

Electoral Governance and Democratic Consolidation in Indonesia

Ben Hillman

Introduction

Since returning to democracy in 1999, Indonesia has introduced direct elections for president, national and sub-national parliaments, and local government executives. While all of these elections have been successful from a number of perspectives—e.g. high voter turnouts, low levels of violence and the peaceful transfer of power, they have also been marred by serious shortcomings in electoral governance. During parliamentary and presidential elections in 2009 and local executive elections in 2010 problems appeared at every stage of the election process from voter registration through to vote counting. Millions of eligible voters were found to be omitted from electoral rolls while thousands of ineligible voters were included in the lists. Forty two of Indonesia's 44 competing political parties filed complaints over vote counting, prompting *Kompas*—Indonesia's leading newspaper—to declare the April 2009 parliamentary elections to be the worst since 1999 (*Kompas* 2009).¹ The presidential elections that followed in July resulted in 722 petitions to Indonesia's Constitutional Court. Local exe-

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¹ 'Manajemen Pemilu 2009 terburuk' (Management of 2009 general elections the worst), *Kompas*, 11 April 2009.

cutive elections in 244 regions in 2010 generated 215 disputes over elections results to be heard by the Constitutional Court as well as 1,636 reports of administrative violations implicating election officials. The persistence of such problems in Indonesia's elections undermines the perceived fairness and legitimacy of the electoral process and efforts to consolidate democracy.²

Understanding the reasons for the decline in the quality of electoral governance is important for policymakers in Indonesia and in other newly democratizing states. So far election analysts have tended to blame failures in electoral governance on the low capacity of Indonesia's General and Local Elections Commissions.³ This view is shared by the media, politicians, political party representatives and civil society groups in Indonesia. In 2009 two of the three largest political parties threatened to sue Indonesia's General Elections Commission for administrative violations—while a consortium of NGOs filed a citizens' law suit against it.⁴ Others called for election commissioners to step down or be put on trial.⁵ In recent local executive elections, governance failures have undermined public confidence in election results and led to violence. In Kupang, Eastern Indonesia, protestors demanded the dissolution of the Local Elections Commission. One person died during the violence surrounding local elections in Tana Toraja, South Sulawesi where angry protestors attacked the offices of the Local Elections Commission and set fire to ballot boxes in 19 out of 23 sub-districts.⁶ A recent study suggests that much of the violence could have been prevented by better electoral management.⁷

² Interview with Election Oversight Committee Member, Wahida Suiab, Jakarta, 9 November 2010.

³ Gumay, Hadar and Stephen Sherlock, "Local Executive Elections: Policy Lessons for Electoral Administration and Democratic Governance", paper presented at the Australia Indonesia Governance Research Partnership Policy Research Forum, December 2007 (Jakarta: Indonesia); and Rizal Sukma, "Indonesian Politics in 2009: Defective Elections, Resilient Democracy", *Bulletin of Indonesian Economic Studies*, Vol. 45, No. 3, 2009: 317–36.

⁴ Nugroho, I.D., "Election results legally challenged", *Jakarta Post*, 15 April 2009.

⁵ Wisnu, Andra, "Bring KPU members to court, analysts say", *Jakarta Post*, 7 July 2009.

⁶ Violence was reported in as many as 10 per cent of local elections held in 2010, an increase in violence from previous local elections. For a more detailed treatment of violence during local executive elections in 2010 see International Crisis Group, *Indonesia: Preventing Violence in Local Elections* (2010).

⁷ International Crisis Group, *Indonesia: Preventing Violence in Local Elections*, Asia Report N°197–8 December 2010.

While it is clear that Indonesia's General and Local Elections Commissions have been overwhelmed by the scale and complexity of organizing elections in a country that has the world's second largest number of registered voters, this article argues that the analytical focus on the administrative capacity of Indonesia's elections commissions overlooks more important institutional factors for the declining quality of electoral governance in Indonesia. Using local executive elections as a prism for analysis, this article examines the institutional framework for organizing elections in Indonesia. It argues that overlapping responsibilities between electoral management bodies and the dependence of the elections commissions on executive government resources and processes are the major obstacles to improving the quality of electoral administration and election-related dispute settlement in Indonesia. Findings are based on interviews with national and local election officials, legal analysis and on participant observation. While the focus of this study is electoral governance in Indonesia, the analysis will be of interest to students of democratization and democratic institutions in other parts of Southeast and East Asia.

Local Executive Elections in Indonesia

The introduction of direct elections for heads of government was a critical step for democratization in Indonesia because post-Suharto reforms included the decentralization of extensive powers from central government to local governments, particularly at the district (*kabupaten*) and municipality (*kota*) level.⁸ Decentralization itself was seen as an important complement to democratic reforms, first by diffusing the concentration of political power at the center, and second, by placing decision-making closer to the people. The initial decentralization law (Law on Regional Autonomy No. 22 1999), however, did not provide for full local democracy. Instead it transferred the power to appoint local heads of government from the President to local parliaments. Under the Regional Autonomy Law provincial parliaments would appoint provincial governors, district parliaments would appoint district

⁸ Under the Law on Regional Autonomy, the central government reserved exclusive jurisdiction over defence, national security, foreign relations, law enforcement, monetary and macroeconomic policy and religious affairs, while residual powers of government were devolved to sub-national levels. By concentrating powers at the district level, the law essentially bypassed provincial government.

heads (or regents, as they are sometimes known) and municipal parliaments would appoint local mayors. Such arrangements, however, failed to appease democracy activists and citizens' groups, many of which argued that a stronger system of checks and balances was needed to ensure the responsiveness and political accountability of the newly empowered local governments.⁹

In response to mounting public pressure, in 2004 the central government enacted a new law on regional administration (Law No. 32/2004). In addition to clarifying local government powers, this law introduced for the first time direct elections for heads of local government—provincial governors (*gubernur*), district heads (*bupati*) and town mayors (*walikota*).¹⁰ Direct elections for heads of local government (Pilkada, Pilkada-sung, Pemilu Kakada) began in 2005, one year after Indonesia held its first direct presidential election. Since then each of Indonesia's 33 provinces (*propinsi*) and 502 districts (*kabupaten*) and municipalities (*kota*) has held elections for local executives at least once. In 2010 local executive elections were held, in most places for the second time, in 244 regions—seven at the provincial level and 217 at the district/municipality level.

The electoral mechanism introduced for local executive elections is essentially the same as that for presidential elections. It is a two-round or run-off system designed to ensure that the winner receives more than 50 per cent of the total vote. Candidates for heads and deputy heads of government compete in pairs at each level. A candidate pair wins the election outright if they receive more than 50 per cent of votes. If no candidate pair receives more than 50 per cent of the vote, then the candidate pair with the highest number of votes is declared the winner as long as their share of votes is higher than 30 per cent. If no candidate pair wins more than 30 per cent of the vote, then the candidate pairs with the highest and second highest number of votes contest a run-off

⁹ Aspinall, Edward and Greg Fealy (2003) *Local Power and Politics in Indonesia: Decentralisation and Democratisation* (Singapore: Institute of Southeast Asian Studies).

¹⁰ The establishment of direct elections for local heads of government in Law No 32/2004 was based on a 2002 amendment to Indonesia's 1945 Constitution. Art. 56 Section 1 states that "Regional heads and deputy regional heads standing as candidate pairs are to be democratically elected by secret ballot in a manner that is direct, open, honest and just" *Kepala daerah dan wakil kepala daerah dipilih dalam satu pasangan calon yang dilaksanakan secara demokratis berdasarkan asas langsung, umum, bebas, rahasia, jujur dan adil.*"

election. All other candidate pairs are eliminated prior to the run-off. However, in at least one locality, local elections officials have declared a result even though no candidate pairs won more than 30 percent.¹¹

According to eligibility requirements, candidates must be nominated by a political party or coalition of political parties that together represent at least 15 per cent of the seats in the legislative assembly at the same level, or that received at least 15 per cent of total votes in the preceding general (legislative) elections. In the first rounds of Local executive elections there were no legal provisions for independent candidates. However, in 2007 a decision by Indonesia's Constitutional Court paved the way for independent candidates to contest future elections.¹² The participation of independent candidates will make local executive elections more competitive, but they will also make elections more administratively complex because independent candidates must meet stringent nomination criteria—collecting endorsement signatures from as much as three per cent of the population in each province or district. In Aceh special autonomy arrangements allowed for the participation of independent candidates in the 2006 elections for heads of local government, a precursor to the Constitutional Court decision that allowed independent candidates to contest all local executive elections. Verifying the accuracy of nomination lists for independent candidates' proved so difficult for the Aceh Independent Election Commission that commissioners gave up trying to do it thoroughly, deciding that all candidates who had provided the minimum number of signatures had met the requirement.¹³

Organizing Local Executive Elections: the Role of Indonesia's Local Elections Commission (KPUD)

Legislation governing local executive elections initially placed local elections within the regional autonomy framework (i.e. outside the electoral framework governing Indonesia's general and presidential elections). This meant that during the first round of local executive elections the central elections commission did not have the authority to

¹¹ This happened, for example, in Western Seram District in North Maluku.

¹² Constitutional Court decision No 5/PUU-V/2007, 23 July 2007.

¹³ Hillman, Ben "Democracy and Peace-Building in Aceh: Report on Aceh Local Elections", United Nations Development Program, Indonesia, 2007.

oversee implementation of local executive elections. This led to a high degree of variation in the quality of local executive elections across the archipelago. Indonesia's Regional Autonomy Law (No. 32/2004) also placed the KPUD under the direct control of the local parliament (DPRD) during the implementation of local executive elections—a move that seriously compromised the electoral management body's independence. However, following a judicial review of the institutional arrangements, a new Law on Election Administration (No. 22/2007) placed the KPUD under the direct supervision of the national elections commission rather than the local parliament. While the local elections commission would retain primary responsibility for implementing local executive elections, the role of the central elections commission would be to formulate uniform national guidelines and to supervise and monitor the elections.¹⁴

According to Law No 22/2007 article 9 (3), the primary responsibilities of the local elections commission are to:¹⁵

- a. design the program, budget, and schedule of elections;
- b. prepare and establish technical guidelines for each stage of the election;
- c. coordinate, implement, and control all stages of implementation;
- d. update the voters' data based on population data and finalizing the voter's register;
- e. verify pairs of candidates;
- f. confirm and announce results of the count;

¹⁴ Other relevant laws are: Law No 12/2008 on the Second Amendment of the Regional Governance Law No. 32 of 2004; Law No. 8/2005 on the Enactment of the Government Regulation in Lieu of the Law No. 3/2005 on the Amendment to the Law No 32 of 2004 regarding the Regional Government to become a Law; Law No. 1/2004 on the State Treasury; and Law No 33/2004 on the Fiscal Balance between the Central Government and Regional Governments. Important government regulations with reference to Local executive elections include: Government Regulation in Lieu of Law No 3/2005 regarding the Amendment to Law No. 32/2004 regarding the regional government; Government Regulation No 6/2005 on the Election, Approval, and Dismissal of the regional head and the regional deputy head; and Government Regulation No. 17/2005 on the Amendment on the Regional of the Government of the Republic Indonesia No. 6/2005 regarding the election, approval, and dismissal of the regional head and the region deputy head.

¹⁵ The law specifies duties for KPUD at the provincial, district and municipal level. An abridged version of KPUD duties is provided here for convenience. For precise wording, readers should consult the relevant legislation directly.

- g. prepare an official report on the vote count and provide a certificate of the results to witnesses representing candidates, Panwaslu, and KPU;
- h. confirm and announce the result of the election;
- i. report the result of the election to KPU;
- j. follow up irregularities reported by Panwaslu;
- k. suspend temporarily or impose administrative sanctions on any members of the KPUD or secretariat who have not acted in accordance with laws or regulations; and
- l. submit reports on the result of the election to the DPRD and head of government.

The capacity of the KPUD to discharge its duties impartially and efficiently has been a continuous target of public criticism in Indonesia. While blame is often placed on the capacity of staff recruited to organize elections, findings from this study suggest that more attention should be given to underlying institutional arrangements. Many of the “capacity” problems in electoral administration can be attributed to the structure of the KPUD and the agency’s dependency on local government. While KPUD are designed to serve as independent election management bodies, in the implementation of local executive elections, their independence is compromised by several factors, including: (i) the method of recruitment of KPUD commissioners; (ii) the structure of the KPUD secretariat; (iii) finance and budgeting systems; and (iv) the role of the local government executive. Each of these factors is examined in turn below.

Local Election Commissioners

Much of the scholarly and journalistic criticism of electoral management in Indonesia has focused on the competencies of election commissioners.¹⁶ Each local election commission (province, district and municipality) consists of a board of five commissioners elected for five-year terms. Candidates for commissioner positions generally have backgrounds in academia, civil society and/or religious organizations. In some cases commissioners have backgrounds in private business. Candidates are ineligible if they have been a member of a political party

¹⁶ Rizal Sukma, ‘Indonesian Politics in 2009: Defective Elections, Resilient Democracy’.

during the previous five years. Candidates are screened by a selection team consisting of five members, one of whom represents the government executive, two of whom represent the DPRD, and the other two of whom represent KPU. After screening for eligibility, the selection team prepares a shortlist of 10 candidates. For provincial KPUD positions, the list is submitted to the central elections commission. The list of candidates for KPUD at the district and municipal level is submitted to the provincial KPUD. The higher level election commission then selects the final five commissioners.

While the transparency of the selection process is commendable, several weaknesses in the commissioner recruitment process compromise the capacity and integrity of the KPUD. To begin with, the office of KPUD commissioner is not considered to be one of high status within the public service. Neither is it well remunerated. This makes it difficult to attract qualified and capable candidates. It also makes KPUD candidates more vulnerable to official corruption. Research has uncovered examples of candidates for political office promising KPUD members positions in the future government in return for their 'support'. Such "opportunities" are also blamed for attracting candidates with the wrong motives such as those who seek to use the role as a means of launching their own political careers. This occurs because local government retains a high degree of influence over the selection process. Even though KPU makes the final selection, the initial screening is conducted by a selection team appointed by the government executive and political parties within the DPRD. When an incumbent is running for a second term, election commissioners nominated by the local governor, mayor or district head can be susceptible to political pressure. One former provincial election commissioner and a former district election commissioner related to the author their personal encounters with such unsolicited pressure.¹⁷ This potential problem is compounded by the fact that local government controls the budget for local executive elections—a separate issue compromising the operational autonomy of KPUD that is discussed in more detail below.

The timing of commissioner recruitment is another problem affecting the capacity of KPUD to discharge its duties effectively. The

¹⁷ The identities of the two election commissioners are necessarily concealed.

duration of a KPU term of office is five years, which is aligned with the five-year terms served by local and national assemblies. This means that appointments are not aligned with local executive elections, which, unlike legislative elections in Indonesia, are staggered. Sometimes this means that KPUD commissioners are recruited just before local executive elections, leaving them little time to learn the ropes. This problem is compounded by the fact that new KPUD commissioners often have little or no election experience. In many other countries, the recruitment of lawmakers is staggered in order that the commission retains institutional memory.

The Structure of the Local Election Commission's Secretariat

While KPUD commissioners are responsible for general oversight of the process, the actual business of implementing local executive elections is carried out by the KPUD secretariat—a fact which is often overlooked by election critics, particularly political analysts within the Indonesian media. In accordance with the law, KPUD secretariats at the provincial level must consist of three divisions, each with two subdivisions, while KPUD secretariats at the district/municipality level must consist of four subdivisions. The uniform organizational structures imposed on the KPUD result in secretariats that are not always organized in a manner best suited to operational needs. In some cases, a minority of staff in one subdivision end up shouldering a majority of the work while staff in other divisions have little to do.

A further ongoing challenge is the election commissions' ability to recruit and retain high quality staff. While criticism of KPUD staff calibre has largely focussed on the commissioners, capacity is also a problem within the secretariat. While each KPUD has its share of competent staff, most are seconded from other government agencies and are frequently rotated out of the secretariat. This practice undermines organizational capacity and institutional memory. When required to second staff in preparation for upcoming elections, other local government agencies are reluctant to provide their most qualified or productive staff. One reason for this is that KPUD assignments are considered of low importance. Any position in the KPUD is outranked by the equivalent position in a line ministry. For example, the bureaucratic rank of the secretary of a district election commission is one rank lower

than the secretary of the health or education department. Partly because of this, and partly because of its isolation from the core activities of local administration, within Indonesia's civil service the KPUD is often seen as a career dead end. New recruits are often graduates with poor prospects for career advancement. Even though amendments to the electoral law gives the KPUD new human resource management powers, including the power to hire some staff, powers must be executed in concert with other national civil service regulations, which are cumbersome and ill-suited to developing the expertise required. For example, according to civil service rules, new entrants can only be promoted to the next level after eight years of service. Such human resource constraints have a negative impact on secretariat performance.

One way for Indonesia to strengthen its local election commissions could be to follow the example of the highly successful Corruption Eradication Commission (KPK), which struggled for two years to win the authority to recruit personnel outside of the Indonesian civil service. If similar authority was given to the KPU, it would increase its ability to recruit and retain more competent staff. Mexico's electoral management body recruits and manages its staff in this manner, providing a possible reference for Indonesia's policymakers.

Another unresolved human resource management problem confronting the KPUD is the relationship between the secretariat staff and the election commissioners. Because secretariat staff are civil servants, they are recruited, remunerated and promoted by the local government executive. While, in theory, the KPUD secretariat reports to the commissioners, the commissioners' authority is weak because most secretariat staff are on a short secondment and because commissioners have very limited hiring and firing power. The Law on Election Administration (Law No. 22/2007) granted commissioners authority to appoint some professional staff, but it did not grant them powers to control key staff appointments such as the head of the secretariat. Instead, the head of the secretariat, the most influential member of the KPUD, continues to be appointed by the local government executive. This practice undermines both the operational autonomy and effectiveness of the KPUD, and leaves it vulnerable to political interference.

The potential for political interference becomes even greater at the sub-district and polling station level where electoral officers are

appointed by local officials on an ad hoc basis during the first 30 days of the election preparation phase. During the preparation phase of local executive elections, district and municipality KPUDs appoint five electoral support staff (PPK) in each sub district. Their responsibilities are to assist KPUD, and to recount and tally election results from each of the sub district's polling stations. While the law is silent on the mechanism for appointing sub-district electoral officials, they are typically appointed by the sub-district head (*camat*). Polling staff at the village and polling station levels are appointed on the recommendation of the village/neighborhood heads (*kepala desa/lurah*) in accordance with the law. However, the formal eligibility requirements for polling station staff are so onerous and the remuneration so low that the job is generally not considered attractive. The criteria for appointment is essentially the same as for KPUD commissioners—appointees need to obtain (and pay for) medical certificates and a notice from the court testifying that they do not have a criminal record. Again, Mexico might provide a reference for Indonesia's policymakers here. In Mexico polling station officials are selected by a national lottery. In some European countries electoral officials are called up from among the public in the same way people are summonsed for jury duty.

Electoral officials at the Subdistrict Level

PPK	Panitia Pemilihan Kecamatan
PPS	Panitia Pemungutan Suara
KPPS	Kelompok Penyelenggara Pemungutan Suara

Election Financing and Budget Issues

While frequently overlooked by critics of election management in Indonesia, election finance mechanisms are a major constraint on efficient electoral administration. The chief source of finance for local executive elections is the local government budget. Government regulations require KPUD to submit its budget plan to the government executive in time for incorporation into the government's annual budget and work plan. This means that funds are only made available once the annual budget is approved. This causes major difficulties for the KPUD because the preparation and approval of the government's

budget rarely coincides with the election cycle. Much critical election work such as updating the voters' list takes place outside the official implementation period, but there is no separate budget for this work. A lack of readily available funds is a major underlying cause of many weaknesses in electoral administration, including voter registration and voter education/information campaigns.

Local governments also have a tendency to slash KPUD budget proposals leaving KPUD with inadequate funds. The government budget also excludes a number of direct costs such as overtime payments for KPUD staff. And while KPUD is held legally responsible for procurement of election materials and services, cost standards are typically set by the local government executive. Even though Law No 32/2004 authorises KPUD to set cost standards, local government control over the budget effectively limits KPUD's ability to set these standards. KPUD dependency on the local government executive for budget management creates the undesirable situation in which election officials are sometimes forced to curry favour with the local executive. Favouritism towards incumbents has been observed by researchers in a number of areas, most noticeably in the candidate verification process. One study noted that KPUD tended to be more lenient towards the incumbent than towards rival candidates.¹⁸ This problem has only been partially addressed by amendments to the election law, which now requires incumbents to resign upon announcing their candidacy for re-election.

Despite this small step, unless local election commissions are empowered to manage a budget that is synchronised with the electoral cycle rather than with the government's financial year, it is difficult to see how the problem of financial pressure will be resolved. The timely allocation of funding is needed to reduce the risk of disruptions as well as the misallocation of resources. It is also needed to protect the neutrality and integrity of KPUD.

The mechanism by which local elections are financed also leads to dramatic variations between regions in the quality of local elections.

¹⁸ Report prepared by Banten District Election Oversight Committee, 2007, cited in Gumay and Stephen Sherlock, "Local Executive Elections: Policy Lessons for Electoral Administration and Democratic Governance".

Wealthier regions have greater resources to conduct local executive elections, while poorer regions have less. Under the current system, under-resourced regions are unable to access top-up funding from the center. Experience from other countries suggests that it is more effective if all elections are funded from a single budget source. In Indonesia, the central election commission could be made responsible for allocating budgets to the provinces and districts on the basis of formulas determined by election administrators. This would help to better integrate local executive elections into the elections regime and, at the same time, strengthen the central election commission's oversight of the process.

The Role of Local Government in Organizing Elections

While KPUD is the chief election management body responsible for local executive elections it is not the only one. Executive government also participates directly in the organization of elections via the Local Executive Elections "Desk". Under Ministry of Home Affairs regulations created prior to the first round of local executive elections in 2005, the Ministry of Home Affairs established a national Local Executive Elections Desk in Jakarta with representative branches in all provinces, districts and municipalities.¹⁹ Local Executive Elections Desks are funded generously by the Ministry to provide a range of key electoral support activities including the provision of technical assistance to the KPUD, the conduct of voter education (*sosialisasi*), conflict monitoring and the supervision of all stages of the electoral process. While there is evidence that Local Executive Elections Desks have made positive contributions to the electoral process in some regions, there is also evidence to suggest that the Desks have been disruptive to the process in others.²⁰ Overall, however the existence of the Desks is a threat to the credibility of local executive elections. This is because many of the Desk's functions overlap with the responsibilities of the KPUD and the election oversight committee (Panwas). The Local Executive Elections Desk blurs the lines of institutional accountability. As an example, in

¹⁹ Ministry of Home Affairs Regulation No 9/2005 Chapter IV on Regional Election Management.

²⁰ Rozi, Syafuan "Netralitas Birokrasi dalam Pilkada Langsung di Indonesia 2005- studi kasus Malang, Gowa, dan Kutai Kartanegara (Neutrality of the Bureaucracy in Indonesia's Local executive elections in 2005 - cases study from Malang", Gowa, and Kutai Kartanegara) Lembaga Ilmu Pengetahuan Indonesia (LIPI, 2006).

one district the Local Executive Elections Desk formally announced the results of the election before KPUD.²¹

Local Executive Elections Desks also provide a legal mechanism for the direct intervention of heads of local government in the elections.²² Desk staff are recruited from the public service, the police and public prosecutor's office. The Desks are usually headed by the head of the local government executive's secretariat (Sekda) who reports directly to the head of government. In cases where the incumbent is running for a second term, evidence from the field suggests that the Desk has been used as an instrument for interfering in the electoral process. Reports indicate that Desk-sponsored voter education campaigns sometimes resemble political campaigns for incumbents²³, underlying the importance of transferring these functions to an independent election management body.

While the level of engagement of Local Executive Elections Desks varies between localities, in many places, the size of the Desk budget provides an indication of their significance for the elections. Generally, Local Executive Elections Desks have much larger budgets for voter education and election awareness campaigns than the local elections commission. This provides opportunities for political interference in the electoral process. An increasing body of evidence from the field to suggest that the operations of the Local Executive Elections directly desk undermines the autonomy of the KPUD, and is out of step with international best practice.²⁴

Voter Registration: Overlapping Authorities and the Question of Accountability

Voter registration is one of the most important stages of the election cycle, but it remains one of the biggest weaknesses of election

²¹ Gumay, Hadar and Stephen Sherlock, "Local Executive Elections: Policy Lessons for Electoral Administration and Democratic Governance".

²² Zuhro, Siti "Posisi Birokrasi dalam Pilkada Langsung di Malang" (The Role of the Bureaucracy in Malang's Local Elections), *Jurnal Demokrasi & HAM* (Democracy and Human Rights Journal), Vol. 6 No. 2, 2006.

²³ Evans, Kevin, Bima Arya Sugiarto and Ahmad Kusworo, "Conducting Regional Elections in Indonesia: the Challenges of Reform", unpublished research paper, United Nations Development Program (Jakarta: Indonesia, 2009).

²⁴ Gumay, Hadar and Stephen Sherlock, "Local Executive Elections: Policy Lessons for Electoral Administration and Democratic Governance"; and Evans, Kevin, Bima Arya Sugiarto and Ahmad Kusworo, "Conducting Regional Elections in Indonesia: the Challenges of Reform".

management in Indonesia. Irregularities in the voters' list remain the primary source of election-related disputes. Arguably, the quality of the voters' list has been even poorer for local executive elections than for general elections. While there are a number of proximate causes for problems with voter registration, including the relatively short time allocated for updating the list, this study finds institutional accountability to lie at the heart of the problem.

Like its national counterpart, the local election commission does not have independent authority for compiling the voters' list. According to the law, voters' lists are prepared by the Ministry of Home Affairs on the basis of government population data. Prior to elections, the government submits the data to the local election commission for updating. The local election commission is responsible for updating the list and for giving eligible voters an opportunity to check that they have been properly included. Unfortunately, however, government data remains outdated and incomplete, and KPUD lack the time and resources needed to improve the data after they receive it.

As an example, an independent audit of the Jakarta voters' list in the lead up to elections for the Governor of Jakarta in 2007 found that only 77.8 per cent of eligible voters were registered. Furthermore, 20.8 per cent of registered voters were found to have been ineligible.²⁵ By contrast, in Aceh, where special circumstances led to the establishment of an Aceh Independent Election Commission (KIP), 86.9 per cent of eligible voters were found to be registered, despite widespread population displacement due to previous conflict and the 2004 Indian Ocean Tsunami. Because of the need to update population data in the wake of the tsunami, KIP had access to a new voters' list compiled by Indonesia's Bureau of Statistics (BPS) under the supervision of the central elections commission using the traditional door-to-door registration method.²⁶ When new laws required KIP to use government population data as the basis for the voters' list prepared for the April 2009 general elections, the quality of the voters' list declined.²⁷

²⁵ Source: LP3ES & NDI, Press Release: Most Eligible Voters in Jakarta Registered, 21 June 2007, <http://www.jurdil.org>

²⁶ Source: Jurdil Aceh, "Most Eligible Voters in Aceh Registered", 3 November 2006, <http://www.jurdil.org>

²⁷ Interview with election officials, Banda Aceh, 8 April 2009.

The Aceh experience, while born out of tragedy, highlights the benefits of making the elections commission responsible for the voters' list. It also highlights the advantages of allowing a longer lead time for conducting voter registration—up to 12 months can be needed to ensure the accuracy of the list. Because the official implementation schedule for local executive elections only provides 10 days for updating the voters' list, it is not surprising that it contains many errors.

Election Oversight and Dispute Resolution

Successful democratic elections depend not only on the effectiveness of implementing institutions, but also on the effectiveness of oversight and dispute resolution mechanisms. Ensuring effective election oversight and dispute resolution has been a challenge since Indonesia's return to democracy in 1999. In Indonesia, the Election Oversight Committee (Bawaslu) serves as the chief election oversight body. Bawaslu is now a permanent body at the national level. In the lead up to each election, Bawaslu establishes ad hoc committees (Panwaslu) at the provincial and district levels. Because the focus of this study is local executive elections, the analysis here will focus on the role of Panwaslu rather than the national-level Bawaslu.

The Regional Election Oversight Committee (Panwaslu)

Panwaslu committees are established 30 days prior to the commencement of local executive elections implementation, or 210 days prior to elections.²⁸ The committees are responsible for monitoring all stages of the election process and for passing on reports of violations to the appropriate authorities. While only the Constitutional Court has the power to adjudicate disputes over election results, Panwaslu is responsible for dispute resolution during all other stages of the local executive elections. This difference in function between elections has caused a great amount of confusion.²⁹ Each Panwaslu committee consists of three

²⁸ The Panwaslu committees established for Local executive elections are referred to in official documents as "Panwaslu Kada".

²⁹ Legal ambiguity continues to surround the dispute resolution functions of Panwaslu during Local executive elections. This is because while Law No 22/2007 was meant to clarify the authorities of all election management bodies including Panwaslu (i.e. superseding Law No 32/2004 on Regional Autonomy), the law failed to specify dispute resolution functions that were outlined in 32/2004. In the lead up to the current round of Local executive elections, Bawaslu asked for legal advice on the matter. A first group of legal advisors argued that because it was

members. The national oversight committee is responsible for appointing the members, but the nominations are provided by the local election commission. Administrative support staff are seconded from government agencies for the duration of the election organizing period.

Panwaslu Responsibilities

Panwaslu responsibilities are specified in Law No 22/2007 on Election Administration. According to the law, the duties of the district and municipality election oversight committee are:³⁰

- (a) Supervising all stages of election implementation including
 - (i) updating voter data based on population data and affirmation of preliminary voters' register and final voters' register;
 - (ii) candidate nomination;
 - (iii) candidate verification;
 - (iv) campaign implementation;
 - (v) election supplies procurement and distribution;
 - (vi) voting;
 - (vii) supervision on the whole process of vote counting;
 - (viii) movements of ballot papers from the polling stations to PPK;
 - (ix) vote recapitulation;
 - (x) recounts, re-voting, second, and make up elections as required; and
 - (xi) affirmation of election results;
- (b) Receiving reports on violations of election laws or regulations;
- (c) Managing findings and reports concerning disputes on non criminal election matters;
- (d) Submitting findings and reports to KPUD for follow up;
- (e) Conveying findings and reports beyond the Panwaslu mandate to relevant authorities;
- (f) Submitting reports to Bawaslu regarding any compromise of the election process by election implementers;

not outlined in 22/2007, Panwaslu no longer had dispute resolution functions in Local executive elections. However, a second group of experts argued that provisions in 32/2004 would still apply if it did not contradict 22/2007. Bawaslu adopted the second group's view, which has upheld Panwaslu's dispute resolution role in Local executive elections, but this authority remains open to challenge because of the ambiguity in the law. E.g. a party to dispute resolution might have a legal basis for refusing to acknowledge Panwaslu's authority to adjudicate. The upcoming Local executive elections law presents an opportunity to clarify Panwaslu's dispute resolution function.

³⁰ The law also specifies the responsibilities of election oversight committee at the provincial and national level. Nearly all duties are the same for Panwaslu at the district and municipal levels, Panwaslu at the provincial level and Bawaslu at the national level. However, only district and municipal Panwaslu are responsible for supervising the movement of ballot papers from polling stations to election officials at the sub-district level (PPK).

- (g) Supervising the imposition of sanctions on staff found to have acted improperly;
- (h) Supervising voter education activities

Panwaslu Role in Dealing with Administrative and Criminal Violations

While Panwaslu is required by law to oversee all stages of the election process, its main function is to receive and forward reports of electoral violations. There are two main types of violations that Panwaslu deals with—criminal and administrative. Examples of criminal violations include vote-buying, campaigning outside official campaign periods, and use of public resources in campaigns. Other crimes such as vandalism, arson, physical assaults, and assassination are considered to be crimes of a general (i.e. not election-specific) nature and fall under the general criminal code. Examples of administrative violations include, inter alia, inconsistencies in the vetting of candidates' against eligibility criteria and the updating of voters' lists, and procedural errors in vote counting and recapitulation. Upon receiving a report of a violation, Panwaslu's role is to first determine whether the report has merit. If it is found to have merit, Panwaslu forwards a report to the police (for criminal violations) or to KPUD (for administrative violations). It is then the responsibility of the police or KPUD to respond to complaints.

In other elections in Indonesia (parliamentary and presidential) administrative and criminal violations must be dealt with within a legally specified time frame in order to minimise political uncertainty. For criminal violations police have 14 days to gather evidence. The public prosecutor then has only five more days to submit the case to the district court. For administrative violations, KPUD has only seven days to respond following receipt of Panwaslu's report. While time limits sometimes mean that there is insufficient time to gather evidence, time limits are nevertheless necessary to ensure that cases with possible implications for the election result are handled quickly. Unfortunately, however, the law does not specify time limits for handling local executive elections-related violations.

Furthermore, (and this applies to all elections in Indonesia) Panwaslu does not have the authority to ensure that either the police or

KPUD follow up on reported criminal or administrative violations. Neither does the complainant have recourse to the courts if the local election commission fails to act—a major lack of procedural safeguards. And where complaints or administrative violations involve improper conduct on the part of local election commission staff, the local election commission is usually disinclined to follow up. These problems will continue to plague elections unless Panwaslu is strengthened as an institution, i.e. until the body is transformed into an elections complaint commission with enforcement powers.

Panwaslu Role in Dispute Resolution

Controversially, Panwaslu has been made responsible for the resolution of disputes emerging during any stage of local executive elections—a responsibility that it does not have in other elections. Election-related disputes are those which occur during implementation and are to be distinguished from disputes over election results, which can only be adjudicated by the Constitutional Court. Election-related disputes typically arise from conflicting interpretations of electoral laws and regulations. For example, the most common type of dispute to come before Panwaslu is one in which candidates have conflicting views over the delimitations of a campaign zone, i.e. two candidates both claim a particular site. If one candidate is clearly campaigning outside the boundaries of his/her zone then this constitutes an administrative violation to be referred to the local election commission. But if the campaign boundaries have been unclearly specified by the local election commission, then this becomes a dispute that Panwaslu has the power to adjudicate.

Bawaslu has issued regulations outlining Panwaslu's role in dispute resolution during the conduct of local executive elections.³¹ According to Bawaslu regulations, sub national Panwaslu committees are to observe the following steps in resolving disputes:

- (i) Receive report from complainant
- (ii) Seek clarification
- (iii) Examine report to assess whether complaint relates to (a) criminal violation, (b) administrative violation, or (c) dispute

³¹ See Bawaslu Regulation No. 24/2009.

- (iv) Negotiate an acceptable agreement between parties to the dispute
- (v) If no agreement, make final and binding decision
- (vi) Publish the written agreement or decision (*berita acara*)

While the new regulations are clear, their implementation has proved to be a challenge. This is because Panwaslu committees do not have the expertise needed to properly adjudicate election-related disputes. Another concern is that while Panwaslu decisions are final and binding on the parties to the dispute, Panwaslu has no power of enforcement. If parties to a dispute choose to ignore Panwaslu's decision, there is nothing that Panwaslu can do about it. In the most recent rounds of direct executive elections, only a handful of the estimated 1636 rulings by Panwaslu committees have been followed up by the Local Elections Commissions or local law enforcement agencies.³² The law does not specify a mechanism for dealing with such situations. Panwaslu clearly cannot be effective in resolving disputes unless it has the power to ensure compliance with its decisions.

Panwaslu Organizational Capacity

Like the local elections commission, Panwaslu effectiveness is hampered by the difficulty of recruiting suitably qualified personnel. The ad hoc nature of the commission, its lack of resources and the rigidity of eligibility criteria are serious obstacles for recruitment. Panwaslu commissioners are required to work full-time from one month before the election period until one month after the election period—a total period of 240 days. Many of the most qualified candidates for the positions tend to be already occupied with full-time work. The low pay and low status of the positions are poor incentives. Positions at Panwaslu are ranked below equivalent positions at KPUD. It will be difficult to attract capable and qualified candidates, unless the remuneration and status of the positions are increased.

The Election Law requires KPUD to initiate the formation of Panwaslu 30 days before the start of the election implementation period

³² Interview with Election Oversight Committee Member, Wahida Suiab, Jakarta, 9 November 2010.

and to dissolve it 30 days after the elections. Candidates must obtain health certificates and police checks, which takes time. Often, prospective commissioners have to bear these costs themselves. While the background checks are important, the administrative process tends to discourage prospective candidates. And recruitment is almost never finalized in time, leaving many stages of the election without adequate oversight. In many cases the recruitment of Panwaslu members only begins at the 30-day mark, instead of prior to the 30-day mark—a problem which stems from the ambiguity of electoral rules. Regulations need to make it clear that Panwaslu must be operational by the 30-day mark at the latest.

New electoral laws separating Panwaslu from the police and public prosecutor's office may serve to boost Panwaslu's neutrality, but they also reduce Panwaslu's ability to harness those agencies' investigative skills and legal expertise. Such capacity is now supposed to be developed within Panwaslu itself, but with the current level of resources, it is difficult to see how such capacity can be built at sub national levels. Resources are limited and Bawaslu is not inclined to spend money on training because of the impermanent nature of Panwaslu and high staff turnover. Even when it is able to allocate funding, funding is often not available in time. As a lower-level agency (i.e. its chief is not a top echelon civil servant), Bawaslu does not have the authority to manage its own budget. All expenditure is processed through the Ministry of Finance.

New electoral laws also reduce Panwaslu capacity by downsizing the body's key staff. The 2007 Law on Election Administration reduced the number of commissioners at the provincial, district and sub-district levels from five to three. Panwaslu commissioners are supported by a handful of secretariat staff seconded from other government departments. As is the case with secondments to the KPUD secretariat, local governments are generally not inclined to share their most competent officers with Panwaslu and expertise in election oversight is often lacking.

A lack of budget control and poor timing of finance undermine the operational effectiveness of Panwaslu. In Bengkulu Province, for example, Provincial Panwaslu recently submitted a proposed budget of 25 billion rupiah (US\$2.77 million) for oversight of elections in 11

districts and municipalities. However, the provincial government authorized funding of only two billion rupiah (US\$222,000), which is approximately US\$20,000 per district for eight months of election oversight and dispute resolution activities. In another district in Central Java, only Rp 250 million was provided for Panwaslu activities in 278 villages, amounting to a little over \$US100 per village for eight months work. In other places Panwaslu is still waiting for the funding it has been promised.³³

Given capacity challenges, higher level supervision of Panwaslu activities will be essential. However, during elections for heads of district and municipal governments, Panwaslu is not established at the provincial level. District and municipal Panwaslu committees come under the direct supervision of Bawaslu in Jakarta. Given the central body's lack of resources, it is unable to provide much support. Bawaslu does not even have enough funds to conduct eligibility ("fit and proper") tests of newly nominated Panwaslu members even though it is required to do so by law.³⁴ If Bawaslu/Panwaslu is to be retained as a meaningful election oversight and dispute resolution body, it needs to be given resources commensurate with its duties. Currently, neither Bawaslu at the national level nor Panwaslu at the sub-national level has the resources needed to properly discharge its election oversight and dispute resolution duties.

Conclusion

Indonesia has been hailed as a democratic success story since returning to multiparty democracy in 1999. Direct elections have now been held on a regular basis for president, heads of local government and national and sub-national legislatures. In recent years, however, the quality of electoral governance has gone backwards. Because democracy cannot survive without credible institutions to implement elections and settle election-related disputes, strengthening electoral governance will be essential for democratic consolidation in Indonesia over the coming decade.

³³ Interview with Election Oversight Committee Members, 15 January and 9 November 2010.

³⁴ Interview with Election Oversight Committee Member, Wahida Suiab, Jakarta, 9 November 2010.

While public and scholarly criticism of electoral governance in Indonesia has generally targeted the competencies of election administrators, findings from this study suggest that the most pressing problems with electoral governance in Indonesia are structural and can only be addressed by institutional reform. The Indonesian case demonstrates that it is difficult to improve the quality of electoral governance if election management bodies remain too heavily dependent on executive government processes and resources. Findings from this study suggest that Indonesian policymakers should reconsider the powers and responsibilities of election management bodies and the institutional relationships between them. Overlapping functions between various government agencies responsible for organizing elections has created an accountability crisis. Similarly, overlapping authorities between the Ministry of Home Affairs and the Election Commission obfuscate accountability for voter registration, which remains the single major source of election-related disputes. Both agencies regularly blame each other for weaknesses in voter registration. Local election commissions are also totally reliant on local government budgets, making local electoral commissions susceptible to political pressure. It also leads to wide regional variation in the quality of local executive elections. As it stands, the central government does not intervene to ensure that local election commissions throughout the archipelago have sufficient resources to fulfil their mandates. Institutional reform of Indonesia's electoral governance framework is urgently required. This is as much a political problem as it is a technical problem for Indonesia's reformers. Part of the challenge lies in convincing Indonesia's powerful Ministry of Home Affairs—the agency that controlled local governments throughout the authoritarian period and that continues to oversee regional autonomy today—that it should relinquish some of its authority for organizing elections. This will be difficult because the budget attached to such responsibilities is large. Similarly, to make Panwaslu a credible and effective election oversight and dispute resolution body, it needs to be given powers and resources commensurate with its tasks.