research publications, and official institutional reports addressing the merit system, bureaucratic neutrality, independent state institutions, horizontal accountability, and the remedial authority of constitutional courts.

The study also undertakes a functional comparison of civil-service oversight arrangements in the United States, the United Kingdom, and Australia. These jurisdictions were selected not as models for direct institutional transplantation, but because they illustrate different arrangements for separating policy formulation, personnel administration, investigation, adjudication, and compliance review. The comparative inquiry therefore focuses on institutional functions rather than formal nomenclature or organisational similarity. It considers the legal basis of the relevant bodies, their institutional relationship with the executive, the appointment procedures, tenure, and removal safeguards applicable to their leadership, their investigatory and adjudicative powers, the legal effect of their decisions or recommendations their authority to receive complaints and obtain records and other information necessary for investigation, and the mechanisms through which they remain subject to legal, parliamentary, financial, and public accountability.²⁰

The legal materials were analysed through statutory analysis, case-law analysis, conceptual analysis, and functional comparative analysis.²¹ The statutory analysis first identified the constitutional and legislative norms governing ASN oversight before and after the enactment of Law Number 20 of 2023. The case law analysis then reconstructed the majority's *ratio decidendi* in Decision Number 121/PUU-XXII/2024 and compared it with the dissenting opinion in order to identify the underlying doctrinal conflict concerning institutional independence and legislative discretion. The conceptual analysis evaluated the Court's reasoning through the lenses of open legal policy, horizontal accountability, institutional conflicts of interest, functional independence, and the limits of constitutional remedial authority. Finally, the functional comparison was used to formulate criteria for an institutional design capable of satisfying the constitutional requirement of independence without compromising supervisory effectiveness or democratic accountability.²²

The analysis is interpretive and evaluative rather than merely descriptive. It proceeds by identifying the relevant legal norms, reconstructing the Court's constitutional reasoning, testing its consistency with relevant doctrine and precedent, and assessing the

²⁰ Ralf Michaels, "The Functional Method of Comparative Law," in *The Oxford Handbook of Comparative Law*, 2006, 339–38.

²¹ Rosenfeld dan Sajó, "The Oxford Handbook of Comparative Constitutional Law."

²² S Butt dan F E Siregar, "CONSTITUTIONAL INTERPRETATION IN INDONESIA," in *Routledge Handbook of Indonesian Law*, 2026, 189–99, <https://doi.org/10.4324/9781032709840-22>.

institutional consequences of the judgment. On this basis, the study develops an evaluative framework organised around three dimensions: institutional independence, supervisory effectiveness, and democratic accountability. This framework is used to determine whether any future ASN supervisory body would comply substantively with Decision Number 121/PUU-XXII/2024 or merely create a formally separate institution without the authority and safeguards required to exercise meaningful oversight.

3. Results and Discussion

3.1. From Institutional Separation to Executive Internalisation: The Constitutional Problem of ASN Oversight

The development of civil-service oversight in Indonesia reflects a gradual shift from a personnel-administration model centred on executive hierarchy towards a governance framework in which merit, professionalism, and political neutrality operate as constraints on administrative power.²³ The idea that civil-service oversight should maintain a degree of institutional distance from personnel-management structures predates the establishment of the State Civil Apparatus Commission (KASN). Article 13(3) of Law Number 43 of 1999 on the Principles of Civil Service mandated the establishment of an independent State Civil Service Commission, although that mandate was never implemented. The underlying idea was subsequently institutionalised through Law Number 5 of 2014 on the State Civil Apparatus, which established KASN as a non-structural body responsible for supervising the merit system, safeguarding the political neutrality of the State Civil Apparatus (ASN), and monitoring compliance with the fundamental values, code of ethics, and code of conduct governing the civil service.

The creation of KASN formed part of a broader transformation in the legal understanding of public personnel administration. Appointments, promotions, transfers, rotations, and dismissals were no longer treated solely as matters falling within the administrative discretion of government officials. They were increasingly understood as exercises of public authority that had to comply with standards of objectivity, competence, performance, and equality of opportunity.²⁴ Within this framework, KASN's institutional significance lay less in its formal designation or organisational status than in the external review function it performed regarding executive personnel decisions. It introduced a measure of institutional distance between the authorities exercising personnel-management powers and the body assessing whether those powers had been exercised consistently with merit and neutrality requirements.²⁵

This institutional distance did not render KASN entirely separate from the governmental system or confer upon it unrestricted authority. KASN was not designed as a

²³ Andarwati, Andri, dan Karneli, "Merit System Implementation and Employee Performance in Pekanbaru City Government."

²⁴ Andarwati, Andri, dan Karneli.

²⁵ Adrie, "Kedudukan Dan Kewenangan Komisi Aparatur Sipil Negara (KASN) Pada Penyelenggaraan Pemerintahan Dalam Perspektif Hukum Kepegawaian," *YUSTITIA* 12, no. 2 (2018): 30–44.

superbody capable of displacing the functions of ministries, the National Civil Service Agency (*Badan Kepegawaian Negara, BKN*), or Personnel Management Officers (*Pejabat Pembina Kepegawaian, PPK*). Its principal responsibilities involved supervision, evaluation, examination, and the issuance of recommendations.²⁶ In many cases, the imposition of sanctions continued to depend upon action by the relevant PPK or another authorised official. This design demonstrates that independence and effectiveness constitute distinct institutional variables. KASN possessed a degree of distance from the authorities it supervised, but it did not always have sufficient direct enforcement powers to secure the implementation of every recommendation.

This architecture was fundamentally altered by Law Number 20 of 2023 on the State Civil Apparatus. The legislation no longer retained KASN as a permanent component of the ASN governance structure. Supervision of the merit system was instead placed within a framework of authority exercised by ministries and agencies responsible for ASN affairs, subsequently operationalised through an allocation of functions between the Ministry of Administrative and Bureaucratic Reform and BKN. The reform did not abolish supervision of the merit system. It did, however, relocate the centre of supervision from an institution possessing relative distance from personnel-management authorities to executive institutions simultaneously involved in policy formulation, personnel administration, administrative control, or the evaluation of ASN management.

The principal consequence of Law Number 20 of 2023 was therefore not an absence of supervision, but a change in its institutional quality. Under the previous model, policy formulation, personnel administration, and compliance review were not entirely concentrated within the same institutional environment. KASN provided a channel of review outside the immediate administrative chain of command of the government institutions under examination. Under the post-2023 arrangement, that distance was reduced because supervisory functions were returned to institutions located within the executive branch and directly connected to ASN administration. This shift may be characterised as the internalisation of civil-service oversight within the executive.

Table 1. Comparison of the Institutional Design of ASN Oversight under Law No. 5 of 2014 and Law No. 20 of 2023.

Dimension	Institutional Design under Law No. 5 of 2014	Institutional Design under Law No. 20 of 2023	Institutional implication
ASN policy formulation	The President and the ministry responsible for ASN affairs	The President and the ministry responsible for ASN affairs	Remains within the executive branch
Remains within the executive branch	PPK, government institutions, and BKN according to their respective powers	PPK, government institutions, and BKN according to their respective powers	Remains integrated within executive administration

²⁶ Muchlis Adi Putra Wajong, “Tugas Dan Wewenang Komisi Aparatur Sipil Negara Menurut Undang-Undang Nomor 5 Tahun 2014 Tentang Aparatur Sipil Negara,” *Lex Administratum* VII, no. 2 (2019): 23–31.

Supervision of the merit system	KASN as an institution possessing relative distance from implementing authorities	Ministries and agencies within the executive structure	Reduced distance between implementing and supervisory authorities
Examination of complaints	Available through KASN as a channel of relatively external supervision	Conducted through institutional mechanisms situated within the executive	Potential reduction in both perceived and structurally guaranteed impartiality
Follow-up to supervisory findings	KASN recommendations depended on compliance by the PPK or other authorised officials	Follow-up occurs within the executive chain of authority	Coordination may improve, but the risk of institutional conflicts of interest remains
Principal institutional rationale	Relative separation to protect merit and neutrality	Integration to promote administrative coordination and effectiveness	Creates a tension between efficiency and independence

Source: Authors' analysis based on changes to Indonesia's legal framework governing ASN oversight.

The integration of supervision into the executive structure is not necessarily unlawful or inherently ineffective. It may be defended on grounds of administrative efficiency, organisational simplification, the avoidance of overlapping authority, the consolidation of personnel data, and improved inter-institutional coordination. BKN possesses extensive technical capacity, administrative data, and organisational networks through which ASN management can be monitored.²⁷ The Ministry of Administrative and Bureaucratic Reform similarly exercises strategic authority over policy formulation and bureaucratic-reform evaluation. From an administrative perspective, integrating certain functions may reduce institutional fragmentation and accelerate coordination.

Efficiency and coordination, however, do not resolve the separate question of whether an institution can impartially review policies and decisions formulated and implemented within the same chain of authority. This question is particularly important because ASN management does not operate in a politically neutral administrative environment.²⁸ At both central and regional levels, PPK exercise strategically important powers over appointments, transfers, promotions, and dismissals. Some of these officials hold political office or operate within relationships of political accountability. In such circumstances, a system of supervision located entirely within the executive creates a structural risk: alleged abuses of personnel authority are reviewed by institutions situated within the same general sphere of power as the officials whose decisions are being contested.

²⁷ M Metalia, S W Zarkasyi, dan H Sugarman, "Factors affecting the performance of Indonesian government's internal supervisory," *Utopia y Praxis Latinoamericana* 25, no. Extra10 (2020): 498–513, <https://doi.org/10.5281/zenodo.4155787>.

²⁸ M Mirayanti et al., "The illusion of meritocracy: a critical analysis of open selection for senior leadership in Indonesia," *Cogent Social Sciences* 11, no. 1 (2025), <https://doi.org/10.1080/23311886.2025.2484472>.

This risk need not take the form of direct political interference. Institutional conflicts of interest may also arise through hierarchical dependency, budgetary control, restricted access to information, influence over appointments, or administrative reluctance to correct decisions made by politically more powerful officials. The independence of oversight cannot therefore be evaluated solely by determining whether explicit political instructions can be proven. It must also be assessed by reference to the structural guarantees enabling a supervisory institution to receive complaints, obtain documents, conduct examinations, reach findings, and secure follow-up without excessive dependence on the consent of those subject to supervision.²⁹

From the perspective of horizontal accountability, an adequate supervisory system requires at least a functional separation among the institutions responsible for formulating policy, implementing personnel decisions, and reviewing compliance.³⁰ Such separation does not require the creation of a body entirely detached from the state or immune from accountability. A supervisory institution must remain subject to legal, financial, administrative, and public-accountability mechanisms. These mechanisms, however, should not deprive it of the autonomy required to review executive conduct objectively.³¹ The central issue is therefore not a binary choice between internal and external oversight, but whether the overall institutional design provides a degree of functional independence commensurate with the political and administrative risks inherent in ASN management.

Institutional records of political-neutrality violations illustrate the scale of the risk that any supervisory design must be capable of addressing. Between 2020 and 2023, 2,299 alleged violations of ASN neutrality were reported, and 1,711 civil servants, or approximately 74.4 per cent of those reported, were found to have committed violations following examination.³² The reported conduct included involvement in electoral campaigns, expressions of support for political candidates, the use of public office or bureaucratic resources for electoral purposes, and other forms of partisan alignment. These

²⁹ Ismail Aris, Irfan Amir, dan Septian Amrianto, "Konstitusionalitas Hak Angket Dewan Perwakilan Rakyat (DPR) Terhadap Komisi Pemberantasan Korupsi (KPK)," *Al-Adalah: Jurnal Hukum dan Politik Islam* 4, no. 2 (2019): 135–58, <https://doi.org/10.35673/ajmpi.v4i2.436>.

³⁰ C D Kenney, "Horizontal Accountability: Concepts and Conflicts," in *Democratic Accountability in Latin America*, 2005, <https://doi.org/10.1093/0199256373.003.0003>.

³¹ S S Ankamah, "Toward a framework of improving horizontal and social accountability mechanisms: Case studies in Asia," *Asian Education and Development Studies* 5, no. 3 (2016): 288–304, <https://doi.org/10.1108/AEDS-09-2015-0043>.

³² Republik Indonesia, "Putusan Mahkamah Konstitusi Nomor 121/PUU-XXII/2024," 188–90; Tri Meilani Ameliya, "KASN terima aduan 2.073 ASN diduga langgar netralitas pada 2020-2022," <https://www.antaranews.com>, 2026, https://www.antaranews.com/berita/3350823/kasn-terima-aduan-2073-asn-diduga-langgar-netralitas-pada-2020-2022?utm_source=chatgpt.com.

figures indicate that bureaucratic neutrality is not merely a matter of public perception, but a recurring governance risk within Indonesia's administrative practice.³³

These data must nevertheless be interpreted with caution. Violations recorded while KASN remained operational do not establish that a relatively independent institution was ineffective. Nor can they be used directly to conclude that the post-2023 supervisory model will necessarily perform worse. A high number of recorded cases may reflect the persistence of bureaucratic politicisation, but it may also indicate the supervisory institution's capacity to receive complaints, detect misconduct, and verify violations. The figures therefore do not demonstrate a direct causal relationship between institutional form and the incidence of misconduct. Their relevance lies in demonstrating the scale of the regulatory risk that any model of ASN oversight must be equipped to manage.

A further difficulty concerns the enforcement of supervisory recommendations. Under the KASN model, findings frequently required subsequent action by the PPK or another official authorised to impose sanctions. This dependency exposed the limits of KASN's enforcement capacity. Relatively independent supervision was not invariably accompanied by effective coercive authority. Conversely, placing supervision within an institution possessing stronger access to administrative instruments does not guarantee objectivity where adequate distance from the supervised authority is absent. The experience demonstrates that independence and effectiveness should neither be treated as mutually exclusive nor assumed to be interchangeable. An adequate design must combine autonomy in examination and decision-making with clear and enforceable mechanisms for follow-up.³⁴

The same reasoning applies to disputes concerning ASN transfers, demotions, promotions, and dismissals. The relevant question is not confined to whether a personnel decision rests upon formal legal authority. It also concerns whether the decision can be reviewed by an institution that has no interest in preserving the position of the official responsible for it. Where corrective mechanisms depend exclusively upon internal administrative structures, the objectivity of supervision becomes more contingent upon individual integrity and political willingness than upon systemic safeguards. The rule of law, by contrast, requires constraints on power to be institutionalised through functional differentiation, procedural review, reason-giving obligations, and effective mechanisms of correction, rather than being left solely to the personal qualities of office-holders.³⁵

³³ R J Hadi, "Pelaksanaan Peraturan Bupati Nomor 58 Tahun 2017 tentang Kode Etik dan Kode Perilaku Pegawai Negeri Sipil di Lingkungan Pemerintah Kabupaten Bandung terhadap Pelanggaran Netralitas ASN di Pilkada Kabupaten Bandung," *Khazanah Hukum* 3, no. 3 (2021): 107–15, <https://doi.org/10.15575/kh.v3i3.13863>.

³⁴ OECD, *Being an Independent Regulator, The Governance of Regulators*, OECD Publishing, Paris (Paris, 2016), <https://doi.org/https://doi.org/10.1787/9789264255401-en>.

³⁵ R Ridwan, "THE EXISTENCE AND URGENCY OF ADMINISTRATIVE EFFORTS IN THE ADMINISTRATIVE JUSTICE AND REGULATION," *Journal of Governance and Regulation* 12, no. 2 (2023): 84–91, <https://doi.org/10.22495/jgrv12i2art8>.

This analysis produces two principal findings. First, KASN's constitutional value did not lie in its institutional name or organisational form, but in the external-review function through which it created distance between those administering and those supervising the civil service. Its limited capacity to enforce recommendations did not eliminate the need for independence; it demonstrated instead that independence must be accompanied by adequate powers and effective enforcement mechanisms. Second, Law Number 20 of 2023 did not create a supervisory vacuum. It altered the quality of supervision by reducing the separation among the institutions that formulate policy, administer personnel decisions, and assess compliance. This change raises the question whether administrative coordination and efficiency can substitute for structural guarantees of impartiality.

The debate concerning the abolition of KASN should therefore not be reduced to a binary choice between restoring the former institution and transferring all supervisory functions to BKN and the responsible ministry. The more fundamental questions concern which supervisory functions constitutionally require independence, what powers are necessary to make supervision effective, and what accountability mechanisms should constrain the supervisory body itself. Internal supervision remains necessary for routine administrative control, but it may be insufficient to address allegations of political interference, conflicts of interest, or abuses of authority involving officials positioned at the apex of the personnel hierarchy.

At this point, the restructuring of ASN oversight ceases to be merely a question of administrative organisation and becomes a constitutional problem. The issue is not simply whether the law-making institutions possess the authority to abolish or create a particular body. It is whether that discretion may be exercised to concentrate personnel-management and supervisory functions without preserving a corrective mechanism possessing functional independence. The tension among institutional discretion, horizontal accountability, and the protection of the merit system subsequently became the central issue before the Constitutional Court in Decision Number 121/PUU-XXII/2024.

3.2. Constitutionalising Functional Independence: Decision Number 121/PUU-XXII/2024, Judicial Remedies, and the Future Design of ASN Oversight

The analysis in Section 3.1 demonstrates that Law Number 20 of 2023 did not abolish oversight of the merit system, but altered its institutional quality by reducing the distance between policy-making authorities, the institutions responsible for personnel administration, and the bodies charged with assessing compliance with merit and political-neutrality requirements. This institutional reconfiguration formed the starting point of the constitutional review in Constitutional Court Decision Number 121/PUU-XXII/2024. The issue before the Court was therefore not confined to the abolition of the State Civil Apparatus Commission (Komisi Aparatur Sipil Negara, KASN). It concerned the limits of legislative discretion in designing a supervisory mechanism capable of safeguarding

objectivity, professionalism, and the protection of the civil service from political interference.

In its judgment, the Court declared Article 26(2)(d) of Law Number 20 of 2023 conditionally unconstitutional insofar as it was not interpreted to require that supervision of the merit system, including the governing principles, fundamental values, code of ethics, and code of conduct of the State Civil Apparatus (Aparatur Sipil Negara, ASN), be conducted by an independent institution. The Court further required the law-making institutions to establish such a body within two years. This operative order produced a significant constitutional change. Before the judgment, supervision of the merit system could be organised through the President's delegation of authority to ministries or agencies responsible for ASN affairs. Following the judgment, an independent supervisory institution could no longer be treated merely as one organisational option among several alternatives. It became a minimum requirement that every future model of ASN oversight must satisfy.

The judgment should not, however, be interpreted as an order to restore KASN in a form identical to that established under Law Number 5 of 2014. The Court did not prescribe the institution's name, organisational structure, leadership composition, administrative status, source of funding, or complete catalogue of powers. These matters remain within the authority of the law-making institutions. What the Court constitutionalised was therefore not a particular institutional form, but the requirement that the supervisory function be exercised independently. This distinction prevents the judgment from being reduced to an instruction to reinstate KASN while also precluding legislative compliance through a mere change in nomenclature unsupported by substantive guarantees of independence.

The majority's reasoning was grounded principally in the problem of institutional conflicts of interest. The merit system requires more than statutory rules governing qualifications, competence, performance, and objectivity. It also requires an institution capable of determining whether those standards have been consistently observed. When the authorities responsible for formulating policy, making appointments or transfers, and reviewing compliance operate within the same sphere of power, supervision risks losing the institutional distance necessary for impartial scrutiny. The danger becomes particularly pronounced when personnel decisions involve political office-holders or officials with a direct interest in securing bureaucratic loyalty.

This concern is supported by empirical evidence from Indonesia. Berenschot demonstrates that within clientelistic political settings, bureaucratic appointments are frequently used by political actors to secure electoral support and consolidate control over state resources. More recent research on Indonesia's open recruitment for senior civil service positions similarly finds that although the initial stages of selection are generally based on competency assessments, political considerations and personal connections tend

to become increasingly influential during the final appointment stage.³⁶ Complementary socio-legal research on the supervision of ASN neutrality further indicates that, despite formal compliance with applicable regulatory standards, supervisory mechanisms remain substantively constrained by fragmented sanctioning authority, limited institutional capacity, uneven internalisation of neutrality norms, and entrenched informal power relations.³⁷ Collectively, these findings suggest that the institutional conflict of interest identified by the Court reflects an observable feature of bureaucratic governance rather than a merely hypothetical concern.

Against this empirical background, independence in the present context cannot be understood as a symbolic status or merely formal separation. Rather, it operates as a procedural and institutional safeguard enabling a supervisory body to receive complaints, obtain documents, summon relevant persons, conduct examinations, formulate findings, and secure follow-up without unlawful direction from the authorities under review. The independence required by the Court is therefore best understood as functional independence. A body may remain situated within the constitutional and administrative order and remain subject to accountability mechanisms, yet it must possess sufficient autonomy to perform its supervisory functions without improper interference.

This interpretation also clarifies the relationship between the merit system and the rule of law. Merit is not merely a technique of human-resource management; it is a legal principle that constrains administrative discretion. Appointments, promotions, transfers, demotions, and dismissals determine access to public office and shape the political neutrality of the bureaucracy.³⁸ Such decisions must therefore rest upon reviewable criteria, reasoned justification, and corrective mechanisms that are not controlled by the official whose decision is being challenged. Without independent oversight, the merit system risks becoming a declaratory norm whose practical application depends upon the willingness of those exercising personnel authority.

Within the framework of checks and balances, an ASN supervisory body cannot be equated with a constitutional branch standing alongside the legislature, executive, and judiciary. Its constitutional function lies instead in establishing horizontal accountability within the administrative state. Such accountability prevents the functions of policy formation, implementation, and compliance review from being concentrated in the same

³⁶ Berenschot, "Incumbent bureaucrats: Why elections undermine civil service reform in Indonesia"; Mirayanti et al., "The illusion of meritocracy: a critical analysis of open selection for senior leadership in Indonesia."

³⁷ Wulan Maulidia, Fathul Mu, dan Alan Yati, "State Apparatus Neutrality in Electoral Governance : The Siyasa Tanfidziyah Perspective on Oversight Frameworks in Indonesia," *Al adalah: Jurnal Hukum dan Politik Islam* 11, no. 1 (2026): 80–97.

³⁸ E Oliveira et al., "What does the evidence tell us about merit principles and government performance?," *Public Administration* 102, no. 2 (2024): 668–90, <https://doi.org/10.1111/padm.12945>.

actor or chain of authority. The constitutional value of the supervisory institution thus does not depend upon its absolute location outside the executive, but upon its capacity to constrain administrative power through objective review and enforceable follow-up.

The majority's conclusion was not unanimous. In his dissenting opinion, Constitutional Justice Anwar Usman regarded the transfer of supervisory functions to the Ministry of Administrative and Bureaucratic Reform and the National Civil Service Agency (BKN) as a legislative policy choice that remained within the authority of the law-making institutions.³⁹ From this perspective, the Constitution does not prescribe a particular institutional model for ASN oversight. Provided that the supervisory function continues to exist and is entrusted to institutions possessing the necessary administrative capacity, the replacement of KASN with supervision located within the executive branch does not, by itself, establish a constitutional violation.

This position reflects the doctrine of open legal policy, which recognises that the legislature possesses a sphere of discretion in determining institutional design when the Constitution does not expressly mandate a particular arrangement. The doctrine is important in preventing the Court from replacing legislative policy judgments with its own institutional preferences. The creation, consolidation, or abolition of state bodies ordinarily requires assessments of efficiency, coordination, budgetary implications, administrative capacity, and governmental priorities that cannot be resolved exclusively through constitutional interpretation. This understanding is consistent with scholarship observing that the Constitutional Court has developed the doctrine of open legal policy primarily for situations where the Constitution does not prescribe a specific institutional arrangement.⁴⁰ At the same time, recent studies argue that greater conceptual clarity can be achieved by distinguishing between the constitutional object of regulation (what) and the legislative choice concerning the regulatory design (how).⁴¹ From this perspective, the Constitution may prescribe the objective or function that must be secured while leaving the institutional means for achieving that objective to legislative discretion. Applied to ASN supervision, this distinction suggests that the Constitution may require an effective supervisory mechanism capable of safeguarding the merit system without necessarily prescribing that such supervision must be exercised through KASN as an independent commission.

Nevertheless, open legal policy does not amount to unlimited legislative discretion. A legislative choice remains reviewable where it produces an institutional structure inconsistent with constitutional rights, the rule of law, legal certainty, or the need to

³⁹ Republik Indonesia, "Putusan Mahkamah Konstitusi Nomor 121/PUU-XXII/2024," 293–97.

⁴⁰ M Wibowo et al., "The Criticism on the Meaning of 'Open Legal Policy' in Verdicts of Judicial Review at the Constitutional Court," *Constitutional Review* 3, no. 2 (2017): 262–86, <https://doi.org/10.31078/consrev326>.

⁴¹ F Arifin et al., "Open Legal Policy Criteria in the Constitutional Court Decision: An Evaluation and Recommendation," *Padjadjaran Jurnal Ilmu Hukum* 12, no. 2 (2025): 216–33, <https://doi.org/10.22304/2442-9325.1335>.

prevent an excessive concentration of authority. In the context of ASN oversight, the legislature continues to enjoy discretion over the name, form, legal position, and distribution of powers of the supervisory body. After Decision Number 121/PUU-XXII/2024, however, that discretion no longer includes the option of eliminating the functional independence of supervision. The institutional form remains open, but the constitutional outcome that must be achieved has been delimited.

The disagreement between the majority and the dissent should therefore not be reduced to a binary opposition between judicial intervention and legislative freedom. It concerns the point at which administrative design becomes a constitutional problem. The dissent places primary emphasis on executive capacity and the continued availability of supervision. The majority focuses on the quality of institutional relationships and the structural risk of conflicts of interest. The majority's position is more persuasive if independence is understood not as a preference for KASN, but as a structural safeguard required when supervision is directed towards officials and institutions operating within the same chain of authority.

The majority's reasoning must nonetheless be confined so that the mere existence of a potential conflict of interest does not automatically justify requiring an independent institution for every administrative function. ASN oversight possesses distinctive characteristics. It directly concerns access to public office, the continuity of state administration, and bureaucratic neutrality. Officials who control civil-service careers are frequently political office-holders or operate within relationships of political accountability. Moreover, the politicisation of the bureaucracy may affect electoral integrity, the quality of public services, and equal treatment of citizens.⁴² These cumulative features provide a stronger basis for constitutionally requiring independent oversight than would ordinarily exist in routine administrative functions.

The form of remedy adopted in Decision Number 121/PUU-XXII/2024 further demonstrates that the Court did more than invalidate a statutory provision. It supplied a constitutional interpretation requiring supervision by an independent institution and imposed a two-year period within which the law-making institutions must establish that body. The remedy is structural because it not only corrects the meaning of the disputed provision, but also directs the creation of a revised institutional architecture.

This remedial choice is defensible for two reasons. First, the immediate invalidation of the provision could have produced a legal vacuum in the supervision of the merit system. Second, a declaration of unconstitutionality without a substantive minimum standard could have permitted the legislature to retain an institutionally equivalent arrangement. A conditionally unconstitutional ruling allowed supervision to continue

⁴² J D Huber dan M M Ting, "Civil service and patronage in bureaucracies," *Journal of Politics* 83, no. 3 (2021): 902–16, <https://doi.org/10.1086/711057>.

during the transitional period while requiring the law-making institutions to construct a constitutionally compliant framework.

The specification of an institutional outcome and a legislative deadline nevertheless raises questions concerning the limits of the Court's authority. An order requiring the creation of a body within a defined period may be perceived as interfering with the legislative agenda and the organisation of public administration. The legitimacy of such an intervention depends upon the extent to which the Court continues to preserve a meaningful sphere of legislative discretion. In this case, the Court prescribed only the minimum result - an independent institution and the scope of its supervision - without dictating a complete organisational model. The remedy may therefore be characterised as a limited structural remedy: the Court determined the constitutional standard, while the institutional means of implementing that standard remain subject to the legislative process.

The judgment does not fully resolve the difficulties of implementation. The two-year deadline is not accompanied by an explanation of the legal consequences of legislative inaction. Nor did the Court formulate specific indicators of independence, define the future institution's relationship with BKN and the responsible ministry, determine the legal force of its recommendations, or clarify the transitional supervisory arrangement. These uncertainties create a risk of formalistic compliance. The legislature could establish a body that is administratively separate but remains dependent upon the executive in relation to leadership appointments, budgeting, access to information, or the implementation of supervisory findings.

Table 2. The principal implications of the judgment may be summarised as follows

Dimension	Before Decision No. 121/PUU-XXII/2024	Standard following the judgment	Implementation issue
Supervisory authority	Ministries and/or agencies exercising governmental functions in ASN affairs	Supervision must be conducted by an independent institution	Its organisational form, legal position, and institutional relationships remain undefined
Scope of supervision	Implementation of the merit system	The merit system, governing principles, fundamental values, code of ethics, and code of conduct	The boundaries among ethical, administrative, and disciplinary supervision require clarification
Nature of independence	Not expressly established as a constitutional requirement	Independence becomes a minimum constitutional standard	Indicators of institutional and functional independence remain unspecified
Establishment deadline	No obligation to establish an independent supervisory institution	The institution must be established within two years of the judgment	The consequences of legislative delay are unclear
Legislative discretion	Broad authority to determine the supervisory model	Broad discretion over institutional form, but constrained by the requirement of independence	Risk of a design that complies only formally
Legal effect	Dependent upon	Must be capable of ensuring	The binding force of

of supervision	administrative design and follow-up by authorised officials	effective oversight	findings or recommendations remains unresolved
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Source: Authors' analysis based on Constitutional Court Decision Number 121/PUU-XXII/2024

Comparative experience demonstrates that independent civil-service oversight need not be concentrated within a single institution exercising every relevant function. In the United States, responsibility for protecting the merit system is divided between the Merit Systems Protection Board, which performs adjudicative functions, and the Office of Special Counsel, which investigates and enforces prohibitions against unlawful personnel practices.⁴³ In the United Kingdom, the Civil Service Commission supervises merit-based recruitment and protects the impartiality of the civil service.⁴⁴ In Australia, the Merit Protection Commissioner independently reviews specified employment decisions and supports compliance with the employment principles and values of the Australian Public Services.⁴⁵

These institutional variations demonstrate that independence does not require a uniform organisational model. The more important consideration is the separation of functions that may generate conflicts of interest. Policy formulation, personnel-data management, investigation of alleged misconduct, adjudication of disputes, the imposition of sanctions, and compliance review need not all be vested in a single body. Indeed, concentrating excessive authority in one commission could create new accountability concerns. The Court's judgment should therefore not be implemented by creating an institution that displaces all functions presently performed by the Ministry of Administrative and Bureaucratic Reform, BKN, Personnel Management Officers, and adjudicative bodies.

⁴³ J P Near dan M P Miceli, "Wrongdoing, Whistle-Blowing, and Retaliation in the U.S. Government: What Have Researchers Learned From the Merit Systems Protection Board (MSPB) Survey Results?," *Review of Public Personnel Administration* 28, no. 3 (2008): 263–81, <https://doi.org/10.1177/0734371X08319153>; D D Goldman dan D H Rosenbloom, "Whistleblower," in *Defining Public Administration: Selections from the International Encyclopedia of Public Policy and Administration*, 2018, 428–35, <https://doi.org/10.4324/9780429501074-45>; R Zuberi, *Favoritism, fairness and equity in the Federal workforce: Perceptions, impacts, and recommendations for a strong merit system, Favoritism, Fairness and Equity in the Federal Workforce: Perceptions, Impacts, and Recommendations for a Strong Merit System*, 2014, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84952644154&partnerID=40&md5=7879aa75ca0c619f8704dd8637592216>; United States Senate, "A Review of the Office of Special Counsel and Merit Systems Protection Board (S. Hrg. 112-526)" (Washington, DC: U.S. Government Printing Office., 2012).

⁴⁴ Parliament of the United Kingdom, "Constitutional Reform and Governance Act 2010," *UK Parliament*, 2010; Civil Service Commission, "Civil Service Commission Annual Report and Accounts 2013 / 14" (London, 2014), https://assets.publishing.service.gov.uk/media/5a7da53f40f0b65d8b4e2a59/2902194_CSC_Annual_Report_PRINT.PDF; Lucinda Maer, "The Civil Service Code. Standard Note: SN/PC/6699," 2015.

⁴⁵ Merit Protection Commissioner, "What We Do," Merit Protection Commissioner, 2023, <https://www.mpc.gov.au/>.

The principal value of comparison lies in its functional orientation. Indonesia must determine which functions require institutional independence and which may legitimately remain within executive administration. General policy formulation and the administration of personnel data may continue to be exercised by the responsible ministry and BKN. Routine internal control also remains necessary. By contrast, the direct receipt of complaints, examination of alleged merit-system violations, assessment of political interference, review of compliance in senior appointments, and scrutiny of the conduct of Personnel Management Officers require greater institutional distance from the authorities under supervision.

Comparative experience also indicates that independence must be accompanied by functional specialisation and a clear allocation of powers. A body authorised merely to receive complaints, but unable to obtain documents, will be institutionally weak. Conversely, a body vested with extensive investigatory powers but lacking review and accountability mechanisms may become a new centre of unchecked authority. Institutional design must therefore address the distribution of powers, mechanisms of coordination, and the availability of judicial review over decisions affecting legal rights.

Implementing Decision Number 121/PUU-XXII/2024 requires a design capable of reconciling independence, supervisory effectiveness, and democratic accountability.⁴⁶ These dimensions are interdependent. Independence without meaningful powers produces a symbolic institution. Extensive powers without accountability create a risk of abuse. Conversely, accountability mechanisms based upon excessive executive control may undermine the independence required by the judgment.⁴⁷

Institutional independence requires a leadership-selection process that is not controlled by a single political actor, secure terms of office, legally defined and reviewable grounds for removal, and budgetary arrangements that cannot easily be used as instruments of pressure.⁴⁸ Appointment may involve both the President and the House of Representatives, but it should be accompanied by an open selection process, professional criteria, disclosure of conflicts of interest, and public participation. The terms of office should not fully coincide with the governmental electoral cycle, thereby reducing the perception that the body merely serves as an extension of a particular administration.

Functional independence requires authority to determine supervisory priorities, receive complaints directly, obtain data and documents, summon relevant officials, protect

⁴⁶ M U H Ridha Hakim, "INTERPRETATION OF JUDICIAL POWER INDEPENDENCE IN CONSTITUTIONAL COURT DECISIONS," *Jurnal Hukum dan Peradilan (JHP)* 7, no. 2 (2018): 279–96, <https://doi.org/https://doi.org/10.25216/jhp.7.2.2018.279-296>.

⁴⁷ Andrew Podger dan Donald F Kettl, "How much damage can a politicized public service do? Lessons from Australia," *Public Administration Review* 84, no. 1 (1 Januari 2024): 160–72, <https://doi.org/https://doi.org/10.1111/puar.13789>.

⁴⁸ Fabrizio Gilardi, "The Formal Independence of Regulators: A Comparison of 17 Countries and 7 Sectors," *Swiss Political Science Review* 11, no. 4 (1 Desember 2005): 139–67, <https://doi.org/https://doi.org/10.1002/j.1662-6370.2005.tb00374.x>.

complainants, and formulate findings without obtaining the approval of the institution under examination.⁴⁹ The supervisory body should also have access to ASN information systems, subject to proportionate requirements of data protection and confidentiality. Complete dependence upon BKN or the responsible ministry for access to information would undermine the effectiveness of independent review.

Effective supervision further requires clearer mechanisms for implementing findings than those previously available to KASN. The new institution need not necessarily impose every administrative sanction directly. Nevertheless, failure to comply with its decisions or recommendations should generate legal consequences. Such consequences may include a duty to provide reasons, escalation to the President or another competent authority, public disclosure of non-compliance, invalidation of a defective appointment process, or the availability of review before the administrative courts.

The allocation of jurisdiction among the new institution, the Ministry of Administrative and Bureaucratic Reform, BKN, the Ombudsman, the Election Supervisory Body, the Corruption Eradication Commission, and the administrative courts must also be clearly defined. The independent ASN supervisory body may focus on compliance with the merit system, political neutrality, ethical obligations, and institutional conflicts of interest in personnel administration. BKN may continue to perform technical personnel-management and administrative functions; the responsible ministry may retain policy-making authority; the Election Supervisory Body may address violations arising in the electoral context; and the courts may review the legality of administrative decisions that directly affect individual rights. Such a distribution would minimise overlap without eliminating reciprocal oversight.

The institution's organisational capacity must also reflect the scale and territorial dispersion of Indonesia's civil service. Supervision of millions of civil servants across central and regional institutions cannot depend upon a single central office and manual procedures. The institution will require a digital complaints mechanism, interoperable data systems, risk-based analysis, a process for prioritising cases, and regional investigatory capacity. Digitalisation, however, should not justify structural dependence upon the executive institutions controlling personnel-data systems. Interoperability must be accompanied by guarantees of independent access, information security, and auditing of data use.

At the same time, independence does not entail freedom from accountability. The supervisory body should submit periodic reports to the public and representative institutions, disclose aggregate information concerning complaints and follow-up

⁴⁹ L. Glušac, "Ombuds Institutions," in *Routledge Handbook of Security Sector Reform*, 2026, 184–95, <https://doi.org/10.4324/9781003290384-19>.

measures, and explain the basis of its supervisory policies.⁵⁰ Its financial administration should remain subject to audit, while decisions affecting individual rights should be reviewable through internal objection procedures or judicial proceedings. Members of the institution should also be bound by a code of ethics, conflict-of-interest disclosure requirements, and fair removal procedures.

Table 3. The minimum framework may be expressed as follows.

Dimension	Minimum safeguard	Constitutional objective
Institutional independence	Open selection, secure tenure, removal on legally defined grounds, and proportionate budgetary autonomy	Reducing dependence upon the authorities under supervision
Functional independence	Access to information, direct receipt of complaints, investigatory authority, and complainant protection	Ensuring objectivity in supervision
Effectiveness	Follow-up powers, consequences for non-compliance, data integration, and regional capacity	Preventing the institution from becoming merely symbolic
Coordination	Clear allocation of powers among the responsible ministry, BKN, the Election Supervisory Body, Ombudsman, Corruption Eradication Commission, and courts	Preventing jurisdictional overlap and supervisory gaps
Democratic accountability	Public reporting, auditing, ethical regulation, judicial review, and transparency of decisions	Preventing independence from becoming unaccountable power

Source: Authors' analytical framework based on doctrinal analysis and functional comparison

This framework demonstrates that institutional options should not be confined to restoring KASN or recreating an identical commission. The legislature may establish an independent commission, divide investigative and adjudicative functions between different bodies, or strengthen an existing institution through legally protected autonomy. Each model, however, must be evaluated substantively rather than by its formal designation. A unit described as independent, but whose leadership, budget, supervisory agenda, and access to information remain controlled by a ministry, would not satisfy the judgment. Conversely, a body situated within a broader administrative framework may satisfy the constitutional standard if it possesses effective legal safeguards against interference and can perform its supervisory functions objectively.

Decision Number 121/PUU-XXII/2024 ultimately establishes a new limit upon legislative discretion. Before the judgment, independent ASN oversight could be treated as a contestable choice of institutional design. After the judgment, the legislature remains free to determine the form of the institution, but it is no longer free to remove the substance of independence. In this respect, the Court transformed functional independence from a policy preference into a minimum constitutional requirement.⁵¹

⁵⁰ M Bovens dan A Wille, "Indexing watchdog accountability powers a framework for assessing the accountability capacity of independent oversight institutions," *Regulation and Governance* 15, no. 3 (2021): 856–76, <https://doi.org/10.1111/reg.12316>.

⁵¹ Hakim, "INTERPRETATION OF JUDICIAL POWER INDEPENDENCE IN CONSTITUTIONAL COURT DECISIONS."

The significance of the judgment will not, however, be determined merely by the formal creation of a new institution. Substantive compliance requires adequate distance from the authorities under supervision, effective investigatory powers, enforceable follow-up mechanisms, and accountability arrangements capable of preventing abuse. Reproducing KASN's former enforcement weaknesses would generate independence without effectiveness. Conversely, granting extensive authority without transparency and review would create a powerful but insufficiently accountable institution.

The future of ASN oversight should therefore not be framed as a choice between KASN and BKN, or between external and internal supervision in absolute terms. Internal oversight remains necessary for routine administrative management, while independent supervision is required for matters involving conflicts of interest, political intervention, violations of merit principles, and abuses of authority by officials at the apex of the personnel hierarchy. Both forms of oversight must be situated within a complementary institutional structure.

Decision Number 121/PUU-XXII/2024 thus does not constitutionalise KASN as the only lawful institutional model. It constitutionalises functional independence as a minimum quality of ASN supervision while preserving legislative discretion over institutional design. Successful implementation will depend upon the legislature's ability to translate an abstract constitutional standard into an institutional architecture that reconciles independence, effectiveness, and democratic accountability. Without such a balance, the establishment of a new body would amount only to symbolic compliance rather than a substantive restoration of checks and balances within Indonesia's bureaucratic governance.

4. Conclusion

Constitutional Court Decision Number 121/PUU-XXII/2024 marks a significant development in the constitutional construction of oversight over Indonesia's State Civil Apparatus (ASN). The central problem arising from Law Number 20 of 2023 was not the complete absence of supervision, but the reduced institutional distance among policy-making authorities, personnel-management institutions, and the bodies responsible for assessing compliance with the merit system. The Court did not constitutionalise the State Civil Apparatus Commission (KASN) as the only permissible institutional model. Rather, it constitutionalised functional independence as a minimum requirement for supervising the merit system, its governing principles, fundamental values, code of ethics, and code of conduct. Accordingly, open legal policy continues to govern the institution's name, organisational form, legal position, and allocation of powers, but no longer extends to the elimination of substantive supervisory independence. The judgment also represents a limited structural remedy: the Court prescribed a constitutional standard and a deadline for establishing an independent institution while leaving its detailed organisational design to the law-making institutions.

Implementation of the judgment must therefore be evaluated by reference to the substantive quality of the institutional design rather than the formal creation of a new body. A supervisory institution will satisfy the constitutional standard only if it possesses institutional and functional independence, adequate investigatory authority and access to information, effective follow-up mechanisms, and democratic accountability secured through transparency, auditing, ethical regulation, and judicial review. The functional comparison with the United States, the United Kingdom, and Australia demonstrates that no single institutional model is universally applicable; the decisive consideration is whether functions capable of generating conflicts of interest are adequately separated and whether the supervisory institution can review personnel authority objectively and effectively. This study's principal contribution is therefore to conceptualise ASN oversight as a form of horizontal accountability within the administrative state and to develop an institutional framework that reconciles independence, effectiveness, and democratic accountability. Without such a balance, the establishment of a new supervisory body would constitute merely symbolic compliance rather than a substantive restoration of the merit system and the mechanisms of checks and balances within Indonesia's bureaucratic governance.

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