

**THE SETTLEMENT REGULATION OF THE
ADMINISTRATIVE VIOLATION BY THE
IMPLEMENTERS IN THE IMPLEMENTATION OF
ELECTION FOR MEMBERS OF THE HOUSE OF
REPRESENTATIVES, REGIONAL REPRESENTATIVE
COUNCIL, AND THE REGIONAL HOUSE OF
REPRESENTATIVES (*Studies on the Democratic legislative
elections*)**

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Abstract

The settlement regulation of administrative violation by the implementers in the implementation of legislative election (DPR, DPD, and DPRD) raised legal issues. One of them was due to the vacancy of legal norms (vacuum of norm) of legal remedies in the settlement of administrative violations of the implementers in the elections implementation. The absence of law regulation is necessary reconstruction of the law in order to provide an opportunity to the parties to be able to take legal remedies in the settlement of administrative violations committed by the implementers in the implementation of elections. This study is a normative legal, legislation approaches, concepts, and history. Legal materials include primary legal materials and secondary legal materials, while the analysis using prescriptive analysis. The results showed first, the maker of the election law had not yet realized the importance of the settlement regulation of administrative violations committed by the election implementers. Settlement of administrative violation and administrative sanctions that are *reparation / reparatoir* and *correction* lenggar actions are expected to protect and assure the rights of voters and legislative candidates / elections participants. Secondly, there should be legal reconstruction of the settlement mechanism of administration violation of election in two ways, first, allowing the law to be able to take legal remedies to the voters and election participants, second, devolving the authority of settlement of administrative violations of election from KPU to Bawaslu. Decision of the administrative effort to Bawaslu could be filed a lawsuit in court of TUN and court of TUN decisions can be appealed to PTTUN which are final and binding. To support this alternative it is necessary to arrange a special law to adjust to the schedule of events, stages and Elections program. Second, establish a special ad hoc judicial for elections to deal with violations and dispute of elections implementation process. The formation of judicial is accompanied by law-making special event handling election violations which adopts the principles of a settlement of election violations that is fair and fast, accountable and integrated. The existence of a special court from the aspects of effectiveness and efficiency of handling violations case is important to oversee elections. Moreover, legislative and Presidential elections in 2019 carried out simultaneously.

Keywords: legal vacuum, legal remedies, administrative violation of legislative election, legal reconstruction.

1. Introduction

Legislative election in 2014 is the 4th elections to elect the representatives (legislators) in the reform period¹. Through the implementation of elections is intended to produce the members of DPR, DPD, and DPRD which is aspirational, quality, and responsible.² Almost every implementation of elections (local and national) followed by various violations both participants and implementers. Post legislative election on DKPP receive 3,045 complaints, of 178 complaints on trial, 106 cases have been decided, as many as 98 election implementers are dismissed permanently.³

Implementation of legislative elections based on Law No. 8 year 2012 on the election of Legislative members. The law classifies the types of election violations one of them is election administrative violation. Article 250 Paragraph (1) b states:

Election administrative violations are violations that include: ordinances, procedures, and mechanisms related to the administration of the election in each phase of election outside the crime of election and the violation of code of ethics of election implementers.

These limits do not touch the subject of the perpetrators. Administrative violations can be done by the participants or the implementers of election. Limitations of administrative violation as a violation beyond the code of ethics of election implementers, the violators are only the election implementers (KPU and Bawaslu), while limitation beyond the criminal act of violators can be anyone including the implementers themselves. Therefore, the limits of the elections administrative violations examined from the perpetrators contained a broad sense.

Law No.8/2012 governing the handling and settlement of violations of election implementation in general whiles the procedure of settlement the law delegate further arrangements with KPU Regulation.⁴ In KPU Regulation No. 25 year 2013 on the Settlement of Administrative Violations of Election Article 26 states: "The decision of the settlement of suspected administrative violations of the Election shall be final and binding". The provisions of Article 26 resulted in a legal vacuum (vacuum of norm) to be able to take legal remedies in the process of settlement of administrative violations by the implementers in the election implementation.

The legal vacuum that show the law makers and the KPU have not realized the importance of the administrative sanctioning of the administrative violations completion committed by the implementers in the implementation of election. As a result, the voters and the legislative candidates / Election participants get difficulties to demand the return of losing right to vote of citizens and election participants in the current gain political support from voters. The legal vacuum is theoretically attracting to question besides as potential to cause injustice and uncertainty in providing legal protection to the voters and the election participants, it can also contribute to the improvement of the theory of democratic elections and enforcement system of election law.

The research of Khairul Fahmi⁵ on the imposition of administrative sanctions legislative elections in 2009 by KPUD of Mentawai Islands of West Sumatra province shows, the imposition of administrative sanctions⁶ are not fully focused legislation and suspected violations by the implementers of election⁷ of election participants parties and the loss of 4,120 voters due to the cancellation of membership of the political parties.⁸ Tragically the

¹ Legislative elections after the new order includes: Election in 1999 was held under the Law No. 3/1999, Election in 2004 was held under the Law No. 12/2003, Election in 2009 was held under the Law No. 10/2008, and the Election in 2012 was held under the Law No. 8 / 2012.

² The preamble letter a. Law No. 8/2012 on general election of the members of DPR, DPD, and DPRD . (LN RI year 2012 No. 117, TLN No. 5316).

³ Anonym, *Chairman of DKPP: Jangan Berpihak, Karena Mudah Dilihat*, <http://www.tribunnews.com/pemilu-2014/2014/07/05/ketua-dkpp-jangan-berpihak-karena-mudah-dilihat>, Tuesday, July 8, 2014, accessed August 9, 2014.

⁴ Law No. 8 year 2012 Article 255 paragraph (2). KPU Regulation as its implementation is Election Commission Regulation (PKPU) No. 25/2014 on the Settlement of Administrative Violations of Election. PKPU is the procedural law (formal law) to settle the Election administration violation.

⁵ Khairul Fahmi, *Pembatalan Partai Politik Sebagai Peserta Pemilu (Studi Kasus Pembatalan Partai Politik Peserta Pemilu tahun 2009 di Kabupaten Kepulauan Mentawai Sumatera Barat)*. <http://www.fahmikhairul.com/2011/10/pembatalan-partai-politik-sebagai.html>, accessed Januari 11, 2013.

⁶ The decision of KPUD Mentawai Islands No. 17/2009 On Cancellation 5 political parties as election participant, namely: 1. Prosperous Justice Party, 2. United Region Party, 3. Prosperous Indonesia Party, 4. National Party of Indonesia Marhaenisme, 5. Indonesian Democratic Devotion Party.

⁷ Law 10/2008 Article 288 "any person who commits acts that cause voters becomes worthless, can be punished.

⁸ the action of KPUD is not in accordance with time procedures stipulated by Law No.10 year 2008 which is

administrative violation can not be questioned by the election participants due to the absence of rules to be able to take legal remedies against administrative violations by the implementers in the implementation of elections.

Moving on from the description of the legal issues in this research is about the legal vacuum (vacuum of norm) of settlement of administrative violations committed by the implementers in the implementation of legislative elections, the legal issues in this paper. First, why do the legal remedies of the settlement of administrative violations in the implementation of election of members of DPR, DPD, and DPRD is not regulated? Second, how do the construction of the settlement arrangements of administrative violation of implementers in the democratic implementation of legislative elections?

This research is a normative law research. The study uses the concept approach, legislation, and historical approaches.¹ Legal materials consist of primary legal materials and secondary law. While the analysis using a prescriptive analysis. Stages of research: (1) The collection and recording of primary and secondary legal materials; (2) Assess and record the secondary materials to identified various concepts, theories or opinions that are relevant; (3) the legal materials that have been collected later systematized and followed by an analysis to find concepts, norms and values to address the issue of the problems that have been set.

II. Developments of Law Arrangement on Completing of Administrative Violations by the Implementers in the Implementation of legislative elections

2.1. The Completion Arrangement of Administrative Violation of Election Implementation in the Law No. 3 Year 1999 on General Election

The resignation of President Suharto and replaced by B.J. Habibie on May 21, 1998 has led to call for the holding of elections to replace the members of legislative the election results of 1987. The emergence of MPR Decision No. XIV / 1998 contains a command to the President B.J. Habibie to hold elections at the latest on June 7, 1999 to add the strong insistence. As a result, on February 1, 1999 passed Law No. 3/1999 on the General Election and the appropriate June 7, 1999 was implemented elections to elect members of DPR, DPRD (Level I and II) as the first elections after the New Order.

Implementation of the 1999 elections gave rise to criticism, namely: *first*, the attitude of some members of KPU who do not want to validate the election results.² *Secondly*, it still has strong alignment of legislation on the status quo³ and do not reflect the reform mandate.⁴ There are two causes of the above criticisms, *first*, the preparations are feverishly making it less provide an opportunity for political parties to conduct socialization to the wider community. *Second*, the election law is still very biased pro-party interests of the New Order.⁵

The election of 1999 followed 48 political parties is simply different with the Election of the New Order.⁶ The election implementers of 1999 conducted by the National Election Commission (KPU), which is free and independent.⁷ According to Ramlan Surbakti⁸ KPU on Elections 1999 have weaknesses: (1) KPU handle the affairs of planning, implementation and legislative authority as well; (2) there are great numbers of KPU's members and came from representatives of political parties of election participants and government where they tend to act in a non-partisan (pro), and; (3) The task of evaluating the implementation of the 1999 elections can

done after the voters cast their vote.

¹ Peter Mahmud Marzuki, Legal Research, Jakarta: Prenada Kencana, 2005, p. 35.

² The implementation of elections has been peaceful, smooth and democratic, but it does not end smoothly. Because at the time of the election results validate some members of KPU the representatives of political parties are not willing to sign the results of a nationwide vote count. <http://www.rumahpemilu.org/read/193/Penyelenggara-Pemilu-1999-Mengantung-Suara-Rakyat>, December 17, 2013

³ *Status quo* (Latin), meaning 'steady state as the state now or as a previous state'.

⁴ *Reform* means change drastically for improvement (social, political, or religious) in a community or country (<http://www.artikata.com/arti-347280-reformasi.html>)

⁵ Ellyasa KH. Darwis, Three package of political law of 1999 : *Pemetaan Beberapa Distorsi untuk Agenda Reformasi* in Mulyana W. Kusumah at al, *Menata Politik Paska Reformasi*, Jakarta : Independent Election Monitoring Committee (KIPP), p. 2

⁶ New Order elections only three political parties, namely: United Development Party (PPP), the Indonesian Democratic Party (PDI), and the Functional Group (Golkar).

⁷ Based on Presidential Decree No.16/1999 members of KPU are 53 (48 Members of elements Political party representatives and 5 members from the Government). Deputy government consists of: 1) DR. Adnan quoted, SH; 2) Prof. Dr Adi Andoyo, SH; 3) Dr. Affan Gafar; 4) Oka Mahendra, SH; 5) Dr. Andi A. Malarangeng

⁸ Ramlan Surbakti, *Sistem Pemilu dan Proses Pelaksanaan Pemilu : Membangun Pemilu Yang Menjamin Keterwakilan Penduduk dan Keterwakilan Wilayah*. In Mulyana W. Kusumah et al, *Menata Politik Paska Reformasi*. Op. Cit, p. 59-62.

not be carried out, this is because some members of KPU representatives of the political parties have failed to gain seat of DPR and even do not meet the threshold to participate in the following elections (*electoral threshold*).¹

To oversee the Election formed the Election Supervisory Committee (Panwaslu). Panwaslu was formed at the central, provincial, district / city, as well as the district that their membership is comprised of representatives from judges, universities, and community. The position of Panwaslu at that time was not clear, whether the part of the KPU or independently outside KPU. The formation made by the Chairman of the Supreme Court (center), Chairman of the High Court (Provincial), Chairman of the Court (regency / municipality and district). Panwaslu has the authority to conduct research in case of problems (rejection) in the validation of counting result. Panwaslu is authorized and liabilities to check the validity of those reasons no later than 7 (seven) days. Panwaslu decision is final and binding.²

Law No. 3 year 1999 does not provide for the limit of administrative violation of elections and the settlement mechanism.³ As the following instructions cited Article 26 of the Law on the duties and obligations of the Election Supervisory Committee are: a. oversee all phases of general elections; b. Settle the controversy over disputes arising in the general elections; and c. follow up the findings, controversy, and disputes which can not be resolved to be reported to law enforcement agencies.

2.2. The Completion Arrangement of Administration Violation of Election Implementation in the Law No. 12 Year 2003 on General Election of Members of DPR, DPD, and DPRD.

Election of 2004 was the first election under the 1945 Constitution of the Republic of Indonesia after the change. The election was also the first time to choose the DPD and the President and Vice-President (Election) by the people directly. 2004 legislative election held under the Law No. 12/2003 on the General Election of Members of DPR, DPD, and DPRD.⁴ Election participants consisted of political parties and individual candidates for the members of DPD.⁵ As mandated by the Constitution⁶ elections organized by a general election commission which is national, permanent and independent.⁷ KPU as the election implementer is responsible for the implementation of elections by delivering a report to the President and DPR.⁸ The number of members of KPU is determined by 11 people,⁹ Provincial and regency / municipality of more than 5 people.¹⁰ While for Sub-District Election Committee members (PPK) are 5, Voting Committee (PPS) are 3, and Group Voting Committee (KPPS) are 7 people.

¹ To carry out elections, KPU formed the Indonesian Election Committee (PPI) serves as executive election (Law No.3/1999 Article 10c and Article 12 paragraph (1) and (2).

² Periksa PP No. 33/1999 Pasal 33. Pasal ini menjadi dasar BJ. Habibie untuk mengambil alih untuk mengesahkan hasil Pemilu 1999.

³ Law No. 3/1999 only regulates criminal violation in a separate chapter (Chapter XIII on the Penal Provisions).

⁴ Preamble Law No. 12/2003 states; that Law No. 3/1999 on the General Election that is not in accordance with the demands and dynamics of society that need to be replaced. Elections should be held in higher quality with the broadest participation of the people. This is a consideration for the improvement of the weakness of arranging and conducting of previous elections.

⁵ Law No. 12 year 2003 Article 5

⁶ the 1945 Constitution of the Republic of Indonesia Article 22 E paragraph (5)

⁷For "national", KPU as the implementers covers the whole territory of the Republic of Indonesia, for "fixed", KPU as an institution carrying out their duties continuously, although the membership is limited to a certain period, and for "independent", that in implementing and carrying out elections, KPU be independent and free from the influence of any party, accompanied with clear transparency and accountability in accordance with the legislation. Check the general explanation of Law No. 12/2003.

⁸ Elucidation of Article 15 paragraph (3) of Law No. 12 /2003 states, which is to deliver a report on the implementation stage, is a report on the implementation of the activities that have been, are, and will be including things that in certain circumstances require the President's policy.

⁹ The second KPU established by Decree No. 70 year 2001, consists of 11 people appointed by President Abdurrahman Wahid on 11 April 2001. All 11 members consist of: Chairman: Prof. Dr Nazaruddin Sjamsuddin, M.A, Members: 1). Prof. Ramlan Surbakti, M.A, Ph.D., 2). Drs. Mulyana W. Kusuma, 3). Drs. Daan Dimara, MA, 4). Dr Rusadi Kantaprawira, 5). Imam Budidarmawan Prasodjo, MA, PhD, 6). Drs. Anas Urbaningrum, M.A, 7). Chusnul Mar'iyah, Ph.D., 8). Dr F.X. Mudji Sutrisno, S.J, 9). Dr Hamid Awaluddin, 10). Dra. Valina Singka Subekti, MSi

¹⁰ UU No. 12 Tahun 2003 Pasal 16 ayat (1)

Law No. 12/2003 divided the election violations into the administrative violation and criminal election. There is no explanation of what constitutes an administrative violation. Law does not formulate the limitation of administrative violations,¹ but other forms of administrative violations can be found in every stage of the election. While, the law does not regulate the forms of administrative violation by the implementers in the election implementation. Thus we can conclude that the law does not become clearer in arrangement of administrative violations committed by the implementers in the implementation of elections.

Settlement arrangements of Election administration violation in the Law No. 12/2003 divided in the form of report handling and violation settlement. All kinds of receipt of the report and the initial handling become the authority of the Election Supervisor. Election supervisor as the only institution that is authorized to receive and determine whether there is a violation or no. If based on the results of the study and preliminary examination proved, Election Supervisor forward to police investigators for a criminal violation, and KPU for administrative violations.² Arrangements regarding the procedure of the imposition of administrative sanctions for election participants are delegated to KPU.³ Based on author searches, KPU's decision on procedures for the imposition of administrative sanctions until the election was done the decision still had not been made yet. Therefore the settlement of administrative violations by both the participants and the implementers at that time became unclear.

2.3. The Completion Arrangement of Administration Violation of Election Implementation in the Law No. 10 Year 2008 on General Election of Members of DPR, DPD, and DPRD

Legislative elections in 2009 followed by 34 political parties that passed the verification and have right to join the Election by KPU and individual candidates for the members of DPD. Election of 2009 were supposed to be Election to strengthen the reform agenda rests on previous elections, the 2009 elections were supposed to realize substantial democracy in order to accelerate the consolidation of democracy as a vision, but instead the otherwise. Election of 2009 was considered to have failed in the realization of this vision even rated as the worst elections between the two previous elections.⁴

The number of members of KPU trimmed from 11 to 7 people. Arrangement the election implementer in the 2009 elections set by separate law.⁵ Such arrangements are intended to create a general election in accordance with the principles of elections and election implementers with integrity, professionalism, and accountability.⁶

Law No. 10/2008 explicitly arranges limits Election administrative violations. Administrative violation is formulated as a "violation against the provisions of this law which is not a criminal provision of the elections and other provisions set out in KPU regulation".⁷ Coverage the administration violation of the Election is very broad, because not only are regulated in the law but also set out in KPU regulation which is not a criminal provision of the Election.⁸ The extent of administrative violations limitation that is not followed by grouping types of administrative violations each stage of elections, a violation, and the threat of sanctions as arrangement of

¹ Law No.12 year 2003 Article 130 states: Election Supervisory forward findings which is an administrative violation to KPU and violation containing criminal elements to the investigator.

² Law No. 12/2003 Article 129 paragraph (5) and article 130

³ Law No 12 year 2003 Article 76 paragraph (3) "The procedure for the imposition of sanctions against violations of campaign provisions as on paragraph (2) shall be determined by KPU. The provision does not explicitly mention as an administrative violation of the Election although in substance the imposition of sanctions for violations is the authority of KPU. Based on the search by the author, the decision on procedures for the imposition of sanctions by KPU until the completion of the implementation of the 2004 elections has not been well defined. Thus practically the administration violation of election never properly resolved by KPU. Delegation of settlement arrangements of administrative violation to KPU by the election law there is no explanation whether the violations committed by KPU, Panwaslu or just any election participant

⁴ Nur Hidayat Sardini, Restoration Implementation of elections in Indonesia, Yogyakarta: Dawn Media Press, 2011, p. Vi.

⁵ To realize a better election implementation, DPR and the government has approved Law No. 22 Year 2007 on the Election. Since 2009 Election, the election implementers were strengthened its position to maintain the quality and independence. General explanation of the law asserted, arrangement of the election implementers in a separate law to further improve the functions of planning, implementation, monitoring and evaluation of general election implementation.

⁶ Preamble letter b. Law No. 22/2007.

⁷ Article 248 Law No. 10/2008

⁸ Based on a review of the Law No. 10/2008 there are 24 kinds of Regulation that should be established by KPU as the implementation of the law.

election criminal offenses.¹ Such arrangements complicate handling violations by the supervisor elections and the imposition of sanctions by KPU. Therefore in such conditions the potential occurrence of omission of violations and ambiguity in handling.

Law No. 10/2008 gives delegation the arrangement of procedures for the settlement of administrative violations to KPU.² KPU had established a KPU Regulation No. 44 of 2008 on the Guideline Procedure of Administrative Violation Settlement of Election. As a guideline procedures (formal law), KPU regulations do not provide specifically, whether the regulation was intended for either participants or implementer elections as well. Because if KPU regulation is also intended for the settlement of violations by election implementers certainly very imprecise. Due to procedural law (formal process) handling of administrative violations made by the offending agency. Such provisions should be part of the arrangement law (legislation) as the arrangement on the Election crime and settlement mechanism. That arrangement became strange because the inclusion of the completion of administrative violations by the election implementer in violation of code of ethic of election implementers.³

A provision of the mechanisms and institutions that manage and resolve administration violations of election is not regulated in KPU regulation. Therefore KPU Regulation equalized and made the handling of administrative violations of election implementers with violations of code of ethic committed by election implementers. These regulations had not answered how the settlement of administrative violations committed by implementers in the implementation of elections. Since both the Law of Election (Law No.10/2008), Law of Election Implementer (Law No.22 / 2007), and in KPU Regulation (PKPU No. 44/2008, as amended by PKPU 20/2009) did not set law mechanisms of settlement of administrative violations of implementers in the implementation of the legislative election. As a result in case of administrative violation by the implementers of the election became uncontrolled and well processed in accordance with the principles of handling and settlement of administrative violations of elections in creating a democratic legislative election.

III. Law Political Configuration Settings on the Completion of Administrative Violation of Election Implementation in the Establishment of Law No. 8 of 2012 on Election of Members of DPR, DPD, and DPRD.

The Administrative Violations of Election and settlement mechanism is one of the violation stipulated in the previous election law. In the development of the arrangements conducted changes. The idea of change of boundary of administration violations of Election delivered by Gede Pasek Suardika as follows:

.... The proposed formula, "Election administration violation is a violation that includes ordinance, procedures and mechanisms relating to the administration of the election in each phase of election beyond the election crime and violation of code of ethic of elections implementers," meaning classified.

If you do not enter a code of ethic and does not make a criminal offense related to the administration of the election then he will enter an election administrative violation. So I guess it's a complete there are ordinances, procedures, and mechanisms".⁴

The proposal was finally approved by the members of meeting formulated in Article 253 of Law No. 8 in 2012 on the limitations of administration violations as follows: "Violation of Election administration is a violation which includes ordinance, procedures, and mechanisms related to the administration of the election in each phase of election outside the crime act of election and violation of code of ethic of elections implementers". Elements of an administration violation of elections can be specified as follows: 1). Violation of the ordinances,

¹ The provisions of election criminal acts in Law No. 10/2008 grouped by stage of elections, type of criminal acts, as well as the threat of sanctions in a separate chapter. (Check the Law No. 10 of 2008 CHAPTER XXI About Crime).

² Article 251 of Law No. 10/2008. KPU Regulation No. 44 year 2008 on the Code of Administrative Violation Settlement Method of Election this is then amended by KPU Regulation No. 20 of 2009 on the Amendment KPU Regulation No. 44 of 2008 on the Code of Administrative Violation Settlement Method of Election.

³ PKPU No. 44/2008 Article 17 states "In terms of types of administrative violations committed by members of KPU, provincial and regency / municipality KPU, can be formed Honor Council no later than 14 days after the report of violation is received. Establishment of the Honorary Board of the Commission (DK-KPU) that is ad hoc done at two levels, namely DK to examine complaints and / or reports of suspected violations of the code of ethic committed by members of KPU and the provincial KPU and DK to investigate complaints or reports of suspected violations of the code of ethic committed by members of the Regency / municipality KPU. Law No. 22/2007 Article 111 paragraph (1) and Article 112 paragraph (112).

⁴ The statement of Gede Pasek Suardika in the written manuscript in the Minutes of Meeting on Discussion of Draft On Amendment Law No. 10 of 2008 on Election of Members of DPR, DPD, and DPRD were delivered on Friday, March 9, 2012 in the meeting room Hotel Tugu Tani Aryaduta Jakarta.

procedures, and mechanisms related to the administration of the election in each phase of the implementation of elections; and 2). The violations outside the crime act of elections and code of ethics of election implementers.¹

Legal political configuration of settlement of administration violation of implementer in the implementation of legislative election based on document review of minutes of meetings of the discussion draft legislative elections specifically is not appear. According to the author it is more due to the strength of the idea to bring a new institution that is the Honorary Council Election (DKPP) as an institution handling and resolving suspected violations of code of ethic committed by election implementers (KPU and Bawaslu). In RDPU² the Working Committee (PANJA) of Election Bill to Law Expert turned more to discuss issues concerning the enforcement of criminal law on elections than administration violations and other violation as stated by vice-chairman of the meeting Gede Pasek Suardika / F-PD as follows.

We need to inform the Election Working Committee, today we invited the experts to be asked for opinion and feedback about the criminal provisions, to replace the perspective of the violation and the offense as stated in the Law No. 10/2008, and a clear description of the overall election law enforcement....³

Statement of the member of DPR indicates how strong the law politic of a criminal offense arrangement of election rather than the administration violations arrangement in the legislative election law. The strong politic of criminal law of election can be seen from the clear and the complete of arrangement of the offenses each stage elections, handling and settlement mechanisms (mechanisms objection or appeal), a violation specified in each phase along with the threat of sanctions.⁴ The strong of law politics of criminal law also followed by the arrangement of handling model on criminal offenses of election in an integrated (Integrated Law Enforcement Center / Center Gakkumdu) are set out in Article 267.⁵ Moving on from the description appears weak enforcement agenda and completion of administration violations in the implementation of elections by the formers of the Election Law and KPU. whereas if it is examined, the result of administration violations committed by the implementers in the implementation of elections has a fundamental impact related to the political choices of citizens and the electability of legislative candidates / parties participating in elections.

IV. Legal Reconstruction on Completing Administration Violation of Legislative Elections Implementation.

The philosophy of power or sovereignty in accordance with the Constitution of NRI Year 1945 is the highest authority in the hands of the people, which is implemented in the corridors of state law-based government. One of the key of the embodiment of pillars of a democratic constitutional state, reflected in the relationship between the state and the citizens. In the context of elections, the relation between state and the citizens is determinant for maturity of democratic. That dialectic relationship is defined as a process of transfer of people's power to be given to representatives of the people who elected democratically.

Joseph Schumpeter put the implementation of free and periodic elections is the main criteria for a political system to be called democratic.⁶ Because the administration of elections should be based on the principle of election⁷ as a consequence of being espoused a concept of democratic state. But in the implementation, the Election was often tinged by violation of the implementation. Such conditions injure the democracy (substantive and qualified democracy). In the implementation of elections always arose violations and disputes, where the violation or the dispute may include administration violation, criminal violation elections and election result dispute.⁸

¹ Roni Wiyanto, Election Law Enforcement DPR, DPD, and DPRD, Bandung: Mandar Maju, 2014, p. 87

² Hearing Meeting (RDPU) Working Committee (Panja) Election Bill with Dr. Aswanto and Topo Santoso held on Wednesday, February 29, 2012.

³ Gede Pasek Suardika statement contained in the Written Manuscript of Minutes of Meeting on Discussion of Election bill of members of DPR, DPD, and DPRD delivered on 29 February 2012 in Jakarta.

⁴ Criminal Election is specifically regulated in Chapter XXII (separate chapter) consisting of 59 Articles of the 328 Articles. Part One Article 273-291 on the Election offenses and second part of Article 292-321 regulating on criminal offenses of elections. Types of criminal offenses and criminal violation each pahse of election along with the threat of sanctions are regulated in detail so that easier on handling and settlement. Unlike the administrative violation.

⁵ His name is "Integrated Law Enforcement Center" should be a blend of the entire management and enforcement of election law violations, in fact, the combined is only handling criminal violation elections.

⁶ Joseph Schumpeter, **Capitalism, Socialism, and Democracy**, New York: Harper, 1947 p 122.

⁷ See Article 22 E Paragraph (1) the constitution of NRI year 1945.

⁸ Janedjri M. Gaffar, **Law Politic of Election**, Konpress, Jakarta, 2013, p 63

Rationality of violation of election process as a form of democracy injuries which is least based on two things; *first*, the choice of Indonesian democracy is a democracy of *representative* so that the elections became the primary means of realizing the people's sovereignty. Through elections the people vote their representatives in parliament who will use their authority to represent the people's interests. What if there is a violation by the implementers in the implementation of elections? That's why the violation of election is a form of injuries against the goal and the realization of democracy. *Second*, A fair, democratic, and prosperous Indonesian state can be realized if it is built on the practice and principles of good governance and sustainable. To generate them one of the key is by implementing a fair and democratic elections through the arrangement of election system. So it's precisely if it is stated that violations of election injure the democracy because it is not consistent with the goals of the Indonesian that is creating a fair, democratic, and prosperous country.

In regard to the handling of election violations Jenedjri argued, form of handling violations the things that need to be improved is the handling of administration violations, it hadn't determined the mechanisms of justice as a forum for the completion of the violations.¹ Completion of administrative violations submitted to election implementers without being provided with a clear mechanism of the legal remedies that creates legal uncertainty. Not a few violations of election administration was not resolved properly due to the limited understanding of *stakeholders* on administration violations by the election implementers. Therein lays the legal vacuum of completion process of election implementation violation which is not regulated comprehensively, in order to obtain legal certainty in a relatively short time so as not to interfere with the implementation stage of elections.

Moving on from that mind, it is important to provide a mechanism to take legal remedies in the process of completion of administration violations in the implementation of elections as part of realizing substantive justice. The substance of the election is the process of delivering vote to form a representative institution and governance as the state implementers, so that the procedural law is not justified, in fact it obscure the truth of the material, and even become a tool of legitimacy violation of the implementers/doer.² Legal remedies are as an effort to ensure/guarantee the validity of any action, procedure, or the decision of the election process. Determinants of democratic and fairness of election substantively refers to *legal principle election process* rather than *legal election result*. For if the first process valid (legal) then the result is certainly also valid (legal).³

The absence of law to take legal remedies could lead to legal uncertainty and injustice. The condition was also weakened by the absence of the persons making the substantive review of KPU regulations regulating the procedures for the completion of administration violations of implementers in the implementation of the elections. Therefore, the author initiated the rule of law should be available to take legal remedies in the completion of administration violations committed by the implementers in the implementation through the Election Supervisor.⁴ and the lawsuits through the State Administrative Court (PTUN). Availability rules are an attempt to prevent the possibility of arbitrary action (*wilkeur*) or abuse of authority (*de tournament de pouvoir*) by the election implementers. Therefore, it is necessary to strengthen on the Election Supervisor as an institution that is authorized to settle administration violations of implementers in the implementation of elections.

Realizing legal compliance in the process of completing the administration violation of elections there are a number of requirements that become the basis for the development of good election law enforcement system. The requirements are: (1) The existence of mechanisms and effective legal completion; (2) The rules on penalties for violations of the election; (3) The existence of a detailed and adequate provisions to protect the right to vote; (4) The rights of voters, candidates and political parties to contest the election management bodies or the courts; (5) The decision to prevent the loss of the right to vote from the election management bodies or the courts; (6) The existence of a right to appeal; (7) The decision as soon as possible; (8) The rules regarding the time needed to decide a lawsuit; (9) There is clarity about the implications for violations of election rules on the election results, and; (10) The existence of processes, procedures, and prosecution that respects human rights.⁵ All 10 requirements above attract to explain how the completion of the violation and the completion of objection in implementing elections in Indonesia.

4.1. Completion of Administration Violation Committed by Implementers in the Implementation of Election by Election Supervision.

¹ Ibid, p. 65.

² Janedjri M. Gaffar, **Politik Hukum Pemilu**, Jakarta : Konpress, 2012, p. 5.

³ Nur Hidayat Sardini, **Op. Cit**, p. 317

⁴ Election Supervisory term used to refer to all level of election supervisory referring to the title Chapter IV of Law No. 15 of 2011 on the Election Implementers.

⁵ Topo Santoso, **Election Law Enforcement, Practice Election 2004, Election Study 2009-2014**, *Op.Cit.*, p. 101-102

Yuridically legal framework of handling completion of administration violation of election implementation has been set in Law No. 8/2012 on Election of members of DPR, DPD, and DPRD. One of the Article which explicitly regulate the completion of administration violation by KPU is article 114.

- (1) The regency/manucipality Panwaslu complete the report of suspected violation against the provision of implementation of election campaign as mention in article 113 paragraph (2) letter a which is administration violation, at the same day as the report received.
- (2) In the case found enough initial prove of administrative violation by implementers and election campaign participants in level of regency/manucipality, the regency/manucipality Panwaslu delivered the findings and the report to the regency/manucipality KPU.

Paragraph (3) of the article asserts that the completion of administrative violations committed by KPU. KPU is authorized to complete the report and findings of administrative violations committed by executive and election campaign participants on the day of receipt of the report. Even further stipulated in Article 115 that KPU then has the authority to establish additional sanctions against administrative violations in which the sanctions will be further regulated by KPU.¹ The role of KPU related to an overall completion of administrative violations clarified in Article 254-256 of Law No. 8/2012. KPU, Provincial KPU, Regency / Manucipality KPU, which examine and decide administrative violations within a maximum period of 7 (seven) days of receipt of recommendation Bawaslu, the Provincial Bawaslu and The regency/manucipality.² Article 256 confirms "In terms of KPU, the Provincial KPU, the Regency / Manucipality KPU, PPK, PPS or Election Participant do not follow up the recommendations of Bawaslu, Bawaslu give sanction either verbal warning or written warning."³

Based on these studies, it was found the base and opportunities strengthening the Election supervisor (Bawaslu and subordinates) as an institution that can be authorized to resolve administration violations of election by the election implementers. Therefore, the election law which authorizes the KPU to regulate and resolve himself the administration violation which he did himself inappropriately. In addition, the KPU ranks as the violator can not adjudicate himself so that the rule should be reconstructed with alternatives to be submitted to the Election Supervisory authority.

The strengthening of the position and function of the Election supervisor (Bawaslu) as a component of the elections implementer with oversight function and enforcement of election law stated in the Law No.15 year 2011 and Law No. 8 year 2012, by giving authority space to Bawaslu to handle and complete violation and dispute of election process. The dispute is not just a dispute among participants of elections, but also a dispute between election participants and Election implementers (KPU).⁴

The provision is to encourage the revitalization of Bawaslu institutions asan institution of elections supervisor to resolve administrative disputes, both disputes among participants of the election or dispute between participants of elections and implementers of election. In addition, Law No. 8 year 2012 arranged that the decision of Bawaslu in resolving election disputes shall be final and binding except in two disputes, ie, disputes that arise in the process of verification and determination of political parties participating in elections and the stipulation of political parties participating in elections and the stipulation of list of fixed candidates for members of DPR, DPD and DPRD by KPU, which Bawaslu decision is not final and binding so for those who feel aggrieved / not satisfied given the right to file a lawsuit to the Administrative High Court (PT TUN).⁵ In the perspective of administration law, Bawaslu position in the case of verification of political party and verification of legislative candidates as a form of Appeals Administration (*Administrative Beroef*) after filing an objection to KPU.⁶ Administration appeal made after the election participant or the legislative candidates filed an objection to the KPU over the exclusion of the KPU's decision. If Bawaslu's decision is not accepted, then the parties filed a lawsuit to PT TUN.⁷ Some of the records that must be done to support the granting of authority to the Election

¹ Based on the writer search, the KPU Regulation governing the provision of additional administration sanctions has not been formed yet.

² Further provisions on the procedure for the completion of administration violations of election stipulated in the KPU Regulation.

³ The article shows that the Supervisor of Election by Law maker of election has been given the authority although limited to impose administrative sanctions on the ranks of KPU. Authority to impose administrative sanctions will be more complete and accurate as accompanied by granting authority to provisions concerning the stages in the process of resolution of election violation especially in resolving the administrative violations.

⁴ See Article 256 Law No.8/ 2012.

⁵ Administrative effort in the form of objection and appeal must be explicitly set / required by law to regulate about it so that it becomes compulsory procedures that must elapse before filing a lawsuit in court.

⁶ Irvan Mawardi, **Dynamics of Administrative Law Dispute in Election** *Mewujudkan Electoral Justice Dalam Kerangka Negara Hukum Demokratis*, Rangkang Education, Yogyakarta, Juni 2014, p 208.

⁷ *Ibid*

Supervisor is:¹ 1) The Election Supervisor should be the independent body (including the person) and non-partisan; 2) Election Supervisors must be able to work in a transparent and all activities could be accountable to the public; 3) Supervisors of election should be firm and fair in making decisions and therefore it must be supported by clear internal rules; 4) Supervisor of Election supported with adequate facilities to carry out his duties.

In conclusion some recommendations that can be given, *firstly*, Bawaslu should ensure that the rules on dispute resolution are clear and definite, so that it becomes effective guidance in resolving the dispute by the election supervisor ranks. *Secondly*, Bawaslu need to recruit people who have the capacity to resolve disputes. So Bawaslu competence in equating the view, earnestness in holding the principle, and technical ability to resolve disputes in the ranks of elections supervisor can be done through systematic and comprehensive training. *Thirdly*, in the face and resolve disputes, Bawaslu and his staff put forward considerations of democratic values, principles of democratic elections and constitutional spirit rather than referring to the technical provisions of election which the compilation is not a comprehensive and confusing.

4.2. The Settlement of Administrative Violation in the Implementation of Election through Administrative Court.

The existence of the State Administrative Court (PTUN) is important in state law.² The existence of PTUN warrant any action on the tools of completeness State legally accountable for the welfare of the people as widest as possible (*bonnum commune*)³, including the KPU act in the implementation of Election. PTUN function is as a place where the disputes between agencies or officials of state administration with a legal subject (person or civil legal entity) who feel harmed by either issued or not issued administrative decisions.

Recalls that in the implementation of elections (lagislative elections) there are two types of decisions, they are the decision of the election result and the decision non election result. The decision on the election results come in the authority of the Constitutional Court, while the dispute non election results some are under the authority of Bawaslu, the State Administrative Court and the KPU. In practice, a few decisions on the administrative dispute (State administrative dispute) is not the election results so it can not be executed because the final decision and is legally binding exit after passing through the stages of voting and determination of the elected candidates / participants of Elections and Election Commission's reluctance to comply with and implement the decision of the State Administrative Court with the argument of running the stages of election which has been established by legislation.⁴ So need to synchronize the Administrative Court Law specifically related to sued grace period and the examination that meets the principle of justice is done with a simple, fast and inexpensive.

The settlement of administrative violations of election by the election implementers, according to the author, is more appropriately carried out by PTTUN (State Administrative High Court) as one of the attractive alternatives. There are at least three reasons why the author chose PTTUN, ie: (1) to take advantage of existing institutions; (2) to guarantee legal certainty and justice by making procedural law of administrative violation settlement of elections on its own; (3) embodies the principle of justice quickly at low cost, because the parties do not need to go through an appeal but can immediately make appeal efforts to the Supreme Court.

In order to ensure the PTTUN decision can be committed by the election implementers, and then you can add a new legal provision in the PTTUN Law and in the election law, that the Election may be subject to administrative sanctions if it does not implement the PTTUN decisions related to the settlement of administrative violations of elections by the Election Implementers. In addition it should be considered how the effort to be able to restore the rights of voters and participants / lagislative candidates who are victims of such violations. That's because for the sake of the realization of justice, so the judicial process is not only set up to provide sanctions for the violators (offenders) only, but also how the efforts to recover / restore the rights of victims of violation committed by the implenters in the implementation of elections realized.

4.3. The Settlement of the Administrative Violation of the Election Implementation through Courts of Ad hoc Special for Election

Philosophically the making court of ad hoc special for election is meant to guide, guarantee and ensure legally in order that the process of the election implementation is running in accordance with the election law

¹ Nur Hidayat Sardini, Op. Cit, p. 333.

² Jimly Ashiddiqie, **Konstitusi dan Konstitusionalisme Indonesia**, MKRI-PSHTN FH UI, Jakarta, 2004, p. 123-129

³ Much. Anam Rifa'i, **Rekonstruksi Penyelesaian Sengketa Administrasi dan Hasil Pemilihan Umum Kepala Daerah dan Wakil Kepala Daerah**, Journal of Law, Faculty of Law, University of Brawijaya, pp 14-16

⁴ Myaskur, **Penyelesaian Sengketa Administrasi Pemilu di Indonesia**, Journal of Law, Master of Law, p. 1

(principles and legislation) and the principle of election justice. Elections as a means of the change of leadership of the nation should take place in a fair, honest and justice.¹ The **juridical** basis of the establishment of the Court special for Election and judge of ad hoc had been predicted far ahead by the law maker. The predictions can be found in the Law No. 48 Year 2009 on Judicial Power. Article 27 of the Law signaled the opening of space for the establishment of other special courts according to the needs and context, including the establishment of the court special for elections. Then Article 8 paragraph (1) of Law No. 49/2009 on the General Court confirms that:

- (1) In the environment of general courts may be established special courts which are regulated by law.
- (2) In the special court may be appointed *ad hoc* judge to examine, hear and decide cases, which require expertise and experience in a particular field and in a certain period of time.
- (3) Provisions on the conditions and procedures for the appointment, dismissal and also allowance of ad hoc judges are stipulated in the legislation.

Constitutional Court Decision No. 14 / PUU-XI / 2013 decided the implementation of legislative elections and presidential elections will be held simultaneously at the elections in 2019, the potential for accumulation of violations or disputes will occur so that need to anticipate by forming the Judicial special for Election.

The idea of the establishment of a special ad hoc Judicial elections have long been put forward as an alternative to tackle election violations fast, accurate and integrated. To deal with violation cases of election implementation at the level of Regency / manucipality KPU and under, set up a special ad hoc judicial election at the regency / manucipality as the first instance courts and high courts at the provincial level as appellate courts in which its decision is final and binding. while for dealing with cases violations of implementing elections at the provincial and national level, the high court is the first instance courts and the Supreme Court as a court of appeal which its decision is final and binding.² As a special ad hoc judicial election the judges can be recruited from non-career judges who comprehend and understand the issues and election law.

Urgency establishment of a special ad hoc judicial elections beside for the purpose of speed, accuracy, fairness, and the integration of the settlement of election violations as well as to guarantee the legal protection of the right to vote of citizens in voicing their political aspirations and election participants. Constitutional Court's decision related to simultaneous elections in 2019 that has the potential to accumulate problems / violations that require the preparation of a judicial institution that can encourage and escort the settlement of election violations that the alternative is to form a special ad hoc judicial elections to produce a legitimate election process (legal election process).

4.4. Comparison Model of Election Violations Settlement of Various Countries

Election law enforcement practices in each country developed in accordance with the legal system as well as empirical experience of elections in the country. There are at least five law enforcement models for settlement of disputes Elections, *first*, the examination by the election implementer body with the possibility of appeal to a higher institution. *Second*, the courts or the judge special election dealing with the objections of election. *Third*, the general court dealing with an objection that can be possible appealed to a higher institution. *Fourth*, the Election problem resolution submitted to the constitutional court and / or the judicial court. *Fifth*, the Election problem resolution submitted to the high court.³ Various models of law enforcement on dispute resolution of the elections, developed on the basis of the structural approach and the principles of fairness that can be guaranteed the continuity.⁴

For example, referring to the practice of the implementation of elections in Mexico, there is the Federal Electoral Institute (IFE) as the implementer of the federal elections and the Federal Election Court as guardian of Election law.⁵ IFE decision can be used by judicial institution as a basis for a verdict both the implementers and participants of the election. In the Mexican election law enforcement system, violation againts the Election law

¹ Irvan Mawardi, **Op. Cit**, p. 237.

² Letter of the Chairman of the Supreme Court No. 142 / KMA / SK / 2001 on Guidelines for the Application System Room in the Supreme Court split into 5 rooms ie, Criminal, Civil, Administrative, religion, and military. The handling violations in the election process of the Supreme Court by forming of sub Room Special Election in existing rooms. Rooms special election can have its main office on Criminal Room or the State Administrative Room. Article II paragraph 2 of the Decree is a basis referenced to the formation of sub Room in MA.

³ Topo Santoso, *Op.Cit.*, p. 28

⁴ International IDEA, **International Standards Guidelines for Reviewing the Legal Framework of Elections (IDEA)**, 2002, p. 13.

⁵ *Ibid*

classified as administrative errors, while the criminal act dealt with criminal law. In addition, there are prosecutor election violations, but there is also a special prosecutor from the attorney general's office who has technical autonomy deal with specific violations.¹

Similarly with the settlement of election dispute in the Philippines, the Election Implementer Body (Comelec) has the exclusive authority to conduct a preliminary investigation of all forms of violations against the law of elections. While the judiciary institution often conduct investigations based on Comelec's report. Comelec investigation officer authorized to issue a summons letter and clarify the issues that occur. The results of the investigation will determine whether there is or not a violation that must be addressed for the prosecution. If there is, the case will be handed over to the public prosecutors.²

Comelec authorized to examine the juridical aspects of all complaints relating to qualification electoral district and appeals of elected officials convicted by court. These institutions also prevent and punish all forms of cheating, violation and malpractice, as well as interference in the election nomination. Comelec also authorized to decide all matters of objection that may affect the electoral, including the registration of political parties. However, an objection to the decision of the implementers of these elections can be submitted to the high court. While criminal offenses resolved through a competent court, such as the regional court.³

While in South Africa form the Election court only to examine the appeal. The court is authorized to review all decisions of the election implementers relating to the problems in the Election. The review is done with high urgency and decided as short as possible. This court may examine all allegations of violations, incapacity or incompetence members of the commission, and make recommendations to the National Assembly who authorized to appoint the members of the commission.⁴

The Chart of Model Comparison on Settlement Election Violations of Countries

No.	Dispute Settlement System	Nation
1	Examination by the election implementer body with the possibility to appeal to a higher institution	Philippines (the elected candidates appealed to the Comelec, ultimately to the High Court; city officials, provincial, and regional elected appealed to the High Court.)
2	Court or special judge to handle objections in elections	Malaysia, Singapore, Philippines (election of members of DPR and Senate) appealed to the High Court.
3	Public court proceedings against the objections of election, may apply to the higher institution.	-
4	Dispute resolution of election results submitted to the constitutional court, the settlement process to the KPU, Bawaslu, district court, and administrative court.	Indonesia (election for DPR / DPRD, DPD, the President)
5	Dispute resolution of election results by the High Court	Philippines (Presidenti and legislative elections)

Source : International Standards Guidelines for Reviewing the Legal Framework of Elections (IDEA) be treated.

Seeing the models of dispute resolution of Election of various countries they use the dispute resolution of elections one roof which is not separated between the Election implementer institution and elections supervisor institution. In many countries the process of settlement of election violations committed by the election implementer at an early stage and proceed to court for the final stage and the end. Election law enforcement system that is applied in a country that was born of a long process from time to time toward better recognized (*incrementalism*). On one side the application of election law enforcement in the country following the elections

¹ Adapted from the explanation of Sue Nelson, **Election Law Enforcement: International Comparison**, <http://www.elections.ca/> in Topo Santoso, op.cit., P. 23

² Adapted fro the explanation of Hon. Hilario G. Davide, JR, "**The Role of the Philippine Courts in Democratic Elections**" <http://www.supremecourt.gov>. in Topo Santoso, Op.Cit., p. 23.

³ Manikas, Peter M and Laura L. Thornton (Eds.). **Political Parties in Asia Promoting Reform and Combating Corruption in Eight Countries**, 2003, p 231-232.

⁴ Topo Santoso, **Penegakan Hukum Pemilu**, Op.Cit., p. 25

law enforcement standards are universal, but on the other hand products of legislation election law was born of the agreement of political forces in the country concerned (*particularism*).

V. Conclusion

- 5.1. The legislation concerning the settlement of administrative violations in the Implementation of Election of Members of DPR, DPD and DPRD (legislative elections) has been unclear. Since Election Law No. 3 Year 1999 and perfected by Law No. 8 In 2012, an arrangement on legal effort of the settlement of administrative violations committed by implementer in the implementation of elections, still found a legal vacuum (vacuum of norm). Legal vacuum that occurs include: (a) specific provisions regulating administrative violations committed by the implementers of the election; (b) regarding the settlement mechanism of the administration violation of legislative election by election implementers; (3) concerning the legal efforts to restore the rights of victims of administration violation. As a result the case of administrative violation elections by the election implementer no settlement is fair and sense of justice for the people.
- 5.2. Reconstruction Regulation of Administrative Violation Settlement of legislative elections offered are:
 - a) Improving the election law by making clear rules on: forms of administrative violation each phase of elections, violators of administration, (should be distinguished between the participants and implementers of the elections), the threat of administrative sanctions, and a fair settlement mechanism. KPU only given the authority to regulate the settlement mechanism of administrative violations committed by election participants and related parties, while the regulation on settlement mechanism of administrative violations committed by the election implementers arranged in the election law as a handling mechanisms of elections crime.
 - b) In order to be optimal the settlement of administrative violation of election, then the authority of resolving the administrative violations of election submitted to the Election Supervisor and if it is not satisfied may file a lawsuit in the Administrative High Court (PTTUN). Therefore, it is immediately conducted harmonization on Law of PTUN with the election law by preparing a special procedural law in the election law on administrative violation settlement conducted by the Election as the settlement of the crime of elections. The second alternatives to forming a special ad hoc judicial elections to resolve all disputes and violations of election process by preparing a special procedural law . The special ad hoc judicial formed at district and city levels as justice in the province for the first and appellate courts . Appeal a judicial decision is final.
 - c) The settlement of administrative violations of implementer in the implementation of fair and democratic elections should provide legal remedies for aggrieved parties (voter and candidate / participant of elections) to protect and restore the right to vote and support in the implementation of the legislative elections.

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