



Law on the General Election
of the President and Vice-President
passed by the DPR on 8 July 2003

A Short Guide

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The Law on the General Election of the President and Vice-President was passed by the DPR on 8 July 2003 after completing the joint legislation process with the Government laid down in Article 20 of the Constitution. The Law will take effect when signed by the President or in any event after 30 days.

The Law lays down detailed provisions for the direct election for President and Vice-President in line with Articles 6, 6A, and 22E of the Constitution as amended. Under the Constitution, tickets of candidates for President and Vice-President are proposed by parties or coalitions of parties before the conduct of the general election. Any ticket which receives (a) over 50% of the total vote and also (b) at least 20% in at least half of the provinces is declared elected. If no ticket achieves these criteria, the two highest polling tickets run off in a second round election.

Major issues within the Law

1. Separate Elections and the Threshold for Entry

Although the presidential elections are considered as being connected to the legislative elections as required by the Constitution, polling will take place separately and later. In 2004, entry to the first round of the presidential election will be restricted to tickets nominated by parties and coalitions which have achieved either 3% of the seats in the DPR, or 5% of the vote. It is not clear which of these barriers will be more onerous: it will depend significantly on decisions on the size of DPR electoral districts still to be taken by the KPU.

In 2009 and afterwards, the threshold for entry to the first round rises to 15% of the seats in the DPR, or 20% of the vote. Here, compliance with the seat requirement will almost certainly be easier than compliance with the vote requirement.

There has been considerable debate on whether it is constitutional to restrict entry to the presidential election in this way, based on the constitutional provision that tickets are nominated by parties or coalitions of parties which are participants in the General Elections. However, all party fraksi within the DPR agreed the Law in its current form as a negotiated compromise. The constitutionality of legislation may be tested by the Constitutional Court, once it has been established and subject to any restrictions included in the Constitutional Court Law – of which the current draft only allows such

testing for new legislation within 90 days of its enactment. In the meantime, this function may be undertaken by the Supreme Court.

2. Timetable Questions

A party or a coalition may if it wishes announce its candidate for President, its candidate for Vice-President or its ticket at the same time as it submits its list of candidates for the DPR elections. The formal registration of tickets, however, only takes place after the party or coalition is shown to have reached the required threshold of seats or votes.

In this context, there are no provisions regulating the timetable for formation of coalitions. As it is likely that there will be good indications of DPR results soon after polling day arising from parties' own witnesses, fast result reporting systems, parallel vote tabulations &c, this means that parties may form coalitions based on the DPR results.

The period for formal registration of tickets lasts for 7 days after the finalisation by the KPU of the vote totals received by parties in the DPR election. Although the Law on General Elections requires the results of the DPR elections to be announced to the public at the latest 30 days after polling day, the exact term used for 'finalisation' in the new Law does not appear in identical words to the provisions relating to declaration of results in the Law on General Elections. As a result, there is a lack of clarity. This could however be resolved if the KPU decides to issue this finalisation of vote totals and the allocation of seats to parties simultaneously.

Following submission of formal registration, the KPU has up to 7 days to check compliance with the requirements of the Law: if any defects are discovered, the party or coalition has 7 days to correct them.

The campaign period begins 30 days before polling day and ends 3 days before polling day.

The first round presidential election takes place at most 3 months after the declaration of the results of the elections for DPR, DPD and DPRD. The provisional date considered by the KPU for 2004 is 3 July, which is consistent with the requirements of the Law.

There are no detailed provisions regarding the timetable for the second round, the date of which is also fixed by the KPU. The election must

however be completed at the latest 14 days before the expiry of the term of office of the existing President – thus, in 2004, before 6 October. The provisional date considered by the KPU for 2004 is 13 September: the requirement to declare a second round result in 23 days after polling may cause this to be reconsidered.

3. *What is a Coalition?*

A coalition is formed by two or more parties reaching an agreement to submit one ticket. This agreement must be submitted in written form accompanying the formal registration. The two candidates on a coalition ticket must be chosen in line with the internal procedures of the parties and/or consultation within the coalition, which should be carried out in a democratic and open manner. (What constitutes a democratic and open manner is not defined.)

4. *Candidate Qualifications*

The negotiation between the parties on candidate qualifications was unsurprisingly resolved to require all candidates at least to have a high school diploma (thus allowing a Megawati candidacy) and not to have been convicted by a court of a final jurisdiction of a criminal offence for which the possible penalty is 5 years or more (thus, at least for the present, allowing an Akbar Tanjung candidacy – although this will depend on the Supreme Court decision if it is issued before the election). Among other requirements, candidates must be at least 35 years old, must be physically and mentally capable of carrying out the job, and must have complied with any tax liabilities for the last 5 years and wealth declaration obligations.

5. *Campaign Activities*

As part of the documentation accompanying formal registration of a ticket, a written text of the vision, mission and programme of the parties is required. This document may be strengthened and refined by the two tickets participating in the second round, a process which is to be regulated and facilitated by the KPU (how is not yet clear).

The Law contains a list of defined campaign activities, which matches that in the Law on General Elections with the specific addition of public debates between the candidates. However, this provision appears permissive rather than mandatory.

The media are required to give equal opportunity to all tickets in campaign reporting and also equal opportunity for placing advertising. The Law also contains both a provision requiring the Government to give equal access to public facilities to all tickets, and a prohibition on the use of government facilities.

State officials, including civil servants, members of TNI and Polri, officials of state and regional enterprises, and village chiefs, may not be involved in the election campaign. An exception is made for state officials who are themselves candidates, who are required not to use state facilities for campaigning purposes and also to take leave from their official duties.

6. Campaign Organisation

Each ticket together with the party or coalition which has nominated it forms a Campaign Team which is responsible for the technical aspect of the campaign. However, overall responsibility for the campaign remains with the ticket.

7. Campaign Finance Provisions

Campaign finance regulation remains potentially weak, although there is some strengthening of the provisions in the Law on General Elections. There is no overall limit on campaign income or expenditure. Campaign income may be received from the ticket themselves, from its supporting party or coalition, and from private individuals and legal entities. There is no restriction on campaign income from the candidates or the party/coalition. Contributions in kind are treated in the same way as contributions in cash. Contributions from abroad, contributions from the Government or state enterprises, and anonymous contributions are prohibited.

Contributions from third parties are restricted to Rp 100 million for private individuals and Rp 750 million from legal entities. All contributions of over Rp 5 million are required to be individually declared to the KPU with the identity of the donor. The KPU is then required to publish these reports. False reporting is subject to criminal sanctions, as is the giving and receiving of contributions in excess of the limit.

Tickets are required to submit campaign accounts to the KPU not more than three days after polling day. The KPU then sends the accounts for audit within 2 days, and the audit must be completed within 15

days. The KPU is then required to publish the audit. There are no specific sanctions for failure to audit or publish.

8. Ballot Papers

Ballot papers will be printed with the names and photographs of each ticket in order of the serial numbers assigned to each ticket by the KPU by lot.

9. Failure to Hold Elections

Delayed elections may be held in areas where riot, security disturbance or natural disaster prevents any part of the election process from taking place. However, delayed elections require the issue by the President on the proposal of the KPU of a declaration of delay. Such a declaration of delay may be issued if the elections have not been able to take place in 40% of provinces or if 50% of the total electorate has been unable to use their right to vote.

10. Challenges to the Results

Only tickets (not parties or coalitions and not individual candidates) may submit a challenge to the results to the Constitutional Court. Challenges are restricted to disputes which may affect which ticket is elected and it is possible, although the drafting is not totally clear, that they cannot be made against the result of the first round if a second round is to take place. Any such challenge must be submitted within 3 days of the declaration of the results by the KPU and determined by the Constitutional Court within 14 days.

11. Observation

Observation may be carried out by NGOs, legal entities, and representatives of foreign governments. Observers from foreign NGOs and legal bodies are required to have competence and experience in observation of presidential elections in other countries and to receive a visa as an election observer. Observers are required to submit a report of the result of their observation to the KPU by at the latest 7 days after the swearing in of the newly elected President and Vice-President, a provision which would not normally be considered in line with international standards.

Accreditation of observers for the legislative elections does not carry over to the presidential election.

12. Election Organisation

Throughout the Law, technical provisions relating to electoral organisation – for example the formation and operation of the KPU and of Panwas at different levels, the definition of polling stations or the organisation of counting and tabulation – are structured as far as possible to be directly parallel to the provisions in the Law on General Elections.

13. Casual Vacancy Provisions

The Law contains a number of detailed provisions relating to the possibility of casual vacancies in tickets. Once a ticket formally registered, neither the candidates nor their supporting party or coalition may withdraw.

In summary, the general rule for involuntary casual vacancies is that where a candidate is permanently incapacitated or removed from the field, the party or coalition which has nominated that candidate has three days to find and nominate a replacement – otherwise the nomination falls. The major exception is that during the period between the start of the campaign for the first round and polling day, if two fully qualified tickets remain in the running, the nomination of a ticket which suffers a casual vacancy automatically falls. This provision may give rise to difficult consequences: for example, if one member of a front running ticket in the first round were to die during the campaign period and the ticket was disqualified in line with the Law, there could be security and stability implications.