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The Position of the General Election Management Body in the Constitutional Structure of the Republic of Indonesia

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ABSTRACT

The general election organizing agency plays a strategic role in ensuring the implementation of democratic principles in Indonesia. This article aims to examine and analyze the position of the election organizing agency in the constitutional structure of the Republic of Indonesia based on the provisions of the 1945 Constitution of the Republic of Indonesia and related laws and regulations. This study uses a normative legal research method with a legislative and conceptual approach. The results of the study show that the election management body has the character of an independent institution that stands alone, not under the authority of the executive, legislative, or judicial branches. However, in constitutional practice, its existence faces various challenges, including

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potential political intervention and overlapping authorities. Therefore, constitutional and legislative strengthening is necessary to ensure the integrity and professionalism of this institution within the Indonesian constitutional system.

Keywords: Electoral Management Body, State Administration, Constitution, Democracy

1. INTRODUCTION

General elections are the main means for the people to exercise their sovereignty in a democracy. The concept of popular sovereignty places the people as the highest authority in a country, and the implementation of elections is a constitutional mechanism to realize this sovereignty periodically, openly, and competitively. Elections are an important instrument for directly electing leaders and representatives of the people, as well as for testing the legitimacy of power within the framework of constitutional supremacy (Charada et al., 2023). In the constitutional system of the Republic of Indonesia, the implementation of elections is clearly regulated in the 1945 Constitution of the Republic of Indonesia, which establishes elections as an institution of constitutional democracy.

Article 22E paragraph (5) of the 1945 Constitution explicitly states that elections are organized by a national, permanent, and independent commission. This norm emphasizes that elections are not only a formal democratic procedure, but also contain the principle of institutional independence as an absolute requirement for the implementation of honest, fair, and integrity elections. As the implementer of these constitutional provisions, the state then formed three main election organizing institutions, namely the General Election Commission (KPU) as the technical implementer of elections, the Election Supervisory Agency (Bawaslu) as the supervisor of election implementation, and the Election Organizers Honorary Council (DKPP) as an ethical institution that examines ethical violations by election organizers. These three institutions were established through Law Number 7 of 2017 on Elections and are

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expected to work professionally and independently in accordance with constitutional mandates (Pasaribu, 2019).

However, in constitutional practice, there has been academic and legal debate regarding the structural position of election management bodies within the Indonesian state power structure. A fundamental question that often arises is: are these institutions classified as high state institutions on par with the President, the House of Representatives, or the Supreme Court? Or are they a separate branch of power outside the trias politica, which consists of the executive, legislative, and judicial branches? Or, are these institutions included in the category of functionally independent institutions that are administrative in nature but have independent characteristics due to the demands of their functions? This issue becomes increasingly important because the structure and position of an institution in the constitutional system will affect its legal legitimacy, scope of authority, and form of accountability to the public and the state.

In the context of elections fraught with conflicts of interest and political dynamics, affirming the constitutional position of electoral management bodies is crucial to maintaining public trust and the quality of democracy in Indonesia. Furthermore, with the increasing complexity of elections and the strengthening of electoral political influence at the executive and legislative levels, the existence of an independent election organizing body has become a kind of last bastion of democracy. Therefore, an academic review of the constitutional position and function of this institution is not only important in theoretical terms but also highly relevant for promoting institutional reform that guarantees the integrity of the democratic system in Indonesia (Millah et al., 2024).

2. RESEARCH METHODS

This study uses a normative legal research method, which is a research approach that focuses on the study of written legal norms as a basis for answering the legal issues being examined. This method is relevant because the topic focuses on analyzing the position of election organizing institutions in the state structure based on the provisions

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of the constitution and laws and regulations applicable in Indonesia. In the context of normative research, the data used is secondary data, which includes primary, secondary, and tertiary legal materials. Primary legal materials include constitutional provisions (1945 Constitution of the Republic of Indonesia), laws (Law No. 7 of 2017 on Elections), and other implementing regulations governing election organizing institutions. Secondary legal materials are obtained from scientific literature such as constitutional law books, scientific journals, academic articles, and official documents from state institutions. Meanwhile, tertiary legal materials are used to support the understanding of legal terms and concepts used (Rosidi et al., 2024).

The approaches used in this study consist of: Statute Approach. This approach is carried out by reviewing and analyzing relevant legislation (Khairani et al., 2021), specifically: The 1945 Constitution of the Republic of Indonesia, specifically Article 1 paragraph (2), Article 22E, and other provisions related to people's sovereignty and the implementation of elections. Law Number 7 of 2017 concerning General Elections, which is the legal basis for the formation and authority of the KPU, Bawaslu, and DKPP. KPU Regulations (PKPU), Bawaslu Regulations, and DKPP Regulations are technical implementations of the aforementioned laws. Constitutional Court decisions, particularly those related to the authority, independence, and strengthening of the institutional structure of election organizers.

Conceptual Approach: This approach is used to examine theories related to the structure of state institutions, the position of independent institutions, and the principles of democracy and popular sovereignty. This approach is also used to clarify academic understanding of whether election organizing institutions can be categorized as high state institutions, functionally independent institutions, or separate branches of power in modern constitutional structures. Theories referred to include Montesquieu's theory of *trias politica*, the concept of checks and balances, and contemporary constitutional law thinking developed by experts such as Jimly Asshiddiqie, Mahfud MD, and Hans Kelsen.

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In its data analysis, this study uses deductive reasoning, which involves concluding general legal provisions to analyze concrete phenomena or issues, namely, how the position of election organizing institutions is formed, regulated, and practiced in the constitutional system of the Republic of Indonesia. Using this method, it is hoped that the study can answer legal issues systematically, objectively, and scientifically, while also contributing to the strengthening of democratic and constitutional Indonesian constitutional theory and practice (Bado, 2021).

3. DISCUSSION

Constitutional Position of the Election Management Body

The 1945 Constitution of the Republic of Indonesia explicitly regulates general elections in Article 22E, which reads: "General elections shall be held directly, publicly, freely, confidentially, honestly, and fairly every five years. General elections shall be organized by a national, permanent, and independent general election commission." This provision forms the main constitutional basis for the existence of election organizing bodies in Indonesia, while also affirming the fundamental principle that elections are a manifestation of the sovereignty of the people, carried out periodically and democratically.

This article provides constitutional legitimacy for the existence of the General Elections Commission (KPU) as the main administrator of elections. However, in its development, the election administration system was later expanded with the presence of two other institutions that are also regulated in Law Number 7 of 2017 concerning General Elections, namely the Election Supervisory Agency (Bawaslu) and the Election Administrators Honorary Council (DKPP) (Tammu et al., 2023). These three institutions form a unified electoral system in Indonesia that complements each other, while also functioning as a mechanism for mutual control and correction. The functions and authorities of each institution are described as follows: General Elections Commission (KPU). The KPU is the institution responsible for all technical stages of the elections,

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from planning, updating voter data, determining election participants, campaigning, voting, to recounting and determining the national election results. The KPU also has the authority to draft technical implementation regulations (PKPU) that are binding on all election participants and relevant stakeholders.

The Election Supervisory Agency (Bawaslu) is tasked with supervising the entire election process, both directly and indirectly. In addition, Bawaslu has the authority to handle administrative election violations, resolve disputes between election participants, and provide recommendations on criminal election violations to law enforcement officials. In practice, Bawaslu also carries out preventive and political education functions. The Election Organizers Honorary Council (DKPP) serves as an ethical body tasked with examining and ruling on violations of the code of ethics committed by members of the KPU and Bawaslu, both at the central and regional levels. DKPP rulings are final and binding, as a form of moral and professional accountability for election organizers.

These three institutions were established based on the principle of institutional independence, which means that they are not under the control of any state institution, including the President, the House of Representatives, or the Supreme Court. They are institutionally, administratively, and operationally independent, as stipulated by the 1945 Constitution and its implementing regulations. This independence is important to ensure that the implementation of elections is not influenced by certain political powers, as well as to maintain neutrality and fairness in electoral contests. However, from a constitutional perspective, the positions of the KPU, Bawaslu, and DKPP are still not explicitly categorized as high state institutions, such as the President, DPR, Supreme Court, or Constitutional Court. They are also not included in the three branches of power according to the classical trias politica theory (executive, legislative, judicial) (Wahyudi, 2022).

Therefore, many constitutional law experts refer to these institutions as independent state auxiliary bodies, which are tasked with carrying out specific constitutional functions in a professional manner. According to Jimly Asshiddiqie, in his book “State Institutional

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Format and Power Shifts in the 1945 Constitution,” institutions such as the KPU and Bawaslu fall into the category of state auxiliary organs, which are state institutions formed to strengthen the democratic system, but are not included in the main power structure of the state. These institutions were created in response to the need for more democratic, accountable, and transparent state governance (Sihombing, 2018).

In practice, this position has various legal and political implications, such as: Unclear institutional accountability: to whom is this institution legally and administratively accountable? Vulnerability to political intervention, particularly in the selection of members and budgeting processes. Inconsistency in legal treatment: Is the legal protection afforded to election organizers commensurate with the responsibilities they bear?

Thus, although de jure these three institutions are independent, de facto, they still face various challenges in maintaining their autonomy and institutional integrity. This highlights the importance of discussing and reaffirming the structural and constitutional position of election management bodies, so that they are not only legally strong but also capable of responding to the increasingly complex challenges of electoral democracy in Indonesia.

The *Sui Generis* Position and Structural-Functional Problems of the Election Management Body

In Indonesia's constitutional system, the structure of state power is no longer rigidly based on the classical trias politica model proposed by Montesquieu, namely the division of power between the executive, legislative, and judicial branches. With the development of democracy and the need for complex governance, various state institutions have emerged that cannot be strictly classified into these three branches of power. Electoral management bodies, in this case the General Elections Commission (KPU), the Elections Supervisory Agency (Bawaslu), and the Election Management Honorary Council (DKPP), are clear examples of state institutions that have a *sui generis* position—that is,

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they are independent, unique institutions with special characteristics within the constitutional structure (Wibowo, 2023).

The term *sui generis* indicates that these institutions are established by constitutional mandate, but are not structurally subordinate to any branch of state power. They are not under the President, are not directly supervised by the House of Representatives, and are not subject to the jurisdiction of the Supreme Court in the performance of their technical duties. This shows the existence of quasi-independent bodies in the Indonesian constitutional system, non-ministerial state institutions that are mandated to carry out certain constitutional functions independently of political interference. However, in practice, the existence of electoral management bodies is not free from various structural and functional problems that threaten their independence and effectiveness (Wibowo, 2023).

- a. **Problems in the Recruitment Process** Although these institutions are nominally independent, the selection process for KPU and Bawaslu members at the national level is highly dependent on representative political mechanisms. Members are recruited by the President (through a selection team) and approved by the DPR RI through a fit and proper test. This procedure creates room for the politicization of recruitment, as potential candidates must obtain support from political parties or interest groups in parliament. This creates potential conflicts of interest when election organizers are required to be neutral, even though the appointment process is not entirely free from political influence. This situation is exacerbated by the absence of a strong check and balance mechanism from a neutral or independent institution that can oversee the recruitment process. As a result, the public often questions the integrity of election organizers, especially when handling cases involving parties or political actors who have close ties to the organizers.
- b. **Dependence on the State Budget** As state institutions, the KPU, Bawaslu, and DKPP are entirely dependent on the allocation of the State Revenue and Expenditure Budget (APBN) channeled through the Ministry of Finance. This dependence has two serious

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implications. First, delays or cuts in the budget can hamper the effectiveness of the election stages. Second, budget dependence creates the potential for political pressure from the government or the House of Representatives, which has the authority to approve and oversee the use of the state budget. In practice, the allocation of the election budget often becomes a political commodity, both in the context of lobbying between the organizing institutions and the government, and in relation to competition between political parties ahead of the elections. This budget uncertainty undermines institutional consolidation and long-term planning efforts, especially for national elections, which are highly complex and logistically massive.

- c. **Overlap and Ambiguity of Authority** Another issue that arises is the overlap of authority, particularly between Bawaslu and DKPP, which both have a supervisory function over the conduct of election organizers. Bawaslu is given the authority to conduct technical and administrative supervision, while DKPP handles ethical aspects. However, in practice, there are often discrepancies in interpretation, so that a single case may be handled by both institutions from different perspectives, or conversely, not handled at all because neither feels it has the authority to do so. This ambiguity not only causes legal confusion but also creates uncertainty for election organizers and participants in pursuing dispute resolution or violations. In some cases, such as in the 2019 and 2024 elections, there were inconsistencies between Bawaslu's decisions and DKPP's recommendations, which worsened the public's perception of the integrity of these institutions.
- d. **Lack of Protection for Local Election Organizers** Local election organizers, such as provincial and district/city election commissions (KPU) and regional election supervisory bodies (Bawaslu), are often subject to political pressure from local elites. Threats of violence, intimidation, criminalization, and administrative criminalization are real risks they face. Unfortunately, there is no strong protection system from the state, either legally or institutionally, to guarantee their safety and independence. This is very ironic considering that they are the spearhead of election implementation in the

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field. Academic and Theoretical Affirmation. From an academic perspective, the existence of election organizing agencies as sui generis institutions shows that the Indonesian constitutional system recognizes institutional pluralism in the structure of state power. According to Jimly Asshiddiqie, the presence of independent institutions such as the KPU is part of an effort to realize the principles of democracy that are not only procedural but also substantial. However, in order for this independence to be more than just nominal, it is necessary to reformulate the institutional system, including improving recruitment mechanisms, strengthening the constitutional legal basis, and providing institutional guarantees that protect these institutions from political intervention and structural pressure (Pokhrel, 2024).

Independence and Challenges of Election Management Bodies in Political Dynamics

Indonesia's political developments after the 2024 elections show complex dynamics that tend to contradict the principles of substantive democracy. One of the most prominent symptoms is the strengthening of political polarization, both at the elite and grassroots levels, which has a direct impact on the stability of the electoral system. This polarization is not only ideological in nature but is also driven by pragmatic interests in the power struggle. In these circumstances, election organizers face serious challenges in maintaining their neutrality, credibility, and integrity (Lestari et al., 2024).

- a. Criticism of the KPU: Transparency and Accountability in the Spotlight The General Elections Commission (KPU), as the main actor in the implementation of the election stages, faces sharp criticism from civil society, academics, and election participants, particularly in relation to three main issues: Verification of Political Parties and Determination of Presidential/Vice Presidential Candidates There are allegations that the verification process was not conducted in an open and accountable manner. The mechanism for digitizing data through the Political Party Information System (SIPOL) is considered to be not fully transparent and susceptible to manipulation (Rahmat & Setiawan, 2024). Recapitulation and Vote Counting. The recapitulation process in

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various regions was said to be inconsistent between the manual vote count and the digital count (Sirekap). This raised doubts about the validity of the data and the integrity of the election process (Pramesella et al., 2024). Lack of Response to Criticism The KPU is considered insufficiently responsive to input and criticism from civil society and election observers. In fact, in some cases, the KPU tends to be defensive and closed to public evaluation, thereby undermining public trust. This phenomenon points to a deficit in institutional accountability, which is ironic given that the KPU is supposed to be the main symbol of electoral democracy in Indonesia (Pokhrel, 2024).

- b. **Bawaslu and the Crisis of Supervisory Effectiveness** The Election Supervisory Agency (Bawaslu) also faces various challenges in carrying out its functions independently and decisively. Several election monitoring reports by civil society organizations indicate that election violations such as campaigning outside the schedule, use of state facilities, money politics, and civil servant neutrality are not dealt with proportionally by Bawaslu. The contributing factors include: Limited capacity of supervisors in the field, especially in remote areas. Fear of taking firm action against violations involving major political actors. Weak coordination between Bawaslu and law enforcement agencies and ethical institutions. In many cases, Bawaslu only issues moral appeals or recommendations without any executive power. This has led to repeated violations and has not had a deterrent effect on election participants (Pokhrel, 2024).
- c. **DKPP and the Challenges of Enforcing Ethics** The Election Organizers Honorary Council (DKPP) plays an important role in enforcing the code of ethics for organizers, but still faces problems in applying effective sanctions. In many of its decisions, the DKPP only issues warnings, reprimands, or ethical statements without sanctions that have a systemic impact. This raises several issues: DKPP decisions are often considered to have little institutional impact, especially when they are not followed by administrative sanctions from the KPU or Bawaslu. The DKPP is not yet considered a strong ethical instrument for establishing standards of professionalism and integrity

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for election organizers (Anam, 2024). Some academics have even proposed repositioning the DKPP's role so that it is not only an “ethical judge,” but also has structural authority in the selection and performance evaluation process of election organizers.

The Urgent Need for Structural and Constitutional Reform

Faced with various structural and functional challenges described above, particularly those related to the threat of politicization, budgetary dependence, and institutional uncertainty, the need for comprehensive reform of Indonesia's electoral institutions has become urgent. This reform is not merely a technical update, but a strategic step to ensure that elections continue to function as a credible, fair, and politically independent mechanism of democracy (Kumara, 2022).

In the academic and political spheres, there are currently two main approaches that are the focus of intense discussion and debate, namely:

- a. **Constitutionalization Approach to Election Management Bodies** This approach proposes that election management bodies, namely the General Election Commission (KPU), the Election Supervisory Agency (Bawaslu), and the Election Organizers Honorary Council (DKPP), be given explicit recognition and status as independent state institutions that are regulated and guaranteed constitutionally through limited amendments to the 1945 Constitution of the Republic of Indonesia. This amendment will strengthen the legal position of these three institutions so that they no longer depend solely on ordinary laws that are easily changed or influenced by the political majority in the House of Representatives (Hartono et al., 2023).
- b. Thus, the KPU, Bawaslu, and DKPP have strong constitutional legitimacy as constitutional bodies, which are institutionally independent and immune to political interference, particularly in the recruitment of members, budgeting, and internal oversight. The benefits of this constitutionalization are as follows: Guaranteeing the independence and integrity of election organizing institutions, so that they can carry

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out their duties professionally without political pressure. Ensuring legal protection and strict sanctions for parties who attempt to intervene in or disrupt the election process. Clarifying the accountability mechanisms and institutional relationships between election management bodies and other state institutions, as well as with the people as the holders of sovereignty. Increasing public trust and the legitimacy of election results, which in turn contributes to political stability and quality democracy (Warjiyati, 2020).

This approach is in line with practices in several democratic countries that make electoral management bodies part of the “basic structure” or fundamental constitutional framework, so that their existence cannot be challenged by the legislative or executive branches.

- c. Strengthening the Institutional Model of Electoral Management Bodies (EMBs) The second approach sees the need to develop and strengthen a professional, independent institutional model for Electoral Management Bodies (EMBs) that is truly free from the influence of electoral political actors. EMB is a term used globally for election organizing agencies that have a mandate to organize the entire election process neutrally and effectively. Several countries have provided concrete examples of how EMBs can be organized to be strong and free from political intervention, including India, with the Election Commission of India (ECI), which is a sovereign constitutional institution with broad authority and strong legal protection, enabling it to organize the world's largest elections with a high level of credibility. South Africa, with its Independent Electoral Commission (IEC), which is organizationally separate from government agencies and has a strict internal oversight structure, ensures that the electoral process is transparent and fair. Other countries, such as Canada, Australia, and Kenya, also have EMBs that are independently regulated with strict recruitment and oversight systems and protection mechanisms for administrators. The implementation of the EMB model emphasizes several principles: Clear institutional separation from executive and legislative political power.

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Merit-based professional recruitment, involving elements of civil society and other independent institutions to ensure the integrity of prospective organizers. Independent budgeting that does not depend directly on the central government, but is regulated in the state budget with special protection mechanisms. Transparent oversight and accountability through regular reports to the public and relevant state institutions. The implementation of an ideal EMB model will ensure that elections are conducted to high international standards, affirming the principles of free and fair elections and encouraging broad political participation.

4. CLOSING

The position of the general election organizing body within the constitutional structure of the Republic of Indonesia is highly strategic and unique. Based on Article 22E of the 1945 Constitution of the Republic of Indonesia, this institution has constitutional legitimacy as a national, permanent, and independent institution. The General Election Commission (KPU), the Election Supervisory Agency (Bawaslu), and the Election Organizers Honorary Council (DKPP) are the main pillars in the implementation of democratic, transparent, and accountable elections.

However, in practice, the existence of these three institutions still faces serious challenges that test their independence and effectiveness. Structurally, none of them fall into the category of high state institutions or conventional branches of power (executive, legislative, judicial), but are categorized as *sui generis* institutions or functional independent institutions. This position provides flexibility but at the same time creates legal ambiguity and vulnerability to political intervention, particularly in the recruitment process, budgeting, and institutional accountability.

Various structural and functional issues have emerged, such as overlapping authority between Bawaslu and DKPP, politicization in the recruitment of organizers, and weak protection for organizers in the regions, indicating that the existing legal and institutional framework is not yet fully capable of ensuring the neutrality and

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professionalism of these institutions. This situation is exacerbated by the political dynamics following the 2024 elections, which show signs of increasing political polarization, electoral inequality, and public distrust of the transparency of the electoral process. Election management bodies, particularly the KPU, have come under intense scrutiny for alleged inefficiencies and bias in the management of election stages, while Bawaslu and DKPP are considered to have been suboptimal in carrying out their supervisory and ethical enforcement functions.

To address these challenges, structural and constitutional reforms are needed. Two important approaches can be taken, namely: Constitutionalization of the election management body, through limited amendments to the 1945 Constitution, to strengthen the legitimacy and legal position of this institution so that it is free from political interference. Strengthening the Electoral Management Bodies (EMBs) model by adopting international practices that position election organizers as professional, independent institutions with adequate legal protection and budgets. Thus, strengthening the position, function, and integrity of election management bodies is not only a technocratic necessity but also a constitutional responsibility to ensure the substantive and sustainable establishment of electoral democracy in Indonesia.

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