

## **CHAPTER FOUR**

### **FINDING AND ANALYSIS**

#### **A. The Means to Guarantee Independence and Integrity of the General Election Commissioners**

##### **1. The Requirements of Being the General Election Commissioners**

The General Election commissioners at national level consist of 7 members, at Provincial level consist of 5 to 7 members, while at Regency/Municipal level consist of 3 to 5 members. The membership period of the General Election Commission at every level shall be 5 (five) years and after that can be re-elected only for one period.<sup>39</sup> The requirements to be a commissioner of General Election Commission (KPU) at national/provincial/regency/municipal are regulated in Article 21 of Law Number 7 of 2017 on the General Election and in Article 5 of General Election Commission Regulation Number 7 of 2018 on the Selection of Provincial General Election Commission and Regency/Municipality General Election Commission Members. Furthermore, the Article 22 E of 1945 Constitution requires, “The general election is organized by a general election commission which is national, permanent, and independent.”<sup>40</sup> The detail requirements are mentioned in

<sup>39</sup> Article 10 of Law Number 7 of 2017 on General Election.

<sup>40</sup> Art. 22 E of 1945 Constitution.

the Article 21 of Law Number 7 of 2017 on the General Election, as follows:<sup>41</sup>

- a. A citizen of the Republic of Indonesia;
- b. At the registration, the age has been at least 40 (forty) years old for the candidate members of General Election Commission of Republic of Indonesia, and the minimum age is 35 (thirty-five) years old for the candidate members of Provincial General Election Commission and at least 30 (thirty) years old for the Regency/Municipality General Election Commission;
- c. Loyal to Pancasila as the fundamental principle of state, the 1945 Constitution, and the ideals of the Proclamation of August 17<sup>th</sup> 1945;
- d. Having integrity, strong personality, honest, and fair;
- e. Having knowledge and expertise related to the enforcement of election;
- f. The lowest education is bachelor degree (S1) for the candidate member of KPU of Republic of Indonesia and Provincial KPU, also the lowest education is High School or the same level for the candidate members of Regency/Municipality KPU;
- g. Domiciled in the territory of Indonesia for the members of KPU and in the territory of Province concerned for the member of Provincial KPU, as well as in the Regency/Municipality for the members of Regency/Municipality KPU as evidenced by the Identity Card (KTP);
- h. Being able in physical, spiritual and free from narcotics abuse;
- i. Resign from the membership of political party at least 5 (five) years prior to the registration as a candidate;
- j. Resign from the political office, position in government and State-Owned Enterprises (BUMN)/Regional Owned Enterprises (BUMD) when registering as a candidate;

41 Arti. 21 of Law Number 7 of 2017 on the General Election.

- k. Willing to resign from social organization which is incorporate and un incorporate if elected as the member of –KPU, Provincial KPU, and Regency/Municipality KPU;
- l. –Has never been sentenced to imprisonment based on court decision that has obtained permanent legal force because committing a crime which is punishable by imprisonment for 5 (five) years or more;
- m. Willing to work full time;
- n. Willing not to occupy the political office, position in government and State-Owned Enterprises (BUMN) / Regional Owned Enterprises (BUMD) during the term of membership if she/he was elected;

## **2. The Selection Process of Commissioner**

To appoint the member of KPU, the President forms the selection team, as mentioned in the Article 22 of General Election Law. The President establishes the membership of a selection team which consists of at most 11 (eleven) persons by taking note of women representation of at least 30 %. The selection team has a duty to assist the President to determine the candidate member of KPU which will be proposed to the House of Representative (hereinafter is referred to as DPR) that consist of 3 government representatives, 4 of academician element and 4 of society element.<sup>42</sup>

There are some requirements of being selection team, among others:

- a. Has a reputation and good track record;
- b. Has a credibility and integrity;

<sup>42</sup> Article 22 of Law No.7 of 2017 on General Election.

- c. Understand general election issues;
- d. Has the ability in conducting recruitment and selection;
- e. Not in office as general election organizer;
- f. The lowest education is bachelor degree (S1)
- g. The minimum age is 40 (forty) years old;
- h. Prohibited to nominate as the candidate of General Election Commission (KPU) commissioner.

The selection team- implements its duties openly by involving the society, and then the selection team is assisted by the institution which is competent in their field. In selecting- the member of KPU-, the selection team run several stages of activities, they are:<sup>43</sup>

- a. announcing the registration of candidate of KPU in the mass media and national electronic mass media;
- b. receiving the registration of candidate of KPU;
- c. conducting the observation of the administration of candidate of KPU;
- d. announcing the result of administration of candidate of KPU;
- e. conducting the written selection with the main material is regarding to general election;
- f. conducting Medical Test;
- g. conducting a series of psychology test;
- h. announcing the name of candidate who passed the written selection, medical test, and psychology test to get the society responses;
- i. conducting the interview which material is the implementation of general election and conducting clarification for society responses;

<sup>43</sup> Article 23 of Law NO. 7 of 2017 on General Election.

- j. determining the 14 (fourteen) names of candidate of KPU in the plenary meeting; and
- k. delivering the 14 (fourteen) names of candidate member of KPU to the President. Then, the selection team report every single stage of selection to the DPR.

After the selection team deliver the 14 (fourteen) names of candidate of KPU to the President, the President proposed 14 candidate names or twice amounts of KPU member to the DPR, the DPR selected the member candidate of KPU based on fit and proper test. The DPR determined 7 (seven) of the highest ranks of candidate member of KPU from 14 (fourteen) selected candidate member of KPU who were proposed by the President.<sup>44</sup>

Meanwhile, for selection of the members of Provincial KPU and members of KPU at Regency/Municipality level, KPU will form the selection team which consists of 5 fully integrated members representing the elements of academician, professional, and society. These selection teams work openly with involvement of the society. The selection teams shall submit the result of selection (Provincial/Regency/Municipal KPU candidates two times of the required posts) to KPU to be finalized by the KPU through fit and proper test.

<sup>44</sup> Article 25 of law No. 7 of 2017 on General Election.

### **3. The Supervision**

#### **a. The Supervision by the Election Supervisory Board (Bawaslu)**

The supervision becomes one of the most important steps in determining the successful of general election. Therefore, the Election Supervisory Board (hereinafter is referred to as Bawaslu) has important role in maintaining the general election to be held by direct democracy, general, free, confidential, honest and fair in accordance with Laws and regulations.<sup>45</sup> Before the enactment of the Law No 7 of 2017 on General Election, the duties, functions and authorities of Bawaslu were limited. Among others, the structure of Bawaslu in the Regency/Municipality level is not permanent (adhoc); the authority to resolve the general election dispute, handling the general election violations, and the enforcement towards general election violations does not end in the Bawaslu and the decision of Bawaslu is not final and binding.<sup>46</sup>

Through enactment of the new general election law, the Bawaslu has a lot of roles in making effective supervision of general election, dispute resolution, handling, violation and offence prosecution to

<sup>45</sup> Ramlan Surbakti dan Hari Fitrianto, “Transformasi Bawaslu dan Partisipasi Masyarakat dalam Pengawasan Pemilu”, *Kemitraan bagi Pembaruan Tata Pemerintahan*, 2015, p.7.

<sup>46</sup> See Maharddhika, 2017, “Rezim Penegakan Hukum Pemilu di Tangan Bawaslu yang Makin Kuat”, available at <http://rumahpemilu.org/rezim-penegakan-hukum-pemilu-di-tangan-bawaslu-yang-makin-kuat/> , viewed on February 4<sup>th</sup>, 2018, at 10.22 a.m.

ensure the implementation of general elections which are free from fraud, and conflict of interest, fair, clean and democratic.<sup>47</sup>

Regarding the supervision authorities, Bawaslu has authorities on the general election process which are mentioned in the Law Number 7 of 2017 on General Election, as follows:<sup>48</sup>

1. The planning and determination of general election stages schedule;
2. The planning of logistics procurement by KPU;
3. The Socialization of General Election Enforcement;
4. The implementation of other preparations in the implementation of

General Elections in accordance with the provision of legislations.

5. The supervision on the implementation of General Election stages.
6. The supervision on the neutrality of State Civil Apparatus (ASN);
7. The supervision on the implementation of verdict/decision;
8. The supervision on the implementation of KPU regulation.

Then, the Article 95 of general election law mentions the other

authorities of Bawaslu among others:<sup>49</sup>

1. Examine, review, and decide the violation of general election administration;
2. Examine, review, and decide the violation of money politics;
3. Examine, review, mediate or adjudicate and decide the general election dispute resolution.

<sup>47</sup> *Ibid.*

<sup>48</sup> Arti. 93 of Law Number 7 of 2017 on General Election.

<sup>49</sup> Art. 95 of Law No.7 of 2017 on General Election.

**b. The Supervision by the Election Organizers Ethics Council (DKPP)**

The other institution provided to supervise the KPU commissioners is The Election Organizers Ethics Council (hereinafter is referred to as *DKPP*). *DKPP* is an institution which has a duty to uphold the integrity and credibility of the general election organizers. The *DKPP* has an aim to ensure that the honor of general election organizer is maintained.<sup>50</sup> As the general election organizer, *DKPP* has several duties which are governed by the General Election Law:<sup>51</sup>

1. Receiving the complaints and/or reports of alleged violations of code of ethics conducted by the general election organizers; and
  2. Conducting investigations and verifications, also examination of complaints and/or reports alleged reports a violation of the code of ethics conducted by the general elections.
- DKPP* has the authorities to:
1. Summon the general election organizers which are suspected of violating the code of ethics to give explanation and defense;
  2. Summon the complainant, witness, and/or other parties concerned to be questioned, including to be asked for documents or other evidences;
  3. Impose the sanctions on the general election organizers which proven to violate the code of ethics; and
  4. Decide the code of ethics violations.

50 Arif Syarwani, "Majalah Dialetika Untuk Kemandirian, Integritas dan Kredibilitas Penyelenggara Pemilu", Vol. 1 No. 1, 2018, p.4.

51 Art.159 of Law No.7 of 2017 on General Election.



### **c. The Supervision by the Political Parties/General Election**

#### **Participants**

Regarding the supervision of general election by the political parties regulated in the general election law, it is mentioned that:<sup>52</sup>

1. The implementation of voting is witnessed by the general election participant witnesses;
2. The monitoring of voting is implemented by the general election monitors which are accredited by Bawaslu, Provincial Bawaslu, and Regency/Municipality Bawaslu;
3. The witness must submit the written mandate from pair of candidate/campaign team, political party of general election participants, or the candidate of DPD to KPPS;
4. The witness is trained by Bawaslu.

### **d. The Supervision by Press/Mass Media**

There are four political powers in the democracy, such as Executive, Legislative, Judiciary and Press/Media. The Chief Editorial Board of Jawa Pos states that the press as a media of information should inform the general election background, purpose and the aim of general election, the principle of general election, the general election stages, general election rule, the implementation of general election, general election result and the sanctions of general election violation.<sup>53</sup> Regarding the role of

52 Art.351 of Law Number 7 of 2017 on General Election.

53 See Irwan, "Peran dan Fungsi Pers dalam Pengawasan Pilkada", <http://bawaslu.go.id/id/berita/peran-dan-fungsi-pers-dalam-pengawasan-pilkada> viewed

supervision by the press, it is mentioned in the Chapter II Article 3 and 6 of Law Number 40 of 1999, among others:<sup>54</sup>

- 1) National Press has a function as information media, education, entertainment and social control;
- 2) Uphold the values of democracy, encourage the realization of legal supremacy, human rights and respect *Kebhinekaan* (heterogeneity);
- 3) Develop the public opinion based on the information which is exact, accurate and true;
- 4) Carry out the supervision, critic, correction, and advice towards the things related to public interest;
- 5) Struggle for justice and truth.

**e. The Supervision by Society**

The Supervision and monitoring of general election are a unity of control efforts on the process of general election enforcement, both have the same functions as an effort to create an honest and fair general elections. Topo Santoso states that supervisors and monitors both carry out the mission of general election enforcement that are honest and fair. The differences are general election monitors only work to monitor the implementation, while the general election supervisors have a wider duties and authorities to resolve the disputes and violations of general election. Therefore, the monitoring work is a form of society participation

on April 26<sup>th</sup>, 2018, at 2.11 p.m.

54 Law Number 40 of 1999 on Press

that should be reported and forwarded to election supervisory board

to be followed up.<sup>55</sup>

In the general election law, it is mentioned that the general election

monitors are:<sup>56</sup>

- 1) Incorporated community organization foundation (organisasi kemasyarakatan berbadan hukum yayasan) or incorporated association which are registered in the government or local government;
- 2) General election monitoring institution from foreign country;
- 3) Foreign election institutions; and
- 4) Representatives of sister city in Indonesia.

Furthermore, the monitors must fulfil the requirements as follows:

- 1) Independent;
- 2) Has clear source of funds;
- 3) Registered and has permit from Bawaslu, Provincial Bawaslu, or Regency/Municipality Bawaslu appropriate with the scope of monitoring area.

Before the new general election law, the accreditation of monitor is

issued by KPU, but now through the Law No 7 of 2017 the

accreditation is issued by Bawaslu.<sup>57</sup>

The society may conduct the supervision through participation in reporting all frauds and violations in the general election process.

In reporting fraud the society may report to the general election supervisory body (Bawaslu and DKPP) through complaint procedure. The complaint procedure can be accessed through the

55 Veri Junaidi, 2013, *Pelibatan dan Partisipasi Masyarakat dalam Pengawasan Pemilu*, Jakarta, Perkumpulan untuk Pemilu dan Demokrasi (Perludem) Berkerjasama dengan The Asia Foundation (TAF), p. 14.

56 Art.435 Law No.7 of 2017 on General Election.

57 Art .436 Law No. 7 of 2017 on General Election.

DKPP's website which is also regulated in the Article 458 of Law No 7 of 2017 on General Election. In the website of DKPP complaint procedure that can be done by the community is as follows:<sup>58</sup>

Complaint and/or Report of violations of the General Election

Organizer's ethics code may be submitted directly or indirectly.

1. Direct Complaint

Direct complaint to the DKPP: Reported is the member of KPU,

Bawaslu, Provincial KPU or KIP Aceh (*Independence Election*

*Commission Aceh*), Provincial Bawaslu, the member of Foreign

Election Committee or Foreign Election Supervisory.

Direct complaint to the Provincial Bawaslu: Reported is the

member of Regency/Municipality KPU or Regency/Municipality

KIP, Regency/Municipality Panwaslu, PPK, District Panwaslu,

PPS, Field Election Supervisor, KPPS.

2. Indirect Complaint (Non-Electronic Media/Electronic Media)

**Non-Electronic Media:** Before making a complaint, the

Complainant/Reporter may download the complaint form and send

by written mail to: **Dewan Kehormatan Penyelenggara Pemilu**

**(DKPP) Biro Administrasi DKPP - Bagian Pengaduan Jl. MH.**

**Thamrin No. 14, Jakarta Pusat.**

**Electronic Media:** The Complainant/Reporter may make a

complaint/reporting through electronic complaint media (e-

Complaint), the Complainant/Reporter are register and verify via

online to get username and password, the Complainant/Reporter

are login into the e-Complaint system to conduct

58 See <http://dkpp.go.id/index.php?a=panduan> viewed on March 27<sup>th</sup>, 2018, at 4.28.p.m.

complaint/reporting electronically.<sup>59</sup> Further information can be sent by e-mail to: [pengaduan@dkpp.go.id](mailto:pengaduan@dkpp.go.id).

In more detail, the complaint process is mentioned in the

Article 458 of Law No. 7 on General Election Law as follows:<sup>59</sup>

- 1) The complaint about the allegation of violation of code of conduct of general election organizer submitted in written form by general election Organizer, general election participants, campaign team, community and/or voter shall be equipped by the identity of the complainant to the DKPP;
- 2) The DKPP performs administrative verification and research on complaints. The DKPP shall deliver the first call to the -General Election Organizer 5 (five) days before conducting DKPP session;
- 3) If the general election organizer concerned does not meet the first call, the DKPP may submit -the second call 5 (five) days before conducting DKPP session;
- 4) If -the DKPP has made two calls and the general election organizer does not fulfill the call for no acceptable reasons, the DKPP may immediately discuss and determine the decision without the presence of general election concerned;
- 5) The general election organizer concerned must come alone and cannot be authorized to others;
- 6) The complainants and the general election organizers who are reported may present the witnesses in the DKPP session;
- 7) The complainant and the reported general election organizer put forward the reason of complaint or defense in front of DKPP session;

<sup>59</sup> Art.458 of Law No.7 of 2017 on General Election.

- 8) The witness and/or other related parties provide the information before the DKPP session, include to be asked for the documents or other evidences;
- 9) The DKPP determines the decision after conducting research and/or verification of the complaint, listen to the defense and testimony of the witnesses, and consider other evidences;
- 10) The decision of DKPP is in the forms of sanction or rehabilitation which is taken in the DKPP plenary meeting;
- 11) The sanctions may be written warning, temporary dismissal or permanent dismissal for the general election organizer;
- 12) The DKPP decision is final and binding;
- 13) The general election organizer must implement the DKPP decision. Meanwhile, the Article 454 of general election law adds that the reports of general election violations is the direct reports from the citizen of Republic of Indonesia which has the vote rights, the participants of general election, and general election monitor to the Bawaslu, Provincial Bawaslu, Regency/Municipality of Bawaslu, District Panwaslu, -village Panwaslu, foreign Panwaslu, and/or the supervisor of polling station (TPS) in each stages of general election stages. Then, the result of supervision shall be submitted no longer than 7 (seven) days since found the violations of general election.<sup>60</sup>

60 Art. 454 of Law No.7 of 2017 on General Election.

## **B. The Problem Faced in Ensuring the Independence and Integrity of General Election Commission**

### **1. The Requirements of Being the General Election Commission Commissioner**

The general election law should close the opportunity of political party members to being the commissioner of KPU. That is why in the Article 21 i of Law Number 7 of 2017 mentioned that the candidates must resign from the membership of political party for the minimum of 5 years.<sup>61</sup> According to Constitutional Court, the determination of grace period of five years is appropriate, because it coincides with the periodic of general election.<sup>62</sup> While, Mahfud Md states that the political party members cannot be the general election organizer unless they have been resigned for five years based on two reasons. First, through the Constitutional Court decision Number 81 of 2011, Constitutional Court (MK) wants to maintain the independence of general election organizer, either KPU or Bawaslu. Second, in order to our legal politic is consistent.<sup>63</sup> The other reason is KPU has had bad experience in 1999 due to the involvement of political party members in the institutional of

61 Article 21 i of Law Number 7 of 2017 on General Election.

62 R. Nazriyah, "Kemandirian Penyelenggara Pemilihan Umum (Kajian terhadap Putusan Mahkamah Konstitusi No. 81/PUU-IX/2011)", *Jurnal Hukum*, Vol. 18, 2011, p.124.

63 *Ibid.*

KPU. The involvement of political party members in the membership of election commission has happened in Indonesia in the 1999 general election where the general election commission consisted of 48 political representatives and 5 government representatives.<sup>64</sup> In 1999 general election there were many disputes which have appeared such as in the plenary meeting, the result of the election was not signed by the representatives of political parties. The result is only signed by the government representatives.<sup>65</sup>

While, at the vote counting stage, 27 political parties refused to sign the vote counting report on the argument that the general elections were not honest and fair. That 27 political parties were Partai Keadilan, Partai Nahdlatul Ummat (PNU), Partai Buruh Indonesia (PBI), Partai Demokrasi Indonesia (PDI), Partai Majelis Syuro Muslimin Indonesia (Masyumi), Partai Nasional Indonesia (PNI), Partai Nasional Indonesia Supeni, Partai Krisna, Partai KAMI , Partai Kasih Demokrasi (PKD), Partai Abul Yatama (PAY), Partai Musyawarah Kekeluargaan Gotong Royong (MKGR), Partai Indonesia Baru (PIB), Partai Solidaritas Uni Nasional Indonesia (SUNI), Partai Nasional Bangsa Indonesia

64 See Rakhmat Nur Hakim, 2017, "Politisi PAN: DPR Wajib Jaga Independensi dan Kemandirian KPU", available at <http://nasional.kompas.com/read/2017/03/28/12032081/politisi.pan.dpr.wajib.jaga.independensi.dan.kemandirian.kpu>, viewed on October 20<sup>th</sup>, 2017 at 3.22 p.m.

65 See Komisi Pemilihan Umum Republik Indonesia, 2008, "Pemilu 1999", available at <http://Kpu.go.id/index.php/pages/detail/2008/11/Pemilu-1999> viewed on March 29<sup>th</sup>, 2017 at 1.36 p.m.



(PNBI), Partai Uni Demokrasi Indonesia (PUDI), Partai Bela Negara (PBN), Partai Kebangsaan Merdeka (PKM), Partai Nasional Demokrat (PND), Partai Aliansi Demokrat Indonesia (PADI), Partai Rakyat Demokratik (PRD), Partai Pemuda Indonesia (PPI), Partai Islam Demokrat (PID), Partai Murba, Partai Solidaritas Pekerja Seluruh Indonesia (SPSI), Partai Ummat Muslimin Indonesia (PUMI), Partai Solidaritas Pekerja (PSP), Partai Rakyat Indonesia (PARI).<sup>66</sup>

Another problem occurred was the distribution of the remaining seats. The Islamic political parties did *stembus accord*<sup>67</sup> (vote merging), according to the calculation of Indonesian election committee (PPI) only get 40 out of 120 seats. On the other hand, 8 of Islamic political parties that make *stembus accord* claimed to get 53 seats from the remaining 120 seats.<sup>68</sup> With regard to that case, Prof. Miriam Budiarjo stated: “The election commission has been developed into a dispute arena among political parties which only fight for the interest of their parties or personalities. The

<sup>66</sup> See Komisi Pemilihan Umum Republik Indonesia, 2008, “Pemilu 1999”, available at <http://Kpu.go.id/index.php/pages/detail/2008/11/Pemilu-1999> viewed on March 29<sup>th</sup>, 2017 at 1.36 p.m.

<sup>67</sup>*Stembus Accord* is a cooperation or agreement between two or more political party in election to help each other by utilization the rest of vote which is not end up divided by the Election Number Divider (Bilangan Pembagi Pemilihan), where has a possibility that the total of votes which is obtained by the party can produce the additional seats.

<sup>68</sup> See Komisi Pemilihan Umum Republik Indonesia, 2008, “Pemilu 1999”, available at <http://Kpu.go.id/index.php/pages/detail/2008/11/Pemilu-1999> viewed on March 29<sup>th</sup>, 2017 at 1.36 p.m.

image of the politicians has reached to zero level, so the public opinion emerges that in upcoming general elections the general election commission should be composed of independent, free and impartial members.”<sup>69</sup>

It can be concluded that the political parties cannot be involved in the General Election Commission to guarantee the independence and integrity of General Election Commission and to create the honest and fair general election.

If we look at the case of Hamid Awaluddin (the former KPU commissioner), he was appointed by Susilo Bambang Yudhoyono (SBY) the former president in the period of 2004-2004 as the Ministry of Law and Human Rights while Hamid Awaluddin still taking an office as the commissioner of KPU.<sup>70</sup> Then, the leadership of SBY is the results of general election which is conducted by the KPU in the period of Hamid Awaluddin as the commissioner of KPU in the period of 2003-2008. So, it has caused a suspicion and speculation among society and political observer if there is closeness between Hamid Awaluddin with Susilo Bambang Yudhoyono and allegations of the non-independence of KPU.<sup>71</sup>

69 Winardi, “Menyoal Independensi dan Profesionalitas Komisi Pemilihan Umum Daerah dalam Penyelenggaraan Pemilu Kepala Daerah”, *Jurnal Konstitusi*, Vol. III, No. 2, November 2010, p.63.

70 Anonymous, 2004, “Jumlah Anggota KPU Kembali Berkurang”, available at <https://news.detik.com/berita/228710/jumlah-anggota-kpu-kembali-berkurang> viewed on December 23<sup>rd</sup>, 2017, at 02.06 p.m.

Accordingly, there needs to be prohibition for the commissioner either before taking an office, in office or after taking an office of KPU commissioner to occupying the public official especially which is related to the Executive branch in the grace period of 5 years. In order to avoid the affiliation between the commissioner and Executive branch.

## **2. The Selection Process of Commissioner**

With regard to the selection mechanism, the authority of DPR to elect the member of KPU through fit and proper test has caused the independence of KPU is doubtful due to the members of DPR representing the interests of their political parties. In this case a conflict of interests could happen if the members of KPU are elected by the DPR who are from political parties which will be the participant in the upcoming general election..<sup>72</sup> If so, it contradicts to the Article 22 E of 1945 Constitution which expect the general election shall be organized by a general election commission which is independent, it means free from any interference.<sup>73</sup>

71 Yuman Nur Rozak, 2010, “KPU: Independnesi dipertanyakan”, available at <http://kampus.okezone.com/read/2010/06/22/95/345480/independensi-yang-dipertanyakan> viewed on December 23<sup>rd</sup>, 2017, at 02.10 p.m.

72 Lusy Liany, “Kewenangan DPR dalam Seleksi Komisioner KPU”, *Jurnal Hukum*, Vol7 No.1, p.69.

73 Winardi, *Opcit*, p.66.

The mechanism of the selection of KPU membership with involvement of DPR shows the legislative heavy in the parliament which result the doubtfulness to the independence of KPU. As the statement of Jimly Asshiddiqie that the electoral system that prioritizes the interests of political elite which incidentally was involved in the general election Law making process it will lead to a dominant political power in decision making.<sup>74</sup> Accordingly, Saldi Isra recommends that to limit the intervention from another parties, the legislation should limit the authority of DPR to only give confirmation or approval to the choices of the selection team which has been elected by the president.<sup>75</sup> The restriction is needed to build a balance between the DPR and the President in filling the public officials. Since the power of President has limited by the necessity in establish the selection team. So, there is no centralization of power in the general election such as adagio of Lord Action “Power tends to corrupt, absolute power corrupts absolutely.”<sup>76</sup>

74 Jimly Asshiddiqie, 2013, *Menegakkan Etika Penyelenggara Pemilu*, Jakarta, PT RajaGrafindo Persada, p.1.

75 Lusy Liany, *Opcit.*

76 Admins, 2013, “Meluruskan Kuasa DPR”, available at <https://www.saldiisra.web.id/index.php/tulisan/artikel-koran/11-artikelkompas/239-meluruskan-kuasa-dpr.html> viewed on February 24<sup>th</sup>, 2018, at 10.32 a.m.

### **3. The Supervision**

#### **a. The Supervision by the Bawaslu**

In the Law Number 7 of 2017 on General Election, the authority of Election Supervisory Board (Bawaslu) has been expanded. In the previous Law, as supervisor the result of investigation by the Bawaslu are concluded as recommendation. The Bawaslu makes recommendation to the KPU, then the recommendation can be conducted or not by the KPU.<sup>77</sup>

Nowadays, Bawaslu has not only as a supervisor but also as a executor judge which can decide the case or can be called as judiciary institution which is the decision is final and binding.<sup>78</sup> The bawaslu no needs to make any recommendation, the Bawaslu can decide the case by itself without continue to the KPU instead the KPU must carry out the decision of Bawaslu.<sup>79</sup> Another striking authority is the authority of Bawaslu to deal with the money politics cases, previously the Bawaslu only gave recommendations and then continued the settlement at Gakkumdu. But now for general election participants who are proven to have committed money politics, based on Article 73 paragraph 2 of Law No. 10 of 2016 the Bawaslu is authorized to disqualify its candidacy in the

<sup>77</sup> Erwin Prima Rinaldo, "Penguatan Kelembagaan Pengawas Pemilu dalam Penyelenggaraan Pemilihan Kepala Daerah dan Wakil Kepala Daerah", *Jurnal Hukum*, Volume 10, 2016, p. 478.

<sup>78</sup> Art. 469 paragraph 1 of Law No. 7 of 2017 on General Election.

<sup>79</sup> Art. 14 letter j of Law No. 7 of 2017 on General Election.

Local Elections who are committed money politics.<sup>80</sup> Hence, Bawaslu expected may conduct firm action, effective, and be a fair in taking the decision.

However, these authorities still be a pros and cons among political observer. Didik Supriyanto in his interview said that the Bawaslu cannot has double function (supervisory and judiciary). It is because as the supervisor the Bawaslu has certain assesment which will influence the decision in the trial. Didik also recommends that if the Bawaslu still be judiciary institution it must release the supervisory function. Then the supervision may handed over to the society or the other institutions. Contrarily, if the Bawaslu still be supervisor it must release the judiciary function then it replaced with a special court such as General Election Court as long as it is simple and effective.<sup>81</sup>

Didik said that because he reflects to the political parties information system (sipol) case. Where there is a disagreement between KPU and Bawaslu in assessing sipol. Previously, based on the result of the political parties information system (sipol), the KPU dismiss the registration of 13 political parties for the 2019

**80** Art. 73 paragraph 2 of Law No. 10 of 2016 on The Stipulation of Government Regulation in the Replacement of Law No. 1 of 2014 on the Selection of Governor, Regent and Mayor into Law.

**81** Maharddhika, 2017, “Didik Supriyanto: Fungsi ganda Bawaslu Merisaukan”, available at <http://rumahpemilu.org/didik-supriyanto-fungsi-ganda-bawaslu-merisaukan/> viewed on February 24<sup>th</sup>, 2018, at 10.52 a.m.

legislative election due to the management and membership requirements are not complete.<sup>82</sup>

The provision about sipol was regulated in the General Election Regulation (PKPU) No. 11 of 2017 on the registration, verification, and determination of political parties participant in the 2019 General Election.<sup>83</sup> Meanwhile, the Bawaslu declared that sipol is contradicted to the Law No. 7 of 2017 on General Election, then the Bawaslu claimed that any results from sipol is invalid. Indirectly, the Bawaslu was reviewed the PKPU which is who has the right to review the PKPU is only Supreme Court.<sup>84</sup> Hence, the action of the Bawaslu has troubled.<sup>85</sup>

These authorities become challenge for Bawaslu to prove the role and existence of creating general elections with integrity.<sup>86</sup> However, general elections phenomena in various countries still show that general elections cannot be separated from various

82 Didik Supriyanto, 2018, “Putusan Bawaslu Tidak Mengejutkan, tetapi Merisaukan”, available at <https://nasional.kompas.com/read/2017/11/16/15424781/putusan-bawaslu-tidak-mengejutkan-tetapi-merisaukan?page=all> viewed on February 27<sup>th</sup>, 2018, at 12.19 p.m.

83 General Election Regulation No. 11 of 2017 on the registration, verification, and determination of political parties participant in the 2019 General Election.

84 Art. 76 paragraph 1 of Law No. 7 of 2017 on General Election.

85 Didik Supriyanto, Opcit.

86 Nanang Masaudi, 2017, “Problem dan Tantangan Bawaslu Pasca –UU Pemilu”, available at <http://rumahpemilu.org/problem-dan-tantangan-bawaslu-pasca-uu-pemilu/> viewed on February 27<sup>th</sup>, 2018, at 12.49 p.m.

violations and fraud. Therefore, Bawaslu is expected to be able to take an action against various general election violations committed by anyone, including general election organizer itself. Because if the integrity of the organizers are not good enough, they are unable to deal with the temptations from other parties. Like the bribery case that occurred in 2018 Local Election of Garut between KPU member of Garut Ade Sudrajat and the Chairman of Panwaslu Garut Heri Hasan Basri with the candidate success team of Soni-Usep, Didin Wahyudin.<sup>87</sup>

The Regent and vice Regent candidate of Garut Soni – Usep was declared did not qualify as candidate of 2018 Local Election of Garut due to the lack of support. Then, Didin Wahyudin as success team of Soni –Usep bribe Ade Sudrajat and Heri Hasan Basri to pass the candidate of Soni-Usep. Didin has proved that give the money for amount of 100 milion rupiahs and a car Daihatsu Sigras, with some evidences such as 12 sheets of money transfer from BCA Bank , 3 sheets of money transfer from BRI Bank, 2 pass books of BRI and BNI bank on behalf of Ade Sudrajat.<sup>88</sup>

<sup>87</sup> Julia Alazka, 2018, “Suap Pilkada Garut: Anggota KPU dan Panwaslu ditangkap, calon bupati dan wakil masih bebas”, available at <https://www.bbc.com/indonesia/indonesia-43194543> viewed on February 27th, 2018, at 1.25 p.m.

<sup>88</sup> Aminudin, 2018, “Begini Kronologi Kasus Suap Pilkada Gartut”, available at <https://pilkada.tempo.co/read/1064458/begini-kronologi-kasus-suap-pilkada-garut> viewed on February 27th, 2018, at 12.40 p.m.



The provision on prohibition of money politic for the candidates of Local Election is regulated on the Law No. 10 of 2016 on the Selection of Governor, Regent and Mayor . It is clearly mentioned in the Article 73 and 187 about the sanctions. The administration sanction to the candidates is in the form of cancellation as a candidate by the KPU based on the decision of Bawaslu. The provision also applies to all parties who deliberately commit unlawful act, promising or giving money or other materials as a reward for others to influence.<sup>89</sup> The Article 187 A clearly mentions about the criminal sanctions that the imprisonment at least 36months, maximum of 72 months and a fine of at least Rp. 200.000.000, a maximum of Rp. 1.000.000.000.<sup>90</sup>

Avowedly, the member of Bawaslu Rahmat Bagja said that the Local Election was not effective in preventing the money politics, he said that there are two obstacles in disclosure the money politics. The first obstacle is the Bawaslu has difficult to find the witnesses who are willing to uncover the existence of money politics. The second obstacle is the Bawaslu has difficulty due to the time

**89** Art. 73 paragraph 4 of Law No. 10 of 2016 on on The Stipulation of Government Regulation in the Replacement of Law No. 1 of 2014 on the Selection of Governor, Regent and Mayor into Law.

**90** Article 187 A of Law No. 10 of 2016 on on The Stipulation of Government Regulation in the Replacement of Law No. 1 of 2014 on the Selection of Governor, Regent and Mayor into Law.

constraints of investigation.<sup>91</sup> Based on Local election Law the Bawaslu must deliver the result of investigation to the public prosecutor no later than 14 working days since the report was received by the Bawaslu.<sup>92</sup>

Regarding to the authority of Bawaslu that given by the new election law is getting stonger, it does not avoid the possibility of conflict or violation. Therefore, the Bawaslu is expected can be more responsive and proactive in supervise and implement its authorities maximally. Then, as judiciary institution the Bawaslu is expected can increase the quality and competence of Human Resource of its members due to the wider authority. Moreover, to increase the public trust towards the performace of Bawaslu is by utilize the authority of Bawaslu as judiciary institution by acting decisively, give deterrent effect which can have an impact on prevention aspect.<sup>93</sup>

**b. The Supervision by the DKPP**

Ida Budhiati delivered in the socialization of Regulation No.. 2 of 2017 on the Ethics Code and guidelines for General Election

91 Andrian Pratama Taher, 2018, “Amunisi Anti-Politik Uang di Pilkada: Bawaslu dan Satgas Polri-KPK”, available at <https://amp.tirto.id/amunisi-anti-politik-uang-di-pilkada-bawaslu-dan-satgas-polri-kpk-cDWT> viewed on February 28<sup>th</sup>, 2018, at 10.12 a.m.

92 Article 146 paragraph 3 of Law No. 10 of 2016 on Local Election.

93 Nanang Masaudi, 2017, “Problem dan Tantangan Bawaslu Pasca –UU Pemilu”, available at <http://rumahpemilu.org/problem-dan-tantangan-bawaslu-pasca-uu-pemilu/> viewed on February 27<sup>th</sup>, 2018, at 12.49 p.m.

Organizer and Regulation No. 3 of 2017 on the Guidelines of Court Session for General Election Organizer. Related to the data that confirmed by the DKPP since 2012 till November 2017 the amount of reported has investigated is 3586 persons. Ida emphasized that the data may become reflection for the general election organizers due to still many societies that unsatisfied with the service of the organizers, then also Ida expected regarding to the tagline of “serve (melayani)” from the KPU then the complaint in the DKPP become zero.<sup>94</sup>

Ida explained that the challenges and obstacles the 2018 Local Elections and 2019 General Election for the organizers is the regulation itself. The law has just been enacted but two months later has entered the Local Election and General Election stages. This kind of situation has a huge potential for the disputes if all parties do not understand the general election rules either the organizers or participants.<sup>95</sup> It is usually occurred in the regencies or small regions, as the statistic data

The chairman of DKPP Harjono states that “Becoming a general election organizers means that you are aware of the consequences that you will be borne, included being bound by oaths and appointments when elected. Does the promise of general election organizers, either the KPU or the Bawaslu is independent and

94 Diah Widyawati, 2017, “Ida: Penyelenggaraan Pemilu Semoga Sukses Tanpa Ekses”, available at <http://dkpp.go.id/index.php?a=detilberita&id=2689> viewed on March 1<sup>st</sup>, 2018, at 09.21 a.m.

95 *Ibid.*

impartial, is not it? Therefore, we will watch it are they consistent with that promise”.<sup>96</sup>  
The number of complaint received by the DKPP does not mean that this institution is successful, the number of complaints shows that the general election organizers are still in trouble. In this regard, Harjono said that the DKPP’s achievements were not due to the many cases were decided or the number of general election organizers were dismissed. The DKPP is considered successful if the general election organizers are committed to being independent and professional.<sup>97</sup>

**c. The Supervision by Political Parties/Participants**

The political parties are one of ways for a group of individuals to gain a power and one of the most important components in the political dynamics of a nation. Aristotle said that the only way to maximize the individual’s ability and to achieve the highest form of social life is through political interaction with others in an institution which designed to solve social conflict and to shape the collective goals of the state.<sup>98</sup>  
However, in achieving the highest power sometimes the political parties tend to concern more on their groups interest only. It often occurred in every local election when the political parties entrust

96 Teten dan Irma, “Majalah Dialetika Untuk Kemandirian, Integritas dan Kredibilitas Penyelenggara Pemilu”, Vol. 1 No. 1, 2018, p.11.

97 *Ibid.*

98 Elly Rosana, “Partai Politik dan Pembangunan Politik”, *Jurnal TAPIS*, Vol.8 No.1, 2012, p.169-160.

someone to join the selection of Local General Election Commission (hereinafter referred to as KPUD) with aim to win the pair of candidate which is supported. It was found in 2013 in Demak. Based on the testimony of witness and also examination, the member of Bawaslu of Central Java Teguh Purnomo stated that the selected member of the KPUD Demak which is known has initial SI is a member of *Partai Demokrasi Indoneisa Perjuangan* which also as a participant in the 2009 Legislative General Election.<sup>99</sup>

The Commissioner of the DKPP Ida Budhiarti said that the dismissal decision towards the KPU commissioner usually is caused by the Commissioners which committed the violations such as having affiliation with the political party, sexual harassment, bribery or the Commissioner does not carry out the duty in a long period. Then, Ida admitted that the highest cause of dismissal of the KPU member is due to the Commissioner has been proven to have affiliation with the political party.<sup>100</sup> Hence, the involvement of political parties in the General Election Commission shows the non-independence of General Election Commission.

Robert Michels states that every political parties has oligarchy authorization, here is his full statement “The organization that

99 See Rofiudin, 2013, “Anggota Parpol Jadi Anggota KPUD”, <https://www.google.co.id/amp/s/nasional.tempo.co/amp/528496/anggota-parpol-jadi-anggota-kpud> viewed on May 9<sup>th</sup>, 2018, at 10.17 a.m.

100 See Denisa .T, Fuad .R, Fadli .M, 2018, “Strategi Membentengi KPU dari Intervensi Parpol”, <https://validnews.co/Strategi-Membentengi-KPU-dari-Intervensi-Parpol-hdn> , viewed on on April 26<sup>th</sup>, 2018, at 11.13 a.m.

produced the elected domination over the voters, between the mandator and the buyer of mandate and between the recipient of power with the buyer. Anyone who talks about the organization then actually talks about oligarchy.”<sup>101</sup>

#### **d. The Supervision by Press/Media**

Usually the independence and credibility of press/media<sup>102</sup> and journalist will be tested in general election period. In fact, the media and journalist are not capable yet in controlling the political process even trapped in the interest of political elite. Political journalist in general election is identical with the bourgeois journalism that is journalism which subject to the capitalist which take an advantage in general election to maintain the continuity of their business or political career.<sup>103</sup>

The relationship between media and general election cannot be separated from the position of the media that is not neutral in politics. As happened in the 2014 Presidential general election, with the emergence of media conglomeration because the owners of the media are known as figures in the general election such as

101 Artis, “Eksistensi Partai Politik dan Pemilu Langsung dalam Konteks Demokrasi di Indonesia “, *Jurnal Sosial Budaya*, Vol.9 No.1, 2012, p.68

102 The press here means printed media, electronic media, etc. The press is the one of means to realize the freedom of association and assemble, express the thoughts orally and writtenly.

103 Musfialdy, “Peran Media Massa Saat Pemilihan Umum Mengawasi atau Diawasi”, *Jurnal Risalah*, vol 26 No.2, 2015, p.75.

Abu Rizal Bakrie, Surya Paloh, Chairul Tanjung dan Harry Tanoesoedibjo.<sup>104</sup> Hence, the involvement of media owners in politic influences the content of news. In relation to political issues, the media sometimes is not neutral.

In addition, the media also become money oriented because they earn money from advertising revenue. Therefore, the advertisers may influence media content that will be presented. Surely, it is contrary to the editor in maintaining the independence and ideology in reporting the news. Not infrequently was won by the marketing division that pursued the value of media objects and also the media is called as the power sphere which means the media is supported by the authorized regime.<sup>105</sup> Then,

the issue of independence is also influenced by the informants, where the journalism practices is very dependent on the informants or can be regarded as political tolerance. This is what makes the media want to maintain a good relation with the informants then led to the phenomenon of a paid journalist which means the

104 See Anonymous, 2014, "Menonnton Konglomerat Media Berperang di Pemilu 2014", [https://www.kompasiana.com/nusantara\\_mulkan/menonton-konglomerat-media-berperang-di-pemilu-2014\\_552b95806ea8341c1c8b45c8](https://www.kompasiana.com/nusantara_mulkan/menonton-konglomerat-media-berperang-di-pemilu-2014_552b95806ea8341c1c8b45c8) viewed on April 26<sup>th</sup>, 2018, at 2.43 p.m.

105 Wasito Raharjo Jati, "Politik Persuasif Media: Peran Media dalam Pemilu Presiden Indonesia 2001-2009", *Jurnal Penelitian Politik*, Vol.10 No.2, 2013, p.18.

journalist who writes the news in accordance with the order of informants.<sup>106</sup>

Accordingly, in order to make the independence and credibility of press/media as mentioned in the general election law, the supervisory institution of media such as Indonesian Broadcasting Commission (KPI) and Press Council are obliged to conduct supervision for news release, broadcasting, and general election campaign advertisement which are conducted by broadcasting institution or print media.<sup>107</sup>

**e. The Supervision by the Society**

The society is the highest holder of sovereignty in the state\_ it is clearly defined in the 1945 Constitution.<sup>108</sup> Therefore, the society should be brave in delivering the aspiration if any violations conducted by the government or officials and participate to ensure that the -general election is honest, fair, direct, general, free and secret, also independent; that there is legal certainty, orderly, open, proportional, accountable, efficient and effective.

The obstacle of the supervisory process by the society is that the people are still reluctant to report the fraud to DKPP and Bawaslu.<sup>109</sup> The lack of public awareness in supervising the general election is alleged due to complication in reporting the process of

106 *Ibid.*

107 Art.296 of Law Number 7 of 2017 on General Election.

108 Art. 1 paragraph 2 of 1945 Constitution.



monitoring results, the distance between society and general election supervisor, the inconvenience when dealing with the law, the regulation that limits the reporting time and low trust level to the organizers. The limitation of reporting time caused so many reports from society that were expired and cannot be followed up. Moreover, the violations are occurred in the regions. Therefore, the reporting limit of violations since the occurrence of violation must be extended. Thus, the reports from region to the center are not constrained by the time.<sup>110</sup>

Based on the monitoring result in the 2014 Presidential general election, the society also has an obstacle in attaching the evidence. Sometimes the society found a violation, but they cannot bring an evidence or has not enough evidence to be reported to the supervisory institution. Hence, based on the monitoring result of 2014 Presidential general election, from the 354 finding violations which were found by the supervisory institution, there were only 210 cases which had been reported by the observers or society to the supervisory institution.<sup>111</sup>

Muhammad Afiffudin stated on the data of the Voter Education Network for the People (JJPR), the participation of society to become volunteer of general election monitor tends to decline. In

109 Novembri Yusuf Simanjuntak, "Pemantauan dalam Proses Penyelenggaraan Pemilu", *Jurnal Bawaslu*, Vol. 3 No.3, 2017, p.308.

110 Anonymous, 2014, *Laporan Pemantauan Pemilu 2014*, Jaringan Pendidikan Pemilih untuk Rakyat (JPPR), Jakarta Selatan, p.108.

111 *Ibid*, p. 101.

the 1999 general election the volunteer monitors were 220.000, and in 2004 general election decreased to 140.000 volunteer monitors, while 2009 Legislative general election only 3000 volunteer monitors and in Presidential general election 10.500 voluntary monitors. It is known that because of the reporting process of monitoring results is complicated, the distance between society and general election supervisor.<sup>112</sup>

While in South Kalimantan, the Head of Bawaslu South Kalimantan Mahyuni expressed about the low awareness of the people of South Kalimantan in reporting fraud in the general election process. In the 2014 legislative and presidential general elections, Bawaslu found about 14.000 reports on the allegation of general election fraud but that comes from society reports are not up to 1 percent. Furthermore, Mahyuni received about 200 violation reports during the 2015 local general election and only 50

112 See Anonymous, "Masyarakat Enggan Awasi Pemilu"  
<https://nasional.sindonews.com/read/840553/113/masyarakat-enggan-awasi-pemilu-1393788462/> viewed on on March 27<sup>th</sup>, 2018, at 5.21.p.m.

reports came from societies. It is known that the society feel the inconvenience when dealing with the law.<sup>113</sup>

Therefore, to build the awareness and participation of society is really needed. Especially with technological developments has also opened up the public opportunities to involve themselves in monitoring, supervision and follow up to the supervisory institutions. However, this development must be balanced with an easy process and mechanism, so that the community has no difficulty in supervising.<sup>114</sup>

113 See Anonymous, “DKPP dorong Masyarakat Laporkan Politik Uang di Pilkada”, <https://www.google.co.id/amp/s/pilkada.tempo.co/amp/823163/dkpp-dorong-masyarakat-laporkan-politik-uang-di-pilkada> viewed on March 27<sup>th</sup>, 2018, at 5.34.p.m.

114 Fadli R, Veri Junaidi and Ibrohim, “Desain Partisipasi Masyarakat dalam Pemantauan Pemilu”, *Kemitraan Bagi Pembaruan Tata Pemerintahan di Indonesia atas Kerjasama dengan Perkumpulan untuk Pemilu dan Demokrasi (Perludem)*, 2015, p.114.