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Multilayered Oversight: Electoral Administration in Indonesia

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Abstract

Electoral administration in Indonesia is complex. The Electoral Commission (*Komisi Pemilihan Umum*) is responsible for planning and running five-yearly elections for one national and two regional legislatures, and one additional national regional representative body, as well as direct presidential, gubernatorial, mayoral and regent elections. Because candidates and parties often have significant financial stakes in their outcome, these elections are hotly contested and the results quite commonly disputed, including in Indonesia's Constitutional Court (*Mahkamah Konstitusi*). Electoral contestants often point to mistakes in administration and vote counting, which appear to be natural consequences of the great logistical challenges these elections present. For example, on 17 April, 2019, well over 150 million citizens attended one of over 800,000 polling stations to vote for candidates to fill 19,817 legislative seats in national and sub-national parliaments. Many of these elections are said to be marred by attempts by candidates and their parties to gain illegal advantage, whether through misuse of incumbency or vote buying. There is also said to be much potential for corruption amongst electoral administrators themselves in registering candidates, verifying parties, procuring equipment for polling stations, and counting and tallying votes on election day. Given the potential of mistakes and illegality to jeopardise the legitimacy of election results, lawmakers in Indonesia have created multi-layered oversight mechanisms to oversee the planning and running of the elections by the Electoral Commission, as well as to oversee the Election Supervisory Board (*Bawaslu, Badan Pengawas Pemilihan Umum*) itself, which is charged with supervising that Commission. This article examines the work and performance of these institutions, and the Electoral Administration Honour Council (DKPP, or *Dewan Kehormatan Penyelenggara Pemilu*), which hears allegations of breaches by the Commission and the Board.

Keywords: Electoral Administration

Indonesia is a vast archipelago of around 17,000 islands spread across 5,000 kilometers from East to West. Its population, around 270 million, is particularly diverse – religiously, ethnically, culturally, politically, and economically. Electoral administration has always presented significant challenges, including the logistical challenges arising from Indonesia's geography and problematic infrastructure.

Indonesian elections: history and legislative framework

Indonesia held its first national legislative elections in 1955, around a decade after declaring independence from the Dutch. But with Soeharto's assumption of power from 1966, Indonesia came under military-led authoritarian control. While elections – or parties of democracy (*pesta demokrasi*), as the regime sometimes called them – were held every five years from 1971, they were far from free and fair contests, with opposition parties forced to amalgamate into two unwieldy

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coalitions, and then subjected to close military monitoring and control. These elections were designed to ensure the victory of Soeharto's parliamentary vehicle, Golkar (*Golongan Karya*, or 'functional groups'), which could then control the supreme legislative council that loyally extended Soeharto's presidency every five years. As the late human rights lawyer and champion Adnan Buyung Nasution put it, elections involved 'a lot of dirty tricks, with the military, the bureaucracy, and Golkar colluding in all kinds of illegal and improper methods to preserve Soeharto's power.'¹

After Soeharto was forced to resign in May 1998 amidst economic calamity and related social unrest, Indonesia rushed towards liberal democracy. In 1999, it held its first democratic general elections since 1955, with 48 parties competing for votes. Subsequent legislative and constitutional amendments (from 1999–2002) introduced direct presidential elections (the first of which was held in 2004) and regional autonomy, which led to the establishment of a national-level representative body (the *Dewan Perwakilan Daerah* (DPD), often translated as 'upper house' or senate, even though it has no power to negotiate, block or enact legislation) and the proliferation of subnational governments – 'level 1' provinces and 'level 2' cities and counties.² Each of these have their own elected legislature and executive leaders or regional heads (*kepala daerah*): governors (*gubernur*) in provinces, regents (*bupati*) in counties, and mayors (*walikota*) in cities. Since 2005, regional heads have also been directly elected.³

The sheer number of elected bodies and officials in Indonesia requires many elections and creates great complexity for electoral administration. All these bodies and officials are reconstituted by election every five years. Traditionally, elections for national, provincial, and city or county parliaments, as well as a national-level regional representative body have been held on the same day. However, until recently, elections for executive heads (including the president) were not, causing great confusion and expense and accentuating logistical challenges, particularly for the General Election Commission (*Komisi Pemilihan Umum* or KPU). In more recent years, efforts have been made to consolidate these elections. From 2004 until 2019, presidential elections were held around three months after legislative elections.⁴ However, since 2019, presidential elections have been held on the same day as legislative elections, the result of a Constitutional Court decision.⁵ As discussed below, this has arguably created more difficulties and expense than holding legislative and presidential elections separately. Regional elections take place every five years, but initially were held according to schedules set by local governments in consultation with the Ministry of Home Affairs. This meant that they were held on a rolling basis, rather than simultaneously across the archipelago. Because Indonesia has 34 provinces and 514 cities and districts, this meant that local head elections took place regularly. As one Home Affairs official joked, a regional election used to be held somewhere in Indonesia almost every day.⁶ Since 2015, however, these elections have been held in groups more than a year apart.⁷ From 2024, all regional head elections are

¹Adnan Buyung Nasution, 'Inaugural Professorial Lecture: Towards Constitutional Democracy in Indonesia' (Adnan Buyung Nasution Papers on Southeast Asian Constitutionalism, Melbourne Law School 2011) <https://law.unimelb.edu.au/_data/assets/pdf_file/0008/1547630/NasutionPaper111020_web2.pdf> 19.

²Cities and counties are of the same level, with cities being units of government in primarily urban areas and counties comprising the remainder.

³Previously, under the 1999 Regional Government Law, regional heads were appointed and dismissed by their corresponding local parliament (DPRD): Regional Government Law 1999, art 34. However, this process had degenerated into a bidding war in some parts of Indonesia, where some DPRD members appointed candidates who offered them the most money: Maribeth Erb & Pri Sulistyanto, *Deepening Democracy in Indonesia? Direct Elections for Local Leaders (Pilkada)* (ISEAS 2009) 18.

⁴This was justified, at least partly, on the requirement of a presidential nomination threshold - that is, candidates could only be nominated by parties that held a particular number or percentage of seats in the national parliament.

⁵Constitutional Court Decision 14/PUU-XI/2013.

⁶Tempo, 'Simultaneous Elections' *Tempo* (3 September 2012).

⁷The first wave of these (269 regions, comprising 9 provinces, 36 cities, and 224 counties) took place on 9 December 2015; the second (101 regions, comprising 7 provinces, 18 cities, and 76 counties) on 15 February 2017; and the third (171 regions,

planned to be held together with the legislative and presidential elections (which, as discussed, were themselves held together for the first time in 2019).⁸

The consolidation of these types of elections has been reflected in the consolidation of the statutes that govern them. So, for example, legislative elections (both national and subnational) were traditionally governed by a single statute, as were presidential elections. Regional head elections were governed by the general-purpose regional autonomy statutes that covered a wide range of issues relating to subnational government. Political parties and electoral institutions were regulated by separate statutes. Since 2017, however, those statutes have been consolidated into a single General Elections Law.⁹ The only elections that are not governed by this statute are regional head elections, which continue to be regulated under general regional autonomy legislation.

Key electoral institutions

There are four institutions that are fundamental to the running of Indonesia's various elections. The first is the KPU, which was established in 1999 to prepare, administer, and run Indonesia's national elections.¹⁰ The KPU comprises the KPU itself (located in Jakarta), provincial KPUs (located in the capital cities of each of Indonesia's 34 provinces), and city and county KPUs (located in the capitals of Indonesia's 98 cities and 416 counties).¹¹ The KPU is discussed in more detail below.

The second key institution is the Election Supervisory Board (*Bawaslu*, *Badan Pengawas Pemilihan Umum*). Bawaslu supervises the Electoral Commission and all stages of the election, including planning and logistics, finalisation of the electoral roll, and the application of candidacy rules. It also hears complaints about breaches of electoral rules and even resolves some types of electoral disputes.¹² Like the KPU, it has national, provincial, and city and county offices,¹³ but also subdistrict and even overseas representation. Bawaslu's national and provincial offices are permanent, but its lower-level offices are ad hoc, established two months before election periods begin and disbanded two months after.¹⁴ We note that having an official institution to monitor the electoral process – including the Electoral Commission itself – appears to be relatively rare. Theoretically, this added level of oversight should help ensure that elections are conducted in accordance with rules and are transparent. However, in practice, the KPU and Bawaslu have often found themselves in disagreement – if not outright conflict – which, some authors argue, has sometimes impeded planning for or administration of elections.¹⁵

Third is the Electoral Administration Honour Council (DKPP, or *Dewan Kehormatan Penyelenggara Pemilu*), which hears allegations of breaches of electoral laws and codes of conduct by the KPU and Bawaslu. The Council can impose sanctions, including dismissal of members and employees of either institution found to have breached those laws and codes of conduct.¹⁶ Prior to

comprising 17 provinces, 39 cities, and 115 counties) on 27 June 2018; and the fourth (270 regions, comprising 9 provinces, 37 cities, and 224 counties) on 9 December 2020.

⁸Saldi Isra, *Pemilu Dan Pemulihan Daulat Rakyat* (Themis Publishing 2017) 14.

⁹As the Law itself states, in its preamble (part d), the Law consolidates Law 42 of 2008 on the Election of the President and Vice-President, Law 15 of 2011 on Election Administrators, and Law 8 of 2012 that deals with national and regional legislative elections to become the basis for simultaneous elections.

¹⁰In fact, some form of electoral commission has existed in Indonesia since 1955. Initially called the Indonesian Election Committee (*Panitia Pemilihan Indonesia*), it changed its name to the General Election Institute (Lembaga Pemilihan Umum) in 1970. Then, in 1999, it was restructured and renamed as the General Electoral Commission.

¹¹GEL, art 8.

¹²The tasks and authority of Bawaslu are contained in Articles 93-96 of the GEM.

¹³Bawaslu has offices in all of Indonesia's 34 provinces, 98 cities, and 416 counties.

¹⁴GEL, Chapter II, arts 89–184.

¹⁵Muhammad Febriansyah, Muhammad Takiyuddin Ismail & Norazam Mohd Noor, 'Competing Not Complementing: KPU, Bawaslu, and the Dynamic of Election Monitoring in PEMILU 2019' 28(3) *Asian Journal of Political Science* 275.

¹⁶The tasks and authority of the DKPP are regulated in Article 159 of the GEL. In April 2014, the Council was chaired by former Constitutional Court Chief Justice Jimly Asshiddiqie who reported that the Council had already removed 129 officials

the establishment of the DKPP, KPU and Bawaslu established an honorary ethical council to resolve misconduct allegations. However, due to its ad hoc nature, and because it was thought to largely protect members of the KPU and Bawaslu, lawmakers established a permanent ethical council, which came in the form of the DKPP.¹⁷

The final institution we mention here is the Constitutional Court. Two of the Court's functions make it particularly important for elections: constitutional review and electoral dispute resolution. When exercising its constitutional review powers, for example, the Court has been asked to consider the validity of various electoral statutes that establish Indonesia's election systems, party verification requirements, and candidacy rules.¹⁸ At the time of writing, it also has the final say in electoral disputes, being able to order recounts or even disqualifications where it discovers 'structural, systematic and massive' (*terstruktur, sistematis dan masif*) violations of electoral laws.¹⁹ As we explain below, the Constitutional Court appears to have played a more significant role in helping mediate and resolve larger democratic controversies than the KPU.

Of course, even though the above four institutions are the main actors in charge of preparing and holding elections, and finalising election results, other institutions also play a critical role during elections. For example, general district courts hear cases brought by Bawaslu about alleged crimes,²⁰ and administrative courts settle disputes about registration.²¹

The KPU

Article 22E(5) of the Constitution states that 'general elections are to be organised by a general electoral commission that is national, permanent and independent'. Article 22E(5) does not mention the KPU by name, and while questions have been raised about whether the reference to a commission is a specific reference to the KPU, Article 22E(5) is generally considered to constitutionally entrench the position and key responsibility of the KPU. Article 22E(6) states that 'further provisions regarding general elections are to be regulated by statute'. Pursuant to Article 22E(6), many statutes have been enacted to regulate the basic functioning of the KPU over the past two decades or so, including its structure, membership, powers, and responsibilities. At the time of writing, Law 7 of 2017 on the Organisation of General Elections (the GEL) is the primary statute governing the KPU and the elections it administers.

Main responsibilities

The KPU has almost 14,000 staff in over 500 offices throughout Indonesia.²² While the KPU's jurisdiction extends across the entire territory of Indonesia, it is multi-tiered, largely reflecting the organization of the government into national, provincial, city and county, and district and village levels. The national-level KPU has overall coordination and control responsibility, but many of its tasks, functions, and powers - which are set out in the GEL - are mirrored in the KPU instrumentalities below it. So, for example, it is responsible for tallying up vote counts submitted to it by provincial KPUs, which themselves obtain their figures by tallying the votes cast in the cities and counties located in their respective provinces. City and county KPUs then have similar tasks and responsibilities to oversee the work of district-level electoral administration, and so on. All these

from KPU and Bawaslu for various breaches: 'Sudah 129 Anggota Penyelenggara Pemilu Diberhentikan' *Hukumonline* (19 April 2014).

¹⁷Law 15 Year 2011 on Election Administration, art 109.

¹⁸Simon Butt, *The Constitutional Court and Democracy in Indonesia* (Brill 2015).

¹⁹Simon Butt, 'Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes' (Centre for Democratic Institutions, Australian National University 2013).

²⁰GEL, art 481.

²¹GEL, art 470.

²²Rumah Pemilu, *Brief Overview of the 2014 Elections in Indonesia* (Rumah Pemilu 2014) <www.rumahpemilu.com>.

instrumentalities – whatever level at which they sit – are responsible for running the election, maintaining voter information, informing the public about elections, and the like. While a multi-tiered arrangement such as this is arguably necessary given the sheer number of voters and polling stations, the process by which counts and other information is passed up the chain can be problematic, because it increases the potential for mistakes and fraud, such as in the maintenance of voter lists and tallies.

The KPU's responsibilities are extensive before, during, and after elections.²³ Pre-election, they include maintaining the electoral roll, verifying and announcing candidates and parties, planning, budgeting, and scheduling elections, procuring goods and services needed to run elections (which occur in both Indonesia and abroad), training and managing the key officials who perform election-related functions, and administering those officials' employment, including by supervising them and punishing them for misconduct. In the course of doing these things, the KPU must treat election participants fairly and equally.²⁴ The KPU also has an educative function, being required to encourage citizens to register to vote and to exercise their right to vote. It must also convey 'all election administration information' to the public.²⁵

On election day, the KPU is to tally the votes sent to it by subnational KPUs and overseas committees. It is then to announce the final results of elections and allocate national and subnational legislative seats to parties and candidates. It must also report on all stages of electoral administration to the president and the national parliament, sending copies of its reports to Bawaslu.²⁶ It must also account for the use of its budget, respond to Bawaslu investigations, and comply with DKPP decisions about electoral misconduct. The KPU can also perform and be given other tasks by law, and for the purpose of exercising its functions and responsibilities, can issue regulations.

Provincial KPUs have numerous tasks, many of which mirror those of the national KPU. They also function as conduits between city and county KPUs, and the national KPU. Thus, provincial KPUs are not only responsible for running elections in their respective provinces; they must also coordinate, carry out, and control electoral administration performed by city and council KPUs in their provinces, send electoral roll data from those KPUs to the national KPU, and help maintain the electoral roll. On election day, they are also to collect and tally the votes cast in the cities and districts in their provinces, announce results of provincial legislature elections, and allocate seats. They have similar educative and public information functions and reporting requirements to those of the national KPU, can sanction city and county KPU members for misconduct, and must treat election participants fairly and equally.²⁷

City and county KPUs perform similar functions at the city and county level, except that they are charged with constituting and overseeing the work of: the District Election Committee (*Panitia Pemilihan Kecamatan*, PPK), which conducts elections in Indonesia's counties; the Voting Committee (*Panitia Pemungutan Suara*, PPS), which runs elections at the village level; the Overseas Election Committee (*Panitia Pemilihan Luar Negeri*, PPLN), which runs elections abroad; Voters Organizing Groups (*Kelompok Penyelenggara Pemungutan Suara*, KPPS), which are established by the Voting Committee to run voting at polling stations; and the Overseas Voter Group (KPPSLN), which is established by the Overseas Election Committee to run voting at overseas polling stations.²⁸

Like the national and provincial KPUs, city and county KPUs are to help run the elections in their respective jurisdictions, maintain voter data and electoral rolls, tally the votes from their electoral districts, announce the results, and allocate seats.²⁹ The PPK operates at a lower level of

²³See GEL, arts 12–14.

²⁴GEL, art 14.

²⁵ibid.

²⁶ibid.

²⁷GEL, arts 15–17.

²⁸GEL, arts 1(9)–1(15), 6 and 7(1).

²⁹GEL, arts 18–20.

government administration, collecting voter lists and passing them up to the city or county KPU, tallying votes for legislative and presidential elections, and generally assisting the KPU offices above it as required.³⁰

The PPS runs elections at the village level, as stipulated by the instrumentalities above it. It collects the results of vote counting from all polling stations in its working areas and submits them to the relevant PPKs. On polling day, the KPPS is responsible for conducting voting, counting the votes at the polling station, and sealing ballot boxes, usually with representatives of political parties attending as witnesses and signing off on the vote.³¹ This must be performed on the same day as polling.³² The PPS is also responsible for maintaining and securing the integrity of ballot boxes after the vote count, and, after the boxes are sealed, for forwarding them to the relevant PPKs immediately after the recapitulation of the results of vote counting from each polling station.³³ Before polling day, the PPS helps compile voting lists and sends them to the relevant PPKs, which then send them up through the KPU chain. The PPS is also to publicly disseminate information about the elections, including about its own duties and responsibilities, and to perform tasks given to it by KPU instrumentalities higher up the chain.³⁴ On polling day, the KPPS announces the final voting list at the polling station, conducts the voting, and then counts the votes, again before witnesses who are to sign off on the count.

The PPLN manages Indonesian elections for the Indonesian community abroad, tallying the votes collected by KPPSLN in the relevant voting area, announcing reports, and submitting formal reports.³⁵ The KPPSLN performs a very similar function to the KPPS, conducting the vote, counting the votes, and then sealing the boxes - all on polling day.³⁶ PPLN, with the help of the KPPS, also assists the KPU in maintaining voter lists and securing ballot boxes, and is to perform any other tasks the KPU requests.³⁷

Membership

In 2017, KPU reported that it had almost 2,750 commissioners – 7 at the national level, 172 at the provincial level, and 2,569 at the city/county level - and around 9,000 employees.³⁸

The national KPU has seven members, at least 30 per cent of whom must be women (Article 10 (1)(a) and Article 10(7) of the GEL). To appoint them, the president forms a committee of eleven³⁹ to test and interview candidates, receive community submissions about them, and compile a short-list of fourteen candidates, which the president then presents to the national legislature (*Dewan Perwakilan Rakyat* or DPR).⁴⁰ The DPR selects the final seven after conducting a ‘fit and proper’ test of the candidates (Articles 22– 25 of the GEL), which usually takes the form of an investigation

³⁰GEL, arts 53(1) and 53(3).

³¹GEL, art 60.

³²GEL, art 62.

³³GEL, art 58.

³⁴GEL, art 56.

³⁵GEL, art 64.

³⁶GEL, arts 68 and 70.

³⁷GEL, art 66.

³⁸Komisi Pemilihan Umum, ‘Report No 51/HK.03-Kpt/03/KPU/II/2018 on the Second Amendment to the Decision of the General Election Commission No 63/Kpts 2015 Strategic Plan of the General Election Commission for 2015–2019’ https://jdih.kpu.go.id/data/data_kepkpu/SK%2051%20THN%202018.pdf pp. 15–16. However, the KPU itself estimates that it needs at least 16,000 employees: Ardian Fanani, ‘KPU Kekurangan 10 Ribu Pegawai Organik Di Seluruh Indonesia’ *Detiknews* (20 October 2016) <<https://news.detik.com/berita-jawa-timur/d-3325450/kpu-kekurangan-10-ribu-pegawai-organik-di-seluruh-indonesia>>.

³⁹Comprising three from government, four from academia, and four from the community (GEL, art 22(2)); with good reputations and track records, credibility and integrity, knowledge of electoral issues, and with abilities in recruitment (GEL, art 22(3)); and ‘considering representation of at least 30 percent’ for women (GEL, art 22(1)).

⁴⁰GEL, art 22.

into their track records and then several parliamentarians asking them questions during a formal hearing. The selected candidates are then submitted to the President for appointment. KPU members serve a five-year term and choose the head of the KPU from among themselves (Articles 10 (5), (9) of the GEL).

In contrast, provincial KPUs have between five and seven members, and city or county KPUs have five, depending on the population and geographic size of their respective government areas.⁴¹ Like the national KPU, all subnational KPU members serve five-year terms and 30 percent of the members of each regional commission must be female. To appoint them, the KPU creates a selection team who advertises, screens, tests, and then proposes a list of candidates to the KPU, which chooses the members from that list.⁴² PPK and PPS have three members, the KPPS and KPPSLN have seven, and the PPLN has between three and seven. Again, at least 30% of these offices should be held by women. PPK, PPS, PPLN, KPPS, and KPPSLN are ad hoc institutions. PPK and PPS, for example, are formed no later than six months before the holding of elections and dissolved no later than two months after voting.

KPU members – both national and subnational – must meet various pre-requisites, including: having reached particular education levels, having integrity and honesty, being physically and mentally healthy, and having not been found guilty of a crime for which the criminal penalty is five years of imprisonment or more (Article 21 of the GEL). They must also not have been a member of a political party for at least five years at the time they apply for selection as a member (Article 21(1)(i) of the GEL).

Dismissal

KPU members, whether national or subnational, are discharged if they are unable to perform their duties. They can be dishonorably removed by the president if they violate their oath of office or the code of ethics, or fail to perform their duties for three consecutive months without providing a valid reason.⁴³ They can also be dishonorably removed after being found guilty of and imprisoned for an offence (including, but not limited to, an election-related offence), or if they impede the KPU's making of decisions.⁴⁴

Critically, a KPU member, whether national or subnational, cannot be removed unless the DKPP verifies the truth of the violation alleged against that member, except if the ground for dismissal is imprisonment for an offence, in which case DKPP verification is not required (Article 38(1) of the GEL). The accused member – brought before the DKPP on the complaint of the DPR, electoral contestants, or the public – is to be given the opportunity to defend him or herself before the DKPP. KPU members can also be suspended if they are tried for a crime for which the prison sentence is five years or more, are tried for an election-related crime, or are suspended after the DKPP has decided to remove them but before a formal removal order has been issued (Article 39 of the GEL).

⁴¹Refer to GEL, arts 10(1)(b)-(c). We note that the number of city and county KPU members was a matter of dispute in a recent Constitutional Court case (31/PUU-XVI/2018). This case involved a challenge to Article 10(1)(c) of the GEL that allowed city and county KPUs to have three, four, or five members, depending on the 'characteristics' of each region. Previously, under Law 15 of 2011, five members were required. The Court reinstated the five-member requirement, holding Article 10(1)(c) to be constitutionally invalid, and pointing out that the upcoming simultaneous elections made it irrational to reduce the number of members. After the decision, city and county KPUs and the PPK have ensured that they comprise five members: 'Komisioner KPU Karimun Ditambah Jadi 5 Orang' *Batampos* (7 August 2018) <<https://batampos.co.id/2018/08/07/komisioner-kpu-karimun-ditambah-jadi-5-orang/>>; 'Anggota PPK Ditambah Dua Orang' *Radarsasikmalaya* (3 January 2019) <<https://www.radarsasikmalaya.com/anggota-ppk-ditambah-dua-orang/>>; Abdul Basri, 'Jumlah PPK Kembali Ditambah, KPU Sumenep Lakukan Rekrutmen' *JawaPos* (12 November 2018) <<https://radarmadura.jawapos.com/read/2018/11/12/103230/jumlah-ppk-kembali-ditambah-kpu-sumenep-lakukan-rekrutmen>>.

⁴²GEL, arts 28–30.

⁴³GEL, arts 37(1) and 37(3).

⁴⁴GEL, art 37(2). The KPU can terminate members of the PPK, PPS, KPPS, and PPLN, and members of the KPPSLN can be dismissed on similar grounds: GEL, arts 74(1) and 74(2).

Budget

The GEL specifies that the KPU's budget, including for its various regional instrumentalities, is to be sourced from the state budget (*Anggaran Pendapatan dan Belanja Negara*).⁴⁵ The KPU rarely complains publicly about the adequacy of its budget,⁴⁶ and there have not been widespread reports of the government threatening to reduce it because of poor performance or in an attempt to influence the KPU in the performance of its functions. Indeed, the KPU's allocation from the state budget has tended to increase from year to year,⁴⁷ and was Rp. 24.8 trillion for the 2019 elections.⁴⁸ However, the KPU expressed disappointment about the budget allocated to it by the Ministry of Finance in 2019.⁴⁹

Recent controversy about election funding has surrounded whether a sufficient amount has been allocated to conduct regional elections, with local KPU officials threatening not to conduct their elections unless their budget demands are met,⁵⁰ and the KPU chastising local governments for threatening to cut their contributions to fund local elections.⁵¹ The calls for increased budgets have intensified in recent years due to the extra costs associated with COVID-19. In particular, local electoral officials have demanded assistance, including the provision of protective equipment, to prevent further infection spread during voting.⁵²

Successes and criticisms

Over the years, including in more recent times, the KPU has attracted significant criticism regarding the administration of various elections. Before turning to discuss this criticism, however, we would like to put it in context. The success of the KPU and its members has depended on its ability, in any given election, to maintain professionalism, in the sense of its ability to plan and run numerous elections, coordinate its various instrumentalities, and ensure that its members and employees, and anyone else involved in the processes it oversees, act without bias and corruption. Perhaps the most important indicator of the KPU's overall success has been that Indonesia's elections have, with some exceptions, been remarkably peaceful.⁵³ In our view, this is largely due to the efforts of the KPU, its instrumentalities and its employees, and the work of many other electoral institutions, such as Bawaslu.

It bears noting that the political environment in which the KPU works is particularly difficult, with many politicians willing to employ unsavory tactics to win, particularly in regional areas, where oversight (and security) might be weaker than in urban centers. Most Indonesian elections have taken place in a highly charged political environment, where much is at stake and key players

⁴⁵GEL, art 451(1).

⁴⁶Andrian Pratama Taher, 'Ironi Anggaran Untuk KPU: Melimpah Tapi Tak Selesaikan Masalah' *tirto.id* (15 April 2019) <<https://tirto.id/ironi-anggaran-untuk-kpu-melimpah-tapi-tak-selesaikan-masalah-dmBE>>.

⁴⁷Rina Widiastuti, 'Dana Pilkada Terus Naik, Berikut Anggaran Tiga Tahun Terakhir' *Tempo* (21 November 2017) <<https://pilkada.tempo.co/read/1035588/dana-pilkada-terus-naik-berikut-anggaran-tiga-tahun-terakhir>>.

⁴⁸Ringkang Gumiwang, 'Alibi Di Balik Lonjakan Anggaran Pemilu 2019: Dana BIN Hingga Hoax' *Tirto.id* (27 August 2018) <<https://tirto.id/alibi-di-balik-lonjakan-anggaran-pemilu-2019-dana-bin-hingga-hoax-cUHz>>.

⁴⁹ce1/sat/JPC, 'KPU Galau, Anggaran Pemilu Minus Rp 3 Triliun' *JawaPos* (22 December 2017) <<https://www.jawapos.com/nasional/pemilihan/22/12/2017/kpu-galau-anggaran-pemilu-minus-rp-3-triliun/>>.

⁵⁰See, for example, Imron Arlado, 'KPU Ancam Hentikan Pilkada' *Radarmojokerto* (12 February 2020) <<https://radarmojokerto.jawapos.com/read/2020/02/12/178945/kpu-ancam-hentikan-pilkada>>.

⁵¹'Pemotongan Anggaran Pilkada Berisiko' *Media Indonesia* (7 November 2017) <<https://mediaindonesia.com/politik-dan-hukum/130864/pemotongan-anggaran-pilkada-berisiko>>; Dian Erika Nugraheny, 'Ketua KPU: Ada Pemda Pangkas Anggaran Pilkada Tanpa Libatkan Penyelenggara' *Kompas* (22 January 2020) <<https://nasional.kompas.com/read/2020/01/22/06283251/ketua-kpu-ada-pemda-pangkas-anggaran-pilkada-tanpa-libatkan-penyelenggara>>.

⁵²Dian Dewi Purnamasari, 'Pilkada Tetap 2020, KPU Minta Tambahan Anggaran' *Komas* (27 May 2020) <<https://kompas.id/baca/polhuk/2020/05/27/dilaksanakan-desember-2020-pilkada-butuhkan-tambahan-anggaran/>>.

⁵³Diego Fossati, 'The Resurgence of Ideology in Indonesia: Political Islam, Aliran and Political Behaviour' (2019) 38(2) *Journal of Current Southeast Asian Affairs* 119, 120.

are willing to engage in extreme tactics, including outright corruption, to win. Many candidates are known to pay significant amounts to political parties in order to secure their support. For many, then, standing for election is a significant investment and requires them to go into debt. This is a debt that can only be repaid if they win office, being able to use their new position to leverage bribes and access state funds.

Indonesia's elections are amongst the most logistically challenging in the world. For example, the 2019 simultaneous elections, held on April 17, involved 245,000 candidates vying for 19,817 legislative seats, and votes being cast at 810,329 polling stations, with an estimated 81% of 193 million eligible voters exercising their voting rights.⁵⁴ Millions of both polling booths and bottles of indelible ink, and tens of millions of ballot papers, needed to be delivered across the archipelago. The elections also required the employment of six million people.⁵⁵

In this context, it is not surprising that the KPU has quite commonly sent voting papers to the wrong districts, and sometimes produced inaccurate electoral rolls, particularly for voters who have relocated since the previous election⁵⁶ (noting that the management and accuracy of population data is primarily the responsibility of the Home Affairs Ministry). Results of the KPU's failings include delays (while replacement ballots are delivered) and legal challenges. The KPU has also been criticized for failing to meet many of its own deadlines, being incompetent, showing bias, being corrupt, and being unwilling to follow up on credible claims of electoral impropriety by political parties.⁵⁷ Concerns have also been raised about the adequacy of the education the KPU has provided to its staff and voters. It has also, in past years at least, been criticized for failing to maintain a transparent vote-counting process and auditable publication of results. However, beginning with the 2014 elections, the KPU now scans and uploads local tally forms to its website, which details results from every polling station in the country. This was credited with sparking a popular movement – *Kawal Pemilu*, 'Guard the Election' – and preventing fraud during the 2014 presidential election.

The KPU came under particularly heavy criticism for its handling of the 2019 simultaneous elections. Perhaps the main negative consequence of those elections was the death of 894 officials, primarily from exhaustion.⁵⁸ These officials set up polling stations, oversaw the voting, and then counted the votes. The GEL requires that votes be counted on election day. So, after a long day, many worked late into the night and into the early hours of the morning to check and cross check their counts. Also controversial was that running simultaneous elections did not increase

⁵⁴ibid; Dylan Aprialdo Rachman, 'Pemilu 2019, Jumlah Kursi Anggota DPRD Berjumlah 19.817' *Kompas* (18 April 2018) <<https://nasional.kompas.com/read/2018/04/18/13240581/pemilu-2019-jumlah-kursi-anggota-dprd-berjumlah-19817>>; Kompas Cyber Carina, 'Setelah Putusan MK, Jumlah TPS Pemilu 2019 Bertambah 829 Jadi 810.329' *Kompas* (8 April 2019) <<https://nasional.kompas.com/read/2019/04/08/19475721/setelah-putusan-mk-jumlah-tps-pemilu-2019-bertambah-829-jadi-810329>>.

⁵⁵Ben Bland, 'The Mind-Boggling Challenge of Indonesia's Election Logistics' (*The Interpreter*, 3 April 2019) <<https://www.lowyinstitute.org/the-interpreter/mind-boggling-challenge-indonesian-election-logistics>>.

⁵⁶Sri Nuryanti, 'Data Kependudukan Dan Problematika Pengelolaan Data Pemilih Pemilu Legislatif 2014' in Luky Sandra Amalia (ed), *Evaluasi Pemilu Legislatif 2014: Analisis Proses dan Hasil* (Pustaka Pelajar 2016) 29; Chusna Farisa Farisa, 'Penjelasan KPU Soal 31 Juta Data Pemilih Siluman' *Kompas* (14 December 2018) <<https://nasional.kompas.com/read/2018/12/14/06303141/penjelasan-kpu-soal-31-juta-data-pemilih-siluman>>.

⁵⁷Rizal Sukma, 'Indonesian Politics in 2009: Defective Elections, Resilient Democracy' (2009) 45 *Bulletin of Indonesian Economic Studies* 317; Nasution (n 1).

⁵⁸Syariful Alam, '600 Petugas KPPS Meninggal, MER-C Bentuk Tim Investigasi' *rri.co.id* (16 May 2019) <<https://rri.co.id/1455-pemilu-2019/672637/600-petugas-kpps-meninggal-mer-c-bentuk-tim-investigasi>>; Bayu Septianto, 'KPU: Cukup Sekali Pemilu Serentak Seperti Ini' *Tirto.id* (23 April 2019) <<https://tirto.id/kpu-cukup-sekali-pemilu-serentak-seperti-ini-dmYe>>; Insi Nantika Jelilita, 'KPU Akan Evaluasi Pemilu Serentak' *Media Indonesia* (21 April 2019) <<https://mediaindonesia.com/politik-dan-hukum/230839/kpu-akan-evaluasi-pemilu-serentak>>; 'Dilema Sistem Pemilu Serentak' *Hukumonline* (18 May 2019) <<https://www.hukumonline.com/berita/baca/lt5cdef3179f31b/dilema-sistem-pemilu-serentak/>>; Sania Mashabi, 'Refleksi Pemilu 2019, Sebanyak 894 Petugas KPPS Meninggal Dunia' *Kompas* (22 January 2020) <<https://nasional.kompas.com/read/2020/01/22/15460191/refleksi-pemilu-2019-sebanyak-894-petugas-kpps-meninggal-dunia>>.

efficiency and reduce costs, as expected. According to one report, the 2019 simultaneous elections cost 60% more to run than the 2014 elections.⁵⁹

KPU impropriety

Unfortunately, KPU commissioners have also been embroiled in corruption and ethics scandals that have undermined KPU's credibility and detracted from its achievements. For example, after the 2004 elections, the Anti-Corruption Commission (*Komis Pemberantasan Korupsi* or KPK) successfully prosecuted three former KPU members for taking bribes and kickbacks. Mulyana W Kusumah was caught red-handed attempting to bribe a State Audit Board (*Badan Pemeriksa Keuangan*, or BPK) employee, allegedly to ensure the 'cover-up' of irregularities in the KPU's procurement processes, including during tendering for ballot box suppliers.⁶⁰ Nazaruddin Sjamsuddin, former head of the KPU and Professor of Social and Political Studies at the University of Indonesia, was convicted for accepting kickbacks from an insurance company he appointed to provide accident insurance for people working on the elections.⁶¹ Rusadi Kantaprawira, a Professor of Politics at Padjajaran University and former head of a KPU committee entrusted with ensuring the supply of approximately 1.2 million bottles of ink for use in the elections,⁶² was prosecuted by the KPK for appointing the ink producers and importers in breach of procurement rules. In 2006, an Indonesian corruption court sentenced KPU member Daan Dimara to four years in prison and a Rp 200 million fine for corruption in procuring ballot seals for the 2004 legislative elections.⁶³ The Supreme Court affirmed the Corruption Court's decision in March 2007.⁶⁴

More recently, KPU Commissioner Wahyu Setiawan was arrested by the KPK in January 2020 for taking a bribe to attempt to reallocate a seat won by the Indonesian Democratic Party of Struggle (*Partai Demokrasi Indonesia Perjuangan* or PDI-P) in South Sumatra in the 2019 legislative election.⁶⁵ A PDI-P candidate, Nazarudin Kiemas, had died after the printing of the ballots but before the election, and won the election posthumously. Under KPU regulations, the electoral district's second largest vote-getter from the PDI-P would then take the seat. This was Riezky Aprilia. However, the PDI-P leadership preferred another candidate, Harun Masiku, even though he had received five times fewer votes than Aprilia.⁶⁶ A bribe was paid to Setiawan to reverse the decision to appoint the seat to Aprilia, so that Masiku could obtain the seat. While Setiawan was unable to reverse the decision, he was heard (in a recorded telephone conversation) acknowledging receipt of money and promising to again attempt to reverse the decision. The DKPP also pursued Setiawan for ethics violations, and dismissed him from office for acting 'in bath faith, [and] abusing his authority

⁵⁹Fadhly Fauzi Rachman, 'Anggaran Pemilu 2019 Capai Rp 25 T, Kok Bisa?' *Detikfinance* (27 March 2019) <<https://finance.detik.com/berita-ekonomi-bisnis/d-4485687/anggaran-pemilu-2019-capai-rp-25-t-kok-bisa>>.

⁶⁰News Desk (The Jakarta Post), 'BPK Suspects Corruption at KPU' *Jakarta Post* (21 April 2005); Jakarta Post, 'Audit Report Indicates Massive Corruption at KPU' *Jakarta Post* (23 April 2005).

⁶¹Jakarta Post, 'Poll Commission Chief Charged with Corruption' *Jakarta Post* (9 August 2005); Hukumonline, 'Divonis Tujuh Tahun, Nazaruddin Nyatakan Pemilu Harus Diulang' *Hukumonline* (15 December 2005).

⁶²New Desk (The Jakarta Post), 'KPK Member Could Face Life Sentence for Graft' *Jakarta Post* (13 October 2005); Tempo, 'Rusadi Kantaprawira Divonis Empat Tahun Penjara' (2006) Tempo <<http://www.tempointeraktif.com/ang/min/02/09/nas1.htm>>. Indelible ink is used in Indonesia to stain the fingers of people who have already voted, and thus prevent them from voting again.

⁶³Liputan6.com, 'Daan Dimara Divonis Empat Tahun Penjara' *Liputan 6* (15 September 2006) <<https://www.liputan6.com/news/read/129224/daan-dimara-divonis-empat-tahun-penjara>>.

⁶⁴detikNews, 'MA Tetap Vonis Daan Dimara 4 Tahun Penjara' *Detik* (21 March 2007) <<https://news.detik.com/berita/d-756942/ma-tetap-vonis-daan-dimara-4-tahun-penjara>>.

⁶⁵Dani Prabowo, 'Wahyu Setiawan, Komisioner KPU Kelima Yang Jadi Tersangka KPK' *Kompas* (10 January 2020) <<https://nasional.kompas.com/read/2020/01/10/06470011/wahyu-setiawan-komisioner-kpu-kelima-yang-jadi-tersangka-kpk>>.

⁶⁶John McBeth, 'Bribes, Lies and a Dead Man's Vote Rock Indonesia' *Asia Times* (30 January 2020) <<https://asiatimes.com/2020/01/bribes-lies-and-a-dead-mans-vote-rock-indonesia/>>.

Table 1. DKPP Decisions Regarding Ethics Violations by KPU Commissioners (national and sub-national)*

DECISIONS	TOTAL	PERCENTAGE
Rehabilitation	238	48%
Withdrawal	7	1%
Removal as Chairperson	20	4%
Temporary Discharge	3	1%
Permanent Discharge	46	9%
Warning	187	37%
Total	501	100%

*Collated from various sources.

for his personal benefit'.⁶⁷ In August 2020, the Corruption Court sentenced Setiawan to six years of imprisonment and a fine of Rp 150 million.⁶⁸ Setiawan is the fifth KPU commissioner to have been found guilty of corruption in relation to the 2019 elections.

The DKPP has actively pursued KPU commissioners and members at the national and sub national levels. As of 26 November 2020, the DKPP has rendered 501 decisions regarding ethics violations by KPU commissioners (at national and sub-national levels), as indicated above in Table 1.

In early 2020, the DKPP dismissed Evi Novida Ginting after finding that she had falsified regional election results in West Kalimantan in 2019.⁶⁹ Specifically, it found that she had ignored a Constitutional Court Decision which stated that Hendri Makaluasc of the Gerindra party had been validly elected to the West Kalimantan provincial DPRD, with 5,384 votes.⁷⁰ Even though the DKPP chided all KPU commissioners for this, only Ginting was sanctioned given that she was held to be the most responsible as the relevant Division Coordinator.⁷¹ She was subsequently removed by presidential decree in March 2020. However, she challenged her dismissal in the Jakarta administrative court, which upheld her challenge after finding that the DKPP had not given her the chance to respond to the allegations. The court revoked the decree,⁷² and in August 2020, President Joko Widodo issued a decree reinstating her.⁷³ In another example of the DKPP pursuing the KPU, on 13 January 2021, the DKPP removed the Chairman of KPU, Arief Budiman, from his chairmanship.⁷⁴ The DKPP's reason for doing so was Budiman's public support for Evi Novita Ginting, including accompanying her to Administrative Court. For the DKPP, Budiman's actions were not befitting of his office as KPU Chairman and did not show respect for the DKPP's decision on Ginting.⁷⁵

⁶⁷DKPP Decision 01-PKE-DKPP/I/2020, 15.

⁶⁸Ardito Ramadhan, 'Eks Komisioner KPU Wahyu Setiawan Divonis 6 Tahun Penjara' *Kompas* (24 August 2020) <<https://nasional.kompas.com/read/2020/08/24/15511171/eks-komisioner-kpu-wahyu-setiawan-divonis-6-tahun-penjara>>.

⁶⁹DKPP Decision 371-PKE-DKPP/X/2019; 'KPU Commissioner Evi Novida Dismissed for Manipulating Vote Results in West Kalimantan' *Jakarta Post* (19 March 2020) <<https://www.thejakartapost.com/news/2020/03/19/kpu-commissioner-evi-novida-dismissed-for-manipulating-vote-results-in-west-kalimantan.html>>.

⁷⁰See MK Decision 154-02-20/PHPU.DPR-DPRD/XVII/2019, p. 276.

⁷¹DKPP Decision 317-PKE-DKPP/X/2019 points [4.3.3], pp. 34–35.

⁷²Budi Sutrisno, 'Court Cancels Jokowi's Dismissal of KPU Commissioner' *Jakarta Post* (25 July 2020) <<https://www.thejakartapost.com/news/2020/07/25/court-cancels-jokowis-dismissal-of-kpu-commissioner.html>>.

⁷³Presidential Decree 80/P/2020; News Desk (The Jakarta Post), 'KPU Commissioner Restored to Position after Jokowi Revokes Decree on Her Dismissal' *Jakarta Post* (24 August 2020) <<https://www.thejakartapost.com/news/2020/08/24/kpu-commissioner-restored-to-position-after-jokowi-revokes-decree-on-her-dismissal.html>>.

⁷⁴Election Organization Ethics Council, 'DKPP Berhentikan Arief Budiman Dari Jabatan Ketua KPU RI' *DKPP website* (13 January 2021) <<https://dkpp.go.id/dkpp-berhentikan-arief-budiman-dari-jabatan-ketua-kpu-ri/>>.

⁷⁵DKPP Decision Number 123-PKE-DKPP/X/2020, paragraph [4.3.1].

Constitutional controversies

As discussed, most of the more significant democratic controversies that occur in Indonesia are resolved by the Constitutional Court rather than the KPU. The Court has, for example, decided important cases about (1) the proportional representation system, including the ‘list’ system, the formula for converting votes into legislative seats, and gender quotas; (2) the rules applicable to political parties, including the minimum levels of support required to participate in elections and to obtain any seats in parliament, and the national representation requirement for local parties; (3) voter identification requirements; and (4) the timing of presidential elections and presidential nomination requirements.⁷⁶

In our view, one of the most significant contributions of the KPU is that it *generally* complies with Constitutional Court decisions, even though it might not formally be required to do so,⁷⁷ and even though doing so often requires great effort and expense. The KPU also actively participates in hearings before the Constitutional Court, and, for electoral disputes in particular, cooperates with it to help provide evidence (usually in the form of witnesses and ballot papers), often labouring within strict time frames. Much is made of the herculean task of the Constitutional Court to resolve electoral disputes within strict time constraints. Of course, this also requires as much effort, if not more, from the KPU, which must assist in collecting all evidence required by the Court to make its decisions.

The KPU has regularly complied with Constitutional Court decisions, even though such decisions have imposed significant time and financial pressures. The importance of the KPU’s compliance with Constitutional Court decisions cannot be overstated: both the Court and the Commission play important roles in ensuring the credibility and stability of Indonesia’s elections (and the systems that underlie them). We provide several examples here.

In 2009, the Constitutional Court invalidated provisions of the 2008 Presidential Election Law,⁷⁸ which prevented citizens from voting in presidential elections unless they had registered to vote. The Court decided that these provisions violated citizens’ constitutional right to vote, holding that this right was fundamental and could not, therefore, be restricted, including by ‘mere administrative procedures’ such as registration requirements. To give effect to this decision, the Court issued a direct order to the Commission. In short, it required the Commission to permit unregistered citizens to vote if they presented a valid identity card (*Kartu Tanda Penduduk* or KTP) on polling day at a polling station located in the neighborhood referred to on that card.⁷⁹ More recently, in a decision handed down in the same month as Indonesia’s first simultaneous elections were to be held,⁸⁰ the Constitutional Court removed the Article 348(9) (of the GEL) requirement that citizens possess an electronic identity card. According to the Court, that requirement could be dispensed with if voters provided a letter of reference (*Surat Keterangan*) issued by a local department of the Office of Population and Civil Registration (*Dinas Kependudukan dan Catatan Sipil/Dukcapil*).⁸¹ The Court also extended the amount of time allocated for vote counting by 12 hours (under the

⁷⁶For a full discussion of these types of disputes, see Butt, *The Constitutional Court and Democracy in Indonesia* (n 18).

⁷⁷It is unclear whether the Constitutional Court has the power to issue orders to the KPU. Article 7(3) of the GEL states that, in the administration of the election, the KPU is to be free from the influence of all parties (*pengaruh pihak mana pun*) in relation to the performance of its tasks and exercise of its powers. It might be argued that, strictly speaking, the Constitutional Court cannot directly order the KPU to respond to its decisions, but can issue decisions and hope that the KPU voluntarily follows them.

⁷⁸Presidential Election Law 2008, arts 28 and 111(1).

⁷⁹The Court held, in subsequent cases, that voter registration requirements for other types of elections were also invalid (see Constitutional Court Decision 85/PUU-X/2012) and the requirements were removed by the legislature for legislative elections (see Article 150 of the 2012 General Election Law).

⁸⁰Constitutional Court Decision 20/PUU-XVII/2019.

⁸¹The Office of Population and Civil Registration conducts registration and issues electronic identity cards. However, the production of such cards has not been properly distributed amongst the regions. As a result, there are people who are registered but have yet to receive an electronic identity card; ‘MK Sahkan Suket Perekaman E-KTP Sebagai Syarat Pencoblosan

GEL, vote counting originally needed to be completed on the night of the election⁸²), and allowed people with special needs to change their place of voting up to a week before polling day (previously the limit had been 30 days).⁸³ One result of the decision was that the KPU needed to provide 829 additional polling stations.⁸⁴

In several decisions, the Constitutional Court has also required the KPU to reverify or revalidate whether political parties meet the requirements to participate in various elections. Since 1999, political parties have needed to meet requirements imposed in the Political Parties and General Election Laws to participate in elections. These statutes have prescribed various prerequisites for establishing a political party, including having a minimum number of founders and articles of association evidenced by notarial deed. Under the Political Parties Law, parties have needed to meet various verification requirements – including having regional charters or offices in Indonesia’s provinces, cities, and counties – to be recognized as a legal entity by the Department of Justice. For example, in a 2017 case, the Court upheld a challenge to provisions of the GEL that did not require the KPU to reverify parties for the 2019 elections if they had participated in the 2014 legislative elections. The effect of the decision was that the KPU needed to reverify all such parties. The KPU Commissioner initially complained that the KPU’s budget could not accommodate the decision,⁸⁵ but, ultimately, the KPU was able to perform these reverifications.⁸⁶

However, the KPU has not always agreed with and/or followed the decisions of the Constitutional Court. Perhaps the most controversial disagreement between the two institutions has been about whether those convicted of corruption should be permitted to stand for legislative office after they have served their punishment.

Prohibition on those convicted of corruption from running for the legislature

The Constitutional Court has heard several challenges to provisions in general election laws that prevent candidates standing for election or occupying a particular office if they have been convicted of a crime attracting a prison sentence of five years or more. In these cases, the Court has progressively watered down this general prohibition, creating a list of exceptions. Although most of the cases were brought by legislative candidates, the first significant case concerning the prohibition, the *Muhlis Matu* case (2007),⁸⁷ involved candidates wishing to contest regional head elections. The Court subsequently carried over its reasoning from the regional head case into its legislative candidacy cases in *Kaat* (2008).⁸⁸ The most important case on this issue appears to be the *Robertus* case (2009),⁸⁹ which was a challenge to Articles 12(g) and 50(1) of the 2008 Election Law and Article 58(f) of the 2004 Regional Government Law. These provisions prevented the applicant, a citizen named Robertus, from standing as a candidate for election to the DPD, DPR, or any provincial or city/county DPRD. He had served almost ten years in prison for violent robbery

Pemilu 2019’ *Constitutional Court of Indonesia webpage* (28 March 2019) <<https://www.mkri.id/index.php?page=web.Berita&id=15173>>; Article 9 KPU Regulation 9 of 2019 on Voting and Counting Mechanisms.

⁸²GEL, art 383(2).

⁸³Achmad Fachrudin, ‘Dampak Putusan MK Nomor 20 Tahun 2019’ *Detik* (8 April 2019) <<https://news.detik.com/kolom/d-4501189/dampak-putusan-mk-nomor-20-tahun-2019>>.

⁸⁴Carina (n 54).

⁸⁵Dian Erika Nugraheny, ‘Dampak Putusan MK, Anggaran Verifikasi Parpol Bertambah’ *Republika* (13 January 2018) <<https://republika.co.id/share/p2hfh0330>>; Yustinus Paat, ‘KPU Minta Tambahan Anggaran Rp 68 Miliar Untuk Verifikasi Faktual Parpol’ *Berita Satu* (14 January 2018) <<https://www.beritasatu.com/iman-rahman-cahyadi/nasional/473278/kpu-minta-tambahan-anggaran-rp-68-miliar-untuk-verifikasi-faktual-parpol>>.

⁸⁶Rakhmat Nur Hakim, ‘Tak Dapat Tambahan Dana Verifikasi Faktual, Ini Yang Dilakukan KPU’ *Kompas* (18 January 2018) <<https://nasional.kompas.com/read/2018/01/18/20055811/tak-dapat-tambahan-dana-verifikasi-faktual-ini-yang-dilakukan-kpu>>.

⁸⁷Constitutional Court Decision 14-17/PUU-V/2007.

⁸⁸Constitutional Court Decision 15/PUU-VI/2008.

⁸⁹Constitutional Court Decision 4/PUU-VII/2009.

causing death.⁹⁰ The Court struck down the provisions, allowing Robertus to stand as a candidate provided that he honestly disclosed his conviction, was not a repeat offender, and had adapted back into society. Five years also had to have passed since he completed his sentence.⁹¹

When the KPU refused to allow those convicted of an offence to run for office,⁹² Bawaslu urged it to do the contrary and even brought a case before the Supreme Court, which agreed with Bawaslu and invalidated a KPU regulation that imposed the ban.⁹³ Nevertheless, political parties succumbed to pressure from civil society groups, which supported the KPU's stance.⁹⁴

Oesman Sapta Odang case

Another issue that has drawn controversy over the years is whether DPD members must be independent – that is, not be a member of a political party. Before 2014, DPD candidates needed to be independent; but after 2014, this limitation was removed. However, in 2017, the Constitutional Court reinstated the limitation for party functionaries.⁹⁵ This affected Oesman Sapta Odang, a controversial businessperson who had served as DPD member from 2014–2019 and chair of the Hanura Party from 2016, and wanted to run again for DPD election in 2019. The KPU refused to allow him to do so, issuing a regulation that confirmed the Constitutional Court's decision⁹⁶ and not including him on the candidate list.⁹⁷ Outraged, Odang challenged the KPU's refusal in an administrative court, which ordered the KPU to include him. However, the KPU refused to comply with that order, pointing to the Constitutional Court's decision. This prompted Odang to appeal to Bawaslu to intervene, which it did by issuing an order to the KPU.⁹⁸ However, the KPU refused to change its stance, even in the face of a letter from the president's office requesting it to follow the administrative court's decision.⁹⁹ Odang appealed to the Supreme Court, which held in his favor on the basis that applying the limitation to the 2019 general election violated the principle of non-retroactivity¹⁰⁰ and that the KPU regulation giving effect to the Constitutional Court's decision was invalid.¹⁰¹ However, the KPU ignored this, again pointing to the Constitutional Court's decision. Accordingly, Odang was unable to stand for election to the DPD.¹⁰²

Conclusion

Having three institutions with responsibility to manage or supervise elections appears to be unique to Indonesia. As discussed, while the KPU and its subnational branches are the institutions

⁹⁰The applicant was convicted under Articles 365 and 351(3) of the Criminal Code and Article 1(1) of Emergency Law 12/Drt/1951.

⁹¹Constitutional Court Decision 4/PUU-VII/2009, 79.

⁹²KPU Regulation 20 of 2018, art 4(3).

⁹³Supreme Court Decision 46 P/HUM/2018, 73–74.

⁹⁴Febriansyah, Ismail & Noor (n 15) 283.

⁹⁵Constitutional Court Decision 30/PUU-XVI/2018.

⁹⁶KPU Regulation 26/2018 concerning the Second Amendment to KPU Regulation 14/2018 concerning the Candidacy of Individuals Participating in the DPD Election, art 60A.

⁹⁷KPU decision 1130-PL.01.4- KPT/IX/2018.

⁹⁸008/LP/PL/ RI/00/XII/2018.

⁹⁹This was likely at the behest of Wiranto, a founder of Hanura, who was serving in the national cabinet at the time: Febriansyah, Ismail and Noor (n 15) 283.

¹⁰⁰Apparently on the basis that the DPD nomination process had commenced the month before the Constitutional Court's decision was handed down: Fabian Januarius Kuwado, 'Putusan MK Soal Pengurus Parpol Dilarang Ke DPD Dinilai Langsung Berlaku' *Kompas* (28 July 2018) <<https://nasional.kompas.com/read/2018/07/28/17385621/putusan-mk-soal-pengurus-parpol-dilarang-ke-dpd-dinilai-langsung-berlaku>>.

¹⁰¹Specifically, the Court held that Article 60A of KPU Regulation 26/2018 contradicted Articles 5 and 6 of Law 12 of 2011 on Lawmaking.

¹⁰²For another example of election-related conflict between the Constitutional Court and the Supreme Court, see Simon Butt, 'Two at the Top: The Constitutional Court and the Supreme Court' (2009) XI (8) Van Zorge Report on Indonesia 12.

primarily responsible for planning and running elections, their work is closely overseen by Bawaslu, and the DKPP decides whether officials working at both KPU and Bawaslu have engaged in misconduct. This three-tiered system has emerged from a historical mistrust of electoral processes, born of decades of authoritarian rule, and allegations of electoral manipulation – primarily through vote-buying – in the post-Soeharto era. We would also argue that these multiple levels of supervision might be necessary to identify and remedy any mistakes made on Indonesia's many polling days, and in the lead-up to and aftermath of them. As this article has shown, Indonesia's electoral system is complex, involving multiple elections, logistical challenges and very large numbers of officials. The 2019 simultaneous elections, for example, required the employment of millions of KPU officers. Also assisting were 808,856 ad hoc election supervision officers recruited by Bawaslu.¹⁰³ With so many moving parts, there is great potential for administrative and other errors to be made, which could affect electoral results.

The relations between the three electoral institutions (KPU, Bawaslu, and DKPP) have had their ups and downs, and have been marked by disagreements between them about their authority vis-à-vis one another. It is quite possible that, in future, the national legislature may reconfigure the structure and functions of these institutions, in part to reduce this friction. During parliamentary debates leading up to the enactment of the 2007 GEL, for example, some proposed that Bawaslu should be empowered to carry out the investigation and prosecution of election crimes, functions which were hitherto reserved for the police and prosecutorial service. Another proposal was to make DKPP an ad hoc independent institution under the Ministry of the Interior, with no power to adjudicate ethics violations.¹⁰⁴ Whether such proposals – or others – find their way into Indonesia's future elections legislation remains to be seen.

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