

Civil Service Neutrality in Indonesian Regional Elections: Enforcement Authority, Administrative Accountability, and Due Process

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Abstrack

Civil service neutrality in Indonesian regional elections serves as both an ethical obligation of State Civil Apparatus (ASN) employees and a safeguard for fair elections and impartial public administration. This article examines the relationship between ASN neutrality and civil servants' political rights, as well as the allocation of authority and procedural safeguards in enforcing neutrality obligations. It employs normative legal research using statutory, conceptual, and case approaches. Primary materials include the 1945 Constitution, Law No. 20 of 2023 on the State Civil Apparatus, Law No. 10 of 2016 on Regional Elections, Government Regulations No. 42 of 2004 and No. 94 of 2021, related implementing regulations, and Constitutional Court Decision No. 121/PUU-XXII/2024. The analysis shows that neutrality restrictions are justified when preventing the use of public office, resources, or hierarchical influence for partisan purposes but should not extend to private political opinions without a clear legal basis. The main enforcement problem is the absence of a traceable process from reporting to accountability. The article proposes a legal-characterization matrix and a coordinated case-handling protocol to ensure institutional competence, reasoned decisions, and protection against political coercion and arbitrary punishment. As a normative study, it proposes a legal model without claiming empirical effectiveness.

Keywords: administrative accountability; civil service neutrality; due process; merit system; regional elections.

A. INTRODUCTION

Regional elections are a constitutional means of conferring democratic legitimacy on local executive government. Article 18(4) of the 1945 Constitution

requires governors, regents, and mayors to be elected democratically. Democratic competition, however, requires more than the formal opportunity to vote or stand as a candidate. It also requires that public authority and government resources are not converted into electoral advantages for a candidate. When public officials mobilize subordinates, direct public facilities toward campaign activity, or use administrative decisions to benefit or disadvantage a candidate, the concern is both electoral and administrative: the state's institutional capacity is being used in a partisan contest.

The legal position of ASN employees requires a distinction between citizenship and public office. Civil servants retain lawful personal beliefs and the right to vote, while their professional duties require impartiality in the exercise of public functions. Neutrality therefore should not be understood as a requirement that public employees have no political views. It is a restriction on using official authority, public resources, institutional identity, or workplace hierarchy to advance partisan interests. This functional distinction is essential to reconcile constitutional citizenship with the need for a professional and non-partisan bureaucracy.

The relevant legal framework includes the 1945 Constitution, Law No. 20 of 2023 on the State Civil Apparatus, Law No. 10 of 2016 concerning the election of governors, regents, and mayors, Government Regulation No. 42 of 2004 concerning the development of corps spirit and the civil servants' code of ethics, and Government Regulation No. 94 of 2021 concerning civil-servant discipline. These instruments do not all perform the same function. The ASN statute establishes the governing framework for professional public service; election

legislation regulates specified conduct affecting candidates and electoral competition; the code of ethics addresses professional conduct; and disciplinary rules provide procedures and consequences for breaches of civil-service obligations. A single factual event may raise issues under more than one regime, but the elements, authority, procedure, and legal consequence of each regime must be identified separately.

The central difficulty is consequently not adequately described by saying that enforcement is fragmented. The legal analysis must identify the distinct stages of the process: receiving a report, verifying facts, determining whether the conduct falls within election law or ASN rules, referring the matter to the competent authority, deciding on a sanction or other response, reviewing the decision, and reporting the outcome. A recommendation issued by one institution should not be confused with a final personnel decision made by another. Equally, coordination between institutions cannot lawfully transfer decision-making powers that legislation assigns to a particular authority. Earlier studies examine bureaucratic politicization, local patronage, neutrality policy, and the political pressure faced by civil servants. Zuhro (2021) discusses the continuing influence of patronage in Indonesian politics. Pardede and Kristian (2021) examine strengthening neutrality policy in North Sumatra, while Riyanto et al. (2023) relate ASN neutrality to good governance. Studies published around the 2024 elections address political pressure, career vulnerability, and the implementation of neutrality rules (Ishaka et al., 2024; Kamaluddin et al., 2024; Muksalmina et al., 2024; Sumarlin et al., 2024). These works provide important contextual accounts, but their geographical settings, election types, and methods differ. They should not be treated as a single

empirical dataset or as proof that every reported weakness occurs uniformly throughout Indonesia.

The legal contribution of this article is narrower and more specific. Rather than claiming that earlier scholarship has not discussed ethics, equality, or institutional coordination, it examines how those themes can be connected through a legal mapping of conduct, authority, procedure, and remedy under the post-2023 ASN framework. It distinguishes substantive prohibitions from institutional competence and develops a case-handling model designed to make the route from allegation to outcome traceable without collapsing the legal mandates of electoral supervisors and personnel authorities.

The article addresses two research questions: (1) how should ASN neutrality restrictions be interpreted consistently with civil servants' lawful political rights and the principles of legality and proportionality; and (2) how should authority, procedure, and review be organized so that neutrality violations are handled accountably under the applicable legal framework? The objective is to formulate a doctrinal analysis of the boundary between private political expression and role-based partisan conduct, and to propose an institutionally coherent process for handling allegations while preserving due process.

B. RESEARCH METHOD

The study distinguishes doctrinal conclusions from empirical claims. It can determine the legal allocation of powers and assess whether a proposed procedure is consistent with the identified norms. It cannot, without a systematic case dataset, establish the national frequency of non-compliance, prove that referrals are routinely ignored, or demonstrate that a proposed dashboard or protocol will

reduce violations. References to institutional fragmentation are therefore framed as a legal and procedural risk indicated by the distribution of functions, rather than a quantified conclusion about enforcement outcomes.

This article uses normative legal research. The statutory approach identifies the legal rules governing ASN duties, election-related conduct, ethics, discipline, and institutional authority. The conceptual approach is used to examine neutrality, administrative impartiality, legality, proportionality, merit-based administration, and due process. The case approach focuses on Constitutional Court Decision No. 121/PUU-XXII/2024 because the decision bears directly on the institutional arrangements for merit-system supervision under the 2023 ASN Law. The decision is considered through its legal issue, reasoning, and operative part; it is not treated as a general empirical finding about the effectiveness of neutrality enforcement.

Primary legal materials were selected according to three criteria: (1) binding status and authority within the Indonesian legal system; (2) direct relevance to the research questions; and (3) temporal applicability to the legal framework after the enactment of Law No. 20 of 2023. Where older instruments or scholarship are used, they are considered for the specific matters they continue to regulate or for historical and contextual explanation, not automatically treated as current law. Secondary materials consist of scholarly publications and official institutional information. Official releases are used to describe institutional positions or reported administrative developments; they are not substituted for legislation when determining binding powers or legal consequences.

The analysis proceeds in four stages. First, relevant provisions are identified and interpreted according to their wording, legal context, purpose, and relationship with other provisions. Second, the rules are systematized by protected interest, prohibited conduct, responsible institution, procedure, and possible consequence. Third, the legal framework is compared with the institutional sequence required to process a neutrality allegation, identifying points where responsibilities may be unclear or follow-up may be difficult to trace. Fourth, a proposed model is formulated and each recommendation is classified as an operational measure that may be pursued within existing authority or a matter that would require a new or amended regulatory instrument.

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C. RESULT AND DISCUSSION

1. Constitutional basis and the boundary of neutrality

Article 18(4) of the 1945 Constitution supplies the constitutional context for democratic regional elections. The principle of democratic equality is impaired when state resources or official authority are used to

advantage a candidate. The legal concern is particularly clear where an official directs subordinates to attend a campaign, uses public facilities for partisan purposes, conditions public services on political support, or makes personnel decisions to reward supporters or disadvantage perceived opponents. Such conduct connects the use of public office with electoral competition and may engage the relevant provisions of election law, ASN law, ethics rules, or discipline rules depending on the facts and legal elements.

Neutrality also protects the public-service function. Administrative decisions should be based on law, relevant facts, and the public interest rather than electoral preference. The protected interest is therefore not simply the reputation of the bureaucracy. It includes equal treatment of service users, proper use of public assets, professional continuity, and the prevention of public authority being exercised for a private or partisan purpose. The merit system supports this objective by reducing the extent to which recruitment, promotion, transfer, evaluation, and discipline can be used to reward political loyalty.

The boundary of neutrality must nevertheless be legally precise. A civil servant's private political opinion, lawful vote, or ordinary social relationship should not automatically be equated with active campaigning or misuse of office. Relevant factors include whether the person acted in an official capacity; whether public resources, institutional accounts, uniforms, official vehicles, or authority over subordinates were used; whether the conduct was directed toward a candidate or campaign; whether coercion occurred; and whether a specific legal prohibition applies. These factors are analytical

criteria for applying existing law, not independent grounds for creating a new offence or sanction.

The ‘reasonable observer’ formulation should accordingly be treated as a proposed evidentiary and contextual aid, not as a freestanding rule of Indonesian law. It may help explain why a public communication or appearance could reasonably be understood as institutional endorsement, but it cannot replace the elements of a statutory or disciplinary prohibition. A finding must identify the applicable provision and establish the facts required by that provision. Perceived impropriety alone cannot authorize a sanction where the legality principle requires a clear legal basis.

2. Distinguishing accountability regimes

Ethical, disciplinary, administrative, electoral, and criminal accountability are related but not interchangeable. Government Regulation No. 42 of 2004 concerns the civil servants’ code of ethics and the development of corps spirit. Government Regulation No. 94 of 2021 governs civil-servant discipline and replaced Government Regulation No. 53 of 2010. Election legislation addresses specified conduct in the electoral process, including conduct by officials that benefits or harms a candidate pair. Criminal liability, where alleged, requires the elements of a criminal offence and must be determined through the applicable criminal process. An ethical assessment cannot itself establish criminal guilt, and a failure to prove an election offence does not necessarily resolve a distinct disciplinary question.

For each allegation, the decision-maker should identify: (a) the legal interest protected; (b) the exact provision potentially breached; (c) the status

and role of the alleged actor; (d) the elements that must be established; (e) the evidence relevant to each element; (f) the authority competent to investigate, recommend, decide, or review; and (g) the available consequence or remedy. This legal-characterization matrix prevents two opposite errors. The first is to dismiss conduct under all regimes merely because it does not satisfy the elements of one election offence. The second is to impose a disciplinary or ethical consequence through a general reference to neutrality without identifying the applicable rule and supporting facts.

Law No. 10 of 2016 is the second amendment to Law No. 1 of 2015 concerning the election of governors, regents, and mayors. Article 71(1) addresses decisions or actions by specified officials and employees that benefit or disadvantage a candidate pair; Article 70 contains restrictions concerning campaign involvement by specified categories. The provision selected in a particular case must match the actor, conduct, timing, and statutory elements. A general reference to the Pilkada law is not enough to establish liability. The precise wording and current applicability of each provision should be checked against the official consolidated legislation before a final enforcement decision is made.

3. Institutional authority and the enforcement sequence

Institutional coordination should begin by separating overlapping norms from overlapping jurisdiction. Overlapping norms exist where one act may be assessed under more than one legal regime. Overlapping jurisdiction concerns whether more than one institution claims or exercises authority over the same procedural task. These are different problems. The existence of

multiple applicable rules does not by itself mean that institutions have the same power to investigate, recommend, impose a sanction, or hear an objection.

A legally coherent sequence should specify the receiving institution, the scope of its initial assessment, the evidence required for referral, the institution responsible for further examination, the authority that makes the final decision, and the avenue for review. Electoral supervisors may process matters within their statutory remit and transmit recommendations or findings where the law so provides. Personnel authorities and other competent bodies must then act within their own legal powers and procedures. A recommendation is not automatically equivalent to a final sanction; likewise, a receiving authority should not treat a referral as a substitute for its own required assessment.

The 2022 Joint Decree on guidance and supervision of ASN neutrality reflects the need for inter-agency coordination. However, a joint instrument or administrative arrangement cannot override statutory allocations of authority. Any protocol for shared case identifiers, receipt acknowledgements, status updates, evidence standards, and closure notices should be implemented by the institutions within their respective powers and through a legally appropriate instrument. If a binding deadline, mandatory disclosure, new appeal route, or new sanction is not authorized by existing law, it must not be introduced solely through an informal protocol.

The post-2023 institutional framework requires particular care when describing the role of the State Civil Apparatus Commission (KASN). Older

studies and instruments may reflect a previous institutional arrangement. The applicable authority must be determined by examining Law No. 20 of 2023, relevant transitional provisions, implementing regulations, and the operative legal effect of subsequent judicial decisions. References to KASN should distinguish historical functions from any current role legally retained or assigned; the institution should not be described as the permanent or exclusive supervisor without verifying the current legal basis.

Constitutional Court Decision No. 121/PUU-XXII/2024 is material to this institutional question because it concerns the statutory arrangements for merit-system supervision under the 2023 ASN Law. Its holding must be described according to the operative part and the Court’s reasoning, including the scope of the conditional interpretation and any direction concerning an independent institution. The decision should not be cited merely as a general endorsement of institutional independence. Before publication, the author should verify the official judgment text and quote or paraphrase precisely what the Court ordered, the provision affected, and the time period stated in the judgment.

4. Digital Conduct, Official Resources, And Evidence

Social-media conduct should be assessed according to attribution, context, and the applicable legal elements. The investigator should determine whether the account belongs to or is controlled by the employee, whether the content is authentic and complete, when it was posted, whether the employee actively endorsed or disseminated campaign material, and whether official status or resources were invoked. A screenshot alone may not resolve

authorship, editing, context, or timing. Electronic material should be preserved and assessed in a manner that allows the employee to understand and respond to the allegation.

The same distinction applies to attendance at campaign-related or family events. Mere presence, an official assignment, accompaniment of a spouse, and active campaign participation are not necessarily equivalent. The legal analysis should consider the person's role, the event's purpose, the use of official symbols or resources, statements made, and any relevant instructions or coercion. Official ministry guidance can help explain administrative interpretation, but the ultimate decision must be grounded in the applicable law and facts of the case.

The use of government facilities, public assistance programmes, budgets, data, official vehicles, or institutional communication channels requires an inquiry into both the conduct and its connection with public authority. The decision-maker should identify the resource, its public purpose, who authorized or used it, whether it was diverted toward a candidate, and which prohibition applies. Claims that the conduct changed voting behavior or affected the election result should not be asserted unless supported by reliable evidence. A legal violation may be established by the elements of a prohibition even where a measurable effect on votes cannot be demonstrated, but the article must not confuse the legal conclusion with an unproven causal claim.

5. Political Pressure, Merit Safeguards, And Proportionality

Neutrality violations may arise from voluntary conduct or pressure imposed through hierarchical relationships. Where a superior threatens transfer, promotion, performance evaluation, or continued appointment to secure partisan participation, the inquiry should examine both the subordinate's conduct and the superior's role in organizing or directing it. Coercion may be relevant to culpability and sanction, but its legal effect must be assessed under the applicable rules rather than assumed to create automatic immunity. An enforcement system that records only the visible participation of junior employees may fail to identify the official who used administrative hierarchy to create the violation.

The merit system is relevant because personnel dependence can make a formal duty of neutrality difficult to exercise in practice. Personnel decisions during an election period should be based on lawful criteria, supported by reasons, and documented sufficiently to permit review where retaliation is alleged. This recommendation should not be interpreted as an automatic suspension of all transfers or evaluations during an election. Instead, heightened scrutiny is appropriate where timing, unexplained departures from ordinary procedure, or evidence of political pressure gives a concrete reason to question the decision.

Proportionality helps structure the assessment of restrictions and sanctions. The decision-maker should identify the legitimate purpose, the relationship between the conduct and that purpose, the seriousness of the infringement, and whether the selected consequence is supported by the

governing rule. Relevant factual considerations may include the employee's authority, the use of public resources, repetition, planning, coercion, concealment, and cooperation with examination. These considerations guide the application of an authorized sanction; they do not permit an institution to invent a new penalty or bypass a mandatory procedure.

Due process requires that the employee be informed of the allegation and applicable norm, have a meaningful opportunity to respond to the material evidence, and receive a reasoned decision from the competent authority. Any objection or appeal must follow the review mechanism provided by the relevant law. The article therefore does not posit a universal appeal route applicable to every neutrality case. Instead, the competent institution must identify the review procedure associated with the legal regime under which the decision is made. Protecting due process also requires safeguarding the confidentiality and safety of witnesses where authorized, while respecting the rights of the person under investigation.

6. An integrated model for accountable enforcement

The model proposed here is a procedural coordination framework, not a new enforcement agency and not an independent source of sanctions. Its first component is a legal-characterization matrix used at intake. The matrix records the alleged conduct, actor's status, date and context, public resources or authority involved, potential legal provisions, required elements, available evidence, competent institution, and possible procedural route. The purpose is to ensure that the matter is classified by law and facts rather than by a generic label of 'non-neutrality'.

The second component is a traceable referral record. Within existing authority, institutions can record when a report is received, what material accompanies it, when it is referred, whether receipt is acknowledged, whether additional information is requested, and how the matter is closed. Standard forms and case identifiers can improve administrative traceability where authorized. Mandatory deadlines, disclosure obligations, or legal consequences for non-response, however, should be established only through a valid instrument adopted by the competent authority.

The third component is a reasoned decision and review record. The final decision should identify the legal basis, material facts, evidence accepted or rejected, the employee's relevant response, the reasoning connecting the facts to the legal elements, and the consequence imposed. Where the matter is closed without further action, the record should state the legal and factual reason to the extent permitted by applicable rules. The available objection or appeal mechanism should be identified in the decision in accordance with the governing regime.

The fourth component is protection against coercion and retaliation. Existing reporting and personnel-protection mechanisms should be used where applicable, and institutions should preserve evidence of threats or improper instructions. A secure channel outside the immediate chain of command may be proposed, but the channel's legal authority, confidentiality rules, data access, and responsibility for follow-up must be specified before it is represented as an enforceable entitlement. New statutory protection or a

new independent review mechanism would require a proper legal basis if it cannot be implemented under existing rules.

The fifth component is proportionate transparency. Public reporting may disclose aggregate information on reports received, referrals, responses, outcomes, processing times, and unresolved matters, subject to privacy, data-protection, and fair-process requirements. Anonymized summaries can explain legal reasoning without disclosing personal information or prejudging pending cases. The purpose is to make institutional follow-up visible, not to create public pressure for a predetermined sanction.

Implementation should be divided into two categories. Operational measures potentially available within existing authority include standardized internal documentation, legal mapping of allegations, reasoned decisions, evidence preservation, staff guidance, and lawful aggregate reporting. Measures that may require new or amended regulation include new binding inter-agency deadlines, compulsory information-sharing duties not already authorized, new independent appeal powers, new sanctions, or statutory whistleblower protections beyond existing mechanisms. This distinction is necessary to ensure that a proposal designed to strengthen legality does not itself bypass the principle of legality.

7. Scope and limits of the findings

The literature reviewed identifies recurring concerns about political pressure, career vulnerability, regulatory understanding, and inconsistent follow-up. However, the cited studies differ in location, election type, and research method. Findings from Bima City, Bima Regency, North Sumatra,

or studies of the 2024 national elections cannot automatically establish the prevalence of the same problem in every local government. They are used here as contextual evidence of risks that legal and administrative arrangements should be capable of addressing.

This study also does not establish that the proposed model will reduce neutrality violations or improve public trust. Those are testable propositions for future empirical research. Evaluation would require, for example, a defined sample of case files, data on referral and response times, analysis of final decisions, and interviews with relevant actors. The present contribution is doctrinal: it clarifies the legal distinctions and proposes a procedurally structured model consistent with the need to preserve institutional competence, legal certainty, and due process.

D. CONCLUSION

ASN neutrality in regional elections should be interpreted as a duty governing the exercise of public office, not as a general prohibition on civil servants holding private political opinions. Restrictions are legally defensible when they are connected to a specific rule and address partisan use of public authority, public resources, institutional identity, or hierarchical influence. The legal analysis must preserve the distinction between private political rights and role-based conduct, and it must not rely on a broad perception of impropriety as an independent basis for punishment.

The enforcement issue concerns the relationship among legal regimes and the sequence of institutional responsibilities. Ethical, disciplinary, administrative,

electoral, and criminal accountability may intersect, but each requires its own legal basis, elements, competent authority, procedure, and consequence. The distribution of functions between electoral supervisors and personnel authorities should therefore be mapped stage by stage. A recommendation is not the same as a final sanction, and inter-agency coordination cannot displace powers assigned by law.

The article's proposed contribution is a legal-characterization matrix and a traceable case-handling protocol that connect classification, referral, reasoned decision, review, and proportionate transparency. Measures that can be adopted under existing authority must be distinguished from proposals requiring regulatory change. Because the study is normative and does not test implementation empirically, the model should be understood as a legally reasoned proposal rather than a proven effective intervention. Further research using case files and institutional data is needed to evaluate its practical operation.

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