

Settlement of election offences in four southeast Asian countries (with special reference to the Indonesia general elections)

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Abstrak

ABSTRACT

The aim of this research is to analyse the legal framework in Indonesia, Malaysia, Singapore, and the Philippines, and its conformity to international instruments regarding general elections, particularly on settlement of election offences for the conduct of democratic general elections. To achieve the purpose of this study, there will be need to examine (i) The extent the legal framework in Indonesia, Malaysia, Singapore and the Philippines incorporated international standards on election to protect election process from election offences; (ii) The extent the election offences are settled through the process and through the process of election petition.

It is highly important to conduct a more comprehensive research, either 'globally or regionally, to identify some problems related to settlement of election offences, either through the criminal process or through the election petition process. By means of this research, the differences and similarities of the legal framework as well as their strengths and weaknesses can be found and some recommendations could be proposed to strengthen the system of election offence settlement.

This study is a comparative study. The methodology applied in this thesis is related to the objective, namely, to analyse the legal framework of Indonesia, Malaysia, Singapore, and the Philippines in solving election offences problems. This thesis analyses the extent to which the legal framework incorporates several international standards concerning elections.

The primary data of this thesis are documents in the form of laws, legislation and court decisions. It is supported by other literature, such as reports, academic journals, magazines, newspapers, and books. Additionally, interviews were also conducted with several resource persons having expertise in this field. The data are analysed using a qualitative approach.

The study results demonstrate that in order to prevent unwanted political influence on the election process, every country needs a legal framework that protect general elections from all kinds of election offences, provide the right of all aggrieved parties to challenge the elections result before an independent and competent judicial body and set out the scope of available review, establish provisions concerning the effect of irregularities on the outcome of elections and provide effective and fair redress mechanism.

The existing legal framework of the respective countries generally cover elements of international human right standards of election, however different on some issues, especially the coverage of election offences, the model of regulation, the effect of election offences on the election result, the ground of election petitions

and the settlement procedure (in criminal process and in election petition). Some aspects of the legal framework of settlement of election offences, particularly in Indonesia, need to be improved to ensure more democratic general elections. It is extremely important for democratic country to protect its political process and protect political rights of every citizen and parties from election offences. Without an effective and fair system, it will be very difficult to achieve the protections as provided in International standards. The international standards provide a minimum benchmark to which all countries should aspire.