

The Law No. 20 of 2023: Reform or Retreat? A Critical Analysis of Its Impact on The State Civil Apparatus (ASN) Personnel System in Indonesia

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Abstract. *The enactment of Law No. 20 of 2023 concerning the State Civil Apparatus (ASN Law) marks a significant normative reconstruction in the governance of state civil servants in Indonesia. This law explicitly affirms the principles of meritocracy, professionalism, and bureaucratic modernization through digitalization and the structuring of the status of Civil Servants (PNS) and Government Employees with Work Agreements (PPPK). However, behind the rhetoric of reform, the ASN Law also contains problematic constitutional and administrative implications, particularly regarding central-regional relations, the legal status of PPPK, and the effectiveness of the merit system in stemming the politicization of the bureaucracy. This study uses a normative legal research method with a statutory and conceptual approach to analyze the consistency of the ASN Law with the principles of regional autonomy, equality before the law, and neutrality of state apparatus. The study results show that the ASN Law tends to reinforce the centralization of ASN management authority, creating formal but not substantive equality between PNS and PPPK, and placing the merit system in a vulnerable position to political co-optation due to the weak design of independent oversight. Thus, the ASN Law has the potential to give rise to what can be called functional unconstitutionality, namely a condition where legal norms appear to be textually aligned with the 1945 Constitution, but functionally weaken the constitutional principles they are intended to protect.*

Keywords: Apparatus; Merit System; Politicization; PPPK.

1. Introduction

Since the reform era, the governance of the state civil service (ASN) in Indonesia has been a constant battleground between the principles of meritocracy, administrative decentralization, and local political pressures. Indonesian public administration literature shows that post-New

Order bureaucratic reform has not fully succeeded in freeing itself from the legacy of patrimonialism and centralized power that has undermined the rationality of the civil service system (B. Herry Priyono, 2018). On October 31, 2023, the House of Representatives (DPR) and the Government ratified Law No. 20 of 2023 concerning the State Civil Apparatus (hereinafter referred to as the ASN Law), which formally restructures the legal framework for ASN management—regulating rights and obligations, personnel structure (PNS and PPPK), mechanisms for filling positions, and supervision of ASN management. The text of this law serves as the primary legal source that emphasizes the purpose of its formation: to build an apparatus that has integrity, is professional, neutral, and free from political intervention, clean from the practices of corruption, collusion, and nepotism, and is capable of providing public services to the community and is able to carry out its role as a unifying element of national unity based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The regulation regarding ASN has previously been regulated in Law No. 5 of 2014, however, with the development of the times, changes and adjustments need to be made. In addition, there are rapid technological advances, increasing public demands for public services, including demands for solving the problem of honorary workers, as well as the opportunities and challenges of the global economy faced by the Indonesian nation to be able to compete with other nations in the world. Legally, Law No. 5 of 2014 concerning the State Civil Apparatus also needs to be adjusted to the Constitutional Court Decisions that have implications for the material content of the Law. Some of the Constitutional Court Decisions include: Constitutional Court Decision Number 41/PUU-XII/2014 concerning the resignation of Civil Servants who participate in political contests; Constitutional Court Decision Number 8/PUU XIII/2015 concerning Civil Servants who no longer serve as state officials and there are no vacant positions; and Constitutional Court Decision Number 87/PUU-XVI/2018 concerning the dishonorable dismissal of Civil Servants for committing criminal acts.

The enactment of the Civil Service Law marks a significant normative reconstruction of Indonesia's civil service governance. From a constitutional law perspective, any regulatory change at this level does more than simply restructure administrative norms; it alters the framework of bureaucratic power, impacts democratic control mechanisms, and restructures the central-regional relations that are the lifeblood of state practice in Indonesia.

From a constitutional governance perspective, changes to civil service management norms always have structural implications. They determine the direction of the doctrine of bureaucratic neutrality, regulate who is authorized to fill strategic positions, and define the limits of political influence on the bureaucracy. Jimly Asshiddiqie calls the bureaucracy the "backbone of the rule of law"—an element that must stand tall amidst the dynamics of electoral politics (Jimly Asshiddiqie, 2006). Therefore, any reconstruction of ASN management has constitutional consequences, including in relation to regional autonomy, the principle of checks and balances, and administrative independence.

Substantively, the ASN Law emphasizes that the state apparatus consists of Civil Servants (PNS) and Government Employees with Work Agreements (PPPK), placing both under the same legal

umbrella while also affirming more substantial rights for PPPK—from income, allowances, social security, to facilities and competency development rights. At the level of legislative rhetoric, these norms are formulated as part of the bureaucratic modernization agenda: strengthening the principles of merit, professionalism, and digitalization of ASN management.

However, behind the language of reform and reformist jargon, there are a number of structural and practical issues that require critical and immediate examination. First, the problematic centralization of authority over filling positions and controlling personnel management. Although this law is packaged with a narrative of bureaucratic modernization, several provisions actually strengthen the central government's role in determining standards, oversight, and even the mechanisms for filling positions in regional governments. In a decentralized state system, such shifts in authority cannot be underestimated. Agus Dwiyanto warned that centralization of personnel policies often weakens regional capacity and reduces the responsiveness of local bureaucracies to diverse public needs (Agus Dwiyanto, 2018). In other words, what appears to be an “administrative arrangement” in the ASN Law actually has the potential to shift the power relations between the central and regional governments in a constitutional sense.

Second, the ambiguity of legal status and welfare implications for PPPK. Miftah Thoha emphasized that the status of civil servants (PNS) and PPPK have different institutional philosophies: PNS support the institutional sustainability of the state, while PPPK is built on contractual flexibility (Miftah Thoha, 2018). Although the Civil Servant Law promises equal rights, the contractual status of PPPK, which differs substantially from that of PNS, still opens up the potential for long-term uncertainty—both in terms of pension security, career continuity, and legal protection when fiscal policy changes. The normative question is: does equal rights in the text equate to status security in modern bureaucratic practice? Early implementation experience suggests caution is needed before declaring that normative shifts automatically lead to improvements in structural welfare.

Third, the risk of politicization of the bureaucracy despite the launch of a merit system. Meritocracy, as a governance principle that prioritizes competence and achievement, can serve as a legal code for reform. However, without independent oversight mechanisms and strong selection transparency, claims of meritocracy risk transforming into formal legitimacy for selection practices that remain vulnerable to political intervention. In other words, *de jure* merit does not necessarily translate into *de facto* merit if the supporting institutional ecosystem is weak. B. Herry Priyono revealed that the Indonesian bureaucracy is often trapped in a form of “instrumental rationality” that is subject to the political interests of those in power, rather than to the law or the public interest. This shows that the existence of “meritocratic” norms in the new law does not necessarily create meritocratic practices in the field.

Fourth, the fiscal and administrative consequences of the restructuring of honorary and PPPK (Commissioned Personnel). The restructuring of non-ASN (honorary) workers into PPPK (Commissioned Personnel) or their removal from the ASN structure has implications for short-term and long-term fiscal burdens, as well as the capacity of state administrators to absorb the workforce that has shaped the local bureaucracy's experience. Sedarmayanti noted that any

restructuring of institutional structures is always accompanied by administrative costs and redistributive effects that cannot be ignored (Sedarmayanti, 2017). This merger or relocation of the workforce has redistributive implications that must be analyzed from the perspective of state costs and administrative justice.

Fifth, from a constitutional perspective, there is an urgent need for a post-implementation evaluation mechanism. A law as significant as the Civil Service Law should not stop at ratification; it needs to be accompanied by independent oversight instruments, measurable performance indicators, and corrective procedures if norms do not produce the desired results. Without these tools, reforms will remain mere normative texts divorced from bureaucratic reality. This echoes Zauhar's argument, which emphasizes that administrative reforms without evaluation mechanisms only result in "pseudo-modernization"—changes that appear only in text but do not alter bureaucratic behavior (Zauhar, 2016).

Efforts to improve the implementation of ASN management require in-depth and comprehensive analysis so that its implementation runs optimally. This is certainly so that high work results are achieved and service-oriented, accountable, competent, harmonious, loyal, adaptive, and collaborative behavior by ASN can be realized. Therefore, this study positions itself in a critical fragment that attempts to open three analytical domains: (1) the legal system and constitutionality of central-regional relations reconstructed by the ASN Law; (2) the normative and practical impacts on the status and welfare of PPPK; and (3) the effectiveness of merit system claims in preventing bureaucratic politicization. The study will attempt to synthesize the analysis of legal texts, the initial implementation context, and institutional implications within the framework of constitutional law theory and modern public administration.

2. Research Methods

The research method used in this paper is normative legal research. Legal research is a process of discovering legal rules, legal principles, and legal doctrines to address the legal issues faced (Peter Mahmud Marzuki, 2011). This aligns with the prescriptive nature of legal science. The approaches used to examine each problem include the statute approach and the conceptual approach, which examines all laws and regulations relevant to the legal issue at hand. The statutory approach in normative legal research has both practical and academic uses.

3. Result & Discussion

3.1. The Constitutionality of the Reconstruction of Central-Regional Relations in ASN Management

In the normative construction of Article 1 number (1) of Law No. 23 of 2014 concerning Regional Government, regional government is understood as the implementation of government affairs by the regional government together with the DPRD based on the principles of autonomy and assistance tasks, which are carried out within the corridor of the principle of the broadest possible autonomy as outlined by the 1945 Constitution. This legislative formula emphasizes

that regional governments are given a constitutional mandate to manage concurrent government affairs, namely affairs that are systematically divided into mandatory affairs and optional affairs. Mandatory affairs are a spectrum of authority that must be implemented by all regions without exception, while optional affairs are authorities that are implemented selectively according to the characteristics, capacity, and objective potential of each region. Furthermore, the category of mandatory affairs is further distinguished between affairs that are directly related to basic services and affairs that are not directly related to these basic services.

In the personnel administration dimension, Law No. 23 of 2014 together with Law No. 20 of 2023 concerning the State Civil Apparatus form a legal framework that serves as the foundation for the governance of ASN management in the regions. These two regulations emphasize the delegation of strategic authority to regional heads as Regional Personnel Development Officials, particularly in the process of procurement, appointment, transfer, and dismissal of regional civil servants. This position demonstrates that regional heads are not merely administrative actors, but key elements in the architecture of national governance, considering that regional government is an integral subsystem of the overall national government system.

The granting of regional autonomy not only encompasses the dimension of decentralization of authority, but also serves as a constitutional instrument to ensure that regions have the capacity to regulate and manage their own government affairs and the interests of their local communities. This autonomy is oriented towards increasing the rationality, efficiency, and effectiveness of local governance in order to provide responsive and high-quality public services. However, the ideal goals of regional autonomy can only be realized through the quality of its primary implementers, namely regional heads and regional government officials—particularly civil servants at the provincial, district, and city levels—who possess integrity, competence, and a deep understanding of the nature of decentralization in Indonesia's constitutional design.

The reconstruction of ASN management through Law No. 20 of 2023 concerning the State Civil Apparatus (ASN Law) is not simply a technical correction of bureaucratic practices; it is an institutional restructuring that shifts the boundaries of authority between the central and regional governments in a subtle yet systemic manner. On the surface, the legislation is marketed as modernization—digitizing ASN data, enforcing merit, and structuring honorary workers—but when examined from a constitutional law perspective, its substantive consequence is a redistribution of administrative power from the regions to the center. Such a shift must be assessed not by its rhetorical intent but by its institutional effects: the extent to which regional heads retain control over the public policy implementation apparatus in their regions, the extent to which the regional budget is not burdened with unfunded mandates, and the extent to which local political accountability is not emptied by nationally produced recruitment mechanisms. In the tradition of Indonesian constitutional studies, this issue is not merely administrative; it touches on the very heart of Article 18 of the 1945 Constitution on regional autonomy and the principle of local self-government, which has become the cornerstone of local government legitimacy after the Reformation.

Within the framework of assessing the constitutionality of the ASN Law, the most fundamental step is to first place the law's key provisions within the context of its normative construction, then examine the resulting doctrinal implications. A textual reading of these norms is essential because any reconstruction of the ASN management design inherently touches on established constitutional principles, particularly the principle of decentralization, the principle of "real, broad, and responsible" regional autonomy, and the doctrine of the division of authority, which is a key pillar of regional government law. Therefore, analysis of these provisions cannot stop at the descriptive level, but must be directed towards an in-depth examination of their consistency with the hierarchical structure of norms, their conformity with the fundamental principles of constitutional law, and the potential shifts in the central-regional authority relationship that they may cause.

This normative-doctrinal approach allows for a more precise examination of whether the expansion and standardization of central government authority in the Civil Service Law is constitutionally justifiable or whether it creates normative tensions that could erode the principle of regional autonomy. The following are some changes in the Civil Service Law that have a substantive impact on regional autonomy:

a. Centralization of National Talent Management

One of the most strategic changes in the Civil Service Law is the introduction of National Talent Management (MTN) as a civil service development instrument, centrally managed by the central government. Article 47 stipulates that strategic talent management be conducted "nationally," with the central government playing a dominant role in talent identification, classification, and promotion. The impact on regional autonomy is as follows:

- 1) MTN places regional ASN talent in the national pool, thereby depriving regions of discretionary space to develop potential officials according to local needs.
- 2) Regional heads no longer have full authority to select their strategic officials; strategic talent officials can be appointed by the central government, potentially blurring the lines of political accountability between regional heads and civil servants.

The introduction of the MTN as a centralized mechanism for the identification, development, and placement of strategic civil servants transforms regional bureaucratic talent into a national resource that can be deployed according to central needs. The MTN's concept, which resembles a talent pool, eliminates the role of regional heads as agenda-setters for establishing local policy teams. Instead of selecting and forming bureaucratic partners aligned with local political mandates, regional heads risk becoming program managers whose implementers are appointed or equated by the central government. The immediate consequence is not simply operational disharmony but also an erosion of democratic accountability: voters evaluate regional heads, but regional heads lose the instrumental means to fulfill campaign promises (Mahfud MD, 2017).

b. Weakening of KASN's Authority and Strengthening of Central Intervention

The ASN Law changes the function of the State Civil Service Commission (KASN). The merit-monitoring role previously assigned to KASN has been narrowed and partially transferred to central agencies through the Minister of Administrative and Bureaucratic Reform and the National Civil Service Agency (BKN). This impacts regional autonomy:

- 1) With the weakening of KASN's function as an independent watchdog, the selection process for regional positions is increasingly under the radar of the central government.
- 2) The mechanism for monitoring merit in the regions now relies more on central policies, which has the potential to drag back the administrative relationship patterns of the pre-1998 centralist era.

Repositioning the oversight and selection functions, previously a relatively independent domain—partly within the KASN—to the central policy realm weakens the institutions that safeguard local meritocracy. Removing or reducing KASN's oversight capacity without strengthening other independent oversight tools creates a control vacuum that is easily filled by central administrative logic. In practice, this opens up opportunities for selective centralization framed as enforcing national standards, when in fact its function is to centralize recruitment and promotion authority at a more centralized level. A historical perspective shows how seemingly technical institutions are often used to consolidate political authority (Daniel S. Lev, 2000).

c. Nationally Integrated Digitalization of ASN Management

Article 63 concerning the Digitalization of Civil Servant Management stipulates the provision of an integrated digital platform to facilitate the management and service of civil servants, including for learning, performance, collaboration, providing and receiving feedback, and talent and career development. Furthermore, the obligation to integrate civil servant data into the National Civil Servant Information System provides a strategic data control center. Data is not merely an administrative fact; it is a basis for decision-making, a tool for justifying interventions, and an instrument for allocating remuneration and formation. When access to and control over data is standardized nationally without an institutional firewall mechanism protecting regional operational autonomy, the central government gains the technical capability to justify interventions that previously required political processes or constitutional debate. Information modernization without institutional guarantees has the potential to transform transparency into centralized oversight. Agus Dwiyanto warned that bureaucratic modernization without protective governance mechanisms is easily exploited as an instrument of technical centralization.

d. Transition and Arrangement of Non-ASN Personnel

In the latest ASN Law, there are no longer any non-ASN or honorary workers, where this arrangement will be carried out until December 2024 as stipulated in Article 66. Personnel Development Officers and other officials in government agencies are prohibited from

appointing non-ASN employees or any other name other than ASN employees and will be subject to sanctions if they violate. There is an expansion of the PPPK concept to avoid mass layoffs, budget overruns, and decreased revenue, where PPK can appoint PPPK part-time. The transition provisions and arrangement of honorary workers to the PPPK scheme—without a clear transition financing scheme from the central to the regional—contain a serious risk of an unfunded mandate. Relying on long-term burdens such as allowances, pensions, and welfare rights to the APBD, while conversion standards and rights are set nationally, means that regions are forced to cover the costs of central policies. In fiscal administration theory, imposing regulations without adequate budget allocations cripples the capacity of states/regions to implement fiscal autonomy and public services. If this law is implemented without a financial compensation mechanism, the resulting flow of authority will be in the form of regression: formally, autonomy remains, but its functions and capacities are eroded by the regulatory burden produced at the center.

e. More Centralized Standardization of ASN Recruitment

The Civil Servant Law stipulates that civil servant recruitment uses a national selection system with a single, centrally established standard. The impact on regional autonomy includes:

- 1) Regions cannot add selection criteria according to local needs, for example the ability to understand customary legal traditions, local languages, or region-specific competency needs.
- 2) Reducing the space for adaptation to regional needs shifts the recruitment orientation towards “one-size-fits-all”.

Standardized national recruitment standards—despite their general aim of improving the quality of civil servants—tune the bureaucracy toward a one-size-fits-all model that ignores the diversity of local needs: regional languages, customs, geographic conditions, and the varying nature of public services across regions. Regional autonomy should allow for recruitment innovations to address specific needs; standardizing selection criteria without room for adjustment negates this adaptive capacity. In the light of decentralization theory, local adaptability is central to the legitimacy of devolution of power; without it, so-called decentralization is merely administrative decentralization without political substance.

In synthesis, the changes introduced by Law No. 20 of 2023 represent a new paradigm: from decentralization, which emphasizes local sovereignty over administrative apparatus, to a nationally standardized model that views civil servants primarily as state assets to be managed centrally. This paradigm may be justified on the basis of the need for integrity and uniformity of public services at the national level, but it also demands strict constitutional consistency. Constitutionality is tested not only on the aspect of textual legality (the conformity of the law's text with the 1945 Constitution), but also on the institutional function the law performs in relation to constitutional principles. The concept of functional unconstitutionality is relevant: a norm may not explicitly violate the wording of the Constitution, but if its implementation effect reduces the essence of regional autonomy (Article 18 of the 1945 Constitution) and local

political accountability, then the law is constitutionally problematic (C.F. Strong, 1966). For this reason, there are 4 (four) evaluative indicators, which must be tested empirically and normatively:

- a. Discretion of local policymakers — do regional heads still have room to select key officials, structure organizations, and determine substantive staffing needs?
- b. Adaptation of local public services — do national standards accommodate different geographic, demographic, and fiscal conditions?
- c. Fiscal burdens imposed without compensation — do central policies result in unfunded mandates in the regional budget?
- d. Coherence of political accountability — can regional heads be held accountable by voters if they do not master the bureaucratic apparatus that implements regional policies?

Without such normative correctives, the ASN Law risks producing what could be called functional unconstitutionality: a law that is textually in line with the constitution but functionally undermines the spirit of regional autonomy and local democratic accountability.

According to the author, theoretically and historically, the language of administrative reform (merit, transparency, digitalization) often serves as a legitimation for new centralization. This rhetoric is readily accepted by public and academic opinion because it promises objective improvements. However, if the reforms fail to accommodate democratic control mechanisms (fiscal balance, contextual exceptions, independent oversight institutions), then modernization turns into a tool for consolidating central power—more subtle, but just as dangerous as old centralism. Daniel Lev once outlined how modern legal instruments can become a medium for 'recentralization without constitutional amendment.' In other words: do we want a standardized bureaucracy where a strong state guides the regions, or a responsive bureaucracy where regions have the capacity to choose and control their own administrative apparatus? The Civil Service Law tends to favor the former; it's a legitimate political choice, but not without constitutional consequences.

To ensure that this law does not result in functional unconstitutionality, the author suggests several normative correctives that can be included through implementing regulations, government regulations, or technical changes:

- a. Formulate National Policy as a "Minimum Standard" — add clauses that explicitly provide space for local adaptation and derogation mechanisms based on technical justification.
- b. Maintain Regional Head Discretion over Local Implementing Officials — e.g., combine national selection with regional head quotas/approvals for local JPTs to maintain political-administrative alignment.
- c. Form of Transitional Financing Mechanism for PPPK/honorary: special transfers (matching funds) for regions that bear the burden of workforce conversion.

- d. Institutionalize Independent Firewall & Oversight over SI-ASN — a watchdog that regulates data access, ensuring data is used for merit enforcement, not as a tool of political pressure.
- e. Routinely publish Post-Implementation Evaluations (annual impact assessments) to assess indicators of regional authority, fiscal burden, and political accountability.

The Civil Servant Law depicts a vision of a modern, integrated, and meritocratic bureaucratic state. However, if this modernity is upheld without maintaining local policy space, fiscal balancing mechanisms, and independent oversight, then instead of strengthening the rule of law, this law has the potential to result in administrative centralization that weakens regional autonomy. In constitutional terms, the text of the law may not be literally contradictory to the 1945 Constitution, but its implementation mechanism has the potential to create functional unconstitutionality that must be empirically tested and subjected to implementing regulations or judicial review, if necessary.

3.2. Normative and Practical Implications of the Position of PPPK in the National Civil Service Framework

The establishment of the Government Employees with Work Agreements (PPPK) scheme in Law No. 20 of 2023 concerning the State Civil Apparatus (ASN Law) is normatively intended to balance the need for bureaucratic flexibility with the principles of meritocracy and legal certainty. However, significant changes in this law raise fundamental questions regarding the constitutional status of PPPK, particularly when the state positions them as "part of the ASN" while maintaining the contractual character inherent in the employment relationship. This is where the conceptual problem of PPPK arises: is it a public office or public employment? This ambivalence directly impacts the national civil service structure, the principle of non-discrimination, bureaucratic stability, and even the design of modern state governance.

a. The Constitutional Status of PPPK: Ambiguity between Public Position and Employment Relations

Law No. 20 of 2023, through Article 1, number 4, defines PPPK as "Indonesian citizens who have met certain requirements and are appointed based on a work agreement for a specific period to carry out government duties." This formulation emphasizes that PPPK are state apparatus, but do not have the permanent nature that is generally associated with public positions in the civil service tradition.

Within the framework of constitutional law, public office should be under the principle of stability of office, as emphasized by Bivitri Susanti that a state office cannot be constructed as a contractual work relationship without eroding the principle of public accountability which is based on the sustainability of the bureaucratic structure (Bivitri Susanti, 2019). This ambiguity becomes even more acute when PPPK has duties, authorities, and responsibilities that are almost identical to those of PNS, but do not have the same legal relationship.

Guy Peters' study of bureaucratic structure confirms that modern states require institutional durability to support policy certainty (Guy Peters, 2010). The placement of PPPK as an ASN element but only on a contract basis weakens the institutional resilience, making the bureaucratic structure vulnerable to turnover, task instability, and policy fragmentation at the national and regional levels.

b. Normative Tension between PPPK and the Principle of Equal Rights for ASN

The ASN Law emphasizes the equality of civil servants and PPPK in several aspects. Article 20 states that ASN have the right to a decent income and protection, while Article 21 regulates the right to competency development, and Article 22 regulates the right to leave and protection. However, this equality is not absolute. The problem is that PPPK still lack two fundamental structural rights in the state civil service system:

- 1) The right to equal pension and old age security—Articles 24–26 provide normative references, but their implementation is still far from being equal to that of civil servants.
- 2) The right to a permanent rank-based career system— Although Article 47 introduces the concept of National Talent Management, the contractual nature of PPPK limits full access to structural promotions.

Ridwan HR stated that such differences in substantive rights could violate the principle of equality before the law, especially when the differences do not have an objective and proportional basis (Ridwan HR, 2020). PPPK bear the burdens and responsibilities of public office, but do not receive commensurate protection. As a result, PPPK are trapped in functional inequality: equal duties, different rights. This approach contradicts modern public administration theory put forward by Ferlie and Pollitt, which emphasizes that apparatus reform should not create a two-tier bureaucracy that creates structural inequities within state institutions (Ewan Ferlie & Christopher Pollitt, 2011).

c. PPPK in the National Talent Management Framework: Artificial Equality

Article 47 paragraphs (1) to (3) of the ASN Law states that PPPK can be included in the National Talent Management (MTN) alongside PNS. However, philosophically, the talent system requires two main components: career continuity and long-term incentives. These two components are inherently absent from PPPK's contractual relationship. Miftah Thoha emphasized that a career-based system can only be built through permanent relationships and stable rank levels; PPPK cannot fully enter this framework because the nature of its contract prevents the realization of a long-term job trajectory. Thus, the equality of PPPK in the MTN is actually simulative, not substantive. Conceptually, the state faces an internal contradiction: PPPK are positioned as part of the national talent elite, yet they are still treated as contractual workers. This tension is driving the fragmentation of civil service HR policies.

d. Fiscal Impact and the Phenomenon of Unfunded Mandates

From a state financial perspective, the PPPK has significant fiscal consequences. The central government normatively regulates the authority and number of PPPK, including national formations, but the burden of salaries and benefits falls largely on regional governments. This is a classic example of what Christopher Hood calls unfunded mandates: the central government makes the decisions, and the regions bear the costs (Christopher Hood, 2010).

In many regions, especially those with low local revenue (PAD), the massive increase in PPPK (Regional Employee Recipients) following recruitment for education and health sectors has created serious fiscal pressure. Local governments lack the fiscal flexibility to reject centrally imposed recruitment, yet are obliged to allocate ever-increasing personnel expenditures. This phenomenon threatens the principle of fiscal decentralization as guaranteed by Article 18 of the 1945 Constitution and affirmed by the theory of broad autonomy. Agus Dwiyanto warned that an unbalanced personnel structure can undermine local government capacity, especially if personnel expenditures consume more than 50% of the regional budget. PPPK exacerbates this trend.

e. PPPK and the Risk of Bureaucratic Dualism

With the increasing proportion of PPPK in the ASN structure, the Indonesian bureaucracy is moving towards a dualism of bureaucracy—a phenomenon that Evan Berman warned about as a situation that hinders organizational cohesion (Evan Berman, 2011). PPPK and PNS are within the same institution but have different legal bases, work motivations, and legal protections. As a result, there is a duality of organizational commitment, differing levels of loyalty to the institution, fragmented command structures, and inconsistent performance due to differing incentives. The bureaucracy, which should be an instrument of the state to achieve the public interest, has instead become an arena for structural inequality.

f. Constitutional Evaluation: PPPK and Article 28D of the 1945 Constitution

Constitutional issues arise when PPPK, who bear the same obligations as civil servants, are treated differently in terms of social security, legal protection, and career certainty. Article 28D paragraph (2) of the 1945 Constitution states that every citizen has the right to decent work and a decent living, as well as fair treatment. The constitutional question is: does the difference in treatment of PPPK constitute an objective, rational, and proportional limitation? Some experts argue that such a difference is only rational if PPPK are placed as auxiliary personnel. However, since Law 20/2023 expanded the function of PPPK to fill strategic positions, the rationale for differentiation has weakened. This dualism, if not corrected, has the potential to be tested through a constitutional review in the Constitutional Court.

The normative description of the ASN Law shows that the construction of equality between PPPK and PNS is partial and non-substantive, despite being legislatively packaged as an effort to modernize ASN management. The equality stipulated in Articles 20 to 22 only covers the surface dimensions of equality—income rights, leave rights, and competency development—but fails to

address the most fundamental aspects of public office, namely long-term protection, career trajectories, and bureaucratic structural stability.

The difference in treatment of PPPK, who remain contractual, despite having duties and responsibilities equal to those of PNS, legally creates a vertical imbalance within ASN. This imbalance has the potential to conflict with the principle of equality before the law in Article 27 paragraph (1) and fair treatment as guaranteed by Article 28D paragraph (2) of the 1945 Constitution. Thus, the legislators create a situation of “formal but not substantive equality,” which theoretically is a form of normative inconsistency between equality of rights and differentiation of status.

Administratively, this gap creates a two-tiered bureaucracy that, in the long term, weakens organizational cohesion and institutional resilience. The PPPK (Commissioned Officers) are a group of state officials burdened with official responsibilities but denied structural incentives for long-term loyalty. This creates the risk of organizational dissonance, reduces policy stability, and hinders the consolidation of meritocracy.

From the perspective of administrative law theory, substantial differences not supported by objective and proportional reasons can be viewed as policies that fail to meet the principles of due diligence and non-discrimination. Such a construction is vulnerable to challenge through constitutional review mechanisms, particularly because the distortion between function (carrying out state duties) and legal status (contractual relationships) creates uncertainty for government officials.

Thus, the ultimate conclusion is that PPPK (National Civil Service) are placed in a liminal normative situation: recognized as part of the ASN (National Civil Service), yet denied full ASN guarantees and protections. Consequently, the PPPK equality policy in Law 20/2023 is better understood as legislative rhetoric, not substantive reform. Civil service reforms that purport to strengthen meritocracy have instead created new structures of inequality that have the potential to undermine bureaucratic professionalism and violate the constitutional principle of fair treatment for all citizens.

3.3. The Substantive Applicability of the Merit System in Countering the Risk of Politicization of Bureaucracy

The discussion on the substantive validity of the merit system in the context of Law No. 20 of 2023 concerning the State Civil Apparatus (ASN Law) inherently touches on the core issue of bureaucratic reform: is the state capable of creating a legal regime that limits the temptation to politicize the bureaucracy, or does the law actually soften forms of patronage with the language of meritocracy? The main challenge lies not in the text, but in how the text operates within the reality of Indonesian administrative politics, which has historically been shaped by executive dominance, patrimonial culture, and highly personalistic power relations, especially at the regional level. In other words, the problem is not the law, but the political economy of the law.

a. Merit System as a Normative Principle

The ASN Law positions the merit system as a fundamental principle in ASN management. This formulation is clear, especially in Article 27 paragraph (2), which states that ASN Management is organized based on the Merit System. Likewise, Article 30 paragraph (2) states: "Authorized Officials carry out ASN Management functions in Government Agencies based on the Merit System and consult with the Personnel Development Officers in their respective agencies."

Theoretically, the establishment of a merit system in an imperative article is a progressive step. However, such a merit norm, as proposed in the global public administration literature, always carries an ambivalence: it can become a mechanism for liberating the bureaucracy from political intervention, or, paradoxically, legitimize political actors to package their interventions as "competence considerations." This raises the issue: the merit norm is easily co-opted due to the flexibility of its criteria, its technocratic nature, and its reliance on performance indicators formulated by the same institutions that have the potential to politicize it.

As Peters stated, the merit system often becomes a "neutrality façade", that is, a face of neutrality that on the surface appears objective, but in the background is filled with political interests packaged administratively.

b. Delegation of Power and the Potential for Merit Reconstruction as a Political Instrument

The biggest problem in the ASN Law lies not in the definition of merit, but in the institutional architecture that places the President as the holder of supreme authority in ASN policy. Article 26 paragraph (1) emphasizes that the President, as the holder of governmental power, holds the highest authority in policy, professional development, and ASN Management. Furthermore, this delegation is also emphasized in the following paragraph, which states that the President delegates some of his authority to ministries and/or institutions that carry out government duties and functions according to their respective fields.

This delegation becomes problematic for 3 (three) fundamental reasons:

1) Delegation does not mean decentralization of power

Delegations are revocable and can be withdrawn at any time. Therefore, the official receiving the delegation remains within the executive's political orbit. Consequently, even merit-based oversight remains potentially politicized, as the oversight body inherently falls within the same political chain of command.

2) The merit system can be redefined through administrative instruments.

Senior political and bureaucratic officials can modify competency parameters, evaluation standards, and assessment weights to secure political influence within the bureaucracy without violating the law.

3) No institutional firewall

The Civil Servant Law revokes some of the previous institutional design, which emphasized checks and balances (Law 5/2014). Now, policymakers, implementers, and merit monitors can operate within the same power network—a configuration vulnerable to regulatory capture.

Within the framework of constitutional law, this situation presents what is known as the structural risk of politicization—a risk that arises not from specific political actions, but because institutional designs allow politicization to occur unhindered. As Hofstede warned, “institutions shape incentives, and incentives shape behavior (Geert Hofstede, 2019).” In other words, if the structure provides opportunities for politicization, meritocracy will only become a legal ornament.

c. Normative Gaps in Merit Implementation

The Civil Service Law mandates merit, but does not establish operational standards. This is where politicization finds its niche. First, the Civil Service Law does not provide legally binding criteria for competencies that must be used in promotions. The absence of legal indicators forces us to rely on implementing regulations, which, hierarchically, are more susceptible to political interference. Second, the Civil Service Law does not require agencies to publish the objective basis for promotions, transfers, or dismissals of civil servants. Without mandatory transparency, merit becomes a black box—decisions appear legal but cannot be publicly tested. Third, although it provides for administrative objections, the law does not mandate the establishment of an appeals body that is fully independent of the decision-making official. As a result, appeals become merely an internal process biased against the organizational status quo. Fourth, public management literature clearly states that meritocracy only survives with periodic independent audits that serve as ex-post reviews. Without audits, merit becomes merely a permanent rhetoric. Thus, these weaknesses pave the way for what Callahan calls “bureaucratic political drift,” the process by which organizations gradually move away from the principle of neutrality formulated by the law (Kathryn Callahan, 2020).

d. Politicization of Bureaucracy

According to various empirical studies on local politics in Indonesia, the politicization of bureaucracy is not merely a threat, but a systemic phenomenon closely linked to the power relations between regional heads and structural officials. Recent research shows:

- 1) ASN becomes a tool for electoral mobilization in regional elections,
- 2) structural officials are shifted for electoral benefits,
- 3) The mutation was carried out immediately after the change of regional head, even though it basically violated the principle of neutrality.

If the ASN Law is not accompanied by a strong security mechanism, it can actually strengthen this pattern through:

- 1) Centralization of authority without independent supervision

The concentration of power in the hands of the President and civil service officials opens the door to more structured politicization.

2) Bureaucratic simplification without supervisory reform

Simplification of positions (functional positions) facilitates political control over technical officials; officials who are no longer protected by a structural hierarchy are easier to pressure.

3) Digitalization without transparency

Digitizing ASN information does reduce manual corruption, but if the data is controlled behind closed doors, it can become a more efficient political instrument.

As Caiden reminds us, bureaucratic reform often “falls into the trap of reproducing power in new formats (Gerald Caiden, 2018).” This is the main danger that threatens the ASN meritocracy in Indonesia.

From a constitutional law perspective, the validity of the merit system in the Civil Service Law cannot be separated from the constitutional framework that demands governance based on the principles of the rule of law (*rechtsstaat*), the professionalism of the apparatus, and the limitation of power. In this context, the merit system is not merely a managerial instrument, but rather a constitutional mechanism to ensure that the bureaucracy functions as an instrument of the state, not a tool of political power. Therefore, a normative design that places the authority to manage the Civil Service predominantly in the hands of the executive, without effective independent oversight, creates latent constitutional problems.

A meritocratic system that is not supported by an independent oversight institution has the potential to undermine the principle of checks and balances in state administration, while blurring the line between government functions and political interests. In such a configuration, meritocracy could degenerate into mere formal legitimacy for administrative practices that are substantially imbued with power interests. This suggests that the 2023 Civil Servant Law stands at a crucial crossroads: will it serve as an instrument of institutional reform that strengthens bureaucratic neutrality, or will it become a turning point toward the consolidation of executive power through formal-legal control of the apparatus. Theoretically, this condition reflects what is referred to in the constitutional literature as constitutional erosion through administrative law, namely the weakening of constitutional values through the design of administrative regulations that appear neutral but are fraught with structural political implications.

Comparative results from various countries show that the success of a merit system is largely determined by the institutional architecture that supports it. Countries with professional bureaucracies that are relatively immune to politicization, particularly in Western Europe and East Asia, place independent civil service commissions as the main pillar of meritocracy, with strong authority to supervise, audit, and correct personnel policies. This system is equipped with procedural transparency, open promotion and transfer data, and an effective administrative complaint mechanism for employees. Conversely, countries that centralize civil service

management entirely in the hands of the executive, without strong external controls, tend to experience the regression of meritocracy into modern patterns of patronage legitimized by law.

In this context, global experience shows that the digitalization and modernization of administration, as mandated by the 2023 Civil Servant Law, are not politically neutral. Without the principles of openness and public accountability, technology can actually strengthen hierarchical control and facilitate more subtle and difficult-to-detect politicization. Therefore, international lessons emphasize that a merit system cannot exist solely as a legal norm but must be realized as an institutional ecosystem that limits power and guarantees bureaucratic independence.

Based on the normative, constitutional, and comparative analysis above, it can be concluded that the merit system in Law No. 20 of 2023 contains a fundamental paradox. On the one hand, this law explicitly affirms the principle of merit as the foundation of civil servant management and adopts the language of modern bureaucratic reform. However, on the other hand, the institutional design and distribution of authority contained within it actually leave ample room for bureaucratic politicization in more covert and institutionalized forms. Without strong independent oversight, meritocracy risks being reduced to mere legal rhetoric, a legal facade that masks the practice of administrative patronage.

From the perspective of a state based on the rule of law, this situation is dangerous because it creates the illusion of objectivity and professionalism, while the substance of bureaucratic neutrality is slowly eroding. Therefore, the crucial question raised by the 2023 Civil Servant Law is no longer simply whether the merit system is normatively recognized, but rather whether the state is truly willing to limit its own political power to maintain the independence of its apparatus. Without such a commitment, the merit system will not serve as a bulwark against the politicization of the bureaucracy, but instead will become a new instrument to normalize and legitimize political domination within the state administration.

4. Conclusion

Based on normative and conceptual analysis, Law No. 20 of 2023 concerning the State Civil Apparatus reflects a structural ambivalence between the rhetoric of bureaucratic reform and the tendency towards reconsolidation of state administrative power. Although the ASN Law affirms modern principles of public administration—such as the merit system, apparatus professionalism, digitalization of personnel management, and strengthening the role of PPPK—the institutional design and distribution of authority it regulates actually point towards centralization that has the potential to erode regional autonomy, weaken bureaucratic neutrality, and facilitate the covert politicization of the apparatus. The structuring of central-regional relations through standardization of national policies, National Talent Management, and integration of ASN information systems has shifted the substantive discretion of regional governments, thereby functionally reducing the meaning of autonomy as guaranteed by Article 18 of the 1945 Constitution and potentially giving rise to functional unconstitutionality. At the same time, the regulation of PPPK positions displays formal but not substantive equality,

maintaining fundamental differences in career security and legal protection that risk creating a two-tier bureaucracy. Furthermore, the merit system put forward by the ASN Law is not yet supported by independent oversight and adequate accountability mechanisms, so that in a political-administrative context that is still full of patronage, meritocracy is at risk of being reduced to a legal façade—providing administrative legitimacy without effective power to stem the politicization of the bureaucracy.

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