



The Controversial Law on *Panwaslu* in Aceh

Among the requirements for political elections to be implemented in a democratic manner are proper mechanisms for implementation and monitoring. The implementation mechanism of elections in Aceh province has so far seemed to work well since the election process started with the factual verification processes on July 2008 up to the Al'Quran recital test, which as of writing is currently still ongoing. Until the second week of September 2008, no legal disputes have been reported. However, questions still remains whether it indicates that the election in Aceh is being carried out in an democratic manner.

When one refers to the democratic governance that prevails in Indonesia, it is apparent that the election in Aceh has not been implemented in a democratic manner due the absence of the Election Supervisory Committee (*Panitia Pengawas Pemilu/Panwaslu*), which is still due to be established. As a result there has been no official body to monitor the stages of the election in Aceh while prevailing regulations govern that a provincial and district/city *Panwaslu* should be established at least 40 days before the initial stages of a general election begin.

Article 247 of the Law (*Undang-Undang/UU*) No. 10 year 2008 on the Implementation of General Elections stipulates that "*Bawaslu*¹ and the *Panwaslu*, at the provincial, district/city, and sub-district level as well as the *Pengawas Pemilu Lapangan*² and the *Pengawas Pemilu Luar Negeri*³ are responsible to receive reports on irregularities and frauds in every stage of the election." Therefore, these election monitoring bodies should have been established in Aceh at least in May 2008 along with the start of the works of the Election Independent Committee (Komite Independen Pemilihan/KIP) of Aceh. *Panwaslu* should have been involved in all stages of the election, including during the verification processes of participating political parties.

The general election at the national level may serve as a comparison to this. Three months before the election processes begun, the *Bawaslu* at the national level was established in Jakarta. In a number of other provinces, *Panwaslu* started to work at the same time with the Regional Election Commission (*Komisi Pemilihan Umum Daerah/KPUD*). In the meantime in Aceh, the establishment of *Panwaslu* has been constrained by two contradicting regulations concerning who should have the authority to recruit the members of *Panwaslu* in Aceh.

The *Qanun* (Regional Regulation) No. 7 year 2007 on the Implementation of General Elections in Aceh clearly governs that the recruitment of members of *Panwaslu* is under the authority of the Aceh Parliament (DPR Aceh/DPRA). Article 42 of the *Qanun* stipulates as follows:

(1) *At least 3 (three) months before the stages of any election begin, DPRA carries out selection process to choose candidate members of Panwaslu Aceh*

¹ *Badan Pengawas Pemilu* or the Election Monitoring Body (footnote added by author)

² *Field Election Supervisory* (footnote added by author)

³ Overseas election supervisory committee



- (2) Selection of candidates as mentioned in paragraph (1) can be done in cooperation with any organization that has the competency in the area
- (3) DPRA appoints 15 (fifteen) candidates of members from the result of the selection mentioned in paragraph (1) and will apply fit and proper test to the candidates
- (4) Based on the results of the fit and proper test mentioned in paragraph (3), DPRA appoints/sets the order of ranks of the 15 candidates.
- (5) DPRA appoints 5 (five) members at the top list of the 15 candidates to be proposed to the Bawaslu.
- (6) Bawaslu will choose the 5 (five) names of candidates proposed by the DPRA to become the members of Panwaslu of Aceh at least 40 (forty) days before the first stage of election starts.

The *Qanun* has been recognized by the Minister for Internal Affairs. "The Minister never revokes the *qanun*. Therefore, all parties concerned, including the national Commission for Election (KPU) and Banwaslu should respect the *qanun*," said Saifuddin Bantasyam, a lecturer at the Faculty of Law of the Unsyiah to the journalists.

Respect to the prevailing law in Aceh has actually been duly paid, including on the existence of KIP, which has been formalized by means of the Law No. 11 year 2000 on Governing of Aceh and recognized by the National Government. Seven members of the KIP of Aceh have been sworn in by the Indonesian Election Commission (*Komisi Pemilihan Umum/KPU*) in May 2008.

The recognition has become the basis for DPRA to expedite the implementation of *Qanun* No. 7 year 2007. Since the KIP also has the authority to carry out the selection of *Panwaslu* members candidates, they started the screening in April 2008. As a result, the DPRA has already chosen five candidates to become *Panwaslu* members. The names of the five candidates have been submitted to the *Banwaslu* in Jakarta to be appointed. However, it turned out that Banwaslu rejected the proposed names on the grounds that only the provincial KPUD or KIP had the legal authority to select members of the *Panwaslu*.

Banwaslu refers to the National Law No. 10 year 2008 on National General Elections. In article 251 of the Law, it is stipulated that "the provisions on the mechanisms for resolution of any administrative irregularities and violation in the election will be governed by KPU regulations." Meanwhile, KPU has also issued their own provisions that the process for the selection of members of provincial *Panwaslu* should be in line with the National Law No. 22 year 2007 on the Implementation of General Elections and KPU's Regulation No. 14 year 2008 on the Guidelines for Selection of Candidates of *Panwaslu* members. In the regulation, the KPU requires that selection of members of Aceh Provincial Panwaslu is the authority of KIP Aceh.

Referring to this, the Chairperson of KPU says, "We urge that KIP of Aceh immediately carries out re-selection to select members of provincial *Panwaslu*. Selection of *Panwaslu* of Aceh is not the authority of the DPRA," said the Chairperson of the National KPU, Dr. Hafiz Ansyari Az in his letter to KIP of Aceh Number



2620/15/IX/2008. This has posed a dilemma to the KIP of Aceh. On one hand, they have to respect *Qanun* No. 7 year 2007 enacted by the Minister of Internal Affairs. On the other hand, they need to uphold the provisions by the KPU, which are strengthened by the prevailing Law. This has made the case concerning Aceh Provincial *Panwaslu* left unsolved. Until now, there has not been any follow up concerning the five candidate members of *Panwaslu* who have been formally selected by the DPRA.

In addition, differences also exist regarding the number of *Panwaslu* members. KPU requires that *Paswanlu* at the provincial level should consist of three members only. To choose the candidates, Aceh Provincial KIP will have to select and appoint six candidates in the top ranks. The six names will be proposed to the national *Bawaslu*. "The *Bawaslu* will choose the best three from the six candidates," said Hafiz.

This provision is in contradictory with the *Qanun* No 7 year 2007 which stipulates that the Aceh *Panwaslu* should consist of five members. "We have already selected the five members of the *Panwaslu* and the names are already in our hands," said Raihan Iskandar, the Vice Chairperson of the Aceh Parliament. Therefore, Raihan has asked the Aceh KIP to stop inviting applications for Aceh *Panwaslu* members as instructed by KPU. With the uncertainty on which regulation is stronger than the other, the Chair Person of the Aceh KIP, Abdul Salam Poroh has conducted a number of consultation sessions with the KPU and *Bawaslu* to solve this legal uncertainty. The already selected members of *Panwaslu* of Aceh are now left in uncertainty. This may potentially constraint the formation of the district/city level *Panwaslu*.

This article does not aim to point the finger at who is right or wrong; both the Aceh Parliament and the KPU and *Bawaslu* have referred to reliable legal bases. In addition, the *Qanun* No. 7 year 2007 has taken into effect in Aceh and has not been revoked by the Home Affairs Minister. If the KPU is wise enough in terms of legal basis, they should have issued a special decision concerning membership of *Panwaslu* for Aceh. The decision should take into account the effective *qanun*, especially because *Qanun* No. 7 year 2007 came into effect before the KPU Regulation No. 14 year 2008.

It is true that the KPU Regulation is based on the Law No. 22/2007; however, it should be noted that the *Qanun* No. 7 year 2007 also refers to the Law No 11 year 2006 on the Governing of Aceh. This only means that both regulations are referring to strong effective laws. "KPU and *Bawaslu* should both be in respect of the prevailing regulations in Aceh. It would be so irrelevant if they question the re-election of *Panwaslu* members by the DPRA," said Saifuddin Bantasyam to *Serambi* daily news.

In spite of that, if the KIP Aceh agrees, the consensus reached by the DPRA, the government and Aceh KIP can be applied. This consensus required that re-election was not necessary. Aceh KIP has been recommended to accept the five members of *Panwaslu* elected by the DPRA. Meanwhile, they will only need to recruit another candidate to make the membership into 6 persons. The sixth candidate will be selected from the sixth rank in the previous selection. The names will then be



proposed to the national *Bawaslu* to shortlist them into three members of Aceh *Panwaslu*.

If the Aceh KIP and the national KPU agree to carry out this option, the selection process of Aceh *Panwaslu* members will be simple. However, Aceh KIP, KPU and the *Bawaslu* are still considering the suggested option. The Acehnese are of course hoping that the polemic is solved and that the facilitation of election processes in Aceh can commence. Currently, the election has come to the stage where candidates are undergoing *Al-Quran* recital test in a number of cities. The process is among the problematic stages. It is unfortunate that due to the absence of a supervisory body, the whole mechanisms of the *Al-Quran* recital test have not been monitored well.

The presence of *Panwaslu* is not limited to election supervision only. They are also responsible for solving any disputes that may arise. Fortunately, no meaningful problem has arisen in relation to the implementation of the election in Aceh. However, if it does it will only make the KIP's position more difficult and they will be cast as the scapegoat. In light of the issue, it is only appropriate that the Aceh KIP, the DPRA and Government of Aceh make a wise and win-win decision to solve this legal uncertainty.

Correction to ***Anda dan Hukum dalam Keseharian*** column edition **89** on **Delay in the formation of the Truth & Reconciliation Commission (KKR) in Aceh** published in the daily *Serambi Indonesia* of 31 August 2008: "...Resolve past gross violation of human rights *di luar pengaduan*" in column two should read "...Resolve past gross violation of human rights outside of the formal court system"