



## The Formulation of The Norm On Handling The Violation of Local Election

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### ABSTRACT

The study to analyze the formulation of the norm on handling the violations of local election which can affirm sanctions for violators of Article 73 of Law Number 10 of 2016 concerning the Second Amendment to the Act Number 1 of 2015 regarding the Government Regulation in Lieu of Act Number 1 of 2014 about the Election of Governors, Regents and Mayors into Law.

The Type of the Research Method used in this study is normative legal research. The results of this study are the sanction formulation policies specifically regarding the formulation of administrative sanctions for violators of Article 73 of Act Number 10 of 2016 regarding The Election of Governors, Regents and Mayors, which have a number of fundamental weaknesses, thus affecting the effectiveness of handling violation, because the weaknesses in the formulation stage (in abstracto) are strategic weaknesses for the next stage, namely the application and execution stage (in concret).

The conclusion of this study is that there is a legal certainty about the violation handling for the local election that is structured, systematic and massive. It is recommended that these elements are not to be used as a series of reasons that will be difficult in proving all three together since it will cause legal uncertainty and a short amount of time to handle an election crime, the bureaucracy to handle election crimes should be designed more simply.

**Keywords:** Authority; Constituional Court; Election; Election Law

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### INTRODUCTION

Local election (Pilkada) is the demonstration of the popular sovereignty in order to produce a democratic government. The 1945 Constitution of the Republic of Indonesia explicitly states that regional heads are democratically elected, this provision can be found in Article 18 paragraph (4) of the 1945 Constitution which states: Governors, Regents, and Mayors respectively as heads of provincial, regency, and the city is democratically elected. Talking about democratic elections, of course, the concept of Pilkada (local election) that took place in 2005, 2010 and lately in 2015 earlier, showed

the demonstration of democratic principles, namely the heads of local government is elected directly by the people.

The phenomenon of the local elections demonstration as a form of democratic state implementation has not entirely presented optimism towards institutionalizing legal values and democratic values. The existence of legal and democratic principles in the demonstration of the local election is not just democratic proceduralism that lacks legal substance, therefore it is necessary to examine to what extent do the principles of the democratic law state are embedded in the demonstration of local elections. The basic agenda in the context of democratization of local elections is the extent to which the implementation of the principles of democratic law in the demonstration of local elections.

However, in *das sein*, the demonstration of the local elections so far have not shown that it has fulfilled the country's legal indicators of democracy. In the context of formal demonstration, the local elections have fulfilled the spirit or the state value of democratic law, namely the existence of legal certainty or juridical "support" in the provisions of the Local Election Law, but substantially, a prerequisite for democratic law covering aspects of political rights (*het beginsel and de politieke grondrechten*), principle of majority, principle of representation, principle of accountability and public principle (*openbaarheidbeginsel*).<sup>1</sup>

In the perspective of legal sociology, law enforcement in elections and local elections is, generally speaking, still quite weak. Laws on local elections have not been institutionalized well, as a result, the process of handling violations cannot be managed elegantly but instead leads to prolonged conflict. There are a number of fundamental factors that hinder the process of institutionalizing the law in resolving local election lawsuits so far<sup>2</sup>; First, there is a relatively low level of public comprehension of the legal mechanism that must be taken when dealing with issues related to deviations and violations during local elections. Second, law enforcement institutions in the local elections, in this case, the Election Supervisory Agency (Bawaslu) and the Election Supervisory Committee (Panwaslu) cannot work optimally because juridically, the existence of the institutions does not have strong authority. The weakness of the Election Supervisory Committee so far has been in their inability to investigate the violations that is reported by the public. It can be seen that the Election Supervisory Committee does not have a strong executive power in handling

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<sup>1</sup> Irvan Mawardi, *Dinamika Sengketa Hukum Administrasidi Pemilukada*, Rangkang Education, Yogyakarta (2014): 86.

<sup>2</sup> Irvan Mawardi, *Pemilu dalam cengkraman oligarki; fenomena kegagalan demokrasi prosedural*, Pukap, Makassar (2010) : 302.

the violation reports. The legal rules in the simultaneous local elections in 2015 also seem to be failed substantially because they did not regulate sanctions regarding violations of money politics. Because of the unclear legal mechanisms that govern it, the formula for settlement often ends in legal uncertainty that clearly tarnishes the image of democracy.

To strengthen the law enforcement and the supervision of money politics, Integrated Law Enforcement (Gakkumdu) General Elections has been established since 2004. Gakkumdu is a joint forum of election supervisors, police and prosecutors in order to accelerate the process of handling election criminal cases.

However, the dealings of money politics in the 2015 local election is still barren. Various reported cases of alleged money politics just evaporated and could not be processed to the courts. While Election Supervisory Agency does not have the authority to make a decision for the cases.

One of the breakthroughs in the revision of Act Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors that has been approved by the People's Representative Council of Republic of Indonesia (DPR-RI) is to strengthen the authority of the Election Supervisory Agency (*Bawaslu*). In the revision, the Election Supervisory Agency was given the authority to accept, examine and decide on the local election money politics cases. The Election Supervisory Agency is given the authority to give administrative sanctions to revoke the election candidate.

In spite of the fact that the authority has been given to the Election Supervisory Agency, the People's Representative Council (DPR), however, opened a loophole of money politics to be legal. It is as if Election Supervisory Agency is only given a blunt weapon. With the legality of transport costs and so on, it causes some difficulties for the Election Supervisory Agency to establish sanctions for money politics violations. As well as the explanation in Act Number 10 of 2016 concerning the Second Amendment to Act Number 1 of 2015 concerning the Election of Governors, Regents and Mayors regarding the administrative requirements violations must fulfill the Structured, Systematic and Massive elements.

From the explanation above, it is not easy to prove a violation that is structured, systematic, and massive that can disqualify the candidate since the uncertainty of the Structured, Systematic, and Massive (TSM) elements. The proof of TSM becomes onerous since the authority is given to the Election Supervisory Agency with a very limited time to investigate, moreover, they are not given a full authority in resolving candidate disqualification cases because the candidates who were considered to have committed violations and were disqualified could still appeal to the Supreme Court.

## **METHOD**

The method used is normative legal research, as well as with analytical descriptive analysis methods.

## **DISCUSSION**

### **The Urgency of the Second Amendment to Act Number 1 of 2015 into Act Number 10 of 2016 about the Election of Governors, Regents, and Mayors**

In the early June 2016, the government has officially ratified the Law concerning the second amendment to Act Number 1 of 2015 concerning the Election of Governors, Regents, and Mayor, to the People's Representative Council. This change is compelling to be carried out in response to the evaluation of the first wave of simultaneous local elections (*pilkada*) on December 9<sup>th</sup>, 2015. The Act (UU) of the Local Election has organized a gradual major scenario for the execution of simultaneous local elections. Starting from December 2015, February 2017, June 2018, 2020, 2022, 2023, until the next simultaneous local elections that will be held nationally throughout Indonesia in 2027.

There are several reasons why the Election Law severely needs to be revised. First, as a legal product of the Election Law, it still contains several weaknesses as a logical consequence of an incomplete and hasty initiation process. Lawmakers must accommodate the various Constitutional Court Decision (MK) as a result of the judicial review of various parties, that changed several important clauses in the Election Law. The adjustment to the Constitutional Court Decision is absolutely for the sake of legal certainty in the execution of local elections in the future.

Additionally, the fundamental weakness of the simultaneous Local Election Law in 2015 is that it did not regulate sanctions for the practice of money politics. In the 2015 Election Law, there were no clauses of sanctions for violators of Article 73 of Act Number 1 of 2015 concerning Election of Governors, Regents, and Mayors which contained a ban on giving or promising something to the voters. As a result, the handling process is transferred to the police and handled through general criminal provisions. This clearly dishonored the democracy of the first local elections that were held simultaneously. This local elections that were held simultaneously in 269 regions in Indonesia are, of course, cannot be separated from promising practices or giving rewards to the voters. Nearly all regions that carry out the simultaneous local elections cannot process reports of alleged money politics violations up to the court.

**a. 21 Points of Change in Act Number 10 of 2016 concerning the Election of Governors, Regents and Mayors**

After going through various debates, the People's Representative Council (DPR) finally ratify the Election Law in the early June 2016. In the ratified Law, there are 21 points of change. The changes include: (1) Article 7 concerning candidacy paragraph s and t, Declare a written resignation as the members of the DPR, DPD and DPRD, and as members of the TNI, the Police, Civil Servants and head of village since they have been designated as candidate pairs for the election; (2) Article 9 KPU's Duties and authority paragraph a, develop and establish PKPU and technical guidelines for election after consulting with the DPR and the government in the RDP whose decisions are binding; (3) Article 10 paragraph b1 KPU immediately implemented Bawaslu's recommendations and / or decisions regarding sanctions for election administration; (4) Article 16 paragraph 1a The selection of PPK members is carried out openly by taking the competence, capacity, integrity and independence of PPK member candidates into account; (5) Article 19 paragraph 1a, The selection of PPS members is carried out openly by taking the competence, capacity, integrity and independence of PPS member candidates into account; (6) Article 21 paragraph 1a, The selection of KPPS members is carried out openly by taking the competence, capacity, integrity and independence of KPPS member candidates into account; (7) Article 22B about Bawaslu's Duties and Authority added with paragraph a1, Receiving, examining and deciding objections to the decision of the Provincial Bawaslu regarding the selection of the candidates for Governor and Vice governor, the candidates for Regent and Vice Regent, and the candidates for Mayor and Vice Mayors submitted by the candidate pairs and/or political parties related to the imposition of disqualification sanctions and whether it is permitted or not by political parties to present the candidates in the next election; (8) Article 41 paragraph 1 and paragraph 2, Individual candidates register by submitting support with a percentage of the most recent election electoral data; (9) Article 41 paragraph 2 (as well) it seems like this should be paragraph 3, The support referred in paragraphs (1) and (2) is made accompanied by a photocopy of Electronic ID Card and a certificate issued by the Population Office and civil registration which explains that the resident is domiciled in an area which is currently holding elections for a minimum one year and is listed in the previous DPT General Election in the said Province or City Province; (10) Article 42 (about The Registration of candidate pairs from political parties) paragraph 4a, in the case of registration for candidate pairs, as referred to in paragraph 4 (note: governor election), it is not carried out by the head of provincial level political parties, registration of candidate pairs that have been approved by central parties can be carried out by central parties, (11) Article 42 (about The Registration of candidate

pairs from political parties) paragraph 5a, In the case of registration of candidate pairs, as referred to in paragraph 5 (note: regent mayoral election), it is not carried out by the head of regency and city level political parties, registration of candidate pairs that have been approved by central parties can be carried out by central parties; (12) Article 57 paragraph (2), In the case that Indonesian Citizens are not registered as voters as referred to in paragraph (1), they shall show their Electronic ID Card on the polling day; (13) Article 58 paragraph (1), The Final Voter List for the last election is used as a source of updating the voter data by taking DP4 into consideration; (14) Article 61 Voters who have not been registered in the Final Voter List can use their voting rights by showing an Electronic ID card at the polling station which is located in the RT RW listed on their electronic ID card; (15) Article 63 about campaign paragraph 2a, Campaigns in the form of limited and face-to-face meetings are funded by political parties and or candidate pairs; (16) Article 63 paragraph 2b Campaign in the form of dispersing campaigns materials to the publics and campaign's tools can be funded and be held by political parties and or candidate pairs; (17) Article 73 paragraph 1 and 2, The candidates or the campaign's team are not allowed to promised or giving away money or any kind of material forms to influence the election organizers and or voters. Any candidates who are proven committing the act according to the Election Organizer Ethics Council's decision will be sanctioned a revocation of their candidacy by the General Elections Commission of the province or city district; (18) Article 74 and added paragraph a1 to The campaign's funds of the candidates can be acquired from : donations from Political party/Joint Political parties, donation from the candidate pairs, contribution of other 3rd party that are not tied with the candidate pairs including personal/individual donations and or private law entity; (19) Article 74 paragraph 5 Donations from a person/an individual at most or highest is 75.000.000 IDR while from a private law entity at most is 750.000.000 IDR; (20) Article 85 paragraph 1 The voting can be done with : a. Mark out a voting paper once, b. A voting poll via an electronic device (poling station); (21) Article 144 The decision of Election Supervisory Agency and principles of general election concerning voting dispute that are binding and mandatory shall be prosecuted by the General Elections Commission of the province and city district at most in 3 days

**b. The urgency to regulate election crime and the application of sanctions for violators of the article 73 of the Act number 10 year 2016 pertaining to the election of a Governor, regent and Mayor.**

Any actions assessed as a election criminal offense is an act of discrimination based on Election's constitution. Corresponding to the definition of election's

constitution, can be understood that election crimes is an offense to an obligation, which the violation will be sanctioned by the electoral constitution.<sup>3</sup>

As a part of the regulating system which organized election, preventing election crimes is an act to sustain a honest and fair election. In that context, the importance of regulating election crimes can be divided into two important parts

*One*, to protect the election, the institution who organized the election and the voters<sup>4</sup> from any malign offense and election crime. *two*, it is to uphold the law and society in Election. As stated by Remmlink, The law are not aimed at itself, but intended to enforce order and to protect society,<sup>5</sup>including Election law.

The Act number 1 year 2015 pertaining to the election of Governor, Regent and mayor used in 2015's regional election still far from enforcing order and protecting the society. For the reason that there is an article which are not accompanied by the sanction clause, which it's the criminal sanctions nor the administrative sanctions

The problem can be found in the article 73 of the Act number 1 year 2015 stated that "the candidates and/or the campaign's team are prohibited in promising and/or giving away currency in any kind of forms to influence voters." Looking at the constitution, we know that it did not include any form of sanctions. A way to avert this act of political bribery is to threaten the perpetrators with punishment of a jail time or in the form of a fine; "*that if any of the candidates and/or campaign team promising to give away money or other kind of materials to influences voters will be sanctioned accordingly by the regulations*". Systemically, the interpretation for article 73 of the electoral regulation refer back to the article 149 from the book of criminal code (KUHP): "*(1) those who at the time of an election, giving away or bribing an individual to influence their right of vote, are threatened with jail time for at most nine months or a fine at highest, forty-five and five hundred thousand rupiah; (2) same punishment are also given to the voters who accepted the bribe*". However, this matter may not easily handled knowing that the Electoral regulations is a *lex specialist*.

With the problems above, the government officially issued the Act number 10 year 2016 in the matter to changing Act number 1 year 2015 in regards to the election of governor, regent and mayor. And related with handling and managing the sanctions for violating article 73. The sanctions are tucked into article 135 A of

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<sup>3</sup> Topo Santoso, dkk. *Tindak Pidana Pemilu*, Jakarta, Sinar Grafika, (2006) : 89.

<sup>4</sup> Ramlan Surbakti, dkk., *Penanganan Pelanggaran Pemilu*, Buku 15, Jakarta : kerjasama Kemitraan, Kingdom of The Netherlands dan Danish International Development Agency, (2011) : 16

<sup>5</sup> **Andi Hamzah**, *Asas-asas Hukum Pidana di Indonesia dan Perkembangannya*, Jakarta : PT. Sofmedia, (2012) : 36

administrative sanctions and article 187A for the criminal sanctions. All of this of course in hope to giving the perpetrators a sense of deterrent and prevent the so called “instant politic practice” which could tarnish the image of a Democratic Lawful country.

#### Formulating a Norm in handling violation of article 73 of the Act number 10 year 2016

The writer in this case, reviewed the sanctions concerning the violation of article 73 of the constitutions number 10 year 2016 as follows:

- a. Candidates and or/ campaign team are prohibited in promising and/or give money or any kind of valuable materials to influence the election’s organizer and/or voters.
- b. Candidates who are proven committed the offense as it shown in article (1) according to the Province’s *Election Supervisory Agency* (banwaslu) they will be sanctioned administratively via revoking their candidacy by General Elections Commissions of the province or city/districts.
- c. The campaign teams who are proven committed the offense as it shown in article (1) will be prosecuted by the court of justice according to the constitution’s regulatory provisions and with the proper sanctions and punishment.
- d. Beside the candidates or the candidate pairs, members of the political parties, campaign teams and volunteers or other/3rd party will also be banned if purposely act against the law by bribing or promising valuable materials to the Indonesian citizens whether directly or indirectly.

#### Formulating article 135 A of the Act number 10 of 2016 pertaining to the election of Governor, Regent and mayor

The article to those who infringed article 73 sanctioned administratively regulated in article 135A which reads as follows:

- a. Electoral administrative offence as it defined in article 73 paragraph (2) is an offense happened structurally, systematically and massive.
- b. The Provincial Election Supervisory Agency (Banwaslu) would then receive, investigate and resolves Electoral Administrative offense intended by paragraph (1) in the spans of at most 14 work days.
- c. The investigation as it stated in paragraph (2) must be done publicly and must be performed properly and according to constitutions and regulations.

- d. The Provincial's or city/districts General Elections Commission (KPU) will receives The Provincial Election Supervisory Agency's Reports of the case and perform a mandatory follow up investigation which then be published at most after 3 work days.
- e. The resolution from the provincial's or city/districts General Elections Commission (KPU) can be in a form of according to paragraph (4) an administrative sanctions by retracting the candidate/pairs candidacy status.
- f. The candidate pairs whom administratively sanctioned can repeal their case stated in paragraph (5) and perform a legal effort in supreme court at most in 3 work days after receiving the resolution from Provincial's or city/districts General Elections Commission (KPU).
- g. Supreme Court decide the candidate's legal efforts stated in paragraph (6) in at most 14 work days counted after the Supreme Court receives the case documents.
- h. In which case the supreme court revoke General Elections Commission (KPU) previous resolution stated in paragraph (6). They have to restore the accused candidate's candidacy status.
- i. The Supreme Court's jurisdiction are absolute and final.
- j. Further investigation of the Electoral administrative offense stated in paragraph (1) is regulated by Election Supervisory Agency (bawaslu).

In the revised article 73 of the constitution number 19 year 2016 paragraph (1) and (2) regarding the arrangement of governor, regent and mayor election stated that any candidate pairs and or campaign teams are forbidden to promise and or giving away money and any kind of valuable material to sway an electoral organizer or voters. And in which case the candidates are proven guilty committing money politic after investigated by the Election Supervisory Agency (bawaslu), their candidacy status would be revoked by The provincial or the city/districts General Elections Commission (KPU). this of course will gives election supervisors an institutional authority to prosecute. Unfortunately, this power of authority have weakness in which case the Supervisor must prove the perpetrator's committing money politic only can be done by structured, systematic and massive as it stated in article 135A. Bearing in mind, there are many factors that need to be proven, at least the factors proven are consists of:

- a. The act of Money politic must be committed by structured agency whether it's a government agency as well as the collective election organizers.
- b. The investigation must be done carefully, structured and presentable to higher/supreme court.

- c. It must have a broad or huge impact on the outcome of the election, and not only in small parts.

Of course, this is a very difficult problem to prove concurrently. So that it will certainly move the money politics back in addition to the explanation of the article in which it states that the regulations does not include providing or giving away money or other valuable material including campaign costs, campaign participants' transportation costs, campaign material procurement costs at limited events or meetings and or face-to-face meetings and public dialogue, and other prized events based on the value of fairness and expenses of a region determined by the Election Commission Regulation.

Asserted in article 73 paragraph (1), it is confirmed that electoral offense that occur are violating the electoral system in a structured, systematic and massively affect the polls. What it meant is in the clarification of The Act Number 10 Year 2016 concerning the second amendment to constitution Number 1 Year 2015 pertaining to Government Regulation in Lieu of regulation Number 1 Year 2014 concerning the Election of Governors, Regents and Mayors into Laws, is meant by:

- a. "structured" is a fraud committed by structural officials, both government officials and Election Organizers collectively;
- b. "systematic" is a violation that is carefully planned, arranged neatly;
- c. "massive" is the impact of the electoral offense that have a very broad impact on the results of the Election and not partially.

The context to proof of Structured, Systematic, and Massive (TSM) according to the interpretation of the Electoral Regulation is a 3 series of actions, if the violation is not of a third nature, the offense can be considered as not fulfilling the requirements to be prosecuted.

#### Formulation in Handling Article 187 A of Act Number 10 of 2016 concerning Election of Governor, Regent and Mayor

Article for criminal sanctions against violations of article 73 is regulated in article 187A which reads as follows:

- a. Anyone who intentionally acts against the law and promises or gives money and or other valuable material to Indonesian citizens either directly or indirectly to influence the Voters and influences their right to vote in certain ways so that the vote becomes invalid , voters can be influences to choosing a particular candidate, or not choosing a particular candidate as referred to in Article 73 paragraph (4) shall be punished with imprisonment for at least 36 (thirty six) months and no longer than 72 (seventy two) months and a fine of at least Rp200,000,000, 00 (two

hundred million rupiah) and a maximum of Rp1,000,000,000.00 (one billion rupiah).

- b. The same criminal offense is applied to voters who intentionally commit illegal acts to receive gifts or promises as referred to in paragraph (1)

In the development of the rules of criminal election, legislators no longer divide criminal election in the form of violations and crimes under of Act No. 1, 2015 on local elections. In the criminal provisions of the Act are no longer found the segregation between the crime of electoral violations and crimes, but only formulated in a unit called the criminal provisions of the election.

### Evidence of Election Crimes

Act no. 1 of 2016 concerning the Second Amendment to Act no. 1 of 2015 concerning the Election of Governors, Regents and Mayors does not specifically regulate the proof of criminal offenses. In a sense, there is no provision that gives its own character in proving criminal offenses. the absence of a regulation to prove the criminal act of election has a consequence on the submission of the regime for proving criminal offenses in the verification system in the Criminal Code. This is based on the provisions of Article 147 paragraph (1) of Act no. 1 of 2015 concerning the Election of Governors, Regents and Mayors stating, *the District Courts in examining, adjudicating and deciding cases of election crimes using the Criminal Procedure Code, unless otherwise stipulated in this Act.* The provision implies that the proof of criminal offenses fully follows what is stipulated in the Criminal Code.

With the special character possessed by electoral crime, such as a short treatment time, it actually requires the existence of more specific provisions related to evidence other than those stipulated in the Criminal Procedure Code. If only refers to the Criminal Procedure Code, handling election crimes will be far from effective. Especially for the purpose of maintaining honest and fair election integrity.

When compared with the handling of criminal acts of corruption, one of the factors that supports more evidence space than what is contained in the Criminal Procedure Code. One of them is the expansion of the definition of evidence as stipulated in Article 189 paragraph (2) of the Criminal Procedure Code. In Article 26 a of Act No. 20 of 2001 concerning Amendment to Act No. 31 of 1999 concerning Corruption Acts is regulated as follows: Legitimate evidence in the form of instructions as referred to in Article 188 paragraph (7) of Act no. 8 of 1981 concerning Criminal Procedure Law, specifically for criminal acts of corruption can also be obtained from:

- a. other evidence in the form of uttered, sent, received or stored electronically information by means of an optical or other similar device; and

- b. documents, namely any recorded data or information that can be seen, read, or heard that may be issued with or without the help of a facility, either on paper or any physical material other than paper, or recorded electronically in the form of writing, sounds, images, maps, designs, photos, letters, signs, numbers, or perforations that have meaning.

Provisions of the Law on Corruption Eradication above provide opportunities spacious enough for investigators to prove the allegations of corruption more easily. Therefore, investigators are not just limited to obtaining evidence set out in the Criminal Procedure Code, but broader than that.

If the same thing is applied in the handling of criminal offenses, of course the verification of criminal offenses will be much easier. because, investigators have a wider source of evidence than the provisions of the Criminal Procedure Code which can be said to be very limited. Thus, an alleged election crime is not easily escaped because there is insufficient evidence to bring it to court.

Moreover, criminal offenses are very easily smuggled into various other activities. In various ways, the perpetrators of election crimes are actually easy to escape from the law because the evidence of election crime is very difficult to find.

### Election Law Enforcement Problems

The problem of enforcement of election criminal law can at least be filled by looking at each component in the legal system which directly affects law enforcement. Lawrence M. Friedman considers that whether or not the law is enforced depends on three components of the legal system. *First*, legal substance. Legal substance is the rules, norms, and patterns of the real proliferation of people in the system. *Second*, the legal structure or structure of the legal system. Friedman called it a skeleton or frame or part that survives or that gives a kind of form and boundary to the whole. The existence of a legal structure is very important, because no matter how good the legal norms are, but if it is not supported by good law enforcement officers, law enforcement and justice are only in vain, *Third*, legal culture. Legal culture is opinions, beliefs, habits, ways of thinking, and ways of acting, both from law enforcers and from citizens about the law and various phenomena related to law.

Departing from the three indicators, the ineffectiveness of electoral criminal law enforcement is also inseparable from the problems contained in electoral laws and regulations, especially related to election crimes; the professionalism of law enforcement officers consisting of election supervisors, police, prosecutors and judges at the District Court and High Court; and the legal culture of implementing elections that is far from healthy.

At the level of norms, laws and regulations as outlined in the previous section have not been clear enough and completely regulate material and formal laws. Even the existing formal law is not sufficient to effectively enforce election criminal law. While at the structural level, law enforcers are faced with the problem of insufficient understanding of the apparatus on the types of election crimes; not yet professional and still "refusing" which leads to deadlock in handling election criminal cases. Whereas in the realm of legal culture, interested parties, especially election participants, still tend to "outsmart" existing regulations so that they can circumvent the legal demands. The political community instead builds awareness of the need to take part in the elections according to the rules, but instead builds a cheeky attitude towards existing rules.

The three issues of electoral criminal law enforcement run in such a way that the enforcement of election law is not handled properly. The system for handling election crimes still requires improvement so that it can be implemented properly and effectively to become one of the instruments to realize fair and fair elections. Handling system improvements include improved regulation; strengthening the capacity and professionalism of election law enforcement; and increasing legal awareness of all election stakeholders. Without doing that, the system for handling election crimes will always be in place and will not be successful in supporting the realization of honest and fair elections.

The flow of handling criminal acts in the electoral criminal justice system as described above shows that bureaucratic handling is not simple. The system for handling electoral crimes is far more complicated than ordinary crimes involving only the police, attorneys and courts. While election crimes also involve election supervisors. Thus, even this condition is considered as one of the reasons why the handling of electoral crime is ineffective.

## **CONCLUSION**

The urgency of the Second Amendment to Act No. 1 of 2015 became Act No. 10 of 2016 concerning the Election of Governors, Regents and Mayors is due to the lack of legal certainty in handling money politics violations in the 2015 simultaneous regional elections. Throughout the implementation process, no candidate pairs can be legally processed until the court ruling. The sanction formulation policy in particular regarding the formulation of administrative sanctions has a number of fundamental weaknesses, so that it influences the effectiveness of violation handling, because weaknesses in the formulation stage (*in abstracto*) are strategic weaknesses for the next stage, namely the application stage and execution (*in concret*). Weaknesses in formulating sanctions against article 72 of Act No. 10 of 2016 concerning the Second Amendment to Act No. 1 of 2015 concerning Determination of Substitute Government Regulations Act No. 1

of 2014 concerning the Election of Governors, Regents and Mayors into the current Act are as follows; (a) Administrative sanctions clause requires violations must meet the elements "Structured", "Systematic" and "Massive"; (b) The authority of the Election Supervisory Board as a party that processes, handles and decides administrative violations is not given a strong authority because the party's decision is not final and binding; (c) Handling criminal acts of local elections still needs improvement so that it can be implemented properly and effectively to become one of the instruments to realize honest and fair regional head elections. Improved handling systems include improved regulation; strengthening the capacity and professionalism of election law enforcement; and increasing legal awareness of all election stakeholders.

### **SUGGESTIONS**

Election Supervisory Board as the party given the authority to handle violations of the Election, especially the authority to decide administrative violations in Article 73 of Act Number 1 of 2015 concerning the Establishment of Government Regulation in Lieu of Act Number 1 of 2014 concerning Election of Governors, Regents and Mayors should authorize to decide a violation in a final and binding manner.

In order not to cause multiple interpretations in connection with structured, systematic and massive election administration violations, it is better if the provisions can contain indicators or elements of the violations so that they are clear and provide legal certainty.

With the time-handling of criminal election is very short, the bureaucracy handling election crime must be designed more simply. Where, the involvement of the police and attorneys are no longer placed separately from the election oversight process carried out by the election supervisors. In this context, the police and attorneys must be designed to be in a unit of the electoral supervisory institution in enforcing election criminal law. In this context, changing the institutional design of electoral supervisors by including elements of the police and prosecutors in *ex officio* is one way to cut the length of the series of bureaucratic case handling election crimes. In this way, all acts of investigation, investigation and prosecution of criminal offenses will be under one command. So that the enforcement of electoral criminal law in a very short time will certainly run better.

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