

## Independence of the General Election Commission and Election Supervisory Board for Democratic Elections

**Ridwan Syaidi**

Faculty of Law, Tama Jagakarsa University, E-mail: [syaidi.ridwan@gmail.com](mailto:syaidi.ridwan@gmail.com)

**Abstract.** *The Constitution explicitly states that to achieve the national ideals and objectives, General Elections need to be held to elect members of the People's Representative Council, members of the Regional Representative Council, the President and Vice President, and to elect members of the Regional People's Representative Council, as a means of realizing the sovereignty of the people and producing representatives of the people and a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The organizers of elections, as regulated in Law Number 7 of 2017 concerning General Elections, are stated to be the Election Commission, the Election Supervisory Body, and the Council of Election Organizer Honor as a unified function of Election Organization. Doubts about the independence of the general election commission continue to be questioned by parties who dislike the results obtained; political narratives and cheating issues are always attached to the general election commission. The purpose of this study is to determine the role of the General Election Commission as the organizer of elections in creating a Just and Fair Election (Direct, Free, and Secret). And how the role of the Election Supervisory Board in carrying out Supervision and Implementation of laws. This study uses a descriptive quantitative approach, where data is based on survey results, document reviews, and observations. The results showed that the competence and independence of the General Election Organizers significantly influence the success of the election stages.*

**Keywords:** *Commission; Democratic; Election; Supervisory.*

### 1. INTRODUCTION

In our Constitution, General Elections are conducted by an election commission as regulated in Article 22-e of the 1945 Constitution, the meaning of the word "commission" is not interpreted as the name of an institution but is interpreted as its function. This is also supported by the opinion of the Constitutional Court in Constitutional Court Decision No. 11/PUU-VIII/2010, which states that the term "an election commission" in Article 22E paragraph (5) of the 1945 Constitution does not refer to the name of an institution, but rather refers to the function of organizing elections<sup>1</sup>.

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<sup>1</sup> The Constitutional Court Decision No. 11/PUU-VIII/2010

On February 19, 1999, the General Election Commission was established, where the composition of the commissioners of the General Election Commission came from representatives of Political Parties. And on June 5, 2001, through Presidential Decree No. 70 of 2001, the Independent and Independent Commissioners of the General Election Commission were formed.

In the implementation of election organization, an election supervisory body must be formed to work on supervision so that the organizers and participants of the election can conduct general elections in accordance with the laws and regulations.

The Democratic Party held every five years with the formation of the General Election Commission (KPU) and the Election Supervisory Board (Bawaslu) has produced productive social reactions, although the counterproductivity is also very high if the expectations given cannot be realized. Society will still judge all steps and policies made by the KPU and Bawaslu. And the narrative of electoral fraud will be attached to the KPU if there are parties that feel disadvantaged by the policies made by the KPU.

## **2. RESEARCH METHODS**

Based on the title and the issues to be addressed in this research, and in order to provide beneficial results, this study is conducted using a normative juridical research method (normative legal research method) (Soekanto, 2007). The normative juridical research method is a literature-based legal research method conducted by examining literature materials or secondary data alone. Normative legal research, also known as doctrinal research, refers to legal norms found in legislation, court decisions, and prevailing legal norms in society. (Ali, 2021) This research is conducted to obtain materials such as theories, concepts, legal principles, and legal regulations related to the subject matter. The scope of normative legal research according to Soerjono Soekanto includes<sup>2</sup>:

- a. Research on legal principles;
- b. Research on legal systematics;
- c. Research on the level of legal synchronization vertically and horizontally;
- d. Legal comparison; and
- e. Legal history.

In this study, the scope of this research will be conducted by extracting legal principles, which are conducted on both written and unwritten positive law (Soekanto, 2006). This research can be used to extract legal principles in interpreting legal regulations. Additionally, this research can also be used to search for legal principles formulated both implicitly and explicitly. (Sunggono, 2003)

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<sup>2</sup> Soerjono Soekanto dan Sri Mahmudji, *op.cit*, p.14

### 3. RESULTS AND DISCUSSION

#### 3.1. The Role of the General Election Commission (KPU) as the Organizer of Elections in Creating Fair and Transparent Election Administration

##### Elections in the reformation era

In the 1999 elections, a commission called the General Election Commission (KPU) was formed, which is one of the main pillars of democracy. General elections are one of the main pillars of democracy. One of the early modern conceptions of democracy was proposed by Joseph Schumpeter (the Schumpeterian school), which placed free and periodic elections as the main criteria for a political system to be called democratic (Schumpeter, 2013). However, merely holding elections is not enough for a political system to be considered democratic, as this conception (known in Indonesia as substantive democracy) requires respect for broader civil rights and fundamental pluralism principles (Zakaria, 2007). Democracy is an ongoing process. A country whose democracy is considered consolidated may experience setbacks that endanger its democratic position.

In an open system, it is common for expectations to continuously increase. It is not uncommon in transitional governments around the world to be unable to fulfill these expectations quickly enough, leading to the perception of failure in achieving their initial goals for governments in the Reform Era.

Returning to the issue of elections held during the transition era, the debate between procedural and substantive democracy was strongly felt before the 2004 elections. Some observers wanted a stronger embodiment of substantive democracy in the transition era, while others argued that procedural democracy in the transitional period was a necessary phase, as experienced by many countries newly freed from authoritarian rule. Moreover, procedural democracy can serve as a measure to determine whether a transition in a country is taking place or not. (Sahdan, 2004)

Beyond this debate, the absence of strong parties with clear reform agendas was a significant factor. The lack of major parties with a rule of law reform agenda was another fact that colored the political situation in Indonesia before the 2004 elections.

Therefore, some political scientists proposed the idea of "transformative elections" in the spirit of the 2004 elections, not just as a healthy and democratic electoral process, but as an opportunity to initiate forward change, making voters autonomous and rational<sup>3</sup>. In such a context, the 2004 elections were held, aspiring to realize procedural democracy transparently, fairly, justly, and peacefully as a path to consolidate democracy for civil forces, with concerns about the consolidation of old forces, namely Golkar-The Army, and the Bureaucracy for the return of the old political format, or at least a modification of the New Order authoritarianism<sup>4</sup>.

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<sup>3</sup> CSIS, Tahun XXII/2003 No. 2. p. 203

<sup>4</sup> Ignas Kleden dan Leo Agustiono dalam Analisis CSIS, Tahun XXII/2003 No. 2. p. 160-191

## General Election Commission (KPU)

The KPU is an election organizing institution guaranteed and protected by the 1945 Constitution, and therefore categorized as a state institution with what is known as constitutional importance (Asshiddiqie, 2006). As an important institution, the KPU is asserted to be national, permanent, and independent<sup>5</sup>, with its institutional status equal to other state institutions established by law.

The independence of an election organizing institution is expected to create representative institutions of the people of higher quality on one hand, and to maintain the continuity of the democracy-building process on the other.

Independence not only means "independent, free, impartial, or unbiased" from individuals, groups, or any interested organizations, but also as a strength, paradigm, ethic, and spirit to ensure that the election process and its results reflect the interests of the people, the nation, now and in the future. Institutional independence, functional independence, and personal independence are three aspects of independence that must be maintained and upheld by an independent institution. Institutional or structural independence means that the KPU is not part of the existing state institutions, nor is it subordinate or dependent on any state or any other institution. Functional independence means that the KPU should not be interfered with, commanded, or pressured by any party in carrying out elections. Personal independence means that individuals who become members of the KPU are impartial, honest, and have the capacity and capability. Only then can a Commission (including the Ombudsman) be impartial, independent, fair, and credible. (Gottehrer & Hostina, 1998)

The independent nature of the KPU has relatively been outlined in several articles in Law No. 7 of 2023 concerning the DETERMINATION OF GOVERNMENT REGULATIONS SUBSTITUTING LAW NUMBER 1 OF 2022 CONCERNING AMENDMENTS TO LAW NUMBER 7 OF 2017 CONCERNING GENERAL ELECTIONS BECOMING THE LAW. The structural independence asserted in the 1945 Constitution has relatively also been guaranteed by the Law. The KPU, in carrying out its duties, submits reports on the election administration stage to the President and the DPR. The reports referred to are not in the sense of accountability, but more as providing information to the relevant state institutions.

Buyung asserts, "I agree with an independent KPU, because the results will be better, not influenced by party interests, and work will proceed smoothly without any encroachment (Nasution, 2004), resulting in the birth of a democratic legislative institution." Moreover, our political parties are still far from political maturity to accept the process and results of any honest, fair, and transparent elections (Gaffar, 1919). Our political parties, according to Franz Magnis Suseno, are still trapped in the mentality of being bad losers (unable to accept defeat), whereas, according to Romo Magnis, one of the most basic democratic virtues is the willingness to accept defeat gracefully, or in John Rawls' terms, not being fair with differences of opinion (Ujan, 2001), but these parties do not take the opportunity to show themselves as noble

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<sup>5</sup> Article 22E paragraph (5) of the 1945 Constitution

losers to the public<sup>6</sup>.

In the context of contemporary political science, an independent KPU is expected to act as rules and constraints that reduce uncertainty by establishing a stable and predictable structure for human interactions, both as individuals and as groups. In Ramlan Surbakti's terms (Surbakti, 2003), the KPU is a democratic institution that must ensure and ensure well-established and predictable procedures in carrying out elections so that the results cannot be predicted (Surbakti, 2003).

The importance of the principle of independence, according to Ramlan, is based on four things. First, general elections are a procedure and mechanism for delegating some of the people's sovereignty to state organizers, both those who will sit in legislative bodies and in executive bodies at the central and regional levels, to act on behalf of the people and be accountable to them. Second, general elections are a procedure and mechanism for transferring differences in aspirations and conflicts of interest from society to state organizing institutions, both at the central and regional levels, to then be discussed and decided upon in a civilized manner. Third, general elections are a procedure and mechanism for regular/ orderly political change, both changes in the form of political elite circulation and changes in the direction and pattern of public policy.

### **Enforcement of Electoral Management Ethics**

Ethics serves as a vital tool in human life, starting from private spaces to social interactions in public spheres. In Law No. 7 of 2017 concerning Elections, it is stated that electoral organizers must conduct elections based on the principles of direct, general, free, secret, honest, and fair elections. They must also adhere to the principles of independence, honesty, fairness, legal certainty, order, transparency, proportionality, professionalism, accountability, effectiveness, and efficiency (Rajab, 2018). The goal of ethics is to maintain trust in institutions, ensuring that electoral organizers are trustworthy. Sanctions are imposed to ensure that trust remains high and the products produced are still trusted.

The principle of independence is essential, as it ensures that elections, as a power circulation arena, cannot be interfered with by anyone or any institution. Compliance and obedience of electoral organizers lie in legislation. To strengthen the ethical principles of electoral organizers, there are at least three interrelated regulations: first, in Law No. 7 of 2017.

The ethical standards of organizers have been regulated in legislation and regulations of the General Election Commission (KPU) related to the principles of elections, the objectives of elections, and regulations that provide clear limitations on the roles and functions of electoral organizers. The foundation for formulating KPU's ethical standards is the Constitution and Election Law, which are elaborated more specifically to shield electoral organizers from deviant behavior (Rajab, 2018).

The Regulation of the Ethics Council of Electoral Organizers No. 2 of 2017 concerning the Code of Ethics and Guidelines for the Behavior of Electoral Organizers stipulates

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<sup>6</sup> Franz Magnis Suseno, dalam "Siapa Mau Jadi Presiden", Kompas, 2004, p. 249

that to maintain integrity and professionalism, electoral organizers must adhere to the principles of electoral organizers. (Maki, 2020)

Integrity of electoral organizers, as mentioned in paragraph (1), is guided by the principles (Maki, 2020):

- 1) Honesty meaning in the conduct of elections, electoral organizers are motivated solely by the desire for the election to be held in accordance with applicable regulations without personal, group, or factional interests;
- 2) Independence meaning in the conduct of elections, electoral organizers are free to refuse interference and influence from anyone with an interest in actions, decisions, and/or judgments made;
- 3) Fairness meaning in the conduct of elections, electoral organizers place everything according to its rights and obligations;
- 4) Accountability means in the conduct of elections, electoral organizers carry out tasks, authorities, and obligations responsibly, and the results can be accounted for in accordance with the provisions of the legislation.

In terms of professionalism, electoral organizers must adhere firmly to the principles of legal certainty<sup>7</sup>, meaning that electoral organizers carry out tasks, functions, and authorities in accordance with the provisions of the legislation. Every policy of the KPU must be clear and definite, without ambiguity or multiple interpretations. Another principle is accessibility, which means the ease provided by electoral organizers for persons with disabilities to achieve equal opportunities; all citizens must be treated equally without exception. The dimensions of order and openness mean the existence of regulation, harmony, balance, and providing wide access to information to the public. Electoral organizers, in carrying out their duties, must maintain a balance between personal interests and public interests to achieve justice. The aspects of effectiveness and efficiency also become ethical dimensions, meaning that electoral organizers have a timely electoral agenda, utilize resources, facilities, and infrastructure in accordance with rules and norms while still considering public interests.

Many norms and rules must be preserved and nurtured, both individually and collectively. In the chapter on the Guidelines for Electoral Organizers' Behavior, it is stated that organizers must maintain independence by ensuring that all actions, speech, and other "indecent" behavior are avoided. Article 8 regulates in detail to ensure that the dignity and authority of electoral organizers remain intact.

As a fundamental principle, honesty dictates that electoral organizers must be open and provide information to the public based on true data and facts. The honesty of organizers lies in the publication of authentic information regarding the implementation of elections, although not all information can be published. When there are organizers who are not open and do not provide information to the public, then such organizers

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<sup>7</sup> Article 6 paragraph 3 of Regulation No. 2/201 DKPP 7

are considered to violate ethical standards<sup>8</sup>.

### **Strengthening Electoral Resources**

Electoral organizers are a combination of commissioners with secretariats, the KPU, Bawaslu, and the DKPP. Commissioners are individuals elected through a selection process, and the origins of KPU commissioners are diverse; not all have backgrounds in social and political sciences or law, but many also come from religious scholars, natural science graduates, and even KPU commissioners who have not completed their undergraduate education. Still, through the process, they are deemed competent and eligible to become KPU commissioners and are subsequently elected. Knowledge and understanding, both macro regarding democracy and elections and micro regarding technical aspects of election administration, vary among elected commissioners. Diversity of knowledge is the main asset of the KPU in making the institution dynamic, vibrant, and operational. After being inaugurated, KPU commissioners receive specific orientation regarding their duties and functions.

Strengthening KPU human resources is a necessity, considering the challenges faced by the institution in the future, especially since the simultaneous elections in 2024 require competent human resources. Capacity-building efforts conducted by the KPU include: first, conducting Task Orientation (Ortug) for newly inaugurated provincial and district/city KPU commissioners. The material in Ortug focuses more on strengthening understanding and knowledge related to macro politics and democracy, especially concerning elections. In conducting Ortug activities, the KPU involves practitioners, academics, and NGO activists in the field of democracy and elections as facilitators, so that the messages intended through Ortug can be communicated effectively and practically. General understanding of democracy and elections and solving practical problems in election implementation are key points conveyed during Ortug with the main handbook being the Electoral Governance Foundation<sup>9</sup>.

In implementing professionalism as mentioned in Article 2 paragraph (2) letter i, KPU members, provincial KPUs, district/city KPUs, PPKs, PPLNs, PPSs, KPPSs, and KPPSLNs must behave by<sup>10</sup>:

- a) Following and undergoing knowledge improvement processes that support their work, especially regarding elections, statehood, and nationalism, through technical guidance, education and training, seminars, workshops, knowledge sharing, and/or other media.
- b) Placing personnel according to their duties, functions, and capacities in a workgroup, committee, and other activity implementing elements.
- c) Ensuring service quality to voters, Election Participants, and stakeholders in

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<sup>8</sup> This article conveys a similar message to Article 13, which requires Election Organizers to provide easy access and service to the public to obtain information and data related to the decisions of the Election Organizers, and to respond wisely and judiciously to public criticism and inquiries

<sup>9</sup> PKPU Nomor 8 Tahun 2019, paragraph 85

<sup>10</sup> KPU RI, *Fondasi Tata Kelola Pemilu* (Jakarta: KPU, 2017). This book comprehensively explains the theme of electoral matters

accordance with professional standards of election administration.

d) Acting based on operational procedures and substance of election administration and selection profession.

e) Being brave in facing and accepting decision consequences.

f) Making decisions in carrying out duties, functions, and authorities collectively and collegially.

g) Maintaining confidentiality of the contents and dynamics of Plenary Meetings.

### **3.2. The Role of Bawaslu in Supervising and Implementing Legislation Post-Reformasi**

Bawaslu is part of the electoral administration system, which also includes the General Election Commission (KPU) and the Election Organizer Honorary Council (DKPP). Bawaslu establishes standards for the implementation of electoral supervision work stages as guidelines for election supervisors at every level, and its duties include overseeing the electoral process to prevent and address violations to ensure democratic elections. In the context of the 2024 elections, the authority and duties of Bawaslu are strengthened, serving not only as an oversight body but also as a dispute resolution institution, with Bawaslu's decisions in electoral disputes being final and binding, except for disputes related to political party verification.

The designers of electoral laws from the New Order era until now have desired the existence of an Electoral Supervisory Institution, as its position and role are considered strategic in overseeing the implementation of elections in accordance with applicable laws, particularly in upholding the principles of free and fair elections. Bawaslu's tasks in overseeing the electoral process include<sup>11</sup>:

a. Monitoring the preparations for the election, which consist of:

- 1) Planning and scheduling the election stages;
- 2) Planning the procurement of logistics by the KPU;
- 3) Implementing the determination of electoral districts and the number of seats in each electoral district for the election of members of the Regional Representatives Council and the Regional Representatives Council at the provincial and district/city levels by the KPU in accordance with the provisions of the legislation;

a) Socializing the electoral process; and

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<sup>11</sup> In carrying out their duties, they are guided by: a) legislation regulating elections; b) the Code of Ethics for Election Administrators; c) the Code of Conduct; d) oath/pledge; and e) integrity pact of members. The ethical guidelines issued by the KPU are much more stringent, strict, and detailed in regulating the conduct of election administrators.

- b) Implementing other supervisory tasks as stipulated in the legislation.
- b. Monitoring the implementation of the election stages, which include<sup>12</sup>:
- 1) Updating voter data and determining the temporary and final voter lists;
  - 2) Determining election participants;
  - 3) The nomination process up to the appointment of members of the People's Representative Council, Regional Representatives Council, Regional Representatives Council, presidential and vice-presidential candidate pairs, and gubernatorial, regental, and mayoral candidates in accordance with the provisions of the legislation;
    - a) Conducting campaigns;
    - b) Procuring election logistics and distributing them;
    - c) Conducting voting and vote counting in polling stations;
    - d) Moving ballot papers, vote counting reports, and certificates of vote counting results from the polling station level to the sub-district election committee (PPK);
    - e) Moving the tabulation reports of vote counts from the polling station level to the District/City KPU;
    - f) Recapitulating the results of vote counts at the sub-district election committee (PPK), District/City KPU, Provincial KPU, and KPU levels;
    - g) Conducting vote recounts and revotes, as well as supplementary and repeat elections;
    - h) Implementing court decisions related to the election; and
    - i) Implementing DKPP decisions and the process of determining election results.

Factors Influencing Bawaslu's Performance in Conducting General Elections to Achieve Democratic Elections. Bawaslu is an ideal state institution tasked with exercising its authority as an election watchdog. However, there are still many factors affecting Bawaslu's performance. Solutions are needed to improve the performance of Bawaslu members and leaders to address the factors hindering oversight of the electoral process.

These factors include:

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<sup>12</sup> Ibid, p. 69

a. Structural Factors

- 1) Personnel quantity.
- 2) Support facilities.
- 3) Imbalance between duties and authority and operational funds.

b. Substantive Factors

Many loopholes in regulations that can be exploited by electoral participants to commit violations. For example:

- 1) Money politics.
- 2) Almost all violations related to campaigns cannot meet the elements of the offense because the provisions related to these violations must meet the campaign elements as defined in the Law and KPU regulations. For example, violations of campaigning in places of worship and education are challenging to prosecute because the elements of presenting the vision and mission by the perpetrator are not fulfilled.

c. Cultural Factors

In the development of political culture, familial ties between candidates and voters can lead to voters choosing not based on conscience that aligns with the capacity and electability of DPR members but based on regional affiliations.

#### 4. CONCLUSION

The role of the KPU as the organizer of the General Election has adhered to the principle of independence in conducting elections but is suboptimal. The principle of independence in conducting elections is by remaining committed to organizing elections in accordance with all regulations, rules, and laws in force. The accessibility of public information is a form of transparency despite many shortcomings. Bawaslu plays a significant role in the conduct of the 2024 General Election in efforts to realize democratic elections. Factors influencing Bawaslu's performance in the implementation of the 2024 General Election in efforts to achieve democratic elections include structural factors, substantive factors, and cultural factors.

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