

# Design of The Institutional Position of The General Election Organizer Based on Article 22E Paragraph (5) of the State Law of Republic of Indonesia 1945

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**Abstract.** It can be said that the position of election management institutions is strong, even stronger than other institutions, considering that election management is very vulnerable to political and power intervention. The phrase "independence" as specified in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia means that the membership of election management commissioners must be free from political parties. Likewise, when making decisions regarding an election-holding policy, the same treatment must be given without taking sides toward certain parties. This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively. Concluding was carried out using a deductive method from general to specific, especially those related to the research topic. The research finds that the Article above stipulates that general elections are held by a national, permanent, and independent general election commission. However, the 1945 Constitution does not require that the name of the institution be the General Election Commission (KPU). In this article, the commission referred to is only formulated in lowercase letters. Therefore, the name General Election Commission is a name given by law, not a name explicitly given directly by the 1945 Constitution.

**Keywords:** Institutional Position, General Election Organize, Article 22E Paragraph (5) of the 1945 Constitution of the Republic of Indonesia

## 1 Introduction

To enhance the quality of holding general elections that can guarantee the implementation of people's political rights, general election organizers who are professional and have integrity, capability, and accountability; Law Number 22 of 2007 concerning General Election Organizers needs to be replaced, by establishing a new Law concerning General Election Organizers. The legal basis for this law is: Article 1 section (2), Article 6A, Article 18 passage (3) and passage (4), Article 19 section (1), Article 20, Article 21, Article 22C section (1), and Article 22E of the 1945 Constitution of the Republic of Indonesia.

This Regulation directs the standards of Political race Coordinators, General Political decision Commission, Political race Administrative Body (Bawaslu), Political race Coordinator Privileged Board (DKPP), Money, and. Political race Coordinator Guidelines and Choices. General Decisions, hereinafter curtailed to Races, are a method for carrying out individuals' sway which are held straightforwardly, openly, unreservedly, privately, truly, and genuinely in the Unitary Condition of the Republic of Indonesia in light of Pancasila, and the 1945 Constitution of the Republic of Indonesia.[1]. Races for Individuals from Individuals' Delegate Chamber, Territorial Agent Board, and Local Individuals' Delegate Gathering are decisions to choose individuals from Individuals' Agent Committee, Provincial Delegate Gathering, Commonplace Local Individuals' Delegate Board, and Regime/City Territorial Individuals' Agent Gathering fairly inside the Unitary Condition of the Republic of Indonesia in view of Pancasila, and the 1945 Constitution of the Republic of Indonesia. The Official and Bad habit Official Political race is a political race to choose the President and VP equitably in the Unitary Condition of the Republic of Indonesia in view of Pancasila, and the 1945 Constitution of the Republic of Indonesia.

When election management institutions are weak, what often happens is that greedy political parties dominate and control the entire election implementation process. Therefore, the effective functioning of state institutional functions, one of which is election management institutions, greatly determines the quality of the democratic mechanism system developed by a country. Nowadays, the concept of democracy is practiced throughout the world differently from one country to another. Each country and even each person applies its definition and criteria regarding democracy. Democracy itself involves awareness, behavior, and a relatively well-established social structure, so legal reforms that must be carried out by the Indonesian people will take a relatively long time. Therefore, to achieve democratic legal reform, clear and definite legislation is required.

Article 22E paragraph (5) of the 1945 Constitution states that general elections are held by a national, permanent, and independent general election commission. However, the 1945 Constitution does not require that the name of the institution be the General Election Commission (KPU). In this article, the commission referred to is only formulated in lowercase letters. Therefore, the name General Election Commission is a name given by law, not a name explicitly given directly by the 1945 Constitution.[2]. This understanding was then kept up in Regulation Number 15 of 2011 concerning Political race Coordinators. The Overall Political race Commission (KPU), the Overall Political decision Administrative Body (Bawaslu), and the Political decision Coordinator Privileged Chamber (DKPP) are characterized as political decision the board foundations that comprise a bound together political decision capability. In this manner, what is perceived as the Overall Political decision Commission as contained in Article 22E section (5) of the 1945 Constitution is the KPU, Bawaslu, and DKPP as one bound together political decision the board foundation. During the most common way of deciding the ideological groups taking part in the 2014 political race, 13 of the 24 ideological groups that neglected to be checked by the KPU presented a claim to Bawaslu in light of the fact that they were not permitted to partake in the 2014 general political race.

As believed by many people who are concerned about the implementation of elections, the verification stage of political parties as election participants is one of the most crucial and tense phases. Because, in this phase, the KPU determines the fate of political parties and whether or not they can participate in the elections. However, the aim of forming a political party, hereinafter referred to as a political party, is to participate in fighting to win voters' votes in elections. Therefore, when the KPU held an open plenary meeting to determine the election participants, a tense atmosphere was inevitable. It turned out that, as previously thought, there

was no need to wait long for the problem to arise, namely when the KPU stated that it could not implement Bawaslu's decision to grant PKPI's request to become an election participant. The pros and cons became much more prominent once the KPU concluded that it would not implement Bawaslu's decision. Some parties argue that the KPU's steps cannot be justified at all and can be seen as harassment against Bawaslu. Meanwhile, on the other hand, many parties can accept and justify the KPU's steps[3].

The dynamics and development of the institutional structure of election organizers are not stagnant in the above regulations and guidelines. In view of Article 571 of Law of the Republic of Indonesia Number 7 of 2017 concerning General Decisions (then alluded to as Regulation No. 7 of 2017), it regulates when this Law comes into force:

- a. Law Number 42 of 2008 About the Overall Appointment of the President and VP (State Periodical of the Republic of Indonesia of 2008 Number 176, Supplement to the State Journal of the Republic of Indonesia Number 4924)
- b. Law Number 15 of 2011 about Broad Political race Coordinators (State Paper of the Republic of Indonesia of 2011 Number 101, Supplement to the State Periodical of the Republic of Indonesia Number 5246)
- c. Law Number 8 of 2012 About the Overall Appointment of Individuals from the DPR, DPD, and DPRD (State Newspaper of the Republic of Indonesia of 2012 Number 117, Supplement to the State Paper of the Republic of Indonesia Number 5316)
- d. Article 57 and Article 60 passage (1), section (2), and passage (4) of Regulation Number 11 of 2006 concerning the Public authority of Aceh (State Journal of the Republic of Indonesia of 2006 Number 62, Supplement to the State Paper of the Republic of Indonesia Number 4633), are renounced and announced invalid[4].

In view of Article 22E passage (5) of the 1945 Constitution of the Republic of Indonesia, decisions are held by a KPU which is public, extremely durable, and free. Like it or not, this is vital, and its presence is ensured and safeguarded unavoidably in the 1945 Constitution of the Republic of Indonesia. Regarding the independence or interdependence of the KPU, Saldi Isra assumes that the law on election organizers has the potential to kill the independence of election organizers as mandated by Article 22E paragraph (5), one of which is the formation of the DKPP, whose members include one representative from each political party in the DPR. The hope of achieving election goals imposed on election organizers is not easy to realize in reality. On the one hand, the freedom or independence of election organizers has been recognized as a step forward because it is constitutionally guaranteed, but on the other hand, there are still many questionable things. Why does the KPU have to be independent in carrying out elections, especially about the stages of the election up to determining the election results? Many parties have questioned the independence of the KPU, as stated by KPU members.

The KPU is currently inhabited by two opposing camps, this can be seen from the chaotic political party administration verification process. The arrangements of Article 1 number 22 of Regulation Number 15 of 2011 concerning General Decisions establish that the Political race Coordinator Privileged Committee, hereinafter condensed as DKPP, is the foundation entrusted with taking care of infringement of the Implicit set of principles for Political race Coordinators and is a fundamental piece of the political decision organization capability. In the 2014 legislative elections, it was further said that there was organizational decay within the KPU, there was a dichotomy between the commissioners and the secretariat general. In contrast, the attitude of the two KPU camps reached its peak when the KPU commissioner qualified political parties that were not administratively complete[5]. There is not a single staff from the KPU Secretariat General who is willing to help the commissioners check the administrative

improvements submitted by political parties, even though the KPU Secretariat General has assigned 68 people to check the improvements, but the KPU Secretariat General has not provided this support. The commissioner had difficulty obtaining data reports on political parties that had registered based on standard KPU regulatory procedures.

## **2 Methodology**

This sort of examination is Regularizing research. The methodologies utilized are a legal methodology and a reasonable methodology. The data source used is secondary data. Data analysis was carried out descriptive-qualitatively[6]. Concluding is carried out using a deductive method, namely concluding the general to the specific, especially those related to the research topic of the Design of the Institutional Position of General Election Organizers based on Section 22E subsection (5) of the 1945 Constitution of the Republic of Indonesia. Qualitative data analysis is conducted if the data empirical data obtained is in the form of a collection of words and not a series of numbers and cannot be arranged into categories. Data can be collected in various ways (interview observations, document instances, and recording tapes). It is usually processed first before being used in qualitative research, counting the consequences of interview records, information decrease, examination, information understanding, and triangulation.[7].

## **3 Results and Discussion**

### **3.1 Implications of the Design of the Institutional Position of General Election Organizers Based on Article 22E Paragraph (5) of the 1945 Constitution of the Republic of Indonesia**

Political race Coordinator is a foundation that sorts out decisions comprising of the KPU and Bawaslu as a bound together capability of political decision coordinators to choose individuals from the DPR, Territorial Delegate Board (hereinafter alluded to as DPD), Local Individuals' Agent Committee (hereinafter alluded to as DPRD), President and VP straight by individuals and to choose lead representatives, officials, and city chairmen fairly. In view of the aftereffects of the assessment of the execution of authoritative races and local head decisions, it was presumed that all regulative races and provincial head races were shaded by extortion and were loaded with personal stakes. This implies that races will more often than not misshape a majority rules government. The Chief Justice of the Constitutional Court said that all regional head elections were marred by legitimate fraud, even though there was cheating or violations.[8]

To achieve legal order, there is a need for order. Law is defined as a legal system of written positive law that should provide certainty. It is hoped that legal certainty can serve as a guide for the parties involved. One of the keys to success or failure in holding elections depends on the rules of the game that are created. It is difficult to hope that the election will run well if the seeds of problems have been established in the political decision regulation itself. Current regulation, races for individuals from the DPR, DPD, and DPRD are controlled in Regulation Number 8 of 2012 concerning Decisions for Individuals from the DPR, DPD, and DPRD (alluded to as the Political race Regulation). With a long history of organizing legislative elections, ideally, Indonesia would have strong regulations. In other words, having an election law that can be used continuously,

where certainty and consistency animate all of its content so that there is a clear legal benchmark[9].

The law stipulates that dispute decisions issued by Bawaslu and its staff related to participation and nominations are immediately appealed to the High Administrative Court (PTTUN), which is a second-level court. Not at the State Administrative Court (PTUN) which is the court of first instance. However, the PTTUN decision is not completely final, because an application can still be submitted to the Supreme Court (MA). The consideration for appointing the PTTUN directly to resolve election disputes, apart from efficiency considerations, is also due to the assumption that judges at the second-level court have better knowledge and experience in resolving state administration disputes. The law orders the Supreme Court to form a special state election administration council which is given the authority to examine, adjudicate, and decide on election disputes. It certain panel consists of career judges in the high state administrative judiciary, who have at least 3 (three) years of experience. Furthermore, when handling election dispute cases, these special judges are relieved of their duties to examine, try, and decide other cases. They are also required to have electoral knowledge, so before working as special magistrates they must learn and improve their electoral knowledge through workshops or training[5].

As a type of understanding individuals' sway inside the structure of democratization, the progressive faction is held as Broad Races (Pemilu) with the standards of immediate, general, free, secret, genuine, and fair (Luber Jurdil). Fundamentally, decisions are a method for famous sway to guarantee vote based progress and turn of force. Article 1 point 1 of Regulation Number 7 of 2017 concerning General Decisions expresses that Overall Races alluded to as Races, are a method for executing famous power to choose individuals from Individuals' Delegate Chamber, individuals from the Territorial Agent Board, the President, and VP, and to choose individuals from the Agent Committee. Provincial Individuals, which is carried out straightforwardly, openly, unreservedly, secretly, truly, and fairly in the Unitary Condition of the Republic of Indonesia in light of Pancasila and the 1945 Constitution of the Republic of Indonesia[10].

### **3.2 Form of Design of Institutional Position of General Election Organizers Based on Article 22E Paragraph (5) of the 1945 Constitution of the Republic of Indonesia**

Bawaslu is given the position to regulate the execution of races, and official and provincial decisions with regards to forestalling and making a move against political race infringement. DKPP has the obligation and position to maintain and keep up with the freedom, respectability, and validity of political decision coordinators. All the more explicitly, the DKPP was shaped to look at, settle, and settle on grievances/reports of supposed infringement of the governing set of rules committed by KPU individuals, Bawaslu individuals, and lower positions. DKPP has the option to give a last and restricting choice in the wake of directing examination/confirmation of the grievance, paying attention to the protection and witness explanations, and taking into account other proof by Article 458 subsection (10) of Regulation Number 7 of 2017 concerning General Decisions. The importance of the expression last and restricting alluded to in the DKPP choice appears to recognize that the DKPP choice can't be done further as though it were a legal establishment. The development of the DKPP as a political decision coordinating organization brought about different issues in the execution of its power.

The General Election is very close to political issues and the change in the office of regional heads in Indonesia because general elections, politics, and the period of changing regional heads are related to each other. The General Election held is nothing more than a political issue related to the issue of changing the terms of office of leaders in each region, carried out by statutory regulations once in 5 (five) years in each period, which is directly elected by the people concerned in each region.[11]. From a theoretical point of view, general elections are the most important means and instrument for the realization of popular sovereignty and the implementation of democratization in Indonesia. The implementation of democracy will be felt directly by the community when the process of holding general elections is held by the legal rules which are the basis and principles in the implementation of direct regional head elections to determine who the leadership candidates are who are worthy and worthy of holding the reins of power. government in a direct, general, clean, honest, and fair manner to achieve people's sovereignty as expected from the ongoing process of holding general elections which is expected to provide legal certainty, legal justice, and the benefits of the law itself.

Election management institutions that carry out and have independence. The independence of election management institutions has a significant influence on the process of holding democratic elections. Article 22E paragraph (5) stipulates that elections are held by a KPU which is national, permanent, and independent. The 1945 Constitution of the Republic of Indonesia in Article 1 section (2) commands that sway is in the possession of individuals and is carried out as per the Constitution. The result of the detailing of this article is that races should really oblige the goals of individuals who will choose their delegates who will sit as individuals from individuals' agents (DPR, DPD, and DPRD) whose execution should be founded on the 1945 Constitution of the Republic of Indonesia. As a political decision sorting out organization, the KPU plays a part The primary errand is to hold races, both official races (DPR, DPD, and DPRD), official and bad habit official decisions, as well as provincial head and delegate territorial head races. Article 1 number 6 of Regulation Number 15 of 2011, the KPU is alluded to as a political decision sorting out foundation that is public, extremely durable, and free. The KPU is a free establishment shaped as an epitome of the command of the 1945 Constitution of the Republic of Indonesia which has an extent of work all through the domain of the Unitary Condition of the Republic of Indonesia. The KPU carries out its duties continuously and free from influence from any party[12].

It can be said that the position of election management institutions is strong, even stronger than other institutions, considering that election management is very vulnerable to political and power intervention. The phrase "independence" as specified in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia means that the membership of election management commissioners must be free from political parties. This intention was very clearly visible during the debate on the formulation of the constitutional articles according to historical interpretation supported by international principles of democratic election management. Unfortunately, the desire to form an independent election organizing institution was disrupted by the formulation of Law Number 15 of 2011 that the KPU, Bawaslu, and DKPP are one political decision sorting out unit, as controlled in Article 1 number 5 that the political race coordinator is an establishment that puts together decisions comprising of KPU and Bawaslu as a solitary capability.

The independence of election management bodies is interpreted in different ways, as is the nature of independence. In international principles, independence requires that

election management bodies be free from interference from power or other forces, whether from the government, political parties, or election participants. Likewise, when making decisions regarding an election-holding policy, the same treatment must be given without taking sides towards certain parties. This needs to be fulfilled to avoid conflicts of interest within election management institutions. The independence of election management institutions which are non-partisan or neutral in making decisions regarding the elections must be guaranteed in statutory regulations. Election management institutions are not established by government authority in any case, are shaped in view of legal guidelines. This is to guarantee the execution of legitimate and fair races with the great respectability of political decision coordinators, eventually ensuring the execution of races that have lawful sureness[3].

#### **4 Conclusion**

1. Article 22E paragraph (5) of the 1945 Constitution states that general elections are held by a national, permanent, and independent general election commission. However, the 1945 Constitution does not require that the name of the institution be the General Election Commission (KPU). In this passage, the commission referred to is only formulated in lowercase letters. Therefore, the name General Election Commission is a name given by law, not a name explicitly given directly by the 1945 Constitution.
2. The General Election is very close to political issues and the change in terms of the office of regional heads in Indonesia. Because general elections, politics, and the period of changing regional heads are related to each other. The General Election held is nothing more than a political issue relating to the issue of changing the terms of office of leaders in each region and is carried out by statutory regulations once every 5 (five) years in each period.
3. It can be said that the position of election management institutions is strong, even stronger than other institutions, considering that election management is very vulnerable to political and power intervention. The phrase "independence" as specified in Article 22E paragraph (5) of the 1945 Constitution of the Republic of Indonesia means that the membership of election management commissioners must be free from political parties. This intention was very clearly visible during the debate on the formulation of the constitutional articles according to historical interpretation supported by international principles of democratic election management.

#### **5 Suggestion**

1. It is hoped that to achieve legal order, there is a need for order. Law is defined as a legal system of written positive law that should provide certainty. It is hoped that legal certainty can serve as a guide for the parties involved. One of the keys to success or failure in holding elections depends on the rules of the game that are created. It is difficult to hope that the election will run well if the seeds of problems have been planted in the election law itself.

2. It is hoped that general elections are the most important means and instrument for the realization of popular sovereignty and the implementation of democratization in Indonesia. The implementation of democracy will be felt directly by the public when the process of holding general elections is held by the legal rules which are the basis and principles in the implementation of general elections.
3. It is hoped that the concept of democracy is practiced throughout the world differently from one country to another. Each country and even each person applies its definition and criteria regarding democracy. Democracy itself involves awareness, behavior, and a relatively well-established social structure, so legal reforms must be carried out by the Indonesian people will take a relatively long. Therefore, to achieve democratic legal reform, clear and definite legislation is required.

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