



International Development Law Organization
Organisation Internationale de Droit du Développement

The Legality of the 2009 Election Monitoring Organisation

Since the General Election of 1999, elections in Indonesia have been characterized by the presence of election monitoring teams, both national and also international election monitoring committees. They have become parts of the formal structure within the election system in Indonesia. These monitoring committee members are crucial for the monitoring of ongoing election processes.

The presence of monitoring organisations in Indonesia is undoubtedly due to the concern for irregularities being perpetuated during elections. This concern is justifiable considering the many irregularities that took place during the six elections in the New Order era. Participating political parties in those elections also seemed to ignore the fraud and irregularities that took place right before their eyes.

The spirit to call for the presence of an Election Monitoring Committee emerged in 1997 during the waning rule of the New Order regime. The idea came to the surface following the bold step by those who questioned the validity of the implementation of elections in Indonesia. A number of activists later formed an election monitoring body, which is known as the Independent Election Monitoring Committee (*Komite Independen Pemantau Pemilu/KIPP*).

Despite KIPP's relentless efforts to recruit volunteers from across Indonesia, it has not been easy for them to monitor the implementation of elections in Indonesia. Some training activities on election monitoring in a number of regions have even been arbitrarily dismissed or prevented from being implemented. KIPP became the symbol of resentment of activists against the General Election of 1997, which they considered unfair and corrupt.

It was only after the reformation era that the presence of an election monitoring committee was considered a crucial requirement for a clean election. It came as no surprise that nearing the 1999 Election, a number of election monitoring bodies were formed. The government can no longer ignore their presence, for instance the presence of the KIPP before the 1997 Election. Their presence has now been formalized by means of the Election Law No. 12 year 2003 and the General Election Law No. 10 year 2008.

Apart from KIPP, there are a number of organisations committed to building a network of election monitoring in Indonesia, such as the *Forum Rektor dan Jaringan Perguruan Tinggi Pemantau Pemilu* (University Network for Free and Fair Election/UNFREL). Their presence is supported by other monitoring organisations such as the Alliance for Independent Election Monitoring (*Aliansi Pemantau Pemilu Independen/APPI*), the Indonesian Society Network for Election Monitoring (*Jaringan Masyarakat Pemantau Pemilu Indonesia/JAMPPPI*) established by the Indonesia's Islamic Student Association (*Perhimpunan Mahasiswa Islam Indonesia/PMII*), and the Commission for General Election Monitoring (*Komisi Pemantauan Pemilihan Umum*) the Development of Democratic Life (*Pengembangan Kehidupan Demokrasi/KP3KD*), and even foreign election monitoring organisations.



The success of the 1999 Election in Indonesia which involved the participation of many monitoring bodies strengthened the call for the need for the presence of monitoring bodies. The General Election Law No. 12 year 2003 has confirmed the role of such Election Monitoring bodies. The Law stipulates that election monitoring organisations should register their presence and obtain accreditation from the Commission for General Elections (*Komisi Pemilihan Umum/KPU*) (Article 135 paragraph (3) and (4)). In general, the procedures for obtaining the accreditation as a monitoring body from KPU are easy. This explains the presence of 74 election monitoring bodies across Indonesia during the 2004 Election.

Aceh is one of the most attention-drawing regions for monitoring during election. The attention of the monitoring organisations toward the dynamic of democratic processes in Aceh has started to emerge since the Election of Regional Head (*Pilkada*) in 2006. During the *Pilkada*, more than 10 local, national and international monitoring organisations were present. Among the most prominent was the monitoring team of the European Union, which deployed 400 personnel. They distributed themselves across Aceh two weeks before the election day. These foreign monitoring personnel monitored the processes of the *Pilkada* in Aceh for two and a half months.

The presence of election monitoring organisations in Aceh during the past *Pilkada* was recognised by the law by way of Article 64 paragraph (1), (2), (3) and (4) of the Law (*Undang-Undang/UU*) No. 11 year 2006 on Governing Aceh. To be able to carry out monitoring of an election, they have to meet the standards of accreditation set by the KIP of Aceh. Similar to the General Election five years ago and the 2006 *Pilkada*, the government also recognizes the presence of local, national and international election monitoring organisations during the 2009 Election. The recognition has been stipulated in Law No. 10 year 2008 on General Elections. The monitoring bodies are free to monitor the implementation of general elections in 2009 in all parts of Indonesia, including Aceh. The Law has 60 articles to govern the presence of election monitoring organisations. The Law may have become the most comprehensive legislation that governs the procedures of general elections in Indonesia, among others through its provisions on the requirements of election monitoring organisations, procedures of monitoring, foreign monitoring organisations (individuals), coverage of regions and the limitations of monitoring organisations/individuals. Article 231 of the Law specifically governs the regulations for the 2009 election, stipulating that "Election Monitoring organisations can be domestic non-government organisations and communities for election monitoring, domestic legal entities, foreign election monitoring organisation, and representatives of friendly countries in Indonesia." The provision clearly shows a spirit for making a clean and transparent election in 2009.

To be recognised as a monitoring organisation, the organisation must be accredited by the Commission for General Elections (*Komisi Pemilihan Umum/KPU*). For Aceh, accreditation can be obtained from the Election Independent Commission (*Komisi Independen Pemilu/KIP*) of Aceh. The procedures for accreditation are contained in Article 232 of the Law No. 10 year 2008, which among others stipulating the following

requirements to be recognized as an election monitoring organisation: independent, having a clear source of funding, and accredited by the national, provincial or district/city KPU in line with their coverage areas.

Paragraph (2) of Article 232 stipulates that foreign election monitoring organisations should have prior experience of election monitoring in other countries, which should be supported by the statement of the respective monitoring organisation or the country of monitoring experience. Monitoring organisations should also be equipped with visas to become part of the Election Monitoring Body from the Embassy of the Republic of Indonesia abroad and adhere to the monitoring procedures as governed by the legislation.

Furthermore Article 233 confirms that Election Monitoring Organisations should submit the application to carry out election monitoring by filling in the registration form provided by the national, provincial, or district/city KPU. The national, provincial or district/city KPU will later have to examine the submission of administrative requirements by the respective election monitoring organisation. Organisations that meet the criteria will be marked as a registered monitoring organisation and provided with an accreditation certificate. Foreign monitoring organisations should obtain a recommendation from the Minister of Foreign Affairs.

KPU can only issue the permit for monitoring of certain coverage areas to monitoring organisations who have submitted applications. If the organisations are to monitor down to the regional level, they have to obtain accreditation from the provincial and district/city KPU. For Aceh, the provincial KIP and district/city KIP are responsible for this.

Organisations granted with accreditation to take part in election monitoring will have certain privileges. Article 236 of the General Election Law says that election monitoring teams have the rights for legal protection and security from the Government of Indonesia; to observe and collect information on implementation processes of the election; to monitor the voting processes and the vote counts from the voting booth (Tempat Pemungutan Suara); to have access to information from KPU, and the provincial and district/city KPU; and make use of the equipment to document the voting activities as long as it is in line with the implementation of the election. Foreign diplomats serving in the monitoring election have the right to diplomatic impunity during their task as election monitors.

KPU will later issue a code of conduct related to the monitoring of the 2009 Election. This code of conduct should be adhered to by all monitoring organisations in Indonesia. Drawing from the experience during the 2004 Election, the code of conduct will contain the responsibility of members of monitoring teams to wear identity card when conducting all activities, to report the total number and presence of election monitoring personnel, to respect the position, task and authority of the Election Committee and to respect the local customs and culture.



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Article 238 of the Law contains prohibitions in relation to the members of election monitoring teams, among others prohibition to put on uniform, colour or other attributes that may give the impression of their support of a specific election participant. In addition, the article governs that monitoring can only be conducted outside of the voting booth (TPS). Members of monitoring teams who violate the provisions can be revoked from their status and rights to monitor elections by the KPU or KIP of Aceh.

In collaboration with the Minister of Foreign Affairs, the Minister for Law and Human Rights will be responsible in handling all violations by foreign members of election monitoring teams by revoking the status and the rights of the team members. Aceh will surely be a top target for the national and foreign monitoring teams because the election in this region will be a unique one due to the participation of local political parties for the first time.

Until end the of September 2008, however, no election monitoring organisation has registered at the KIP of Aceh. The Vice Chair Person of the KIP of Aceh, Ilham Syahputra, estimates that election monitoring organisations will only start to register later during the distribution of logistic supplies, open campaigning, and just before the voting day. "The KPU will issue additional provisions for monitoring organisations. This will in turn require applicant organisations to wait for the regulations before they can register themselves," says Ilham.