

REPORT OF 2004 ELECTION SUPERVISORY COMMITTEE

This report is preliminary, and the data presented are still subject to change in the future since various events related to the conduct of the Legislative Elections are still developing, such as the cases which have been processed up to the investigative stage, as well as cases which have only been developed up to the data collecting stage, findings, and also some violation reports which have just been received.

Regarding the supervision of the stages of the Election, we are submitting a brief report as follows:

1. Voter Registration

- A. Voter Registration had been conducted before the Election Supervisory Committee (Panwas) was established. However, Panwas tried to develop coordination with the Central Bureau of Statistics (BPS) at the headquarter and in the districts. Based on the information forwarded by the Head of BPS, there were some difficulties in the data-recording process, since the staff in the field didn't entirely understand the data-recording process. This happened because there were a great number of data-recording officials drawn from other institutions outside BPS.
- B. Up to Election day, April 5th 2004, the number of reports from the public to Panwas regarding Voter Registration was zero. The emerging cases were exposed through printed and electronic mass media. Besides, other members of the public reported directly to Regional Police (*Polda*) – such as in DKI Jakarta.
- C. Regarding the cases publicised by mass media, Panwas tried to supervise them actively. Yet, the cases found in the field were not immediately processed, either administratively or criminally. This happened since those cases only came to light in February and March 2004, whilst the KPU's official announcement regarding the number of voters was on December 31st, 2003. The deadline stated in Law Number 12 of 2003 in relation to reports from the public and Panwas findings is 7 (seven) days after the date of the occurrence [Article 127 section (4)]. When the KPU stipulated the number of voters on December 31st 2003, the KPU, in fact, exceeded the deadline required by law (Law Number 12 of 2003). This states that the Voter Registration process has to finish at the latest 6 (six) months before Election day [Article 52 section (3)].

2. Determination of Electoral Districts

KPU has determined 69 Electoral Districts for the People's Representative Council; (DPR). That decision has undergone public tests and no parties have raised any objections regarding the determination of Electoral Districts.

3. Election Contestants Verification and Determination (Political Party and Regional Representatives Council - DPD)

There were 14 Political Parties that filed their protests regarding the KPU's Decree on Determination of Political Parties contesting the Election. But, those reports weren't responded to by Panwas, because Panwas had to obey the requirements stipulated in Law Number 12 of 2003, regarding the requirements to have standing

to report a complaint. According to that law, reports on Election violations are to be filed by a citizen of Indonesia who has the right to vote; an Election Supervisor; and voters (Article 127 section (2) a, b, c). As to the 14 Political Parties reporting to Panwas, they still had the status of candidates to be an Election contestant, thus they had no right to file any report on an Election violation.

However, in order to meet the requirements of justice, a Panwas Plenary Meeting decided that the status of those violation reports was information to Panwas in conducting its supervisory function over the Election Contestants Verification and Determination stage. Thus, Panwas examined the matter and established a Fact Finding Team to deal with information (report) where there was sufficient initial data. The results of the fact finding team were:

- A. Inconsistency occurred at the North Sulawesi local-level KPUD towards United Development Reform Party (*PPP Reformasi*). At first, there was a letter signed by the North Sulawesi KPUD's Chair, stating that *PPP Reformasi* passed in that district, and because of that, *PPP Reformasi* should have been a contestant. But later, Provincial KPUD, through Plenary Session, cancelled that letter. Based on our fact finding, *PPP Reformasi* indeed didn't fulfill the requirements to pass in North Sulawesi province. *Panwas* had reported the inconsistency of North Sulawesi KPUD's Chair to the KPU so that tough action could be taken. But, without *Panwas* concurrence, no action had been taken on that matter.
- B. Inconsistency occurred in Bengkulu KPUD towards *PPP Reformasi*, similar to that which happened in North Sumatra Province. *Panwas* also reported this matter to the KPU, but no action had been taken regarding the Chair of the Bengkulu KPUD.
- C. Regarding information about PKDI (*Partai Katolik Demokrasi Indonesia*) in Buleleng, Bali, *Panwas* did field research. The result was that the information stated by PKDI was not supported by the facts found in the field..
- D. Regarding reports from other parties, even though there was sufficient data to support the reports, those parties could not possibly fulfill the requirements to qualify as Election contestants. *Panwas* only did some analytical inspections and corrections of KPU output regarding Election Contestants Verification and Determination.
- E. Medan *Panwas* received a report from the Freedom Bull National Party (PNBK). It stated that KPU members assigned to verify that party didn't do their job. Instead they only produced a pre-signed form, and asked PNBK members to fill in the form by themselves. *Panwas* followed up the report and sent it to the investigating team. Next, 2 (two) persons from PNBK who supplied the report were processed by the investigating team as suspects, and then were sent to trial. The files on 2 (two) members of Medan KPUD didn't reach the court.

The main problem faced by *Panwas* in implementing its function regarding Election Contestants Verification and Determination was the reticence of the KPU to allow access to data and information needed by *Panwas*. 90% of Provincial and Regency/City *Panwas* filed complaints to Central *Panwas* regarding this behavior by Provincial KPUD and Regency/City KPUD

4. Verification and Determination of DPR, DPRD and and DPD Candidates

Supervision of this stage was done actively, and was also based on report from the public. Most of the violations found in this stage involved the use of fake certificates and providing incorrect information. Up to this stage, the number of cases which were believed to be Election criminal acts and which had been forwarded to investigators was 811 cases. There were 876 cases of administrative violations..

The number of violations found by Panwas and reported by the public during this election stage was much more than the number of cases which were forwarded to Indonesian Police (*Polri*) investigators and to KPU. Not all cases could be processed because of insufficient data from the person making the report. Investigation became very difficult, since KPUDs were very reticent towards Panwas. It was very difficult to make that commission allow access to data (documents) on the candidates.

Strangely, there were several reports and findings regarding candidates who couldn't fulfill the requirements – even reports from people who didn't themselves want to be legislative candidates – but had been passed by the KPU. It also happened vice versa, where there were candidates who had fulfilled requirements but had been failed in the verification.

5. Campaign

Generally, the campaign went smoothly and safely all over Indonesia. The violations that mostly happened were ones preceding the start of the campaign period, and there were others such as placing political parties masterials outside the locations determined; giving and promising money or other materials to voters; involving under-aged children in the campaign; and conducting campaigns outside the allowed electoral districts. During the campaign period, 3,728 cases of alleged administrative violations, 330 cases of alleged criminal violations, and 69 cases involving an Election lawsuit were recorded. In this stage (alleged) violations were recorded for the Indonesian Democratic Party of Struggle – *PDI Perjuangan* (557 cases), Golkar Party (479 cases), United Development Party – PPP (395 cases), National Mandate Party (352 cases), Prosperous Justice Party – PKS (273 cases), Crescent Star Party – PBB (176 cases), Democratic Party (170 cases), Reform Star Party - PBR (154 cases) For the complete information, please see the appendix detailing 2004 Election Violation Data during the 2004 Election Campaign Stage.

In this stage, there was continual debate over the interpretation of Law Number 12 of 2003, especially regarding the campaign procedures issued by the KPU in KPU Decree Number 701 of 2003. Because of this, Panwas sent an official letter to KPU, asking for revisions to some articles in KPU Decree Number 701 of 2003. But, up to the end of Legislative and DPD Election, KPU was persistent in its stance. In relation to campaigns conducted by State Officials, there was only one person who violated this and was reprimanded either by Panwas or by the KPU, who was the Minister of Justice and Human Rights.

It needs to be stated that, owing to the lack of socialization of Law Number 12 of 2003 by the KPU, a great number of violations by political parties occurred – especially in displaying materials and campaigning before the campaign period (stealing a start to the campaign). Panwas itself could not do the socialization because KPU had confirmed beforehand that it would do the socialization, including printing leaflets to socialize Panwas duties.

One other thing that needs to be noted is the wide emergence during the campaign period of news on citizens who were not registered as voters. In Panwas's analysis, it turns out that campaign activity can create public interest in voting, but that enthusiasm is very late.

6. Voting and Counting

A. Voting

A.1. The distribution of Election materials and equipment, which was the responsibility of the KPU, didn't fulfill the legal requirements, which is the deadline of 10 days before Election day. [Article 45 section (3) Law Number 12 of 2003]. Anticipating that occurrence, Panwas Plenary Meeting decided to write to the President requesting the issue of a Government Regulation in Lieu of Law (PERPU), copied to the Chairs of the DPR and the KPU. That letter received a (baffling) response from the KPU, through a statement by the Chair of the KPU, that Panwas had violated the Constitution. Panwas itself then sent a letter to the KPU stating that KPU had violated Article 45 section (3) Law Number 12 of 2003.

A.2. In some regions, ballot papers were distributed to the wrong electoral districts. Some incorrectly distributed ballot papers that were punched by voters were deemed to be valid votes. This meant that the essence of the electoral system - proportional system with open candidates list - was not fulfilled. The voters' right to vote directly for a legislative candidate, that should have been guaranteed, was lost because of the incorrectly distributed ballot papers.

In response to the incorrectly distributed ballot papers which had been punched in some electoral districts, KPU issued a letter Number 650/19/III/2004, dated April 5th 2004, to its officials at lower levels, allowing the usage of those incorrectly distributed ballot papers and their inclusion in the count of votes, as long as this was agreed by the political parties contesting the Election. Regarding that action, Panwas responded orally so that KPU immediately withdrew that letter (Number 650).

In relation to that matter, Panwas also instructed local Panwas to reject the results of vote counting in polling stations that had already conducted vote counts with the incorrectly distributed ballot papers, and to ask each local KPUD to conduct a re-vote.

But, given the issue of KPU Letter Number 650, some local KPUs rejected the revote. Owing to this attitude of the KPU, on April 6th 2004 Panwas sent a letter to KPU, so that the KPU withdrew that letter (Number 650) because it had caused restlessness at lower levels.

A.3. As the result of the late distribution of election materials, such as ballot papers, voter cards, ink, the conduct of the Voting and Counting stage in certain regions became less controllable. This condition would automatically create potential suspicion about the occurrence of various forms of fraud.

Most of the violation reports relating to election logistics received by Panwas concerned the distribution of Voter Cards to the public. In several places, voter cards were sold, such as in Jakarta, Central Kalimantan, Batam, and Tanjung Pinang City. According to mass media reports, similar cases also

happened in other regions. No party has acknowledged its responsibility in the distribution of those unauthorized voting cards.

B. Vote counting

The conduct of the legislative and DPD Election was completed with the determination of votes and seat results on May 5th 2004. The result could still be challenged through the Constitutional Court. One thing that has to be recognised is that the number of cases brought by contestants to the Constitutional Court is an indicator of whether the recapitulation processes in each stage are successful or not. Regarding the supervision of voting, some things that can be reported are:

- B.1. Recapitulation of Tabulation process for DPR candidates was conducted openly to serve as an authentication against objections from all political parties contesting the Election. In that respect, at least, some things could be recorded:
 - a) Political Parties had difficulties in bringing authentic proof to compare to the numbers displayed by the KPU
 - b) Political Parties (at least half of them) had difficulties in obtaining official reports and certificates, especially in problematic electoral districts. It happened because the implementing organisation was involved in fraud, helping certain Election contestants. The fraud in vote counting would never have happened if the implementing organisation hadn't been involved.
- B.2. In the Recapitulation of the Tabulation for DPD candidates which was conducted by the KPU on May 3rd 2004, Panwas found a violation of Article 101 of Law Number 12 of 2003. The reason was that the KPU only invited 4 (four) DPD candidates from each Province to participate in that plenary meeting for the recapitulation. Other candidates who weren't invited were not allowed to participate in that meeting. A candidate from South Sumatra who was already in the meeting room was sent away by KPU officials. Based on those facts, Panwas evaluated that the Recapitulation of the Tabulation and the final DPD vote results were invalid according to the law.

At the Voting and Counting stage, various types of violations were committed by Election implementing organizations. As a result, Panwas asked for re-voting in 815 polling stations. Up to April 23rd 2004, revoting had been conducted in 421 polling stations.

Violations not only happened during the voting process, but also during the vote counting process. As a result of those violations, Panwas asked for recounting in 1,046 polling stations, 365 Village Election Committees, and 598 Kecamatan Election Committees. However, up to now, recounting has been conducted in only 836 polling stations (TPS), 299 Village Election Committees (PPS), and 444 Kecamatan Election Committees (PPK).

From the results of supervising the Voting and Counting stage, up to now, indications of criminal violations by 85 Election implementing organisations (local-level KPU, PPK, PPS, polling station officials - KPPS) have been found. Allegations against 53 of these organisations have been forwarded to *Po/RI* Investigators (preliminary data).

8. Violations

Overall, 11,147 violations, either criminal or administrative, have been reported by the public or found by Panwas.. 442 Electoral lawsuit cases have been delivered to and recorded by Panwas.

- 8.1. Among those cases,1,776 criminal violation cases have been forwarded to PolRI investigators. Up to now, the number of criminal violation cases which have proceeded to sentence by the State Court is 170 cases.
- 8.2. Up to March 2004, 876 administrative violation cases from the Election had been forwarded to the KPU. The fate of those cases in the KPU has never been advised to Panwas.

9. Suggestions:

1. It is essential that this RDP recommends the establishment of something like a *Joint Committee* between KPU and Panwas to solve the administrative violation cases.
2. It needs to be stated that the KPU must allow Panwas to access information on the verification process, especially data related to candidacy requirements, as regulated in Article 77 section (3) of Law Number 23 of 2003. In relation to this, the KPU needs to issue a circular to local level KPUs so that they will give Panwas access to information so it can implement its supervisory function.

Thus this report is delivered to Commission II of DPR to serve as a consideration in order to implement political and democratic improvement in Indonesia.

Jakarta, May 12th 2004

ELECTION SUPERVISORY COMMITTEE

VICE CHAIRPERSON

CHAIRPERSON

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Prof.Dr. Komaruddin Hidayat