

Preliminary Review June 2003

Legislative

Framework for

the Indonesian

General

Elections

2004

Constitution of the Republic of Indonesia

Law on Political Parties 2002

Law on Elections 2003

Second Edition

INTERNATIONAL IDEA

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Introduction to the Second Edition (March 2004)

This second edition of this user-friendly Review of Indonesia's electoral laws produced with generous support by the Australian Agency for International Development (AusAID) aims to meet the exceptionally strong demand by Indonesian electoral officials and international observer missions for additional copies of this publication. The Bahasa Indonesia version of the second edition is being distributed to all KPU Daerah and PANWAS at Propinsi and Kabupaten/Kota levels. The English version is available at the UNDP's International Election Observers Centre in Jakarta. Both Bahasa and English language versions are also available online at <http://www.ideaindo.or.id> and can be downloaded free of charge.

Ten months have elapsed since the writing of the first edition of the Review. During this period, 01 Presidential Decrees and 48 KPU Decrees were issued to clarify the electoral laws. The updated list of Decrees is provided in the section below "Decrees". As the second edition went to print, several KPU Decrees had yet to be published, making it impossible for IDEA to integrate an analysis of the decrees passed since May 2003 into the second edition of the Review. While the latest decrees have provided a useful clarification of the electoral laws, they do not alter the main findings and analysis of the Review. Thus, this second edition provides up to date information that will be a valuable resource for those wanting to understand the essence of the electoral laws in the final weeks ahead of the 2004 PEMILU.

Jakarta, 10 March 2004.

Acknowledgments

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Jakarta, June 2003

Table of contents

Introduction	iii
Acknowledgments	iv
List of Decrees/Laws Enacted in 2003-2004	vi
Glossary	ix
Introduction	xii
Executive Summary	xiv
Chapter 1 Structuring the legal framework	1
Chapter 2 The electoral system	5
Chapter 3 Boundary delimitation, districting and defining boundaries of electoral units	8
Chapter 4 The right to elect and to be elected	13
Chapter 5 Electoral management bodies	15
Chapter 6 Voter registration and voter registers	20
Chapter 7 Ballot access for political parties and candidates	23
Chapter 8 Democratic electoral campaigns	27
Chapter 9 Media access and freedom of expression	30
Chapter 10 Campaign finance and expenditure	33
Chapter 11 Balloting	38
Chapter 12 Counting and tabulating votes	41
Chapter 13 Role of representatives of the parties and candidates	45
Chapter 14 Electoral observers	47
Chapter 15 Compliance with and enforcement of electoral law	50
About the Authors.	53

LIST OF DECREES/LAWS ENACTED IN 2003 - 2004

Last updated: 5 March 2004

KPU DECREES OF 2003

No.	REGULATIONS	DECREE No.	DATE OF ENACTMENT
1.	Selection Procedures and Establishment of Provincial and Regency/City KPU	68	25 Mar 2003
2.	Election Supervisory Committee (Panwas)	88	08 Apr 2003
3.	Procedure of the Management of the Election 2004 Budget	89	08 Apr 2003
4.	Stages, Program and Schedule of the Elections for DPR, DPD and DPRD Members	100	24 Apr 2003
5.	Election Observers and Procedures for Election Monitoring	104	30 Apr 2003
6.	Verification and Establishment of Political Parties Contesting in the Election	105	30 Apr 2003
7.	Organization and Working Procedures of PPK, PPS and KPPS	172	06 June 2003
8.	Organization and Working Procedures of PPLN and KPPSLN (Overseas Polling Booth Officials and Committees)	173	06 June 2003
9.	The Implementation of the Code of Conducts for Election Officials As Mentioned in the KPU Decree Number 33 of 2002 for Provincial and Regency/City KPU	564	20 June 2003
10.	The 2004 Election Theme Song	582	25 Jun 2003
11.	Revisions to KPU Decree 105	615	03 Jul 2003
12.	Procedures for Verification and Nomination of Contestants to the General Election for Individual Participants and Nomination of Candidates for the DPD Membership	616	03 Jul 2003
13.	Voter ID Card for Voting in the General Elections	618	22 Jul 2003
14.	The Conduct of the 2004 General Election for Indonesian Citizens Overseas	620 Joint (KPU & MOFA) SKB.79/B/PO/VIII/ 2003/01 OF 2003	7 Aug 2003
15.	Ballot Boxes for Voting Purposes during the General Election for the DPR, DPD, Provincial and Regency/City DPRD	621	8 Aug 2003
16.	Organization and Working Procedure of KPU Secretariat General, Provincial KPU Secretariat and Regency/City KPU Secretariat	622	8 Aug 2003
17.	Operational Guidelines for the Electoral Information and Voter Education	623	28 Aug 2003

No.	REGULATIONS	DECREE No.	DATE OF ENACTMENT
18.	Voter Registration Procedure for Indonesian Citizens Overseas in the 2004 General Election	624	23 Aug 2003
19.	Revisions to KPU Decree No. 616 of 2003	630	1 Oct 2003
20.	Standardized Format for KPU Official Documents	631	9 Oct 2003
21.	Technical Guidance and Distribution Procedures of Ballot Papers and Goods for the 2004 Election Purposes	632	10 Oct 2003
22.	Revisions to KPU degree no. 89 of 2003	635	14 Okt 2003
23.	Revision of KPU Decree No. 100 of 2003 on Stages, Program and Schedule of The Elections for DPR, DPD and DPRD Members	636	13 Nov 2003
24.	Verification Procedures of Interim Replacement Candidates Requirement for the DPR, DPD, Provincial DPRD and Regency/City DPRD	637	13 Nov 2003
25.	Stages, Programs and Schedule of the Conduct of Election of President and Vice President	638	13 Nov 2003
26.	The Number of Election Organizing Bodies in Regions and the Number of Indonesian Citizens in the 2004 Election	639	18 Nov 2003
27.	Determination on Electoral District and Counting Procedure of the Number of Seat for the DPR in Each provinces in Indonesia in the 2004 Elections	640	
28.	Nomination Procedures for Members of the DPR, Provincial DPRD and Regency/City DPRD	675	3 Dec 2003
29.	Procedures of Financial Administration and Financial Accounting System of Political Parties, as well as the Reporting System of Campaign Fund of Election Participants	676	3 Dec 2003
30.	Working Procedures of the KPU, Provincial KPU & Regency/City KPU	677	5 Dec 2003
31.	Determination of Political Parties as Election Participants in the 2004 Election	678	7 Dec 2003
32.	Determination of Order Number of Political Parties as Election Participants in the 2004 Election	679	8 Dec 2003
33.	Revision to KPU degree no. 640 of 2003 on Determination on Electoral District and Counting Procedure of the Number of Seat for the DPR in Each provinces in Indonesia in the 2004 Elections	680	29 Dec 2003
34.	Election Campaign for the DPR, DPD and DPRD	701	29 Dec 2003

KPU DECREES OF 2004

1.	Voting and Vote Counting Procedures at the TPS in Relation to the Election of Members of the DPR, DPD and DPRD	1	23 Jan 2004
2.	Voting and Vote Counting Procedures at the TPSLN for Indonesian Citizens Overseas in Relation to the Election of Members of the DPR	2	23 Jan 2004
3.	Ballot Papers for the Election of DPR, DPD, Provincial DPRD and Regency/City DPRD in 2004	3	23 Jan 2004
4.	Administrative Materials for Voting and Vote Counting in Relation to the Election of Members of the DPR, DPD, Provincial and Regency/City DPRD	4	23 Jan 2004

No.	REGULATIONS	DECREE No.	DATE OF ENACTMENT
5.	Revision to KPU degree no. 88 of 2003 of Election Supervisory Committee (Panwas)	5	23 Jan 2004
6.	Determination of List of Candidates for the DPD in the 2004 Election for All Provinces in Indonesia	6	3 Feb 2004
7.	Technical Guidelines for the Election Campaign for the DPR, DPD and DPRD	7	10 Feb 2004
8.	Operational Procedures of Recapitulation of Votes for the DPR, DPD, DPRD by the District Committee, Provincial and Regency/City KPU	8	16 Feb 2004
9.	Broadcasting of Election Campaign and Election Participants Campaign at Broadcasting Institution	12	19 Feb 2004
10.	Revision to KPU Decree No. 01 of 2004 on Voting and Vote Counting Procedures at the TPS in Relation to the Election of Members of the DPR, DPD and DPRD	13	24 Feb 04
11.	Revision to KPU Decree No. 02 of 2004 on Voting and Vote Counting Procedures at the TPSLN for Indonesian Citizens Overseas in relation to the Election of Members of the DPR	14	24 Feb 04
12.	Revision to KPU Decree No 04 of 2004 on Administrative Materials for Voting and Vote Counting in Relation to the Election of Members of the DPR, DPD, Provincial and Regency/City DPRD	15	24 Feb 04
13.	The Number of Eligible Voters and Voting Stations in Election 2004	16	25 Feb 04
14.	Revision to KPU Decree No 701 of 2003 on Election Campaign for the DPR, DPD and DPRD	17	26 Feb 04

PRESIDENTIAL DECREES

1.	Organizational Structure and Working Procedures of the KPU	54	18 Jul 03
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LAWS

1.	Political Parties	31	27 Dec 02
2.	General Elections for the Members of DPR, DPD and DPRD	12	11 Mar 03
3.	Organizational Structure of MPR, DPR, DPD and DPRD	22	31 Jul 03
4.	General Election for President and Vice-President	23	31 Jul 03
5.	Constitutional Court	24	13 Aug 03

Glossary of terms and abbreviations

BPP	Bilangan Pembagi Pemilihan	Election Divisor Is the vote quota for one seat. This is described in the law as: Election Divisor, referred to as BPP, is the divisor obtained as a result of dividing the number of valid votes by the number of seats in each respective electoral district to determine the number of seats obtained by the Participating Political Parties and the election of the members of the DPR, provincial DPRD and regency/city DPRD.
DPR	Dewan Perwakilan Rakyat	People's Representative Council. House of Representatives <i>Legislature at the National level</i>
DPD	Dewan Perwakilan Daerah	Regional Representatives' Council The Council of Representatives of the Regions <i>Legislature at the National level</i>
DPRD-1 (DPRD provinsi)	Dewan Perwakilan Rakyat Daerah Provinsi	Provincial level DPRD Regional People's Representative Council – Province <i>Legislatures at the Provincial level</i>
DPRD-2 (DPRD kabupaten/ kota)	Dewan Perwakilan Rakyat Daerah Kabupaten/Kota	Regency/City level DPRD Regional People's Representative Council – Regency Houses in each regency and or city <i>Legislatures at the Local level</i> <i>Provinces are divided into regencies (kabupaten) and city (kota)</i>
KPPS	Kelompok Penyelenggara Pemungutan Suara	Voting Station Officials
KPPSLN	Kelompok Penyelenggara Pemungutan Suara Luar Negeri	Overseas Voting Station Officials
KPU	Komisi Pemilihan Umum	National Election Commission of Indonesia
KPU Daerah		Regional KPU (provincial and city/regency level)
MPR	Majelis Permusyawaratan Rakyat	People's Consultative Assembly <i>Legislative Assembly at the National level.</i> <i>This body consists of 2 chambers, the DPR and the DPD.</i>

NAD	Nanggroe Aceh Darussalam	Province of Aceh
OPOVOV		OPOVOV One person one vote one value
Parpol	Partai Politik	Parpol Political party
PKI	Partai Komunis Indonesia	Indonesian Communist Party
P4B	Pendaftaran Pemilih dan Pendaftaran Penduduk Berkelanjutan	List of voters and population. Combined census and voter registration for the 2004 election.
Panwas/Panwaslu	Panitia Pengawas Pemilihan	Election Supervisory Committee
Polri	Polisi Republik Indonesia	Indonesian Police Force
PPK	Panitia Pemilihan Kecamatan	Sub-District (<i>Kecamatan</i>) Election Committee PPK
PPLN	Panitia Pemilihan Luar Negeri	the Overseas Election Committee
PPS	Panitia Pemungutan Suara	Kelurahan/Village Election Committee
TAP MPR	Ketetapan MPR	MPR Decree
TNI	Tentara Nasional Indonesia	Indonesian Armed Forces
TPS	Tempat Pemungutan Suara	Polling station
UU Pemilu Pasal 2 (1) a	Undang-undang Pemilu Pasal 2 ayat (1) a	Election Law Article 2 (1) a
WNI	Warga Negara Indonesia	Indonesian citizen (citizen of Indonesia)

Laws of the Republic of Indonesia

Konstitusi Konstitusi UUD 1945	Constitution The 1945 Constitution of the Republic of Indonesia. As amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002
Election Law	Law of the Republic of Indonesia Number 12 of year 2003 Concerning General Elections or the for the members of the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council
Political Party Law	Law of the Republic of Indonesia Number 31 of year 2002
Presidential Law	Laws on the President and the Vice President
Law on the structure and composition of the Houses	Law on the Structure and Composition of the MPR, DPR, DPD and DPRD
Presidential Decree Re	Presidential Decree re.....

Decrees (regulations and decisions) of the KPU (National Election Commission)

KPU Decree No. 33 of 2002

Regarding the code of ethics for general elections managers.

KPU Decree No. 235 of 2002

Regarding voter registration and ongoing population census.

KPU Decree No. 185 of 2002

Regarding members of the general election commission managers in the regions and voters for the 2004 elections.

KPU Decree No. 68 of 2003

Regarding selection procedures and appointment procedures for the membership of provincial and regency/city KPU.

KPU Decree No. 88 of 2003

Regarding election supervisory committee.

KPU Decree No. 89 of 2003

Regarding the management of budgets for the 2004 election.

KPU Decree No. 100 of 2003

Regarding stages, program and schedule of the election of members of DPR, DPD and DPRD in 2004

KPU Decree No. 104 of 2003

Regarding electoral observation and procedures for electoral observation.

How the election law describes the various bodies and abbreviations in the law.

1. The People's Representative Council, Regional Representative Council, Provincial People's Representative Council, and Regency/City Regional People's Representative Council are referred to respectively as the DPR, DPD, Provincial DPRD and Regency/City DPRD
2. The National Election Commission, referred to as the KPU, is a national, permanent, and independent institution which is established to hold elections
3. The Provincial Elections Committee and the Regency/City Elections Committee, referred to as the Provincial KPU and the Regency/City KPU, are the election organizing bodies in the provinces and regencies/cities, which are part of the KPU
4. The Sub-District (*Kecamatan*) Election Committee, the Overseas Election Committee, Kelurahan/Village Election Committee, Voting Station Officials, and Overseas Voting Station Officials are referred to as the PPK, PPLN, PPS, KPPS and KPPSLN
5. Election Supervisors are the Election Supervisory Committee, Provincial Election Supervisory Committee, Regency/City Election Supervisory Committee and Sub-district (*Kecamatan*) Election Supervisory Committee which supervise the implementation of all election processes
6. Polling Stations and Foreign Polling Stations, are referred to as TPS and TPSLN, are locations at which voters cast their votes on election day

Introduction

Why are the electoral laws so important?

This review of Indonesia's electoral laws is a simple to use, step by step review of the fifteen main elements that make up a democratic electoral law. It provides a useful checklist to determine whether Indonesia's 2003 General Election law and 2002 Political Party law are supportive of free, fair and peaceful elections in 2004. The analysis is based on IDEA's "International Electoral Standards: Guidelines for reviewing the legal framework of elections"¹. This set of internationally recognized standards, was compiled by the Office for Democratic Institutions and Human Rights (ODIHR)-Organization for the Security and Co-operation in Europe (OSCE) and International IDEA, drawing on the experience of a number of countries, and provides a methodical approach to analyzing electoral laws.

In June 1999, Indonesia held its first democratic elections in almost fifty years. In this time of transition from an authoritarian regime to a representative and democratic government, elections play a crucial role. The next general election is scheduled for 5 April 2004, and will be conducted under an amended constitution and new election laws. Amendments to the 1945 Constitution (1999, 2000, 2001 and 2002) turned the national parliament into a bicameral institution. In addition to the Peoples' Representative Council (DPR) there is now a Regional Representatives Council (DPD) at the national level. Constitutionally, the other main changes for next year's elections are a permanent and independent General Election Commission (KPU), direct presidential and vice-presidential elections, and a new constitutional court to rule on electoral disputes.

To ensure that the next general elections conform with the changes to the constitution, between late 2002 and early 2003 parliament passed a new General Election Law and a Political Party Law. This legal framework sets the rules, and determines the roles and responsibilities of the various players in the elections. Therefore, the design of electoral laws is one of the most important institutional decisions for any democracy. Although these laws have a profound effect on the future political life of the country, political actors often lack the necessary knowledge and information, meaning that the choices made in parliament and their consequences are not fully recognized. Conversely, some political actors may use their knowledge of how elections work in practice to promote the design of electoral laws that they think give them an advantage in the elections. Therefore, electoral laws are a crucial determinant of free and fair elections.

Why this review?

This review focuses on the Indonesian general election laws which determine the election of representatives in the legislative bodies which include the DPR and DPD at the national level, and the DPRD at the provincial level and at the city/regency level.

The unique contribution of this review to understanding the Indonesian electoral legislative framework is to lay out a set of benchmarks of internationally-recognized standards applicable to fifteen key elements of democratic electoral legislation. The standards assess the level of accuracy, reliability, consistency, uniformity and overall professionalism in elections.

While this assessment provides an accurate indication of whether the laws are supportive of free, fair (and peaceful) elections in the coming Indonesian election, it must be acknowledged that our findings are preliminary. At the time this report is going to press, the election legal framework is still incomplete. Out of the five laws that set this framework, only two have been passed by parliament. These are the Political Party Law Number 31 of 2002

and the General Election Law Number 12 of 2003. It is expected that the remaining bills (the Presidential Election bill, the bill on the Structure and Composition of the MPR, DPR, DPD and DPRD, and the Constitutional Court bill) will become law at the latest by August 2003. Moreover, the electoral laws' crucial implementation guidelines (*petunjuk pelaksanaan* and *petunjuk teknis*) under the responsibility of the KPU have not yet been completed. Therefore, our assessment of the Indonesian electoral laws can only be finalized once all the laws and guidelines are completed.

What does this review achieve, and who can benefit from reading it?

As a user-friendly resource that explains the complexities of the Indonesian electoral laws, this review is a useful tool for all those who wish to better understand the 'rules of the game' for the 2004 general election. It has five main purposes. First, it identifies areas in the laws that require further regulation by the **National KPU** as well as areas that are not regulated at all. It also provides a useful summary of important issues in the laws so that the work of the **Regional KPU**s and **PANWAS** can become more effective. Secondly, it helps the **mass media** to better understand important aspects of the electoral laws, and therefore improve their coverage of next year's general election. Thirdly, it can assist **election observers** in their strategies for monitoring the running of the elections. Fourthly, as an English-language resource that uses internationally-recognized standards for assessing the electoral laws, it can help maximize the efficient allocation of **international assistance** to the Indonesian elections. Last but not least, this review is forward looking. Recognizing that improving election standards is a constantly evolving process, we hope that the **government and the People's Representative Council /House of Representatives (DPR)** will find this review a source of useful ideas for improving the electoral laws in years to come.

Endnote:

¹ International Electoral Standards Guidelines for Reviewing the legal framework of elections. Guideline series. Pub. International IDEA, Stromsberg. 2002

Executive summary

1 Structuring the Legal Framework

The legal framework for elections in Indonesia is sufficiently clear and open. The principles of an election which is free, secret, fair, and honest are formally guaranteed in the legal framework. A large part of the legal framework has been amended, including the Constitution, the Election Law, the Political Party Law, the structure of the KPU, and new regulations for elections – which includes a code of ethics for election managers (the KPU and election supervisory committee). Other parts of the legal framework for elections, including the proposed Presidential Election Law and Law on Structure and Composition of Representative Assemblies are under discussion in the DPR. The Law on the Constitutional Court, which is to determine disputes on the overall result of the election, is to be discussed by the DPR. While access to the law is not restricted in any way, it is difficult for the broader public to have access to the laws and regulations.

2 The Electoral System

The Election Law explicitly stipulates that all members of the MPR representative assembly, i.e. both the DPR and DPD, are directly elected. Direct elections are also stipulated for the members of regional representative assemblies, i.e. the provincial and regency/city DPRD. The DPD is elected using a Single Non Transferable Vote System, based on provinces as electoral districts, with the same number of representatives being elected from each province. The election system for DPR and DPRD members is a proportional one, with an open list of candidates. The formulas for converting votes into seats and for determination of the winning candidates are explicitly stipulated. Candidates from parties winning seats in a district are elected based on their personal votes if these are equal to or greater than the BPP (seat allocation quota) for the district. If, as is highly likely, no candidate, or insufficient candidates achieve the BPP to fill all seats won by a party in a district, remaining seats are assigned to candidates on the basis of rank order in the party's candidate list for the district.

3 Boundary Delimitation, Districting and Defining Boundaries of Electoral Units

The Election Law's provisions on the formation of electoral districts are incomplete and not explicit. Some are inconsistent. The attempt to achieve vote equality for electoral districts for the DPR will be difficult to realize in practice because of the provision that stipulates the number of seats allocated to each province will not be less than what each was given in the 1999 election. The independent KPU is both the election organizer and the institution tasked with forming electoral districts. Currently, the KPU has not laid down any stipulations on the requirements and procedures for formation of electoral districts.

4. The Right to Elect and Be Elected

The Constitution stipulates equal treatment for all citizens before the law and in matters of governance, while the right to vote is guaranteed under the Election Law for all adult citizens who are over age 17 or who are, or have been, married. However, the law restricts the suffrage rights of one group of the population for the 2004 elections, as the military and police personnel are not allowed to use their right to vote at the 2004 election. Also, former members of the PKI or its mass supporter organizations do not have the right to become candidates for election as members of the legislature. This discrimination is not just inconsistent with the principles of the constitution, but is also not in line with international standards concerning the right to elect and to be elected.

5 Electoral Management Bodies

The Election Law contains a number of provisions on the requirement for the KPU as election management institution to act independently and fairly. The basic principle stipulating that the KPU is to be an independent, national, permanent institution is contained in the Constitution. To ensure the independence of KPU members, both at the national as well as local level, they are prohibited to also be political party members. KPU members may come from the bureaucracy, but they are required to take leave of absence for the duration of their terms of office in the KPU. The code of ethics for election managers, compliance with which is mandatory, stipulates in more detail the requirements for working independently, fairly, transparently, within the law, accountably, and professionally.

6. Voter Registration and Voter Registers

The Election Law does not specifically regulate regarding the processes of the KPU working in conjunction with the Ministry of Home Affairs and Central Statistics Agency in undertaking the initial voter registration process for the 2004 election. There is no guarantee that the voters' list will be accurate and transparent. Other areas relating to voter registration not regulated in the legal framework include regulation of omissions, additions and objections to entries on the voters list, and regulation of the protection of data, including personal information, in the voter registration process. The stipulations in the legal framework on these are not fully in accordance with international standards on voter registration and voter registers.

7. Ballot Access for Political Parties and Candidates

The legal framework guarantees that all political parties and candidates may compete in elections on the basis of fair treatment. However, the requirements provided in the election law for a political party to qualify to participate in an election are considered to be overly burdensome for small parties and regionally based parties. There is a prohibition on former members of the PKI, and its related organizations, members of other prohibited organisations and all those involved directly or indirectly in the PKI rebellion of 30 September 1965, being candidates for elections.

8. Democratic General Election Campaigns

The legal framework guarantees that each political party and candidate may enjoy freedom of expression of opinion and the freedom to meet and have access to voters during the campaign period. To that end the legal framework provides clear regulation on the behavior of political parties and candidates throughout the campaign period. The legal framework also clearly stipulates campaign timetables. However, the available time allocated to handle complaints from election participants during the campaign period is insufficient and it is possible under the current timeframe that campaign disputes may not be settled until after the election. Campaigning by government officials is in general prohibited, except for defined exceptions relating to elected members of the executive and government ministers. These officials must take leave from their office while campaigning, but the law does not sufficiently clearly define prohibitions on their use of government resources and the facilities related to their office.

9. Media Access and Freedom of Expression

The legal framework provides that electoral participants are to be given equal opportunity in the electronic and print media to present their campaign material and election advertising. This stipulation is a general statement which does not provide details, which are to be provided later by KPU regulation, and does not specifically differentiate between government and privately owned mass media. While those actions that are prohibited throughout the campaign period which would be a misuse of the freedom of expression, or would violate the freedom of expression of other parties are clearly stipulated the legal framework does not specifically guarantee freedom of expression for political parties and candidates throughout the campaign.

10 Campaign Finance and Expenditure

The Election Law regulates that opportunities for collection of campaign funds are more or less the same for both political parties and candidates. Maximum limits are stipulated for the contributions that can be made by individuals

as well as private sector legal entities. The Election Law does not regulate the use of campaign funds. There are no explicit provisions limiting how funds originating from political parties and candidates themselves may be used. There are no specific stipulations in the Election Law which mandate public access or the requirement to publish audited financial statements of campaign funds for political parties or candidates.

11. Balloting

In formal terms, the Election Law stipulates the principles of secrecy of balloting and ballot papers. The Law instructs the KPU to draft the procedures for voting processes, as well as the procedures for security, printing, counting, storage, packing and distribution of ballot papers. The Election Law gives dispensations for those voters who need to use alternative methods of casting votes. Nevertheless, the Election Law provides no stipulations on any prohibitions of military and police personnel entering a polling station. The Law also does not have any stipulations on the procedures, authority, and responsibility of police and military to ensure public order and security during voting.

12. Counting and Tabulating Votes

The principles of accuracy, equality, fairness, and transparency in vote counting and tabulation of the results of vote counting are stipulated in the Election Law. The participation of representatives of election participants (parties and candidates), election supervisors, election monitors, and the public at all levels of vote counting and tabulation of the results of vote counting is also permitted in the legal framework. The same is true for recounting of votes, repeat and supplementary elections, and even postponements of elections, which are all provided for in the Election Law. However, some things that would be required to ensure accurate, transparent and fair counting of votes are not yet regulated in the legal framework. There is no regulation requiring a cross check mechanism on vote counting at all levels. Also, no regulation is in place which provides for independent verification by the public of any software and hardware that may be used in the vote counting system set up by the KPU.

13. The Role of Representatives of the Parties and Candidates

The presence of party and candidate representatives, together with election supervisors, election monitors, and the general public, is acknowledged in the articles which regulate voting and vote counting. However, the legal framework does not specifically stipulate on the presence of representatives of political parties and candidates to scrutinize the entire balloting process, nor does it specifically define the rights and responsibilities of party and candidate representatives at the voting station.

14. General Election Monitors

The legal framework clearly determines that election monitors may monitor all stages of the election. The legal framework requires election monitors to be accredited by the KPU. The KPU has already issued a detailed decree on election monitors, and is preparing a code of ethics (conduct) for election monitors. However, the decree is unclear in its references to election monitors as election monitoring organizations or to individual members of the election monitoring organisations. If violations by election monitors occur, it is not clear who is to be penalized, the individual monitor or their organization, or both.

15. Compliance with and Enforcement of Electoral Law

The Election Law stipulates the mechanism for reporting and resolution of election violations. It explicitly stipulates who has the right to report, and what they should report in any violations. The Election Supervisory Committee has been established as a special ad hoc body which begins the process of resolution of violations. The Election Law also stipulates the time limits for this resolution and subsequent enforcement of the Law to be undertaken both by the Election Supervisory Committee and other institutions such as the Police, State Prosecutor and the Courts. There are no provisions that ensure that these institutions carry out their enforcement duties.

1. Structuring The Legal Framework

The legal framework should be so structured as to be unambiguous, understandable and transparent, and should address all components of an electoral system necessary to ensure democratic elections.

1. Is the legal framework objective, clear, transparent and publicly accessible?

Reference in Legislation

- Article 22 E of the Constitution.
- The Election Law for members of MPR, DPR, DPD and DPRD (No. 12/2003).
- The Political Party Law (No. 31/2002).
- The Presidential Law (under discussion by the DPR).
- The Law on the Structure and Composition of the MPR, DPR, DPD and DPRD (under discussion by the DPR).
- Plus various KPU Decrees which spell out the details of the Election Law, including the code of ethics for election managers, together with that for election monitoring.

Comments

- In general, the legal framework is sufficiently objective, clear, open and publicly accessible.
- There are no limitations imposed on public access to information.
- The Election Law and KPU Decrees are publicly accessible on the DPR and KPU websites. The public may even access all the Laws that have just been passed on the government's websites.
- Actual public access is relatively limited because people tend to be passive in seeking information on public policy, and programs for familiarizing the public with the legal framework also do not reach the majority.

2. Are fundamental suffrage rights, such as the right to vote and to register as a voter, the right to run for a public office etc., safeguarded by constitutional guarantees?

Reference in Legislation

- Articles 28A-28J of the constitution guarantee basic political rights for every citizen, including giving equal opportunities in governance (Article 28D clause 3).
- Articles 13 and 14 of the Election Law stipulate the right to vote.
- Article 60 of the Election Law prohibits former members of the Indonesian Communist Party (PKI) from becoming candidates for election to parliament.

Comments

- The Constitution does regulate and guarantee fundamental political rights. While it does not specifically guarantee the right to elect and to be elected, article 28D, clause 3 guarantees the same opportunities for every citizen in matters of governance.
- Articles 13 and 14 of the Election Law make further stipulations on the right to elect and that to be elected, although the transition regulation in article 145 states that for the 2004 election military and police personnel do not have the right to vote.
- The right to be elected to public office does not apply equally because of the discrimination against former members of the PKI.

3. Have all relevant laws been reviewed, including the constitution, general and specific election legislation, laws relating to citizenship, political parties and campaign finance, media and public information legislation, criminal provisions related to election law violations and EMB instructions?

Reference in Legislation

- The Constitution has already been amended four times (1999, 2000, 2001, and 2002).
- The Election Law has been amended twice (2000 and 2003).
- The Political Party Law was amended in 2002.
- The Presidential Law is under discussion by the DPR.
- The Law on the Structure and Composition of the Houses is under discussion by the parliament.
- The structure of the KPU was amended through the Election Law No. 4/2000 and Election Law No.12/2003.
- The Media Law was amended through the Broadcasting Law No. 32/2002.

Comments

- A review of the entire election legal framework has been undertaken, with the exception that the Citizenship Law is yet to be amended.
- The DPR has yet to place the Freedom of Information Bill and the Witness protection Bill proposed by the public through a coalition of NGOs on its agenda for discussion. The government-proposed State Secrets Bill has also yet to be put on the DPR's agenda.
- Campaign funding and stipulations on criminal violations during an election are both integral parts of the Election Law.

4. Do the codes of conduct form part of the electoral legal framework? If so, have they been reviewed to ensure that they conform and contribute to the overall objective of holding free and fair elections?

Reference in Legislation

- Article 21 of the Election Law requires the KPU to prepare Codes of Ethics.
- Article 136 of the Election Law requires that election monitoring be based on a code of ethics that has been adopted by the KPU.
- KPU Decree No. 33 /2002 contains the code of ethics for Election organizers.
- KPU Decree No. 88/2003 Article 17 requires the Election Supervisory Committee (Panwas) to abide by the code of ethics which is regulated in KPU Decree No. 33/2002.
- KPU Decree No. 104/2003 sets out requirements and procedures for election monitoring.

Comments

- The Codes of Ethics have become a part of the legal framework of elections and have been partially reviewed by the KPU. Although this is so, not all the required Codes of Ethics have been prepared by the KPU. The one for election monitoring is being prepared, while that for election participants, covering both political parties and individual candidates, has still to be drafted.

5. Does the legal framework ensure that the instructions and directives of EMBs at all levels are consistent with the provisions of the constitution and the electoral law?

Reference in Legislation

- Article 22E (6) of the Constitution requires that detailed stipulations on elections be regulated under the Election Law.
- Election Law article 17 clause 4; article 25 (i); article 26 (g); article 29 (g) article 32 (g); and article 124 clause 3 instructs the KPU to regulate this in conformity with the legislation.

Comments

- The election legal framework does not specifically instruct the KPU to draw up election implementation guidance at all levels that is consistent with the Constitution and the Election Law.
- The KPU at all levels is an organization which is centrally managed and accountable, and hence it may be assumed that all regulations on the election will be internally consistent.

6. Does the legal framework ensure that the provisions relating to national-level elections, sub-national (provincial or state) level and local elections are in harmony with each other?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none"> • No regulation. 	<ul style="list-style-type: none"> • The Constitution and the remaining legal framework do not follow and regulate any separation between national, sub-national (provincial), and local Elections. • Separate legislation is being drafted for the election of presidents and vice presidents under the Presidential Law, and there is also likely to be another Law for election of regional/district heads. • It remains uncertain whether all these laws related to the election will be in mutual conformity.

7. Was any part of the electoral law enacted just before the elections without affording a sufficient opportunity for discussion and debate?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none"> • Article 150 of the Election Law states that the Law took effect from the date of its promulgation (11 March 2003). • The Presidential Law has not yet been passed by the DPR. • The Law on Structure and Composition of Houses has not yet been passed by the DPR. • The KPU has not yet completed its technical election regulations. 	<ul style="list-style-type: none"> • The Election Law and Political Party Law were passed well before the 2004 election and have undergone extensive public discussion and debate. • The Presidential Law, the Law on Structure and Composition of Houses, and Constitutional Court Law are still being discussed by the DPR, although these are likely to be passed before the election. Public discussion and debate on these Bills has been quite extensive. • The introduction of a number of fundamental changes in the legal framework, such as a new election system, a new KPU structure, the direct election of the president and vice president, and the introduction of the DPD make the election timetable very tight.

1. The legal framework (regulations) which underlies the Election in Indonesia is quite clear, although public access to it is relatively limited. Article 22E of the 1945 Constitution (Amended) regulates the general principles of elections, stating they shall be direct, public, free, secret, honest and fair and shall be held periodically. It also states that the purpose of the Election is to elect the members of the national parliament (the DPR and DPD) and local ones (provincial and regency/city level DPRD) plus the election of the President and Vice President. The existence of an Election commission which is national, permanent, and independent in nature is also mandated. The legal framework for elections consists of the Constitution, Law No. 12/2003 on elections; Law No. 31/2002 on political parties; the Presidential Law on the election of president and vice president (Bill under discussion in the DPR); the Law on the Structure and Composition of the MPR, DPR, DPD, and DPRD (Bill being discussed by the DPR); and KPU Decrees which spell out the various procedures to be followed in holding an election that are stipulated under the Election Law.
2. Numerous articles in the Constitution stipulate and guarantee basic human and political rights in great detail, in line with international standards. The election law ensures voting rights for citizens who are over the age of 17 or married. The Constitution does not explicitly stipulate the right to elect and to be elected, but article 28D

clause 3, does guarantee the right of every citizen to have the same opportunities in matters of governance. Articles 13 and 14 of the Election Law contain further stipulations on all citizens' right to vote. Article 60g of the same law stipulates the right to be elected to public office. However, article 145 stipulates that the right to elect does not yet apply to military and police personnel for the 2004 Election. Furthermore, article 60 discriminates against former members of the Communist Party of Indonesia (PKI) and "other prohibited organizations" who do not have the right to be elected.

3. The various components of the elections legal framework mentioned are the result of amendments or revisions to the old legal framework. Amendments to the Proposed Law on the Structure and Composition of the Houses are currently being discussed by the parliament; the Presidential Law – which has not yet been passed — is also being discussed by the parliament, as is the Law on the Constitutional Court. The Broadcasting Law No.32/2002 is also part of the new legal framework resulting from the amendments. Several KPU Decrees that were mandated under the Election law – including those connected with the formation of regional KPUs, the timetable and stages of an election, the Election Supervisory Committee, and regulations on election monitoring — have already been prepared by the KPU. It is still preparing some of the other election requirements, procedures and processes including balloting and ballot counting procedures, and the updating of voter lists. The Citizenship Law, though, has still to be amended. The DPR, has still not included on its agenda for discussion either the Freedom of Information Bill or Witness Protection Bill – the substance of which will strengthen the position of citizens before the law and governance; both of these bills were proposed by the public through a coalition of NGOs.
4. In formal terms, the codes of ethics are a part of the legal framework for elections in Indonesia, even though their effectiveness in practice is still to be tested. These codes include the one for Election Organizers, set out in KPU Decree No.33/2002, that for Election Supervisory Committees, part of the same Decree, and the Code of Ethics for Election Monitors which is set out in KPU Decree No.104/2003. All these codes of ethics result from a review of the old set of laws.
5. The election legal framework is in line with and is consistent with the stipulations within the Constitution. Article 22E clause 6 of the Constitution stipulates that further regulation on elections shall be stipulated in the Election Law. As well, various Election Law articles require that KPU Decrees shall conform to the stipulations of the Election Law. However, there are also some articles in the Election Law that do not direct the KPU to issue Decrees to ensure conformity with the election Law.
6. The election legal framework in Indonesia does not follow the principle of a separation of the election at the national, regional, and local levels, as is practiced in other countries. As well as having their requirements stipulated under one law, the elections of members of legislative bodies, including the DPR and DPD at the national level, and DPRD's at provincial, regency and city levels, are also held simultaneously. Elections of Presidents and Vice Presidents, and regulation of political parties are to be covered in separate Laws from the Election Law, which covers only members of the legislature. No institution has yet been set up to ensure consistency between the various components that are part of the legal framework, and so inconsistencies between various laws often surface.
7. There was sufficiently wide public participation in discussion and debate on amendments to the Constitution and election-related Laws. The tug of war between the various political camps colored the discussion on the election legal framework in parliament so that the discussions were tough and took a relatively long time, i.e. around 7 (seven) months. The remaining election legislation such as the Presidential Law, Law on Structure and Composition of Houses, Constitutional Court Law, and KPU Decrees related to the technical regulation of the election have yet to be completed. The public is quite interested in discussions on the Law connected with elections. However, the dilemma is that public access to obtain the right information on the new election regulations, including KPU Decrees, is relatively limited because of the limited publication of this and while the information is published on the KPU website, public access is restricted to the small proportion of the population with capacity in this electronic medium.

2. The Electoral System

The choice of electoral system should ensure that the international standards for democratic elections are met in terms of institutions elected, the frequency of elections and the organization of electoral units.

1. Does the legal framework provide that all seats in at least one chamber of the national legislature are subject to direct or popular elections to be held at regular and reasonable intervals as provided by law?

Reference in Legislation

- Article 7 of Constitution on President/ Vice President's terms of office.
- Article 19 (1) of Constitution on DPR elected through an election.
- Article 22c (1) of Constitution on DPD elected through an election.
- Article 22E (1) and (2) of Constitution on the frequency and elements to be elected through elections.
- Article 4 of Election Law on election frequency.
- Article 6 (1) and (2) of Election Law on system of election for DPR & DPD members.

Comments

- All the members of both chambers of the national legislature (MPR), i.e. the DPR and DPD are elected directly.
- An election to elect members of the DPR, DPD, DPRD's, the President and Vice President, are held once every 5 years.
- DPR and DPRD members are elected through a proportional system with an open list of candidates, while the members of the DPD are elected through an SNTV (Single Non Transferable Vote) system.

2. Does the legal framework clearly provide an electoral formula for converting votes into legislative seats?

Reference in Legislation

- Article 105 (1-2) of Election Law on valid votes and determination of BPP.
- Article 106–107 (1-2) of Election Law on calculation of seat allocations and determination of elected DPR and DPRD candidates.
- Article 109 of Election Law on determination of elected DPD candidates.

Comments

- The formula for converting votes into seats is clear. In each DPR and DPRD electoral district, the seats gained by a political party approximately relate to the valid votes won through the method of the largest remaining vote.
- The DPD candidates who win the most votes will fill the four DPD seats for each province.

3. Has any adjustment to the legal threshold for securing a seat in the legislature been made which could benefit a party or parties at the expense of others?

Reference in Legislation

- Article 9 of Election Law, on limitations on participating in an election.
- Articles 142 – 143 of Election Law on limitations

Comments

- There is no regulation of the threshold of votes won to gain a seat in the legislature.
- The only existing legal threshold is the limit on being

on parties participating in 2004 election.

- Article 107 (2) of Election Law , on determination of elected DPR & DPRD candidates.

able to take part in the following election. Those political parties that participated in the 1999 election may take part in the 2004 election provided they have already been registered as political parties under Law No. 31/2002 and obtained at least 2% of the seats in the DPR or at least 3% of the seats in City/Regency-level DPRD in the 1999 election.

- For participants in the 2009 election the legal threshold is increased to 3% of the DPR seats, and 4% of the seats in provincial DPRD or 4% of those in regency/ city DPRD in the 2004 election
- This limit to participation in elections will create difficulties for new parties and those that have not yet been successful.

4. Is the length of the term of the institution being elected acceptable?

Reference in Legislation

- Article 22E (1,2) of Constitution on frequency and elements elected in an election.
- Article 4 of Election Law on election frequency.

Comments

- The Constitution and the Election Law do not explicitly state the terms of office for each institution. They clearly stipulate that elections to elect members of the DPR, DPD and DPRD are held once every 5 years.
- The terms of office of the members of each legislative institution will be explicitly regulated in the Law on Composition and Structure which is still under discussion.

5. Does the country have sharply divided political, religious or ethnic minorities, and does the existing electoral system accentuate such differences?

Reference in Legislation

- Article 10 (2) of Political Party Law , on openness and lack of discrimination for membership.
- Article 6 (1- 2) of Election Law on system of election for DPR and DPD members.

Comments

- In many areas there are numerous religious and ethnic minorities. Sharp differences between the majority and minorities ended up in conflict in only a few specific areas.
- The election system does not exacerbate these differences, although its limits on party formation and participation in elections do create obstacles for minority groups and newly established parties to overcome.
- The proportional election system for the DPR and DPRD will tend to favor inclusive representation, although this will also depend on the size of electoral districts.

1. As a result of amendments to the Constitution, the MPR is now made up the members of the DPR and members of the DPD who are directly elected in the election. The 38 members from the military and police, formerly appointed members of the DPR, and the members that were Special Groups Representatives, chosen by the KPU, and the Regional Representatives members chosen by Provincial DPRD's all no longer have any part of the membership of the DPR. Now all the members of both chambers of the legislature, the DPR and DPD are elected directly through elections. The existing legal framework, both the Constitution as well as the Election Law, states that an election is to be held once every 5 years. The Election Law (article 6) explicitly states that in electing members of both the National and Regional DPR's a proportional system with open candidate lists is to be used. Members of the DPD are elected by using the SNTV (Single Non Transferable Vote) system, where the electoral district is the province, each having 4 representatives, and electors choose only one candidate representative.
2. The process of counting of votes to determine both the number of seats allocated to parties, and the winning candidates is clearly stipulated in the election law. The seats obtained by each political party in the election of members for the DPR and DPRD in one electoral district will be roughly in proportion to the total number of valid votes gained. First, the total number of valid votes for each political party is divided by the seat allocation quota (BPP) and for each time it meets the BPP, that political party gains a seat. Those seats that have not been clearly distributed will be given to the political party with the highest remaining number of votes won. The BPP itself is obtained from the total number of legitimate votes divided by the number of seats available in one electoral district (article 105 (2)). Only those candidates who gain enough votes to match or exceed the BPP quota are immediately determined as winners. The remaining winning candidates will be selected based on their order on the candidate list prepared by their political party (article 107). This stipulation makes it possible for a particular candidate who has actually won many more personal votes than another to be defeated by a rival whose numerical order in the political party's candidate list is higher, even though the latter won far fewer votes.
3. There is no actual official limit or legal threshold that stipulates a requirement of votes won to gain a seat in the DPR, DPRD, or even the DPD. There are however, provisions which set limitations on participation in the following election. Article 9 of the Election Law stipulates that only those political parties that have won at least 3% of the seats in the DPR and 4% of those in at least $\frac{1}{2}$ the Provincial DPRD's or 4% of those in at least $\frac{1}{2}$ the City/Regency Level DPRD's are permitted to participate in the following election. Political parties that do not fulfill these requirements may combine with others to do so. To participate in the 2004 election these thresholds are lowered as follows: winning at least 2% of the seats in the DPR, or 3% of those in Provincial level DPRD's or 3% of those in Regency/City level DPRD's. For new political parties to be able to take part in the 2004 election, they are required to have party organizers in at least $\frac{2}{3}$ of the provinces, so this threshold stipulation disadvantages small and newly established parties.
4. The term of office for the DPR, DPD, as well as the DPRD's is evidently acceptable. There has been no serious debate to date on these terms of office. The terms of office are not explicitly stated in the Constitution or the Election Law. Existing provisions only state that the Election to elect members of the DPR, DPD and DPRD is held once every 5 years. Explicit regulation on members of the legislature's terms of office will be included in the Composition and Structure of the Houses Law that is currently being discussed in the DPR.
5. There are numerous minority political, religious and ethnic groups in many areas of Indonesia. Sharp differences between these minority groups and the majority are found in a number of areas. The current electoral system, specifically for DPR, and DPRD members, proportional with an open candidate list, considers this, as its character is inclusive. However, the inclusive nature of the electoral system will be greatly influenced by the size of electoral districts. Each electoral district can have between 3 and 12 seats to represent its population. Smaller district magnitude (smaller districts with fewer seats) would provide less opportunity for participation of smaller parties and interest groups to be represented in the DPR and DPRD. Larger districts allowing more seats to one area would provide greater opportunity for inclusion of smaller parties and groups in the legislature. Regulation of political parties provides that membership must be open and not discriminative. (Law No. 31/2002, article 10) This also reduces any sharp divisions with minority groups.

3. Boundary Delimitation, Districting and Defining Boundaries of Electoral Units

The legal framework for elections should seek to ensure that the boundaries of electoral units are drawn in such a way as to achieve the objective of according equal weight to each vote to the greatest degree possible to ensure effective representation.

1. Does the legal framework provide for the principle of equality of votes, drawing electoral unit boundaries with a more or less equal number of voters? Does the legal framework also provide for objective criteria for deviating from the “equality” standard in terms of physical geographical features, existing administrative and historical boundaries, or other well-established criteria?

Reference in Legislation

- Articles 46 – 52 of the Election Law on form of electoral district, limit on total seats per electoral district, limits and total number of seats in each representative institution.
- Elucidation of article 48 (1) of the Election Law on limits of DPR seat allocations per province
- Elucidation of article 49 of the Election Law, Special Autonomy Law for Aceh and Papua.
- Elucidation of article 52 of the Election Law on number of members of new DPD.

Comments

- The electoral district for each level of the representative institutions is the administrative area or a combination of several of these. Each DPR and DPRD electoral district has 3 – 12 seats of representation.
- The allocation of DPR seats per Province is population-based, striking a reasonable balance that has three criteria stipulated in article 48, i.e.(1) an approximate quota of 325,000 – 425,000 per seat, (2) no fewer seats than the number for the 1999 election, and (3) a guarantee of at least 3 seats for new provinces. All three of these criteria cannot possibly be met in all provinces.
- The total number of seats in Provincial, and Regency/ City DPRDs, is clearly regulated, and based on their respective populations. Exceptions apply to the numbers determined by the electoral law and are found in the Law on Special Autonomy for Aceh (NAD) and Papua. This law allocated these provinces 25% more seats in their DPRD's than are provided for under the electoral law.
- The method of allocation of DPRD seats to each electoral district is not stipulated in the law.
- The DPD electoral district is the province and every province has the same number of seats. However, the law makes no provision for the creation of new provinces. Under the current law, new provinces will not be able to have seats in the DPD.

- There are various criteria for determining the formation of electoral districts that are not catered for in the legal framework. These include OPOVOV (One Person One Vote One Value) requirements and permissible levels of deviation and exceptions, the obligation to have electoral districts which are a single whole, compact, share common boundaries at different levels. Also the law does not stipulate that factors such as geographic and cultural considerations be catered for in establishing electoral districts.
- The KPU is given the authority to determine the requirements and procedures and to determine the number of seats for each electoral district.

2. Does the legal framework provide for an impartial, non-partisan, independent and professional body of persons or an institution to undertake boundary delimitation?

Reference in Legislation

- Article 46 (2) of the Election Law on the institution which determines electoral districts.
- Article 22E (5) of the Constitution on national, permanent and independent election organizers.
- Articles 18i, 21, and 26a of the Election Law.
- KPU Decree No. 33 on KPU code of ethics.

Comments

- As the election organizer, the KPU also determines electoral districts.
- The Constitution stipulates that the KPU is an independent institution. KPU members may not be political party members or organizers. They must act fairly towards election participants, and comply with the code of ethics for organizers drafted by the KPU.

3. Is there a broad consensus and measure of support among the political parties regarding the existing electoral units' boundaries?

Reference in Legislation

- Article 46 (1) of the Election Law on form of electoral district.
- Article 48 (1) of the Election Law and its elucidation, on the principles and limits of seat allocations per province.

Comments

- The Election Law only stipulates the form, range of the number of seats per electoral district, and limits on the total number of seats for each level of representation, and the principle of division of seats in the DPR for each province. There is no stipulation on the procedures for determining the total number of seats and formation of electoral districts. No electoral districts have yet been formed.

4. Do the existing boundaries of electoral units favor the ruling party?

Reference in Legislation

- Articles 46 (1) a and b of the Election Law on the form of electoral districts.
- Article 48 (1) of the Election Law and its elucidation on the principles and limits of seat allocations per province.

Comments

- Currently, no electoral districts have been formed. Hence, it cannot be said that the existing electoral districts favor the political party in power.

5. Does the legal framework clearly state the events which trigger the boundary delimitation process?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">Articles 46 (2), 48 (2) of the Election Law on KPU's authority to determine the procedures and requirements for calculation of seat allocations and electoral districts.	<ul style="list-style-type: none">For the first time in Indonesia, the 2003 Election Law stipulates the formation of special electoral districts specifically for election purposes. The Election Law does not give guidance on a mechanism that requires review of future amendments to electoral districts. The KPU is granted full authority to regulate in relation to determining electoral districts.

6. Is the EMB involved in the boundary delimitation exercise? Is it likely to impinge upon the impartiality and independence of the EMB?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">Article 46 (2) of the Election Law on the institution which determines electoral districts.	<ul style="list-style-type: none">As the election manager, the KPU is itself the body with full authority over formation of electoral districts.It still cannot be ascertained whether the role of the KPU as the one drawing up the electoral districts will damage the neutrality and independence that it should have as an election management body. However, with a Law which is inconsistent in its allocation of seats and in the formation of electoral districts, the KPU faces the challenge of determining a policy which will have political impact. No decision made will fully comply with what has been stipulated in the Law. One or other of the political parties will be advantaged or disadvantaged, whichever system is used.

7. Does the legal framework provide for appeals against decisions concerning boundary delimitation?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">No regulation.	<ul style="list-style-type: none">The existing legal framework does not stipulate how to challenge a KPU decision on the formation of electoral districts. It also does not state that a KPU decision is final in this. This matter can be regulated in the KPU decree on the formation of electoral districts. Also, it could be stipulated in a decree of the Election Supervisory Committee on resolution of election violations.

1. The determination of electoral districts begins with the allocation of seats in the legislatures at every level. The total number of seats of DPR members is 550 (article 47). Nevertheless, the number of seats allocated to each province is not clearly stipulated. The Election Law only states that the total number of seats in each is to be determined based on its total population, taking into consideration a reasonable balance (article 48). In the elucidation this balance is defined as: a. The quota per seat is 325,000 for areas with low population density up to 425,000 for densely populated regions; b. The total number of seats for each province is not to be less than the seat allocations in the 1999 election; c. New provinces formed after the 1999 election get at least 3 seats. These three limits cannot all be applied simultaneously in all provinces. Specifically, limits b and c themselves will result in at least 7 provinces having a quota of votes per seat of less than 325,000, with some even being under 200,000. Hence, the principle of equality of votes is cannot be fully applied in various areas. For example, one vote in Papua can be worth twice that on the island of Java. Priorities or exceptions need to be made among these three limits. There is still no legal framework which clarifies the inconsistencies in the legal requirements. An electoral district for the DPR is a province or parts of a province, while for provincial DPRD it is a regency/ city or some combination of these, and for regency/ city DPRD it is a *kecamatan* district or a combination of these. The total number of seats for members of Provincial, Regency/ City DPRD are clearly stipulated in the Election Law and are determined by the total population. The Election Law does not stipulate how seats are to be allocated or how many are to be provided for each electoral district but gives ranges of minimum and maximum seats for electoral districts at the DPR and DPRD levels.

The law stipulates that every electoral district will obtain between 3 – 12 seats (article 46 (2)), and provides levels of population linked with the various levels of district size. However, if the principle of One Person One Vote One Value (OPOVOV) for provincial, Regency/ City DPRD, one Regency/ City electoral district or its Sub-districts is applied, some areas will have populations that should then permit that electoral district to have more than 12 seats to represent the electoral district. There are no stipulations in the Election Law to resolve this inconsistency.

The KPU is faced with a situation where, whatever position or policy it drafts, it cannot fully comply with all the stipulations about representation that are laid out in the Law.

The KPU has a full mandate to determine numbers of seats for each district, and to determine the electoral districts. Whether the KPU will set electoral districts with an average number of seats tending to 3, or whether the average total number of seats will tend to 12, has yet to be seen. The law has no provisions on the determination of district magnitude.

A special regulation applies for determining the total number of DPRD seats for the areas of special autonomy i.e. the provinces of Aceh and Papua; the Special Autonomy Law for both these provinces stipulates that the total number of provincial DPRD seats is to be increased by 25%.

The Election Law clearly stipulates that each electoral district for the DPD is a province and that every province has a total of 4 DPD members.

2. The Election Law clearly stipulates that the KPU determines electoral districts. The formation of districts in Indonesia is to be undertaken by the election management body, not by a separate institution, as the practice in many other countries. The law does not explicitly stipulate that electoral districts are to be drawn up in an unbiased, non-partisan, independent, and professional manner. Nevertheless, the legal framework does clearly stipulate that both its members and the KPU itself, as the election management body, must be independent, its members shall not be members or organizers of political parties, shall be non-partisan and not take sides, act fairly, transparently, accountably, and professionally.
3. Currently, no electoral districts have been formed. The seat allocations for each provincial and regency/ city DPRD have yet to be determined. The seat allocations for each electoral district have also not yet been determined. There is no regulation yet on the requirements and procedures for the process of allocation of seats and determining electoral districts. The Election Law gives the KPU the power to prepare these regulations. Hence it is impossible to know whether these electoral districts will be supported by the political parties.

4. To date, no analysis has been made of whether the electoral districts which will be formed will benefit the political party in power. The process of creating the electoral districts for the 2004 election is scheduled by KPU to begin in July 2003.
5. To date, the KPU has not written the regulation for the process of formation of electoral districts. Regulations do not exist that provide for scheduled review or the review process, for future changes in electoral districts.
6. The KPU as the election manager is responsible for process and will be determining the electoral districts itself. It is the sole institution which is granted the authority under the Election Law to determine electoral districts (article 46 (2)). The KPU as election organizer is directed to be non partisan and must maintain its independent position. Its role in the process of drawing of electoral boundaries, and the impact that this may have on the independent and non partisan status of the KPU is an issue that can be looked at once the process of determining electoral districts has begun.
7. The Election Law does not provide for the right of appeal against a decision on the setting of an electoral district. It also does not explicitly state that the KPU's decision on the determination of an electoral district is final. Regulation of these claims may also be included in a decision of the KPU on the requirements and procedures for formation of electoral districts which is still to be drawn up. This regulation of claims could also be included in the regulations of the Election Supervisory Committee under the requirements and procedures for complaints and resolution of election violations.

4. The Right To Elect and To Be Elected

The legal framework should ensure that all eligible citizens are guaranteed the right to universal and equal suffrage as well as the right to contest elections without any discrimination.

1. Are all citizens of the age of majority guaranteed the right of universal and equal suffrage?

Reference in Legislation

- Articles 13 and 14 of the Election Law stipulate the same right to vote for all citizens who fulfill the requirements.
- Article 145 of the Election Law does not grant the right to vote for military and police personnel for the 2004 election.
- Articles 60-70 of the Election Law on candidacy for DPR, DPD and DPRD membership.

Comments

- The right to vote of all citizens is guaranteed by the Election Law, with the exception that for the election in 2004, military and police personnel will not have the right to vote.
- Article 60 (g) prohibits former members of the Communist Party of Indonesia (PKI) or any organization connected with it to be elected. Article 60 (g) prohibits involvement by those involved directly or indirectly in the PKI rebellion of 30 September 1965.
- The same Article also prohibits former members of prohibited organizations from being elected. The definition of “a prohibited organization” is not clear.

2. Does the legal framework ensure that suffrage rights are exercised in a non-discriminatory manner on the basis of equal treatment before the law?

Reference in Legislation

- Article 28D clause 1 of the Constitution guarantees equality before the law.
- Article 28D of the Constitution guarantees citizens' rights and equal opportunity in matters of governance.
- Articles 2 and 13 of the Election Law stipulate that everyone has the same right to vote.
- Article 13 of the Election Law stipulates that all citizens who have attained the age of 17 or are married have the right to vote.

Comments

- The requirement for the same treatment before the law is explicitly stated in the Constitution and Election Law, with the exception of military and police personnel in the 2004 election.

3. Are there any limitations or restrictions on the right of suffrage and, if so, are they clearly justified by exceptional circumstances or based on recognized norms?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none"> Article 14 clause 2 stipulates that the right to elect applies to all citizens of sound mind and whose right to vote has not been withdrawn by the courts. Article 145 of the Election Law stipulates that military and police personnel do not have the right to vote in the 2004 election. 	<ul style="list-style-type: none"> The restrictions for the military and police personnel on voting in the 2004 elections is to be understood as an exceptional circumstance in the transition from an authoritarian regime dominated by the military to a democratic system which is now being experienced by Indonesia.

1. All citizens that meet the age condition (17), or are already married, registered as a voter, and whose right to vote has not been withdrawn through a final, incontestable court decision, do have the right to vote as stipulated in articles 13 and 14 of the Election Law. Equal treatment before the law for all citizens is mandated in Article 27 clause 1 of the Constitution. The Election Law does not stipulate of any difference in electoral rights for all citizens who have the right to vote, so this forms a guarantee of equal treatment of voters before the law. Although this is so, article 145 of the Election Law excepts the military and police personnel from this right for the 2004 election.
2. The legal framework guarantees the same treatment for all citizens in voting. Article 28D clause 1 of the Constitution is an umbrella that guarantees equality of treatment before the Law, while article 28D clause 3 guarantees that all citizens have the right to the same opportunity in matters of governance. In turn, articles 2 and 13 of the Election law regulate on the right to vote that applies equally to all citizens who have that right.
3. Apart from the specific limitation of the right to vote for military and police personnel in the 2004 election, there are no other limitations in the elections' legal framework. The limitation for military and police personnel can be understood in the context of the transition from an authoritarian regime to a democratic system which Indonesia is now experiencing – where the military and police had become an integral part of the authoritarian system. There is a limitation of the right to vote that applies to those of unsound mind and whose right to elect has been withdrawn by the courts.

5. Electoral Management Bodies

The legal framework should require that EMB's (Electoral Management Bodies) be established and operate in a manner that ensures the independent and impartial administration of elections.

1. Does the legal framework for elections provide for the EMB to be constituted as an independent and impartial body?

Reference in Legislation

- Article 22E (5) of the Constitution on the KPU as an independent institution.
- The Election Law Articles 15, 18, 21, and 26 on the KPU being independent, individual members of the KPU to be fair, not political party members, the obligation to be fair to election participants and comply with code of ethics.
- KPU Decree No. 33/2002 on the code of ethics for election managers.

Comments

- The Constitution explicitly states that the KPU is the election manager, and that it is not only permanent and national in scope, but is also independent.
- The Election Law states the same. The members of both central and regional KPUs may not be either members or organizers of political parties and are obliged to act fairly.
- KPU secretariat staff are to be government employees.
- The code of ethics stipulates that managers shall have an independent and neutral attitude, and shall act accordingly. All election managers are obliged to comply with the code of ethics.

2. Does the legal framework protect EMB members from arbitrary removal?

Reference in Legislation

- Article 20 of Election Law on limitation and termination of KPU members.
- Article 30 (2) and 33 (2) of the Election Law.

Comments

- Members of the central KPU may only be terminated by the President, however, this must also be with the approval of and/ or be proposed by the DPR.
- Members of provincial level and regency/ city KPUs may be terminated by the National level KPU.
- The secretaries in regional KPU secretariats may be terminated through a decision of the Secretary General of the National KPU.

3. Does the legal framework require the EMB to operate in an independent, impartial and transparent manner? Are there any provisions in the legal framework that could prevent the EMB from working in such a manner?

Reference in Legislation

- Article 22E (5) of the Constitution and Election Law Article 15 (1), on independence of election managers.
- Article 21 of Election Law on the obligation to comply with the code of ethics.
- Article 26 a of Election Law, on the obligation to act fairly towards election participants.
- KPU Decree No. 33/2002, on code of ethics for election managers.

Comments

- In both the Constitution as well as Election Law, the KPU, as election manager, is stipulated to be an independent institution.
- The Election Law requires all KPU members, both at the central as well as the regional level to act fairly towards all election participants.
- All election managers as a group are also required to comply with their code of ethics which stipulates they are to maintain an independent, unbiased, transparent and professional attitude and are to act accordingly.

4. Does the legal framework clearly define the authority and responsibility of each level of EMB and their relationships to each other as well as to governmental bodies and executive authorities?

Reference in Legislation

- Articles 1 (4), 17 (1) and (2) of the Election Law on National and regional KPUs forming a single whole as election managers.
- Articles 19 (1) – (5) of the Election Law on the government's relationship with the DPR and the KPU in formation of National and regional KPUs.
- Articles 25, 26, 28, 29, 31, and 32 of Election Law on the duties, obligation and responsibility of the KPU and regional KPUs.
- Articles 27, 30, and 33 of the Election Law on the management secretariat, appointment and termination of secretary and secretariat employees.

Comments

- The Election Law specifically and clearly stipulates the relationship between the KPU and its secretariat, together with the KPU's functions at every level.
- The relationship between and roles of the National KPU and government in the formation of National and local KPU's are clearly stipulated.
- The requirement to report to the government and legislatures is also clearly stipulated.
- There are no clear provisions on the relationship between the KPU and the government in election budget preparation.

5. Does the legal framework provide for adequate opportunity to seek review or reversal of an EMB decision?

Reference in Legislation

- Election Law article 7 (4) and article 12 (2), state the determination of election participants is final.

Comments

- There are no provisions for the review of KPU or regional KPU decisions.
- The Election Law states that there will be no review of any KPU decisions on a political party's right to participate in an election.
- Any KPU decision which is considered to be an administrative violation may be reported to the election supervisory committee to be processed. However, its resolution is then returned into the hands of the KPU. There are no provisions for any institution to evaluate the KPU's decisions.
- The KPU may also itself become subject to charges

of criminal infractions. However, the means and procedures to process and to uphold or reject accusations of any criminal actions of the KPU are not regulated; this may later be done through a KPU Decree.

6. Does the legal framework provide for continuity of electoral administration by staggering the terms of office of its EMB members?

Reference in Legislation

- Articles 19 (6), 36 (6) of the Election Law on the term of office of the managers.
- Article 20 of the Election Law on the termination and replacement of members of the National and regional KPUs.

Comments

- The Election Law does not explicitly stipulate that all KPU members must all be elected at once.
- KPU members' terms of office at all levels are 5 years. KPU members may resign, be terminated, or replaced during their terms in office. There are, however, no stipulations requiring that vacancies in National KPU membership must be filled, or that there be a specific minimum number of members.

7. Does the EMB have sufficient lead time to organize elections, especially at the lower levels?

Reference in Legislation

- Article 45 (3) of the Election Law on the minimum time for receipt of ballot papers by local level managers (PPS and PPLN).
- KPU Decree No. 100/2003, specifically on timetable for formation of PPK and PPS.

Comments

- Having been given the benefit of a legal framework and funding well in advance of polling day, together with the support of provincial, regency and city KPUs as permanent institutions supported by their own secretariats which are also permanent, election managers at the local level will have sufficient time to manage the election.
- For the 2004 election, the late completion of the necessary legal framework has drastically reduced the available time for the KPU to prepare its various own regulations and to implement this completely new legal framework.

8. Does the legal framework provide for making available sufficient and timely funds to the EMB to manage its operations?

Reference in Legislation

- Article 23 of Election Law and KPU Decree No. 89/ 2003 Articles 1 (6) and 2 on sources and nominators for election funds.

Comments

- The KPU will be funded from the Ministry of Finance through standard procedures. There are no provisions to ensure the KPU will obtain sufficient funds and that these will be disbursed in time to carry out the election.
- The Election Law explicitly states that the KPU is funded from the State Budget (at national level) and local government budgets (at provincial and regency/ city levels). Local governments' capacities to provide election funding are considered to be extremely diverse.

1. As election manager in the current legal framework, the KPU has changed significantly in structure and format. Before the 1999 election, the KPU was fully part of the government. In the 1999 election, the majority of KPU members were political party representatives, while the others came from the government. The current body is now made up fully of people from outside political parties. Political party members or organizers are prohibited from being KPU members. KPU members from the government must leave any structural office which they occupy and, as an employee of the state, must take leave without pay for the duration of their term as a KPU member. Both the Constitution and Election Law explicitly stipulate that the KPU is a self-governing or independent institution. All KPU members, both at the central/national level as well as in the regions must act fairly towards election participants. Together with the other election managers they must comply with the code of ethics for election managers. This code stipulates that they must take an independent stance and act accordingly, not siding with any political parties, candidates, or even voters.
2. KPU members may not be unilaterally terminated. They may only be replaced if they no longer meet the membership requirements, or have violated the oath they took, among other reasons. The termination of a member of the National KPU may only be done by the President; nevertheless, this must have the approval of or be proposed by the DPR. Termination of members of regional KPUs may be done by the National KPU. Secretaries who head up the secretariats of regional KPUs, such as those in the provinces, regencies or cities, are appointed through a decision of the Secretary General of the Central or National KPU. The Election Law does not stipulate that these decisions of the Secretary General must have the approval of, or be based on proposals from each KPU which proposes them.
3. The stipulations of the requirement for the KPU to be independent, not take sides and to be transparent in carrying out its activities are found in separate regulations. The Constitution stipulates that the KPU must be an independent institution. The Election Law stipulates that it must act fairly, particularly towards election participants. That Law has no stipulation that the KPU must be transparent. The code of ethics does state that all KPU members and other election managers must maintain an independent stance and act accordingly, being non-partisan, not taking sides, acting transparently and professionally.
4. The Election Law and KPU Decree No. 68/2003 on the requirements and procedures for the selection and determination of the membership of provincial and regency/city level KPUs are both clear on the powers and responsibilities of the KPU, at both the national as well as regional levels, and on the formation of KPUs at every level, which involves the government and the Central KPU.
5. There are no provisions in the Election Law to appeal a decision by election managers. There are even several types of KPU decisions which are explicitly declared to be final, for instance, those on election participants. A KPU decision which is considered to be an administrative violation may be reported to the election supervisory committee for processing. Its resolution is then returned into the hands of the KPU. The institution which is accused of carrying out violations is then given authority to penalize itself. There is no provision for an institution to evaluate the KPU's decisions. The KPU may also become subject to charges of criminal infractions. The means and procedures to process and uphold or reject any accusations of criminal actions by the KPU are not stipulated, this may later be done through a KPU Decree.
6. There is no stipulation that all KPU members begin and end their terms of office together. The Election Law only stipulates that the term of office for KPU members is 5 years. Replacement during a term of office may be carried out, specifically of those members who die, resign, are terminated and so on. Replacement KPU members are to be selected using the same process as initially used. For the National KPU, there are no provisions that vacancies in KPU membership must be filled by new members, or that a minimum number of KPU members are required. At the beginning of June 2003, two KPU members resigned, but there is still no proposal to replace them. For provincial and regency/city KPUs, all positions on those with only five members must always be filled.

7. Elections are held at the same time for every DPR legislature level and for the DPD. For the 2004 election, the Election Law was promulgated only 14 months before polling day. The available time is now very limited for the KPU to complete its preparations for the election in April 2004. This problem is compounded because the 2004 election introduces many new elements, as reflected in the various new laws and regulations. The short time available for management preparation could potentially produce a number of errors.
8. The current provisions do not ensure that the KPU will obtain adequate funds sufficiently far in advance to complete its preparations and management of the election. These funds will be issued through the Ministry of Finance, while the amounts will be decided on with the DPR's agreement, as normal. The Election Law explicitly states that election funds are to be taken from the State Budget (APBN) and local government budgets (APBD). In view of the great variability that exists in the funding capacities of different regions and the major reliance on local funding for elections, there is concern that, combined, these two issues could result in undue risks of undesirable outcomes arising from local differences in the quality of services actually provided in election management.

6. Voter Registration and Voter Registers

The legal framework should require that voter registers be maintained in a manner that is transparent and accurate, protects the right of qualified citizens to register, and prevents the unlawful or fraudulent registration or removal of persons.

1. Does the registration process provide for accurate voter registers? Is the process itself transparent?

Reference in Legislation

- Articles 53- 59 of the Election Law regulate the KPU's voter registration process.
- Article 53 (3) requires that voter registration be carried out at the latest 6 months before the election.
- Article 147 requires that for the 2004 Election, voter registration is to be undertaken in collaboration with the government.
- KPU Decree No. 235/2002 stipulates the Voter Registration procedure and Ongoing Census of the Population (P4B).

Comments

- The legal framework cannot ensure accurate preparation of voter registers because there are insufficient control mechanisms to do so.
- Voter registration for the 2004 election will be done in collaboration with the government (Ministry of Home Affairs and Central Statistics Agency (BPS)) because it will happen at the same time as part of the ongoing census of the population (P4B). This population data will become the basis for determination of electoral districts by the KPU.
- P4B produces both population data and voter register data of those citizens that meet electoral requirements.
- The BPS' voter registration is not accompanied by any mechanism that would ensure transparency in this.
- The KPU has not yet prepared any stipulations on how to update, maintain, and add data and on integrated control of interim and final voter lists.

2. Does the legal framework contain provisions for regular and timely updating of voter registers before an election?

Reference in Legislation

- Article 53 (3) of the Election Law stipulates that voter registration shall be completed no later than six months before polling day.
- Article 55 of the Election Law requires that the voter list be kept and maintained by the KPU.
- KPU Decree No. 236/2002 stipulates the development of a voter list database that shall be updated.

Comments

- The legal framework stipulates the regular periodic updating of the voter list, but there are no specific stipulations that determine a continuous voter registration system, nor any requirements and procedures on the implementation for the next election after 2004.

3. Are the requirements for voter registration stated in clear and unambiguous language?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">Articles 13 and 14 of the Election Law stipulate the qualification requirements for voters who may be registered.Article 53 (1) and (2) stipulate the procedures for voter registration for citizens both within Indonesia and overseas.KPU Decree No.235/2002 regulates the registration of voters who have changed their domicile.	<ul style="list-style-type: none">In general, the requirements for voter registration are stated in language that is clear and not ambiguous.

4. Does the law clearly identify what documents are necessary to register as a voter?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">Article 54 (2) of the Election Law states the type of data to be recorded on the voter list.No required documents are stipulated.	<ul style="list-style-type: none">The Election Law regulates on voter data but not on the documents needed in voter registration.KPU Decree No. 235/2002 also does not stipulate anything further on voters' documents.In its Guidelines for Voter Registration Officers the KPU offers guidance for the registration officer, who is to ask for several documents (marriage certificate, birth certificate, personal residency card). Despite this, a prospective voter may still be registered by an officer even though they do not produce any documents.

5. Are the provisions for challenging a registration decision stated in clear and unambiguous language?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">Article 59 (3) of the Election Law stipulates that unregistered voters may register themselves as additional voters.There is no specific regulation on other statements of objection.	<ul style="list-style-type: none">The Election Law does not stipulate any mechanism for challenging a voter registration decision.The Election Law stipulates giving the opportunity to those citizens who are unregistered to register in the supplementary voter list.Article 122 gives authority to the supervisory committee which regulates regarding the opportunity for resolution of disputes during the election does not specifically mention what opportunity is provided to make a statement of objection to a voter registration.The Election Law contains no provisions on a person's right to refuse to be registered as a voter.

6. Is the time period for challenging a registration decision clearly stated?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">Not yet regulated.	<ul style="list-style-type: none">See comments above.

7. Are voters protected from the wrongful disclosure of personal data?

<i>Reference in Legislation</i>	<i>Comments</i>
The Election Law does not regulate on this.	<ul style="list-style-type: none"> There is no specific regulation, either in the Election Law, KPU Decrees, or in the Statistics Agency's registration procedure that protects voters from the wrongful disclosure of personal information.

- KPU Decree No. 235/ 2002 stipulates the objective of the registration and scope of duties together with the authority of the KPU and its working partners – the Ministry of Interior Affairs and Central Statistics Agency — in voter registration and the sustained census of the population. But there are no stipulations on the requirements and procedures for integrated supervision in the updating, maintenance, or addition to voter lists or to supplementary voter lists. Although the registration of voters is within the KPU's authority, article 147 of the Election Law states that for the 2004 election voter registration will be undertaken in concert with the government.
- The Election Law requires updating of voter lists before a general election. Article 53, clause 3 of the Election Law stipulates that the time limit for completion of voter registration is six months before polling day. KPU Decree No. 235/2002 (article 2) only says that the objective of voter registration is part of updating the population database from time to time. Furthermore, article 55 of the Election Law only requires that voter lists for each area be kept and maintained by the KPU.
- Articles 13 and 14 of the Election Law stipulate the qualifications for those citizens who meet the requirements to be registered as voters. Article 53, clauses 1 and 2 make it possible for every Indonesian citizen, both within the country and overseas, to register through the registration mechanism, either actively or passively.
- The Election Law and KPU Decrees do not explicitly state the need for any documents in voter registration. Article 54 clause 2 of the Election Law only stipulates the data needed for voter registration, namely: (a) full name; (b) marital status; (c) date and place of birth/age; (d) gender; (e) type of any disabilities suffered; and (f) home address. For registration, the officer is provided with a Guide that says they should ask for documents such as birth certificates, marriage certificates, personal residency card. However, in practice, citizens may still be registered even though they do not have these documents.
- The Election Law and KPU Decrees make no provision for citizens to state their objection to the voter register or registration as a voter, or to challenge the refusal of the KPU to include them on the voters register. Article 122 does stipulate the authority of the Supervisory Committee in the resolution of disputes that arise over the election, but there is no specification connected with an objection to voter registration. Article 59 clause 3 of the Election Law only regulates on giving an opportunity for those citizens who are not yet registered to do so in the supplementary voter list.
- There are no stipulations on the time period to state any challenges to the voter list.
- The Elections' legal framework has no stipulations that ensure protection of personal data and information. This is a part of citizens' basic rights that must be protected by the state.

7. Ballot Access for Political Parties and Candidates

The legal framework should ensure that all political parties and candidates are able to compete in elections on the basis of equitable treatment.

1. Are all political parties and candidates assured equitable treatment?

Reference in Legislation

- Article 8 (1) of Political Party Law.
- Article 2 of Election Law (on the basis of elections),
- Articles 7-12 of Election Law on election participants.
- Articles 60-70 on candidacy for DPR, DPD (Regional Representatives Council), DPRD (Provincial Legislative Council), and those at regency/city level.
- KPU Decree No 105/2003 on requirements for research into and confirmation of political parties to participate in an election.

Comments

- The legal framework provides guarantees of fair treatment for political parties and candidates in many articles.

2. Are eligible citizens assured of the right to seek office as either candidates for a political party or independent candidates?

Reference in Legislation

- Articles 11 and 12 of the Election Law on individual election participants.
- Articles 60-70 of the Election Law on candidacy for DPR, DPD and DPRD membership.
- KPU Decision No 105/2003.

Comments

- A citizens' right to become a candidate for a political party is guaranteed by articles 60-70 for the DPR, Provincial DPRD, Regency and City DPRD, as is that to be an independent candidate for the DPD.
- Article 60 (g) prohibits former members of the Communist Party of Indonesia (PKI) or any organization connected with it from being elected. Article 60 (g) prohibits involvement by those involved directly or indirectly in the PKI rebellion of 30 September 1965.
- The same Article also prohibits former members of prohibited organizations from being elected. The definition of "a prohibited organization" is not clear.

3. Does the legal framework provide a level playing field for registration and ballot access for all political parties and candidates?

Reference in Legislation

- Articles 7-10 of the Election Law on election participants from political parties.
- Articles 60-70 of the Election Law on candidacy for DPR, DPD and DPRD membership.
- KPU Decision No 105/2003.
- Political Parties' registration is regulated under the Political Party Law No. 31/2002.
- Article 143 of the Election Law on transition stipulations.

Comments

- Legitimate political parties that have been registered under Political party Law No.31/2002 do not automatically have access to the ballot (become election participants).
- There are various additional requirements in the Election Law No.12/2003. Parties that contested the 1999 election must meet a threshold of percentage of seats in representative assemblies or amalgamate with other parties to reach this threshold. On the other hand, all other parties must meet more stringent qualifications related to numbers or branches than those imposed in the Political Party Law No. 31/2002 and must additionally meet membership numbers and spread requirements.

4. Are the requirements and procedures for party and candidate registration based on relevant, reasonable and objective criteria? Are these criteria clearly stated in the law?

Reference in Legislation

- Political parties Law.
- Articles 7-10 of the Election Law on election participants from political parties.
- Articles 60-70 of the Election Law on candidacy for DPR, DPD and DPRD membership.
- KPU Decision No 105/2003.
- Article 143 of the Election Law on transition stipulations.

Comments

- Party and candidate registration conditions and procedures are based on criteria which are relevant, logical and objective. Initially, the existence of political parties is regulated under the Political Party Law. The participation of political parties in elections is further regulated by the Election Law and KPU Decree No. 105/2003.
- The participation of independent candidates is also regulated under the Election Law, although detailed regulation has not yet been prepared by the KPU.

5. Does the legal framework provide for a timely appeal to expeditiously review the decisions made on the party and candidate registration?

Reference in Legislation

- Article 68 of the Election Law on requirements for submitting candidates.
- Article 122 of the Election Law on the duties and powers of the Election Supervisory Committee.
- Articles 128 and 129 of the Election Law on the mechanism and time needed to study decisions taken.
- KPU Decree No.105 Article 3.
- Article 7 (4).
- Article 12 (2).

Comments

- Article 7 (4), 12 (2) of the Electoral Law and KPU Decree No. 105/2003 article 3 states that a decision of the KPU on the participation of a political party in an election is final.
- The attitude taken and regulations to be prepared by the Election Supervisory Committee on this issue are still unknown.
- There is currently no route for appeal for intending candidates for the DPR/DPD who have been rejected.
- A decree regulating the participation of candidate members of the DPD has yet to be prepared.

6. Does the legal framework provide for minor corrections of errors or allow further information to be added so that candidates' nominations are not rejected on flimsy grounds?

Reference in Legislation

- Article 68 of the Election Law on requirements for submitting candidates.

Comments

- The legal framework provides for minor corrections in Article 68. If the data provided by a DPR/DPRD or DPD candidate is not sufficient to meet the qualifications for candidacy, the candidate affected is given the opportunity to change or add to the data they have provided. A political party may propose a replacement candidate in their candidate lists for the DPR and DPRD if an initial candidate does not meet the required qualifications.

1. The legal framework provides for fair treatment for political parties and candidates in many articles. Article 8 (1) of the Political Party Law for instance, states that "political parties have the right to equal treatment from the state, of the same degree and fair". Article 2 of the Election Law states that "elections shall be held on a basis of being direct, general, free, secret, honest and fair". The articles in the Election Law that cover individual and political party participants (articles 7-12), for instance, stipulate the same treatment for all candidates in the election. The same is true, too, for articles 60-70 on candidacy for membership of the DPR, DPD and DPRD.
2. Citizens may become either political party or independent candidates. That right is guaranteed by articles 60-70 for political party candidates to sit in the DPR, or Provincial DPRD and City/Regency DPRD, while articles 11 and 12 guarantee it for independent candidates for the DPD. The exception in article 60 (g) prohibits former members of the Indonesian Communist Party (PKI), or any other organization related to it from being elected. The same clause also prohibits anyone who was involved either directly or indirectly in the 30th September 1965 attempted coup conspiracy (G30S/PKI). It also does away with the right of former members of prohibited organizations to be elected. The definition of these "prohibited organizations" here is not clear.
3. Legitimate political parties registered under Political Party Law No. 31/2002 do not automatically have access to the ballot (become election participants). There are various additional requirements in the Election Law No.12/2003. Note that legitimate political parties under Political Party Law No. 2/1999 are acknowledged as legitimate ones under the new Election Law No. 12/2003 but must adjust to the new law within 9 months. The stipulations on the number of branches and minimum membership needed by political parties to be legitimately established (regulated by the Political Party Law) and to participate in the election (regulated under the Election Law) make it more difficult for smaller, and regionally based parties, in particular, to participate.
4. Party and candidate registration conditions and procedures are based on criteria which are relevant, logical and objective. Initially, the existence of political parties is regulated under the Political Party Law. Political parties' participation in elections is further regulated by the Election Law and KPU Decree No. 105/2003. The participation of independent candidates is also regulated under the Election Law, although detailed regulation has not yet been prepared by the KPU.
5. Article 3 of KPU Decree No. 105/2003 on the determination of political parties' legitimacy to become election participants states that the KPU's decision is final. There is currently no route for intending DPR/DPRD and DPD candidates rejected by the KPU to appeal that decision. Rejected DPR/DPRD candidates may complete the missing requirements for their candidature. Political parties may also substitute another DPR or DPRD candidate for the one rejected. Nevertheless, there is no mechanism provided for political parties or candidates whose candidacy was rejected to lodge an appeal. A decree regulating the participation of DPD candidates has yet to be prepared.

6. Small corrections needed during registration are regulated under Article 68. If a DPR/DPRD candidate is rejected because they do not meet the requirements then the one affected is given the opportunity to make the necessary amendments or – in the case of the list of a party's legislature candidates – their political party may propose a replacement (see point 5 above).

8. Democratic Electoral Campaigns

The legal framework should ensure that each political party and candidate enjoys the right to freedom of expression and freedom of association, and has access to the electorate, and that all stakeholders in the election process have an equal chance of success.

1. Does the law regulate the conduct of political parties and candidates during electoral campaigns and provide for active and open campaigning free from government and other political parties' or candidates' interference?

Reference in Legislation

- Article 71 (4-5) of the Election Law on campaign material and its presentation.
- Article 73 of the Election Law.
- Article 74 of the Election Law on prohibited behavior during a campaign.
- Article 75 of the Election Law on officials who are prohibited from campaigning.

Comments

- The Election Law regulates the behavior of political parties and candidates throughout the official campaign period. It also lists prohibited behaviors, such as insulting or inciting others, and threatening or engaging in violence.
- The freedom of political parties and candidates to campaign without the involvement of the government or political parties or other candidates is implicitly guaranteed by article 2.
- The Election Law does not stipulate whether a political party or candidate may campaign in the period between the official announcement of the candidates' names (no later than 2 months before balloting) and the official election campaign (for 3 weeks and ending 3 days before balloting). It is hence unclear whether campaigning is prohibited in this period or not.
- The guidelines on campaigning have not yet been drawn up by a KPU Decree.

2. Where admissible, does the legal framework define the campaign period – the date of its commencement and date when it ends?

Reference in Legislation

- Article 71 (3) of the Election Law on the official campaign period.
- Article 71 (6) of the Election Law on the guidelines and schedule for campaigning.

Comments

- Article 71 (3) of the Election Law stipulates that a campaign shall take place over 3 weeks and must be stopped 3 days before polling day.
- Article 71 (6) states that the campaign guidelines and timetable are to be decided by the KPU.

Specifically for the 2004 election, the timetable has been set via KPU Decree No. 100/2003, i.e. 11 March -1 April 2004.

- The guidelines on campaigning have not been drawn up by a KPU Decree.

3. Where admissible, does the legal framework provide for cessation of all active campaigning one or two days prior to polling day?

Reference in Legislation

- Article 71 (3) of the Election Law on the official campaign period.

Comments

- Article 71 (3) of the Election Law stipulates that a campaign shall stop 3 days before polling day.

4. Are there provisions and safeguards to avoid electoral violence so that the electorate and other candidates and parties are not intimidated?

Reference in Legislation

- Articles 71 (5 and 6) of the Election Law on presentation of campaign material and guidelines and the campaign schedule.
- Article 74 of the Election Law on prohibited behavior during a campaign.
- Article 76 of the Election Law on the penalties for violations.
- Article 138 of the Election Law on the penalties for violations.

Comments

- Article 71 (5) states that the presentation of Election campaign material shall be done politely, and in an orderly and educative manner.
- Article 71 (6) states that campaign guidelines and schedule shall be set by the KPU after considering the proposals from election participants. The KPU can hence arrange matters so that those political parties or candidates which are in strong competition do not campaign in the same place and at the same time.
- Article 74 stipulates those behaviors that are prohibited throughout a campaign. The prohibition of any suggestions for and use of violence are stipulated in article 74 (4). Articles 76 and 138 stipulate the penalties for violations of article 74.

5. Does the legal framework for elections provide for procedures and mechanisms to deal with complaints and disputes during the campaign period in a timely manner?

Reference in Legislation

- Article 76 of the Election Law on types of violations and penalties.
- Article 77 of Election Law on the prohibition of money politics.
- Article 122 Election Law on the duties of the Election Supervisory Committee.
- Articles 127-130 of the Election Law on handling violations and resolution of election disputes.
- Article 138 of the Election Law on prison sentences and fines.

Comments

- Article 128 allows the Election Supervisory Committee 21 days to process any complaints received before making a recommendation for further processing. Because the campaign period is only three weeks, the stipulated time period above is then inadequate. The resolution of administrative violations and criminal actions by the courts could exceed the election campaign period.

6. Is there a prohibition on the use of government resources during the campaign period, other than those available to all parties and candidates?

Reference in Legislation

- Article 74 g of the Election Law on prohibition of the use of government facilities.
- Article 75 (2) of the Election law on the prohibition for state officials from political parties to use any facilities connected with their offices.

Comments

- Article 74 g prohibits any campaigning using government facilities.
- Article 75 (2) permits state officials who are from political parties to campaign, nevertheless it prohibits any use of the facilities that they have access to through their positions.
- The Election law does not clarify what is intended by 'facilities' but does specifically prohibit the use of any government resources.

1. The Election law regulates the behavior of political parties and candidates throughout the official campaign period. It clearly regulates the standards of behavior of Election participants in presenting their campaign material, which is to be done politely, in an orderly and educative manner (article 71 clause 5). It also nominates prohibited behaviors, such as insulting or inciting others, and threatening or engaging in violence. The freedom of political parties and candidates to campaign without the involvement of the government or political parties or other candidates is implicitly guaranteed by article 2. However, the Election Law does not stipulate whether a political party or candidate may campaign in the period between the official announcement of candidates' names (no later than 2 months before balloting) and the official election campaign (lasting 3 weeks and ending 3 days before balloting). So it is unclear whether campaigning is prohibited in this period or not, and if it is not, what rules would then govern campaigning during that period. It would be very difficult to enforce a total ban in that time. Campaign guidelines have still not been drawn up in a KPU Decree.
2. Article 71 (3) of the Election Law stipulates that a campaign shall take place over 3 weeks and must stop 3 days before polling day. Article 71 (6) states that the campaign guidelines and timetable are to be decided by the KPU. Specifically for the 2004 election, the timetable has been set via KPU Decree No. 100/2003 i.e. 11 March -1 April 2004.
3. The election campaign is required to stop 3 days before polling day. This exceeds the commonly stipulated standards of stopping a campaign only 1 or 2 days before polling day.
4. Article 71 (5) states that the presentation of Election campaign material shall be done politely, and in an orderly and educative manner. Article 71 (6) states that campaign guidelines and schedule shall be determined by the KPU, after considering proposals from election participants. The KPU may then organize matters so that those political parties or candidates which are in strong competition with one another do not campaign in the same place at the same time. Article 74 stipulates prohibited behaviors in election campaigns. The prohibition on incitements to and use of violence are regulated under Article 74 (4). Articles 76 and 138 stipulate the penalties for violations of article 74.
5. Article 128 gives the Election Supervisory Committee 21 days to process any complaints received before making a recommendation for the further handling of this. Because the campaign period is only three weeks, the time period stipulated by the Election Law is inadequate. The KPU's resolution of administrative violations and criminal actions through the courts will take more time again.
6. Article 74 (g) prohibits any campaigning using government facilities. Article 75 (2) permits state officials who are from political parties to campaign; nevertheless it prohibits any use of the facilities that they have access to through their positions. The Election law does not clarify what is intended by the term 'facilities' although it does specifically prohibit the use of any government resources.

9. Media Access and Freedom of Expression

The legal framework should ensure that all political parties and candidates have access to the media and are treated equitably by media owned or controlled by the state, and that no unreasonable limitations are placed on the right of political parties and candidates to free expression during election campaigns.

1. Does the legal framework for elections ensure that all political parties and candidates are provided access to the media and equitable treatment in media owned or controlled by the state?

Reference in Legislation

- Article 73 (1-2) of the Election Law on the media giving equal opportunities to election participants to present their material and advertising in election campaigns.

Comments

- The Election law states that the mass media shall give equal opportunities to election participants (that is, participating political parties for the DPR, DPRD and individual candidates for the DPD) to present their campaign material and election advertising. The Election law does not specifically differentiate between government and privately owned mass media.

2. Does the legal framework establish a formula for media access and equitable treatment that is fair, understandable and capable of objective application?

Reference in Legislation

- Article 73 (1-2) of the Election Law on the media giving equal opportunities to election participants to present their material and advertising in election campaigns.
- Article 73 (9) of the Election Law on KPU decrees.

Comments

- Articles 73 (1 and 2) that state the media shall give equal opportunities for election participants are very general.
- Clarification of the wording regarding access to the media and the way that it is to be applied objectively, are yet to be regulated in a KPU decree.
- It is not clear how this equal access criterion could be applied to the national media for the independent candidates for the DPD, considering their likely number.

3. Does the legal framework provide for free expression during election campaigns?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">• Article 71 (1-2) of the Election Law on organizing election campaigns and the public's freedom to attend campaign meetings.• Article 71 (5) of the Election Law on the means of presentation of campaign material.• Article 74 of the Election Law on prohibited behavior during a campaign.	<ul style="list-style-type: none">• There are no articles in the Election Law that specifically guarantee freedom of expression. However, its article 71 (1-2) states that campaigns may be undertaken by election participants and the public shall be free to attend. Article 74 of the Election law also stipulates actions prohibited during a campaign that would constitute a misuse of freedom of expression, or would violate the freedom of expression of other parties.

4. Does the legal framework provide that no party or candidate shall be discriminated against in terms of access to the media or, where paid advertising is permitted, in being overcharged for political advertising?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">• Article 73 (1-2) of the Election Law on the media giving equal opportunities to election participants to present their material and advertising in election campaigns.• Article 73 (9) of the Election Law on KPU decrees.	<ul style="list-style-type: none">• The Election Law guarantees equal opportunity (there may be no discrimination) but does not provide detailed stipulations on this. It is unknown, for example, whether differences in advertising rates or other “in kind” contribution by the media to particular political parties will be regulated or not. More detailed stipulations will be determined by the KPU.

5. Does the legal framework ensure that the ruling party does not get disproportionately large media coverage in the guise of news or editorial coverage?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none">• Article 73 (1-2) of the Election Law on the media giving equal opportunities to election participants to present their material and advertising in election campaigns.• Article 73 (9) of the Election Law on KPU decrees.	<ul style="list-style-type: none">• The Election Law only guarantees equal access for political parties in campaigning or advertising in the media. It does not regulate equal access in news coverage by these media. However, more detailed stipulations are to be determined by the KPU.

1. Article 73 (1) of the Election Law states that the electronic and print media shall give the same opportunity to all election participants to convey their theme and election campaign material. Article 73 (2) states that the electronic and print media are obliged to give equal opportunities to election participants for placing election advertising as part of their campaigns. In this, though, it does not specifically regulate on or differentiate between government-owned or controlled and privately owned media.
2. Articles 73 (1 and 2) state that election participants shall be given the same opportunity to present their campaign material in the electronic and print media and election advertising. However, this stipulation is still very general. Whether this wording for media access will be readily understood and can be applied objectively, will depend on how articles 73 (1 and 2) are put into effect by a later KPU Decree. The difficulty in applying this for the national media to the numerous individual DPD candidates must be noted.

3. There are no articles in the Election law that specifically guarantee freedom of expression. However, article 71 (1-2) of the Election law states that campaigns may be undertaken by election participants and the public shall be free to attend. Article 74 of the Election law also stipulates those actions that are prohibited throughout a campaign as these would be a misuse of the freedom of expression, or would violate the freedom of expression of other parties. Examples of prohibited actions given in article 74 include “insulting any person, religion, ethnicity, race, group, or other candidate and/or election participant”, “incitement and setting of individuals or groups of the public against one another”, and “threatening violence or suggesting the use of violence against anyone, a group of the public, and/or another election participant”.
4. The Election law guarantees equal opportunity (there may be no discrimination) but does not provide detailed stipulations on this. It is unknown whether differences in advertising rates or other such means of benefiting particular political parties are to be regulated or not. Further stipulations on this will be nominated through later regulation.
5. The Election law only guarantees equal access for political parties in campaigning or advertising in the media. It does not regulate on equality of access or extent of news coverage by the mass media for election participants, especially for the party that is in power. Nevertheless, this may still be stipulated later in a KPU Decree.

10. Campaign Finance and Expenditure

The legal framework should ensure that all political parties and candidates are equitably treated by legal provisions governing campaign finances and expenditures.

1. Does the legal framework ensure that all political parties and candidates are treated equitably through provisions governing campaign contributions and expenditures?

Reference in Legislation

- Articles 78 – 80 of the Election Law on regulation of sources, limits, audit, and reporting of campaign contributions.
- Article 9 j of the Political Party Law on campaign funds accounts, obligation to audit, and report.
- Articles 18 (1) and (2) of the Political Party Law.

Comments

- The legal framework does provide a fair basis for the collection of contributions by political parties and candidate DPD members, however, there is no stipulation on the use of these.
- There are no specific stipulations on the collection and use of funds for candidate members of the DPR and DPRD.
- The regulation of contributions to individual candidates, DPD members, is not differentiated from contributions to political parties as both are considered to be election participants.
- There are maximum limits on contributions originating from individuals as well as private sector legal entities (companies etc.).
- There is a requirement for all parties and individuals to submit a list of all single contributions over Rp 5 million, together with information on the identity of the donor.
- The reports on campaign funds must be audited and handed in to the KPU.

2. If the legal framework for elections allows public funding or the use of state resources for campaigns, does it regulate such use on the basis of equitable treatment for all political parties and candidates?

Reference in Legislation

- Article 17 (1) – (3) of the Political Party Law on state assistance, form of assistance, basis for determination of size of assistance.
- Article 80 (1) of the Election Law on prohibited sources of funding.

Comments

- The government, through the State budget, contributes to political parties. These contributions may take monetary or other forms. The elucidation of the article states that such contributions are designated for secretarial needs and/or the secretariat. The size, frequency and timing of state contributions are not yet fixed. All these will be determined in a new Government Regulation.
- Under the Election Law, the government, SOEs (State-Owned Enterprises) and local-government-owned businesses are all deemed prohibited sources of campaign funding.
- The KPU is tasked with regulating the requirements and procedures for channeling assistance.

3. Are limitations on funding of campaigns reasonable, clear and capable of objective application?

Reference in Legislation

- Article 78 (2) – (4) of Election Law on limits, contributions in the form of debt, and obligation to report the identities of contributors.

Comments

- The stipulation on limits of total contributions is reasonable, considering the magnitude of the funding needed by election participants for their campaign.
- The regulation does not clearly distinguish between monetary contributions and those in the form of loans.
- Application of an objective regulation on the limits for contributions will be difficult to apply considering that only for those of greater than Rp 5 million is the donor obliged to reveal their identity.

4. Does the legal framework for elections require periodic reporting on campaign contributions and expenditure?

Reference in Legislation

- Article 79 (1) – (3) Election Law on audit time limits, completion of audits, and obligation to report.
- Article 9 j of the Political Party Law on the obligation to keep special bookkeeping records on campaign funds and to report this to the KPU.

Comments

- Financial statements for campaign funds must be reported periodically, namely only once after an election.
- The Political Party Law requires the submission of periodic reports however, the time limit for handing them over is different from that stipulated in the Election Law.

5. Does the legal framework for elections provide for public access to reports on campaign contributions and expenditure?

Reference in Legislation

- Article 78 (5) of the Election Law on requirement to publish a report.
- Article 9 h of the Political Party Law on the obligation to prepare a list of contributions and for public access.

Comments

- The Central and Regional KPUs publish reports on contributions exceeding Rp 5 million in the mass media.
- Under the Political Party Law the book keeping of the list of contributors and size of their contributions is open to the public and the government.
- There is no specific stipulation on whether the reports on audit results on campaign funds received by the KPU can be accessed by the public, or must be published.

6. Does the legal framework for elections provide for adequate and effective enforcement of the political finance laws?

Reference in Legislation

- Article 80 (3) of the Election Law on the obligation to apply penalties for prohibited contributions that have already been received.
- Article 122 of the Election Law on the duties and powers of the Election Supervisory Committee.
- Article 138 (5) – (7) of the Election Law, on penalties for violation of limits, prohibited sources, and erroneous clarifications in reports.
- Articles 23 e, 24 (1)b of the Political Party Law on supervisors and form of supervision of campaign finances.

Comments

- Violations of campaign funds limits are considered criminal acts.
- The Election Supervisory Committee is tasked with receiving reports of violations, resolving those which are disputes, and for forwarding to other authorities those violations which are administrative and criminal.
- Law enforcement is still very dependent on other bodies such as police and the court system as the law enforcers. There are no stipulations on cases where law enforcers exceed the time limits for resolution of violations or do not enforce the law.
- The KPU is given the authority to make regulations needed for proper enforcement of the law over campaign finance violations.
- The KPU is only granted the authority to ask for the results of audits of political parties' financial statements.

7. Does the legal framework for elections provide for equality of freedom to raise private funds without unreasonable limitations?

Reference in Legislation

- Article 78 (1) b on the Election Law on being allowed to accept non-binding private sector contributions.
- Article 78 (2) of the Election Law on maximum contribution limits.
- Article 78 (3) of the Election Law on loan limits.

Comments

- All stipulations on campaign funds in the Election Law fully concern contributions from the private sector which are non-binding.
- There are no special stipulations on the process of how the funds are to be gathered.
- There is no specific prohibition on any political party collecting contributions, so long as these are within the permitted limits.

1. The legislative framework provides for more or less equal opportunities for election participants. However there is no stipulation or regulation on the use of these funds or the limits on the funds they can collect. . The Election Law also does not stipulate on the collection or the use of campaign funds for individual candidates from parties included on their party's candidate list, specifically those seeking membership of the DPR and DPRD. Any political party may obtain funds from its members, including those who have become DPR, DPRD, or DPD candidates. Non-binding contributions may also be accepted by political parties, both from individuals as well as private sector legal entities (companies etc.). Contributions may be in the form of money, goods, or services which may be valued in monetary terms. Contributions from individuals may not exceed Rp 100 million, and from private sector legal entities may not exceed Rp 750 million. The Political Party Law stipulates the contributions which may be accepted by political parties each year from individuals may not be more than Rp 200 million, whilst from a business or private legal entity may not be more than Rp 800 million. All contributions received that exceed Rp 5 million are required to be reported to the local KPU. Such a report must cover the form and size of the contribution together with the full identity of the donor. The KPU is then required to announce these to the public at large via the mass media, though no time limit for reporting or publicizing is specified. All reports on campaign funds must be audited and handed in to the KPU. There is no specific requirement that these audit reports be made public.
2. The legal framework prohibits the government, SOEs, and local-government-owned businesses from being campaign funding sources for election participants. No state funds may be accepted for campaigning. Other funds that may not be accepted for campaigning include those that originate from foreign parties and donors whose identity is unclear. While political parties may accept state budget assistance provided under the Political Party Law, the Election Law prohibits contributions from the government being used for campaigning.
3. The limits on contributions to campaign funds, both from individuals as well as private sector legal entities as above, in total are reasonable. The need for political campaign funds is very great. A lower limit for contributions to campaign funds would "tempt" political parties more to carry out violations of the limits on collection of campaign funds. The limitation on contributions to an individual's campaign funds under the Election Law is now 6 times larger than under the previous Election Law. In turn, the limit on the maximum contribution from private sector legal entities is now 5 times larger. It is not clearly stipulated whether a donor who provides both a donation and extends credit is limited to the total of the two being Rp 100 million or whether in fact it could be twice that, Rp 200 million. The stipulated limits to contributions also cannot be applied objectively, remembering that a single donor may give up to a limit of Rp 100 million or Rp 750 million, while at the same time channeling more donations through other persons or entities. Only the full identities of donors who give more than Rp 5 million must be recorded and reported.
4. Both the Election Law and Political Party Law clearly state that political parties and election participants must provide an audited report on their campaign funds to the KPU. However, only one report is required to be handed over, i.e. after the election is over. Both Laws also state a time limit for handing in the report on campaign funds. However, the time limits for handing in the report nominated in each Law are different. The Political Party Law gives a final time limit for handing in the report of 6 months after polling day (article 9 j), while the Election Law gives less, i.e. 97 days after polling day (article 79 (1) – (3)).
5. There is no specific regulation on public access to the overall audited statements of a political party's or candidate's revenue and expenditure of campaign funds, or even on the obligation to publish these. The reports are required to be given to the KPU. The Election Law only stipulates that the KPU must publish the reports of the lists of those who contribute more than Rp 5 million in the mass media. The Political Party Law also only stipulates that the report of the list of party donors and their donations (but not including expenditures) must be accessible to the public and government.
6. Violations of campaign funds contributions limits are stipulated to be criminal acts. The Election Supervisory Committee is tasked with receiving all reports of election violations. It has the authority to then resolve disputes, and to forward criminal violations to the authorized law enforcers, i.e. the police, to investigate. A time limit of

30 days, within which the police must complete their duties, is also stipulated. The time limits for resolution of election violations that applies to both the public prosecutor and public courts are also stipulated, i.e. 14 and 35 days respectively. However, the legal framework does not sufficiently guarantee the enforcement of the law in respect of election violations. There are no further stipulations governing what is to happen should these law enforcement agencies exceed the prescribed time limits for resolution of violations. No absolute time limit is stipulated for a decision on the resolution of a violation so it could well be obtained only long after the official determination of the stage of the election where the violation occurred. The KPU is also not given any specific authority to stipulate further, for instance on the requirements and procedures and time for reporting the list of contributors of donations exceeding Rp 5 million. Such regulations could be of assistance in making enforcement of the law more effective.

7. All regulation of campaign funds in the Election Law relates fully to contributions from the private sector that are non-binding. Political parties are also prohibited from obtaining any election funding from foreign parties, governments, local government owned businesses, and donors whose identities are unclear. There are no special stipulations on the amount or the manner in which campaign funds can be collected except on specifying limits on contributions.

11. Balloting

The legal framework should ensure that polling stations are accessible, that there is accurate recording of ballots and that the secrecy of the ballot is guaranteed.

1. Does the legal framework guarantee that votes are cast by secret ballot? Are there adequate prohibitions against “family voting”?

Reference in Legislation

- Articles 2 and 88, clause 2 of the Election Law stipulate a basis of secrecy of voting.
- Article 85 ensures the secrecy of the ballot papers of physically disabled voters.
- Article 139 (8) stipulates the criminal penalties for anyone who advises others of how voters voted.
- Article 87 instructs the KPU to prepare voting procedures and requirements.
- Article 139 (4) of the Election Law stipulates the criminal penalties for anyone who votes more than once.

Comments

- The Election Law adequately provides for secrecy in voting and of ballot papers. More detailed regulation from the KPU is needed to ensure secrecy in voting and of ballot papers. These regulations have not yet been prepared.
- There is no specific regulation on “family” voting.

2. Does the legal framework for elections require that voters be adequately identified prior to receiving a ballot?

Reference in Legislation

- Not yet regulated.
- Article 87 of the Election Law instructs the KPU to draw up the requirements and procedures for casting and collecting votes.

Comments

- Regulation on voter identification will be prepared by the KPU in conformity with article 87 of the Election Law.

3. Does the legal framework contain sufficient provisions for the security of all ballots and voting materials before, during and after voting?

Reference in Legislation

- Article 44 clause 6 of the Election Law instructs the KPU to prepare procedures on securing ballot papers and other material.
- Article 140 (2) and (3) of the Election Law stipulates the criminal penalties for anyone who damages or causes the loss of ballot papers after balloting.

Comments

- Not yet regulated but is to be prepared by the KPU in conformity with the directive in article 44 clause 6 of the Election Law.

4. Does the legal framework provide alternative methods of voting for specific persons or special categories of person?

Reference in Legislation

- Article 85 (1) and (2) of the Election Law regulate the means of voting for voters who are faced with a physical impediment.
- Article 85 (3) instructs the KPU to draw up guidelines for providing assistance to voters with a physical disability.
- Article 95 (2) stipulates the method of voting for Indonesian citizens abroad.
- Article 58 (4) gives voters the opportunity to choose another TPS if forced to.

Comments

- The Election Law provides a dispensation for voters with physical disabilities to have the assistance of an officer or someone else in voting.
- Those who live overseas are permitted to lodge postal votes. Voters who wish to exercise their right to vote elsewhere if it is not possible for them to vote at their place of domicile may do so.
- The Election Law does not specifically stipulate voting requirements and procedures for Indonesians resident overseas, but article 87 instructs the KPU to prepare the requirements and procedures for voting and counting of ballots.

5. Does the legal framework contain sufficient safeguards to prevent fraudulent or double voting?

Reference in Legislation

- Article 92 prevents the possibility of double voting by physically marking those voters who have already voted.
- Article 137 of the Election Law regulates the prevention of dishonesty in voter registration.
- Article 139, in (3) and (4) stipulates the criminal penalties for anyone who impersonates someone else, or who votes more than once.
- Article 140 stipulates the criminal penalties for anyone who damages or causes the loss of the results of a ballot count.

Comments

- The prevention of dishonesty or double voting is regulated through article 92 of the Election Law that requires voters who have already voted to have marks placed on their bodies.
- Dishonesty in voter registration is countered through criminality provisions (article 137, clauses 1-7). Criminal charges may be lodged against anyone who impersonates someone else or votes more than once (article 139 clauses 3 and 4, as with those who damage or lose the results of counting of ballots (article 140).

6. Does the legal framework prevent a person from using an alternative method and the regular process to vote twice in the same election?

Reference in Legislation

- Reference as for No.5.

Comments

- There are no further stipulations in the Election Law that prevent someone from using either an alternative method or the normal voting process to vote more than once.

7. Does the legal framework prohibit the routine entry of police or other armed forces into polling stations except when they enter to vote or when they are specifically authorized by the person in charge of polling station to restore order?

Reference in Legislation

- Not regulated

Comments

- The legal framework does not specifically stipulate any prohibitions on military and police personnel entering a polling place.
- However, article 87 of the Election Law instructs the KPU to draw up the requirements and procedures for casting and collecting votes.

1. The Election Law stipulates secrecy in voting and of voters' ballot papers. Articles 2, 85, 88 clause 2, and article 139 clause 4 and clause 8 of the Election Law stipulate that the voting process shall be secret, and mentions specifically that consideration be taken so this does apply for physically disabled people. Nevertheless, further regulation through KPU Decrees is needed so that the stipulations in the Law can be realized in practice. The legal framework does not nominate any prohibitions on voting deputized to family members or others, but article 139, clauses 4 and 8 of the Election Law stipulate the criminal penalties, both for someone who votes more than once as well as for someone who advises another of a voter's choices. However, article 85, clause 1 of the Election Law makes it possible for a KPPS officer or someone else nominated by a voter to assist blind or physically disabled voters
2. The legal framework does not stipulate any requirement for voters to provide identification before receiving their ballot papers. However, Election Law Article 87 does instruct the KPU to prepare more detailed requirements and procedures on balloting and collecting ballots. The KPU's decree on this has yet to be issued.
3. Article 44 clause 6 of the Election Law requires the KPU to prepare procedures for the security of the printing, counting, storing, packing, and distribution of ballot papers. In support of this, article 140, clauses 2 and 3 stipulate the criminal penalties for anyone who damages or loses ballot papers after voting. The KPU's Decree connected with this has yet to be issued.
4. Article 85 clauses 1 and 2 of the Election Law stipulate the alternative methods of voting for voters who are blind and those who are physically disabled, while article 85 clause 3 instructs the KPU to regulate further on providing assistance to voters who have physical disabilities. Those voters who wish to exercise their right to vote elsewhere if it is not possible for them to vote at their place of domicile may do so. Article 87 of the Election Law instructs the KPU to draw up the requirements and procedures for casting and collecting votes. Article 95 clause 2 stipulates an alternative mechanism for casting votes by post for voters who reside overseas.
5. Article 92 of the Election Law stipulates that those voters who have already exercised their right to vote shall have certain marks placed on them, article 137 regulates dishonesty in voter registration, while article 140 clause 4 of the same Law stipulates the legal criminal penalties for whoever deliberately changes the result of a ballot count and/or official record and tabulation certificate of the result of a ballot count. The criminal penalties for anyone that votes more than once are also stipulated, i.e. in article 139 clause 4 of the same Law.
6. There are no additional stipulations that prevent someone using an alternative method to cast multiple votes.
7. The legal framework for elections does not stipulate any prohibitions on police and military personnel entering the polling place. The Election Law also does not stipulate the authority and responsibility of the police and armed forces in keeping order and ensuring security during an election as a preventive measure against the emergence of conflict and disorder during vote casting and counting. Article 87 of the Election Law only instructs the KPU to draw up the requirements and procedures for casting and collecting votes.

12. Counting and Tabulating votes

The legal framework should ensure that all votes are counted and tabulated accurately, equally, fairly and transparently.

1. Does the legal framework ensure that the entire process for counting and tabulating votes is conducted in the presence of representatives of parties and candidates as well as observers and media representatives?

Reference in Legislation

- Article 96 (4) and (7), article 97 (1), article 98 (1), article 99 (2), article 100 (2), and article 101 (3) of the Election Law all stipulate that vote counting shall be done in public.

Comments

- The Election Law stipulates that vote counting may be attended by election participants, both parties as well as individual candidates, who may instead be represented by a witness who has a mandate from the election participant, also by election supervisors, election observers, and members of the public.
- The Election Law does not specifically mention elements of the media, but there is a category “members of the public” that could cover the media within it.
- The statement “may attend” provides no compulsion for attendance by representatives, candidates or media.

2. Does the legal framework provide for independent verification of all hardware, software and other elements in the counting and tabulation processes where methods other than manual counting are used?

Reference in Legislation

- Article 103 of the Election Law instructs the KPU to prepare the procedures and requirements for vote counting.

Comments

- Vote counting is to be performed manually.
- The set of election laws does not yet regulate the obligation for independent verification by the public of the hardware and software used in the process of calculation and tabulation of votes.
- It is very important that electronic equipment, if used in counting or tabulating processes, is regulated on within the legal framework so the process can be seen to be open, transparent and the public can be assured that there is no computer-based manipulation.

3. Does the law require that all tabulations be available in a format that allows representatives of the parties and candidates and observers to track the vote count of each polling station all the way up, through intermediate levels to the final consolidated results?

Reference in Legislation

- Article 96 (11), article 97 (6), article 98 (6), article 99 (8), article 100 (9), and article 101 (9) of the Election Law stipulate on copies of the results of the ballot count for party representatives.

Comments

- The Election Law requires giving 1 (one) copy of the official reports and certificates of the tabulation of the results of vote counting to election participants' witnesses who attend. This mechanism is stipulated for all levels of vote counting.
- However there are no other mechanisms in the legal framework that would make it possible for all sides to carry out cross checks on the results of the vote count.

4. Does the law require that tabulations of results contain detailed information on results for all methods of voting other than where the secrecy of the ballot might be threatened?

Reference in Legislation

- Not yet regulated.
- Article 103 (1-3) of the Election Law instruct the KPU to prepare the requirements and procedures for vote casting and collecting votes, as well as the format of the tabulation and official report.

Comments

- Article 103 of the Election Law stipulates that the balloting procedures and those for counting votes and recapitulation or tabulation of the results of counting of ballots at all levels shall be determined by the KPU.

5. Does the law require public posting and publication in the print media of detailed results from the polling station level up to the central EMB?

Reference in Legislation

- Article 104 of the Election Law.

Comments

- The Election Law stipulates that the determination of the outcome of an election and the announcement of this shall be done nationally by the KPU.
- The opportunity for local election commissions to announce interim results at each of their levels has not yet been regulated.

6. Does the law clearly specify the processes for final certification of election results and notification to candidates, and the tenure of office for elected candidates?

Reference in Legislation

- Article 111 of the Election Law.

Comments

- The Election Law stipulates quite clearly the mechanism for the KPU to inform elected candidates and political parties of the outcome of the election.
- The term in office of elected candidates is regulated in a separate Law, namely the Law on Structure and Composition of the Houses (*Susduk*) which is still being discussed in the parliament.

7. Are all requirements and procedures for a recount of ballots clearly stated?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none"> • Election law article 115. • Article 117 stipulates that ballot recounts will be decided on by the PPK. 	<ul style="list-style-type: none"> • The Election Law stipulates detailed requirements and procedures for ballot paper recounts on the results of an election. If irregularities are found, ballot paper recounting can be ordered at TPS, PPS, and PPK levels. Above the PPK, rechecking is carried out from the certificate of the recapitulation of the result of the ballot paper counting.

8. Are all requirements and procedures for a new election clearly stated?

<i>Reference in Legislation</i>	<i>Comments</i>
<ul style="list-style-type: none"> • Articles 116 and 117 of the Election Law regulate on repeat voting. • Articles 118 and 119 regulate on supplementary and repeat elections. 	<ul style="list-style-type: none"> • The Election Law stipulates clearly the conditions and procedure which must be followed to carry out repeat voting at a TPS and a supplementary election and repeat election in one or more villages, sub-districts, regency/city, or province. On the same grounds, the President, at the suggestion of the KPU, may determine a postponement of the election nationally. • The determination of the need for a supplementary election and/or a repeat election shall be made by the National KPU and local KPU in conformity with the coverage of the area for which these are necessary.

1. Articles 96-101 of the Election Law stipulate that vote counting at all levels shall be attended by witnesses for election participants – both from parties as well as for individual candidates, election supervisors and monitors together with members of the public. The Election Law does not specifically state a requirement for the attendance of representatives from the mass media, but there is a category “the public”, which could also include the media as well as election supervisors and monitors.
2. The election legal framework does not yet stipulate the urgency for independent verification by the public of all the KPU’s non-manual technical preparations in the counting and tabulation of votes. The Election Law also does not stipulate who or which institution will undertake the independent verification of this. Nevertheless, article 103 of the Election Law requires the KPU to prepare requirements and procedures for balloting, counting of ballots, format of the official report, certificates of the outcome of the counting of ballots, and recapitulation certificates or tabulation of the results of ballot counting.
3. A number of other articles of the Election Law ensure that the results of counting of ballots can be tracked by representatives of parties, candidates, monitors, and even members of the public if they so wish. These articles require 1 (one) copy of the official report and certificate of the result of the tabulation of counting of ballots be given to witnesses for election participants who attend during the counting of ballots. Article 103 of the Election Law also instructs the KPU to draw up the requirements and procedures for balloting, counting of ballots, and tabulation of the results. Nevertheless there is still no other mechanism within the legal framework that makes it possible for many parties to carry out cross checks on the results of the ballot count at all levels.
4. Article 103 of the Election Law instructs the KPU to prepare the procedures and requirements for counting of votes, the format of tabulations and official reports on the outcome of the election. The KPU’s decree on this has yet to be issued.

5. Article 104 of the Election Law stipulates that the determination of the election outcome shall be made nationally by the KPU within 30 days at the latest after polling day. The Election Law does not stipulate any opportunity for local election commissions to announce the interim results of counting of ballots to the media for their respective levels.
6. Article 111 of the Election Law stipulates relatively clearly the mechanism the KPU is to use for informing candidates and political parties. The terms of office of the elected candidates are regulated separately through the Law on Composition and Structure of the Houses (*Susduk*) which is still being discussed in the parliament.
7. Articles 115 and 117 of the Election Law set out the requirements and procedures for re-counting the results of the election in great detail and allows this at all levels of vote counting if these do not comply with the principles of honesty, fairness and transparency. In turn, the election commission level above the PPK will carry out rechecking of the recapitulation certificate of the result of the vote counting at 1 (one) level below it. For instance, rechecking will be done by the provincial KPU of the recapitulation certificate of the result of vote counting at the KPU regency/city level.
8. The Election Law stipulates in sufficient detail the conditions and procedures for collection of repeat voting, and for supplementary and repeat elections. Articles 116 and 117 of the Election Law regulate on collection of re- votes at the TPS level and the authority of the PPK to decide on this. As well, articles 118 and 119 of the Election Law stipulate the situations for repeat or supplementary elections in one or several villages, or sub-districts, or regency/city, or province because of security disturbances, civil disorder, and natural disasters. The decision on a repeat election or a supplementary election shall be made at each KPU level for those 1 (one) level below it. On the same grounds, the President, on the suggestion of the central KPU, may determine a postponement of the election nationally.

13. Role of Representatives of The Parties and Candidates

As a necessary safeguard of the integrity and transparency of the election, the legal framework must contain a provision for representatives nominated by parties and candidates contesting the election to observe all voting processes. The rights and responsibilities of candidate and party representatives in polling stations should also be defined in the legal framework.

1. Does the legal framework provide for independent observation of the polling process, and of the counting of ballots, by the representatives of political parties and contesting candidates?

Reference in Legislation

- Article 90 (2) of the Election Law.
- Article 96 (4-9) of the Election Law.
- Article 97 (1-6) of the Election Law.
- Article 98 (1-6) of the Election Law.
- Article 99 (1-8) of the Election Law.
- Article 100 (excl. clause 8) of the Election Law.
- Article 101 of the Election law.

Comments

- The Election Law does not specifically regulate on independent observation by political parties' representatives or candidates. The presence of political parties' representatives and candidates, together with election supervisors, monitors, and the general public is acknowledged in those articles which regulate the stages of voting and counting.
- However, no specific provision is made in the law for candidates to be present at the count and recapitulation of count at all levels.

2. Does the legal framework facilitate observation of elections by providing for easy accreditation of such representatives, by way of provision of training manuals for the representatives of parties and candidates for polling and counting, and by imparting formal training?

Reference in Legislation

- The Election Law does not regulate on this (No provision).

Comments

- There is no article in the Election Law which facilitates election monitoring by providing guidance on training or providing official training.
- Under the Election Law, representatives of political parties and DPD candidates are not required to be accredited. They need only produce an authorization letter from their organization/candidate. Further requirements could be imposed in future by the KPU in its regulations on voting and counting.

3. Does the legal framework contain sufficient safeguards to ensure that the representatives of parties and candidates do not undertake active campaigning within the premises of the polling stations and within the prohibited limits around the polling stations?

Reference in Legislation

- Election Law Article 71 (3) on campaign schedule.

Comments

- The law on campaign schedule provides a general ban on campaigning anywhere from 3 days before voting day.

4. Does the legal framework provide a clear procedure for the representatives of parties and candidates to obtain relevant information to facilitate their observation of polling, or for challenging the identity of the voter? Does the legal framework provide for clear procedure for dealing with such challenges by the polling station chairperson?

Reference in Legislation

- Election Law Article 96 (8-9)
- Election Law Article 97 (3-4)
- Election Law Article 98 (3-4)
- Election Law Article 99 (5-6)
- Election Law Article 100 (5-6)
- Election Law Article 101 6-7)
- Election Law Article 102

Comments

- There is no provision in the law regarding party or candidate representatives obtaining relevant information to facilitate their observation of polling, or for challenging the identity of the voter. In addition, there is no explicit provision in the laws that party representatives can be present in the voting station during the voting – except to check the ballot box before voting. (article 90)

5. Does the legal framework provide for a code of conduct for the representatives of parties and candidates to ensure orderly conduct on polling day within polling stations and during the counting at the counting station (if it is separate from the polling station)?

Reference in Legislation

- The Election Law does not regulate on this (No provision).

Comments

- The Election Law does not stipulate any code of ethics for representatives of political parties or candidates to ensure their behavior is appropriate on polling day.

1. The Election Law does not regulate on independent observation by political party representatives and candidates in any specific articles. Their presence is usually mentioned jointly with that of the election supervisors, election monitors, and the public.
2. There is no article in the Election Law which facilitates election monitoring by candidates, political parties or their representatives providing guidance on training or providing official training.
3. Article 71 (3) on the period of campaigning provides for a general ban on any campaigning anywhere from 3 days before voting day. Further regulations may not be necessary.
4. There is no provision in the law for party or candidate representatives to obtain relevant information to facilitate their observation of polling, or for challenging the identity of the voter. In addition, there is no reference in the law for the representative to submit a complaint on the voting process. There are no explicit provisions in the law that provide for party representatives to be present in the voting station during voting – except to check the ballot box before voting.
5. There is no clause in the Election law stipulating the need for a code of ethics for representatives of parties and candidates to ensure their behavior is appropriate on polling day, and for the counting of ballots at the polling place.

14. Election Observers

To ensure transparency and to increase credibility, the legal framework should provide that election observers can observe all stages of election processes.

1. Does the legal framework allow accredited election observers to observe all election processes?

Reference in Legislation

- Article 135 (1) of the Election Law.
- Article 135 (4 c) of the Election Law.
- Article 136 (1) of the Election Law
- KPU Decree No. 104/2003.

Comments

- The Election Law states that election monitoring may be carried out by election monitors. It stipulates accreditation as a requirement to be met to become an election monitor. KPU regulations explicitly state that accredited observers may observe all stages of the election process.

2. Does the legal framework provide clear and objective criteria for the accreditation requirements for election observers as well as providing a well-defined role?

Reference in Legislation

- Article 135 (4 c) of the Election Law.
- Article 136 (4) of the Election Law.
- KPU decree No 104/2003.

Comments

- Article 136 (4) states that the requirements and procedures to become an election monitor and those for monitoring elections are determined by the KPU. This is contained in KPU Decree No 104/2003. However, the Election Law and KPU Decree No. 104 do not clarify to whom the accreditation is given. Is it the organization, its individual members, or both?

3. Does the legal framework provide clear criteria as to which governmental authority accredits election observers?

Reference in Legislation

- Article 135 (4 c) of the Election Law.

Comments

- The Election Law clearly states that that it is the KPU that is the institution which accredits election observers and monitors.

4. Does the legal framework provide clear criteria and time-frames for applying for election accreditation?

Reference in Legislation

- Article 135 (4 c) of the Election Law.
- Article 136 (4) of the Election Law.
- KPU decree No 104/2003, articles 4-5.

Comments

- The criteria to become a monitor are clearly stipulated.
- The time schedule for seeking accreditation is not regulated in KPU Decree No 104/2003.

5. Does the legal framework provide clear criteria for the activities of election observers and as to when and under what circumstances election observer status can be revoked?

Reference in Legislation

- Article 136 of the Election Law.
- KPU Decree No 104/2003, articles 6-9.

Comments

- The Election Law and KPU Decree No 104/2003 state the criteria for the activities of an election monitor and on when and in what circumstances their accreditation may be withdrawn. Nevertheless, there is a problem in that the Election Law stipulates only the violations by an election monitoring organization and not those by an individual member of that organization.

6. Does the legal framework strike a balance between the activities of election observers and the orderly administration of elections?

Reference in Legislation

- Article 136 (2) of the Election Law.
- KPU Decree No 104/2003, Article 6-9.

Comments

- The Election Law and KPU Decision No. 104/2003 together stipulate the rights and obligations of election monitors, both domestic as well as those from overseas.

7. Are there any legal requirements that could be too onerous for election observers and serve to hinder legitimate observation?

Reference in Legislation

- Article 135 of the Election Law.
- Article 136 of the Election Law.
- KPU Decree No 104/2003.

Comments

- In essence, there are no articles that impede and obstruct valid monitoring. Nevertheless, article 8 (j) of the KPU Decree has the potential to make monitoring difficult because any statement by an election monitor considered to disadvantage a party or candidate may be used to accuse that monitor of being partisan. The consequence of the proof of that accusation is the withdrawal of the right to monitor an election.

1. Articles 135 (1) and 136 (1) of the Election Law permit election monitoring to be carried out by election monitors. Article 135 (4) c of the same law stipulates that all monitors shall be accredited. The requirements and procedures for accreditation are stipulated in KPU Decree No. 104/2003.
2. Article 136 (4) of the Election Law states that the requirements and procedures to become election monitors and the requirements and procedures for monitoring elections are determined by the KPU. The detailed stipulations are given in KPU Decree No. 104/2003. However, neither this Law nor the KPU Decree explicitly clarifies to whom this accreditation is given, the organization or the individual members.
3. The Election Law clearly states that the KPU gives accreditation.
4. The Election Law and KPU Decree No. 104 provide clear criteria for election monitors to submit a request for accreditation. However, neither stipulates a time limit for submissions for this accreditation.
5. Articles 135 (1) and 136 (1) of the Election Law, together with KPU decree No. 104/2003, articles 6-8, set out the criteria for election monitoring activities. Article 136 (2-4) of the Election Law and KPU Decree No. 104 article 9 stipulate under what circumstances an election monitor's accreditation may be withdrawn.
6. The Election Law and KPU Decree No. 104/2003 stipulate monitors' rights (article 6), obligations (article 7), and prohibitions (article 8), together with a code of ethics for election monitors (article 10). These four areas should lead to a balance between election monitors' activities and having an orderly election. Article 6 states, among other things, that election monitors have the right to "closely observe and collect information on the organization and running of the election from the initial through to the final stages." An example of the balance referred to above is article 7 that balances the abovementioned rights with the obligation of monitors to "carry out their monitoring roles without taking sides and by remaining objective." Another example is article 8 which rounds out the rights and obligations with a sentence that reads: "election monitors are prohibited from monitoring in such a way that it interferes with the running of the election". Article 10 states that the "code of ethics of election monitors attached forms an integral part of this Decree".
7. In essence, there are no articles that excessively impede and could obstruct valid monitoring. Nevertheless, KPU Decree No. 104 article 8 (j), which states that election monitors are prohibited from "making any announcements or statements that take a certain side on the result of an election," has the potential to create difficulties for election monitors because any statement by a monitor considered to damage a political party or candidate may be used by the political parties or candidates affected to accuse that monitor of being partisan. The consequence of proof of the accusation is the withdrawal of election monitoring rights.

15. Compliance With and Enforcement of Electoral Law

The legal framework should provide effective mechanisms and remedies for compliance with the law and the enforcement of electoral rights, defining penalties for specific electoral offences.

1. Does the legal framework provide effective mechanisms and remedies for compliance with the law for the enforcement of electoral rights?

Reference in Legislation

- Articles 120 (1), 127 – 133 of the Election Law on the Election Supervisory Committee, complaints process, handling, resolution of disputes and election violations.
- Article 137 (2) and (5), and article 139 (1) and (2) of the Election Law on the penalties for doing away with or interfering with a person's right to register as a voter and the right to vote.
- Election Law article 7 (4) and article 12 (2), on the finality of a determination on election participants by the KPU.

Comments

- In general, the Election Law adequately stipulates the process for complaints and subsequent law enforcement in dealing with election disputes and violations. The election supervisory committee accepts complaints and begins the process of resolving violations before handing these over to the KPU and other law enforcement institutions.
- There are specific penalties for anyone who stops another from registering as a voter, takes away their right to vote, or to vote in accordance with their own wishes.
- There is no stipulation of penalties for causing the loss of the right to be chosen as an election participant. Several of the KPU's decisions in this area are considered final. There are no stipulations on any opportunity to seek redress against these decisions.

2. Does the legal framework clearly state who can file complaints for election law violations and the process for filing complaints?

Reference in Legislation

- Article 127 (2) of the Election Law on those reporting violations.
- KPU Decree No. 104 article 6a on the right to report violations.
- Articles 127 (3) and (4) of the Election Law on information about reported violations, to whom the report is to be given, together with the time limit for reporting.

Comments

- The legislation explicitly nominates those who may report election violations. They are: citizens with the right to vote, election monitors, and election participants.
- The information which must be reported in connection with the violations is also stipulated, as is the reporting process.
- The procedures for reporting will be specified in more detail by the election supervisory committee.

3. Does the legal framework provide for the right to appeal an election management body decision to a court of law with authority to review and exercise final jurisdiction in the matter?

Reference in Legislation

- Article 133 (3) of the Election Law on appeals court.
- Article 7 (4) and article 12 (2) of the Election Law, on the KPU's determination of election participants being final.
- Article 24C (1) of the Constitution on duties of the Constitutional Court.
- Article 134 of the Election Law on duties of the Constitutional Court in differences on the outcome of an election.

Comments

- There are no stipulations on how to contest or appeal against a KPU decision. Several clauses even state that the KPU's decisions are final.
- The only stipulations on appeals are for decisions of a state court on those violations which carry a prison sentence of more than 18 months.
- One of the duties of the Constitutional Court is to decide on differences over the outcome of an election.
- Those who may lodge a claim over a KPU decision on an election outcome still have not been stipulated. This will be spelled out in the proposed Constitutional Court Law which has just begun to be discussed in the DPR.

4. Does the legal framework provide for timely deadlines for filing, considering and determining remedies for a complaint?

Reference in Legislation

- Article 127 (4) of the Election Law on final time limit on when a report can be given to the Election Supervisory Committee.
- Article 128 (2) and (3), article 129 (3), article 131 (2) – (4), article 133 (2) – (4) of the Election Law on the time limit for conveying and resolution of violations at each stage.
- Article 24C (1) of the Constitution and Transitional Regulation Article III, on the role of the Constitutional Court in elections.
- Article 134 of the Election Law, on resolution of differences on the outcome of an election.

Comments

- The Election Law regulates on time limits for reporting, resolution and decision making at every level in disputes and election violations.
- Nevertheless, what happens with those violations that are not resolved within the given time limits or are not acted on is yet to be stipulated.

1. The Election Law does stipulate the reporting mechanism for and means of resolution of election violations. The effectiveness of these regulations is yet to be tested in an election. The Election Supervisory Committee has been formed to resolve any election violations which occur, and then to uphold the law. All reports of violations are to be taken to the Election Supervisory Committee. Election disputes will be resolved by the Election Supervisory Committee itself, while those which are administrative will be forwarded to the KPU and the criminal ones to the police. Specific stipulations and penalties are provided to guarantee individual's right to vote, both during registration as well as during balloting, including those for disabled voters who need someone to assist them. The Election Law does not stipulate that election participants may challenge the decision to keep their right to stand for election. Some decisions of the KPU, as stipulated in the election law cannot be challenged, specifically those determining election participants.
2. Article 127 (2) of the Election Law explicitly states who may lodge complaints on election violations, namely citizens with the right to vote, election monitors and participants. The complaint process is also stipulated. The one making the complaint may do so in written form or orally to their local election supervisor. The Election

Supervisory Committee exists at the central (national) level, and at the provincial, regency or city, and sub-district (*Kecamatan*) levels (article 120 (1)). In reporting violations, the one reporting must provide the following information: the name and address of the one reporting it, time and place of the incident; the name and address of the violator, the names and addresses of witnesses, and a description of what happened (article 120 (3)). The Election Supervisory Committee is tasked with drawing up regulations in more detail on the requirements and procedures for reporting.

3. There is no specific and explicit regulation in the Election Law on how to contest or appeal a KPU decision. Some KPU decisions are even explicitly stated to be final (article 7 (2) and article 12 (2)). Apart from a KPU decision on an election result at the national level, other challenges over an election result may be submitted to the Constitutional Court. However, the procedures for lodging a challenge and who has the right to challenge are not stipulated at all. The Constitutional Court has also still not been formed. The procedures to appeal the outcome of an election and the formation of the Constitutional Court will both be stipulated in the Constitutional Court Law which is shortly to be discussed in the DPR. Appeal against any decisions of the KPU which are believed to contain violations may of course be sought through the mechanism of the Election Supervisory Committee. However, if these violations are categorized as administrative ones by the Election Supervisory Committee, then the resolution of these will be returned to the KPU itself. This could result in a situation where the KPU, which is being charged with a violation, is also the institution which is given authority by the Law to take decisions and issue penalties on these same violations.
4. The Election Law stipulates the time limits in every stage of the law enforcement process for election violations. Violations are to be reported to the Election Supervisory Committee no later than 7 days after they occur. The Election Supervisory Committee is required to make a decision no later than 14 days after a report is received. It is required to resolve all disputes within 14 days at the latest after the parties in dispute are confronted with each other. The Election Supervisory Committee is given a limit of 21 days in total after a violation occurs for a decision at its level; but several stages of the election may have already finished by then, for instance, the campaign. In other words, a certain stage of the election may be over before the Election Supervisory Committee has made a decision on a violation report. As a result, law enforcement becomes more difficult. Furthermore, the police's investigation of election-related criminal violations must be completed within 30 days after receiving a matter for processing from the Election Supervisory Committee. The Attorney General's office, as public prosecutor, is required to have handed over the results of its work to the courts within 14 days at the outside after it receives the file on the matter from the police. Finally, a court must have already made a decision on any case involving a maximum sentence of less than 18 months within 21 days at the outside. The court's decision is final, there is no appeal. For violations for which the maximum sentence is 18 months imprisonment or more, appeals may be lodged only with the High Court. An appeal hearing in the High Court must be finalized within 14 days at the latest. There is no stipulation in the Election Law which addresses the question of what will happen if the abovementioned law enforcement agencies exceed the given time limits, or if the duty of law enforcement is not completely carried out within the time stipulated.

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