



March 2003

OVERVIEW OF LEGAL FRAMEWORK FOR 2004 GENERAL ELECTIONS IN INDONESIA

New Political Laws

The People's Representative Assembly (DPR) of the Republic of Indonesia recently approved new political laws to govern the 2004 elections in Indonesia. The Law on Political Parties was approved by the DPR in November 2002. The Law on General Elections was approved by the DPR on February 18, 2003. A draft Law on Presidential Elections is currently being considered by a special committee (*Pansus*) of the DPR.

Timing of Elections

Indonesia's General Elections Commission (KPU) has announced that general elections—elections for legislative assemblies at national, provincial and regency/city levels—will be held on Monday, April 5, 2004, which shall be declared a holiday. The dates for two rounds of presidential elections have not been set, pending the approval of a presidential election law; the terms of the current president and vice president of Indonesia expire in October 2004.

Election System

Elections for the DPR and the provincial and regency/city peoples representative assemblies (DPRDs) will be conducted using a form of Open-List Proportional Representation in new electoral districts (generally, smaller districts than in 1999). Voters will choose one party and may also choose one candidate on a party's candidate list. Voters preferences for an individual candidate will only be instrumental in determining which candidate(s) from a party's list is/are assigned to any seat(s) won by the party, if the candidate receives a number of votes at least equal to the "quota" used to determine how many seats each party obtains in the electoral district.

Nationally, electoral districts to elect 550 DPR representatives will be formed from provinces (in less populated provinces) or parts of provinces (in more populated provinces). For provincial DPRDs, electoral districts will be formed from individual regencies/cities or combinations thereof. For regency/city DPRDs, electoral districts will be formed from individual sub-districts (*kecamatan*) or combinations thereof. To permit reasonable proportionality in awarding seats to successful political parties, the new election law specifies that a range of between 3 and 12 representatives shall be elected in each DPR and DPRD electoral district. Average population per representative may vary between 325,000 (in less densely populated provinces) and 425,000 (in more densely populated provinces). This will tend to preserve the relative over-representation of areas outside Java/Bali.

General elections will include voting for the new Regional Representative Council (DPD). Each province will elect four DPD representatives; the entire province is the DPD electoral district. Voters may vote for only one DPD candidate. Candidates are not identified on the ballot as affiliated with any political party.

Ballots and Voting Method

Voters will be given ballots for each of three levels of DPR/DPRD assemblies, plus a ballot for DPD (and a ballot for president/vice president if the first round of presidential elections is held simultaneously). Candidates for DPR/DPRD are listed under their political party symbol. Voters vote by punching a hole through the symbol of the party of their choice and by punching a hole through the name of the candidate of their choice. Voting for the DPD is also by punching a hole by the name of the candidate of choice; DPD ballots will contain photographs of DPD candidates.

Political Party Participation

The new political laws establish higher qualification barriers for political parties to participate in general elections. Under the new Political Party Law, all parties must newly register with the Ministry of Justice and meet requirements to demonstrate serious organizational scope. Additionally, under the new General Election Law, political parties that contested the 1999 general elections and seek to compete in 2004 must:

- Hold 2% of DPR seats, or 3% of DPRD seats in half of the provinces, or 3% of DPRD seats in half of the regencies/cities; OR
- Merge with a party meeting the above criteria; OR
- Amalgamate so as to collectively meet the above criteria; OR
- Form a new party entirely.

Parties that did not contest the 1999 election may compete in 2004 if—in addition to meeting requirements of registration with the Ministry of Justice—such parties have:

- Executive committees (and permanent offices) in 2/3 of the provinces and 2/3 of the regencies/cities in those provinces, AND
- Party members numbering (the smaller of) 1000 members or 1/1000th of the population in each regency/city where the party is organized, as evidenced by membership cards.

Candidate Nomination

Any Indonesian citizen 21 years of age or older is qualified to be a candidate if: domiciled in Indonesia, educated at least to High School Diploma level, fluent in Bahasa Indonesia, registered to vote, loyal to Pancasila and the Constitution, and believing in God. Persons who are mentally disabled, or who do not have the physical capacity to discharge their duties if elected, are barred from nomination as candidates, as are those under final sentence for a crime punishable by five or more years imprisonment. Candidates may be nominated only for one elected body and only in one electoral district

Candidates for DPR/DPRD must be members of political parties, and be nominated by their party in a “democratic and open” process. Political parties are encouraged to nominate at least 30% women candidates in each electoral district. Political parties submit lists of candidates for

nomination (up to 120% of the number of representatives to be elected in each electoral district) to the relevant election commission (KPU) at national, provincial and regency/city level. Following a period in which parties may correct any errors in the nomination of their candidates, candidate lists are to be finalized by election commissions no later than two months prior to Election Day.

DPD candidates are required to have lived in the province in which they are nominated for at least three consecutive years prior to nomination or for ten years cumulatively since age of 17. DPD candidates who are members of the Civil Service, National Armed Forces (TNI) or the Indonesian Police Force (POL-RI) must resign from those positions. For the 2004 elections, DPD candidates may not have held an administrative position in a political party from, at the latest, three months after the enactment of the election law (for elections thereafter, for four years prior to nomination).

Voting Rights

Indonesian citizens who are at least 17 years old, or have been married, are eligible to vote, subject to disqualification as a result of mental disability or revocation of voting rights by a final court decision. Members of the National Armed Forces (TNI) and the Indonesian Police Force (POL-RI) are not permitted to exercise their voting rights in the 2004 elections.

Voters must be on the voters register to vote. Voter registration, in conjunction with national population registration, is to begin in April 2003, conducted on behalf of the KPU through door-to-door operations of the State Statistics Bureau. Voter registration must be finished at least six months before Election Day.

Election Campaigns and Political Party Funding

The General Election Law defines the election campaign as the period from three weeks prior to Election Day to three days before Election Day, and specifies activities in which political parties and candidates may engage during the election campaign. The president and vice president, ministers, governors and mayors have been excluded from the list of state officials that are prohibited from campaigning, but they may not use state facilities to campaign.

Political parties are prohibited from receiving contributions from foreign sources, state-owned businesses, or from donors whose identity is not clear. For party or DPD candidate campaign funds, contributions from individuals may not exceed one hundred million rupiah and contributions from private entities may not exceed seven hundred and fifty million rupiah. Contributions to campaign funds exceeding five million rupiah are apparently to be reported to election commissions at some time, and then publicized; parties must submit audited reports of campaign receipts and expenditures to the KPU no later than 90 days after Election Day.

Structure and Operations of Election Commissions

The General Elections Commission (KPU) is “national, permanent and independent;” is hierarchically organized at central, provincial and regency/city levels; and has been given greater financial and managerial autonomy. KPU’s responsibilities include conducting and coordinating all stages of the election process; determining which political parties and candidates are eligible

to compete in elections; drawing electoral district boundaries and determining the number of seats per district; and certifying and announcing results of the election.

The National KPU has a maximum of 11 members, who are approved by the DPR from a list of candidates (double the number of vacancies to be filled) proposed by the president. The new election law requires KPU members at national, provincial and regency/city levels to agree to work full time in the KPU and to not simultaneously hold any position in the Civil Service (including teaching positions at state universities). Current KPU members must comply with these requirements within one month of enactment of the General Election Law.

Provincial KPUs have five members, who are selected and appointed by the national KPU from candidates (double the number of vacancies to be filled) proposed by provincial governors. Regency/city KPUs also have five members who are selected by provincial KPUs from candidates (double the number of vacancies to be filled) proposed by heads of regency/city governments and are then appointed by the national KPU. Election committees are temporarily established at sub-district (*kecamatan*), village and voting station levels

Election commissions are supported by a secretariat of civil servants. The secretary-general of the national KPU, to whom all civil servants working for the KPU at any level are ultimately responsible, will now be selected by the national KPU from three candidates proposed by the Minister of Home Affairs.

Election Supervision and Complaint Adjudication

The national KPU will appoint an Election Supervisory Commission, which is responsible to the KPU. A hierarchy of lower level supervisory committees will be formed at provincial, regency/city and sub-district levels. Members of these bodies are drawn from public officials, civic leaders, academics, the media, police and prosecutors. Supervisory committees will accept and investigate complaints, seek to resolve disputes, and forward credible allegations of violations of the law to police (for criminal violations) and the KPU (for administrative violations.)

District courts are the first and final court for election-related offences punishable by less than 18 months imprisonment. For offences punishable by more than 18 months imprisonment, decisions of the district courts may be appealed to Indonesia's Supreme Court. The new Constitutional Court (or until such time as it is appointed, the Supreme Court) is the first and final court for disputes about election results.

The General Election Law permits NGOs, legal entities and foreign governments to monitor general elections. Election monitors must be accredited by the KPU, be independent, have a transparent source of funding, and follow the relevant laws and regulations.