

NDI AND CARTER CENTER: POST-ELECTION STATEMENT NUMBER 4, POST-ELECTION DEVELOPMENTS IN INDONESIA, THE FORMATION OF THE DPR AND THE MPR

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EXECUTIVE SUMMARY

Now that the results of the June 7 elections in Indonesia have been validated by a presidential decree, the next steps in the electoral process are the formation of the People's Representative Assembly (*Dewan Perwakilan Rakyat* or DPR) and the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR). Since the procedures to form these representative bodies were not fully established before the June 7 elections, this report examines the status of their development. It is based on a review of applicable laws and regulations and on recent discussions in Jakarta and Yogyakarta with election authorities, political party leaders, government and military officials, and leading political observers.

The Formation of the DPR

The formation of the DPR requires the allocation of seats to parties on the basis of election results and the determination of the elected candidates for those seats.

The Allocation of Seats to Parties

Problems have occurred in the allocation of seats according to largest remainders, under Indonesia's proportional representation electoral system. These problems have centered around the use of "stembus accords," or voluntary agreements among parties to combine their remainders in order to improve their chances of obtaining seats. The Election Commission (*Komisi Pemilihan Umum* or KPU) was late in establishing the ground rules for the formation of such accords and has amended these rules several times in the months following the elections. These uncertainties have caused confusion and controversy in the months following the elections, and the KPU continues to debate these issues.

The Determination of Elected Candidates

The election law in Indonesia created a unique and complex electoral system by linking the determination of elected candidates to the results obtained by parties at the district level. The law did not establish, however, the specific mechanisms for this system. Furthermore, parties have resisted the implementation of this element of the system, because they want to maintain as much control as possible over which candidates are elected. Consequently, electoral authorities appear to be allowing parties greater authority than the law would suggest in determining their elected candidates. In sum, these developments have eliminated much of the district element of the electoral system.

In order to maintain public confidence in the electoral process, the rules established before the elections should be maintained as the basis for seat allocation. It is fundamentally unfair to make changes to these rules after election results are known. By making such changes, the KPU and the Indonesian Election Committee (*Panitia Pemilihan Indonesia* or PPI) are, in effect, taking seats away from some parties and giving them to others. Thus, the KPU and the PPI should

refrain from making further changes in any of these rules and should move to finish the processes of seat allocation and the determination of elected candidates as quickly as possible.

The Formation of the MPR

The formation of the MPR requires not only the determination of the DPR's membership, but also the selection of functional group and provincial representatives.

Functional Group Representatives (Utusan Golongan)

The 1945 Constitution stipulates that the membership of the MPR includes functional group representatives, who are intended to represent certain sectors of society. The selection of these representatives has proved difficult and controversial.

Provincial Representatives (Utusan Daerah)

The Ministry of Home Affairs has recently provided guidelines for the election of the provincial representatives to the MPR, but these rules may allow a party or coalition that controls a majority of the seats in a provincial assembly to choose all of that province's representatives to the MPR. Moreover, each provincial assembly is free to establish its own rules for the election of its representatives. An assembly might consider a proportional system to better represent minority views that received substantial support in the June elections. Provincial assemblies must also address whether active military officers should be eligible to serve as provincial representatives.

The Possibility of Delays in the Opening of the MPR General Session

In order for the MPR to be sworn in on schedule on October 1, all four of the processes addressed above must be completed by mid-September: (1) the allocation of DPR seats to parties, (2) the determination of elected candidates, (3) the selection of functional group representatives, and (4) the election of provincial representatives. While all of the government, military and political party leaders with whom NDI met recently indicated their commitment to ensuring that the MPR session will be held on time, delays remain possible. It is important that the MPR general session and the election of the president and the vice president not be delayed.

Electing the President and the Vice President

The MPR's rules for electing the president and the vice president have also yet to be fully established. For instance, will a majority be required? Will these leaders be elected separately by the MPR, as in the past, or will candidates be paired on slates? Will each MPR member have one vote, or will they be forced to vote as blocs, as in the past? Perhaps most controversial, will the election be conducted as a secret or an open ballot?

Introduction

On August 4, President Habibie signed a decree validating the results of the June 7 elections, effectively breaking the stalemate within the Election Commission (*Komisi Pemilihan Umum* or KPU) caused by the refusal of many smaller parties to sign off on the results. Thus, the next steps in the electoral process are the formation of the People's Representative Assembly (*Dewan Perwakilan Rakyat* or DPR) and the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR).⁽¹⁾ The KPU and its implementing body, the Indonesian Election Commission (*Panitia Pemilihan Indonesia* or PPI), are currently allocating elected DPR seats to parties based on the election results and overseeing the process by which parties assign candidates to those seats. The KPU and the government are also developing the procedures for selecting the functional group and provincial representatives to the MPR.

The procedures to form these representative bodies were not fully established before the June 7 elections.⁽²⁾ The election law passed on January 28 establishes only basic principles of the electoral system. The KPU subsequently promulgated rules defining how votes would be translated into seats in regulations released just weeks before the elections, leaving little time for the public to learn about them, and has amended these rules numerous times in the months

following the elections.⁽³⁾ The law defining the structure and status of legislatures, enacted at the same time as the election law, provides that the provincial assemblies will choose the provincial representatives, but does not establish fixed procedures for those elections.⁽⁴⁾ Moreover, although the KPU determined before the elections which social categories would be eligible for functional group representatives, it delayed determining which organizations within those categories could choose representatives.

This report is based on a review of applicable laws and regulations and on recent discussions in Jakarta and Yogyakarta with election authorities, political party leaders, government and military officials, and leading political observers. It builds on the previous work of the international election observation mission organized by the National Democratic Institute for International Affairs (NDI) and The Carter Center. NDI and The Carter Center have issued three post-election statements: on June 9, June 20 and July 15. In those statements, NDI and The Carter Center have made clear that they would continue to monitor the entire electoral process, through the election of the country's next president.

The Formation of the DPR

The Allocation of Seats to Parties

Indonesia's electoral system for the DPR is proportional by province. Each province has a quota equal to the total number of valid votes divided by the number of seats available (a "quota of n"). Parties earn one seat for each quota of votes received, and remaining seats are then allocated to parties on the basis of the largest vote remainders. This system is widely used around the world. Furthermore, the formula appears to be well understood by election authorities at all levels in Indonesia.

Problems have occurred, however, in the allocation of seats according to largest remainders. These problems have centered around the use of "stembus accords," or voluntary agreements among parties to combine their remainders in order to improve their chances of obtaining seats. The KPU was late in establishing the ground rules for the formation of such accords, releasing the relevant regulation just weeks before the June 7 elections. The result was that parties had little time to form such accords, and none met the deadline of seven days before the election for notification of the existence of an accord. Accordingly, the KPU extended the deadline to June 4, or three days before the elections.

These uncertainties caused confusion and controversy in the weeks following the elections, as it remained unclear which parties had actually formed valid stembus accords. In the meantime, parties that had clearly performed poorly in the elections began maneuvering to create post-election agreements to combine their vote totals. Election authorities, correctly, have refused to accept post-election agreements. On July 5, the KPU finally determined that only two stembus accords were valid at the national level. This decision, however, did not end the controversy among local election authorities about the validity of local accords for the formation of provincial and district assemblies, as they often questioned whether the national accords were also binding for the formation of these assemblies.

The KPU has continued to debate how to allocate remainder seats to parties that have entered into stembus accords. As the process of seat allocation has unfolded, parties have begun to understand that these accords are not always beneficial. Under certain circumstances, the accord as a whole can actually lose seats compared to the total number of seats these same parties would have won in the absence of the accord. As this has become clearer in recent weeks, parties to these accords have protested that this is "unfair" and have claimed that a stembus accord should only be applied when it helps a party. In other words, they argue, if without combining remainders some of the parties to an accord already have vote remainders large enough to win seats, then only the remainders of the other parties to the accord should be combined. These parties have also proposed changing the system of allocating remainder seats.

Rather than allocating those seats according to largest remainders, these parties have suggested that a second, lower quota equal to the single largest remainder be established for the purpose of allocating remaining seats. This change would have the effect of awarding seats to the stembus accord that would otherwise go to other parties.

In recent days, some members of the KPU have suggested that stembus accords should be retroactively eliminated altogether. Another proposal apparently under consideration by the KPU is to combine all remaining votes on a national basis and then allocate the remaining seats proportionally. This would enable a number of smaller parties to gain seats in the DPR by taking them away from other parties. It would also retroactively alter the fundamental premise that the elections were proportional by province.

Neither of these proposals should even be under consideration. The election law clearly established that the elections for the DPR would be proportional by province.⁽⁵⁾ Moreover, the widespread understanding of the rules established before the elections was that stembus accords could not be applied selectively.

Finally, there has been controversy about how to assign the seat(s) won by an accord to the parties within it. The rules established by the KPU before the elections required parties to determine seat assignment procedures as part of the accord itself. However, the KPU has also allowed parties to alter these procedures after the elections, causing further confusion and controversy.

In order to maintain public confidence in the electoral process, the rules established before the elections should be maintained as the basis for seat allocation. The establishment of clear rules for the allocation of seats is extremely important because different rules, using the same vote count, can lead to substantially different numbers of seats won. The rule of law depends on the establishment of these rules before the elections and on the implementation of those same rules, without changes, after the elections. It is fundamentally unfair to make changes to these rules after election results are known. By making such changes, the KPU and the PPI are, in effect, taking seats away from some parties and giving them to others. Thus, the KPU and the PPI should refrain from making further changes in any of these rules, and should move to finish the processes of seat allocation and the determination of elected candidates as quickly as possible.

The Determination of Elected Candidates

Once seats have been allocated to parties, then the actual candidates elected must be determined. The election law in Indonesia created a unique and complex electoral system by linking this process to the results obtained by parties at the district level. The rationales for this element of the system were to introduce greater candidate accountability to specific constituencies into Indonesia's proportional representation system and to weaken control of elected representatives by party leaders. NDI reported in May that "party representatives on the KPU seem to have largely emasculated this provision," and this trend has continued in the post-election period.⁽⁶⁾

According to KPU regulations, seats allocated to a party on the basis of quotas are to be filled by candidates assigned to districts where the party fared best.⁽⁷⁾ The regulations required parties to notify the KPU no later than seven days before the elections whether they chose to have their best district performances judged on the basis of total number of votes or percentage of votes. In fact, some parties failed to do so. Consequently, electoral authorities appear to be allowing parties greater authority than the rules would suggest in determining their elected candidates for quota seats. In addition, the KPU regulations already grant central party leaders full discretion in filling seats won through stembus accords and largest remainders. Taken together, these developments have eliminated much of the district element of the electoral system.

The Formation of the MPR

Functional Group Representatives (Utusan Golongan)

The 1945 Constitution stipulates that the membership of the MPR includes functional group representatives, who are intended to represent certain sectors of society. On the basis of democratic principles, this form of representation is difficult to justify. As NDI stated in its February report, "The existence of functional seats in the MPR gives certain, as yet unidentified, elite-based groups substantial say in the choice of the president. Each member of one of these favored groups gets a second, more influential vote in choosing representatives for the MPR and thus in the indirect election of the president."⁽⁸⁾

Moreover, in practice the selection of functional group representatives has proved difficult and controversial. Before the elections, the KPU only identified the social categories that would be eligible for functional group representation: 20 for religious leaders (15 for Muslims, 2 for Protestants, 1 each for Catholics, Hindus and Buddhists); nine for economically weak groups, including workers, peasants, cooperatives and small businesses; nine for intellectuals, scientists and cultural leaders; five for veterans and pioneers of the independence movement; five for women; five for NGOs, students and youth organizations; five for civil servants; five for ethnic minorities, now defined only as indigenous peoples; and two for the handicapped.⁽⁹⁾ The KPU declined to decide before the elections which organizations within each of these categories would be eligible for representation as functional groups.

As was anticipated, the post-election process of identifying these organizations has become highly controversial.⁽¹⁰⁾ The KPU formed a Team of 15 to receive proposals from organizations and verify that they fulfill certain administrative criteria regarding notarized charters, internal statutes and bylaws, number of branches, etc. The team was then supposed to submit a list of all such verified organizations to the entire KPU. The Team of 15 received proposals from approximately 500 organizations, but appears to have gone beyond its mandate by submitting the names of only 65 organizations to the entire KPU, despite the fact that many more of the 500 organizations fulfilled the administrative criteria.

This list of 65 organizations immediately generated controversy. For example, under the category of Muslim organizations the list did not include the two largest religious organizations in the country, *Nahdlatul Ulama* (NU) and *Muhammadiyah*, on the grounds that they were already represented in the MPR through their close affiliations with the National Awakening Party (*Partai Kebangkitan Bangsa* or PKB) and the National Mandate Party (*Partai Amanat Nasional* or PAN), respectively. Nevertheless, the KPU has now decided to include NU and Muhammadiyah on the list in place of their own women's organizations: *Muslimat NU* and *Nasyiyatul Aisyiyah*, respectively. Thus, the net result of this decision is to reduce further the already low level of women's participation in the MPR.

This controversy illustrates one of the difficult aspects of the selection of functional group representatives: determining the appropriate criteria for selecting the organizations with the right to choose these representatives. The KPU has worked with the two basic criteria that these organizations should represent important sectors of society and should not be associated with political parties. In practice, as this dispute demonstrates, these criteria are often in conflict. On the one hand, NU and Muhammadiyah are the two largest organizations in the country. On the other hand, they have informal links to PKB and PAN, and their interests have already been fully represented through the democratic process of electing DPR members.

Moreover, the Team of 15 recommended several organizations headed by or affiliated with members of the KPU itself. The parties represented on the KPU by these members had not won DPR seats in the elections. For the most part, after some debate within the KPU, these organizations have been removed from the list.

On August 19, the KPU finalized the list of 65 organizations that will be eligible to select one functional group representative each. Under former President Soeharto's New Order regime, many of these organizations were associated with Golkar. However, the current strength of these relationships remains unclear, as several of the organizations on the list have declared their independence from Golkar during the past year.

Provincial Representatives (Utusan Daerah)

The legislatures law provides that each provincial assembly will elect five provincial representatives in accordance with that assembly's formal rules of procedure.⁽¹¹⁾ Nonetheless, the Minister of Home Affairs recently issued a decree that provides non-binding guidelines to these assemblies in drafting their rules of procedure.⁽¹²⁾ Even though it is non-binding, this decree appears inconsistent with the spirit of new laws on legislatures and regional government, which attempt to increase the autonomy of provincial assemblies from the central government.

The decree provides that these representatives should be "community leaders" who "can represent the interests of their province and have a broad understanding of government in general."⁽¹³⁾ Each bloc in the provincial assembly can nominate up to five candidates to be provincial representatives to the MPR.⁽¹⁴⁾ On the basis of these nominations, the assembly leadership will draw up a list of at least 10 candidates whose names will appear on the ballot. This provision grants assembly leaders significant power over the election process. Each assembly member can vote for up to five candidates, and the top five vote-getters are elected to the MPR.

In practice, these procedures may produce a fully majoritarian system for choosing provincial representatives to the MPR. A party or coalition that controls a majority of the seats in a provincial assembly can elect all five of that province's representatives to the MPR. Thus, under this system, the representatives from any given province may not reflect minority views that received substantial support in the June elections. This can only be achieved through the adoption of some kind of proportional system for the election of provincial representatives. (See Appendix A for examples of such systems.)

The new law on regional government passed in May 1999 establishes that the assembly sessions to elect these representatives must be open to the public.⁽¹⁵⁾ The legislatures law forbids government officials from the executive and judicial branches from also becoming members of the MPR, thus ensuring that the pattern established by the New Order of provincial representation by the governor and the regional military commander will not be continued in 1999.⁽¹⁶⁾ It is also widely expected, although not expressly forbidden in the legislatures law, that members of the provincial assemblies will not be eligible to sit in the MPR as provincial representatives.

None of these laws and regulations addresses the possibility of the military adding to its 38 MPR seats through the election of officers as provincial representatives. Nonetheless, this remains a controversial aspect of the election of these representatives, with many leading Indonesians calling for military officers to be declared ineligible for these seats.

Each provincial assembly should consider carefully the various options open to it as it develops the rules for the election of its provincial representatives to the MPR. Among other issues, provincial assemblies must address whether active military officers should be eligible to serve as provincial representatives.

The Possibility of Delays in the Opening of the MPR General Session

The DPR and MPR are currently scheduled to be sworn in on October 1. The MPR is then scheduled to meet for 11 days to choose its leaders, form committees, and approve its rules of procedure, including the rules for the election of the president and the vice president. Although the meeting schedule of these committees and of the full MPR has not yet been set officially, the

full MPR is expected to reconvene in mid-November for about 10 days to elect the president and the vice president.

In order for the MPR to be sworn in on schedule on October 1, all four of the processes addressed above must be completed by mid-September: (1) the allocation of DPR seats to parties, (2) the determination of elected candidates, (3) the selection of functional group representatives, and (4) the election of provincial representatives. While all of the government, military and political party leaders with whom NDI met recently indicated their commitment to ensuring that the MPR session will be held on time, delays remain possible. It is important that the MPR general session and the election of the president and the vice president not be delayed.

Electing the President and the Vice President

The MPR's rules for electing the president and the vice president have also yet to be fully established. As NDI pointed out in its February report, the "MPR does not have clear rules for the selection of a president in the event that consensus is lacking. No procedure is specified if no candidate has the support of a majority of the MPR's 700 members."⁽¹⁷⁾ In fact, the constitution is vague as to whether a majority is required at all. The constitution states that the president is to be elected by a *suara yang terbanyak*, literally "largest vote," which has been variously interpreted as an expanded majority (two-thirds), a simple majority, and a plurality.

Despite these various interpretations, it seems likely that the phrase "suara yang terbanyak" will be understood to require some type of a majority. It would be highly desirable for the MPR to establish in advance in its rules of procedure how that majority will be determined. One way to achieve a majority would be to establish a multiple ballot system, in which all eligible candidates appear on the first ballot. If a candidate wins a majority on the first ballot, then he or she is elected. However, if no candidate wins a majority on the first ballot, then the candidate with the fewest votes is dropped from the list, and a second round of balloting occurs. This process continues until a candidate has won a majority. Another option, if only one ballot is desired, is a preferential system. The ballot lists all eligible candidates, and MPR members rank these candidates in the order of their preference. If a candidate wins a majority of first preferences, then he or she is elected. If not, then the candidate with the fewest first preferences is dropped from the list and his or her votes distributed to the other candidates according to those voters' second preferences. This process continues until a candidate achieves a majority of the MPR.

In addition to the above issue, there are other aspects of the presidential and vice presidential election procedures that remain to be specified. For instance, will the president and the vice president be elected separately by the MPR, as in the past, or will candidates be paired on slates? Will each MPR member have one vote, or will they be forced to vote as blocs, as in the past?⁽¹⁸⁾ Perhaps most importantly, will the election be conducted as a secret or an open ballot?

The question of whether the ballot for president and vice president will be open or secret is particularly controversial. A secret ballot ensures that neither winning nor losing candidates can know who voted against them, thus protecting MPR members from possible recrimination. However, a secret ballot also creates greater possibilities for party members to break ranks with their leaders, which can increase the chances for vote-buying ("money politics") to play a role in the election. An open ballot can serve to increase public confidence in the transparency of the process.

The other two issues are much less controversial. It is widely expected that blocs, even if they exist in the MPR and play a role in determining both election procedures and nominated candidates, will not play a role in the actual vote. Members are expected to be free to cast their votes as they wish. The resolution of the first issue remains unclear. However, pairing candidates on slates can foster inter-party cooperation and avoid a potential source of conflict within the new government between leaders with separate mandates.

Appendix A: Proportional Systems of Electing Provincial Representatives to the MPR

Under the legislatures law, five representatives of each province are to be elected to the MPR by the provincial assemblies in accordance with the rules of procedure of each assembly. This procedure for the election of provincial representatives is new, and the existing rules of procedure of the provincial assemblies therefore do not appear to include any method for conducting these elections. Thus, it will fall to each provincial assembly, presumably at its first meeting, to determine the method of election.

In making this decision, it might be desirable for each provincial assembly to consider the need to reflect as far as possible the verdict of the electorate and the composition of the assembly. One possible system is already familiar through the proportional element of the electoral system. The party composition of the provincial assembly could be used as the basis for a proportional allocation of the MPR seats. If the assembly determined that active military officers are eligible to become provincial representatives, then the military representatives in the provincial assembly would be treated as a bloc. As the use of largest remainder and an "n" quota is already familiar, it might be sensible to use it also for this election. (The quota would thus be 20 percent of the provincial assembly membership). Once the entitlement of each party has been established, it would then be up to the party to determine who should fill its seats.

An alternative method would be the use of the single transferable vote (STV), another internationally standard electoral system. Party blocs would nominate candidates. Each provincial assembly member would then order his or her preferences by voting 1, 2, 3 . . . on a ballot paper listing all the candidates. Any candidate with at least a quota (as above, 20 percent) would be declared elected, and the quota subtracted from his or her vote total. The unused surplus vote for the elected candidates are each transferred at reduced value (each one being worth the size of the surplus divided by the total number of votes) to the candidate shown next with a valid preference on that ballot. Any candidates now holding a quota are thus elected, and their surplus votes redistributed following the above procedure. When no surpluses remain, the votes for the bottom candidate are each transferred at the same value to the candidate shown next with a valid preference on that ballot. Candidates are elected by achieving the quota; if only six candidates remain, the top five are elected regardless of achieving quotas. This method, while more complex, would enable the members of the provincial assembly to choose the provincial representatives to the MPR on the basis of personal qualities as well as of party membership, perhaps selecting better qualified candidates from each party.

1. The DPR, or national legislature, consists of 462 elected members and 38 appointed from the military and the police (17 from the army, eight each from the navy and the air force, and five from the police). The MPR will elect the president and the vice president and establish the broad outlines of state policy. It consists of all 500 members of the DPR plus 135 provincial representatives (*Utusan Daerah*, 5 from each of the 27 provinces) and 65 functional group representatives (*Utusan Golongan*).

2. For more detailed information about the gaps in the legal framework for these elections, see NDI, "The New Legal Framework for Elections in Indonesia," February 23, 1999 and NDI, "The Prospects for Democratic Elections in Indonesia," May 28, 1999.

3. The original regulations are KPU Regulation No. 76A/1999, dated May 10, 1999, on determining elected candidates and KPU Regulation No. 88/1999, dated May 19, 1999, on stembus accords. Regulation No. 76A has been revised at least three times, by KPU Regulation No. 109/1999, dated June 16, 1999; by KPU Decree No. 114/1999, dated June 22, 1999; and by KPU Decree No. 136/1999, dated July 20, 1999. Regulation No. 88 has been revised at least four times, by KPU Decree No. 106/1999, dated June 9, 1999; by KPU Radiogram No. 135/1999, dated July 26, 1999; by KPU Radiogram No. 138/1999, dated August 4, 1999; and by KPU Radiogram No. 145/1999, dated August 9, 1999.

4. Law No. 4/1999 on the Composition and Status of the MPR, DPR and DPRD, Articles 2 and 40.
5. Law No. 3/1999 on Elections, Articles 1 and 3.
6. NDI, "The Prospects for Democratic Elections," p. 18.
7. KPU Regulation No. 76A/1999, KPU Decree No. 114/1999, and KPU Decree No. 136/1999.
8. NDI, "The New Legal Framework," p. 10.
9. KPU Decree No. 108/1999, dated June 16, 1999. Since the publication of this decree, the KPU decided that Chinese, Indians, Arabs and Eurasians should not be eligible for functional group representation in the "ethnic minority" category.
10. NDI, "The Prospects for Democratic Elections," p. 21.
11. Law No. 4/1999, Articles 2 and 40.
12. Minister of Home Affairs, Decree No. 59/1999 on Guidelines for the Development of DPRD Rules of Procedure, August 2, 1999.
13. Ibid., Article 15.
14. In Article 11, the decree provides that the minimum number of assembly members to form a bloc is 10 percent. Blocs can consist of a single party, multiple parties, or the military's representatives.
15. Law No. 22/1999 on Regional Government, Articles 25 and 26.
16. Law No. 4/1999, Article 41.
17. NDI, "The New Legal Framework," p. 10.
18. An MPR bloc would consist of a single party, several parties, or the military's representatives. The functional group representatives and provincial representatives might be allowed to form their own blocs, or might be forced to join other blocs.

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