

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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TABLE OF CONTENTS

- [Executive Summary](#)
- [Introduction](#)
- [The Formation of the DPR](#)
- [The Formation of the MPR](#)
- [The Possibility of Delays in the Opening of the MPR General Session](#)
- [Electing the President and the Vice President](#)
- [Appendix A: Proportional Systems of Electing Provincial Representatives to the MPR](#)

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.

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

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

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.

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⁾ d. For preferences is described from in the

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

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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