

Campaign Finance in Indonesia

MAY 2003



EXTENDING THE REACH OF DEMOCRACY

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INTRODUCTION

The People's Representative Assembly of the Republic of Indonesia (DPR) recently approved new political laws to govern 2004 general elections in Indonesia.¹ General elections will involve voting for legislative assemblies at three levels—national (DPR), provincial (DPRD-Province) and *kabupaten/kota* (DPRD-Regency/Municipality)—and voting for the new national “upper house,” the Regional Representative Council (DPD).

The revised election law and political party law contain provisions that regulate funding of political parties and candidates during the time period surrounding the election campaign and include requirements for financial reporting and public disclosure. This report discusses these “campaign finance” provisions and provides recommendations regarding implementation.²

IFES' prior *Money Politics* reports have noted how Indonesia's system for regulating and disclosing political finance is elementary in form, poorly administered and enforced, and ignored by most electoral participants. As preparations accelerate for general elections in 2004—and as Indonesian citizens' aspirations for fair and honest elections rise—efforts to improve the campaign finance framework under the new political laws should be given a high priority by policy-makers and election authorities.

This report examines opportunities for improving regulation and disclosure of political party and candidate funding in the election campaign, through development of comprehensive implementing regulations by Indonesia's General Elections Commission (KPU) and through the monitoring efforts of news media and civil society.

NEW DEVELOPMENTS IN LEGAL FRAMEWORK

Please refer to **Appendix: OVERVIEW OF RELEVANT PROVISIONS**, attached, for specific language of provisions in Indonesia's new Law on General Elections (*Elections*) and new Law on Political Parties (*Parties*).³

¹ Law No. 31 of 2002 on Political Parties was approved by DPR in November 2002. Law No. 12 of 2003 on General Elections was approved by DPR in February 2003. A draft Law on Presidential Elections is currently being reviewed by a DPR Pansus (special committee); direct elections for President and Vice-President of the Republic of Indonesia will also be held in 2004.

² The International Foundation for Election Systems (IFES) has provided information and analysis regarding political finance issues and practices in Indonesia for over four years. In November 2002, IFES issued a report entitled *Money Politics: Regulation and Public Disclosure of Political Finance in Indonesia – Part 3* (which followed up IFES' *Money Politics* reports of December 1999 and June 2000). IFES' November 2002 report: reviewed the status of political finance regulation and disclosure practices in Indonesia; examined relevant provisions of drafts of the election law and party law that were then being considered by DPR special committees; and offered twenty-one specific recommendations for improvements to political finance regulation and public disclosure.

³ For comparison to provisions in draft laws that were submitted to DPR by the Ministry of Home Affairs and Regional Autonomy (*DepDagri*) last May, see: *Appendices 2 & 3* in IFES' November 2002 report, *Money Politics: Regulation and Public Disclosure of Political Finance in Indonesia – Part 3*.

Coordination between political laws

The two main problems with regulation and disclosure of political party funding under *Elections* and *Parties* are: 1) lack of coordination between the two laws, and 2) lack of specificity about terms and procedures (discussed generally throughout this report).

A fundamental weakness is that neither of the two laws acknowledges the existence or jurisdiction of the other. The DPR did not attempt to synchronize the two laws during legislative consideration (nor had the Ministry of Home Affairs and Regional Autonomy [*DepDagri*] in draft proposals that formed the basis of the new laws). The election law was approved by DPR two months after the political party law but did not appear to take into account the earlier law's provisions. For example:

- Both laws stipulate limitations upon contributions to political parties from individuals and from corporations/entities. However, the two laws apply two different sets of limits on contributions and do not clarify when or how legal application of each set of restrictions begins and ends.
- *Parties* requires political parties to establish, maintain and report a Special Election Campaign Fund Account, which must be reported to KPU no later than six months after the election. *Elections* makes no reference to such an account, however, nor to other separate party accounts, but simply uses the term "campaign funds" without elaboration. And *Elections* requires an audited report of campaign funds to be submitted to the KPU no later than 97 days after the election—on a different schedule than for the special account under *Parties*.

(See below for further discussion of these points.) Fortunately, synchronizing these two laws and integrating their implementation can generally be achieved by drafting implementing regulations by the KPU, as discussed within each topic below.

See: RECOMMENDATION #1 (KPU Campaign Finance Legal Assessment).

Electoral participants

Elections imposes campaign finance controls and disclosure requirements upon "electoral participants." *Elections: Article 5* identifies electoral participants for the 2004 general elections as political parties for DPR/DPRD elections and individual persons for DPD elections—consistent with the Constitution of the Republic of Indonesia.⁴ This issue has significance for implementing regulations in the campaign finance area, particularly as to DPR/DPRD candidates' funding, as discussed below.

Financial assistance to political parties from state budget

Parties: Article 17(1)(c) includes "assistance from the state budget" as a permissible source of funding for political parties' administrative expenses.⁵ *Parties: Article 17(3&4)* provides that government assistance "shall be given proportionally to political parties that have

⁴ DPR/DPRD seats will be distributed to political parties through proportional representation, according to voters' choices for parties. Under *Article 6(1)* of the new election law, elections for DPR/DPRD will also utilize 'open-list voting', in which voters may mark one choice for a candidate on a party list.

⁵ *Elections* does not provide for state budget funding subsidies to political parties for election campaign expenses.

received seats in the representative institutions of the people” and that procedures for allocating such funds shall be further stipulated by “Government Regulation.”

The *Elucidation* for Article 17:

- Identifies DPR, DPRD-Province and DPRD-Regency/Municipality as the “representative institutions of the people” to which the new funding provision refers;
- Specifies the level of state budget (national, provincial and regency/ municipality) that will provide financial assistance to parties that win seats at each level of legislative assembly; and
- States that funding to parties shall be “in accordance with the capability of state finances to do so.”

As elucidated, this provision indicates (but does not explicitly provide) that these subsidies to parties will be disbursed to political party committees at each level and location corresponding to the legislative assembly and funding budget.

Importantly, the *Elucidation* for Article 17 also stipulates:

- Financial assistance from the state shall be “transferred to political parties to pay for the administration and/or secretariat of the political parties,” and
- Assistance provided to political parties by the government “shall be accounted in accordance with legislation and regulations.”

The limitation upon particular uses of this state funding suggests political parties must maintain separate administrative accounts, although the new law does not stipulate specific requirements for such accounts nor define permissible expenditures from such accounts. These provisions indicate the need for KPU implementing regulations to facilitate separate and accurate financial reporting—within general financial reporting obligations—by those political parties that receive and spend state funds.⁶

Separate accounting for ongoing administrative expenditures of political parties would be consistent with *Parties: Article 9(j)*, which requires political parties to maintain and report a Special Election Campaign Fund Account ([see](#): discussion below). The *Elucidation* for that provision describes the fund as “a special account opened for the purpose of holding election campaign funds, which shall be separate from other necessary accounts.” Again, however, *Parties* does not further stipulate specific requirements for such accounts, define permissible expenditures from these accounts, or identify the time frame in which campaign fund accounts must be used.

See: RECOMMENDATION #2 (Establishing Separate Political Party Accounts) and RECOMMENDATION #3 (Financial Record-Keeping and Reporting).

Duration of election campaign period

DPR added a provision to the election law regarding the election campaign period that was not in *DepDagri’s* draft election law. *Elections: Article 71(3)* provides:

Election Campaigns shall be held by the Participating Political Parties for 3 (three) weeks and end 3 (three) days prior to Election Day.

⁶ These provisions also suggests potential application of Indonesian laws, other than the political party law, related to accounting of funds received from state budgets.

The stipulation of a three-week election campaign period in *Article 71(3)* is stated in passive voice and is not referred to elsewhere in the election law. The *Elucidation* for this provision does not clarify the duration issue, but states: “The period of 3 (three) days prior to voting day is a period of silence, and it is prohibited to conduct activities that can be classified as campaign activities.”

These timing limitations pose several problems for implementation (particularly in conjunction with the enumeration of election campaign activity under *Article 72*):

- The stipulated period is not realistic as to actual beginning and duration of campaigning activity. In Indonesia, election campaigning by political parties typically begins months before the election (as of this report, political parties have already begun holding public rallies and meetings). Campaign activities by parties are certain to commence two months prior to Election Day, at the point when candidate lists of political parties must be approved by election commissions.
- Application of campaigning rules, including campaign finance requirements, could be narrowly restricted. Even if not interpreted to restrict general campaigning but only to limit an officially recognized and organized electoral campaign, this provision creates a huge loophole for avoiding regulation and financial reporting of campaign finance activity. If interpreted literally, *Article 71(3)* would narrowly confine legal controls on political parties’ election activity—particularly for financial regulation and disclosure—to an unreasonably short time frame.
- A “cooling-off” period of three days at end of the campaign period seems excessive. To require political parties and candidates to stop campaigning three days before Election Day seems impractical, creates an awkward long pause before voting, and invites violations (and allegations of violations). Many countries provide for such “cooling-off” periods before Election Day in their election laws, but these periods typically last 24 (or at most 48) hours before the election.

Moreover, arbitrary restrictions on the nature or timing of parties’ campaigning could have serious enforcement consequences, encouraging widespread circumvention of the law or selective prosecution.⁷

See: RECOMMENDATION #4 (Election Campaign Period).

Restrictions and prohibitions on political party fundraising

The two new political laws provide for restrictions and prohibitions upon raising funds by political parties and candidates. Significantly, both laws prohibit contributions from:

- Foreign entities—*Parties: Article 19(3)(a)* and *Elections: Article 80(1)(a)*;
- Unidentified sources (donors for which the full name and address are not known)—*Parties: Article 19(3)(b)* and *Elections: Article 80(1)(b)*; and
- State owned enterprises—*Parties: Article 19(3)(d)* and *Elections: Article 80(1)(c)*.

Parties: Article 19(3)(c) specifically prohibits political parties from receiving contributions that exceed contribution limitation amounts (but the law does not specify administrative

⁷ For example, under *Elections: Article 138(3)*: Any person who intentionally conducts campaigning outside of schedule determined by KPU for each electoral participants as stipulated in Article 71 paragraph (3), shall be punishable with imprisonment of minimum 15 (fifteen) days or maximum 3 (three) months and/or fine of minimum Rp. 100.000 (one hundred thousand rupiah) or maximum Rp. 1.000.000 (one million rupiah).

sanctions for violations of this provision). In addition to contributions from state-owned enterprises, *Parties: Article 19(3)(d)* prohibits parties from requesting or receiving funds from "cooperatives, foundations, NGOs, community organizations and humanitarian organizations." *Parties: Article 19(4)* also prohibits parties from establishing a business entity and/or holding shares in a business entity.

See: RECOMMENDATION #5 (Anonymous, Unidentified or Falsely Identified Donors).

Permissible funding

Parties: Article 17(1) states that political parties shall obtain financing from "members' periodic fees," contributions allowed by law, and (as noted above) assistance from the state budget. However, *Elections: Article 78(1)* uses different terms than *Parties* regarding the nature of party funds used for election campaigns and about the recipients of funds being regulated:

Election campaign funds may be obtained by the electoral participants from:

- a. members of the relevant Participating Political Party including candidates for the DPR, DPD, Provincial DPRD and Regency/City DPRD;
- b. other non-binding sources including private entities, or persons, whether given to the Participating Political Party or to the candidates for the DPR, DPD, Provincial DPRD and Regency/City DPRD;

Unfortunately, the new election law carries over two problems from *DepDagri's* draft law, as described in IFES' *Money Politics* report of November 2002:

- The most obvious problem with this provision ... is its mention of candidates for *DPD* as being a source of, and conduit for receiving, contributions to political parties. Since [the draft law] otherwise states that political participants for elections for the new *DPD* (Regional Representative Council) shall be individual persons rather than political parties, the language ... that includes *DPD* candidates in partisan fundraising is presumably a drafting error. Regulation and disclosure of political finance activity of *DPD* candidates should be separate and distinct from provisions regarding political parties and candidates for *DPR/DPRD* ...
- By specifically including [all] candidates as a source of party funds, *Elections: Article 111(1)(a)* infers that candidates should contribute money to their party. This language raises questions of seat buying or expectations of entry fees for candidates. Absent such motives, for purposes of regulation ... contributions to political parties from candidates should not be treated differently than contributions from individual persons generally.

The broad inclusion of *DPD* candidates in general provisions of *Elections* regarding partisan fundraising and the absence of specific provisions for such candidates are problems for financial controls that can be corrected in implementing regulations.

See: RECOMMENDATION #6 (Election Campaign Funds of Candidates for *DPD*).

The seeming emphasis in the election law on the role of *DPR/DPRD* candidates in fundraising for political parties raises troubling questions but is not necessarily an ongoing problem for financial controls; the legal right of such candidates to make contributions to political parties is not disputed. However, the language in the new election law continues a

fundamental ambiguity from the draft law regarding the capacity and responsibility of DPR/DPRD candidates for raising, spending and—most importantly—reporting election campaign funds.

Generally, a system for regulating and reporting contributions to political parties and spending by parties is undermined if funds received and spent by parties' candidates are not subject to the same regulation. Contributions to candidates should be subject to the election law's contribution limitations and "aggregated" within the same party. Funds raised and spent by candidates should be properly documented and integrated into the audited reports of accounts of parties that nominated such candidates (or subject to separate regulation and reporting requirements for candidates).

Moreover, the open-list voting system to be used in 2004 general elections in Indonesia will encourage separate campaign activity by candidates on political party candidate lists for DPR/ DPRD. This innovation in Indonesia's electoral system makes it even more important that candidate funding be integrated into the system for financial record-keeping and reporting by political parties.

As noted above, *Elections* defines electoral participants for DPR/DPRD elections as political parties, not individual candidates. The language in *Article 78(1)*, above, strongly suggests that campaign funds may *only* be obtained by electoral participants, and subparagraph (b) refers to these funds as including donations "whether given to the Participating Political Party or to the candidates" That reference implies that candidates serve as "agents" of their political party in campaign fundraising.

Thus, all raising and spending of campaign funds by parties' candidates should be subject to the prohibitions, limitations and reporting requirements of the election law; candidates' campaign funding activity should be included in financial reports of their respective parties. To interpret this provision differently—in the absence of campaign finance provisions directly applicable to DPR/DPRD candidates—could leave such candidates completely outside of funding restrictions and reporting obligations and create an enormous loophole in the campaign finance system.

See: RECOMMENDATION #7 (Record-Keeping and Reporting of Election Campaign Funds of Candidates for DPR/DPRD).

Parties: Article 17(2) provides that contributions to parties "may be in the form of money, goods, facility, equipment, and/or services (in-kind contributions)." The *Elucidation for Elections: Article 78(1)* similarly provides that electoral campaign funds may be in the form of cash, goods, services and/or items that can be equivalent to or valued with money. These provisions are stated in terms of allowing such donations but should be clarified in implementing regulations to ensure such donations are properly recorded and included in the financial reports of political parties.

See: RECOMMENDATION #8 (Non-Monetary Contributions).

Limitations upon contributions

As noted above, limitations upon the amounts that may be contributed to political parties are not synchronized in *Parties* and *Elections*. The new laws approved by DPR now contain

different sets of limitations both for contributions from individuals and from corporations and legal entities.⁸

Parties: Article 18 provides:

- (1) Contributions from members and non-members as referred to in Article 17, paragraph (1), point b shall not exceed Rp. 200,000,000.00 (two hundred million rupiah) within a one year period.
⇒ [one hundred million rupiah in *DepDagri's* draft party law]
- (2) Contributions from corporations and/or any other form of legal entities as referred to in Article 17, paragraph (1), point b shall not exceed Rp. 800,000,000.00 (eight hundred million rupiah) within a one year period.
⇒ [five hundred million rupiah in *DepDagri's* draft party law]

Elections: Article 78 provides:

- (2) Contributions to Campaign Funds as referred to in paragraph (1) from any individual person shall not exceed Rp. 100,000,000.- (one hundred million rupiah), and contributions from a private entity shall not exceed Rp. 750,000,000 (seven hundred fifty million rupiah).
⇒ [fifty million rupiah from individuals and five hundred million rupiah from private entities in *DepDagri's* draft election law]

As noted above, neither law acknowledges the provisions or jurisdiction of the other.⁹ Thus, the two laws do not identify how or when each of the two sets of contribution limitations begin and end. There is no clear indication of when funds for different accounts of political parties may or may not be raised or spent or for what purposes.¹⁰ As IFES' *Money Politics* report of December 1999 indicates, these jurisdiction and timing issues were never resolved during the 1999 general elections under Indonesia's prior political party and election laws.

It is conceivable under *Elections: Article 71(3)*, discussed above, that limits in the election law only apply to funds spent during the officially recognized period of the three weeks before Election Day. Again, however, that interpretation narrowly restricts the application of regulation and, more importantly, reporting requirements under the election law. That interpretation does not answer questions of when "campaign funds" subject to separate

⁸ Inconsistent contribution limits were not a problem in Indonesia's 1999 general elections, because the election law granted the KPU authority to set contribution limitations, and the KPU adopted the same limitation amounts as specified in the political party law. However, as noted below, the question of when separate limits under the election law began and ended, and to what party funds the limits applied, was not resolved.

⁹ However, a provision prohibiting transfers of funds from party accounts into the election campaign fund during the 'campaign period' was introduced into the draft law during DPR consideration but was removed before final approval. Such a provision would have been of questionable value, given the prescription of a three-week electoral campaign in *Elections: Article 71(3)*.

¹⁰ As noted above, the *Elucidation* for *Article 17* in the political party law regarding financial assistance to parties contemplates distinct costs for 'administration and/or secretariat of the political parties', but with no further explanation for separating such funds.

limitations under the election law can or must be raised and whether all spending of political parties during the campaign period must be considered a campaign expenditure.¹¹

Moreover, *Parties: Article 18* (as in the *DepDagri* draft law) states that contributions to political parties may not exceed its prescribed limitations “within a one-year period.” As noted in IFES’ *Money Politics* report of November 2002:

That language is deficient as a political finance control, as it suggests the limitation time period is different for each particular contributor, depending on when each contribution is made. Such a floating time period would be difficult to monitor, both by parties internally and by monitoring organizations and enforcement bodies. Contribution limitations based upon calendar year would be far simpler and more effective.

Elections: Article 78(3) provides that campaign funds in the form of a loan from a company or private entity shall not exceed contribution limitation amounts. *Parties* does not contain a comparable provision regarding loans. Certainly, loans to political parties and candidates should be treated as contributions, subject to the same controls and reporting obligations.

See: RECOMMENDATION #9 (Contribution Limitations).

Financial record-keeping and reporting obligations

The new election law and political party law have expanded—but unfortunately different—financial reporting requirements for the campaign funds of political parties.

Parties: Article 9(h – j) requires parties to:

- Maintain bookkeeping and keep a list of donors and a total of donations received, which is open for examination by society and Government;
- Prepare an annual financial statement, which must be audited and submitted to the KPU;
- Maintain a Special Election Campaign Fund Account and submit an audited financial statement to KPU within six months after the election.

The *Elucidation* for paragraph (h) adds a new reporting element arising from the law’s new provisions for state funding assistance for political parties, discussed above. It provides that “the use of assistance funds from the state budget to a political party shall be reported each year to the Government, defined here as the Ministry of Home Affairs, and audited by the State Audit Board (BPK).”

As described above, the *Elucidation* for paragraph (j) describes a Special Election Campaign Fund as “a special account opened for the purpose of holding election campaign funds, which shall be separate from other necessary accounts.”

See: RECOMMENDATION #2 (Establishing Separate Political Party Accounts) and RECOMMENDATION #3 (Financial Record-Keeping and Reporting).

¹¹ Further questions arise as to whether parties can continue to separately raise and spend funds (or use state budget funds) for administrative expenses during the election campaign period, and what type of party expenditures qualify as an administrative rather than campaign expenditure.

Elections: Article 79(1) requires electoral participants to submit reports of campaign fund income and expenditures to a registered Public accountant no later than 60 days following Election Day. Paragraph (2) then requires the audit to be completed within 30 days, and paragraph (3) requires the result from the audit to be submitted to the KPU and electoral participants no later than seven days following finalization of the audit. Thus, the new election law requires that parties' reports of their election campaign funds be reported no later than 97 days after the election.

This provision sets a more realistic timetable than *Depdagri's* draft election law (at *Article 112*), which required campaign fund reports to be audited and submitted to KPU no later than 30 days after Election Day.¹² However, the two laws require reporting of campaign funding on two different schedules. *Elections* requires political parties to submit financial reports regarding their campaign funds to KPU no later than 97 days after the election; *Parties* requires political parties to submit reports of their Special Election Campaign Fund Accounts to KPU within 6 months of the election. This is a fundamental flaw in the law that requires legislative correction by DPR.

See: RECOMMENDATION #1 (KPU Campaign Finance Legal Assessment).

Special reporting for contributions

Elections: Article 78(4) (as in *DepDagri's* draft law) creates a reporting requirement for contributions over five million rupiah made "to any electoral participant." Contributions exceeding five million rupiah must be reported to election commissions at national, provincial and regency/municipality levels "with regard to the form and amount of the contribution and the full identity of the contributor." DPR added *Article 78(5)* to require election commissions receiving reports required under paragraph (4) to "publicize the contributions reports ... to the public through the mass media."

Other provisions of the election law and political party law already require all contributions (and expenditures) for political parties' election campaign funds to be reported after the election. Thus, the intent of *Elections: Article 78(4-5)* appears to be for some form of pre-election reporting system for contributions exceeding five million rupiah made to electoral participants (political parties and DPD candidates).

However, these requirements for reporting and disclosure of large contributions are not fully developed (and not given elucidation) in *Elections*. In particular, these provisions do not specify where and when such reports must be submitted by electoral participants, nor describe how election commission should organize and disclose information for contribution reports to the public. Also, *Elections* does not impose any penalties upon electoral participants for failing to submit such reports. Thus, these new reporting provisions provide an important opportunity for elaboration in KPU implementing regulations to fully meet goals of campaign finance transparency.

¹² Unfortunately, however, the new law omits two requirements that were in the draft law's *Article 112*, that:

- The report from the audit submitted to KPU must be "accompanied by all valid evidence of contributions and expenditures";
- "All documents pertaining to the report on campaign funds must be maintained and kept by the KPU and must be made available to the public."

These omissions are administrative in nature, however, and should be corrected in KPU implementing regulations.

See: RECOMMENDATION #10 (Special Reporting and Disclosure of Contributions).

Supervision and law enforcement

The new political laws take entirely different approaches to supervising and enforcing campaign finance controls and financial reporting requirements for political parties and candidates. These approaches—both substance and process—should be reconciled and coordinated in KPU implementing regulations.

See: RECOMMENDATION #1 (KPU Campaign Finance Legal Assessment).

Parties: Article 23 identifies the duties of supervision regarding political finance:

- Request political parties' financial statements and audit results;
- Examine potential violations of prohibitions upon sources of funds.

DepDagri's draft law on political parties placed responsibility for supervision and reporting of violations with "the Government." *Parties: Article 24* now specifically identifies and separates oversight responsibilities within state bodies (though indirectly, by reference to prior articles):

- Ministry of Justice regarding political party registration requirements;
- KPU regarding political parties' financial reports and audits under *Article 9*;
- Ministry of Home Affairs regarding investigation of violations of prohibitions upon party funding under *Article 19*.

This is a more explicit grant of supervisory and investigatory power to Ministry of Home Affairs in the political finance area than under *DepDagri's* draft law¹³ and is particularly troubling given significant potential consequences of criminal sanctions (discussed below). Moreover, no specific supervision is defined in *Article 24* for contribution limitations imposed under *Article 18* (although related criminal penalties for violations are described in *Article 28*, discussed below).

PANWAS. Unlike *DepDagri's* draft election law, *Elections* reintroduces a customary Indonesian institution of election supervisory committees (collectively referred to as *PANWAS*) to serve as a monitoring, mediating and quasi-adjudicative body in the election process—including in the area of campaign finance controls and reporting requirements.¹⁴

Elections: Articles 120-121 establish election supervisory committees at national, provincial, regency/municipality and sub-district (*kecamatan*) levels. *Article 122(1)* specifies the duties and responsibilities of election supervisors are to:

- Supervise all election implementation stages;
- Accept reports pertaining to violations of election laws;
- Settle disputes arising from implementation of elections;
- Submit findings and [refer matters] to authorized institutions.

¹³ Thus, *Parties* contains no comparable provision to *DepDagri's* draft law (at *Article 21(3)*), which stipulated that investigation, indictment and examination in court shall be conducted by Investigators, District Attorneys and courts of general jurisdiction.

¹⁴ For a full discussion of the performance of *PANWAS* supervisory committees during Indonesia's 1999 general elections, see: *Experience Gained From June 1999 Elections: Resolving Complaints and Disputes in the Electoral Process* (report from seminar held by IFES and the University of Indonesia Law Faculty in Jakarta on September 15, 1999).

In a significant improvement from provisions regarding PANWAS under the prior election law, *Elections: Article 127* describes requirements and procedures for citizens, election monitors and electoral participants to submit complaints to election supervisory committees. Similarly, *Article 128* describes the process by which such committees will review complaints, including to forward matters of a criminal nature to “investigators.” Subsequently, *Article 130* states that election supervisors “shall forward findings that are administrative violations to KPU and criminal violations to investigators” (presumably police). *Article 131* establishes time frames for such investigators to investigate and for criminal cases to be referred to court. *Article 133* identifies jurisdiction for hearing cases involving election-related criminal offenses among Indonesian courts.

An increased level of detail in both the election law and political party law regarding supervision and law enforcement is welcome. However, as in their substantive controls and requirements, these two laws do not present an integrated system for supervising and enforcing campaign finance regulation and would benefit from clarification in implementing regulations.

See: RECOMMENDATION #11 (Supervisory and Law Enforcement Authority).

Violations and sanctions

Administrative sanctions. Support for strong financial regulation and reporting requirements is lacking in penalties for violations of obligations or prohibitions (again, indirectly, by reference to prior articles) under *Parties: Articles 26 & 27*:

- 26(2) – “Administrative sanction in the form of public reprimand” by the KPU for political parties that violate requirements to conduct bookkeeping or maintain donor lists and records under *Article 9(h)*;
- 26(3) – “Administrative sanction in the form of withdrawal of assistance from the state budget” for political parties that violate requirements to submit audited annual financial statements and statement for campaign fund account under *Article 9(i-j)*;
- 27(3) – “Administrative sanction in the form of public reprimand” by the KPU for political parties that violate prohibitions, including against receiving contributions from foreign and unidentified donors, under *Article 19(3)*.

As in the *DepDagri* draft law, no specific administrative sanction is prescribed for violations of contribution limitations (although related criminal penalties for violations of *Article 18* are set forth in *Article 28*). The sanction by KPU under *Parties: 27(3)* is also odd, considering the Ministry of Home Affairs has supervisory and investigatory power for violations of *Article 19(3)*.

Parties, unlike *DepDegri’s* draft law, does not offer options of administrative sanctions for campaign finance violations in the form of one-year or more suspension of party activity, ban from participation in at least one election, or dissolution of the party.¹⁵

¹⁵ The most severe penalty – ‘administrative sanction in the form of a prohibition on contesting the following election’ – is now imposed under *Article 27(5)* for political parties that violate the prohibition against establishing a business entity and/or holding shares in a business entity under *Article 19(4)*.

The only reference to administrative violations in *Elections* is in *Article 130* (discussed above), in which election supervisors are to forward findings that are administrative violations to the KPU. The *Elucidation* for *Article 130* merely states: "Administrative violation means violations of provisions and requirements as defined in this law." Thus, the KPU appears to have wide latitude to define administrative violations and sanctions relating thereto under implementing regulations.

Criminal sanctions. Under *Parties: Article 28*, criminal penalties for persons (including party administrators) who violate contribution limitations and prohibitions upon political party funding (pursuant to *Parties: Article 18 & 19*) are relatively severe and more extensively described than in *DepDagri's* draft law. These penalties include financial sanctions and imprisonment; contributions received by parties that exceed limitations will be forfeited to the state.

Since the Ministry of Home Affairs has supervisory and investigatory functions related to *Article 19* (and no specific grant is given to any authority with regard to *Article 18* contribution limitations), the Ministry wields considerable (discretionary) prosecutorial power over political parties under the new law.

Similarly, *Elections: Article 138* provides for relatively severe criminal penalties for campaign finance violations:

- Any person who makes or receives a contribution to campaign funds exceeding the specified limits as stipulated in *Article 78(2)* shall be punishable by imprisonment of minimum 4 (four) months or maximum 24 (twenty four) months, and/or fine of minimum 200,000 (two hundred thousand) rupiah or maximum 1,000,000 (one million) rupiah.
- Any person who intentionally makes or receives a contribution to campaign funds to or from prohibited parties as stipulated in *Article 80(1)* shall be punishable by imprisonment of minimum 4 (four) months or maximum 24 (twenty four) months, and/or fine of minimum 200,000 (two hundred thousand) rupiah or maximum 1,000,000 (one million) rupiah.
- Any person who intentionally gives false information in the Electoral Campaign Fund Report as obliged by this law, shall be punishable by imprisonment of minimum 2 (two) months or maximum 12 (twelve) months, and/or fine of minimum 1,000,000 (one million) rupiah or maximum 10.000.000 (ten million) rupiah.

These provisions may represent a strong commitment by DPR to treat "money politics" offenses seriously and should therefore be encouraged. Unfortunately, however, election officials and courts are often reluctant to impose severe penalties for campaign finance violations, so sanctions that seem too harsh may result in undermining enforcement. Moreover, as noted above with respect to the role of the Ministry of Home Affairs under *Parties*, legal authority to initiate and pursue investigations for violations that carry such severe consequences must be used impartially and fairly.

See: RECOMMENDATION #12 (Violations and Sanctions).

Public disclosure

IFES' *Money Politics* report of November 2002 observed:

Political finance laws should specifically guarantee rights of public access to political party finance reports and provide appropriate means for public examination of these

reports. Broad access to financial reports increases the amount and quality of information available to the voting public. Access permits increased scrutiny and 'self-policing' of election law violations through the watchfulness of competing parties, civil society and the news media.

As noted previously, Indonesia's new political laws provide for financial reporting by electoral participants after the election (*see: Parties: Article 9(j) and Elections: Article 79*). *Parties: Article 9(i)* requires political parties to submit annual financial reports. *Parties: Article 9(h)* states that lists of party donors and donations received "shall be open for examination by society and government." *Elections: Article 78(4-5)* provides for special reporting of contributions over five million rupiah and requires election commissions to publicize these contribution reports.

These provisions indicate a commitment to transparency and accountability for political parties and candidates. To achieve these goals, KPU should draft implementing regulations to facilitate financial reporting and to guarantee public access to the financial reports of electoral participants.

See: RECOMMENDATION #13 (Public Disclosure).

Conclusion

A fundamental principle of campaign finance regulation and disclosure is that electoral participants must be encouraged to submit honest, accurate and complete financial reports. The KPU, supervisory and law enforcement bodies, news media and monitoring organizations face an enormous challenge in facilitating that result—particularly in view of Indonesia's political history. IFES' first *Money Politics* report described conclusions reached by observers following 1999 general elections in Indonesia:

The KPU [post-election summary] report acknowledged that most political parties did not have an appropriate bookkeeping system. Accountants familiar with the audit process described the [parties'] reports as likely constituting only a fraction of political finance activity conducted by or associated with many, if not most, of the parties. Most parties did not record or report receipt of in-kind donations (goods or services), and failed to include spending by organizations that sponsored or supported parties.

General elections in 2004 present an opportunity to learn from the past and advance reform of political finance in Indonesia. With DPR's approval of a new Law on General Elections and a new Law on Political Parties, the legal framework for the elections is becoming clearer. The new laws provide an opportunity for the KPU to clarify and facilitate the campaign finance provisions through implementing regulations and procedures. Campaign finance regulation and disclosure is particularly deserving of attention and improvements.

RECOMMENDATIONS

RECOMMENDATION #1: KPU Campaign Finance Legal Assessment

The Law on Political Parties and Law on General Elections have concurrent jurisdiction regarding regulation of political party funding and overlapping jurisdiction in the more specific area of campaign finance regulation and public disclosure. To fully meet the

challenges posed by this situation, the KPU should form an in-house team to review the provisions of these two laws that relate to party and candidate funding¹⁶ and should also seek inputs and advice from outside experts and civil society.

The objective of this review should be to:

- Identify aspects in which the laws operate concurrently, are inconsistent and/or require extra efforts at coordination (particularly including: financial reporting requirements and time frames, limitations upon contribution amounts, and law enforcement);
- Recommend (for KPU approval) regulations and procedures that reconcile and synchronize relevant laws relating to campaign funding for political parties and candidates;
- Recommend to DPR any substantive or technical corrections to the election law or political party law (or other laws) regarding issues that do not appear capable of being clarified through implementing regulations or procedures (See: RECOMMENDATIONS #3 and #4, below).

RECOMMENDATION #2: Establishing Separate Political Party Accounts

To implement and synchronize *Parties: Article 9(h-j)*, *Parties: Article 17*, *Elections: Article 78*, and *Elections: Article 79*, the KPU should consider adopting regulations and procedures to:

- Require each political party (that is registered with the Ministry of Justice) to conduct all financial activity through designated bank accounts that are open to inspection by the KPU (and other appropriate investigatory and enforcement authorities); all party expenditures must be made from, and all contributions received into, designated bank accounts.
- Prohibit political parties from using any other funds or accounts to finance their activities apart from or outside their official, reported accounts.
- Clarify that political parties and their representatives/agents may not cause, authorize, consent to or coordinate with other persons or entities to spend other funds or use other resources outside the parties' designated bank accounts for political purposes, unless such activity is reported as a contribution; any expenditure by any person or group that is made to support a political party or candidate and is done with the consent or at the suggestion of, or in cooperation or coordination with, such party or candidate is treated as a contribution to that party and fully reported.
- Require each political party (that is registered with the Ministry of Justice) to establish and maintain an Administrative Account, which shall be used for routine operational expenses, including administration (overhead), party development and recruitment, research, fund-raising and general public communications (outside of the election campaign period).

¹⁶ The review should also extend to other Indonesian laws that affect this policy area, including laws relating to accounting for state funds, investigations by police and prosecutors, and criminal prosecution.

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- Require each political party certified to compete in general elections to establish an Election Campaign Fund Account, which must be maintained separately from the party's Administrative Account; all expenditures made by a political party for election campaign expenses (expenditures to support or oppose a particular party or candidate in an election), including but not limited to all expenditures during the official election campaign period, must be made from the Election Campaign Fund Account.
 - Require (for accounting, audit and reporting purposes) that all political party accounts be combined and included within financial reports for either the party's Administrative Account or Election Campaign Fund Account.
 - Require that all financial activity of political parties be fully reported and disclosed pursuant to reporting and disclosure regulations.

To clarify *Elections: Articles 74(g) & 75(2)*, the KPU should consider adopting a regulation to stipulate that:

Political parties and candidates are prohibited to use any government (state) funds, facilities, personnel, supplies, materiel, equipment or any other government (state) resources for election campaign or other political purposes, except as specifically provided or authorized by law.

RECOMMENDATION #3: Financial Record-Keeping and Reporting

To implement and synchronize *Parties: Article 9(h-j)* and *Elections: Article 79*, the KPU should consider adopting regulations and procedures to:

- Require each political party (that is registered with the Ministry of Justice) to appoint a Financial Officer of the party, who will be responsible for compliance with political finance regulations, including record-keeping and reporting obligations. A Financial Officer shall be:
 - Professionally qualified to work as an accountant and follow accepted accounting procedures for record-keeping and reporting;
 - Legally responsible for keeping complete and accurate records of all financial activity of the political party (receipts/disbursements; assets/liabilities), for maintaining supporting documentation for financial records, for integrating and reconciling all financial accounts of the party, and for submitting true and accurate reports of this activity in accordance with requirements and schedule for reporting stated in the political finance laws and regulations;
 - Provided unrestricted access to all political party financial records and full cooperation from all party officials;
 - Given internal authority to accept or reject contributions according to legal restrictions;

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- Obligated to cooperate with and facilitate all audits or official investigations of political party accounts, including to provide all relevant financial records and supporting documentation within his/her responsibility.
 - Require each political party central committee to maintain consolidated financial records of contributions to, and expenditures made by, the party at all levels of organization, including subordinate party organizations at all geographic levels; all subordinate party organizations must report to the central party headquarters all contributions received that exceed [### rupiah] and all expenditures that exceed [### rupiah].
 - Require each registered political party to submit an Annual Administrative Account Report no later than March 1 of each year –
 - Reports must fully and accurately describe the financial transactions of the political party's Administrative Account for the preceding calendar year, including all contributions received, all expenditures made, and all transfers of funds made from/to other party accounts¹⁷;
 - The Report must be signed by the political party's Chairman and Financial Officer; these party officers shall affirm that such report is accurate to the best of their knowledge.
 - Require each political party certified to compete in general elections to submit an Election Campaign Fund Account Report (deadlines for submitting reports under *Parties: Article 9(j)* and *Elections: Article 79* differ) –
 - The Report shall fully and accurately describe the financial transactions of the political party's Election Campaign Fund Account during the applicable time frame, including all contributions received and all expenditures made for election campaign purposes.
 - The Report shall be signed by the political party's Chairman and Financial Officer; these party officers shall affirm that such report is accurate to the best of their knowledge.

The KPU should urge the DPR to revise and make consistent the timeline under *Parties: Article 9(j)* and *Elections: Article 79* for political parties to submit post-election financial reports regarding campaign funds.

RECOMMENDATION #4: Election Campaign Period

The DPR's decision to add a provision to the election law (not present in the *DepDagri* draft law) specifying a three-week election campaign period (*Elections: Article 71(3)*) creates a practical dilemma for political parties and an intolerable regulatory and enforcement problem for the KPU. Parties, potential candidates, academic and legal experts, and non-governmental organizations should strongly encourage the DPR to reconsider and revise this provision.

¹⁷ Special requirements and accounting rules will be necessary for political parties that amalgamate (or split apart) during the time period covered by political finance reports.

**RECOMMENDATION #5:
Anonymous, Unidentified or Falsely Identified Donors**

To clarify *Parties: Article 19(3)(f)* and *Elections: Article 80(1)(b)*, the KPU should consider adopting regulations that specify:

- Political parties and candidates are prohibited from accepting anonymous contributions; the true identity of each donor must be known and reported, including each donor's full name and address.
- Political parties and candidates are prohibited from accepting contributions given in the name of another. Political parties or candidates may not accept contributions that they know or should have known have been passed through an intermediary (conduit) from another donor, unless the identity of the original donor is reported as the source of the contribution.
- Persons or entities identified on political finance disclosure reports as making contributions to a political party or candidate may not receive advance payments or reimbursements for such contributions from other persons or entities.

**RECOMMENDATION #6:
Election Campaign Funds of Candidates for DPD**

Elections: Article 78(1) includes references to candidates for DPD in general regulatory provisions regarding donations to campaign funds of political parties; this provision covers donations received by (and made by) candidates during the election campaign period. *Elections* provides no further explanation or separate requirements for funding controls or financial reporting obligations for DPD candidates. However, in DPD elections it is clearly intended (as specifically indicated by *Elections: Articles 11, 12, 63 & 66*) for DPD candidates to be "electoral participants" separate from political parties.

To clarify, implement and synchronize these provisions, the KPU should consider adopting regulations and procedures that reaffirm that DPD candidates are subject to:

- Prohibitions and limitations upon donations to campaign funds under *Elections: Articles 78(1-3) & 80*;
- Special contribution reporting requirements under *Elections: Article 78(4-5)*;
- Post-election reporting requirements under *Elections: Article 79*.

The KPU should also consider:

- Adopting a regulation requiring DPD candidates to form Campaign Fund Accounts held in designated bank accounts and open to inspection by the KPU;
- Adopting a regulation requiring DPD candidates to appoint a Financial Officer responsible for maintaining and reporting the Campaign Fund Account;¹⁸
- Devising separate financial reporting forms appropriate to DPD candidates and distinct from financial reporting forms devised for political parties and candidates for DPR/DPRD.¹⁹

¹⁸ See **RECOMMENDATION #3**.

¹⁹ See **RECOMMENDATION #3**.

**RECOMMENDATION #7:
Record-Keeping and Reporting of Election Campaign Funds of
Candidates for DPR/DPRD**

To implement and synchronize *Parties: Article 9(h-j)*, *Elections: Article 78* and *Elections: Article 79*, the KPU should consider adopting regulations and procedures to:

- Recognize candidates for DPR/DPRD as representatives/agents of the political parties that nominated them for purposes of campaign finance regulation and reporting; all contributions provided to candidates (including non-monetary donations) shall be considered as contributions to their political party and subject to the same prohibitions, limitations and reporting requirements as contributions to political parties under *Elections* and *Parties*.
- Require all funds raised and spent for election campaign purposes by candidates for DPR/DPRD to be fully and accurately reported by the political party that nominated such candidates in the party's election campaign fund report.
- Require candidates for DPR/DPRD to finance all campaign activity in support of their candidacy through the designated accounts of the party that nominated them.
 - Contributions received by candidates shall be forwarded by candidates to their political party for deposit in party election campaign fund accounts;
 - Candidates must notify their party of all funds received and spent for election campaign purposes; all financial activity of candidates must be fully reported by the political parties that nominated such candidates.

**RECOMMENDATION #8:
Non-Monetary Contributions**

To clarify *Parties: Article 17(2)* and *Elections: Article 78(1)*, the KPU should consider adopting regulations that specify:

- All donations in non-monetary form are legally equivalent to contributions of money.
 - Non-monetary donations are subject to limitations upon contributions under law and must be reported as contributions in the political party's consolidated financial report.
 - The amount of non-monetary contributions shall be determined at fair market value; questions by electoral participants about valuation of non-monetary contributions received should be brought to election supervisory commissions at corresponding levels.
 - Discounts in prices on sale of goods or services provided to parties or candidates and not normally given to all customers are considered non-monetary donations for the full amount of the unusual discount.
 - Political parties have received non-monetary donations if any party representative/agent, including a candidate, accepts or uses the donated goods, services or facilities for any political purpose.
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**RECOMMENDATION #9:
Contribution Limitations**

To implement and synchronize *Parties: Article 18(1-2)* and *Elections: Article 78(2)*, the KPU should consider adopting regulations and procedures to:

- Distinguish campaign funds and political party funds other than campaign funds for purposes of contribution limitations (See: **RECOMMENDATION # 2**); clarify –
 - When (and for what particular types of expenditures) campaign funds and funds other than campaign funds may be used;
 - When (or to what particular donations) to apply limitations upon amounts of contribution under the political party law and the election law.
- Clarify limitation period (time frame) per donor.
 - For example: (for Parties) all contributions made within one calendar year for limitations under Parties; (for Elections) all contributions made within three months before and up to Election Day.
- Require aggregation.
 - All contributions from the same donor made to the same recipient political party or candidate during the limitation period are combined for purposes of applying the contribution limitations.
- Clarify that loans made to political parties or candidates constitute contributions under the law and are subject to prohibitions and limitations for contributions and subject to reporting requirements.

**RECOMMENDATION #10:
Special Reporting and Disclosure of Contributions**

To implement *Elections: Article 78(4-5)*, the KPU should consider adopting regulations and procedures to:

- Clarify that contributions to campaign funds exceeding five million rupiah should be specially reported at each level of election commission (KPU) by corresponding levels of political party committees (and candidates).
 - Contributions given to national political party committees or to DPR candidates should be reported to the national KPU;
 - Contributions given to provincial political party committees or to DPRD-Province candidates should be reported to the provincial KPU;
 - Contributions given to regency/municipality political party committees or to DPRD-Regency/Municipality candidates should be reported to the regency/municipality KPU;
 - Contributions given to DPD candidates should be reported to the provincial KPU.
- Clarify that contributions to campaign funds exceeding five million rupiah should be reported within a reasonably rapid time (e.g., within seven days, and within two days during the last week of the election campaign).
- Clarify that contributions to be reported under this provision include non-monetary contributions exceeding five million rupiah.

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- Provide administrative sanctions for electoral participants that fail to report contributions under this provision in an accurate and timely manner.
 - Define an appropriate time frame and means for election commissions to publicize these special contribution reports.

RECOMMENDATION #11: Supervisory and Law Enforcement Authority

The KPU will need to reconcile different and inconsistent approaches to supervisory and law enforcement authority in the election law and political party law. *Parties* is much more specific in assigning responsibility for oversight to state bodies for particular aspects of financial activity of political parties. It is unclear how these delegations of authority will be interpreted in the regulation of campaign finance activity, which is only a part of political finance activity but involves a somewhat broader range of persons and groups (electoral participants, including DPD candidates).

Elections relies upon election supervisory committees (PANWAS), which provide an avenue for complaints and are a vehicle for investigation of violations as well as mediation of disputes. The work of these committees ultimately depends upon follow-up by the KPU, prosecutors and courts. The KPU is already working to establish the system of PANWAS and to draft implementing regulations and procedures in this area. Additionally, the KPU should consider a broader review to integrate its own role, the role of PANWAS and the roles of Government Ministries, police, prosecutors and courts to avoid confusion and encourage cooperation during the hectic election period (See: RECOMMENDATION #1).

RECOMMENDATION #12: Violations and Sanctions

Similarly, the KPU will need to reconcile different and somewhat inconsistent approaches in setting violations and sanctions related to campaign finance activity under *Parties* and *Elections*, which could also benefit from a broad review aimed at coordination (See: RECOMMENDATION #1).

Elections presents a challenge (and offers an opportunity) to the KPU in its reference to “administrative sanctions” in *Article 130*, without further elaboration. The KPU should consider adopting regulations to articulate administrative sanctions relating to financial record-keeping and reporting, including for these offenses:

- Late filing of reports;
- Failure to file reports;
- Submitting false or incomplete information in reports;
- Inadequate record-keeping or failure to maintain documentation;
- Failure to provide or collect information relating to consolidated financial records of political parties (including information from subordinate party committees and/or candidates);
- Failure to conduct a professional and accurate audit of financial records;
- Obstruction of, or lack of cooperation with, financial audits or official investigations;
- Conducting political finance activity outside of the officially reported account, or in coordination with surrogates.

Sanctions for such offenses would likely be monetary penalties, and based on a graduated scale proportionate to the financial amount, severity of the violation and degree of culpability (mistake, negligence or deliberateness).

**RECOMMENDATION #13:
Public Disclosure**

To implement *Parties: Article 9(h-j)* and *Elections: Articles 78&79* regarding transparency and accountability of political party (and DPD candidate) funding, the KPU should consider developing an office of Public Disclosure. Such an office should be provided adequate resources to assist public examination of financial reports:

- Personnel and equipment to receive, photocopy, organize, file and make available such reports for public scrutiny.
- Suitable facilities to assist public examination of financial reports and permit photocopying at a reasonable cost and in a convenient manner.

The KPU should also consider adopting regulations regarding public access to financial reports of electoral participants:

- Information should be made available to the public according to a reasonable timeline (such as within 48 hours of receipt of reports by the disclosure authority).
- Access to such information should be open to all interested persons and groups, including but not limited to political parties, news media, academics and civil society.

OVERVIEW OF RELEVANT PROVISIONS**Law on Political Parties (*Parties*)**

- ◇ *Parties: Chapter V (Functions, Rights, and Obligations), Article 9* states political parties' financial reporting obligations, which include to:
 - h. Conduct bookkeeping and maintain a list of donors and a total of donations received, which shall be open for examination by society and the Government;
 - i. Prepare a periodic financial statement annually and submit it to the General Elections Commission following an audit by a public accountant; and
 - j. Maintain a Special Election Campaign Fund Account and submit a balanced financial statement audited by a public accountant to the General Elections Commission by no later than 6 (six) months following Election Day.

Explanation is added in the *Elucidation for Article 9* –

Point h. The use of assistance funds from the state budget to a political party is reported every year to the Government, defined here as the Ministry of Home Affairs, and audited by the State Audit Board (BPK).

Point j. A special election campaign fund account is a special account opened for the purpose of holding election campaign funds, which shall be separate from other necessary accounts.

- ◇ *Parties: Chapter IX (Finances), Article 17* sets out permissible sources of funding for political parties –
 - (1) Financing for a political party shall be obtained from:
 - a. Member's periodic fee;
 - b. Contributions which are allowed by law; and
 - c. Assistance from the state budget.
 - (2) Contributions as referred to in paragraph (1) point b may be in the form of money, goods, facility, equipment, and/or services.
 - (3) Assistance under paragraph (1)(c) shall be given proportionally to political parties that have received seats in the representative institutions of the people.
 - (4) The procedures for channeling assistance under paragraph (3) shall be further regulated by Government Regulation.

Explanation is added in the *Elucidation for Article 17* –

(1)(c) State budget is national budget (APBN) and regional budgets (APBD).

(3) The representative institutions of the people are the DPR, DPRD Propinsi and DPRD Kabupaten/Kota. Parties that gain seats in:

- a. DPR are given financial assistance sourced from the national budget (APBN);
- b. DPRD Propinsi are given financial assistance sourced from the provincial budget (APBD); and
- c. DPRD Kabupaten/Kota are given financial assistance from the kabupaten/kota budget (APBD).

This assistance is provided by the government and transferred to political parties to pay for the administration and/or secretariat of the political parties in accordance with the capability of the state finances to do so, and shall be accounted in accordance with legislation and regulations.

◇ *Parties: Chapter IX (Finances), Article 18* stipulates contribution limitations –

- (3) Contributions from members and non-members as referred to in Article 14 paragraph (1) point b shall not exceed Rp. 100,000,000.00 (one hundred million rupiah) within a one year period.
- (4) Contributions from corporations or any other form of legal entities as referred to in Article 14 paragraph (1) point b shall not exceed Rp. 500,000,000.00 (five hundred million rupiah) within a one year period.
- (5) Contributions as referred to in paragraph (2) by corporations and any other forms of legal entity shall be made pursuant to the provisions of the prevailing laws and regulations.

◇ *Parties: Chapter X (Prohibitions), Article 19* includes prohibitions regarding political party funding –

- (3) A political party shall be prohibited from:
 - a. Receiving and making contributions in any form from or to foreign entities in contravention of legislation and regulations;
 - b. Receiving contributions, whether in the form of goods or money, from anybody that does not state their clear identity; or
 - c. Receiving contributions from individual persons and/or corporations/business entity which exceed the specified limit; or
 - d. Request or receive funds from state/region owned enterprises, regionally owned enterprises, enterprises which are owned by villages or equivalent, cooperatives, foundations, NGOs, community organizations, and humanitarian organizations.
- (6) A political party shall be prohibited from establishing a business entity and/or holding shares in a business entity.

Explanation is added in the *Elucidation for Article 19* –

(3)(a) A foreign entity is a foreign citizen, a foreign community organization or a foreign governmental institution.

(3)(b) A clear identity involves information regarding the name and full address of an individual or business.

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- ◇ *Parties: Chapter XII (Oversight), Article 23* describes various duties of oversight regarding political party regulation, including to –
 - e. Request the result of the annual financial audit report and the result of the financial audit report of general election campaign finances under *Article 9(h),(i),(j)*, above; and
 - f. Conduct investigation of the possibility of violation against the prohibitions applicable to political parties under Article 19(2),(3),(4), above.

 - ◇ *Parties: Chapter XII (Oversight), Article 24* identifies oversight responsibilities regarding political party regulation –
 - (1) Oversight under Article 23, above, shall be conducted by:
 - a. The Ministry of Justice in undertaking the duty of oversight under Article 23(a), 23(b), 23(c), and 23(d), above;
 - b. The General Elections Commission in undertaking the duty of oversight under Article 23(e), above; and
 - c. The Ministry of Home Affairs in undertaking the duty of oversight under Article 23(f), above.
 - (2) Carrying out of oversight under paragraph (1) shall be conducted in accordance with legislation and regulations.

Explanation is added in the *Elucidation for Article 24* –

(2) Matters that are not yet regulated will be regulated in future legislation and regulations.

- ◇ *Parties: Chapter XIII (Sanctions), Articles 26 & 27* stipulate penalties for violations of provisions of the political party law, including –

Article 26

- (2) Violation of the provisions under Article 9(h), above, shall be subject to administrative sanction in the form of a public reprimand by the General Elections Commission.
- (3) Violation of the provisions under Article 9(i) and 9(j), above, shall be subject to administrative sanction in the form of withdrawal of assistance from the state budget.

Article 27

- (3) Violation of the provisions under Article 19(3), above, shall be subject to administrative sanction in the form of a public reprimand by the General Elections Commission.
- (4) Violation of the provisions under Article 19(4) shall be subject to administrative sanction in the form of a prohibition on contesting the following election under Article 16(1), above.

(5) Before administrative sanctions under paragraphs (1), (2), (3), and (4) are imposed, the explanation of the central executive committee of the political party shall first be heard.

◇ *Parties: Chapter XIII (Sanctions), Article 28* stipulates criminal penalties for violations of contribution limitations and prohibitions –

(1) Any person who makes a contribution to a Political Party which exceeds the amount as set out in Article 18 shall be punishable by imprisonment for a maximum term of 2 (two) months and/or a fine in the maximum amount of Rp. 200,000,000 (two hundred million rupiah).

(2) A Political Party organizer who accepts a contribution from a person and/or corporation/business entity in an amount exceeding that which is set out in Article 18, shall be punishable by imprisonment for a maximum term of 6 (six) months and/or a fine in the maximum amount of Rp. 500,000,000 (five hundred million rupiah).

(3) Any person who influences or coerces another person and/or corporation/business entity to make a contribution to a Political Party which exceeds the amount as set out in Article 18 shall be punishable by imprisonment for a maximum term of 6 (six) months and/or a fine in the maximum amount of Rp. 500,000,000 (five hundred million rupiah).

(4) Contributions accepted by a Political Party from a person and/or corporation/business entity that exceed the specified amount as referred to in Article 18 shall be seized to become the property of the State.

(5) Organizers of a Political Party who are guilty of a violation as referred to in Article 19 paragraph (3) shall be punishable by imprisonment for a maximum term of 6 (six) months and/or a fine in the maximum amount of Rp 1,000,000,000 (one billion rupiah).

Explanation is added in the *Elucidation for Article 28* –

A political party administrator in Article 28(2), 28(5) and 28(6) is an element of the administration of a political party who commits actions of violation as defined in those subarticles.

Law on General Elections ('Elections')

◇ *Elections: Chapter I (General Provisions), Article 5* identifies electoral participants –

(1) Electoral Participants with respect to the election of members of the DPR, DPD Provincial DPRD, and the Regency/City DPRD are Political Parties.

(2) Electoral Participants with respect to the election of members of the DPD are individual persons.

◇ *Elections: Chapter VII (Campaigns), Part 1 (Electoral Campaign), Article 71(3)* stipulates duration of official campaign period:

Electoral Campaigns shall be held by the Participating Political Parties for 3 (three) weeks and end 3 (three) days prior to Election day.

- ◇ *Elections: Chapter VII (Campaigns), Part 1 (Electoral Campaign), **Article 77*** prohibits candidates from vote-buying and provides for penalty of disqualification for candidates who violate this provision –
 - (1) Candidate members for the DPR, DPD, Provincial and Regency/City DPRD are prohibited from promising and/or giving money or other materials with the aim of affecting voters during the campaign period until the election day.
 - (2) Candidates who are proven to have committed a violation as referred to in paragraph (1) shall be disqualified as a candidate by the KPU/Provincial KPU/Regency/City KPU.
 - (3) Procedure for the suspension of candidate as referred to in paragraph (2) shall be determined by the KPU.

- ◇ *Elections: Chapter VII (Campaigns), Part 2 (Campaign Funds), **Article 78*** identifies permissible sources and amounts of campaign funds for electoral participants –
 - (2) Election campaign funds may be obtained by the electoral participants from:
 - a. members of the relevant Participating Political Party including candidates for the DPR, DPD, Provincial DPRD and Regency/City DPRD;
 - b. other non-binding sources including private entities, or persons, whether given to the Participating Political Party or to the candidates for the DPR, DPD, Provincial DPRD and Regency/City DPRD;
 - (3) Contributions to Campaign Funds as referred to in paragraph (1) from any individual person shall not exceed Rp. 100,000,000.- (one hundred million rupiah), and contributions from a private entity shall not exceed Rp. 750,000,000 (seven hundred fifty million rupiah).
 - (4) Campaign funds as referred to in paragraph (1) in the form of a loan from a company or private entity shall not exceed the amount as specified in paragraph (2).
 - (5) Contributions of more than Rp. 5,000,000.- (five million rupiah) made to any electoral participants must be reported to the KPU/Provincial KPU/Regency/City KPU with regard to the form and amount of the contribution and the full identity of the contributor.
 - (6) The KPU/Provincial KPU/Regency/City KPU shall publicize the contributions report as referred to in paragraph (4) to the public through the mass media.

- ◇ *Elections: Chapter VII (Campaigns), Part 2 (Campaign Funds), **Article 79*** requires submitting audited reports of campaign funds to KPU –
 - (1) All campaign fund reports of the electoral participants, whether income or expenditures, must be submitted to a registered Public Accountant by no later than 60 (sixty) days following Election Day.
 - (2) The registered Public Accountant must finish the audit no later than 30 (thirty) days following the acceptance of the reports as referred to in paragraph (1).
 - (3) The result from the audit as referred to in paragraph (2) must be submitted to the KPU and electoral participants no later than 7 (seven) days following the finalization of the audit.

- ◇ *Elections: Chapter VII (Campaigns), Part 2 (Campaign Funds), **Article 80*** adds further prohibitions upon sources of campaign funding –

- (1) Electoral participants are prohibited from accepting contributions or other forms of assistance for the purpose of campaigns which come from:
 - a) foreign parties;
 - b) a contributor whose identity is not clear;
 - c) Government, State-owned (BUMN) and Regional-owned Enterprise (BUMD)
- (2) Electoral participants who receive such contributions as referred to in paragraph (1) are not allowed to use the said fund and must report it to KPU no later than 2 (two) weeks after the end of campaign period and relinquish the fund to the State Treasury.
- (3) Electoral participants who do not meet their obligations as stipulated in paragraph (2) shall be given criminal sanction.

- ◇ *Elections: Chapter XIV, (Supervision, Legal Enforcement and Election Monitoring), Part 1 (Supervision) **Articles 120 & 121** establish Election Supervisory Committees at national, provincial, kabupaten/kota and kecamatan levels. **Article 122(1)** describes these committees' functions –*

Election Supervisors have the duties and authorities as follows:

- To supervise all Election implementation stages;
 - To accept reports pertaining to violations of election laws;
 - To settle disputes arising from implementation of Election; and
 - To submit findings and unfinished reports to authorized institutions.
- *Elections: Chapter XIV, (Supervision, Legal Enforcement and Election Monitoring), Part 2 (Law Enforcement) – Election Violation and Dispute Settlement, **Articles 127-8** describes procedures for managing complaints of violations by Election Supervisory Committees –*

Article 127

- (1) Election Supervisors receives violation on election laws on every stage of Election implementation.
- (2) Reports on violation of election law can be submitted by:
 - a. Citizens with voting rights;
 - b. Election monitors; and/or
 - c. Electoral participants.
- (3) Reports shall be submitted in writing or orally, which contains:
 - a. Name and address of the reporter;
 - b. Time and place of occurrence;
 - c. Names and addresses of the perpetrators;
 - d. Names and addresses of the witnesses; and
 - e. Details of the occurrence.
- (4) Reports as referred to in paragraph (3) shall be submitted to the Election Supervisors according to their jurisdiction no later than 7 (seven) days following the occurrence of violation of election laws.
- (5) The procedure of reporting shall be regulated further by the Election Supervising Committee.

Article 128

- (1) Election Supervisors analyze all violation reports received.
- (2) Election Supervisors decides to process or not to process the reports referred to in paragraph (1) no later than 7 (seven) days following the receipt of the reports.

- (3) In the event Election Supervisors need additional information from the reporter to complement the report, the decision as referred to in paragraph (2) shall be taken no later than 14 (fourteen) days following the receipt of the reports.
- (4) Reports on dispute which have no criminal nature shall be settled by the Election Supervisors.
- (5) Reports which have criminal nature will be forwarded to investigators.

- ◇ *Elections: Chapter XIV, (Supervision, Legal Enforcement and Election Monitoring), Part 2 (Law Enforcement) – Election Violation and Dispute Settlement, **Article 130** provides for referral of criminal cases by Election Supervisory Committees for further investigation –*

Election Supervisor shall forward findings that are administrative violations to KPU and criminal violations to investigators.

- ◇ *Elections: Chapter XIV, (Supervision, Legal Enforcement and Election Monitoring), Part 2 (Law Enforcement) – Investigation and Prosecution, **Article 131** establishes time frames for investigating violations and referring criminal cases to courts –*

- (2) Investigation on criminal acts regulated in this law shall be completed within 30 (thirty) days following the receipt of the report.
- (3) Investigators must submit case file to the General Attorney no later than 7 (seven) days following the completion of investigation.
- (4) General Attorney shall delegate the case file to the court no later than 14 (fourteen) days following the receipt of case file from the investigators.

- ◇ *Elections: Chapter XIV, (Supervision, Legal Enforcement and Election Monitoring), Part 2 (Law Enforcement) – Examination in Court of Justice, **Article 133** determines jurisdiction among Indonesian courts for hearing cases involving election-related criminal offenses –*

- (1) Examination on criminal acts in this law is conducted by judicial courts in the public court level.
- (2) Judicial courts as referred to in paragraph (1) are Land Courts, which is the first and the final level, for violations punishable with less than 18 (eighteen) months imprisonment.
- (3) Judicial courts as referred to in paragraph (1) are Land Courts for the first level and Supreme Court as the appellate and final level, for violations punishable with 18 (eighteen) months of imprisonment or more.
- (4) Case settlement as referred to in paragraph (2) and paragraph (3) shall not be later than 21 (twenty one) days by the Land Court and not later than 14 (fourteen) days by the Supreme Court following the receipt of case file.

- ◇ *Elections: Chapter XV (Criminal Provisions), **Article 138** provides criminal penalties for campaign finance related violations –*

- (5) Any person who make or receive a contribution to campaign funds exceeding the specified limits as stipulated in Article 78 paragraph (2) shall be punishable by imprisonment of minimum 4 (four) months or maximum 24 (twenty four) months

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- and/or fine of minimum Rp. 200.000,- (two hundred thousand rupiah) or maximum Rp 1.000.000,- (one million rupiah)
- (6) Any person who intentionally make or receive a contribution to campaign funds to or from prohibited parties as stipulated in Article 80 paragraph (1) shall be punishable by imprisonment of minimum 4 (four) months or maximum 24 (twenty four) months and/or fine of minimum Rp. 200.000,- (two hundred thousand rupiah) or maximum Rp 1.000.000,- (one million rupiah)
- (7) Any person who intentionally give false information in the Electoral Campaign Fund Report as obliged by this law, shall be punishable by imprisonment of minimum 2 (two) months or maximum 12 (twelve) months and/or fine of minimum Rp. 1.000.000,- (one million rupiah) or maximum Rp 10.000.000,- (ten million rupiah)