

# THE ROLES OF GENERAL ELECTION COMMISSION AND GENERAL ELECTION SUPERVISORY BOARD FOR A DEMOCRATIC ELECTION

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## Abstract

*To build a strong and reliable democratic institution, is a time consuming process which also requires a long patience. Accordingly, three pillars of General Election Commission (KPU), namely, structural independency, functional independency and personal independency, shall be consistently kept up and maintained.*

**Keywords:** *General Election Commission, General Election Supervisory Board, Democratic*

## Introduction

It is mentioned in Article 22 of Indonesia's Constitution of 1945 that "General Election is conducted by a general election commission." The word commission is not capitalized, and it means that the committee responsible for conducting the election is not necessarily the General Election Commission (KPU), which is well-known today, but it can be other institutions. However, Act No. 12/2003 which has been replaced by Act No. 10/2008; Act No. 23/2003; and Act No. 22/2007 have clearly pointed out that the interpretation on the given commission is that of the existing KPU.

The presence of KPU in 2001, the Provincial General Election Supervisory Board (Panwaslu) in 2003, and now the National General Election Supervisory Board (Bawaslu)

gives hope, as well as question on the ability of these institutions<sup>1</sup> to create a reliable, honest, just, and transparent election. A lot of critics and citizens highly appreciate them and believe that they enable a cleaner and more democratic election. Such hope and trust are understandable in a way that the anxiety due to the fraudulent general election practiced during the New Era (Orde Baru) under Suharto regime is still embedded in the minds of Indonesian people.<sup>2</sup>

On the one hand, the traumatic experience is positive as it results in a productive social reaction (support) to the KPU's existence and Panwaslu despite its high contra-productive potential if the promise cannot be realized. Criticism emerges, however, regardless of the fact that the inability is not solely of the KPU, internal variable, and Panwaslu, the external variable, and is directed to the given institutions.

### **General Election During the Transitional Period**

General election is one of the main pillars of democracy. Its centralized position in distinguishing a democratic political system from what is not seems clear in several definitions formulated by the scholars. One of the early conceptions of democracy was proposed by Joseph Schumpeter (the Schumpeterians) placing the freedom and period as its main criteria to be called a democratic political system.<sup>3</sup>

In terms of contemporary democracy, the position of general election is strengthened. Academic study to democracy recognizes two immense categorization, that is, minimum and maximum concepts.<sup>4</sup> More notable as procedural democracy in Minimized democracy,<sup>5</sup> in Indonesian discourse, refers more to a political system

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<sup>1</sup> Act No. 22/2007 manages that General Election Supervisory Board (Bawaslu) is at the national level and is permanent; while Panwaslu is at provincial/district/municipal level, sub-district, and field which ad hoc in nature.

<sup>2</sup> We know that the election in that era was conducted in an unpredictable process and procedure, but the outcome of the election was predictable; who would win and become the next president was already known.

<sup>3</sup> See Joseph Schumpeter's *Capitalism, Socialism, and Democracy* (1947), New York: Harper, p. 122. For a similar argument in terms of contemporary scientific field, see Samuel P. Huntington's *The Third Wave: Democratization in the Late Twentieth Century* (1991), Norman: Oklahoma University Press, p. 636.

<sup>4</sup> Many scholars write about the categorization. See, for example, Larry Diamond's *Developing Democracy: Toward Consolidation* (1999), Baltimore: The Johns Hopkins University Press.

<sup>5</sup> According to the theory of minimalist democracy, election becomes an arena enabling the competition among political actors gaining the power; political participation to decide their choice;

performing a regular power shift through a free, open, and universally massive (without differentiating race, religion, ethnic, and gender) mechanism of election. Meanwhile, maximized democracy, commonly termed as substantive democracy, views that a mere general election is not enough unless a wider respect towards the civil rights and fundamental pluralism principles is upheld.<sup>6</sup>

Examined further, the two concepts similarly take general election as the primary condition for democracy. Therefore, a regime which guarantees pluralism and civil rights but not conducts a regular power shift through general election cannot claim itself as a democratic country. Although there have been a number of criticisms toward this procedure, the position of general election is still central in the democratic discourse.

The issue of consolidation becomes a new interesting issue to discuss. If portrayed as a spectrum, it solidifies the color of democracy from light minimalist type to a dark maximized category. The necessity for consolidation is commonly applied in countries which have just left authoritarian era and moved to a democratic one. When these countries are on the long way to democracy, their first step is a series of minimalist acts such as conducting an open, free, and fair general election, and providing all citizens with fundamental political rights in spite of the issues of race, religion, and gender.

Consolidated democracy is the road heading to a maximized democracy. The opinion saying that it is only applied by new democratic countries is totally wrong as democracy itself is a never ending process. A country which is regarded to have had it consolidated is able to experience a turn-around which is dangerous for its position. In an open system, it is normal to have a continuously increasing hope, and it is not weird to see that the transitional government, even in several cases in the world, cannot run faster to realize the expectation. Thus, the government during the Reform Era is often seen as a failure as it is unable to achieve the early goals.

Such an opinion is directed not only to the under achievement of the government in fulfilling the living standard of most people after the economic crisis in 1997 and 1998

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as well as the liberalization of civil and political rights. An interesting and critical study on Schumpater's view can be read in Adam Przeworski, in Ian Shapiro & Casioano Hacker-Cordon (ed)'s *Democracy's Value*, Cambridge University Press, 1999, p. 23-50.

<sup>6</sup> Lots of critics were sent to procedural democracy, for example, see Fareed Zakaria's *The Future of Freedom: Illiberal Democracy at Home and Abroad*, (2003), New York: W.W. Norton.

but also to the failure of the country to appreciate pluralism for all its citizens.<sup>7</sup> Moreover, what is more visible is the government's weakness in upholding the principle of "law as the knight" in many aspects despite the fact that there are legal institutions, figured during the Reform Era which are expected to begin upholding the constitution, like Constitutional Court (MK), Judicial Commission (KY), and the changes in a variety of laws. It is very unfortunate that all these things have strongly indicated that the political power has become a subordinate and law power.<sup>8</sup>

Such circumstance is potential to make the democratic process wither before it bloom, or is called "frozen democracy" by Georg Sorensen<sup>9</sup> or "fragile democracy".<sup>10</sup> The Old Era has been wrecked, but the new one is still not yet born, and this emptiness is awful. It is an appalling heritage of disorganized civil society as the product of the New Era throughout its reign.

Back to the general election issue during this transitional period, the debate on the procedural and substantive democracy was hard during the 2004's general election. Some critics suggested that the manifestation of substantial democracy in this transitional era be heightened; some others argued that the procedural democracy was a step that had to be through. Likewise this situation was encountered by a lot of countries which had just released themselves from an authoritarian regime. In addition, it is the procedural democracy which can be the measurement to check whether the transitional process in a country is happening or not.<sup>11</sup>

According to Gregorius Sahdan, the procedural democracy is one of the instruments in the first, second, and third waves during the regime transition from an authoritarian one; it has a significant role for the individual freedom, public order, and

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<sup>7</sup> The government's difficulty, post Soeharto, to eliminate this problem is closely related to the policies during the New Era which was oriented to a Powerful State in order to sustain the economic development process following the state-led capitalism development. An interesting analysis on this can be seen in AS. Hima's *Politik Kewarganegaraan Landasan Redemokratisasi in Indonesia*, Erlangga, 1999, p. 2 and more.

<sup>8</sup> Critical analysis by Moh. Mahfud MD about the hesitation of how the law as the commander in political system during the Reform Era has not yet worked can be read in his book "Membangun Politik Hukum Menegakkan Konstitusi, LP3ES, 2006.

<sup>9</sup> Georg Sorensen's *Democracy and Democratization Process and Their Prospect in the Changing World*, (translated), Pustaka Pelajar & CCSS, 2003, p. xiii.

<sup>10</sup> See "Menuju Pemilihan Umum Transformatif", IRE, Annual Report 2003/2004, p. 16.

<sup>11</sup> Gregorius Sahdan's *Jalan Transisi Demokrasi Pasca Soeharto*, Pondok Edukasi, 2004, p.14-15

citizenship warranty in the government, a bridge showing the direction during the transitional phase from non-democratic regime; and can easily see; whether there is any transitional end, whether there is any election during the transitional period; whether the election is done fairly and justly; whether there is any formation of democratic institutions; and whether the democratic institutions function well.<sup>12</sup>

The whole component of evaluation to democracy becomes the barometer distinguishing whether the transition is forward to democracy or backward to the authoritarian. In other words, it is the procedural democratic which demonstrates the direction of the political and legal tendency to where it should be heading; whether the democratic process or the transition is more likely to strengthen the democracy or turn back to the past mistake; back to the non-democratic power.

In spite of the debate, the states where there is no party strongly supporting the real Reform agenda and the absence of big parties during the rule of law Reform agenda become the evidences escorting Indonesia's political agenda prior to the 2004's general election.<sup>13</sup> Here Verdi R. Hadits<sup>14</sup> had once predicted that the 2004's election would be less meaningful for the democratic process in Indonesia. He thought that the transitional period in this country was over, and the outcome was not liberal democracy but a system whose type, pattern, logic, and dynamic were built upon money politics and violence.<sup>15</sup>

That is why a number of political scientists propose an idea of "transformative election" in the core of 2004's election, that is, an election which was not only healthy and democratic in its process but also an opportunity to start a new change ahead, as well as an election which served the common voters as free and rationale-autonomous voters.<sup>16</sup> And the 2004's election was done under such circumstance; that is, an election

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<sup>12</sup> Ibid

<sup>13</sup> Such view emerges as the reaction to the process and result of the 1999's election presenting the two sides of paradox. One the one side, people expected that the election could be the first chance for them to end the economic-political crisis, the hope for the birth of a new leader who could really create security, welfare, and so on. On the other side, the ideal view of democracy on the election experienced distortion and anomaly. One of the causes of the anomaly is the absence of communal vision and mission on what would be achieved after the election.

<sup>14</sup> Vedi R. Hadits, in "Gerakan Demokrasi di Indonesia Pasca Soeharto," AE. Priyono, etal (ed), Demos, 2003, p. 61

<sup>15</sup> Ibid, p. 62

<sup>16</sup> Read Annual Report 2003/2004, Menuju Pemilihan Umum Transformatif, IRE Yogyakarta, IRE Press, 2004

that brings about the realization of hope which is transparent, fair, honest, and peaceful as the road for the consolidation of democracy.<sup>17</sup> For the civil power, the anxiety becomes the moment of consolidating the precedent power, that is, Golkar-Tentara and bureaucracy of old politics, or the modified authoritarianism.<sup>18</sup>

### **General Election Commission**

KPU is conceptualized differently, in terms of law and politics, from the previous electoral institution. They use a system which is different from that of the New Era and the 1999's election, and apparently carry with it high expectation for the civil power (pro democracy) to run an independent election that is fair, just, and transparent with reliable outcome. Only upon an independent authority and institution can the election creates a quality representative and sustain the democracy.<sup>19</sup>

KPU is a committee responsible for general election which is guaranteed and protected by the 1945's Constitution, and it is classified as the state institution which possesses the constitutional importance.<sup>20</sup> As an important board, KPU is national, permanent, and independent<sup>21</sup> with the same institutional level as other state institutions which are built upon the law.

Independence<sup>22</sup> is the universal principle of the institutions in order to run the general election, or the institution that investigate some crime done by the state agent or government. Dean Gottehrer, an international consultant of Ombudsman in Indonesia,

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<sup>17</sup> The consolidation of democracy, according to Gregorius Sahdan, is in Phase III compared to the previous election which was done at Phase I ending the non-democratic governance then the Phase II election, inaugurating a democratic governance. For the complete analysis, read CSIS Analysis, Year XXII/2003 No. 2, p. 203

<sup>18</sup> Analysis on the democratic process which is on progress in Indonesia, read Ignas Kleden and Leo Agustiono in CSIS Analysis, Year XXII/2003 No. 2, pp. 160-191

<sup>19</sup> Sudarsono's Mahkamah Konstitusi Sebagai Pengawal Demokrasi, *Penyelesaian Hasil Pemilu 2004 oleh Mahkamah Konstitusi*, 2005, p. 122

<sup>20</sup> Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Secretary General and Committee of Constitution Court of Indonesia, 2006, p. 235

<sup>21</sup> Chapter 22E Article (5) of the 1945's Constitution

<sup>22</sup> In English terms, according to dictionary database of Wordnet which I read on [url=http://stardict.sf.net/[url], independent means (1) free from external control and constraint; "an independent mind"; "a series of republic" [ant: (dependent)]; (2) not dependent on or conditioned by or relative to anything else; (3) of political bodies; "an autonomous judiciary"; "a sovereign state" [syn: {autonomous}, {self-governing}, {sovereignty}]; (4) not contingent; (5) (grammar) of a clause; able to stand alone syntactically as a complete sentence; "the main (or independent) clause in a complex sentence has at least a subject and a verb" {syn: [main(a)]} [ant: [dependent], and (6) not controlled by a party or interest group.

says that the independence is the most essential component to determine the consistency, function, use, position, and facilities of the given institution.<sup>23</sup>

Independence does not only imply “free, liberating, impartial, or one-sided” with the individual, group, or interest organization, or not dependent or influenced by any factor. Independence can also mean power, paradigm, ethic, and spirit to assure a process and the outcome of the election and reflect the common interest, of the nation, today and tomorrow.

Independence must be maintained and sustained by an independent institution comprising of three elements: institutional independence, functional independence, and personal independence. In the viewpoint of institutional or structural independence, KPU is not part of the existing state institution, not a sub-ordinate, nor does it depend on any state institution. The functional independence means that KPU cannot interfere or be commanded and pressed by anyone in running the election. Meanwhile, the functional independence implies that someone who becomes the member of KPU is an impartial, honest, and a capable person. Only by doing so, a commission (including the Ombudsman), according to Gottehrer and Michael Hostina, can be impartial, independent, fair, and credible.<sup>24</sup>

The relative nature of independence is described in a number of chapters in Act No. 22/2007 which constitutes to a legal framework for the given three independence aspects. The structural independence which is mentioned in the 1945’s Constitution is relatively guaranteed by Act No. 22/2007 into several chapters. First, in Chapter 15 Article (3) saying that KPU is doing its job in making the report at the level of Election implementation to the President and Congress. The report referred in this chapter is not in terms of responsibility, but more on giving the information to related state institution. Second, in Chapter 16 Article (3) saying that the Head and his Vice are chosen from and by the members, so it is not appointed by any other institution.

The functional independence can be read in Chapter 25 that provides institutional authority to make plan, organization, and the style of the election, control the election,

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<sup>23</sup> Dean Gottehrer, “Ombudsman Legislative Resource Document, Occasional Paper, International Ombudsman Institute, 1998, p. 65

<sup>24</sup> Dean Gottehrer and Michael Hostina’s “Essential Characteristics of a Classical Ombudsman”, USOA, on <http://www.usombudman.org>

establish the participants of the election, decide the location of the election, schedule the time, report the results of the election, and conduct the other authority, and all which is arranged in the constitution. Meanwhile, the personal independence is explicitly stated in its requirements to become the members of KPU which is arranged in Chapter 18. For instances, having a strong, honest, and fair personal integrity, commitment and dedication in succeeding the election, ready to uphold the democracy and justice, not a member of any political party, and is not taking up any political, structural, and functional positions at state level.

Although the independence is the universal standard for the commission conducting the election, it is still questionable for the political practitioner. The independence principle of KPU is valued as an abrupt decision. It is because the independent and non-partisan men do not even know the political life including the election.<sup>25</sup> After the 2004's election, sue on the KPU's independence was re-questioned by the government and certain political parties by bringing about the cases done by KPU as well as the technical of the election as the excuse to change the system in KPU.<sup>26</sup> This sue was strongly criticized by Denny Indrayana who saw it as an over-reaction. Denny said "not to over criticize the KPU as it could disturb its independence and eliminates the electoral organization system which has been formulated by KPU this time."<sup>27</sup>

The over reaction by several fractions were also responded by Romo Magnis as unethical. He pointed out that "if the 2004's election, in the midst of Indonesia's complicated circumstance, had only five percent of error, counterfeit, and manipulation, the election could be regarded successful. It is not only a realist demand but also honest and moral normality."<sup>28</sup>

Therefore, the view by certain political parties who believed that the 2004's election was not even better than the 1999's does not add up and sounds historically irrelevant. They forgot that the members of 1999's KPU who were from political parties were anarchical. Besides, they were continuously involved in internal fight in their effort

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<sup>25</sup> See Koirudin's *Profil Pemilu 2004: Evaluasi Pelaksanaan, Hasil, dan Perubahan Peta Politik Nasional Pasca Pemilu Legislatif 2004*, Pustaka Pelajar, 2004, p. 34

<sup>26</sup> The Government and some members of the Congress argued that the independence principle was erased because it opens the government's way to include the civil servants

<sup>27</sup> See Denny Indrayana in "Siapa Mau Jadi Presiden," *Kompas*, 2004, p. 254

<sup>28</sup> See Franz Magnis Suseno in "Siapa Mau Jadi Presiden," *Kompas*, 2004, p. 248



to carry on the interest of their own parties. The result of the election was even signed by the President and not by KPU in which it was supposed to be according to the constitution. It is what makes Adnan Buyung Nasution, a member of 1999's electoral commission or KPU, realize the importance of the independence of the member of KPU.

Buyung underlines that "I agree on an independent KPU because it will end with a better result, which is not influenced by any political interest, and the job will be easier as there will be no intruder,<sup>29</sup> and the outcome itself will bear a democratic legislative institution as well.<sup>30</sup> Moreover, our political party is far from being politically mature to accept the process and result from an honest, fair, and transparent election. Our political parties, according to Franz Magnis Suseno, is still mentally chained as bad losers (unable to accept failure and loss). In fact, according to Romo Magnis, one of the most fundamental prime of democracy is the readiness to accept loss. In addition, John Rawls states further that it is not fair with the difference in opinion,<sup>31</sup> but the political parties no longer use the chance to show up as noble losers in the society.<sup>32</sup>

To this point, Adnan Buyung Nasution states that only a free and clean election enables the change in politics, both the political power structure and political leaders.<sup>33</sup> The elections during the New Era (Orba) was an imprudent project because the people were not given rights to vote in that the result had been determined since the beginning.<sup>34</sup>

In context of contemporary political science, an independent KPU is hoped to perform as the regulation and the medium by which to reduce uncertainty by establishing a stable structure which can be estimated for human interaction, both as individuals and groups. In Ramlan Surbakti's term,<sup>35</sup> KPU is a democratic institution assuring that there will not be any predictable procedures in conducting the election and maintaining that the outcome should be unpredictable.

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<sup>29</sup> Read Adnan Buyung Nasution's *Pergulatan Tanpa Henti Pahit Getir Merintis Demokrasi*, Aksara Karuna, 2004, p. 59

<sup>30</sup> See Afan Gaffar's *Politik Indonesia: Transisi Menuju Demokrasi*, Pustaka Pelajar, 2005, p. 269

<sup>31</sup> Andre Ata Ujan's *Keadilan dan Demokrasi: Telaah Filsafat Politik John Rawls*, Kanisius, 2001, p. 103

<sup>32</sup> See Franz Magnis Suseno in "Siapa Mau Jadi Presiden," *Kompas*, 2004, p. 249

<sup>33</sup> Read Adnan Buyung Nasution in "Mendidik Manusia Merdeka," 56 year of Y. B. Mangunwijaya, *Interfidei*, 1995, p. 390

<sup>34</sup> *Ibid*, p. 391

<sup>35</sup> Ramlan Surbakti's "Demokrasi Menurut Pendekatan Kelembagaan Baru," *Journal of Political Science*, Edition 19/2003, pp. 4-5

Ramlan<sup>36</sup> argues that the main importance of independence principle is based on four aspects. First, the election is a procedure and mechanism of delegating parts of people's sovereignty to state, including those who sit in the legislative institution, executive at the centre and regional, to act in the name of the people and responsible for the people. Second, the election is the procedure and mechanism of shifting the difference in aspiration and conflict of interest from the people to the state level, both national and regional, that later will be discussed and decided in a good manner. Third, the election is the procedure and mechanism of the change in politics which is in order, periodically, including the elitist cycle and the direction heading, and public policy.

In context of the role, KPU conducts the election based on the predictable principle process but unpredictable result. According to Huntington,<sup>37</sup> it is the requirement that must be fulfilled no matter what. The election conducted during the transitional period is: first, "the mark" of the inauguration on democratic regime, as well as the institutionalizing of democracy and the rebuilding of the social cohesion which had been cracked caused by intermittent support and reject by several social groups. Second, the meaning of the inauguration of the democratic regime replacing the authoritarian. Third, the election during the transitional period is the manifestation of the consolidation of the inauguration of the democratic system, that is, the effort to strictly maintain the come-back of status quo regime.

Consequently, the mandate by KPU to hold the election during the transitional period is better than that of the 1999 which was very tough. It is not strange if the controversy at the level of trust by a number of fractions towards the KPU, especially by the politicians (Congressmen) is high—it even led to the delay in ratifying the Act No. 22/2007 arranging the organization and authority of KPU.<sup>38</sup> The hardest point being debated<sup>39</sup> was the KPU's independence principle and election supervisory board. According to Ferry Mursidan Baldan,<sup>40</sup> the debate on Panwaslu, is focused on whether

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<sup>36</sup> Ibid

<sup>37</sup> Huntington's *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press, 1991, pp. 208-210

<sup>38</sup> Act No. 23/2003 was ratified on March 2003—a year prior to the conduct of legislative election and DPD

<sup>39</sup> Bivitri Susanti's *Menata Ulang Kedudukan Wakil Rakyat*, Paper, p. 4

<sup>40</sup> The statement given during the Q&A section on the proposed acts about the election on September 23, 2005 in the Congress of the Republic of Indonesia

this board is outside KPU or parts of job and institution of KPU or formed as an independent board.

In this context, what is the urgency of Panwaslu? What constitutional background required by KPU to have independence which is protected by the 1945's Constitution and electoral Act which is reliable that it is necessary to form Panwaslu outside KPU?

### **KPU and Panwaslu**

An international consultant by Foundation for Electoral Systems (IFES) finds it surprising to see the existence of Panwaslu. As far as he knows, never in the world has there been a election supervisory board which is separated from the election commission, except in Indonesia.<sup>41</sup> In 1999's election and the previous ones, election watch was done by a Monitoring Committee (Panwas) which was separated from the election commission (KPU) itself. Many criticism were directed to the quality of the Panwas, including the ex-member of the Panwas—it was said that the job of Panwas was ineffective and inefficient.<sup>42</sup>

In Act No. 23/2003, the function of the election is part of the duty and authority of the election as mentioned in Chapter 17 Article (11) and Chapter 120-130. The unifying function of the election commission and monitoring raises a number of questions. If it is the KPU that monitors, what about the principle of checks and balances? Can KPU be the institution that controls itself? Will not there be a conflict of interest by uniting the functional conduct and the watch? Can the objectivity of the KPU in conducting the election be guaranteed?

By several fractions, uniting the function of conduct and watch by KPU is dangerous and difficult to do. Merely conducting the election is already difficult; how would it be if it is burdened with the election watch job? On the other hand, the fractions who believe that KPU should also watch the election argue that the empirical experience function of the 1999's election watch and at the previous elections prove to have failed. The other reason is that KPU gets the authority from the 1945's Constitution that its

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<sup>41</sup> Read the series of papers by IFES, Part 4, May 2003, p. 12

<sup>42</sup> The separation of supervising function is arranged in Act No. 3/1999 about the General Election

independence is warranty. Therefore, do not let the function of the watch is lowered into only be arranged in Act. In checks and balances context, the unified function of watch becomes an inherent part of KPU. Furthermore, making a different monitoring commission would cause a financial problem because it means creating a new infrastructure.

In the 2004's election, the relation between the institutional and functional of KPU and Panwaslu which were formed by KPU did not run well. Both were in conflicts from the national-provincial-districts-municipal to sub-district level. The core problem is in three points. First, the scope and mechanism of the monitoring. Second, tension among the provincial, district/municipal KPU and PPK with the same level of Panwaslu. Third, the legal mechanism of problem solving relating the two institutions is unclear.

Judicially, the central Panwaslu is formed and responsible for KPU while provincial, district/municipal and district Panwaslu are hierarchically formed. The model of Panwaslu institution like this becomes the key problem of the bad relation between the KPU's institution and functional and Panwaslu.

At the institutional level, the tension related to the scope of Panwaslu's authority occurs. KPU regards the job of Panwaslu does not include watching KPU as organization, but limited to only watch the functional aspect of all process and conduct of the election. In the errand, the focus of supervising is more to the participants of the election and the common voters as the warranty and do the legal steps to anyone who violates the free and fair election.

However, it is difficult, if not impossible, for Panwaslu to separate the functional and institutional monitoring because of, in some cases, the functional problems in the fields triggered by KPU's decision or KPU's delay in achieving target. In this way, it is impossible for Panwaslu not to point out the fact that the problems occurring are due to the error by KPU itself. For instance, mechanism of the voter's registration and logistics delay which give negative implication to the phase in the election.

At the provincial, district/municipal, and sub-district level, the tension between the two institutions is even worse. What is worse, there has been attack exposed to mass media. It is because the Panwaslu at regional level is not formed directly by KPU at the main office but hierarchically formed by Panwaslu itself. Therefore, there is some

arrogance in the institution in a way that they are focused on watching over the KPU. Even if there is conducive and productive relation between the two institutions, like in Yogyakarta, it is all due to personal approach.

Disharmony at the institutional and functional level is also due to the arrangement of law order towards the violation which is part of the authority of Panwaslu and KPU cannot be run in a good mechanism due to limitation of time and the uncertainty in the rule of the game. Panwaslu's recommendation so that KPU does an administrative action to the electoral voters who violate the rule cannot be done until the time setting has been passed. For example, Panwaslu's recommendation that the rights for campaigning of the political party or the candidate at the final round should be cancelled due to their act of violating the rule of the game cannot be done since the party or the candidate no longer has the right to campaign.

Another point deals with the decision. In the acts, there mentioned that the nature of problem solving from the election supervisory board is final and binding as stated in Chapter 129 Article (1) of Act No. 12/2003 meaning that it can directly be done and bind the related staffs as well as brings its effect to them. In fact, this decision is hard to apply, especially if the central and regional KPU are not willing to end the decision to the conflict. The application will be even more difficult if the electoral acts do not mention the implication or impact at all for the commission that do not obey the decision by the supervisory board. For example, in Tangerang and Semarang case, the decision made by the supervisory board to solve the conflict of the candidate legislative member registration.<sup>43</sup>

In short, it is clear that there is no relation between KPU's institutional and functional aspect with the synergic Panwaslu, not only based by the structural (as an institution) but also the legal and functional. Thus, how is the relation between the institutional and functional aspect of both institutions in the future?

### **The Format for Future Relation**

Essentially, supervising refers to the act of continuously reminding the doers in order that they keep staying on the right track and paying attention to the rules, norms,

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<sup>43</sup> Written Report by Panwaslu, p. 129

and existing law so that the election runs fairly, justly, and transparently that the results would be accepted and trusted by the people. In context of an independent institution of the election, the supervisory board should be built-in the independent institution itself.<sup>44</sup> The authority provision as the doers and supervisors by the Act No. 12/2003, according to Jimly, has the meaning that KPU should only function as the policy maker and regulator. Meanwhile, for the election conduct and supervising, KPU form a Commission for the election and Election Supervisory Board, which is wholly ad hoc, formed, and responsible for KPU, as well as the members and its leaders are hired and fired by KPU.<sup>45</sup>

Therefore, the problem of supervising the election is not only about where the function of the election is placed but also, more importantly, how the objectivity of the KPU's watch is placed. To solve it, the institutionalizing inside KPU itself is possible to do. It is especially when the election has been "the industry of democracy" in which it requires a permanent institution which is inherent in KPU. Inside KPU, there should be a special board to do the functional internal watch and some kind of inspectorate. It does not only consist of men from KPU and common people, but the legal upholders are there. People with special capability to solve conflict should also be involved in that institution so that there will be the alternative dispute resolution (ADR).

For instance, Thailand Electoral Commission has the investigation directorate and Adjudicative Directorate because their election rule enables them to investigate the violation related to the election. The members are derived from the police department, attorney, lawyer, and non-government organization. If agreed, KPU also designs the organizational structural arrangement so that it supports the core business of KPU.

Minor crime case does not require general attorney, but directly to ad hoc so that the process runs faster. To solve the case of major crime, general attorney is required and should be processed through usual law court. Particularly for a violation which could significantly violate the vote counts, there should be time limit. It is also suggested that the ad hoc judge in electoral ad hoc court be from the KPU staffs, academicians, or judge

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<sup>44</sup> Suparman Marzuki, "Synergy of KPU and Panwaslu's Works," Paper presented in a national workshop by Panwaslu in Bali, February 3, 2004

<sup>45</sup> Jimly, *Op. Cit.*, p. 237

who is expertise in electoral case. Ad hoc court like trade and human rights court is a model proposed to solve a number of election-related crime.

There is a proposal that KPU becomes the first level of court for administrative violation cases where those who are not satisfied can go to the higher court. For this, State Court acts the higher court. However, for criminal cases, KPU does not have the authority and should continue it to the court. In relation to that, the corporation between KPU and Supreme Court and Justice Department and Human Rights are required so that the State Court are really ready to help KPU.

## **Conclusion**

In long run, the general election supervising board should be built and integrated with KPU instead of detached institution. The first point supporting my view is that the structural, functional, and personal independence of KPU is a constitutional guarantee which is to be trusted. The three sustaining pillars of KPU (structural, functional, and personal independence) must be preserved and maintained. The failure in two election terms (1994 and 2004) by KPU does not mean that it can be concluded that the institutional model and function of KPU require revision and strict watch by and through the institutions outside KPU.

Since the quality of KPU's job is as well determined by the quality of resources and the work of the secretariat, the element of KPU secretariat which is according to Act No. 12/2003 is placed as the supporting point deserves redesign, both the personnel and the institutions. So far the relation between KPU and Secretariat is far from satisfaction, both due to the fact that there is a cultural difference and personnel style. Secretariat from the civil servants and KPU which is from academician, social worker, Press, and social community, but also their organization style which is pointed out in Act No. 12/2003 is blurred. Consequently, there is conflict, even in some provinces and district/city which is marked by the case in which the secretary of KPU was fired.

In KPU, there seems to be two institutions: KPU and secretariat or two navigators on the same ship. The secretariat side does not rely structurally on KPU because they are hired and fired by the President/Governor/Regent/Mayor. The mental and loyalty on the command which has been shaped and developed by the New Era regime is embedded in

the minds of the civil servants.<sup>46</sup> What remains is a non-loyalty towards the bureaucratic interest itself.<sup>47</sup>

The bureaucratic culture of the New Era (Orba) includes patrimonial and the patron-client controlling the relation between the bureaucracy and the other components in its structure although it is not in relation to the KPU's interest. The culture of prioritizing to secure their position and the domination of materialism values as well as hedonism has triggered, what is called by Soedjatmoko, "disjunction between power and morality".<sup>48</sup> Thus, it is not strange if the meeting, traveling, or storing is preferred to socializing or education of the voters which involve civil society (social worker, higher education) in the form of discussion, seminar, and the like.<sup>49</sup> Therefore, it is difficult to ask them to negotiate, make decision, and apply the program which is oriented to the civilian interest. They give a lot of excuses such as no fund, not included in the program planning, etc.

From the other point of view, bureaucratic mentality which is particular to Indonesia especially in terms of handling the finance which is identical with the tendency towards state-stewardship,<sup>50</sup> in the government in general, that is, the nature of controlling totally the finance and isolating KPU.

The unclear relation between the structural and functional aspects is actually a serious matter that needs to be solved unless similar problem will occur in the future. If the secretariat is occupied by the non-civil servant or the professionals, the quality of KPU's job can be made sure. Moreover, building a strong and credible democratic institution is time consuming and painstaking. The developed countries in Europe and America needed 100 to 150 years to arrive at the institutional and functional model of a

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<sup>46</sup> Civil servants (PNS) in Indonesia are understood as people who work for the government, in a way that they should obey the governance law; not state men like in other democratic countries such as Germany. As state apparatus, civil servants in Germany obey and dedicate themselves for the people's interest. An interesting explanation about it can be read in Pipit R. Kartawidjaja's "Pemerintah Bukanlah Negara Study Komparasi Administrasi Pemerintah RI dengan Negara Jerman, Henk Publishing, 2006, pp- 6-12

<sup>47</sup> Read Mochtar Mas'Oed's *Restrukturisasi Masyarakat oleh Pemerintah Orde Baru*, Prisma 7, pp. 15-20, 1987

<sup>48</sup> Kenneth W. Thomson's "Introduction" in Selo Soemardjan and Kenneth Thomson (eds), *Culture, Development and Democracy: A Tribute to Soedjatmoko*. Tokyo: United Nation University Press, 1994, p. 2

<sup>49</sup> Joke among the civil servants saying that the programs proposed by KPU is not a way to gain "welfare"

<sup>50</sup> See Ibid "Politik, Birokrasi dan Pembangunan, Yogyakarta, Pustaka Pelajar, 1994, p. 60



strong, solid, and reliable election. They passed similar hardship, but they had a great patience to build the trust; starting from that among the individuals, individuals and society up to the public trust.<sup>51</sup> Therefore, this nation must be able to build trust since it, according to Fukuyama,<sup>52</sup> constitutes the hopes for order, honesty, cooperative attitude emerging from the community which is based on norms.

The improvement in knowledge and individual and public awareness towards the instruments of democracy, which is so called legal, is the way to develop order and trust. Both aspects are social capitals for the society, nation in the future because it is the accumulation of human interaction, in the form of trust, understanding, and shared values and attitude binding its members in a networking and community enabling cooperation. To quote Francis Fukuyama's view on social capital, "the ability of people to work together for common purposes in groups and organizations".<sup>53</sup> In a larger scope, his opinion can be interpreted that Indonesian people's ability to live together as one nation achieving the common goal, that is, democratic law state.

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<sup>51</sup> This statement was said by Christian Reinheim, European consultant when visiting KPU in Yogyakarta during the 2004's election

<sup>52</sup> Francis Fukuyama, TRUST: Kebijakan Sosial dan Penciptaan Kemakmuran (translated), Qalam, 1995, p. xiii

<sup>53</sup> Ibid;

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