

## COMPARATIVE ANALYSIS OF RECRUITMENT ARRANGEMENTS FOR MEMBERS OF INDEPENDENT STATE INSTITUTIONS AND NON- STRUCTURAL INSTITUTIONS

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### Abstract

*The establishment of several independent state institutions and non-structural institutions in the reform era has strengthened Indonesia as a democracy and a state of law. Its institutions which are independent from political influence and power of any party are very important for the growth of democracy. Uniform and patterned arrangements in the laws that form them are important factors to support the independence of carrying out their duties and functions. This study aims to compare the recruitment arrangements for members of the KPK, Ombudsman, KPPU, KPI, KPU and KASN in the laws that formed them. Normative juridical methods and literature are used by examining the substance of the six laws, as well as examining relevant information in the form of books and journals. The results of the study indicate that recruitment, which begins with the formation of a committee/selection team by the President/government, the implementation of the selection, the results are submitted to the President, then submitted to the DPR for election, and the elected candidate is submitted to the President for determination, applies to the membership of the KPK, Ombudsman, and KPU. Recruitment which begins with the formation of a selection team by the Minister of Administrative and Bureaucratic Reform, the implementation of the selection, the results of which are proposed to the President for stipulation, apply to KASN membership. Recruitment through elections by the DPR at the suggestion of the community and determined by the President at the proposal of the DPR applies to KPI membership. Recruitment through appointment by the President with the approval of the DPR applies to KPPU membership. There are arrangements for member recruitment patterns that vary between independent state institutions and non-structural institutions. For certainty and clarity of recruitment, it is necessary to make uniform arrangements among similar institutions.*

**Keywords:** *Recruitment, Independent, State Institutions, Non-Structural Institutions.*

### 1. INTRODUCTION

One of the characteristics of the government after the cessation of President Soeharto in 1998 was the formation of several independent state institutions and non-structural institutions, including the Corruption Eradication Commission (KPK), the Ombudsman of the Republic of Indonesia (ORI), the Indonesian Broadcasting Commission (KPI), the Business Competition Supervisory Commission (KPPU), Information Commission (KI), General Election Commission (KPU) and State Civil Apparatus Commission (KASN). Its presence strengthens Indonesia as a legal state and democracy state, so there is a big challenge for its members to play a maximum

role in accordance with their institutional authority.

In the political context, the power of state administration by several state institutions that represent different branches of power, is regulated by their duties and authorities in the constitution. The 1945 Constitution as a result of the amendments has further strengthened Indonesia as a constitutional democracy. This provides a wider place for the people as the holder of sovereignty, as well as the state ensures and guarantees the fulfillment of the rights of citizens in various fields of life. This is further complemented by the presence of several independent state institutions whose formation is through law.

Its nature as an independent state institution and non-structural institution is mainly supported by the background of its members who are not members of political parties or are not affiliated with political parties. With this, the main character of this institution is that it is not affected by political power or political intervention from any branch of power. Therefore, the recruitment of its membership will greatly determine the quality of its institutions as state organs that must be independent in carrying out their duties and functions. Along with the development of political development needs in the reform era, the formation of several of these institutions gradually gave different characteristics in the regulation of membership recruitment in the laws that formed them.

Thus, there is a diversity of recruitment patterns that have been carried out over the last 22 years at these independent state institutions. This diversity is from the aspect of the institution that conducts the selection, the criteria for the selection team, the involvement of the community in the selection, the educational background of the candidate, the involvement of the DPR and the role of its administrative determination by the President. The existence of a relatively uniform pattern in the recruitment pattern is a positive thing for future political and constitutional developments. Therefore, comparative research on the diversity of recruitment patterns for members of independent state institutions and non-structural institutions is important for improving state administration.

The purpose of this study is to examine comparatively the recruitment arrangements for members of independent state institutions and non-structural institutions, namely the KPK, ORI, KPI, KPPU, KI, KPU and KASN in the laws that formed them. The seven laws are Law Number 30 of 2002 concerning the Corruption Eradication Commission, Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, Law Number 32 of 2002 concerning Broadcasting, Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, Law Number Number 37 of 2008 concerning Openness of Public Information, Law Number 7 of 2017 concerning General Elections and Law Number 5 of 2014 concerning State Civil Apparatus.

## **2. LITERATURE REVIEW**

### *1.1 Public Administration And Politics*

The existence of various independent state institutions or commissions and non-structural institutions cannot be separated from discussions on public administration and politics. This is because it relates to several interrelated variables including organization, state goals, state apparatus, power, public interest and public policy. Public administration according to Pfiffner and Robert V. Presthus involves the implementation of public policy which has been outlined by representative political bodies. As the coordination of individual and group efforts to carry out public policy (1960:4-5). For example, the tasks assigned to the KPU and the KPK are closely related to the broad public interest, because the people really hope for more democratic elections and more effective corruption eradication.

The relationship with organizational variables, state apparatus and state goals can be seen from the definition put forward by Dwight Waldo that public administration is the organization and management of men and materials to achieve the purposes of government (Rosenbloom et al., 1994:4). The existence of members in each commission or independent state institution and non-structural institution indicates the existence of an organization or institution that is authorized by laws and regulations to realize the goals of the state or government. For example,

the existence and performance of ORI and KI are closely related to the state's goal to provide the best service and guarantee the people's right to public information.

From the perspective of political science, the discussion of independent state institutions or commissions and non-structural institutions can be seen from the institutional aspect as part of the political concept. According to Surbakti, the institutional or institutional view sees politics as a matter related to the administration of the state. The state is seen as the main source of the right to use legitimate physical coercion (1999:3).

## *2.2 Public Administration*

Several institutions have defined non-structural institutions including the State Administration Agency/LAN (2015) which defines it as an independent institution formed based on laws and regulations to carry out certain tasks which due to the nature of their duties cannot be accommodated in the form of existing ministries/institutions, where the membership of the institution involves elements outside the government and its existence is financed by the state budget. With a not-so-different formulation, Kemenpan and RB refer to it as an institution outside the government organizational structure, which is independent, and has autonomy in carrying out its mandate in accordance with applicable laws and regulations (2015). In a lot of literature, according to Asshiddiqie (2011) there are also those who use terms in English, namely 'independent bodies', 'auxiliary agencies', 'self regulatory bodies', and so on. In order to be general in nature, all of these institutions, because of their special nature outside the usual ministry structure, we can call them special agencies.

The improvements made by the government as a response to the strengthening public distrust of the government, are carried out not only by improving the system with various new laws and regulations but also almost always being followed by the formation of extraordinary institutions, such as the KPK and the Ombudsman. The formation of non-structural institutions is often interpreted as an implication of the inability of existing institutions to carry out their mission or special role (Dwiyanto, 2015:70).

From the perspective of environmental change as unavoidable in the administration of the state, the formation of various independent state institutions is inseparable from the demands of democratization, human rights and accountability as a consequence of a democratic state and the rule of law. Cooper et al. argued that the environment in which government agencies operate and the methods of administering them are undergoing a fundamental change. Organizational structures, forms, procedures, and concepts need to change as well (1998:203).

One of the debates in the theory and practice of modern constitutional law according to Saldi Isra is the presence of state organs known as "state commissions" or "independent state institutions" or "state auxiliary bodies" or "state auxiliary agencies". In addition, it is also driven by the fact that there is a crisis of trust in conventional state institutions (Mochtar, 2016:viii).

According to Mochtar and Iwan Satriawan, an independent state commission is a state institution idealized to be independent, free from interference from the executive, legislative and judicial branches of power. But at the same time, independent state commissions have functions and characters that are "interference" in all three (2009:151). It was further stated that there are several patterns of recruitment for membership of independent state institutions, including commission members elected by the DPR on the recommendation of the President, commission members elected by the DPR on the recommendation of the commission, commission members elected by the DPR on the recommendation of another commission, the President appointing commission members with the approval of the DPR. DPR, and the President appoints commission members after receiving consideration from the DPR (2009:155-156). In addition, there are several important characteristics in the selection pattern of independent state institutions, namely the involvement of civil society in it, carried out directly under the realm of state power, its membership as a whole is a selection process with slightly different mechanisms (2009:157).

## **3. RESEARCH METHODS**

This research uses normative juridical method and literature study. According to Marzuki

(2015:47) it is classified as legal research, or normative legal research or library law which is carried out by examining library materials or secondary data (Soekanto and Mamudji, 2015:13). Research is conducted on information that is documented in the form of regulations so that it is commonly known as document analysis research or content analysis. Referring to Zed, library research or literature study is a series of activities related to the methods of collecting library data, reading and taking notes and processing research materials (2004:3).

The normative juridical method is carried out by examining the substance of seven laws relating to the formation and recruitment of members of independent state institutions and non-structural institutions, namely KPK, ORI, KPI, KPPU, KI, KPU and KASN. The seven laws are Law Number 30 of 2002, Law Number 37 of 2008, Law Number 25 of 2009, Law Number 14 of 2008, Law Number 7 of 2017, Law Number 32 of 2002, Law Number 5 of 2014, and several other relevant laws. Literature research is carried out by examining various written sources in the form of books, journals and other sources relevant to the research topic.

#### **4. RESULTS AND DISCUSSION**

##### *4.1 Institutional Character*

In the constitutional structure entering the reformation era in 1998, in addition to the existence of state institutions whose existence and authority are regulated in the constitution, there are also other state institutions established by law. These institutions are commonly referred to as independent state institutions, independent state commissions, auxiliary state institutions, quasi-state institutions, state auxiliary agencies and non-structural institutions. In the context of political science, its existence is part of the political superstructure, namely the order and political life that takes place in the life of the state/government.

The position of the KPK as a state institution is explicitly stated in Article 3 of Law Number 30 of 2002, including affirming the nature of its institution as independent and free from the influence of any power in carrying out its duties and authorities. The explanation of Article 3 states that what is meant by "any power" is power that can affect the duties and authorities of the KPK or KPK members individually from the executive, judicial, legislative, other parties related to cases of criminal acts of corruption, or circumstances and situations. or for any reason. The institutional character changed after the issuance of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Article 3 has been changed so that the sentence becomes KPK is a state institution within the executive power clump which in carrying out its duties and authorities is independent and free from the influence of any power. His assertion as an independent and state institution is very important to strengthen the corruption eradication program, because corruption is like a social disease that has undermined various aspects of life.

The nature of ORI as a state institution is stated in Law Number 37 of 2008 Article 1 point 1 and Article 2. In addition, it is also stated in Article 1 number 13 of Law Number 25 of 2009 concerning Public Services. Its nature as an independent state institution is stated in Article 2 that as an independent state institution, the Ombudsman does not have organic relations with state institutions and other government agencies, and in carrying out its duties and authorities it is free from interference from other powers. Elucidation of Article 2 states that what is meant by "organic relationship" is a structural or hierarchical relationship with state institutions or other institutions.

Its explicit mention as a state institution in this law provides a solid foundation for ORI, because of its very heavy duty, function and authority to oversee the implementation of public services as regulated in Article 1 point 1, Article 6, Article 7 and Article 8. also an explanation of its nature as an independent state institution, showing a very strategic institutional independence as a strong fortress for intervention from the political power of other state institutions.

The position of the KPU as a non-structural institution is stated in Article 8 paragraph (4) of Law Number 7 of 2017. In the explanation of this law it is stated that what is meant by "non-structural institutions" are institutions formed because of the urgency of a certain special task that cannot be accommodated in form of government/state institutions. Its nature as an

independent state institution is stated in Article 1 point 8 which states that the KPU as an election management body that is national, permanent and independent in conducting elections. In addition, it is also stated in Article 7 paragraph (3) that in the implementation of elections, the KPU is free from the influence of any party with regard to the implementation of its duties and authorities. The mention of its independent nature is very important because the duties, authorities and obligations of the KPU are very high in political interaction with various political forces, so that they are a big capital for the growth of institutional authority.

The position and nature of KPI as an independent state institution is stated in Article 1 paragraph 13 and Article 7 paragraph (2) of Law No. 32 of 2002. Its designation as a state institution is a strategic aspect for the growth of organizational authority in a competitive broadcasting business situation which of course involves many large investors. . This law does not explain the meaning of the term "independent", even though a comprehensive understanding of the meaning of independence is very important for various parties. However, it is very important to emphasize the mention of the term "independent" regarding the people's rights in the broadcasting sector which must be guarded by this institution.

Formally, IP in Law Number 14 of 2008 is not referred to as a state institution or non-structural institution, but is only referred to as an independent institution as stated in Article 1 point 4 and Article 23 of Law Number 14 of 2008. Even though the mention of a state institution or non-structural institution in the law that formed it is very strategic for the growth of the weight and authority of this institution in carrying out its functions and duties as regulated in Articles 23 and 26. However, the term "independent" attached to this institution is an important aspect to support its functions and duties in guarding the right of citizens to obtain public information guaranteed by Article 28 F of the constitution. Although the term "independent" is not explained further, it has contributed to the growing commitment of all commissioners not to be influenced by any political forces.

The nature of KASN as a non-structural institution that is independent and free from political intervention is stated in Article 1 point 19 and Article 27 of Law Number 5 of 2014. This law does not further explain the meaning/definition of a non-structural institution, different from its position/nature as an non-structural institution at the KPU. Likewise, the meaning of the phrase "independent and free from political intervention" is not explained. In fact, it is very important to describe and explain the two phrases for clarity of identity as an institution that functions as a supervisor for the implementation of basic norms, codes of ethics and codes of conduct for the state civil apparatus, as well as the application of a merit system policy and management of the state civil apparatus, as stated in Article 30. This is partly because since the 1998 reformation, quite a number have been formed through laws on various state institutions or independent state commissions or structural institutions, the urgency of which has been questioned by some parties.

The overall position and nature of the institution can be seen in the following table

**Table 1  
Institutional Position and Character**

No	Institution Name	Institution Designation	UU Shaper	Designation of independent/independent institutions	Number of Commissioners	Recipient of Responsibility
1.	KPK	State Institutions (in the executive power area)	UU No. 30/2002 jo UU No. jo UU No.19/2019	Independent and free and indifferent to any power	5	Public
2.	ORI	State Institutions	UU No. 37/2008	Independent	9	-

3.	KPU	Non-structural Institutions	UU No.7/2017	Independent	7	-
4.	KPI	State Institutions	UU No. 32/2002	Independent	9	President
5.	KI	State Institutions	UU No. 14/2008	Independent	7	President
6.	KASN	Non-structural Institutions	UU No. 5/2014	Independent and free from political intervention	7	-
7.	KPPU	Commision	UU No.5/1999	Independent	8	President

#### 4.2 Recruitment Pattern

The discussion on the regulation of recruitment of members of independent state institutions and non-structural institutions in the laws that form them is very important, because by analyzing this, the weight of their independence will be predicted in carrying out their duties and authorities. These arrangements, among others, relate to the selection pattern carried out, the state institutions that formed it, the configuration and characteristics of the selection team/committee, the relationship between the establishment authority and the DPR, the involvement of other institutions other than the selection team/committee, community involvement, and state institutions that ratify/determine candidates. selected.

The recruitment of KPK members begins with the formation of a selection committee by the government as regulated in Article 30 paragraph (2) of Law Number 30 of 2002, whose selection results are proposed by the President to the DPR for election as regulated in Article 30 paragraph (1). The membership of this selection committee consists of elements of the government and elements of the community as stipulated in Article 30 paragraph (3), as well as community involvement to provide responses to the announced candidates, as referred to in Article 30 paragraph (6). The criteria and requirements for candidates including their educational qualifications as regulated in Article 29 are very important for the selection of KPK leadership candidates who are more in line with public expectations. Community involvement during the selection process also encourages the principles of participation and transparency in state administration. The results of the selection are submitted to the President, which is then submitted to the DPR as stated in Article 30 paragraph (8) and paragraph (9) for election. The elected candidates from the election results by the leadership of the DPR are submitted to the President for determination as stipulated in Article 30 paragraph (12) and paragraph (13).

The recruitment of candidates for ORI members begins with the formation of a selection committee by the President as stipulated in Article 15 paragraph (1) of Law Number 37 of 2008. The selection committee carries out its duties based on Article 15 paragraph (3) and paragraph (4) and reports the results to the President. Based on this, the President proposes candidate members to the DPR to elect and determine them as stipulated in Article 16 paragraph (1) and paragraph (2). The DPR submits the elected candidates to the President as regulated in Article 16 paragraph (3), for appointment by the President based on Article 16 paragraph (4). The elements of the selection team/committee as regulated in Article 15 paragraph (2) consist of elements of the government, legal practitioners, academics and community members. Community involvement in the selection process is regulated in Article 15 paragraph (3) letter d and paragraph (4). The requirements for members which are regulated in detail in Articles 19 and 20 are important aspects for the formation of a capable and credible ORI. Community involvement in the selection process is an important indicator for efforts to realize the principles of participation and transparency in governance.

The recruitment of candidates for KPU members begins with the formation of a selection team by the President as stated in Article 22 paragraph (1) of Law Number 7 of 2017. This is a positive thing because it shows the credibility of the selection team as the executor of

recruitment operations. Likewise, the very detailed regulation on the requirements for KPU members as referred to in Article 21 is a very positive thing from the aspect of government transparency. The implementation of the selection by the selection team is regulated in Article 23, and the submission of the names of the candidates resulting from the selection to the President as stated in Article 23 paragraph (3) letter j. The President submits it to the DPR as referred to in Article 24 to be elected, and the results of the election are submitted to the President as regulated in Article 25 paragraph (8), followed by ratification by the President as stated in Article 26. Elements and criteria of the selection team consisting of government elements, elements of academics and elements of society are regulated in Article 22 paragraph (3) and paragraph (4). Similarly, involvement and coordination with other institutions required in the selection is regulated in Article 23 paragraph (2), as well as community participation to provide responses to candidates being selected is regulated in Article 23 paragraph (1). This is very important to support the weight of the independence of the election management body that will be formed, as well as to fulfill the principles of participation and accountability of the candidate selection process.

The recruitment of KPI members is carried out through an election by the DPR as stated in Article 10 paragraph (2) of Law Number 32 of 2002. The DPR proposes to the President to be administratively appointed as a member of the KPI as regulated in Article 10 paragraph (3). In this arrangement, it appears that there is no mention of the state/government institution that formed the selection committee and the selection mechanism that was carried out. In contrast to the establishment of the Ombudsman, the KPK and KPPU are both explicitly mentioned as state institutions. In this law, there should be clear arrangements regarding the selection team/committee, formed by the President or the DPR, as well as clarity on the elements and criteria for the selection team. Likewise, there should be arrangements for community involvement in responding to candidates who are participating in the selection as a fulfillment of the principles of government participation and accountability.

The recruitment of KASN members begins with the formation of a selection team formed and led by the Minister of PAN and RB, as referred to in Article 39 paragraph (1). The criteria for the selection team as regulated in Article 39 paragraph (3), although not detailed, are things that need to be continued in the future, because they are a good entry point for government transparency and accountability. Setting the criteria and requirements for candidates detailed in Article 38 paragraph (2) is an important aspect for the birth of qualified candidates in accordance with expectations. Community involvement in the selection process is seen in Article paragraph (4), and contributes to the establishment of the principles of participation, transparency and accountability in state administration. After carrying out the selection, the selection team submits it to the President for determination, as regulated in Article 39 paragraph (5) and Article 40 paragraph (1). The recruitment pattern is different from the KPU as a fellow non-structural institution which is selected by the DPR before being determined by the President. Other regulatory differences with the KPU relate to the institution forming the selection team, the head of the selection team, the criteria and elements of the selection team, and the absence of the DPR in the selection of the elected candidate.

The recruitment of KI members as regulated in Article 30 paragraph (2) of Law Number 14 of 2008 is carried out by the government, which is announced to the public for a response as regulated in Article 30 paragraph (3) and paragraph (4). The results of the recruitment are submitted by the President to the DPR for election as referred to in Article 31 paragraph (1) and paragraph (2), which are then determined by the President based on Article 31 paragraph (3). There is uncertainty about the government as referred to in Article 29 paragraph (2), whether the President is directly or a certain minister in charge of informatics affairs. The provisions of this article also do not regulate whether or not there is a selection team/committee formed by the government, as well as the elements and criteria needed as a selection team/committee. This is different from what is stipulated in the formation of the selection team/committee for the KPU as regulated in Article 22 paragraph (1) of Law Number 7 of 2017 and KASN which is regulated in Article 39 of Law Number 5 of 2014.

The recruitment of KPPU members in Law Number 5 of 1999 is not specifically regulated, it

is only stated that KPPU members are appointed and dismissed by the President with the approval of the DPR, as stated in Article 31 paragraph (2). The absence of regulation in this law is stated in Article 34 paragraph (1) that the formation of the KPPU as well as its organizational structure, duties and functions shall be stipulated by a Presidential Decree. Thus, in this law there is no regulation regarding the selection team/committee to be formed, the institution that forms the selection team, the selection process up to the appointment by the President, the elements and criteria for the selection team, as well as community involvement in the selection of candidates.

The regulation of recruitment patterns for independent state institutions and non-structural institutions in the laws that formed them, the most complete of which is regarding the KPU which is regulated in Law Number 7 of 2017, and the least complete is about KPPU which is regulated in Law Number 5 of 1999.

Overall, the pattern of recruitment arrangements for members of state institutions and non-structural institutions can be seen in the following table

**Table 2**  
**Pattern of Recruitment Arrangements for Members of Independent State Institutions and Non-Structural Institutions**

No	Institution Name	Selector	Committee Former	DPR Involvement	Community Involvement	Membership Determination
1.	KPK	Selection Committee	President	Selection	Response	President
2.	ORI	Selection Committee	President	Selection	Response	President
3.	KPU	Selection Team	President	Selection	Response	President
4.	KPI	-	-	Selection	-	President
5.	KI	-	Government	Selection	Response	President
6.	KASN	Selection Team	Minister PAN RB	-	Response	President
7.	KPPU	-	-	Approval	-	President

## CONCLUSION

Recruitment of members of independent state institutions and non-structural institutions is an important part of state administration. Some of these state institutions that have been formed since the 1998 reformation with laws are a tangible manifestation of Indonesia's strengthening as a democratic and legal state. There is a diversity of arrangements in the pattern of recruitment of members of the KPK, ORI, KPU, KPI, KI, KASN, and KPPU in the laws that form them. Uniform arrangements are needed in the recruitment pattern of independent state institutions and non-structural institutions by perfecting the laws that shape them.

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