

THE CONSTRUCTION OF ELECTION ORGANIZER INSTITUTION IN INDONESIA

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Abstract:

The principles of the election organizer is a translation of Article 22 E, paragraph (5), the Election Commission which is national, permanent and independent, which means that the region reflects the national character of the work and responsibility of the Commission as election organizers cover the whole territory of the Republic Indonesia. While the fixed nature shows KPU as election management duties continuously although limited by the term of office. Independent nature of the Commission stressed in organizing and conducting the elections free from the influence of any party. Independence of electoral administration in carrying out its duties very seriously, because therein professionalism, integrity, accountability that will run when it will provide public confidence in election management, which will ultimately society believer results generated for both the executive and legislative.

Elections in Indonesia, there legislative election to choose DPR, DPD and DPRD, then the election of President and Vice President, and the last General Election of Regional Head and Deputy Regional Head. Where in each governed by different laws, different processes and different law enforcement. Commission responsible for institutional issues, for legislative elections and for elections of President and Vice-President of the stages of the Commission in district/ city to the Provincial KPU and provincial KPU to the Central Election Commission.

Key Words: Election Commission, Organizer, State institutions, Constitutional structure

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I. Introduction

Centralism power developments take shape in the doctrine of the king in parliament in the 18th century, which principally reflects the king's power is not unlimited.¹ Previously as a reaction to the strong grip on power of the kings in Europe, arising revolution in various countries are demanding more freedom free from the masses in the face of state authorities. Separation of powers is to control the power that is not arbitrary and led to the corrupt power (*power tend to corrupt, power absolutely tend to corrupt absolutely*) even tyranny.² According to Montesquieu in his *Esprit des Lois*, published in 1748, "that when the legislative and executive put together on the same person or entity, then there will be no freedom, because there is a danger that the king or legislature will enact Law tyrannical laws and implement them in a way that tyrant, even if the right to make and implement laws given to the same person or entity, then there will be no political freedom.

While his predecessor John Locke, with his background as a judge, judicial functions are separated individually, while the federative function as a kind of executive function.³ But still very influential teachings of the century is trias politica of Baron Montesquieu. Before Montesquieu, in France in the sixteenth century, which is generally recognized as the functions of the state power, there are five. The fifth is a function diplomacies, defencie function, function Financiè, justicie function, the function Policie.⁴

According C.F. Strong in the development of many modern countries (without mentioning the United States and countries of Latin America), which remains staunchly maintain the shape function of the separation of powers explicitly and fully, the function of the executive totally outside the control of the legislature, rarely apply the theory of separation of powers pure (material). It thus expressed by Bagir Manan, which besides being practical, also negates the system of checks and balances between branches of power with each other, and can lead to arbitrariness by or in the environment of each branch of power.⁵ The fact shows that the

¹ Jimly Asshiddiqie, *Konstitusi.....*, Op.Cit., hlm. 24.

² CF Strong, *Konstitusi-Konstitusi Politik Modern, Kajian tentang Sejarah & Bentuk-Bentuk Konstitusi Dunia*, Nuansa dan Nusamedia, Bandung, Juli 2004, hlm. 330.

³ Jimly Asshiddiqie, *Perkembangan.....*, hlm. 34.

⁴ *Ibid.*, hlm. 33.

⁵ Bagir Manan seperti yang dikutip oleh Abdul Latif, Op.Cit., h. 33.

relationship between the branches of power it is impossible not touch each other, and in fact all three are equal and mutually controlling each other in accordance with the principle of checks and balances.⁶ Changes in the Constitution of the Unitary State of Indonesia 1945, resulting in a paradigm shift in the concept of trias politica or separation of powers. The shift is also related to the division of power versus the doctrine of separation of powers. Which was once embraced power-sharing vertically (vertical distribution of power), now adapted a horizontal separation of power.⁷ Arthur Mass uses the term power sharing (division of power), consisting of capital division of power to sense the horizontal, and the territorial division of power for understanding the nature vertical.⁸ Capital division of power is the term used for the division of powers that are horizontal, between state institutions at the central level. While the territorial division of power is used for the vertical division of power, the relationship between governments at the central level with government at the local level. As in development in the United Kingdom and the United States,⁹ agencies or commissions, there are still within the realm of executive power, but some are independent and are outside the territory of the executive, legislative, or judicial branches.

In Indonesia, often appear various proposals that state institutions be re-examined its existence, as well as the authority, and its position in the state system of Indonesia, including the new state agency in it. Because since the reform, the state is not clear institutional design.¹⁰ The application of the principle of checks and balances set out in the constitution unitary state of Indonesia in 1945 after the change is felt not be followed completely. In addition, the government also bring new innovations to create the state commissions either as an independent state agency or institution that is not independent. Whereas have never done yet a comprehensive study of the performance of state institutions or state instruments until now.

This is able to be understood, because the Constitution of the Unitary State of Indonesia in 1945 in fact is a "constitutional freedom" (the constitution of liberty) which embodies the will

⁶ Jimly Asshiddiqie, *Perkembangan.....*, Op.Cit., hlm. 36.

⁷ *Ibid.*, hlm. 45-46.

⁸ Jimly Asshiddiqie, *Pengantar....Op.Cit.*, hlm. 24-25

⁹ *Ibid*, hlm 28

¹⁰ Ni'matul Huda, *Op.Cit.*, hlm. 94

of the people of Indonesia to gain independence according the quote of Lukman Hakim.¹¹ This is clearly revealed in a series of sentences in the Preamble to the Constitution of the Union Republic of Indonesia in 1945, which stated, "Indonesia's national independence laid down in the Constitution of the Republic of Indonesia is established within the structure of the Republic of Indonesia with sovereignty of the people".

This confirms the sovereignty of the people dimension of the relationship between the requirement of independence in the Constitution of the Unitary State of Indonesia in 1945 and the idea of democracy.

Independence or freedom is the main idea in a democracy. In the context of judicial Hans Kelsen's conception of freedom is explained as follows:

Politically free is he who is subject to a legal order in the creation of which he participates. An individual is free if he "ought to" do according to the social order coincides with what he "wills to" do. Democracy means that the 'will' which is represented in the legal order of the state is identical with the wills of the subjects."¹²

A constitution that expresses the will of the independence of a nation always contains the idea of the freedom of citizens. Such constitution not only contains the will to protect citizens from any form of arbitrariness (all arbitrary coercion).¹³ According to William G Andrews, as quoted Lukman Hakim This is the idea of constitutionalism which contains the doctrine of limited government (the limited government).¹⁴ In terms of the idea of the freedom of citizens, constitutionalism is basically the other side of democracy.

Departing from the central notion of freedom that, then the interpretation of the meaning of democracy in the Constitution of the Unitary State of republic of Indonesia in 1945 basically an interpretation of the notion of freedom or independence contained in the Constitution of the

¹¹ Lukman Hakim, *Kedudukan Huku Komisi Negara di Indonesia*, Program Pasca Universitas Brawijaya, Malang, 2010. Hlm 102.

¹² Hans Kelsen, General, *Op.Cit.*, hlm. 284

¹³ Lukman Hakim, *Op.cit*, hlm 303

¹⁴ Lukman Hakim, *Op.Cit*, hlm 304

Unitary State of Indonesia Year 1945. Interpretation Republic is a meaning of the degrees of freedom which moves between state power and restrictions on the freedom of citizens.

Basically, the establishment of independent state institutions, or whatever his name in Indonesia established since the state institutions that currently are not able to provide a way out and resolve the existing problems when demand changes and improvements is becoming more prominent with the rise of the democratic era. In addition, the birth of an independent state institutions it is a form of public distrust of institutions that exist in resolving the problems faced of by the state administration.¹⁵

In more detail, the establishment of independent state institutions in Indonesia based on the five important things. First, the lack of credibility of the institutions that have been there before as a result of the assumption (and evidence) about the systemic corruption, entrenched and difficult to eradicate. Secondly, no independent state institutions that for some reason the subject under the influence of a particular power. Third, the inability of the state institutions that already exist to perform the tasks that must be done in a period of transition to democracy either because of internal and external problems. Fourth, the existence of global influence which showed the tendency of some countries to establish institutions of extra, called state institutions independent (state auxiliary agency) or watchdog (institutional watchdog) is regarded as a necessity, and necessity because the institutions that already exist have be part of the system that should be corrected. Fifth, pressure from international institutions to establish such institutions as a prerequisite for a new era of democratization.¹⁶

In principle, the institutions that have always idealized extra independent and often have a mix of functions and regulatory semi legislative, semi administrative, and even semi yudikative. And because of that, then came the term independent bodies and the right to govern themselves (independent and self-regulatory bodies) were developed in many countries.

¹⁵ <http://www.djpp.depukumham.go.id/htn-dan-pUndang-undang/Dinamika> *Lembaga-lembaga Negara Mandiri di Indonesia Pasca Perubahan UUD 1945*, diunduh 18 januari 2013.

¹⁶ <http://www.djpp.depukumham.go.id/htn-dan-pUndang-undang/Dinamika> *Lembaga-lembaga Negara Mandiri di Indonesia Pasca Perubahan UUD 1945*, diunduh 18 januari 2013.

Problems often faced by the countries that make up the institutions it is a question of the mechanism extra accountability, its position in the constitutional structure, and pattern of his working relationship with government, the power to make laws, and the judicial power. It is inseparable from the political struggle between the government and the parliamentary political forces when both are fighting the influence of the people in the management of the country. The political power of government in an era of democracy which "forced" to be shared with other powers, especially the parliament, this is the result of competition between the two is inevitable. Of course this had a negative impact in the form of vagueness accountability and work patterns institutions such extra, because its formation often not based on rational needs and sufficient legal basis. As an independent institution apart from the structural relationship with the government, the government would not be in the capacity to be able to control specifically to institutions such extras.

II. Discussion

Commission, Elections and Democracy

Basically if it is associated with the destination country, the establishment of state commissions formed because the state institutions that currently are not able to provide a way out and resolve the existing problems when demand changes and improvements is becoming more prominent with the rise of the democratic era. In addition, the birth of state commissions it is a form of public distrust of institutions that exist in resolving the problems faced by the state administration.

According to Article 22E paragraph (1) of the Constitution of the Republic of Indonesia Year 1945, the election was conducted in a direct, public, free, confidential, honest and fair. So the principle of direct elections, general, free, confidential, honest and fair. Understanding the principles of the election are:

a. Immediately

Citizens as voters have the right to vote in person in accordance with the requirements of his conscience, without intermediaries.

b. General

Basically, all citizens who meet the requirements in accordance with this Law shall be entitled to

participate in the election. Selection of a general nature implied guarantee applies extensive opportunities for all citizens, without discrimination based on ethnicity, religion, race, class, gender, regionalism, occupation, and social status.

c. Free

Every citizen has the right to choose freely make their choice without pressure or coercion from anyone. In the exercise of their rights, every citizen is guaranteed security, so it can choose according to their conscience and the will of its importance.

d. Secret

In voting, voters are guaranteed that the choice will not be known by any party and by any means. Voters cast their votes on the ballot with can not be known by anyone else to anyone votes are cast.

e. Honest

In the administration of elections, each election organizers, government officials, electoral participants, election supervisors, election observers, voters, and all concerned should behave and act honestly in accordance with laws and regulations.

f. Fair

In the administration of elections, each voter and electoral participants received the same treatment, and free of any party fraud.¹⁷

A government decision which is contrary to AAUPL (Principles of Public Administration Decent) means contrary to the rule of law. Although the principle that such a vague statement, but the power is not tied at all vague, because it has a working principle common binding. According to Philip M. Hadjon,¹⁸ AAUPL should be seen as norms of unwritten law should always be adhered to by the government, although the exact meaning of AAUPL for each state separately cannot always be described accurately. So it can be said that AAUPL is the principle - the principle of the law is not written, from where to circumstances - certain circumstances can be drawn rules - the rules of applicable law. But the problem is when equating AAUPL with unwritten legal norms can give rise to misunderstanding, because between "principle" and "norm" there is a difference. Azas a common rationale and abstract, the idea of tau concept, and

¹⁷Penjelasan Umum Undang-undang Nomor 12 Tahun 2003 tentang Pemilu Anggota DPR, DPD, dan DPRD.

¹⁸ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Gajah Mada University Press, Yogyakarta, 2001, hlm 270.

does not have sanctions, while norm is a rule that is concrete, elaboration of ideas and have sanctions.

In Law 15 of 2011 on administering elections and the laws previously discussed the meaning of the principles of election management. For that, the writer try to see and compare the general principles of good governance, as the Commission also perform the function of carrying out the law or government electoral area. KPU as election organizers in the run rule or government, makes the rules (regulations), and law enforcement administration. Thus, in carrying out its functions to carry out the legislation or executive also fixed by the principles of good governance / decent and as a comparison chart on some principles are almost the same.

The principles of the election organizer is a translation of Article 22 E, paragraph (5), the Election Commission which is national, permanent and independent, which means that the region reflects the national character of the work and responsibility of the Commission as election organizers cover the whole territory of the Republic Indonesia. While the fixed nature shows KPU as election management duties continuously although limited by the term of office. Independent nature of the Commission stressed in organizing and conducting the elections free from the influence of any party. Independence of electoral administration in carrying out its duties very seriously, because therein professionalism, integrity, accountability that will run when it will provide public confidence in election management, which will ultimately society believer results generated for both the executive and legislative.

The principle of independent providers is often called an Independent and impartiality is also a function of EMB should not be subject to the direction of any other party, the authorities, or political party. EMB must function without partiality or political prejudice. EMB should be able to operate free of interference, because any allegation of manipulation, perception of bias, or alleged interference will have a direct impact not only on the credibility of the body responsible, but also the whole electoral process.

Honestly principle in accordance with the principle of elections for the organizers should behave and act honestly in accordance with laws and regulations. The principle of fair also for the

organizers give equal treatment to participants of elections and citizens, and not to commit fraud to the election participants. So all participants of the election shall be informed and served in the same way there is no difference. If according to the general principles of proper administration, fairness and reasonableness of this intention was not arbitrary or valid unfit.¹⁹

The principle of legal certainty, according to SF Marbun and Moh. Mahfud MD This principle requires respect for the rights which have been obtained by a person pursuant to a decision of the administrative agency or official. It may only be revoked by the State administrative decision that has been qualified materially (requisite authority to act) and qualified formal (terms relating to the form of the decision).²⁰ So what has been decided KPU respected and executed unless there is a decision, the competent authority granted by the Act to cancel it, and even then with regard to the on going election stages. Because the election stages were certainly also have the legal certainty for the participants of the election and the public.

The principle of public interest, this is almost the same as the understanding of the principles of proper governance, that this principle requires that the run or the election process conducted KPU always put the public interest.

The principle of openness or transparency, overall credibility of an electoral process is substantially dependent on all relevant groups (including political parties, government, civil society, and the media) who are aware of and participate in the electoral process, the color formation and the structure of the electoral process.²¹ An issue shall be submitted in these groups should also be done with regards to the function of EMB. In this case, the value of deliberations conducted continuously, communication, and cooperation between the EMB, political parties, and institutions of society can not be overemphasized. The principle of accountability, that this principle is closely related to the responsibilities of the Commission in holding elections.

¹⁹ ST Marbun dan Moh. Mahmud, *Pokok-pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, 2009. Hlm 63.

²⁰ *Ibid*, hlm 60.

²¹ International Institute for Democracy and Electoral Assistance (International IDEA), *Standar-standar Internasional untuk Pemilu*, Publikations Office, International IDEA, SE 103 34 Sdtockholm, Sweden. Hlm. 46

Accountability personal and institutional accountability is done. Typically each stage and the problems that occur by submitting to the public or the media, as one form of accountability.

Professionalism principle, elections should be managed and conducted by the expert or has the capability, which has been very well trained and have a high commitment to manage and facilitate the electoral process and who are permanent employees of the EMB.²²

The principle of proportional, which must make provision for a mechanism to process, adjudicate and dispose of electoral complaints appropriately duties, functions, and the powers also the step or a specified time.

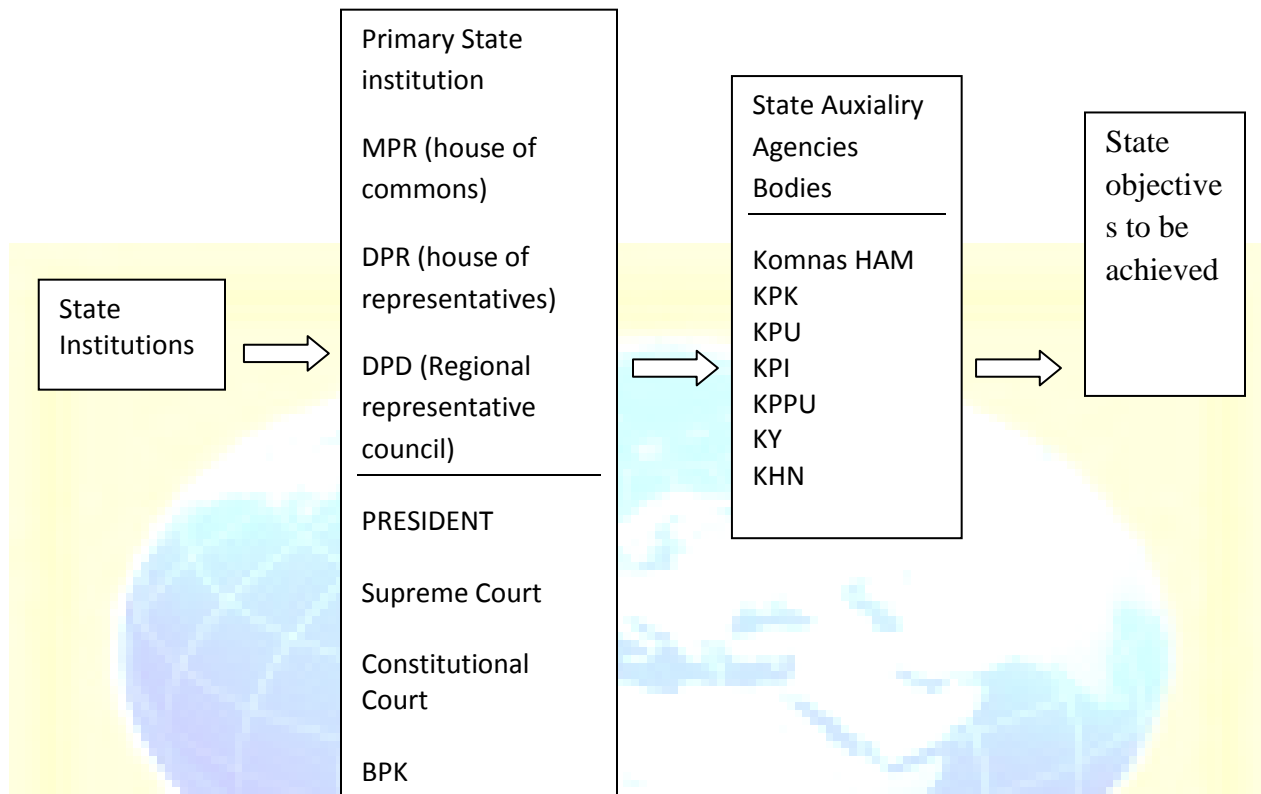
The principle of efficiency and effectiveness are integral components of the overall credibility of the election. Efficiency is important for the whole electoral process failures and technical problems can be and actually cause chaos and failure of law and order.²³ Usually closely related to the efficient use of the budget, which is in use budgets can be se-efficiently as possible to produce an effective stage. Efficiency and effectiveness depend upon several factors, including the professionalism of the staff, resources, and most importantly, sufficient time to hold elections and train those responsible for its implementation.

When all the principles of election management can be carried out either by the Commission, the election as the embodiment of popular sovereignty in choosing the dreamer in both the legislative and executive can run at the same time get its best to run the government to realize a clean government and good. In addition the role of participating in the election, the people and uphold the law in its implementation will also be important to stick to the principles and rules already in force.

²² *Ibid*, hlm 46

²³ *Ibid*, hlm. 45

- The position of the main agencies and state auxiliary.²⁴



In this section, the main state institutions and the state auxiliary agencies, have equal status and ultimate goal to achieve the purpose of the State is mandated by the constitution according in the Preamble of the Constitution of the Unitary State of Republic of Indonesia in 1945 fourth paragraph namely :

1. To protect the whole Indonesian nation and the entire country of Indonesia;
2. Promote the general welfare
3. Educating the life of the nation.
4. To participate in the establishment of world order based on freedom, lasting any peace and social justice.

²⁴Dewa Gede Atmadja, *Hukum Konstitusi-Problematikaan Konstitusi Indonesia Sesudah Perubahan UUD 1945*, Setara Press, Malang, 2010. Hlm 176.

When the main institutions (primary state institution) stipulated in the constitution of the institutional character are "permanent institution", while the institutional character of the temporary nature of the institution "auxiliary state agencies" that can grow and may be removed. It depends on the situation, especially the political conditions that trigger the presence of DAPT said auxiliary state agencies is due to distrust of the institutions of the existing state as the executive, legislative and judicial institutions. This is due to distrust of state institutions can not perform its function and/or expansion of government power irregularities. To institute the Commission even though as an institution of state auxiliary agencies, functions as a supporting institution other institutions in the field of elections or not the main institutions like executive, legislative, judicial, institutions Commission are set out in the Constitution or the Constitution of the Unitary State of Republik of Indonesia in 1945. so that the function of elections conducted by the electoral commission within the meaning of the Constitution of the Unitary State of Republic of Indonesia in 1945 is permanently or there should be no change in the constitution along.

In addition to the changes and additions to the details of the provisions, the amendment of the Constitution of the Unitary State of Republic of Indonesia Year in 1945 also lead to changes in position and relationship of several state agencies, the elimination of certain state institutions, and the establishment of new state institutions.

According to Hans Kelsen, the state organ conducting at least one of the two (2) function, which creates the law (law-creating function) or functions that implement the law (law-applying function).²⁵ According to Kelsen parliament which establishes the laws of country which choose their representatives through elections together is equally a state organ in a broader sense. Similarly, judges who prosecute and convict and punish criminals who carry out the sentence in a correctional institution, is also a state organ. Simply put this in a broader sense, it is synonymous with the state organs which exercise the functions of the individual or department within the context of the activities of the state. This is a public office or public position (public offices) and public officers or public officials (public officials).

²⁵ Jimly Asshiddiqie, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, Sinar Grafika, Jakarta, 2010, hlm. 32.

Besides the broad sense, Hans Kelsen also outlines the state organs in the strict sense, namely the sense organs in the material sense. Said individual organs of state only if he personally has certain legal status. A civil law transactions, such as contracts, is an act or acts that created the law, as well as a court judgment.²⁶

By using the Kelsen analysis, Asshiddiqie conclude that the post-change of the Constitution of the Unitary State of Republic of Indonesia in 1945 Republic, it can be said there are 34 state agencies. Of the 34 institutions of the country, there are 28 agencies whose authority is determined both generally and in some detail in the Constitution of the Unitary State of Republic of Indonesia in 1945. All 28 state agencies is what can be called a state agency that has the constitutional authority or authorities are granted explicitly by the Constitution of the Republic of Indonesia in 1945.²⁷

All 34 of these organs can be distinguished from two aspects, namely in terms of functionality and in terms of the hierarchy. The hierarchy of state institutions it is important to determine because there must be regulation of the legal treatment of the people who occupy positions in the state institutions. Whichever is higher and which lower needs to be ascertained to determine the order of seating in the ceremony and the amount of allowances to officials. For that, there are two criteria that can be used, namely (i) the hierarchy of criteria that determine the shape of the source of normative authority, and (ii) the quality function. That is the main or auxiliary in the system of state power. In this connection, it can be determined that the terms of its functions, the 34th such institution, there is the main or primary, and others are secondary or auxiliary (auxiliary). In terms of hierarchy, the 34th of the institution can be divided into three layers. Organ first layer can be referred to as a high state institution. The second tier organ called the state institutions only, while the third tier organ is a local institution. Among these institutions exist which can be categorized as primary or primary organ (primary constitutional organs), and there is also a supporter of organ or auxiliary (auxiliary state organs). The style and the organizational structure of our country in Indonesia is also experiencing rapid growth dynamics.

²⁶ Hans Kelsen, *Op.cit.*, hlm. 32-33

²⁷ Jimly asshiddiqie, *Sengketa Kewenangan Antar Lembaga Negara*, Konstitusi Press, Jakarta 2005, hal. 49-50

In any discussion about state institutions, there are two (2) basic elements which interrelated, they are organ and functie. Organ is a form or the shape of the container, while functie is contents; organ is the status form (English: form, Germany: vorm), whereas functie is the movement of the container according to the purpose of its formation. In the text of the Constitution of the Republic of Indonesia in 1945, there are some organ are called explicitly name and some are mentioned explicitly only function. There are also institutions or organs called that either his name or function or authority shall be governed by the regulations is lower.²⁸

Under "Norma Sources Legitimacy Theory" put forward by Asshiddiqie, scientific equipment grouped by the State of legal norms form the source or giving authority to the relevant institutions. At the central level grouping of state institutions are divided into:²⁹

1. Institutions set up under the constitution stipulated and specified further in or with the laws, regulations, rules the president and the president's decision. State institutions at the level of this constitution, for example, the House of Representatives, the President, the CPC, the Supreme Court, and the Constitutional Court. The authority of these institutions stipulated in the constitution, and further specified in the legislation, although the appointment of members designated by presidential decree as the highest officials of the State administration.
2. Institutions established under the laws that regulated or determined further in or with government regulations, presidential decree, and the president's decision, the second level of this Institute is an institution that source authority under the Ordinance. The process of granting the authority to these institutions involves the role of Parliament and the President or to certain things also involve the role of the Regional Representatives Council (DPD). Therefore, dissolution or change in shape and authority of such institutions also involve Parliament and the President. For example, the Attorney General, Bank Indonesia, KPK, KPI, INTRAC, etc., formed by law, because it can not be changed or dissolved except by changing its laws or revoke the regulations.

²⁸ Jimly asshiddiqie, *Sengketa Kewenangan Antar Lembaga Negara*, Konstitusi Press, Jakarta 2005, hal. 49-50

²⁹ Jimly Asshiddiqie, *Perkembangan*, *op. cit.*, hlm 43-47

3. Institutions established under a presidential decree, which is determined more by presidential decree. These institutions have a pure source of the authority of the president as head of government, so that its formation entirely sourced from belied president (presidential policy). It means the establishment, alteration, or dissolution depends on the president. Arrangements regarding the organization of the State concerned also stated in the presidential decree that is Regaling, and the appointment is done by a presidential decree that is beschiking.

4. Institutions established under ministerial regulations, which specified further by ministerial decree or decision under meters officials. At the lowest level, the relevant institutions established at the initiative of the minister as a public official, according to the needs with regard to the tasks of governance and development in the areas of responsibility. Minister may establish agencies, boards, agencies, or committees that are not permanent and specific.

Commission established pursuant to Article 22E paragraph (5) of the 1945 Constitution, which states that *"The general election is held by a general election commission which is national, permanent and independent"*. That is, that the election commission that is organizing the elections, and as an organizer he is national, permanent, and independent (independent). Seeing this as the Commission established by the Constitution could also be called the main institutions (primary constitutional organs). Although it is based on institutional theory states according to Montesquieu and John Locke, the Commission is not the main institutions, but views of philosophy and function, that the Commission as the guardian of the people's voice or guarding the sovereignty of the people, then the Commission can be regarded as an important institution and foremost, because the sovereignty of the people is something very essential and fundamental in a democracy and state of law. In addition it is the function of the Commission is to conduct a process to elect representatives in executive and legislative, therefore the Commission is also a major institution in the country. Instituting the Commission as the main body of national, permanent and independent power outside the executive branch, and judicial legislative become important thing to do in that embrace democracy. Therefore, the organizers of the election commission can still be seen aspects of constitutional authority. If the operational implementation of the authority or the nature of the authority to deviate from the provisions of the law, then such cases may become the object of dispute in court. As far as the aspects of the

constitutionality of that authority, can not be no judicial forum is the Constitutional Court. According to the theory completeness Atmadja there are 3 countries, namely:³⁰

1. The constitutional theory, the emphasis is on the source of authority "state institutions", and personification.
2. juridical theory, the emphasis in shape, composition, duties and powers or authority.
3. functional theory, the emphasis on the functions of the state.

The Commission did indeed get the direct authority of the constitution through EE paragraph of Article 22 (5) of the Constitution of the State of the Union Republic of Indonesia in 1945, then legally, the composition, duties and powers be translated by Act No. 15 of 2011 concerning the election organizers. In theory functional Commission conducted several election law, also make more detailed regulatory and operational duties and authorities as well as elections, and also the function of enforcing the law in administration of the elections process.

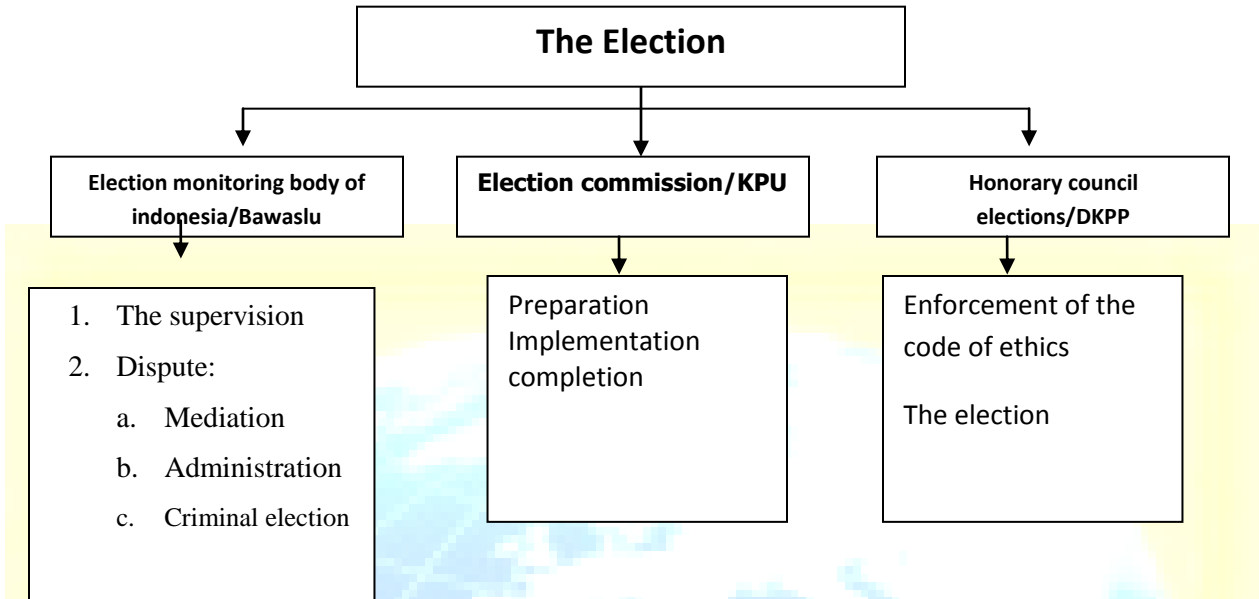
Picture 9.

**Duties and Responsibilities
Of Election commission**

Preperation	Create the Regulation Make or create the step Institutional establishment Announcements and registration monitors Coordination of budget
Implementation	update the voter of data brokering procurements and distribution of the logistics campaign
Completion	Dispute Administrative violations PTUN Constitutional Court Determination of election results

³⁰ Dewa Gde Atmadja, *Ilmu Negara*, Setara Press, Malang. 2012, hlm 96.

Relationship between Election organizers based on Law Number 15 Year 2011 regarding the Election, is as follows:



An institution that has always been a partner of the Commission is Bawaslu, and now there DKPP besides government also common SCARA also assist the electoral process, either legislative election, presidential election, and the election of regional head and deputy head of the region. At the time of the 2004 elections, to conduct surveillance formed Election Supervisory Committee, election supervisory committee at the provincial level, district / city and sub district ad hoc. For the supervisor of Election Committee formed at the center which is the KPU, Panwaslu center then gradually establish the level below it. Then Supervisory Committee is responsible to the Commission. For the provinces, districts / cities and districts are responsible in stages. Member of the Election Supervisory Committee maximum of 9 (nine), Provincial Election Supervisory Committees more than 7 (seven) members, the Election Supervisory Committee Regency / City more than 7 (seven) people, and the Election Supervisory Committee District of maximum 5 (five) who come from elements of the state police, the prosecutor, colleges, community leaders, and the press. Although established by the Commission, but because in it there is an element of police agencies and prosecutors who have the professionalism of law enforcement, the law enforcement process can almost immediately be followed. In addition there is an element of the press or journalists and college became partners internal Supervisory Committee. Relations with the Commission are also very good, because the

Commission as election organizers from start to finish, accompanied by elements of law enforcement which done by professionalism. At the time of the 2004 election is not denied enforcement performed on the participants of elections only. Many election organizers who violate the law or code of conduct, but only enforcement mechanism in the commission's internal, so it is not fair and equitable. Then at the 2009 election, election organizers regulated in Law Number 22 Year 2007 to improve the process of elections in 2004. In 2004 election supervisory committee called ad hoc. Whereas in 2009 the supervision of the organizers of elections conducted by the regulatory Body elections (Supervisory Board Election), Provincial Election Supervisory Committee, Panwaslu Regency / City, the District Supervisory Committee, the Election Supervisory Field, and the Election Supervisory Foreign Affairs. Bawaslu established for the 2009 elections are fixed. While the Provincial Election Supervisory Committee, Panwaslu Regency / City, the District Supervisory Committee, the Election Supervisory Field, and Foreign Election Supervisory ad hoc. Panwaslu Province, Panwaslu Regency / City, Panwaslu the District, the Election Supervisory Field, and the Election Supervisory Foreign Affairs established no later than 1 (one) month prior to the first stage of election starts and ends no later than two (2) months after all stages of election was completed. Bawaslu membership consists of professionals who have the ability to supervise and are not members of political parties. The number of members of the Election Supervisory Body of five (5) members of the Supervisory Committee of three (3) members, electoral districts / municipalities by 3 (three), the electoral district of the 3 (three), and the number of members in each election supervisors Airport / villages of 1 (one).

The composition of the Election Supervisory Body, provincial electoral and electoral districts / municipalities pay attention to the representation of women at least 30% (thirty percent). Bawaslu membership period is five (5) years from the oath / pledge.

In the 2014 elections, with law No. 15 of 2011 organizing the elections mentioned in the general description of the Act, referred to as the elections are KPU, Bawaslu and DKPP (such as the above chart). So all institutions established through the process in Act No. 15 of 2011.

Accountability Commission

Knowing the source and how to obtain the authority of the organs of government in the study of the State Administration Law is very important, because it relates to liability law (rechtelijke verantwoording) in the use of that authority, along with one of the principles in state law (geen bevoegdheid zonder verantwoordelijkheid or there is no authority without responsibility) there is no authority without accountability. Likewise for the KPU institution, if the authority Each granting authority to the Commission along with the accountability of the Commission institution was not accompanied with accountability, then it becomes an impossible goal constitutional state can be realized. Perhaps it is happening is the abuse of authority for personal interests of the holder of authority.

Elections in Indonesia, there legislative election to choose DPR, DPD and DPRD, then the election of President and Vice President, and the last General Election of Regional Head and Deputy Regional Head. Wherein each governed by different laws, different processes and different law enforcement. Commission responsible for institutional issues, for legislative elections and for elections of President and Vice-President of the stages of the Commission in district/ city to the Provincial KPU and provincial KPU to the Central Election Commission. Commission accountable to the President and Parliament. Based on this trait to be lost due to the independence of the Commission when it is responsible to the President and the Parliament, the Commission is an agency under the President and Parliament. Then also for the Election of Regional Head and Deputy Head of the region, originally Election Commission (KPU provincial / district / city) that is still considered the regime of local governments should be accountable to the government and the DPRD. It also raises concerns of institutional independence of the Commission, a good performance, budget, and political intervention. Then of some rule changes and the development of several decisions of the Constitutional Court decision making and accountability mechanisms according to the constitution number 15 of 2011 about the Election. Decision-making KPU, Provincial KPU and Regency / City in the plenary meeting. Plenum type referred to in Article 30 is a closed plenary session and a plenary meeting open. KPU plenary meeting valid if attended by at least five (5) members of the Commission as evidenced by the attendance list. Decision of the plenary meeting of KPU valid if approved by at least four (4) members of the Commission were present. In case no agreement is reached, as above, the

plenary meeting of the Commission decision was taken by majority vote. Plenary meeting of the Provincial KPU and Regency / City as valid if attended by at least four (4) members of the Provincial KPU and Regency / City as evidenced by the attendance list.

Plenum of the Provincial Election Commission decision and Regency / City KPU valid if approved by at least three (3) members of the Provincial KPU and Regency / City in attendance. In case no agreement is reached, the decision of the plenary meeting of KPU and Regency / City taken by a majority vote. In case of no quorum, a special plenary meeting of KPU, Provincial KPU and Regency / City to fix the election results was delayed for three (3) hours. In the case Plenum has been delayed and still no quorum, regardless of the plenary meeting followed a quorum. Special plenary meeting of KPU, Provincial KPU and Regency / City KPU to determine the results of elections do not vote. Invitation and agenda of the plenary meeting of KPU, Provincial KPU and Regency / City submitted no later than three (3) days in advance. The plenary meeting was led by the Chairman, the Chairman of the Provincial Election Commission, and the Chairman of the District / City. If the chairman is absent, the plenary meeting of KPU, Provincial KPU and Regency / City led by one member elected by acclamation. Secretary General of the KPU, Provincial KPU secretary and secretary of the Regency / City shall provide technical and administrative support in the plenary meeting. The Chairman shall sign the election results shall be decided in a plenary session within the period of three (3) days. As regards the determination of election results is not signed by the chairman within three (3) days, one of the members signed the determination of election results. If no member of the KPU, Provincial KPU and Regency / City who signed the determination of election results, by itself the result of the election shall be declared valid and enforceable.

In carrying out its work, the Commission:

- a. in terms of financial responsibility in accordance with laws and regulations;
- b. in the case of maintenance all stages of the election and other duties to report to the Parliament and the President.

Report to the Parliament and the President delivered periodically at every stage of the administration of elections in accordance with laws and regulations, then the report is also forwarded to the Election Supervisory Body.

In performing its duties, the Commission is responsible to the Provincial KPU, Provincial submit performance reports and the holding of elections periodically to the Commission. In the elections of regional heads, provincial KPU submit reports on the activities of each stage of the implementation of the gubernatorial elections to the governor and the Provincial House of Representatives. Gradually to Regency / city, too, in carrying out its duties, Regency / City shall be responsible to the Provincial Election Commission. Regency / City KPU submit performance reports and periodic holding of elections to the Provincial Election Commission. Regency / City KPU submit reports on the activities of each stage of the implementation of the election of regent / mayor to the regent / mayor and House of Representatives District / City.

About the use of the budget accounted for in according to the mechanism that applies the use of budget of the state in force. To work in a functional responsibility legislative election and election of President and Vice President done cascade of Regency / city to the provinces, and provinces to the central KPU. Then the Commission started from the stage of implementation, preparation and completion is always announced to the public or the community regarding all phases undertaken as part of accountability to the community. It is also done by KPU districts/cities and provinces regarding both the legislative elections, the presidential elections and the local elections. It is also same what is done by FEC and the Comelec as an organizer in the United States, that accountability to the public is done by always announce any important stage. Why is it important to be made public because at every stage, many things related to the public interest. Concerning stage, rights and obligations of participants of the election, rights and obligations of the public, the data of voters, nomination and determination of the candidate, campaign, voting day, until the determination of who's winner. It was all very closely related to the interests of society (the public) and participating in the election, which means that the public interest in the stages of concern and their interest towards the election process to produce leaders in both the executive and legislative, central and local. This is consistent with the presence of the Constitutional Court, the provisions of Article 57 ayat1, Article 66 paragraph 3 letter e and Article 67 paragraph 1 letter e relating to the responsibilities of the Regency / city and province to the Parliament is not enacted anymore then accountable to the public was to the financial accountability is responsible under the terms of legislation. According to Herman Finer "The experience of Government over the Centuries has taught us that there are two kinds of

responsibility. One may be called moral responsibility, and the other political or, the use a valuable adjective employed by Alexander Hamilton, censorial responsibility".³¹

Judging from the character of the political system, when the dictatorial character of the political system that is usually used by the dictator countries, such as Russia-Lenin, Hitler's Germany, and Mussolini - Italy, a form of accountability is a moral responsibility. While the political accountability of sensorial or used by democratic nations. Commission as a state agency which do the elections is the main pillar of democracy do accountability to the public, is a sensorial or political accountability to the public. So according to Herman Finer there are two models of accountability in governance experience that *moral responsibility and accountability sensorial. Moral responsibility means the self-imposed acceptance of a standard of conduct by politician or official, a self-regulated change on his conscience for his behavior. Censorial responsibility means that the standard of action, the authority to act, is established by someone other than the official, someone to Whom he owes an accounting for this actions in the fulfillment of the standard and its duties. His authority is answerable trust censorial subject to an external body - the Congress, the parliament, the electorates. This is very heart and soul of democratic system.*³²

When the state of parliamentary democracy, a cabinet responsible to parliament while the presidential known as power control to power. State liability associated with the use of government authority in the functioning of the public service. In performing these functions can be impaired and suffering for the people. Losses to society can occur because of a flaw in the use of authority or authorities relating to behavior as private. Secondly it is a parameter of the presence or absence of a liability for losses existing state institutions including the Commission are performing the duties of government. Relating to the use of authority there are 3 forms of legal protection to the public, namely:

- a. Bescherming via de domcratie (protection through democracy).
- b. Bescherming via de bestuurlijk-hierarchische verhoudingen (legal protection through the government hierarchy relationship).

³¹ Herman Finer, *The Major Governments of Modern Europe*, University of Chicago, Harper & Row Publisher, New York, 1926. Hlm 5.

³² *Ibid*, hlm 5.

c. Bescherming Juridische voorzieningen (protection of law through judicial settings).³³

Accountability of State Administration politically one of which is accountable to the public, and make a report on its performance to the DPR / DPRD and the government. Then the liability of ethics, the state administration act is judged by the public. KPU in the accountability of state administration should be able to provide role models and role model for the community, participating in the election and the environment, so that the resulting confidence in the Commission, which resulted in the political legitimacy of the process and the results achieved in the elections. While sanctions in violation of ethics are moral sanctions. Decisions of individual ethics that it must be owned by a person who becomes a servant of the community (public servant). As the organization's ethics (ethics of rule) which is reflected in the organization with the structure and functions and procedures including a system of incentives and sanctions based on the rules. The role of the code of conduct for election organizers, should be a compass that provide or indicate the direction for the Commission and its staff guaranteeing the quality or the quality of the elections in the presence of the community. KPU as election organizers as a public servant may not rid itself of the lives of the people it serves, thereby materially have an obligation to provide public services as well. By understanding the ethics and principles of organizing the election, is expected to reduce the actions despicable, disgraceful and harmful election participants and the public. Adoption of a code of conduct to bring the Commission in the moral consciousness of the position and the profession will be very important for the elections from the state on behalf of the people. KPU who obey the code of conduct and implement the principles of the election organizers will put obligations as the national KPU, fixed and independent and honest and fair. Code of conduct serves as a benchmark mental attitude that is ideal for all levels of the Commission which can drive the success of the organization. KPU organization succeed if all ranks have good initiative, conscientious, honest and fair and have a high loyalty so that quality like this is to be achieved when the ethical code is executed

³³ J.B.J.M. Ten Berge, *Bescherming Tegen de Overheid*, Derde Druk, W.E.J. Tjeen Willink, Zwolle, Nederlands, 1995, hlm 6-7.

III. Concluding Remark

Construction generally means the composition or the Commission institute a model for the future, this means regarding the structure, functions, duties and accountability KPU institution. In embodying the above functions are also regulated how the mechanism of action of the Commission of the central, province and region to exercise their functions and authority. But the bottom line is the authority here many are still passive and puts the Commission as a mere administrative agencies. In fact, as one of the pillars of democracy organizers should the Commission may be more active in carrying out the functions and authority to realize the ideals of the election itself. Which is passive in the above ideas is the authority of the Commission explicitly only administratively and stuck on the rule about its existence, but in the end still open doors of opportunity for the participants ELECTION in violation and other things that are not in accordance with the ideals and principles ELECTION itself. To fix the powers which tend to be passive in the law, the Commission can actually optimize its role by creating an implementing regulation, and no longer need to consult the Parliament, since the Commission has been given authority by statute as an implementer and regulators operations elections by principled to independence, professional and fairness. Besides organizing the elections as Bawaslu and DKPP order not to exceed the authority granted or do not overlap, or it could just avoid each other (finger pointing) the authority if there is a problem that is crucial. Obscurity of authority between the organizers of the election in addition to make between the carriers increasingly avoided or overlap, as well as for participating in the election and the public more confused in case there are issues to be reported if there are violations of the election somewhere. Demands professionalism both the KPU and Bawaslu fore become a very important thing, not to choose the commissioners at the central area of people who do not understand the duties and authority of the institution, as the commissioner Bawaslu most of the duties of law enforcement election either administrative or criminal, how could be optimal when the elected people who do not understand the law, people who understand the law alone may not be able to carry out its duties and functions moreover do not understand, then you can imagine how the implementation of the election law enforcement in a region.

Other reinforcement to do KPU and Bawaslu is in terms of recruitment commissioner / KPU members to manifest integrity and public confidence accommodate. In the implementation of

laws and regulations Election Commission has actually been properly set on the recruitment process itself where the acceptance of provincial KPU members and city / county is done with a rigorous selection process and accountable, and set about the formation of the organization committee at the district level. But recruitment has not been accompanied by a selection track record integrity and prospective members of the KPU as election of members of the Commission that its output produces the members of integrity. Some areas where the Commission is very close to the power holders of a particular party or group. In the end there has been an open secret that the general election there is an arm of the ruling party earlier or certain.

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